

Study on **Land Acquisition** V/s **Land Pooling**

Sponsored by
National Housing Bank

October 2016



*Centre for Excellence in Management of Land Acquisition,
Resettlement and Rehabilitation (CMLARR),
Administrative Staff College of India (ASCI),
Hyderabad, India*



*National Housing Bank
A wholly owned subsidiary of
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ASCI Study Team

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ABBREVIATIONS

AMV- Additional Market Value
 AP - Andhra Pradesh
 BDA- Bangalore Development Act
 CLU- Change of Land Use
 CPR- Common Property Resources
 CRDA- Capital Region Development Authority
 DC- District Collector
 DDA- Delhi Development Authority
 DE- Developer Entity
 DP- Development Plans
 EDC- External Development Charges
 EWS- Economically Weaker Sections
 FP- Final Plan
 GIS- Geographic Information System
 GMADA- Greater Mohali Area Development Authority
 GO- Government Order
 GTPUDA- Gujarat Town Planning and Urban Development Act
 JDA- Joint Development Authority
 LAA – Land Acquisition Act
 LP- Land Pooling
 LP/LR- Land Pooling / Land Readjustment
 LPOC- Land Pooling Ownership Certificate
 LPS- Land Pooling Scheme
 LR- Land Readjustment
 MCD- Municipal Corporation of Delhi
 MNREGA- Mahatma Gandhi National Rural Employment Guarantee Act
 MPD- Master Plan for Delhi
 MRTP- Monopolies and Restrictive Trade Practices Act 1970
 NCR- National Capital Region
 NCT- National Capital Territory
 NPRR-National Policy on Rehabilitation and Resettlement
 NTPC- National Thermal Power Corporation
 OP-Original Plot
 PAF-Project Affected Family
 PN- Preliminary Notification
 PPP- Public Private Partnership
 PSU- Public Sector Units
 PUDA- Punjab Urban Planning and Development Authority
 R&R- Resettlement and Rehabilitation
 SC- Scheduled Caste
 SDM- Sub Divisional Magistrate
 SF- Semi-Final
 SIA- Social Impact Assessment
 SIMP-Social Impact Mitigation Plan

ST- Scheduled Tribe

TDR- Transfer of Development Rights

TPO- Town Planning Officer

TPS- Town Planning Schemes

RFCTLARR-The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act.

UCA-Urbanisation Control Area

UN- United Nation

UPA-Urbanisation Promotion Areas

ZE- Zone Expropriation

1.1 Executive Summary

1. In 2013, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 was enacted by the Government of India. The legislation replaced the century old colonial land acquisition law. While the new law is hailed as a progressive community-centric legislation, there have been concerns about the long drawn processes. The implication of the higher compensation/Resettlement & Rehabilitation (R & R) norms on the viability of the projects (in general and affordability of the housing projects in particular) has been another critical concern. On a general note, the high upfront costs, social resistances and the wider political ramifications, all issues of concern with the land acquisition regime have resulted in the increasing tendency on the part of the government to look for alternative ways to assemble land for urban infrastructure. Land pooling/readjustment, a technique for carrying out the unified servicing and subdivision of separate landholdings for planned urban development is being seen as one of the most promising alternative. The present study is an earnest attempt to critically examine the two most important mechanisms of land procurement for public projects in India; land acquisition and land pooling-for their efficiency, equity and ease of addressing land supply issues.
2. The first part of the study devotes itself to an exhaustive analysis of land assembly through the Land Acquisition Act (LAA). The Study provides an assessment of the historical background of the LAA, explains the processes/procedures associated with the land act, particularly the contentious issues-public purpose, use of land for other purposes, determination of compensation, land valuation and the prominent land valuation methods in India. The Study critically examines the RFCTLARR Act, 2013 and provides conceptual clarity on its important provisions viz. social impact assessment, land compensation, mandatory R & R package extending beyond land-losers and land acquisitions, the entitlements and process of R & R, special provisions to safeguard the food security, mandatory consent provisions from landowners and

gram sabha, transparency and consultation provisions, other provisions to curb misuse of acquisition law, the institutional mechanisms and retrospective applicability.

3. For a comprehensive understanding of the changed processes for acquisition, the Study presents a provision by provision comparison of the new legislation with the LAA, 1894, the process flow under the new legislation, the achievable timelines vis-à-vis the maximum timelines specified under the Act and the cost implications of the new law vis-a-vis the old law. The Study provides an assessment of the implementation experience of the new law. The Study makes an assessment of the legal applicability of the RFCTLARR Act over the state specific legislations and the effectiveness of the land procurement through the purchase policies. The Study then assesses the efficiency of the land pooling/readjustment strategy as an alternative to the land acquisition mechanism. The study elaborates the benefits of the strategy to various stakeholders and goes on to describe the land pooling models in various countries. In the Indian context, the Study provides an assessment of the existing models – the Gujarat Town Planning Scheme, Delhi Land Pooling Policy, Haryana Land Pooling Model, the Andhra Pradesh Capital City Land Pooling Scheme, the Punjab Land Pooling Model and the Rajasthan Land Pooling Act.
4. Does the concern about the cost and timelines undermine the effectiveness of the land acquisition as a strategy for assembly of land for the urban sector? Is land pooling an effective and dependable tool that can replace the traditional mechanism? Could land pooling/reconstitution emerge as a futuristic land assembly strategy particularly for the housing sector? It is these precise questions that the Study has attempted to provide more insights into. The Study however works with an important limitation. The new land acquisition Act is just in its implementation phase and so is most of the land pooling policies. Given the nascent stage of the implementation of both these forms of land assembly, a holistic judgment of the social acceptance of these models may be premature. The recommendations made in the study may therefore be considered in the background of the above limitation.

5. Does the concern about the cost and timelines under the RFCTLARR Act, 2013 undermine the effectiveness of the land acquisition as a strategy for assembly of land for the urban sector? The Study finds that the concern about the timeline is more hyped than real. The case study of the first land acquisition (for a 11 kms long road project in Punjab) under the new act, completed in just a year's time and the several other acquisitions that are reaching the award stage in about an year dispels the myth of the non-operability of the new law and that the concern over the maximum timelines may be too far stretched. The study revealed that the hike in compensation for procurement of land through the RFCTLARR Act, 2013 would be in the range of 50/150 percent in the rural/urban areas. The additional R & R cost would be about 6 lakhs per affected family and about 10-12 lakhs for displaced families. Apart from the slightly higher compensation in the urban areas and R & R entitlements, the law also provides for 20 percent of land for return to the landowners in the urbanisation projects. While the use of the new land acquisition act based on the principle of eminent domain may be reviled on account of the cost implications, the legislation scores over the colonial legislation in terms of equity and social acceptance, two key ingredients for a successful land assembly strategy, This is expected to reduce the land conflicts and the associated time and cost overruns arising out of the conflicts over land prices, especially in the urban context.
6. It is a common concern that the society will be forced to bear very high costs if governments are forced to pay exorbitant sums to the landowners. This will also have an impact on the end product, the affordability of the housing sector in particular. It is in this context that the effectiveness and efficacy of the land pooling strategy is assessed. The Study finds that there are many advantages of this mechanism and it could be a win-win strategy for most of the stakeholders; government and land acquiring bodies benefit by the negligible upfront costs, relatively less conflict ridden process and greater social capital creation; land owners benefit by the increase in value of land by several folds, conversion of irregular land parcels into plots of regular sizes and shapes, better infrastructure etc. The pooling mechanism for land assembly can be efficiently implemented in different country contexts and would be workable

if each project generates land value increases sufficient enough to cover the project costs and leaves the landowners with a significant gain in their total land value despite the reduced size of their landholdings. The Study provides a summary of important models in various countries.

7. There are significant lessons from established land pooling mechanisms in various countries. The German Model reflects the importance of institutional strengthening in terms of policies and personnel; equitable distribution criteria and a Valuation Board to promote independent decision making on valuation and promote accountability and transparency in the system. The Japanese experience shows that a dedicated and sufficiently staffed department, policy changes to incentivise the people to join the mechanism voluntarily and a minimum voluntary proportion of people to avoid conflict may greatly contribute to the successful implementation of the strategy. In Japan, a large number of projects were abandoned because of local opposition. This is a significant learning for our country which is looking at land pooling as a win-win strategy with negligible conflict potential. In both Japan and Korea, the legislation provides for different parties to initiate the procedure unlike in India where the government initiates the mechanism in all practising models). While the government should continue to play a key role in developing legal framework, institutionalising systems, procedures and monitoring so as to achieve equitable outcomes, more successful bottom up land pooling models need to be encouraged in our country too.
8. Land pooling or reconstitution has the potential to supply serviced urban land in the fringe areas for a variety of purposes. However, irrespective of the land assembly mechanisms, balancing social and economic issues is vital to effective land management. There are several factors that would have to be accounted for in the expansion of LR as a futuristic strategy for urban infrastructure development and housing in India. It is important to see if the institutions and instruments for land pooling have the legal sanctity; are based on the principles of efficiency, equity, and transparency and has the ability to gain wide social acceptance. The Study puts

forth suggestions towards strengthening this promising land assembly strategy as we expand its use for assembly of land for smart cities and other urban projects.

9. While ensuring easy and fast-tracked process of urban-serviced land is important, It is important that land pooling is carried out in conjunction with the timelines prescribed for various processes of the implementation of the development plan. The relation between land pooling and land acquisition is only spelt out in the Haryana policy (that is yet to be implemented) and practiced in Punjab (though there is no explicit mention in the policy). It may be ideal for the state governments to come out with a generic law for land pooling like the recent Rajasthan Land Pooling Act, with flexibility for use of different financial and technical models in different implementation areas. There should be legal backing for the principles and formal procedures to be followed in land pooling including planning, project management, cost recovery, value capture and allocation. Presently, this is absent in most of the existing policies. While five percent provision is kept for affordable housing in most of the existing models in India, the legal framework does not lay down the process framework and timelines for delivering on the provision. A futuristic land pooling policy should therefore provide for the institutional arrangements for implementation with clear roles and responsibilities and may also provide for penalty provisions for non-adherence of plan provisions/timelines. This is important to bring in more discipline in the process. The involvement of landowners at various stages of the policy formulation, planning, implementation and monitoring of the development scheme may be envisaged in the legal framework. To ensure inclusiveness, it may be also be helpful to ensure minimum percentage of voluntary land owner participation for the project.
10. In India, serious political conflicts have centred on land acquisition cases. Land pooling does not completely eliminate the problem. Any scheme that upsets the status quo in property relations will have resistance from unwilling property owners who benefit from the existing situation for different reasons. The interest may relate to the use value of land, owners with land uses that will not be permitted in the

redeveloped project area, owners with building densities that would not stand according to the zoning restrictions, sentimental/ideological reasons for the status quo etc. The hurriedly put together land pooling schemes may also be prone to similar conflicts unless there is due diligence while planning for the land pooling process. The selected site should be physically (small/medium projects more ideal) and economically suitable for urban development through land pooling. Utmost care should be taken to ensure that habitations of people are not required to be relocated and that proposed area for land pooling does not have a majority of small sized plots. All regions have varied socio-economic contexts and it is extremely important to conduct a study of the area prior to pooling. This would help in preparing adequate safeguards in the scheme. It is also critical to assess the personnel, financial and institutional arrangements for the successful implementation of the strategy.

11. Social acceptance is critical for the success of any land assembly strategy. The study points out the need for improving both substantive and procedural equity for better social acceptance of land pooling policies/projects. This includes allowance for annuity during intervening period, special provisions for landless and other vulnerable sections of the society who are impacted by the project etc. Another extremely important aspect of land pooling that is not receiving adequate attention is the land contribution ratio. It is important that the valuation mechanisms and contribution ratios are finalised with sound technical basis and built in elements of the proportionality principle (maintaining the proportional value share before and after the pooling). Uniform contribution ratio based on size is the existing model for the land pooling policies in India. The mechanism provides optimum outcomes only when plots have very similar characteristics and no dramatic differences in prices exist between different lots. Thus, a critical assessment of the quantum of land area, nature of land use prior to pooling and value of land before pooling becomes important. There could be two options; a higher contribution ratio for landowners with higher original plot values. Second, in case of uniform contribution ratio, the balancing fees may be considered for the losers (with higher original plot values). This

can reduce the resistance to pooling from areas that have relatively higher original plot values.

12. In an era where transparency is stressed and is the also the hallmark of the recently enacted land acquisition Act (also named as Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act), the land pooling/readjustment mechanisms cannot be functioning in a vacuum. The neglect of transparency in project phases and insufficient participation may cause loss of confidence in the process. Information flow and consultations during the preparation of the scheme, beginning with the selection of the project site would be helpful as it would ensure that the concerns of the landowners are taken into account. The disclosure of information should be accessible, in local language and also updated. A Grievance Redressal Mechanism that is accessible, multi-layered and which ensures timely and responsive feedback should also be established at the authority supervising the land assembly.
13. Some states have developed land purchase policies for procuring land for development projects. Most of these policies have a faster land procurement procedure but provide lesser benefits than provided by the 2013 Act. Despite the success of the policies in some high profile projects, the future of this procurement mechanism appears bleak unless benefits are made at par with the land acquisition law. There are also special development acts for acquisition of land in many states. These acts do not have elaborate procedural requirements, timelines and institutional framework as laid out in the new Act. These less stringent procedural requirements provide for an easier process for acquiring land for public projects including the housing sector.
14. As we redefine the use of eminent domain for housing and urban projects, this does not mean that they would completely stop using it all together. Land pooling cannot be used in all contexts and has its own share of challenges. The demand pressure on land remains the critical factor required for the success of the strategy. Also, several

procedural changes are required to improve the robustness of the existing models. The Punjab land pooling experience (that provides an option for the farmers to choose between land pooling benefits and compensation benefits) shows that it is not always the best preferred option by the farmers. It is the expectation from the real estate market that largely guides the choice of the landowners. Given the situation and the potential for conflicts, the two forms of land assembly may be presented as options for land owners to choose from. The experience in Punjab also shows that the urban authority providing the option of compensation/R & R can recover the cost of the high compensation through the sale of urban plots. A judicious use of both the mechanisms may therefore come handy in many cases.

15. A critical issue that deserves mention regarding any futuristic land assembly strategy is the time and cost factor. For the future of RFCTLARR Act as a land assembly strategy, the Study has provided some suggestions to rationalise the time and cost. This could be incorporated as amendments in the central/state laws. On the other hand, the land pooling policies may also have to improvise on many fronts. The establishment of a robust system to determine land values is a critical factor in both the assembly mechanisms. After the initial euphoria, land pooling policies too would be prone to conflicts if not adeptly handled.

1.2 Background

India's urban population is expected to reach about 81 crore by 2050. It is estimated that about 1.7 to 2.0 lakh hectare of land is required to fulfill urban housing need by 2022. The actual requirement of land may decrease, if the unoccupied houses of about 94 lakh are occupied¹. Research has revealed that much of the new development in the urban areas is poorly serviced with most cities absorbing the increasing populations in poor settlements.

The vision of the government is to have housing for all by 2022. Urban land and housing markets play a critical role in shaping urban development outcomes—determining the location, density, form, and price of residential, commercial and industrial development—and are driven by both demand and supply factors. Factors such as population growth, income, and level of economic activity determine how much land is demanded to support development. On the other hand, topography and physical conditions, patterns of land ownership, availability of infrastructure, and government regulations determine urban land supply. Land supply is constrained by restrictive land use regulations, inadequate network infrastructure to support urban land development, unclear property ownership and titling records, and the actions of landowners to drive up land prices by withholding land from the market.²

The executive is the custodian of land. The laws give different kinds of rights to people. These rights are of ownership, possession, enjoyment, right to transfer, right to inherit, right to mortgage, lease, etc. In other words, nobody has any absolute or supreme power/authority/right to land and whatever rights exist are those given by law. Just as rights on land are given by law, so also laws can curtail, regulate or even abolish rights. The urban land can be distinguished into public and private land. The land in the urban areas are primarily owned by private landowners. Land is considered as the most durable of assets, valued as a collateral, security against natural hazards (droughts,

¹ KPMG (2014); Decoding Housing for All-2022

² World Bank (2007), The Evolving Role of World Bank Urban Shelter Projects: Addressing Land Market and Economy-wide Constraints

floods) and other contingencies (dowry, funeral costs), the ownership of which brings a sense of identity for a landowner. Land acquisition through eminent domain is the primary method used by municipalities to acquire land to accommodate urban expansion. While the power to expropriate land exists in most nations of the world, there are differences in the legal conditions and processes. Land acquisition, in many countries are marred by conflicts owing to the equity considerations. Lack of formal funding channels for land acquisition is also being considered a major bottleneck in expanding the land supply for housing development especially in the urban areas. Land pooling or land reconstitution is emerging as a promising alternative for managing and financing urban land development.

1.3 Study Objectives

The primary objective of this study is to critically examine the significance of the traditional eminent domain based land assembly mechanism vis-a-vis the land pooling/adjustment/reconstitution methods to meet the increasing land requirement. The objectives are spelt out as given below:

1. To study the legal and institutional framework prevailing in India and selected countries on land acquisition and land pooling systems.
 - Mechanisms for procurement of land by the Central/State Governments in India for housing sector and the legislative framework.
 - History and evolution of the Land Acquisition Act/ Land Pooling Mechanism in India and International experiences.
2. To understand the implications of the RFCTLARR Act, 2013 on procurement of land for the housing sector:
 - Major procedural changes vis-à-vis the Land Acquisition Act, 1894
 - Compensation mechanisms
 - Potential challenges
3. To understand various models of land pooling existing in the country and evaluate its suitability as an alternate land procurement mechanism for the housing sector.

1.4 Study Organisation

The Study is divided into four chapters. The first chapter provides a brief background, objectives, organisation of the Study and a brief of important land policy instruments. The second chapter focuses on a comprehensive literature review of land acquisition in India along with relevant case laws and the transition to the new law viz. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013, the implementation experience in the law; the issues and challenges, land procurement through land purchases and state legislations.

The third chapter includes two sections. The first section includes a study of the origin of the land pooling policy, benefits of the policy vis-a-vis the land acquisition models and a comprehensive review of the operation of the policy in selected countries. The second section elaborates on the legislative framework for the various land pooling models in India and its operation and implementation experience. These are Gujarat, Haryana, Delhi, Punjab and Andhra Pradesh. The fourth and final chapter summarises the key discussions and findings of the Study.

1.5 Methods of Data Collection and Analysis

The information/data for the study was collected from primary and secondary resources. The secondary sources included:

- Central/State government agencies
- Publications, web resources and other secondary sources.

A survey instrument was also developed for evaluating the land pooling models. In addition, field visits were undertaken to selected states to collect and verify specificities of the land pooling models. The field visits involved semi-structured interviews with representatives of key stakeholder groups.

1.6 Study Focus and Limitations

To understand the efficacy of the land assembly tools, the significance of the evaluation of the existing models need not be overemphasised. Evaluation involves an analysis of cause and effect in order to identify impacts that can be traced back to interventions.

Given the nascent stage of introduction of most of the pooling policies, it is difficult to holistically assess their impact on the beneficiaries and hence to arrive at a judgment of the social acceptance of these models. This is an important limitation of the Study.

Land is recognised as a key constraint to addressing the shelter needs of the increasing urban population. Several alternative policy measures have been made use of in different countries/states to address the shelter needs of the poor in general and urban poor in particular. A brief description of the various land management tools other than land acquisition and land pooling is presented in the next section. While an evaluation of all these tools may be vital for a comprehensive understanding of the future of land assembly alternatives in the urban context, this is not within the purview of the present study. The study also does not dwell into the practices made use of world-over to capture the land values for infrastructure development in the urban context. Nor does it aim at a critical appraisal of the mechanisms to enlarge private sector involvement in financing urban infrastructure and hence address the cost concerns of land assembly and urban infrastructure development. The present study focuses at an in-depth understanding of the two most important land assembly mechanisms in vogue in the country -Land Acquisition/Eminent Domain and Land Pooling/Reconstitution.

1.7 Alternate Land Management Tools

Infrastructure development causes an increase in land value or 'betterment' for the adjoining land parcels belonging to private owners. This unearned increment gives an opportunity for the public authorities to mobilise private land and utilise land-based instruments for the development of land in public domain and for the development of city infrastructure. Policymakers in both developed and developing countries use variety of land management tools to accommodate urban growth and infrastructure development. These land tools have to be understood in the context of the larger legal framework governing land in the urban/peri-urban context (determining the spatial structure in various urban areas). Critical to understanding the land constraints is also an understanding of the policies that facilitate the rural-urban land use conversion and the institutional arrangements thereof. The requirement of urbanisation would also

necessitate policies that can efficiently capture land values to finance infrastructure development as well as optimise land requirement by enabling vertical growth. Some of the prominent land management tools in the Indian context are given below:

- **Transferable Development Rights (TDR):** TDRs, primarily used in Greater Mumbai involves separating development rights from the ownership of land. Given the extremely high land prices, the housing supply in Mumbai can be increased and profits multiplied only if more habitable space can be built on less land³. TDRs means a development right to transfer the potential of a plot designated for a public purpose in a plan (expressed in terms of total permissible built space calculated on the basis of Floor Space Index or Floor Area Ratio allowable for that plot) for utilisation by the owner himself or by way of transfer by him to someone else from the present location to a specified area in the plan, as additional built space over and above the permissible limit in lieu of compensation for the surrender of the concerned plot free from all in cumbrances to the planning and development authority.

With TDR, one can sell the rights of development of a specific land with exchange of money to another person. The developer can get additional built-up area to development in the zone of development. In Mumbai, a landowner whose land is acquired gets a TDR or monetary compensation. He can use this in his remaining land, on any other land owned by him or trade TDR in the open market. While the amount of TDR granted is equal to the plot area surrendered; if the amenity for which the plot is intended is also built and handed over free to the municipal corporation by the landowners, an additional TDR to the extent of the built up area of the amenity is allowed. TDRs can however only be used in designated receiving zones. These zones exclude sensitive and congested zones.

³ One of the striking features of Mumbai's housing situation is the mismatch between the relatively higher incomes of the people vis-a-vis the very low per capita housing space, one of the lowest among the world cities due to unimaginable real estate prices. The prices varied from Rs. 55000/sq.ft at Malabar Hill in South Mumbai to Rs 7500/sq.ft at Dahisar in the distant suburbs. The city has the costliest rental space and the component of land cost in the cost of a formal house can be as high as 90 percent at prime locations (Patil, 2015).

The Government of Maharashtra extended the concept of TDRs to slum redevelopment schemes. The private developer re-houses the slum-dwellers free of cost in self contained tenements of 269 sq.ft carpet area in multi-storied buildings. In return, the developer gets to construct a built up area equivalent to that constructed on the balance plot of land previously occupied by the slum and can sell it in the market. While the mechanism effectively reduces the land availability per slum dweller, it provides them formal housing with ownership, better housing conditions and in effect increases the total housing stock. About one lakh slum dwellers have been rehabilitated through such schemes.

TDRs can be a viable option only under a stable and growing property market where the value of TDR would be greater than compensation. Extremely high land prices, limited land availability and vertical pattern of city development are the potential factors for implementing the TDRs.

- **Partnership with Private Sector for Development:** The private developers can work in close partnership with the government. In Haryana, the private developers are granted permission to develop residential layouts in the state under the Haryana Development and Regulation of Urban Area Act, 1975. The state government evaluates the title of the land, extent and situation of the land, capacity of the applicant to develop a colony, the layout of the colony, and conformity of the development schemes of the colony land with those of the neighbouring areas. They are required to furnish a bank guarantee equivalent to 25 per cent of the estimated cost of land development along with an undertaking to carry out and complete the development works. They also have to pay proportionate development charges if the main lines of roads, drainage, sewerage, water supply and electricity are to be laid out and constructed by the Government or any other Authority.

The developer has to provide for social infrastructure in the area and also has to provide for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a fixed period after which it is to be transferred free of cost to the government or the local Authority as the case may be. The model has worked out well in regions with high demand like the National Capital Region and also providing for

increased supply of housing for higher and middle income Groups. The most ambitious and visible of such schemes is Gurgaon Township, a satellite township of the New Delhi Metropolitan area.

- **Guided Land Development:** The mechanism is used for the conversion of privately-owned land in the urban periphery from rural to urban uses. The approach is seen as a solution for adhoc, uncontrolled urban development in which informal housing and other development occurs with no regard to formal planning. It is also a response to the limited availability of urban land for Economically Weaker Sections (EWS) in urban areas. It is done in partnership with landowners who pay for the cost of servicing their land through donation of land for public infrastructure and payment of a betterment levy.

The government can thus select the area for development and provide for the essential infrastructure. This paves the way of the entry of private developers in the area. Unlike the land pooling mechanism, the government need not decide the amount of land to be returned to the landowners at the end of the project. The approach is cost effective as the landowners of the designated area donate land for roads and right of way for infrastructure and public spaces, as well as pay a 'betterment levy' to meet the costs. The increase in the value of land due to the provision of infrastructure and conversion of land use from rural to urban justifies the imposition of betterment levy from the landowners. In areas with fragmented landownership, this method may need considerable time for building consensus. There is also a great deal of potential for default of the betterment levies by the land owners. This approach was applied in Chennai, under the World Bank-assisted Tamil Nadu Urban Development Project with Chennai Metropolitan Development Authority (CMDA) as the nodal agency.

The Guided Urban Development Scheme in Tamil Nadu was a noteworthy effort to provide for housing supply for the marginalised sections. According to the approach, the private sector developer/land owner affected by the Urban Land Ceiling Act was encouraged to provide serviced sites for the EWSs for exemption from the Act.

While acquisition of private land has its cost implications, there are several land based financing mechanisms⁴ that help use the land values to finance infrastructure development. Given the limited financial capability of the government, this is now becoming an important element of urban infrastructure finance in developing countries especially where cities are growing rapidly. Extensive literature has also developed on unlocking land values for financing infrastructure development. According to a recent Study by McKinsey (2014), that there is no land for affordable housing is a myth and the need is to unlock land at appropriate locations in the cities. The Study highlights six mechanisms that have been used around the world to unlock urban land for affordable housing (Box 1). A judicious choice of innovative methods of urban land assembly mechanisms along with the financing mechanisms will be critical for achieving urban infrastructure development in general and meeting the housing sector targets in particular.

⁴ According to Peterson (2008), Land-based financing of infrastructure is divided into three categories: developer exactions, value capture and land asset management. Developer exactions require developers to build external infrastructure (such as trunk lines for delivery of water, access highways, etc.) in addition to building infrastructure at their own site. In this way, incremental infrastructure costs are passed on (as an impact fee or development charge) to private developers who, in turn, may pass on the costs to the purchasers of the developed sites. Value capture refers to the capture of gains in land value created by infrastructure investment. It can be done through a betterment levy (a one-time tax on gains in land value) or sale of public land whose value has been enhanced by infrastructure investment. China has used this instrument on a large scale to finance infrastructure. Finally, land asset management recognises that the balance sheets of many public entities are already top-heavy with urban land and property assets and public authorities can exchange underused and vacant land for infrastructure.

Box 1.1 Mechanisms to Unlock Urban Land for Affordable Housing

Smart, transit-oriented development: Development around rapid-transit routes has several advantages, including improving labor mobility and, potentially, providing a mechanism for funding both affordable housing and transportation infrastructure. In cities where new transit facilities have been built, land values in the surrounding areas have risen by 30 to 60 percent. By capturing a share of that increase (through land sales or "betterment" assessments), government can pay for the infrastructure investment and the cost of affordable housing.

Releasing public land: Governments often own significant shares of undeveloped land in cities, and this land is frequently valued below market prices. This land is developed in partnership with private developers under a revenue-sharing scheme that allows splitting of development costs and funding further land acquisition and development of affordable housing. Value captured from the release of public land is also a potential source of funding for infrastructure development.

Unlocking serviced idle land: In many cities around the world, significant amounts of serviced residential land (with access to utilities and infrastructure) within urban areas are unused or under-developed. Land remains idle for a range of reasons, including lack of demand and hoarding for speculation as improvements and rising market values around the parcel result in an "unearned betterment" for owners. In some cases, a lack of clear title keeps land off the market. Tax and regulatory policy can unlock idle land through incentives (property tax exemptions for new development, for example) or penalties, such as idle-land taxes.

Enabling development through land assembly or readjustment: Ownership of idle or underused land or dilapidated properties is often fragmented, making development of such land parcels complex and time consuming. Under land assembly/readjustment/land pooling schemes, owners pool their land in exchange for higher density and infrastructure investment. The readjusted land is then returned to the owners. The resulting increase in value creates a strong incentive for owners to contribute land for development.

Ensuring clear titles and formalising informal land use: Informal land can be formalized through legal structures that facilitate individual or collective ownership. Simply establishing who actually owns land can make it accessible to the market. An efficient land-registration system establishes clear ownership rights that enable transactions to move ahead without risk that another party will later assert ownership rights. In addition, a modern land-registration system provides a database of all parcels, their value, land-use restrictions, and any encumbrances (such as mortgages or easements) so buyers have certainty of ownership. Land registration and other legal processes to formalise ownership of informal land also can facilitate transfer of ownership to individuals or groups that have occupied the land.

Improving urban land-use rules and using inclusionary planning: By changing land-use rules, cities can significantly lower the amount of land used per housing unit, usually by adjusting the permitted floor-area ratio. This can be done on a block-by-block basis to take into account the impact of higher density on infrastructure capacity. Developers then can construct more square meters of space for each square meter of land and can fill more demand for housing, particularly in areas close to transit stations where the infrastructure can support it. Encouraging development in this way can cause a trickle-down effect, in which new housing is created across all income segments and older stock becomes available at appropriate locations for low-income households. Broad reform to urban land regulation needs to be complemented in the near term by “inclusionary” planning that requires developers to supply affordable housing or land on which affordable housing can be built. Under inclusionary principles, in return for higher revenue per square meter of land (a density bonus), the developer must set aside a certain portion of a project for affordable units to be sold or rented to lower income residents.

Source: McKinsey Global Institute (2014), A Blueprint for Addressing the Global Affordable Housing Challenge

2.1 Introduction

In India, about fifty percent of the people continue to derive their livelihood from the agricultural sector. For a significant majority of our population, land is a dominant source of livelihood. Beyond the assured source of employment, land serves as a source of collateral, provides cushion against inflation and is a source of social prestige. On the other hand, land is a crucial resource required for development activities. The opposition to land acquisition stems from this dichotomy of views on land by different stakeholders. While traditional literature on development economics devoted primary importance to optimising labour and capital, very little attention was paid to land as a constraining factor. The developments in the last couple of decades have changed the focus to land availability as the most significant impediment to development of infrastructure projects.

2.2 Policies related to Residential Housing

The Constitution of India lays the framework for division of functions and powers between the central and state governments. The legislative powers are divided into three lists: Union list, State list and Concurrent list. The Union Government and State Governments have exclusive power to legislate on the Union and State list respectively. Both the parliament and the state legislatures can legislate on the subjects in the concurrent list. The Constitution (74th Amendment) Act has further delegated several of these functions to urban local bodies. Functions such as housing, urban development, water supply and civic services fall within the purview of the state governments, and they are legally competent to formulate and execute schemes and policies for human settlements, mobilise resources and implement various programmes. Despite the constitutional position, the central government plays a significant role in the governance of urban areas since the country has adopted a strategy of development through centralised planning. Apart from the outlays for housing and urban development made in the State Plans, the central budget makes provision for outlays on schemes of special importance and for assistance to specialised housing and urban institutions.

Compulsory land acquisition based on the principle of eminent domain has been the most important mechanism for acquiring land for urban infrastructure projects in the past. The central law that applied in this case was the LAA, 1894. There were state amendments to the LAA and state-specific legislations that focused on the needs of specific sectors or even communities. For instance, Tamil Nadu has a special Act called the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. The Act provides for acquisition of land for Harijan Welfare (and giving effect to Article 46 of the Constitution of India contained in the Directive Principles of State Policy). In Tamil Nadu's case, for the procurement of land for the specific purpose of housing, the complete formulation of the scheme is not a necessary pre condition for acquiring land. This was provided for in State of Tamil Nadu & Others Vs. L. Krishnan & Others¹. The purpose of the same acts a valid ground for acquisition of the land. Land can be acquired by the government or land which has been previously acquired by the government can be transferred to the housing board which must initiate and execute such schemes (State of Tamil Nadu & Another Vs. A. Mohammed Yousef)². The following Section provides a historic perspective of the LAA in India.

2.3 The Genesis of Regulatory Framework for Land Acquisition in India

The power of compulsory acquisition of land is possessed by the governments of all modern nations. The constitutional framework of various countries provides the power to compulsorily acquire land as the single exception to fully protected private property rights. In most countries, the legislative framework for acquisition of land specifies the mechanisms by which the government can compulsorily acquire land, the purposes for which compulsory acquisition can be used, the agencies and officials with the power to compulsorily acquire land, the procedures to be followed, the methods for determining compensation, the rights and legal remedies of affected owners/communities etc. In India, the genesis of regulatory framework of land acquisition dates to the colonial times. The Bengal Regulation 1 of 1824 that applied to all the provinces under the presidency of Fort William, was the first legislative attempt in this regard. The law was premised on the

¹ 1996 AIR 497

² 1992 AIR 1827

doctrine of *Eminent Domain*. *Eminent domain* is the legal theory of government taking power; the power of the sovereign to take or destroy private property for public purpose without the consent of the owner. The different definitions of the term including interpretations by the judiciary are provided in Box 1.1. In justification of the powers, the two most cited maxims are *salus pouli est suprema lex* (regard for the public welfare is the highest law) and *necessita publica major est quam private* (public necessity is greater than private necessity).

The Bengal Regulation 1 of 1824 was aimed at enabling the officers of the government to obtain, at a fair valuation, land or other immovable property required for roads, canals or other public purposes. Similar legislations were enacted in Bombay and Madras in the following decades called the Bombay Building Act XXVIII of 1839 and Madras Act XX of 1852. The legislation soon required to be enlarged for acquiring land for the railways in the middle of the nineteenth century. The Act XLII of 1850 declared that railways were public works within the meaning of the Regulation and enabled the provisions of Regulation I of 1824 to be used for the construction of railways.

The first enactment on land acquisition for the whole of British India was the Act VI of 1857, which repealed all the previous enactments. The preamble of the Act stated its purpose as making better provision for the acquisition of land needed for public purposes within the territories in the possession and under the governance of the East India Company and for the determination of the amount of compensation to be paid for the same³. One drawback of the improvised Act was the lack of any provision for acquiring land for companies for providing public utility services. This was provided by the amendment to the Act in 1863. Further, under the Act, the Collector was empowered to fix the amount of compensation and disputes, if any, were to be referred to the administrators whose decision was to be final. Though the preamble of the Act provided for the determination of compensation, there was no guideline for the arbitrators to determine the compensation. The working of the Act revealed considerable

³ Study on the Acquisition and Requisition of Law, Tenth Study, Law Commission of India, Ministry of Law, Government of India, 1958

dissatisfaction with the values arrived at by the arbitrators and the lack of legal remedy to get their decision revised. This also paved the way for the enactment of the Act X of 1870. The Act, for the first time provided for a reference to a civil court for the determination of the amount of compensation when the collector could not settle the same by agreement. The drawbacks associated with the 1870 Act finally resulted in the enactment of the LAA, 1894. The Act originally applied only to British India. The native states like Hyderabad, Mysore and Travancore passed their own legislations. Further, there were few amendments to the LAA, 1894 by some provinces (empowered by the Government of India Acts of 1919 and 1935 by which provinces could legislate with respect to compulsory acquisition of land). The amendment of the Act in 1923, the XXXVIII Act of 1923, for the first time provided an opportunity to the persons interested in the lands proposed to be acquired to state their objections to the acquisition of land and to be heard by the authority concerned in support of their objections.

After independence, the central and state governments acquired huge tracts of land using LAA, 1894 for setting up heavy industries, physical infrastructure (such as dams, railways, and highways), creation of townships etc. The LAA, 1894 economised on cost by facilitating the transfer of land by doing away with the protracted negotiations with numerous small land holders. The Constitution of India brought the subject matter of acquisition and requisition of property under Entry No.42 of Concurrent List, empowering the Union government under Article 254 (2) to legislate on the subject and control the state legislations in line with the central legislation.

Box 2.1 Eminent Domain

Eminent domain is the legal theory of government taking power; the power of the sovereign to take or destroy private property for public purpose without the consent of the owner. The term was taken from the legal treatise, *De Jure Belli et Pacis*, written by the Dutch jurist Hugo Grotius in 1625, who used the term *dominium eminens* (Latin for supreme lordship) and described the power as follows:

"... The property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done, the state is bound to make good the loss to those who lose their property."

It is a right inherent in every sovereign to take and appropriate the property belonging to individual citizens for public use. This right, which is described as eminent domain in American Law, is like the power of taxation, an offspring of political necessity, and it is supposed to be based upon implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner (**Chiranjit Lal Chowdhuri Vs. Union of India⁴**)

Eminent domain may be defined as the right or power of a sovereign state to take private property for public use without the owner's consent upon the payment of just compensation. It means nothing more or less than an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities and common good of the whole society. It embraces all cases where, by the authority of the state and for the public good, the property of an individual is taken without his consent to be devoted to some particular use, by the State itself, by a corporation, public or private, or by a private citizen for the welfare of the public (American Jurisprudence, Second, Volume 26, pp 638-39; Quoted by Apex Court in **Sooraram Pratap Reddy Vs. District Collector⁵**).

Eminent Domain is the inherent power of a governmental entity to take privately owned property, especially land, and convert it to public use, subject to reasonable compensation for the taking (**Ramanatha Aiyar, Law Lexicon, 3rd Edition**).

The Constitution, as originally enacted, had provisions under Articles 19 (1) (f) and Article 31 which constituted the Fundamental Right to Property. The 44th Constitutional Amendment of 1978 removed the right 'to acquire, hold, and dispose of property' from

⁴ A.I.R.1951 S.C. 41

⁵ Special Leave Petition (C) NO. 2239 OF 2006

the Constitution as a fundamental right and retained it as only a legal right in Article 300A (that is, no person shall be deprived of his property save by authority of law).

The LAA, 1894 Act underwent series of amendments in its 120 years of existence till its repeal and replacement by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act from 1st January, 2014. The primary objectives of the amendments were to provide timelines, hasten the process of acquisition and provide more reasonable award of compensation. The law saw major amendments in 1984 (given in Box 1.2).

Box 2.2 Land Acquisition Act – The 1984 Amendment

- **Timelines:** For the first time, a frame-work was set up for completion of activities under Sections 4 to 6 i.e. between preliminary notification and final declaration (one year) and under Sections 6 to 11 i.e. between final declaration and award (two years).
- **Higher Solatium:** The payment of solatium was increased from 15 to 30 per cent of the market value.
- **Additional Market Value:** Payment of interest at 12 per cent per-annum was introduced covering the period commencing the date of notification under Section 4 till the date of publication of the Collector's award.
- **Negotiated Land Value:** Section 11A, Consent Award was introduced
- **Award Re-determination:** Section 28A was inserted in the Act to provide equal benefits to all persons to automatically get similar amounts of compensation for losing similar quantum of land without further approaching any court.
- **Compensation for Advance Possession:** For emergency acquisition under Section 17, taking of possession was brought under a pre-condition of payment of 80 per cent of the estimated compensation.
- **Procedure for acquisition of land for a public owned or state controlled body** was provided by amending the words 'public purpose' vide Section 3 (f) (iv).

Prior to 1984, the Land Acquisition Act was applicable to the whole of the country, except the states of Jammu and Kashmir, Rajasthan, Kerala and Nagaland, which had their own land acquisition laws.

2.4 LAA, 1894- The Process and Issues

2.4.1 Land Acquisition-The Process under the Colonial Law: LAA, 1894 was repealed with effect from 1st January 2014. However, it is pertinent to understand the processes and issues associated with the implementation of the Act to appreciate the background of the enactment of the RFCTLARR Act, 2013 and the changed processes. The broad processes under LAA, 1894 included notification of acquisition, identification of affected parties and determination of a compensation package for the land losers. The process started with the issuance of preliminary notification under Section 4(1) of the Act which had to be published in the Official Gazette, two newspapers (one in the local language) and also publicly displayed in convenient places in the locality. The notice made it lawful for the government to enter and survey the specified land and is also was an alert to the landowner not to invest on improvements in the land. The payment for damages, if any were rendered to the concerned persons and the decision of the Collector was final regarding the sufficiency of the amount.

The persons interested in the land could file their objections within 30 days of the notification and the Law provided for him/her an opportunity of being heard by the Collector. The Collector had to submit a report to the appropriate government in respect of notified land along with his recommendations on the objections. Based on the decision of the government, a declaration had to be issued under Section 6(1) within one year of the preliminary notification, with similar publicity norms. This became the conclusive evidence that land was needed for public purpose. The land could then be marked out, measured and planned under Sections 8. Under Section 9(1), the Collector conveyed the intention of the government to take possession of the land and invited claims from all interested persons to compensation. Thereafter, the Collector had to conduct an enquiry under Section 11 of the Act and make an award stating (i) the area of the land (ii) compensation payable and (iii) the apportionment of the compensation among the interested persons. The land owner could however object to the award. The Collector could go ahead with possession of land under Section 16 after passing the award and upon doing so, the land vested absolutely in the government,

free from all encumbrances. The procedures to be followed at the time of possession of land were not detailed out in the Act. However, this has been interpreted by the Supreme Court in various judgments (Box 1.5). The Act provided for compensation to be based on market value on the date of preliminary notification. In addition, in view of the compulsory nature of the acquisition, a solatium of 30 percent of market value was provided for besides an interest of 12 percent from the date of preliminary notification till award or possession (whichever was earlier). Section 17 of the Act conferred special powers in the event of urgency which empowered the Collector to take possession of land by dispensing with Section 5 (A) that provided the land owners with the right to raise objections against acquisition of their land. In such cases, Section 6 (1) could be passed soon after preliminary notification under Section 4(1) and the possession of land could be taken upon the expiry of 15 days from notices under Section 9(1) and even before the award (advance possession), provided 80 percent of the compensation was paid (as per the estimates of the Collector) to the land owners.

The land could be acquired under Part II or Part VII of the Act. Part II of the Act could be invoked if the compensation is funded wholly or partly from the public revenues or some fund controlled or managed by the local authority. Under Part VII, land could be acquired for non-government companies, with the company paying for the entire amount compensation for the land to be acquired. The acquisition under Part VII could be for (i) erecting dwelling houses for workmen or for providing amenities connected with such dwelling houses (the only 'non-public purpose for which land can be acquired under the Act) (ii) construction of some building or work for a company, which is engaged or is taking steps for engaging itself in any industry or work, which is for a public purpose or is likely to prove useful to the public.

Box. 2.3 Procedures for Possession of Land

In **Balmokand Khatri Educational and Industrial Trust Vs State of Punjab**⁶, the Court opposed the argument that even after finalisation of the acquisition proceedings possession of the land continued with the appellant and observed: *"It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession viz. drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession"*.

In **Balwant Narayan Bhagde Vs. M.D. Bhagwat (supra)**⁷, the apex court held that *"No hard and fast rule can be laid down as to what act would be sufficient to constitute taking of possession of the acquired land and observed that when there is no crop or structure on the land, only symbolic possession could be taken"*. The principles which can be culled out from the many judgments are:

- No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
- If the acquired land is vacant, the act of the concerned state authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
- If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, not be sufficient for taking possession. The concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama..
- If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.
- If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.

⁶ (1996) 4 SCC 212

⁷ (2010) 4 SCC 532

2.4.2 The Working of LAA, 1894: Laws are primarily enacted to achieve the social and political objectives of the State. The LAA, 1894 was enacted to primarily meet the need of the colonial state to create infrastructure to facilitate movement of goods and services for trade and commerce. The Act served the needs of the post independent India with its massive industrialisation programme and irrigation projects. The first two decades after independence saw some of the largest land acquisition projects in the country's history (multi-purpose irrigation projects of Bhakra Nangal in Himachal Pradesh, Hirakud Dam in Orissa, Damodar Valley Project in West Bengal, the Steel Plants in Bhilai, Rourkela, Durgapur etc). The issues emerging from the implementation of the LAA, 1894 was aptly captured more than forty years ago by the Land Acquisition Review Committee (a Committee consisting of Members of Parliament and nominees of the state governments set up by the Government of India in 1967 to examine the entire framework of LAA, 1894, its administration and to suggest improvement in its working). Much of the following quoted from the Study of the Committee in 1970 continued to remain largely true in the following decades.

"The LAA 1894 is over 75 years old. When enacted it was not faced with the requirements of the Constitution of India. It is remarkable that broadly speaking, it fulfilled the needs of the community for such a length of time. Even today, the Act is not so much vulnerable on its provisions as on the way the executive authority tried to implement them. From one end of the country to the other, the same story has been repeated again and again that it has been used as an engine of oppression by the administrative authorities and the weaker and poorer sections of the community have suffered the most. The complaint (not without substance) is that only an illusory compensation was awarded in an appreciable number of cases and that too was not paid for years. Emergent acquisition became the order of the day without the existence of any emergency. The law was ignored and the exception was made the law, perhaps on the ground that observance of the law would have meant delay. The executive mind considered the delay in acquiring possession as a matter of great importance but the delay in payment of compensation to poor landowners as of no consequence. This callous indifference was manifested again and again. Many of the sufferers lost their hereditary occupation also which alone provided them with some sort of economic security. As a result, quite an

appreciable number of citizens were completely uprooted and turned into refugees in their own land"

2.4.3 Public Purpose: Under LAA, land was to be acquired when it was needed for a "public purpose" or a company. The definition of "public purpose," which started out as fairly expansive was stretched even wider over the years⁸.

The definition of "public purpose" in the LAA was expanded in 1984 to include land needed for a government-owned or controlled corporation. Nothing has been more debated in the working of the LAA than the principles governing acquisition of land for public purpose, the absence of an exhaustive definition and the issues that emerge when land is not used for the purpose for which it was acquired. The expression 'public purpose' is not defined in the Constitution. The LAA did not provide a conclusive definition of this term, and only an inclusive definition is given in Section 3 (f) of the Act. As per the Act, once a declaration was made that the land was required for a public purpose; such a declaration is conclusive evidence of the fact that the land is needed for a public purpose. Over the years, the concern has always been that the power to acquire the land could be abused in the name of public purpose if no precise definition of the term was given in the statute. The expression, 'public purpose' has been considered by the courts in several cases. One of the earliest case was that of *Hamabhai Framji Petit Vs. Secretary of State for India*⁹. In that case, the Judicial Committee of the Privy Council had to consider the meaning of the words 'public purpose' occurring in a

⁸ The expression "public purpose" included the following under the definition.

- (i) village sites;
- (ii) town or rural planning;
- (iii) planned development of land from public funds in pursuance of a government program or policy;
- (iv) for a corporation owned or controlled by the state;
- (v) residential purposes to the poor, landless, those affected by natural calamities, or those displaced by a government scheme;
- (vi) carrying out any educational, housing, health, or slum clearance scheme;
- (vii) any other development scheme sponsored by the government; or
- (viii) locating a public office

⁹ (1915) 17 BOMLR 100

lease of the 19th century. The following passage from the Judgement reflects the early thinking on the issue.

General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purpose' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.

In the State of Bihar Vs. Kamleshwar Singh¹⁰, the Apex Court observed that "it is the presence of general interest of the community in an object or an aim that transforms such object or aim into a public purpose" and further that "the Legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute". Some of the important cases challenging land acquisition for housing sector is given in Box 2.4.

¹⁰ AIR 1952 SC 352

Box 2.4 Cases Challenging Land Acquisition for Housing Sector

State of Tamil Nadu and Another Vs. A. Mohammed Yousef and Others, 6 August, 1991¹¹

Land was acquired by the Government of Tamil Nadu for the purposes of construction of residential houses although there was no housing scheme in place. The provisions of the Housing Board Act suggest that the Board has not been vested with unrestricted power to frame any scheme. It has to have a housing scheme in place, even if not a final one in order to take into account the representation by the local authority and the objections of any other person while deciding the same on merits before according sanction. If a notification is published without a scheme, it defeats public purpose since the land owners cannot object it on any grounds and goes against the principles of natural justice. Hence a proceeding can be commenced only after framing the scheme for which the land is required.

State of Tamil Nadu & Others Vs L.Krishnan & Others, 1 November, 1995¹²

Lands were acquired by the Government of Tamil Nadu without the publication of a scheme which was transferred to the housing board for the purpose of construction of residential houses for the poor. The same was challenged on the grounds of non-publication of a scheme. It was however held that The Housing Board Act was enacted by the Tamil Nadu legislature "to provide for the execution of housing and improvement schemes, for the establishment of a State Housing Board and for certain other matters". The duty of the Housing Board it is believed does not begin and end with executing the housing scheme. It is under an obligation to carry out certain other schemes as mandated by the Government in public interest. The limitation of drawing up a final scheme of housing applies only when the housing board specifically acquires land for the purpose of housing and explicitly states so. Hence the acquisition was held to be valid.

Madhya Pradesh Housing Board Vs. Mohd. Shafi & Others, 13 February, 1992¹³

The State Government issued a notification and a subsequent declaration for the acquisition of land under the LAA in a village in Madhya Pradesh for the purpose of construction of buildings and shops under self financing scheme. The notification however read the purpose of the acquisition to be one in public interest and purpose. It was noted that the State cannot acquire the land of a citizen for building some residence for another, unless the same is in "public interest" or for the benefit of the "public" or an identifiable section thereof. There remains no clarity or even details about the alleged public purpose and hence appears too vague. It was further held that "Self finance schemes" do not constitute a housing scheme for the housing board and the acquisition was held invalid in the eyes of law.

¹¹ State of Tamil Nadu and Another Vs. A. Mohammed Yousef and Others, 6 August, 1991

¹² SCC (7) 450, JT 1996 (1) 660

¹³ Special Leave Petition (C) No. 8788 of 1989

New Riviera Co-Op. Housing Vs. Special Land Acquisition Officer, 4 December, 1995¹⁴

New Riviera Coop. Housing Society, Bombay consisted of several flats which were notified for acquiring the land for public purpose. The flat owners contested this acquisition on the grounds that it rendered them shelter less which they claimed violated their right to shelter under Article 21 of the constitution. It was however held by the hon'ble Supreme Court that even though a person whose land is being acquired compulsorily for a greater public purpose is rendered shelter-less, he/she is rendered a solatium to compensate him for depriving him of his/her property. The housing scheme was hence held not to be violative of Article 21 of the constitution.

H.M.T. House Building Co-Op. Vs. Syed Khader & Others, 21 February, 1995¹⁵

A co-operative society registered in Karnataka under the Karnataka Co-operative Societies Act intended to acquire land from the government for the purposes of a housing scheme for its members which it alluded to as a public purpose. The society however then outsourced the construction of the houses to another party for which it was paid a huge amount. This was come to seen as meandering the law and the object of "public purpose" was challenged. It was held that it is incumbent on part of the appropriate government while granting approval to examine different aspects of the matter so that it may serve the public interest and not the interest of few who can as well afford to acquire such lands by negotiation in open market and hence the acquisition was held to be invalid since it served no public purpose at large.

Rajasthan Housing Board & Others. Vs. Kishan & Others, 27 January, 1993¹⁶

The government had acquired land for Rajasthan Housing Board under the LAA. A notification was however issued dispensing with the inquiry provisions contemplated under the Act. The land acquired had houses, huts, cattle sheds etc. The appellant contended that the land acquisition would be void since the inquiry proceedings were dispensed with and the houses in existence should not have been acquired. The Court held that the inquiry proceedings needed to be dispensed with due to the emergency of the need to provide houses to the EWSs sections of the society. So far as the houses in place are concerned, the existence of a few super structures does not vitiate the proceedings of the large land in question. The land acquisition was held to be valid.

Another question which arose in the earlier years is if the existence of public purpose should be made justiciable. In the State of Bombay Vs. R. S. Nanji¹⁷, the Supreme Court observed that an examination of its previous decisions led to the conclusion that it was impossible to precisely define the expression, public purpose. In each case, all the facts

¹⁴ 1996 SCC (1) 731

¹⁵ 1995 2 SCC 677

¹⁶ 1993 SCC (2) 84

¹⁷ AIR 1956 SC 294

and circumstances were to be closely examined in order to determine whether a public purpose has been established. However, it was held that for any law in India passed after the commencement of the Constitution would be unconstitutional if it seeks to make the executive determination of the existence of a public purpose final and non-justiciable. Also, in the State of West Bengal Vs. Bela Banerjee¹⁸, the Supreme Court observed that the existence of public purpose as a fact must be established objectively in as much as Article 31 (2) of the constitution made the existence of such a purpose a necessary condition for acquisition. In Somavanti Vs. State of Punjab¹⁹, the Supreme Court held that the conclusiveness or finality attached to the declaration (Section 6 which provides that the declaration shall be conclusive evidence that land is needed for a public purpose) is not only as regards the fact that the land is needed but also as regards the question that the purpose for which the land is needed is, infact, a public purpose. On the lines of the several important court judgements mentioned above, the Daulat Singh Surana Vs. Land Acquisition Officer²⁰ emphasised the two points of judicial stand on 'public purpose'. First, the term should not be defined as it changes with passage of time and second, the interest of the community is always superior to the interest of the individual.

Thus, the declaration of the Government as regards the existence of a public purpose was final except in cases involving fraud or colourable exercise of the power. While the power of judicial review of the Courts made the determination of public purpose justiciable, they were seen generally placing restrictions on themselves and leaving it largely to the domain of the government. The grounds of review were (i) malafide exercise of power (ii) a public purpose that is only apparently public purpose but in reality private purpose or other collateral purpose (iii) an acquisition without following the procedure established under the Act (iv) when the acquisition is unreasonable or irrational and (v) when the acquisition is not a public purpose at all and the fraud on the statute is apparent.

¹⁸ 1954 AIR 170

¹⁹ AIR 1963 SC 1951

²⁰ AIR 2007 SC 471

2.4.4 Use of Land for Other Purposes: Another issue that has brought about considerable discontentment in the implementation of the LAA, 1894 was the frequent change of use of land from the one for which it was acquired. There have also been several apex court judgments on whether the use of land for any public purpose other than the one for which its possession was taken should be permitted. In *Suresh Verma Vs. State of Punjab*²¹ case, the land was acquired for the purpose of construction of bus stand. Later, however, the government changed its mind and the land was handed over to the state-owned Agro-Industries Corporation. The original owner from whom the land has been compulsorily acquired challenged the acquisition. The question raised was whether the government could use the land for some purpose other than that for which the land was originally acquired, and what the rights and remedies available for the original owner were under these circumstances. The court held that, once the acquisition is complete, the land vests in the government, and it is subsequently open for the government to use it for some other purpose. The judicial interpretation regarding the change of purpose in cases of land acquisition by the sovereign in its exercise of the power of eminent domain has been largely similar. In other words, even in case of change in the purpose for which land was acquired, the judiciary has been largely accommodative of the actions of the appropriate government.

2.4.5 Determination of Compensation under Land Acquisition Act: The LAA, 1894 provided for determination of compensation by reference to the market value on the date of notification under Section 4 (1) of the Act. The expression land as defined in Section 3 (a) of the LAA includes benefit to arise out of land and things attached to earth. Though the market value was not defined in the Act, the factors that should be considered in determining the compensation and that should be ignored were specified. Thus, in determining the amount of compensation under Section 23, the Court was required to take into consideration the matters such as the market value of land, the damage by reason of taking of any standing crops or trees, damages due to severing of land from other land etc. But the Court cannot take into consideration matters such as increase to the value of the acquired land or other land of the person likely to accrue

²¹ AIR, 1971, Punjab and Haryana (P&H), 406.

from the use to which the land acquired will be put after acquisition; any improvements on the land acquired made without the sanction of the Collector after the publication of Section 4(1) notification etc.

Box 2.5 Market Value of Land

There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of "prices that have been obtained in the past for land of similar quality and in similar positions". This is what must be meant in general by the market value in Section 23

Judicial Committee in Narayana Gajapatiraju Vs. Revenue Divisional Officer, Vizagapatam²²

The importance of notification under Section 4(1) is that on the issue of such notification, the land in the locality to which the notification applies is in a sense frozen. The freezing takes place because the market value of land to be acquired had to be determined on the date of Section 4(1) notification. The value of crops and trees on the land at the time of publication of notice had to be included in the market value of the land. Also, any outlay or improvement on the land made or affected without the sanction of the Collector after the date of the publication of the notification under Section 4(1) could not be taken into consideration at all in determining compensation (Section 24).

2.4.6 Land Valuation Methods in India: The definition of the Courts on the market value has been fairly consistent - "*market value is the price that a willing seller might reasonably expect to obtain from a willing purchaser*". This definition does not however lead to a precise determination of market value as the demand and supply factors vary substantially over time and place. Also, the uniqueness of each property's location, size, quality, and possible potentialities affects its market value. The court decisions have generally accepted two different valuation methods for determining market value: (i)

²² AIR 1939 PC 98

comparable sales; (ii) capitalisation of income from land. The third method which is also called the expert assessment method makes use of either of the two.

(a) Comparable Sales Method: The comparable sales method is the most frequent method used by the land acquisition officers to determine market value of land compulsorily acquired under the LAA. The rationale of the method is that a recent sale from a willing seller to a willing buyer of a property (the comparable property) is the best reflection of the value of the land. In *Shaji Kuriakose Vs. Indian Oil Corporation Limited*²³, the Supreme Court held that “It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. The Apex Court in India has therefore laid down many factors that are required to be fulfilled for the use of the method:

- (1) The sale must be a genuine transaction
- (2) The sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act
- (3) The land covered by the sale must be in the vicinity of the acquired land
- (4) The land covered by the sales must be similar to the acquired land
- (5) The size of plot of the land covered by the sales should be comparable to the land acquired.
- (6) The land covered under the sale instance should have similar potential as that of the acquired land²⁴

²³ (2001) 7 SCC 650

²⁴ *Faridabad Gas Power Project, N.T.P.C.Ltd. & Ors. Vs. Om Prakash & Ors.* [2009 (4) SCC 719]; *Shaji Kuriakose & Anr. Vs. Indian Oil Corp. Ltd. & Ors.*, AIR 2001, SC 3341; *Ravinder Narain & Anr. Vs. Union of India*, [2003 (4) SCC 481].

If the above factors are satisfied, it is held rational to provide for the sale value of the land covered by the sales for the acquired land. In *Viluben Jhalejar Contractor Vs. State of Gujarat*²⁵, the Hon'ble Supreme Court laid down the following principles for determination of market value of the acquired land. The Court held that the amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. When there are dissimilarities in regard to locality, shape, site or nature of land between land covered by the sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. According to the method, while market value is best reflected in actual prices paid and received (which is the case when the market is relatively active), the value can also be approximated by the prices paid in "comparable sales"—that is, recent voluntary transactions for similar and nearby land parcels. In India, the sale deeds for immovable property are required by law to be registered.

²⁵ (2005) 4 SCC 577

Box. 2.6 Case Laws-Market Value of Land**Value of Developed Vs. Underdeveloped Land**

Market value of fully developed land cannot be compared with wholly under developed land although they may be adjoining or situated at a little distance
Ranvir Singh Vs. Union of India²⁶

Factors Essential for a Sale to be a “Comparable Case”

The element of speculation will be reduced to the minimum if the underlying principles of fixation of market value with reference to comparable sales were made. Only when the following factors are present, it could merit a consideration as a comparable case

- (i) When sale was within a reasonable time of preliminary notification, Section 4(1)*
- (ii) It should be a bonafide transaction*
- (iii) It should be of the land acquired or of the land adjacent to the land acquired*
- (iv) It should possess similar advantages*

Ravinder Narain Vs. Union of India²⁷

Future Speculative Values Should Be Excluded

If a land has potential as building site, the market makes allowance for it, and naturally the market value of land rises accordingly. The market value itself includes estimates by the market of speculative advances in the value of lands in consequence of improvement already made in the locality or in consequence of potentialities for many purposes. The market, even in villages, take into account the use already made of similar lands in the locality and the probable most advantageous use similar lands are capable of being put to. It is not for the court to speculate as to the future potentialities of sites or lands. The Court has only to consider the market value on the relevant date. If the land has future potentialities, the market value includes the value of such future potentialities

Yeshwant Rao Govindrao Vs. The Collector Nagpur²⁸

The crux of the valuation problem in India is the understatement of the vast majority of registered sale deeds to reduce tax liability²⁹. This results in substantial undervaluation of land.

²⁶ AIR, 2005 SC 3467

²⁷ Civil Appeal 11733-11734 Of 1995

²⁸ AIR 1961 Bom 129

²⁹ Most states impose a transaction tax on sales of immovable property which ranges from 10–14% of the sales price. Parties to a transaction thus have a substantial incentive to understate the sales price. In recognition of this problem, all states have developed government-determined “registration values” or “circle rates” to help determine the basis for tax liability. Nearly all sellers and buyers just record the “registration value” in the sales deed even when the actual sales price is higher.

Table 2.1 Valuation of Land by Courts – Positive and Negative Factors

Positive Factors	Negative Factors
Smallness of size	Largeness of area
Proximity to a road	Situation in the interior at a distance from the road
Frontage on a road	Narrow strip of land with very small frontage compared to depth
Nearness to developed	Lower level requiring filling up the area depressed
Regular shape	Remoteness from developed locality
Level vis-à-vis land	Some disadvantageous factors which would deter a purchaser
Special value for an owner of an adjoining property to whom it may have some very special advantage	

Source: Viluben Jhajar Contractor Vs. State of Gujarat³⁰

Despite this great drawback, the comparable sales method of valuation is generally used by the Land Acquisition Officers. There are two other factors that result in undervaluation following this method. First, the tribal landowners typically are restricted by law from selling their land to non-tribals, paving the way for significant reduction of the market value of their land and thus their compensation upon acquisition. Second, the poor people who had received land from the government through various measures are often restricted by law from selling their land, affecting the market value.

The courts have also held that the potentiality of the acquired land should also be taken into consideration for ascertaining the market value of the land. The potentiality is the capacity or possibility for changing or developing into state of actuality. It is well settled

Actual sale prices typically range from 20–100 percent higher than the “registration value” based on RDI’s field experience in several Indian states and discussions with several Indian experts. In ADB-funded NHAI projects, the India Country Study notes that the applied definition of “replacement value” is 200–300 percent higher than the compensation award made by the land acquisition officers. A World Bank assessment Study of a Karnataka irrigation project found that their applied definition of “replacement value” was 122 percent higher than the average compensation provided based on registered sale deeds (ADB, 2007)

³⁰ (2005) 4 SCC 577

that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The potentiality of land depends upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near to a town and developing or has the prospect of development should also be taken into consideration³¹. It has been held that failing to consider potential value of the acquired land is an error of principle in *Kausalya Devi Bogra Vs. Land Acquisition Officer*³². In *Mehrawal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab*³³ and others (supra), another two Judge Bench re-stated the law in the following words:

“It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction, has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation.”

(b) Capitalisation of Income Method: This method has also been applied by the Apex Court in various cases³⁴. This method is often applied when comparable sales information is not available. The land valuation under this method is done after multiplying the annual net returns or profit by a certain multiplier. The annual net returns

³¹ *Collector Vs. Dr. Harisingh Thakur* (1979), 1 SCC 236; *Raghubans Narain Singh Vs. U.P. Govt.* AIR 1967 SC 465 and *Administrator General of W.B. Vs. Collector* (1988) 2 SCC 150; *Himmat Singh and Others Vs. State of M.P.*

³² (1984), 2 SCC 324 and *Suresh Kumar Vs. Town Improvement Trust* (1989) 2 SCC 329

³³ Civil Appeal 6792 Of 2004

³⁴ *Union of India & Anr. Vs. Smt. Shanti Devi & Ors.*, (1983), (4) SCC 542; *Executive Director Vs. Sarat Chandra Bisoi & Anr.*, 2000 (6) SCC 326; *Nelson Fernandes & Ors. VS. Special Land Acquisition Officer, South Goa & Ors.*

is arrived at by first calculating the gross annual income (ascertained from all known components of income from the land) and deducting the annual total cost incurred from the production of gross income. The choice of the multiplier is important in reaching the determined compensation when using the capitalisation of income method. In India, a multiplier of 10 is generally used for agricultural land. This multiplier has been broadly accepted by the Indian courts. For assessment of the value of buildings based on their net rental income, a multiplier of 15 or 20 is typically used.

The method works out well when where there is reliable and acceptable evidence on the record of the annual income of the trees. While the method provides a proxy for determination of market value of land in the absence of reliable comparable sales information, the shortcomings of the method is that it only reflects the value of the land based on its capacity to produce income. Other values namely speculative value (reflection of possible future uses), security value (provides its owner with increased access to credit), status value etc. are ignored. Practically, the assessment of the income and costs can also be extremely cumbersome as prices vary geographically. Prices of agricultural inputs and outputs also vary seasonally and regionally.

The valuation of trees would have to be differently done in the two methods. The apex Court in Administrator General of West Bengal Vs. Collector, Varanasi case³⁵ held that where the land is valued with reference to its potentiality for building purposes, the tree growth on the land cannot be valued independently on the basis of its horticultural value or with reference to the value of the yield. In such cases, the trees are to be separately valued as timber and the salvage expenses are to be deducted to cut and remove the trees from the land".

The third method called the Expert Opinion method in the literature on valuation is not a distinct method of valuation. In valuing land, valuation experts typically employ valuation methods based on comparable sales and capitaliation of income. In practice, the state governments use valuation experts to create schedules for

³⁵ 1988 2 SCR 1025

determining the market value of buildings and other non-land property. These schedules then form the basis for determining the market value of such non-landed property when it is compulsorily acquired.

2.5 Land Acquisition Act, 1894-Critical Appraisal

The land acquired by various states and ministries during the last ten years is given in Appendix 1 (Table A 1.1). Table A 1.2 and 1.3 provides the details of lands acquired for the Irrigation and mining projects respectively. Though the legislation significantly aided the procurement of land for development projects in the post-independence era, it was widely criticized for the misuse of its provisions over the years. The important ones are given below:

First, the government is empowered to acquire land for a public purpose. The term "public purpose", as explained above was not exhaustively defined in the Act. The lack of clear definition of "public purpose" resulted in the Apex Court providing for broad discretionary powers to the state in terms of deciding the contours of public purpose. Also, the LAA did not insist on non-displacing or least displacing alternatives before displacing the people. The result was that there was scant regard for the sufferings of the people and the primary consideration always remained the interests of the parties for whom land was to be acquired. Second, the government was armed with urgency powers with which it could cut short the entire process of notices and objections. This became widely prevalent, causing tremendous discontentment among the affected communities. The term "urgency" should have been clearly defined. Third, despite the inclusion of the term, persons interested in LAA, 1894, very often, only the minimum subset of landowners were identified. The encroachers, sharecroppers, landless labourers and others, who had an interest in the land were not compensated. Several people practising agriculture were not legally registered and were not eligible for compensation. This led to widespread unrest³⁶.

³⁶ In India, 15-35% of agricultural land is farmed by tenants (Committee on Land Reforms, 2009)

Fourth, the process of acquisition was very time-consuming and could take up to three years even if implemented without undue resistance. Further, although the broad steps of the land acquisition process are outlined in the Act, an enormous amount of discretion was vested upon the District Collector and the *Tehsildar*, who effectively adjudicated on several objections related to the acquisition as well as on the compensation to be provided. Fifth, the asset appreciation that occurred after the determination of compensation resulted in a failure to reach replacement costs. The acquisition of land has an impact on the purchase price of the replacement land in the vicinity. The cash compensation, based on pre-project rates was in most cases not enough for recipients to purchase equivalent land at higher post-project rates. Land-for-land compensation options were often not considered. In the *Udho Dass Vs. State of Haryana & Others*³⁷, the Supreme Court held that although, in the LAA, provision existed for the payment of solatium, interest and an additional amount, the same had not kept pace with the astronomical rise in land prices in many parts of India, and most certainly in North India, and the compensation awarded could not fully compensate for the acquisition of the land. The Court observed that the 12 percent per annum increase which had often been found to be adequate in matters relating to compensation, hardly did justice to those land owners whose lands had been taken away and the increase was even at times up to 100 percent a year for land which had the potential of being urbanised and commercialised.

Sixth, there was no clear formula given as to how compensation was to be calculated. Government officials often considered the least value derived from all possible compensation approaches and as a result the final compensation arrived at was often much lower than that expected by landowners. The undervaluation due to reliance on understated values in sale deeds, explained above, was the most potent issue.

Seventh, the compensation could only be paid to those possessors of land whose rights were formalised. In many parts of the country and more prevalent in remote areas, the people had been living on land for years or even generations on which the government

³⁷ (2010) 12 SCC 51

claims ownership. Eighth, the customary use and access rights to Common Property Resources (CPR) are not compensated though the access to the CPRs play an important role in the livelihood of poor people, particularly in the rural areas of the country. Ninth, in many states, the poor households were provided land by the state governments through land reform or government land allocation programs. Since such lands are inalienable, they were compensated at a much lower rate with the courts too finding them in order. In some cases, the competent authorities held that such households were not entitled to any compensation. Tenth, the over reliance on cash compensation in cases where recipients were not accustomed to handling cash resulted in corruption and leakages. The net result of the cash compensation mechanism and corruption often resulted in leaving the affected communities both asset-less and cashless. The low compensation standards and procedural rigidities are compounded in other central legislations on land acquisition like the National Highway Act, Coal Bearing Areas (Acquisition and Development) Act, 1957.

2.6 The Policies on Resettlement and Rehabilitation (R & R)

In India, there was no national policy on R & R till 2003. Land was acquired by the government for public purpose under the Land Acquisition Act, 1894 following the procedures outlined above. In 2003, after years of deliberation and several drafts, the Department of Land Resources, Ministry of Rural Development framed a National R & R Policy (NRRP), which was revised and notified in 2007, duly incorporating the major gaps of the 2003 policy. Though NRRP, 2007 recognised the importance of holistically addressing the issues of R & R in developing projects, the envisaged measures were meager for the policy to achieve its laudable objectives of providing sustainable livelihood to affected families or minimising displacement. The policy provided for various discretions that could come in the way of its successful implementation viz. 'land-for-land' subject to availability of land in the resettlement areas; 'preference for employment' subject to the availability of vacancies/ suitability of the affected person, declaration of an area as an "affected area only upon reaching the threshold of 400 people in plains/200 people in hilly areas etc. In the absence of land-based or employment-based rehabilitation or any long term benefit sharing mechanism, the

project proponents could fall back on cash-based R & R along with initiatives in self employment in some cases (conditions of market demand, proficiency and experience, all of which are demanding conditions for skill development). The policy is also gender-biased as the R & R benefits accrue to adult sons but not adult daughters. Though notified in 2007, the application of the policy has been at the discretion of various requiring bodies and the resolve of the respective state governments to enforce its implementation. The elaborate institutional mechanisms provided for in the policy have largely remained on paper, both at the central and the state level. Despite the above criticisms, the significance of the national policy in recognising the issue of involuntary displacement and the need to suitably provide for R & R cannot be understated.

Even before the NRRP came into existence, several states and some public sector undertakings had adopted their own policies for R & R. In the 1980s, Maharashtra, Madhya Pradesh and Karnataka enacted their policies for rehabilitation of irrigation displaced persons, followed by Orissa in the 1990s and Jharkhand, Haryana etc in the 2000s. The 1990s saw promulgation of resettlement policies by NTPC (1993; revised in 2005 and 2010) and Coal India Ltd. (1994; revised in 2008 and 2012), followed by NHPC in 2007. Some of these policies had provisions that were more progressive than the National policy. These notable progressive provisions included annuity (Jharkhand, Uttar Pradesh and Haryana), higher compensation to those multiple displaced in development projects (Orissa), distribution of developed land (Uttar Pradesh), sharing of project benefits in the form of distribution of a certain proportion of free power to the people affected by hydro power projects (Government of India, Hydro policy, 2008), comprehensive R & R package including equity sharing and compensation in fixed deposits (Jindal Steel, Salboni) etc.

2.7 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The deficiencies and issues associated with the LAA, 1894 were enumerated above. Over the years, there had been an escalating demand to replace the LAA, 1894 with a more humane law that recognised the issues related to "development-induced displacement". The RFCTLARR Act, 2013 is an effort in this direction. The Act in its preamble mentions that "it seeks to ensure a humane, participatory, informed, consultative and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation".

Box 2.7 Archaic Legislation-Need for Replacement

There is no provision in the Act for rehabilitation of persons displaced from their land although by compulsory acquisition, their livelihood gets affected. Moreover, acquired land remains unused and utilised for years. The Act has become outdated and needs to be replaced at earliest, by fair, reasonable and rational enactment in tune with the provisions of the Constitution.

Ramji Veerji Patel Vs. Revenue Divisional Officer³⁸

The Act introduced provisions of mandatory Social Impact Assessment (SIA) for all projects involving land acquisition, 'prior consent rule' in select situations, vastly increased the quantum compensation for land vis-à-vis the 1894 Act, a mandatory R & R package to all affected families and that which extends beyond eminent domain acquisitions, 'land for land' option for irrigation projects, benefit sharing from accretion in land value of non-developed land and restraining indiscriminate use of urgency clause etc. The major provisions of the Act is discussed below:

2.7.1 Social Impact Assessment (SIA): The most important procedural change in the new legislation is the SIA. The study is to be carried out as a prelude to all land acquisition

³⁸ (2011) 10 SCC 643

projects initiated for a public purpose³⁹. This is expected to provide the affected people with a legitimate forum to articulate their concerns before the start of the land acquisition process. Though the NPRR, 2007 too had envisaged a mandatory SIA study, the same was applicable only beyond a threshold (where displaced people exceeded 400 in the plain areas and 200 in the hilly areas)

According to the RFCTLARR Act, 2013 the study (to be completed in 6 months) would aim at assessing the veracity of public purpose in the proposed land acquisition, impact of the acquisition on the human and material costs imposed and if it outweighs the projected benefits. More importantly, the study has to assess if the land proposed is the bare minimum and if all available alternatives have been considered. The process of seeking consent in scheduled areas and private/public private partnership projects is also to be undertaken during the SIA. The SIA Study is to be appraised by a seven member Expert Committee (comprising two social scientists, representatives of affected local bodies, two rehabilitation experts and one technical expert) within two months of its constitution. However, the appropriate government is empowered to overrule the recommendations of Expert Committee and go ahead with acquisition. The pre-notification process of SIA is a major procedural change in the process of land acquisition in the country and the project authorities are apprehensive of its potential to delay the process, the nature of social cost benefit analysis undertaken and the process thereof, the representatives of affected communities scuttling the process, the possible bureaucratic delays etc. There are also concerns regarding the extended pre-notification process aiding outsiders to purchase land in the area and the benefits not reaching the intended beneficiaries.

One of the important reasons for the impoverishment of the displaced and the poor record in resettling displaced people have arisen owing to the focus on the aggregate costs and benefits from the project. The loss for a numerically smaller proportion of the

³⁹ Under RFCTLARR Act, 2013, SIA is mandatory for all projects involving land acquisition except those under urgency provisions, irrigation projects wherein an Environment Impact Assessment Study and exempted legislations in Schedule IV of the Act.

population often tends to get overshadowed by the larger benefits offered by the project. This becomes particularly important in the case of CPR dependents.

The transparent pre notification procedure allays another prevalent issue relating to information asymmetry and the existing land owners coerced into selling lands to others who are aware of the planned project in any area. The concern is still being raised by project proponents pointing out that the long drawn pre-notification process would further aggravate the situation at the ground level. This fear seems unfounded primarily because a transparent process of SIA is expected to make the existing land-owners aware of their own rights under the new Act and the accruable benefits. Information asymmetry induced land purchase can therefore be expected to decrease. Also, on a universal plane, the transparent mechanisms are likely to aid the process and ensure that the opposition to well-meaning development programmes does not derail the development process. The lack of transparency and adequate communication mechanisms coupled with extremely meager compensation norms were the greatest source of discontentment with the existing legislative framework of land acquisition. The land losers remain at the periphery. The first individual notice that goes to the land owner is after Section 9 i.e. a final declaration is issued by the government. This would change with the new legislation when affected people would feel party to the process. While it may be premature to predict the precise impact of the SIA, a definite likely outcome of the SIA would be the reduction in the quantum of land acquired, search of lesser displacing options, utilisation of available unutilised land and most importantly reduction in the time/cost overruns due to conflicts.

2.7.2 Land Compensation: It is common knowledge that land markets do not function efficiently in the country. Existing research point out that there is very few land transactions (especially) in the rural areas. Unless forced by extreme circumstances, the land-owner does not sell his land. Thus, there is an involuntary element in majority of the recorded land transactions as many of these are distress sales. There is also improper recording of even the limited transactions that take place. It is also widely appreciated that vast variations in land quality render it extremely difficult to find comparable transactions.

The new legislation continues to have the compensation based on market value through comparative sales approach. Though there is widespread criticism of using this as a benchmark⁴⁰, the significantly higher benefits to the land losers is beyond doubt⁴¹. For determining the average sale price, fifty percent of the higher sale deeds of the past three years is considered (provided this is higher than the market value specified under the Stamp Act). Market value of land is multiplied by a maximum factor of two in the rural areas (multiplication factor determined on a sliding scale by the state governments). The land losers will also be entitled to a solatium of 100 percent of the total compensation amount (as compared to 30 percent in LAA, 1894) and an additional market value of 12 percent from notification to award (similar to LAA, 1894). However, given the lack of functioning market, the ensuing valuation of the land would itself depend on the above benchmarks/subjective valuation by the District Collector. The legislation places the responsibility on the state government for specifying the floor price in areas where the market value cannot be determined based on sales statistics or the Stamp Act.

Is the legislation anti-industry and would there be an enhanced compensation and spiraling costs for land? Even before the enactment of RFCTLARR Act, many projects in the country had been disbursing a compensation which is multiple times the valuation arrived by LAA, 1894. For instance, the compensation was 40 -50 percent and in some instances more than 100 percent higher than the traditionally arrived value (market value plus solatium plus enhanced compensation from Section 4) in majority of the land awards of the erstwhile Andhra Pradesh State Irrigation department. The State Irrigation department has acquired more than 5 lakh acres of land since 2005 through the consent

⁴⁰ Fair market value of land is the amount that the land might be expected to realise if sold in the open market by a willing seller to a willing buyer" (Asian Development Bank). Going by the definition, it may be difficult to conclude if the valuation proposed can arrive at the correct valuation of a given land.

⁴¹According to Section 26 of the Act, the higher of the (i) value, if any specified in the Indian Stamp Act (ii) average sale price for similar type of land situated in the nearest vicinity (iii) consented amount of compensation in case of acquisition of lands for private companies or for Public Private Partnership (PPP) projects will be multiplied by a factor between 1 and 2 in the rural areas (as notified by the respective state governments to arrive at the market value of land. In the urban areas, the multiplication factor is 1.

mode. Similarly in many transport projects assisted by the World Bank, the land compensation has been 50-100 percent higher than the traditionally arrived market value (World Bank, 2012). Forced by protests, project proponents have increasingly been agreeing to consent awards and paying a compensation that is often several times higher than the benchmark value. The new legislation only makes the existing and widely prevalent practice mandatory.

Second, there was an apprehension that the consideration of highest sale transactions for determining the average sale price may result in a spurt in the speculative transaction. The experiences in land acquisition in the country reveal a marked increase in the land transactions prior to the notification. The new legislation provides for a maximum timeline of one year between the appraisal of the SIA Study and the preliminary notification. The existing landowners could therefore resort to sale of small extent of land at exorbitant rates. Some of the judicial interventions have set useful precedent in this regard. In *Ranvir Singh and another Vs. Union of India*⁴², the Supreme Court pointed out that *"Market conditions prevalent on the date of notification are relevant. An isolated sale deed showing a very high price cannot be the basis for determining market value"*. Similarly in *Union of India and Another Vs. Ram Phool and Another*⁴³, the Apex Court observed that *"Sale price in respect of a small piece of land, it is well settled, cannot be the basis for determination of a market value of a large stretch of land"*. The RFCTLARR Act, 2013 does take into consideration this critical concern of the industry. Explanation 4 of Section 26 states that "while determining the market value under this Section..., any price paid, which in the opinion of the Collector is not indicative of the actual prevailing market value may be discounted for the purposes of calculating the market value. The apprehension of spiraling land cost in subsequent acquisitions have been quelled by the Explanation 3 in Section 26, which states that any price paid as compensation for land acquired on an earlier occasion in the district shall not be taken into consideration in determining market value.

⁴² AIR 2005 SC 3467

⁴³ 1998 VAD Delhi 433

The Act also includes three other progressive measures. First, to combat the cause of resentment due to increase in the values of land post acquisition and development, it was increasingly being advocated that land could be acquired in surplus to what is necessary for the project and this excess land which is likely to be more valuable post development could be reallocated to the displaced people (Dan et al 2008). The Act introduces a form of benefit sharing in case of land acquired for urbanisation purposes, a measure that has long been emphasised by the resettlement specialists. The Act makes it mandatory to reserve 20 percent of the developed land to the land losers, though the price of land offered to the land oustees will include the cost of acquisition. Second, a major reason for the protests against land acquisition in the recent years has been the disappointment of the original land owners over the manifold increases in the prices of the land after they were compulsorily acquired from them for infrastructure and urbanisation purposes. The new legislation mandates that whenever the ownership of any land acquired under this Act is transferred to any person for a consideration, without any development having taken place on such land, forty per cent of the appreciated land value shall be shared amongst the persons from whom the lands were acquired in proportion to the value at which the lands were acquired. Third, the Act makes an additional seventh consideration in determining the amount of compensation in Section 28 (as against six considerations in the original LAA, 1894, Section 23). This states that in determining the amount of compensation to be awarded for land acquired, the Collector shall take into account any other ground which may be in the interest of equity, justice and beneficial to the affected families. Though the Act does away with the provision of Consent Award (Section 11.2 of LAA, 1894), this additional condition does provide the Collector with some flexibility to address genuine concerns of land losers and thus reduce the time/cost overruns due to conflicts.

Further, to ensure that benefits of the Act flows down to the original owners who had unassumingly sold their land to speculative elements, the Act states that if any land is purchased by a person on or after 5th September, 2011 (above limits specified by appropriate government) and the same land is acquired within three years of the new

Act, 40 percent of the compensation amount would have to be shared with the original owners.

2.7.3 Mandatory R & R Package Extending beyond Land-losers and Land Acquisitions: The LAA, 1894 Act provided for a notice to be served on all *persons interested*. However, since the law did not provide a clear definition of the term nor any procedure to identify various affected categories, the land acquisition process could be completed with compensation (whatever meager) to the title holders. This was recognised by the NRRP, 2007. Apart from the families whose land or other place of residence is adversely affected by the acquisition, NRRP included tenants, agricultural/non agricultural labourers, rural artisan, small traders/self employed residing/engaged in any business etc. The new legislation makes this definition more comprehensive by including families dependent on CPR, tribals and other forest dwellers who have lost any of their traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, families assigned government lands, and urban livelihood-affected families.

All affected families will have a choice of employment, annuity of two thousand rupees per month for twenty years (with appropriate indexation to the Consumer Price Index) or a onetime payment of five lakh rupees. In addition, each displaced family would be entitled for a monthly subsistence allowance equivalent to three thousand rupees per month for a period of one year along with other monetized benefits (one time resettlement allowance, transportation grant, grant for cattle-shed, artisans etc) and in kind resettlement benefits (Land for land in irrigation projects, houses for the displaced families and 25 infrastructure facilities in resettlement colonies). The Act gives a more precise meaning of the term "family". A family includes an adult person, spouse, minor children, minor brothers and minor sisters dependent on him. The applicability of compensation and R & R for various categories of affected families is given in Table 2.2. There are some practical issues in implementation. The definition is wide and the criteria to be adopted in identifying the affected people is yet to be clearly spelt out.

Table 2.2 Applicability of Land Compensation, Resettlement and Rehabilitation for Affected Families under RFCTLARR Act, 2013.

Affected Family	Land Compensation	R & R
Owner of Land/Immovable Property ⁴⁴	Yes	Yes
Scheduled Tribes and Other Traditional Forest Dwellers recognised under Recognition of Forest Rights Act, 2006	Yes	Yes
Owners of Assigned Land/Entitled to be granted Patta rights	Yes	Yes
Primary Source of Livelihood Affected – Agricultural labourers, tenants, share-croppers, artisans etc	No	Yes
Primary Source of Livelihood Affected – forests or water bodies – gatherers of forest produce, hunters, fisher folk, boatmen etc	No	Yes
Primary Source of Livelihood Affected – residing in urban area	No	Yes

2.7.4 Process of Rehabilitation and Resettlement: Once the preliminary notification for acquisition is published, an Administrator has to be appointed to conduct a survey and prepare the R&R scheme. This scheme shall then be discussed in the Gram Sabha in rural areas (equivalent bodies in case of urban areas). Any objections to the R&R scheme shall be heard by the Administrator. Subsequently, the Administrator shall prepare the final R & R scheme and submit it to the Collector. The Collector shall review the scheme and submit it to the Commissioner (R&R) who has to give the final approval for the scheme. The Administrator shall then be responsible for the execution of the R & R scheme. The Commissioner shall supervise the implementation of the scheme. In case of acquisition of more than 100 acres, an R&R Committee shall be established to monitor the implementation of the scheme at the project level. In addition, a National Monitoring Committee is appointed at the central level to oversee the implementation of the R&R scheme for all projects. In case the land is being privately purchased (100 acres in rural areas and 50 acres in urban areas), an application must be filed with the Collector who shall forward this to the Commissioner for approval. After the application has been approved, the Collector shall issue awards as per the R&R scheme.

⁴⁴ The lack of thresholds makes it difficult to implement especially in linear projects where the landowner may only be losing a small proportion of their land (that do not result in physical/economic displacement).

2.7.5 Special Provisions to Safeguard Food Security: The Act provides for acquisition of multi-crop irrigated land as a demonstrable last resort and also subject to the limits fixed by the respective state governments. There are two limits specified in the Act, the discretion of which has been left to the respective state governments. First, aggregate limits of multi-crop irrigated land that can be acquired in a district/state. Second, the aggregate limits of agricultural land (of the total net sown area) that can be acquired that can be acquired. The linear projects⁴⁵ are however excluded from these provisions. In case of acquisition of multi-crop irrigated land, an equivalent area (of such lands acquired) has to be developed for agricultural purposes. For ease of project developers, the Act however provides the discretion of depositing the amount equivalent to the value of the land acquired with the appropriate government for investment in agriculture for enhancing food security (instead of developing waste lands).

2.7.6 Mandatory Consent Provisions from Landowners and Gram Sabha: The Act prescribes mandatory consent of 70 percent/80 percent of land-owners (private landowners and assignee landowners) in case of PPP/private projects. In case of alienation of land in the scheduled areas⁴⁶, the prior consent of the Gram Sabha is mandatory.

2.7.7 Transparency and Consultation Provisions: In addition to the provisions of publication of notification & final declaration in the official gazette and newspapers (as provided for in the LAA, 1894), the Act also mandates publishing in local language in the panchayat/municipality/offices of Collector, Sub Divisional Magistrate and Tehsil as also

⁴⁵ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 (that has lapsed) had exempted five categories of projects-(i) projects vital to national security or defence of India (ii) rural infrastructure including electrification (iii) affordable housing and housing for the poor people (iv) industrial corridors and (v) infrastructure and social infrastructure projects from these provisions to safeguard food security.

⁴⁶ The term 'Scheduled Areas' has been defined in the Indian Constitution as "such areas as the President may by order declare to be Scheduled Areas". The criteria followed for declaring an area as Scheduled Area are preponderance of tribal population; compactness and reasonable size of the area; under-developed nature of the area; and marked disparity in economic standard of the people. These criteria are not spelt out in the Constitution of India but have become well established.

in the special website created for the purpose. This should be done at various stages of the land acquisition process viz the commencement of SIA study, the SIA Study and SIMP, the recommendations of the Expert group, the decision of the appropriate government on SIA Study and SIMP, the preliminary notification, the draft R & R Scheme, the approved R & R scheme etc. The Act provides for a specially convened meeting with the gram sabha/municipalities after the preliminary notification, mandatory consultations with them at the time of SIA Study, draft R & R Scheme as also a post implementation social audit. The Act provides for two mandatory public hearing, one at the time of the draft SIA and SIMP and the second one after the preparation of the draft R & R scheme.

Table 2.3 Schedule V and VI Areas

State	Areas
Scheduled V Areas	
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad, Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Deogarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)
Scheduled VI Areas	Assam, Meghalaya, Tripura and Mizoram

2.7.8 Other Provisions to Curb Misuse of Acquisition Law

- Limitation to Acquisition under Urgency Clause: According to the RFCTLARR Act, land can be acquired under urgency clause only for defence of India, national security; or emergencies arising out of natural calamities. In all such cases (except one that affects the sovereignty and integrity of India), an additional 75 percent of the total compensation has to be paid to the land owners.
- There should be no change from the purposes specified in the land use plan and only if the acquired land is rendered unusable for the purposes for which it was acquired because of any unforeseen circumstances can the government use it for any other purpose.
- There should be no change in the ownership of the land without the permission of the appropriate government
- The land that remains unutilised for a period of five years⁴⁷ has to be returned to the State Land Bank or the land loser.
- Lands when transferred for higher consideration (without any development having taken place on such land) should share forty percent of the difference in price with the original landowners in the same proportion as the value at which their lands were acquired.

2.7.9 Institutional Mechanism: The RFCTLARR Act provides for several new institutions; an Expert Group for evaluating the SIA and SIMP; an Administrator for the formulation, execution & monitoring of R & R; the Commissioner (R & R) for approving the R & R Scheme and ensuring their proper implementation through conduct of the post implementation social audit; a R&R committee to monitor and review progress of R & R scheme for projects involving acquisition of more than 100 acres of land; a National Monitoring Committee/State Monitoring Committees for reviewing and monitoring the implementation of R & R schemes. The legislation also provides for the establishment of the LARR Authority for disposal of disputes relating to LARR and has barred the jurisdiction of civil courts (other than High Courts under article 226 or 227 of the constitution).

⁴⁷ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 had amended "a period of five years" by "a period specified for setting up of any project or for five years whichever is later". The Ordinance has lapsed.

2.7.10 Retrospective Applicability: The Act came into effect from 1st January 2014. For those cases, where land acquisition award was passed under the LAA, 1894 before the said date, the new legislation would not apply. However, if the proceedings were initiated and the award was yet to be passed, the determination of compensation was to be made under the new Act. For the old cases where, the award was made five years before the commencement of the Act but physical possession was not taken or compensation was not paid, the proceedings would be deemed to have lapsed. If the appropriate government still chooses to acquire the land, the proceedings have to be initiated afresh under the 2013 Act. The implication is that the government would have to initiate the proceedings afresh incase it is desirous to acquiring such land. The proviso to the particular subsection states that in those cases where the award has been made but compensation in respect of majority of land holdings has not been deposited into the account of the beneficiaries, all the beneficiaries would be entitled to determination of compensation in accordance to the provisions of the RFCTLARR Act.

There have been many Supreme Court Judgements on the applicability of the Retrospective Clause. In the first and most significant judgement in the Pune Municipal Corporation Vs. Landowners⁴⁸ case, the Apex Court not only interpreted the provisions of the retrospective applicability of the law but also the interpretation of term "compensation paid". According to the Court, *the procedure, mode and manner for payment of compensation are prescribed in S. 31-34 of LAA, 1894*⁴⁹. *The Collector can only act in the manner so provided. It is a settled proposition of Law that where a power is given to do a certain thing in a certain way, that must be done in that way or not at all. Other methods of performance are necessarily forbidden.* The apex Court further held that, *"Land Acquisition proceedings shall be deemed to have lapsed under Section 24 (2) of the 2013 Act because the compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the Court. The deposit of the*

⁴⁸ Civil Appeal No.877 Of 2014

⁴⁹ Section 31(2) provides a collector with only two alternatives – to pay the compensation to the landowners or to deposit the same in court.

compensation amount in the government treasury is of no avail and cannot be held equivalent to compensation paid to the landowners/persons interested".

Table 2.4 Acquisition of Land under LAA, 1894 and RFCTLARR Act, 2013 – Provision by Provision Comparison

LAA, 1894	RFCTLARR ACT, 2013
No Requirement of SIA	Pre-Notification Provision of SIA (Chapter-II), S.4-8 • Social Impact Assessment (SIA) Notification by State Govt., S.4 • Public Hearing for Social Impact Assessment, S.5 • Appraisal of Social Impact Assessment by an Expert Group, S.7 • Examination of proposals of LA, SIA Study, Study of Collector (if any) and Expert Group Study, S.8
Preliminary Notification S. 4 (1) Only details of lands required for Public interest	Preliminary Notification – Section 11 Within one year of date of appraisal of SIA Study by Expert Committee (power of appr. Govt. to extend) Includes the following • Land details • Summary of SIA • Nature of public purpose • Reasons necessitating displacement of affected persons • Details of Administrator
Land Records Updation - No timeline	S.11 (5) Complete updation of land records within a period of 2 months of 11(1)
Hearing of Objections– Section 5A • Within 30 days of Publication of Notification. • Objection to the acquisition of land	Hearing of Objections - Section 15 (1) Within 60 days of Publication of the Notification, objection to the • area and suitability of land • Justification offered for public purpose • Findings of the SIA Study
Activities Between PN (S.4) and Declaration (S.6) Preliminary survey of land Hearing of Objections (5 A)	Activities Between PN (S.11) and Declaration (S.19) • Preliminary survey of land, S.12 • Hearing of Objections, S.15 (1) • Census of all PAFs, infrastructure and CPRs, S.16 (1) • Preparation of draft R & R Scheme, S.16 (2) • Draft R&R Scheme to be given wide publicity 16(4) • Public hearing on Draft R & R & Raising of objections, S. 16 (5) • Review and approval of draft of R & R Scheme by Collector and Commissioner, S.17 • Finalisation & publication of approved R & R Scheme in the Gazette/in local language to local bodies, S. 18

LAA, 1894	RFCTLARR ACT, 2013
Final Declaration S.6 - Declaration that land is required for public purpose within one year of s.4 (1) notification Notices to land owners for compensation, S.9	Publication of Declaration and Summary of R & R, within one year of S.11. Includes the following: • Demarcated details of lands with full particulars of all interest holders • Details of land required for 'resettlement area' • Summary of R&R Scheme Deposit of funds compulsory before final notification Notices to persons interested for Compensation and R & R, S.21
Award , S.11 and 12 LA Award S. 12 - within two years of S.6 (1) notification. 11(2) Consent Award Six Conditions for determining Land Compensation – Six, s.23	Award, S.23 within ONE year of S.19 Award shall comprise of two components, viz.LA and R&R • Section-23 Enquiry and Land Acquisition Award by Collector • Section-30 Individual Award with respect to land • Section-31 (1) R & R Award by Collector No Provision for Consent Award Seven Conditions for determining Land Compensation, S.28 – 7th Condition-"any other ground which may be in the interest of equity, justice and beneficial to the affected families"
Power to take possession of land, S.16 When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.	Power to take possession of land S.38 Power to take possession only after: • Full payment of compensation (3 months) • Monetary part of R & R (6 months) from the date of Award; Irrigation projects / Hydel projects – R & R to complete 6 months before submergence. 38 (2) - Collector to ensure that R & R is completed in all its aspects before displacing the affected families (Infrastructural Entitlements to be provided within 18 months of Award).

LAA, 1894	RFCTLARR ACT, 2013
Urgency Clause, S.17 Expiry of 15 days from S. 9, though no award is passed	Urgency Clause, S.40 Expiry of 30 days from S. 21, though no award is passed Use of Urgency Restricted to • Defence • National security • Emergencies arising out of natural calamities Additional compensation of 75% of the market value No additional compensation if land is taken for security and strategic interests
Land Compensation Rural and Urban 1. Market Value of land (+) Value of structures and assets (+) 30% solatium (+) 12% interest from PN to Award / Possession	Land Compensation - Rural Market Value of land as determined in S.26 (1) (x) Multiplier (sliding scale) Urban - Market Value of land (+) Value of structures and assets (+) 100 solatium (+) 12% interest from SIA/PN to Award/Possession No Multiplier in Urban Areas
No consideration for Multiple Displaced	Double Compensation for Multiple Displaced

Figure 2.1 Consultation and Transparency Checkpoints under RFCTLARR Act, 2013**Notification of SIA, Section 4 (1) and (2)**

- ✓ Consultation with panchayat, municipality or Municipal Corporation to carry out a SIA Study
- ✓ Publication in local language to the Gram Panchayat, Mandal Parishad, Municipality or Municipal Corporation and in offices of the DC/SDM/Tahsildar
- ✓ Public notice by affixing at some conspicuous places in the affected areas
- ✓ Uploading on the website of the State Government.

SIA Study and SIMP, Section 5

- ✓ Public hearing in affected area-adequate publicity about the time, venue and place
- ✓ Publication in local language to the Gram Panchayat, Mandal Parishad, Municipality or Municipal Corporation and in offices of the DC/SDM/Tahsildar
- ✓ Public notice by affixing at some conspicuous places in the affected areas
- ✓ Uploading on the website of the State Government.

Recommendations of the Expert Group, Section 7(6)

- ✓ Publication of SIA Notification in local language to the Gram Panchayat, Mandal Parishad, Municipality or Municipal Corporation and in offices of the DC/SDM/Tahsildar
- ✓ Public notice by affixing at some conspicuous places in the affected areas
- ✓ Uploading on the website of the State Government.

Decision of Appropriate Government on SIA Study & SIMP, Section 8(3)

- ✓ Publication in local language to the Gram Panchayat, Mandal Parishad, Municipality or Municipal Corporation and in offices of the DC/SDM/Tahsildar
- ✓ Public notice by affixing at some conspicuous places in the affected areas
- ✓ Uploading on the website of the State Government.

Preliminary Notification, Section 11 (1) and (2)

- ✓ Official Gazette
- ✓ Two daily newspapers circulating in the area, one of which is in local language
- ✓ Publication in local language to the Gram Panchayat, Mandal Parishad, Municipality or Municipal Corporation and in offices of the DC/SDM/Tahsildar
- ✓ Public notice by affixing at some conspicuous places in the affected areas
- ✓ Uploading on the website of the State Government.
- ✓ Special meeting at gram sabha/municipalities/autonomous Councils to inform contents of meeting

Draft R & R Scheme, 16, (4), (5) (6)

- ✓ Wide publicity in affected area and discussion in concerned gram sabhas or municipalities
- ✓ Public hearing in affected area(every gram sabha/municipality where more than 25 percent of land belonging to that area is going to be acquired -adequate publicity about the time, venue and place

Publication of Declaration and Publication of Summary of R & R Scheme, Section 19 (4)

- ✓ Official Gazette
- ✓ Two daily newspapers circulating in the area, one of which is in local language
- ✓ Publication in local language to the Gram Panchayat, Mandal Parishad, Municipality or Municipal Corporation and in offices of the DC/SDM/Tahsildar
- ✓ Public notice by affixing at some conspicuous places in the affected areas
- ✓ Uploading on the website of the State Government.

Notices to Persons Interested Inviting Claims to Compensation/R&R- Section 21

- ✓ Public notice at convenient places on or near the land by Collector
- ✓ Public notice on website by Collector
- ✓ Notice to all occupiers and on all persons known to be interested therein

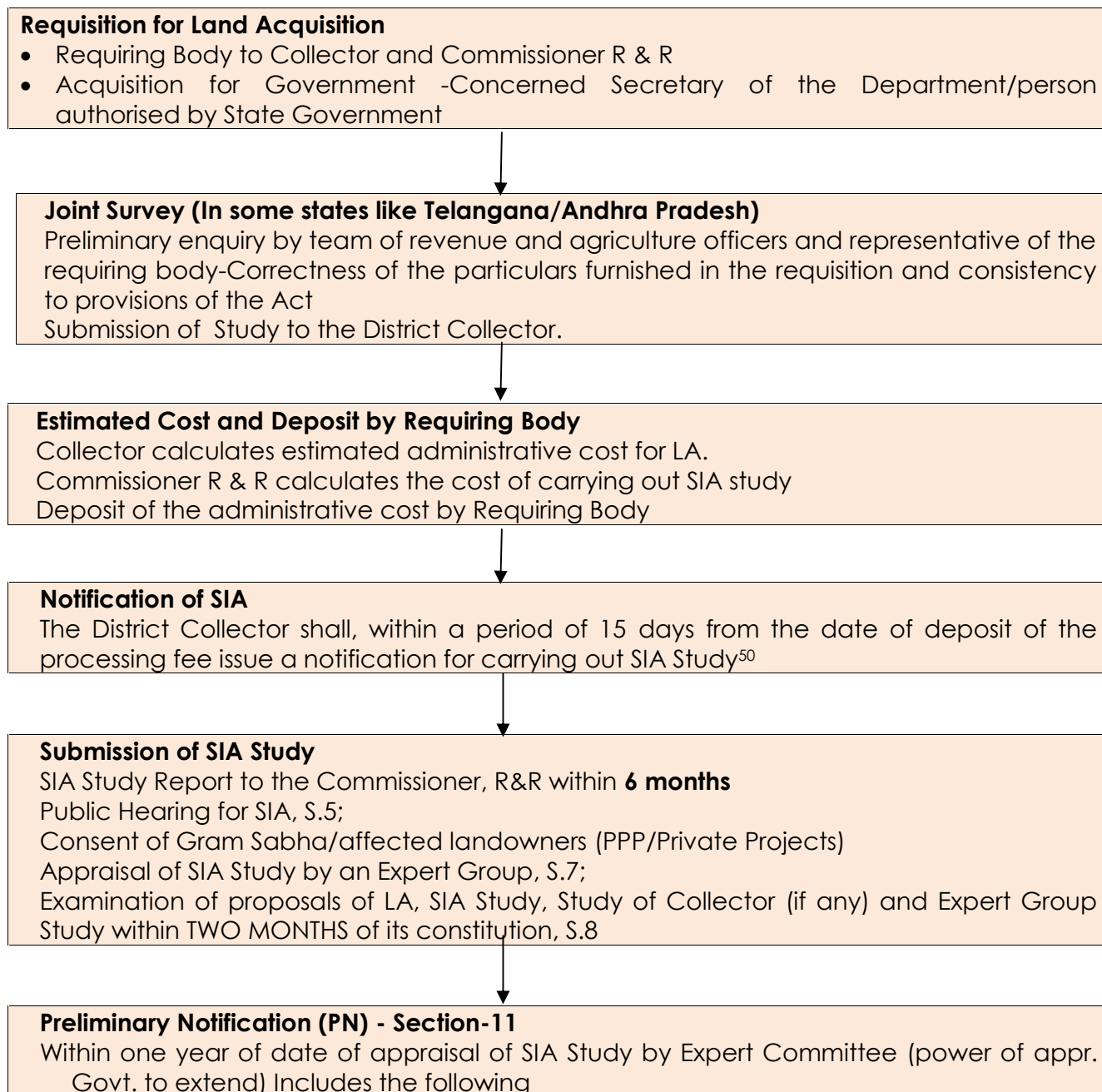
Award, Section 23, 37 (2) and (3)

- ✓ Notice to persons interested who were not present personally at the time of Awards
- ✓ Summary of entire proceedings including amount of compensation awarded to each individual along with details of land acquired on the website.

Time Line Extension

Mandatory timeline of one year between SIA Appraisal and PN, One year between PN and Declaration and One year between Declaration and Award. This can be extended at the discretion of the appropriate government. However, the same has to be notified and uploaded on the dedicated website.

Figure 2.2 Process Flow – THE RFCTLARR ACT, 2013



⁵⁰ Where any land is proposed to be acquired invoking urgency provisions u/s 40 (2), the District Collector shall submit a Study to the State Government seeking permission to invoke the urgency provisions giving reasons for exemption from undertaking SIA.

- Land details
- Summary of SIA
- Nature of public purpose
- Reasons necessitating displacement of affected persons
- Details of Administrator



Land Records Updation-Section 11(5) – TWO MONTHS of Section 11(1)

- Delete the entries of dead persons;
- Enter the names of the legal heirs of the deceased persons;
- Take effect of the registered transactions of the rights in land such as sale, gift, partition, etc.
- Make all entries of the mortgage in the land records;
- Delete entries of mortgage in case lending agency issues letter towards full payment of loans
- Make necessary entries in respect of all prevalent forest laws;
- Make necessary entries in case of the Government land;
- Make necessary entries in respect of assets in the land like trees, wells, etc.
- Make necessary entries of share croppers in the land
- Make necessary entries of crops grown or sown and the area of such crops, and
- Any other entries or up-dating in respect of land acquisition, rehabilitation and resettlement.



Hearing of Objections - Section 15 (1)- Within 60 days of PN Publication

Objection to the

- Area and suitability of land
- Justification offered for public purpose
- Findings of the SIA Study

Submission of Report on objections and recommendations by LAO to Collector

Decision of Collector Final



Preparation of Draft R & R Scheme by Administrator

- Preliminary survey of land, S.12
- Conduct of Census and Survey by Administrator by door to door visits and verifying SIA data within two months of PN
 - ✓ List of likely to be displaced families;
 - ✓ List of infrastructure in the affected area;
 - ✓ List of land holdings in the affected area;
 - ✓ List of trades/business in the affected area;
 - ✓ List of landless people in the affected area;
 - ✓ List of persons belonging to disadvantageous groups
 - ✓ List of landless agricultural laborers in the affected area;
 - ✓ List of unemployed youth in the affected area.

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graph TD
 A["• Preparation of draft R & R Scheme, S.16 (2)
• Preparation of Development Plan for SCs/STs
• Draft R&R Scheme to be given wide publicity 16(4)
• Public hearing on Draft R & R & Raising of objections, S. 16 (5)
• Review and approval of draft of R & R Scheme by Collector and Commissioner, S.17
• Finalisation and publication of approved R & R Scheme in the Gazette/made available in local language in local bodies, S. 18"] --> B["Publication of Declaration and Summary of R & R-ONE year of Section 11 (1)
Publication of Declaration and Summary in Form VII Includes the following:
• Demarcated details of lands with full particulars of all interest holders
• Details of land required for 'resettlement area'
• Summary of R&R Scheme
• Deposit of funds by Requiring body compulsory before final notification"]
 B --> C["Notices to Persons Interested - Section 21
• Claims to Compensation
• Claims to R & R"]
 C --> D["Award, Section 23; within ONE year of Section 19
Award shall comprise of two components, viz. LA and R&R
• Section-23 Enquiry and Land Acquisition Award by Collector
• Section-30 Individual Award with respect to land
• Section-31 (1) R & R Award by Collector"]
 D --> E["Possession of Land, Section 38
Power to take possession only after:
• Full payment of compensation (3 months)
• Monetary part of R & R (6 months) from the date of Award;
Irrigation projects/Hydel projects – R & R to complete 6 months before submergence.
38(2) - Collector to ensure that R & R is completed in all its aspects before displacing the affected families (Infrastructural Entitlements to be provided within 18 months of Award)"]

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- Preparation of draft R & R Scheme, S.16 (2)
  - Preparation of Development Plan for SCs/STs
  - Draft R&R Scheme to be given wide publicity 16(4)
  - Public hearing on Draft R & R & Raising of objections, S. 16 (5)
  - Review and approval of draft of R & R Scheme by Collector and Commissioner, S.17
  - Finalisation and publication of approved R & R Scheme in the Gazette/made available in local language in local bodies, S. 18

**Publication of Declaration and Summary of R & R-ONE year of Section 11 (1)**

Publication of Declaration and Summary in Form VII Includes the following:

- Demarcated details of lands with full particulars of all interest holders
- Details of land required for 'resettlement area'
- Summary of R&R Scheme
- Deposit of funds by Requiring body compulsory before final notification

**Notices to Persons Interested - Section 21**

- Claims to Compensation
- Claims to R & R

**Award, Section 23; within ONE year of Section 19**

Award shall comprise of two components, viz. LA and R&R

- Section-23 Enquiry and Land Acquisition Award by Collector
- Section-30 Individual Award with respect to land
- Section-31 (1) R & R Award by Collector

**Possession of Land, Section 38**

Power to take possession only after:

- Full payment of compensation (3 months)
- Monetary part of R & R (6 months) from the date of Award;

Irrigation projects/Hydel projects – R & R to complete 6 months before submergence.

38(2) - Collector to ensure that R & R is completed in all its aspects before displacing the affected families (Infrastructural Entitlements to be provided within 18 months of Award)

## 2.8 RFCTLARR Act, 2013: Implementation Experience

The RFCTLARR Act, 2013 made significant changes in the processes and provisions relating to land acquisition. However, enactment of the Act was followed by a period of uncertainty. The formation of rules and key decision points were delayed in most of states. There was perceived lack of institutional capability among the state governments to implement the provisions of legislation (in particular, the SIA). The central government issued three consecutive ordinances<sup>51</sup> to do away with the consent and SIA provisions. A combination of these real and perceived factors resulted in the complete standstill with regard to the process of land acquisition in the country. Given the above, it is difficult to comprehensively evaluate the implementation experience of the RFCTLARR Act, 2013.

The greatest apprehension about the RFCTLARR Act, 2013 is about expanding the timelines. KPMG (2014)<sup>52</sup> recommended the revision of the LARR Act 2013 to remove complexities in the unavailability of land, especially in the urban areas and points out that the LARR Act, 2013 would not only increase land acquisition cost by two to four times (in urban and rural region respectively), but it would take at least three years to acquire land. The following sections attempts to clear such apprehensions based on the implementation experience.

### 2.8.1 Implementation Experience: The Case Study of Punjab Project

To lend more clarity to the process timelines under the new Act, we see the case study of land acquired under RFCTLARR Act, 2013 in Punjab. The first case of acquisition of land under the new legislation in the country was for the 100 ft Master Plan Road of New Chandigarh, from Majra T-Junction to Palanpur in Punjab. About 10.88 acres of land was acquired for the project, involving 6.23 acres of private and 3.65 acres of Government land. The project was initiated by the Greater Mohali Area Development Authority (GMADA). GMADA has been engaged in planning and development of a new world class city with modern infrastructure in New Chandigarh. The Authority also planned to develop master plan roads and other connecting roads around these urban estates.

<sup>51</sup> The period between 1<sup>st</sup> January 2015 to 31<sup>st</sup> August, 2015 was a period of three ordinances.

<sup>52</sup> Funding the Vision - Housing for all by 2022, KPMG in India, 2014

According to the SIA Study for the project, the Master Plan road is part of the New Chandigarh local planning area aimed at providing multiple benefits including easy accessibility to Chandigarh from the rural areas (Palanpur and surrounding villages), faster transport of agricultural produce (especially perishable items) to the Chandigarh market and New Chandigarh, reduction in pollution level, enhancement of quality of environment etc.

The provision-wise timelines undertaken under the new Act is explained in Table 2.9. The table also mentions the maximum timelines prescribed under the new Act. The acquisition process of the 11 Km project was completed in about one year. As against the maximum timeline of 8 months for the completion of SIA process, the project took a little more than four months. According to the provisions of the 2013 Act, the Preliminary Notification had to be mandatorily issued within a period of one year from the appraisal of SIA Study by the Expert Group. In the above project case, the same was issued in less than a month of the Appraisal. The final declaration was issued in three and a half months from the issue of preliminary notification as against the maximum specified timeline of 12 months. Finally, the Award for the project was issued in less than two months after the issue of declaration under Section 19. The maximum duration allowed under the 2013 Act between declaration and award is 12 months.

The RFCTLARR Amendment Ordinances, effective during the period 1<sup>st</sup> January to 31<sup>st</sup> August 2015 had left it to the respective state governments to exempt conduct of SIA Study for an expansive list of five projects<sup>53</sup> projects involving land acquisition. The Government of Punjab, like most other state governments also issued notification exempting SIA for projects notified on 5<sup>th</sup> March, 2015, 29<sup>th</sup> July 2015 and 21<sup>st</sup> August 2015. The implementation timelines for two other ongoing projects that are given in Table 2.6 and 2.7. Each of these projects viz. a road project and a solid waste management projects have limited land acquisition impacts viz. between 5 and 50 acres and is

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<sup>53</sup> For (1) national security/defence projects (2) rural infrastructure including electrification (3) affordable housing and housing for rural poor (4) industrial corridors and (5) infrastructure and social infrastructure projects including PPP projects where land continues to vest with the government.

expected to complete the land acquisition process in less than 1.5 years. The SIA process may have added another four to six months in the process.

**Table 2.5 Master Plan Road of New Chandigarh, from Majra T-Junction to Palanpur - LARR Process under RFCTLARR Act, 2013**

| <b>RFCTLARR Act, 2013 Process</b>   | <b>Dates</b> | <b>Max. Timelines as specified in 2013 Act</b> |
|-------------------------------------|--------------|------------------------------------------------|
| Notification of SIA u/s 4(1)        | 04.03.2014   | -                                              |
| Publication in News papers u/s 4(2) | 06.03.2014   | -                                              |
| Upload on Website of GMADA u/s 4(2) | 07.05.2014   | -                                              |
| Public hearing for SIA u/s 5        | 10.05.2014   | -                                              |
| Appraisal by Expert Group u/s 7     | 11-07-2014   | -                                              |
| Acceptance of Expert Group u/s 8(1) | 25-08-2014   | 8 Months                                       |
| Notification u/s Section 11         | 22.09.2014   | 20 months                                      |
| Publication in Newspapers           | 23.09.2014   | -                                              |
| Uploaded on the website of GMADA    | 23.09.2014   | -                                              |
| Public hearing u/s 15(1)(2)         | 02.12.2014   | -                                              |
| Notification no. u/s 19             | 02.01. 2015  | 32 months                                      |
| Award u/s 23                        | 27.02.2015   | 44 months                                      |

**Table 2.6 164 feet wide Road Project in Village Kambali, Kambala & Rurka - Process under RFCTLARR Act, 2013**

| <b>Process</b>                              |                         |
|---------------------------------------------|-------------------------|
| Land (Acres)                                | 19.88                   |
| Affected Families (Nos)                     | 194                     |
| Displaced Families (Nos)                    | Nil                     |
| Section 11-Preliminary Notification         | 21-08-2015              |
| S.11(5) Land Records Updation by Collector  | 23-10-2015              |
| S. 15(1)-Hearing of Objections              | 09-11-2015              |
| S. 16 (1)-Start date of Survey              | Oct. 2015               |
| S. 16 (1)-End date of Survey                | Oct. 2015               |
| S. 16(2)-Preparation of draft R & R Scheme  | Oct. & NoVs. 2015       |
| S. 16(5)-Public Hearing                     | 13-11-2015 & 20-11-2015 |
| Section 19-Declaration and Summary of R & R | Pending                 |
| Section 23-Award Date/Expected Date         | April 2016              |
| Section 38-Date of Possession/Expected Date | April 2016              |

**Table 2.7 Solid Waste Management Project- Process under RFCTLARR Act, 2013**

| Process                                     | Date                      |
|---------------------------------------------|---------------------------|
| Land (Acres)                                | 50                        |
| Affected Families (Nos)                     | 38                        |
| Displaced Families (Nos)                    | Nil                       |
| Section 11-Preliminary Notification         | 05-03-2015                |
| S.11(5) Land Records Updation by Collector  | March 2015                |
| S. 16 (1)-Start date of Survey              | May 2015                  |
| S. 16 (1)-End date of Survey                | June 2015                 |
| S. 16(2)-Preparation of draft R & R Scheme  | June 2015                 |
| S. 16(5)-Public Hearing                     | 21-06-2015 and 30-06-2015 |
| Section 19-Declaration and Summary of R & R | March 2016                |
| Section 21-Notices to Persons Interested    | Pending                   |
| Section 23-Award Date/Expected Date         | June 2016                 |
| Section 38-Date of Possession/Expected Date | June 2016                 |

Though all the projects mentioned above have limited land requirements, it dispels the myth of existence of insurmountable implementation issues with the new Act. The issue of lack of expert institutions that can conduct SIA studies, inadequate personnel in the government machinery to carry out all the transparency and consultative requirements in the Act etc are cited as the most important issues impeding successful implementation of the Act and rightly so; it may also not be stretched so far as to say land acquisition is impossible under the new legislation. Considering the implementation experience in Punjab, the revised expected timelines for acquiring land under the new Act for similar projects are given in Table 2.9. Needless to say, for larger land requirements and those inducing relocation of affected families, the timelines would necessarily be longer. It is important to stress that faster land acquisition under both the old and the new legislations require a proactive and enabling district administration. However, on the whole, the housing projects for which land is acquired under the new Act can also be assumed to acquire land within the timelines mentioned above.



**Table 2.8 Timelines as per RFCTLARR Act: Maximum and Achievable**

| Sl. No | Item                                                                                                 | Tentative Achievable time required (days) | Cumulative time | Max Timeline (Cumulative) RFCTLARR Act, 2013 |
|--------|------------------------------------------------------------------------------------------------------|-------------------------------------------|-----------------|----------------------------------------------|
| 1      | Social Impact Assessment                                                                             | 180                                       | 180             | 240                                          |
| 2      | Section 11-Priliminary Notification                                                                  | 30                                        | 210             | 605                                          |
| 3      | Section 19- Declaration and Summary of R & R Scheme                                                  | 90                                        | 300             | 970                                          |
| 4      | Preparation of Rehabilitation and Resettlement Scheme                                                | 60                                        | Parallel        | -                                            |
| 5      | Calculation of Market rate                                                                           | 30                                        | 330             | -                                            |
| 6      | Section 21-Hearing of claims                                                                         | 50 (30 days mandatory period)             | 380             | -                                            |
| 7      | Section 23-Award of LARR                                                                             | 50                                        | 430             | 1335                                         |
| 8      | Section 38-Disbursement of compensation & R & R (if there is no displacement) and possession of land | 180                                       | 610             | 1515                                         |
| 9      | Completion of R & R (if there is displacement and site is developed)                                 | 540 (18 months)                           | 700             | 1700                                         |

The other point that policy makers need to consider whether the entire bureaucratic machinery is required at all for small projects. In other words, do we really need have to have such an elaborate procedure for acquiring miniscule proportion of land? The land compensation as per the old law and the RFCTLARR Act are given in Table 2.9. It shows that the price of land (land compensation) will in most cases will increase by about 50% to 150% in urban and rural areas respectively<sup>54</sup>. The additional R & R cost would be about 6 lakhs per affected family and about 10-12 lakhs for displaced families. The increase in the land costs under the RFCTLARR Act however needs to be understood in proper perspective. First, as explained earlier, the circle rates and registered deeds are usually much lower than the real market value. It is on this depressed market value that the multiplier is applied. Second, forced by protests, project proponents have

<sup>54</sup> This is assuming the circle rates as the base value.

increasingly been agreeing to consent awards and paying a compensation that is often several times higher than the market value. Third, the resettlement costs are also reduced by almost half in cases where there is no displacement and associated relocation.

Table 2.9 Scenario 1-Land Compensation Pre and Post RFCTLARR Act in Urban Area (Multiplier 1)

| Land Acquisition Act 1894 |              |                 |                          |                        | RFCTLARR ACT, 2013 |               |                 |                           |                        |
|---------------------------|--------------|-----------------|--------------------------|------------------------|--------------------|---------------|-----------------|---------------------------|------------------------|
| S. No                     |              | Area (in Acres) | Rate per acre (Rs Lakhs) | Total Amount (Rs. Crs) | Sl.No              |               | Area (in Acres) | Rate per acre (Rs Lakhs)# | Total Amount (Rs. Crs) |
| 1                         | Pvt. Land    | 700             | 10.00                    | 70.00                  | 1                  | Pvt. Land     | 700             | 10.00                     | 70.00                  |
| 2                         | Asset value  |                 |                          | 35.00                  | 2                  | Asset value   |                 |                           | 35.00                  |
|                           |              |                 | Total                    | 105.00                 |                    |               |                 | Total                     | 105.00                 |
| 3                         | 30% Solatium |                 |                          | 31.50                  | 3                  | 100% Solatium |                 |                           | 105.00                 |
| 4                         | 12% AMV      |                 |                          | 12.60                  | 4                  | 12% AMV*      |                 |                           | 8.4                    |
|                           |              |                 | Total                    | 149.10                 |                    |               |                 | Total                     | 218.4                  |

(\*) Additional Market Value: To be paid from Preliminary Notification to Award

Table 2.10 Scenario 2-Land Compensation Pre and Post RFCTLARR Act in Rural Area (Multiplier 2)

| Land Acquisition Act 1894 |              |                 |                          |                        | RFCTLARR ACT, 2013 |                |                 |                           |                        |
|---------------------------|--------------|-----------------|--------------------------|------------------------|--------------------|----------------|-----------------|---------------------------|------------------------|
| S. No                     |              | Area (in Acres) | Rate per acre (Rs Lakhs) | Total Amount (Rs. Crs) | Sl.No              |                | Area (in Acres) | Rate per acre (Rs Lakhs)# | Total Amount (Rs. Crs) |
| 1                         | Pvt. Land    | 700             | 10.00                    | 70.00                  | 1                  | Pvt. Land      | 700             | 10.00                     | 70.00                  |
|                           |              |                 |                          |                        |                    | Multiplier (2) |                 |                           | 140.00                 |
| 2                         | Asset value  |                 |                          | 35.00                  | 2                  | Asset value    |                 |                           | 35.00                  |
|                           |              |                 | Total                    | 105.00                 |                    |                |                 | Total                     | 175.00                 |
| 3                         | 30% Solatium |                 |                          | 31.50                  | 3                  | 100% Solatium  |                 |                           | 175.00                 |
| 4                         | 12% AMV      |                 |                          | 12.60                  | 4                  | 12% AMV        |                 |                           | 16.8                   |
|                           |              |                 | Total                    | 149.10                 |                    |                |                 | Total                     | 366.80                 |

Note:

(#) Assuming that Market Value calculated as per Section 26 (1) remains unchanged

**Table: 2.11 Monetised Rehabilitation Benefits per Affected Family**

| S. No | Heads                                                  | Amount (INR) Lakhs                                 |
|-------|--------------------------------------------------------|----------------------------------------------------|
| 1     | Subsistence Grant                                      | 0.36 (general) 0.50<br>(SC/STs in Scheduled Areas) |
| 2     | Housing in case of Displacement                        | R-1.6555; U-5.38                                   |
| 3     | Transportation Grant                                   | 0.36                                               |
| 4     | R & R Package/Employment/Annuity                       | 0.5                                                |
| 5     | Resettlement Allowance                                 | 0.5                                                |
| 6     | One time grant for cattle sheds                        | 0.25                                               |
| 7     | One-time grant for artisans/small traders              | 0.25                                               |
|       | Approximate R & R Values for an Urban displaced family | 11.5 lakhs                                         |
|       | Approximate R & R Values for an Rural displaced family | 8.0                                                |
|       | Approximate R & R Values for an Urban affected family  | 5.5                                                |
|       | Approximate R & R Values for an Rural affected family  | 6                                                  |

**Affected Family:** Family losing ownership of Land/Property/Forests rights/Assigned/Ceiling Pattas and/or Livelihood losers, with three years residence /working in the affected area; prior to acquisition of land.

**Displaced Family:** Any family who on account of acquisition of land has to be relocated and resettled from the affected area to the resettlement area i.e, the family should be normal residents of the houses under acquisition. If the residence of the family is outside the affected area but they own a house in the area, the family is an affected family but not a displaced family.

**Family:** "Family" includes a person, his or her spouse, minors children dependent on him/her.

<sup>55</sup> Government of Maharashtra has monetised the urban/rural house values (to be given as R & R benefits) as per the specifications given in the Act. The estimate in Table 2.11 is based on these figures.

## 2.9 Land Acquisition through State Legislations

In addition to the principal Land Acquisition Act, 1894, the provisions regarding compulsory acquisition of land also exists in other allied legislations dealing with urban development in various states. These include legislations on housing, town planning, industrial development, and construction of highways. As explained earlier, the legislative competence of the Central and State Legislatures is demarcated by the Constitution under Article 246, with the fields for exercise of legislative power enumerated in List I (Central List), List II (State List) and List III (Concurrent List) of Schedule VII to the Constitution of India. In case of inconsistency between laws made by Parliament and laws made by the Legislatures of States, Article 254 of the Indian Constitution states:

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause ( 2 ), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

In terms of the applicability of the RFCTLARR Act, 2013 or any other central law over the state laws, the following may be noted:

1. Where the provisions of a Central Act and State Act in the concurrent list are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void.
2. Where a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent to a previous law made by the Parliament, then such a Law can be

protected by obtaining the assent of the President under article 252 (2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only.

3. Where a Law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the entries in the Central List, the constitutionality of the Law may be upheld by invoking the Doctrine of Pith and Substance<sup>56</sup>, if on an analysis of the provisions of the Act, it appears that by and large the law falls within the corners of the State List and entrenchment, if any, is purely incidental.

The RFCTLARR Act, 2013, does not have any consolidating and non-obstante provision excluding the application of all other laws. The Act provides that 'the provision of the Act shall be in addition to and not in derogation of any other law for the time being in force (Section 103). The Act states that "Nothing shall prevent any State from enacting any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for R & R which is more beneficial than provided under this Act" (Section 107).

It may be worthwhile examining few important apex court judgments in this regard. In *Girnar Traders Vs. State of Maharashtra*<sup>57</sup>, the Supreme Court held that the application of Doctrine of Pith and Substance makes it clear that the State Act (Mumbai Regional Town

<sup>56</sup> Doctrine of Pith and Substance is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists.

1. If an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature.'
2. When a law is impugned as being ultra vires of the legislative competence, what is required to be ascertained is the true character of the legislation. To ascertain the true character of the legislation, the entire Act, its object, its scope and effect is to be examined.
3. The question of invasion into the territory of another legislation is to be determined not by degree but by substance.
4. Wherever the question of legislative competence is raised, the test is whether the legislation, looked at as a whole, is substantially w.r.t the particular topic of the legislation.

<sup>57</sup> (2004) 8 SCC 505

Planning Act) is aimed at planned development unlike the Central Act where the object is to acquire land and disburse compensation in accordance with law. The paramount purpose and object of the State Act being planned development and acquisition being incidental thereto, the question of repugnancy does not arise. The Court held that they would fall within the permissible limits of doctrine of "incidental encroachment" without rendering any part of the State law invalid. The Court went on to clarify that only those provisions of the Central Act which precisely apply to acquisition of land, determination and disbursement of compensation in accordance with law, can be read into the State Act. However, the provisions of the Central Act relating to default and consequences thereof, including lapsing of acquisition proceedings, cannot be read into the State Act. It was for the reason that neither they have been specifically incorporated into the State law nor they can be absorbed objectively into that statute. If such provisions (Section 11A being one of such Sections) are read as part of the State enactment, they are bound to produce undesirable results as they would destroy the very essence, object and purpose of the MRTP Act.

Similarly, in *Munithimmaiah Vs. State of Karnataka*<sup>58</sup>, the Supreme Court pointed out that the Bangalore Development Act (BDA) is not an Act for mere acquisition of land but an Act to provide for the establishment of a Development Authority to facilitate and ensure planned growth and development of the city of Bangalore and areas adjacent thereto. Acquisition of lands, if any, therefore is merely incidental thereto. In *Pith and Substance*, the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List II of the VIIth Schedule. The Court held that if at all, the BDA Act, so far as acquisition of land for its developmental activities are concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of the BDA and the same was also not considered to be part of the Land Acquisition Act, 1894.

The above discussion sums up the applicability of the RFCTLARR Act, 2013 over the state Acts. The process framework conceptualised under these Acts may still continue to be followed while compensation/R & R mechanisms are integrated into the state Acts. Tamil

<sup>58</sup> (2002) 4 SCC 326

Nadu was the only state that received a presidential assent for exempting their state acts from the process framework of the new LARR Act. These Acts are the Tamil Nadu Highways Act, 2001, Tamil Nadu Acquisition of Land for Industrial Purpose, 1997 and Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. The state carries out more than 80 percent of land acquisition under these Acts. To continue land acquisition under these three State Acts, the Government passed the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014 by inserting Section 105A, which places the above three Acts in a newly created Fifth Schedule, at par with the thirteen Central enactments in the Schedule IV of the 2013 Act. The Amendment received assent of the President on 1<sup>st</sup> January 2015. The assent of Hon'ble President was however accorded to the RFCTLARR (Tamil Nadu Amendment) Bill, 2014 subject to the following conditions namely;-

First, the concerns of the Ministry of Tribal Affairs regarding the interests of Scheduled Tribes in general and Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers in particular has to be safeguarded by incorporating the provisions of Sections 3(c) (iii), 41 and 42 of the RFCTLARR Act, 2013.

Second, with the State Bill being given retrospective effect (i.e. from 1.1.2014), the amendment law should not take away vested rights that have accrued to the parties.

Third, the Government also decided that the provisions of Central Act 30 of 2013 relating to determination of compensation in accordance with the First Schedule and R & R specified in the Second and Third Schedules shall apply to the cases of land acquisition where the notices against each Tamil Nadu Act have been published on or after 01.01.2014. Accordingly, the Government issued executive instructions in the above regard. Like Tamil Nadu, other states can also subject to presidential assent protect their state specific development legislations including the ones for housing sector and continue with the processes outlined in the state specific legislation.



## 2.10 Government Supported Land Purchase as an Option

The exercise of compulsory acquisition may be unnecessary where the existence of such powers is sufficient to encourage a negotiated settlement. Negotiated settlement provides faster results for the land procuring body and is perceived as more participatory.

### Box 2.8 Negotiated Settlement in Other Countries

In a 1997 Study, 80% of British organisations having powers of compulsory acquisition had acquired land by agreement rather than through the use of compulsory acquisition powers; and 97% said that acquiring by agreement was preferable to compulsory purchase. The Study demonstrated that providing a body is not making an unlawful acquisition, then it is certainly more appropriate to acquire by agreement, given that the vendor is likely to receive compensation on the same basis as under a compulsory acquisition, with the acquisition being less bureaucratic, faster, and allowing for flexible negotiations ... At the same time, a balance needs to be maintained, because in certain circumstances, such as highways or slum clearance schemes, a CPO [compulsory purchase order] will be necessary in order to acquire all the interests within a given timescale.

Source Almond, N and Plimmer, F. (1997)

In the Indian context, negotiated settlement or consent award was looked upon as a good option for assembly of land under the earlier land acquisition Act<sup>59</sup>. Since the RFCTLARR Act does not include the provision of consent award, some states have issued policies for direct purchase of land by the government. Four states Telangana, Madhya Pradesh, Uttar Pradesh and Chhatisgarh have come out with their own land purchase policies.

The Telangana government order provides for procurement of land for public purpose and has constituted District Level Land Procurement Committee under the Chairmanship of the Collector for the purpose. Madhya Pradesh is the second state that has come out with a Consent Land Purchase Policy for procuring the land for the state departments. The compensation for the land that is offered is double the value of calculated compensation

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According to Section 11(2) of the repealed 1894 Act, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(guideline value plus Assets). Uttar Pradesh that had a land purchase policy prior to the enactment of the new LARR Act has also reframed a Mutual Consent Land Purchase Policy under Section 46 of the RFCTLARR Act, 2013 for the state government Departments/PPP Projects. The compensation offered is four times the market value (guidance value) in the rural areas and twice the market value in the urban areas.

Land procurement under these purchase policies are being done independently and not incorporating the elaborate procedures laid down in the Act. These purchase policies also provide for lesser benefits than mandated by the Act. While these could be a form of quicker land assembly, any policy that provides for lesser benefits than contemplated under the 2013 Act are unlikely to be legally sustainable or successful in the long run.

## 2.11 Conclusion

At one end of the debate is the view that the society is forced to bear very high costs if governments are forced to pay exorbitant sums to the landowners. This is the greatest concern with the new land acquisition Act. At the other end, is the potential delay owing to land conflicts/time and cost overruns owing to meager compensation/lack of R & R support. Would the former outweigh the latter and would land acquisition cease to be an option at all. We do not think so. While the use of the new land acquisition act may be reviled on account of the hike in compensation and R & R and the cost implications thereof, the legislation scores over the colonial legislation in terms of equity and social acceptance, two key ingredients for a successful land assembly strategy. In the long run, the assembly process may also result in greater efficiency with reduced conflicts. Finding the balance between efficiency and equity for urban development may be a difficult but not an impossible task. A proactive acquiring authority can greatly reduce the timeline and improve efficiency. Efficiency can also be improved by through necessary amendments in the law to rationalise the time and cost.

Another critical issue that deserves mention regarding the future of RFCTLARR Act as a land assembly strategy is the mechanism to arrive at realistic land values. For any land

assembly tool to succeed, there should be a robust system to determine land values. The most significant information used world-wide to assess land values include market data on transactions, assessing the attributes of the property, data concerning the potential income from land, cost of inputs into land development etc. Developing countries like India are known to have a major constraint with the transaction data as these do not reflect the true price of land because of black market transactions to save on taxes. The rationale for use of the multiplier in the rural context is primarily to address this concern. However, a major drawback of the new legislation is that it only provides for a single mechanism for valuation of the land to be acquired. The land valuation, despite the multiplier, may not provide for an accurate and appropriate assessment of the property in question particularly where large transaction data for similar lands are not available. In the urban context, it is more troublesome as decoupling the transaction data between land and built-up portions may be difficult. It is also important to understand that not all land may have enough market comparables. For a futuristic land acquisition policy, the comparable sales approach may have to be complemented with other land valuation mechanisms.

**CHAPTER III****LAND POOLING/RECONSTITUTION  
MECHANISMS****3.1 Introduction**

The world population living in the urban areas is expected to increase to 70 percent from the present 50 percent by the middle of this century. Developing countries currently account for more than 95 percent of the global urban population growth. During the period between 2000 and 2030, the urban population is expected to double and the built-up area of these countries is expected to triple in size (UN-Habitat, 2012). These population pressures necessitate the need to assemble and develop the land in the most efficient and effective manner.

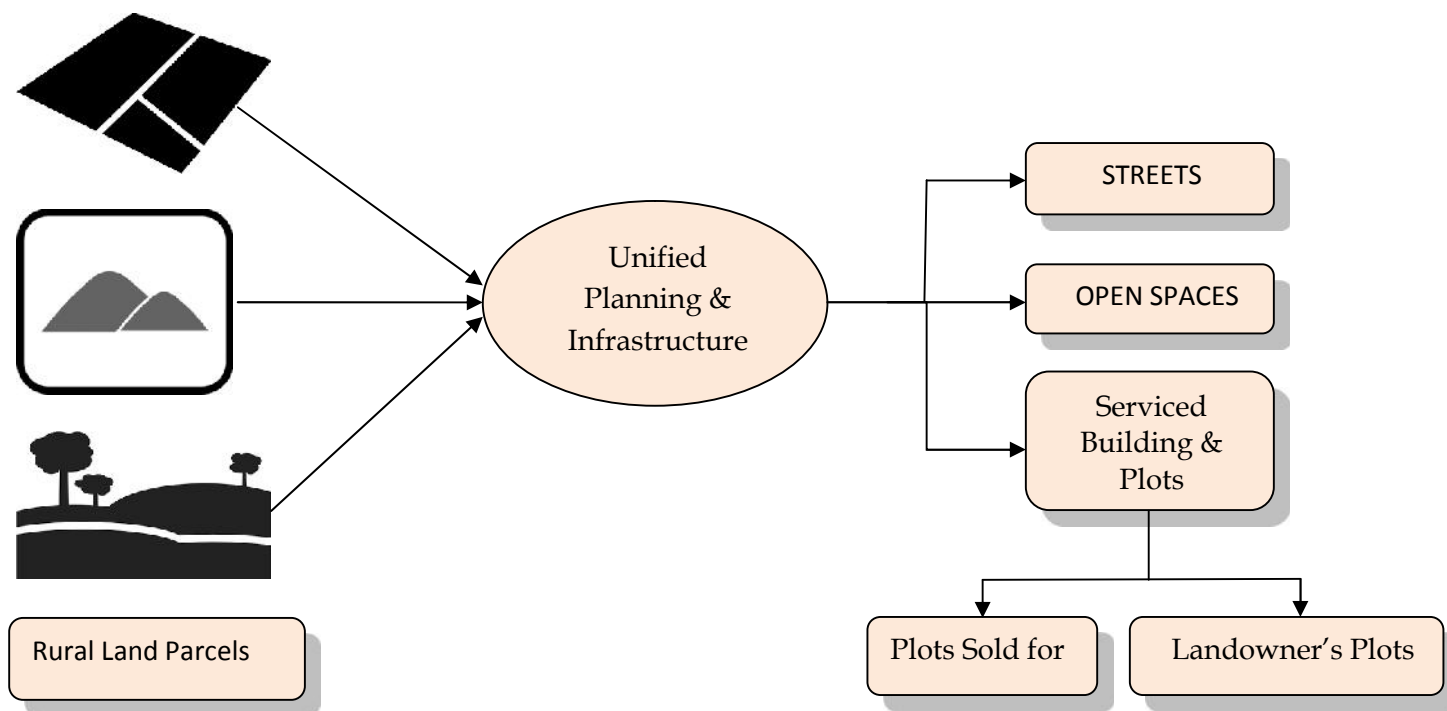
Land Pooling/Readjustment/Reconstitution<sup>1</sup> is increasingly gaining acceptance as a land assembly strategy for development projects in India, particularly dealing with urban expansion in the urban periphery or redevelopment in existing urban areas. It is seen as a more efficient mechanism than the conventional methods of assembly grounded in the power of eminent domain. The process is known in different parts of the world by different names viz., *Land Readjustment* (LR) in South Korea and Japan, *Land Consolidation* in Europe and *Land Pooling* in Australia. There are a large number of studies that provide a great deal of information on the principles and practices of land pooling or LR in different countries<sup>2</sup>. The common features characterising countries have been using LR successfully are rapid population growth, high real estate values and fiscal constraints to finance large

<sup>1</sup> There is an important legal distinction between land readjustment and land pooling. In land readjustment, there is no transfer of title to the development entity. The original landowners retain title to their land throughout the process and the title is simply modified at the end to show the new property designation. In land pooling, the original landowners actually transfer title to the development entity at the beginning of the process and receive a new title after reconstitution.

<sup>2</sup> Most of the research has focused on the general concepts or key characteristics of the LR process in countries such as; Germany (Davy, 2007; Doebele, 1982; Müller-Jökel, 2001, 2002, 2004; Seele, 1982); Japan (Doebele, 1982; Carlsson, 1991; Hayashi, 2000; Nishiyama, 1987; Sorensen, 2000a,b, 2007; Supriatna, 2011); Holland (Van Der Krabben and Needham, 2008; Needham, 2002); Sweden (Carlsson, 1991; Kalbro, 2002); Australia (Doebele, 1982); Taiwan (Doebele, 1982; Chou and Shen, 1982; Lee, 1982; Lin, 2005); Turkey (Turk and Korthals Altes, 2010a,b); Finland (Viitanen, 2002); Indonesia (Supriatna, 2011); Israel (Alterman, 2007); China (Li and Li, 2007); Korea (Doebele, 1982; Lee, 2002) and Nepal (Karki, 2004).

development initiatives. LR is favoured given its greater social and political acceptability as well as self financing nature.

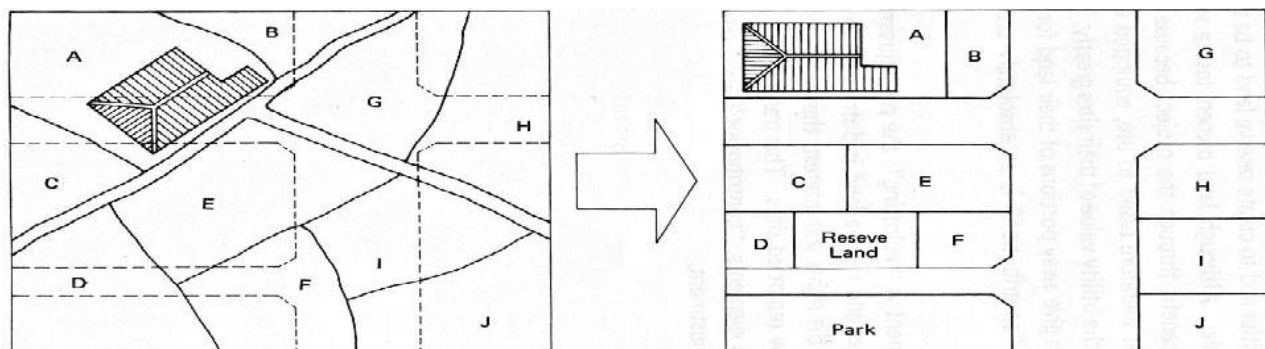
Historically, land pooling has been used as a means to capture land value increments to cover urban development costs, adjust outmoded property boundaries, facilitate land acquisition for urban development for speeding up the development process and at the same time allowing existing landowners to share the wealth generated from urban development and promote housing development. According to Viitanen (2002), the LR procedure is justified not only based on the involved costs and efficiency of the method but also based on its fair treatment of landowners, improvements in plan quality, savings to the community and environmental benefits. Thus, it ensures a fair distribution of developmental costs and profits created by spatial plans (Sonnenberg, 1996) and preserves the original ownership structure and social networks.



**Figure 3.1 Distribution of Land Post Land Pooling/Adjustment**

The method is widely practiced mainly in Japan and Germany for more than a century. It has also been implemented in several other countries including Taiwan, India, Australia, etc. Although, the name and process of the project differ slightly country to country, the method is based on the reassembling of land parcels by a new layout plan together with the development of new urban infrastructure. Land contribution by each landowner is essential to utilise for the site of newly established infrastructures, and to cover the project cost fully or partially.

Under land pooling, public infrastructure is provided at a shared cost to the landowners and the public authority. In the urban context, the process enables the urban authorities to develop new areas by financing the infrastructure through the increase in land values. Once infrastructure is in place, the land value rises. The landowners receive a property of at least the same value near their original property after the development of the area. Thus, the cost recovery mechanism coupled with the absence of purchasing land outright eliminates the need of the government in making a large up-front investment in infrastructure development. The strategy on the other hand is to shift the burden to the landowners by inviting them to contribute their land in exchange for a participating interest in the value created by the development project. The landowners benefit by remaining in the same area, preventing significant social and emotional issues associated with displacement and relocation. The public authorities on the other hand are much benefited as they do not require substantial upfront capital in paying compensation to the existing landowners.



**Figure 3.2 An Illustration of Segmentation of Land under Land Pooling**

Thus, financial risks are pooled and shared between the original property owners and redevelopment agent in the pooling mechanisms. In cases of conventional land assembly, public agents or developers have to pay large sums of money to acquire properties. Land pooling may thus allow urban redevelopment to be self-financing. The typical land pooling works in the following manner:

$$L * P < L_1 * P_1$$

Where,

L = Initial Area (Land plot size) before Land Pooling

P = Initial Land price

L<sub>1</sub> = Land plot size after Land Pooling development/reconstitution

P<sub>1</sub> = Land Price after development/reconstitution

### 3.2 Benefits of Land Pooling/Readjustment to Various Stakeholders

#### 3.2.1 Landowners

- Increase in Value of land:** Unfair distribution of land values in land acquisition is the primary cause of increasing land conflicts in most of the developing countries. The dissatisfaction of the land owners stems from the capturing of the incremental value of the land by the beneficiary of the expropriation, the government and the development entities. Land pooling projects distribute the newly created incremental value among the land owners and the government/developer entities. The strategy increases the property values in the area owing to two reasons; change in the land use plan that permits the land uses with a higher value and increase in public works and infrastructural improvements that enhances the value of properties. Land continues to be the most valuable asset held by people, especially in the developing countries (with ever appreciating land prices). Any increase in the value of the land is welcome to the landowners since it is the revenue that they derive from the mere possession of the land. The logic that owners do not contribute to the creation of land values and hence cannot legitimately claim the economic benefit breaks down when the financial benefits of the land improvements are upsurbed by the neighbours with no inherent stake in the opportunity. The land pooling projects would also have spillover effects that may reach beyond the extent of project boundaries.

- **Non-Displacing Strategy of Land Assembly:** Changes of any kind are always met with resistance. Land owners find comfort with their familiarity and land pooling provides adequate cushion by enabling the continuity of the same. Rehabilitation measures are often not welcome since they dispossess the land owners off their initial land which they hold very dearly. Most often, the measures could either not be adequate or appropriate. Land Pooling provides for a mechanism whereby land owners retain their land and hence the sense of belonging.

The right of the landowners to return to the project area is one of the greatest advantages of this non displacement development strategy. Certain land pooling models like the AP capital City have also ensured that habitations within the land pooling area also are not touched besides ensuring commercial/residential plot for the landowners in the project area. The non-displacement strategy however does not mean that the landowners have the obligation to return to their traditional occupation. Given the transformation of the agricultural land into urban plots, the land owners may chose to sell off the lands, buy lands elsewhere and continue livelihood in a different place. However, despite the above and the fact that there is a dramatic transformation of the existing neighborhood, this strategy is perhaps the only method which allows for the preservation of an existing community.

- **Conversion of irregular land parcels into plots of regular sizes and shapes:** This is one of the most commonly faced challenge in a country like India, where population exceeds infrastructural growth by leaps and bounds. The urban fringe lands are usually divided into small parcels of farmland without any public road connection and other adequate infrastructure. The assembly and consolidation is difficult and costly for the private developers. Owing to these inherent issues, there is unplanned growth and scattered pattern of building development and unused land. Planned development through land pooling not only eliminates this particular hurdle but also promotes better land use to the land owners which in turn promotes the efficiency of the entire process.



- **Better Infrastructure:** The financial constraints of the government bodies result in gaps in the needed public infrastructure, especially in the sub-urban areas. The financial burden imposed by the acquisition of land imposes a financial burden and these gaps continue to increase causing immense misery to the residents of these areas. By doing away with the high land acquisition costs, land pooling presents a more financially feasible option. The cost of infrastructure can be financed with a short/medium term loan which can be quickly recovered by the sale of some of the new building plots. The residents are thus assured of a much better serviced plot with improved infrastructure and other amenities.
- **Exemption of applicable taxes in land exchange:** In pooling projects, the government usually retains a portion as cost recovery land. The landowners do not have to pay for the administrative costs that would apply to a transaction involving a lower value land to a higher value land. It is a win-win situation as the local bodies too would benefit from the increased land values and the increase in their revenue from the enlarged tax base.

### 3.2.2 Government

- **No Upfront Costs:** Land pooling is a unique assembly strategy that has the advantage of no initial monetary outlay to purchase the land. In land acquisition, governments, exercising their right to property for public purposes must pay the land owners fair market value of the land for acquiring their lands and proceeding with the development project. In the new land acquisition law, the compensation and R & R costs would have to be borne by the land requiring body. Under land pooling, the burden is shifted to the landowners to contribute their land in exchange for a participating interest in the value created by the development project. The landowners and development entity share in the risk and return of the project. The cost recovery land pays for infrastructure and other public facilities.
- **Relatively less Conflict Ridden Process:** The acquisition of land for public use has always been resented by the landowners for various reasons. These include definition of public purpose, the change of purpose after which the land has been acquired,

the payment of just compensation, lack of value for the benefit of CPRs received by the landowners, the state of utilised land for years after the acquisition process is complete, the urgent acquisitions without the inadequate valuation for businesses, relocation expenses, etc. Though land pooling does not eliminate the possibility of landowner resistance, the strategy may be offering a stronger protection of property rights as the landowners share the opportunity to share in the development potential and in a way treat the landowners like investors in the future project. This happens because the process preserves the right of the landowners to benefit from the land even if the reconfiguration reduces the size and alters the location of the plot. The strategy however does not completely eliminate the problem. Any scheme that upsets the status quo in property relations will have resistance from unwilling property owners who benefit from the existing situation for different reasons. This would include the landowners interested in the use value of land, owners with land uses that will not be permitted in the redeveloped project area, owners with building densities that would not stand according to the zoning restrictions, owners resisting owing to sentimental/ideological reasons for the status quo etc.

- **Higher tax base with increase in property prices:** As explained above, the revenue base of the local bodies increase owing to increased land values and enlarged tax base. The increased tax revenues provides an extra source of funding for the government.

### 3.2.3 Others

- **Social Capital Creation:** Social capital refers to the institutions, relationships, and norms that shape the quality and quantity of a society's social interactions. Social cohesion is critical for societies to prosper economically and for development to be sustainable. Social capital is not just the sum of the institutions which underpin a society, it is the glue that holds them together. The creation of social capital may be difficult to quantify. Nevertheless, it is an extremely important benefit of the land pooling strategy. The social capital is created by the private and public actors working collectively foreseeing mutual benefits and in a process where the interests of the landowners get aligned with the development entity. The proximity of the citizens to municipal

decision-making can encourage transparency and promote cooperation between public and private actors (Schrock, 2012). The non-displacement strategy by helping in the maintenance of status quo also ensures that social capital is not adversely affected.

- Less Political Capital as compared to Eminent Domain Acquisitions:** The compulsory acquisition of private lands is increasingly becoming a difficult proposition for the government given the strong opposition of the landowners. Though the legal and policy arguments for the use of eminent domain are often rational and sanctioned by courts, it is perceived as heavy-handed and remains fraught with political problems. The land pooling strategy, through enhanced economic benefits has the potential to further a stronger political consensus and eliminate much of the litigation and delays that marks the opposition to redevelopment of the urban/peri-urban areas. It is however important to understand that no model of implementation can be an insurance policy against failure caused by civic opposition, litigation delays, conflicts of interest, negative media coverage etc. Yet, land pooling, with necessary due diligence measures has the potential to be less contentious.
- Increase of public-private cooperation and trust:** Typically, the existing owners do not have the ability or means to engage redevelopment of the scale made possible by the public sector. Through land pooling, a wider community participation in land development and public-private partnership is fostered. On the benefit side, the strategy ensures a three way win; for the private players to put their skills to use; the government to facilitate the development and ultimately the land owners who benefit from the development.

### 3.3 Land Pooling/Land Readjustment in International Context

The legal origins of various models that exist world-wide are given in Table 3.1.

**Table 3.1 International Experiences on Land Readjustment/Associated Techniques**

| Country     | Legal Origin                                                                                                                    | Period / Year                            | Term / Technique Applied         |
|-------------|---------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------|
| Japan       | Introduced through the Agricultural Land Consolidation Act and then through the Land Readjustment Federal Law.                  | 1899 and 1954                            | Land Readjustment / Kukaku Seiri |
| Germany     | Lex Adickes – Land Consolidation Act (LCA);also referenced in Baugesetzbuch (BauGB)and Law on Adjustment of Agriculture (LAA).  | LCA 1902<br>BauGB 1986<br>LAA 1990       | Umlegung                         |
| Australia   | Western Australian Town Planning and Development Act (TPA).                                                                     | Framework from 1928. Current TPA of 1984 | Land Pooling                     |
| Turkey      | Municipal Expropriation Law 2497, Building Amnesty Law 2981, Reconstruction Law 3194. Current Municipal Expropriation Law 2942. | 1934, 1983, 1985, 2005                   | Land Readjustment                |
| South Korea | Introduced through the City Planning Act and then the Residential Land Development Promotion Act                                | 1934 and 1980                            | Land Readjustment                |
| Taiwan      | Republic's Constitution and Agrarian Land Consolidation Program                                                                 | 1949 and 1958                            | Land Consolidation               |
| Spain       | Land Use Law                                                                                                                    | 1956                                     | Land Readjustment                |
| Indonesia   | Basic Agrarian Law N.5, Spatial Use Management Law, Law on Housing and Settlement                                               | 1960 and 1992                            | Land Consolidation               |
| North Korea | Five Lines of Nature Remodeling, Nature Remaking Policy and Agricultural Law                                                    | 1976 then late 90's                      | Land Readjustment                |
| Nepal       | Land Acquisition Act, Town Development Act                                                                                      | 1976 and 1988                            | Land Pooling                     |
| Canada      | Local Government Act                                                                                                            | 1983                                     | Repotting Schemes                |
| Colombia    | Urban Reform Law, Territorial Development Law                                                                                   | 1989 and 1997                            | Reajuste de Terrenos             |
| Thailand    | Land Readjustment Act BE 2547                                                                                                   | 2005                                     | Land Readjustment                |

Source: Ministry of Land, Infrastructure and Transport – MLIT from Japan. Updated by Felipe Francisco de Souza in 2007.

**3.3.1 Germany:** Germany has the oldest example of Land Readjustment (LR). The legal framework for land pooling was established in 1902 by Franz Adickes, Mayor of Frankfurt am-Main, Germany. The law that was enacted in 1902 and amended in 1907 is therefore

called 'Lex Adickes'. Called *Umlegung* in the local parlance, the LR is built into the Federal Law, The Federal Building Law Code (Articles 47-78). The LR is premised to empower municipal governments to enforce their land use plans through land consolidation. The private property is protected under Article 14 of the German Constitution. However, the Constitution also stipulates that that private property may be expropriated for public purpose by giving just compensation. Mueller-Jokel (2004) describes the local authorities as "comprehensive planning authorities" and the use of the LR is looked upon as a primary tool with which the local authorities can carry out long range development plans as public projects<sup>3</sup>.

**German Model of Land Pooling (Readjustment):** Germany has two standards of distribution for readjusted land returned to landowners; relative size and relative value.

- **Standard of Distribution Based on Relative Size:** The relative size distribution method is made use of when the land values in the redistribution area are homogeneous. In other words, the mechanism is followed where plots have very similar characteristics and no dramatic differences in prices exist between different lots. This is also a mechanism that is followed if the land values are hard to determine. Under this method, the government retains upto 30 percent of the landowners land. In practice, the landowner may receive a plot that is slightly smaller or larger than what is due to him as per the share. For example, if Land owner A contributes 10 acres of agricultural land, the municipality can take upto 3 acres for public use. In other words, he should be getting 7 acres in return. Now, if the municipality gives him 8 acres, the land owner should pay the market value of 1 acre to the municipality. The municipality will make use of the payment received to compensate Landowner B for the additional one acre that he had to forgo.

<sup>3</sup> Davy (2007) points out the ruling of the US Federal Constitution Court in 2001 that LR cannot be challenged as unconstitutional as taking would require failing a public purpose use test as well as physical taking of property, neither of which LR does. LR is thus viewed as a regulation than taking as government's power is circumscribed in the process.

- Standard of Distribution Based on Relative Value:** Since land values are rarely homogeneous, the distribution based on relative value is practiced more widely in Germany. The principle in this method is to share the benefit created by the development project between the Government and the landowners. In essence, what the landowners would receive would be the planning gain (appreciation in land values owing to change of land use from agriculture to non-agriculture/potential development) and the government would make use of the gain resulting from the appreciation of land values owing to development of the said land. The numerical example is given in Table 3.2. The table is explained below:
  - Land owner A contributes an agricultural plot of 1000 m<sup>2</sup>.
  - Agricultural market value = \$5 \* 1000 = \$5000
  - Unit input value of land readjustment - 200 \* 1000 = \$200,000
  - Landowner A's potential gain = 200,000-5000 = \$195,000.
  - If land after readjustment is \$350/m<sup>2</sup>, plot after readjustment = \$350 \* 1000 = \$350,000/-
  - Land owner receiving 600m<sup>2</sup> would mean that the plot = \$600 \* 350 = \$210,000
  - Unit Input Value of Land contributed by Landowner = \$200,000
  - Compensation to be paid by landowner to municipality = \$ 10,000
  - Municipality Gain = 400m<sup>2</sup> of owners A's land + Monetary Compensation of \$10,000

**Table 3.2 Numerical Example of Working of German Land Redistribution by Relative Value**

| Land Owner A | Contributed Land (m <sup>2</sup> ) | Unit Input Land Value | Total Input Land Value | Land Retained (m <sup>2</sup> ) | Land Returned | Unit Output land Value | Total Returned land Value | Compensation Payable by Land Owner /(Payable by Government) |
|--------------|------------------------------------|-----------------------|------------------------|---------------------------------|---------------|------------------------|---------------------------|-------------------------------------------------------------|
| Customary    | 1000                               | \$200                 | \$200,000              | 400                             | 600           | \$350                  | \$210,000                 | \$10,000                                                    |
| More land    |                                    |                       | \$200,000              | 200                             | 800           |                        | \$280,000                 | \$80,000                                                    |
| Less land    |                                    |                       | \$200,000              | 600                             | 400           |                        | \$140,000                 | \$(60,000)                                                  |
| Total Buyout |                                    |                       | \$200,000              | 1000                            | 0             |                        | \$0                       | \$(200,000)                                                 |

Source: Muller Jokel, 2004

The above mechanism benefits the municipality by getting access to land for roads, parks etc. without paying anything for it. The land owner A gets a building plot in the urbanised developed area instead of his former agricultural land. Mr A can also have different scenarios negotiated with the municipality. If he prefers to have more land, he has to pay the higher monetary compensation according to the market value. For example, if he gets 800 m<sup>2</sup> of building land, this represents a market value of \$280,000 (800 m<sup>2</sup> \* 350 /m<sup>2</sup>). Since the input value of land that he has contributed is only \$200,000 (\$200 \* 1000), he has to pay \$ 80,000 (\$280,000 - \$200,000) to the municipality. On the other hand, if he prefers to have a smaller plot of 400 m<sup>2</sup>, the input value of land that he has contributed amounting to \$200,000 would be more than the total returned land value. In this case, he is eligible for an additional monetary compensation of \$60,000 (\$200,000-\$140,000) from the municipality. In the extreme case, if he does not want land in return, then the municipality can pay him his input market value of the potential development i.e. \$ 200,000. This flexibility is provided only when there are other landowners wanting to have more plots than they are eligible to receive. In case such cases do not exist, Landowner A should accept the redistribution of a building plot and sell after the completion of land readjustment procedure on the free land market. Dieterich et al (1993: 66-7) describes the process of *Umlegung* as a complicated procedure that can be subdivided into the following Stages<sup>4</sup>:

<sup>4</sup> Davy, 2007; Doebele, 1982; Dransfeld, 2001; Müller-Jökel, 2001, 2002, 2004

1. The municipality makes the formal decision to start the procedure by determining the area of the Umlegung.
2. The rights and claims of all plots within the area of the Umlegung are established and added together.
3. Land designated for streets, other public space or similar amenities in the local plan is appropriated from the area of the Umlegung. The remaining private properties will be returned to all owners involved using a standard of distribution.
4. There are different possible standards of redistribution, according to either plot values or sizes. The use of the size standard is only suitable if the values of all former plots are fairly similar. The principle of allocation has to take into account the former ratio of ownership. For example, if a landowner possessed 20 percent of the overall value of the plots initially, he would have to receive back 20 percent of the value of the reallocated plots. The allocation of new plots to landowners is conducted on the basis that each gets one or more developed plots according to entitlement, with monetary compensation if necessary.
5. When using the value-based distribution, the landowner has to pay the difference between the value of his former plot (undeveloped) and the value of his serviced new plot after the procedure of the Umlegung. In the process, the Municipality is permitted to retain betterment value (Müller-Jökel R.,1997).
6. When using the standard distribution according to the sizes of the plots, the Municipality is allowed to retain land equal to the increase in value caused by the Umlegung itself; and not to exceed more than 30 percent in green-field areas and 10 percent in inner-city locations.

An important aspect that helps the LR process in Germany is the enabling institutions. The country has a robust legal framework. For implementation of the land readjustment mechanism, Germany has the institutional arrangement in the form of Land Valuation Boards. These Boards collect and maintain purchase data, publish periodic valuation trend reports and assesses property values and levels of compensation. The data base on the ground value of all land purchases includes details on land plots in terms of size, type of use, location, date etc. These data helps in comparison of market valuation. All important decisions in land readjustment project are transferred to the independent land



readjustment boards appointed by the municipalities. Thus, while the municipality negotiates with all the landowners of the area, the final decisions are made by the independent Boards. These Boards usually consists five persons: a lawyer, a land evaluator, a land surveyor and two members of the local parliament (Jokel, 2004). The country also has an robust adjudication mechanism to deal with disputes. The final decision will be made by the Federal Court of Justice.

The German LR process is led by the local authority. It is mandatory for the land owners to participate. No consensus is required from the majority of landowners required for commencing the project. However, studies on German Model indicate that there are intensive negotiations on the general principles of land readjustment, the market value of the landowners input plots, their claims, different options of land redistribution etc. The Board can also try to get agreements of the landowners to use those parts of their actual plots that are needed for the construction of the roads. If the land readjustment department succeeds to get those agreements, the municipality or any other agency charged with providing local public infrastructure can start with the construction of the sewerage and the roads<sup>5</sup>.

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<sup>5</sup> If a landowner denies his agreement for the land readjustment, the Board can force him by putting the municipality in possession prior to completion of the land readjustment plan ((Müller-Jökel R.,1997).

**Table 3.3 Process of Land Reconstitution in Germany**

| S. No | Steps                               | Action Points                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | Commencement of Readjustment        | <ul style="list-style-type: none"> <li>Define area selected for LR based on land use plan</li> <li>Map all properties and list all landowners</li> <li>Record commencement of land readjustment in land registrar</li> </ul>                                                                                                                                                                                                                 |
| 2     | Preparation for Land Readjustment   | <ul style="list-style-type: none"> <li>Establish market values of land</li> <li>Subtract land designated for public use (roads, parks etc) and allocate to municipality or development company</li> <li>Designate either relative size or relative value as method of redistribution</li> <li>Determine share of each individual owner</li> </ul>                                                                                            |
| 3     | Value Capture and Reallocation      | <ul style="list-style-type: none"> <li>Determine readjustment gain difference to be paid to the municipality (relative value method) or retained in land (relative size method)</li> <li>Consider present and proposed uses of land as well as needs and suggestions of landowners</li> <li>Allocate readjusted plots back to each owner</li> <li>Determine the compensation of landowners who have not received their full share</li> </ul> |
| 4     | Readjustment Plans                  | <ul style="list-style-type: none"> <li>Issue formal decision on LR</li> <li>Determine rights and obligations of each party, including municipality</li> <li>Include a map of new property boundaries</li> <li>Issue a public notice that LR is legally binding once legal issues are resolved or arbitration is exhausted</li> </ul>                                                                                                         |
| 5     | Implementation of Readjustment Plan | <ul style="list-style-type: none"> <li>File readjustment plan with land registrar</li> <li>Monitor implementation of readjustment plan</li> </ul>                                                                                                                                                                                                                                                                                            |

Source: Gracy etal (2013)

**3.3.2 Australia:** In Australia, the land readjustment process is referred to as Land Pooling. The legal backing for land pooling is the Town Planning and Development Act of 1928. The Councils are authorised by the legislation to undertake pooling projects as a means of implementing their municipal land use planning schemes. The first project under land pooling was undertaken in response to lack of funds to redevelop an area that had inadequate infrastructure. The land pooling projects in Australia have been used to

develop urban lands on the fringes. Western Australia has successfully implemented many small projects.

In Australia, the local councils are authorised to implement the municipal plans of which land pooling becomes the tool. The process has been more specifically used for housing projects. Local councils formulate the plans in consultation with the landowners. The approved scheme authorises the Council to take over and consolidate the separate landholdings so that they can be planned, serviced and subdivided. The council raises a short term loan to finance the project. Later on, some of the new building sites are sold to recover its costs and repay the loan and the remaining land is returned to the landowners.

Land pooling was undertaken initially to service an undeveloped estate in Perth. Although the town planning law authorised the use of land pooling from 1928, the first pooling project was not undertaken until 1951. Then a local council in the suburbs of Perth undertook a pooling project to subdivide an undeveloped and obsolete subdivision estate. The nine hectare estate had been subdivided prior to the Second World War with the subserviced home sites being sold to speculators. With the post-war upsurge in suburban development, some houses were built on the estate and the residents requested the local council to construct roads and drainage works and provide parks. Since the Council did not have the funds for these improvements, it undertook a land pooling project to redesign the estate and construct the infrastructure works. The cost was recovered from the resultant increase in land values. While the early land pooling projects were undertaken to redesign and service the undeveloped pre-war subdivision estates, the latter years saw the Councils using it as a tool for urban development i.e. to service and subdivide the urban fringe farmlands. Most land pooling projects in Australia have used it as a means of financing the construction of infrastructure works rather than orderly planned development of their municipality.

According to Archer (1988), the Council distributes all the value gained to the landowners and retains only the value used to cover the cost of improvements in land. Western Australia has successfully implemented land readjustment for smaller projects and with great public acceptance. He spells out the process of LP in Australia as given below:

- The local council prepares a draft pooling scheme to define the proposed project and does so in consultation with the landowners.
- This scheme is placed on public exhibition and reviewed (and amended, where necessary) by the State Department of Town Planning.
- The scheme is approved and published by the Minister for Town Planning.
- The scheme includes a map of the landholdings, a plan of the subdivision layout and building sites, valuations of the landholdings and sites, a project budget, and a scheme.
- The council assembles the private, government and public lands in the scheme area by compulsory acquisition (without paying compensation to people who opt for land pooling). The landowners in this case can sell their land by availing compensation.
- The Council designs and carries out the infrastructure works and then services and subdivides the land into streets, open spaces and building sites, using borrowed funds to finance its works.
- The council sells some of the sites to recover its outlays and costs and to repay the loan, and then passes the other sites back to the landowners as "compensation" for their land.

**3.3.3 Japan:** The LR is a dominant urban development method in Japan, and about 30 percent of the urban area<sup>6</sup> has been developed by a variety of the LR projects. LR is commonly referred to as 'The Mother of City Planning' in Japan's context.

The mechanism of LR was introduced in Japan following the German experience and was used primarily for agricultural land consolidation and irrigation improvement though it was soon put to use for suburban expansion projects as well (Sorensen, 2000). The Great Kanto Earthquake of 1923 was a blessing in disguise for the land development in Japan since it wreaked most of Tokyo and Yokohama, necessitating a wide spread reconstruction wave

<sup>6</sup> As of 2007, 11608 projects for a land area of 3,94,484 ha had been undertaken under the provisions of the City Planning Law, 1919 and Land Readjustment Law, 1954 (World Bank, 2007). The urban areas are defined as areas of Densely Inhabited Districts (DIDs). DIDs are contiguous census tracts with a population density of greater than 40 persons per hectare and a total population of 5000 or more.

across Japan. The Urban Planning Act was enforced vehemently and land readjustment was executed for approximately 3,500 ha of land in the affected areas. When the World War II ended, Japan had to deal with the tumultuous consequences of displaced people in unregimented towns and cities. LR projects were extensively used in the post-war urban reconstruction projects.

The urbanisation related issues and infrastructure gaps were a major point of concern for the Japan government in the 1960s and 1970s. The need to effectively manage this paved way for greater use of LR. The expansion of LR also owed to the financing of the land readjustment projects by the national government in terms of grants for public infrastructure provisions including land costs, buildings for road, parks and public facilities. The rationale for government financing contribution is that public amenities such as roads, primarily benefitted the ones outside the project area and hence it was unfair for them to bear the burden of the same. In Japan, most of the LR projects have been undertaken in urban fringe areas as "sprawl prevention" projects and new town development projects to convert rural land to urban building land. These projects have provided about 40 percent of the total annual supply of urban building plots since 1977 (World Bank, 2007). The projects undertaken by the Housing and Urban Development Corporation (HUDC) also provide for land for housing of low income households.

The LR projects in Japan can either be privately or publically initiated. The executors include 1) Individuals 2) Landowner Associations 3) Local governments 4) Government agencies and 5) Housing and Town Corporations. They are designated, planned, designed and implemented by the local government planning officers. They invest huge resources to convince the local landowners to accept the projects. Though not mandated legally, the local government does not generally go ahead with the project unless majority of the landowners are willing to go ahead. The consent of two-thirds of landowners is necessary for the formation of an Association. Japan has witnessed several implementation issues when landowners are opposed to the project. Thus, even for local government projects, there is a lot of emphasis on securing consent of the affected landowners. According to Sorensen (2007), there had been large number of projects that were abandoned because of local opposition in Japan.

**Box 3.1 Characteristic Features of Land Readjustment in Japan**

The following are the key features of the LR projects in Japan irrespective of whether they are initiated by Associations, local governments or national governments.

1. The precise boundaries of the target project area are legally defined and the responsibilities for the same lie with the local governments.
2. A legal body is established to carry out the project. This includes a Board of Directors with the members from the sponsoring agency and some landowners. While in Association led projects, all landowners are members; in the others land owners select their representatives.
3. The draft plan of infrastructure is drawn up to calculate the estimated project budget and determine the availability of the national subsidies, land needed from landowners for public use and as saleable use.
4. The consent is solicited from the landowners. For the Association-led projects, the legal requirement is 66 percent of landowners owning 66 percent of the land must sign a contract consenting to the project before it can proceed. In the local government projects, though there is no legal requirement, the local government stresses on consent from the majority to prevent impediments to implementation.
5. The replotting design, financial plan, project implementation plan and land contribution of each landowner must be approved by the Board and 66 percent landowners in association-led projects.
6. Project completion, financial reconciliation and return of readjusted parcels to participating landowners is specified.

From 1954 to 1979, the majority of projects in Japan (by area) were initiated by local governments (42.3%) and landowner associations (29.5%). As of March 31, 1994, there were 207 km<sup>2</sup> of projects completed or in progress executed by Individuals, 1072 km<sup>2</sup> by Associations, 1205 km<sup>2</sup> by Local Governments, and 548 km<sup>2</sup> by administrative agencies and public corporations. Thus, private executors are responsible for about 42 percent of the project area, and public executors for 58 percent (Sorensen, 2000).

There are several learning's from the Japanese experience in land adjustment. *First*, the Land Readjustment Act was enacted in 1954. It developed from experiential learning of the nation, containing provisions designed to systematically help urban development and residential land development. *Second*, the LR departments in all large cities include about half of all city planning staff members (Sorensen, 2007). The staff in this department is thus equal to the combined staffing at the Zoning, Development permit, Building Control, Parks, Infrastructure Planning, Public Works Construction and Maintenance Departments

*Third*, the 1954 Law allowed the local government and other government bodies to initiate LR projects directly without the consent of the landowners. Fourth, in 1959, recognising that it is unfair to force the landowners to bear the burden of constructing arterial roads primarily benefiting people from outside the area, a major policy revision was brought into force. This revision enabled the use of revenues from the gasoline tax (dedicated to road construction) to subsidise the land readjustment projects at a cost equal to the cost of buying the land, which soon became the major source of funding for the local government.

*Last*, but not the least was the carrot and stick policy of “flexible Senbiki” operationalised in 1980 to increase the wider use of LR mechanisms. Senbiki in Japanese means drawing the line between town and country. The New City Planning Law of 1968 divided the city planning areas into Urbanisation Promotion Areas (UPA), where development is encouraged and Urbanisation Control Area (UCA) where it is prohibited. Basically aiming at preventing urban sprawl, these projects however did not achieve its objectives, while creating zones with vast disparity in land values between the two zones (Shrock, 2012). Flexible Senbiki meant that power could be exercised to change the Senbiki Zoning to persuade the landowners to join a LR program. Thus, UCA area was upzoned to UPA if landowners agreed to LR projects. The landowners thus benefited from the vastly higher values of land in the UPA. On the other hand, this also meant downsizing of designated UPA to UCA if agreements on initiating a LR readjustment project could not be reached. The job of negotiating with the landowners fell to the local government planning departments.

The creative approach however was not very successful and most projects ended up with just the establishment of LR Organising Committees. Nevertheless, the above policy changes reveal the continuous efforts of the government in encouraging the use of LRs and points out the important role that incentives/disincentives can play in encouraging the schemes.

**Box 3.2 Factors Contributing to Extensive Use of Land Readjustment in Japan**

- Highly fragmented patterns of land ownership in areas on the urban fringe due to high density of population, post war land reform that broke up all large landholdings and redistributed the land to former tenants<sup>7</sup>. Reorganisation and consolidation of landholdings are vital for planned urban development.
- Public ownership of land is very small. Also, high density human development and intensive use of land resulted in little land for public space in Japan. The existing clusters of unplanned lands with Japan's extremely high land prices had rendered it difficult for the governments to build space intensive public goods such as roads and parks. The enormous demand for land for roads, parks, social infrastructure etc coupled with inability of municipalities to finance land purchases has meant a strong tilt towards LR (a mechanism that contributes about one-third of the land of the landowners for public uses and sale).
- Strong land ownership rights are a cultural legacy in Japan. Traditionally, the ownership and control of land formed the basis of political and economic power making land appropriation legally feasible but practically difficult. The Courts have always favoured the landowners and awarded generous compensation. The land readjustment seems a better way of protecting property rights while contributing to the land requirement for public facilities.
- Weak land development control regulations in Japan. This has resulted in large areas on the urban fringe of Japan being developed as haphazard sprawl with houses in narrow lanes and poor municipal services (road networks, lack of parks and provision of other basic public services). Land readjustment remains the only way to ensure adequate infrastructure at reasonable cost and land owners bear some contribution.
- There is a great deal of literature attributing the success of LR in Japan to the Japanese tradition of collaborative and consensual decision making and group mobilization (Nishiyama, 1992, Nagamine, 1986, Nakane, 1970, Dore, 1973 etc).

Source: Sorensen (2007) and Various Sources

**3.3.4 South Korea:** LR was imported into Korea by Japan. Korea, particularly Seoul, was faced with a primary problem of rapid urbanisation and an ever increasing population and the rising needs of basic urban services. LR accounted for 95 percent of the total supply of urban land during 1962-81 (Lee, 1997). In 1980, the central government took over responsibility from local governments for the supply of housing land and commenced a large-scale national program of land acquisition and subdivision projects through the Korean Land Development Corporation (KLDC) and Korean National Housing Corporation

<sup>7</sup> All lands of absentee landlords, all leased out lands in excess of one hectare of cultivating landlords and all owner cultivated land above 3 hectares was purchased from 23.41 lakh landlords and resold to 47.48 tenants (Hong and Needham, 2007).



(KNHC) (World Bank, 2007). The Central Government resorted to the technique of land purchases during the period 1981-1995. However, since 1995, there has been a reduction in the role of central government in land development in favor of local government and resumption in the practice of LR.

Seoul was the main city applying LR. From 1934 to 1984, there were 397 LR projects with a total area of 43,580 (Heon-Joo, 1991). These projects differed significantly on the purposes for which they were initiated and the executor. Projects were implemented in Seoul to construct the network infrastructure and to produce building plots for housing. The cost recovery was by the sale of some of the plots at their market value. Given its import from Japan, the methodology of LR remains identical in South Korea except the financing of infrastructure. Since these projects received little financial support, they had to be mostly self financing projects. Most of the LR projects in Korea were conducted by governmental organizations (Konsuray, 2004).

The LR in 1966 enabled four different parties to be the initiator of readjustment procedure: 1) individual landowners or an association of at least seven landowners; 2) public corporations such as the Korea Land Development Corporation or the Korea National Housing Corporation; 3) local authorities and 4) Ministry of Construction (Larsen, 1991). A further improvement in the process had been carried out within the special joint renewal program, initiated in 1983, which mandated landowners and residents to form an association which could invite construction companies to be responsible for the development process. Most current residential renewal projects in Seoul use this program (Lee, 1998). A strong element of cross subsidy for the provision of low-income housing is induced into the latest land readjustment projects implemented in Korea.

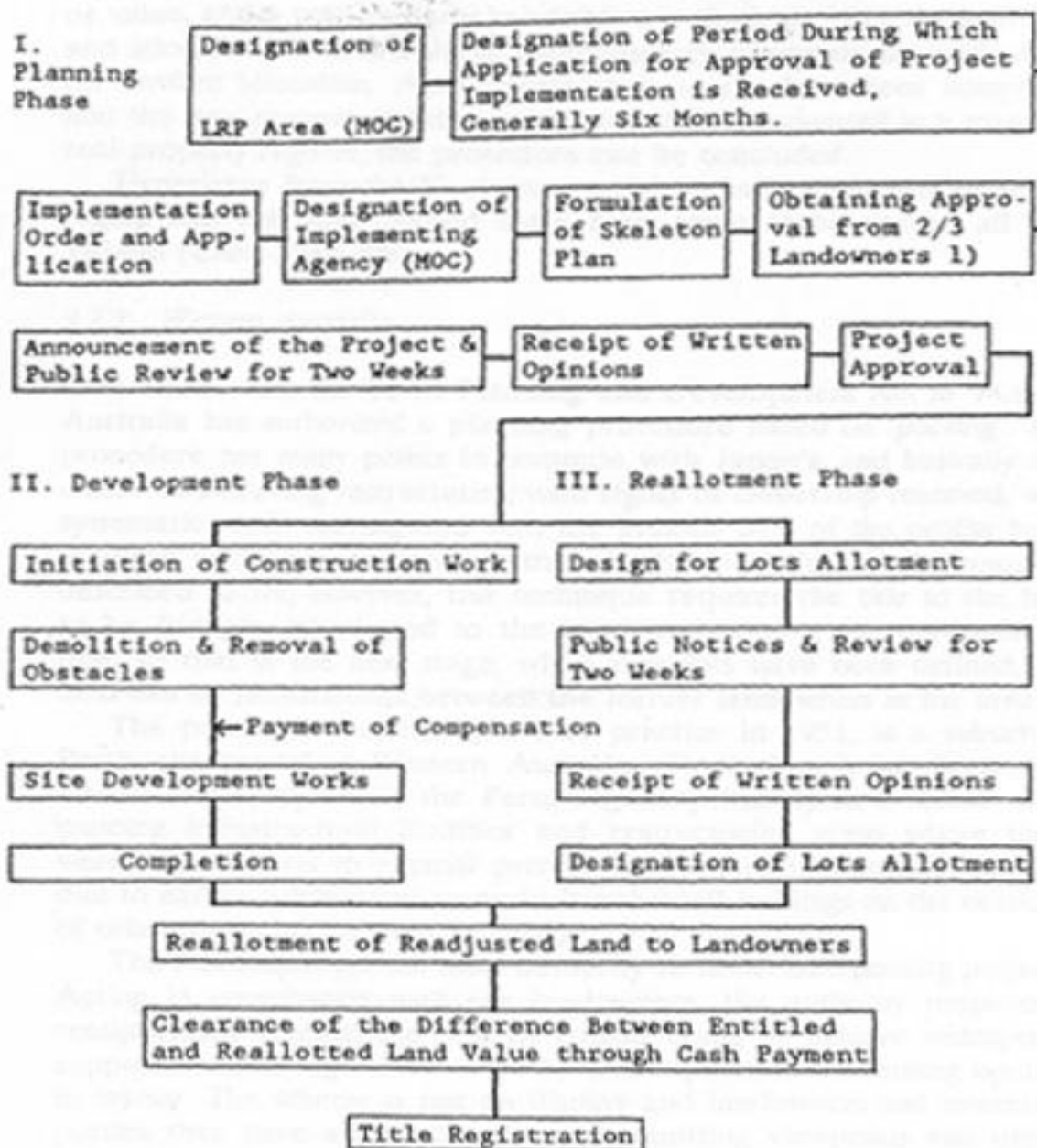


Figure 3.2 Sequence of Joint Development Procedure in Korea

### Box 3.3 Seoul – Case Study

One of the most successful LR project in Seoul was the Gaepo District. The site development program in Gaepo District aimed to supply extensive sites to build five million houses. To alleviate the lack of sufficient urban infrastructure and traffic congestion in Seoul, the government sought to disperse the population away from the Seoul metropolitan area and contain growth. Gaepo was then planned as the next new “downtown” for Seoul. By developing this district, Seoul attempted to address the housing shortage and promote balanced urban development through LR scheme.

The projects which were implemented in order to foster development did significantly contribute to the overall improvement of Korean cities, but a lot of issues started cropping up such as the inflation of land prices and rampant land speculation in and around the project area coupled with a strong resistance from landowners owing to the fact that only less than half the land was returned (as low as 42% of the land was returned to the landowners). Because the LR Program usually supplied sites for detached housing, it did not alleviate the housing shortage caused by rapid urbanisation at that time. There was a growing need for extensive sites for housing to respond to the population boom, with a strong institutional framework to control land development as there was a problem of privatising development profits.

The standards also began dropping since revenues from the sale of the acceptable amount of land were sometimes inadequate for the provision of roads, open spaces and public facilities. Only in four areas, public housing corporations have been provided serviced land for the construction of housing units for low-income groups at 50 percent of the price of other sites. Despite its short comings, LR is still regarded as a viable means of land development in most Korean cities particularly in the development of smaller plots of vacant high-priced land.

Source: Ansari and Einsiedel (1998)

Similarly, LP/LR projects are being carried out in many other Asian countries for urbanisation projects and have also produced significant land for housing. This was in the form of allotment to public housing agencies for construction of housing for sale, rent and to low income households. Some of the diverse models are given below:

**3.3.5 Taiwan:** In Taiwan, the method is called land consolidation and it was imported from Japan. Most projects have been carried out by the local governments. There are large

number of projects undertaken by landowner cooperatives in the commercial areas<sup>8</sup>. However, the land for the housing projects was mainly acquired by appropriation and a land development technique called Zone Expropriation (ZE). The ZE technique has evolved out of the excess expropriation technique of government land acquisition that is authorised by the Land Law. A limited version of ZE was introduced in 1969. This continued till June 1986 when the current version of ZE was adopted by an amendment of the Equalisation of Land Rights Act (World Bank, 2007). In essence, the ZE is like a modified and compulsory form of LP/R as the land is expropriated and serviced and subdivided into building plots. The landowners can choose to receive their compensation entitlement either as money or as "equivalent-value land" up to the same amount in the form of building plots valued at their average cost and up to a maximum at 40 percent of the land area. The local government can also sell about ten percent of the project land as cost recovery plots so as to recover the cost of preparing and implementing the project. The ZE projects enable them to allocate up to 50 percent of the project land for public facility and government purposes, including housing development.

**3.3.6 Israel:** Israel has one of the world's most widely practised systems of LR (Alterman, 2007). The LR has its legal basis in the Planning and Building Law, 1965. Israel uses LR for a wide range of purposes in both the rural and urban areas. For a country experiencing a high rate of demographic growth<sup>9</sup>, scarcity of land, high priced land, LR has emerged as the preferred tool for planners. Though the nationally owned land is about 93 percent of

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<sup>8</sup> The first LP/R project was completed in 1958 and by 1993, local governments had completed 190 projects to produce 8,379 ha of urban land, including 5,615 ha of building plots mainly for multiunit housing. Landowner groups had also completed 240 projects for 632 ha, including 448 ha of building plots.

Kaoshuing City Government is the leading local government in the use of LP/R; more than 40 percent of the Kaoshuing urban area has been developed through LP/R projects. Up to mid-1993 the City Government had undertaken 49 projects (with 33 completed and 16 in progress) to produce 2,538 ha of urban land, including 1,605 ha of building plots mainly for multi-unit housing. Landowner groups had also undertaken 15 projects to produce 77 ha of urban land, including 52 ha of building plots (World Bank, 2007).

<sup>9</sup> Israel's population density is about 300 persons per square kilometer. About 50 percent of the land area is the inhospitable desert and hence the effective population density is much higher.

the total area, it is leased out for long term for various uses-commercial, residential and industrial. The public leaseholds receive a similar degree of protection from the courts as the freehold land (Alterman, 2003). Hence public land ownership means little in terms of availability of land for public infrastructure and services. The Planning Law defines owner to also include long term lease holders but also freeholders.

Article 121 of the Planning Law sets out the basic authority to undertake LR and the associated processes. The Local Planning Commissions are authorised to conduct LR by integrating it in the detailed regular plans and thus the regular planning bodies handles LR. While Israel's regular planning procedures include the right of public participation, the LR plans have an extra stage in this process viz. personal notices to each of the landowners early in the planning process. The Planning Law was amended to create the Appeals Committee to hear appeals about planning decisions concerning property rights including LR. The Law authorises two mechanisms of carrying out LR; One, with formal consent and second with less than formal consent. In cases of full consent, it is assumed that the landowners will negotiate and arrive at the contribution ratio. In case of the latter, the Particle 22 of the Planning Law provides three principles to arrive at the contribution ratio.

- First, the reallocated plot should be as close to the original.
- Secondly, the proportionate value/share of each plot before/after the process of LR should remain as similar as possible.
- Third, the gainers must pay excess value to the planning commission and the losers shall have the right to receive the difference from the commission. However, since it is always difficult to extract payments from landowners, planners try their best to follow the proportionality rule without the need for monetary payments.

**3.3.7 Sweden:** The legislation of land readjustment came into force in 1987 with the Joint Development Act (ESL).<sup>10</sup>The decision on special area development needs to indicate the delimitation of the joint development area and the duration necessary for the

<sup>10</sup> "The European Dimensions and Land Management – Policy Issues: Land Readjustment and Land Consolidation as Tools for Development", in FIG Commission 7 Annual Meeting, 1996, Budapest

completion, which cannot exceed five years. During this period, the municipality arranges for a general meeting with the landowners in order to communicate the implications of the procedure and to understand their views. A formal initiative is taken by either the municipality or property owners in the delimited area applying to the land survey authority for an executive procedure. Since the participation in joint development is voluntary, a person owning land within the stated area can decide whether or not to take part in the procedure. If a landowner does not want to take part, the purchase of his land is possible on the condition that the association indicates its necessity for development. After the landowners' decision, the properties whose owners take part in the process constitute a special association.

The land survey authority directs the process in the form of a legal executive procedure. It is mandatory during this period, to take more than half of the landowners support for the method of joint development. In case of disagreement, necessary investigations for both economic and technical conditions are carried out. The consultations are made with the municipal building committee and other authorities affected by the development. Once the issue is resolved, the land survey authority makes a development order indicating specific decisions about the project (Sadik, 2004) Once the decision is formalised, the apportionment basis of costs and benefits is decided upon. The share basis with respect to area of land is set for the landowners in the joint development area. The necessary boundary changes are then decided in order to accomplish a suitable manner in joint development. If full allocation of land according to the share is not feasible, the differences are compensated with cash. Just after the final agreement, the readjustment is entered in the real-estate register.

The association completes the construction work within the time limit fixed by the development order; if not, the executive official may decide a certain extension of the time limit. As soon as this time has expired, the association is dissolved (Kalbor, 2002). The land owners have four weeks to appeal before the court.

**3.3.8 Indonesia:** In Indonesia, the method is called land consolidation and it was instituted by a national land distribution policy in Basic Agrarian Law, 5 of 1960. It was then updated

by the Occupation and Housing Law of 1992. After the first project in the 1980s, several projects have been carried out. Extreme difficulties in the provision of land for infrastructure development and public money restrictions impede compensation by payment using financial resources.

**3.3.9 Nepal:** The method is called Land Readjustment in Nepal. The method was introduced in 1976 through the Land Acquisition Law and established in 1988 by the Urban Development Law. The method aims at providing basic urban infrastructure in extremely poor areas in the city through landowner contributions. While the reserve lands called service lands are sold to finance the project, the re-plotted lots are returned to the landowners who are benefited by the infrastructural improvements and consequent increase in the land value.

**3.3.10 Spain:** The practical experience of LR was unsatisfactory until the mid-1990s. With the Valencia Regional Planning Law of 1994, LR became the standard procedure. LR began to be implemented all around the Valencia region as well as other Spanish regions. Almost all the major real estate developments in Spain are now performed using LR (Blanc, 2008; Gielen and Altes, 2007).

**3.3.11 Canada:** The method is called re-plotting schemes and is institutionalised by the Local Government Law of 1983. The partnership between the land owners is modelled on landowners becoming the promoting agent and the rules for urban development are stipulated by the public authorities.

### 3.4 Conclusion

Every country develops and uses readjustment models that differ in various respects. Even though these models show procedural differences in terms of implementation, they serve the objective of meeting the needs of urbanisation. The projects are either initiated by public authorities or by private entities. For instance, while in Germany, the projects are initiated by the public authorities, managed by the municipal agency and governed by the independent Land Readjustment Board, in the Japanese system, the majority of projects are privately initiated but negotiated, guided and approved by the municipality.



In Japan, Germany, Australia, South Korea and Turkey, the decisions on LR projects may be made directly by local governments without a formal process of consent as a general rule (though in some cases, the support of landowners are obtained to a limited extent at the beginning of the project). In countries such as Germany and Japan, the privately initiated projects do not need the approval of all landowners. In case of association-led projects, the need is for consent of two-thirds of the landowners and it becomes compulsory for the others. Following the participation process, the area allocated for public purposes according to the spatial plans are extracted from the project area. The contribution ratio differs in different counties.

In Japan, Germany, France, Sweden, Finland, Australia, South Korea and Taiwan, landowners make more contributions in terms of their land to recover the cost of the project. The reserve or cost equivalent land is sold at the end of the project to pay for costs (such as planning, administration and construction of infrastructure) and the remaining area is subdivided into urban parcels according to the master plan, and allocated to the landowners at the end of the project. The calculations in the allocation process could be area or value-based. While some countries have only one allocating base (land-based in Turkey and Indonesia, and value-based in Sweden and Australia), in others like Japan, Germany, South Korea and Taiwan, the allocation can be based either on area or on value. In Germany, Japan, France, Sweden, Finland, Australia, South Korea and Taiwan, after the allocation of the land, the value difference between the initial and allocated plots is calculated for each landowner and compensated through money payments. In terms of value creation, Germany and Japan lie at the opposite ends. German municipalities take back as much newly created value as possible. Japanese system allows bulk of the gain to private landowners.



**3.5 Land Pooling and Readjustment Experience in India**

**3.5.1 Introduction:** In India, the urban planning in each state is governed by the State Town Planning Acts and several development Acts. At the Government of India level, the Town and Country Planning Organisation (TCPO) formulated the Model Town and Country Planning Law in the year 1960. This model Act was revised by TCPO in year 1985 as "Model Regional and Town Planning and Development Law". The Model Law was enacted to provide a comprehensive urban and regional planning legislation in all the States and UT's and is in the form of guidelines which ensures better overseeing and coordination of planning with implementation. The Model Regional and Town Planning and Development Law, 1985 provided for the constitution of State Regional and Town Planning Board by the State Government for the purpose of advising on the delineation of the region for the planned development; directing the preparation of metropolitan, regional and area plans by the metropolitan, regional and area planning and development authorities; setting up of metropolitan, regional and area planning and development authorities for different urban and rural areas within the State to undertake preparation of development plans and to enforce and implement them; coordinating the planning and implementation of physical development programmes etc.

Land has always been the primary resource for planning and development of any area. In India, the Master Plans are used as a tool to design cities. The concept and methods of Master Planning in India owe their origin to the British town planning laws. The Master Plan provides guidelines for the physical development of a city or town. The scope of Master Plan has been clearly defined in various Town Planning Acts and other relevant legislations. It is a statutory instrument for controlling, directing and promoting the rational development and redevelopment of urban areas with a view to achieving maximum economic, social and aesthetic benefits. The Master Plan is followed by preparation of Zonal Development Plan, Development Schemes, Town Planning Schemes, etc. which indicates the specific location of various activities, facilities and services as suggested in the Master Plan. Such detailed plans and Town Planning Schemes are necessary for smooth enforcement and implementation of Master Plan.

The land pooling and redistribution process in urban areas of is generally launched in various states through the mechanism of Town Planning Schemes (TPS). As explained in the context of land readjustment/reconstitution, the concept of TPS implies pooling together all the land under different ownership and redistributing it in a properly reconstituted form after deducting the land required for open-spaces, social infrastructures, services, housing for the economically weaker Section and road network. The process enables the government/local authority to develop the land without fully acquiring it.

In India, the Town Planning Scheme (TPS) was first introduced under the Bombay Town Planning Act of 1915. In the words of A. E. Mirams, credited to have introduced the concept to India, "The Bombay Town Planning Act aimed at distributing the cost of development schemes over the lands improved thereby, and yet at the same time allowed a fair margin of profit to the owners of land, who as a rule had done absolutely nothing to improve the value of the property. At the same time, the Act brings into the market large areas of land which without cooperative action would for untold years remain agricultural land. In this way, the community at large is able to obtain land at a reasonable price". The first TPS was prepared for seven acres in Bandra (Deuskar, 2011).

The TPS was widely used in Maharashtra in the first half of the 20th Century. Large parts of Mahim, Khar and Borivali in Mumbai were developed through TPS. The use of TPS however declined when the Maharashtra Regional & Town Planning Act, 1966 shifted the focus for the implementation of the city master plan from TPS to detailed Development Plans (DPs). The long time taken between the initiation of TPS and final government approval and the fact that an ownership dispute over a single land parcel could hold up the entire scheme seemed the inherent drawbacks (IDFC, 2010). In Gujarat, the first Town Planning Act was enacted in 1915 and the first TPS was taken up as early as in 1917 for Jamalpur area of Ahmedabad city. TPS became a more sustainable practice in Gujarat after the enabling amendments in the legislation in the 1980s and 1990s.

**3.5.2 Judicial Interpretation:** The constitutional validity of the Gujarat Town Planning Act was upheld in several judgments. It was also held that in case of lands which are

needed for the local Authority under the owners Planning Scheme which authorises allotment of reconstituted plots to persons from whom original plots are taken, it is difficult to apply the provisions of the Land Acquisition Act, 1894 (Prakash Amichand Shah Vs. State Of Gujarat & Others<sup>11</sup>). The violation of Article 14 of the Constitution was also ruled out since equals are treated equally under the Act and the means to arrive at the decision is not arbitrary and well defined. In another significant judgment, the Gujarat High Court had held that TPS ipso facto is the form of delegated legislation and such a scheme is prepared not by the legislature but by the competent authority constituted under the delegated legislation and that town planning scheme at any time can be varied by a subsequent scheme to be made by the competent authority (Rajan Sankalchand Patel Vs. State of Gujarat<sup>12</sup>).

The High Court going into the question about whether the TPS can be varied at any time by a subsequent scheme to be made by the authority held that the authority was exercising statutory powers specifically conferred by the legislature. The complaint of pecuniary loss to the petitioners became immaterial and irrelevant in such cases as individual interests have to be subordinated so as to serve the public good (Hasmukh Shah Vs. Ahmedabad Municipal Corporation<sup>13</sup>).

There have been judicial interpretations about the 74<sup>th</sup> constitutional amendment and whether the TPS schemes integrate the required changes mandated by the amendment. For instance, the Chhattisgarh High Court had held that a nominated body like Raipur Development Authority cannot assume the role of an elected body and consequently usurp the power of the local authority in framing development schemes (Rajendra Shankar Shukla and Others Vs. State of Chhattisgarh<sup>14</sup>). The apex court held that the Chief Executive Officer is not permitted to unilaterally prepare a development scheme resulting in reconstitution of land without taking into consideration the opinion and suggestions of the democratically elected bodies such as the District Planning Committee and Officer of

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<sup>11</sup> 1981 AIR 1597

<sup>12</sup> (1997) 1 GLR 31

<sup>13</sup> (2001) 4 GLR 2840

<sup>14</sup> 2015 SCC Vol. 10

the Town and Country Planning Department. In a similar case in 2011 in Kerala, the High Court held that the provisions of Town Planning Act, 1939 and Madras Town Planning Act, 1920 cannot survive in the light of Part IX-A of the Constitution and the Municipality Act, 1994, with a direction to the Government to address all aspects with regard to spatial planning and to bring in the new legislation proposed as per the Kerala Town and Country Planning Act.

While upholding the land pooling policy in Punjab, the Punjab & Haryana Court held that the policy is prospective and cannot be made retrospective by a judicial order to cover acquisitions that have been finalised (Amarjit Singh & Others Vs. State of Punjab & Others<sup>15</sup>). In another significant judgement dealing with the rights of the tenants (Jaswant Singh Mathura Singh Vs. Ahmedabad Municipal Corporation<sup>16</sup>), the Court ruled that the TPS had injuriously affected the tenant by terminating his possession and adversely affecting his business and directed the Corporation to provide alternative premises by allotting a suitable shop within the city. Some of the important judgments are given below in Box.

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<sup>15</sup> Civil Appeal No. 8431 of 2010

<sup>16</sup> AIR 1991 SC 2130

**Box 3.4 Judicial Interpretation -LP/R Schemes****Prakash Amichand Shah Vs. State Of Gujarat & Others, 20 December, 1985<sup>17</sup>**

**Facts:** The Surat Municipality made a declaration declaring its intention to prepare a TPS in respect of the locality called Umarwada under Section 22 of the L.A. Act. The scheme proposed reserving large portion of land of a private owner in the favor of the municipality. This was contested. The Owner not only challenged the reservation but also claimed compensation at the rate which the land in the vicinity had been sold. The Town Planning officer issued a notice expressing the intention to acquire the land reserved despite the resistance. The owner filed an appeal before the board of appeal which held that the decision of the Town Planning Officer on questions of compensation was not appealable under Section 34 of the Act.

**Issues:**

- Whether the Decision of the Town Planning officer with regard to compensation can be appealed?
- Whether the non provision of solatium makes town planning schemes discriminatory.

**Analysis:** There is no rule that every decision of every officer under a statute should be made appealable and if it is not made appealable, the statute should be struck down. It may be salutary if an appeal is provided against decisions on questions which are of great importance either to private parties or to the members of the general public, but ordinarily on such matters the Legislature is the best judge. Unless the Court finds that the absence of an appeal is likely to make the whole procedure oppressive and arbitrary, the Court does not condemn it as unconstitutional.

As regards the determination of compensation, it may be possible to apply the provisions of The Land acquisition Act, 1894 with some modification as provided in the Schedule to the Act in the case of lands acquired either under Section 11 or under Section 84 of the Act. In the case of lands which are needed for the local Authority under the TPS, the reconstituted plots are distributed to the persons from whom original plots are taken and it is difficult to apply the provisions of the Land Acquisition Act, 1894. The provisions of Section 32 and the other financial provisions of the Act provide for the determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc.

Furthermore, the provisions of Section 32 and the other financial provisions of the Act provide for the determination of the cost of the scheme, the development charges to be levied and contribution to be made by the local authority etc. It is only after all that exercise is done the money will be paid to or demanded from the owners of the original plots depending on the circumstances governing each case. It is not always uniform and the compensation varies from one person to another.

**Conclusion:** Considering the status of the officer who is appointed as a Town Planning Officer, Section 32 of the Bombay Town Planning Act cannot be said to

<sup>17</sup> 1986 AIR 468, 1985 SCR Supl. (3)1025

confer uncanalised and arbitrary power on the Town Planning Officer, merely because of the denial of the right of appeal in some cases. The validity of the statute cannot depend upon whether in a given case it operates harshly. If the scheme came into force within a reasonable distance of time from the date on which the declaration of intention to make a scheme was notified, it cannot be contended that fixation of compensation according to the scheme of Section 67 per se made the scheme invalid. It cannot also be said as a rule that the State which has got to supply and maintain large public services at great cost should always pay in addition to a reasonable compensation some amount by way of solatium.

The interest of the public is equally important. In any event, it is not shown that the compensation payable in the present case is illusory and unreal. The Act has made special provision under Section 67 to 71 for determining compensation payable to the owners of original plots who do not get the reconstituted plot. It cannot be said that there has been any violation of Article 14 of the Constitution since equals are treated equally under the act and the means to arrive at the decision is not arbitrary and well defined. Thus, the constitutional validity of the TPA was upheld while also upholding the decision of the Town Planning Officer in determining the amount of compensation and solatium.

**Rajan Sankalchand Patel Vs. State of Gujarat<sup>18</sup>, Gujarat High Court, 2<sup>nd</sup> August, 1996**

**Facts:** The challenge in this petition under Article 226 of the Constitution is against the proposal of the respondent authority for variation in the scheme for upgradation of slums situated on different parcels of lands which form part of TPS. The petitioners contended that there was no question of requiring their land for slum upgradation and to make variation second time, in final scheme as proposed by the Corporation in view of the fact that there are no slums. Once the scheme is finalised, there is no justification to vary the same for the aforesaid purpose. According to the petitioners, the Ahmedabad Municipal Corporation frequently acquired plots for slum upgradation that eventually gets used for other purposes. If their lands are acquired, pursuant to the variation in the final TPS, it will affect the fundamental rights of the owners of the lands. The petitioners therefore prayed for writ of Mandamus for directing the Corporation to drop the proceedings for proposed variation in the TPS for slum upgradation. And to direct the state government not to approve the preliminary scheme.

**Issues:**

1. Can TPS be varied at any time by a subsequent scheme to be made by the authority?
2. Is the change in the TPS a breach of Article 14 of the Constitution of India
3. If variation in the town planning scheme is allowed to be completed, for the purpose of slum upgradation, will it affect the fundamental rights of the owners of the land under Article 19.

**Judgement:** TPS is the core of delegated legislation. TPS ipso facto is the form of

<sup>18</sup> (1997) 1 GLR 31

delegated legislation and such a scheme is prepared not by the legislature but by the competent authority constituted under the Gujarat Town Planning and Urban Development Act and in view of the delegated legislation. It is that very authority to whom power has been granted for the purpose of making variation in the scheme. Specific provisions are laid down and guidelines are made in respect of making a town planning scheme and making variation therein. There is no manner of doubt that town planning scheme at any time can be varied by a subsequent scheme to be made by the competent authority. In the opinion of this Court, there is no substance in this petition as no illegality is noticed in the challenged action proposed to be taken by the respondent-authority for the purpose of varying the TPS.

The respondent-authority has issued the impugned notice and notification. The statutory forum of the State cannot be prevented from statutory exercise of powers. Therefore, the contention complaining breach of Article 14 is without any substance and is rejected.

It is not for the Court to decide whether land could be reserved for slum upgradation being a part of the policy matter. It must be remembered that Court is obliged to till the balance between judicial restraint and judicial activism. The Court cannot embark upon scrutinising rightly executive policies of the State or statutory authority. Where, how and why slum upgradation project is required and is undertaken by the respondent-authority should not be subjected to judicial review or scrutiny as the same would be falling within the domain of policy of the executive and that too in absence of mala fides and discrimination. When the respondent-authority is taking statutory action to vary the existing scheme by exercising statutory powers specifically conferred by the legislature, complaint of pecuniary loss to the petitioners is immaterial and irrelevant. Article 19 no doubt, guarantees certain fundamental rights subject to the power of the State to impose reasonable restriction on exercise of those rights.

**Rajendra Shankar Shukla and Others. Vs State Of Chhatisgarh and Others, 29 July, 2015<sup>19</sup>**

**Facts:** The Raipur Development Authority (RDA) was established under Section 38(1) of the M.P. (C.G.) Nagar Thatha Gram Nivesh Adhiniyam, Act 1973 . The Kamal Vihar Township Development Scheme (KVTDS) was planned by the RDA as an integrated township. The initial plan and proposed area issued via a public notification by RDA was of 416.93 acres only. However, a month after the publication, the RDA, increased the area of the integrated Township Scheme from 416.93 acres to 2300 acres which resulted in the inclusion of the lands of the appellants.

The RDA planned to develop the land and hand over about 35 percent of the developed plot to the land owners without charging any contribution/incremental cost from them in return for their acquired land for the development of the KVTDS. The remaining area of their undeveloped plot would be retained and subsequently, may go to the other land owners or may be utilised for constructing other facilities under the development scheme. Out of the total 4969 private land owners, 39 land owners did not

<sup>19</sup> SLP (C) Nos.30942-30943 of 2014



agree to the scheme/procedure adopted and preferred 23 writ petitions on various grounds.

**Issues:**

- Whether the KVTDS provide the authority to the Director of the RDA, to formulate Town Development Scheme and is it in contravention to the 73rd and 74th Amendments to the Constitution of India?
- Whether the Town Development Scheme is formulated as per the provision mentioned in Section 50(1) of the Act of 1973? Whether the subsequent alteration of land acquired, is in consonance with the provisions of the Act?
- Whether the Town Development Scheme framed by the RDA, in the absence of a zonal plan, is legal and valid?
- Whether the Act of 1973 authorises the Town Planning and Development Authority to reconstitute the plots and change the land use apart from public utility?
- Whether the proposal of the RDA to return 35 percent of the area of the land taken away from the land owners/appellants is legally permissible?
- While planning the KVTDS, whether the respondents ensured compliance with EIA clearance procedure from the competent authority?

**Analysis:** According to Part IX and Part IX-A of the Constitution, a zonal plan has to be framed by democratic institutions as prescribed under its provisions. The RDA, has framed the Town Development Scheme without consulting or taking into account the views of the District Planning Committee which is constitutionally authorised under the 73rd and 74th amendment to undertake the task of framing the scheme. The RDA assumed the role of town planning authority by proposing and framing KVTDS with land use which is different from the one prescribed in the Raipur Master Plan (Revised) 2021. Section 14 of the Act confers the power upon the Director of Town and Country Planning appointed under the Act, to prepare development plans. However, this power conferred upon the Director has to be read along with Section 17 of the Act, which mandates the Director to take into consideration, any draft Five Year Plan and Annual Development Plan of a district prepared under the Madhya Pradesh Zila Yojana Samiti Adhiniyam, 1995.

The RDA has not put any document on record, which shows any assessment of “need” or “requirement” for town expansion conducted by it prior to proposing the KVTDS or the alteration of land use. The initial intention to prepare the KVTDS was published in the Gazette. Thereafter, the RDA made a decision to add land but no prior survey or assessment of the need for addition of land to the area of the scheme was undertaken by the RDA. The decision to add land was examined by a Committee constituted under Section 50(5) of the Act of 1973, which was headed by the Director who had proposed the addition of land in the first place.

**Conclusion:** Once the Constitution provides for democratically elected bodies for local self-government, a nominated body like RDA cannot assume the role of an elected body and consequently usurp the power of the local authority in framing development schemes and subsequently altering the size and use of land in the KVTDS.



Article 243N specifies that any law relating to Panchayat in force, immediately before the commencement of the Constitution [73rd Amendment] Act, 1992 which is inconsistent with the provision of this part IX of the Constitution, shall continue to be in force until amended or repealed by a competent legislature or until the expiration of one year from its commencement, whichever is earlier. These constitutional provisions nowhere show the intention of Parliament to deprive the panchayats or municipalities of their powers or to dilute their function as institutions of self-government. The Chief Executive Officer is not permitted to unilaterally prepare a development scheme resulting in reconstitution of land without taking into consideration the opinion and suggestions of the democratically elected bodies such as the District Planning Committee and Officer of the Town and Country Planning Department, as mentioned in the Act of 1973.

The proposal of RDA to include large extent of land to the KVTDS is vitiated action in law as the same is tainted with bias and non-application of mind on the part of the State Government since the same person was acting in two different capacities - who proposed as well as accepted the plan of addition of land at subsequent stages which goes against the principles of natural justice. Where arbitrary and unexplained deletions and exclusions from acquisition, of large extents of notified lands, render the acquisitions meaningless, or totally unworkable, the court will have no alternative but to quash the entire acquisition.

**Judgment:** The Development Plan and its modification have not been made in accordance with the constitutional mandate and the Act of 1973. The Development Plan has been altered by the Director to suit the requisites of KVTDS which is impermissible and unlawful. The Object and Purpose of the Act provides that a Town Development Scheme can be prepared only in the presence of a Zonal Plan which in turn has to be prepared for the implementation of the Development Plan. The proposed scheme was neither in accordance with the Development Plan nor did any Zonal Plan exist at the material point of time. The TPS is always subservient to the master plan as well as the zonal plan, as provided under Section 17 of the Act of 1973. An absence of a zonal plan would make the KVTDS illegal and void rendering the assessments carried out under it null as well.

#### **V. Shivaprasad Vs. State Of Kerala, Kerala High Court<sup>20</sup>, 9 February, 2011**

**Facts:** The reliefs claimed in these writ petitions were mainly to quash the General TPS and the Detailed TPS produced in 24526/2009 & respective writ petitions, to declare that the provisions of Sections 3 and 11 of the Town Planning Act, 1939 are inconsistent with Part IX-A of the Constitution of India and Chapter IV of the Kerala Municipality Act, 1994.

**Judgement:** The provisions of Town Planning Act, 1939 and the Madras Town Planning Act, 1920 with regard to the preparation of general TPSs and detailed TPSs cannot survive in the light of Part IX-A of the Constitution and the Municipality Act, 1994. The provisions of the Town Planning Acts are really inconsistent with the provisions of Part IX-A of the Constitution as well as the Municipality Act, 1994. Section 51(4) of the

<sup>20</sup> (2011 (1) KLT 690).

Municipality Act, 1994 is therefore unworkable.

The Court cannot adopt a rigid attitude of negativity and sit back after striking down the scheme of Government, leaving it to the helpless Government caught in a crisis to make-do as best as it may, or throwing the situation open to agitational chaos to find a solution by demonstrations in the streets and worse. These principles will therefore have to be considered to deliberate as to how the situation can be remedied during the interim period till the new enactment is brought into force by the Government or till the new Integrated Development Plans and Local Development Plans are brought out under the spatial planning approach.

Evidently, the general TPSs and detailed TPSs have been framed by the then Municipalities in terms of the provisions of the statute. Still, the need is to bring out a uniform legislation on town and country planning for wider preparation of special development plans, regional development plans and district development plans, urban development plans, etc. Sufficient time will have to be spent for working out the details after such legislation is brought into force. Therefore, even though the provisions of the Town Planning Acts and Section 51(4) of the Municipality Act cannot survive and are really unworkable, the Municipalities including Municipal Corporations can have recourse to the existing TPSs and the detailed TPSs to avoid a vacuum. They can take appropriate decisions in the matter with regard to the adoption and continuance of the schemes, till new arrangements are made. They can also resort to the principles of spatial planning and introduce them in the meanwhile, after a comprehensive integrated district development plan is prepared and implemented. This alone will avoid a vacuum and will pave way for an orderly development of the spatial planning schemes. Therefore, the writ petitions are allowed as follows:

- (a) It is declared that the provisions of Town Planning Act, 1939 and Madras Town Planning Act, 1920 cannot survive in the light of Part IX-A of the Constitution and the Municipality Act, 1994;
- (b) There will be a direction to the Government to address all aspects with regard to spatial planning as envisaged under Section 51(3) of the Municipality Act, 1994 and other provisions of the Act and to bring in the new legislation proposed as per the Kerala Town and Country Planning Act within a reasonable time.

### **Amarjit Singh & Others Vs. State of Punjab & Others<sup>21</sup>, 29 September, 2010**

**Facts:** The government had undertaken to develop and expand the township sector of Mohali for which land was acquired under the Land Acquisition Act, 1894 and development was carried out under the provisions of Punjab Urban Estate (Development and Regulation) Act, 1964 and Punjab Housing Development Board Act, 1972. While most land owners found no fault with the proceedings, some of the owners representing around 10 percent of the total area notified for acquisition questioned the same on the grounds that no planning scheme was finalised under the Punjab Regional and Town Planning and Development Act, 1995 and hence acquisition of land could not be undertaken.

<sup>21</sup> SLP (C) No.9924 of 2007

The government was of the view that these legal impediments in the acquisition of a small percentage of the total area could not be allowed to adversely affect the entire plan which was meant to meet the urgent housing requirements of the people of Punjab. Therefore it invoked its powers under the Punjab Regional and Town Planning and Development Act, 1995 and exempted the areas to be acquired from the provisions of Section 14 and those contained in Chapters VIII, IX and XII of the said Act. Hence compulsory acquisition was enforced in order to foster development irrespective of the dissent.

**Issues:**

- Whether the absence of any rehabilitation measures renders the acquisition in question legally bad. If not, whether the 'Land Pooling Scheme' can be made applicable to the acquisition of the land acquired from the appellants

Rehabilitation was not a recognised right either under the Constitution or under the provisions of the Land Acquisition Act. Any beneficial measures taken by the Government are, therefore, guided only by humanitarian considerations of fairness and equity towards the land owners. The benefit of such measures is however subject to the satisfaction of all such conditions as may be stipulated by the Government in regard thereto. The policy relied upon being only prospective cannot be made retrospective by a judicial order to cover acquisitions that have since long been finalised.

A reference to the Civil Court for determination of reasonable compensation, if otherwise dissatisfied with the amount determined was deemed more suitable. However, acquisition in accordance with the procedure sanctioned by law is a valid exercise of power vested in the state and hence cannot be taken as depriving the right to livelihood especially when compensation is paid for the acquired land at the rates prevailing on the date of publication of the preliminary notification. There is thus no gainsaying that rehabilitation is not an essential requirement of law for any compulsory acquisition nor can acquisition made for a public purpose and in accordance with the procedure established by law upon payment of compensation that is fair and reasonable be assailed on the ground that any such acquisition violates the right to livelihood of the owners who may be dependent on the land being acquired from them.

**Judgment:**

"To the credit of the State of Punjab, we must say that it has formulated a LPS which is owner- friendly and provides greater incentives for the owners to readily give up their lands whenever the same are needed for a public purpose. Difficulty, however, arises on account of the fact that the scheme formulated and circulated by the Government in terms of its letter dated 5th September, 2008 is only prospective in its operation.

The scheme envisages a kind of public-private partnership in the development of areas involving acquisition of large extents of land. Not only that in order that the scheme works effectively the authorities for whom acquisition is being made will have to take a broader initiative at the appropriate stage to make provision for allocation to the

owners of what is due to them under the scheme. This can be done only when an acquisition is tailored according to the scheme". The Land Pooling Scheme is held to be valid, operative but remains only prospective in its applicability.

**Jaswant Singh Mathura Singh Vs. Ahmedabad Municipal Corporation<sup>22</sup>, 1 October, 1991**

**Facts:** The appellant was in possession of a plot as a tenant. Pursuant to TPS framed by the Corporation under the Bombay Town Planning Act, 1955, the said plot was re-constituted i.e. the plot was altered by the making the TPS. The respondent was injuriously affected by the said scheme because it had the effect of terminating his possession and adversely affected his business in the demised premises. However, before finalising the scheme, the Town Planning Officer (TPO) neither issued special notice to the respondent as required under sub-rule (3) nor provided him an opportunity as provided under sub-rule (4) of Rule 21 of the Bombay Town Planning Rules, 1955.

**Judgment:** 1. Under Section 105 of Transfer of Property Act, a lease creates right or an interest in enjoyment of the demised property and a tenant or a sub-tenant is entitled to remain in possession of the demised property until the lease is duly terminated and eviction takes place in accordance with law. Therefore, a tenant or a sub-tenant in possession of a tenement in the TPS is a person interested within the meaning of Rules 21(3) & (4) of the Rules. Every owner or tenant or a sub-tenant, in possession on that date alone shall be entitled to a notice and opportunity.

2. A conspectus of the statutory scheme brings out the fact that the Town Planning Officer before making the final scheme and submitting it to the local authority is required to follow the procedure prescribed by the Act and the Rules. At the relevant stages, he is required to issue notice to the affected person. A reading of Section 32 of the Bombay Town Planning Act, 1955 read with Rule 21(3) makes it abundantly clear that the Town Planning Officer is to give notice of at least three days in the prescribed manner to the affected persons to submit objections or views; affected persons are to be given adequate opportunity under rule 21(4) to respond and thereafter the Officer is to demarcate the area allotted to or reserved for public purposes or for purpose of the local authority and the reconstituted plots to be allotted to the persons in ownership with the shares of such persons in common plot.

The issuance of notice under sub-rule (3) and giving of sufficient opportunity under sub-rule (4) are self evident to subserve the basic concept of fair and just procedure. These sub-rules subserve the principles of natural Justice to avoid arbitrariness offending Article 14 and to be Just and fair procedure satisfying the mandate of Article 21. It is settled law that before depriving a person of his property or imposing any further liability, the principle of natural justice require prior notice and reasonable opportunity to him to put forth his claim or objections.

Since the non-compliance with issuance of notice and giving of sufficient opportunity contemplated under sub-rules (3) and (4) of Rule 21 injuriously affects the right to property of the owner or interest of the tenant or sub-tenant, as the case may be, it shall

<sup>22</sup>1991 (10) TMI 308

be construed to be mandatory and not directory. Therefore, the issuance of special notice of at least three clear days duration and giving sufficient opportunity to the person affected to put forth his views of the scheme are mandatory and non-compliance thereof vitiates the validity of the final scheme.

It is seen that the appellant has been in possession as tenant for well over half a century and, therefore, it is injuriously affected by the scheme which has the effect of terminating his possession and this adversely affects its business in the demised premises. Since it is a running business over the years, the respondent is directed to provide alternative premises by allotting a suitable shop within the city to the appellant; to put it in possession thereof and until then allow its occupation of demised shop. In case the appellant does not vacate or creates any obstruction in any form in the matter of possession, it would be open to the respondent to have the appellant ejected summarily.

**Hasmukh Shah Vs. Ahmedabad Municipal Corporation<sup>23</sup>, 27<sup>th</sup> December 2000**

**Facts:** The petitioners prayed that the TPS of the Bombay Town Planning Act, 1955, the General Development Control Regulation and Gujarat Town Planning and Urban Development Act, 1976 be declared as ultra vires to Articles-14, 19 and 21 of the Constitution of India and therefore, void and inoperative. The petitioners further prayed that Section-18(j) of the old Town Planning Act and Section-12(m) of the Development Act be declared as unconstitutional since both these provisions delegate essential legislative powers to subordinate legislative authority. The petitioners have further contended that the Ahmedabad Municipal Corporation had no authority to compel the petitioners to earmark and reserve any area for common amenity as per the Development Regulation.

**Judgement:** Individual interests should not be allowed to outweigh and prevail over the wider social interests so as to thwart or torpedo salutary social schemes of Town Planning for the benefit of the public as a whole. Individual interests have to be subordinated so as to subserve public good. The provision of 5 percent of F.S.I. to be reserved for common amenities and for watchman's quarter to look after the building and the occupiers cannot be said to be inconsistent with the provisions made under the Old Town Planning Act and the Development Act. More particularly, when the provision made in the scheme which had become final after it received the sanction of the Government and became part and parcel of the Act itself, one cannot make a grievance about the same.

**Arvind Mills Ltd vs Commissioner Of Income Tax<sup>24</sup> 1993 AIR 103**

**Facts:** Under the Bombay TPS, the lands of different owners within the scheme were treated in a common pool and various improvements were effected for the better enjoyment of the lands in question for which a betterment fee was charged. The land owners which held a company made payments towards betterment charges in ten installments and claimed deduction of the said payment on the ground that it was a

<sup>23</sup> (2001) 4 GLR 2840

<sup>24</sup> 1993 AIR 103



revenue expenditure. The Income Tax Officer disallowed the claim for deduction.

**Issue:** Whether the payment of betterment fee amounted to revenue expenditure.

**Judgement:** In deciding whether an expenditure is a capital expenditure or a revenue expenditure, the question of voluntary and/or involuntary payment becomes immaterial. It is the nature of expenditure that determines the issue. Improvement by way of laying down roads, making provision for drainage etc. under the scheme, the owner got the advantage of betterment of the land in question and there is no manner of doubt that the valuation of the land had increased because of the improvements effected on the land. Simply because by such improvement, it has also resulted in providing better facilities for carrying out the business of the assessee, the betterment charge required to be paid by the assessee, does not become the revenue expenditure. Such payment has no direct nexus with the day-to-day running of the business. The betterment fee, therefore cannot be construed to be a revenue expenditure.

**Shanti G. Patel And Others Vs. State Of Maharashtra<sup>25</sup>, 12 September, 2005**

**Facts:** By this petition under Article 226 of the Constitution of India, the petitioners pray for issuance of a Writ of Mandamus or any other appropriate writ, order or direction declaring Section 37 (1AA) of the Maharashtra Regional & Town Planning Act 1966 as violative of the 74th Constitutional Amendment to the Constitution of India {Article 243(W)} and Schedule XII items i) and ii) thereto as also Maharashtra Metropolitan Planning Committees Act 1999.

**Judgement:** Mere challenge to Section 37(1AA) of the MRTP Act would not be enough. The petitioners will have to lay a proper foundation in the pleadings as to how merely challenging this provision would suffice when power to issue directions is also conferred by other provisions of MRTP Act and the Planning Committees Act. Municipal Administration is not without control and supervision of the state government. The state government in the scheme of Municipal Laws as well, has been conferred with power to issue directions and exercise control over Municipalities/Municipal Corporations. Therefore, it is not as if elected bodies at local level are not subject to any supervision and control of the state government.

It is not necessary to go into this aspect any further because in the absence of a comprehensive challenge of the nature aforesaid, it is not possible to arrive at any conclusion as to whether power conferred on the state government to issue directions under a planning law would violate the mandate of part IX-A of the Constitution and Article 243W in particular. It is well settled that there is a presumption about the constitutionality of an enactment, and the burden is upon the person who challenges it. The question about the validity cannot be decided lightly and without proper foundation or pleadings. The challenge to Section 37(1AA) and other provisions is left open for decision in an appropriate case.

Now, that the state is fully aware of the constitutional obligation and the need to

<sup>25</sup> 2005 (6) BomCR 503

empower municipalities so as to enable them to effectively and properly carry out their duties in as per the XIIth Schedule, we have no doubt that all necessary steps and measures in that behalf would be taken expeditiously.

**3.5.3 The Indian Land Pooling Models:** The policy/implementation experience of the following land pooling policies in existence in the country is discussed in this section. The recently enacted Rajasthan Land Pooling Act, 2016 is also discussed at the end of the section. Table 3.5 provides the legal framework for land pooling and readjustment mechanisms in India.

1. The 'Development Plan–Town Planning Scheme' (DP–TP mechanism) under the Gujarat Town Planning and Urban Development Act (GTPUDA), 1976
2. The Delhi Land Pooling Policy, 2013
3. The Haryana Land Pooling Policy, 2013
4. The Andhra Pradesh Capital Region Land Pooling Policy, 2014
5. The Punjab Land Pooling Policy, 2012
6. The Rajasthan Land Pooling Act, 2016

**Table 3.4 Land Pooling and Readjustment Mechanisms in India**

| State          | Legal Origin                                                                                                                                                                                                                                                                                               | Period / Year | Term / Technique Applied |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------------------------|
| Gujarat        | Gujarat Town Planning and Urban Development Act 1976. Section 65(3) of the Act provides for the validity of the Scheme drafted. Gujarat Town Planning and Urban Development Rules, 1979 must be followed while drafting a Scheme.                                                                          | 1976          | Land Readjustment        |
| Andhra Pradesh | Andhra Pradesh Capital Region Development Authority Act, 2014. Section 52 defines the Land Pooling Scheme. The Andhra Pradesh Capital City (Formulation and Implementation Rules, 2015)                                                                                                                    | 2014          | Land Pooling             |
| Greater Mohali | The Punjab Regional And Town Planning and Development Act, 1995. S.70 Provides for Formulation of Town Planning Schemes. Land Pooling Policy For the State Of Punjab issued on 19 <sup>th</sup> Nov 2013 provides for Land Pooling as a scheme to boost the urban development.                             | 1995          | Land Pooling             |
| Haryana        | Haryana Land Pooling Scheme notified on the 14 <sup>th</sup> of August 2012 as an extension of the 'Land Acquisition and R&R Policy' issued on the 9 <sup>th</sup> November, 2010.                                                                                                                         | 2012          | Land Pooling             |
| Delhi          | The Delhi Development Authority under Sections 7-11 of the Delhi Development Act 1957 issued the Master Plan Delhi 2021 on Feb 2007. The Land Pooling Policy Regulations notified on the 5 <sup>th</sup> of September 2013, under the plan provide for the legislative backing for the development scheme. | 2013          | Land Pooling             |
| Rajasthan      | The Rajasthan Land Pooling Schemes Act, Generic Land Pooling Policy                                                                                                                                                                                                                                        | 2016          | Land Pooling             |

Source: The Delhi Development Act 1957, The Punjab Regional And Town Planning And Development Act, 1995, Andhra Pradesh Capital Region Development Authority Act, 2014, Gujarat Town Planning and Urban Development Act 1976, Government of Haryana: Land Pooling Scheme (2010)

### 1. The Gujarat Town Planning Scheme

In Gujarat, the first town planning act was implemented in 1915. The Act was modified in 1954 and the recent version of the Act is the Gujarat Town Planning and Urban Development Act, 1976. The TPS of Gujarat draws a lot of straws from the development of



Mumbai and its historical evolution. Mumbai was saddled with the daunting task of thrusting itself away from the clutches of swarming chaos that had engulfed the city inside out. The need for town development was felt out of the alarmingly low levels of sanitation and hygienic conditions in Mumbai which posed a big threat to the sustainability of the city. The Bombay Town Planning Legislation, 1915 had therefore envisaged a mechanism through which unplanned land clusters within a specified area were pooled together by the government. Not only would the benefits of the same be usurped by the land owners but also a portion of the said land would devolve back onto them.

The Gujarat Town Planning and Urban Development Act was passed in 1976. The process begins with a decadal macro level "Development Plan" for the entire city and followed by a large number of micro level "TPS" covering approx. 100 ha area each for areas delineated for new development. The Act had some major drawbacks till the amendment in 1999; lack of a fixed time limit for the completion of the Scheme and the resulting delay in its completion, acquisition of land for construction of roads could be only after sanctioning of the Final TPS, ownership disputes could hold back the scheme etc. The TPS found a favorable environment in Gujarat, especially after the 1986 & 1999 amendments to the GTPUDA. A key amendment was allowing the local government to take the possession of land for construction of roads after approval of the Draft TPS. This approval usually happens within 15 months after the publication of "Declaration of Intent" to prepare a TPS (Mathur, 2013). Since the development of roads is a major infrastructure project in any urban development scheme that contributes significantly to the increase in the land values, the amendment has also helped ensure landowner support for the schemes.

The sale of reserved plots had also emerged as a major source of revenue for the government after an increase in the contribution ratio from 10-20 percent to 40 percent and allowing authorities to appropriate land to sell in the market. As a result, TPS has become the predominant urban expansion tool in all the major cities in Gujarat. The process for preparing a TPS is prescribed in GTPUDA, 1976, and its Rules. In practice, it may take much longer than the four years conceptualised in the Act. According to Ballaney (2009), delays were the norm in Gujarat, with some schemes taking over 20 years for

completion. Though legislation exists in other states, none of them have used it as extensively as Gujarat. However, there has been a renewed interest in the TPS in the country particularly with the increasing land related conflicts and the perception of these schemes being financially and politically superior alternative to land acquisition. The step-wise process in Gujarat is explained below:

- (i) **Survey of the area:** A very detailed and accurate topographical survey of the entire area for which the TPS is being prepared is undertaken. The survey captures the details of all physical features on the ground; structures, trees, fences, compound walls, electric poles, water bodies, drain, etc. This may have to be compensated when the plan is implemented on the ground.
- (ii) **Establishing the ownership details of land parcels:** All cadastral records are collected to reflect the ownership details, extent (area), tenures, and encumbrances for every land parcel and are compiled in a prescribed format. The type of tenure for each land parcel has a direct implication on the change of use and transfer of ownership. However, while preparing the TPS, the tenure and encumbrances on a plot would remain unaffected.
- (iii) **Preparation of a base map:** Along with the cadastral records, all types of spatial records (maps) are also collected. The ground survey and the cadastral maps are collated to prepare a base Map. The boundaries of each plot are corrected in the base map to truly reflect the area in the record. While the base map is prepared by the Development Authority, it is approved by the Revenue Department of the State.
- (iv) **Defining the boundary of the TPS:** On the final base map of the area, the boundary of the TPS area is clearly marked. The intention to prepare the TPS for the area is published in the local newspapers at this stage. The Original Plots (OP) are now identified on the base map, a process that would also consolidate the contiguous plots held by the same owner. Thus, at this stage landholdings within a TPS are also consolidated as far as possible.

- (v) **Laying out the roads in the rea:** While designing the subsidiary roads (apart from the major city-level roads indicated in the DP), the Planner has to envision the future requirements.
- (vi) **Carving out plots for amenities in the area:** The plots for variety of public uses such as schools, parks, health facilities and housing for EWSs are drawn up. Plots are also set aside for the Land Bank that would be sold off by the Development Authority to raise finances for infrastructure development. The total percentage of area that goes under roads and amenities is about 35 to 40 percent.
- (vii) **Tabulating deduction and final plot size:** The operative information regarding the TPS is tabulated in the 'F' Form. The form shows the ownership details of each OP, the area and the value of each OP (based on land sales data in the TPS area). The incremental values expected on account of the implementation of the TPS are not taken into consideration here. The total land area for roads and plots for public uses is calculated as a proportion of the total land area of the TPS. This figure, usually predetermined is deducted from each OP to arrive at the area of the final plot (FP). Each OP thus gets a smaller FP. However, the percentage of land deducted from each OP is the same as the percentage of the land for TPS used up for roads and plots for public uses.
- (viii) **Delineation of final plots, computing compensation and final plots:** After the roads and amenity plots are worked out, each OP is reconstituted or redrawn. At this stage, the irregular shapes of the OPs give way to regularly shaped FPs with the new areas. As far as possible, the FP is allotted in the same location as the OP. Compensation to be paid to each landowner for the land is appropriated based on the Semi-Final (SF) value to each of the FP. Usually, this is the same as the OP value. However, there can be a marginal change in the values of the OP. It may increase or decrease owing to the planning proposals such as zone changes, changes in the plot shape, plot size, development control regulations, substantial shift in plots and proximity to features that may negatively impact the development etc. The compensation for the land appropriated is now calculated as given below:

Finalisation of compensation for appropriated land = (Value of Original Plot\* Original Plot Area) – (Adjusted Land Value \* Final Plot Area).

(ix) **Estimating the cost of the TPS, value of FPs and betterment charges:** These include the costs of key infrastructure (roads, water supply, sewerage, drainage, streetlights etc); compensation to the land owners and administrative and legal costs in preparing and implementing the TPS. The total cost of the TPS is divided by the total land that is given as the FPs. This would give the cost of development per unit area. The value of the FP is the sum of the cost of development and the SF value. The value for each plot is the product of the FP value and FP area. The GTPUDA stipulates that about half of the increment can be taken up by the Development Authority to finance the cost of TPS. In other words, the estimation of the betterment is 50 percent of the increase in the land value from each plot (final plot value minus compensation paid for land expropriated).

(x) **Owner's meeting, modification of the Draft TPS and its Approval:** A public meeting of the landowners is called to present the draft TPS proposal and suggestions/objections are solicited. Based on the suggestions and objections received from each landowner, the draft TPS is modified and published. It is again thrown open for objections and suggestions from the landowners. Based on the second round of objections and suggestions, it is modified and then submitted to the State Government for approval. Once approved, the draft TPS is now called the sanctioned draft TPS. After the sanction, the Development Authority can take physical possession of the land designated for roads. The proposals for roads can be implemented.

(xi) **Appointment of the Town Planning Officer (TPO):** After approval of the draft TPS, a quasi-judicial officer called the Town Planning Officer (TPO) is appointed. The TPO's task is to deal with each landowner both on the physical planning proposal, the shape and location of the FP and the financial proposal viz. the compensation and betterment norms, and eventually demarcate the FP on ground and hand it over to the owner. The TPO divides the sanctioned draft TPS in two parts to facilitate his or her functioning: a preliminary TPS to deal with the physical planning proposal and a final TPS to deal with the financial proposal.

(xii) **Individual hearings to each landowner on the preliminary TPS:** The TPO gives three individual hearings to each landowner and revises the preliminary TPS, if required. There are four rounds of public inputs. The first round is initiated by the development authority at the Draft TPS stage. The other 3 rounds are initiated by the TPO in the Preliminary and Final TPS stages (the first two rounds focus on physical issues, such as location and size of plots and the third focuses on financial issues, such as determination of plot values and betterment charges). The inputs from the State Government and local authority and development authority are also sought.

(xiii) **Finalisation of the preliminary TPS and its approval:** The TPO finalises the preliminary TPS by writing his or her decisions with regard to every plot. This is referred to as the award of the preliminary TPS and is published in the local newspapers. At this stage, the preliminary TPS is sent to the state government for approval. It must be approved within two months. The preliminary TPS comes into effect from the date of sanction and all plots appropriated for public purpose vest with the local authority or development authority.

Although the TPS process provides ample public input opportunities, formal land owner consent is not required. Once the hearings are done, the financial proposals may be modified and sent to the state government for opinion. There may be some modifications. The TPO then finalises the TPS and publishes it in the local newspapers. This is referred to as the "Award of the Final TPS". A Board of Appeals for further issues on financials is constituted. Once all appeals are resolved and the final TPS is modified, it is sent to the state government for approval. The state government is required to sanction it within three months, but it usually takes longer. Once approved, the drawings and documents are sent to the state's revenue department to update the records.

**Conclusion:** Despite the 1999 amendments, the entire process of TPS can still take much longer than the stipulated 3-4 years mainly due to delays by the Town Planning Officer (TPO) and the state government. The Gujarat TPS provides the primary role (85-98%) of financing to the betterment charges. However, this only happens when the revenues are realised in the first year itself. In actual practice, the betterment charges are set very low

and determined at a low level. The delays in the construction raised costs manifold and are not revised over time to account for the increase in land value. The betterment charges are only payable when the land owner chooses to apply for land use change and are hence realised over a very long period of time. IDFC (2010) points out the case of a pre 1999 TPS, where the betterment charges, set in 1978, started coming in 1993 onwards and continued to trickle in and are still trickling in, resulting in their financing only 6 percent of the scheme cost (see Table 3.6). In other words, for most TPSs, it is the sale of plots that is increasingly taking a major proportion of the scheme cost. For the betterment charges to emerge as a major source of financing, the scheme as conceptualised requires early development of infrastructure which would trigger the land use conversion and, in turn the payment of betterment charges.

The Gujarat TPS is similar to the German model. However, there is no precise assessment of the actual increase in land value and its source. It is quite possible that the large increase in land value is because of rezoning of the land for development and not just the attributable to the infrastructure and amenities built by the government as part of the town planning scheme. Also, in reality, the original and final plot values may be far from the real prices. The original plot value, arrived on the basis of the standard ready reckoner rates suffers from undervaluation similar to the rates arrived at by the land acquisition officer for compensation. Similarly, the betterment charges are the pre determined rates based on the costs incurred by the government in developing the land and the portion it would like the landowners to bear. In fact, the calculation of future, post-implementation values have always been a difficult proposition (Peterson, 2009). The low conflicts in Gujarat TPS is also because the final output values seem to be many times the prediction based on infrastructure/other costs. In other words, the landowners do not require to part away with half of the real increase in plot values.

The TPS has a robust enabling legislation and has been upheld by the Court. The most important feature of the model is its comprehensive approach that not only enables the Development Authority to plan on paper but implement it by appropriating land, raising finances and distributing costs. While the first stage involves preparation of development

plan, the second stage involves preparation and implementation of TPSs to realise the proposals of the development plan.

The TPS essentially is an integrated mechanism through which the various tasks of urban transformation governed by diverse laws<sup>26</sup> are brought under the same legal mechanism. In states that do not make use of the TPSs, a number of different departments governed by the different legal frameworks would have to coordinate and work towards the objective. The TPS, thus amounts to enormous saving efforts of coordination. The mechanism is self financing. The cost for land would not have to be paid for and the costs of the TPS can be realised from increments in the land value. On the other hand, the landowners benefit from having a substantial portion of developed land and the increment in land value. By transferring the land ownership disputes transferred to the new plot, the Gujarat TPS also ensures that this does not prove a hindrance for implementing the scheme.

In most cases, a critical factor for success is the manageable size of the scheme that enables fruitful stakeholder consultations and easier reconciliation of revenue records. The political acceptability of the scheme is high owing to the legal sanction, self-financing nature and land owner satisfaction. Ballaney (2008) describes the schemes as participatory, democratic, equitable, inclusive, transparent, non-disruptive and non-coercive. However, there are still vast areas of improvement in the Gujarat TPS. Unlike other countries, these schemes do not at all require the consent of the landowners to proceed. There is no mechanism for the general public to take part in the design of the TP schemes and no collective input regarding the road network, open spaces and other amenities. Meaningful public participation is therefore lacking in the existing scheme. The land reserved for low income housing very often does not get used for it (Joshi and Sanga, 2009) and the TPS has not delivered on their potential to house the poor.

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<sup>26</sup> Land Acquisition Act can be used to appropriate land; Land for low income housing can be done by suing the Land Ceiling Act; Betterment charges can be built in through municipal legislations etc.

**Box 3.5 Gujarat TPS: Common Demands Raised by Landowners**

- Changes in plot allotted if the new plot has any undesirable land use (garbage dump/informal settlement)
- Lower contribution ratio and request for smaller percentage of land to be taken by the government
- Higher compensation for land taken
- Widening of road in front of their plot
- Settlement of ownership disputes

Source: Deuskar (2011)

The firm control of the state government over the entire process may also be in conflict with the 74<sup>th</sup> constitutional amendment of 1992 that prescribes the devolution of powers to the local governments. The concerns have emerged on the real beneficiary of the TPS and no real impact assessment of the scheme so far. In many cases, it is believed that the real owners are the speculative land assemblers, developers, business people and even politicians and bureaucrats (Joshi, 2011).



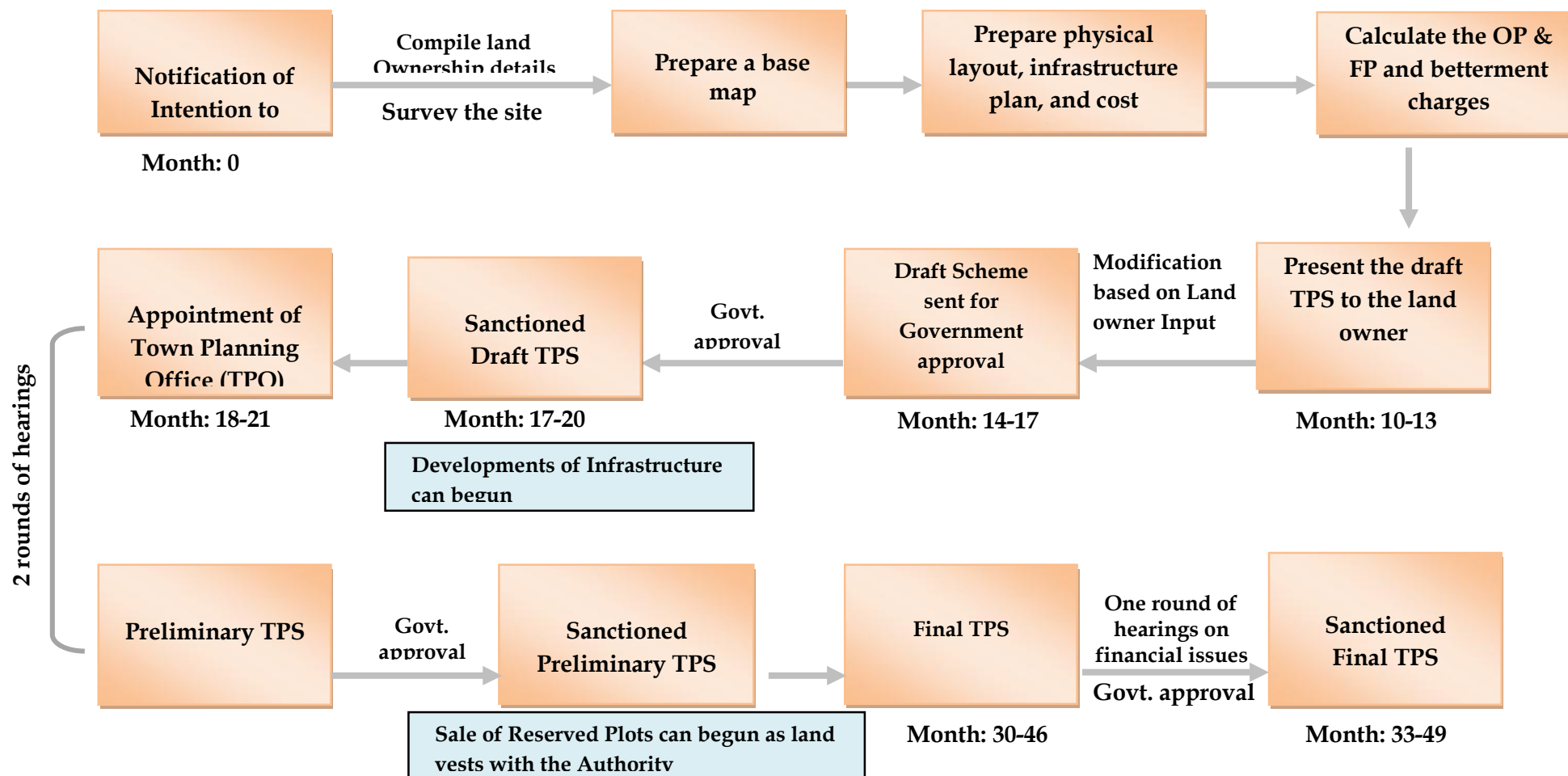


Figure 3.4 The Process Framework under Gujarat TPS

Table 3.5 Scheme Costs under the Gujarat LPS

|                        | Original<br>Land Value<br>(Rs/sq.m) | Original<br>Plot Size<br>(sq.m) | Total<br>Original<br>Value (Rs.) | Final Land<br>Value<br>(Rs./Sq.m) | Final Plot<br>Size<br>(sq.m) | Total<br>Value of<br>Final Plot<br>(Rs) | Increase in<br>value for<br>property<br>owner<br>F-C | Total<br>betterment<br>charges<br>payable<br>F-C/2 | Net benefit<br>for property<br>owner(Rs.)<br>G-H |
|------------------------|-------------------------------------|---------------------------------|----------------------------------|-----------------------------------|------------------------------|-----------------------------------------|------------------------------------------------------|----------------------------------------------------|--------------------------------------------------|
|                        | A                                   | B                               | C                                | D                                 | E                            | F                                       | G                                                    | H                                                  | I                                                |
| \$0% Land<br>Deduction | 1000                                | 500                             | 500000                           | 2500                              | 300                          | 750000                                  | 250000                                               | 125000                                             | 125000                                           |
| 20 % Land<br>Deduction | 1000                                | 500                             | 500000                           | 2500                              | 400                          | 10,00,000                               | 500000                                               | 250000                                             | 250000                                           |
| No land<br>deduction   | 1000                                | 500                             | 500000                           | 2500                              | 500                          | 12,50,000                               | 750000                                               | 375000                                             | 375000                                           |

## 2. The Delhi Land Pooling Model

The Delhi Development Authority (DDA) was established in 1957 to oversee planned development in Delhi<sup>27</sup>. The planning process includes development of Master Plan, Zonal Plans, and Action Area Plans etc. The plans normally include city level plans, sub-city level plans, comprehensive traffic/transportation plan etc. In 1962, the first twenty-year Master Plan for Delhi was prepared with the assistance of Ford Foundation, promulgated on 1<sup>st</sup> September, 1962 and formulated under the provisions of DDA in 1957. The MPD-1962 was prepared with a perspective of 20 years i.e. till 1981. Based on the experience of the plan and to cater to the increasing population and changing requirements of the city up to year 2001, extensive modifications to MPD-1962 were made under Section 11-A of the DD Act in the Master Plan for Delhi in 2001. The development of Delhi is presently by the third Master Plan, MPD- 2021, notified on 7<sup>th</sup> February, 2007.

It was recognised that planned development in Delhi has not been able to meet the unprecedented population growth and there was shortage of urban infrastructure, such as housing, roads, sewerage, water, transportation and power. As per estimates by DDA, Delhi's present infrastructure can accommodate a maximum of 1.5 crore people as against the present population of 1.7 crores. Delhi is expected to add another 60 lakh people by 2021. The increasing population would push the demand for housing, roads, sewerage, water, transportation and power. Most importantly, affordable housing for the new population has emerged as the critical need of the hour. According to DDA, about

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<sup>27</sup> The central ministries control much of the public investments in the national capital. After independence, in order to plan Delhi and to check its rapid and haphazard growth, the central government, based on the recommendations of a Committee chaired by G. D. Birla, formulated a single planning and controlling authority for all the urban areas of Delhi. Consequently, the Delhi Development (Provisional) Authority (DDPA) was constituted by promulgating the Delhi (Control of Building Operations) Ordinance, 1955 (which was replaced by the Delhi Development Act, 1957). On December 30, 1957, the Delhi Development Authority acquired its present name. After the special status granted to Delhi as the National Capital Territory of Delhi (NCT Delhi), the Delhi State Assembly has powers to make laws on matters contained in the State and Concurrent lists that are applicable to the Union Territories. However, it cannot legislate on matters relating to public order, police and land. The DDA does not come under the administrative ambit of the Delhi government.

20,000 to 24,000 hectares of land needs to be developed to address the accommodation needs of the deficit as well as the estimated population increase<sup>28</sup>.

**Table 3.6 Land Management in Delhi: Agencies and Responsibilities**

|                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Land Record Management, DDA                     | It deals with Nazul-I lands transferred to the DDA from the Delhi Improvement Trust and Nazul-II lands acquired under the policy of large-scale acquisition for development and disposal of land by the DDA after 1957. Its functions are to acquire land, allot sites for petrol pumps and gas godowns, maintain land records, protect land from encroachment and enforce the Master Plan Section against misuse. The DDA has set up six field zones for the purpose of protection of land. |
| Land and Building Department/Revenue Department | The revenue department acquires land on behalf of the DDA/MCD/Slum department. The demand for land acquisition is placed by the DDA before the Land and Building Department, which acquires the land for the DDA after getting approval from the Lieutenant-Governor (LG); after acquisition, it places the same at the disposal of the DDA, under Section 12 of the DDA Act.                                                                                                                |
| Land and Estate Department of MCD               | It deals with records of land and properties of the colonies/villages within the jurisdiction of the MCD. The department also deals with the collection of property tax and monitors its activities through the 12 MCD zones.                                                                                                                                                                                                                                                                |
| Land and Development Office (L&DO) GoI          | It deals with the maintenance of land records of the properties of the Government of India (GoI). The activities of construction and maintenance are with the Central Public Works Department (CPWD).                                                                                                                                                                                                                                                                                        |

Source: Bedi (2014)

Most of the land in the National Capital Region (NCR) is owned by DDA. Chapter V of the DDA Act 1957 provides for compulsory acquisition of land by the central government under the provisions of the Land Acquisition Act, 1894 for development or for any other purpose under the Act. Such land, acquired and taken possession of was to be transferred to the DDA or any local authority (for whom land was acquired) on payment of the compensation

<sup>28</sup> The modifications in the form of a Draft Land Policy were published in the Gazette of India, Extraordinary, as Public Notice vide s.O. No. 990 (E) dated 4<sup>th</sup> April 2013 by the DDA. In accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/suggestions as required by sub-Section (3) of Section 11-A of the said Act. On 5<sup>th</sup> September, 2015 after duly considering the objections/suggestions received with regard to the proposed modifications, the Land Policy was incorporated in the MPD-21.

awarded and the charges incurred by the government in connection with the acquisition. The various agencies involved in land management in Delhi are given in Table 3.7.

The DDA has planned and executed large-scale land acquisition, development and disposal of land through the land acquisition law. In Delhi's case, the provision of affordable housing was facilitated by a kind of cross subsidisation by DDA. In other words, DDA carried out the cross subsidisation by making use of its land resources to make self-contained colonies by providing for commercial office and retail complexes, placing the sale of this land in revolving funds to cross subsidise the low income housing programs. However, since 2001, there has been a major change in the role of DDA—from a land developer to more of a controlling authority in the development work by private developers. The absence of land supply from government and skyrocketing prices made it profitable for these developers to prosper utilising the urban building construction norms and the purchasing power of the urban middle class to purchase houses even at extraordinarily high prices.

There are differing views on the impact of DDAs operations with regard to fulfilment of the central objective of affordable housing in general and land prices in particular. One view that hails the DDAs policy is that a large number of households in the lower income range would otherwise have been driven out of urban Delhi were provided quick housing options and that the policy regulated speculation in housing land. The differing view of the impact of the policy of bulk acquisition and monopoly ownership by DDA highlights the loss to the exchequer owing to the large number of vacant plots; advance land acquisition programme and auctioning of land at high prices contributing to the pressure on the remaining lands and resulting in boosting of prices of land; slow supply side responses etc.

Given the large scale demands of urban infrastructure in the country's capital, demands of affordable housing and the limited resources with the government, the MPD-21 recommended the increasing role of private participation in the development process in general and infrastructure development in particular. A significant policy change in this regard was the liberalized land policy by the DDA. The Land Policy was notified by the Ministry of Urban Development (Delhi Division) on 5<sup>th</sup> September, 2013. Accordingly, Land Policy was incorporated as Chapter 19 in MPD-21.

### The Delhi Land Policy and Land Pooling Model

The Delhi Land Pooling Policy envisages voluntary assembly of land by different land owners who can pool their land parcels together by forming associations/societies/partnerships or formal understanding amongst themselves (which are legally recognised). This pooled land is to be transferred to the Urban Development Authority. The Authority, after carrying out verification and physical possession of the pooled land has to return a specific share of the transferred land back to the land owners (or their representative) with the rights to develop the returned land for various urban uses. The DDA, which gets the ownership of the balance of the pooled land utilises it for providing infrastructure to the new urban areas - transportation, utilities, social and physical infrastructure etc.

In line with the MPD-2021 that provides for increasing role of the private sector in the urban infrastructure projects, particularly in the process of acquisition of land, the Land Policy assigns a facilitator role to the Government/DDA. As a facilitator, the primary responsibility of the Government/DDA would be to operationalise the land pooling scheme by framing detailed regulations<sup>29</sup>; declaration of areas under land pooling and preparation of layout plans and sector plans based on the availability of physical infrastructure; superimposition of revenue maps over the approved zonal plans, time bound development of identified land with master plan roads, provision of physical, social and transportation infrastructure and external development in a time bound manner; acquisition of left out pockets in a time bound manner; creation of a dedicated unit in DDA for dealing with approvals of land pooling applications etc. Unlike the present policy, the private developers were not given land directly under the earlier policy. The land pooling policy allows developers/landholders to pool land for development purposes and get back a share in lieu of it. Under the policy, a Developer Entity (DE) is defined as a landowner, group of landowners or a developer who is permitted to pool land for unified planning, servicing and subdivision/share of the land for development according to the prescribed norms and guidelines. The land owners after

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<sup>29</sup> The draft regulations date 5<sup>th</sup> September 2013 were accordingly put up on the public domain for inviting views of all stakeholders giving a 30 day time frame.

getting the developed land can further sell or use it by adhering to the prescribed regulations.

The policy is applicable in the proposed urbanisable areas for which Zonal Plans are approved. The land pooling policy further stipulates that the DE shall be returned within 5 km radius of pooled land subject to other planning requirements. As per the policy, a landowner who gives 20 hectare of his land would receive 60 per cent of his pooled land back post development. Those offering between 2 and 20 hectare for development will receive at least 48 per cent of their land back. The remaining land would become DDA's property and be built upon as per the Master Plan 2021. Landowners and developers will be able to get back developed land that they can further sell or use, as long as they adhere to the regulations according to the Master plan/Land Policy. According to the present policy, the land use distribution at the city level for infrastructure development is 53 percent for gross residential purposes (with approximately 50,000 dwelling Units for housing for EWSs; five percent for commercial purposes; four percent for Industrial purposes, sixteen percent for recreational uses (excluding green areas within various gross land-use categories); ten percent for public and semi public facilities and 12 percent for roads and circulation. The DDA's share in the residential land shall vary between 0-10 percent and commercial land shall vary between 0-2 percent. The entire industrial land of 4 percent shall be retained by DDA.

**Table 3.7 The Delhi Land Pooling Model**

| Category of Land Assembly (Ha)    | Surrendered to Govt | Land Returned to DE |                   |               |                |
|-----------------------------------|---------------------|---------------------|-------------------|---------------|----------------|
|                                   |                     | Total               | Gross Residential | Commercial    | PSP facilities |
| Category I<br>20 Ha & above       | 40%<br>8 ha         | 60%<br>12 ha        | 53%<br>10.6 ha    | 5%<br>1.0 ha  | 2%<br>0.4 ha   |
| Category II<br>Between 2 to 20 ha | 52%<br>1.02 ha      | 48%<br>0.96 ha      | 43%<br>0.86 ha    | 3%<br>0.06 ha | 2%<br>0.04 ha  |

Note: Land Pooled for the illustrative example is assumed at 20 Ha for Category I and 2 Ha for Category II.

### Category I

a. The land returned to Developer Entity (DE) in Category-I (20 Ha and above) will be 60% and land retained by DDA 40%.

b. The distribution of development rights on the land returned to DE (60%) in terms of land use in Category-I will be 53% Gross residential, 2% City Level Public/Semi-Public and 5% City Level Commercial.

### **Category II**

a. The Land returned to Developer Entity (DE) in Category II (2 Ha to less than 20 Ha) will be 48% and land retained by DDA 52%.

b. The distribution of development rights on the land returned to DE (48%) in terms of land use in Category II will be 43% as Gross residential, 2% City Level Public/Semi-Public and 3% City Level Commercial.

### **Other Specificities of Delhi Land Policy**

1. Any land with clear title and with minimum required parcel size (2 Ha) can be pooled. Land initially has the option to pool his land under land pooling policy or abstain from pooling. If the land is falling in such an area where 60% of the owners have given their consent, then the owner of that parcel of land has to give his land under land pooling scheme or under land acquisition.
2. Ownership is important to become a DE. If there are group of owners, then each one of them must have own land. The group can bring together their holding, make equal to 2 ha or more and offer for pooling under the policy.
3. For a farmer, who does not have money to invest but only land, he can pool land under this policy and collaborate with a developer to invest and develop the land. The farmer can also take a TDR Certificate that he can sell later.
4. As per the Master Plan, the DE shall ensure adequate provision of EWS and other housing as per the Shelter Policy of the Plan. Apart from this, the developer entity shall also return the prescribed built up spaces, EWS dwelling units and LIG housing components to the DDA as per the policy. Half of EVS Housing Units (32-40 Sq.ms) developed by the DE shall be retained by the DE and the other half to be transferred to DDA. The disposal of DDA's share in EWS Housing and terms and conditions for sale of Developers share in EVS Housing is to be clarified by the government in a notification.



**Implementation Experience:** The Delhi LP policy was expected to help in the development of 24-25 lakh housing units without the land acquisition issues<sup>30</sup>. Though the urban development ministry gave its nod to the operational guidelines for LPP in May 2015, the process of declaration of development area and declaration of 95 villages falling in five zones as “urban” is a work still in progress. The conversion of 95 rural villages to urban villages is to be carried out under Section 507 of the Delhi Municipal Corporation Act (DMCA) 1957<sup>31</sup>. Once the rural villages becomes urban areas, Section 12 of DDA Act directs that these villages should be converted into development areas. However, the implementation of the policy has been held up owing to reasons that may be largely political. The Delhi LP experience also underlines the critical need for political support for the successful implementation of the LP policy. It is also being reported that land within these development zones had already changed hands to a large extent before the land pooling policy was made public. In other words, this may mean that the advantage of the policy would be reaped to a great extent by the large-scale operators.

### 3. The Haryana Land Pooling Model

The Department of Urban Estates, Haryana had a history of acquiring land under the Land Acquisition Act, 1894. Haryana also had the unique distinction of coming out with one of the most progressive R & R policy in the country (dated 9<sup>th</sup> November, 2010), which included minimum floor rates so as to ensure payment of market linked compensation and other R & R benefits that included payment of annuity for a period of 33 years.

In 1975, with the enactment of the Haryana Development and Regulation of Urban Areas Act (HDRUAA), Haryana became the only state in India to formally involve the corporate private sector in the acquisition, development, and disposal of urban land. The HDRUAA, 1985 provided for certain planned areas to be specially designated to allow private

<sup>30</sup> <http://timesofindia.indiatimes.com/city/delhi/Govt-transfers-land-in-95-villages-to-revenue-dept/articleshow/49795246.cms>

<sup>31</sup> According to Section 507 (DMCA), “The Corporation with the previous approval of the Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas.”

developers to assemble parcels of land that exceed the limits set by the Urban Land Ceiling Act (ULCER). The Act provided for the licensing of private developers to assemble land directly from landowners in such areas and develop such land for residential purposes. This included financial contributions to the development authority for attributable off-site infrastructure costs; and the reservation of a portion of the developed land for lower-income housing to be allotted through the development authority.

The Haryana Government notified the Land Pooling Policy on 10<sup>th</sup> September, 2012<sup>32</sup>. The important features of this policy are given below:

- **Applicability:** Under the Scheme, the landowners were given an option either to accept the package of compensation and R & R (as per Haryana R & R policy) or to adopt the Land Pooling Policy. The policy is applicable in case of all acquisition proceedings initiated for the purpose of development of residential sectors after the notification for land pooling model (also as a one-time measure for retrospective cases where notifications were issued under Section 4 or 6.
- **Minimum Threshold:** The landowners would be eligible to participate in the Scheme only if a minimum of 1000 sq. yards of lands are acquired.
- The landowner(s) opting for the LPS will be provided with developed residential site/plots measuring 1000 sq. yards and commercial sites measuring 100 sq. yards against each acre of land acquired.
- Unlike other pooling mechanisms, the Haryana Land Pooling Policy also entitles farmers who opts for the land pooling scheme to request a payment for the land as per applicable floor rates. He can then request for allotment of developed land on refund of the compensation availed with the 9 percent interest rate; landowner may opt for allotment of developed land after adjusting the advanced amount paid to him along with 9 percent interest; landowner may opt for payment of the balance amount after adjusting for amount paid and the interest thereon.
- The landowner shall also have the option to opt for land pooling scheme in respect of part of his land being acquired (minimum land being one acre); the option of LPS and compensation along with R & R benefits split in the ratio of 50:50. Wherever the

<sup>32</sup> Haryana has also notified a progressive Land Licensing policy in October 2016.

entitlement of developed land is in fraction of the standard sizes of residential/commercial plots, the landowner is to be compensated in monetary terms for such fraction.

- In case, the owners are co-sharers in the acquired land, the plots/sites will be allotted in proportion to the share of each of the co-sharer. However, where such proportion is less than the standard size of the plot/site, the owners will be eligible either to have a plot in their joint name or seek monetary benefits in accordance with their share.
- The developed land will be allotted to the eligible landowners as per their entitlements through draw of lots from among the applications received from the landowners opting for the scheme.
- Plots will be transferred on freehold basis and will be governed by the rules and regulations of HUDA. There will be no upper limit for the beneficiary landowner under the scheme for utilisation or sale of his developed sites. However, any subsequent purchaser of land shall be governed by the HUDA policies as applicable from time to time and time limit for construction shall also be applicable for subsequent buyers as per HUDA policy. The land use in respect of such land shall remain 'residential' or 'Commercial' as the case may be and shall not change under any circumstances.
- The awards in respect of pooled land would be made by the Collector under Section 11(2) of the Act.
- The Haryana Urban Development Authority executes conveyance deeds in favour of the landowners opting for the Land Pooling Scheme as per their entitlement/allotment of developed land for which no stamp duty and registration is payable. The landowners opting for developed plot will also have the right to sell them.

**Implementation Experience:** Despite the progressive policy for land pooling, it is yet to take off on the ground. However, the acquisition of the 19.11 acres of land for Dwarka Expressway that was held up by the farmers recently opted for the policy. While HUDA

usually pays monetary compensation to the land owner for acquisition; the land owners were keen on getting alternative plots in the present case.<sup>33</sup>

#### 4. The Andhra Pradesh Capital City Land Pooling Model

The Andhra Pradesh Capital Region Development Authority Act, 2014 (Act.No.11 of 2014) was enacted for the declaration of the new capital area for the State of the Andhra Pradesh and establishment of the Andhra Pradesh Capital Region Development Authority for the purpose of planning, co-ordination, execution, supervision, financing, and for promoting and securing the planned development of the capital region and capital city area for the state of Andhra Pradesh and for managing and supervising urban services in the new capital area.

Under Section 3 of the AP CRDA Act, 2014 the Government notified the area about 8352.69 Sq.Kms for Capital Region and 217.23 Sq.Kms as AP Capital City area<sup>34</sup> The Capital City area falls in Guntur district, covering covers 24 revenue villages and part of Tadepalli Municipality covering mandals of Thullur, Mangalagiri and Tadepalli.

**Land Pooling Scheme:** The AP Act defines land pooling scheme as “assembly of small land parcels under different ownerships voluntarily into a large land parcel, provide it with infrastructure in a planned manner and return the reconstituted land to the owners after deducting the land required for public open spaces such as parks and play grounds, social housing for EWSs, social amenities such as schools, dispensary and other civic amenities, road network and other infrastructure as specified under the Act as well as such extent of land in lieu of the cost of development towards the provision of infrastructure and amenities and other costs and expenses to be incurred for the scheme and external trunk infrastructure”. The AP Act, comprehensively lays down the process framework for different type of development schemes. The type of development schemes envisaged

<sup>33</sup> Land pooling clears Dwarka e-way hurdles,  
<http://timesofindia.indiatimes.com/city/gurgaon/Land-pooling-clears-Dwarka-e-way-hurdles/articleshow/51216508.cms>

<sup>34</sup> G.O.Ms.No. 253, 254 of MA & UD (M2) Department, dt. 30-12-2014 read with G.O.Ms.No. 141 MA & UD (M2) Department, dt. 09-06-2015 and G.O.Ms.No. 207 of MA & UD (M2) Department, dt. 22-09-2015.

are LPS, TPS and any other development schemes as prescribed by the provisions of the Act.

Chapter IX, Sections 52-59 of the Act lays down the LPS, describing the reservation and allotment of plots, role of the developer entity, processes of declaration of intention, draft and final notifications, implementation and completion of the LPS. The area of the LPS is to be notified by the Authority under Section 55 of the Act. The Government in G.O 7 issued authorisation to the Andhra Pradesh Capital Region Development Authority to undertake development scheme as provided in chapter IX of Andhra Pradesh Capital Region Development Authority Act, 2014 (Act.No.11 of 2014) through voluntary LPS in the capital city area. Subsequently, the CRDA published the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 (notified in Gazette dated 1<sup>st</sup> January 2015). The important provisions of the scheme as laid down in the Act is given below:

1. The LPS is for land owners volunteering to surrender their land against a guaranteed return of developed and reconstituted plot/land.
2. The reservation for land for various purposes in the LPS is given below:

**Table 3.8 Reservation of Land under Andhra Pradesh LPS**

| S. No | Heads                                                                                                                                                     | Proportion (%)                                                  |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| 1     | Parks, playgrounds, gardens and open spaces                                                                                                               | 10                                                              |
| 2     | Roads and Utility Services                                                                                                                                | 30                                                              |
| 3     | Social Amenities (schools, Dispensary and other community facilities)                                                                                     | 5                                                               |
| 4     | Affordable Housing for Poor                                                                                                                               | 5                                                               |
| 5     | Reconstituted Plots                                                                                                                                       | As per Contribution Ratio spelt out in the Scheme               |
| 6     | Land with CRDA (cost of development towards provision of infrastructure, amenities, trunk infrastructure and other costs to be incurred for the scheme)*. | Balance Land after return of reconstituted plots to landowners. |

\*The Authority may make use of this land for development of capital city area or for residential/commercial/public/semipublic or any other purposes as may be approved by the Authority.

Note: The Section also provides the flexibility to the Authority to alter the above allotment of land depending on the sanctioned development plans under Section 38.

3. The developer entity intending to undertake LPS shall have to take a license from the Commissioner and submit an application to formulate and implement a LPS as per the requirements of the scheme.
4. Process Framework for LPS
  - The Competent Authority for Land Pooling, the Commissioner, shall issue a notification declaring its intention to make the LPS and calling for consent/suggestions/objections within 30 days of the date of publication of notification.
  - Subsequent to the above, he shall notify the area and this will be followed by a process of verification of title and resolving of the disputed ownership.
  - The Authority would then make a draft LPS of the area in accordance with the sanctioned plans and in consultation with the landowners. A 30-day period timeline would be provided for the landowners for suggestions/objections and the final LPS would be notified by the Commissioner after duly considering these.
  - After the publication of final LPS, the Authority shall issue a Land Pooling Ownership Certificate (LPOC) to the landowners. The Certificate would specify details of the original and reconstituted plots. The notified area under the final land pooling scheme shall vest absolutely with the Authority free from all encumbrances for implementation of the LPS
  - After the final sanction of the LPS, the physical demarcation of roads and plots shall be commenced immediately. The reconstituted plots will be given to the landowners after the formation of roads.
  - The owners of the reconstituted land would require permission for development of the plot, pay necessary fees and charges for the same. They would also have to pay the applicable charges for the common infrastructure.
5. The plan after considering the objections and suggestions must contain in detail and in specified colours, the uses to which the land will be put, the maps, charts, statements explaining the provisions of the draft development plan, the draft regulations for enforcing the provisions of the draft development plan. This modified plan must be notified in an official gazette, thereby inviting any further objections before the plan receives a sanction.

6. Prescribed Timelines: The LPS rules specify the timeline for each process after the declaration of the draft intention to notify land under LPS. The Important timelines are prescribed below:

**Table 3.9 Timeline for Implementation of the LPS in AP**

| S. No. | Process                                                                | Duration       |
|--------|------------------------------------------------------------------------|----------------|
| 1      | Timeline between Notification of Intent for LPS to Draft LPS           | 180 days       |
| 2      | Suggestions/Objections from Land Owners after publication of draft LPS | Within 30 days |
| 3      | Finalizations of Objections                                            | Within 30 days |
| 4      | Final LPS till marking of Roads/reconstituted plots                    | Within 60 days |
| 5      | Allotment of reconstituted plots through draws                         | Within 30 days |
| 6      | Allotment of Land Pooling Ownership Certificate                        | Within 30 days |

Source: LPS Rules, CRDA, 2014

Once the plan under the scheme is sanctioned, the authority issues a Land Pooling Ownership Certificate (LPOC) to the Land owners and the development process for the designated area is carried out. The development scheme as a mandate shall contain the survey numbers, details of ownership of all parcels of land, preparation of the scheme incorporating details in accordance with the sanctioned plans, the land use break-up of the scheme, the re-constituted plots which would be re-allotted to the land owners, method of re-allotment or registration, original location of the land and location of the developed land, the plots/lands to be allotted to the Authority or developer entity in lieu of the cost of development towards the preparation, sanction, provision of infrastructure and amenities and implementation of the scheme and any other provisions as has been necessitated. The scheme must also accommodate for providing social amenities such as roads, schools, hospitals etc as has been mandated by the competent authorities. Once the area is developed, the proportionate amount of land must be re allotted to the owners.

**Table 3.10 Returnable benefits under Land Pooling Scheme in AP**

| Land (1)                                                                                          |                                                       | Category (2) (in Sq. Yards) |      |                    |      |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------|-----------------------------|------|--------------------|------|
|                                                                                                   |                                                       | Dry                         |      | Jareebu/Semi Urban |      |
|                                                                                                   |                                                       | RES                         | COMM | RES                | COMM |
| A) Patta                                                                                          |                                                       | 1000                        | 250  | 1000               | 450  |
| B) Assigned                                                                                       |                                                       |                             |      |                    |      |
| (i)                                                                                               | Ex-Serviceman / Political Sufferer (Except POT Cases) | 1000                        | 250  | 1000               | 450  |
| (ii)                                                                                              | Assignments before 18-06-1954 (Except POT Cases)      | 1000                        | 250  | 1000               | 450  |
| (iii)                                                                                             | Assignments after 18-06-1954 (Except POT Cases)       | 800                         | 100  | 800                | 200  |
| (iv)                                                                                              | POT Resumed lands – Sivoijamadar occupation           | 500                         | 50   | 500                | 100  |
| (v)                                                                                               | Un-Objectionable Govt. lands – Eligible Sivoijamadar  | 500                         | 50   | 500                | 100  |
| (vi)                                                                                              | Objectionable Govt. lands – Eligible Sivoijamadar     | 250                         | 0    | 250                | 0    |
| C) Yearly payment of annuity for crop loss (Rs.) expect for B(iv) and (vi) categories above       |                                                       | 30000                       |      | 50000              |      |
| D) Yearly increase (Rs.)                                                                          |                                                       | 3000                        |      | 5000               |      |
| E) One time additional payment for gardens like lime/sapota/guava/amlam and jasmine (Malle) (Rs.) |                                                       | 100000                      |      |                    |      |

Source: Capital Region Development Authority

For the owners who gave their land in revenue villages viz., Bethapudi, Navuluru, Yerrabalem, Penumaka and Undavalli, will get 450 sq.yds. of commercial reconstituted land and 1000 sq.yds. of Residential reconstituted land.

#### Other Benefits:

1. Rs. 2,500 /- per month for a period of 10 years to all the landless families
2. One time agricultural loan waiver up to Rs. 1, 50, 000 per family to farmers who are surrendering their lands under LPS.
3. Providing NREGA upto 365 days a year per family.
4. Return of land to the landowners near pooled land / within 5 KM radius subject to other planning requirements.
5. LPOC Certificate with alienable rights exempting registration fee.
6. Provision of reconstituted plots in one area to different landowners / landowner having original plots in different areas jointly.



7. Demarcation of Abadi lands and extended habitations so as to ensure no displacement of residential families.
8. Provision of housing to houseless as well as those losing houses in the course of development.
9. Provision of skill development trainings with sty-fund to enhance the skills of cultivating tenants, agricultural labourers and other needy persons to have alternative livelihoods.
10. Provision of interest free loan up to 25 Lakhs to all the poor families for self employment.

**Implementation Experience:** As mentioned above, the AP State Government had authorised the CRDA to undertake Capital City Infrastructure Development Scheme through voluntary land pooling scheme in the Capital City Area. The land pooling mechanism is mainly adopted for development of the Capital City area where in the land parcels owned by individuals or group of owners are legally consolidated by transfer of ownership rights to the authority, which later transfers the ownership of a part of land back to the land owners for under taking of development of such areas. As on December 2015, the progress of implementation of the scheme is given below:

In pursuance of the provisions made under Section 52 of APCRDA Act 2014 along with Rule 6 of AP Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015, Notifications of declaration of intention to undertake "Land Pooling Scheme" in Form 9.1 have been issued in all 24 revenue villages and part of Tadepalli Municipality. As per the legislation, stakeholder consultations were held and objections/suggestions were invited from the landowners. Following conduct of the enquiry, the final LPS was notified. The individual notices were issued to the landowners and the process of verification of the title of the landowners covered under the LPS with reference to revenue records, registration documents and other documents and conducting local enquiry / enjoyment survey was completed. The irrevocable consent applications have been received for 34,103.79 acres (against a target of 36,976.12 acres). The proposed land ownership in the capital city along with share of CRDA is given in Table 3.11.

Table 3.11 Proposed Land Ownership in AP Capital City

| S. No | Land Ownership               | Land use             | Extent (Ac) | % to total |
|-------|------------------------------|----------------------|-------------|------------|
| 1.    | Returnable Lands under LPS   | Residential          | 6506.96     | 12.50%     |
|       |                              | Commercial           | 1781.25     | 3.42%      |
| 2.    | Existing Village settlements | Residential          | 1024.47     | 1.9%       |
| 3.    | Lands with CRDA              | Residential          | 6866.3      | 12.8%      |
|       |                              | Commercial           | 2451.2      | 4.6%       |
|       |                              | Public/Semi public   | 2599.5      | 4.8%       |
|       |                              | Industries           | 3029.4      | 5.6%       |
|       |                              | Green/ Recreation    | 19405.6     | 36.2%      |
|       |                              | Roads                | 5294.9      | 9.9%       |
|       |                              | Infrastructure       | 180.8       | 0.3%       |
|       |                              | Seed                 | 2637        | 4.9%       |
|       |                              | White/Reserved Sites | 277.2       | 0.5%       |
|       | TOTAL                        |                      | 52054.58    | 100.0%     |

Source: Capital Region Development Authority Act 2014

Though the share of the CRDA works out to be about 20 percent as per the above, the actual share is reported to be less owing to multiple accounts viz. the hike in commercial space granted to all the landowning villages of Bethapudi, Navuluru, Yerrabalem, Penumaka and Undavalli (commercial returnable land increased from 350 to 450 sq.yards); grant of plots in the capital city to displaced population of a proposed international airport; the need to exclude Lanka lands amounting to about 2000 acres etc. The maximum process period is 390 days and the final infrastructure development is to be completed in three years in phased manner.

The Andhra Pradesh LPS mechanism is grounded in the legislative framework and also has a detailed time-bound process framework. It is also the first land pooling mechanism that provides some benefits to the land less families. Assembly of such a large quantum of land would have been a difficult proposition under RFCTLARR Act, not just because of the financial implications but also because a significant chunk of the land is fertile irrigated land. To understand the feedback at the ground level, the Study Team visited the capital City area and sample villages viz. Rayapudi (dry village from Tullur Mandal); Krishnaipalem

(wet village from Mangalagiri Mandal); Nellapadu (dry village from Venkatapalem (wet village from Tullur Mandal).

It is too early to evaluate the effectiveness of the model. The land pooling process in Andhra Pradesh has however been much talked about for the fast land procurement process. The following factors deserve merit in this regard:

1. Highest Priority by Political Establishment and Massive Consultation Exercises: One of the key success factors for any land assembly strategy is a pro-political leadership. For the capital city project, the consultation exercises in the initial stages were led by the AP Chief Minister himself and the confidence reposed by the population of the capital city has been the greatest factor contributing to the success of the model. A highly organised state government machinery working with a single minded devotion (approaching house to house in mobilising participation in LPS, verification of land records, taking agreements and payment cheques at door step etc) contributed to the success.
2. The threat of expropriation through land acquisition: The dissenting voices did not really have an option between continuing in their present occupation or to have land pooling. The choice was between land acquisition and land pooling. The general scenario of the registered deeds poorly reflecting the realistic land values coupled with low market values in many dry villages meant that the option of land acquisition remained the last option for the farmers. The fact that CRDA which is the pooling agency also had powers to compulsorily acquire the land of dissenting farmers also meant that there was little option before the farmers. Further, the announcement of capital city in the area resulted in market values going up by several folds in most of these villages. The option of land acquisition would have not benefited the landowners who were also further expecting value addition for their returnable residential/commercial plots duly comparing the market value of their original lands.
3. Not tampering with the existing habitations and ensuring no displacement: Marking old village sites and extended habitations authorised layouts to become part of Capital City have raised the aspirations of the people that they are going to live in capital city of Andhra Pradesh. Avoiding displacement was one of the greatest factors helping the process.

4. Consent process may have focused on taking the consent of the large owners. The CRDA team appealed not only to their self interest in gaining from the development but also to their patriotism in the development of the new state. The Study team found cases where small landowners were not even clear on the contribution ratio or other benefits, but were moving with the tide. Once the large farmers were persuaded to support the project, they would have convinced the smaller landowners too.
5. Conduct of Census before Preparation of Returnable Matrix: Table 3.13 shows that out of the total workforce in the capital city area, about 55 percent are agricultural labourers. This could have prompted the state government to arrive at a more holistic package for the affected families that also included benefits to the landless families. The Government is providing pension of Rs. 2500 /- per month for every such landless family for a period of 10 years through a Capital Region Social Security Fund<sup>35</sup>. In addition, the farmers who contributed their dry/ jareebu land of less than one acre in land pooling scheme were also being paid Rs. 30,000/- for Dry ad Rs. 50,000/- for jareebu lands for 10 years. The limit under NREGA were also enhanced to 365 days a year per family. The government also committed to skill development trainings with a stipend to enhance the skills of cultivating tenants, agricultural labourers and other needy persons.

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<sup>35</sup> in addition to the land less poor pensions that are being given through DRDA.

Table 3.12 Composition of Population in the AP Capital City Area

| S. No | Mandal       | House holds  | Population Total | Caste wise break up |             |              | Occupation wise Main workers |                |                    |               |              | % Agri. Labourers |
|-------|--------------|--------------|------------------|---------------------|-------------|--------------|------------------------------|----------------|--------------------|---------------|--------------|-------------------|
|       |              |              |                  | SCs                 | STs         | Others       | Cultivators                  | Agri. Laborers | House hold workers | Other workers | Total        |                   |
| 1     | Tullur       | 12440        | 43288            | 16288               | 2424        | 24576        | 3507                         | 16845          | 191                | 3440          | 23983        | 70.2              |
| 2     | Mangalagiri  | 10039        | 36952            | 9254                | 1455        | 26243        | 6595                         | 11810          | 1802               | 4507          | 24714        | 47.8              |
| 3     | Tadepalli    | 5822         | 22161            | 6601                | 787         | 14773        | 554                          | 2979           | 2017               | 3656          | 9206         | 32.4              |
|       | <b>Total</b> | <b>28301</b> | <b>102401</b>    | <b>32143</b>        | <b>4666</b> | <b>65592</b> | <b>10656</b>                 | <b>31634</b>   | <b>4010</b>        | <b>11603</b>  | <b>57903</b> | <b>54.6</b>       |

Source: Capital Region Development Authority Act 2014.

### 5. The Punjab Land Pooling Model

The Department of Housing and Urban Development, Government of Punjab notified two related policies through a Notification dated 19<sup>th</sup> June, 2013. The objectives of this policy included avoidance of complications of compulsory acquisition, share benefits of urban development with landowners and to make them a stakeholder in development. The two policies are:

- Land Pooling Policy for the State of Punjab
- Land Owners become Partners in Development

**The Punjab Land Pooling Policy:** For compensation to land owners, either the provisions of LAA shall be applicable or the package under Land Pooling policy. The Land Pooling Policy is applicable to all the Development Authorities in the State of Punjab. The return of developed residential and commercial land to landowners under the land pooling scheme are given in Table 3.14

**Table 3.13 Land Allotment to Land owners under the Punjab LPS**

| Acquired Land<br>(in Kanal) | Residential Land to be<br>Returned (Sq. yards) | Commercial Land to be<br>Returned (Sq. yards)             |
|-----------------------------|------------------------------------------------|-----------------------------------------------------------|
| 1                           | 150                                            | -----                                                     |
| 2                           | 300                                            | -----                                                     |
| 3                           | 450                                            | -----                                                     |
| 4                           | 500                                            | One shop 12ft x 45ft 60<br>sq yard                        |
| 8                           | 1000                                           | SCO/ SCS 121 sq yard<br>2 shops 12ft x 45ft 60 sq<br>yard |

1 acre = 8 canals

Source: Department of Housing & Urban Development, Government of Punjab,

The land owners can opt for maximum three standard plots per acre of land offered for the scheme. This option of the landowner shall be as per the layout plan of the scheme. The land owners shall be allowed to have two standard size residential plots for an area of 0.5 acre (4 kanals) acquired. In case, the area acquired under land pooling scheme is less

than 0.5 acre (4 kanals, the land owner shall be allowed to have one residential plot as per the table above. In case the area acquired for the scheme is in fractions & if the fraction is more than the half of the unit then the area acquired shall be counted in the next upper category e.g. if the area acquired is 1.6 kanals, it shall be considered as 2 kanal for the purpose of entitlement of the plot. Incase, the fraction of the area acquired is less than half of the unit e.g the area acquired is 1.4 kanal then it shall be counted as one kanal for entitlement of plot. The residential & commercial plots to the land owner (s) is to be allotted through open draw of lots under this policy. Where the land owner is to be allotted two or more plots of the same size, he shall have the option to club these plots. In such cases, the allotment of first plot shall be through draw of lots and the rest of the plots shall be clubbed as per availability in the layout plan. For these plots, the continuity factor shall be applied. The common share holders in a khewat can separately or jointly apply under this scheme. In case the land owners are more than one, they can club their land to avail land pooling under this scheme.

The land pooling policy shall be available to the land owners even if the land is acquired for other than residential purpose. The concerned authority shall simultaneously notify the scheme for residential/commercial purpose for the LPS. The compensation for structures falling in the land to be acquired for Land Pooling shall be allowed as per provisions of the LAA. In case the possession of the structure (house) of the land owner is taken by the Authority, the possession shall not be made effective for a period of one year from the date of giving possession of the developed plot to the land owner so as to enable him/her to construct a new house in the plot in that period. The land owners shall be given subsistence allowance @ Rs. 25,000/ per acre upto a maximum three years or till the possession of developed share of land is not handed over to him/her, whichever is earlier. The Punjab Land Pooling Model also provides a role for Land Aggregators. If the land is acquired under LPS through Land Aggregators<sup>36</sup>, the land aggregator shall be paid 2 percent commission (on handing over possession of land without any encumbrances to the Authority) for that land on the total amount (calculated at Collector rates excluding

<sup>36</sup> The land Aggregator must be a registered estate agent and must have special power of attorney from the owners of the land which he offers to the development authority for this scheme

solatium or any other charges payable). However for eligibility for commission, they should make lands available on the sites identified by the Authority.

**The Punjab Policy of Land-owners becoming partners in development with PUDA/ Special Development Authorities.**

Under this Policy, the Development Authority shall develop the land belonging to the land owner(s) and sell the developed land in accordance with the policy of the Authority. The proceeds shall be shared between land owner(s) and the Authority. The land owner(s) having contiguous chunk of land appropriately located for developing an urban estate can enter into an agreement with Punjab Urban Planning and Development Authority (PUDA) or a Special Development Authority and grant them the development rights of land. Exclusive commercial projects can also be executed under this policy.

The land owner(s) shall give all rights of development and sale of his/their land to the concerned development authority at the time of signing of agreement. The land owner(s) will give right of mortgaging their land with banks/financial institutions to the Authority to carry out the development activities. The Authority will develop the land as per the specifications/norms approved by the Authority at the cost of the land owner within a period of five years.

The entire development of area which includes leveling, earth work, roads, laying of basic amenities like sewerage, water supply, storm water sewer, electrical, street lighting, parks, green areas etc will be borne by the land owner(s). The Authority will charge an administrative cost of 10 percent from the land owner(s) over and above the actual cost of development. The CLU, EDC, License/Permission Fee, Social Infrastructure Fund and Urban Development Fund shall be borne by the land owner(s). The interest component on every loan such raised for the development of land will be borne entirely by the land owner(s).

The rates at which the plots, houses, institutional, commercial area etc shall be sold will be decided by the Authority in consultation with the land owner(s). In case there is more than



one owner and there is lack of consensus for reserve price at which the developed land shall be sold, then the price will be decided by the majority of ownership and the weightage of the Authority will be 20 percent of the total. The net receipts/profits from sale of land will be shared in the ratio of 80:20 by the land owner and the Authority respectively. An illustration of the policy with regard to the works to be done and sharing of profits is given as below in Table 3.15.

**Table 3.14 Sharing of Costs between Landowners and Development Authority.**

| S. No | Heads                     | Landowners | Development Authority |
|-------|---------------------------|------------|-----------------------|
| 1     | Land                      | Yes        | -                     |
| 2     | Loan Raising, if required | -          | Yes                   |
| 3     | CLU, EDC, LF, SIF Charges | Yes        | -                     |
| 4     | Development Cost          | Yes        | -                     |
| 5     | Development Execution     | -          | Yes                   |
| 6     | Sale price Fixation       | Yes        | Yes                   |
| 7     | Sale of property          | -          | Yes                   |
| 8     | Receipt of Sale Proceeds  | -          | Yes                   |
| 9     | Profit Share              | 80%        | 20%                   |

**Implementation Experience:** The implementation experience since the initiation of the policy in 2009 is given in Table 3.15. The percentage of lands taken under pooling instead of compensation was at the lowest in 2011 when 1693 acres of land were acquired for the IT City project in 2011. For this project, while only 25 percent of the lands were pooled, 75 percent of the lands were acquired through land compensation. However, the Medicity, Eco City (Phase I and II) and Sector 88-89 projects, where 97 acres, 4535 acres and 668 acres were acquired, about 86-92 percent of the lands were taken under the land pooling policy. All these projects were awarded during the 2011-12 period. In 2013, for the Ecocity Phase II (301 acres) and Ecocity Extension projects (86 acres), only 45 percent and 25 percent were taken under the land pooling policy while land compensation was the preferred option for the majority of landholdings. This dispels the myth of the success of the land pooling strategy as a win-a-win situation and preferred option under all conditions. Market conditions and outlook for the real estate sector govern the choices of the

landowners exercising the option. This also points out the difficulties that may crop up if the land assembly process provides for land pooling as the only option.

**Table 3.15 Implementation Experience: Land Pooling in Punjab (Area in Acres)**

| S.No                                                                        | Project                                                                        | Year of Award | Total Area of Land | Lands Pooled | Lands Acquired | % of LP in Total |
|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------|---------------|--------------------|--------------|----------------|------------------|
| <b>Land Pooling as an Option under the Land Acquisition Award Stage</b>     |                                                                                |               |                    |              |                |                  |
| 1                                                                           | IT City                                                                        | 2011          | 1693               | 416          | 1277           | 24.57            |
| 2                                                                           | Medicity-Phase I                                                               | 2011          | 97                 | 84           | 13             | 86.60            |
| 3                                                                           | Eco City-Phase I and II                                                        | 2010          | 435                | 399          | 36             | 91.72            |
| 4                                                                           | Sector 88-89                                                                   | 2011          | 668                | 614          | 54             | 91.92            |
| 5                                                                           | Medicity                                                                       | 2013          | 162                | 76           | 86             | 46.91            |
| 6                                                                           | Ecocity II                                                                     | 2013          | 301                | 135          | 166            | 44.85            |
| 7                                                                           | Ecocity Extension                                                              | 2013          | 86                 | 21           | 65             | 24.42            |
| 8                                                                           | Aerocity (2006 Award)*                                                         | 2015          | 830                | 188          | 642            | -                |
| <b>Land Pooling as an Option under Section 28-29 of the PTPDA Act, 1995</b> |                                                                                |               |                    |              |                |                  |
| 1                                                                           | I.T. City (missing Khasra No.)                                                 | 2015          | 10 Acres (Approx)  | 4.84 Acres   | 10 Acres       | 100%             |
| 2                                                                           | Aeocity (missing Khasra No. and straitening of border line and setting of STP) | 2015          | 12 Acres           | 5.80 Acres   | 12 Acres       | 100%             |
|                                                                             | Total**                                                                        |               | <b>3464</b>        | <b>1756</b>  | <b>1719</b>    | <b>50.70</b>     |

Source: Statistics from GMADA

\* At the time of Award for the project in 2006, the land pooling policy was not in existence. Following the directions of the High Court, the policy was extended to these farmers as a special case.

\*\* The total excludes lands pooled under S.No. 8

Table 3.16 Land Pooling Benefits for Farmers/Government

| S. No | Project           | Year of Award | Lands Pooled | Compensation (cr / acre) | Cost of land as per Award rate | Returnable Land (Residential) Sq.yards | Returnable Land (Commercial) | Date of handing over developed Plot to Landowner by GMADA | Date of first sale of plot by GMADA |
|-------|-------------------|---------------|--------------|--------------------------|--------------------------------|----------------------------------------|------------------------------|-----------------------------------------------------------|-------------------------------------|
|       | 1                 | 2             | 3            | 4                        | 5                              |                                        |                              |                                                           |                                     |
| 1     | IT City           | 2011          | 416          | 1.69                     | 703.04                         | 416000                                 | 41600                        | Expected in 2016                                          | 2014                                |
| 2     | Medicity-Phase I  | 2011          | 84           | 1.3                      | 109.20                         | 84000                                  | 8400                         | 2012                                                      |                                     |
| 3     | Eco City-Phase I  | 2010          | 399          | 1.3                      | 518.70                         | 399000                                 | 3990                         | Phase-I 2015                                              | 2013                                |
| 4     | Sector 88-89      | 2011          | 614          | 1.8                      | 1105.20                        | 614000                                 | 6140                         | Expected in 2016                                          | 2014                                |
| 5     | Medicity          | 2013          | 76           | 2                        | 152.00                         | 76000                                  | 760                          | 2015                                                      | 2015                                |
| 6     | Ecocity II        | 2013          | 135          | 2                        | 270.00                         | 135000                                 | 1350                         | 2018                                                      | 2015                                |
| 7     | Ecocity Extension | 2013          | 21           |                          |                                | 21000                                  | 210                          | 2017                                                      | ---                                 |

Source: Greater Mohali Development Authority

The contribution ratio (land returnable to the land owners) in case of the Punjab land policy is about 23 percent. The land that has to be reserved as per the town planning act requirements is 50 percent. This leaves about 27 percent land with GMADA. The price of developed residential and commercial plots by GMADA is Rs. 23,500/per sq.yard- and 70,000/per sq.yard respectively. Table 3.16 shows that despite the high compensation given to landowners who had opted for land acquisition instead of pooling, GMADA can easily recover the same from sale of plots given the high cost of developed plots. The sale period taken for return of developed land is about five years in most of the projects. The delay in the period for returning the land to the landowners is the most common concern with land pooling models. This transition period is critical if the landowners were dependent on the pooled land for their livelihood.

#### **6. The Rajasthan Land Pooling Schemes Act, 2016**

Rajasthan is the first state in the country that has enacted a comprehensive land pooling legislation for pooling of any area in the state. The legislation does not limit itself to any sector/project. The appropriate authority (local authority or any other agency notified by the state government) is empowered to initiate the process of land pooling in consultation with the Chief Town Planner. The Authority is also required to subsequently prepare a draft scheme. The state government can appoint an officer to make and submit the draft scheme for the area if the same is not done by the Authority.

Unlike other land pooling policies, the Rajasthan Act explicitly provides for the percentage of land that would be available with the authority for financing the infrastructure facilities. The following allocation of land is provided in the Act (with flexibility for alteration depending on the nature of land:

**Table 3.17 Allocation of Land in the Rajasthan Land Pooling Scheme**

| Heads                                                                                                  | Proportion (%) |
|--------------------------------------------------------------------------------------------------------|----------------|
| Parks, playgrounds, garden, open spaces and social infrastructure                                      | 15             |
| Roads                                                                                                  | 15             |
| Sale by Authority for residential, commercial or industrial use depending on the nature of development | 15             |
| EWS and Lower Income Group Housing                                                                     | 5              |

The Act also explicitly provides for in the LPS, the imposition of conditions and restrictions with regard to the open space to be maintained around buildings, the percentage of the building area for a plot, the discontinuance of objectionable uses of land or buildings in any area in specified periods etc. The landowners cannot be expected to have knowledge of these urban planning requirements and the Act provides transparency in providing for the same in the pooling scheme. Another notable feature in the Act is the appointment of a land pooling officer to carry out the scheme. However, the Act does not discuss the timeline for return of reconstituted plots, does not have any established grievance redressal procedure and also presumes only the impact on land owners and others dependent on land.

Box 3.6 provides the gist of the provisions of another land pooling model in the country – the Navi Mumbai Airport Influence Area (NAINA). The NAINA Scheme of the City and Industrial Development Corporation (CIDCO) is unique in terms of incentivising the land owners through additional FSI free of cost for providing the affordable housing components.

**Box. 3.6 Navi Mumbai Airport Influence Notified Area (NAINA): The 60:40 Voluntary Participation Model.**

- Minimum area for land aggregation is 7.7 hectares and 4 ha within urban villages and within 200 meters of urban villages;
- For area between 7.5 to 10 ha, 50 percent land would have to be surrendered to the authority.
- The landowners carry out the developments on the land component in their possession as per the norms stipulated by CIDCO.
- FSI of 1.7 for land aggregation of over 7.5; 2 for land aggregation between 7.5 to 10 Ha and higher FSI for higher land area; maximum of 0.5 for non participating owners
- Lands measuring 4000 sqm or more should provide 20 percent CIDCO at the Annual schedule of rates for inclusive housing.; in urban villages, the requirement is 10 percent for inclusive housing

Tables 3.17, 3.18 and 3.19 show the evaluation of the three LR/P models that are operational viz. the Punjab, Andhra Pradesh and Gujarat respectively.

Table 3.18 Evaluation of LPS: The Punjab Model

| S. No | Characteristic Features                                                                            | Remarks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------|----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | Is LR/LP carried in conjunction with plans and Usage of land in conjunction with development plans | <p>1.The LP policy dated June 2013 is an independent policy of the Department of Housing and Urban Development, Government of Punjab and to be used as an option for the farmers at the Section 11(108 Of LARR Act 2013) Award stage of the Land Acquisition Act. The policy provides only the pooling process and benefits thereof.</p> <p>2.The Punjab Regional Town Planning and Development Act, 1995 under Section 28 and 29 provides for land through land purchase. The land Pooling Policy is also provided as an option in this case.</p> <p>3.The planning for the pooled land is carried out as per the Punjab Regional Town Planning and Development Act, 1995. The Act spells out the planning stages.</p> <p>4.The Pooling policy provides provision of subsistence allowance for a period of three years.</p> |
| 2     | Are the procedural timelines in implementation of Land Pooling policy spelt out in the Law         | <p>The time line is generally of 2 months from the date of award is given for application of land pooling. The date is extended on valid reasons for 15 days.</p> <p>The policy does not spell out timelines for the implementation of the pooling policy vis. provision of infrastructure, reconstitution of plots, return of developed land etc</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 3     | Are there provisions for usage of land for low cost housing                                        | It is provided in the Town planning Act. In the 50% reserved for common facilities, 5% is for housing for EWS.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 4     | Land ownership disputes hampering the process                                                      | No, Not in absolute sense, but there are cases, wherein due to disputes in ownership possession of land has not been taken up.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 5     | Does legal framework cover<br>(1) Project Management<br>(2) Cost Recovery and Value Capture        | <p>The Land Pooling policy in Punjab is given as an option to the farmer. The cost recovery and value capture is done through sale of developed plots by GMADA</p> <p>No betterment levies are exclusively charged from the landowners</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 6     | Transparency &                                                                                     | The policy is not elaborately spelt out in terms of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

| S. No | Characteristic Features                                                                             | Remarks                                                                                                                                                                                                                                                                                                           |
|-------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       | consultation                                                                                        | transparency and consultation mechanisms. However, detailed information about land pooling is provided to land owners during hearing of objections under Section 15, and under Section 21. The information is shared informally with the people that they can opt for the land pooling scheme at the Award stage. |
| 7     | Does the policy spell out the relationship between LR and LA tools                                  | Yes. This is provided as an option                                                                                                                                                                                                                                                                                |
| 8     | Is the institutional mechanism spelt out for implementing LP                                        | It is not spelt out per se in the policy.                                                                                                                                                                                                                                                                         |
| 9     | Is there any feasibility Study conducted prior to land pooling to see categories of impacted people | No                                                                                                                                                                                                                                                                                                                |
| 10    | What are the value capture tools                                                                    | Sale of developed plots                                                                                                                                                                                                                                                                                           |
| 11    | Is a pre and post evaluation done to arrive at the returnable benefits                              | An initial calculation to arrive at the Contribution Ratio (Ratio of returnable land) was done before developing the policy in 2013.                                                                                                                                                                              |

Source: The Punjab Regional Town Planning and Development Act, 1995



Table 3.19 Evaluation of LPS: The Andhra Pradesh Model

| S. No | Characteristic Features                                                                            | Remarks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | Is LR/LP carried in conjunction with Plans and usage of land in conjunction with development plans | Yes. The land pooling policy is integrated policy with the Master Plan for the development of the city.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 2     | Are the procedural timelines in implementation of Land Pooling policy spelt out in the Law         | <p>Detailed Time frame for each step of the land procurement has been provided for under the land pooling rules in pursuance with The Capital Region Development Authority Act.</p> <ul style="list-style-type: none"> <li>• Timeline between Notification of Intent for LPS to Draft LPS: 180 days</li> <li>• Suggestions/Objections from Land Owners after publication of draft LPS: Within 30 days.</li> <li>• Finalizations of Objections: Within 30 days.</li> <li>• Final LPS till marking of Roads/reconstituted plots: Within 60 days.</li> <li>• Allotment of reconstituted plots through draws: Within 30 days.</li> <li>• Allotment of Land Pooling Ownership Certificate: Within 30 days.</li> <li>• Period for return of reconstituted plots to the land owners. Within twelve months of the date of notification of final LPS</li> </ul> |
| 3     | Are there provisions for usage of land for low cost housing                                        | S.53 of The Capital Region Development Authority Act provides for a reservation of at least 5% for the cause of housing for the EWS.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 4     | Land ownership disputes hampering the process                                                      | There are provisions (rule 8 of LPS rules which have been devised under Section 18(2)(f) of the Capital Region Development Authority Act) detailing out the procedure in the event of a dispute, which are sought to be amicably resolved and hence hinder deferring the process.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 5     | Transparency & Consultation                                                                        | The policy articulates the procedure to be followed at each stage and invites objections. While the elaborate consultative mechanisms helped pooled the vast chunk of land, the mode/mechanisms are not elaborately dwelt in the policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 6     | Does the policy spell out the relationship between LR and LA tools                                 | No. However people falling in the area covered by the Master plan and who did not give consent are to be acquired under the Land Acquisition Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| S. No | Characteristic Features                                                                             | Remarks                                                                                                                                                                                                                                                                                                                                                                        |
|-------|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7     | Is the institutional mechanism spelt out for implementing LP                                        | S.4(1) of The CRDAA mentions the competent authority and their powers to carry out the procedures of the LPS. While the authority vests with the CRDA headed by the Commissioner, there is no separate implementation department.                                                                                                                                              |
| 8     | Is there any feasibility Study conducted prior to land pooling to see categories of impacted people | Yes. The policy included benefits for landless people after the pre survey revealed significant proportion of landless people in the affected area.                                                                                                                                                                                                                            |
| 9     | What are the value capture tools                                                                    | Sale and Lease of the reconstituted plots.<br>Chapter IX, Section 53 (F) provides for a share of total area of the scheme specified by the CRDA in lieu of the cost of development towards the provision of infrastructure and other expenses for the development of the Scheme. The CRDA can use this land for the development of capital city area or for any other purpose. |

Source: The Capital Region Development Authority Act 2014.

Table 3.20 Evaluation of LP/LR: The Gujarat Model

| S. No | Characteristic Features                                                                             | Remarks                                                                                                                                                                       |
|-------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | Is LR/LP carried in conjunction with development plans                                              | Yes. Gujarat was one of the first states to have adopted the LPS and the TPS is integrated with the development plans.                                                        |
| 2     | Are the procedural timelines in implementation of Land Pooling policy spelt out in the Law          | Yes. Clear and well defined procedural timelines are a precursor for Land Pooling under The Gujarat Town Planning and Urban Development Act 1976.                             |
| 3     | Are there provisions for usage of land for low cost housing                                         | Section 40(3)(jj)(a) of The Gujarat Town Planning and Urban Development Act (GTPUDA) mandates reservation for EWS that can be altered upwards.                                |
| 4     | Land ownership disputes hampering the process                                                       | Section 46 of the GTPUDA specifically deals out the procedure to be adopted in the event of a dispute and hence doesn't encumber the process significantly.                   |
| 5     | Transparency & Consultation                                                                         | The policy articulates the procedure to be followed at each stage and invites objections hence facilitating consultation and transparency. However, consent is not mandatory. |
| 6     | Does the policy spell out the relationship between LR and LA tools                                  | No                                                                                                                                                                            |
| 7     | Is the institutional mechanism spelt out for implementing LP                                        | Yes. Each procedure of the LPS mentions the competent authority and their roles and duties towards their position.                                                            |
| 8     | Is there any feasibility Study conducted prior to land pooling to see categories of impacted people | No. The policy presumes only the impact on land owners and others dependent on land are not provided for.                                                                     |
| 9     | What are the value capture tools                                                                    | Sale and Lease of developed plots. Betterment levy (50% of the increase in the valuation of developed land)                                                                   |

Source: The Gujarat Town Planning and Urban Development Act 1976.

## 3.21 Comparison of Various Land Pooling Models in India

| Features                 | Gujarat                                                                                                                                                                                                           | Andhra Pradesh                                                                                                                                                                                                                  | Punjab (Mohali)                                                                                                                                                                                                                                            | Haryana                                                                                                                                                                                             | Delhi                                                                                                                                                                                                                      |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legal Basis              | <ul style="list-style-type: none"> <li>Gujarat Town Planning and Urban Development Act 1976</li> <li>Gujarat Town Planning and Urban Development Rules, 1979 must be followed while drafting a Scheme.</li> </ul> | <ul style="list-style-type: none"> <li>Andhra Pradesh Capital Region Development Authority Act, 2014. S.52 defines the Land Pooling Scheme.</li> <li>The AP Capital City Formulation and Implementation Rules, 2015.</li> </ul> | <ul style="list-style-type: none"> <li>Land Pooling Policy For The State Of Punjab issued on 19<sup>th</sup> Nov 2013 applicable across all Development Authorities</li> <li>The Punjab Regional And Town Planning &amp; Development Act, 1995.</li> </ul> | <ul style="list-style-type: none"> <li>Haryana Land Pooling Scheme notified on -14<sup>th</sup>Aug 2012- Industries and Commerce Dept. -10<sup>th</sup> Sept 2012 Dept. of Urban Estates</li> </ul> | <ul style="list-style-type: none"> <li>The Delhi Development Act 1957 includes development of Master Plan</li> <li>Delhi 2021 on Feb 2007.</li> <li>The Land Pooling Policy 2013-Chapter 19 of Master Plan-2021</li> </ul> |
| Initiating Entity        | Local Authority/Area Development Authority/Urban Development Authority                                                                                                                                            | Capital Region Development Authority (CRDA)                                                                                                                                                                                     | All Development Authorities viz; Dept of Industries, Housing & Urban Development Department, Local Government Department, PUDA, GMADA                                                                                                                      | Development Authorities-HSIIDC HUDA                                                                                                                                                                 | Delhi Development Authority                                                                                                                                                                                                |
| Standard of Distribution | Uniform reconstituted plots Compensation – Difference of                                                                                                                                                          | Based on Size. Uniform reconstituted plots (per acre of land pooled) is returned. Annuity for 10                                                                                                                                | Based on Size. Uniform reconstituted plots (per acre of land                                                                                                                                                                                               | Based on Size. Uniform reconstituted plots (per acre of                                                                                                                                             | Based on Size. Uniform plot size for each category of                                                                                                                                                                      |

|                                 | Value of Original Plot and Final Plot | years @ 50000/30000 for 10 Years                                                                                                                                                                                   | pooled) is returned                                                                                                                                                                                                                                                              | land pooled) is returned                                                                                                     | landowners (<20 ha and 2-20 ha |
|---------------------------------|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| Returnable Developed Land       | Varies between projects 40%-50%       | Per Acre<br>Res-1000 sq. yards<br>Comm-450sq.yards (Wet)<br>200sq. yards (Dry)<br>Wet: 30%; Dry: 25%                                                                                                               | Per Acre<br>Res-1000 sq.yards<br>Comm-100sq.yards<br>23%                                                                                                                                                                                                                         | Per Acre<br>Res-1000 sq. yards<br>Comm-100 sq. yards<br>23%                                                                  | <20 ha –60%<br>2-20 ha-48%     |
| Other benefits to landowners    | -                                     | <ul style="list-style-type: none"> <li>Yearly payment of Rs 50000/30000 for wet/dry land with annual increase of Rs. 5000/3000.</li> <li>One time additional payment for gardens like lime/sapota/guava</li> </ul> | Nil                                                                                                                                                                                                                                                                              | Nil                                                                                                                          | Nil                            |
| Reservation of Land for Housing |                                       | Yes (5%)                                                                                                                                                                                                           | Yes (5%)                                                                                                                                                                                                                                                                         | Yes (5%)                                                                                                                     | Yes (5%)                       |
| Displacement                    | -                                     | Habitations are exempted                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>Compensation for structures as per provisions of the Land Acquisition Act.</li> <li>Possession shall not be made effective for a period of one year from the date of giving possession of the developed plot to enable him/her</li> </ul> | <ul style="list-style-type: none"> <li>Compensation for structures as per provisions of the Land Acquisition Act.</li> </ul> | -                              |

|                                |                                                                                                                                                                         |                                                                                                                                                                      |                                                                          |                                                                                                                                                     |                                                                                                           |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
|                                |                                                                                                                                                                         |                                                                                                                                                                      | to construct a new house.                                                |                                                                                                                                                     |                                                                                                           |
| Benefits to Landless           | Nil                                                                                                                                                                     | Rs. 2500 per month for 10 yrs<br>365 days NREGA<br>Skill development<br>25 lakhs interest free loan                                                                  | Nil                                                                      |                                                                                                                                                     | Nil                                                                                                       |
| Consultation and Participation | Gazette Notifications and Newspaper publications at notification/declaration stages<br>GTPUDA has four rounds of formal consultation/raising objections and suggestions | Gazette Notifications and Newspaper publications at notification/declaration stages<br>Consultations mandated at each stage of draft LPS to approval of Master Plans | To be carried through as a part of the LA process                        | To be carried through as a part of the LA process                                                                                                   | Draft Rules provide for the same.                                                                         |
| Voluntary/Compulsory           | Consent not required                                                                                                                                                    | Lands of non-consenting landowners within the master plan will be acquired through Land Acquisition                                                                  | LP is an option at the Award Stage of the Compulsory Acquisition process | LP is an option at the Award Stage of the Compulsory Acquisition process<br>Land owners can opt for partial lands to be acquired and partial pooled | Sixty per cent of people (with a 5% margin either way) in a sector will have to agree to pool their land. |

|                   |                                                                                                                                                                        |                                                                                          |                                                               |                                                   |                     |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------|---------------------|
| Cost Recovery     | Betterment Levy- 50% of increase in land value ( and is only payable when a landowner applies for land use change from agricultural to urban use)<br><br>Sale of plots | The Authority can make use of its share of the land for sale, lease or any other purpose | Sale of plots                                                 | Sale of plots                                     | Sale of plots       |
| Minimum Size      | -                                                                                                                                                                      | -                                                                                        | 1000 sq. yards                                                | 605 sq.yards                                      | 2 ha                |
| Political Support | High<br>Well established                                                                                                                                               | Very High. Driven by the political establishment actively led by Chief Minister          | Is slowly becoming popular. Actively promoted by GMADA        | Low<br>Not much. The policy yet to be implemented | Very Low            |
| Current Status    | Is effectively implemented across Gujarat                                                                                                                              | Lands have been pooled. The Master Plan is being finalized                               | Land pooling is given as an option & successfully implemented | Not yet implemented                               | Not yet implemented |

### 3.5.4 Private Initiatives in Land Pooling - The Magarpatta Land Pooling Model

The government led initiatives in LP/R has been discussed above. The discussion on land pooling would however be incomplete without a discussion of the Magarpatta LP Model, an initiative primarily initiated by the land owners themselves.

Magarpatta City covered 430 acres of land that was owned by about 120 farmer families. These farmers joined together to form the Township called Magarpatta Township Development and Construction Company Limited (MTDCCL) and developed the city, thereby realising their dream of converting their land into a value-added finished product that gave them benefits and returns in perpetuity. The Magarpatta area was in the agriculture zone but listed as part of the Pune Municipal Corporation from 1960 onwards. Under the Urban Land Ceiling Act, the Government had the authority to acquire the land at rates decided by them. This was in most cases substantially lower than the market rates.

The Land Pooling Model provided the farmers with an opportunity to become entrepreneurs. The objective of the Magarpatta joint venture model was to create long term wealth for the farmers from their landholdings, create opportunity for the farmers to turn into entrepreneurs; to provide the farmers with a long term annuity and to create a strong real estate franchise to enable the development of other large scale projects. In the Model, the farmers contributed their individual landholdings under a Joint Development Agreement (JDA) to the project for a refundable security deposit and a revenue share. The revenue was shared on the entire pool and not only on a particular farmers land. In addition to the share of revenue, the farmers were also given equity position in the project's Special Purpose Vehicle. As opposed to the situation elsewhere, where the farmers were losing their land to the developers with urbanisation, in Magarpatta, every farmer became an equity holder in the company in proportion to his holding. The Magarpatta city with 5 million sqft of leased space created long term annuity for all the farmers. Most of the farmers also became contractors, building material suppliers and machinery owners.



The above model also ensured that the farmer got the appreciation in value of the property in the township. The property values in Magarpatta City increased from about Rs. 1000 per square feet to about Rs. 5000 per square feet during the period 2003 to 2011. There had also been a tremendous value appreciation in the farmers land. In the year 2000, the land rate around the area was between Rs. 30-35 lakhs per acre. In 2011, the land became worth Rs. 3.5 crore per acre (Magar, 2014). This appreciation in property prices had come back to the farmers as dividends from the company as per their JDA.

The model also offered significant advantages to the developers. Offering equity positions to landowners enables negotiations of better terms for the JDA vis-à-vis a traditional JDA. The developers were able to acquire larger tracts of land with minimal capital. Litigations from land owners which are a proverbial problem were non-existent since the model locks in the land-owners. No specific timelines or selling price conditions were there in the JDA for completion of the development as opposed to typical JDAs. It also enabled raising of debt, based on mortgage of land which are not permitted by the landowners in a typical JDA. Due to the creation of a strong franchise, the farmers invested their share of profits and revenue share amounts with Magarpatta City, making its financial position much stronger.

### 3.5.5 LP/LR and Housing

The lack of low-cost housing and serviced land is one of the critical factors affecting the formation of informal settlements in many cities of the world (UNECE, 2009). How could land pooling help in the relocation of squatters? One of the important ways is to relocate the squatters into the pooled areas through the allocation of cost recovery land from other people. Since land is the main cost component in a low cost housing, the easiest way is to focus on the supply side of the market since the main cost component in a low-cost housing is the cost of land (Turk and Altes, 2010). While country practices vary, the important approaches for providing land for low-cost housing via land pooling/readjustment are given below:

1. Selling land at a reduced price to agencies producing low-cost houses, with a cross-subsidy for these reductions with higher payments by other landowners;

2. Selling a share in the project area to the agencies producing places for low-cost housing before LR starts;
3. Using the financial surplus gathered from the increase in land prices for low-cost housing production during land;
4. Using some of the landowners' plots to construct multi-unit housing for rent or sale to low-income families;
5. Increasing the land deduction rate taken from landowners at a certain level to finance low-cost housing.

Therefore, as given above, in order to promote social and economic objectives of land policies, the capacity of land pooling mechanism to provide for affordable housing should be inbuilt. This is extremely important as land pooling on its own does not result in more land supply for the poor. The mechanism is only effective at providing infrastructure and designed to increase the land values and the poor cannot on its own afford such improved land unless it is provided by law. In India, though the five percent provision is kept for affordable housing, the experience of its implementation is yet to be assessed. In case of the TP Schemes in Gujarat, Joshi and Sanga (2009) point that the policy of reserving lands for low-income housing is deficiently planned, inadequately financed and inefficiently implemented.

However, this is certainly not an end in itself. Land pooling is mainly used in urban-fringe areas. Though the strategy, as explained above may produce cheapest building plots, they are usually at locations too distant from employment and self-employment opportunities for many of the low-income households. Thus, the dwelling units that are constructed may find few takers because of the distance from their workplace and high cost of commuting. This implies that land pooling strategy while helping in the assembly of land for affordable housing projects would have to be complemented with other measures to address the issue of location disadvantage (for instance, development of factories and employment establishments in the urban-fringe areas). However, land pooling policies can deliver on providing a source of funds for social housing/low cost housing through sale of certain proportion of land.

**Releasing Land for the Squatters**

The problem of squatters is not unique to our country. The squatter settlements formed mainly through push and pull factors of rural-urban migration impose huge challenges for the urban planners. Relocating the squatters to safe areas while releasing land for urban infrastructure development remains a top priority for the government throughout the world. However evicting the unauthorised settlers for other uses impoverishes the poor communities, already living in extreme conditions. Further, this provides no solution. It only moves the problem to a new location. Integrating land, housing, infrastructure and development policies may provide for a sustainable solution to the problem. However, this would bring about the improvement only in the long run and that too after issues of effective coordination between different agencies can be guaranteed. This may not be easy in the Indian context.

It is also to be recognised that equitable success to land for shelter is a basic human right. Thus, though occupation of government land is not legally tenable, forced eviction may also not be a justified solution. One of the innovative ways in which the large scale resettlement of squatters were successfully completed, while releasing crucial land for urban infrastructure was the Mumbai Urban Resettlement Project (MuTP). The TDR mechanism was used to procure land free of cost for the project works as well as the residential and non-residential tenements for R&R of the project affected persons. The same mechanism is followed in slum rehabilitation projects in Mumbai. This is explained in the box below.

### **Mechanism of TDRs for Urban (Squatter) Resettlement – The Good Practice Case Study of Mumbai Urban Transport Project**

The Mumbai Urban Transport Project (MUTP) was undertaken to augment and improve rail and road transport infrastructure in Greater Mumbai during 2002-2010. In 2002, the Government of Maharashtra and the World Bank began implementing the Project aimed at increasing the speed and length of suburban trains and widen east-west roads to ease congestion and improve connectivity. It also aimed to modernise traffic management and planning to enable the smoother flow of traffic and improve safety.

The MUTP, undertaken with the financial assistance of the World Bank involved one of the biggest urban resettlement programs in the World. The Project Affected Persons (PAPs) mostly consisted of non-titleholder encroachers and some legal title holders of land and structures. Almost ninety five percent of the people who were resettled did not have legal title to the land or buildings they occupied. The project was implemented by the Mumbai Metropolitan Region Development Authority (MMRDA). The project required rehabilitation of nearly 19,000 households and business enterprises.

The Govt. of Maharashtra formulated and applied a specific R&R Policy for the project clearly stating the eligibility and entitlement framework for both title and non-title holders. Under MUTP, all PAPs included in the Baseline Survey and affected by the project were considered eligible for R&R benefits irrespective of type of structures and occupation, which reduced resistance to R&R and made the process of shifting easier. According to the policy, free housing and shops of 225 sq. ft. each were to be provided to all those who had lost land and assets, including to land owners and tenants, as well as to squatters, in accordance with the Government of Maharashtra's R&R Policy. Affected shopkeepers and landowners were also allowed to buy additional floor area up to 525 sq. ft in proportion to their loss.

**Mechanism of TDRs for Resettlement:** The land required for the project works as well as the residential and non-residential tenements required for R&R of PAPs were procured free of cost through the mechanism of Transfer of Development Rights (TDRs) as provided under Development Control Regulations of Greater Mumbai, 1991. Accordingly, MMRDA offered additional TDRs or 'Floor Space Index' (FSI) to private developers willing to resettle slum dwellers at their own cost. The Developer provided land along with tenements constructed with 3 FSI as per the Slum Rehabilitation Scheme norms. In addition, developer paid Rs. 560/ sq.m. towards infrastructure charges and Rs. 20,000/ tenement for maintenance. The Developer in return received 1:1 FSI in the form of TDRs for land and 1:1.33 for construction. The TDRs could be used on another plot north of surrendered land by the Developer himself or are sold in the market for use by others. The landowners in the affected areas were also offered TDR or additional floor space in lieu of the cash compensation for the land they had lost; they could utilise these to build properties elsewhere.

**Chapter IV****LAND ACQUISITION/LAND LAND  
POOLING – THE WAY FORWARD****4.1 Summary**

Acquisition of land has been the primary method of land procurement for rural/urban infrastructure. In this mode of land assembly, the government would first acquire all the land at the existing value, demolish buildings as necessary and develop the project including new infrastructure. Serious political conflicts citing equity considerations have in the recent past centred on land acquisition cases. As land continues to be a source of livelihood for the majority of people, land conflicts have spilled over to the political domain. The social and political acceptability of this method that allows the government to forcibly acquire land is therefore diminishing. In case of the urban expansion and infrastructure development, balancing the need for land along with addressing the welfare of the displaced population has been even more challenging and would be increasingly so in the coming years.

Social resistances, the wider political ramifications and sky rocketing land prices in the urban areas are all issues of serious concern with the expropriation regime. There is an increasing tendency to look for alternative ways to assemble land for urban expansion. Land readjustment/pooling, a technique for carrying out the unified servicing and subdivision of separate landholdings for planned urban development is seen as one of the most promising alternative. In India, the land acquisition regime has also seen a great change with the coming into operation of a more community-centric law since 1<sup>st</sup> January, 2014. The present study is an earnest attempt to critically examine the two most important mechanisms of land procurement for public projects in India- the new LAA and land pooling-for their efficiency, equity and ease of addressing land supply issues. Appendix 2 provides the various land procurement mechanisms prevalent in India and the advantages and disadvantages of these mechanisms. Appendix 3 provides a template for land acquisition for housing projects. This includes the pre-notification due diligence activities and the role and responsibilities of the state housing departments.

The study evaluated the provisions of the new land acquisition act as also its implications on the cost front. Although a small project, the case study of the first land acquisition (for a 11kms long road project in Punjab) under the new act, completed in just a year's time revealed that the concern over the maximum timelines may be much more hyped than real. The political factors coupled with the deadlock over institutional changes have been the greatest factors for the non-implementation of the law. Apart from the higher compensation and R & R entitlements, the new law also provides for mandatory reserving of 20 percent of land for return to the landowners (in lieu of compensation). This could reduce the land conflicts and the associated time and cost overruns, especially in the urban context.

The study revealed that the hike in compensation for procurement of land through the RFCTLARR Act, 2013 would be broadly in the range of 50/150 percent in the rural/urban areas with an additional R & R cost of Rs.6 lakhs INR/ Rs.10-12 lakhs INR for affected/displaced families. And yet, the AP capital land pooling experience revealed that this may still not be an attractive option for the farmers if given an option of receiving a quarter to one-third of land as contribution ratio. This also reflects the low base of the compensation and the inability of the mechanism to capture the future rise in land values. In all the areas where the land values may be expected to see a manifold increase, even the higher compensation norms laid down in the new legislation may not be an attractive option and the process could be prone to conflicts if authorities justifiably try to make use of the power inherent in the legislation through forcible acquisition. On the other hand, the Punjab land pooling experience (that provides an option for the farmers to choose between land pooling benefits and compensation benefits) shows that it is the expectation from the real estate market that largely guides the choice of the landowners for land pooling/land acquisition options. For instance, about 92 percent of the lands acquired for the Eco City (435 acres) and Sector 88-89 (668 acres) projects in Mohali, Punjab were through land pooling policy (as opted by the farmers) in the year 2010 and 2011. However, only about 45-47 percent of the lands in the Medicity and Ecocity projects were acquired through land pooling policy in 2013, the remaining opting for compensation.

The study also reflected on the purchase policies that have been developed by few states to address the issue of expanded timelines, a critical perception about the adverse implication of the new law. The most notable success among these is the acquisition of land for the 3000 kms Agra Lucknow Expressway project. While these policies may yield rich dividends in the short run, the success of the policies that provide for lesser benefits than the RFCTLARR Act is unlikely in the long run. The study showed that many states continue to apply their state special acts for acquisition of land. These acts do not have elaborate procedural requirements, timelines and institutional framework as laid out in the new Act. Given the less stringent requirements, these legislations do provide for less cumbersome process of acquiring land in the transitional phase. However, the progressive features of the new law albeit in diluted forms may have to be adopted by the state legislations in the long run. In a recent writ petition <sup>1</sup> for declaring the land acquisition proceedings initiated under the Tamil Nadu Highways Act, 2001 as void, unconstitutional and illegal given non-compliance of Section 11 A (of LAA, 1894), the Madras High Court held that though in the absence of a timeline for lapse of proceedings under the State Act, the proceedings cannot be declared as unconstitutional, the Hon'ble High Court advised the Government to introduce a new provision in the Tamil Nadu Highway Act similar to Section 11A of the LAA, 1894/Section 25 of RFCTLARR Act, 2013 (prescribing a time limit for determination of the compensation by the District Collector).

The study covered national and international experiences with LP/R and the following Section looks at the road ahead for this innovative land management tool. The mechanism is considered ideal when the urban fringe areas legally suitable for urban development (zoned/designated) are divided into numerous separate landholdings; have limited residents and low potential for displacement. Since the mechanism reduces the area of every owner's property, it will be attractive only where infrastructure is difficult to obtain by other means. The demand for the serviced land also has to be strong enough to compensate the owner for the loss of area by making the remaining property more valuable, even though it is smaller. Also, given that the benefits due to the land owners only happen after the project is efficiently implemented, skilled personnel for the implementation of projects remains an important factor for the success of the projects. The

<sup>1</sup> S.N. Sumathi vs State Of Tamil Nadu, W.P.No.34150 of 2014.

strategy also places heavy demands on the government agency to select sites and negotiate with the landowners. Adequate staff need to be trained to make assessment of suitable sites, to explain the benefits and negotiate with the landowners and coordinate with other development agencies. Another prerequisite is adequate provision for short term finance for all the infrastructure works to develop the land prior to the cost recovery. LR is a time consuming process. The only model which has been evaluated with regard to the timelines, the Gujarat town-planning mechanism revealed serious delay with regard to the implementation timelines.

There are significant learnings from established land pooling mechanisms in various countries. Germany which has the oldest example for land readjustment uses two standards of distribution, based on size and value, the former used only when the land values in the redistribution area are homogeneous and the latter used more extensively (as land values are rarely homogeneous). The conflicts in the AP land pooling model has a lot to do with uniform treatment of land owners with widely different original plot values. In Germany, the extensive database includes details of the size of lot, type of use, location, date, etc and is also linked it to geographical information systems. The Boards publish periodic valuation trend reports and makes exhaustive data on prices available for the general public. This promotes accountability and transparency in the system. The importance of institutional support for facilitating the process cannot be better reflected in any country than in Japan, where one third of the urban area has been developed through LR methods. A comprehensive Land Readjustment Act, inclusion of about half of city planning members in the land readjustment departments and continuous policy changes through zoning regulations to encourage people to participate in land reconstitution projects. It is also fruitful understanding that in Japan, the role of conflicts stalling the process is recognised. Unless a substantial majority of landowners support the project (thumb rule being 80 percent), the local government does not go ahead even when it is not legally mandatory for the local government projects. A large number of projects were abandoned in Japan because of local opposition. This is a significant learning for our country which is looking at land pooling as a win-win strategy with negligible conflict potential. In Australia, after provision of infrastructure, the land is



redistributed to land owners based on the value method, with the government only retaining the cost of the infrastructure improvements and distributing all the value gained to landowners.

In countries like Japan and Korea, the legislation provides for different parties to be initiator for land readjustment procedure- individual owners, landowner associations, public corporations, local authorities, government agencies etc unlike in India where the government initiates the same in all practising models. In Japan half of the land readjustment projects have been initiated by the land owner departments. There can be more successful bottom up land pooling models in India like the Magarpatta. The Magarpatta model, explained in the Study was a case of farmers pooling their land and forming a real estate company that built a high value township on the outskirts of Pune. The profits were shared among the original landowners. This would be futuristic, being less conflict prone and the role of the government can be in developing legal framework, institutionalising systems, procedures and monitoring so as to achieve equitable outcomes.

#### **4.2 Land Assembly through RFCTLARR Act, 2013-The Way Forward**

It is too early to evaluate the implementation experience of the RFCTLARR Act, 2013. If the implementation experience reveals serious issues impacting the efficiency of the land acquisition process through eminent domain in the coming years, appropriate amendments will have to be taken to address the issues. Thus, as we redefine the use of eminent domain for housing and urban projects, this does not certainly mean that they would completely stop using it all together. A successful land assembly strategy should maintain the delicate balance of the mutually influencing objectives of efficiency, equity and social acceptance. A significant amount of effort would also be required to build and strengthen the institutions to support a process that satisfies the three objectives. It needs to be understood that while efficiency can certainly be improved by suitable amendments, principles of equity, transparency and social acceptance also requires as much or greater attention. These factors cannot be compromised if the issues are to be addressed with a long term perspective. The new legislation is a much improved version over its colonial predecessor with respect to all the three factors- equity, transparency and

social acceptance. There are number of amendments that would streamline the process and improve the operability and efficiency of the new land acquisition law. These are classified under two broad categories given below::

#### **Rationalising Timelines under RFCTLARR Act, 2013:**

- Provide mandatory SIA only for projects above a threshold size (based on land size/displacement).
- Reduce the maximum timeline given in the Act between Submission of SIA Appraisal Study and Preliminary Notification (PN)/ Lapse of SIA Study (Section 14) substantially from the existing one year.
- Establish a sound Grievance Redressal Mechanism (GRM).
- Updation of land records may be initiated soon after notification of SIA.
- The Expert Group Appraisal could be included after a certain timeline given that the legislation also provides for a public hearing prior to the initiation of the notification.
- The discretion available with the government to delay the timeline at every stage between SIA and PN, PN and Final Declaration and Declaration and Award may be removed.
- Providing the responsibility of construction of the Resettlement colony to the Requiring Body and to be initiated at the government land wherever possible so as to reduce the time for possession of land after award.
- Providing for advance possession of land under urgency clause wherever land is to be acquired for construction of R & R colony and which entails displacement. This will enable the expeditious execution of work with regard to construction of R & R colony.
- The requiring bodies and their dedicated personnel could be involved to aid the state functionaries to speed up the R & R process. This is a major gap that would otherwise delay the process.
- Placing restrictions on outsider elements/vested interests playing havoc with public hearing and resulting in delaying the process so that that there is adherence to timelines.

**Rationalising Cost under RFCTLARR Act, 2013**

- For considering the existence of affected family and eligibility for R&R benefits, the cut-off date should be date of notification of SIA viz. Section 4 of the Act. This would mean mandating a census survey of beneficiaries during the SIA itself. This would curb the potential usurping of the benefits provided in the act by unintended claimants.
- R and R may be provided as an entitlement to only those who are physically displaced and those whose economic livelihood is affected.
- The multiplier need not be applied in private/PPP projects where compensation is a negotiated amount.
- Utilisation of video graphic images taken during the pre-notification SIA procedure may be construed as evidence against non-genuine claimants to prevent them from reaping R & R benefits under Section 84 (2)
- Triggering Point for the construction of a resettlement colony may be established in terms of number of families displaced.

**4.2 Evaluation of Indian Land Pooling Models**

In the Indian context, the comparative evaluation of the century old expropriation technique with a recently emerging strategy that is yet to be effectively implemented may be premature. However, considering the nature of most of the LP policies in India, an attempt is made to critically examine those factors that would be critical for emergence of land pooling as a futuristic strategy. While a number of countries make use of land pooling/readjustment, its application is context specific. Urban systems are complex and dynamic, and thus policies workable in one place have little relevance in others due to cultural, economic and legal differences (Roberts, 2000). The technique can however be efficiently implemented in different country contexts. The project is workable if each project generates land value increases sufficient enough to cover the project costs and leaves the landowners with a significant gain in their total land value respite the reduced size of their landholdings.

Land pooling has emerged as a promising tool for land assembly. That it is gaining acceptance in varied project contexts is a good indicator of its attractiveness and

potential transferability. However, land pooling can certainly not be expected to solve all the problems of land supply especially in the urban context. There are several factors that would have to be accounted for in the expansion of LR for urban infrastructure development and housing in India. It is also important to see if the institutions and instruments of alternate land assembly, land appropriation and LP/R, in particular has the legal sanctity; are based on the principles of efficiency, equity, and transparency and has the ability to gain wide social acceptance. A successful expropriation process has to provide for the following elements:

- Legal Sanctity
- Equity and Social Acceptance
- Efficiency
- Transparency

#### **4.3.1 Legal Sanctity: Need for Concrete Legislation and Enabling Institutions**

A sound legal framework and an institutional backing provide the source of validation as well as the confines within which the land pooling process can be worked around. A legislative backing is the check point which not only qualifies the authenticity of the process but also acts as a reference which can be relied on. The government finds solace in legal backing since it lays down the mechanism for the process which the government only needs to ensure a compliance of. There is a necessity for legal basis in land pooling too as it interferes with the property structure and rights of communities. It is not only the existence of the legislation, but its coverage which is most important to advocate it as a futuristic strategy. The supreme power of the sovereign to appropriate property is made use in the land acquisition. The colonial law existed for 120 years and has been replaced by the RFCLTARR Act, 2013. The rules under the Act have been framed by most states. The new legislation provides an elaborate process framework, procedure to arrive at compensation and R and R benefits and adjudication mechanisms. In the case of land pooling, a sound legal framework along with enabling institutions for implementation would rest on the following pillars;

First, a legal backing with comprehensive coverage of the principles and formal procedures to be followed in such projects including planning, project management, cost recovery, value capture and allocation; The law should also be integrated with the existing laws and the relationship of LR with LA may be spelt out in the changed legal environment.

Second, for inclusiveness and effectiveness of the enabling legislation, there may be a minimum percentage of voluntary land owner participation for the project<sup>2</sup>.

Third, there may be enabling institutional arrangements for implementation of the pooling strategy, development plans, independent valuation and public dissemination of the processes and land valuations.

Fourth, some proponents have also advocated a 'carrot and stick approach' in terms of incentives to participate and disincentives to resist these projects to provide the landowners with a clear delimitation of their regulated rights and responsibilities, while offering the negotiators with a variety of tools for use in the process (Hong, 2007).

Fifth, a strong judicial system to address public claims.

In the Indian case, the fulfilment of these conditions is examined below:

**Integrated Law:** In the Indian case, the land reconstitution/pooling is strongly integrated in the TPS in Gujarat and the AP Capital Region Development Act, 2014 in Andhra Pradesh. The other policies have their legal backing in the urban development acts (Delhi and Haryana). In Punjab, the land pooling policy was notified by Punjab Urban Development Authority in 2013. This is almost an independent policy to be used as an option against land acquisition in Punjab. While the Gujarat and the Andhra Pradesh laws integrates the broad processes of planning, project management, cost recovery, value capture and allocation of land, the remaining seem to be standalone policies with focus merely on land procurement through pooling. For a detailed understanding of the planning and

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<sup>2</sup> Countries with land readjustment experience recognize that a critical mass of voluntary landowner participation ensures a smooth process and projects in many places goes above the legal requirement to seek cent percent landowner agreement.

implementation strategies, we have to fall back on the parent urban development/town planning Acts. The current legal framework does not provide for stringent conditions for adherence to timelines, penalty clauses for discrepancies between plans for an area and its eventual development, institutional mechanisms for the implementation of the scheme and adequate financial provisioning for infrastructure creation.

**Operational aspects:** In India, the legal challenge may be less to the basic constitutionality of the land pooling but the operational aspects of implementation. While ensuring easy and fast-tracked process of urban-serviced land is important, the process should be integrated between the projects and the master plan. It is extremely important that these critical aspects are integrated in the land pooling policy itself. It is also important that the relation between land pooling and land acquisition is only spelt out in the Haryana policy (that is yet to be implemented) and practiced in Punjab (though there is no explicit mention in the policy).

**Minimum Voluntary Participation:** Land pooling or readjustment is definitely not a panacea for conflicts over property values. While hold outs that demand a price that far exceeds the land value will exist in most cases and would have to be addressed strongly within the legal framework, it is also important to have acceptance of a critical mass to reduce conflict ridden delays and smoothen the implementation process. For inclusiveness and effectiveness of the enabling legislation, there may be a minimum percentage of voluntary land owner participation for the project to take off. None of the models except the Punjab policy offers any discretion to the landowner. At the basic minimum, a futuristic strategy would call for insistence of a minimum percentage of voluntary participation. Even incase of Punjab, the option for all the landowners is to choose between LR and LA and no option to stay away. This is particularly important because the consent clause has also been inbuilt in the present acquisition law.

**Judicial Interpretation:** On a general note, land pooling may be less conflict ridden than LA owing to the seemingly greater acceptance of the strategy as compared to land acquisition. The Supreme Court and High Courts have upheld the validity of the Gujarat

TPS. The following is the gist of important judicial interpretation of the TPS/Land Pooling Policy.

- Constitutional validity of the Gujarat Town Planning Act and Punjab Land Pooling Policy.
- TPS not violative of Article 14 of the Constitution.
- TPS ipso facto is the form of delegated legislation and such a scheme is prepared by the competent authority constituted under the delegated legislation.
- TPS at any time can be varied by a subsequent scheme to be made by the competent authority.
- Development schemes resulting in reconstitution of land should incorporate the opinion and suggestions of the democratically elected bodies such as the District Planning Committee and Officer of the Town and Country Planning Department.
- The applicability of any pooling policy is prospective (unless provided for in the policy) and cannot be made retrospective by a judicial order to cover acquisitions that have been finalised.
- The scheme should recognise the rights of the tenants and compensate appropriately.

The RCFCTLARR Act, 2013 has a stronger legal framework that holistically spells out the processes of LA and institutional arrangements for implementation and adjudication. In the future, the Courts may suggest a more comprehensive process framework for the land pooling policies as well. In India, it may not be the basic constitutionality of the LR law (that are well established) that may be challenged. It is more likely to be the valuation mechanism and process framework that may be contested.

#### 4.3.2 Equity and Social Acceptance

Equity in land pooling/reconstitution refers to two matters: substantive equity and procedural equity. Equity also means how well the strategy is meeting the needs of particular groups that have special needs. Doebele (1982) describes equity in the form of:

- Input Equity: Involvement of landowners in policy formulation and planning
- Process Equity: inclusive participation of landowners/other stakeholders

- Output Equity: Benefits in terms of returnable land and development of urban facilities

Ensuring equity goes a long way in developing social acceptance for the project. The input, output and process equity aspects in the Indian LP/R models is examined below:

**The Process and Potential Conflicts:** In the absence of appropriate incentives for participation, land adjustment or land pooling will take the form of “instigated property exchanges” (Hong, 2007). The existing practice involves persuading land-owners to negotiate with the developers under the shadow of the land appropriation law. In the three states where the LP/R policy is being implemented on a large scale, Gujarat, Punjab and Andhra Pradesh, the strategy is far from voluntary. Threat of a land appropriation law in case of AP or mandatory participation in case of Gujarat can be legally sanctioned but cannot be solution to address the conflicts and gain social acceptance. In Gujarat, there is no choice for the land owners; in Punjab, there is an option between LA and LP at the Award stage and in Andhra Pradesh, the lands falling within the Master Plan area would be appropriated under the LA if the landowners do not voluntarily give in to for the landowners.

In terms of a genuine option between LA and LR, the Punjab policy is the only one that gives a choice between the two forms of land assembly. The changing options by landowners and favouring LA in the recent times also dispels the myth of superiority of land pooling at all times. The minimum that LP/R could guarantee is a choice between compensation/R & R as per the new land acquisition appropriation and pooling/reconstitution and a set of options for those who may not be interested in participating in the risky development process. This offers a greater choice to the landowners and hence reduces the potential for conflicts. On the flipside, it does away with the greatest advantage of the model in terms of the need to incur huge upfront costs in land procurement. However, effective planning and implementation will still enable the government to recover the costs through appropriate value capture mechanism.

**Addressing Issues of Small & Marginal Farmers/Squatters:** The balance of benefits and costs of LP/R is likely to be structured differently by differing land development control systems,



land markets and economic contexts. Though the strategy is practised in different countries with similar issues of urbanisation, infrastructural gaps and financial constraints of government, the underlying socio-economic background of the population from whom land is to be procured is different. While large owners undoubtedly benefit from the process, the case may not be so for the small and marginal farmers. First, a small and marginal farmer who owns a small farm and is primarily concerned with the use value of the land and not the investment/exchange value. Secondly, the farm size after pooling may reduce to a size that may not only compromise with its use value but also the exchange value. For a typical small land owner engaged in agricultural pursuits, the net economic benefit due to land pooling may only be notional that can't be realised in case of sale of part of the land. Also, for the owners of small plots, the consequence of higher value is a serviced plot but also higher taxes. It is important to note that while one third of Japanese urban land have been developed using the technique, the dissatisfaction of the small landowners resulted in at least half of the municipalities not applying the technique (Atterhog, 1995).

The above considerations should weigh in the adopted in the land pooling policy to arrive at the deductions. The land pooling models may have to duly take into account the equity criterion and the impact on small holdings and the applicable deductions (difference between the original plot and final plot size)<sup>3</sup>. The allowance for the intervening period also deserves considerable importance, when the primary source of livelihood of the affected families is dependent on the area. This is because the landowners are prevented from the land use rights during this period.

The issue of tenant farmers and squatters is another critical issue that often is not considered within the gamut of land pooling policy. The Court has also upheld the rights of the tenants and directed the planning authorities to compensate the loss appropriately. It is important to note that about 15-35 percent of agricultural land is farmed by the tenants in the country (Committee on Land Reforms, 2009) who do not have legal rights over the land which they

<sup>3</sup> The TPS for Bhuj Reconstruction, the deduction policy brought in the equity criterion (>30 Sqm – No deduction; 30-100 sqm -10% deduction; 100-200-20% deduction; 200-500 sqm-30% deduction; <500 Sqm – 35% deduction). But for this to be practically implemented in other projects, it is also important to have a census cut-off date or a slightly retrospective cut-off date. In case the cut-off dates are not rigidly adhered to there would be much misuse of this provision by deliberate fragmentation of landholdings to reap greater benefits.

till and derive their livelihood. Given the country context, it is extremely important to consider this important segment while designing a futuristic pooling policy. It becomes extremely vital to conduct quick survey/socio-economic study/land use pattern of the area to understand the identification of the affected/need, their income generating sources, to incorporate appropriate provisions in the policy. It is worth noting that the AP capital city land pooling scheme included monthly pension of Rs. 2500 per month for a period of 10 years after the survey revealed that 55 percent of the workforce in the area comprised of landless agricultural labourers.

**Land Occupied by Squatters<sup>4</sup>** Such land belongs either to the government or private owners. Squatter settlements are not administratively and legally recognised. However, these settlements are provided amenities by the municipalities. The issue of squatters also need to be addressed within the framework of land pooling policy. The planning norms do provide for five percent allotment (of total area) for affordable housing within the pooled/readjusted area. The concern still remains on the implementation front. The policy may also provide for alternate ways of implementing the provision. It should also be ensured that the city plan is attached with effective land management policies to manage future growth and to prevent the development of squatters.

**Valuation and Distribution of Value:** In all the land pooling models, the contribution ratio is based on the initial calculation of the cost of land development, infrastructure and the expected (estimated) post development value of the land. In the more recent LP policies, the ratio is arrived at by tweaking the existing ratios and providing slightly better benefits. However, the nature of the project, the quantum of land area, the nature of land and land use prior to LP, the socio-political context varies across regions. Land valuation based on size is uniformly applied in most cases. However, the allocation criteria based on land size will provide optimal outcomes only if the lands that are pooled/reconstituted are homogeneous. However, both before and after the process, the value of land is not equal

<sup>4</sup> The United Nations Human Settlements Programme, UN-HABITAT had held the first consultative workshop on a new approach called PILaR-Participatory and Inclusive Land Readjustment at Nairobi from 28<sup>th</sup> to 30<sup>th</sup> August, 2013. The aim of the Workshop was to achieve a more inclusive and participatory methodology to realise the upgrading of squatters and pro-poor.

due to varying conditions such as access to street, topography, location in the block etc. For equity and fairness, it is important that the proportionate value/share of each plot before/after the process of LR should remain as similar as possible. The justification of a near uniform accretion in post development land values will have little merits if there are wide differences in the land values prior to the taking over of the land. For a fair implementation among the land owners, the selection of land distribution method is very important.

The Study finds that it is only in the TPS in Gujarat that there is an assessment of the pre and post reconstitution plot values and the amount payable/due from a landowner is a function of these values. Even in Gujarat, these values remain far from the realistic. The original plot values reflect the circle rates and the final plot values too are determined at the level that the government would want the landowners to share in the cost incurred for the infrastructure. Since the betterment charges are a function of the final plot values, the final plot values are calculated in order to recover the pre-determined betterment charge.

Uniform contribution ratio based on size ignores various other considerations. There is a location advantaged gained by some at the expense of others. Lands near the main road of the land readjusted areas benefit more so do owners on flat lands. It is worthwhile mentioning the three proportionality rules prescribed by the Israeli LR legislation, as given below<sup>5</sup>

- The proximity principle: Each reallocated plot should be as close as possible to the original plot.
- The proportionality principle: The proportionate value of each plot relative to the total value of all the plots in their original state should be as close as possible to its share of the total value of all the plots after reallocation. In other words, the proportional share before and after the reparation should be as similar as possible.

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<sup>5</sup> The German Law by emphasising land valuation by value puts into action this principle. Though using the method of redistribution by size has the consequence that every landowner loses the same percentage of his land, this is seldom used in the country. The major cause for frequently resorting to the "Valuation by Relative Value" principle is mainly owing to the different output values during just one land readjustment process which is the consequence of the different types and intensities of land use regulated in our legally binding land-use plans

- The balancing fees: If it turns out that keeping the proportionate share of all the plots is not feasible, landowners who are in the "plus" must pay the excess value to the planning commission, and landowners in the "minus" have the right to receive the difference from the local commission. In professional jargon, these payments are called balancing fees.

In the Indian case (with the exception of Gujarat), while the first principle is generally emphasised upon, little attention is paid to the second proportionality principle. Even in Gujarat, the valuation is far from realistic. The AP capital region had to face the dissent from the land owners in five villages for the contribution ratio (1000 sq. yards of commercial space and 350 sq.yards of commercial space). As soon as the capital city area was declared, prices in the affected villages saw a manifold increase. For villages like Rayapudi (where the rates per acre hovered around 12-15 lakhs and market value of land increased by more than five times), the contribution ratio appeared very attractive. However, the uniform contribution ratio was not acceptable to the resenting villages of Penumakka, Undavali etc where the market value of land was several times that of Rayapudi before the declaration of capital area. Subsequently, bowing to popular demands, the CRDA increased the size of returnable commercial plot size by 100 sq. yards (to 450 sq.yards). It is important that the valuation mechanisms and contribution ratios are not finalised without sound technical basis and evaluated with built in elements of the proportionality principle, equity and fairness. As mentioned earlier, the legal challenges may be more to these procedural aspects than to the basic constitutionality of the mechanism.

**Explicit Sharing of Valuation Mechanisms:** The questions that would arise in the future would be whether or not there should be a full and explicit sharing of the land valuations and distribution mechanisms. Land contributions may create as much discontentment in the absence of transparent mechanisms reflecting the value capture. Also as per the plan requirements, 50 percent of the land is reserved for various purposes (roads, parks, playgrounds, open spaces, social amenities and affordable housing for the poor). The

deductions may not be contested by the landowners now as the strategy is generally considered superior than the acquisition form of land assembly.

**GIS Based Valuation:** Information about pre and post land valuation still remains a grey area in the implementation of land pooling mechanisms. Yomralioglu and Parker (1993) had built a strong case for maximising the benefits from land pooling by making use of a GIS based approach. The study pointed out that substantial criteria that may affect the land parcel's value are ignored during the process. Owing to this, the land distribution and valuation process cannot be expected to be equitable. It was suggested that each geographic unit can be characterised by a set of economic, environmental and spatial attributes and which would be provided suitable weights<sup>6</sup> and numerical value (as opposed to market value) of each land parcel can be determined before and after LP/R. While the factors may differ from country to country, the technique may be important to arrive at a transparent pre and post valuation mechanism.

**The Free Rider Issue:** While there is merit in the argument that the land values of the owners would increase because of urbanisation, even after land contributions, the free rider issue will dominate in cases where each landowner would determine whether the increase in the land value is tied to the land readjustment project or can be readily gained without it. This scenario becomes much more complex if the real estate market is in decline. It is important that the negotiations involved with the landowners must not only stress the rise in land prices and the benefits thereof but also the benefits of urban development, the overall improvement in the infrastructure in the area and the costs imposed on the free-riders.

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<sup>6</sup> The land valuation factors (to arrive at the numerical value) include supply of basic services; permitted number of floors; landscape view; access to street; parcel location within the block; permitted construction area; environment; street frontage; land parcel shape; distance to city centre; currently usable area; distance from noise; distance to educational centres; access to highway; soil condition; distance to shopping centres; distance to health services; distance to recreational areas; topography; distance to religious places; available utilities; distance to play garden, distance to car parking area; access to waterway; access to railway; distance to fire station and distance to police station.

**4.3.3 Efficiency:** Efficiency implies cost effectiveness, manageability and implementability. Efficiency means the use of resources such that output is optimised for any given set of resource inputs or input is minimised for any given quantity and quality of output. Though the RFCTLARR Act, 2013 has increased the compensation and rehabilitation benefits several folds, the issues of displacement and relocation remains. There is still no measure for subjective value of land. The high enforcement costs due to conflicts may however come down. On the other hand, the land pooling policies addresses many of these issues. It minimises the transactional costs of assembling land, provides incentive for the landowners to speed up the process as it is in their interest to get the reconstituted land.

Even in Japan, where the practice of land readjustment is well established, these projects take a lot of time and energy of the local government who plan and implement it. It is in the fitness of things to understand that these projects have succeeded only when the government invests huge resources for both convincing the landowners but also successfully implementing the plan. The case of Gujarat and Andhra Pradesh in the national side and Germany and Japan in the international side are testimony to this. In short, introduction of the strategy should pay sufficient attention to the planning requirements and engaging expert personnel in the field of project management, planning, and financial management besides adequate technical personnel in terms of quality, quantity and resources. It is not only important to plan for adequate personnel but also in specifying the roles and responsibilities

Failure of implementation of some LP policies are a case in point. Failed LP projects can be as instructive as the successful ones. Despite having one of the more progressive policies, lack of adequate support (administrative and political) to sail it through has contributed in the non-implementation of the 2012 Haryana LP policy. The experience of the 2013 Delhi policy is also a case in point.

#### **4.3.4 Transparency, Accountability and Participation in LR/LP**

Transparency encompasses, improving access to information to general public for verification and promoting clarity about government rules, regulations, and decisions.

Accountability means the obligation of power-holders to account for or take responsibility for their actions<sup>7</sup>. In an era where transparency is stressed and is the also the hallmark of the recently enacted RFCTLARR Act, 2013 Act, the land pooling mechanisms cannot be functioning in a vaccum. In the case of LP/R, transparency requires:

- Complete information and knowledge about project including the process, role of stakeholders at various stages of the project, sharing of costs and benefits, management of funds, current and future status/values of their property, period for return of reconstituted plots, risks involved, advisory guidance etc
- The disclosure of information should be accessible, in local language and also updated.
- A Grievance Redressal Mechanism that is accessible, multi-layered and which ensures timely and responsive feedback should be established at the authority supervising the land assembly.
- A good practice would be participation of people or their representatives in the project management team.

After the initial euphoria, the land pooling strategy would also be prone to conflicts if not adeptly handled. The neglect of transparency in project phases and insufficient participation may cause the loss of confidence in the process and create problems that may cause public reaction, resistances, hinder the implementation or even in the annulment of the projects. Information flow and consultations during the preparation of the scheme, beginning with the selection of the project site would be helpful as it would ensure that the scheme and its process takes into account the landowner's concerns and objections. The participation of the landowners in each process should be encouraged. Moreover, if possible, a consensus among the affected actors in decision-making should be ensured.

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<sup>7</sup> Power-holders" refer to those who hold political, financial or other forms of power. They include officials in government, private corporations, international financial institutions, civil society organizations, etc.

#### 4.4 Land Pooling-The Way Forward

In India, the most important reason for the expansion of the land pooling policies is the advantages offered by the strategy vis-a-vis the upfront costs imposed by the land acquisition law. Land pooling schemes have been generally in a constant reform process throughout the world. In India, as state after state is coming out with their own versions of the land pooling policies, the following may be critical for the success and sustainability of the mechanism from a futuristic perspective.

##### I Sound Legal Framework with Enabling Institutions

- **Overarching Legal Framework with Flexibility on Technical/Financial Aspects:** Land pooling policies can be implemented by various agencies such as individuals, associations, cooperatives, governments, public sector undertakings or private entities. It may be ideal for the state governments to come out a generic law for land pooling with flexibility for use of different financial and technical models in different implementation areas.
- **Comprehensive Coverage to Avoid Circumvention:** There should be legal backing for the principles and formal procedures to be followed in land pooling including planning, project management, cost recovery, value capture and allocation. The law should also be integrated with the existing laws and the relationship of land pooling and land acquisition may also be spelt out, especially in the changed legal environment.
- **Deadlines for Execution:** For the timely execution of the Scheme, firm deadlines should be set up and provided for in the legal framework. LR must be carried out in conjunction with plans.
- **Provisions for Affordable Housing:** While 5 percent provision is kept for affordable housing in most of the existing land pooling models, the implementation is yet to be assessed. The existing experience of the TPSs for housing reveals serious shortcomings. be desired. The legal framework should therefore clearly out of the process framework and timelines for delivering on the provision.



- **Incentive / Disincentive Framework:** Penalty provisions for non-adherence of plan provisions/timelines by pooling authority (of sharing developed land) may bring in more discipline in the process. Transitional allowance/interest payment for the extended period may also contribute to better acceptability of the scheme.
- **Institutional Arrangements:** Enabling institutional arrangements for implementation of the pooling strategy and development plans for independent valuation and public dissemination of the processes and land valuations. The appointment of a full-time Project Officer for formulating the scheme, processing it and implementing it as per the laid out statutory mechanism.
- **Voluntary Participation:** Minimum percentage of voluntary land owner participation for the project may be envisaged in the legal framework to insure inclusiveness and effectiveness.

## II Planning for Land Pooling Schemes

- **Due Diligence for Land Selection Process:** The following Do's and Don'ts may merit attention for planning:

**Do's:** The selected site should be physically and economically suitable for urban development through land pooling.

- Physical feasibility: Small/Medium sized projects can be better expected to contribute to implementation success.
- Economic feasibility: The market demand for building plot has to be high enough to support the profitable subdivision of the land into serviced building plots. The real estate market should expect an upswing.

**Don'ts:** To minimise impacts, the following land parcels may be avoided

- Multi-crop irrigated land
- Habitations (traditional villages, residential and commercial structures)
- Area having majority of small sized plots

- **Pre Pooling Study of the Proposed Area:** Conduct quick survey/socio-economic study/land use pattern of the area to understand the identification of the affected families and the special needs, of the study area. This would help in preparation of safeguards to address such needs of the region.
- **Participation:** Involvement of Landowners in policy formulation, planning, implementation and monitoring of the development scheme. Land owners may not only be involved in matters relating to plot reconstitution/sharing but also regarding the road network, open spaces and other amenities.
- **Technology:** Explore potential of use of technology like GIS that could improve valuation of land by defining the characteristics of the varied geographic unit in terms of economic, environmental and spatial attributes.
- **Institutional Mechanisms for Implementation of Development Plans:** Estimate the personnel, financial and institutional arrangements for implementation of the pooling strategy. In some cases, to entail risk avoidance to the owners, a development organisation is involved early in the process as an active participant (by sharing risk) This however would also mean profit sharing with that organisation.
- **Staff with Requisite Skills:** The implementation of land pooling schemes involves a range of special skills, both technical and managerial. The involved personnel should also have negotiation skills. Land surveyors, appraisers/valuers, planners and project managers should be part of the team

### III Improve both Substantive and Procedural Equity for Better Social Acceptance

- **Small and Marginal Farmers:** This may include progressive deduction to arrive at contribution area, allowance/annuity for the intervening period, etc. However, while going for a progressive deduction, application of a cut-off date and enabling framework may be required to curb fragmentation of landholdings/malpractices.
- **Contribution Ratios and Land Valuation:** Land pooling models have flexible procedure in which different financial models can be implemented by various implementers. Yet, assessment of the present models reflects the need for appropriate analysis for arriving at the contribution ratio considering the nature of the land pooling project, quantum of land area, nature of land use prior to LP and most importantly value of land before

pooling. There could be two options; a higher contribution ratio for landowners with higher original plot values. Second, in case of uniform contribution ratio, the balancing fees may be considered for the losers (higher original plot values) for the difference. This can reduce the resistance to pooling. Though the assessment of original and final plot values are far from realistic as explained earlier, the well laid down framework that ensures that differential benefits entail differential betterment charges contributes to the perception of fairness of the process.

- **Vulnerable Sections:** Incorporate special provisions for the vulnerable sections of the society.

#### IV Transparency, Accountability and Participation in LR/LP

- **Information Sharing:** Complete information sharing about project including the process, role of stakeholders at various stages of the project, sharing of costs and benefits, management of funds, current and future status/values of their property, period for return of reconstituted plots, risks involved, advisory guidance etc. For easy comprehension of benefits from land pooling, the disclosure of information may include the net benefits for a landowner; the present discounted value of net agricultural income over 30 years, the net rental income over 30 years from land pooling, net benefits from land pooling etc.
- **Grievance Redressal Mechanism (GRM):** A Grievance Redressal Mechanism should be established at the Office of the Authority supervising the land pooling process. The GRM should be accessible, multi-layered and which ensures timely and responsive feedback.

#### V Monitoring and Evaluation

- Σ There should be institutional framework to monitor and evaluate the implementation of the pooling/development schemes.
- Σ The monitoring process should include the policy, procedure, finance, project management and technical aspects.
- Σ The evaluation framework should assess the socio-economic impact of land pooling process on the land-owners.

Appendix 4 provides a template for the formulation of a model land pooling policy for the state housing departments. Land pooling is an important land assembly mechanism that creatively mobilises land as a physical and financial resource and improves upon addressing the issues with traditional land assembly mechanism. Attention to the above suggestions would help in improving the viability of the mechanism and address the issues inherent in this promising tool. Balancing social and economic issues is central to effective land assembly. Another extremely critical ingredient to success of the land assembly process is the political capital. Regardless of the mechanism adopted for land assembly, the national and international experience strongly points out the critical role of a politically strong government agency in successfully implementing large projects. However, political will imposed on socially conflict-ridden situations too cannot be expected to yield results. The above are few suggestions towards strengthening this promising land assembly strategy as we expand its use for assembly of land for smart cities and other urban projects.

## Appendix 1.1 Land Acquired during the Last 10 years

| S. No                     | Name of the States/UTs | Period                      | Land Acquired (ha) |
|---------------------------|------------------------|-----------------------------|--------------------|
| 1                         | Andhra Pradesh         | April 2004-December 2014    | 151879             |
| 2                         | Assam                  | April 2004-December 2014    | 5782.50            |
| 3                         | Bihar                  | November 2005-March 2015    | 30482.65           |
| 4                         | Chhattisgarh           | October 2007-February 2015  | 10272.21†          |
| 5                         | Gujarat                | January 2004-December 2014  | 42032.00           |
| 6                         | Haryana                | January 2004-December 2014  | 13974.40           |
| 7                         | Jharkhand              | January 2004-December 2014  | 13333.55           |
| 8                         | Maharashtra            | January 2004-December 2014  | 99985.362          |
| 9                         | Mizoram                | January 2004-December 2014  | 65117.63           |
| 10                        | Punjab                 | October 2007-December 2013  | 370.09             |
| 11                        | Rajasthan              | January 2004-December 2014  | 7809.82            |
| 12                        | Tamil Nadu             | January 2004-December 2014  | 4124.32            |
| 13                        | Telangana              | January 2004-December 2014  | 52389.5            |
| 14                        | Lakshwadeep            | January 2007- December 2013 | 34.41              |
| 15                        | Chandigarh             | January 2007- December 2013 | 242.42             |
| <b>CENTRAL MINISTRIES</b> |                        |                             |                    |
| 1                         | Defence                | As on April 2012/2004-2014  | 601509.07/3523.61  |
| 2                         | Power                  | January 2004-December 2014  | 20018.70           |
| 3                         | Space                  | January 2004-December 2014  | 315.47             |

Source: Department of Land Resources, Ministry of Rural Development, Government of India

## Appendix 1.2 Selected Dams and Impact on Land Acquisition &amp; Displacement

| Name of Dam / Project | State       | River      | Area Submerged (in acre) | Population Displaced |
|-----------------------|-------------|------------|--------------------------|----------------------|
| Almatti               | Karnataka   | Krishna    | 1,95,179                 | 2,00,000             |
| Narmada Sagar         | MP          | Narmada    | 2,25,630                 | 2,00,000             |
| Sardar Sarovar        | Gujarat     | Narmada    | 69,903                   | 2,00,000             |
| Narayanpur            | Karnataka   | Krishna    | 32,604                   | 1,60,000             |
| Polavaram             | MP & AP     | Godavari   | 1,09,947                 | 150,000              |
| Pong                  | Himachal    | Beas       | 71,630                   | 1,50,000             |
| Sriramsagar           | AP          | Godavari   | 1,38,246                 | 1,50,000             |
| Bansagar              | MP          | Sone       | 1,27,571                 | 1,27,000             |
| Kangsabati Kumari     | West Bengal | Kangsabati | 33,345                   | 1,25,000             |
| Bargi                 | MP          | Narmada    | 1,99,823                 | 1,13,600             |
| Hirkud                | Odisha      | Mahanadi   | 1,83,521                 | 1,11,000             |
| Tehri                 | UP          | Tehri      | 12,844                   | 1,05,000             |
| Gandhisagar           | MP          | Chambal    | 1,67,960                 | 1,00,000             |

| Name of Dam / Project | State       | River       | Area Submerged (in acre) | Population Displaced |
|-----------------------|-------------|-------------|--------------------------|----------------------|
| Somasila              | AP          | Pennar      | 55,577                   | 1,00,000             |
| Srisaillam            | AP          | Krishna     | 1,52,399                 | 1,00,000             |
| Ukai                  | Gujarat     | Tapi        | 1,48,200                 | 88,000               |
| Rengali               | Odisha      | Brahmani    | 1,02,258                 | 80,000               |
| Upper Mullamari       | Karnataka   | Mullamari   | 1,48,521                 | 80,000               |
| Lower Mandair         | AP          | Mandair     | 20,007                   | 78,000               |
| Nizamsagar            | AP          | Manjira     | 74,495                   | 67,445               |
| KoelKaro              | Bihar       | Koel        | 43,875                   | 66,000               |
| Majalgaon             | Maharashtra | Sindhphana  | 91,267                   | 65,296               |
| Gosikhurd             | Maharashtra | Wainganga   | NA                       | 65,198               |
| Hippargi              | Karnataka   | Krishna     | 7,410                    | 62480                |
| Balimela              | Odisha      | Sileru      | 43,274                   | 60,000               |
| Rihand                | UP          | Rihand      | 1,15,843                 | 60,000               |
| Bhima                 | Maharashtra | Bhima       | 83,239                   | 57,000               |
| Tungabhadra           | Karnataka   | Tungabhadra | 93,366                   | 54,452               |

### Appendix 1.3 Land Acquired for Mining

| State          | Years       | Numbers Displaced | Land under Mining (acre) |
|----------------|-------------|-------------------|--------------------------|
| Andhra Pradesh | 1980 – 95   | 1,00,541          | 92,300                   |
| Assam          | 1980 – 2000 | 41,200            | 28,140                   |
| Goa            | 1980s       | 4,740             | 1,33,900                 |
| Jharkhand      | 1980 – 95   | 4,02,882          | 5,15,100                 |
| Odisha         | 1960 – 95   | 3,00,000          | 4,10,100                 |
| West Bengal    | 1960 – 2000 | 4,18,061          | 28500                    |

Source:

#### **Note:**

- Land acquired by Coal India Ltd. and its subsidiaries till June 2007: 381,000 acres, including 181,000 acres of tenancy land.
- Goa: In the late 1990s 11% of the land area of the state was under mining leases; this proportion has been as high as 14.5%. In 1989, 104,000 acres were under 526 mining leases.

## Appendix 2

## Assessment of Land Procurement Mechanisms for Housing Sector

## Land Procurement Mechanisms

Assess different land procurement mechanisms vis-à-vis their advantages and disadvantages and state-wide practices.

### 1. Land Acquisition (Processes as per state-wise rules framed under RFCTLARR Act, 2013)

| Pros                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Cons                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• A near universal land assembly strategy. Can work in all sectors including interior areas of rural India.</li> <li>• Addresses hold-out problems.</li> <li>• A better alternative in case of projects involving numerous landowners and small fragmented landholdings.</li> <li>• Greater certainty owing to the largely unlimited power to government</li> <li>• Better option when property prices vary widely across the areas to be assembled for the project.</li> <li>• Remains the only option for projects in the scheduled and tribal areas where land cannot be purchased or alienated.</li> </ul> | <ul style="list-style-type: none"> <li>• High upfront costs</li> <li>• Inequitable distribution of value especially in urban areas where property prices swing upward with the announcement of a project.</li> <li>• Compensation benefits often not arrived at replacement value; enterprise value of land not considered generating discontentment.</li> <li>• Perceived as heavy handed, conflict-prone and time consuming.</li> <li>• Involves displacement, trauma of relocation, issues of acceptable resettlement, difficulty of resurrecting lost livelihoods, risk of breaking community and social networks and psychological trauma for the affected people.</li> <li>• Allocative inefficiency (land forcibly transferred from a user who may be valuing it more than the acquirer).</li> </ul> |

## 2. Land Pooling

| Pros                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Cons                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• No/limited upfront costs for land procurement</li> <li>• More of a self financing model.</li> <li>• Fairer distribution of land value. Allows a landowner to benefit from the value accretion in land value caused by the change in the land use and post infrastructure development.</li> <li>• Largely non-displacing (physical) land strategy</li> <li>• Facilitates less conflict prone planned infrastructure development especially in areas with high and rising land prices. Provides a win-win strategy for all.</li> <li>• Facilitates more social capital creation.</li> </ul> | <ul style="list-style-type: none"> <li>• Not a universally applicable mechanism for land procurement.</li> <li>• Most appropriate in urban/urban fringes with rising property prices.<br/>Difficult to implement in areas/projects where:               <ol style="list-style-type: none"> <li>(i) Land prices are not expected to appreciate much especially in distant rural contexts</li> <li>(2) Areas with numerous landowners, small fragmented landholdings and unclear land titles</li> </ol> </li> <li>• Implementation issues:               <ul style="list-style-type: none"> <li>-financing development plans</li> <li>-Delay in issuance of reconstituted plots.</li> <li>-Livelihood assistance during transition periods</li> <li>-grievance redressal mechanism</li> <li>-Low public participation</li> </ul> </li> <li>• The standard of distribution of land value/contribution ratio is often finalised without rigorous analysis.</li> <li>• Do not adequately address issues of marginal and landless farmers/ landowners who value land for its use rather than exchange</li> <li>• The issue of who the scheme benefits are often overlooked. The actual beneficiaries may often be real estate agents and other parties with vested interests.</li> </ul> |

## 3. Land Lease

Section 104 of the RFCTLARR Act, 2013 provides for exemption to the provisions of the Act if the land is taken under lease. The provision is quoted below:

*Notwithstanding anything contained in this Act, the appropriate Government shall, wherever possible, be free to exercise the option of taking the land on lease, instead of acquisition, for any public purpose referred to in sub-section (1) of section 2.*

Public purpose also includes project for housing for such income groups, as may be specified from time to time by the appropriate Government; The Government of Bihar has formulated a generic land lease policy for taking land on perpetual lease for



different public purposes (compensation of about four times the registered rate). This option could be made use of in states. A sector-specific land lease policy could also be formulated for the housing sector.

#### **4. Land Purchase (Madhya Pradesh, Telangana, Uttar Pradesh)**

State governments like Madhya Pradesh, Telangana and Uttar Pradesh have formulated land purchase policies that provides for faster process of procurement of land. This could be another option. However, the policies could be futuristic only if the compensation/R & R benefits provided in the land acquisition Act are integrated.

## Appendix 3

## Template-Land Acquisition for Housing Projects

**The Pre-acquisition Activities****Acquisition:**

Projects for Housing: The appropriate government has to be specifying the respective income groups for being classified as 'public purpose' projects.

**Requisition:**

Due diligence measures prior to requisition

- Assess the vacant government land/waste/ unutilized land/Land Bank
- Minimise land requirement as per technical specifications
- Avoid lands that involves physical displacement
- Avoid lands that are agricultural/multi-crop irrigated

**Land Acquisition-Role and Responsibilities of State Housing Departments**

- Housing Department to send requisition for land to the Collector and Commissioner Resettlement & Rehabilitation with requisite information in the prescribed format (along with copies of revenue map and certified copy of record of rights)
- Deposit of administrative cost for Land Acquisition and conduct of SIA study
- Provide the required information and technical specifications of the housing project to the SIA team.
- Be part of the public hearing process and decide on the additional demands of the project affected families.
- Ensure fund flow for timely publication of declaration and implementing R&R Scheme
- Work closely with the Administrator and District Collector in finalising the R & R scheme and its eventual submission to the Commissioner
- Coordinate with field level functionaries in planning and implementing R&R Scheme
- Provide for a web-based project flow of the land acquisition process and public disclosure of R&R Scheme
- Work closely with the state level Land Acquisition and R&R Authority and Monitoring Committee in dispute resolutions.

While the land acquisition law does not specify the role of the requiring bodies beyond timely provision of funds, sharing of technical information and monitoring R & R in large projects, speedy acquisition would require strengthening the implementing government agencies, particularly the district administration (where infrastructure is woefully lacking in most cases). Any additional support in this regard as given above viz. facilitating institutional strengthening through provision of manpower/infrastructure/public support at various stages of land acquisition and implementation & monitoring of R & R would go a long way in speeding up the land acquisition process.

## Appendix 4

### Template for Housing Departments

#### Formulation of a Model Land Pooling Policy: The Ignored Parameters

The state governments can enact a generic law for land pooling with flexibility for use of different financial and technical models in different implementation bodies/areas/sectors. Alternately, in states where such policies do not exist, the Department of Housing and Urban Development can formulate land pooling policies. Land pooling may be the right strategy to procure land where pre-conditions as mentioned in the study exist. In other words, it should also be ensured that the selected site is medium sized and the real estate market is on an upswing to support the profitable subdivision of the land into serviced building plots. The existing land pooling policies do not adequately cover many provisions that are critical for a holistic/futuristic policy. These are given below:

- *To reduce conflicts and enable smooth implementation process, multi-crop irrigated land, habitations (traditional villages, residential and commercial structures) and areas having majority of small sized plots may be avoided.*
- Provide for comprehensive coverage to the formal procedures to be followed in land pooling including planning, project management, cost recovery, value capture and allocation (contribution ratios).
- The policy may be integrated with the existing laws and land pooling may be given as an option against the compulsory appropriation.
- Land pooling must be carried out in conjunction with plans. For the timely execution of the pooling scheme, firm deadlines should be set up and provided for in the legal framework.
- The provisions for affordable housing may be built in, also specifying the process framework and timelines for delivering on the provision.

- Include penalty provisions for non-adherence of plan provisions viz. sharing developed land, payment of transitional allowance/interest payment for the delay/timelines by pooling authority.
- Provide for conduct of a pre-pooling study of the proposed area to understand the socio-economic conditions, land use pattern, identification of the affected families, families with special needs and provide for flexibility to address such needs of the region along with special provisions for the vulnerable sections of the society.
- Provide for enabling institutional arrangements for implementation of the pooling strategy and development plans. This may include appointment of a full-time Project Officer for formulating the scheme, processing it and implementing it as per the laid out statutory mechanisms; recruitment of other technically skilled members viz. land surveyors, appraisers/"valuer/s", planners etc; land valuation arrangements and public dissemination of the processes.
- Provide for minimum percentage of voluntary land owner participation to ensure inclusiveness and effectiveness of the pooling scheme.
- Provide for involvement of landowners in policy formulation, planning, implementation and monitoring.
- To ensure substantive equity, the contribution ratios may have progressive deduction while ensuring adherence of a rigid cut-off date to curb fragmentation of landholdings/other malpractices.
- The contribution ratios should have sound technical basis and assessed in terms of the proportionality principle, equity and fairness. The equitable land contribution ratio for landowners would mean maintaining the proportional value share before and after the pooling. The contribution ratio should be arrived at scientifically by considering the nature of the land pooling project, quantum of land area, nature of land use prior to pooling and most importantly the value of land before pooling.

- The land pooling policy guidelines should provide for disclosure norms i.e. knowledge about project, the processes, role of stakeholders at various stages of the project, sharing of costs and benefits, management of funds, current and future status/values of their property, period for return of reconstituted plots, risks involved, advisory guidance, net benefits for a landowner etc.
- The land pooling policy should incorporate a Grievance Redressal Mechanism (GRM) at the Office of the Authority supervising the land pooling process. The GRM should be accessible, multi-layered and that which ensures timely and responsive feedback.
- The policy should provide for the institutional framework and guidelines to monitor and evaluate the implementation of the pooling/development schemes. While the monitoring process should include the policy, procedure, finance, project management and technical aspects, the evaluation framework should assess the socio-economic impact of land pooling process on the land-owners.

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