

## **Constitutional Manifestation of Land Acquisition Act: Its Factual Issues and Proposed Remedies in India**

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### **I. Introduction**

Land acquisition in India refers to the process by which the union or a state government acquires private land for the purpose of development purposes like industrialization, development of infrastructural facilities or urbanization of the private land, and provides compensation to the affected landowners and their rehabilitation and resettlement.

In other words, Land acquisition is the process by which the government forcibly acquires private property for public purpose without the consent of the landowner. It is different from a land purchase, in which the sale is made by a willing seller. India faces serious challenges in creating development processes that generate economic growth while being socially inclusive, ecologically sustainable, politically feasible, and in accordance with the Rule of Law.

Land acquisition in India is governed by **the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR)** and which came into effect from 1 January 2014. Before that in 2013, land acquisition in India was governed by Land Acquisition Act of 1894.

In May 2014, as the Bhartiya Janata Party led National Democratic Alliance came to power, riding high on its development-driven agenda, it sought to bring about immediate reforms in land acquisition procedures. It was argued by the government that without land acquisition, they will find it difficult to execute their projects, including the “Make in India” programme, which seeks to revive and boost domestic manufacturing. On 31 December 2014, the President of India promulgated an ordinance with an official mandate to “meet the twin objectives of farmer welfare; along with expeditiously meeting the strategic and developmental needs of the country”.

The land is not only an important economic resource and source of livelihoods, it is also central to community identity, history and culture. Unsurprisingly then, throughout India, a dispute over state acquisition of land that deprives people of their land rights spans various dimensions of economic, social, and political life.

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## **II. Background of Land Acquisition Law**

### **II.I. Colonial Period**

The first land acquisition legislation in India was enacted by the British government in 1824. Called the Bengal Resolution I of 1824, the law applied only to Bengal province subject to the presidency of Fort William.” The law enabled the government to “obtain, at a fair valuation, land or other immovable property required for roads, canals or other public purposes.” In 1850, the British extended the regulation to Calcutta (now Kolkata), through another legislation. The Act of 1850 “declared that Railways were public works and thus enabled the provisions of Resolution I of 1824 to be used for acquiring lands for the construction of railways.”

However, it was in 1857 that the British enacted legislation that applied to the rest of the provinces or presidencies and the whole of British India. Act VI of 1857 “repealed all previous enactments relating to acquisition and its object as stated in its preamble, was to make 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 for the compensation to be paid for the same.”

This act, owing to “unsatisfactory settlement”, “incompetence” and “corruption” was further amended in 1861 (Act II) and 1863 (Act XXII) and subsequently led to the enactment of Act X of 1870. The 1870 law, which for the first time, brought a mechanism for settlement, was eventually replaced by the Land Acquisition Act, 1894 (Act I of 1894).

The 1894 law did not apply to princely states like Hyderabad, Mysore, and Travancore, who enacted their own land acquisition legislation. All laws enacted by the colonial administration initially in the then Presidency towns and later spreading across the country, to facilitate the easy acquisition of land and other immovable properties for roads, canals and other ‘public purposes’ with compensation to be determined by specifically appointed arbitrators.

### **II.II. Independent India**

After India gained independence in 1947, it adopted the Land Acquisition Act of 1894 by the “Indian Independence (Adaptation of Central Acts and Ordinances) Order” in 1948.

Land acquisition by state governments for development purposes became a subject of legal dispute in 1960s and 1970s. It was seen as violation of fundamental right to property. Land Acts passed by the state that were challenged in the court of law were put in the 9th Schedule to get immunity from judicial scrutiny. The Golak Nath and the Kesavananda Bharati cases were landmark judgments of the Supreme Court not only over right to property and land but a set of legal negotiations attempting to settle the contradictions between right to property as a fundamental right and acquisition of land for development under Directive Principle of State

Policy. Furthermore, the legal disputes over landed property brought the legislature and judiciary at loggerheads with each other. The government controlling the legislature was keen to initiate land legislations and acquisition while judiciary was criticised for having usurped its constitutional authority of interpreting laws than defining them. The land and property issue led to a new trend of judicial activism in India as the Supreme Court firmly defined the basic structure of the Constitution doctrine in the Kesavananda Bharati case. Property (that includes land) acquisition thus became a subject of institutional cleavages until right to property was removed from the list of fundamental rights by the 44th Amendment to the Constitution under the Janata Party government.

Many important state and business personalities consider land acquisition to be the “biggest problem” in India’s development path. A new Land Acquisition, Rehabilitation and Resettlement bill (LARR) was drafted in mid-2011, and in May 2012 the parliamentary standing committee report (PSCR) on LARR was made public. At this moment of writing, the union cabinet is discussing the final version of the bill incorporating some PSCR recommendations and ignoring others to be taken to parliament. Media reports suggest that there is significant dissent within the cabinet, especially from the ministers for commerce, urban development, highway and surface transport, and civil aviation. This dissent is needed because there appears to be little awareness in any of the approaches taken so far of the fundamental changes in India’s land markets and their consequences. As a result, the final bill, as it stands, is likely to replace a serious political problem with a serious economic one. Narendra Modi’s ambitious plan to revive India’s economy has received a major setback. On Aug. 3, India’s opposition managed to stop a refurbished and contentious land acquisition bill that Modi and his government had been pushing for in the past few months. The bill will now be reworked and most likely be similar to the country’s existing land acquisition law. After coming to power in May 2014, the new government had introduced nine key amendments to the earlier law that was passed in 2013. According to the new bill, a mandatory social impact assessment and a consent clause 70% consent from landholders for public-private partnership (PPP) projects, and 80% for private projects were done away with in the case of five categories of projects. These included defence, rural infrastructure, affordable housing, industrial corridors, and infrastructure. The caving-in could be a major setback for Modi’s ambitious “Make in India” campaign to boost manufacturing. Estimates suggest that projects worth Rs53,000 crore (\$9 billion) are stuck due to land acquisition problems. But such controversy over land acquisition legislation in India isn’t new. In fact, it’s been the case for almost 200 years now.<sup>1</sup>

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<sup>1</sup> Manu Balachandran, “Timeline: 200 years of India’s struggle with Land Acquisition Laws”, website-<http://qz.com/471117/timeline-200-years-of-indias-struggle-with-land-acquisition-laws/>., assessed on 29.05.19

The UPA Government also sought to compensate artisans, traders and other affected parties through a one-time payment, even if they didn't own land in the area considered for acquisition. The bill was passed in August 2013 as "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" and came into effect on 1 January 2014.

The current BJP government introduced amendments to previous Act which have been opposed by all political parties, Not only the opposition parties but also other organization that traditionally supported Bharatiya Janta Party such as Mazdoor Sangh, Bhartiya Kisan Sangh and Akhil Bhartiya Vanvasi Kalyan Ashram have come heavily against the amendments proposed by the Narendra Modi lead NDA government including their ally Shiv Sena in the Rajya Sabha.

The BJP's argument has been that the UPA's land acquisition law makes it impractical for any public purpose and endlessly delays infrastructure projects. While the amendments were passed in the lower house of the parliament where BJP enjoys the vast majority, it has been unable to pass this in the Rajya Sabha. Instead, it took recourse in an ordinance to pass the amendment to the bill in December 2014.

### **III. The Land Acquisition Act, 1894**

The Land Acquisition Act of 1894, allows the Indian Government to acquire the private land in the country. Under this Act, "Land Acquisition" means acquiring land for any public purpose by the government or its agency, as authorized by law, from the individual landowners after paying a fixed compensation in lieu of losses incurred by these landowners due to the surrendering of their land to the concerned government agencies.

According to this Act, the state has the power to exercise its right of eminent domain wherein it is the ultimate owner of all the Land which it can acquire for public purposes after paying full compensation calculated on the basis of market value. Despite numerous amendments to the Act after independence, the two basic principles of land acquisition, that is, a). Public purposes and b). Compensation on Market Value remains unchanged. Although the Central Government determines the content of the law, there can be regional variations in the procedural matters.

As Land is a scarce resource and always has various holders claiming ownership, this Act provided a set of rules for convenient settlement of such disputes. As per the 1894 Act, land can be acquired either under Part-II or Part-VII of the Act. While the former is used when acquiring body is the central or state government or companies that are either owned, partly owned or controlled by the State, the latter is used in case of private companies. Another important aspect is that, while land acquisition under **Part-II is entirely for "Public Purpose"**, acquisition under **Part-VII can be for both "Public Purpose" and "Non-public Purpose"**, although the scope for "Non-public Purpose" is very limited.

The Constitution of India Acquisition and Requisition of Property were initially dealt under entry 33, list I, entry 36, list II, and entry 42, list III of the Seventh Schedule and the corresponding Article 31(1) and 31(2) of the Constitution. Entry 22, list I authorising Centre to legislate for acquisition and compensation, entry 36, list II likewise for the state; both were deleted through the deletion of the entire Article 31 by the Constitution Forty-fourth Amendment Act 1978 w.e.f. 19.6.1979.<sup>37</sup> While the entire Article 31 was entirely deleted by 44th Amendment Act 1978, but the subject matter of Article 31(1) was reinserted as a legal right and not as a fundamental right in the new Article 300A of the Constitution through the Constitution Forty-fourth Amendment Act 1978 w.e.f. 19.6.1979. Thus the provisions for deprivation of property by acquisition and requisition are now contained in Article 300A read with entry 42, list III of the Seventh Schedule of the Constitution.<sup>2</sup>

#### **IV. Right to Property**

##### Part III: FUNDAMENTAL RIGHTS

Article 19- Protection of certain rights regarding freedom of speech, etc.<sup>3</sup> -(1) All citizens shall have the right-

(f) To acquire, hold or dispose of property (now deleted).

[Property includes movable, immovable, patents, copyrights, leases etc. and everything having exchangeable value].

Combined effect of deletion of Art 19(1) (f) and Art.31 (1) & 31(2) etc. and the introduction of Art.300A seems to be at first sight that it is the intention of the government to take one's property with nominal or no compensation. But as long as Art. 300A is there and no new enactment to that effect is made, the right to property must have existed there.

Though the general Right to Property will no more a Fundamental Right consequent on the abrogation of Art.19(1)(f) and Art.31(1), 31(2) etc. the properties of an educational institution established and administrated by a minority whether based on 30 and also a basic right. This right is not confined to the conservation of language, script or culture. Again, the word "minority has not been defined in the Constitution. The right under Art. 30(1) is subject to the regulating power of the state. This right can be regulated for ensuring educational standards and maintaining excellence thereof. However, they can make writ petitions under Arts.32 and 226 for safeguarding their rights particularly when the amount or compensation on acquisition of their properties are not fair and illusory and the old rulings of well-known cases including Keshvananda's case<sup>4</sup> will apply so far as the institutions of minorities are concerned.

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<sup>2</sup> P.K. Sarkar, "Law Of Acquisition Of Land In India", 1 Eastern Law House, 3d edition, 2012

<sup>3</sup> Indian Constitution, Article 19

<sup>4</sup> AIR1973 SC 1461.

Article 300A does not say that deprivation shall be without compensation and so the adequacy and mode of payment will also be justiciable. As per present Article 300A in case of acquisition or requisitioning, compensation is payable and that should be reasonable one. Again, the right that there shall be no deprivation without recourse to law being a constitutional right, a writ petition under Article 226 will always be maintainable.<sup>5</sup>

Chapter IV (After 44th Amendment)

Article 300A.<sup>6</sup> - Persons not to be deprived of property saved by authority of law. No person shall be deprived of his property save by authority of law.

31A Saving of laws providing for acquisition of estates, etc. - (1) Notwithstanding anything contained in Article 13, no law providing for-

- a) The acquisition by the State of any rights therein or the extinguishment or modification of any such rights, or
- b) The taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- c) The amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
- d) The extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
- e) The extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence;<sup>7</sup>

Shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19: Provided that where such law is a law made by the Legislature of the State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as it is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.<sup>8</sup>

<sup>5</sup> *Bishambar v. State of UP AIR 1982 SC 33.*

<sup>6</sup> Article 300A inserted by the Constitution 44th Amendment Act 1978(w.e.f. 20.6.1979).

<sup>7</sup> *Supra* Note 2, Pg. 34

<sup>8</sup> *Ibid*

31B. Validation of certain Acts and Regulations. Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, on the ground that such Act, Regulation or provision is inconsistent with, or taken away or abridges any of the rights conferred by, any provisions of this Part, notwithstanding any judgement, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.<sup>9</sup>

Land Reform Legislation: Article 31A: Laws providing for acquisition of estates, takeover of corporations etc. have been saved by Article 31A against challenge on the ground of alleged infringement of Article 14 or 19. The object of Article 31A was to validate the acquisition of zamindaries or abolition of permanent settlement and to validate other items of agrarian and social welfare legislations without interference from courts on the ground that no compensation has been provided for or that there is no public purpose or that it violates some other provisions of Part III e.g. Article 14 of the Constitution.<sup>10</sup>

Saving Ninth Schedule Acts: Article 31B: By Acts and Regulations specified in the Ninth Schedule have been saved against challenge on the ground of inconsistency with, taking away or abridging any fundamental right. However, after the decision in the case of *Keshvananda Bharati v. State of Kerala*,<sup>11</sup> inclusion of any law in the Ninth Schedule is open to challenge on the ground of damage to the “basic structure” of the Constitution. The rationale behind the case was (i) to protect the people from the sovereignty of the Parliament, (ii) that the question of “purpose” and “adequacy of compensation” seems to be justiciable with the result a fair value for the property taken, may have to be payable, (iii) ouster of court’s jurisdiction in many matters is not likely to be tolerated by the Supreme Court, (iv) no property should be taken without fair compensation, (v) the Ninth Schedule should be a closed chapter, it should not be utilised to protect acts of Govt. which could not stand the test of validity in any court of law, (vi) all undesirable provisions introduced previously should at once be removed.

**Laws to implement Directive Principles:** Article 31C: The Article was inserted by the 25th Amendment Act of 1971 protected laws giving effect to the Directive Principles in Article 39(b) (c) from unconstitutionality on ground of contravention of Articles 14, 19 and 31. By the 42nd Amendment Act, the protection was extended to legislation for implementation of any directive principle.

## V. Land Acquisition Under Part-II

Under this part, acquisition process involves the following steps:

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<sup>9</sup> P.K. Sarkar, “Law Of Acquisition Of Land In India”, 1 Eastern Law House, 3d edition, 2012, Pg. 35

<sup>10</sup> *Ibid*

<sup>11</sup> *AIR 1973 SC 1461*.

1. **NOTIFICATION:** The land acquisition process starts with issuing of a preliminary notification in the Official Gazette in two locally circulated newspapers. Also, the collector is to ensure the “public notice of the substance of such notification” to be given at a convenient place in the locality. This notice:

- Makes it lawful for an authorized officer to enter and inspect the land specified in the notice without the owner’s permission.
- Alerts the owner not to invest any money or labour on any improvements to his land without the Collector’s consent and
- Informs the public not to acquire any interest in such land.

2. **FILING OF OBJECTIONS:** Owners and the people who have interest in the land are then required to file their objections if any within 30 days of the issuing of the notice. These objections are to be submitted to the collector and the collector shall give an opportunity of being heard to all those people who raise objections. After hearing these objections, the collectors submit a report to the government which contains all his recommendations and all the records of the proceedings. Then the government takes a decision of acquisition based on the collector’s report. The right to file objections is regarded a substantial right when a person’s property is threatened with the acquisition.

3. **DECLARATION:** After the government takes the decision, a declaration is issued under Sec 6(1) and this declaration must be given equal publicity as the preliminary notification. According to this Act, this declaration shall be issued within one year from the date of issuing of preliminary notification.

4. **NOTICE TO INTERESTED PARTIES:** After the declaration, the notified land is planned and measured as per Sections 7 and 8 of the Act. A notice is issued by the collector to all the landowners and the parties having interest in that land to information about government’s intention to acquire their land and also to call for claims for compensation.

5. **ENQUIRY AND AWARD:** After the notice is issued, collector conducts an inquiry into the objection raised and accordingly an award is given. The award contains an area of the notified land, compensation payable and the share of all the interested persons in the compensation. This award should be made within two years from the date of declaration or else under Sec 6 the acquisition proceedings will lapse. Any appeal against the award can be made by filing an application to the collector who shall then refer the matter to the court. The interested parties cannot file a suit in the ordinary civil courts to establish their claims. The award must be made within the stipulated time period of 2 years under Section 11A. The period of stay if any to be excluded from the time fixed for passing the award.

6. **ACQUISITION:** After the award is made the government acquires the land and immediately takes the possession of the land after paying appropriate

compensation.

7. **COMPENSATION:** The compensation should be based on the market value of the land. If the payment of compensation is delayed even after the acquisition of the land, then an interest of 12% per annum shall also be given. In addition to that, a solatium equivalent to 30% of the market value shall also be given. The recent judicial trends have also seen the refund of compensation at specific interest rate if the acquired land is not used for the desired purposes.

#### **VI. Land Acquisition Under Part VII**

Under part VII, land can be acquired for non-governmental companies. Unlike Part II, where compensation is granted wholly or partly, but under Part VII, a company is bound to pay the entire amount of compensation for the notified land. Basically, the process of land acquisition under Part VII is similar to that Part II, but there are two major exceptions. The exceptions are related to the company in following ways:

- Getting government's consent under Sec 6 (1)
- Entering into an agreement with the government before the declaration is issued under Sec 6(1).

#### **VII. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015**

The Amendment Bill was introduced in the Lok Sabha by the Minister for Rural Development, Mr. Birender Singh on February 24, 2015. The Bill amends the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013). The Bill replaces the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement (Amendment) Ordinance, 2014.

This bill not only provides for land acquisition but also for rehabilitation and resettlement (R&R). The provisions of this bill shall be applicable where the government acquires land either for its own use or for the use of any private company for public purposes. The earlier Act only allowed land acquisition by the government for government-owned companies as well as schemes run by societies/authorities/co-operative societies while the new Bill allows acquisition for a public purpose by private companies and Public Private Partnership (PPPs) apart from government-controlled organizations.

According to this bill, the private companies are entitled to provide rehabilitation and resettlement if they acquire land through private negotiations. R&R shall be equal to or more than 100 acres in rural areas and 50 acres in urban areas. As per this bill, the term "public purpose" includes:

- National security and strategic defence purposes

- Roads, railways, and ports built by government and PSEs
- Project affected people
- Planned development or improvement of villages
- Residential purposes for the poor
- Government projects benefiting public.

This Bill creates five special categories of land use which are exempted from certain provisions. This includes:

- Defence
- Rural infrastructure
- Affordable housing
- Industrial corridors
- Infrastructure projects including PPP projects.

However, under the LARR Act, 2013 land could be acquired for all these purposes only when 80% of the project affected people give their consent. But this bill exempts the above-mentioned land uses from this consent clause. This bill apart from limiting government's involvement in an acquisition and required the consent of affected people, it also talks about the return of the acquired land after a period of 5 years or any period specified at the time of setting up of the project, whichever is later if left unutilized. But no mechanism has been provided for this. This Bill stipulates the appointment of an R&R committee to review R&R progress in the case where land acquired is 100 acres or more for the public purpose.

#### **Analysis of Compensation for Those Affected by Land Acquisition**

There is an improvement in the original act which did not provide any kind of compensation both monetary and non-monetary to those affected by the land acquisition process. This bill makes a start, compensating those who will be affected by land acquisition prior to the setting up of the infrastructure or development project, monetarily and in some cases, non-monetarily. The bill also provides land-for-land compensation in certain cases.

Also, the clause of the lease means that the landowner at least need not lose land ownership, although others may lose their livelihoods in the process and have to be adequately compensated and rehabilitated. But the bill has been criticized mainly for two accounts

First, there is a huge debate on account of whether such compensation amount would be enough or not. Activists argue that prior to the coming up of a development project, the market price is quite low particularly in rural areas or semi-urban

areas, and so the compensation amount (up to 4 times the market price) may be too little for a landowner or farmer who is losing his livelihood in a big way.

Second, those who would be affected by the establishment of the project, they have not been considered at all in the bill although one could say that this was not the primary purpose of the bill, and second, one could address these through proper implementation and enforcement of the environmental regulations for air and water (if not for land). There are issues with those norms though, but for once, this is a secondary problem with the bill itself.

### **VIII. Conclusion**

An act that was born in a different context, amended under various compulsions and continues to be in conflict with other laws. While the demand for the land continues to increase, its supply is fixed. In order to meet the rising demand of the land, it has to be acquired and its use pattern has to be changed along with various policies implementation.

Question arises that whether changing a specific law could overhaul the system of overlapping laws which has already allowed the misuse of limited land resources? The current government, however, has completely denied the allegations that the amended bill is anti-poor and anti-farmer. The efforts of the government in power to bring about the changes in LARR Act are commendable.

However, there is need of the hour for the developing country of ours is to expand its infrastructure and welcome the technological advancements with open hearts in order to bridge the gap between developing and developed countries, still the major factor that India is an agricultural based country cannot be ignored.

The major initiatives taken by Modi government is praiseworthy as land acquisition hurdle creates much delay and obstacle in the completion of even public welfare projects i.e. metro, railway, roads etc. The recent proposals regarding compensation based on lease or annuity are worth consideration. The current Act requires the market value to be paid for the land and any other property on it (buildings, trees, irrigation work etc) as well as expenses for compelling the person change the place of residence or business. It explicitly prohibits taking into account the intended use of land while computing market value.

The 2007 Bill requires payment of the highest of three items: the minimum value specified for stamp duty, the average of the top 50 percent by the price of land sale in the vicinity, and the average of the top 50 pc of the land purchased for the project from willing sellers. For computing recent land sale, the intended land use is to be used. Thus, agricultural land being acquired for an industrial project will be paid the price of industrial land. No doubt the passing of this bill will surely create a great hue and cry amongst the farmers of the nation but none the less the duty to protect the interest of these people lies in the hands of the government.

The nuances of contemporary land legislations could be summed up in less than three concluding points. First, ideological propensity for commercialisation and economic growth has facilitated land acquisition in the recent past. The emerging collaboration between state and capital has led to a fundamental restructuring of economic laws and principles. The new land amendment is a necessary outcome of this trend. Second, the land legislation in the recent past is caught between two contradictory developmental objectives based on their respective ideological premises—(i) it is to promote fast-track growth and industrialisation and (ii) is to prioritise the issue of livelihood and social protection. Striking a balance is a difficult political proposition. Finally, the neoliberal agenda implied in the land policy is being interrogated in the public domain. The power of resistance that is offered by our democracy opens several channels of dissent.