

The Gujarat Amendment (Bill, 2016) is a clear attempt to nullify the real effect of the enactment 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'.

The amendment deserves to be out rightly rejected as it goes beyond the scope, object and reasons of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'.

The amendment is on the face of it capitalist in nature and anti-farmer, it is worded in such a manner that a layman will not understand the huge repercussions of this amendment are that it not only tries to override the decisions of the Hon'ble Supreme Court of India but also makes 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' redundant.

The plight of land owners, farmers and others holding lands are directly affected.

The intention of the State Government is to neutralize the most relevant provisions of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' and is as good as contemptuous act on

the part of the State Government, wherein the Government has tried to supersede the judgments of the Hon'ble Supreme Court of India by trying to introduce the second amendment.

- (1) The introduction of the new Land Acquisition Act if looked into along with the statement of objects and reasons would make it clear that new Act represents a change in the legislative approach in the land acquisition, it introduces for the first time provisions for social impact analyses, recognizes non owners as affected persons, a mode of acquisition requiring consent of displaced and statutory entitlements for resettlements. In addition it has restricted the grounds on which land may be acquired under the urgency clause.
- (2) The provisions of the old Land Acquisition Act were found to be inadequate in addressing certain issues relating to the exercise of statutory powers of the State for involuntary acquisition of private land and property. The old land Act did not address the issues of rehabilitation and resettlement to the affected persons and their families, the definition of the expression 'public purpose' in the old Act was very wide and therefore it become necessary to re-define the definition so as to restrict the scope for acquisition of land for strategic purposes vital to the State, and for infrastructure projects where the benefits accrue to the

general public. The principle of “willing seller-willing buyer” basis, it seen a more fair arrangement from the point of view of the land owner and in order to streamline the provisions of the Act causing less hardships to the land owners and other persons dependent upon such land, it was decided to repeal the old Land Acquisition Act, 1894 and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

The first amendment sought is in Section-2(2) by wanting to introduce the proviso as third proviso, that the said proviso is being introduced in such a manner that a layman would loose sight of what is being introduced, because the said proviso which is being added mentions as regards Section-10A, Section-10A is also sought to be introduced by the very amendment.

Section-10A is a section where the whole of the 2 chapters II and III and the application of the provisions of these Chapters are sought to be exempted.

Chapter-II deals with the very core issue being ‘determination of social impact and public purpose’. It starts with preliminary investigation for determination of social impact and public purpose, Section-4 in the said Chapter deals with preparation of social impact assessment study, social impact assessment studies

also deals with displacement of affected families, whether it is a real public purpose for which acquisition is sought for, extent of lands public and private, houses settlements and other common properties likely to be affected by the proposed acquisition, whether the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project, whether land acquisition at an alternative place has been considered and found not feasible, study of social impacts of the project and nature and cost of adjusting them and the impact of this cost on the overall costs of the project vis-a-vis benefits of the project.

The said Chapter also deals with the procedure to be followed while preparing social impact assessment report, very material issues are required to be considered, public hearing for social impact assessment is also to be undertaken, thereafter, publication of social impact assessment study is required and appraisal of social impact assessment report by an expert group which consist of (A) 2 non-official social scientists, (B) 2 representatives of Panchayat, Gram Panchayat, Municipality or Municipal Corporation as the case may be, (C) 2 experts of rehabilitation and (D) a technical expert in the subject relating to the project, the expert group suggests that project may not serve the public purpose and the social cause and adverse social impacts of the project out way the potential benefits.

The said Chapter also deals with a provision where examination of proposals for land acquisition and social impact assessment report by appropriate Government is required.

Chapter-III of the Act deals with social provision to safeguard food security which is a very important issue which is considered in these days and therefore it forms a part of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'.

New Section-10A which is sought to be introduced by way of the amendment includes industrial corridors set up by the State Government projects with under public private partnership where the ownership of the land will be of the State Government and as such even in these projects there cannot be exemption to Chapter-II and III of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'.

The relevant Sections being Section-2, 10, 24, 31, partly 40, 46, 87 are all sections which did not even exist in the old act being 'The Land Acquisition Act, 1894' and it is this State Government which wants to destroy the ambit and purpose of The Central Act 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' by now

trying to amend the very sections which are not only most important but changes the complexion of the New Act.

The amendment sought to be brought in Section-23 being Section-23A gives wide powers to the Collector to an extent that he may waive inquiry and that the determination of compensation for any land under Section-23A(1) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

Even in the State of Gujarat there is a large scale of uneducated public and in this circumstances the introduction of Section-23A by also introducing a notwithstanding clause the complexion of Section-23 in Chapter-IV will be materially changed.

The most important and relevant Section-24 of The New Act based on which several Hon'ble High Courts as well as the Hon'ble Supreme Court of India has laid down a law in catena of decisions, the said provision is sought to be interfered with by trying to insert the amendment, not only is the said amendment illegal amendment but it is in direct conflict with the decision of the Hon'ble Supreme Court of India as reported in (2014) 3 SCC 183, 2010 (7) SCC 129, 2015 (3) SCC 541, 2015 (3) SCC 327, 2015 (3) SCC 353, 2015 (3) SCC 341.

The State Government introducing such an amendment is nothing but a contemptuous Act, the said amendment also deserves to be rejected out rightly.

The Hon'ble Supreme Court in a case of Pune Municipal Corporation v/s. Harakchand Misrimal Solanki and others as reported in (2014) 3 SCC 183 (Paragraphs No. 12 to 21) has laid down a law that compensation lying in the treasury of the Government and not paid to the owner also amounts to lapsing of the acquisition and the said provision is said to be interfered with by the present State Amendment.

Section-31 is also sought to be amended by introducing Section-31A, it is most important to note at this juncture that if Section-31 is read first and then Section-31A is read the State Government has left playing area in Section-31A that the State Government if it is acquired for its own use to left then 100 acres, it does not specifies for which use, which public purpose, in what nature and is to be acquired in case of projects which are linier in nature as referred to in the proviso to sub-section-4 of Section-10, the amount of compensation is automatically reduced in the new amendment and also seeks to indirectly interfere with Section-27 of The Act, the amendment does not clarify that lump sump amount equal to 50% of the

compensation as determined under Section-27 and therefore reduces the original amount of compensation by introduction of this Section-31A.

Section-31A leaves room for the State Government to state that it has acquired for its own use and then enter into any partnership, SEZ, give it over to private companies, there is no clarification on the same and it leaves lot of mischief area in the said amendment.

As far as amendment in Section-40(2) is concerned, by adding the words which are sought to be amended 'ought to comply with the directions given by the Central Government to the State Government', by adding these words which are as a matter of fact not required to be added at all, here also lot of room is left for the play area, that directions given by the Central Government are in what nature, for what purpose and at what time.

The next amendment which is sought to be brought in Section-46(6) an explanation in Clause-b(i) is sought to be deleted and the whole meaning and context of Section-46 changes because Section-46 deals with the provisions relating to rehabilitation and resettlement to apply in case of certain persons other than



specified persons, there is no purpose of deleting explanation b(i) by the State Government.

The whole of Section-87 is sought to be replaced if both the sections i.e. the existing Section-87 and the amendment sought by substituting the new Section-87 is seen, the responsibility is removed from the head of the department liability for proceeding for punishment and proceeding for punishment is also removed, Section-87(2) says that where an offence under the Act has been committed by a department of the Government then it is proved that the offence has been committed with the consent or connivance of, or his attributable to any neglect on the part of any officer other than the head of the department such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly, the whole of this section is sought to be substituted by a complete vague, ambiguous which by all means permits escaping liability by the heads of the department of State Government.

The Statements of object and reasons if seen, it contemptuously states that the provisions of the New Act are 'very stringent' for acquiring a land, land acquisition has become a very lengthy and difficult proposition, this statements itself are contemptuous and on the face of it in direct conflict with the new law i.e. 'The Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013' and the decisions of the Hon'ble Supreme Court due to which the new legislation has come into operation like in the case of Bondu Ramaswami and others v/s. Bangalore Development Authority and others as reported in 2010 (7) SCC 129 mainly Paragraphs-150 and 155 where the Hon'ble Supreme Court observed that there is a need for the Law Commission and Parliament to revisit 'The Land Acquisition Act, 1894' which was more than a sanctuary old and that there is also a need to remind the development authorities that they exist to serve the people and not vice versa.

In the case of Rajiv Chaudhari H.U.F. v/s. Union of India as reported in 2015 (3) SCC 541 the Hon'ble Supreme Court has held that the plain wordings used by the legislature under the provisions of Section-24(2) are made very clear and do not create and ambiguity or conflict in such a situation the court is not required to depart from the literal rule of interpretation, the court has examined the legal contention and held that the legislature in its wisdom made the period of 5 years under Section-24(2) of The Resettlement Act, 2013, absolute and unaffected by any delay in the proceedings on account of any order of stay by a court.

In the case of *Magnum Promoters Private Limited v/s. Union of India and others* as reported in 2015 (3) SCC 327 the Hon'ble Supreme Court has held in that case that on the date of commencement of The 2013 Act i.e. on 01.01.2014 more than 5 years had elapsed after the award under The Land Acquisition Act, 1894, but actual physical possession on the appellant's land was in fact not taken and could not have been taken in view of the interim order of status-quo having been passed by the Hon'ble Supreme Court, the contention was negative and the land acquisition was ordered to be lapsed in terms of Section-24(2) of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'. In the case of *Sree Balaji Nagar Residential Association v/s. State of Tamilnadu and others* as reported in 2015 (3) SCC 353, the Hon'ble Supreme Court has held that period of stay/injunction cannot be excluded in computing 5 years period mentioned in Section-24(2) of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'.

In the case of *Sharma Agro Industries v/s. State of Haryana and others* as reported in 2015 (3) SCC 341 it has been held by the Hon'ble Supreme Court on the same lines that the said period of injunction cannot be excluded and if the proceedings lapsed on that account, they lapsed and in all these cases the issue of

injunction and possession was there and in all the cases acquisition was ordered to having been lapsed under Section-24(2) of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'.

It is clear from the above that the State Government has taken a totally contemptuous position of daring to have a volte face on the judgments of the Hon'ble Supreme Court of India by trying to introduce the present amendment and therefore the amendment is required to be rejected out rightly.

The State Government is trying to mislead the public at large and the House because even the Central Government which tried to bring in Ordinance of 2014 (No.9 of 2014) had tried to bring in this clause of exclusion in Section-24(2) and had to drop the said Amendment/Ordinance of 2014 and now the State Government is trying to bring in the very amendment.

As far as the amount deposited in a designated account is concerned even the Ordinance of 2014 (No.9 of 2014) which was sought to be brought in by the Central Government which was also in direct conflict with the decisions of the Hon'ble Supreme Court in the case of Pune Municipal Corporation as reported in (2014) 3 SCC 183 (Paragraphs No. 12 to 21), also in direct conflict with the decision of the Hon'ble Supreme Court in

the case of Union of India v/s. Shivraj and others as reported in 2014 (6) SCC 564 (Paragraphs No.49 and 50) and followed in series of decisions of the Hon'ble Supreme Court.

It is shocking that the State Government is trying to bring in the similar amendment to Section-87 as the Central Government had tried to bring in the Ordinance of 2014 (No.9 of 2014) in Part-VIII of the said Ordinance by substituting Section-87 which almost gives total immunity to the Government Officers and the offence if committed would be almost impossible to institute a case and prove the officer of the Government guilty, procedure of sanction etc. is appealable, revisable and would never bring the persons who are actual responsible to justice and the very effect of original Section-87 would be lost and the Government would always have a open hand in protecting its capitalist interest.

(A) In the case of N. Padmamma & ors. V/s. S. Ramkrishna Reddy & Ors. reported in 2008 (15) SCC 517, it has been held that, right to property is a human right as well as a constitutional right, and hence, cannot be taken away except in accordance with law, any Act seeking to divest such right must be strictly construed – human rights.

(B) In the case of Hindustan Petroleum Corporation Limited V/s. Darious Shapur Chennai & Ors. as reported in 2005 (7)

SCC 627, in Paragraph-6 and 9 it has been held that, even Section 5-A of the old Land Acquisition, 1894 conferred a valuable right in favour of a person whose land is sought to be acquired and the same is to be looked into having regard to the provisions contained in Article -300-A of the Constitution, it has been held to be a keen to fundamental right.

(C) Union of India & Ors. V/s. Mukesh Hans as reported in 2004 (8) SCC 14 in interpreting the powers of acquisition by forcing urgency clause and by interpreting Section 5-A of deciding objections under the old Act i.e. Land Acquisition Act, 1894 and from thereon the Hon'ble Supreme Court in catena of decisions has laid down a law that, where a citizen is deprived of property, great care and caution is to be taken, and having regard to the provision contain in Article- 300 A of the Constitution of India, detailed procedure and inquires required, good amount of compensation is required and under the new Land Acquisition Act of 2013, rehabilitation and compensation package, solatium and market value to the land owners all have been re-defined and by introducing Ordinance of 2014, the whole effect of the new Act of 2013 is sought to be deliberately lost.

(D) In the case of Dev Sharan & Ors. V/s. State of Uttar Pradesh & Ors. as reported in 2011 (4) SCC 769 in Paragraph-15 the Hon'ble Supreme Court has held that, the old Land Acquisition Act was a pre-constitutional legislation of colonial vintage and is a drastic law, being expropriatory in nature as it confers on the State a power affects person's property right, by observing that, even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory and that the Land Acquisition has to be viewed from an angle which is consistent with the concept of a welfare State, it was also held that, the concept of 'public purpose' cannot remain static for all times to come.

(E) In the case of Tukuram Kana Joshi & Ors. V/s. Maharashtra Industrial Development Corporation & Ors. as reported in 2013 (1) SCC 353 by interpreting Article-300 – A of the Constitution of India and by mentioning right to property it was held that deprivation of property by authority of law, legal obligation of authorities to complete acquisition proceedings and to make payment of requisite compensation expeditiously, strictly as per statutory procedure, was emphasized that relief to be granted for

delay by the State, violates fundamental rights, market value to be computed as per current market value of land and not the date on which the possession was illegally taken and that even right to property if ceased to be a fundamental right, taking possession of or acquiring a property of a citizen can take place only in accordance with law as per mandate of Article – 300- A i.e. such deprivation can be only by resorting to a procedure prescribed by a statute.

It is held that right to property is now considered to be not only a constitutional or a statutory right but also a human right, though it is not a basic feature of constitutional or a fundamental right, human rights are gaining and even greater multifaceted dimension and right to property is considered very much to be a new part of such new dimension.

- (F) In the case of Darshanlal Nagpal (dead) through legal representatives V/s. The Government of NCT of Delhi and ors. reported in 2012 (2) SCC 327, it has been held in paragraph-28 that, the power to acquire by state must be exercised with great care and circumspection. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is exercised by invoking the provisions like the one contained in Section 17 of



the Act (old Land Acquisition Act, 1894) that results in depriving the owner of his property without being afforded an opportunity of hearing, it is emphasized that, although in exercise of power of amendment domain, the State can acquire the private property for public purpose, it must be remembered that compulsory acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his Constitutional right of not being deprived of his property without the sanction of law while considering Article 300A and the legal rights under the Constitution of India.

- (G) In the case of *Laxamanlal V/s. State of Rajasthan* as reported 2013 (3) SCC 764, it has been held in Paragraph-16 on the issue of Article 300-A of the Constitution of India and its mandate.
- (H) In the case of *Mohanlal Nanabhai Choksi V/s. State of Gujarat* as reported in 2010 (12) SCC 726, the same is reproduced in Paragraph-30 that, deprivation of property by acquisition, ultimately by the Land Acquisition Act, 1894, which is a drastic and expropriatory piece of legislation, the owners of the property, the appellants in that case, are entitled to raise all legally permissible objection to the legality of the acquisition proceedings in view of the enjoyment of the protection under Article-300-A of the Constitution of India.