EXAMINING THE CASE OF LAND ACQUISITION IN REAL ESTATE DEVELOPMENT UNDER PPP IN NOIDA/GREATER NOIDA – Learning lessons thereupon

A presentation on 6th December 2017 at APHRDI, Bapatla, A.P.
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• URBANIZATION SCENARIO
• 74th CONSTITUTION AMENDMENT ACT
  ✓ Structure and composition of ULB, Free and fair election periodically, Ward committees, DPC and MPC, Devolution of functions.
• CONSTITUTION OF SFC
• PPP
  ✓ PPP in Real Estate
• LAND ACQUISITION IN GREATER NOIDA
• LESSONS & MEASURES
• COMPARISON OF LAA 1894, LARR 2013
By year 2030, almost 590 million people (40% of the population) shall be living in urban areas. All states will be impacted by urbanization (McKinsey Global Institute, 2010).
URBANISATION SCENARIO

- Maximum growth seen in the case of Class 1A and Class 1B cities (Ahluwalia, 2011).
- Urban areas to contribute to 70% (approx.) in the GDP by 2030 (McKinsey Global Institute, 2010).

Are cities ready???
• Initiated a historical reform to decentralize power at the grass root level.
• Provided constitutional recognition to the ULBs and empowers them to function as an effective democratic institution of local self-government.
• Introduced some fundamental changes in the system of local governance:
  1. Structure and Composition of ULBs.
  2. Periodic and fair conduct of elections.
  4. Constitution of MPCs and DPCs.
  5. Devolution of additional functions as per 12th Schedule.
Most states amended their municipal acts to confer to the provisions of CAA, and according to the studies conducted by NIUA etc., following is the status on implementation of various components of CAA:

**Structure:**

- ULBs have been grouped into three categories viz; (i) Nagar Panchayats; (ii) Municipal Councils; and (iii) Municipal Corporations.
- Variations are however, found in the definition of small, large and transitional area among the states.

**Composition:**

- **Two categories of Councilors** - directly elected and nominated or co-opted. Number of **elected councilors** vary according to population of urban area. For **nominated members** however state has to decide for their conditions and procedures.
- Reservation has been made for SCs, STs and Women. In some states OBCs also included in the reserved list.
Elections:

• State Election commission conducted elections for the municipalities. Two round of elections have been held in most states and more than 70 thousand elected reps. including women and other weaker sections of the society have came into the urban political system.

• They are responsible for taking decisions and giving voice to the needs of the community with a view to ensuring that these be met.

• Election of Mayors and Chair persons is direct in some states while in others it is indirect. Tenure also vary from state to state.
Ward Committees:
1. To be setup in the ULBs having 3 lakh or more population.
2. Most states setup WCs but differ widely in terms of composition, scope and functions of WC.
3. In some states DMA or Commissioner is empowered to decide on these issues.
DPCs/MPCs:

1. Article 243 ZD of CAA requires that DPC be constituted in every district to consolidate plans prepared by the panchayats and municipalities in a district.

2. Article 243 ZE provides for the preparation of Draft Development Plan for the metropolitan area as a main task of MPC.

3. Enabling provisions for MPC and DPC have been made in the concerned acts but progress is slow.

4. There is a great deal of overlapping of functions between DPCs and MPCs, and also the role of development authorities and parastatal bodies in the new setup not defined.
**Devolution of Functions:**

1. All **the 18 functions listed in the 12th Schedule are not mandatory upon the ULBs.** State has a power to decide on it.

2. Most states devolved functions as per the 12th Schedule. Variations however, are found among the states in the nature and number of functions assigned to the ULBs.

3. Ambiguity between role of **parastatal organizations vis-à-vis ULBs**

4. Functions have not been assigned/ transferred along with the funds and functionaries.

6) Devolution of finances (continued..)
Devolution of Finances:

The performance of ULBs far from satisfactory:

1. Mis-match.
2. Declining fiscal base.
3. Adhoc, unspecified and uncertain state-local fiscal relations.
4. Poor information and record management system.
5. Poor collection efficiency.
6. Defective accounting and financial reporting system.

7. **Limited access to capital market** have been observed some of the basic issues which required to be addressed for enhancing the fiscal capabilities of ULBs.
1. The fiscal stress being explained by the ULBs does not allow them to perform their functions efficiently.

2. Although financial crisis has been identified as a major issue at the municipal level, no specific provisions have been made in the CAA for devolution of adequate financial powers to them, except for the institutional mechanism in the form of SFC to look into the financial health of ULBs once in five years, and suggest measures to improve their finances.

3. SFCs thus have paved the way for a new era in the inter governmental financial relations by suggesting guidelines for action by the states.

4. This has provided state a unique opportunity to re design the fiscal transfer systems that could be flexible enough to meet the rapidly growing local needs and responsibilities.

5. Key recommendations of selected SFCs are summarized below:

- Tax Assignment,
- Transfer of finances,
- Public participation municipal affairs,
- Privatization of municipal services and PPP.
Manufacturing and services seeing an upward trend, and is critical for India to achieve more than 7% annual growth. Investment in real estate and supporting infrastructure is needed (India Brand Equity Foundation, 2017).
• Overall development of the country is shaped by well developed infrastructure. Sustained development of the country’s infrastructure complements the growth of other sectors, leading to the overall development of the country (*PricewaterhouseCoopers, 2016*).

• The Indian real estate sector is the second largest employer and contributor to economic activity in India, and accounts for the second highest inflow of foreign direct investment (FDI). In India, 50% of the demand for construction activity comes from the infrastructure sector. The sector employs more than 35 million people. Given the significance of the sector in the overall growth of the economy, this sector has recently received a great impetus from the government (*Make In India, 2014*).

• Market size in real estate expect to reach 180 billion USD by 2020 (*India Brand Equity Foundation, 2017*)

• *A paradigm shift in India’s real estate sector. Are we ready??*
Some of the issues (in general) are mentioned below:

- **LAND ACCESS:**
  Land requirement to foster real estate development is seen controversial.

- **PAUCITY OF LONG TERM FUNDS:**
  Delays in land access leads to paucity in funding. Funding options in general are not available to the developer before the grant of approval.

- **TRANSPARENCY ISSUES:**
  Government misleading the farmers by acquiring their lands and failing to give them required compensation.

- **STAKEHOLDER PARTICIPATION ISSUES:**
  Between farmers, ULB, project developers and residents who had book homes.
• Land Acquisition Act is a powerful procedure through which the government acquires the land from individuals for public purpose and other development work meant for larger society of public i.e. its people \((Pankaj & Shekhar, 2014)\).
• Transparency between the authorities and people becomes an important aspect.
• However the process has been associated with many controversies.
Gurgaon, Haryana

Plans drafted in infrastructure were riddled with corruption and thus support the elite section of the country at the cost of the national interest. Stories have been reported from states such as Haryana, Uttar Pradesh and Odisha where a fertile land has been shown barren and suitable for acquisition by various industries. As an evidence state government of Haryana had had assured the farmers residing in Gurgaon that factories would be setup on their land and their family members would get a job. The state thus acquired land from farmers and later sold it to the concerned developer at throw away prices to build a stream of real estate. As a result of this, the farmers didn’t get the job that was promised and the built flats were affordable only by the elite (Rao & Singh, 2004).
NH -7 Golden Quadrilateral Project

In Golden Quadrilateral Project it was found that contracts were rewarded without any tender/bid resulting in a loss of Rs. 1321 crores to the ex-chequer. The contract was given to real estate developer which further sub-contracted the project to other small players who perpetually had no experience. Due to lack of transparency the quality has suffered so much that NH 7 is due for repairing even before the completion of the project, and as a result implementation still suffers on ground (Haldea, 2009).
PPP – AAI, DELHI INTERNATIONAL AIRPORT LIMITED, GMR GROUP

Comptroller and Auditor General of India (CAG) tabled its report in the Union Parliament on the 17th August, 2012. According to report, 1.63 Lakh Crore (approx. $29.4 billion) was lost by the people of India due to a deal entered between the Airports Authority of India and Delhi International Airport Limited for the lease of land. It must be noted, that the land acquired for the same purpose was actually agricultural land and a heavy development fees was levied on the passengers. So, in brief from both sides the national interest was compromised to uphold the growth of GMR (Haldea, 2009).
“The above facts reveal that sometimes it is the center that lacks direction and sometimes it is the state that pays no ear to the directions laid out. This has been marked elsewhere implicitly at various local levels as well. Often lack of transparency, complex procedure, a top down approach due to the unitary bias leads to such consequences, which is often reflected in planning processes which requires a great deal of interventions at legislative levels (TNN & Agencies, 2011).”

In this regard a case study on Greater Noida to looks at the problem more closely.
Land Acquisition Act of 1894 was created with the purpose of facilitating the government’s acquisition of privately held land for public purposes. The word "public purpose", is defined in the Act. The word "government" refers to the central government if the purpose for acquisition is for the union and for all other purposes it refers to the state government. It is not necessary that all the acquisition has to be initiated by the government alone. Local authorities, societies registered under the Societies Registered Act, an co-operative societies established under the Co-operative Societies Act can also acquire the land for developmental activities through the government. The Indian Constitution does not recognize property right as a fundamental right. In the year 1977, the 44th amendment eliminated the right to acquire, hold and dispose of property as a fundamental right. However, in another part of the Constitution, Article 300 (A) was inserted to affirm that no person shall be deprived of his property save by authority of law. The result is that the right to property as a fundamental right is now substituted as a statutory right. The amendment expanded the power of the state to appropriate property for social welfare purposes. Article 31, clauses (1) and (2) provided for the doctrine of eminent domain and under clause (2) a person must be deemed to be deprived of hi/her property if he/she was substantially dispossessed or his/her right to use and enjoy the property was seriously impaired by the impugned law. According to this interpretation, the two clauses of Article 31 dealt only with acquisition of property in the sense explained by the court, and that under Article 31 (1) the state could not make a law depriving a person of his/her property without complying with the provisions of Article 31(2) (Patil, 2012).
• Over the past few years, New Delhi and its environs have been rapidly developing and changing.
• Noida/G.Noida, which are located on the eastern side of Yamuna River, are also experiencing rapid development as a commuter towns of the capital.
• It can be substantiated by many industrial complexes being built one after another.
• Both the cities now experience chaos.
• Land acquisition in Noida extension (Greater Noida) has been characterized with severe criticisms.
• Both from farmers’ perspective and property buyers, it has had negative ramifications.
• One would realizes how a fall in government procedures negatively affects many stakeholders, such as farmers, builders and property investors, simultaneously!
• In this acquisition, where on one hand farmers whose lands seized were compensated, on the other hand property rates and real estate market were severely hit bringing a jolt to Uttar Pradesh Government.
• A Development Authority prepared a plan for Greater Noida 2021 (for short “Development Plan”) covering a total area of 21570 hectares.
• This area has been described, as Phase I of Greater Noida. The Land use specified in the Development Plan (Table 1)

Table 1: Land use as per Greater Noida Development Plan 2021

<table>
<thead>
<tr>
<th>LAND USE</th>
<th>2021 (ha)</th>
<th>PERCENTAGE</th>
</tr>
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<tbody>
<tr>
<td>Residential</td>
<td>5000</td>
<td>23.2</td>
</tr>
<tr>
<td>Industrial</td>
<td>4227.3</td>
<td>19.6</td>
</tr>
<tr>
<td>Commercial</td>
<td>1200</td>
<td>5.6</td>
</tr>
<tr>
<td>Institutional</td>
<td>3502.7</td>
<td>16.2</td>
</tr>
<tr>
<td>Green areas</td>
<td>5000</td>
<td>23.2</td>
</tr>
<tr>
<td>Transportation</td>
<td>2600</td>
<td>12.1</td>
</tr>
<tr>
<td>SEZ</td>
<td>40</td>
<td>0.2</td>
</tr>
<tr>
<td>TOTAL</td>
<td>21570</td>
<td>100</td>
</tr>
</tbody>
</table>
• The land use of village Shahberi was shown in the Development Plan as “Industrial”.
• The farmers, were unilaterally evicted from their land.
• They were not given an opportunity to file objections.
• Consequentially they waged a campaign against the acquisition, eventually celebrating a judgement by Supreme Court in their favour.
• Based on this judgment, land was returned to the original owners (most of them are farmers).
• However, flat buyers who had booked flats with real estate developers on lands acquired, were disappointed by the loss of their long-awaited dreams.
• This situation raised developers’ and builders’ fears of bankruptcy and of failure to reimburse deposits to those who booked flats and houses in this area.
• Real Estate sector was badly jolted. PPP undermined (Pankaj & Shekhar, 2014).
Identified causes leading to dire situation were as follows:

- Land acquisitions were originally carried out by the UP State government as a part of the Greater Noida’s Industrial Development Plan, pursuant to the emergency clause (Article 17) stipulated in the Land Acquisition Act 1894 for Industrial Purpose.
- The land was acquired by GNIDA at 850 rupees per square meter from farmers and then resold the land at 10,000 to 12,000 rupees to private developers for the planned construction of residential buildings (250,000 flats) in the area.
- Real Estate developers who sold flats at first showed an inclination to respond to the issue with reimbursement or provision of alternative flats.
- However this had put a strain on their relations with GNIDA undermining PPP and USP of Greater Noida (Pankaj & Shekhar, 2014).
Inferences could be summarized as:

- **Breach of rules**: Land acquired by the govt. in the name industrial use but actually sold to private parties.
- **Lack of transparency**: Govt. misleading the farmers by acquiring their lands and failing to give them required compensation.
- **Lack of regulation in the functioning of the ULB**: Tyrant attitude on the ULB’s part for not allowing farmers to raise objections.
- **Destitute of funds** on part of ULB due to improper decentralization.
1. **Scope for bottom-up approach:**
   - As highlighted earlier, decentralization bestowed the local governments with greater responsibilities without providing them measures for their revenue generation.
   - As a result Urban Local Body often became debt ridden and bribed by private developers.
   - Similar thing when happened with Greater Noida Industrial Development Authority, lead it to such a trouble, which otherwise could have been prevented if self-revenue generation mechanism like that of Surat or other such city was in place.

2. **Public participation:**
   - Participation of people becomes an important aspect.
   - In the case of Noida people were merely consulted. Had there been an effective public participation, queries of people would not have remained unheard so long.
   - Bottom-up approach ensures greater and more effective participation of people.
2. Transparency:
• Diaphanous functioning of the Urban Local Body should be of prime importance.
• Voices of all stakeholders alike should be duly heard.
• In case of Noida, the act of dubbing farmers with false notion of giving lands for industrial purpose was met with a vehement backlash.
• If there had been more transparency into the matter, with farmers being aware of ongoing process, such a jolt to the ULB would not have happened.

3. Strict regulation:
• Greater Noida Industrial Development Authority had played a role of tyrant by not allowing the farmers to raise objections.
• If it had allowed the farmers to raise an objection such a campaign would not have been triggered from farmers’ side, which ultimately was met by huge media coverage, bringing down the reputation of the Uttar Pradesh government and Greater Noida Industrial Development Authority apart from undermining the prospect for PP.
• Strict regulation through transparency would minimize such a scenario.
4. Besides this Management Information System and Relational Database Management System may help the officers to keep and manage large chunk of records without any risk of inconsistency or redundancy.

5. Laws empowering the PRIss may be amended so that it can work independently and does not face exploitation by urban government even if it is mentored by the state government.

6. In addition to it, national agencies should work together to bring a fair co-ordination between the union and the states.
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<th>Variable</th>
<th>LAA, 1894</th>
<th>LARR, 2013</th>
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<tr>
<td><strong>Public Purpose</strong></td>
<td>This clause was completely violated by GNIDA because they gave the acquired land for industrial purpose and gave it to developers. So, this was the first stage where land acquisition start crumbling</td>
<td>Strategic purpose, national security, infrastructure, transport corridors, govt. institutions, residences for poor.</td>
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<td><strong>Consent of affected purpose</strong></td>
<td>There was no provision of consent.</td>
<td>Requirement : Consent of Affected Families 70% in case of PPP 80% in case of private company</td>
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<td><strong>Social Impact Assessment (SIA)</strong></td>
<td>Since there was no such provision for Assessing the social impact, the authority who handed over the land to the developers became were linen, without considering the society as a whole.</td>
<td>This clause restricts the authority to hand over the land to developers.</td>
</tr>
</tbody>
</table>

*Sources: (A. Gurnani, 2015), (Government of India, 2015) & (British government in India, 1894)*
REFERENCES

- British government in India, 1894. *Land Acquisition Act 1894*, s.l.: British government in India.
THANK YOU