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# THE LAND QUESTION

## EXPERT VIEW

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**T**he recent U-turn by the Bharatiya Janata Party (BJP)-led government on the proposed amendment to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (henceforth the land Act), can be viewed narrowly as a Congress victory in the ongoing tit-for-tat game that is short-changing voters and wrecking our parliamentary system. But it actually reflects a re-balancing of deeper political forces that are at work in India's political economy.

Here is a summary of the main events leading up to this episode.

Article 246(3) of the Constitution assigns exclusive power to state legislatures to make laws relating to subjects in list 2, the state list, in the Seventh Schedule of the Constitution. Land, and matters relating to land, is item 17 in this list, giving state legislatures the exclusive power to legislate on matters relating to land. However, Article 249 empowers Parliament to legislate even on matters in the state list, provided not less than two-thirds of the members present and voting in the Rajya Sabha, the council of states, pass a resolution declaring that such legislation is necessary or expedient in the national interest. The United Progressive Alliance (UPA) government passed the land Act on 27 September 2013 under this proviso.

The land Act was passed against a backdrop of state governments increasingly distorting the land market, invoking eminent domain (the power of a government to acquire private land for public purpose) for forcible acquisition of land from farmers and tribals on behalf of mining, real estate and other corporate interests. The new Act blocks this trend, shifting the law quite sharply in favour of the farming community. It provides for compensation of up to four times the market value of the acquired land. It requires consent of 70% of the land owners whose land is to be acquired in the case of public-private partnership (PPP) projects, and 80% in

the case of private-sector projects. It requires compulsory social impact assessment by independent experts and local government representatives. It requires accountability of the department head in case there is malfeasance in the acquisition of land, and several other pro-land-owner provisions.

The Congress had hoped that this law, along with a number of other pro-poor measures taken towards the end of its tenure, would more than compensate for the multiple scams that paralysed the second term of the UPA government. But that was not to be. The Congress suffered a humiliating defeat, and the BJP came to power with a thumping majority in May 2014. One of the early policy moves of the new government was the attempt to amend the land Act, eliminating or softening some of its strong land-owner protecting provisions. Among other things, the amendment sought to eliminate the consent requirement for private or PPP projects in the case of defence, rural infrastructure, affordable housing, industrial corridors, and infrastructure. It sought to exempt the same five classes of projects from social impact assessment. It sought to drop the provision regarding accountability of the head of department in case of malfeasance, and proposed several other such changes.

The amendment was introduced through a series of temporary executive ordinances passed in December 2014, April 2015, and May 2015. The same amendments were presented in Parliament through the land Act amendment bill that was passed by the Lok Sabha in March. But it got stuck in the Rajya Sabha, where the BJP government has not been able to muster the required two-thirds majority.

In a joint select committee set up to reach consensus, the BJP members withdrew six of the nine major amendments that the party had earlier sought, including the elimination of the consent clause and social impact assessment require-

ment for projects in five key sectors. Despite this, consensus could not be reached on some remaining minor amendments before the end of the monsoon session of Parliament. It is expected that consensus will be reached in the winter session. Meanwhile, the BJP government will no longer renew the amendment ordinance, underlining its complete capitulation on the land question.

Reportedly, this BJP U-turn on the land Act amendment is attributable not so much to resistance from the Congress-led opposition, but to strong reservations against the amendment bill among its own members, its allies and its sister organizations within the Rastriya Swayamsevak Sangh (RSS) such as the Bharatiya Kisan Sabha, Bharatiya Mazdoor Sangh, Swadeshi Jagran Manch and Vanavasi Kalyan Ashram. This is because the land question represents one of the great divides in Indian politics, which cuts across party lines, the divide between the farming interests of rural India, Bharat, and the corporate interests of urban India.

Reminiscent of the forced enclosure movements in 17th and 18th century Britain and elsewhere in Europe, forced land acquisition is not uncommon in countries transforming from an agrarian to an industrial economy. It has provoked a great deal of anger among farmers, which the Congress party had hoped to exploit. The land Act of 2013 blocked this forced alienation of farmers' lands, re-setting the balance in state policy between rural and urban interests. The BJP U-turn on the amendment bill underlines the necessity of maintaining this political balance while pursuing a reform agenda in India.

Unfortunately, the BJP projected the proposed amendments as being essential for unblocking a large number of stalled infrastructure projects and reviving the investment cycle. Consequently, potential investors in India and abroad, rating agencies, and multilateral financial insti-

tutions adopted passage of the land Act amendment bill as a litmus test of India's performance on the reform front. However, eminent economist Nitin Desai and Right to Information activist Venkatesh Nayak have argued convincingly in their articles and e-letters that the land Act has little to do with stalled projects, especially in the private sector.

In its analysis of stalled projects, the government's own 2015 Economic Survey does not even cite land acquisition as a factor for private-sector projects that account for 78% of stalled projects. Of the 804 stalled projects listed by the ministry of finance, land acquisition is a factor for only 66 (8%). Of these, 10 projects are for elite consumption such as shopping malls, hotels and resorts, high-end residences and villas, golf courses, etc. The major factors accounting for stalled projects include unfavourable market conditions, lack of funds, raw material and fuel supply bottlenecks or loss of promoter interest.

Clearly, the BJP's pursuit of land Act amendments was not driven by the urgent need to revive the investment cycle and promote growth as claimed. Was it perhaps driven by influential corporate entities hoping to manipulate public policy to serve their own special interests? Desai argues (*Business Standard* 20 May 2015) that eminent domain should not be used to distort the land market, except in clearly demonstrable cases of public purpose such as road or railway projects. Even the existing land Act, he feels, leaves too much room for enforced land acquisition by the government for unwarranted purposes. Moreover, the provisions for consent, social impact assessment and compensation in the land Act are really no more demanding than the terms that multilateral financial institutions require for land acquisition in their infrastructure project loans to developing countries.

So, hopefully, private investors, rating agencies and multilateral institutions will re-assess the BJP U-turn on the land Act amendments and see it not as a setback for reforms, but as a victory for competitive market capitalism in the battle against crony capitalism.

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**BJP's U-turn on the proposed land Act reflects a re-balancing of deeper political forces that are at work in India's political economy**