

To

Shri Kalyan Singh, Member of Parliament, and Chairperson Parliamentary Standing Committee on Rural Development, Lok Sabha Secretariat, Room No. 151, Parliament House Annexe, New Delhi-110001

SUB: Views/Suggestions on The Land Acquisition (Amendment) Bill, 2007 in response to the PIB's advertisement on its website dated 3rd Jan. 2008

Dear Sir,

(1) While thanking you for your initiative to invite views/suggestions on two important Bills [namely LA (Amendment) Bill 2007 and The Rehabilitation & Resettlement Bill, 2007], I would like to say that the time allowed to the public to place their views/suggestions on the same is too short. As you might know, the invitation eliciting the public opinion on these two important documents was circulated by Press Information Bureau on 3rd January 2008 on its website, calling for public response within 15th Jan. 2008. Thus a too short interval spanning less than 12 days was allowed for the public to send in their response on the two bills. As you shall further agree, a hasty response from the public would be of no value to the esteemed Committee in assessing the public opinion on these two Bills. Usually at least a month's notice should be allowed for the public to respond on each such Bill. It is therefore earnestly urged that the time given to the public for their response on these two Bills be reasonably extended to enable them to debate and discuss the concerned issues involved in these two Bills among themselves before they dispatch their feedback.

(2) Keeping the time constraint in view, the undersigned after making a cursory reading of the LA (Amendment) Bill, 2007 has proposed a list of 18 Views/Suggestions (from A to R) covering various provisions of the Bill.

(3) Time constraint prevented the undersigned from putting forward his views/suggestions on the other important document i.e. The Rehabilitation & Resettlement Bill, 2007. If time is reasonably extended beyond the present deadline i.e. 15th of Jan. 2008

Looking forward to an acknowledgement of the present response,

With Regards,

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Dated 15th January 2008

Views/Suggestions on the Land Acquisition (Amendment) Bill, 2007

- (A) **From a reading of Section-1 of the Bill** it appears, the Amendment Bill shall apply only to the projects, which are likely to come up in future. But there are massive backlogs of cases of displacement caused by the past projects, which have not been properly compensated or resettled/rehabilitated, as a result of which sporadic outbursts of protest and agitation have been taking place intermittently all across the country. ***In order to take care of the left out class of project displaced/affected persons, the Section-1 of the proposed Amendment Bill should provide for the needed space to address to the unsolved problems and issues of the persons displaced/affected by the past projects, irrespective of whether these are completed or still ongoing.***
- (B) **From a reading of Section-5 (i) of the Bill** it appears that only the land-holding families, the families having tenancy rights and the families covered under the ST and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are entitled to make any claim for compensation. But it is a well-known fact that a large number of landless and marginal farmer families, who are substantially dependent upon common property resources ('Government land' in the official parlance) do get badly affected in terms of livelihood by the acquisition of such land for any development project. ***The Bill should therefore put in place appropriate provisions for the general run of landless, occupier ('encroacher' in official parlance) and marginal farmer families to claim compensation in terms of both cash and kind against the loss of their habitation and livelihood caused by the land acquisition in their respective areas.***
- (C) **From a reading of Section-5(v) of the Bill** it appears that though the proposed amendment bill seeks to delete the word 'Company' from the long title and preamble of the Act, it however keeps spacious provision for the land acquisition to be made in favour of the companies in tact and moreover, unlike the existing Act (LA Amendment Act, 1984) where there is a distinct line drawn between the 'public purposes' and 'purposes of company' [Vide Supreme Court Judgement Case No. Appeal (civil) 4843 of 2007, dated 12. 10.2007], the proposed amendment seeks inter alia to project Company's purposes as public purposes, and thereby lands up in a worse position. **Moreover, from a reading of the clause (iii) under its Section-5 (v),** it appears that if a company has directly purchased 70% of the total land required for its project, this fact itself shall suffice to bestow the stamp of 'public purpose' to the proposed project irrespective of the aims and objectives of the project. **Again, from a reading of the clause (vi) under the Section-5,** it appears that any infrastructure project, even if it is proposed by a private company shall be construed as a project for public purposes, and such a provision goes against the spirit of the amendment that proposes to abolish the word 'company' from the long title and preamble of the Act. Thus from a combined reading of the different clauses under Section-5(v) of the Bill, it is revealed that there is a great deal of contradiction between the primacy that the Bill promises to accord to 'public purposes' on one hand and the massive space given for free play to private companies and that too in the name of 'public purposes' on the other. It is again worth quoting the above judgement of Supreme Court, "39. A declaration is to be made either for a public purpose or for a company. It cannot be for both".

It is suggested that in order to ensure congruity between the new title and preamble of the Bill on one hand and its remaining provisions on the other, the above mentioned provisions under Section-5 should be so reworded that the old distinction between 'public purposes' and 'purposes of a private company' be made explicit and each be treated in respect of the procedure for land acquisition and allied matters in a separate and distinct manner.

(D) The Section-5 (v) of the Bill mentions inter alia, “(iii) the provision of land for any other purpose useful to the general public, for which land has been purchased by a person under lawful contract to the extent of seventy per cent but the remaining thirty per cent of the total area of land required for the project as yet to be required.” From this it is not clearly understood, whether the above-mentioned ‘seventy percent’ is out of the total land required (private land plus government land) or only out of the total private land. Of late the trend followed by most State Governments in choosing the project sites for private companies is such that out of the total land required for a private company the bigger portion is selected from the Government land while minimising the need for acquisition of private land. And the State Governments/Companies don’t pay any compensation or other benefits to the local people for the acquisition of such Government land. *It is therefore indispensable that the Bill make it clear as to whether the said 70% is in reference to the total private land to be acquired or to the total land consisting of both private land and Govt land.*

(E) The Section 6 of the Bill says, ‘Throughout the principal Act, the words “or for a company” along with their grammatical variations, shall be omitted’. But as a matter of fact, the acquisition of land for companies is not excluded from the purview of the Bill as such. The Section 5(v) bears the following mention, ‘*Explanation* —The word “person” shall include any company or association or body of individuals, whether incorporated or not’. It clearly means that the Government shall continue to undertake land acquisition in favour of private companies. If that be so, there should be separate and distinct procedure laid down in respect of land acquisition for companies, just as there is one such procedure mentioned under Chapter-VII of the principal Act and Land Acquisition (Companies) Rules, 1963 made there-under. *Thus there is no justification in saying that the words “or for a company” be omitted altogether from the Act.*

(F) The Section 8 of the Bill says that social impact assessment shall be conducted ‘whenever the appropriate Government intends to acquire land for public purpose involving physical displacement of— (i) four hundred or more families *en masse* in plain area; or (ii) two hundred or more families *en masse* in tribal or hilly areas or Desert sixth Development Programme blocks or areas specified in V Schedule or Schedule VI to the Constitution’. There is very much a possibility that a project is spread in a vast area and has massive potential to adversely impact otherwise the life and livelihood of the people living in the vicinity of the project site, but the number of families to be displaced by it is smaller than the abovementioned limits. In such cases it is not wise at all to forego the need for conducting a social impact study. *So there is no justification at all to specify the definite numbers of displaced families as a condition for undertaking of social impact study.*

(G) From a reading of the Section 9 of the Bill it appears that like the existing Land Acquisition Act, 1894 as amended in 1984, the current Bill retains the Government’s

arbitrary power to issue the preliminary notice for land acquisition under Section 4(1) of the Act without having to seek the consent of the people who are going to be displaced and/or affected by the proposed project. As the Bill stands now, this arbitrary power shall continue to be exercised henceforward even when the land is to be acquired for a private company garbed under the rubric 'public purpose'. It is well known that such a provision has served as the main cause for provoking people's resentment and agitation against the land acquisition by the Government, even when the proposal for such land acquisition was meant for a good cause. In the above quoted judgment of the Supreme Court it was held inter alia that the issue of preliminary notice under Section 4(1) for land acquisition must be preceded by the fulfillment of conditions and obligations under the Part-VII of Land Acquisition Act, 1894 and Land Acquisition (Companies) Rules, 1963 made thereunder (vide Para 45). Such conditions stipulate that the Collector must conduct an enquiry to ensure that the concerned company has made the best of its efforts to locate the alternate sites but failed, the land to be acquired is not good agricultural land, the reasonable price shall be paid for the land to be acquired, and moreover, based upon the Collector's report the Land Acquisition Committee at the State level must give their approval for the acquisition of the proposed land. ***So the Bill should incorporate a provision saying that where the land acquisition is proposed to be made for a private company, the notification under Section 4(1) of the principal Act should be preceded by the fulfillment of the conditions and obligations similar to those laid down in the principal Act and Land Acquisition (Companies) Rules, 1963.***

(H) From a reading of Section 10 of the Bill it appears that Part-VII, which deals with 'acquisition of land for companies', shall be altogether dropped from being mentioned under Section-6 of the principal Act. Section 6 of the principal Act says that a declaration shall be made whether the land in question is required for a public purpose or for the purposes of a company. We have already seen that the Bill under Section 5(v) has provided for ample scope for land acquisition to be made by the Govt for private companies and that too covered under the rubric 'public purpose'. But it is well known that the public purposes and Company's purposes are altogether different from each other. As the Supreme Court said, a declaration under Section 6 can't be for both at the same time. And that is why, Part-VII of the principal Act has been exclusively devoted to the treatment of land acquisition for companies as distinguished from the land acquisition for public purposes. Moreover, to operationalise the provisions under Part-VII, the Land Acquisition (Companies) Rules, 1963 has been framed, and these Rules serve to a great extent as a safeguard against the arbitrary manner of land acquisition made by the Government in the interest of private companies. ***Thus there is no justification as to why the reference to Part-VII (Acquisition of Land for Companies) shall be omitted from the Section 6 of the principal Act.***

(I) From a reading of Section-13 of the Bill (determination of market value), it appears that the old method of computation of land value based upon the transactions of the past and/or the determination by the Collector has been retained. But the anti-displacement movements have always critiqued this method since it provides for a much lower price to be paid to the land loser in comparison to the land-price, which usually gets escalated in the wake of the announcement of a new project coming up in the area. ***So the Bill ought to provide for fixation of the land price to be based not upon the record of past transactions, but upon the current, escalated price level for the land in question that***

might have emerged following the announcement of the new project coming up in the area.

- (J) **From a reading of Section-13 of the Bill (determination of market value)**, it again appears that the cut-off date for fixation of land price is implicitly maintained as 'at the date of the publication of the notification under Section 4(1)' [vide Section 11(1) of the principal Act], which is a retrograde provision for the reasons explained in the above para. *It is therefore suggested to delete the above expression from Section-11 (1) of the principal Act.*
- (K) **From a reading of Section-13 of the Bill (determination of market value)**, it further appears that the Bill seeks to authorise a company to pay 50% of the amount of compensation in the form of shares or debentures to the land losers. The common people by and large are not conversant with this mode of payment. *It is therefore suggested that the provision for payment of compensation money to be made through shares and debentures be made optional, not a compulsory one.*
- (L) **From a reading of Section-14** it appears that the Bill contains a good provision for transparency of the entire acquisition proceedings including award of compensation to each individual by way of display before the public. But it is not clear as to the stage at which such transparency before the public shall be ensured. *It is suggested that the Bill ought to provide for transparency of the activities of the Government and that of the concerned Company right since the stage of selection of the project site prior to the notification under Section 4(1) of the principal Act upto the full payment of compensation and other R&R benefits to the displaced and affected families.*
- (M) **From a reading of Section-15 of the Bill** it appears that the old method of computation of the land price, which is based upon the record of past transactions, is retained fully. But as already pointed out above, the land price needs to be determined not on the retrospective, but on the prospective considerations. *It is therefore suggested to delete the proposed amendment in Section-15 of the principal Act and instead to incorporate a provision that bases the determination of land price on the criteria of prospective escalation of land price following the announcement of a new project in the concerned area.*
- (N) **From a reading of Section-16 of the Bill**, it appears that the emergency power under Section 17 of the principal Act as vested in the Collector for acquisition of any land bypassing the procedures laid down for issue of notice and declarations etc. as required under Sections 4 and 6 is retained fully. But there is a difference too. While the principal Act exercises the emergency power only for 'public purposes' (as distinguished from purposes of a company), the proposed amendment seeks to legitimise the emergency power for both public and company purposes. *It is therefore suggested that the Bill ought to ensure that the emergency power as mentioned under Section-17 of the Act is exercised only for 'public purposes' and not for the purposes of a private company.*
- (O) **From a reading of Part IIA (Establishment of the State Authority) and PART IIB (Establishment of the Authority for the Centre) covered under Section 17 of the Bill** i.e. Sections 17A to 17M it is not clear as to who shall be eligible to act as the Chairperson of the respective authorities at the State or Central level. It has been found

from the past experience that where the retired Officers of the Government have been chosen to head commissions and authorities of the kindred type, they in course of their performance show a bias towards the officers involved as parties to a case. *It is therefore suggested that the Bill should provide for a retired judge to head the proposed authority at State or Central level, while appointing the retired officers as its members.*

(P) From a reading of Section 19(i) of the Bill it appears that the concept of market value as determined on the basis of cut-off date [the date on which the notice under Section-4(1) has been issued] is implicitly retained. Already we have seen above that this provision militates against the interest of the land losing families. *It is therefore suggested that the expression ‘market value of the land’ occurring in Section 23 of the principal Act should be redefined to mean the need for determining the value of the land on the basis of the prospective escalation of land price in the aftermath of the announcement of the project.*

(Q) The Section 21 of the Bill provides for the abolition of the Part-VII (Acquisition of Land for Companies) containing Sections 38 to 44B (both inclusive). This is objectionable. We have already seen that the present Bill has not done away with, and rather reinforced the need for land acquisition in favour of private bodies including companies [vide Explanation in the Section 5(v) of the Bill]. Needless to say, since the public purposes and company’s purposes are altogether different from each other, there must be separate procedure laid down for acquisition of land for private companies. In the framework of the existing LA Act, 1894 amended in 1984, the Part-VII consisting of Sections 38 to 44B enjoins upon the State to pursue a more rigorous and elaborate procedure to the satisfaction of both land losing families and the appropriate Government as a condition precedent to the acquisition of land by the Government in favour of the private companies. Now if the Part-VII of the principal Act along with its component Sections is abolished as suggested by the Bill, then the land acquisition for private companies shall be made in the same manner as it is done for public purposes. In the Para-15 of the above quoted judgement of the Supreme Court, it is clarified, “When a request is made by any wing of the State or a Government company for acquisition of land for a public purpose, different procedures are adopted. Where, however, an application is filed for acquisition of land at the instance of a ‘company’, the procedures to be adopted therefor are laid down in Part VII of the Act”. Moreover, the suggested abolition of Part-VII implies the automatic nullification of the Land Acquisition (Companies) Rules, 1963, which is again objectionable. The above quoted Supreme Court judgment in Para-16 maintained, “The Land Acquisition (Companies) Rules, 1963 for acquisition of land for the companies have been framed by the Central Government in exercise of its power under Section 55 of the Act”. As per Rule 4 of the said Rules, the appropriate Government needs to be satisfied in regard to certain matters before initiating acquisition proceedings. For the purpose the said Government shall direct the Collector to submit a report on a number of matters, such as (i) whether the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition; (ii) whether the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed; (iii) whether the land proposed to be acquired is suitable for the purpose; (iv) whether the area of land proposed to be acquired is not excessive; (v) whether the company is in a position to utilise the land expeditiously; and (vi) whether the land proposed to be acquired is good agricultural land, and whether no alternative suitable site

can be found so as to avoid acquisition of that land. To ascertain the facts about the above matters the Collector shall hold an enquiry, which shall include consultation with senior agricultural officer of the district regarding the status of the land in question, determination of the amount of compensation for the said land and company's willingness to pay the said amount. After the above enquiry is held, the Collector shall submit his report to the Government and the latter shall forward the same to the Land Acquisition Committee formed at the State level. It is mandatory that no declaration shall be made by the Government under Section 6 of the Act unless the consultation with the Committee has been held, enquiry report of the Collector considered, report if any submitted under Section 5-A of the Act taken into account and agreement between the Government and Company as required under Section 41 of the Act executed. The above judgement in its Para-17 emphasises, "When the State intends to proceed with the acquisition of land it must form an opinion that the lands which are going to be acquired are not good agricultural lands. The rules by and large lay down a statutory policy in that behalf and question of ignoring the same by the State does not arise". *Under the circumstances, when the Bill provides for an unbound scope for the State to acquire lands including agricultural lands in favour of private companies, the Part-VII of the principal Act and Land Acquisition (Companies) Rules, 1963 made there-under, which contain a number of countervailing safeguards against the possibility of a nexus between the concerned officers of the Govt and land requiring company to acquire the good agricultural land for profiteering purposes of a private company must not be abolished, but rather be further refined and reinforced to serve their avowed objectives.*

(R) From a reading of the Section 23(i) of the Bill it appears that the Bill denies altogether the need for making any separate rules to regulate the process of acquisition of land for private companies. This is objectionable. It stands to anybody's common sense that so long the present Bill accommodates the space for land acquisition for private companies, there ought to be and must be separate and well-defined procedures in place to govern the same. The above quoted judgment of Supreme Court has also emphasised such an imperative need in unequivocal terms. *Under the circumstances, the suggestion of the Bill to omit the first proviso to the sub-section (i) of Section 55 is devoid of any merit.*

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Dated 15th January 2008**