



National Conference on the **Five-Year Journey of** **THE RFCTLARR ACT, 2013** **THE WAY FORWARD**

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Background Note on 2nd session: 'Land Procurement Models: what have we learnt?

The availability of land is one of the critical factors in achieving India's targets for expansion of infrastructure, and provision of affordable housing for all in the coming decades. Further, to facilitate investments, foster innovation, build best-in-class manufacturing infrastructure and enhance skill development, through its flagship programme – 'Make in India', the Government of India is building industrial corridors across the country, to encourage foreign and domestic investment. While states are in the process of making land available under LARR Act, 2013, states are also developing other mechanisms of land procurement for industrial and development projects in the state. From 2016 onwards, several states have begun to design new means to procure land, as land acquisition processes are seen as lengthy and time consuming under the LARR Act, 2013.

The session 'Land procurement models: What have we learnt?', encourages a discussion on different models and the opportunities and challenges that each one presents. The three major models of land procurement, other than land acquisition, will be discussed – private purchase, land pooling and land leasing. These models are being used across sectors, and this session will discuss procurement models for urban development, the renewable energy (RE) sector, and the development of linear infrastructure such as roads. Key issues in changing land use categories, which can broadly be classified as forest, revenue, and private lands, will also be referred to, specifically the conversion of forest

land. Each model has its unique benefits and challenges, and the choice of one or the other is determined by both the regulatory framework created by state governments, and the specific purpose for which land is required.

I. Private Purchase

Since the enactment of the LARR Act, 2013, it is seen that the private purchase of land has gained greater popularity, considering the relatively easier process of purchasing land directly from land owners willing to sell their land. Further, the purchase of land is preferred over leasing when permanent infrastructure is required to be developed. Typically, the developer purchases land from the owners under the Transfer of Property Act, 1882. The Transfer of Property Act, 1882 provides that the right, title, or interest in an immovable property (or land) can be transferred only by a registered instrument. The Registration Act, 1908, is the primary law that regulates the registration of land related documents.

One of the major challenges of purchasing land directly is the absence of clear land titles. Nearly 67% of litigants in civil cases are approaching the judiciary for land or property related cases, mostly as a result of difficulty in establishing ownership of land. In this context, the Committee on Financial Sector Reforms (FSRC) had, in 2009, recommended moving from a presumptive to a conclusive titling system. Guaranteed title systems have been developed and adopted in countries such as Australia, New Zealand, United Kingdom, and Singapore. To improve the quality of land records, and make them more accessible, the central government introduced the Digital India Land Records Modernization Programme in 2008. The programme seeks

to achieve complete computerization of the property registration process and digitization of all land records. However, the pace of digitization of records has been slow.

II. Land Pooling

Land pooling has been used internationally for urban development in Europe, Australia, Tokyo, South Korea, Seoul and other parts of Asia. The policy is primarily used for urban development. Land Pooling and its variants are known by different names, such as land readjustment, land pooling and readjustment and land reconstitution. Typically, the concept involves amassing small rural land parcels into a large parcel, creating infrastructure on this land and returning part of the redeveloped land to owners after appropriating the costs of infrastructure and public spaces. Of the land that remains with the local town planning or state government authority, a substantial portion is reserved for setting up infrastructure such as roads, hospitals, schools and parks and establishing electricity, water and sewerage networks. The local planning or development authority usually sells the rest for financing the costs of the infrastructure and amenities.

In India, concept of land pooling was first introduced in India under the Bombay Town Planning Act, 1915 in the erstwhile Bombay Presidency. However, post 2013, several states have framed or are in the process of framing land pooling policies and schemes as a viable alternative to land acquisition. These include Andhra Pradesh, Gujarat, Haryana, Maharashtra, New Delhi, Punjab, and Tamil Nadu. A recent example of land pooling policy is that under the Andhra Pradesh Capital Region Development Authority Act, 2014 for the development of Amravati, the capital of Andhra Pradesh. After the bifurcation of Andhra Pradesh in 2014, the Government of Andhra Pradesh required large tracts of land for its new capital, Amravati. Under this model, in exchange for land, the government promised a smaller, but developed plot of land to the title holders in the future. Started in 2015, the scheme aimed to obtain 38,581 acres of land. By June 2018, the Government of Andhra Pradesh had obtained over 33,700 acres under the scheme.

III. Land Leasing

An effective land lease market can significantly benefit the economy, by making land available for industrial and other development projects, while providing source of regular income to the owner. Section 104 of the LARR Act, 2013 states that, 'Notwithstanding anything contained in this Act, the appropriate Government shall, wherever possible, be free to exercise the option of taking the land on lease, instead of acquisition'. However, in India the participation in land lease market has been found to be declining since 1970. Stringent laws related to land leasing

and transfer of ownership are argued to be the reason behind this fall (World Bank 2007). The NITI Aayog's Expert Committee on Land Leasing (2016) chaired by Dr T. Haque has recommended a model agricultural land-leasing law for adoption by the states

For the land leasing model to be a success, state governments will need to amend their tenancy laws to facilitate the entry of industry in the land market, and promote willing buyer-willing seller transactions. This can further be strengthened by simultaneously liberalizing the use of agricultural land for non-agricultural purpose. Experts observe that a potential hurdle to the land leasing reform laws is the fear among landowners that a future populist government may use the written tenancy contracts as the basis for transfer of land to the tenant. However, this can be overcome by giving land owner an indefeasible title. States such as Karnataka that have fully digitized land records and the registration system have also progressed in this direction, with a solar park being established on private lease model.

Thus, the regulatory framework and practices pertaining to land procurement are evolving, and especially after the enactment of the LARR Act, 2013, several state governments and agencies are attempting to develop new means for the fair, transparent, and just procurement of land for development. There are significant inter-state differences with some states taking the lead in innovating on this front and it is important to understand how the development of land can be enabled across states. Clearly there is new thinking, across the public and private sector, on alternate means of land procurement.

The following issues are germane to the discussion on the utility of leasing and pooling model:

1. Should each model be driven entirely by market-forces?
2. What are the safeguards against coercion, fraud and misrepresentation?
3. Would R&R benefits be available to title holders who participate in these models of land aggregation?
4. What kind of compensation and R&R benefits would be offered to families dependent on that land for livelihood?
5. How would the environmental and social risks to communities be addressed?
6. What are the measures for assuring that the intra-household allocation of compensation safeguards the interest of all family members?
7. What would be the contour of the appellate structure for dispute resolution between developer and landowner?

There is a need to consider the desirability of framing national policies on pooling and leasing, to act as a template for governments of states and Union Territories in designing sustainable procurement models.