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India: Land in demand

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As the country shifts from an agrarian to an industrialised economy, selling farmland fairly is a priority



A woman and her daughter collect cow dung — to be used as cooking fuel — near a Kolkata building site. Narendra Modi is trying to overhaul India's land acquisition rules to speed up development

Ashok Yadav was optimistic when Uttar Pradesh authorities took 589 hectares of land from his village, Patwari — including his fields — for new factories. Officials paid Rs850 per square yard, and promised jobs would soon follow. “They said ‘give us your land for industrial purposes and your family — your children — will get jobs’,” recalls Mr Yadav, whose extended family received compensation of Rs17m — at the time worth \$400,000 — for its holdings in the area, 42km from central Delhi.

“We thought our lives would take a different turn,” he adds.

But instead of the promised factories, apartment blocks rose on the fields. Farmers discovered their land — taken using powers of eminent domain laid out in India’s colonial-era land acquisition law — had been sold to private developers to build housing for New Delhi’s expanding middle class. The builders paid Rs10,000 per square metre for the land — more than 14 times what the farmers received.

Furious, the Patwari farmers went to court to challenge the 2008 acquisition, arguing that authorities had abused their powers in order to benefit private businesses. “We were cheated,” says Mr Yadav. “They told us one thing then did something else.”

In May, India’s Supreme Court agreed. It ruled that the state’s acquisition of the fields was illegal. Judges criticised the government’s invocation of an emergency clause in the land acquisition act that had prevented the farmers from contesting the seizure beforehand. But the judges said the property could not be returned, as thousands of families had already paid for flats in the partially completed buildings. Instead, the court ordered a 64 per cent increase in compensation payments.

Akhilesh Tomar, a 38-year-old engineer, is an unwitting casualty. He put down a deposit for a two-bedroom flat in 2010, hoping to move in within three years. But with construction delayed by the litigation, he has spent five years paying a mortgage on the unfinished apartment and rent for accommodation. The price he will have to pay for his flat, originally Rs1.8m, is rising too, as builders try to pass on cost increases, including the extra compensation. Still facing a long wait, Mr Tomar bears no malice to the farmers. “As we are the sufferers, they are also the sufferers,” he says. “We are both being harassed by the system. We blame the system.”

Urban planning

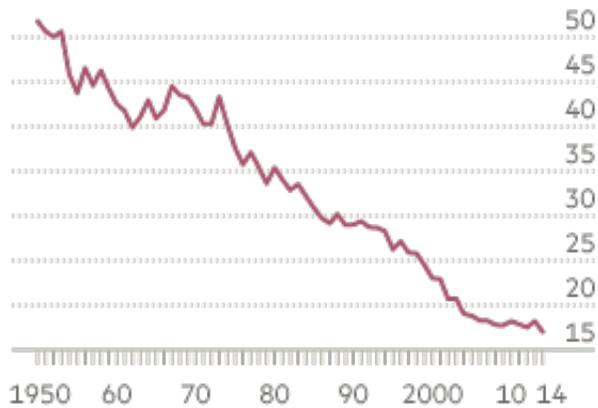
As Prime Minister Narendra Modi has tried to accelerate India’s transformation from a predominately rural, agrarian society to an industrialised, urbanised economy with smart cities and industrial corridors, the question of how to manage competing demands for land, and ensure a fair, efficient and transparent conversion of farmland to non-agricultural uses is one of his most vexed political challenges.

India’s corporate sector has grown accustomed to the government using its powers of eminent domain to provide it with inexpensive land for a wide range of commercial projects and insists this is necessary to enable large-scale, job-generating investments. But in a litigious democracy with a long tradition of private property rights, state land acquisition has often triggered fierce battles — from the edge of big cities to remote villages — stalling the very projects the state wanted to

facilitate.

Agriculture and forestry

As % of GDP



Source: Haver Analytics

FT

While many of India's estimated 90m farming families are struggling, few among them have the education or skills to secure stable employment, making them highly resistant to perceived threats to their way of life and only tangible income.

“There is a real tension between the model of economic growth India is pursuing and the weight of farmers in [terms of] India's electoral democracy,” says Michael Levien, a Johns Hopkins University sociologist, who has studied land acquisition in India. “The rural population are looking for jobs but they are not finding ones that pay enough or are of high enough quality to make them want to leave agriculture for good.”

India's political and business elites are feverishly debating how the state can give companies access to land in a politically palatable manner.

Analysts are sceptical that India's increasingly assertive — even combative — public will accept widespread compulsory land acquisition any more. Instead, they argue, India must make its opaque property markets work more smoothly to allow companies to buy land from willing sellers.

“Eminent domain is not something one uses for essentially commercial, profitmaking activities,” says Nitin Desai, an economist and former UN official. “The minute you take land from somebody against that person's wishes — or on terms he doesn't consider appropriate, he will go to court. If it's a free transaction, at least that doesn't arise. Industry basically has to go to market and buy the land that it needs.”

At independence in 1947, India inherited the 1894 Land Acquisition Act, which allowed the state to take private land for “public purposes” if owners were fairly compensated.

With its then-socialist bent, India used these powers to commandeer land for roads, dams, steel mills, power plants, industrial townships, military bases and other projects deemed critical for national development. Resistance was muted or ineffective. In 1984, the law was broadened to permit the state to acquire land on behalf of private companies too.

But as controls on private capital were relaxed in the 1990s, state governments began amassing vast landholdings to sell to private companies — a process that accelerated as property values soared in the past decade. While some land went to infrastructure projects such as power plants, states also provided it for commercial endeavours with only tenuous claims to a public purpose: shoe factories, carmakers, luxury housing, even resorts and swimming pools. Companies handpicked their desired sites and took far bigger tracts than their projects strictly required. Meanwhile, farmers received compensation far below the legally-mandated “market rates”.

“Every state government has become like a property dealer,” says Ajay Jakhar, chairman of the Bharat Krishak Samaj, or Indian Farmer’s Forum. “They acquire land from the farmers then they rezone it into urban land and sell it at 10 times the value to urban dwellers. It has entered into the farmers’ minds that they have been exploited.”

As perceptions of large-scale, corporate land grabs grew over the past decade, farmers mobilised to resist, aided by social and political activists, resulting in protracted, sometimes violent, stand-offs on the ground — and long battles in court. When judgments were finally issued, courts routinely ordered significant rises in compensation — often as much as six times the original payout.

Ram Singh, a Delhi School of Economics professor, says the process has become a drag on industrialisation and urbanisation. “It is not efficient at all . . . is not in the interests of India’s industrialisation,” he argues. “It is inviting popular resistance and protests.”

Doing business

In 2013, the then Congress-led government pushed through legislation designed to strike a balance between property-owners’ interests and the need to make land available for industry and urban expansion. It laid out a complex process for states to take land for private companies — even for public-private partnerships in infrastructure, which it said would prevent conflicts and protect farmers from abuse of state power.

At the heart of the law was the requirement that authorities obtain the consent of 70 to 80 per cent of “project affected families”, including both property owners and those, such as farmhands, losing their livelihood, before taking any land. It also mandated detailed social impact assessments evaluating the costs and benefits of diverting land from agriculture to the designated project. Compensation rates were raised to four times the market price for rural land, twice the market price for urban land. It also laid out generous resettlement and rehabilitation packages for the displaced.

Dismayed companies complained that the law’s onerous bureaucratic requirements would make it

virtually impossible for the state to acquire land.

“It’s completely and absolutely impossible to implement,” says Rajiv Lall, managing director of the Mumbai-based Infrastructure Development Finance Corporation. “You are not living in a university, debating. We are running a country which is complex to administer. You have to balance what is morally and ethically correct and fair, with what is feasible and doable.”

The law also imposed new obligations on companies trying to buy large tracts of land through the market, requiring them to resettle anyone affected — not just landowners but also their workers — by the purchase. Businesses warned it would have a crippling affect.



70-80%

Proportion of affected families from which authorities must obtain consent for developments. The 2013 law is already subject to revisions

“It’s almost as if someone has written this bill not for social justice but more to stall India from growing,” says Ajit Gulabchand, chairman and managing director of Hindustan Construction Company. “It would take 58 months — if everything went right — for the process to be followed. Add to it the usual bureaucratic delay it will easily double that. When are you going to acquire land?”

Determined to kick-start India’s stalled investment cycle, Mr Modi is trying to amend the two-year-old law so authorities can again take land without farmers’ consent or social impact evaluations — though the enhanced compensation will remain. But the proposed changes have met fierce resistance from the opposition Congress party and other political groups with strong agrarian constituencies. Mr Modi’s government hopes

to push the changes through during the upcoming monsoon session of parliament — at the end of this month — but meanwhile, land transactions have basically frozen. His political reputation and business sentiment both stand to suffer if the government cannot push through the changes.

“The government did not expect the intensity with which this was opposed — not just in parliament but outside of parliament,” says Jahangir Aziz, chief Asia economist at JP Morgan. “For most non-urban people, the most well-understood, widely accepted fear of living is that the outsider will come and ‘take away my land’. These proposals feed into that traditional fear.”

Role of the state

Some farmers and economists think the state should get out of the land market altogether and leave private companies to deal directly with farmers — except for narrowly defined public projects.

“Industry wants the free market for everything, but when it comes to farmers land it wants regulation,” says activist Mr Jakhar. “The government should get out of it. It should only get into acquisition for line projects — like railway lines and canals.”

But many businessmen argue India’s land market is too dysfunctional for them to make purchases, which means government intervention is required for the foreseeable future.

“It’s not easy for people who are not specialists in the very murky business to acquire land by themselves,” says Mr Lall. “There are all kinds of problems that emanate from our very poor land records, and the infirmity of land titles.”

Even if Mr Modi’s proposals are pushed through parliament, debates — and conflicts — over land will not end, especially if state governments resume snapping up large land tracts for new ‘smart cities’ or industrial zones.

“The existential question India faces is: what is a public purpose that justifies a democratic government forcibly taking land from farmers? Is it a factory? Is it real-estate development? Is it a Formula One race track?” says Mr Levien. “That is a political question. There is nothing inevitable about it. The question is: what is the meaning of development? Who gets the benefit and who pays the cost?”

Eminent domain: Companies rely on state to navigate complex rules

When Indian companies complain of the difficulties of buying large tracts of land on the open market, their complaints cannot be easily dismissed. Purchasing land in India is certainly a risky, fraught undertaking, due in part to the welter of government regulations that are attached to land and how it can be used.

Nearly half the country’s labour force still depends on agriculture, though agriculture accounts for just 15 per cent of gross domestic product. However, the average landholding has dropped from 2.2 hectares nearly 35 years ago to just over a single hectare today.

That means companies looking for 100 acres could find themselves dealing with more than 50 families. Within landowning families, it is often unclear who has the legal authority to make decisions about the property, especially when there are differing opinions on a potential sale.

Land records are often poorly maintained and can only guide potential purchasers to the “presumptive owner” of a property. But often there are other claimants who step forward — and litigate — in case of a sale.

Changing the zoning on a piece of farmland so it can be used for industry or urban projects is also a highly opaque process.

Given all these problems, companies sometimes look to the state to acquire land on their behalf using its power of eminent domain. This allows them to obtain land with a clear title and permission to use it for the projects they want.

Experts say these obstacles could be overcome if Indian authorities updated and upgraded land records, carried out surveys and adopted policies to shield purchasers of land from ownership claims by third parties.

But Professor Ram Singh of the Delhi School of Economics says state governments are unlikely to make such an exhaustive effort as long as they can simply use their power to take private land and sell it on to companies.

“As long as land acquisition is easy, nobody will feel the need to set the regulatory regime right,” he says.

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