

Comments of Shri Nitish Kumar, Chief Minister, Bihar for the Second Meeting of Governing Council, NITI Aayog.

July 15, 2015 at Panchavati

At the onset I would like to thank the Hon'ble Prime Minister for inviting me to the second meeting of the Governing Council and for giving me an opportunity to express my government's view on "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015". We are of a firm belief that a concerted view has to be formed on the pertinent and sensitive issue that we have come together to deliberate today.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 envisages to adopt a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families, provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition, make adequate provisions for such affected persons for their rehabilitation and resettlement and ensure that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

The Central Government has now proposed certain amendments in the Principal Act through "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015". I want to clearly state that the State Government opposes any attempt to dilute, nullify or tamper with the letter and spirit of the 2013 Act in its original form. The amendments proposed by the Central Government are blatantly against the tone, tenor and tenets of the Principal Act and it clearly violates the basic features of the original Act, while trying to compromise the interests of landowners and farmers in the garb of development. The clauses such as - the substitution of "private company" by "private entity", removal of the consent clause, exemption from the social impact assessment and special provisions relating to the safeguard for food security in the process of land Acquisition and relaxation in the time limit for return of the unutilised acquired land are not in public interest.

With these general observations, I would like to discuss some of the specific amendments. First of all, substitution of "private company" by "private entity" according to clause 2 of the bill is not acceptable. Normally, the process of land acquisition is initiated where large chunk of land is required for setting up big projects by the private players bringing substantial investments. We do not envisage a situation where other than a company as defined under section 3 (j) of the Principal Act, any private player falling in the other categories listed in clause 4 of the Bill may require huge chunk of land necessitating compulsory acquisition. In any case, they can get land at cheaper rates by purchasing land directly from the farmers because their requirements of land may not be that substantial. Small players will have to pay four times the market value of the land if they prefer the land acquisition route. It is to cover the need of such categories of private players that provision of direct purchase of land through private negotiations has been made in Section 46 of the Principal Act. Thus, there is no rationale in substituting "private company" by "private entity".

The Principal Act provides for obtaining consent of 80% of the land owners in case of land acquisition for private companies, and 70% in case of PPP projects. The clause 3 effectively puts an end to obtaining consent in case of private companies/entities and for PPP projects for the purposes listed in proposed new chapter III A, Section 10 A. We believe that the best course in an economy would be to allow natural play of market forces in the land market and encourage the private sector to purchase land from the farmers directly on the mutually agreed terms and conditions. This will catalyze economic growth. If State intervenes to compulsorily acquire land for private sector, it would distort the market forces and impede competition in the land market which, in turn, would impede growth. We do not see any rationale as to why consent of the farmers should not be obtained. While passing the original Act, the Parliament decided by consensus to seek consent of farmers before acquiring land for private sector and public-private partnership projects (PPP). Tampering with the consent clause, therefore, is neither desirable for the economic growth nor conducive for the agrarian peace and harmony.

It has been the experience of the State of Bihar that without consent, land acquisition process becomes adversarial and authorities face stiff resistance at the time of acquisition. It was in this context that even when there was no provision of consent in the old Land Acquisition Act of 1894, the State Government in Bihar had formulated its own Rehabilitation Policy in the year 2007 in which provision was made for payment of additional 30% solatium in cases where farmers gave their consent in the acquisition of their lands. We are also of the

opinion that if the land acquired for private sector and PPP projects is meant for “development” purposes, the farmer whose land is being taken should be informed and persuaded to part with it willingly rather than resorting to forced acquisition which may prove to be a regressive in the realization of the goal of the “development” itself. Hence, consent clause in the Principal Act should not be tampered with in any way.

The clause 5 of the proposed amendment Bill provides for exemption from the social impact assessment and special provisions relating to the safeguard for food security envisaged in the Principal Act. National security and defence of India are of paramount importance to all of us. But for expeditious acquisition of land for national security and defence purposes, inclusion of these words in sub-clause (a) of sub-section (1) of Section 10A is not necessary at all. For expediting land acquisition for national security or defence of India or any emergency arising out of natural calamities, urgency provisions are already available in the Principal Act, which can be invoked. So it is meaningless to include national security and defence of India in the list of subjects in the proposed section 10A.

The “growth and development” mentioned in the “Statement of Objects and Reasons” of the Bill needs a honest elaboration. Growth and development are not mythical but modern era concepts, they need to be understood in terms of social benefit versus social cost of a project. The moot question is whose development and at whose cost? Development has to have a humane face not only in the context of maintenance of social harmony but also for its sustainability. In India principles of justice and equity have been time tested pillars on which growth and development rest. Any attempt to displace any of these pillars has created disharmony, conflict and strife in the society. Any forced land acquisition in the name of growth and development without considering the aspects of justice and equity in the independent India has led to myriad of problems, which the political economy of this country is not equipped to grapple with.

This was one of the reasons that Parliament by a historic consensus decided that land acquisition shall take place only when social benefits of a project outweighs its social cost and, thus, the concept of applying social impact assessment was made integral to the Principal Act. The social impact assessment also examines whether land acquisition would serve a public purpose. In the context of land acquisition the determination of public purpose is very essential.

Moreover we should not forget that Agriculture in India is still dependent on vagaries of nature and failed monsoon creates a drought like situation.

Availability of food grains to feed our large burgeoning population is still a very big challenge. We need food security cover more than anything else to feed our people, majority of which is dependent on food-grains and not on animal meat. Even animals would require cattle feed which can only be grown in the fields. Hence, a balanced development approach is a must with appropriate safeguards for food security.

Insertion of Chapter IIIA and Section 10A would mean that for the sake of so called development we want to expropriate people from their precious land resources without evaluating social cost vis-à-vis social benefit and without considering the absolute need for food security. Hence it is unacceptable.

A new section has been inserted to provide for mandatory employment for farm labour. This apparently makes it compulsory to offer a job to farm labour although the corresponding Schedule (II) has not been amended to provide for this, raising doubts about the sincerity. The 2013 Act provides for mandatory employment to all affected families, including farm labour but where jobs are created through the project. The employment is one of three options given to the affected families.

The Principal Act provides that if the acquired land remains unutilized for a period of five years from the date of taking over possession, it shall be returned to the original owner(s) or their legal heirs or to the land bank of the Government. The proposed amendment intends to prolong this period to a period specified by the requisitioning authority for setting up the project for which the land was acquired. This amendment will not serve any purpose but will only incentivize delay in the utilization of acquired land and tendencies to leave the land unutilized for years together would increase. This will be neither good for the “growth and development” as envisaged in the Statement of Objects and Reasons of the Bill nor for the farmers whose precious land resources were acquired.

The 2013 Act expressly directs that within one year of the coming into force of the law (i.e. on January 1st, 2015) the exempted laws would have to be amended to bring them at par with the 2013 law in terms of compensation and rehabilitation/resettlement benefits. The Central Government has been using this directive as an excuse for over half a year to justify the re-promulgation of its Ordinance while at the same time taking credit for the salutary nature of a mandatory provision which they had no choice but to comply with.

The amendment, which seeks to dispense with the Social Impact Assessment by including a meaningless requirement to do a wasteland survey in the rehabilitation and resettlement award, is also unacceptable. There can be no

compromise on the duty of the Government to carry out a comprehensive Social Impact Assessment.

The Special Powers retained with the Government to implement the Law has been proposed to be extended from two years to five years. This allows the Government sweeping residual powers to take any action necessary to support their interpretation of the Act. The 2013 Act gave the Government the power to take any action that may be necessary to implement the law for two years after its passage. The time period was an important limitation on potential abuse and was designed to ensure that the Government would only invoke it in bona fide and unanticipated situations. Therefore any deviation from the same is unacceptable.

On the whole it is again reiterated that any attempt to dilute or nullify the well deliberated and unanimously passed (by Parliament) provisions of the Principal Act would be opposed tooth and nail. Principles of equity and fair play cannot be sacrificed on the pretext of growth and development. State Government of Bihar has been diligently working on the dictum of "Development with Justice" - a way of progress that generates economic growth while ensuring high level of integrity and accountability, broad social inclusion and representation of the weakest sections. The amendment proposed in the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015" actually negates the very premise of these principles that the State Government stands for. Therefore they are not acceptable in any form or manner.

In fact, we would like to go a step further and recommend before this council that in case where land is acquired for a project by a private company, five percent of the share of the company should be offered to the land owning affected families, in proportion to the area of their land acquired and at a price equal to the current price of the share in the stock market, if the company is a listed company or at par with the price of the share held by the promoters.

With regards to the implementation of the "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, we have already formulated the Bihar Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement rules 2014, notified the multiplication factor for the determination of compensation in rural areas in May 2014, notified the extent of land purchased through private negotiations, beyond which R&R as per Act, 2013 will be applicable and appointed the Administrators and Commissioners for

Rehabilitation and Resettlement. The Establishment of the State Monitoring Committee (SMC) for rehabilitation and resettlement is under process.

Furthermore with regards to the other issues being considered by the Sub-committees of the NITI Aayog, the State government has already submitted and shared its considered views on rationalization of Centrally Sponsored Schemes, on Skill development and on Swachh Bharat Mission. We sincerely hope that our views will get a favourable attention by the respective Sub-Committee. As for the formation of Task Force on Poverty Eradication and Agriculture Development, both have been constituted and the report is in the process of finalization and will be submitted shortly. The Institutional arrangement for quick completion of crucial schemes has also been put in place. A State Project Monitoring Group has been constituted under the chairmanship of Chief Secretary for monitoring the implementation of projects varying between ₹100 to ₹ 1000 Cr.

Though not an agenda item but there is a very important issues we have been regularly raising and I would not miss this opportunity to dwell a little on the same. I have written to the Hon'ble Prime Minister and the Hon'ble Finance Minister raising the issue of the reduction of allocations of Bihar with regard to the recommendations of the 14th Finance Commission, the Economic Survey Report 2014-15 and the Union Budget 2015-16 and requested them all to make special dispensation to meet this deficit.

I had requested the Union Finance Minister to honour the commitment he has made in his budget speech in the Parliament, where he had proposed to give similar special assistance to Bihar as has been provided by the Government of India in the case of Government of Andhra Pradesh. Furthermore there is a specific provision in the Bihar State Reorganization Act 2000 that provides for the special needs of Bihar to be looked into by the Central Government. The recommendation of the 14th Finance Commission also suggests that " tax devolution should be the primary route of transfer of resources to States since it is formula based and thus conducive to sound fiscal federalism. However, to the extent that formula-based transfers do not meet the needs of specific States, they need to be supplemented by grants-in-aid on an assured basis and in a fair manner." In this light the Chief Secretary of Bihar met the Hon'ble Vice Chairman and Chief Executive Officer of NITI Aayog in April 2015 and handed over a detailed proposal of demands related to the memorandum earlier submitted to the Hon'ble Prime Minister.

The Chief Executive Officer of NITI has written to Ministry of Finance stating that the fund flow to Bihar through BRGF was approved by the Union

Cabinet for the 12th Five Year Plan period and that it may be necessary to keep a provision for completing the commitments for the on-going projects in the State within the sanctioned amount for the packages for the current year and prospectively for 2016-17.

I request again that if the dictum of "Cooperative Federalism" is to be genuinely translated into reality, speedy action is required on the well thought out detailed proposal of the State Government, which is pending before the Central Government. If something concrete and meaningful has to be done, the Central Government should seriously consider this detailed proposal which confirms to the aspirations of the people of the State.

The SECC data has been compiled by the Central Government but the caste data has not been released and it has been withheld. The objective of conducting SECC was to enumerate the caste data so as make appropriate policy interventions. We request that the Central Government releases the SECC caste data, so that strategic and holistic planning could be done to address the people's concerns.

In the end I would again express my gratitude for the opportunity given to express our views and concerns. I sincerely hope that reason and due diligence will prevail and that the Central Government will be able to appreciate the concerns and interests of the farmers, artisans, labourers and all other stakeholders who are affected by land acquisition. As a mature democracy we not only have to work in Public interest but also appear to be doing so. Throughout the country there is a real perception that the Central Government is compromising the interest of the land-holders, farmers and rural poor to give advantage to big projects and private companies. If this perception is to be dispelled, then the Central Government should immediately withdraw this Amendment Bill and take all necessary steps for the implementation of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in its true letter & spirit.