

CHAPTER–III

Acquisition of Land

CHAPTER-III

Acquisition of Land

Introduction

Land Acquisition Process

3.1 NOIDA acquires land through three processes *i.e.* Acquisition, Resumption and Direct Purchase.

Acquisition

3.1.1 Land is acquired under the provisions of the Land Acquisition Act, 1894 (LAA), and the Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award) Rules, 1997 (*Karar Niyamawali*).

The Government of India (GoI) enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act) to replace the LAA, which came into force from 1 January 2014.

More than 80 *per cent* of the land in Noida has been acquired under the LAA. The procedure for acquisition under the LAA, being the principal mode of land acquisition, has been depicted in **Chart 3.1**.

Chart 3.1: Process for acquisition under LAA



In the above process of land acquisition (as detailed in **Chart 3.1**), the proposal for acquisition of land is sent by NOIDA to the Additional District Magistrate (Land Acquisition) {ADM (LA)} in the proforma prescribed for publication of preliminary notification under Section 4 and declaration that land is required for a public purpose under Section 6 of the LAA. The ADM (LA) examines the correctness of information submitted by NOIDA and, after satisfying himself, forwards the proposal to the Government for publication of notifications under Sections 4 and 6 of the LAA. The compensation for land acquisition is paid by the ADM (LA) to the landowners at the rates determined under the LAA. For acquisition carried out by mutual consent under Section 11 (2) of the LAA, compensation rates approved by NOIDA are applied, which are uniform for all villages, types and locations of land for a particular year.

Resumption

3.1.2 The land of *Gram Samaj* is Government land left at the disposal of the *Gram Samaj*. NOIDA sends proposals to the District Collector for resumption of land of the *Gram Samaj* based on which the Divisional Commissioner issues notification for resumption of land in favour of NOIDA along with the value of land. The land is thereafter resumed in favour of NOIDA on payment of the amount mentioned in the notification.

Direct Purchase

3.1.3 Land is also acquired by purchasing directly from the landowners based on the rates of compensation approved by the Board of NOIDA and payment is made directly to the landowner. Sale deeds are executed between landowners and NOIDA.

Status of Land Acquisition in Noida

3.2 During the period from its inception in the year 1976 to March 2018, NOIDA has acquired 12,326.777 hectare of land in Noida. The status of land acquired through all the processes since inception to March 2018 and during the years 2005-06 to 2017-18 is summarised in **Table 3.1**.

Table 3.1: Status of land acquired

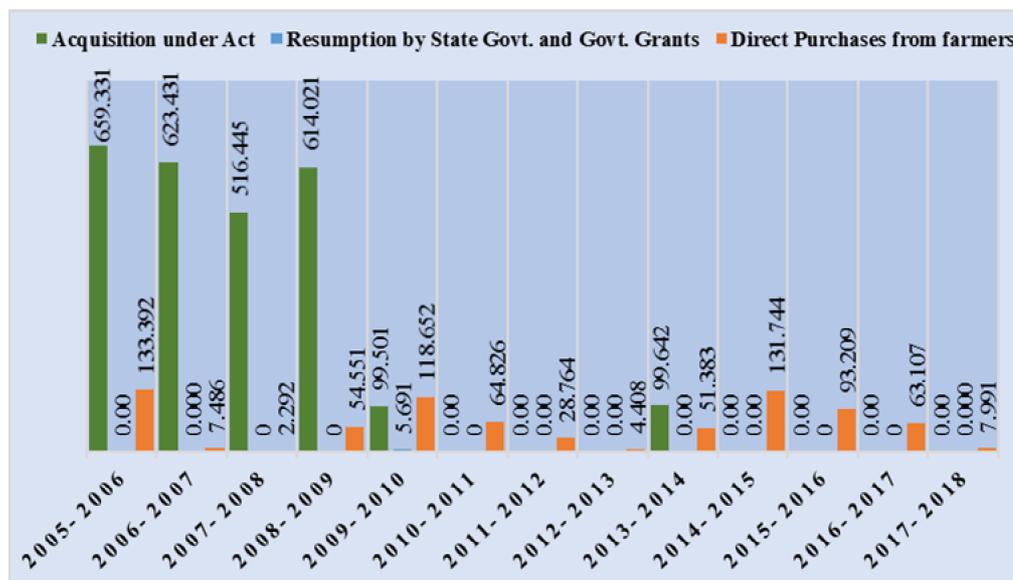
Land Acquisition Process	Total land acquired up to March 2018	Acquired during 01.04.2005 to 31.12.2013		Acquired during 01.01.2014 to 31.03.2018	
	Area (in hectare)	No.	Area (in hectare)	No.	Area (in hectare)
Acquisition under Land Acquisition Acts	10,085.7968	24	2,612.3714	0	0
Resumption by State Government and Govt. Grant	1,106.8514	7	5.69	0	0
Direct purchase from farmers	1,134.1288	604	444.7206	530	317.0830
Total	12,326.777	635	3,062.782	530	317.083

Source: Information furnished by NOIDA.

The status of year-wise acquisition of land during the years 2005-06 to 2017-18 is shown in **Chart 3.2**.

Chart 3.2: Year-wise acquisition of land

(Area in hectare)



Source: Information furnished by NOIDA.

From the above chart, it is evident that 77 per cent acquisition took place upto the year 2008-09 and thereafter the majority (73 per cent) of the land acquired was through direct purchase from the farmers. Notably, the route of direct purchase from farmers was taken greater recourse to since financial year 2009-10. In fact, in eight out of nine years starting from the year 2009-10, either acquisition was undertaken only through direct purchase or direct purchases outstripped acquisition of land through the processes laid down under LAA & 2013 Act.

Scope of Audit

3.3 Out of 3379.865 hectare of land acquired during the years 2005-06 to 2017-18, Audit scrutinised cases of acquisition of 2,164 hectare of land, which included 15 cases of acquisition under the LAA for 2,086.58 hectare, all seven cases of resumption for 5.69 hectare and 115 cases (61 cases before the enactment of 2013 Act and 54 cases after the enactment of 2013 Act) of direct purchases for 71.73 hectare. The issues/discrepancies observed during audit are detailed in the succeeding paragraphs.

Audit Findings

3.4 The audit findings as a result of examination of sample cases, are discussed in the ensuing paragraphs. These audit findings have been grouped as under:

- Irregularities in acquisition under LAA (discussed in Paragraphs 3.5 to 3.5.6).
- Irregularities in acquisition under 2013 Act (discussed in Paragraphs 3.6 to 3.6.1).
- Failure in exercise of due diligence (discussed in Paragraphs 3.7 to 3.7.2).
- Ineffective follow-up of acquisitions (discussed in Paragraphs 3.8 to 3.8.2).

Irregularities in Acquisition under LAA

3.5 Section 17 of the erstwhile LAA provided the following powers for acquisition:

• Section 17(1) of the Act provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely with the Government, free from all encumbrances.

• Section 17(2) of the Act provides that whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in subsection (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely with the Government free from all encumbrances provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty eight hours' notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

• Section 17(4) of the Act provides that in the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4, sub-section (1).

Thus, Section 17 empowered the Collector, with the approval of Government, to make an award to acquire the land and take possession in cases of urgent requirement of the land. Further, sub-section 4 enabled the Collector to dispense with public hearing required under Section 5A.

The discrepancies observed in respect of land acquisition made under the LAA are discussed hereunder:

Acquisition invariably under urgency clause on a standard justification

3.5.1 Audit observed that during the period covered in audit, NOIDA had, in all 15 sampled cases of land acquisition involving 13 villages¹ and 2,086.58

¹ Badoli Bangar, Badoli Khadar, Basi Brahauddin Nagar, Begampur, Gulawali, Kondali Bangar, Lakhnawali, Nagla Nagli, Salarpur Khadar, Shehdara, Shahpur Goverdhanpur Khadar, Sorkha Jahidabad and Suthiana

Invoking of urgency clause on grounds other than those provided under LAA.

hectare of land, forwarded its proposals to the ADM (LA) for acquisition of land by invoking Section 17(4) of the LAA. In 14 cases², Audit observed that urgency clause was invoked using a standard justification (**Appendix-3.1**) as translated hereunder:

“In accordance with the plans of the New Okhla Industrial Development Authority for industrial development, the work of development of roads, sewerage and electricity availability is expected to be carried out. The work is held up due to non-allotment. Applicants want allotment of this land which is not being done due to non-acquisition of land. The applicants are specially the reputed foreign industrial institutions which want to make substantial capital investment in the area of Uttar Pradesh. Hence, it is very essential to provide them the land immediately according to their plans. If this land is not made available to these units according to their requirements, these applicants will establish their units in other States. Therefore, effort is being made so that any unit may not go from this area of the State to another State because of land acquisition, only then the industrial development of this area will be possible.

Therefore, it is extremely important to acquire this land through NOIDA for planned development. (details of proposed acquisition). Considering the above, notification for acquisition of selected land under Section 4 read with Section 17 of the LAA is recommended.”

From perusal of above standard justification for invoking urgency clause, it is evident that the grounds given by NOIDA did not fall under the ambit of conditions laid down in Section 17, which was primarily meant to be invoked for events like change in channel of rivers or other emergencies, for maintenance of railway traffic or for maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity.

Thus, it is evident that the grounds for invocation of urgency clause were not in accordance with the purposes specified by the Act.

The enforcement of the urgency clause and dominant object of the Industrial Development Authorities were challenged in the Hon’ble Allahabad High Court. In its judgement³ dated 21 October 2011, the Hon’ble Court held that the Authorities were giving priority to the allotment of Group Housing/Builder plots over those related to industries. As a result, acquisition of land in village Momnathal, wherever it was in progress, was quashed. Additional compensation was also awarded to the landowners wherever land acquisition process had been completed.

Delay in processing of cases of acquisition under urgency clause

3.5.2 Acquisition of 2,086.58 hectare of land in 13 villages involving 15 cases test-checked in audit revealed that the acquisition procedure in 11 out of 15 sampled cases took time ranging from 18 months to 94 months as detailed in **Appendix 3.2** despite invocation of urgency clause. This establishes that invocation of urgency clause did not help in early completion of the acquisition process.

Inordinate delay in sending the final proposals resulted in huge additional expenditure to the tune of ₹ 563.84 crore.

² In one case of Sorkha Jahidabad village justification was not found on record.

³ Case No. 37443 of 2011, Gajraj Singh and others Vs. State of UP and others.

Audit further noticed that on the one hand NOIDA claimed urgency in acquisition of land but on the other, incurred inordinate administrative delays in sending the final proposals after the initial proposals of NOIDA were returned by the ADM (LA) for removing shortcomings in 11 cases (9 villages, area 1,637.619 hectare) (**Appendix-3.2**). Audit observed that the reasons attributable to delays were lack of information, incorrect area of land, missing details of *khasra/ khatauni*, absence of list of assets and inclusion/exclusion of directly purchased land area, missing details of *abadi*⁴ etc. given in the proposal of land acquisition. The year-wise position of the delays observed is shown in **Table 3.2**.

Table 3.2: Range of time taken by NOIDA in sending final proposal

Year of Acquisition	No. of cases	Range of time taken by NOIDA in sending the final proposals
2005-06	1	34 months
2006-07	1	46 months
2007-08	1	11 months
2008-09	3	18 months to 27 months
2009-10	2	26 months to 27 months
2010-11	2	26 months to 36 months
2013-14	1	22 months

Source: Information furnished by NOIDA.

It can be seen from the table that delays attributable to NOIDA⁵ ranged from 11 to 46 months during the acquisition process, indicating that the invocation of urgency clause was uncalled for. Analysis of the reasons for delay revealed that crucial information missing in the file was sought by the Government but was submitted with delays by NOIDA. Case-wise reasons for delay are given in **Appendix-3.2**. The said incorrect/missing information led to delays which could have been avoided by NOIDA by correct survey and exercising due diligence in submission of the acquisition proposal. From the above, it is evident that in spite of invoking urgency clause, there were substantial procedural delays on the part of NOIDA and thus invocation of the urgency clause only served the purpose of bypassing the mechanism of holding public hearings to redress the objections of landowners.

Further, no timelines and Standard Operating Procedure (SOP) relating to time-bound acquisition of land was issued by NOIDA to suggest that the proposed acquisitions were urgent.

Audit analysed the financial impact of the delays calculated from the date of return of the initial proposal by ADM (LA) to the date of sending the revised final proposal which is brought out in **Table 3.3**.

⁴ Residing population.

⁵ Calculated for period between return of initial proposal by ADM (LA) and submission of final proposal by NOIDA.

Table 3.3: Financial Impact of the delays

Sl. No.	Name of Villages	Date of proposal returned by ADM(LA)	Rate for the year (₹ per sqm)	Date of revised/ final proposal sent	Rate for the year (₹ per sqm)	Difference of rate (₹ per sqm)	Total Area acquired (in hectare)	Additional Expenditure (₹ in crore)
1	2	3	4	5	6	7 (6-4)	8	9 (7*8)
1	Basi Brahuiddin Nagar	04.05.2002	431.91	25.02.2005	469.42	37.51	145.60	5.46
2	Sorkha Jahidabad	17.04.2001	411.64	25.02.2005	469.42	57.78	439.32	25.38
3	Begampur	05.09.2005	486.65	27.07.2007	1,000	513.35	7.559	3.88
4	Begampur	05.09.2005	486.65	27.07.2007	1,000	513.35	100.66	51.67
5	Shahpur Goverdhanpur Khadar	20.12.2006	503.89	25.10.2007	1,000	496.11	128.43	63.71
6	Badoli Bangar	21.01.2006	486.65	27.07.2007	1,000	513.35	152.69	78.38
7	Salarpur Khadar	20.05.2006	503.89	03.07.2008	1,000	496.11	159.25	79.00
8	Salarpur Khadar	20.05.2006	503.89	03.07.2008	1,000	496.11	42.74	21.20
9	Kondali Bangar	21.01.2006	486.65	28.03.2008	1,000	513.35	194.30	99.74
10	Shehdara	17.01.2006	486.65	24.03.2008	1,000	513.35	170.14	87.34
11	Gulawali	22.09.2006	503.89	14.10.2009	1,000	496.11	96.93	48.08
								563.84

Source: Information furnished by NOIDA.

Thus, the delay on the part of NOIDA in acquisition of land, each of which was acquired invoking the urgency clause, led to incurrence of additional expenditure to the tune of ₹ 563.84 crore by NOIDA.

In its reply, NOIDA stated (August 2020) that the procedure for land acquisition under the LAA was determined by the Board of Revenue/ Government from time to time. The delays were attributable to changes in the rules prescribed from time to time, for complying with the Government directives, rules and procedures, legal delays on account of matters being under consideration of courts and revision of acquisition proposals. These changes necessitated administrative and financial approvals on revised proposals and thus delays were inadvertent and cannot be ascribed to the Land Acquisition wing. However, the Government, during the exit conference, accepted the audit recommendation of exercising due diligence in invoking the urgency clause and stated that it has since been rescinded and NOIDA has stopped using the urgency clause.

No justification has been put forth in the reply for invocation of urgency clause due to which the landholders' rights to hearings were dispensed with. In this context, it is pertinent to point out that the Hon'ble Supreme Court, in its judgement⁶, has held that invocation of Sections 17(1) and 17(4) was wrong. Further, the reply of NOIDA citing procedural issues as the reason for delay is not acceptable as on the one hand, the right of landowners to hearing was being bypassed on the grounds of urgent acquisition while on other hand inordinate delays were taking place for routine processes.

⁶ Savitri Devi vs. State of U.P. and others, civil appeal no. 4506 of 2015.

The Government may also consider examining the basis on which NOIDA was permitted to invoke the urgency clause, which allowed dispensing with due process on the one hand, while at the same time there were inordinate delays in sending the final proposals which resulted in huge additional expenditure.

Excessive use of urgency clause to acquire land

3.5.3 Section 11(2) of the LAA, dealing with the enquiry and award by the Collector, lays down the provisions for acquisition of land through agreement on agreed rates.

On analysis of the acquisition cases, Audit observed that all the processes involved viz. proposals for land acquisition by NOIDA, the notifications under Section 4 and the declarations under Section 6 were made by invoking powers under Section 17 (urgency clause), thereby depriving the farmers of the opportunity of public hearing. The only resort left for unwilling farmers was litigation in the Courts. Alternatively, the farmers could either accept the award made by Collector at circle rates or could enter into an agreement with NOIDA under Section 11(2) at the rates declared by NOIDA, which were two to eight times the circle rates. Audit observed that in 22 land acquisition cases/notification (**Appendix 3.3**), NOIDA acquired only 20 *per cent* land through compulsory acquisition route and entered into agreements for acquisition of 80 *per cent* land. Thus, invoking of Section 17 in all cases worked as a coercive measure to acquire land.

In its reply, NOIDA stated (August 2020) that 90 *per cent* of the farmers had sold their land through agreement and payment has been made in accordance with the *Karar Niyamawali*, which was approved by the Government, hence there was no irregularity. Further, NOIDA stated that it is incorrect to state that the farmers did not get an opportunity for hearing due to invocation of urgency clause as the agreements were entered into by the farmers on their free will and hence there was no coercion.

The reply does not address the fact that all acquisitions were made by invoking urgency clause under Section 17 of the LAA and the agreements made under Section 11(2) as stated in the reply were also made in pursuance of the notifications under urgency clause. By invocation of the urgency clause, the right to public hearing was waived off and the farmers were forced to sell their land either by way of compulsory acquisition under Section 11(1) or through the agreement route (*karar*) under Section 11(2), and 80 *per cent* of the landowners chose the agreement route on account of higher rates being offered. Agreements with landowners at individual level cannot be equated with the public hearing process wherein all affected parties are given a fair chance to raise their objections. The fact remains that through the discretionary use of urgency clause, NOIDA acquired land bypassing the right of farmers for hearing of objections. In effect, the invocation of urgency clause took away the basic rights of farmers/landowners to raise their objections against proposed acquisition and coerced them to hand over these land to NOIDA.

Avoidable payment of additional compensation in cases of direct purchases of land through sale deeds

3.5.4 As discussed in **Paragraph 3.5.1**, the enforcement of the urgency clause and dominant object of the Industrial Development Authority (IDA) were challenged in the Allahabad High Court. In its judgment⁷ (21 October 2011), the Hon'ble High Court directed that:

Direct purchase cases were not covered in the ambit of the judgement in case of Gajraj Singh vs State of Uttar Pradesh. Hence, additional compensation should not have been paid to the landowners whose lands were directly purchased through sale deed. NOIDA chose to pay additional compensation to the tune of ₹ 270.91 crore which was avoidable.

- the petitioners shall be entitled for payment of additional compensation to the extent of 64.70 per cent in addition to the compensation received by them under Karar Niyamawali/award;
- all the petitioners shall be entitled for allotment of developed abadi plot⁸ to the extent of 10 per cent of their acquired land subject to maximum of 2,500 sqm.

The Hon'ble High Court however left it open to NOIDA in cases where allotment of *abadi* plot to the extent of six *per cent* or eight *per cent* had already been made either to make allotment of the balance of the area or to compensate the landowners by payment of the amount equivalent to balance area as per the average rate of allotment made for developed residential plots.

NOIDA was also allowed to take a decision as to whether the benefit of additional compensation and allotment of *abadi* plot to the extent of 10 *per cent* be also given to (a) those land holders whose earlier writ petition challenging the notifications have been dismissed upholding the notifications; and (b) those land holders who have not come to the Court, relating to the notifications which are subject matter of challenge in writ petitions mentioned.

On a query by NOIDA (July 2012) on this matter, GoUP had stated that there was no legal compulsion to pay additional compensation in cases of direct purchase of land through sale deeds.

Audit observed that NOIDA made payment of additional compensation of ₹ 270.91 crore and allowed benefit of *abadi* plots to those landowners from whom land was purchased directly through sale deeds. As these cases were not covered in the ambit of the judgement in case of Gajraj Singh, there was no justification for these payments/benefits to landowners and payment of additional compensation of ₹ 270.91 crore was avoidable. It is notable that in the context of payment of additional compensation in cases of direct purchase of land through sale deeds, the Hon'ble High Court, in the case of Brahm Singh and Others vs. State of U.P. and Others, held (3 February 2012) that '*The petitioners having executed the sale deed of the lands in dispute they are not entitled for the benefit of the decision of Full Bench passed in Writ Petition No.37443 of 2001 (Gajraj and others vs. State of U.P. and others) decided on 21 October 2011. The petitioners having voluntarily executed the sale deed, they cannot claim that the compensation is inadequate nor any such claim can be considered at this stage.*'

⁷ Case No. 37443 of 2011 Gajraj Singh and others vs State of U.P. and others.

⁸ Abadi plots are developed plots given to landowners in addition to monetary compensation.

In its reply, NOIDA stated (August 2020) that payment of compensation in the cases of acquisitions through agreements were covered under the Hon’ble High Court order. For payment of compensation decision was taken by the Chief Executive Officer (CEO) of NOIDA on 16 and 23 December 2011 (prior to decision in Brahm Singh case on 3 February 2012) in view of farmers’ agitation and law and order issues. This decision was taken after written agreement between NOIDA and Kisan Sangharsh Samiti on 9 December 2011 and was duly approved by the Board in the 180th Board meeting held on 29 November 2013 after multiple correspondence with the Government.

The reply is not acceptable as it was obvious that the cases filed with the petition of Gajraj Singh pertained to land acquisition under LAA and not the cases of direct purchases through sale deed. Therefore, the direct purchase cases were not covered in the ambit of the judgement in case of Gajraj Singh. On this very ground, additional compensation should not have been paid to the landowners where lands were directly purchased through sale deed. Instead of taking recourse to legal remedies, NOIDA chose to pay additional compensation to the tune of ₹ 270.91 crore which was avoidable. Later on, in the case of Brahm Singh related to Greater Noida, the Hon’ble High Court held⁹ (3 February 2012) that in cases of direct purchase of land through sale deed, additional compensation was not payable.

Loss due to excess payment of additional compensation

Not ensuring due diligence by the officials of NOIDA before payment of additional compensation to ADM(LA) resulted in payment of excess amount of ₹ 228.73 crore.

3.5.5 As discussed in **Paragraph 3.5.4**, the Hon’ble High Court in Gajraj Singh *Vs.* State of U.P. and others (writ petition no. 37443) on 21 October 2011 directed that the petitioners shall be entitled for payment of additional compensation to the extent of 64.70 *per cent* in addition to the compensation received by them under *Karar Niyamawali*/award.

Audit observed that as per the Hon’ble High Court judgement, payment of only 64.70 *per cent* of what had already been paid under agreement or award was to be paid. For acquisition of land under the LAA, NOIDA had acquired land by two methods, viz.

- Through compulsory acquisition, for which initial compensation had been awarded on rates based on DM circle rates, and
- Through agreements between landowners and NOIDA, where compensation had been awarded based on rates decided by NOIDA for ancestral land and non-ancestral land (at the rate of 15 *per cent* below rates for ancestral land).

In actual practice, acquisition of land of any village constituted a combination of acquisitions by means of compulsory acquisitions and agreement based acquisitions for ancestral land and non-ancestral land, with varying rates. These rates under agreement based acquisitions were two to eight times of the rates awarded under compulsory acquisition.

Audit observed that the requirement for the amount likely to be paid as additional compensation was always determined by Land Acquisition wing and Finance wing of NOIDA based on the highest rates applicable for

⁹ Writ number 6176 of 2012, Brahm Singh and others vs State of UP, judgement dated 3 February 2012.

ancestral land, whereas the actual acquisition was done at a combination of rates which were lower. This resulted in an additional payment of ₹ 228.73 crore in case of 22 villages (**Appendix 3.3**). Since the additional compensation was to be paid at the rate of 64.70 *per cent* of what has already been paid under agreement or award, the amount of additional compensation should have been determined at actual rate rather than the highest rate.

Thus, the additional compensation was calculated incorrectly which resulted in excess payment of ₹ 228.73 crore in case of 22 villages. Neither the Legal wing nor the Land Acquisition wing nor the Finance wing exercised due diligence in evaluating the underlying awards before making payment, which has resulted in loss to NOIDA. This is another instance of absolute dereliction of duty cast upon the officials of NOIDA, corroborating the observation of the Hon'ble Supreme Court in its judgement relating to Amrapali Builders¹⁰.

In its reply, NOIDA stated (October 2020) that it has not calculated the amount of compensation to be paid but has released payment to ADM (LA) on their demand and there was no excess payment.

The reply is not acceptable. Financial Rules provide that every officer is expected to exercise the same vigilance in respect of expenditure incurred from public money as a person of ordinary prudence would exercise in respect of his own money. Also it does not address the responsibility incumbent on its own officers for undertaking due diligence before making the payment. Further, there were clear directions of CEO for ensuring due diligence (25 January 2012) in the matter, yet the Land Acquisition wing and the Finance wing failed to estimate the quantum of additional compensation payable, which was discernible from the awards for acquisition of land in case of respective villages, resulting in huge excess payment of ₹ 228.73 crore. Government may consider investigating the matter of excess payment and make suitable determination with respect to infraction by NOIDA and/or concerned district/ LA officials.

Incorrect payment of advance in respect of additional compensation

3.5.6 The Hon'ble High Court in *Gajraj Singh vs State of U.P. and others* (Writ petition no. 37443/2011) directed (21 October 2011) that the petitioners shall be entitled for payment of additional compensation to the extent of 64.70 *per cent* in addition to the compensation received by them under *Karar Niyamawali*/award for notifications issued for land acquisition under Section 4 on or after 30 March 2002 to 17 March 2009.

In pursuance of the above judgement, ADM (LA) demanded (03 December 2011) village-wise additional compensation of ₹ 1,024.64 crore to be distributed among landowners of 17 villages. As per order of CEO dated 15 December 2011, 25 *per cent* of the required amount i.e. ₹ 255.41 crore was sent to ADM (LA) in two instalments i.e. ₹ 50 crore on 15 December 2011 and ₹ 205.41 crore on 16 December 2011.

Out of the compiled list of landowners of 17 villages, landowners of two villages (Sadarpur and Sultanpur) were not entitled to get additional

¹⁰ Bikram Chatterjee and others vs Union of India and others writ petition (C) 940/2017.

compensation as the notification issued in the said villages under Section 4 was before 30 March 2002¹¹.

The advance for additional compensation which was sent to ADM (LA) included the compensation to be paid to Sadarpur and Sultanpur villagers amounting to ₹ 8.18 crore (₹ 2.42 crore and ₹ 5.76 crore respectively). At the time of further payment, it was intimated (June 2012) by NOIDA to ADM (LA) that the landowners of the said two villages were not entitled to get additional compensation. Thus, the compensation was not disbursed to the said two villages by ADM (LA) and the same amount was lying unutilised with ADM (LA) since December 2011.

Due to lack of due diligence before making the advance, NOIDA paid excess amount of ₹ 8.18 crore to the ADM (LA) which is still lying unadjusted with them. NOIDA never tried to get refund of this excess amount which remained with ADM (LA) and hence suffered a loss of interest of ₹ 7.50 crore¹².

In its reply, NOIDA stated (August 2020) that after noticing the irregularity in demand by ADM (LA), NOIDA had instructed for non-payment in these two villages. However, some additional compensation has been paid in Sadarpur (the quantum of which has not been intimated in the reply). NOIDA, on its part, has requested the Government to take suitable action against the officials for unwarranted disbursement and recovery from farmers along with interest. Further, it is stated that since the matter pertains to two Government departments, the issue of interest payment does not arise.

The reply confirms the findings of Audit. The primary responsibility vested with NOIDA to conduct due diligence on its own and check the admissibility of the amount claimed by ADM (LA) before payment, which could have prevented the avoidable loss. The amount so advanced and lying unrecovered could not be utilised by NOIDA and has entailed loss of interest, which it could have otherwise earned.

Irregularities in Acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

3.6 The GoI enacted the 2013 Act to replace the LAA. The 2013 Act came into force from 01 January 2014 and sought to provide just and fair compensation to the affected families whose land had been acquired or was proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement. The 2013 Act introduced provisions for recognising non-owners as affected persons (Section 2c), social impact analysis (Sections 4 to 8) and provisions for award of rehabilitation and resettlement amount (Section 31 and 32). These provisions for rehabilitation and resettlement were meant for compensating the affected families in respect of hardships from acquisition of land and consequent displacement.

¹¹ The notification in respect of Sadarpur (44.5289 ha) and Sultanpur (90.321 ha) villages was issued on 28 January 1994 and 06 December 1999 respectively.

¹² Calculated for the period from December 2011 to March 2020 at the rate of 11 per cent per annum at which NOIDA charges interest from its allottees.

Unauthorised and irregular payment of No-litigation bonus beyond scope of the 2013 Act

The payment of ₹ 373.85 crore, towards Rehabilitation and Resettlement/No Litigation Bonus was in contravention and beyond the scope of 2013 Act.

3.6.1 Sections 26 to 30 of 2013 Act lay down the provision for determining the compensation payable. As per the 2013 Act, the amount of compensation payable consists of:

- The market value of land to be acquired, multiplied by a specified factor,
- Solatium equivalent to one hundred *per cent* of the compensation amount,
- Rate of 12 *per cent* per annum on such market value for the period between date of publication of notification of the Social Impact Assessment study to the date of award or the date of taking possession of the land, whichever is earlier.

NOIDA (in the 183rd meeting of the Board in August 2014) decided that in respect of land acquired by agreements, the farmers would be paid compensation consisting of market value of land and 100 *per cent* solatium at the rate of ₹ 1,320 per sqm, thus totalling ₹ 2,640 per sqm. Further, a lump sum payment at the rate of ₹ 1,320 per sqm (50 *per cent* of above) was also fixed for payment as Rehabilitation and Resettlement/No Litigation Bonus. The above decision was based on the recommendations of a Committee constituted for this purpose, which deliberated on the issues arising from the enactment of the 2013 Act, wherein the main points and recommendations thereon were as under:

- Before the notification for acquisition under the 2013 Act, a Social Impact Assessment study has to be conducted and a public hearing and publication of the study has to be carried out. Further, an appraisal of Social Impact Assessment report by an expert group has to be carried. Though these provisions were likely to benefit farmers, yet would cause delays in the acquisition process;
- Besides the Social Impact Assessment Report, a scheme for Rehabilitation and Resettlement was also to be prepared. This scheme was to be approved by Rehabilitation and Resettlement Commissioner. Thus, additional burden for Rehabilitation and Resettlement was to be borne by NOIDA.
- Besides these, there were additional costs and time delays on account of challenges to the awards in the courts.

To avoid the above delays and costs, it was recommended that a separate lumpsum payment of ₹ 1,320 per sqm be paid as Rehabilitation and Resettlement/ No Litigation Bonus.

During the period August 2014 to March 2018, NOIDA acquired 278.9791 hectare of land through agreements on which Rehabilitation and Resettlement/ No-Litigation Bonus amounting to ₹ 327.95 crore has been paid.

Though the Board had initially decided for payment of Rehabilitation and Resettlement/No Litigation Bonus only in the cases of acquisition through agreements, in a subsequent meeting the Board approved (14 March 2016) payment of Rehabilitation and Resettlement/No-Litigation Bonus for acquisition through compulsory acquisition route. In the case of Badoli Bangar village where a total of 81.6423 hectare of land was acquired on 20 June 2016 through compulsory acquisition route, the ADM (LA) made a request for

payment of No Litigation Bonus for the instant acquisition case and accordingly NOIDA paid ₹ 45.90 crore as Rehabilitation and Resettlement/ No Litigation Bonus.

Audit observed that the payment of Rehabilitation and Resettlement/ No Litigation Bonus, as determined by the above Committee and approved by the Board, was in breach of the 2013 Act which provides for preparation of a Rehabilitation and Resettlement Scheme and its approval by competent authority as well as preparation of Social Impact Assessment study and accordingly, taking of measures to mitigate the loss of affected persons. Section 4 to Section 8 of the 2013 Act lay down the statutory process to be followed for Social Impact Assessment in all cases where land has been acquired other than through urgency clause. Similarly, Section 31 to Section 47 of the 2013 Act lay down the statutory provisions in respect of Rehabilitation and Resettlement. However, instead of a family-specific compensation for Rehabilitation and Resettlement, a lump sum amount, payable per sqm of land acquired, was fixed by NOIDA. Instead of preparing a Rehabilitation and Resettlement Scheme, NOIDA has bypassed the laid down procedure of the Act by paying a lump sum amount in lieu thereof. The payment of the entire sum of ₹ 373.85 (₹ 327.95 + ₹ 45.90) crore, towards Rehabilitation and Resettlement/No Litigation Bonus during the period August 2014 to March 2018 was in contravention and beyond the scope of the 2013 Act. The Government should seek a definitive explanation from the Board as to how a decision of this nature was taken by it in blatant violation of the Act.

In its reply, NOIDA stated (August 2020) that the 2013 Act required a Social Impact Assessment Study before the notification and a scheme for Rehabilitation and Resettlement duly approved by the Rehabilitation and Resettlement Commissioner. This required additional cost and time delay besides challenges in the Courts. Hence, on the recommendation of a Committee constituted for this purpose, it was decided to pay Rehabilitation and Resettlement/No Litigation Bonus. It was further stated that Rehabilitation and Resettlement/ No Litigation Bonus was paid for acquisitions made under agreement route which facilitated hassle-free and litigation-free acquisition of land.

The reply is not acceptable as the payment of Rehabilitation and Resettlement/ No Litigation Bonus, as determined by the Committee and approved by the Board, was beyond the scope of the 2013 Act. The Act provides specific provisions for preparation of a Rehabilitation and Resettlement Scheme and Social Impact Assessment Study to adjudge and mitigate the specific loss to affected persons. The circumstances in which Social Impact assessment under the 2013 Act is exempted has been laid down in the Act and the present case does not qualify for such the exemption. NOIDA, has thus, bypassed the laid down procedure and decided to award a lump sum payment in lieu thereof which was beyond the scope of the Act.

Failure in exercise of due diligence

3.7 Financial Rules provide that every officer is expected to exercise the same vigilance in respect to expenditure incurred from public money as a person of ordinary prudence would exercise in respect of his own money. However, Audit observed the following contravention of the Financial rules:

Avoidable payment of excess compensation due to delayed execution of agreement

Due to non-finalisation of policy in time, the payment was made to landowners at revised rate which led to an additional payment of ₹ 1.08 crore.

3.7.1 During the year 2009-10, NOIDA purchased the land of Sarfabad and Wajidpur villages directly from the farmers. In respect of 12 Sale deed cases of acquisition in the above villages, the administrative and financial approval for purchase of land was taken in the year 2009-10 and subsequently cheques for compensation were drawn but were not handed over to the farmers in the same year. It was observed that after drawing cheques in favour of the farmers in the year 2009-10, the agreements were entered in favour of NOIDA after delays ranging from six to 17 months from the date of administrative and financial approval, that is in the subsequent financial year 2010-11, during which period the compensation rate increased from ₹ 1,000 per sqm to ₹ 1,100 per sqm. The landowners demanded additional payment for the revised rates based on date of agreement, which was paid by NOIDA. In addition to this, NOIDA also had to bear differential amount of stamp duty. Additional compensation payable at the rate of 64.7 *per cent* also increased accordingly. This led to an additional payment of ₹ 1.08 crore¹³ for the differential rate of ₹ 100 per sqm which was avoidable.

As such, NOIDA should have paid the compensation only after completing all the requisite formalities on file. Had NOIDA taken appropriate action and entered into the agreements on a timely basis before the end of the financial year 2009-10, it could have saved on the avoidable differential cost amounting to ₹ 1.08 crore arising due to delayed execution of agreement.

In its reply, NOIDA stated (August 2020) that the delay in execution of agreements was on account of procedural delays and due to time taken for finalisation of policies.

The reply is not acceptable as NOIDA, on its own, initiated the process of land acquisition and even sanctioned payment for the land. However, payment was delayed due to non-finalisation of policy in respect of owners who were non-cultivators (*seerdars*). Before initiating the acquisition, NOIDA should have clarified its own policies to avert avoidable payments.

Blockade of fund due to inaction on the part of NOIDA

Physical possession of the land could not be taken. Hence, the amount advanced by NOIDA to acquire land was not utilised and has been lying pending with ADM (LA) since July 2002. The reason being not carrying out due diligence either at the time of survey or taking possession.

3.7.2 For acquisition of land required for public use, NOIDA sends proposal to the Collector duly indicating the location of the land, survey number, extent of the land and sketch of the land. After receiving a proper acquisition proposal, the Collector proceeds with publication of notification under Section 4 of the LAA. Section 16 of the Act also provides that the possessed land should be free from all encumbrances.

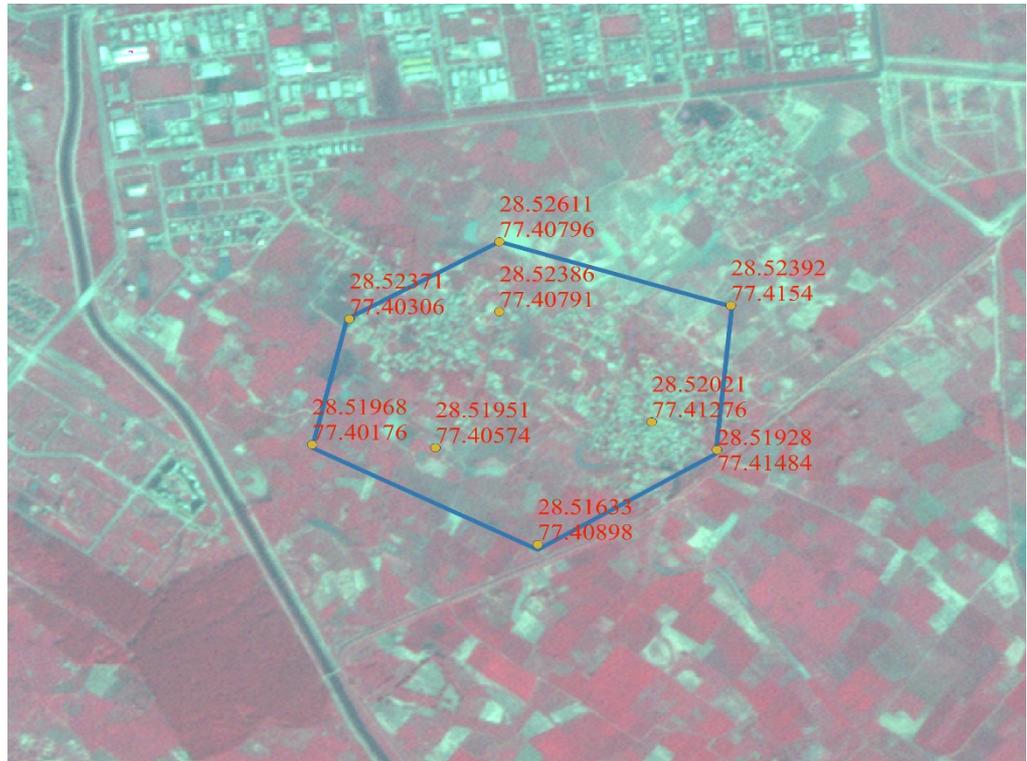
Audit noted that NOIDA decided to acquire 33.28 acre land in Elabans village for which a proposal was sent (27 May 1999) to ADM (LA) to issue notification under Section 4/17. The notification under Section 4/17 was issued on 17 April 2002 for 33.156 acre land followed by notification under Section 6/17 on 26 June 2003. An advance amount of ₹ 4.32 crore¹⁴ was also paid to ADM (LA) towards this proposed acquisition. After issuance of

¹³ ₹ 1.08 crore = Total payable compensation at 90% + Stamp duty at 5% + Additional compensation at 64.70% of ₹ 67,56,700.00 (60,895 sqm * ₹ 100 + 2780 sqm * ₹ 240).

¹⁴ The amount ₹ 36,24,192, ₹ 3,47,97,672 and ₹ 48,02,733 was sent to ADM (LA) on dated 29.4.99, 19.07.02 and 24.06.03 respectively.

notification under Section 6, the site survey of the land was done¹⁵ and it was found that out of 33.156 acre land, 21.484 acre was lying vacant and in the remaining land, school, houses etc. were existing. The matter was referred to Legal wing as to whether the option to withdraw from the land acquisition process under the LAA was available to NOIDA on 25 January 2003 for their opinion. Legal wing opined on 19 April 2004 that NOIDA has no power to give up the land which was included in land acquisition process. In view of opinion of Legal wing, the possession was taken on 28 February 2005 of land of area of 33.156 acre by Land Acquisition wing and handed over to Engineering wing on 16 March 2005 for taking physical possession and necessary action. However, till date physical possession could not be taken by NOIDA as *abadi* was already existing in the land and development works were already executed by *Gram Samaj*. As per records made available to Audit, the award of the said land was not declared till March 2020.

In this connection, Audit obtained a satellite image of Elabans village from National Remote Sensing Centre (NRSC) of Indian Space Research Organisation (ISRO) for the year 2005 to ascertain the extent of *abadi* existing in the village. The image is as under:



Source: Image from NRSC, ISRO, Hyderabad of September 2005.

The blue colour shows construction and the red colour shows vegetation.

The above image clearly confirms that the proposed village (marked in the map in blue lines) had a dense *abadi* settlement. Audit observed that the proposal for acquisition of land was sent without ascertaining whether the land was free from all encumbrances and no site inspection was done by the Land Acquisition wing of NOIDA before sending the land acquisition proposal to the Government. Neither physical possession could be taken by NOIDA nor was any award declared under Section 11 of the Act. As a result NOIDA could not commence its development work. The objective of payment of the amount

¹⁵ Joint survey done by Lekhpal, Revenue Inspector and Naib Tehsildar on 26 July 2003.

of ₹ 4.32 crore for land acquisition remained unfulfilled and the funds have remained unutilised and is pending return from District Authorities since 2003. Further with the enactment of the 2013 Act (with effect from 01 January 2014) the proceedings under the LAA have also lapsed in accordance with the provisions of Section 24(2) of the 2013 Act.

In its reply, NOIDA stated (August 2020) that the land was encroached by villagers after notification under Section 4 and the entire onus of proceedings for acquisition lies on the ADM (LA) rather than NOIDA. Neither has any award been declared by the Collector nor has payment been made under any agreement. Further, the sums pending with the ADM (LA) are adjusted or returned to NOIDA from time to time.

The reply is not acceptable as in this case possession on paper only has been taken by Land Acquisition wing of NOIDA in 2005. The ISRO image of September 2005 clearly brings out the area occupied (*abadi*) which can be seen in the image depicted in blue colour which represents constructions. As a result, physical possession has not been taken nor has any award been declared till March 2020. The reply does not address the issue that the amount advanced by NOIDA could not be utilised and has remained pending with ADM (LA) since July 2002, the reason being not carrying out due diligence either at the time of survey or taking possession. As a result, the case has become deadlocked with NOIDA's advance lying unadjusted.

Ineffective follow-up of acquisitions

3.8 After the acquisition of land has been completed, the possession of acquired land is taken by NOIDA for undertaking further development. Thus, effective follow-up of acquisition is an important aspect of the process. Audit noticed that in the following cases, the Land Acquisition wing of NOIDA failed in following up for possession of the acquired land.

Land under encroachment:

3.8.1 Protection of land from unauthorised encroachment is one of the most important functions of NOIDA. The land protection activities are carried out by Land Acquisition wing as well as the user departments. It is the responsibility of NOIDA to maintain round-the-clock watch and ward for protection of land so as to ensure that no unauthorised structure comes up on the land and to remove the same at the earliest, if any.

Eradication of land mafias being the top priority of the State Government, a task force was constituted under Chief Secretary (May 2017). Clear and result-oriented directions were given for removal of encroachments from both Government land as well as private land. Accordingly, work-circle wise list of encroached land was prepared in June 2017 wherein 988 properties were identified across 10 work circles. In many instances, the dimension of land was not recorded in the list but in the rest of the cases, a total of 45,26,464 sqm land worth ₹ 16,385.80 crore (at 2019-20 prices) was under encroachment (**Appendix-3.4**).

Audit noted that despite acquiring land, NOIDA was unable to develop it on account of encroachments which showed that NOIDA failed in successfully following up the acquisitions made.

95 per cent of 45.26 lakh sqm of land valuing more than 16,000 crores were still under encroachment since June 2017.

In its reply, NOIDA stated (August 2020) that as per the prevailing orders, the responsibility for ensuring encroachment free land rests with the concerned work Circle instead of the Land Acquisition wing. Further, since 2017, 24.580 hectare had been freed of encroachments.

From a perusal of the reply, it is evident that only a small percentage (five *per cent*) of the land has been freed of encroachments and the remaining 95 *per cent* area remained out of NOIDA’s control. NOIDA should strengthen the post-acquisition follow-up mechanism, so as to utilise the acquired land for productive use.

Non-mutation of land purchased

3.8.2 Mutation is the change of title ownership from the existing owner to a new owner, when the property is sold or transferred. By mutating a property, the new owner gets the property recorded in his name in the land revenue department.

During the period 2005-06 to 2017-18 NOIDA acquired lands measuring 761.8036 hectare in Noida through direct purchases from farmers and made 1,134 sale deeds with landowners. After acquisition, NOIDA was required to get the ownership of these lands duly transferred in its favour.

Audit scrutiny of 115 selected cases relating to purchase of land through sale deeds with landowners revealed that in 30 cases, though the land was acquired through mutual agreement (*bainama*) during 08 April 2005 to 19 February 2018, the ownership of these lands continued to vest with the farmers as per land revenue records as on March 2020. NOIDA did not get the title of acquired land transferred in its favour although it was the responsibility of the Land Acquisition wing of NOIDA to transfer the title of the acquired land in favour of NOIDA. In 64 cases, NOIDA took three to 108 months from the date of agreement with landowners to get the ownership of the land acquired. In the remaining 21 cases, the status of mutation was not provided by NOIDA despite request.

Non-transfer of the title of acquired land in NOIDA’s favour was fraught with the risk of transfer of these lands purchased by NOIDA to other persons.

In its reply, NOIDA accepted the audit observation and assured that mutation of the land would be effected.

Conclusion

The land acquisition process undertaken by NOIDA primarily up to 2010-11 suffered from irregularities on many counts. All acquisitions made under the LAA were done by invoking the urgency clause of the Act. However inordinate time was taken for processing land acquisition cases, indicating that there was little justification in invoking the urgency clause in every case. NOIDA, while making payments of additional compensation in pursuance of Hon’ble High Court’s judgement, failed to exercise due diligence resulting in substantial avoidable payments and over-payments.

From 2014 onwards when NOIDA acquired land through direct purchase, it made payment of Rehabilitation and Resettlement /No Litigation Bonus which was beyond the scope of 2013 Act. The Board of

NOIDA, instead of putting a check on the violations, regularised the payment which it was not authorised to sanction.

NOIDA also failed to exercise the required prudence and as a result made excess payments on account of delays of various kinds. Post- acquisition of land, failure to effect mutation of land and check encroachments on land was also observed.

Recommendations		
Recommendation Number	Recommendation	Response of the Government
4	NOIDA needs to ensure abidance with the statutory provisions, as provided for under the Act and exercise due diligence while invoking the urgency clause in carrying out land acquisitions.	Accepted. Government stated that it has since rescinded the urgency clause.
5	Post-acquisition, the follow-up mechanism should be strengthened by NOIDA so that the acquired land is put to productive use at the earliest, mutated without delay and kept unencumbered.	Accepted.

