

LAND ACQUISITION AND REHABILITATION - A GREAT CHALLENGES TO PPP PROJECTS

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Abstract:

India has witnessed considerable growth in PPPs in the last one and a half decades. Today, it has emerged as one of the leading PPP markets in the world. “The Government of India is committed to improving the level and the quality of economic and social infrastructure services across the country. In pursuance of this goal, the government envisages a substantive role for Public Private Partnership (PPPs) as means for harnessing private sector investment and operational efficiencies in the provision of public assets and services.” But in recent days private participation in the process of infrastructure development, especially in road sector, has received lackluster response. Most of the privators are hesitating to take National highway projects. One of the major reasons is delay in acquisition of Land required for the project. Land acquisition is a long drawn process. Synergy of efforts between State Governments and NHAI is essential to complete smooth acquisition. It needs to be ascertained that at least 80 % of the required land is available at the time of award of the projects; further it also needs to be ensured that the balance 20 % of the land shall be available within a period reasonable enough so as not to delay the implementation of the projects as per the stipulations of the Contract / concession agreements (say for e.g. balance land should be available within Appointed Date for BOT projects or as per provisions of Contract Agreements so as to enable Contractor to get all the required Work Fronts within stipulated periods, etc). It is of paramount importance to regulate

and control the development activities in land abutting the Right of Way (ROW) of Highways so as to ensure availability of adequate clearances, enhance safety of traffic, obviate possible encroachments of Road Works in future, etc. Accordingly, State legislations are required to be promulgated to this effect. It needs to be ensured that the land has been acquired as per the provisions of the right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013.

There are several advantages in engaging with the private sector for infrastructure procurement. Foremost amongst these are (a) the ability of the private sector to finance infrastructure that cash-strapped governments are unable to provide and (b) the expectation that a profit-motivated private operator can bring about enhanced operational efficiencies (Gomez-Ibanez et al, 2004). However PPP projects encounter several risks that often lead to cancellations and/or significant renegotiations. Out of that the problem of land acquisition has enormous influence in road sector projects. This paper highlights the land acquisition constraints faced by the privators and put forth suggestive measures to redress the said problem as to attract private investors to participate in the public infrastructure building. The paper also gives a vivid picture of land acquisition and Rehabilitation case in Madurai district in Southern Tamilnadu.

Key words: National Highways, Public Private Partnership, Land Acquisition, Rehabilitation, Infrastructure building.

INTRODUCTION

The Indian economy has been delivering strong economic growth across most sectors for the last few years. However, to achieve inclusive and sustainable growth, it is vital to develop its infrastructure – power, water, roads, ports, airports, urban bus and metro lines, health and education facilities, etc. which serve as the backbone for businesses, livelihoods and living. Infrastructure demand is expected to go up to \$1 trillion under India's 12th Five-Year Plan (2012-2017). The Government of India (GOI) has therefore focused on developing several enabling tools and activities to spur private sector investments into the country through Public Private Partnerships (PPPs). The fact that economic growth is well-correlated with infrastructure development has been well documented (Geethanjali Nataraj, 2014). Over the past few years, the Indian economy, as measured by its GDP, has been growing at the rate of 10% per annum. In order to sustain this growth, a recent study done by the Committee on Infrastructure Financing, constituted by the Government of India, has indicated that India must invest close to USD 400 Billion in infrastructure development and maintenance over the period ranging from 2012-17 (Committee on Infrastructure Financing, 2011). Given the large sum of money involved as well as the vast amount of infrastructure that is to be built, it is clear that the participation of the private sector will be necessary, both in terms of financing and in terms of implementation of infrastructure. Public Private Partnerships (PPP) are therefore considered to be inevitable in the prevailing Indian Infrastructure context and are estimated to constitute 40% of new infrastructure development over the period of next five year plan (Department of Economic Affairs, 2011). The private sector

too is increasingly becoming interested in participating in infrastructure projects. In the roads sector for instance, PPP projects attract more bidders today than they did 5 years ago (Department of Economic Affairs, 2011a)

Land acquisition Constraints in PPP at National level:

Land acquisition is a long drawn process. Synergy of efforts between State Governments and NHAI is essential to complete smooth acquisition. One of the major reasons for delay in implementation of road projects is because of the delay in acquisition of Land required for the project. It is needed to be ascertained that at least 80 % of the required land is available at the time of award of the projects; further it also needs to be ensured that the balance 20 % of the land shall be available within a period reasonable enough so as not to delay the implementation of the projects as per the stipulations of the Contract / concession agreements (say for e.g. balance land should be available within Appointed Date for BOT projects or as per provisions of Contract Agreements so as to enable Contractor to get all the required Work Fronts within stipulated periods, etc).The possibility of allowing real estate development on part of the land acquired for the purpose of developing Highways need to be explored so that sweetener could be offered to the potential concessionaires for developing the stretches on BOT (Toll) mode. Land value captures in addition to real estate development are other strategies for resource mobilization particularly for expressways and building of bypasses, peripheral highways. However, this aspect needs to be widely debated before taking a final view. Accordingly, the Government may explore the feasibility of suitably amending the provisions of the NH Act, 1956.

It is of paramount importance to regulate and control the development activities in land abutting the Right of Way (ROW) of Highways so as to ensure availability of adequate clearances, enhance safety of traffic, obviate possible encroachments of Road Works in future, etc. Accordingly, State legislations are required to be promulgated to this effect.

It needs to be ensured that the land has been acquired as per the provisions of the right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013. Regarding BOT projects, Land acquisition for highways needs constant support of the concerned state where the highway project befalls. However, there is absence of any overall framework or mechanism specifying the role and steps to be undertaken by the State Government in providing assistance to NHAI in acquiring land in their state.

V.K. Sharma, chief general manager for land acquisition at NHAI, told Business Standard: “we have terminated four projects in Kerala and Goa and we are in the process of terminating two more in Kerala. Land acquisition also remains a hurdle in West Bengal, but we have not scrapped any project there.”

(Source: Business standard, Wednesday, December 3, 2014 | 03:41 PM IST)

Land acquisition is one of the factors delaying 72 national highway projects in 17 states and union territories, the Lok Sabha was informed. In a written reply, Minister of State for Road Transport and Highways Krishan Pal Gurjar said: "A total of 72 national highway projects are delayed due to various reasons, including acquisition of land."

Assam has the maximum number of such projects - 12, followed by Tamil Nadu (11) and Bihar (9), he added.

(Source: <http://www.ianslive.in> December 3, 2014)

Table:1 List of NH projects Delayed exclusively due to Land acquisition procedures in India

State	Name of the Project
Assam	<ol style="list-style-type: none"> 1. Construction of new 2 lane road with paved shoulder from 52.00 to 67.600 of NH-154 2. Reconstruction and widening of 2 lane from km.67.600 to 89.000 of existing road including paved shoulder of nh-154 3. Construction of 20.35 km.2 lane Tinsukia bypass with paved shoulder between km.635.800 to km.653.400 of NH-37 4. Construction of 2 lane highway with paved shoulder between km.603/00 to km.637/0 of NH-37(bypasses of Mohanbari, Chabua and other villages) 5. Construction of 2 lane nh-37 with paved shoulder from end of rob at Makum TO NH-52 near Rupai. 6. Realignment and construction of 2 lane nh-37 with paved shoulder from Rupai O Tallap
Arunachala Pradesh	2 laning of NH-229 from Nechipu to Hoj section
Bihar	<ol style="list-style-type: none"> 1.Construction of road NH-102 Takiya bridge in km.21 2.Patna-Muzzaffarpur 3. 2 Laning of Mokama-Munger (Approved Length 70 Km)
Jammu & Kashmir	<ol style="list-style-type: none"> 1. Upgradation of Srinagar –Uri (NH-1A) 2. Construction of 2 Lane Road Batote –Kishtwar-Sinthanpass-Anantnag (NH-1B) 3. Double Laning Of Road Srinagar-Kargil-Leh (NH-ID)
Goa	<ol style="list-style-type: none"> 1.Goa –Karnataka Border –Panaji 2.Maharashtra-Goa Border –Panaji
Kerala	<ol style="list-style-type: none"> 1.Cherthalai To Ochira 2. Ochira- Thiruvanandapuram 3.Kerala/Knt Border-Kannur 4.Kannur- Kuttipuram 5.Thiruvanandapuram-Kerala/TN Border 6.Vadakkancherry-Thrissur(KL-3) 7.NH-Connectivity To ICTT Vallarpadam
Manipur/Assam	1.NH-53&NH-54
Mizoram	<ol style="list-style-type: none"> 1. 2 laning of NH 54 from KM.118/00 TO 133/00 2. 2 laning of NH 54 from KM 134.5 TO 153 3. 2 laning of NH 154 from KM 89/00 TO KM.105/00 4. 2 laning of NH 154 from KM 119/00 TO KM 147/00
West Bengal	<ol style="list-style-type: none"> 1.Dalkola Bypass 2.Siliguri-Islampur 3.Bahrapore-Farakka 4.Farakka-Raiganji 5.Raiganji-Dalkola 6.Barasat-Krishnagar 7.Krishnagar –Bahrapore
West Bengal/ Sikkim	1.NH-31 A

Tamilnadu	1.New Elevated Road Connecting Chennai Port-Maduravayal 2.Chennai –Tada 3.Dindigul-Theni
Haryana(64.3)/ Rajasthan(16.1)	1.Gurgaon-Kotputli-Jaipur(6 lane) 2. Widening to 4 lane of NH 112 from k.105/00 to km.114/00 3. Reconstruction of Minor Bridge (Jawahar Bridge) NH-113 At Km.163
Karnataka	1.Kundapur-Surathkal & Mangalore-KNT/Kerala Border
Maharashtra	1.Pune-Satara(Approved Length-145) 2.Pune-Sholapur Pkg-I (Approved Package Length Pkg I&II 170 KM) 3.Panvel –Indapur
Uttarkhand	1.Muzzafarnagar-Haridwar 2.Haridwar –Dehradun
Uttar Pradesh	1.Delhi-Agra 2.Berailly-Sitapur 3.Mordabad-Bareilly

Source: www.cerebral business .com, www.cerebral business research.mht

Land Acquisition Constraint in Tamilnadu

Tamil Nadu with its strong transport infrastructure along with the state of the art communication network is steadily moving in the direction of achieving an all inclusive growth path plan in this sector. Public and private investments have augured for its steadfast growth. Tamilnadu has an extensive road network. State road network covers about 153 km per 100 km² area, which is higher than the country's average road network coverage of 103 km per 10 km² area. A separate Highways Department (HD) was established in April 1946 and the same has been renamed as Highways & Minor Ports Department (HMPD) on 30 October 2008. HMPD of Tamil Nadu is primarily responsible for construction and

maintenance of roads including national highways, state highways and major district roads in Tamil Nadu. It operates through 7 wings namely National Highways Wing, Construction & Maintenance Wing, NABARD and Rural Roads Wing, Projects Wing, Metro Wing, Tamil Nadu Road Sector Project Wing, Investigation and Designs Wing geographically spread across the state in 31 districts with about 120 divisions and 450 subdivisions Road Network in Tamilnadu. As on 31 March 2013, Tamil Nadu is having a total road length of 2,00,416 km–The various types of roads and their lengths are given below:

Table:2 Tamil Nadu Road Network

Width wise details of roads in Tamilnadu (As on 31 March 2013)						
Sl. No	Category wise	Single lane	Intermediate lane	Double lane	Multi lane	Total
1	National highways	13	34	2785	2142	4974
2	State highways	32	289	9354	1089	10764
3	Major district roads	1698	6263	3128	158	11247
4	Other district roads & sugarcane roads	31285	2837	862	48	35032

Source: Department of Highways, Chennai-5

Out of the total length of NH in Tamilnadu 54% has been constructed through PPP projects

Even PPP in the infrastructure development is picking up during the recent years, When we look at the progress of road development so far, private participation and PPP arrangements in the development is facing several implementation challenges. These challenges typically involve Land Acquisition.

In a recent interview to Zee News, Union Minister of State for Road Transport and Highways Sarvey Sathyanarayana said that Various road projects in Tamil Nadu are getting delayed in the absence of support agreement from the state, He also said that

lack of support for availability of aggregates and soil are a major stumbling block in speedy completion of projects. There are abnormal delays in obtaining required permission from district administrations for quarry materials. Due to non-signing of the agreement, concessionaires are not getting funds from lenders and also resulting in delay in obtaining approvals and clearances from various departments, he said. Due to this NHAI and the concessionaire were facing problem in implementing the projects. So the concerned state government has to provide active support in expediting the completion of projects.

Source: http://zeenews.india.com/news/tamil-nadu/tn-road-projects-delayed-due-to-absence-of-support-agreement_821647.html

Table:3 Land Acquisition Constraints in Tamilnadu

Sl. No.	State	Name of project/State	cost of project (Rs. in Cr.)	Date of Start of Project	Date of Completion of project as per contract	Target Date of Completion	Cumulative Physical Progress achieved as on 31 December 2010	Expenditure as on 31 Dec. 2010 (Rs. in Cr.)	Remarks
1	TAMIL NADU	improvement of existing two lane and construction of paved shoulder on either side from karur (km. 277/400) to coimbatore (km. 332/600) ofNH-67	178.00 (O)	21-Aug-2006	10-Jan-1900	Aug - 2009 Dec. - 2009 April 2010 Dec - 2010 Mar - 2011	99%	130.80	DELAY DUE TO LAND ACQUISITION
2		improvement of access to golden quadrilateral (g.q.) within chennai city including construction of four grade separators of NH - 4, 45 and 205	196.00 (O) 489.34 (R)	7-Apr-2005	6-Apr-2007 (O) 30-Mar-2008 (R)	March - 2008 31.Dec. - 2008 March - 2009 31.Dec. - 2009 Dec. - 2010 Jan - 2011	97%	662.10	DELAY DUE TO LAND ACQUISITION

Source : nhai .org.in

In the case of the Coimbatore bypass road described above, the government of Tamil Nadu decided to toll a neighbouring bridge and include the toll revenues as part of the

financial equation for the bypass road project. However users of the bridge refused to pay.

A Case Study regarding Land Acquisition and Rehabilitation in Madurai district

The execution of work for the formation of road from Dindigul to Samayanallur a part of NH-7 has been undertaken by M/s.DS Toll Road Private Limited. The District Revenue Officer, Madurai was declared as competent authority for acquisition of land for four ways laning. The applicant's land was situated in Madurai District, T.Vadipatti taluk and III ward of Vadipatti township, Thatampatti in survey No. 199/5 and 202/3-. The land was around 4,125, square meters or 101.851 cents of dry land with 108 "sappota" trees aged 8 years. The above land with 108 sapporta trees was acquired for formation of a part of National Highways-7 in Madurai District and 3-A(1) notification was published on 28-07-2006 in Government gazette No.116.S.o.No.12138(E). After 3-A(1) notification, 3-A(3) notification was published in "Daily Thanthi" dated 20-9-2006, after that 3-D(1) declaration was also published on 19-01-2007 and the applicant's land vested with the National Highways Authority. The land acquisition officer fixed Rs.10.88 per sq.meter or Rs.440.64 per cent for punja land at Rs.44,880 and Rs.1,08,324 for the 108 sappota trees and 10% appreciation value and awarded a total compensation of Rs.1,68,525/- and the same was received by the applicant under the protest. Then the applicant filed a claim petition in Ar.o.p.No.8/2009 and an award was passed by the honorable court on 30-8-2012 for the land measuring 4,125 sq.mts or 101.851 cents. After that the applicant filed a petition stating that the awarded compensation did not include the amount of yield expected from the 108 sappota trees that was aged 8 years and will yield for a period of 40 years nearly 350 to 400 kg per tree annually and will give a total yield of 17,28,000/-kg .Even

a kilogram of the fruit is sold at Rs.10/- the total income will be Rs.1,72,80,000/-.After deducting all the expenses , the net income will be 50% of the total income i.e Rs.86,40,000/-. This case was under the proceeding nearly for 6 years (2006-2013) which drastically affected the progress of the project. When this type of problems are promptly redressed it will pave way for amazing developments in road sector .

Recommendations

To address these constraints perceived in the implementation of PPP projects and to attract more private participation in PPP projects in road sector the following are recommendations:

1. Setting up of a dedicated special Purpose Vehicle (SPV) in the form of State Land Bank Corporations (SLBCs), which could aggregate and acquire fallow, barren and unproductive lands, ex-ante, for allocation to the industry in a transparent manner over a period of time.
2. When growth is under pressure, a balanced and well-de-signed land acquisition law could encourage projects revival, and also ensure that interests of affected families are balanced with attractive project viability.
3. The compensation package would be up to four times the market value in rural areas and twice the market value in urban areas.
4. R&R provisions should have been worked out separately for each category of the affected families, depending upon their losses and with an objective to improve their quality of lives, post land acquisition.
5. To Provide R&R entitlements to affected families in cases of land acquisition directly from the land owners above a certain threshold, to be determined by the states. It could also have been avoided since sellers would have received the premium on land value. Thus Laying down suitable R&R entitlements for affected families who lose

their livelihood as a result of such land acquisition is essential.

6. Land Acquisition and Approval mechanism including environmental clearance should be streamlined.

7. Systematic compilation, analysis and experiences should be made available and the same be provided on the website which has been recently launched by the government to exclusively devoted to PPPs. This will facilitate quicker assimilation and dissemination of best practices to various levels of government.

8. For a private entity or a PPP project, the state has to conduct a social impact assessment (SIA) and an environmental impact assessment (EIA).

9. A specialized and efficient dispute resolution and arbitration mechanism may be created.

10. Institutions may be created solely for the purpose of promoting PPP projects at the central and state level.

Conclusion

The creation of world class infrastructure would require large investments in addressing the deficit in quality and quantity. Therefore, it is necessary to explore the scope for plugging this deficit through Public Private Partnerships (PPPs) in all areas of infrastructure especially in road sector. Given India's infrastructure needs, PPPs are a necessity and not just an option. However there are a myriad of issues that need to be

addressed and resolved in order to facilitate a better understanding on how to develop infrastructure efficiently and seamlessly via PPPs.

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