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Sandip Kumar Deb is known as the "Global Face of Indian Valuation". He is the first Indian Valuer to be selected as a member of the prestigious Tangible Assets Board of the International Valuation Standards Council.

Having an undergraduate degree or equivalence in Civil Engineering, Law, Valuation and Building & Quantity Surveying as well as Post Graduate Degree in Land & Building and Plant & Machinery Valuation, he has finally chosen Valuation as his profession and passion.

For more than 25 years, Sandip has been practicing valuation in India, Bangladesh and Nepal as a professional valuer as well as a valuation academician.





VALUATION OF UNREGISTERED LAND OF INDIGENOUS PEOPLE

A NOVEL APPROACH

INTRODUCTION

Indigenous people are always endangered species in every country irrespective of their nature whether developed, developing, or underdeveloped. Most of the time they are the most marginalised and vulnerable segments of the population. They belong to the social groups with identities and livelihoods that are distinct from dominant groups in national societies. They have limited economic, social and legal capacity to defend their rights to and interest in lands and resources.

The Land is absolutely central to infrastructure, especially in Asian countries where the population is growing exponentially and the pace of urbanization is also increasing quite rapidly. Generally, roads, water supply, sewer, power grids, airports, telecommunications etc. are considered to be essential urban infrastructures. As investments in these areas require a substantial amount of money and no immediate and certain returns are guaranteed, we hardly find private investments in such infrastructure development. Moreover, when private parties are left to aggregate the land to build any particular infrastructure, it would take them so long that they would never be willing to do it. Under these circumstances, the government is always under

tremendous pressure to acquire land for the development of infrastructure. But forced land acquisition for infrastructure and industrial facilities - both of which are crucial for a country's economic development - is frequently dogged with controversy. Land acquisition (India, Indonesia), Eminent Domain (United States), Compulsory Purchase (United Kingdom), Compulsory Acquisition (Australia) or Expropriation (Canada, South Africa) is the power of the state to take private property for public purpose.

The Majority of the nations have their own land acquisition act and speaking mechanism of payment of compensation under those acts for the owners of the registered lands. But the indigenous people in most of the countries reside in remote areas located in the boundaries of forests or mountains or rivers. Though they have been living and farming on these lands generations after generations but do not have any ownership rights with them. Therefore, when these lands are required by the government for the construction of large infrastructure viz. roads, dams, barrages etc. the relocation of the indigenous people and payment of compensation to them becomes a big question. Not only the statutes of

different countries but the international funding organisations also do not have any clear policy for payment of compensation to the indigenous land losers for their unregistered lands. This is causing huge problems in the proper rehabilitation and resettlement of these people following chaos in the implementation of such large infrastructure projects.

COMPULSORY LAND ACQUISITION VALUATION – PRESENT SCENARIO

The legal frameworks of different countries provide different guidance for land acquisition valuation. Mostly they prefer the market approach and sales comparison method to estimate the market value of the subject land for the purpose of compulsory acquisition. Then further additions are done on the following heads –

- Addition for the damage caused by the person interested by reason of taking away any standing crops or trees which may be on the land at the time of taking possession thereof;
- Addition for the damage (if any) sustained by the person interested, at the time of taking possession of the land by reason of severing such land from his other land;
- Addition for the damage (if any) sustained by the person interested, at the time of the taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable in any other manner, or his earnings;
- Addition for if as a consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses (incidental to such change);
- Addition for the damage (if any) bona fide resulting from diminution of the profits of the land between

the time of the publication of the declaration and the time of the taking possession of the land and;

- Addition for the loss of earnings, if any, caused to the person interested in consequence of the acquisition of land where earning was derived directly from such land.
- Addition under the head 'Solatium'.

The service of valuers is required during the time of estimation of market value by the acquisition authority as well by the affected party when the award is challenged at the court of law. But all these approaches, methods and techniques are applicable for registered land valuation.

CRITICAL ISSUES IN VALUATION OF UNREGISTERED LANDS OF INDIGENOUS PEOPLE

When a valuer estimates the market value of an immovable property, he doesn't value the bricks and mortars but estimate the value of the rights and interests embedded in the property. Therefore, the major difficulty faced by a valuer while estimating the market value of the unregistered land of an indigenous person is that the rights and interests embedded in such lands belong to the state and not to the indigenous person. As per the valuation principles, the market value the farm land which the affected person has been cultivating for generation after generation will not fetch any money to him if it is acquired by the state for public purpose.

Sale evidence of unregistered land is never available. To apply sales comparison method under market approach, the valuer may take resort of evidence of sale of registered lands in the neighbourhood or even of far-flung areas. But the discount provided due to the unregistered nature of the land shall always be point of dispute.

Therefore, application of sales comparison method under market approach may not be suitable for valuation of unregistered lands.

VALUATION APPROACH AND METHODOLOGY FOR UNREGISTERED LAND VALUATION OF INDIGENOUS PEOPLE

Although the ownership of the unregistered farm lands cultivated by the indigenous people from time immemorial, is with the state but the right to harvesting is with the indigenous farmers. Therefore, estimation of market value of these farm lands by the application of discounted cash flow method under income approach is very much possible.

Once the market value of these unregistered farm lands is ascertained then the next question arises, how to estimate the market value of the rights and interests of these indigenous people? It is already discussed that these indigenous people do not have ownership of this unregistered land but have farming right. To solve this issue, let us take the help of a legal document of this Indian Sub-continent. This is known as Land Reforms Act. This statute of India, Bangladesh and Sri Lanka provides us with a direction how the crops shall be divided between the Bargadar (Share cropper) and the Rayat (Owner). In India, the produce of any land cultivated by a bargadar, who also bears all costs of cultivation, is divided as between the bargadar and the person whose land he cultivates in the proportion of 75:25. Taking clue from this, the market value of the right of the indigenous people having farming right over an unregistered land shall be the 3/4th of the market value of the subject land estimated by the application income approach.

ILLUSTRATION

Calculation of market value of the rights and interest of an indigenous family cultivating half acre two cropped maize producing government land for five generations on

the river bank of a hilly terrain in India. The land is notified for acquisition for the purpose of construction of a hydel power project.

(Table is on the next page)

CONCLUSION

Market value estimation of unregistered land is always a challenge for valuers throughout the world. The valuer is to be very cautious about the land laws of the country in which the estimation is to be done. If no such land law is available there, the valuer has to opine about the division of produce between the share cropper and the owner of land citing related land laws of neighbouring countries and then to draw the conclusion on estimated value. Please remember that in the job of estimation of market value for the purpose of land acquisition, valuer's role ends once the market value is determined. Determination of compensation package is not the job of a valuer unless additionally assigned.

S.No	Description	Unit	Quantity	Rate	Total Cost
A	Variable Costs				
1	Energy Costs				
	Labour Costs				
	Main Land Preparation	Mandays	10.00	600.00	6000.00
	Fertilizer and Compost Application	Mandays	5.00	600.00	3000.00
	Weed Control	Mandays	30.00	600.00	18000.00
	Irrigation	Mandays	3.00	600.00	1800.00
	Plant Protection	Mandays	3.00	600.00	1800.00
	Harvesting / Bundling	Mandays	10.00	600.00	6000.00
	Threshing Winnowing & Storage	Mandays	10.00	600.00	6000.00
	Sub Total - Labour Cost		71.00	600.00	42600.00
	Bullock Labour	Days	5.00	1000.00	5000.00
	Machine Labour Used	Hours	7.00	1200.00	8400.00
	Total Energy Costs				56000.00
2	Raw Material Costs				
	Seeds	Kg	60.00	40.00	2400.00
	Manure & Compost	Kg	7200.00	1.00	7200.00
	Chemical Fertilizers				
	Urea	Kg	100.00	25.00	2500.00
	DAP	Kg	60.00	52.00	3120.00
	Potash	Kg	1.00	37.00	37.00
	Chemical & Bio Pesticides	Lumpsum	1.00	2000.00	2000.00
	Irrigation	Lumpsum	1.00	1000.00	1000.00
	Sub Total - Raw Material Cost				18257.00
B	Fixed Costs				
	Land Tax	Lumpsum	1.00	250.00	250.00
	Total Fixed Cost				250.00
C	Total Cost of Cultivation per Hectare				74507.00
D	Estimated Yield of Maize	Kgs	3000.00	35.00	105000.00
	Fodder Yield	Kgs	4500.00	8.00	36000.00
	Total Revenues per Hectare				141000.00
E	Net Income				66493.00
F	EBIDTA				66493.00
	Terminal Value by Income Capitalization				
	EBIDTA / Risk Free Rate Per Hectare	Risk Free Rate	1.25%		₹53,19,440
3	Market Value of Family's interest		75%		₹8,07,607

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