International Journal of Humanities and Social Science Research
ISSN: 2455-2070; Impact Factor: RJIF 5.22
Received: 23-06-2019; Accepted: 25-07-2019
www.socialsciencejournal.in
Volume 5; Issue 5; September 2019; Page No. 132-140

Political economy of land acquisition in India

Deepika
Ph. D Research Scholar, Department of Political Science, University of Delhi, Delhi, India

Abstract
Acquiring land for industrialization and more generally for development purposes under the Land Acquisition Act of 1894 is fraught with theoretical problems as well as legal complexities. While much has been debated about the procedural lapses and the bureaucratic biases associated with the litigations fought in the courts, much less light has been shed on the theoretical problems and inadequacies existing within the land acquisition law itself. Acquisition by the government by exercising the power of eminent domain has always been and still is one of the most contested areas of law. A study of the litigations on the issue of payment of compensation and the requirement of "public purpose" are both infested with multiple loopholes inherent in the law. Consequently, examples of litigation and court cases are far from rare when it comes to acquisition of land in India. The popular notions about the root causes of such frequent conflicts involving acquisition of land are at best vague and often lack sound analysis. And in need of major amendments in near future.
The objective of this paper is to study the issues related to land acquisition in India which have given rise to debates and litigations appearing both in the Supreme Court and the state High Courts over the years and also to analyze the court judgments related to acquisition of the land and situates it within the broader realms of right to property in the Indian constitution. Central to the idea of right to property is the embedded meaning of transaction rights of the owner, which has today become the central contentious issue regarding to land acquisition. The complexities of the debate arises since the right to property was initially part of the fundamental right of the Indian state, but since the 44th amendment it has been reduced to a directive principle of state policy, which is not justifiable unlike the fundamental rights. The right to property is therefore the subject of much debate and contention between the executive and the judiciary through several judgments of the Supreme Court and the state High Courts. Moreover, the power of eminent domain of the state further deepens the problem of unraveling the rights and powers around property discourse in India. This paper is an attempt to deconstruct the right to property and at the same time, link it to the broader debates on land acquisition. Examples from Supreme Court and state High Court judgments, at the national level is discussed in an attempt to unravel the relation between judiciary and the contentious issue of land over time.

Keywords: land acquisition, court judgments, property right, compensation, eminent domain, urgency clause

Introduction

Acquisition of the land has been regulated by the Land Acquisition Act, which along with the Constitution permits the government to acquire land for public purpose. Central to the debate on land acquisition is the debate surrounding the right to property in the Indian Constitution. Originally at the time of independence when the constitution first came into being, the citizens had enjoyed the right to property under Article 19 (f). What followed was the intense debate between the legislature and judiciary regarding the interpretation of the right, following which by a constitutional amendment, the right was no longer part of the Fundamental Rights of the citizens. It is important to mention here that when the right to property was part of the Fundamental Right, the citizens at least had a legal protection of their property rights from acquisition. With the removal of this right, the debate between the state and the individual further got aggravated and in the absence of a fundamental right to hold and dispose of property, people with land holding have been finding it difficult in defending their land. As it further strengthened the eminent domain of the state, thereby state emerging as stronger compared to that of the farmer. This issue has become prominent in the backdrop of the decision of the government to acquire land and some of these matters have also reached the court.

According to the land acquisition legislation the state government can acquire land for setting up industry (protected under Article 31) or for carrying on any public purpose, the criteria for doing so remains unclear, especially because many a times agricultural land has been taken over for the purposes of industrialization. This is in contrast to the post-independence policy of the government to bring in agricultural reform. The missionary zeal of the government was apparent from the fact that even the Constitution was amended to keep the judiciary off the implementation of the agrarian reform. It may be recalled that right to property was an important weapon in the hands of the judiciary, which had later been reduced to the rank of a mere Constitutional right.

The changing trends of the society are all pervasive and get reflected in the policies and institutions of the country as well. Even the judiciary is not above such socio-economic and political influences of the present times and what better way to observe such trends other than the judgments pronounced by the courts. "While the courts have in many cases provided little assistance to the struggles of the poor against expropriation, there are examples of judgments espousing a more pro-poor stance on these issues. In spite of the fact that increasingly over the last few years there is a clamour for repealing or at least amending the land

acquisition law in India" (Nielsen, 2011, p. 542) [6] the colonial Land Acquisition Act of 1894 still holds sway in the Indian courts and all judgments are made in accordance with it.

The debate between legislature and the judiciary regarding the Right to property in the Indian constitution

With Independence, India started to be governed by its Constitution, which primarily drew inspiration from the Government of India Act, 1935. However, it was markedly different from the Act as "it contained provisions on protection of fundamental rights as well as policy guidelines in the nature of the directive principles of state policy. For enforcement of these rights, original jurisdiction as contained in Article 32 has been vested with the Supreme Court, which is the successor of the Federal Court and replaces the Privy Council in India, unlike Constitutions in most other countries" (Austin, 1966, p. 167) [1]. The Government of India Act of 1935 mentions in Section 299 that people can be deprived of their private properties only because of public purpose, and that they should be paid a compensation, which should be fixed by the constitution, or the principles determining it should be specified. When the right to property was discussed by the Constituent Assembly, Pandit Jawaharlal Nehru was of the view that the compensation should be paid that is determined by the legislatures, while the Supreme Court argued that the compensation should be paid at the market price. Thus began the complicated relation between the legislature and the judiciary in terms of interpretation of the right to property. The right to property was a contentious issue even in the Constituent Assembly debates among the framers of the Constitution, as Grandville Austin notes.

More so because the unique comprehensiveness of the constitutional goals as envisaged by the assembly was far away from the trappings of the constitutional text in general and the chapter on fundamental rights in particular. Two primary concerns emerged from the debates of the constituent assembly, first, regarding maintaining independence of judiciary and second with regard to the power of judicial review. The members of the constituent assembly, had warned against the excessive use of the power of judicial review, which they thought would emanate from an independent judiciary. While framing the constitutional rules and doctrines on property rights in India, the view of the assembly members were based on their knowledge of the experiences of the United States of America, when the legislature felt that the judiciary was unnecessarily interfering with the administrative reforms. Therefore, their concept of independence of judiciary was limited in nature. This is evident form the debates of the constituent assembly on the draft article 39 A, and present Article 50 of the Constitution.

The fifth amendment of the American Constitution points out, "nor shall any person…….be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation". However, the US legal system is weaved around due process of law, but it was felt that if followed in India, it will lead to complexities with regard to the legislative power to land reform. So, the constituent assembly had taken considerable precaution by consciously avoiding the use of "due process" clause and had preferred using the phrase, "procedure established by law" to circumvent the unfolding of events as in the United States of America. On matters of judicial review, they have adhered to the British model over the American Model, where parliament is supreme and judiciary has a limited role to play. However, their decision was taken in the backdrop of a chapter on fundamental right as it is the case of American Constitution. In fact, the Indian Constitution goes a step further than the American model, where judicial review is merely derived, but in India, it is prescribed vide article 13 of the Constitution. Therefore, there was an inherent tussle within the aspiration of the constituent assembly and the written text that they had prepared. The framers were very much aware of the problem and had tried to curb the problem by curtailing the power of judicial review itself.

The framers of the Constitution were in favor of granting power to the judiciary but wished to take precautionary measures in order to avoid usurpation of power by the court, which could come in their way of implementing policies of socio-economic justice. What the constituent assembly expected was neutrality of the judiciary or at best consent of the judiciary to the consensus of the society as reflected through the legislative and executive decisions. This traditional role portrayal of the judiciary was severely narrow. It had problems with regard to execution as there was a mismatch between the text of the Constitution and the intention of the framers. The courts were thus faced with the daunting task of protecting people's fundamental right besides upholding the acts of the other two organs, which were in apparent conflict with the constitutional provisions.

The assembly was apprehensive that if the court takes a legalistic approach in interpreting the Constitution that might ultimately frustrate the plans and policies of the legislature on social and economic reform. Therefore, the constituent assembly wished for an independent judiciary having power of judicial review used that in a manner which is compatible with the policy decisions of the legislature. This kind of Constitutional role portrayal needed a special institutional relationship between all the three organs of the government which is expressed by Jawaharlal Nehru while he was speaking on article 24 (now article 31). For Nehru, the institutional subordination of the Supreme Court vis-a-vis the parliament was very important. He opined that, "... within limits no Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community." In his view the judiciary can only occasionally act as a check on the other two organs to see whether the representatives of people are acting for the benefit of the society at large or not. In no circumstance the judiciary can act as a Third House of correction. His arguments were based on the presumption that, "ultimately the legislature must be supreme and must not be interfered with by the courts of law in such measures of social reform." While sounding a word of caution he observes that "And if it (the Supreme Court) comes in the way, ultimately the whole Constitution is a creature of Parliament." Thus he indicated that the Constitution can be amended suitably.

The threat that he perceived was later came out to be true in Nehru's social and economic reform strategies such as land reforms and abolition of Zamindari. The immediate concern of the Nehruvian state was to abolish the Zamindari system without payment of adequate compensation and usher in an era of socialism that gave the state a major says in matters

of both private and public enterprises. However, such moves of the government were challenged in a number of landmark cases like Bihar Management of Estates and Tenures Act 1949, which was struck down by the Bihar High Court, as it was felt that it violated Articles 19 (1) (f) and Article 31. Another such important judgment came in *Dwarkadas Srinivas* v. *The Sholapur Spinning and Weaving Company* when the mill owners argued in the Bombay High Court that the government had not legally taken over their land, as it led to the neglect of their right to property.

"In contrast to the popular belief that the judiciary resisted all attempts of Constitutional amendments by him; it is interesting to find that, out of all the property related amendments made by Nehru, not even a single amendment was nullified by the Supreme Court, however laws enacted by parliament and state legislatures under relevant constitutional provisions did got struck down. The government passed the first amendment to the Constitution in 1951, by which Articles 31A, 31B and the 9th Schedule were added to the Constitution. The main focus of this legislation was to ensure that the Zamindari system is limited to a great extent". (Singh, 2004, pp. 19-21) [10].

The fourth Amendment followed in 1953, is very important in this regard by which a new Clause 2A was inserted to Article 31. Before the passage of the fourth Amendment, Article 19 (1) (f) could not be read along with Article 31. The amendment stated that the court cannot question the compensation paid for the acquisition of the private property. The amendment was passed as an attempt by the legislature to do away with the decision of the Supreme Court in *State of West Bengal vs. Bela Banerjee* (1954) case where it was argued that the compensation paid was not adequate and kept outside judicial scrutiny. In this judgment, the honorable chief Justice of Supreme Court, Vajravelu Subba Rao emphasized on the justifiability of adequacy of compensation. Instead of deciding the case on the basis of article 31 (2) he emphasized on the equality aspect of the case and held that since better compensation can be received if the land would have been acquired under the Land Acquisition Act. He was of the opinion that the compensation should be paid which is "equivalent" to the "market value" of the property which is acquired. Although the Constituent Assembly had earlier declared that it had the discretionary power to decide on the amount of the compensation to be paid to the owner of the land who is deprived of his right to property due to acquisition, this judgment was under the opinion that compensation should be equivalent of what one is deprived of. The select committee that recommended the fourth amendment clearly stated the primacy of the legislature over executive in matters of the same.

Before the fourth Amendment, the Supreme Court was under the opinion that the Articles 31 (1) and 31 (2) dealt with the eminent domain of the state, while Article 31 (5) dealt with the "restriction of the right to private property in exercise of the police powers of the state". While Article 31 (1) states, "No person shall be deprived of his property save by authority of law", Article 31 (2) states that for the purpose of public interests, the private property may be acquired by the state. It separated Clause (1) from Clause (2) and declared that the Clause (1) dealt with "deprivation‟, other than "acquisition", while Clause (2) dealt with "acquisition". Also, at the same time, Clause (2) notes that there should provision for the payment of compensation for the acquisition of private property. Clause 5 however, on the other hand "exempted State action imposing any tax or penalty, or promoting public health or preventing danger to life or property from the purview of Clause (2)". The amendment further declared that Article 31 (2) is a "self-contained code", which deal with the state's acquisition of private property, while Article 31 (1) should be read along with Article 19 (1) (f). Furthermore, the Court was under the opinion that the laws which deprived individuals of their properties should be reasonable, under Article 19 (5). However, in the Bank Nationalization case, the court reversed this ruling and declared again that Article 31 (2) has to be read along with Article 19 (1) (f).

Sathe notes that during this time also, it was generally held that compensation should be paid whenever any individual is substantially deprived of his property. The word "acquisition" in Clause (2) was viewed to be "inclusive" of the word "deprived" in Clause (1). The 1955 Amendment, however, is extremely pertinent to note here, as it was declared that the Clause (2) does not deal with "acquisition", as it does not mean that there is "transfer" of the property to the state, or to a corporation owned or controlled by the state" (Sathe, 2014). Sathe interprets this and observes that this meant that acquisition of property of an individual must satisfy the following conditions-

1. It should be undertaken under the law
2. The acquisition must be under a public purpose
3. The compensation should be payable under law
4. A similar law should provide reasonable restriction on the individual's right to acquire, hold or dispose of his property.

In the next few years, a few other judgments followed the concerns of the Supreme Court as in Bela Banerjee judgment. First was the Vajravelu Mudliar judgment where it was argued by Justice Subba Rao. It follows that a Legislature in making a law of acquisition or requisition shall provide for a just equivalent of what the owner has been deprived of or specify the principles for the purpose of ascertaining the "just equivalent" of what the owner has been deprived of. "If the legislature, through its ex facie purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property without paying compensation for it, it will be exercising power it does not possess. If the Legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all, one can easily hold that the legislature made the law in fraud of its powers. Briefly stated the legal position is as follows. If the question pertains to the adequacy of compensation fixed or principles evolved for fixing it disclose that the Legislature made the law in fraud of power in the sense we have explained, the question is within the jurisdiction of the court." (Cerna & Mathu, 2008, p. 36) [2]. Thus, this judgment reiterated the need to provide a just equivalent or a compensation which in a way represented the value of the property acquired. Justice Subba Rao again in the Metal Corporation case, he held that a law for acquisition of property has to justify itself that it provides just equivalent of property acquired and should lay down principles which

are not arbitrary but which are relevant to the fixation of compensation.

Interestingly, it can also be noted that the interpretation of the judiciary of the right to property varied a lot on a case by case basis. So, while Justice Subba Rao emphasized on the just equivalent of compensation, Justice Hidayatullah emphasized that after the passage of Article 31 (2), questions on the adequacy of the compensation cannot be entertained anymore. However, the Metal Corporation case was overruled in Shantilal Mangaldas case, where the Bombay Town Planning Act 1958 was challenged, claiming that since the owner of the land was paid according to the valuation of the land as on the day of the declaration of the scheme, the just equivalent of the compensation was not adhered to. Therefore, Justice Hidayatullah through his judgment in a way accepted that the level of compensation prevalent in 1927 is good principle or just equivalent for the payment of compensation in 1957.

Nationalization was carried over in many sectors including amongst others banking, insurance, coal, oil etc. These measures were challenged before the court. The court responded by bringing back the debate on compensation in the Bank Nationalization case, also known as *R.C Cooper v Union of India* which came in 1970 however made some landmark observations through its judicial bench. It was argued that both before and after the 31 (2) Amendment of the Constitution, the right to compensation remained on the owner of the property, and the "illusionary compensation" in return for the acquisition is therefore not justifiable. It was further argued in the judgment that the legislature is not the final authority in terms of payment of compensation. The judgment further stated- the legislation which provided for giving certain amount as compensation is based on irrelevant considerations and cannot be regarded as compensation. By this decision the Supreme Court went back to its earlier position as held in Bela Banerjee case. In other words, it reversed the Constitution fourth amendment. While revisiting the issue of adequacy of compensation the court held the Act to be void as compensation was not based on due consideration of the relevant principles. Therefore, the amount so determined cannot be said to be compensation.

While determining the amount of compensation to be awarded, the judgment further added- "The broad object underlying the principle of valuation is to award to the owner the equivalent of his property with its existing advantages and its existing potentialities. Where there is an established market for the property acquired, the problem of valuation presents little difficulty. Where there is no established market for the property, the object of the principle of valuation must be to pay to the owner for what he has lost, including the benefit of advantages present as well as future, without taking into account the urgency of acquisition, the disinclination of the owner to part with the property, and the benefit which the acquirer is likely to obtain by the acquisition." (Maitreesh & Mookherjee, 2011) [5]. The judgment further recognized that the potential value of the land acquired, as well as the value of the land if the land is taken for lease should be considered while payment of compensation.

Again in the 1967 when a Section of the land was declared "surplus", Golak Nath approached the judiciary arguing that it violated his right to property under Articles 19 (1) (f) and (g) and also the right to equality under Article 14. In this case the constitutional validity of first, forth and seventeenth amendments were in question. All the three amendments had gradually eroded judicial review along with a constant erosion of fundamental rights. The matter was referred to a bench of eleven judges presided over by chief justice Subba Rao. The court had upheld the constitutional validity of the amendments as it felt the parliament has the right to interfere with the fundamental rights. The court had held so on the belief that the parliament enjoys constituent power as well as legislative power, and when it amends the Constitution it puts to use the constituent power. The constituent power is inherent in nature that cannot be interfered with by the court. Thus, the supremacy of the parliament to alter the Constitution was accepted by the court. However, in the later case doubts were raised by two of the judges on the ability of the parliament to amend the Constitution indiscriminately. Therefore, the larger bench was made to sit and re-look at the earlier decisions.

In Golaknath, contrary to the popular belief that Supreme Court had held that the parliament has no right to amend the Constitution, it was held that, the power of amendment is limited in nature. The twenty forth amendment was introduced which wished to nullify some of the arguments of the Golaknath decision. The amendments were sought in article 368 and article 13 (2). Both the amendments were aimed at clarifying the unlimited power of the parliament to amend the Constitution. Since constitutional amendments are law under article 13 of the Constitution they cannot take away or abridge rights in any form. The court thereby reversed its position on the constituent power of the parliament, and observed that even amendment to the Constitution is an exercise of legislative power of the parliament and is subject to the chapter on fundamental rights. This however does not take away their power to add more rights in the already existing list of fundamental rights. In this case Justice Subba Rao held that since the right to acquire, hold and dispose of property is a fundamental right, reasonable restriction can be imposed on the enjoyment of those rights. However, whether such restrictions are reasonable or not and whether it is in public interest or not is a justiciable issue, therefore judicial review cannot be taken away by constitutional amendments. Further the government can acquire property only when such acquisition is in public interest and compensation is being paid to the person who is being deprived of the property. The court reiterated its earlier view that adequacy of compensation is not justiciable. Irrespective of non-justiciability, if the compensation fixed by law is illusory or is contrary to the principles relevant to the fixation of compensation, it would be a fraud and therefore, the validity of such a law becomes justiciable. Thus inspite of constitutional amendments the judicial review of compensation remained intact in this case. This decision served the cause of right to property. More than that it also served the cause of other fundamental rights such as right to equality, seven freedoms contained in article 19, right against exploitation, right to life and liberty, etc. from getting overshadowed. All other fundamental rights read with the provisions restricting the enjoyment of those rights, give a very grim picture of fundamental rights. Therefore, Golaknath was an act in desperation by the judiciary to protect the fundamental rights from the hands of the executive and the legislature. Golaknath overruled *Shankri Prasad Singh Deo vs. Union of India* (1955) case as well as in *Sajjan Singh vs. State vs. State of Rajasthan*

(1965) case judgment on the basis of which the constitutional amendment was carried on. Golaknath was the precursor to the growth of judicial power which was gradually unfolding.

The 44th Amendment however, which came up in 1978 is a landmark in terms of the land acquisition in India. Both the Articles, that is Article 19 (1) (f) and Article 31 were deleted from the Constitution, thus removing the right to property as a fundamental right. The right to property was now placed in 300 A of the Indian Constitution as a statutory right. Article 300 A states "No person shall be deprived of his property save by authority of law". Shanti Bhushan, the then Law Minister defended such a move by stating that the majority of the Indian population does not own property and therefore, often the court's protection of the right to property has led to withdrawal and neglect of other fundamental rights which are more important. The Jilubhai case which came up post amendment is a perfect example to explain the changed attitude of the judiciary post 44th amendment. This case is against the acquisition of mines from the revenue farmers. The judgment upheld that the legislature is able to do so under 44th Amendment, stating that the right to property under 300 A is not a basic feature of the Constitution. The Court therefore was of the opinion that the matters of compensation and whether or not it is adequate is no longer disputable.

The combined effect of all these amendments was that, the laws relating to agrarian reform were kept outside the purview of judicial scrutiny. The only protection being, a person cannot be deprived of the property by executive action. There has to be a law to provide for deprivation of property and more importantly the deprivation can only be for the "public purpose" and has to be accompanied by compensation. These amendments were immune from challenges on the ground of violation of the rights guaranteed in part III of the Constitution.

Power of Eminent Domain

The "eminent domain" is the power that the state may exercise over the entire land within its domain and territory. This power provides land to the state without encumbrances to do whatever it wants to do with the land, at its will. The power of eminent domain however can only be exercised for a "public purpose", the case law made eminent domain and the public purpose a matter solely within the realm of the executive and debatable within the judicial circles. The 1894 Land Acquisition Act acknowledges the power of eminent domain. Although the judiciary might decide whether the power of eminent domain has been justly utilized, at the same time the court is not empowered to decide on the power of eminent domain or public purpose, as it is viewed to be inalienable right of the state.

As Usha Ramanathan has aptly pointed out, "the eminent domain of the state is competing versions of what constitutes public purpose is open and broad, which makes the entire interpretation skewed. The probability of impoverishment, the dislodging of livelihoods, the breakdown of cultural contiguities and continuities have, for instance, not been relevant elements in judicial challenge to the meaning of public purpose. Even where land is acquired on the pretext of furthering a stated public purpose, but it is not so used, or it is diverted to a different use, the immunity from successful challenge extends. This has contributed to the absolute nature of the power of the state to take over, divest and divert land". (Ramanathan, 2008, pp. 209-209)

The requirement of public purpose has the proposed aim of providing a safeguard against the takings power of the government. In the Indian context, the Land Acquisition Act, 1894 calls for acquisition of land by the government only if it is either for a declared public purpose or for a company. Section 6 of the Act is concerned with exactly this issue whereby declaration of a public purpose is a mandatory prerequisite for acquiring land. "The natural question which then arises is what constitutes a public purpose within the meaning of the Act of 1894. Although, section 3(f) of the Act lists down all that can be taken to mean public purpose, it is not difficult to see that the list is neither capable of providing a taut definition for the phrase nor is it full-proof. This lack of a proper definition of public purpose has haunted both the judiciary and the affected landowners over the years, while the government has enjoyed its own discretion in deciding what constitutes a public purpose in case after case" (Sampat, 2013, pp. 40-52) [8]. One natural consequence of this has been an extremely broad interpretation of this notion, including anything and everything under its ambit.

Without exception such policies are regularly conducted under the garb of benefiting the public at large, for the so-called public purpose projects etc. Quite naturally this has given rise to repeated litigations in the courts by the dissatisfied and displaced landowners. A closer look into the case laws involving this particular issue reveals interesting and intricate nuances about how "public" is actually the "public purpose" clause as interpreted by the state governments and at the same time throws light on how the judiciary deals with the issue at hand.

Controversies against Public Purpose

One of the most commonly faced challenges in the courts is concerned with the fact that public purpose does not seem justifiable to the affected landowners. In fact, their vehement opposition is based on the general accusation that the proposed purpose of acquisition can hardly be called a public purpose. The 1962 Supreme Court case of *Smt. Somavanti and Others vs. State of Punjab and Others*. (And Connected Petitions) is an oft-cited judgment where this issue of challenging the proposed public purpose has come up clearly. In this case, the petitioner's plans of setting up a paper mill were spoilt by the government notification to acquire the same land with the intention of building a manufacturing unit of refrigeration compressors and ancillary equipment. The natural contention of the petitioner was that such an aim can hardly be called a public purpose either within section 4 or section 6 of the Land Acquisition Act or for a purpose useful to the public as contemplated in section 41 and that the action of the Government amounted to acquiring property from one person and giving it to another. The respondents' reaction to such a strong challenge was to put forward the general usefulness of setting up a refrigeration factory which according to them served the purpose of the public at large without doubt.

What is interesting to note is the court's reaction in such matters of dispute. The court held that the established legal position in such matters is that once a declaration has been made under Section 6 of the Land Acquisition Act (LAA), the same would be considered to be a conclusive evidence of the fact that the land is indeed needed for a public purpose unless the existence of a "colourable exercise of

power" can be proved and thereby dismissed the petition. With this piece of judgment, the court ruled out any possibility of an actual and fruitful discussion about whether the purported purpose could actually be called a "public purpose" and if not, then why.

Somavanti's instance has been followed in several cases over the later years. In the 1978 Supreme Court case of *Bai Malimabu & Others vs. State of Gujarat & Others* (1978), land had been acquired in Surat, Gujarat for a proposed public purpose namely, for the purposes and the benefit of the employees under the Employee's State Insurance Scheme in the years 1964 or 1965. The main point of contention raised by the appellant was that taking their property for such a use cannot be justified as a public purpose and hence should be quashed. Moreover, with reference to the notification for acquisition under section 4 of the LAA it was contented that it was "confiscatory in nature and it sought to deprive the appellants of their valuable lands thus violating their fundamental rights." The court was decisive to rule out any such challenge against the particular section of the existent LAA. Further the court's judgment resonated the opinion followed in Somavanti's case in so far as it was held the established legal position in such matters was to consider the government declaration to be conclusive evidence regarding the "public purpose" claim unless the existence of a "colourable exercise of power" is proved.

Examples of similar exhibition of utmost judicial complaisance with the government's decision has been observed in several other cases as well, for example, in *Bajirao T. Kote (Dead) By Lrs. and Another vs. State of Maharashtra and Others* (1994), case the Supreme Court observed that "it is primarily for the state government to decide whether there exists public purpose or not, and it is not for the Supreme Court or the high courts to evaluate the evidence and come to its own conclusion whether or not there is public purpose." With this, the court allowed the acquisition to go through even for a purpose like building an access path for a Saibaba temple. In yet another case of *Soorarам Pratap Reddy vs. District Collector* (2008), the Supreme Court held that "government is the best judge". *Daulat Singh Surana and Others vs. First Land Acquisition Collector and Others* (2006), faced the brunt of government action as the Supreme Court upheld that "government has the sole and absolute discretion in the matter." Identical judgment was given in the case of *Dhampur Sugar (Kashipur) Ltd vs. State of Uttaranchal* (2007). Thus, it had almost become a trend for the courts to adopt a "hands-off" attitude when it came to curbing the unrestricted supreme power at the hands of the government.

However, this unfailing deference has shown some signs of a changing pattern if one looks into the cases of recent past. In the case of *DLF Qutab Enclave Complex Educational Charitable Trust vs. State of Haryana and Ors.* (2003), the Supreme Court commented that it was an "Expropriatory statute, as is well known, must be strictly construed". A similar word of caution was seen to be given by a three-judge bench in the case of *State of Maharashtra and Another vs. B.E. Billimoria and Others* (2003). In yet another case of Chairman, Indore *Vikas Pradhikaran vs. Pure Industrial Coke and Chemicals Ltd. and Others* (2007) the Supreme Court by referring to various international covenants like the Declaration of Human and Civic Rights, held that "even though right to property has ceased to be a fundamental right but it would however be given an express recognition as a legal right and also as a human right." In *Hindustan Petroleum Corporation Limited vs. Darius Shahpur Chennai and Others* (2005), the Supreme Court upheld the right to object a certain acquisition under Section 5A of the Act calling it "akin to a Fundamental Right" and said that in this backdrop, a provision which deprives a person of that very right must be strictly complied with. Thus it can be seen that there has been some reconsideration of the attitude of blind compliance with the government decisions and at the same time the need for a stricter scrutiny has come up in the judgments of several cases.

But in the last few years there has been a gradual shift in the judiciary approach, now it has adopted a more sensitive approach. In this context, *Dev Sharan and others vs. State of Uttar Pradesh and others* (2011) requires a special mention. In this case, the petitioners were owners of agricultural land in U.P. which was notified to be acquired for shifting and reconstruction of the district jail of Shahjahanpur, Uttar Pradesh. For this, the agricultural land of the petitioners were notified to be acquired and this led to a move to the court by the landowners under article 226 of the Constitution after the High Court refused to interfere in the decision of the government, the appeal moved to the Supreme Court of India. The main contention of the petitioners was that "whether or not the State Government was justified in acquiring the said pieces of fertile agricultural land, when there were alternative sites of unfertile banjar land available?" The Supreme Court, in its response, had surprisingly been quite a strict critique of the government action and the law itself. In the court's words, "The Land Acquisition Act, a pre-Constitutional legislation of colonial vintage is a drastic law, being expropriatory in nature as it confers on the State a power which affects person's property right. Even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory." In the view of the court therefore, the entire issue of land acquisition has to be judged from a welfare state consistent view point.

Moreover, with regards to the idea of "public purpose", the court commented that the latter cannot remain constant over the years but its interpretation has to change with context and time. Even after the Act has listed what qualifies for "public purpose", the definition is far from being precise and even after undergoing several amendments has assumed the character of an inconclusive one. The court was careful to point out that "It must be accepted that in construing public purpose, a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people especially of the common people defeats the very concept of public purpose." With this, the court ruled in favour of the appellants and ordered the acquisition to be quashed.

Dev Sharan' s case has been an exceptional one, not only because it is one of the very few in which the judiciary itself has assumed a critical attitude towards the provisions of the Act and how it has continued to be implemented by the states, but also for the subsequent discussions on the urgency clause and other issues, which will be taken up at a

later stage. This judgment has been followed in several later cases, e.g., *Devendra Singh and Others vs. State of Uttar Pradesh and Others* (2011), *R. P. Electronics and another vs. State of Uttar Pradesh and Others* (2011), *Har Karan Singh vs. State of Uttar Pradesh and Others* (2011) etc. What it clearly shows is the gradual shift by the judiciary towards a more sensitive approach distinctly different from years of unquestioned deference shown in matters of the government.

Thus the broad view of the public purpose as adopted and practiced by the government over the years has amounted to lose interpretations of "grotesque proportions" and has been criticized by many. Naturally there is an immediate need to adopt a stand of strict scrutiny of the government proclamation of public purpose and not give a free-way to the states in going ahead with whatever purpose suits them. Given this fact, even a slight change in the attitude of the courts in interpreting "public purpose" is a welcome move for sure. Whether this will lead to worthwhile amendments in the law or not is a question that only time can answer.

Another related issue concerning the concept of public purpose which has been litigated is the fact that often the purpose mentioned in the declaration for "land acquisition (under Section 6 of the LAA) turns out to be vague and lacking sufficient precision regarding the purpose for which the land is intended to be used. Other than the fact that this dilutes the very clause that land can only be acquired for a well chalked out and definite public project, this shortcoming hampers the ability of the landowners to object or express their dissent effectively under Section 5A of the Act. A look into the relevant cases would be helpful in laying down the complication which arises due to such vagueness of government notifications." (Desai, 2011, pp. 95-100) [3]

In the case of *Munshi Singh and Others vs. Union of India* (1972), large tracts of land around 6000 acres were required to be acquired for the purpose of planned development of Ghaziabad as was declared by the Government in a notification issued under section 4 of the Land Acquisition Act (LAA) in 1960. Given such a notification, the affected landowners contention was that the purpose as notified by the government was vague to say the least and devoid of any specificity regarding what kind of development was planned and about the exact plan of using up such substantial amount of land. The petitioners counsel argued that even to challenge the acquisition proceedings, a sufficient clarity is needed in terms of how the government proposes to use the acquired land, the details of the development plan and whether the government will itself take up the development or control and monitor the development of that area through a Master Plan. In the absence of any such details, the petitioners that "the whole object of section 5A would be defeated if the public purpose is stated vaguely and without any indication of the nature of the purpose for which the land is being or is intended to be acquired".

The Supreme Court expressed its accord with the petitioners and said that "mere words, as are to be found in the notifications here "planned development of the area" were wholly insufficient and conveyed no idea as to the specific purpose for which the lands were to be utilized." The court further said that the right to object under section 5A of the LAA was introduced as an amendment only in 1923. Hence, "If it has any purpose and if it has to be given its full effect the person interested in the land proposed to be acquired must have an opportunity to submit his objections and that he can do only if the notification under s. 4(1) while mentioning the public purpose gives some definite indication or particulars of the said purpose which would enable the persons concerned to object effectively if so desired. In the absence of such specific or particular purpose being stated the objector cannot file any proper or cogent objections under section 5A which he has a right to do under that provision." With this, the court allowed the writ petitions. Similar judgments were presented by the judiciary in *Nandeshwar Prasad & Another vs. The State of U.P. &Others* (1963) by saying that "the right to file objections under section. 5A is a substantial right when a person's property is being threatened with acquisition and that right cannot be taken away as if by a side wind."

Again there are cases where this very issue has been interpreted in a grossly different manner. The 1974 Supreme Court case of *Aflatoon and Others vs. Lt. Governor of Delhi and Others* (1974) is an instance where the specified purpose of planned development of Delhi was argued to be vague as neither a Master Plan nor a Zonal Plan was put in place before notifying for acquisition. Consequently, the appellant were unable to exercise their right to object effectively. The court in this case assumed a ridiculously pro-government role by proclaiming that "In the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed." Thus, it validated, in some sense, the vague notifications produced by the government in all such cases.

In *Arnold Rodricks & Another v. State of Maharashtra and Others* (1966), a mere mention of a "planned development" as a public purpose was upheld by the court to be sufficient to satisfy the requirements of law. Similar non-interfering government deference was also exhibited in the court's judgment in *Lila Ram & Birla Cotton Spinning and Waiving Mills vs. Union of India & Delhi Administration* (1975). Without multiplying the examples any more, it can be inferred that although this issue of vague notification has been much litigated, it is hardly the case that the judiciary's response has been uniform and consistent.

Land Acquired for Private Purpose

"In the case of an acquisition for Company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. At the same time, the judgment went to the extent of arguing that public purpose is not so vague and indefinite that the public will not understand the nature and purpose. However, the rider at the end of Clause (f) of the Land Acquisition Act argues that the acquisition of land for companies is excluded from the purview of public purpose. In delivering the judgment the Supreme Court referred to Section 6(1) of the Land Acquisition Act to argue that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or controlled or managed by a local authority"

(Maitreesh & Mookherjee, 2011, pp. 1-35) [5]. Where the acquisition is for the company, the compensation has to be paid wholly by the company. However, in reality this can create a very complex situation where the acquisition maybe to hand over the land to the company in the guise of "acquisition for a public purpose", with a payment of a token amount by the government.

To prove the existence of a public purpose, the cost of acquisition has to be borne, wholly or partially, out of public funds or the state exchequer. Under this rule, by contributing a trifling sum of money as compensation, the character and pattern of acquisition could be changed by the government. So, acquisition for a Company can very well be grouped under acquisition for a public purpose, by doing as little as to contribute partly in the cost of the taking from public funds. That being satisfied, the law provides for no other checks regarding whether acquiring land for a factory can actually be called a public purpose taking under Section 6 of the Act. This is the other related aspect of acquisition for companies which has again raised much debate.

A re-look into the 1962, Supreme Court case of Somavanti is essential to substantiate the point made above. In Somavanti's case, the cost of acquisition for setting up the refrigeration factory was to be primarily borne by the private concern itself with only a token amount of Rs.100 contributed by the Government. Given these facts, the petitioner's contention was that the acquisition should be declared "bad" as it was clearly done for a company and not for any public purpose. In fact, the amount of Rs. 100 is so unsubstantial a sum compared to the total value of the property that it cannot suffice to infer Government participation in the proposed activity. The Supreme Court, on its part, announced that the contribution of a token amount by the government does not invalidate the acquisition proceedings and that there was nothing in the law which mandated bearing a major or even substantial portion of the cost by the state government in such matters. Thus, even a contribution of Rs.100 out of public funds does not violate the law and is sufficient to establish the validity of a public purpose taking. With this argument, the Supreme Court dismissed the appeal regarding non-compliance with Part VII of the Act.

Similar lines of argument were adopted by the state High Courts and even the Supreme Court for several cases in the following years. Token payments made by the states were pronounced to be sufficient to claim land in the name of public purpose projects, although in reality they all were acquired for setting up of or development of Companies without exceptions. In *Ram Narain Singh & Others vs. State of Bihar* (1977), the Patna High Court maintained that even a miniscule portion out of public funds was enough to justify a taking under Section 6 of the Act and that there was no contradiction in considering it to be for a public purpose. Incidentally, in that particular case land was notified to be acquired for a private profit-making concern. The case of *Rajendra Kumar Ruia & Another vs. Govt. of West Bengal & Another* (1951), is again demonstrative of the general attitude of the judiciary in this matter where a meager amount of just Rs.10 out of a total compensation of Rs. 9, 75,000 was borne by the Government and yet the acquisition was justified to be valid by the Calcutta High Court. The High Court further held that there was no justification in considering a land acquisition proceeding bad simply because it does not drain the state funds substantially; in fact it should be considered to be a point of merit.

The judiciary's role of safeguarding the interests of the state reached to ridiculous proportions in the case of *Indrajit C. Parekh of Ahmedabad and Another vs. State of Gujarat and Others* (1975). In this case, land belonging to the petitioner was acquired for construction of dispensaries for the Employees State Insurance Scheme at Ahmedabad under Section 6 of the Land Acquisition Act (LAA). For the purpose of such acquisition, the state government had put forward a token nominal contribution of just one rupee and had directed that the rest of the expenditure should be borne by the same Employees State Insurance Scheme. What followed was a series of petitions filed in the Gujarat High Court by the affected landowners, the main contention being that the "acquisition of the land in question is a case of colourable exercise of power as the State Government did not apply its mind to matters in respect of which it ought to have been satisfied before the declaration under Section 6 of the Act was made." However, the High Court summarily rejected the petitioners' plea and thereafter the case reached the Supreme Court of India. The Supreme Court in its judgment dismissed the writ petition upholding the High Court's decision that even a nominal contribution out of public funds was enough to validate an acquisition. Similarly in *Manubhai Jehtalal Patel vs. State of Gujarat* (1983), the Supreme Court held that "the contribution of Re 1 from the public exchequer cannot be dubbed as illusory so as to invalidate the acquisition".

The above cases help to illustrate the attitude of the courts towards government actions. Although the general trend no doubt had been to offer accord to the government's way of acquiring land for companies and to stretch the limits of law in order to eventually decimate the crucial difference between acquisition for companies and acquisition for public purposes, it would be incorrect to say that the courts' reasoning was way past any dissent or controversies. In fact, Somavanti's case, although judged otherwise in favour of the government, set out a strong dissent given by Justice Subba Rao who remarked that; "A reasonable construction of this provision uninfluenced by decisions would be that in the case of an acquisition for a company, the entire compensation will be paid by the company and in the case of an acquisition for a public purpose the Government will pay the whole or a substantial part of the compensation out of public revenues. The underlying object of the section is apparent; it is to provide for a safeguard against abuse of power. A substantial contribution from public coffers is ordinarily a guarantee that the acquisition is for a public purpose. But it is argued that the terms of the section are satisfied if the appropriate Government contributes a nominal sum, say a pie, even though that total compensation payable may run into lakhs. This interpretation would lead to extraordinary results. The idea that in one case the compensation must come out of the company's coffers and in the other case the whole or some reasonable part of it should come from public revenues. This idea excludes the assumption that practically no compensation need come out of public revenues. The juxtaposition of the words "wholly or partly" and the disjunctive between them emphasise the same idea. It will be incongruous to say that public revenue shall contribute rupees one lakh or one pie. The payment of a part of compensation must have some rational relation to the compensation payable in respect of the acquisition for a

public purpose. So construed part can only mean a substantial part of the estimated compensation."

With this he concluded by saying that "We think that the Legislature, when they passed the Land Acquisition Act, did not intend that owners should be deprived of their ownership by a mere device of private persons employing the Act for private ends or for the gratification of private spite or malice." With this exceptional piece of disagreement, the Justice expressed his concerns regarding the manner in which land is continued to be acquired for private concerns.

The only instance when the court has ruled otherwise was when the entire amount as compensation was borne by the company for which land was being acquired and no part of it had come out of the state coffers (the official requirement to be met in acquisition for companies). The case of *R.L.Arora vs. State of Uttar Pradesh* (1961) is one such rare example where the Supreme Court ordered the acquisition to be set aside as the due process of invoking Part VII of the Land Acquisition Act was not complied with. The entire compensation in this case was borne by the company and hence the whole debate about what proportion of public expenditure justifies a taking in the name of a public purpose could be avoided. However, the court's judgment was in fact progressive as amply exhibited in the following paragraph quoted from the case.

"It seems to us that it could not be the intention of the legislature that the Government should be made a general agent for companies to acquire lands for them in order that the owners of companies may be able to carry on their activities for private profit. If that was the intention of the legislature it was entirely unnecessary to provide for the restrictions contained in ss. 40 and 41 on the powers of the government to acquire lands for companies. If we were to give the wide interpretation contended for on behalf of the respondents on the relevant words in ss. 40 and 41 it would amount to holding that the legislature intended the Government to be a sort of general agent for companies to acquire lands for them, so that their owners may make profits."

The Privy Council observed that in matters deciding the purpose of the acquisition, the decision of the government should be taken as the final. Thus, the state in various cases namely *Jage Ram v State of Haryana, Manubhai Jethalal Patel v State of Gujarat,* the *Hamabhai Framjee Petit v Secretary of State for India, Pratibha Nema and others v State of Madhya Pradesh and others and Somavanthi* case often paid a token share as less as maybe Rs 1 from the public exchequer to argue that it is a public purpose as the state's share is paid from the public exchequer. Thus it provides little scope to the citizens to either question the "public purpose" or to decide the total area of land acquired.

At the end I conclude by saying that, even though the judgments acknowledged the scope for the possible "colorable" exercise of power by the government, it did not go to the extent of questioning the relation of the state and the land, or the absolute power of the state in matters such as deciding the "public purpose". It is therefore important that we try to understand the power of eminent domain of the Indian state and its take on land acquisition through a few Supreme Court judgments in recent times.

References

1. Austin Granvile. The Indian Constitution-Cornerstone of A Nation. New Delhi: Oxford University Press, 4th Impression, 2001.
2. Cerna Michael M, Mathu Hari Mohan. Can Compensation Prevent Impoverishment? Reforming Resettlement through Investments and Benefit Sharing. New Delhi: Oxford University Press, 2008.
3. Desai Mihir. Land Acquisition Law and the Proposed Changes, Economic and Political Weekly, Vol. XLVI, Nos.26&27, 2011, 95-100.
4. Kochan Donald. Public Use and the Independent Judiciary: Condemnation in an Interest-Group Perspective. Texas Review of law and Politics. 1998; 3(1):52.
5. Maitreesh Ghatak. Mookherjee Dilip. Land Acquisition for Industrialisation and Compensation of Displaced Farmers. WIDER Working Paper. 2011; 201:1-35.
6. Nielsen Kenneth Bo. Land Law and Resistance. Economic and Political Weekly. 2011; 46(41):542.
7. Ramanathan Usha. Eminent Domain, Protest and the Discourse on Rehabilitation, Published in, M, Cernea and Hari Mohan Mathur (eds.), Can Compensation Prevent Impoverishment? Reforming Resettlement through Investments and Benefit Sharing. New Delhi: Oxford University Press, 2008.
8. Sampat Preeti. Limits to Absolute Power: Eminent Domain and the Right to Land in India. Economic and Political Weekly. 2013; 48(19):40-52
9. Sathe Dhanmanjiri. Vicissitudes in the Acquisiton of Land: A case Study. Economic and Political Weekly, 2014, 49(7).
10. Singh Jaivir. (Un)Constituting Property: The Deconstruction of the "Right to Property" in India. Centre for Study of Law and Governance, Jawaharlal Nehru University, CSLG Working Paper Series, CSLG/WP/04–05, New Delhi, 2004.