

Land Acquisition and Eminent Domain

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1. Introduction

The origin of the power of the State to take property for public use can be traced back to the olden days. It is an inherent power. An incident to this power is that property shall not be taken for public purpose without just compensation. It is said that right to enjoy private property comes within the purview of personal liberty [1] and the requirement here is that property shall not be taken for public use without just compensation. It is a great principle established by common law for the protection of the private property. It is founded in natural equity and is laid down as a principle of universal law. In *Central Control Board v. Cannon Bre way Co. Ltd* [2] Lord Atkinson observed that the power to take compulsorily raises by implication a right to payment. The power of compulsory acquisition is described by the term eminent domain.

2. Meaning of Acquisition

'Land Acquisition' literally means the acquisition of land for some public purpose by a government agency from individual land owners as authorised by the law, after paying a government fixed compensation to cover losses incurred by the landowners from surrendering their land to the concerned government agency. Till 2013 the process of land acquisition in India was governed by the LAA 1894. In 2013 a new Act has come into existence in India to govern the land acquisition. The Act came into force from January 1, 2014 [3]. It repealed the old Act. The term 'eminent domain' was used in the land Acquisition Act 1894. By using this term land was acquired for the purposes of slum clearance, construction of dams, thermal plants, Industrial projects, educational institutions etc. In *Jameel & Ors v. State of Rajasthan & Ors* [4], the court held that the Land Acquisition Act 1894 is an expropriate- legislation and has to be strictly construed, ensuring procedural fidelity for the protection of the rights of the persons, whose land is sought to be acquired. The right of eminent domain vested in the State to acquire private property for public purpose is the key to acquisition proceedings.

The concept of acquisition and that of compensation are two different notions having their origin in different sources. One is founded on the sovereign power of the State to take; the other is based on the natural right of the person who is deprived of property to be compensated for his loss. [5] One is the power to take; the other is the condition for the exercise of that power [6]. Power to take was contained in entry 36 of List II [7] While the condition for the exercise of that power was embodied on Article 31(2) [8].

The legislative powers conferred in entry 42 of the concurrent list under VII Schedule is a power conferred for

the benefit of the expropriated owner and that the legislature is bound to exercise the power for this benefit whenever it takes property under its compulsory powers [9]. The term expropriation is similar to that of eminent domain [10]. Section 4 of the LAA 1894 says that whenever it appears to the appropriate government that land in any locality is needed for any public purposes, a notification to that effect shall be published in the official gazette and two daily newspapers [11].

In *Bholaram v. GNCTD* [12] the Supreme Court held that section 5-A of the LAA 1894 confers a valuable right to an individual whose land is sought to be acquired [13]. When the government proceeds for compulsory acquisition of a particular property for public purpose the only right that owner or the person interested [14] in the property has to submit his objections within the prescribed time under section 5-A of the Act and persuade the State authorities to drop acquisition of that particular land by setting for the reasons such as the unsuitability of the land for the stated public purpose, the grave hardship that may be caused to him by such expropriation, availability of alternative land for achieving public purpose etc. Moreover, the right conferred on the owner or person interested is not only an important and valuable right but also makes the provisions for compulsory acquisition just and in conformity with the fundamental principles of natural justice. But section 17(1) read with section 17 (4) confers extraordinary power upon the state to acquire private property without complying with the mandate of Section 5A [15].

In India the Act provides directly for acquisition of particular property for public purpose. In *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai* [16] the court held that Land Acquisition Act is an expropriatory legislation. When the properties of citizen are being compulsorily acquired by State in exercise of its power of eminent domain the essential ingredients thereof, namely, existence of public purpose and payment of compensation are principal requisites. In *Gayathri Prasad and five Other v. Shri Kishore Bahaduri Additional* [17] the court held that if the acquisition of private land becomes absolutely necessary, then too the authorities concerned must strictly comply with the relevant statutory provisions and the rules of natural justice. [18]

In *Jagtap Singh Etc v. State of Punjab Etc* [19] the court held that the legislation which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly. It must be remembered that compulsory taking of one's property is a serious matter. The court also held that the acquisition of land for residential, commercial, industrial or institutional purposes can be

Volume 7 Issue 11, November 2018

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treated as an acquisition for public purposes within the meaning of section 4 but that by itself, does not justify the exercise of power by the government under sections 17(1) and 17(4). Therefore the private property cannot be acquired for such purposes by invoking the urgency provisions contained in section 17(1).

The court has repeatedly held that in exercise of the power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be overstretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. When the government takes someone's property for public use, the law calls it a taking. Just compensation is equated with the fair market value of the property appropriated [20]. Entry of List II read with Article 246 (3) was obviously tended to authorize a State legislature to exercise the right of eminent domain that is the compulsory acquisition [21]. It is important that the acquisition must be in time with constitutional and statutory provisions, otherwise it can be challenged. Eminent Domain or power of acquisition is an essential factor in a welfare state for social and economic development.

Land Acquisition Act 1894 was a colonial legislation. It was enacted by the British in order to enable the acquisition of land for the purpose of increasing their revenue in India. After independence the Act was decided to keep in existence and to continue in the original form for the purpose of acquisition of private land for public purposes. Till 2013 the Act was subject to amendments [22]. Theory of eminent domain or the power of acquisition or control over territory is an essential ingredient of Sovereign, in International Law, it is a marker of Sovereignty. [23] Acquisition in the new constitutional scheme, was rendered a concurrent list subject, with power to both Centre and States to make laws on acquisition and requisition of immovable property [24].

3. Meaning of Public Purpose

The power of Eminent Domain is exercised by the State for the acquisition of private property for public purpose. So it is important to define the term 'public purpose'. Constitution does not define the term. So it is to be understood in a common parlance. Even judiciary has not given a proper definition to the term 'public purpose'. BLACK'S LAW DICTIONARY defines the term 'public purpose' most often the public use or purpose is for everyday public needs like a simple road extension, the creation of a park, obtaining land for the construction of a school, public utility or some other forms of public service or need. [25] The word 'public purpose' as defined in the Land Acquisition Act 1894, refers to the acquisition of land for constructing educational institution or schemes such as housing, health or slum clearance as well as for projects concerned with rural planning or formation of sites.

In *Pratibha Nema v. Madhya Pradesh* [26] the court held that acquisition of land for companies can be considered acquisition for public purpose, public purpose will include a purpose in which the general interest of the community is involved that was so held in *Dowlat Singh Susan v. 1st Land*

Acquisition Collector [27]. In *Jagatar Singh Etc v. State of Punjab Etc* [28] the court held that the requirements of the community does not remain static, they indeed, go on, varying with evolving processes for social life. Accordingly, there must be creative response from the public authority and public schemes must be varied to meet the changing needs of the public. Therefore when the notification has mentioned that the land is sought to be acquired for housing scheme but it is sought to be used for District Centre, the public purpose does not cease to be public purpose and the nomenclature mentioned in the notification under Section 4(1) as housing scheme cannot be construed to be a colourable one.

In *Madanmohan v. State of Tamil Nadu* [29] the court held that a public purpose does not entitle the State to invoke the urgency provision because the same have the effect of depriving the owner of his right to property without being heard. In *Hamabhai Framjee Petit v. Secretary of State* [30] the Privy Council held that the phrase 'public purpose' whatever else it may mean, must include a purpose, that is, an object is aiming in which the general interest of the community, as opposed to the particular interest of individual is directly and vitally concerned. In *State of Bihar v. Kameshwar Singh* [31] the Supreme Court held that what would serve the general interest of the community is properly a public purpose. In *Somawanti v. State of Punjab* [32] the Supreme Court held that broadly speaking the expression 'public purpose' would, however, include a purpose in which the general interest of the community as appeared to be particular interest of the individuals is directly and vitally concerned.

The phrase 'public purpose' does not have a static connotation which is fixed for all times. In *Kameshwar Singh Case* [33] Mahajan.J observed that the phrase 'public purpose' has to be construed according to the spirit of the times in which the particular legislation is enacted. The meaning is elastic and changes with the time is nowhere better illustrated than in the interpretation of the phrase public use in America. [34] Das. J, in *Kamaeshwar Singh case* [35] said : "No hard and fast definition can be laid down as to what is a 'public purpose' as the concept has been rapidly changing in all countries. In *State of West Bengal v. Bela Banerje* [36] the Supreme Court observed that the question whether the deprivation of private property is for a public purpose is a justiciable issue. The existence of such a purpose as a fact must be established objectively.'

The term 'public purpose', used to justify land acquisition and other State's inherent sovereign right of eminent domain has become more relevant in the modern world, particularly with the emergence of private enterprises. In *Radheyshyam v. State of Uttar Pradesh* [37] Singhvi. J, opined that 'It must be accepted that in construing public purpose, a broad and over all 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 would defeat the very concept of public purpose [38]. The term 'public purpose' in the LARR Bill has also been expanded to include other newer uses of

land, including land required for resettlement [39]. The Act defines the following as public purpose for land acquisition within India [40] for strategic purposes relating to naval, military, air force and armed forces of the Union, including central Para military forces or any work vital to national security or defence of India or State Police, Safety of the people or infrastructure projects. Projects involving agro processing industrial activities water harvesting educational and research schemes, tourism etc.

'Public Purpose' is an essential requirement for the exercise of the power of eminent domain. Under the provisions of the Land Acquisition Act, 1894 land was acquired for limited purposes but under the provisions of the new Act [41] the concept of public purpose is widened so as to include a number of purposes.

4. Compensation– An Essential Ingredient of Acquisition

Compulsory acquisition raises an implication of payment. U.S. Constitution says "No Person shall be deprived of life, liberty or property, without due process of law nor shall private property be taken for public use without just compensation. [42] Unlike the U.S. Constitution Article 31(2) did not use any adjective like 'just' or, 'adequate' before the word 'compensation'. In *State of West Bengal v. Bela Banerjee* [43] the Supreme Court held that the omission of the word 'just' or 'adequate' before 'compensation' was immaterial and the word compensation by itself meant just and equivalent compensation for the interested in property acquired. Before 1955 the Supreme Court had taken the position that a statute was liable to be struck down as infringing Article 31(2) on the ground that compensation provided by it was 'inadequate' and that compensation ought to be the just equivalent of the property of which a person was deprived and that adequacy of compensation was a justiciable matter [44]. Thus the Central Government became uneasy at the judicial insistence on payment of full market value for the property acquired. The government thought that it would be a hurdle on the way to attain socio-economic progress involving reconstruction of property relations especially in the area of agricultural land. In order to overcome this hurdle the 4th Amendment to Constitution was effected in the year 1955 [45]. This Amendment Act amended Article 31(2) and made the question of compensation as non-justiciable on the ground of not adequate. According to the changing position, where a person is deprived of his property other than by the acquisition or requisition of property by the State, there is no right to demand compensation nor is there any legal obligation on the State to pay.

In *Vajravelu v. Special Deputy Collector* [46] the Supreme Court took the view that the amended Article 31(2) still retained the word 'compensation' which meant that the meaning of the expression 'compensation' as given to it in *Bela Banerjee's* case had been accepted. Under the amended position the principles prescribing the just equivalent could not be questioned on the ground of inadequacy. If the principles are irrelevant to the value of the property acquired at the time of acquisition then there is a room for the judiciary to intervene in the matter of compensation [47].

The 25th Amendment to the constitution replaced the word 'compensation' by the word 'amount'. Mathew.J, said that 'amount' fixed or the principles specified are matters within the absolute discretion of a legislation but where it is illusory or fraud on the Constitution can be struck down by Court [48].

In *State of Tamil Nadu v. Abukavur Bai* [49] the court held that the word 'amount' gives ample discretion to the State to fix a reasonable amount and the court would not interfere with the amount so fixed unless it is shown to the court's satisfaction that the amount fixed is so monstrous as to shock its conscience. In *State of Gujarat v. Shantilal* [50] the court emphasized that it could not go in the question of 'adequacy' of compensation unless the legislation abused its legislative power and called something as 'compensation' which was not recompense at all or was 'illusory'. Thus the scope of judicial review was restricted to the extreme situation of abuse of legislative power. [51]

In *Kesavanada Bharati v. State of Kerala* [52] the changes introduced in Article 31 (2) by the 25th amendment were held valid. The judges who held that the amount fixed by law for the principles laid down there under for fixing the amount must be reasonable and relevant to the property acquired and the amount fixed shall not be illusory or a fraud on power. In this view the property acquired or requisitioned must have a reasonable relationship with the value of the property acquired or requisitioned.

Power to take property for public use, otherwise known as Eminent Domain is the power inherent in the sovereignty. The power to take compulsorily traces an implication a right to payment, the power to acquire being inseparable from the obligation to pay compensation. An incident to the power of the State is the requirement that property shall not be taken for public use without just compensation. The payment of compensation is the condition for the exercise of the power of Eminent Domain. To pay compensation is an essential ingredient for the exercise of the power of Eminent Domain under Article 300-A. Public purpose and payment of compensation are principle requisites when the properties of a citizen are being compulsorily acquired by the State in exercise of its power of eminent domain [53].

Land Acquisition and Eminent Domain are co-related terms. Land Acquisition is possible only with the power of Eminent domain. Under the concept of eminent domain the whole land of the State belongs to the sovereign. So the sovereign has the power to take over the land for the purpose of developmental activities. If the land remains under the head of fundamental right, it would not be possible for the State or government to take over for the purpose of developmental projects. For almost all the developmental activities land is an essential requirement. Under such a situation where land remains a fundamental right it would pose a hardship to the easy taking of land for such activities. That is why the government effected many amendments to Article 31 for facilitating the taking of land. At the end the 44th Amendment to the constitution deleted the right to property from the category of fundamental right and before that by the fourth amendment the concept of adequacy of compensation was made as a non-judicial matter. All these

movements have helped to strengthen the concept of eminent domain in the modern scenario.

Since the era of independence the concept of eminent domain has been developing due to the large scale developmental programme undertaken by the government. The step taken by the government is really laudable; but on the other hand, the act of acquisition leads to the mass displacement of millions of people. Statutes and provisions are there to compensate the evictors. Though no effective implementation is effected for the rehabilitation of the evicted people. Large scale acquisition, that has taken place due to the process of globalization and emergence of corporate firms caused several problems to the displaced people. All these are done in the name of achieving socio economic development. But in the event of the suffering of the people, how it can be termed as development. A Government in a welfare State is equally obliged to look after the well being of those who are becoming landless and homeless due to the act of the State itself. Taking of agricultural land for non-agricultural purposes also affects food security and leads to poverty and suffering of farmers. A Government in a democratic country is under an obligation to ensure justice to all [53].

References

- [1] Mr.Broom, 'Constitutional Law', Smith (ed),, 2nd ed. (1923), p.52
- [2] (1919) A.C.744
- [3] The right to fair compensation and Transparency on Land Acquisition, Rehabilitation and Resettlement Act 2013.
- [4] (2013) 10 SCC 721
- [5] 'Thayer's cases on Constitutional Law', Nichols (ed), Vol.1, (1895), p.3
- [6] Ibid
- [7] Entry 36 was omitted by seventh Constitutional Amendment Act 1956, Section 26
- [8] Article was deleted by the 44th Amendment Act 1978 and was introduced Article 300A to that effect
- [9] The Government of India Act 1935 – Section 299
- [10] Indira English Medium School v. Sub collector AIR 2013 SC 567
- [11] 'Gangadharan on Land Laws', Suresh.G.(ed),, 12th ed., (2012),p.6
- [12] AIR 2013 SC
- [13] Hearing of objections, principles of Natural Justice, Audi Alteam Partem
- [14] A corporation owned or controlled by the State is a person interested – ESI Corporation v. State of Kerala, 1998(1) KLT 712, Tenant is not a person interested and is not entitled to raise the contention of excessive acquisition – P.M.Jacob v. Thiruvananthapuram Development Authority 2007 (2) KHC 744
- [15] Land Acquisition Act 1894
- [16] (2005) 1 SCC 627
- [17] AIR 2012 SC 727
- [18] Section 5A of the LAA 1894
- [19] (2012) 8 SCC 375
- [20] system.USLEGAL.com Interpretation and scope of eminent domain clause
- [21] Omitted by the seventh Amendment to the Constitution 1956, section 29
- [22] The Land Acquisition Act, 1894 has been amended in 1919, 1921, 1923, 1933, 1962, 1967 and 1984
- [23] Malcolm.N.Shaw, 'International Law on Territorial Sovereignty' (1997),p.333
- [24] Till the seventh Amendment the entries ran as follows: Entry 33, List I : Acquisition and requisitioning of property for the purpose of the Union, Entry 36 List II : Principles on which compensation for property acquired or requisitioned for the purpose of the union or the state or for any other public purpose is to be determined, and the form and manner in which such compensation is to be given. The above entries were deleted by the seventh Amendment which came into force from 1st November, 1956, and the following new Entry 42 was substituted on List III : Acquisition and Requisitioning of property
- [25] Black Law Dictionary, 8th (edn), 2004
- [26] AIR 2003 SC 3140
- [27] (2012) 8 SCC 375
- [28] AIR 2012 SC 2535
- [29] AIR 2012 SC
- [30] 42 IA 44
- [31] AIR 1952 SC 252
- [32] AIR 1963 SC 151
- [33] AIR 1963 SC 151
- [34] The power of the State to acquire private property for public purpose is referred in America as Eminent Domain.the requirements of eminent domain are (i) authority of law (ii) public use and (iii) just compensation
- [35] AIR 1963 SC 151
- [36] AIR 1954 SC 170
- [37] (2011) 5 SCC 553
- [38] ibid
- [39] The right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
- [40] Section 2(1) of the LARR 2013
- [41] LARR
- [42] Vth Amendment to the U.S.Constitution
- [43] AIR 1954 SC 170
- [44] Durga Das Basu, op.cit at 1090
- [45] Ibid
- [46] AIR 1965 SC 1017
- [47] Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461
- [48] ibid
- [49] (1984) 1 SCC 515
- [50] AIR 1969 SC 634
- [51] Lachhman Das v. Jalala Bad municipality AIR 1969 SC 1126
- [52] AIR 1973 SC 1461
- [53] (2005) 1 SCC 627
- [54] Preamble to the Indian Constitution