

THE RIGHT OF EMINENT DOMAIN

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The Constitution of India prescribes the basic framework within which government is to function and also mandates that government will promote a welfare state which will have its moorings in socialism. This is given in the Preamble to the Constitution. There is also Part IV of the Constitution which contains the Directive Principles of State Policy. Article 38 requires the State to secure a social order for the promotion of welfare of the people. Article 39 directs the State to secure for all citizens the right to adequate means of livelihood, ensure that the ownership and control of the material resources of the community are so distributed as to best subserve the common good and to prevent the concentration of wealth and means of production in a way which would harm society. Article 46 in particular enjoins the State to promote the educational and economic interests of scheduled castes, scheduled tribes and other weaker sections of society. In other words, both property and resources which could generate wealth are deemed to belong to the nation as a whole and the State given the authority to legislate for the use of these resources for the interests of all and not of a particular section of society. In the matter of property in land, the old original Article 31 which made it a fundamental right was repealed, Article 31A was substituted, the right of the State to legislate in the matter of estates, land above a prescribed ceiling, etc., to be expropriated has been enshrined and the only restriction on acquisition of land held legally within a prescribed ceiling is that compensation for acquisition of the land will not be less than the market value. Constitutionally, therefore, acquisition of land is legal and legitimate, subject to the law enacted in this behalf.

The present Land Acquisition Act permits the State to acquire land for public purpose. Unfortunately public purpose is not clearly defined and, therefore, a mere certificate from the authority acquiring land that it is needed for public purpose is enough justification for acquisition. This provision has been misused. For example, in the Nandigram case as much as thirty-eight thousand acres of land was notified for acquisition by the West Bengal Government, with the objective of allotting it to a foreign company for setting up industry in the corporate sector. The fact that employment would be generated thereby does not make this acquisition fall within the definition of public purpose because the Land Acquisition Act was never designed to help private parties obtain access to land by State coercion. There are innumerable cases where land has been acquired for setting up industrial estates, individual parcels have been allotted to industry and many of these plots have subsequently been resold by the allottee. This is a clear violation of the original objective of acquisition of the land in question. The latest example of this is the Greater NOIDA case in which the Supreme Court quite rightly quashed the orders of the Uttar Pradesh Government whereby thousands of acres of land was acquired for industrial purpose and then passed on to private builders for construction of houses for profit. In doing so the land use was changed, which is also a gross misuse of power.

All industry, all development works, all construction is done on land. In India sixty percent of all land is arable and about thirty percent is under forests, pastures, etc. Only about ten percent of our land is totally unculturable waste. By contrast in China only ten percent of the land is arable, about ten percent is forests and the balance eighty percent of land is unculturable waste. In India if any development work is to be done the likelihood would be that it is from cultivable land that a portion will be excised and given over to the development work. Almost every dam would submerge some cultivable area. Roads, railway tracks, canals and power lines would cut across a substantial amount of cultivable land. Mining may be on forests and waste lands, but here environmental criteria would apply which may activate the brakes. Power stations, educational campuses such as IIT Kanpur and IIM

Ahmedabad, the great industrial clusters such as BHEL, Bhopal, Bhilai Steel Plant, the entire operation of Tatas at Jamshedpur, hospitals such as the All India Institute of Medical Sciences and the Indian Institute of Science are all located on land, as are the Gobind Ballabh Pant Agriculture University at Pantnagar and the Punjab Agriculture University at Ludhiana, the last named two on prime agricultural land. This is inevitable in a country where a major part of land is cultivable and actually cultivated. If land is needed for development works it is axiomatic that a substantial portion of it will come from the cultivated landmass in India. This is a reality of Indian life.

There are three categories of non-governmental activists who are engaged in matters relating to land acquisition. Medha Patkar and Narmada Bachao Andolan represent one category, which started off by awakening us to the fact that land acquisition without justice and equity deprives people of not only livelihood but the means of livelihood, as also their homes. The movement began as a protector of persons displaced by dams on the Narmada River and its tributaries. Adequate compensation, full rehabilitation of the displaced and allocation of land to them in the command area of the projects were the three main demands of this group. Soon, however, the movement metamorphosed into one opposing all dams and subsequently, all development projects which had anything to do with land.

The second set of activists would fall within the category of advocacy and adversarial litigation. The first and second groups have a fair amount of overlap. The advocacy groups emphasise that acquisition is a violation of the fundamental rights of the land owners, mainly small farmers and, therefore, every act of acquisition is opposed at every step by agitation, legal means and resort to litigation.

The third group would be that of the environmentalists. Environmental protection is extremely important in a country where all peninsular rivers are rain fed, whose health is dependent on the health of the forests in the catchment. Protection of the environment, therefore, is crucial to the ecological balance in this country. However, these groups have now gone to the other extreme in which on environmental pretexts they have virtually brought all mining to a halt, most irrigation projects to a halt and all major road works to a halt. None of the above three categories of activists are prepared to even listen to a contrary point of view or to arrive at a compromise in which the interests of persons whose land is being acquired, protection of the environment and promotion of the development programmes are brought into balance. For example, Narmada Bachao Andolan is not prepared to discuss with government measures necessary to reduce dam height and the area under submergence. They have only one stand, which is that there should be no dams at all. Environmentalists want a blanket ban on all mining. In a country where coal based thermal power is a major source of electricity there would be no electricity generation without coal. No one realizes that without dams there can be no irrigation and, therefore, a quantum jump in agricultural production; without power there can be no lift irrigation and all prime movers in industry would come to a halt. Any discussion with any of these groups leads to an almost primordial cry for a return to a state of nature. Whether this is possible in a modern world is a matter of extreme doubt.

Let us take a scenario where there is no Land Acquisition Act. Can we imagine the Punjab without Bhakra-Nangal, Madhya Pradesh without Indira Sagar, Bargi or Bansagar or the country without IIT Kanpur, IIT Delhi or IIM Bangalore? All these exist on land and if land could not be acquired none of them could be built. Is that the objective of our activist groups? The Land Acquisition Act as it stands today is flawed but it is based on what all Land Revenue Codes state in India; all land belongs to the State. This concept itself is based on the British precept of all land belonging to the Crown, from which it is held by the people. In India the State has voluntarily given over bhoomiswami rights under the ryotwari system to all cultivators and in urban areas it has made over land in freehold or on permanent lease. In effect the right to property is restored to the people but because there is what is called in the

west the Right of Eminent Domain, that is, the sovereign right to take over land for public purpose, there is a law which enables the State to acquire land. This ability of the State must not be abridged, though the law must be clear in its definitions, the public purpose for which land is to be acquired must be shared with the people so that they become partners in the project, compensation should be such that at that price the land owner would voluntarily agree to surrender his land and the rehabilitation of the land owner from whom land is acquired must be built into the system. If there is strict definition of public purpose and an even stricter interpretation in application, complaints about the misuse of the Act would disappear or be substantially reduced. In the fixing of compensation the value of the land as reflected in sale deeds should be ignored because all land transactions in India are under valued so that tax and duty can be avoided. Everywhere the District Collectors' office should periodically publish an authoritative rate list of land values, which is compiled by experts of proven credibility who gauge the true value of land, including its declared value and the black money value which is not declared. All Land Acquisition Officers should use this authorised rate list as the basis of fixing compensation.

Under no circumstance should land be acquired for private parties. The corporate sector buys raw materials and other inputs into production from the market and the State does not provide these items. Land on which the corporate activity is located is also an input into production and there is no reason why the State should provide the land, except in designated, highly regulated State owned industrial areas or estates. Land should never be acquired where an alternative is available. However, for development projects which promote the welfare of the people land will be needed and the law should provide for its acquisition. Because of some do-gooders in the National Advisory Council and the intervention of activist NGOs, government is likely to go to the other extreme in enacting a new law on land acquisition. The Bill proposed by Jairam Ramesh under pressure from the NAC makes it so difficult to acquire land as to render it almost impossible. One clause which is likely to be introduced is that government cannot acquire any irrigated or double cropped land. The whole of the Punjab, much of Haryana and Western Uttar Pradesh, the Chambal Valley in Madhya Pradesh are all irrigated and double cropped and, therefore, under the new law land cannot be acquired here for any purpose. This means that in the Punjab no canal could be built, no road widened, no power station set up, no new defence establishment created, no new educational institution built, in fact no development activity in the public sector could be possible because the land would not be available for it. Is this our objective? Will it promote welfare? Will it enhance economic well-being by providing more gainful employment?

In China the government has never recognised private ownership of property and, therefore, the Chinese Government takes over lands whenever it likes for its own schemes. In constructing the Three Gorges Dam China displaced thirty lakh people. In expanding and renovating Beijing, especially in the context of the Olympic Games, China displaced more than ten thousand farmers, whose protests were brutally suppressed. The path followed by China is not available to India, whose democratic polity will not permit us to ride roughshod over the people. Nandigram was an attempt to emulate the Chinese example and it caused the three decades long Marxist Government in West Bengal to be thrown out by the people at the polls. At the same time India cannot afford a state of paralysis in which the State cannot acquire any land whatsoever regardless of the worthiness of the cause. As the minister incharge of piloting the Bill it is the duty of Jairam Ramesh to strike a balance between the needs of the people and society, the protection of the interests of the people and the national imperatives to modernise society, economy and infrastructure. Can we expect this minimum wisdom from a minister whose penchant for playing to the gallery is notorious?
