

Land Management, including Land Acquisition

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The right of eminent domain is almost inherent to every form of government; in a country under Communist rule there is no concept of private ownership of land, which means that the State by a simple order and without paying compensation can take over land under individual use. However, as China moves towards a capitalist society, a form of land ownership has been introduced and whereas the State is quite ruthless in acquiring land needed for its purposes the land owners are given due compensation. In the United States of America where the concept of private ownership is strongly embedded, the right of eminent domain of the State co-exists with the private ownership of property. Under the Fifth Amendment of the Constitution of the United States the provision relating to acquisition of land is contained in the following words "... nor shall private property be taken for public use without just compensation". In other words, the principle of public purpose being the justification for acquisition of private property applies equally to the United States and to India and the principle of just compensation also applies to both countries.

Interestingly enough Articles 14 and 15 of the German Constitution permit legislation on property, the right of inheritance, the acquisition of property for the public weal and fixing of compensation which will be determined by "establishing an equitable balance between the public interest and interest of those affected" (Article 14). Article 15 permits socialisation, that is, nationalisation of land, natural resources and means of production after the fixation of compensation. Neither Britain, nor the United States, nor Germany, which are countries which may be termed as free enterprise and capitalistic, is there an absolute right to property because ultimately the State, in the public interest, can take over property.

In 2013 our Parliament repealed the Land Acquisition Act 1894 and replaced it by Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Section 2 of the new Act provides the purposes for which government may acquire land for public purpose and defines the areas in which public purpose will be presumed. Sub-section 2 of section 2 permits acquisition for projects on PPP mode and for private companies for public purpose, provided that for projects in PPP mode the prior consent of seventy percent of affected families is mandated and in the case of private companies, the consent of eighty percent of affected persons is compulsory. Under sub-section 3 even where a private company purchases land the provisions relating to rehabilitation and resettlement given in section 46 of the Act will apply. This Act has come under heavy criticism by the present government because the procedures laid down for acquisition are so cumbersome and complicated that it would take years to acquire land even for the purpose of defence, public safety or projects for infrastructure development. It is the provisions of chapter II, sections 4 to 10 which have come under criticism because the social impact assessment study required under section 4, the environment impact assessment study under section 6, the subsequent appraisal of the social impact assessment report by an expert group and the provisions regarding the safeguard of food security, that is, a virtual ban on acquisition of multi-cropped irrigated land, which could so delay acquisition that most high priority projects can be subjected to almost indefinite deferment for want of land.

The present government has no quarrel with most of the provisions of the new Act. The definition of public purpose is comprehensive and lends exactitude to the vague concept of public purpose as laid down in the 1894 Act. Not only has the present government accepted the compensation norms but in fact has suggested their enhancement. There are reservations on the rehabilitation procedures laid down in chapter V of the Act, but one can live with this, with suitable modifications being made from time to time. Why the Opposition has negated the Ordinances issued in this behalf is not clearly understood because

the charge of being anti farmer being laid against government is not made out by the amendments suggested by the Ordinance. The Jairam Ramesh draft of the 2013 Act was populist, ill-conceived and contrary to public interest. It is about time that the political parties set aside rhetoric and ensure the enactment of sensible legislation relating to land acquisition. Perhaps this could be done by a properly balanced Parliamentary Committee to thrash out the differences.
