

Economic & Political Weekly August 7-13, 2010 Vol XLV No. 32

PERSPECTIVES

Judicial Failure on Land Acquisition for Corporations

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Despite the 1984 amendment of the Land Acquisition Act, 1894, the judiciary has continued to allow farmland to be acquired freely, with "public purpose" being given the widest possible scope. In the period of globalisation such acquisition has promoted private corporate interests, the state, in turn, becoming an estate agent of the companies. The article focuses on land acquisition under Part II for the state and its instrumentalities and agencies and compares this with Part VI of the Act, which relates to acquisition for a company. The way forward is for the judiciary to compel all acquisitions for companies to follow the Part VII route.

No statute in colonial India or independent India has been used against the interests of the poor in such a systematic and widespread manner, causing misery, as the Land Acquisition Act, 1894. From independence up to 1995, millions of persons were displaced from land due to a variety of reasons including forcible displacement for public projects. The judiciary has played a significant role in executing this statute without care for the effects of land acquisition on small and medium landholders and on agricultural labourers. In this article, we will use part of the legal story to show how the judiciary remained oblivious to the suffering of the rural people. The entire story is difficult to comprehend and requires careful research and analysis. But the part we dwell on will probably serve as indicating how blind the legal system was to the plight of the working people. The article focuses on land acquisition under Part II for the state and its instrumentalities and agencies and compares this with Part VI of the Act, which is acquisition for a company.

The First Phase: Supreme Court against Farmers

At the time of enactment of the Land Acquisition Act, 1894, the second Select Committee in its report dated 24 January 1894,¹ submitted to the Council of the Governor General of India, gave an explanation regarding the proviso in Section 6 of the Act. The proviso is as under:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenue or some land controlled or managed by a local authority.

The explanation given by the Select Committee was as follows:

The object of the amendment we have suggested in the proviso in Section 6 is to enable

land to be acquired under the Bill for the purposes of colleges, hospitals and other public institutions which use in some cases only partly supported out of public revenue or the land of local authorities.

The Land Acquisition Bill was introduced by H W Bliss who explained the difference between the two Parts thus:

Part VI of the Act lays down the procedure to be adopted when it is sought to acquire land for a company. It indicates, though perhaps not so clearly as desirable, that it is not intended that the law shall be put in force for the acquisition of land for all companies. It is not intended, that it is to say that the Act shall be used for the acquisition of land for any company in which the public has merely an indirect interest and of the work carried out by which the public can make no direct use. The Act cannot therefore be put into motion for the benefit of such a company as a spinning or weaving company or an iron foundry, for although the works of such companies are distinctly likely to prove useful to the public (in the words of Section 48), it is not possible to predicate of them the terms on which the public shall be entitled to use them, a condition precedent to the acquisition of land laid down in Section 6. It is important both that the public should understand that the Act will not be used in furtherance of private speculations and that the local governments should not be subject to pressure, which it might possibly sometimes be difficult to resist, on behalf of enterprises in which the public have no direct interest.²

Constitutional Bench decisions of the Supreme Court in 1950 and 1952 declared this difference. These cases are *Pandit Zunda Lal and Others v The State of Punjab and Another* (AIR 1950 SC 343), *R. I. Arora v The State of Uttar Pradesh* (AIR 1952 SC 764) and *Shri Somnath and Others v State of Gujarat* (AIR 1952 SC 152).

In *Pandit Zunda Lal and Others v The State of Punjab and Another* (AIR 1950 SC 343), agricultural land of farmers was taken for the construction of houses for workers of a company under a government-sponsored housing scheme. No attempt was made by government to comply with the requirements of Part VI of the Act. Holding that the construction of residential quarters for industrial labourers is a public purpose and noticing that a large proportion of the compensation money was to come out of public funds, the Supreme Court began the obliteration of

This article is partly based on submissions made in the Special Leave Petition (Civil) No 191 of 2004, *Leela Nagendra Mendir v State of Maharashtra*, pending in the Supreme Court of India.

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Economic & Political Weekly 32 AUGUST 7, 2010 VOL XLV NO 32

37

PERSPECTIVES

the difference between Part II and Part VI in the following terms:

In the case of an acquisition for Company acquisition, the declaration cannot be made without satisfying the requirements of Part VI. 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 VI. If the use of a person or of the use of the acquisition is to come out of public funds. In other words, the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds.

There was a fight back in *R. I. Arora v The State of Uttar Pradesh* (AIR 1952 SC 764). In that case agricultural land was acquired for an industrialist in Kanpur for the construction of a textile machinery parts factory. No action was taken under Part VI. Though this decision is generally favourable to the persons opposing acquisition, a complication was created by the observations made in paragraph 6 to the effect that the crucial determining factor was whether "the entire compensation" is to be paid by the corporation. Since the entire compensation came from the corporation, Chapter VI was said to apply and since the procedures were not followed the acquisition was set aside. It is no doubt true that there are some progressive observations made in paragraph 13 to the following effect:

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 Sec. 40 and 41 or the power 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 Sec. 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, and that their owners may make profits.

The Court then dealt with the submission that the acquisition would come under Part II as the company was producing goods that were useful to the public and

that therefore the acquisition was for a public purpose. The Court held:

It can hardly be denied that a company which will satisfy the definition of that word in § 3 (6) will be producing something or the other which will be useful to the public and which the public may need to purchase. So the whole intention contended for on behalf of the respondents we must come to the conclusion that the intention of the legislature was that the government should be an agent for acquiring land for all companies for such purposes as they might have provided the profits intended to be produced is in general manner useful to the public, and if that is so there would be clearly no point in providing the restrictive provisions in Sec. 40 and 41. The very fact therefore that the power to use the machinery of the Act for the acquisition of land for a company is conditioned by the restrictions in Sec. 40 and 41 indicates that the legislature intended that the land should be acquired through the coercive machinery of the Act only for the restricted purpose mentioned in Sec. 40 and 41 which would also be a public purpose for the purpose of section 4. We find it impossible to accept the argument that the intention of the legislature could have been that individuals should be compelled to part with their lands for the profit of others who might be owners of companies through the Government machinery because the company might produce goods which would be useful to the public.

The Court concluded:

There is, in our opinion, no doubt that the intention of the legislature was that land should be acquired only when the work to be carried out is directly useful to the public and the public will be entitled to use the work as well as for its own benefit in accordance with the terms of the agreement which under section 4 is made to have the same effect as if they form part of the Act.

In paragraph 21 of the decision, the Court gave the example of the construction of hospitals and libraries as works satisfying Sections 40 and 41 and held that agreements have to be entered into so that the public may directly use such facilities.

The majority decision in *Shri Somnath and Others v State of Gujarat* (AIR 1952 SC 152) put the final nail in the coffin and whatever slim chances existed for a proper extension of the statute expunged. This was a case where government sought to acquire agricultural land for the purpose of setting up a factory for the manufacture of compressors and other equipment. The Punjab government sanctioned the under-lease amount of Rs 100 for the purpose of acquisition. It was an admitted

position that the requirements of Part VI were not complied with. It was contended by the writ petitioners that the taken amount itself indicated that the acquisition was not for a public purpose and that the acquisition was mainly for a company and ought to be set aside since the procedure under Part VI was not followed. The Constitutional Bench upheld the acquisition in the following manner:

We would like to add that the view taken in *Sanga Kacker's case*, as in *Shri Somnath* (AIR 1952 SC 152) has been followed by the various High Courts in India. On the basis of the correctness of that view the governments have been acquiring private properties all over the country contributing only token amounts towards the cost of acquisition. Titles in many such properties would be cancelled if we were now to take the view that "public or public purpose" means substantially or public purpose. Therefore, on the principle of stare decisis the view taken in *Sanga Kacker's case*, as in *Shri Somnath* (AIR 1952 SC 152) should not be disturbed.

Justice Subba Rao set out a sterling dissent referring to Section 49(1). He held that:

A reasonable construction of this provision unfettered by decision 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, not a paise, even though that total compensation payable may run into lakhs. The 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 adjective between them emphasize the same idea. It will be incongruous to say that public revenues shall contribute except nominal sums or paise. 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.

38

AUGUST 7, 2010

VOL XLV NO 32 Economic & Political Weekly

He then concluded:

He said that the Legislature, when they passed the Land Acquisition Act, did not intend that owners should be deprived of their ownership by a mere decree of private persons employing the Act for private ends or for the gratification of private spite or malice.

It may be noted that at the time of enactment of the Land Acquisition Act, 1894, the Second Select Committee in its report dated 24 January 1894 submitted to the Council of the Government General of India explained the second proviso to the definition under Section 6(i) in the following terms:

The object of the amendment was suggested in the proviso to Section 6 is to enable land to be acquired under the bill for the purposes of colleges, hospitals and other public institutions which are in some cases only partly supported out of public revenue or the funds of local authorities.

The Second Phase: Legislature Fights Back

The anguish of the legislature was immediately obvious. S K Paul, speaking in the Lok Sabha¹ proposing the Land Acquisition (Amendment) Act, 1962, complained:

What happened after this Act was passed? After this Act came when the judgments came against these words, a similar case arose in Punjab only just south of there or four months back, in May. They had to acquire some land for re-constituting. I do not know one of the two, machinery for tender or site conditioning, which is a larger public purpose. According to me the latter is. The textile machinery is surely a larger public purpose. From then, I do not go into this but the government saw that they were likely to be attacked if they acquired land under Chapter vi or Part vii. Therefore, they were wise enough and they went to Part ii. Part ii puts no obligation on the government of any type, nor only they could acquire but they have got to pay some money. Therefore, you know how much they paid? They paid 10 rupees for the land. Technically they did not pay some money. In the other Part, when it is acquired for a company, the money is to be paid wholly by that company. Therefore in order to satisfy the requirement of law, they paid 10 rupees and acquired the land for themselves which they have a right to do and then they gave it for the re-constituting plant, etc. The case went to the Court and the judgment of the five judges of the Supreme Court said: "Whenever I might be, once the state government, in its wisdom, acquires the land for a public purpose, its decision is final and cannot be challenged."

unthinkable. We have no right to challenge the decision of it because the wording of section 4 of Chapter ii does give us any loophole that we might go through it and change the meaning of it. They are competent and the compensation is after net profitable. You can see. Therefore, we are trying to prevent that, that hereafter the state governments should not go to the length of acquiring land under Part ii case for companies. Therefore, my friend opposite (sic) will see that I am restricting the law in order to take away the liberty of the state to acquire lands under Part ii in which the final decision is only what they decide and not in a going here and many other things might happen. Here I am making it under Part vii so that all those restrictive measures that have been put including the compensation should be applied to it and it should not be very easy for the state government to acquire it like anything and everything. This is the distinction that is ought to be made.

The proposal to amend the Act did not materialise and S K Paul told the Lok Sabha that a more comprehensive Bill would be placed before the House. It took 22 years for the new amendment to be placed before the Lok Sabha.

On 4 August 1984, Bill No 63 of 1984 was introduced in the Lok Sabha to amend the Land Acquisition Act, 1894. In the Statement of Objects and Reasons it was set out that the:

Provision of public purpose has to be balanced with the rights of the individual, whose land is acquired, thereby often depriving of him his means of livelihood. Acquiring of land for private enterprise might not be placed on the same footing as acquisition for the state or an enterprise under it. The main proposal for amendment was as follows:—(i) Acquisition of land for non-government companies under the Act will hereafter be made in pursuance of Part VII of the Act as it exists.

Placing the Bill through the Lok Sabha and the Rajya Sabha, the minister Mohan Lal Khosla said:

I would now like to draw the attention of the Honourable Members to some other provisions of the Bill. The scope of the term "public purpose" has been revised so as to provide for acquisition of land for all socially important purposes, but at the same time to obviate the possibility of misuse of this provision....

This is how the Act was amended and a new Section 3(c) was introduced and a new Section 3(f) was substituted thus separating companies from government entities. The most important change came in 3(f) and avoiding acquisition of agricultural land.

and misusing the Land Acquisition Act by procuring that acquisition of lands for companies was for a public purpose, was thwarted by the Supreme Court.

Dealing with the fourth categories of cases, though there was a feeble attempt by some benches of the Supreme Court to restrict acquisitions for companies using the guise of public purpose, they were very few and could be easily distinguished. In *Jaganmoy Vengra vs K K Pankajgohary*² a registered society sought the intervention of the government to acquire land for a religious procession celebrating a festival in the Jagannath Temple. The Supreme Court held that such an acquisition would be governed by Part vii and would not fall within the definition of "public purpose" as set forth in Section 3(f) of the Act.

In *Devinder Singh vs State of Punjab*³ where the State initiated Part ii proceedings to acquire land for a tractor manufacturing company, the Supreme Court after noticing the amended Section 3(f) correctly held as follows:

When a request is made by any wing of the State or a government company for acquisition of land for a public purpose, different procedures are adopted. Where, however, an application is filed for acquisition of land as the instrument of a company, the procedure to be adopted therefore are laid down in Part VII of the Act.

Though the Court is shown the decision in *Prithibi Nema's case*⁴ the Court declined to follow that ratio and held as under:

Expropriatory legislation, as is well known, must be strictly construed. When the proposition of a citizen is being compulsorily acquired by a State in exercise of its power of eminent domain, the essential ingredients thereof, namely, exercise of public power and payment of compensation are principal requisites thereof. In the case of acquisition of land for a private company, existence of a public purpose being not requisite criteria, other statutory requirements call for strict compliance, being imperative in character.

The Supreme Court then relied on the decision of the SC in *General Government Servants Cooperative Housing Society Ltd. Agre vs Sh Wahab Uddin*⁵ and concluded that Rule 4 was mandatory and Companies were required to negotiate with farmers

where an exclusionary clause was introduced in the expression public purpose making it very clear that acquisition of land for companies was excluded from the expression public purpose in Section 3(f).

It appears that in some publications the exclusionary rider is shown as a continuation of clause (vi) above. However, in the BIP⁶ and subsequent gazette publications of the amended Act the exclusionary rider is set apart from clause (vi) and has a different intent showing that it is exclusion to the entire sub-section. This is the only way to read this exclusionary clause by reading it together with the Statement of Objects and Reasons. The rider is correctly set out in *State Housing Building Cooperative Society vs Syed Khader* (1995) 2 SCC 677 and *Jaganmoy Vengra vs K K Pankajgohary* (1999) 9 SCC 315.

Third Phase: Judiciary Ignores the Amendment

There are several decisions of the Supreme Court with regard to land acquisition done after the 1984 amendment. These may be divided into four categories. First, where the decision relies on pre-1984 judgments of the Supreme Court and do not notice the critical amendment in Section 3(f). The second are those decisions that reproduce Section 3(f) incorrectly as if the rider is connected to Section 3(f) (vi) above. The third are those that correctly set out 3(f) and then proceed on the assumption that the amended section makes no difference at all. The fourth category are those cases that correctly interpret the amended section 3(f).

Dealing with the third category of cases, in *Prithibi Nema vs State of Assam* (2002) 5 SCC 620 land was acquired under Part ii for the establishment of a diamond park. The Supreme Court relied on *State of Punjab vs State of Punjab*⁷, *Jagan Ram vs State of Haryana*⁸, *Mamulal Jhambhai Patel vs State of Gujarat*⁹, *Indulal Chhabil vs State of Gujarat*¹⁰, *Rajmoo T Kote vs State of Maharashtra*¹¹, *R. Arora vs State of UP*¹², *Srinivas Co-op House Building Society Ltd vs Madam Gurusamy Sastri*¹³ and *Pandit Prashad Lal vs State of Punjab*¹⁴ and upheld the acquisition under Part ii in the following terms:

One thing which deserves particular notice is the ratio of the said clause (f) by which

PERSPECTIVES

the acquisition of land for companies is excluded from the purview of the expression "public purpose". However, notwithstanding this dichotomy, speaking from the point of view of public purpose, the provisions of Part ii and Part vi are not mutually exclusive as elaborated later.

This observation is utterly wrong and the decision is in utter disregard of the amendment and deserves to be set aside by a larger Bench.

Every one of the decisions relied upon were in respect of pre-amendment acquisitions through the decisions may have been rendered after 1984. The conclusion of the Supreme Court in that case is utterly retrogressive and is set out below:

Thus the distinction between public purpose acquisition and Part vi acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The ratio and perhaps the decisive distinction lies in the fact whether the use of acquisition comes out of public funds wholly or partly. Here again, even a minor or nominal contribution by the government was held to be sufficient compliance with the second proviso in Section ii as held in a series of decisions. The result is that by contributing even a trifling sum, the character and nature of acquisition could be changed by the government. In the ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could get imbued with the character of public purpose acquisition if only the government comes forward to meet the payment of a nominal sum towards compensation. In the present case of law, that seems to be the end position.

The decision in *Somnath's case*¹⁵ is the effect that even a nominal contribution by the government would convert an acquisition for a company into a public purpose acquisition under Part ii was taken to almost levels in *Indulal C Porek vs State of Gujarat*¹⁶ where it was held that even a nominal contribution of Rs 1 would validate the acquisition. Similarly in *Mamulal Jhambhai Patel vs State of Gujarat*¹⁷ the Supreme Court held that "The contribution of Rs 1 from the public exchequer cannot be dubbed as illusory so as to invalidate the acquisition". These entirely irrational decisions eventually demolished the crucial difference between acquisition for companies and acquisition for public purpose. This deplorable trend continued with *Prithibi Nema's case*¹⁸. Thus the explicit intention of Parliament not to permit state governments becoming agents for companies

