

DOCTRINE OF EMINENT DOMAIN AND LAND ACQUISITION LAW: JUDICIAL APPROACH

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Introduction:

Eminent Domain is an attribute of sovereignty and essential to the sovereign Government. The power of eminent domain, being inherent in the Government, is exercisable in the public interest, general welfare and for public purpose. The sovereign is entitled to reassert its dominion over any portion of the soil of the State, including private property without its owner's consent provided that such assertion is on account of public exigency and for public good.¹

The power of the Sovereign to take private property for public use (called in America eminent domain – an expression believed to have been used by Grotius) and the consequent rights of owner to compensation are well established. In justification of power, two maxims are often cited: *salus populi suprema lex* (regard for the public welfare is the highest law) and *necessitas publica major est quam private* (public necessity is greater than private necessity). A critical examination of the various stages of evolution of this power and its ethical basis will serve no useful purpose as the power has become firmly established in all civilized countries².

EXERCISE OF POWER OF EMINENT DOMAIN WITH GREAT CARE

Although in exercise of the power of eminent domain, the State can acquire the private property for public purpose, it must be remembered that compulsory acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his constitutional right of not being deprived of his property without the sanction of law - Article 300A and the legal rights. Therefore, The Supreme Court of India in *Darshan Lal Nagpal v. Government of NCT of Delhi*, held that the State must exercise this power with great care and circumspection. At times, compulsory acquisition of land is likely to make the owner landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is exercised by invoking the provisions like the one contained in S. 17 of the Land Acquisition Act, 1894, because that results in depriving the owner of his property without being afforded an opportunity of hearing.³

NO ACQUISITION OF LAND OWNED BY THE STATE

The State does not acquire its own land for it is futile to exercise the power of eminent domain for acquiring rights in the land, which already vests in the State. It would be absurdity to comprehend the provisions of Land Acquisition Act being applicable to such land wherein the ownership or the entirety or rights already vests in the State. In *Sharda Devi v. State of Bihar*, the Supreme held that the land owned by the State on which there are no private rights or encumbrances is beyond the purview of the provisions of the Land Acquisition Act.⁴

LAND ACQUISITION FOR PUBLIC PURPOSE – TO BE DECIDED BY LEGISLATURE

The power of compulsory acquisition as described by the term 'eminent domain' can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or

public at large. The concept of 'eminent domain' is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.⁵

The concept of eminent domain which applies when a person is deprived of his property, postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the public. Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. But the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known. The concept of public purpose has been given fairly expansive meaning which has to be justified upon the purpose and object of statute and the policy of the legislation. Public purpose is, therefore, a condition precedent, for invoking Article 300A.⁶

DEPRIVATION OF PROPERTY BY AUTHORITY OF LAW

Article 300A states: No person shall be deprived of his property save by authority of law. The word "law" in the context of Art.300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State made law. The effect of the Constitution (Fourth) Amendment Act, 1955, is that there can be no "deprivation" unless there is extinction of the right to property. The State Government cannot while taking recourse to the executive power of the State under Art. 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Art.162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Art. 300A.⁷

Deprivation of property is by acquisition or requisition or taken possession of for a public purpose. There is no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Art. 300A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300A.⁸

Having regard to the provisions contained in Article 300A of the Constitution of India as also the provisions of Act, the State in exercise of its power of 'eminent domain' may deprive a person of his right to a property only when there exists a public purpose and a reasonable amount by way of compensation is offered for acquisition of his land.⁹

LAW MUST BE JUST, FAIR AND REASONABLE

Article 300A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond that required in public interest. The limitation or restriction must not be disproportionate to the situation of excessive. The legislation providing for deprivation of property under Article 300A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301, etc. thus in each case, Courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable.¹⁰

Rule of law as a principle contains no explicit substantive component like eminent domain but has many shades and colors. Violation of principle of natural justice may undermine rule of law

so also at times arbitrariness, proportionality, unreasonableness etc., but such violations may not undermine rule of law so as to invalidate a statute. Violation must be of such a serious nature which undermines the very basic structure of our Constitution and our democratic principles. But once the Court finds, a Statute, undermines the rule of law which has the status of a constitutional principle like the basic structure, the above grounds are also available and not vice versa.¹¹

RIGHT TO CLAIM COMPENSATION UNDER ART. 300A.

The obligation for payment of just compensation is a necessary incident of the power of compulsory acquisition of property, both under the doctrine of the English Common Law as well as under the continental doctrine of eminent domain, subsequently adopted in America. Our Constitution has raised this obligation to pay compensation for the compulsory acquisition of property to the status of a fundamental right and it has declared that a law that does not make provision for payment of compensation shall be void. 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. One is the power to take, the other is the condition for the exercise of that power.¹²

Payment of compensation amount is a constitutional requirement under Article 30(1A) and under the 2nd proviso to Article 31A(1), unlike Article 300A. After the 44th Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. Article 300A, however, does not prohibit the payment of just compensation when a person is deprived of his property. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300A, it can be inferred in that Article and it is for the State to justify its stand of no compensation or nil compensation or its illusiveness on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.¹³

There is a difference between “no” compensation and “nil” compensation. A law seeking to acquire private property for public purpose cannot say that “no compensation shall be paid”. However, there could be a law awarding “nil” compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the government to establish validity of such law. In the latter case, the Court in exercise of judicial review will test such a law keeping in mind the above parameters.¹⁴

RIGHT TO RESETTLEMENT AND REHABILITATION

In *Narmada Bachao Andolan v. State of Madhya Pradesh*, the Supreme Court held that acquisition of land does not violate any constitutional/fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the concerned project.¹⁵

RIGHT TO PROPERTY : NEW DIMENSION OF HUMAN RIGHT

Right to property under Art. 300A is not a basic feature of Constitution.¹⁶ The right of property is no longer a fundamental right. But still it is a constitutional right. Apart from constitutional right it is also a human right. The procedures laid down for deprivation thereof must be scrupulously complied with.¹⁷

In *Tukaram Kana Joshi v. M. I. D. C.*, the Supreme Court observed that the right to property is

now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right, human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension.¹⁸

CONCLUSION:

The power of the Sovereign to take private property for public purpose and the consequent rights of owner to compensation are well established. The State must exercise this power with great care and circumspection. Public purpose cannot and should not be precisely defined and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, need and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual. Deprivation of property, generally speaking, must take place for public purpose or public interest. Public purpose has to be decided by the legislature, which of course should be made known. Public purpose is, therefore, a condition precedent, for invoking Article 300A. Deprivation of property is by acquisition or requisition or taken possession of for a public purpose. There is no deprivation without any sanction of law. Article 300A enables the State to put restrictions on the right to property by law. It must comply with other provisions of the Constitution. Hence, land acquisition law must be just, fair and reasonable. The obligation for payment of just compensation is a necessary incident of the power of compulsory acquisition of property. Our Constitution has raised this obligation to pay compensation for the compulsory acquisition of property to the status of a fundamental right and it has declared that a law that does not make provision for payment of compensation shall be void.

From the above discussion, it may be concluded that any land acquisition law to be enacted must be in accordance with the well established doctrines, principles of natural justice, human rights, constitutional provisions, and principles of law laid down by the Supreme Court. Though there are demands for development and acquisition of land shall be necessary, land shall be acquired by law and only on the ground of public purpose, since the term 'public purpose' is not static and it cannot be defined, there is inherent danger that the law may be made and implemented for the private interests. To minimise the abuse of the power of eminent domain, the necessary safeguards shall be made in the Act itself, and the Court, shall have to exercise its control over the powers of the Government, as the protector or guardian of the Indians. The balancing of private interest and public interest is the basic function of the law to achieve the common good.

(End notes)

- 1 Laxman Lal v. State of Rajasthan, AIR 2013 SC 1578
- 2 Tenth Report, Law Commission of India, 1958.
- 3 AIR 2012 SC 412
- 4 AIR 2003 SUPREME COURT 942
- 5 Daulat Singh Surana v. First Land Acquisition Collector, AIR 2007 SC 471
- 6 K. T. Plantation Pvt. Ltd. v. State of Karnataka, AIR 2011 SC 3430 (5 Judges bench)
- 7 Bishamber Dayal Chandra Mohan, M/s.v. State of U.P., AIR 1982 SC 33
- 8 Jilubhai Nanbhai Khachar v. State of Gujarat, AIR 1995 SC 142
- 9 Mahender Pal v. State of Haryana, AIR 2009 SC 3220

- 10 Supra Note 6
- 11 Id
- 12 State of Bihar v. Kameshwar Singh, AIR 1952 SC 252
- 13 Supra Note 6
- 14 Id
- 15 AIR 2011 SC 1989
- 16 Supra Note 8
- 17 Vimalben Ajitbhai Patel v. Vatslaben Ashokbhai Patel, AIR 2008 SC 2675
- 18 AIR 2013 SC 565