

IS FORCEFUL ACQUISITION OF LAND BY THE GOVERNMENT JUST? WITH A SPECIAL FOCUS ON FARMERS

Written by *Mayank Khemka*

3rd year BALLB Student, Jindal Global Law School

INTRODUCTION

Land acquisition is the process by which the government can acquire land from residents of a country without their consent. While acquiring any land the principle of eminent domain. Two conditions have to be fulfilled under eminent domain, firstly the land should be acquired for a public purpose and secondly, the owners of the land must be compensated for it. Land Acquisition is based on the principle that the individual liberty of the citizens sometimes needs to be sacrificed in order for the greater good of the country. On paper it seems fair and just that in cases of extreme need the government can take land and other immovable property from people and compensate them for their property but is the compensation fair? Can some one-time payment justify and compensate uprooting someone's entire life? Public purpose may be required for acquisition but what about when the land remains unused? Also, what if the government sells or leases the land to a private entity? Is it still just to take land from a poor farmer just so that it can be sold to a private entity who can make money of this land? Or is there another angle to it where it is required for the greater good of the country that the land be sold to a private entity? To what extent personal liberty can be sacrificed for the greater good of the country?

A BRIEF HISTORY OF LAND ACQUISITION LAWS IN INDIA

It was in 1824 that the British government in India enacted the first land acquisition legislation in Bengal allowing the government to obtain land or any other movable property for roads etc at a fair price decided by the government. In 1894 the government passes the Land acquisition

Act, 1894 allowing the government to acquire land from private landholder for a public purpose at a price decided by the government. In 1948, after the Independence of India, the Land Acquisition Act, 1894 was adopted by India by the Indian Independence (Adaptation of central acts and Ordinances) ¹Order. Before 1978 Right to Property was a fundamental right under Article 19(1)(f) of the Constitution. Along with Article 31 of the constitution, a person had the right to own and dispose off any immovable property however, this was repealed by the 44th amendment and now it is only a legal right under Article 300A of the constitution. In the case of *KT Plantation vs State of Karnataka*, the Supreme Court read the principle of eminent domain under Article 300A of the Indian constitution however, it also held that the compensation given is to be decided by the legislation and cannot be contested². Due to various problems with the law like forced acquisition, no safeguards for land owners, urgency clause, unfair compensation without resettlement and rehabilitation etc, the government passed the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act in 2013 (LARR Act). Some important features of this act are: consent of landowners in cases of involvement of private entities, compensation can be up to four times the market value which is to be given along with rehabilitation and job to at least one member of the family, retrospective application, return of land if remained unused, if land was to be sold to a 3rd party for an appreciated price then land owners would get a share in the profit and if urbanised then some part of the land would be reserved for the land owners.³

PLIGHT OF THE FARMERS

India is primarily an agrarian economy and hence in order for socio-economic development government in majority of the cases acquires land belonging to farmers and use it for construction of roads, dams, educational institutions etc. Hence, the class of people who are most affected by this are the farmers. The argument a neo classical economist would give for acquiring the land from farmers for developmental purposes would be that the agricultural productivity in India is low as farmers are not able to access the latest technology and it would be a more productive use of the land if it is used for something which gives higher returns like

¹ (Ananth, 2018)

² *KT Plantation v State of Karnataka*

³ (Arora, 2017)

selling of the land to private entities who would contribute more to the GDP of the country and would also provide more employment opportunities.

If we look from a Rawlsian perspective, justice is fairness. From his original position we get two principles of justice.

- 1) Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all.
- 2) Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.⁴

Equality of personal liberty has more importance than equality of general opportunities and distribution of economic resources. The second principle's second part is called the 'difference principle' which is concerned with distributive equity and overall efficiency. The idea is to create the most benefit for the worst-off members of the society.⁵

If we look at the current scenario of the Indian farmers, it is fair to conclude that they are the worst-off members of the society as they are not able to pay off the loans they have taken as the agricultural yield is not too good and they are trapped in a vicious cycle of debt. In 2015 12,602 farmers committed suicide which consists of 9.4% of the total suicides in India⁶. According the Rawls the government should aim at introducing policies which help the farmers and the government has made various provisions in the LARR Act 2013 to benefit the farmers but still it is unjust to take away their land against their wishes.

Under the LARR Act. 2013 the collector of land is required to pay compensation to the family for rehabilitation and resettlement of the family cost relating to transportation, payment for cattle shed and petty shops, one-time amount to artisans and traders and compulsory employment to atleast one member of the affected family of a farm labourer. This might appear as a fair compensation to the farmers for their land, but this isn't the case. The legislation calls for employment of atleast on member of the family but general in an agricultural family, the

⁴ (Rawls, 2005)

⁵ (Sen, 2011)

⁶ National crime records bureau

entire family is dependent on the land. A one-time payment might seem fair, but the acquisition takes away the employment and a source of income of the entire family and in return provides employment to only one member of the family. Furthermore, the legislation does not provide for what kind of employment is to be provided and how much will he/she earn. The legislation also not account for the job security of that family member. Consider the following example. A family of 5 own a piece of land in the outskirts of Sonipat. This land has been in their family for around 5 generations. They have been growing rice in that field for a very long time and the entire family works together. They have a small house on the edge of the land where they all live. Now the government decides that a more appropriate use of the land will be to build a school on that land. Since the land is not at a very good location its value is not very high even if the family gets double the market value of that land. The family is relocated to Delhi where they get a small house for rehabilitation and the get transportation money. Also, one family member gets a job at a manager at a cook due to his experience in the rice field. His earns a decent amount of money but barely is able to support his entire family. The other members struggle to find and keep jobs due to their lack of experience. The family runs through their savings and the land money as the expenses in Delhi are higher as they are not self-sufficient anymore. The cook loses his job as he is not able to adjust to the new area. Eventually their quality of life decreases to the point that they have to sell their house. Even if the family somehow managed to survive what about the future generations. Earlier they had a piece of land on which they cultivated rice and made a living but how will the next generation survive as they have no skill or means of getting a quality education to get a decent job. This might seem a slightly unlikely scenario, but this is what happens to most of the farmers after land acquisition. Before the 2013 amendment, majority of the farmers didn't even receive adequate compensation for their property. It is only after 2013 amendment that there was a provision to ensure adequate compensation which allows compensation up to 4 times the market value.

Even though there is a system in place for compensation however, in a lot of cases there is a dispute regarding the ownership of the said property. Often what happens is that due to multiple sales of property the documents are lost and it is difficult to determine the true owner of the land. In such cases people often draw up fake documents regarding the land. Problems also arise when farmers mortgage their land to moneylenders to obtain loans to work on the field. In such cases they are no longer entitled to get compensation for any land acquisition. This is an issue also faced by the developers who find it difficult to find a land which is clean and

undisputed. As soon as there is any sign of acquisition of the land its title is contested, and many cases are filled. This multiplicity of litigation affects most the farmers who are unable to hire lawyers to argue for them and more often than not are unable to comprehend what is happening to them. Family disputes also cause problems as inheritance and will are continuously disputed. All the above-mentioned factor prevents the affected families from receiving the compensation.

One argument in support of land acquisition is that it is necessary for the greater good. People need to sacrifice their personal liberty for the development of the country but what happens if the land remains unused. The current law allows the land to be returned if the land is unutilised for 5 years or any period specified at time of setting up of project whichever is later. This is unjust from the perspective of the farmer as his/her land is being taken away on the grounds of greater importance and the land a lot of times remains unused. The law allows the project head to set a time after which the land can be returned if unutilised, but he/she can choose a period of 100 years. It is extremely unfair for the farmers in such cases as they have no respite as their land is being taken away from them for a purpose not being fulfilled.

Rawlsian justice asks for most benefit for the least advantaged as when we go behind the veil without any knowledge about ourselves this is what we would choose. However, from what we have seen above I doubt if anyone will choose to keep land acquisition laws when behind the veil. The law requires the consent of land owners (70 % in case of PPP and 80% when for private purposes) except in cases of defence, rural infrastructure, affordable housing, industrial corridors and infrastructure projects but still gives the government too much power to acquire any property under these grounds and is violative of the right to livelihood and work freely chosen that contributes to an adequate standard of living guaranteed under Article 21.

SOCIO-ECONOMIC DEVELOPMENT OF THE COUNTRY

Let us imagine what would happen if there was no forceful land acquisition. Majority of the people would refuse to sell their land as they held their land precious. Roads wouldn't be built. There would be very few hospitals, railways, airports etc. For almost all private and public projects land is required and sometimes the land required is not in the hands of someone who

is willing to sell. In such cases forceful land acquisition remains the only scenario to ensure the greatest good for the least advantaged.

According to Amartya Sen every policy of the government should keep in mind the different capabilities of the people whom this policy is going to affect. Also, in the end the idea behind the policies should be to enhance the capabilities of people to a limit such that everyone has equal capabilities. Capabilities refer to the ability of using a resource in different ways. For example, a blind person can use a car as place to live or as a storage for his goods, but a normal person can use it as a means of transportation. According to Sen, Government policies should aim at enhancing such capabilities and reducing the gap between the advantaged and the disadvantaged.⁷

If we look from a utilitarian point of view, government expenditure is necessary for the growth of the economy as according to the government multiplier, the increase in government spending leads to an even bigger increase in the GDP of the country and also the income of the people. Also, due to a higher marginal propensity to consume, the worse off sections of the society are the ones who require more support from the government. In order to provide good quality education, healthcare facilities, infrastructure etc the government needs land. However, in the undeveloped parts of the country where people are still dependent on agriculture for their survival, it is difficult for the government to obtain land from the farmers with their consent. How can the government enhance the capabilities and the quality of life of the worse off sections of the society without forceful land acquisition? If we live in a world where the government doesn't play a big role in the development of a nation and doesn't provide basic health care, education, infrastructure etc it will be the worse off people who will be the most affected as the middle and upper class people would turn to private entities who provide them with such services but, the poor class will not be able to access such services due to a lack of resources which will give a rise to income inequality.

If we look at the case of the O.P. Jindal Global University (JGU), we can see how land acquisition is important. JGU is located at the outskirts of Sonipat which is an agricultural area. JGU was established in 2009 with the help of the government in acquiring the land on which it is built. JGU has brought brilliant students and professors from all over India to Sonipat.

⁷ (Sen, 2011)

Also, since two other higher education institutes have opened up. For the convenience of the students, professors and other dignitaries roads are being improved. Various housing societies and schools are coming up as JGU attracts families of the students, professors and other workers to Sonipat. If we look at the short run effects of the land acquisition, we can see that it might seem unjust to uproot and relocate the life of a family for the benefit of a private entity. However, if we look at the long run effects, we can see how acquisition of 80 Acre property for a private higher educational institute can in period of about 9 years lead to great economic development of an undeveloped area like Sonipat.

A big criticism of Land Acquisition is that it is done without the consent of the land owners. The government before the 2013 amendment, had to satisfy the requirement of public purpose before acquiring the land and consent of land owners was not required. However, after the 2013 amendment, consent of 80% of the land owners (in case of fragmented land and multiple land owners) in cases of a public private partnership (PPP) and 70% in case of a private entity is required before acquiring any land. Also, before the 2013 amendment there were 13 legislations which were free of the requirement of providing compensation but now in all cases compensation has to be paid which can go up to 4 times the market value of the land. Apart from public requirement there are only 5 Public Private Partnership for which consent of the land owners is not required.

- 1) Defence: Security is something that everyone requires as it is in human nature to be paranoid and fear the unknown so national security is considered to be of prime importance in any country as it affects almost every citizen in a similar manner. A lot of resources and manpower is spent to ensure that there are no security concerns for the citizens of the country and hence, it cannot be expected of the government to take permission from any citizen when the national security is threatened even if it is at the cost of the liberty of a few individuals after all we have laws that allow the government to detain citizens on the mere suspicion of their involvement in a terrorist activity. Compared to that land acquisition with compensation and rehabilitations seems just and fair.
- 2) Rural Infrastructure: Any project either private or public developing the infrastructure in rural areas is beneficial for the whole country as it increases the capabilities of the people living in rural areas by giving them access to better technology.

- 3) Affordable housing: Any scheme of the government to provide affordable houses to the needy will be welcome as it is in the general interest of the well-being of the people. Also, under the LARR Act 2013, if a land is acquired for the purpose of urbanisation then the families displaced will be entitled to purchase 20% of the developed land in proportion to their land at a cost of acquisition and cost of further development and if the land is resold without development then 20% of the appreciated value will be shared with the owners.
- 4) Industrial Corridors and PPP Projects: The first thing that comes to mind on hearing industrial corridors is setting up of factories which would cause loads of pollution and would exploit the efforts of poor unemployed people so that the capitalists can earn more however, industrial Corridors are areas where there is a cluster of a certain kind of industries e.g. the manufacturing industry cluster. Corridors are created in areas where there is good infrastructure. These corridors are laid down in an arterial way along Highways and Railroads across states. These corridors are necessary as they provide job opportunities to people close to their home. An improved structure due to the existence of a proper corridor would increase the efficiency in transportation would reduce the production costs thus reducing the price of the products.

In short term it may seem that it is unjust for the land owners to give up their land without their consent. However, in the long run it is clear that in the long run it is impossible to ensure continuous socio-economic development of the country especially in the undeveloped areas without forceful acquisition of land. Capabilities of the worse off section of the society can only be enhanced by the intervention of the government which is not possible without land acquisition.

CONCLUSION

The debate regarding land acquisition comes down to the question, does personal liberty needs to be sacrificed for the greater good of the country? And if yes then to what extent? If we look from a Rawlsian perspective, then the government should aim to create the maximum benefit for the worst-off section of the society. If we look it from Sen's point of view, then we should look to improve the basic capabilities of people and if we look from a utilitarian perspective then we should allot resources to those who can create the maximum benefit out of it. The

government can improve the living standards and capabilities by improving health care facilities, better primary and secondary education, better transportation facilities etc but all of those require land. It is not enough to make only policy changes, but institutions are required for the development of the poorer sections of the society. One argument can be made that government should make institutions on land which is consensually given by the owners but the problem with this is that this is not always possible. For example, a metro rail will be beneficial only in an area which is densely populated. It would be illogical to construct metro only where land is easily available. The government in such cases needs to forcibly acquire land as “the needs of the many outweigh the needs of the few or the one”.

Coming to the second question the government needs to ensure that personal liberty of individuals is sacrificed as less as possible. When it comes to compensation and rehabilitation, the government should try and allot another piece of and in case the land was an agricultural one. The government should try to rehabilitate the family in a nearby area so that the family should not struggle. The government should try to provide jobs in a similar field to the land owners to ensure their survival. When it comes to title disputes, the government should set up an independent body to determine who is the real owner. Also, if the land is leased to someone else then those people should also be rehabilitated as they are the ones who suffer the most. All of this should be done as far as practically possible. With the amendment consent is now required for involvement of private entities except for in exceptional cases. One change the government needs to take care of is the return of land if unused. Before the acquisition of the land the planning of the project needs to be completed and the work should be started in a period of couple of years. The time given to start the project being atleast 5 years is too much and waiting for 5 years show that the acquisition was not necessary and hence unjust for the land owners.

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