
Concept of Public Purpose: It's Importance in Present Legal Scenario

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Abstract: *The power to take property from the individual is rooted in the idea of eminent domain. The doctrine of eminent domain states, the sovereign can do anything, if the act of sovereign involves public interest. The doctrine empowers the sovereign to acquire private land for a public use, provided the public nature of the usage can be demonstrated beyond doubt. The doctrine is based on the following two Latin maxims, (1) Salus populi suprema lex (Welfare of the People Is the Paramount Law) and (2) Necessities public major EST quam. The Government of India believed there was a heightened public concern on land acquisition issues in India. Of particular concern was that despite many amendments, over the years, to India's Land Acquisition Act of 1894, there was an absence of a cohesive national law that addressed fair compensation when private land is acquired for public use, and fair rehabilitation of land owners and those directly affected from loss of livelihoods. The Government of India believed that a combined law was necessary, one that legally requires rehabilitation and resettlement necessarily and simultaneously follow government acquisition of land for public purposes. In this way in India, Land acquisition in India refers to the process by which the union or a state government in India acquires private land for the purpose of industrialization, development of infrastructural facilities or urbanization of the private land, and provides compensation to the affected land owners and their rehabilitation and resettlement. Hence, I think though owner of the property has not fundamental right over property but he has fundamental right for compensation therefore some of the important issues surrounding the Land Acquisition will be discussed below*

Keywords: *Land Acquisition, Public purpose, compensations, Rehabilitation and resettlement*

1. INTRODUCTION

Public Necessity Is Greater Than Private Necessity.¹In the history of modern India, this doctrine was challenged twice (broadly speaking) once when land reform was initiated and another time when Banks were nationalized².The Constitution of India originally provided the right to property (which includes land) under Articles 19 and 31. Article 19 guaranteed that all citizens have the right to acquire, hold and dispose of property. Article 31 stated that "no person shall be deprived of his property save by authority of law." It also indicated that compensation would be paid to a person whose property has been taken for public purposes (often subject to wide range of meaning). The Forty-Fourth Amendment of 1978 deleted the right to property from the list of fundamental rights with an introduction of a new provision, Article 300-A, which provided that "no person shall be deprived of his property save by authority of law"³. Land acquisition in India refers to the process by which the union or a state government in India acquires private land for the purpose of industrialization, development of infrastructural facilities or Urbanization of the private land, and provides compensation to the affected land owners and their rehabilitation and resettlement. In the democratic country, like India the importance of the Power of eminent domain to the life of the state need hardly be emphasis. It is so often necessary for the performance of governmental functions to take private property for public use. As per the constitution of India, the future of India is based on the concept of social welfare⁴ hence for the purposes of social welfare The power is inalienable it is based on the two maxims that (a) salus populist supreme lex i.e., the interest and claim of the whole community is always superior (b) Necessitapublic major east quam private i.e., public necessity is Greater than private interest and claim of an individual. The power of eminent domain has three essential attribute of sovereignty. First, the power of the state to take over private land; second, this power is to be exercised for public ground; and third, it is obligation on

¹ Chandrachur, Y. V. 2009. Concise Law Dictionary. New Delhi: LexisNexis Butterworths Wadhwa Nagpur.

² Tripathi, P.K. 1980. "Right of Property After 44th Amendment Better Prosecuted Than Ever Before."Air Journal (51).

³ Constitution of India

⁴ Preamble of the constitution of India

the State to compensate those whose lands are taken over. Essentially it deals with power of the state to expropriate lands of individuals who, are not willing sellers, it is based on the principle that interests of the whole community is greater than individual interest. Thus property may be needed and acquired under this power for government offices, libraries, slum clearance projects, public schools, college and universities, public highways, public parks, railways, telephone and telegraph lines, dams, drainage, sewers and water systems and many other projects of public interest convenience and welfare⁵. Thus it is clear indication that the legislative intent is to give wide interpretation to public purpose. Recently in *Sooram Pratap Reddy and others v. District Collector, Ranga Reddy Dist and others*,⁶ the Supreme Court stated that “public purpose” includes any purpose wherein even a fraction of the community may be interested or by which it may be benefited. As such Special Economic Zones (SEZs), mines, shopping malls, factories, dams, and other large scale projects have been facilitated by expropriation of land under the Land Acquisition Act. Extending land acquisition for public purpose to industrial development involves the denial of the right to property, life and livelihood. The phrase power of ‘eminent domain’ in USA is known as ‘sovereign power’ in India and it is embedded in the articles 31-A and 300-A of the Indian Constitution⁷. The Government of India believed there was a heightened public concern on land acquisition issues in India. Of particular concern was that despite many amendments, over the years, to India’s Land Acquisition Act of 1894, there was an absence of a cohesive national law that addressed fair compensation when private land is acquired for public use, and fair rehabilitation of land owners and those directly affected from loss of livelihoods. The Government of India believed that a combined law was necessary, one that legally requires rehabilitation and resettlement necessarily and simultaneously follow government acquisition of land for public purposes.

2. MEANING AND OBJECT OF PUBLIC PURPOSE

In India there is concept of welfare state; hence it is very necessary to know the various ways to reach the concept of welfare state so acquisition of private land for public purpose is one of the way. In Black’s Law Dictionary, the term public purpose has been said to have the objective of “promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division⁸.”

The Land Acquisition Act, 1894 (further referred to as ‘Act’), defines ‘Public Purpose’ 2 as including:

- (i) The provision of village-sites, or the extension, planned development or improvement of existing village sites;
- (ii) The provision of land for town or rural planning;
- (iii) The provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part in lease, assignment or outright sale worth the object of securing further development as planned;
- (iv) The provision of land for a corporation owned or controlled by the State;
- (v) The provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced to affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State; (vi) The provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to co-operative societies for the time being in force in any State;
- (vii) The provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

⁵ V.N. Shukla’s ‘Constitutional Law of India’, (Mahendra P. Singh, rev’d. Eastern Book Company, 12th ed. 2008) pp 298-99.

⁶ (2008)9 SCC 552

⁷ Constitution of India P.M.Bakshi

⁸ Black’s Law Dictionary, fifth edition

(viii) The provision of any premises or building for locating a public office but does not include acquisition of land for Companies⁹.

The basic idea behind 'public purpose' is the concept of maximum benefit for the largest number of people. Now, maximum benefit to a group of people, in certain cases, cannot be given unless a privilege of another is taken away. This attitude was legitimized by Nehru, as he said, "[a few] must make sacrifices for the development for the nation", at a speech for the Hirakud dam foundation laying ceremony, just a few months after independence¹⁰.

3. SCOPE

Public purpose was discussed in a number of cases¹¹; The Supreme Court looks at the interpretation of Public Purpose. The following cases have all been discussed in the aforementioned case:

- In the case of *Green v Frazier*¹², The Court stated that the objective of public purpose should be to promote "public health, safety, morals, general welfare, security, prosperity, and contentment" of all the citizens.
- Now, this power to acquire implicitly leads to a right to payment to the ones who have been alienated from their domain for the welfare of the mass. This was according to Lord Atkinson in a judgment¹³.
- In the case *Hamabai v Secretary of State*¹⁰, Batchelor, J. The court was avoided giving a clear precise ambit of extent to the phrase 'public purpose' and left the topic with saying that the purpose should be of general interest of the community, which was to be put before particular individual interests. The Court decided in *Bhim Singhji*¹⁴ that public purpose should serve in the general interest of the community pitted against particular interests of individuals.
- Mahajan, J., in *Bihar v Kameshwar Prasad*¹⁵, said that the phrase could not be given a "precise definition and has not a rigid meaning". The phrase could not have a static and rigid definition and it was colored according to the statute and the social circumstance whereupon it was invoked. It had to be decided on a case to case basis to determine what falls under the ambit of general interest of the community. In the same case, S.R. Das, J. opined that the phrase was to be accorded with the DPSPs and channeled to promote public welfare.
- To define the phrase, all the circumstances and facets of the statute wherein appears need to be closed examined to determine whether a public purpose has indeed been instituted. In *Bombay v R. S. Nanji*¹⁶ the Court opined that though the State Government was regarded as the best judge to decide whether a purpose is a public one, Courts also have the jurisdiction to determine whether the requisition passed by the Government regarding something is for public purpose is actually so or not.
- The Constitutional bench in the *Somawanti* judgment¹⁷ held that the Government would be the one to determine whether a specific purpose fell within the ambit of the phrase. It also held that the satisfaction for the Government regarding the same and a subsequent declaration would be final. Such a decision by the Government could only be challenged on one ground, namely, if there was colorable exercise of power by the Government, the aggrieved party could challenge it before the Court. This was also observed in *Laxman Rao v Maharashtra*¹⁸ that the State Government has the ultimate power to take the decision regarding what constitutes public purpose.

⁹The Land Acquisition Act, 1894, Section 3(f): The expression Public Purpose includes

¹⁰ Workshop report on 'Displacement and Resettlement towards a National Policy', organized by the Centre for Development Economics in Delhi from January 21-23, 1995.

¹¹ *Daulat Singh Surana v First Land Acquisition Collector & Others*, <http://indiankanoon.org/doc/1779121/>

¹² *Green v. Frazier*, 176 N.W. 11, 17, 44 N.D. 395, as read in *Daulant Singh Surana*, Supra no. 11

¹³ *Central Control Board v. Cannon Brewery co. Ltd.*, (1919) AC 744, as read in *Daulant Singh Surana*, supra no. 11
¹⁴ (1911) 13 Bom LR 1097

¹⁵ AIR 1952 SC 252,

¹⁶ AIR 1952 SC 252

¹⁷ (1963) 2 SCR 774

¹⁸ (1997) 3 SCC 493,

- The question of whether all activities of the Government could be classified to be for 'public service' or 'public purpose' was answered by the Constitutional bench in *Satyanarain Singh v District Engineer*¹⁹. The bench opined that by just being useful to the public would not render the activity to be of public purpose. It could be a private individual carrying out a public service, or the State carrying out some activity with the main aim to gain profit. In these two scenarios, the action cannot be classified as being Public Purpose.

4. JUSTIFIABILITY OF PUBLIC PURPOSE

While the Government has frozen land acquisition for Special Economic Zones, it is working on broadening the definition of public purpose to balance the concerns of land losers with what "is useful for the general public."

According to a presentation made to the Prime Minister before some years by the Rural Development Ministry, in the proposed Land Acquisition Amendment Bill 2007, "public purpose" has been classified into three categories:

- Strategic purposes, relating to the defence forces or work "vital to the state"
- Public infrastructure: Electricity, communication, water supply, mining, "public facilities"
- Projects "useful for the general public"²⁰.

Hence, the government is said to have sole and Absolute -discretion with respect to the question of justifiability of the public purpose, In *Ezra v. Secretary of State for India-in-Council*²¹, the Privy Council held that it is Only the government which would be the sole judge as to the question of public Purpose. The necessary qualification in this respect is that existence of a paramount Reason and such reason must be shown before acquisition. The general interest of the Community is said to be the touchstone of public purpose. According to the Privacy Council, public purpose means, the interest of the community as a whole or part as Opposed to particular interest of the individual who is directly and vitally concerned²². In *State of Bombay v. R.S. Nanji*²³, the Supreme Court held that, though the government is generally considered to be the sole judge of justifiability of public purpose, jurisdiction still vest with the Courts and under Article 226 of the Constitution Courts is duly determined whether or not there exists any public purpose in an acquisition. The Supreme Court held that, though the government is generally considered to be the sole judge of justifiability of public purpose, jurisdiction still vest with the Courts and under Article 226 of the Constitution Courts is duly determined whether or not there exists any public purpose in an acquisition²⁴. The circumstances in which the Courts can interfere is disputed even though statute gives the power to the executive to declare and determine the purpose of the acquisition, the jurisdiction of Courts are not barred²⁵. But this has not been applied uniformly. In certain cases it has been held that the Court has to accept the legislative decisions as 'public purpose'²⁶. The question whether there can be a compulsory acquisition for private purpose will have to be answered in the negative. If the public benefit resulting from an action of a person or of a company is not direct but is incidental to personal gain of an individual or of a company, then it is not considered as public purpose²⁷. Justifiability as to the purpose of acquisition may be challenged before the Courts, if prima-facie evidence is available on the grounds²⁸: -----

Acquisition is mala-fide, since the purpose as disclosed in the section 4 of Land Acquisition Act, 1894 notification is not really a public purpose.

1. The power exercised by the Government in acquisition of a land is colorable in nature.
2. The intended acquisition is to benefit a particular individual, firm or a company.

¹⁹ AIR 1962 SC 1161,

²⁰ The "Indian Express" 2007

²¹ Eastern Law House, New Delhi, 1st ed., 998), p 22

²² AIR 1963 Cal. 534; 67 CAL. W.N. 387

²³ AIR 1956 SC 294;

²⁴ *Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995

²⁵ *Mohammed Noohu v. State of Travancore and others*, AIR 1952 TC 522;

²⁶ (AIR 1959 Punj 544)

²⁷ *Veera Raghavachariar v. Secretary of State*, 86 IndCas 485.

²⁸ *Supra* note 21

3. The notification is vague and does not either disclose the purpose or is not clear about the purpose of acquisition
4. Provisions of part VII are not complied with as per the Act.
5. The activities of the agency on whose behalf the acquisition is sought are not really related to public purpose.
6. Delegates excessive and improper powers on collector.
7. Deprives the petitioner means of livelihood.

Many of the above mentioned grounds are based on the procedural irregularities and only few grounds like deprivation of livelihood or the stated purpose not being public purpose are substantial in nature. In respect of the deprivation of livelihood of the petitioner, the cases decided by the judiciary more often rely on compensation, citing the developmental concerns. On the ground that the stated purpose not being a public purpose, in case of acquisition for companies, the Courts have expressed different opinions and at times in conflict with one another.

In this regard, the judicial interpretation of the Supreme Court in *Jandu Lai v. Union of India*²⁹ may throw some light. In this case proviso to the sub-section (1) of section 6 of the Land Acquisition Act, 1894 has been interpreted in regard to acquisition of land for companies. The Court held that if part of the compensation or cost of acquisition comes from public revenue, acquisition of land for company is under public purpose as per the said proviso. It is submitted that this provision, which was originally meant for a specific situation, was extended wrongly to serve private interests. It is further submitted that the plain reading of the section would make it clear that such an interpretation would run counter to the intention of the legislators. Moreover, the question part of compensation or cost of acquisition coming from public revenue is totally relevant in the light of the facts of this case. It must be a limitation to identify the ambit of public purpose but unfortunately it is being used to make every other purpose as public purpose. The legislators seemingly have placed a trust on the executive that it will respect and respond to the rights of the underprivileged too. The following legal provisions give enough scope for the executive to act judiciously. Section 39 of Land Acquisition Act, 1894 requires previous consent of the government for an agreement to be executed between the government and the company³⁰.

5. DEFINITION OF PUBLIC PURPOSE UNDER THE PRESENT ACT

Even after the Constitution came into force the Land Acquisition Act, 1894 continued to be in force till December 31st 2013, now it is repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and people looking forward to see the pros and cons of implementation. The spate of recent divisions by the Supreme Court and widely felt need for 'balance' among diversity of voices are the reasons for repealing 1894 Act. Article 300 A of the Constitution states that. "No person shall be deprived of his property save by authority law". There has been some jurisprudential debate as to whether the phrase 'authority of law' in article 300A must be fair, just and reasonable or whether it simply means law narrowly circumscribed as enactment. Interpretation given to the word "law" under Article 21 in *Maneka Gandhi v Union of India*³¹. And some subsequent cases that 'law' must be fair, reasonable and just. In the recent case of *K T Plantation v State of Karnataka*³². The Supreme Court held that 'public purpose' and 'compensation' as within the purview of Article 300-A. In other words, both 'public purpose' and 'compensation' have been 'read into' the language of Article 300A or doctrine of eminent domain. The term 'public purpose', used to justify, land acquisition Supreme Court divisions point to renewed judicial activism, making departure from the traditional difference. Justice Singhvi in *RadheyShyam v. The State of Uttar Pradesh*³³. It was held that

'It must be accepted that in constructing public purpose, a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the state to acquire land by promoting a public purpose to benefit a particular interest at the cost of the interest of a large section of people especially of the common people defeats the very concept of public purpose. Concept of public purpose introduced

²⁹ AIR 1961 SC 343.

³⁰ L. Thaddeu, 'A Necessary Difference between Public Purpose and Public Use in Economic Development', 56 *Syracuse L. Rev.* 321 (2006).

³¹ AIR 1978 SC 597

³² (2011) 9 SCC 1.

³³ AIR 1989 SC 682:

by the pro-constitutional legislation, its application must be consistent with the constitutional ethics. Justice Singh also remarked that “in recent years, the country has witnessed new phenomena. Large tracts of land have been acquired in rural parts of the country in the name of development and transferred to private entrepreneurs, who have utilized the same for construction of multi storied complexes, commercial centers and for setting up industrial units. In the light of such phenomena, Justice Singhvi seems to be entering a new thicket of judicial executive relations. In recent case in *M/S. Royal Orchid Hotels Ltd & Anr v G. Jayram Reddy & Ors*³⁴ Justice Singhvi and Justice Mukhopadhyaya categorically affirmed that no state having acquired land for public purpose (in this case for golf cum hotel resort) could subsequently transfer the land to private entities for private use; that this amounted to ‘diversification’ of public purpose; and that public purpose cannot be over stretched to legitimize a patently illegal and fraudulent exercise undertaken.

Now in India the public purpose for land acquisition within India is³⁵:

- Acquisition of land for purposes relating to the armed forces of India, national security or defence, police, safety of the people;
- Acquisition of land for railways, highways, ports, power and irrigation purposes for use by government or by government controlled corporations (also known as public sector companies):
- Acquisition of land for planned development or improvement of village or urban sites for residential purpose to weaker sections of society in rural or urban areas.
- Acquisition of land for government administered educational, agricultural, health and research schemes or institutions
- Acquisition of land for persons residing in areas affected by natural calamities;
- Acquisition of land for resettlement of affected people for any of the above government projects
- Acquisition of land by the government for public-private-partnership projects for the production of public goods or the provision of public services
- Acquisition of land for private companies for the production of public goods or provision of public services

Hence, under this Act word public purpose has been comprehensively defined, so that government intervention in acquisition is limited to defence certain development projects only. Except acquisition of land for government including public sector undertaking, an additional security shall require consent of 80 per cent of the project affected families in acquisition of land for private companies or for private-public partnership projects.

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³⁴ AIR 2011 SC 188.

³⁵ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and resettlement Act, 2013.