

# A LEGAL STUDY OF EMERGING DIMENSIONS OF LAND ACQUISITION LAWS IN INDIA

## (ABSTRACT)

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It is a very old and popular statement in Hindi that “*Jhagdhe Ke Teen Jad: Jar, Joru, Jamim*” i.e. there is three causes for the battle i.e. “Wealth, Wife, Land”. Land acquisition is very old issue. Land acquisition had been the core issue of a movie directed by legendry Vimal Roy, “*Do Bigha Zameen*<sup>1</sup>” where a farmer (a role played by Balraj Sahani) denied to give up his land for setting up factory by saying that “*Zameen To Kisan Ki Maa Hoti Hai, Huzoor. Koi Apni Maa Ko Kaise Bech Sakta Hai*”. This movie had depicted how a farmer is associated with his land and its effect on the farmer.

Now, it was year 2006 when the Singur incident happened on the TATA’s Nano Car plant, thereafter in year 2011 Tappal (a village in Aligarh) incident took place where farmers demanded more compensation in lieu of their land. These series of incidents struck my mind to think what is wrong with the land acquisition law which was main bone of contention. Then, I decided to review literature on land acquisition. When I started reviewing of literature on land acquisition, I observed many defects in the Land Acquisition Act, 1894.

After the independence of Nation everyone was charged with the feeling of nationalism and everyone was ready to contribute what they could contribute. The Prime Minister Pt. Nehru (He then) had focused so much on setting up the factories to pace the economy and make a modern India. For the industrilisation land is very essential. Therefore, at the Inauguration of Hirkund Dam in Orissa he said, “*If You Have to Suffer, You Should Suffer in the Interest of the Country*”.<sup>2</sup> The people who lost their land were happy in-spite of losing their land because they thought they contributed in the development of Nation. It is surprisingly true that even today the people who lost their land for big projects like Bahakra Nangal Dam, Hirkund Dam etc. are not 100 % rehabilitated.

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<sup>1</sup> This movie was released in year 1953.

<sup>2</sup> Reported in The Bombay Chronicle, April 12, 1948

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Now what went wrong with the land acquisition that people are not agree to give their land after 68 years and ready to confront with the State? Why people are saying land acquisition as land grabbing? Where, the present Government is working with object of “Make in India”, Smart Cities.

Land is a critical resource-physical, commercial and financial-in any country’s industrial and infrastructure development. It is also a major social and economic asset for any individual, especially in a country like India where a large part of the population depends on it’s as their primary source of livelihood. Possession of land is a mark of respect. If anyone, possess much land, then the common people respect him as prosperous man. In India, land means much more than in any other country. Elsewhere the land is the means of economic production but in India land also means social prestige, social power and right command obedience of the landless, along with the economic production.

The State takes the land with the help of doctrine of Eminent Domain<sup>3</sup>. This doctrine says land belongs to the Sovereign i.e. State. The sovereign power of every state has authority to appropriate for the purpose of public utility lands situated within the limits of its jurisdiction. The principle underlying acquisition by state of private party rests upon the famous maxim *salus populi est supreme lex* that is the welfare of the people or of the public, is the paramount law, and also on the maxim *necessitas publica major est quam privata* which means public necessity is greater than private. The State has to indemnify and equivalent for the injury sustained by the individual. This is based on the maxim *audi alteram partem* that is every subject has a right to be heard before he is deprived of his right to property by the State.

Earlier the right to property was a fundamental right but by 44<sup>th</sup> amendment the status of fundamental right has been taken away, now it is a legal and constitutional right, under Article 300-A.<sup>4</sup>

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<sup>3</sup> Hugo Grotius, credited to give the phrase “eminent domain,” wrote “The property of subjects is under the eminent domain of the State, so that the State or who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for the ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is added to that that when this is done the State is bound to make good the loss to those who lose their property.”

<sup>4</sup> Article 300-A of The Constitution of India, 1950, provides that “no person shall be deprived of his property save by authority of law”. [Inserted by the Constitution (Forty-fourth Amendment) Act, 1978, Sec. 34 (w.e.f. 20-6-1979)]

Land Acquisition Act, 1894 was 118 years old Statute which was not sufficient to deal with the issues arising out of acquisition of land. How a 19<sup>th</sup> century statute can understand the problem of the 21<sup>st</sup> century when there is a gap of one century i.e. 100 years. There was constant demand to repeal this 19<sup>th</sup> century Statute. There was lacunas in these great grand old laws which are as follows:-

- i) There was inadequate definition of public purpose. The public purpose given under the Act was not clear and it is very vague which gave arbitrary powers to government to acquire the land in the name of public purpose.
- ii) The valuation of the compensation under the Land Acquisition Act, 1894 was insufficient. It was very much dissatisfactory which sparked unrest in the acquired land.
- iii) There was no time limit for the payment of compensation. It caused the undue delay which instigated farmers to go on agitation.
- iv) This Act had no provision for the negotiation between the person whose land was sought to be acquired and the state which was looking to acquire the land.
- v) There was no provision for the resettlement of the affected person by the acquisition of the land.
- vi) There was also no provision for the rehabilitation to the affected person by infrastructure projects.
- vii) There was no systematic method to select the proper land for acquisition of land. Normally it happens that the government acquires the multi crop land which creates a great unsatisfactory among the farmers.
- viii) The impugned Act had no provision for livelihood of the farmers who had spent life time in cultivation, such farmers do not have neither enterprises nor knowledge and skill to set up viable business, nor do they have ability to get jobs in other occupations.
- ix) *The Land Acquisition Act 1894* had no provisions for rehabilitation and resettlement which generates a lot of dissatisfaction among the land owners.

## **STATEMENT OF PROBLEM**

Land acquisition is very old concept and law on this issue is more than one century old. Various report<sup>5</sup> and committee<sup>6</sup> had been set up on the problem of land acquisition and its issues. World Bank has issued its guideline on the land acquisition from time to time.

Despite all these laws, amendments, reports research work the present system of land acquisition is still not able to satisfy land owners and policy makers. Present land acquisition system has following lacuna which is required to be tackle.

1. The state is using the concept of 'Eminent Domain' in unguided manner, which helps the State to take multi-crop land. As it was happened in Aligarh, Noida, etc.
2. Farmers are angry at the idea of their land being taken away forcibly for a pittance in the name of developments which does not create jobs for them.
3. The Land Acquisition Act, 1894 did not have transparency provision for participation of land owners in the process of land acquisition. The people can take part actively in the process of land acquisition. They cannot raise their voices strongly before the authority.
4. The process of determination of compensation in the Land Acquisition Act 1894, was too much dissatisfactory. It caused violence protests and agitation, as it was happened in Sigrur and Nandigram.
5. The determination of the market value of the land being acquired is another contention issue. The rate and the method of determination of 'market value' is much far away from actual market value. The assessment of market value

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<sup>5</sup> 10<sup>th</sup> Law Commission's report on the Law of Acquisition and Requisition was submitted on 26<sup>th</sup> September 1958. Justice M.C. Setalvad was the chairman of 10<sup>th</sup> Law Commission. This report contains one hundred ninety pages. 182<sup>th</sup> Law Commission had submitted its report for the Amendment of Section 6 of the Land Acquisition 1894, Act on 07-05-2002. Justice M. Jagannadha Rao was the chairman of this Law Commission. Dr. N.M. Ghatate and T. K. Viswanathan were the other two members. This report contains nineteen pages.

<sup>6</sup> Standing Committee on Rural Development of Fifteenth Lok Sabha had submitted its report on 'The Land Acquisition, Rehabilitation and Resettlement Bill, 2011'. This report was presented to Lok Sabha on 17 May 2012 and laid to Rajya Sabha on 17 May 2012. Mrs. Sumitra Mahajan (now the Speaker of sixteenth Lok Sabha) was the Chairperson of the Standing Committee on Rural. This report was published on 16, May 2012. This is 220 pages report.

is carried out on the basis of registered sale/purchase documents preceding acquisition. These documents deliberately show an amount lower than the actual amount for which land is purchased or sold with a view to reduce tax liability of the parties involved.

6. The farmers are forced to part with their source of living for a pittance. Even those sections who receives better packages are deprived of their job and regular incomes.
7. Farmers who have spent their life on cultivation, find it difficult to switch over to non-agricultural occupants in latter stages of their lives after loosing their farm land. Such farmers have neither enterprise nor knowledge and skill to set up viable business with such meager sums nor they have ability to get jobs in other occupations. This results in destitution, misery, and deprivation.
8. The State has not always stated clearly the purpose of an acquisition. In many cases it has not ensured that the land is used only for the purpose for which it was acquired. The definition of 'public purpose' is very vague it helps the State to acquire the land in unruly manner.
9. The Land Acquisition Act 1894 had no provision for rehabilitation and resettlement for farmers whose land have been acquired. They are led to live in an unhygienic condition of living.
10. The State has acquired so many agricultural lands in the name of public purpose and development, which are still remaining vacant and become barren land. They still have not seen the light of development for which purpose they have been acquired. The Land Acquisition Act, 1894 did not have provision for such unused land.
11. The 'food security' is another challenge before India. The Land Acquisition Act 1894 does not have distinction between agricultural land and non-agricultural land. The food security is directly related to land. This is so true for India because more than 72% of the population still lives in the rural area depending on agricultural produce.