

Eminent Domain, Right to Property and the LARR 2013

2.1 EMINENT DOMAIN AND THE INDIAN TRADITION

The Indian state has the power of ‘Eminent Domain’ which has been defined as “The power to take private property for public use by state, following the payment of just compensation to the owner of the property” (legal-dictionary.thefreedictionary.com).

“The power of eminent domain can be traced back to the Roman Law”, says Leeds S.L. (2005, p. 53) and it is noted that the public use limitation on governmental taking dates back to the Twelve Tables of Roman Law. Much later, the power of eminent domain was recognized in England in 1215 A.D. in the Article 39 of Magna Carta and the Chapter 28 required that immediate cash payment be made for expropriations. By seventeenth century, compensation was a standard practice in England (law.jrank.org and James W. Ely (1992, p. 16)).

Hugo Grotius first used and defined the word eminent domain in 1625 (Beverley H. 2012, p. 14). Grotius argued that the property of the subjects is under the eminent domain of the state i.e. state may use, alienate or even destroy the property. But this had to be done for public utility and the state had to ‘make good the loss’ to those who lose their property. In 1789, France officially recognized a property owner’s right to compensation for taken property. Soon afterwards in 1791, the US passed the Bill of Rights in which it acknowledged the eminent domain in the Fifth Amendment to the Constitution, which states “.....nor shall private property be taken for public use, without just compensation”

(www.billofrightsinstitute.org). Hence as we can discern, there were two parts to eminent domain viz. the property has to be taken for public use and that just compensation had to be given.

In India, the power of eminent domain of the United States of America or the Law of Compensation of England, stands at par with the Land Acquisition Act (LAA) 1894 (Beverley 2012, p. 4) which was made applicable in the colonial times by the British. However, there were many precursors to this Act viz. the Act of 1824 for Bengal Provinces; various Acts passed in 1839, 1852 for construction of public buildings in the cities of Bombay and Madras etc. However, LAA 1894 superseded all the earlier Acts and was comprehensive in nature (Beverley 2012, p. 4).

Since the LAA 1894 has colonial origins, it may be interesting to examine the situation in the pre-colonial times, to see the Indian tradition with respect to land acquisition. Thus we propose to examine the questions as to who owned land and did eminent domain exist in some form, in the pre-colonial times? The study of land ownership in India in the pre-colonial period needs to start with the understanding that land was largely abundant in India in those times. Once we internalize this very relevant and starkly ‘different- from- now’ fact, it becomes easier to comprehend the situation. Further, the land system was largely similar though there were some different features over various parts of India- a somewhat over-simplified statement- it is none-the-less a true statement. Who owned the land in the pre-colonial period has been a contentious issue and the jury is still out on it.

However to simplify, the ancient Hindu law (Manu) states that the cultivated land is the property of the one who clears it and tills it. This tenet was followed by whoever was the king in various regions in India, till the advent of the British (Kulkarni 1996, p. 52). Habib I. (1963, pp. 115–116) opines that the medieval rulers were more concerned with the cultivation of land rather than its ownership. Additionally, he (1963, pp. 111–126) plainly rules out communal ownership of land and clearly states that peasants’ right to land was his individual right.

Focusing on Western Maharashtra (or Deccan as it was called then), where Maan village is located we learn from Kulkarni (1996, p. 52), who bases his opinion on the village records, that in the seventeenth and eighteenth centuries “one finds that the ownership of the entire village land was neither vested in the king, nor the community, but in the individual who agreed to cultivate it as per the customary law of land.” However, and naturally, the king had the right to levy and collect taxes.

Additionally he states, “...., the individual property rights in land were recognized, and neither the Muslim nor the Maratha rulers claimed absolute ownership of the entire land in their territories” (1996, p. 54). Thus both Habib and Kulkarni refute Engels’s contention (made in 1853 in a letter to Marx) that ‘the key to the whole East is the absence of private property in land’ (Marx 1943, p. 3).

Let us now imagine a situation in which British never colonized India. Using this counterfactual, we could visualize what could have happened to land acquisitions if the colonial disruption had not occurred. One important feature of pre-colonial rule in India was that the king/state did not engage much in ‘developmental’ activities like building of roads, dams etc. i.e. the public goods accessible at that time. By and large, this was true not only of India, but also for most of Europe too for the period before 17th and 18th centuries. (Thus one of the reasons for rising use of eminent domain seems to be the developmental activities that the state started to increasingly undertake after 17th and 18th centuries i.e. the change in the perceived role of the state and changes in technology that made railways, electricity etc. available.) Additionally, land was abundantly available in India in this period. How would have an undisrupted Indian rule in India responded to developmental challenges, in the context of land acquisition? To answer this question one could take help of some examples. In the Maratha–Peshwa period (we take this period because Maan was under these regimes), there is evidence that some bunds were built. In this kind of a situation, the beneficiaries had to take the responsibility of half the cost of construction and the remaining half was contributed by the king. However, in such cases land did not pose any problems, mainly because land was abundant. Hence the kind of situation that we witness, to a certain extent during the British rule, and increasingly in the post-Independence period, i.e. the state wanting to acquire land while the owners not wanting to sell it, did not arise in India in the pre-colonial times. But interestingly, if agriculture suffered due to movement of the troops or due to encampment of the army, then the king had to compensate (called ‘*paimalli*’ i.e. whatever is trodden by feet) the farmers. Thus, if the damage was caused by the king, the idea of making losses good was very much part of the Indian convention. Pre-colonial history also shows that the kings were very sensitive to the requirements of the farmers and they very, very rarely ever squeezed the farmers. Thus we could surmise that if colonial break had not occurred then probably something similar to eminent domain would

have occurred in India, at the time when economic development was embarked upon. We can imagine that if the ‘land- for- development’ or for public purpose had been required, and if land had not be easily forthcoming (due to scarcity), the king would have had to pass something similar to eminent domain where in compensation would have had to be paid. We could even surmise that the state would have been extremely considerate of the farmers losing land as it was in case of ‘*paimailli*’ (based on discussions with Prof. Sumitra Kulkarni, Dept. of History, Savitribai Phule Pune University).

2.2 EMINENT DOMAIN IN THE COLONIAL PERIOD: THE CASE OF MULSHI SATYAGRAHA

In colonial India, passing a law like LAA 1894 was the need of the hour when the state’s developmental activities (albeit for its own benefit) rose and land was required for those activities. It was difficult to find rigorous analysis, which is economics centric, of how this Act was implemented in the colonial period, how much land was acquired, what were the norms in the payment of the compensation, to what extent oppression was used etc. One can suppose that it is a topic for a separate study and a researcher would have to work with the primary sources and give answers to these questions. However, what we could find is a political history of the first protest movement. It is a nothing but serendipity that ‘the first recorded organized struggle against (forced) displacement’ (Shah Ghanshyam 2004, p. 12) occurred in Mulshi village which belongs to Mulshi taluka and Mann village also belongs to Mulshi taluka (and both belong to Pune district). We now look into the Mulshi satyagraha as historical forays surely enrich our understanding of the present. The succeeding paragraphs are based on Vora (2009).

As the World War I came to an end, there was a change in the colonial policy with respect to industrialization. The British government felt the need to industrialize India for military and strategic reasons. Weakened by the War, the government was also seeking the support of Indian businessmen. Thus the government started to give them a number of concessions and facilities. Consequently, the need for electricity for industrialization arose and in Maharashtra it was the hydro-electric power that turned out to be the preferred source of energy. As the Development Economics literature tells us, electricity is very essential for

the process of industrialization, a major input, and in a backward economy the state needs to play a role in augmenting its supply. The government of Bombay sanctioned the Mulshi scheme of Tata Power Company on 24 March 1919. The people of Mulshi were served notices in June 1919 under the Clause 4 of the LAA 1894. Thus the state played a role in acquisition of land using eminent domain and the private company Tatas were to set up the electricity plant. This met with resistance and came to be known as ‘Mulshi satyagraha’.

Maharashtra had experienced some peasant movements since 1870 to fight for rights related to famine, debts, and revenue. However, this was the first time that anyone in India took up arms against ‘displacement’. The Mulshi *satyagraha* was led in 1921 by Senapati Bapat, against the forcible acquisition of land from 54 villages for building of Mulshi dam by Tata Hydrolic Project. The agitation went on till 1924 and was a failure in the sense that the dam was ultimately built. In this *satyagraha* the dam affected people and the leaders of the Indian National Congress came together. However, it seems that right from the beginning the Congress was a divided house. The moderates in the Congress party opposed the agitations because they supported industrialization. On the other hand, the ‘changers’ within the party extended limited support (Vora 2009, p. 7). Vora (2009, p. 139) argues that one of the important reasons for the failure of the *satyagraha* can be attributed to the ambiguity in Gandhi’s approach towards it. Gandhi wished that LAA, 1894 should not be used, as this kind of compulsory acquisition was not part of Indian civilization and was ‘satanic’. He rather wished for a conciliation between the farmers and Tatas (Gandhi 2015 p. 36). This is somewhat surprising as one is aware that Gandhi condemned industrialization and western civilization unequivocally. We see two explanations to Gandhi’s reluctance to support the *satyagraha* wholeheartedly and, here, we put a fascinating story in a nutshell. The first reason seems to be that Gandhi had ties with the Gujarati and Parsi communities of Bombay which went back many years and were very deep—Gandhi himself was a Gujarati. Ratan Tata had at the request of Gopal Krishna Gokhale contributed Rs.25,000/- towards Gandhi’s struggle in S. Africa. It is also well known that the Gujarati and Parsi communities were the major contributors to Congress’s funds. Had the struggle been against the government of Bombay, Gandhi may have extended active support but it was against a Parsi company i.e. the Tatas. Secondly, at that time i.e. just after Lokmanya Tilak’s death in 1920, the politics of Maharashtra

was unfolding itself. Gandhi was trying to find out who all were supporting him, others who would go against him; and was trying to capture the political space. So, ‘..... he could not support the satyagraha because that would have worked against his immediate political objectives’ (Vora 2009, p. 146). That, M.R Jayakar, one of the leaders in the *satyagraha* commented that Gandhi gave the Mulshi satyagraha only verbal support, is significant here (Voro 2009, p. 144). Ultimately the farmers accepted cash compensation and the agitation came to an end.

So, it was the links with the capitalists and the political considerations that seem to have affected Gandhi in rather ignoring this *satyagraha*. Add to this another angle viz. is that of caste. Right from the beginning, the leaders of the non-Brahmin peasant castes opposed the struggle and the movement was led by Brahmins. So it assumed the form of conflict between the Brahmins and the non-Brahmins (Vora 2009, p. 7).

Intriguingly, what we see here is a heady combination of all the major factors that define policy-making in India even now viz. links with the capitalists, electoral considerations (which at that time could be labeled as ‘need to dominate the political space’) and the caste calculations. However, there is one more factor that should be added which is that of speculation in real estate. The difference seems to be that currently real estate interests are also playing a very important role which was completely absent in the colonial period.

Apparently, it seems that the rights of farmers were not only ignored by the British but also by the Indian National Congress under the leadership of Gandhi. Possibly, we could hypothesize here that if Gandhi had supported Mulshi agitation and had intervened in the question of compensation and resettlement, then possibly in the post-Independence period the state would have had to follow that precedent and the kind of oppression that was unleashed in the post-Independence period may have been somewhat difficult.

2.3 EMINENT DOMAIN IN THE POST-INDEPENDENCE PERIOD AND THE RIGHT TO PROPERTY

India got Independence in 1947 and embarked upon a path of development, consequently one can see that demand for non-agricultural land increased manifold. Also due to the increasing population, the pressure on land was much more in the post-Independence period. Further, due

to the developmental activities undertaken by the State mainly under the Five Year Plans the demand for land was exponential. With this kind of a background, it is not surprising that LAA 1894 was continued after Independence. One can get a clue about the thinking of the leaders and the policy makers in the statement made by Nehru in 1948 to the people affected by Hirakud dam viz. 'If you are to suffer, you should suffer in the interest of the country' (Vora 2009, p. 10). There were many dams built in the period starting from the fifties e.g. Pong dam in Himachal Pradesh (1970), Chandil dam in Bihar (1978), Bhakra Nangal (Punjab), Tehri dam (1976) etc. There were agitations in most of these. But, as Vora (2009, p. 11) points out "None of these agitations proved successful either in stopping the project or getting a good resettlement package, and none lasted more than one or two years".

A watershed moment, however came with the Narmada Bachao Andolan (NBA), an anti-dam movement started by Medha Patkar and her colleagues against the Sardar Sarovar Project on the river Narmada in the late eighties. It is the achievement of this movement that it put the issue of compensation on the world map and since then the World Bank, government of India have had to integrate the costs of displacement, resettlement etc. in the total costs of a project.

We can discern that, in the context of land acquisition in India there have been two phases (Sathe 2011). I call the first phase the 'traditional' phase which starts in the early fifties and continues till the early nineties i.e. till opening up of the economy. The second phase starts with the opening up of the economy and continues till the survey was done in Maan village in 2013 (and also as this is being written). In the traditional phase, the population pressure on the land was low (in any case compared to the next phase); there was little activism on the part of the farmers, with hardly any non-governmental organizations (NGOs)/civil society supporting them. In this period, much of the land was acquired by government for its own use e.g. for dams, roads, railways etc. Many of the state governments also acquired land for industrial development. For example, the Gujarat Industrial Development Corporation was set up in 1962 with the objective of accelerating industrialization in the state. In Karnataka, the Karnataka Industrial Areas Development Board was set up in 1962, with a similar objective. In most of the cases, the residents were evacuated using force and hardly any compensation was paid to them. What was, *de facto*, demanded was a sacrifice from the displaced for

the larger good. Whatever agitations took place were extremely local in nature and were ruthlessly crushed.

In the second phase, i.e. the civil society phase, though the legal framework remained, by and large the same, many important changes occurred. First, the pressure on the agricultural land became much more as land holdings became smaller and smaller. Second, the mobilization of the farmers became much greater. Farmers who stand to lose their land are much more vociferous, organized, aware of their rights and willing to take up a fight. In this they have been assisted by the NGOs, civil society organizations, the media and the opposition parties. There have been many agitations against acquisitions in this period and many of them have been successful too. In the traditional phase it was easy to displace the farmer and acquire land; in the second phase, acquisition can be seen to be having a range of possible outcomes—sometimes easy, other times quite difficult, and at times, as the examples of Nandigram and Singur show, quite impossible to acquire land (Sathe 2011, p. 153). This is also a phase where the government came up with detailed compensation packages and the compensation paid to the farmer increased manifold. In many cases, the farmers were happy with the package that they got. India is a democracy, albeit a flawed one and in this second phase, one can see that the government has increasingly responded in a positive manner to the agitations against land acquisitions.

It needs to be pointed out at this stage that the power of eminent domain and the Right to Property are inextricably related. How these two get inter-wined at a point in time and how different agents like the State, the farmers, the zamindars (i.e. the big landlords from whom land was acquired for purposes of re-distribution), the industrialists and also the Supreme Court respond to it, is not immune from the overall environment within which the events unfold themselves. As an example from a different field, we could look at the Supreme Court's changing stance towards say the labour issues, bandhs in the pre and post liberalization phases.

The law of any land is expected to reflect, by and large, the ideology/beliefs held by the people and these are susceptible to change. In the context of land, I will now try to put forth a very complicated story in a non-legal manner. To begin with, the Constituent Assembly did not envision the country as a socialist country. Hence the term was not used in the Constitution and the Right to Property was given the place of a Fundamental Right. This is pertinent because in the communist-socialist

regimes private property is an anathema and so does not exist at all; and alternatively, all property belongs to the State. However, this right was not an absolute right as the State could take the property for public purpose and after compensation had been paid (i.e. the power of eminent domain). As the egalitarian agenda of the government took ascendance i.e. from 1951 onwards there were many conflicts, specifically between the Right to Property and the government's desire to redistribute land from the zamindars to the tiller/tenant. Nehru, especially, had no sympathy for the zamindars who were taken to be responsible for much of the plight of the farmers. The tension between the two was resolved by the legislature making amendments to the constitution by which the Right to Property got watered down (starting with the 1st Amendment in 1951). The judiciary, on the other hand, tried to protect the nature of the Right to Property as it was envisaged by the makers of the Constitution.

India started to become increasingly socialistic under the prime-ministership of Mrs. Indira Gandhi. Most of the economists would agree that the Indian economy was not really overtly inward-looking and rigidly controlled till the late sixties. In 1969, Mrs. Gandhi nationalized the Banks and this was possible under the 25th Amendment to the Constitution passed in 1971 (under which the word, 'compensation' was substituted by 'amount'). Even after this Amendment, the Supreme Court tried to defend the Right to Property and in the *Kesavananda Bharati vs the State of Kerala* judgment in 1973 held that the amount which was fixed by Legislature could not be arbitrary. Later under the 42nd Amendment, under the aegis of Mrs. Gandhi the word 'socialist' was put in the Preamble of India's Constitution, which came into effect from Jan. 1977. This was also the period when the economic policies become increasingly control-driven and autarkic. Mrs. Gandhi lost the elections in March 1977 and the Janata Party came to power which continued with the radicalization of policies. The Janata Party government, under the advice of Mr. Shanti Bhushan (who later on was one of the founder members of the Aam Admi Party which was launched in Nov. 2012), the then Law Minister, changed the status of the Right to Property as a Fundamental Right to a Constitutional Right under the 44th Amendment with effect from 1979. This meant that the property loser could approach the High Court and not Supreme Court (which gave its judgment much more speedily) in case of a conflict.

However, under 44th Amendment there were two exceptions, one being relevant to us. This exception states that if the State seeks to acquire land and if that land is held by the person under his personal cultivation and such land is under the ceiling limit imposed at that time, then the State must pay compensation at market value for such land. This means that, though, over the years, on the whole the Right to Property has become very restricted (Basu 2008); with respect to land acquisition for public purpose from the farmers, the government needs to pay compensation at market value.

In this matter, there are two conflicts that one can see. The first one is between the Judiciary and the Legislature; and the second one is between the Fundamental Rights and the Directive Principles (which asks the State to promote economic equality i.e. abolition of zamindari) embodied in the Constitution. Nehru emphasized that there was “an inherent contradiction between the fundamental rights and the Directive Principles of State Policy.... It is up to the Parliament to remove this contradiction and make the Fundamental Rights subserve the Directive Principles of State Policy” (Lok Sabha Debates, 14th March 1955, in Basu 2008, p. 57).

Further we can also note that it was the eminent domain and watering down of Right to Property that led to both i.e. land redistribution from the zamindars to the tillers (to whatever extent it did happen in various states) and the land acquisition for developmental purposes from who ever owned that land be they small or big farmers. Especially in the traditional phase of acquisition, both were not paid any reasonable compensation i.e. sacrifice was expected from both. In the later phase, i.e. civil society phase, the redistribution of land is not even on the agenda of any government (whichever party may be in power) while land acquisition is occurring at unprecedented levels. The compensation package to the farmers has also been increasing in the civil society phase. But even then, on one hand due to a very strong power of eminent domain and on the other hand due to the weakening of the Right to Property, the vulnerability of the land-loser has increased, in institutional terms. Possibly it is the correct time to discuss some institutional changes.

What I am proposing is that if the State wants to have a strong power of eminent domain, then this needs to be balanced with a strong Right to Property. Otherwise, the State will have draconian rights to acquire without paying any reasonable compensation. At ground level it is possible that due to the protest movements and due to the democracy which

exists in India, the State may be differentially repressive (i.e. say could be fair in Haryana or Maharashtra; but very brutal and oppressive in Orissa with respect to tribal lands). But for the land-losers to make their demands in a more secure environment it seems that a change in the status of the Right to Property is essential. The senior advocate Harish Salve on behalf of the petitioner Sanjiv Kumar Agarwal of NGO 'Good Governance India Foundation' filed a PIL petition in July 2007. In this petition, it was argued that the 'Right to Property' was shifted from a Fundamental Right to a Constitutional Right for a specific purpose, i.e. redistributing the land from zamindars to the landless peasants. Since this purpose has been achieved, the Right should be restored back as a Fundamental Right. It was further argued that this change in status is now being used against the small farmer as his land is being usurped for SEZs etc. In Feb 2008 the Supreme Court, after hearing the response, issued a notice to the Central Government asking for its response to this petition. However, in Oct. 2010 the Supreme Court dismissed the PIL petition (based on various newspaper reports).

The United States of America has eminent domain but it is balanced with a very strong Right to Property, which ensures that the land-loser is satisfactorily compensated. Though over the years, the US Supreme Court has expanded the meaning of eminent domain, even allowing taking of land for private purposes if it serves public good; the norms for compensation being very strong, the inevitable pain caused to the land-loser is mitigated (Sathe 2015a, b, c). In India too, as we are moving towards a more capitalistic path, the Right to Property needs to be strengthened, which will feed into better compensation package.

Hence there is a need for many institutional changes. The high demand for land for non-agricultural purposes is both a result and a cause for higher rate of growth. In this changed environment the time has come to change the status of the Right to Property. This change will have an impact on the implementation of the LARR 2013 (about which we talk more specifically below).

The Parliament has, of course, passed the LARR 2013 with amendments in 2014. But for this law to be really effective the overall legal environment needs to be changed.

2.4 OBJECTIONS TO EMINENT DOMAIN

Due to the colonial origins of the LAA 1894, it has been claimed by some that “The doctrine of eminent domain has its origins in India in pre-constitutional colonial British common law” and further that “...the doctrine of eminent domain has extra-constitutional and pre-democratic moorings in India” (Sampat 2013, p. 41). These statements seem to be alluding that there is something not kosher about eminent domain in India. The fact that a particular law has been passed by the British in the colonial times, in itself, need not be a reason to reject it. In any case, most of the Indian laws currently operative are based on the laws passed by the British (including the anti-sati law passed in 1829). Most laws need to be reviewed—as circumstances change—and that is true of LAA 1894 too.

Authors like Ramanathan (2009, p. 137) have argued for the ‘dislodging’ of the doctrine of eminent domain. She thinks this is necessary because, first of all, eminent domain recognizes the rights of ownership but not of use; thereby leaving out the landless, artisans, women. Secondly, because the power is being ruthlessly used for achieving neo-liberal ends. Thirdly, because “dislodging eminent domain would be the first step towards ‘return to equity, distributive justice and limiting of the extraordinary and absolute power that the doctrine has been allowed to vest in the State’” (p. 138). It may be pertinent at this point to look at international experience in this regard. Most of the countries, be they developed or developing, have some form of eminent domain which allows the state to acquire land after paying compensation. The demand for withdrawal of eminent domain seems to be not very thought out on this background. While the fact that most of the economies have eminent domain cannot be a clinching argument in its favour; the fact should at least make us pause and think. Paraphrasing Eagleton (1991, p. 12) if a doctrine is sufficiently pervasive and durable, then we can assume that “it encodes some genuine needs and desires”. From Ramanathan’s sketchy arguments, it is not clear how doing away with eminent domain would help the cause of the marginalized? Ultimately how this eminent domain is implemented and to what extent is the state responsive to its people’s demands would be dependent upon the kind of state one has. If it is fully responsive, democratic state then the trouble to the land-loser and ‘others’ may be minimum. Otherwise this kind of a law could be very oppressive. It may be better to promote satisfactory compensation

package rather than ask for withdrawal of the law, as such. Even in the most capitalist of a nation i.e. the US, where the Right to Property is fiercely defended, the state has the power of eminent domain. So one can definitely say that unequivocal condemnation of the colonial power may not be fair as, as we have seen, even the Indian National Congress was divided over the issue, which only brings into relief the complicated nature of this matter.

2.5 THE LARR 2013 AND AFTER

Land is a State subject and land acquisition is a Concurrent subject under Indian Constitution (Ramesh and Khan 2015, p. 5), which means that the States can and did pass laws with respect to land acquisition. The Central law with respect to land acquisition had been the Land Acquisition Act i.e. LAA 1894 which continued to be operative after the passage of the new Constitution in 1949 (Ramesh and Khan 2015, p. 5). This Law was amended in 1962, 1967 and in 1984—the last amendment being the most significant one (Ramesh and Khan 2015, pp. 3, 9). But over a period of time, most of the states had passed their own laws and LAA 1894 was not being used in any real sense of the term. There were different ways and methods/different models/different laws of their own—through which the states were acquiring land.

Then in Sep. 2013 the UPA government passed the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, known as the LARR 2013 and it became effective from 1 Jan. 2014. After a debate of almost 15 hours in which over 60 members took part, the Parliament gave its thumping approval to the law. The BJP, which was in opposition then suggested some amendments (which were accepted), also supported this law. The passage of this law was hailed as a momentous change as the LAA, 1894 had been finally repealed (Ramesh and Khan 2015, p. vii).

In May 2014 elections, the National Democratic Alliance (NDA) got a majority in Lok Sabha and formed the government. The NDA government made certain amendments to the act and an ordinance was promulgated in Dec. 2014. In Sathe (2015a, b, c, pp. 90–95), I have compared the LARR 2013 with the amendments. Later, a bill giving effect to these amendments (with some modifications) was approved by the Lok Sabha in March 2015 but was not put to vote in the Rajya Sabha. This was then promulgated for the second time as an ordinance

in April 2015. Since the ordinance was to lapse in early July 2015, on 30 May 2015 the land acquisition (amendment) bill was promulgated for the third time (Sathe 2015a, b, c, p. 90). On 31 August 2015 the ordinance was to lapse but it was not promulgated again and it lapsed. The government had the option to get it passed in the Rajya Sabha. But fearing lack of support in the Rajya Sabha and possibly being embarrassed about promulgating it for the fourth time, the Government allowed it to lapse. There were also political compulsions i.e. it was believed at that time that ahead of the Bihar Assembly elections the BJP did not want to be seen as anti-farmer. On 13 May, 2015 there was a 30 member Joint Parliamentary Committee headed by Mr. S.S. Ahluwalia that was set up, to examine the issue.

However even before the ordinance lapsed, Mr. Arun Jaitley had opined that the states cannot wait indefinitely for a consensus to emerge and hence, they should bring their own land bill and push development (*Indian Express*, 16 July 2015). It has also been argued that the states are more experienced on land acquisition and must be allowed their own laws (Sathe, 24 July 2015) and that state-centric strategy on land acquisition would permit a more nuanced approach (Kumar Rajiv, August 2015). As events unfolded, Tamil Nadu moved ahead by amending the LARR 2013 Act by inserting a new section i.e. Section 105 that exempts land acquisition for industrial purposes and highways from the provisions of the Center's LARR 2013 (*Indian Express* 31 October 2015). It was also reported that Maharashtra, Assam and Karnataka are keen on changing their law, but it had not happened at the time of writing this.

On 8 July 2016, the *Indian Express* reported that the government is contemplating withdrawal of the LARR 2013 (Amendment) Bill during the monsoon session of the Parliament starting July 18, 2016. It was also reported that the Joint Committee had decided with consensus to restore most of the provisions of the earlier land acquisition Act; that is, it had rejected the amendments proposed by the BJP government. In the same news item it was reported that the Home Minister Mr. Rajnath Singh was of the view that the amendments were not required since the states had been asked to come up with their own versions of land acquisitions laws and many had already done that.

So, all in all it seems that at the center the LARR 2013 would remain and the states would be allowed to have their own laws. Further it may be noted at this stage that the Article 254(2) of the Constitution makes room for states to pass legislation that does not conform with the Union

Law on Concurrent list subject—such as land acquisition- as long as such legislation is then approved by the President (Editorial, *Indian Express*, 17 July 2015).

Thus, in a way it has become irrelevant to discuss the LARR 2013. In any case in LARR 2013, Section 107 says that the states are free to enact their own laws to enhance or add to the compensation package, and R&R. So, henceforth it may be more pertinent to discuss the appropriate state law and what kind of changes have occurred in various state laws. Also the various models which different states have developed like land pooling developed by bifurcated Andhra Pradesh for its capital Amravati need to be the focus of discussion in the future.

2.6 ISSUES IN LAND ACQUISITION LAW

There seem to be basically three main issues with which any land acquisition law needs to grapple with. The three issues are consent, public purpose and compensation.

On 21 Aug. 2015 on the TV show Walk the Talk, Arvind Panagaria, Vice Chairman, Niti Aayog, made it clear that a law is required when it becomes necessary to acquire without consent. If a farmer is willing to sell, then no power of eminent domain is required. It is when he is not willing to sell that the state needs the law empowering it to acquire the land. However, most laws have the consent clause like LARR 2013 or the MIDC Act in Maharashtra through which land is acquired for industrial purposes (as we shall see later). But this clause is not binding. So, usually such clause is put in with the idea of ‘taking people with you’. However, the percentage of population that should consent can be different for different laws; also different for different projects. But, it needs to be comprehended that ultimately the state has to power to acquire even if land losers do not give their consent.

This forcible taking of land is justified on the grounds that the land is being taken for ‘public purpose’. The definition of public purpose has got expanded over a period of time. We see that LARR 2013 has expanded the definition of public purpose to include projects for sports, tourism also; while the proposed Amendments wanted to expand it further (Sathe 2015a, b, c, p. 91). As the states are allowed to make their own laws they can be expected to broaden it even more.

However, even when the court has upheld the right of the state to acquire a certain property, it is possible that the legislature overtakes the

judgment. In the case of *Kelo vs. New London* in the US the Supreme Court upheld the state's right to acquire a certain property. "Yet there was a hue and cry in several states, and legislation was advanced to overturn the judgment" say Bhagwati J and Panagaria A (2012, p. 157). This can happen in India too. Hence, one agrees when it is stated that "Ultimately, the decision on what is legitimate social purpose for acquiring has to be democratically determined" (Bhagwati and Panagaria 2012, p. 157). The need for a consensus to develop between the various stakeholders seems overriding in such kind of a situation.

Compensation is the third issue. We explicate more on this later, but we can point out now that as compensation rises, chances of consent rising are aggravated, so these two are linked in some way. Ultimately, if the land is going to be acquired (either with consent or without) then the land loser would have to be paid 'acceptable' compensation. Acceptable is when the loser does not agitate nor does he go to the court. To put it in blunt words, it does not matter for the land loser if his/her land is going to be acquired for a dam, an industry or a golf course. He should not be expected to sacrifice for any of these reasons. What he is really interested in is what does he get in return and is that acceptable to him. In this study, besides other things we also try to see what the land loser finds acceptable.

With this backdrop, we try to focus on some history of land acquisition in Pune district and then introduce the Maan village.

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