

PUBLIC PURPOSE - AN ILLUSION?

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The right to property has consistently been a source of contention among academic scholars and judiciaries. The right to property first being a fundamental right, became the only fundamental right to ever be repealed by the 44th Amendment and making it a Constitutional Right under Article 300 A¹, which declares that “no person shall be deprived of their property saved by authority of law.” Hugo Grotius first articulated the doctrine of eminent domain, which entails the inherent power of the state to acquire property for public purposes in exchange for compensation.

The requirement of compensation, despite not being expressly stated in Article 300 A, was deduced by the court in *K.T. Plantation Pvt. Ltd v. State of Karnataka*² and was inherent in its history. The requirement of compensation is innate in the principle of eminent domain. The Act that governs such doctrine is the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (hereinafter referred to as LARR), which replaced the Land Acquisition Act, of 1894. Mr. Madhuresh Kumar in a recent petition stated that “The 2013 law came about after a lot of struggles. It was not the best law, but it was better than 1894³.” The formation of the new Act and the new Article might appear to be appealing on the outside but upon closer inspection, they are severely plagued with fallacies-the maximum shortcomings being found in public purpose.

Public purpose has been defined in many ways in the past and with it being a requirement for acquisition, it is necessary for it to be explicitly stated and not ambiguously. It is further categorised under S2⁴ with it effectively encompassing all kinds of undertakings. The government has provided a comprehensive list of activities for which it can acquire land⁵. Moreover, there are far more exemptions under the ordinance than there are under the legislation. This has exacerbated the arbitrariness of the government regarding acquisitions as

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¹ The Constitution of India, Art. 300A.

² *K.T. Plantation Pvt. Ltd v. State of Karnataka* (2011) 9 SCC 1, 121.

³ Nihar Gokhale, “*In Crucial Verdict, Supreme Court Allows TN to Acquire Land Using State Laws, Not LARR*” <https://thewire.in/law/supreme-court-tamil-nadu-land-acquisition> <accessed on 12 April 2023>.

⁴ Land Acquisition, Rehabilitation, and Resettlement Act, 2013, S2.

⁵ Dhanmanjiri Sathe, “*Land Acquisition Act and the Ordinance: Some Issues.*” *Economic and Political Weekly*, vol. 50, no. 26/27, 2015, pp. 91. <http://www.jstor.org/stable/24482562> <accessed on 13 April 2023>.

also conferred by Namita Wahi⁶. The term public purpose formerly referred to the government's procurement of assets, but this has evolved into a public-private partnership and private corporations that are also not precisely defined⁷. There have been numerous instances in which land purchased by the government for ostensibly public purposes has been transferred to private corporations for private interests. The significant Navi Mumbai Airport acquisition by CIDCO was sold to Adani in 2022⁸. The reason for this acquisition was to alleviate the enormously escalating strain on the original Chhatrapati Shivaji Maharaj International Airport, which was an absurd reason to acquire land and evict people. The aim for selling this to Adani was for the construction of the airport and for the booming real estate business which falls out of the realm of public purpose, while the rehabilitation of the affected families remained unfinished. The Bombay High Court restrained the authorities from acquiring such land since the government acquired the land under the repealed Land Acquisition Act to deprive the proprietors of approximately four times the value of the land⁹. The definition of public purpose can be amended as seen in S69¹⁰ which allows modifying the purpose for which the acquisition took place¹¹. S70¹² allows the land to be acquired by private companies or individuals in the name of public purpose¹³. An example is when the government-acquired land was sold to SEZ developers in the name of economic growth¹⁴. Thus, under the garb of "public purpose," the government has the authority to incorporate a vast spectrum of purposes often including private interests which should not be the case.

Moving to the aspect of displacement that is often disregarded in the name of public purpose, in *Narmada Bachao Andolan vs The State Of Madhya Pradesh*¹⁵ tens of thousands of people

⁶ Tom Allen, "The Revival of the Right to Property in India" Asian Journal of Comparative Law, vol. 10, no. 1, 2015, pp. 51.

⁷ Ibid.

⁸ "All You Need to Know About Navi Mumbai International Airport" (The Marathon, 29 July 2022) <https://marathon.in/infrastructure/navi-mumbai-airport/> <accessed on 14 April 2023>.

⁹ "HC restrains authorities from taking possession of land acquired for Navi Mumbai airport" (The Hindustan Times, 28 December 2022.) <https://www.hindustantimes.com/cities/mumbai-news/hc-restrains-authorities-from-taking-possession-of-land-acquired-for-navi-mumbai-airport-101672170103346.html> <accessed on 15 April 2023>.

¹⁰ Land Acquisition, Rehabilitation, and Resettlement Bill, 2012, S69.

¹¹ Ram Singh. "Inefficiency and Abuse of Compulsory Land Acquisition: An Enquiry into the Way Forward." Economic and Political Weekly, vol. 47, no. 19, 2012, pp. 52. <http://www.jstor.org/stable/23214976> <accessed on 13 April 2023>.

¹² Land Acquisition, Rehabilitation, and Resettlement Bill, 2012, S70.

¹³ Ibid (n.11).

¹⁴ Preeti Sampat. "Limits to Absolute Power: Eminent Domain and the Right to Land in India." Economic and Political Weekly, vol. 48, no. 19, 2013, pp. 45-46. <http://www.jstor.org/stable/23527343> <accessed on 14 April 2023>.

¹⁵ *Narmada Bachao Andolan v. The State Of Madhya Pradesh* (2000) 10 S.C.C. 664, pp. 36.

and affected families were displaced and lost their livelihood. The court allowed such acquisition without considering the displacement of the families and tribals¹⁶. Similarly, in *Almitra H. Patel v. Union of India*¹⁷, the court issued orders for the removal of many of Delhi's slum dwellers devoid of adequate substitute housing¹⁸. Furthermore, there have been people's movements against the Reliance SEZ in Navi Mumbai, Sampeta in Andhra Pradesh, Singur and Nandigram in West Bengal¹⁹. Inspiration can be drawn from the case of *Radovici and Stanescu v. Romania*²⁰ wherein the court stated that the state could not require the property owners to bear the burden. In John Locke's perspective²¹, property rests upon natural law and it must be regulated as per law and consent. When evaluating such a definition, the courts do not consider the effect on the displacement of the affected families. Therefore, the public purpose must be narrowed.

A Social Impact Assessment (hereinafter referred to as SIA) is conducted to ascertain whether an acquisition was for a public purpose. This appeared to be a positive development but, it was deceptive in nature. The authority for conducting the SIA along with the local government will be the acquiring government itself, thus, showing the arbitrary nature of government powers. Given how extensively the term "public purpose" has been used, it is unlikely that any SIA will designate a purpose as "not public."²² Even if the SIA rejects a proposal, the government has the power to neglect it by providing a written justification. Hence, this makes the SIA seem like a farce. It has gone to the extent that the apex Court does not even consider SIA a major requirement. In the case of *G Mohan Rao v. State of Tamil Nadu*²³, the three-judge bench of A.M. Khanwilkar, Dinesh Maheshwari, and Aniruddha Bose allowed the Act to circumvent the LARR as the new Act was implemented which omitted the requirement of SIA and consent²⁴. Even the Tamil Nadu government made an attempt in the same year, but the Madras

¹⁶ Tom Allen, "The Revival of the Right to Property in India." *Asian Journal of Comparative Law*, vol. 10, no. 1, 2015, pp. 49.

¹⁷ *Almitra H. Patel v. Union of India* AIR 2000 SC 1726.

¹⁸ Tom Allen, "The Revival of the Right to Property in India." *Asian Journal of Comparative Law*, vol. 10, no. 1, 2015, pp. 49.

¹⁹ Santosh Verma. "Subverting the Land Acquisition Act, 2013." *Economic and Political Weekly*, vol. 50, no. 37, 2015, pp. 20. <http://www.jstor.org/stable/24482365> <accessed on 15 April 2023>.

²⁰ *Radoviciand Stalnescu v. Romania*, nos. 68479/01, 71351/o, and 71352/o, [zoo6] ECHR, 88.

²¹ Mackie, J. L. "A Discourse on Property: John Locke and his Adversaries. by James Tully" *The Philosophical Quarterly* (1950-), vol. 32, no. 126, 1982, pp. 91. <https://doi.org/10.2307/2219009> <accessed on 15 April 2023>.

²² Dhanmanjiri Sathe, "Land Acquisition Act and the Ordinance: Some Issues." *Economic and Political Weekly*, vol. 50, no. 26/27, 2015, pp. 92. <http://www.jstor.org/stable/24482562> <accessed on 14 April 2023>.

²³ *G Mohan Rao v. State of Tamil Nadu* 2021 SCC OnLine SC 440, 10.

²⁴ Nihar Gokhale, "In Crucial Verdict, Supreme Court Allows TN to Acquire Land Using State Laws, Not LARR" <https://thewire.in/law/supreme-court-tamil-nadu-land-acquisition> <accessed on 12 April 2023>.

High Court declared them void due to repugnancy²⁵. Thus, SIA has been a façade and even downgraded to the extent that it can be excluded entirely.

It can be inferred from the above that people have been kept in the dark under the guise of "public purpose." The concept of public purpose is largely illusory at the grass-root level, and the need for its clarification indeed merits immediate attention. While the definition of public purpose must be constrained, other factors such as SIA and the displacement of affected families must also be warranted. As we conclude, we fear that our land might be acquired in the name of "public purpose."



²⁵ Mihir R., "*Tamil Nadu Land Acquisition: Can States Retrospectively Side-Step Central Laws?*" <https://www.scobserver.in/journal/tamil-nadu-land-acquisition-case-can-states-retrospectively-side-step-central-laws-2/> (Supreme Court Observer, 12 August 2021) <accessed on 15 April 2023>.