

**Eminent Domain – Factual Issues with Land Acquisition and Proposed Remedies for Sustainable Development in India**

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## 1. Abstract

Today, India is the fastest developing world economy. In order to uplift its vast population of 1.25 billion from the grab of poverty, Govt. of India has come up with several large infrastructure programs. It includes creation of roadways, industrial corridors and smart cities. No development is possible without availability of land. Therefore, India is undergoing massive change in the land management policy. Large chunk of land is getting transferred within various stakeholders in this development spree.

Below are some of the examples of land acquisition activities:

- a. Creation of infrastructure: such as roadways, dry ports, railway lines, etc.
- b. Creation on industrial parks: SEZs, Industrial corridors, etc
- c. Development of agriculture: Water dams, canals, etc

While we all want a peaceful and happy life by way of the infrastructure enhancements and industrial growth. Several issues surfaced due to non-compliance of statutory provisions related to land acquisition processes and misuse of power by executives and govt functionaries. These issues have raised an uproar in the country regarding land rights, sustainable development, colorable acts of state & misuse of power by executives etc. The present paper tracks down invasion of land rights and cheating of poor farmers / land owners under the garb of development. Indian judiciary, to some extent, has come to the rescue of such deprived persons. Also, the paper presents some equitable remedies to avoid injustice on poor people and achieve sustainable development of India.

## 2. Eminent Domain

During ancient time India was ruled by the principal of “Dharma” a very broad term, can be termed as way of life. In context of law, “Dharma” also mean righteous and dutiful behavior. Every individual was bound to lead his life according to his duties. This principal was equally applicable to the king as well as his common subject. Wherever required sacrifices were in practice for the sake of larger good. However, in such a system tremendous faith in the motives and dutifulness of kings were placed. Below is a *Shloka* (verse) from great Indian epic of “Mahabharata” in reference to the sacrifices one should, for the larger good-

त्यजेत् कुलार्थे पुरुषं ग्रामस्यार्थे कुलं त्यजेत् ।

ग्रामं जनपदस्यार्थे आत्मार्थे पृथिवीं त्यजेत् ॥

That means, Renounce one person for the sake of the family, A family for the sake of village; village for the sake of country and even the [kingdom of] earth for one's own sake.

In the present era, let's take a look at the concept of eminent domain. The state has sovereign power into three categories namely the power of taxation, the power of eminent domain and the police powers. These are distinct categories of sovereign powers with the different connotation sub-serving different needs of the society and the state. The eminent domain is the power of sovereign to take the properties for public use compulsorily without the owner's consent on payment of compensation. The concept of public use has been inextricably related to an appropriate exercise of the power and is considered essential in any statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term, is an essential element of the valid exercise of such power as no person shall be deprived of his property save by authority of law as per article 300A of constitution of India.

Eminent Domain is power of the sovereign to acquire property of an individual for public use without the necessity of his consent. This power is based on sovereignty of the State. Payment of just compensation to the owner of the land which is acquired is part of exercise of this power. Eminent domain power is regarded as an inherent power of the State to take private property for public purpose. This power depends on the superior domain of the State over all the property within its boundaries. An incidental limitation of this power is that the property shall not be taken without just compensation.<sup>1</sup>

### **3. Right to Property and Agrarian Reforms**

Constitution of India initially granted right to property as a fundamental right. It was amended from time to time and in the end, said right was removed from the chapter of fundamental right. However, it is guaranteed as legal right by introduction of a new article 300-A. Provisions of fundamental rights in constitution of India derives its foundation from Govt. Of India Act, 1935 and the universal declaration of Human Rights (1948). Article 17 of the universal declaration of Human Rights (1948) recognizes the right to private property to which India is a signatory. The right to property contains safeguard against expropriation without compensation and against acquisition for nonpublic purpose.

Though, the right to property is guaranteed by the constitution, by agrarian reforms intermediaries were abolished, ceiling was fixed on land holding. The cultivator / tenants within the ceiling limit secured permanent land rights.

In India a form of private property perhaps more accurately described as vested interest, that required specific protection namely grants of land or tenures, held under

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<sup>1</sup> *Chiranjit Lal Choudhary v. Union of India*, AIR 1967, SC 41 & 54.

various names, of which Taluk, enam, watan, jahagir and Muafi were examples, such grants being either perpetual or for two or three generations. These grants, had the authority of the British Govt, that on due observance by the grantee of specified conditions the rights of himself and his successors would be respected for all time or for the duration of the grant. The Sanad granted by Lord Canning to Talukdar of Aundh was an instance of grant in perpetuity. The rights conferred by Sanad being permanent, hereditary and transferable.

The rights mentioned above belong to individuals, which also includes the rights of Jamindars and others in whose favor permanent settlements has been made in Bengal, Birhar and Orrisa, etc. A change in revenue system not introduced by the British Govt as not supported by overwhelming popular demand, though the declaration of permanence would have binding on British Govt.

After adoption of constitution, right to property was introduced in chap 3, i.e. in fundamental rights by art 31, 31 (2) which runs as

#### 31 – Compulsory acquisition of property

1. No person shall be deprived of his property save by authority of law.
2. No property, movable or immovable, including any interest in or in any company owning, any commercial or industrial undertaking shall be taken possession of or acquired for public purpose under any law authorizing the taking of such possession of such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given.

Along with above article, articles 14, 19(1)(f), 31, 32, 39 (b) and (c), 226 and 225 the gist of said provisions may be briefly stated as “Every Citizen has individual right, to acquire, to hold and to dispose property. A duty is implicit in this right, that it should be reasonably exercised as not to interfere with similar rights of other citizens, the exercise of it should be reasonable and in accordance with public interest. The directive principles of state policy lay down the fundamental principles of state policy and governance of country, and though the relevant principles, the state is directed to secure that the ownership and control of material resources of the community are so distributed as best to sub serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Indeed, the state in exercising the power to enforce this principles does in fact enforce the duty implicit in the exercise of the fundamental right.

The conflict between the citizens right and states power to implement the directive principles are concealed by putting limitations both on right and power, the said fundamental right is absolute it is subject to law of reasonable restrictions in the interest of general public. The state powers are also to subject to the conditions that the law made by it, in so far it infringes the said fundamental right should stand the double test of reasonableness and public interest. The state also has the power to acquire the land of citizens for a public purpose after paying compensation. It has further power to impose taxation on person for his property all the laws made in exercise of the said powers are governed by doctrine of equality subject to the power of classification but the question of the validity of the said laws of social control, taxation and acquisition is justiciable issues.

The right to property was conditioned by social responsibility, the higher judiciary was made the arbiter to maintain the just balance between private rights and public interest. The social order visualized by the constitution was expected to be brought about smoothly by process of gradual judicial adjustments. Under the constitution both the means and the end were equally important in the evaluation of new society. After constitution of India came into force following agrarian reforms were introduced:

- Intermediaries were abolished, ceiling was fixed on land holding
- Cultivating tenants within ceiling secured permanent rights
- In some states, the share of landlord as regulated by the law, in one state, the tiller of the soil secure cultivating rights against the absentee landlord and in some states, the rural economy was re-adjusted in such a way that the scattered bits of land, each tenant were consolidated in place by the provision of statutory change,

The reforms certainly implement the directive principles of the state policy all the these agrarian reforms could have been introduced within the framework of original constitution but they could not be done within the said framework the constitution had been amended on many occasions.

The first amendment introduced in the constitution art. 31(a) and (b), the Bihar land reform act 1950 had been held invalid by the Patna High Court, as article 14 was placed as entry 1 on schedule 9, to protect it from all challenges. A challenge to the validity of the first amendment held in Shankari Prasad Vs Union of India<sup>2</sup>.

That likewise, the Bihar Land reform act was also challenged by Maharajadhiraj Shri Kameshvar Singh<sup>3</sup> on the ground of legislative competency as requirement of public

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<sup>2</sup> AIR 1951, SC 458

<sup>3</sup>AIR 1952 SC 252

purpose and requirement of obligation to pay compensation. The said contention was rejected by the court in arriving a decision, the judges considered the nature of states power to acquire private property for public use described in the united states as the power of Eminent Domain! Since the question now acquire the great importance because of deletion of art 31. The judgement in Kameshvar Singh's case define Eminent Domain as we in India call it as compulsory acquisition.

Mahajan, J examined briefly the nature of states power of compulsory acquisition of private property by referring authoritative books<sup>4</sup>

“Shorn of all its incidents, the simple definition of Power to acquire compulsorily or of the term eminent domain is the power of sovereign to take property for public use without the owner's consent. The meaning of the power in its irreducible terms is 1) power to take, b) without the owner's consent, c) for the public use. The concept of the public use has been inextricably related to an appropriate exercise of the power and is considered essential in any statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term is a essential element of the valid exercise of such power. Courts have defined eminent domain so as to include this universal limitation as an essential constituent of its meaning. Authority is universal in support of the amplifying definition of eminent domain as the power of the sovereign to take property for public use without the owner's consent upon making just compensation.<sup>5</sup> Similar observations were made in case WB vs Union<sup>6</sup>, Sinha CJ affirmed a view that eminent domain was inherent in sovereignty he said “in the United State of America, power to take private property for public use is called by American lawyers eminent domain. It is the power of the state to take property upon payment of just compensation for public use. It is an inherent attribute of sovereignty not arising even out of the constitution, but independently of it, and may be exercised in the respect of all property in state's for effective enforcement of the authority of the union against private property or property of the state.

By the first amendment act 1951, by which the article 31(a) and 31(b) were inserted into the constitution. Article 31(a) was introduced by the constitution wherein the parliament define estate and continued by further amendments to extend its meaning so as to comprehend practically entire agricultural land in rural area including waste, forest lands and land for pasture or sites of buildings. Article 31(b) and schedule 9 is also

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<sup>4</sup> Kent's commentaries, Brun's Constitutional Law, Hugo Grautio's De Jurebelly etpacis, Thayer's cases on constitutional law and the judgement Lord Atkinson in Central Control Board Vs Canon Bravery Company Ltd (1919), A.C. 744 (H. L.)

<sup>5</sup> (AIR 1952 SCR 929)

<sup>6</sup> AIR 1964 SC 1241

introduced. Article 31(b) declared that none of the acts or regulations specified in the 9<sup>th</sup> schedule, nor any of the provisions thereof shall be deemed to be void on the ground that they are inconsistent with part 3<sup>rd</sup>, the history of amendments of article 31 (1) and (2) and the adding of articles 31(a) and (b) and the 9<sup>th</sup> schedule reveal the pattern. The supreme court held in series of decisions which state of west Bengal versus miss Bela Banerjee, the state of west Bengal vs Subodh Gopal and State of Madras vs Namsivaiyya Murlidhar, that the article 31 clause 1 & 2 provided for the doctrine of eminent domain and under clause 2 a person must be deemed to be deprived of his property. If he was substantially dispossessed, his right to use and enjoy the property was seriously impaired. According to this interpretation, the 2 clauses of article 31 dealt only with acquisition of property in the sense explained by the court, and under article 31 (1) the state could not make a law depriving a person of his property without complying with the provisions of article 31 (2). It is worth mention in this context that, it was the decision in the Bela Banerjee's<sup>7</sup> case, that actually induced the govt to resort the 4<sup>th</sup> amendment. In this case the apex court through this landmark decision had insisted for payment of compensation in every case of compulsory deprivation of property by the state. Further the court held that the word compensation meant just compensation i.e. just equivalent of what owner had been deprived.

The parliament instead of accepting this decision, by its 4<sup>th</sup> amendment act 1955 amended clause 2 and inserted clause 2(a) to article 31. The effect of amendment is that clause 2 deals with acquisition and requisition as defined in clause 2(a), and clause 1 covers deprivation of the persons property by the state otherwise than by acquisition and requisition. It was further provided that no such law could be called in question in any court on the ground that the compensation provided by that law is not adequate.

Then, the 17<sup>th</sup> amendment act 1964 by which the state extended the scope of article 31(a) and 9<sup>th</sup> schedule to protect certain agrarian reforms enacted by the Kerala and Madras states. The word estate in article 31(a) now include any *Jagir or Inaam, Mauf* or any other grant and *Janmam* right in State of Kerala, Madras and also Rayatwari land. It also added consequentially the second provision to clause 1 to protect a person of being deprived of land less than the relevant land sealing limits held by him for personal cultivation, except on payment of full market value thereof by way of compensation.

The supreme court in Smt Sitadevi vs State of Bengal held that article 31 (2) i.e. the provisions of acquisition or requisition of land was not subject to article 19 (5). There may be public purpose but compensation fixed may be so illusory.

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<sup>7</sup> AIR 1954 SC 170

The supreme court in *P Vajravelu Mudliyar vs Special Deputy Collector and Union of India vs Metal Corporation of India* considered article 31 (2) in the context of compensation and held that, if the compensation fixed was illusory or the principles prescribed were irrelevant to the value of property at or around the time of acquisition, it could be said that the legislature had committed a fraud on power and therefore the law was inadequate.

The supreme court in three other decisions confined the bar of article 31(a) only to agrarian reforms in *Kochin case*, the court held that requirement of article 31(a) bars an attack on the ground of infringement of fundamental right only in the case of agrarian reforms pertaining to an estate. In *Ranjitsingh vs State of Punjab*, it was held that the expression agrarian reform was wide enough to take in consolidation of holdings as it was nothing more than proper planning of rural area. In *Vajravelu's* decision the supreme court explained that there is no conflict between the said two decisions and pointed out that the latter decision includes in the expression of agrarian reforms, the slum clearance and other beneficial utilizations of vacant and waste land.

The supreme court through this landmark judgment i.e. *Golaknath vs state of Punjab*, wherein the petitioner questioned the validity of 1<sup>st</sup>, 4<sup>th</sup> and 17<sup>th</sup> amendments of the Indian constitution on the ground that they abridge the scope of the fundamental rights guaranteed by part 3<sup>rd</sup> of constitution. The supreme court held that the parliament has no power to amend the constitution so as to take away and abridge the fundamental right of people. But the court held on the application of doctrine of prospective overruling that all the amendments made by the parliament up to the date of judgement were and would continue to be valid. The criticism that the judgment of supreme court tied the hands of parliament and in future to usher in the agrarian and other economic reforms so essential for the progress and prosperity of country is without substance. The Supreme court held on the application of doctrine of prospective overruling that all the amendments made by the parliament up to the date of judgment were and would continue to be valid with the result that all the agrarian reforms already made were sustained and the parliament continues to have power to introduce further agrarian reforms under the protection of the amendments already made. In order to remove the difficulties created by the decision of supreme court in *Golaknath's* case, the parliament enacted the 24<sup>th</sup> amendment act . by the said amendment , restored the amending powers of parliament and extended its scope by adding words, to amend by way of addition or variation or repeal any provision of this constitution in accordance with the procedure laid down in this article.

Thereafter a 25<sup>th</sup> amendment act came to be passed and by the said amendment 3 significant provisions are made: first it amended article 31 (2) and provided that anyone's property may be acquired by payment of an amount instead of compensation, secondly

the amendment enacts that the article 19 (1) (f) would be inapplicable for acquisition and requisition laws. Since all the reasonable restrictions in the public interests are already permitted under article 19 (5) , the only object of article 19 (1)(f) inapplicable would be enable acquisition and required to contain restrictions and procedural provisions which are unreasonable or not in the public interest. Thirdly in the 25<sup>th</sup> amendment inserted article 21 c which provides that no law giving effect to the policy of state towards securing principle specified in clause b or clause c of article 39 shall be deemed to be void on the ground that it is inconsistent or takes away or abridges any of the rights conferred by article 14, 19 or 31 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

The directive principles of state policy set out in article 39 (b) and (c) with the entire economic system and therefore countless categories of law can claim the protection of article 31 c since most laws can be related to the economic system in one way or another.

Keshavanand Bharati vs state of Kerala was one of the milestone in the history of jurisprudence. In this case popularly known as fundamental right case the petitioner has challenged the validity of Kerala land reforms act 1963. During pendency of the petition the impugned act was amended in 1971 and was placed under the 9<sup>th</sup> schedule by 29<sup>th</sup> amendment act. The petitioners were permitted to challenge the 24<sup>th</sup> , 25<sup>th</sup> and 29<sup>th</sup> amendment, the question was as to what was the extent of amending powers conferred by article 368 of the constitution. The judgment came to be passed and thereafter a 42<sup>nd</sup> amendment act sought to expand the scope of article 31 c extending it to any law giving effect to the policy of the state towards securing all or any of the principles led down in part 4. The actual scope of this article has however, been considerably restricted in three respects by process of judicial interpretation and subsequent amendments. The attempt of amendment was frustrated by Minerva mills vs union of India and the above freedom now stands restricted only to laws seeking to give effect to articles 39 b or (c). article 31 (b), a proviso newly inserted by the amendment 42.

By the 44<sup>th</sup> amendment removed the right to property from part 3<sup>rd</sup> (the chapter on fundamental rights) by deleting article 19 (1) (f) and 31 by making consequential amendment and by inserting in part XII the following new chapter IV right to property 300 a. persons not to be deprived or property save by authority of law – no person shall be deprived of his property save by authority of law. By this way, it is ultimately approved the property rights as an constitutional rights and the said property cannot be acquired without payment of compensation and the concept of eminent domain is elaborately explained.

#### 4. Land Acquisition Laws

In the year 1824, first land acquisition act was enacted, then it underwent through several changes and was finally replaced by land acquisition act, 1894. The Govt. of India after independence adopted the land acquisition act, 1894. Hence, land acquisition proceedings were primarily carried out as per provisions of the said act of 1894. Also, the acquisition and requisition activities falls under entry 42 of the constitution, the concurrent list, which enable both the center and states to enact laws governing land acquisition. Though, land acquisition act, 1894 is the main law governing land acquisition, several other acts are also enacted by center and states e.g. The land acquisition (Mines act) 1885, etc.

#### 5. Miss-use of Powers of Eminent Domain

Definition of public purpose is not clearly defined in the act of 1894. There has been considerable difference of opinion among several judgments of Supreme Court, which resulted in granting very broad discretionary power to state in terms of deciding contours of public purpose under particular circumstances. The Supreme Court in the Judgment – State of Bombay Vs R S Nanji<sup>8</sup>, held that Government is the best judge to decide public purpose and courts have power to examine its legality.

Findings of Supreme court while quashing colorable land acquisitions are presented as below:-

In Greater Noida judgment<sup>9</sup>, land acquisition proceedings at village Shahberi located in district Gautam Budh Nagar, Uttar Pradesh were carried out in the name of planned industrial development. It was held, that whole exercise of acquisition was designed to serve the interest of the builders and the veil of public purpose was used to mislead the people in believing that land was being acquired for a public purpose. The court concluded that, it was nothing but a designed attempt by the functionaries and officers of the State Government and the Authority in connivance with the builders to frustrate the right of the tenure holders. Authority was directed to pay cost for undertaking an exercise of allotment of land to the builders in complete violation of the purpose for which the land was sought to be acquired and even before approval by the State Government for the change of land use. Those who have paid money to the builders for booking flats etc., were protected to get back the amount along with interest at an appropriate rate and incase of refusal by builders, they would be free to avail appropriate legal remedy.

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<sup>8</sup> AIR 1956 SC 294

<sup>9</sup>Greater Noida Industrial Development Authority Vs Devendra Kumar and Others reported in 2011(12) SCC 375

Ratio Decidendi from the above judgement is: compliance of the rules of natural justice is a small price which the State should always be prepared to pay before it can deprive any person of his property. The 1894 Act does not envisage any role of the private persons in the acquisition of land except when the acquisition is made under Chapter VII of the 1894 Act. Fraud on power voids the order if it is not exercised bona fide for the end designed.

Likewise, in *Shri Radheshyam*<sup>10</sup>, the Supreme Court held that “The acquisition vitiated due to violation of doctrine of equality as appellant’s parcels of land were acquired, while other similarly situated lands were left out from acquisition”

In another judgment of *Tukaram Krishna Joshi*<sup>11</sup> the Supreme Court held that “Right to property is more than that of fundamental right, as it is human right”

## 6. Protest against colorable land acquisitions

### 6.1 Singur, West Bengal

Singur, in West Bengal is recent example of the State government sought to acquire prime agricultural land for private parties, i.e., for Tata Motors. (State governments have not hesitated to take over land even by employing draconian emergency powers available under this Act). The government had offered the Tata’s non-arable land in West Madinipur for setting up the manufacturing unit, but the latter preferred the sugar agricultural land. The supposedly Pro-people Left Front Government in order to oblige the influential Multinational Company surrendered weekly to its compulsion. Besides this, the acquisition of such a huge land area signifies that Tata’s may turn these lands into a real estate venture in the near future as other Indian companies have done. Fortunately Tata Project was shifted to Gujarat. Then opposition party leader or present Chief Minister Mamatha Banerjee opposed the Tata Motor Project because it was intended to acquire wet and multi-cropped land. Subsequently land acquisition was cancelled by the Supreme Court giving an elaborate judgment<sup>12</sup>. It observed that

- Enquiry was not properly conducted as no opportunity of hearing was given to aggrieved persons and report given by the collector was held invalid.
- The logic used for determination of compensation of market value was termed not valid, and

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<sup>10</sup> *Shri Radheshyam (dead) through LRs & Others Vs State of UP*, reported in 2011 5 SCC 553

<sup>11</sup> *Tukaram Krishna Joshi*<sup>11</sup> and Others, though power of attorney holder Vs MIDC & others, reported in AIR 2012 SCW 6343

<sup>12</sup> judgment is reported in AIR 2016 (Weekly) 4156

- Acquisition of land for company cannot be covered under public purpose
- State government is required to apply mind to the report of the collector and take the final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1) of the Land Acquisition Act, 1894 (L.A. Act). In this case there seems to be no application of mind either at the stage of issuance of the notification under Section 4 of the L.A. Act, or the report of collector under Section 5-A (2) of the L.A. Act or the issuance of the final notification under Section 6 of the L.A. Act.
- It is also evident from this case that, the government's approach to the entire acquisition is very casual. Company has requested 600 acres of the land, whereas acquisition was done for 1200 acres.

## 6.2 Goa

Several cases of fraudulent land acquisition found in Goa, where Goa Industrial Development Corporation did allocations of land to different companies. In the case of Peninsula Research Centre Pvt. Ltd., at Sancoale, the company was not even registered at the time of application. Secondly, the company applied for 2 lakhs sq. m. while the Goa Industrial Development Corporation (GIDC) granted it 2.04 lakhs sq.m. Planet view Mercantile Company Pvt. Ltd., at Verna, the company was not registered at the time of application interestingly, at page 5 of the application says Gems and Jewellery SEZ but at page 7 describes it as a Biotech Park. In case of Cipla's Meditab Specialties Pvt. Ltd., at Keri, the proforma Goa Industrial Development Corporation (GIDC) application form was not submitted and so there are no details about the products to be manufactured daily water and power requirements, etc. in the application submitted on April 3rd 2006. The land of 12.32 lakhs sq.m. was allotted at the Board meeting held on March 28th 2006, even before receiving the application. In the case of K. Raheja Corporation Pvt. Ltd., at Verna, the application was dated April 12, 2006 while the allotment was made on April 19 without proper time to study the project and without the required 7 days' notice to the Board of Directors for the meeting. While several companies in the Verna Industrial Estate are new, companies not having any experience at all, K. Raheja is purely a real estate developer.

From the above cases probably the following issues could be raised. The first is that the allocation of land was done in a hurry and without following proper rules and regulations. The companies mentioned above have been specifically floated for the purpose of grabbing huge tracts of land under the guise of SEZ. The main issue concerning SEZs in Goa is that they appear like nothing but only land scams. The application against SEZ projects in Goa and anti SEZ movement forced the then government to set up a SEZ review committee wherein all the concerned parties /

stakeholders would be allowed to make a detailed presentation of their positions. Finally, on December 31st 2007, the Goa government denoted to scrap all the SEZ, in their present form. December 31st 2007 will go down as a special day in the history of people's movement in Goa since people's power dared the political establishment and succeeded in ensuring that development is for the benefit of the people and not for a few elites. The decision of the Goa government on December 31, 2007 to scrap all the 15 SEZs did not mean that the anti SEZ struggle is over. A very important follow up is bringing the guilty to book.

### 6.3 Maharashtra

#### SEZ:

In Maharashtra, a pharma SEZ, by a multinational company was notified at Aurangabad. The notification was obtained on the basis of forged papers and in violation of the legal provisions. In this case, the company approached to the MIDC with a map of the proposed site. Officials at MIDC, passed an order to re-constitute the said plot, showed land acquisition on paper without actual possession and compensation to the original owners and handed over the land to the multinational pharma company. The said company, the tried to take possession of the said land forcibly. Post which the farmers rushed in the High Court of Bombay and filed a writ petition, which was rejected summarily. Thereafter, the company dispossessed the farmers from their land by demolishing their horticulture, wells and electric connections, etc. Due to these actions of company, few farmers committed suicide and one of the farmer was paralyzed.

Some of the agriculturist obtained records under right to information act approached the hon. High court. In this case initially, MIDC replied that the possession is already taken and it is ready to pay the compensation, if the owners of land execute the sell deed. At the same time, some of the agriculturist approached to civil court and filled a suit for injunction. The application of agriculturist is allowed in civil court. Meanwhile, the state Govt again by misusing the powers, issued a fresh notification as per the land acquisition act and hurriedly passed an award. However, agriculturist continued their fight via various litigations in the courts of law. Also, the impacted community came together and started agitations on the ground. Based on the collective efforts of legal battle and agitation, the state govt de notified the said land, by stating that no possession has been taken, no land has been acquired and now the said land is not required for any further development. There are large no of papers that clearly shows the contradictory statements of MIDC and state Govt made in court and at the time of releasing the property. It is a unique example of misuse of power and fraud made upon the law. The co-author, Vilas D. Sonawane, of this paper contested the said litigation as an advocate for the farmers.

### Irrigation projects:

In Maharashtra, there are also various examples regarding misuse of eminent domain in irrigation projects, from which one example is cited as below, again in these cases, co-author Advocate, Vilas Sonawane, is fighting for the cause of the farmers:

Krishna river water dispute is one of the major water related disputes, that state of Maharashtra and Karnataka are fighting. Maharashtra has detailed plan on using the water, if it gets share of the Krishna's water. In one such scheme of water utilization, Maharashtra has desire to bring, the water of Krishna basin in Marathwada, a draught prone area, a noble thought. It prepared Krishna stabilization project by establishing the said project, water will first be brought in Ujani and then, it will be lifted in Beed district for Ashti and Patoda taluka, the distance between Krishna project and Ashti is about 400 km. Considering the above scheme, the state govt started work on project in Ashti taluka, particularly at Kunthephal and showed the urgency and acquired land via direct negotiation, i.e. by sell deed. Several irregularities are clearly visible, the said adopted process. It also started the work of lift irrigation project, made expenses of Rs. 200 Cr. As explained above irrigation work at the said village is initiated, that lies at the bottom of last leg of the project. However, it's worth mentioning that NO work has been started for the initial phases of project, there is no clarity on how would the Krishna's water reach Ujani dam. Above case is a clear example of wishes and whims of the Government. Currently, in this case a Writ Petition is filed in the high court, state Govt also admitted the irregularities and now the project is stalled.

Due to the above referred protest and subsequent judgments passed by the Supreme Court, need to improve land acquisition act 1894 was deemed necessary. Thereby a new land acquisition act, 2013 was enacted. The said act made some positive provisions to avoid such type of illegalities, however they are not sufficient to protect the interest of land owners.

## 7. Remedies

It is evident that illegalities and colorable acts are observed due to interference of political class, executives and industrialists in the land acquisition process. In order to protect the property rights and enable sustainable development, authors suggests below remedies:

a. Independent land acquisition authority to validate public purpose:

- It is very clear from the number of examples, cited above that the land acquisition processes are abused by the government authority. The collector, who's empowered to listen and act, on the objections raised for land acquisition proceedings u/s 5 A (2) of the LA act. However, in numerous cases failure of the said authority is seen. The same observation is explained by Hon. Supreme Court in the judgement of Surinder Singh Brar & Ors. v. Union of India<sup>13</sup> as under.

“The reason why the LAO did not apply his mind to the objections filed by the Appellants and other landowners is obvious. He was a minion in the hierarchy of the administration of the Union Territory of Chandigarh and could not have even thought of making recommendations contrary to what was contained in the letter sent by the Administrator to Surinder Singh Brar. If he had shown the courage of acting independently and made recommendation against the acquisition of land, he would have surely been shifted from that post and his career would have been jeopardized. In the system of governance which we have today, junior officers in the administration cannot even think of, what to say of, acting against the wishes/dictates of their superiors. One who violates this unwritten code of conduct does so at his own peril and is described as a foolhardy. Even those constituting higher strata of services follow the path of least resistance and find it most convenient to tow the line of their superiors. Therefore, the LAO cannot be blamed for having acted as an obedient subordinate of the superior authorities, including the Administrator. However, that cannot be a legitimate ground to approve the reports prepared by him without even a semblance of consideration of the objections filed by the Appellants and other landowners and we have no hesitation to hold that the LAO failed to discharge the statutory duty cast upon him to prepare a report after objectively considering the objections filed under Section 5A(1) and submissions made by the objectors during the course of personal hearing.”

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<sup>13</sup> (2013) 1 SCC 403

Therefore, prior to implementation of land acquisition proceedings, it is utmost important to validate public purpose, certify strict compliance of provisions of law and determine compensation - by giving reasonable opportunity of hearing to the stakeholders involved

- The authority should have powers to reject proposal, etc.
- This authority should function independently.

b. Availability of documentation in public domain

All the documentation related to the land acquisition should be made available to public without RTI

c. Civil courts

Civil courts need to be empowered to decide the legality and validity of land acquisition and property rights involved in it. The proceedings should be expedited by appointing special judges for quick turnaround.

- In the current structure, of land acquisition laws, civil courts are barred to entertain litigations related to the land acquisition proceeding. However from number of instances it is evident that these courts are very much required to resolve any disputes arising out of land acquisition proceedings. Civil courts, as part of lower judiciary are Fact Finding courts.
- Also, due to the fact that Civil courts are barred from adjudicating litigations pertaining to the land acquisition proceedings, it bears additional cost to the aggrieved community, poor farmers as they often need to travel a lot to reach nearby High Courts. Which require higher expenditure on travel and advocate fees, this at times worked as detrimental the legal processes.

d. Land leasing instead of acquisition

Land leasing instead of acquisition, should be permitted. The state can help both the parties by enabling equitable justice.

e. Policy to return unutilized land to the original owner should be framed

f. The purpose of land use should not be changed without the consent of land owner

g. Partnership between land owner and industry should be encouraged

h. Uniform and equitable norms should be formed for land identification and are strictly followed for the land acquisitions

i. Legal audit of land acquisition and its proper utilization via third party NGOs

## **8. Conclusion**

It is evident from the paper that growth & development of the community is desired, however several issues have surfaced over last decade due to deficiencies in the implementation of the legislative provisions and decision making. We should strive to eliminate deficiencies in the system and a reliance to 100% compliance to the legislative provisions must be achieved. Also, human values must be at the center of all these activities to enhance confidence among all the stakeholders, including industry and poor farmers affected due to the process of land acquisitions.