

P-1339: Refresher Course on Land Acquisition

1st & 2nd April 2023

Dr. Amit Mehrotra, Assistant Professor & Mr. Rajesh Suman, Assistant Professor

The National Judicial Academy organized a *Refresher Course on Land Acquisition* on 1st & 2nd April 2023 at the NJA, Bhopal. The participants were judges from the district judiciary nominated by respective High Courts.

The course facilitated deliberations among participant judges on themes including Land Acquisition: Land Reforms and Amendments in Land Acquisition Laws; Procedural Fairness and Natural Justice Principles in Acquisition; Determination of Compensation and Rehabilitation and Resettlement of Affected Persons; Continuity and Lapse of Acquisition Proceedings; and Adjudication of Offences & Penalties under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The participants were provided a platform to share experiences and assimilate best practices.

The first session was on the theme *Land Acquisition: Land Reforms and Amendments in Land Acquisition Laws*.

The statutory Framework for Land Acquisition law was discussed. It was highlighted that almost all the States enacted the Zamindari Abolition and Land Reforms Act(s), abolishing the role of intermediaries and creating tenancy rights in favour of the tillers of the land. It was underscored that the right to property was deleted by the 44th Amendment of the Constitution in 1978 and Article 300A, which provides that "no person shall be deprived of his property, save by the authority of law", was added. Thus, the right to property became a civil, constitutional, and human right. It was emphasized that no property can be taken away without paying the appropriate and fair compensation. The doctrine of Eminent Domain which means that the State can take away any property for the public good was discussed. It was enunciated that the entire law of land acquisition is based on two basic principles *Salus populi est suprema lex* which means welfare of people is paramount law and the other *necessitas public major est quam private* which indicates that public necessity is greater than private necessity. The history and the evolution of the land acquisition law were elucidated in detail. It was stated that Land Acquisition Act, of 1894 (Act 1894) is a complete code for land acquisition. It provides

for acquisition as a matter of public policy and for public purposes only. Public policy means a decision taken by the governing Authority which in the interest of the public as a whole does not tend to be injurious to the public or against the public good.

It was emphasized that notification is the foundation of the land acquisition proceedings and sine qua non for acquisition. In the absence of such notification, there cannot be any acquisition. In this light the judgments *Babu Barkya Thakur v. State of Bombay.*, AIR 1960 SC 120; and *Aflatoon v. Lt. Governor of Delhi.* AIR 1974 SC 2077 was referred. It was underscored that the government is the best judge to decide whether the public purpose is served by issuing the notification for the acquisition of land. The public purpose must include an object in which the general interest of the community as opposed to the particular interest of the individual, is directly and vitally concerned.

It was further stated that land vests in the State are free from all encumbrances on taking possession and if the land is vested in State, it cannot be divested. The judgment *Tukaram Kanaji Joshi & Ors. v. MIDC & Ors.*, AIR 2013 SC 565 was discussed and it was emphasized that compulsory acquisition of land for public purpose does not violate the fundamental rights guaranteed under Article 21 of the Constitution. The Supreme Court held that the right to land was a Constitutional and human right. In this the judgments *Jilubhai Nanbhai Khachar & Ors. v. State of Gujarat & Anr.* AIR 1995 SC 142; *Chamel Singh & Ors. v. State of U.P. & Anr.* AIR 1996 SC 1051; and *Amarjit Singh & Ors. V. State of Punjab & Ors.* (2007) 10 SCC 43 were also referred to during the discourse.

It was underscored that the Act of 1894 proved to be totally unsatisfactory, having a very wide definition of public purpose. The land could be acquired for private companies under Chapter VII without consent of the tenure holders nor did it have any provision for Social Impact Assessment or exemption of land in Schedule Areas, the proceedings were not transparent as no effective hearing could be given under Section 5A to the persons interested. Lots of problems were created because of massive industrialization drive by Public-Private partnerships. The Act did not have a proper procedure of negotiation on a willing seller-willing buyer basis, which could have been a fairer arrangement. The Act did not have any provision for resettlement and rehabilitation. There was no provision for reverting the land back to the person interested if the land remained unused after the completion of the project. Thus, the Act, 2013 was enacted. The observations and findings

of the judgment *Indore Development Authority v. Manoharlal.*, (2020) 8 SCC129 was deliberated upon.

The second session was on *Procedural Fairness and Natural Justice Principles in Acquisition*. It was underscored that rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. Thus, it is essential that a party should be put on notice of the case before any adverse order is passed against him. Natural Justice implies the existence of moral principles of self-evident and unarguable truth. The British jurisprudence developed it further in conjunction with a reference to “equity and good conscience”. It was emphasized that in earlier times, the natural justice principles were equated with natural law which relates to the administration of justice. These were considered means to an end and not an end in themselves. Thus, the said principles have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively, and fairly. It was underscored that application of these principles prevents miscarriage of justice as the principles work as a check on the abuse or misuse of power. The judgment of *Suresh Chandra Nanhorya v. Rajendra Rajak*, (2006) 7 SCC 800 was referred where the Supreme Court held that *Natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute unless there is a clear mandate to the contrary*. While referring to the judgment of *State of Orissa v. Binapani Dei*, AIR 1967 SC 1269 it was highlighted that even in administrative matters, if the order adversely affects the civil rights, the authority is bound to hear the person concerned before passing the order.

It was highlighted that Section 5A of Act 1894 provided for *Audi alteram parterm* i.e., right of hearing to the person whose land is sought to be acquired. *Audi alteram parterm* means hearing the other party, or, no one should be condemned unheard. It was emphasized that this rule is an essential part of the law pertaining to land acquisition for a public purpose. While acquiring the land sufficient opportunity should be given to the affected person for defense and also to avoid the Monopoly of the government officials. A person having any kind of interest in land sought to be acquired would have the right to raise an objection in respect of the acquisition, basically on the ground of suitability of the land for the purpose for which the acquisition is sought. It was enunciated that objections were to be filed within

a period of 30 days from the date of publication. An opportunity for a personal hearing is mandatory in case the person interested file objections within the time stipulated therein and appear in person or through their representatives and ask for an opportunity for a hearing. It was emphasized that section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. It was highlighted that strict compliance with the procedure contemplated under the Act is a must, particularly when it is a summary one.

It was further emphasized that Section 36 of the Fair Compensation and Transparency in the Land Acquisition, Rehabilitation & Resettlement Act 2013 (Act 2013) empowers the state governments with revisional powers. The Government may call for the record of the case and examine the correctness and transparency of the acquisition proceedings before the Award is made. In case, any Order is passed against a person he must be given an opportunity of hearing before such an Order is passed.

The other rule of natural justice that include “*nemo judex in cause sua*” which means no man shall be a judge in his own cause was discussed. It was highlighted that justice should not only be done but should manifestly be seen to be done.

The third session was on the ***Determination of Compensation and Rehabilitation and Resettlement of Affected Persons***. It was underscored that the Land Acquisition Act of 1894 governed Land Acquisition till the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 came into force on 01.01.2014. It was stated that the main objective of the right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation & Resettlement Act 2013 (Act 2013) was deliberated upon that includes the transparent process of land acquisitions, informed consultation & participative approach, rehabilitation & resettlement, least disturbance, and just & fair compensation. It was enunciated that the preamble of the Act 2013 provides that acquisition shall be in consultation with local bodies, by a humane, informed, and transparent process. The Act would provide for just a fair compensation as well as for rehabilitation and resettlement. It was iterated that public purpose has been defined by an inclusive definition. Section 2(1) of the Act further explains that before the land is acquired, there will be Social, Economic Assessment Study.

The definition of affected family as defined under Section 3 of the Act 2013 was discussed. It was stated that as per the policy, the displaced persons are entitled to resettlement and rehabilitation. Rehabilitation means to readapt to society. Rehabilitation requires providing

shelter, food, educational institutions, shopping units, medical facilities, and other necessities of life within the ambit of a person's fundamental rights under Article 21 of the Constitution. It was highlighted that it is evident that rehabilitation is associated with the acquisition of land and the authority for whose benefit land is acquired has statutorily been recognized as a person responsible for rehabilitation under the provisions of the Act, 2013.

While referring to the judgment *R.B. Dealers (P) Ltd. v. Metro Railway, Kolkata*, (2019) 20 SCC 658, section 69 of the Act 2013 was discussed which provides for the determination of award/final award that includes (i) amount of compensation determined as per Section 26, 27 and 28, (ii) Solatium at the rate of 100% over the total compensation determined as per Section 30(3) and (iii) the additional amount calculated at the rate of 12% of the market value determined and payable under Section 30(1).

It was emphasized that Sections 75 & 76 of the Act 2013 which speak about the apportionment of compensation are analogous to section 30 of the Old Act 1894. As per the Act 2013 in case of dispute, the matter may be referred to the Authority known as Land Acquisition, Rehabilitation, and Resettlement Authority constituted under Section 51. In the old Act 1894, the reference was made to the Civil Court. It was highlighted that the objective for referring the matter to the authority was to provide speedy disposal of disputes related to land acquisition, compensation, rehabilitation, and resettlement.

It was highlighted that section 27 of the Act 2013 empowers the collector to calculate the total compensation, including the damage to the standing crop and trees, incidental charges, and costs incurred due to severing such land from his other land. Sec. 31 of the Act 2013 empowers the collector to pass a resettlement & rehabilitation award that includes Resettlement and Rehabilitation amount, particulars of the house site and houses to be included in case of displacement, after ensuring provisions of infrastructure amenities in the resettlement area as per the third schedule of the Act u/s 32. It was underscored that in the old Act 1894, there was no provision for making awards for resettlement and rehabilitation nor there is a provision for compensation double the amount of the original estimate in case of the double displacement.

The determination of social impact and public purpose was discussed. It was underscored that Section 4 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, is an important section as it deals with

preliminary investigation for determination of social impact and public purpose. It was iterated that whenever the government intends to acquire land for a public purpose, it shall consult the concerned panchayat, municipality, or municipal corporation, in the affected area and carry out a social impact assessment study in consultation with them. It was emphasized that notification issued by the government shall be made available in the local language and published in the affected area and also uploaded to the website of the Government. It was highlighted that Social Impact Assessment study must be completed within a period of six months from the date of its commencement. It was delineated that the availability of the Social Impact Assessment Study report to the public is mandatory. The contents of the Social Impact Assessment Study Report were discussed and it was pointed out that every Social Impact Assessment Report must be evaluated by an independent multi-disciplinary expert group.

It was highlighted that if any land or part thereof acquired under the Act remains unutilized for a period of five years from the date of taking of the possession, the same shall return to the Land Bank/returned to the original land owners as specified by the appropriate Government. Various judgments that were referred to in the discussion include *Land Acquisition Officer, A.P v. Ravi Santosh Reddy* AIR 2016 SC 2579, *Special Land Acquisition Officer v. Anasuya Bai* (2017) 3 SCC 313, *Indore Development Authority (LAPSE-5 J.) v. Manoharlal*, (2020) 8 SCC 129 and *Habib Ahmed vs State of UP* AIR 1965 All 344.

The fourth Session on ***Continuity and Lapse of Acquisition Proceedings*** commenced with a discussion on the implications of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 [hereinafter Land Acquisition Act, 2013]. The session focussed on the continuity of acquisition proceedings between the 1894 Act and the 2013 Act and the interpretation of Section 24 of the new Land Acquisition Act, 2013 by the Supreme Court.

The judgment *Indore Development Authority (LAPSE-5 J.) v. Manoharlal* (2020) 8 SCC 129 was referred. The conditions in which the acquisition made under the Land Acquisition Act, 1894 lapses were discussed. The lapse of acquisition happens when the land is acquired under the old Land Acquisition Act, 1894 and the property was taken over by the State, State does not use the land at all for five years or more, new Land Acquisition Act, 2013 Act comes into force, the compensation has not been paid and the possession has not been taken. Section 101

of the new Land Acquisition Act, 2013 was referred which deals with the land which remains unutilized for more than 5 years and then returned. Section 48 of the old Land Acquisition Act, 1894 was compared with the provisions in the new Land Acquisition Act, 2013 dealing with the withdrawal from acquisition. Then Section 102 dealing with the situation where the acquired land has been used only partially and the unused land has to be sold to a third party was focussed. It was opined that 5 years period is common to Section 24 (2) and Section 102. The judgment of the Madras High Court in 2020 7 MLJ 734 was referred which dealt with the situation where an award inquiry has not been conducted and Section 12 was referred to dealing with the notice to owners. The judgment of the Madras High Court in 2023 2 MLJ 277 [Writ Petition 357 of 2021] was referred and it was opined that the case dealt with the situation where the award is not communicated to the land owner. It was stated that when the land owner continues to be in occupation of the property then he should be given the benefit of Section 24 (2). Section 28 (A) dealing with the grant of higher compensation granted by the court was highlighted.

The 2015 Amendment in the new Land Acquisition Act, 2013 was discussed. It was opined that the retrospective applicability of the new Act was allowed to the acquisition made under the old Land Acquisition Act, 1894 where an award has been made under Section 11 of the Land Acquisition Act, 1894 with conditions that the acquisition was made five years or more prior to the commencement of the new Land Acquisition Act, 2013 and the physical possession has not been taken by the State. Then judgment *Sree Balaji Nagar Residential Assn. v. State of T.N.*, (2015) 3 SCC 353 was referred and the reason for the period of 5 years or more was explained. The judgments *Pune Municipal Corpn. v. Harakchand Misirimal Solanki* (2014) 3 SCC 183, *Yogesh Neema & Ors v. State of Madhya Pradesh* 2016 (6) SCC 387 and *Indore Development Authority v. Shailendra*, (2018) 3 SCC 412 were referred.

The judgment of the Patna High Court in *Union of India, Ministry of Defence, Government of India vs. Arjun Yadav and Ors.* MANU/BH/0604/2019 where the compensation was raised 80 times was discussed in detail. The neglect of the land acquisition officer in the case was highlighted. The judgment *Indore Development Authority (LAPSE-5 J.) v. Manoharlal* (2020) 8 SCC 129 was referred. It was opined that the language of Section 24 of the new Land Acquisition Act, 2013 talks about the continuity of the law. It was stated that with the enactment of the new Land Acquisition Act, 2013, the landowners whose land had been acquired under the old Land Acquisition Act, 1894 sought higher compensation under the new Act. The

arbitrary increase in the compensation and Section 24 (1) (B) were highlighted and the legal framework of the continuity and lapse of acquisition was discussed. The issue of arbitrary compensation in the Arjun Yadav case was explained in detail.

The fifth session on *Adjudication of Offences & Penalties under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 & Open House Discussion: Major Challenges in Adjudication of Land Acquisition Disputes* commenced with a discussion on the jurisdiction of court in relation to fraud and misrepresentation in land acquisition matters. It was stated that other areas of challenges included succession, inheritance, compensation and obstacles by executives. Various provisions relating to offenses and penalties under the new Land Acquisition Act, 2013 i.e. Section 84 deals with the punishment for false information & mala fide action, Section 85 deals with the penalty for contravention of provisions of the Act, Section 86 deals with the offenses by companies, Section 88 dealing with the cognizance of offenses by court and Sections 89-90 dealing with the cognizable and non-cognizable offense were discussed. Then punishment for false information and contravention of the provisions of the Act, commission of offences by companies and commission of offences by government functionaries were highlighted. The punishment in situations of maliciously or deliberately providing wrong information in the matter of rehabilitation was discussed.

The retrospective effects of a provision of law declared ultra vires by the High Court in the matter of land acquisition was discussed and it was opined that judgment will have prospective effect only. It was added that the language of the judgment should be taken into consideration. It was opined that once the title of the land is transferred and the owner has accepted the compensation then the law cannot have retrospective effects on such transfer of property. So the acquisition which has taken place when the law was valid cannot be nullified by the subsequent declaration of the legal provision's unconstitutionality. The judgment *Pune Municipal Corpn. v. Harakchand Misirimal Solanki* (2014) 3 SCC 183, which was subsequently overruled by *Indore Development Authority vs. Shailendra*, (2018) 3 SCC 412 was referred. The situation where the acquisition proceedings are challenged when the possession of land was taken by the State and development has taken place and the compensation was paid was discussed. It was stated that the court cannot undo the acquisition proceedings in such a situation but can order the State to pay the compensation at the market value.

The judgments *Satendra Prasad Jain and Others v. State of U.P. and others* AIR 1993 SC 2517, *M/S Soorajmull Nagarmull v. Sri Brijesh Mehrotra and Ors* C.P(C).Nos.726-728 of 2017, 2015 10 SCC 217, *Nareshbhai Bhagubhai v. Union of India* Civil Appeal No. 6270 of 2019, 2019 15 SCC 1 and *M/s Delhi Airtech Services Pvt. Ltd v. State of U.P* Civil Appeal No. 24 of 2009 was discussed in the session.

The issue regarding the acquisition of land which is a matter of suit for partition in civil court was discussed. The situation where partition suit in civil court and compensation proceedings before the authority is pending simultaneously was deliberated. It was opined that if the property has been acquired by the State then it does not remain the property of the family and the question of partition does not arise and it has to be deleted from suit. The judgment *Ratnam Chettiar & Ors v. S. M. Kuppuswami Chettiar* 1976 SCR (1) 863 was referred. It was opined that if the fact of the dispute regarding partition is not disclosed to the State and if the money has been wrongfully paid then restitution is possible.

Then the situation where the acquisition does not transfer ownership of land and the State only uses the land for public purpose was discussed and Sections 105 & 113 of the new Land Acquisition Act, 2013 were referred. The acquisition proceedings involving different laws i.e. the National Highways Act, the Petroleum and Mineral Pipelines Act, and the Railways Act were discussed.
