Judicial Failure on Land Acquisition for Corporations

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Despite the 1984 amendment of the Land Acquisition Act, 1894, the judiciary has continued to allow farmland to be acquired freely, with "public purpose" being given the widest possible scope. In the period of globalisation such acquisition has promoted private corporate interests, the state, in turn, becoming an estate agent of the companies. The article focuses on land acquisition under Part II for the state and its instrumentalities and agencies and compares this with Part VII of the Act, which relates to acquisition for a company. The way forward is for the judiciary to compel all acquisitions for companies to follow the Part VII route.

This article is partly based on submissions made in the Special Leave Petition (Civil) No 17461 of 2006, *Leela Nagesh Mandke vs State of Maharashtra*, pending in the Supreme Court of India.

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No statute in colonial India or independent India has been used against the interests of the poor in such a systematic and widespread manner, causing misery, as the Land Acquisition Act, 1894. From independence up to 1995, millions of persons were displaced from land due to a variety of reasons including forcible displacement for public projects. The judiciary has played a significant role in executing this statute without care for the effects of land acquisition on small and medium landholders and on agricultural labourers. In this article, we tell one part of the legal story as to how the judiciary remained oblivious to the suffering of the rural people. The entire story is difficult to comprehend and requires careful research and analysis. But the part we dwell on will probably serve in indicating how blind the legal system was to the plight of the working people. The article focuses on land acquisition under Part II for the state and its instrumentalities and agencies and compares this with Part VII of the Act, which is acquisition for a company.

The First Phase: Supreme Court against Farmers

At the time of enactment of the Land Acquisition Act, 1894, the second Select Committee in its report dated 24 January 1894,[1] submitted to the Council of the Governor General of India, gave an explanation regarding the proviso to Section 6 of the Act. The proviso is as under:

> Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

The explanation given by the Select Committee was as follows:

> The object of the amendment we have suggested in the proviso to Section 6 is to enable land to be acquired under the Bill for the purposes of colleges, hospitals and other public institutions which are in some cases only partly supported out of public revenue or the funds of local authorities.

The Land Acquisition Bill was introduced by H W Bliss who explained the differences between the two Parts thus:

> Part VII of the Act lays down the procedure to be adopted when it is sought to acquire land for companies. It indicates, *though perhaps not so clearly as desirable*, that it is not intended that the law shall be put in force for the acquisition of land for all companies. *It is not intended, that is to say that the Act shall be used for the acquisition of land for any company in which the public has merely an indirect interest and of the works carried out by which the public can make no direct use. The Act cannot therefore be put into motion for the benefit of such a company as a spinning or weaving company or an iron foundry, for although the works of such companies are distinctly 'likely to prove useful to the public'* (to use the words of Section 48), it is not possible to predicate of them 'the terms on which the public shall be entitled to use' them, a condition precedent to the acquisition of land laid down in Section 49. *It is important both that the public should understand that the Act will not be used in furtherance of private speculations and that the local governments should not be subject to pressure, which it might possibly sometimes be difficult to resist, on behalf of enterprises in which the public have no direct interest.*[2]

Constitutional Bench decisions of the Supreme Court in 1961 and 1962 decimated this difference. These cases are *Pandit Jhandu Lal and Others vs The State of Punjab and Another* (AIR 1961 SC 343), *R L Arora vs The State of Uttar Pradesh* (AIR 1962 SC 764) and *Smt Somawati and Others vs State of Gujarat* (AIR 1963 SC 151).

In *Pandit Jhandu Lal and Others vs The State of Punjab and Another* (AIR 1961 SC 343), agricultural land of farmers was taken for the construction of houses for workers of a company under a government-sponsored housing scheme. No attempt was made by government to comply with the requirements of Part VII of the Act. Holding that the construction of residential quarters for industrial labourers is a public purpose and noticing that a large proportion of the compensation money was to come out of public funds, the Supreme Court began the obliteration of

the difference between Part II and Part VII in the following terms:

> In the case of an acquisition for Company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. *But that does not necessarily mean that an acquisition for a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds*. In other words, the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a Company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds.

There was a fight back in *R L Arora vs The State of Uttar Pradesh* (AIR 1962 SC 764). In that case agricultural land was acquired for an industrialist in Kanpur for the construction of a textile machinery parts factory. No action was taken under Part VII. Though this decision is generally favourable to the person opposing acquisition, a complication was created by the observations made in paragraph 6 to the effect that the crucial determining factor was whether "the *entire compensation*" is to be paid by the corporation. Since the entire compensation came from the corporation, Chapter VII was said to apply and since the procedures were not followed the acquisition was set aside. It is no doubt true that there are some progressive observations made in paragraph 13 to the following effect:

> *It seems to us that it could not be the intention of the legislature that the government should be made a general agent for companies to acquire lands for them in order that the owners of companies may be able to carry on their activities for private profit.* If that was the intention of the legislature it was entirely unnecessary to provide for the restrictions contained in Ss. 40 and 41 on the powers of the government to acquire lands for companies. If we were to give the wide interpretation contended for on behalf of the respondents on the relevant words in Ss. 40 and 41 *it would amount to holding that the legislature intended the Government to be a sort of general agent for companies to acquire lands for them, so that their owners may make profits.*

The Court then dealt with the submission that the acquisition would come under Part II as the company was producing goods that were useful to the public and that therefore the acquisition was for a public purpose. The Court held:

> It can hardly be denied that a company which will satisfy the definition of that word in S 3(e) will be producing something or the other which will be useful to the public and which the public may need to purchase. So on the wide interpretation contended for on behalf of the respondents we must come to the conclusion that the intention of the legislature was *that the government should be an agent for acquiring land for all companies* for such purposes as they might have provided the product intended to be produced is in general manner useful to the public, and if that is so there would be clearly no point in providing the restrictive provisions in Ss 40 and 41. The very fact therefore that the power to use the machinery of the Act for the acquisition of land for a company is conditioned by the restrictions in Ss 40 and 41 indicates that the legislature intended that the land should be acquired through the coercive machinery of the Act only for the restricted purpose mentioned in Ss 40 and 41 which would also be a public purpose for the purpose of section 4. We find it impossible to accept the argument that the intention of the legislature could have been that individuals should be compelled to part with their lands for the profit of others who might be owners of companies through the Government simply because the company might produce goods which would be useful to the public.

The Court concluded:

> There is, in our opinion, no doubt that the intention of the legislature was that land should be acquired only when the work to be constructed is *directly useful to the public and the public shall be entitled to use the work as such for its own benefit* in accordance with the terms of the agreement which under section 42 are made to have the same effect as if they form part of the Act.

In paragraph 21 of the decision, the Court gave the example of the construction of *hospitals and libraries* as works satisfying Sections 40 and 41[3] and held that agreements have to be entered into so that the public may directly use such facilities.

The majority decision in *Smt Somawati and Others vs State of Gujarat* (AIR 1963 SC 151) put the final nail in the coffin and whatever slim chances existed for a propoor orientation of the statute evaporated. This was a case where government sought to acquire agricultural land for the purposes of setting up a factory for the manufacture of compressors and other equipment. The Punjab government sanctioned the unbelievable amount of Rs 100 for the purposes of acquisition. It was an admitted position that the requirements of Part VII were not complied with. It was contended by the writ petitioners that the token amount itself indicated that the acquisition was not for a public purpose and that the acquisition was mainly for a company and ought to be set aside since the procedure under Part VII was not followed. The Constitutional Bench upheld the acquisition in the following manner:

> We would like to add that the view taken in Senga Naicken's case, ILR 50 Mad 308: (AIR 1927 Mad 245) has been followed by the various High Courts in India. *On the basis of the correctness of that view the state governments have been acquiring private properties all over the country contributing only token amounts towards the cost of acquisition.* Titles to many such properties would be unsettled if we were now to take the view that 'partly at public expense' means substantially at public expense. Therefore, on the principle of *stare decisis* the view taken in Senga Naicken's case, ILR 50 Mad 308: (AIR 1927 Mad 245) should not be disturbed.

Justice Subba Rao set out a sterling dissent referring to Section 6(1).[4] He held that:

> A reasonable construction of this provision uninfluenced by decisions would be that in the case of an acquisition for a company, the entire compensation will be paid by the company and in the case of an acquisition for a public purpose the government will pay the *whole or a substantial part* of the compensation out of public revenues. The underlying object of the section is apparent; it is to provide for a safeguard against abuse of power. A substantial contribution from public coffers is ordinarily a guarantee that the acquisition is for a public purpose. But it is argued that the terms of the section are satisfied if the appropriate government contributes a *nominal sum*, say a pie, even though that total compensation payable may run into lakhs. This interpretation would lead to extraordinary results… The idea that in one case the compensation must come out of the company's coffers and in the other case the whole or some reasonable part of it should come from public revenues. This idea excludes the assumption that practically no compensation need come out of public revenues. The juxtaposition of the words 'wholly or partly' and the disjunctive between them emphasise the same idea. It will be incongruous to say that public revenue shall contribute rupees one lakh or one pie. The payment of a part of compensation must have some rational relation to the compensation payable in respect of the acquisition for a public purpose. So construed 'part' can only mean a substantial part of the estimated compensation.

He then concluded:

> *We think that the Legislature, when they passed the Land Acquisition Act, did not intend that owners should be deprived of their ownership by a mere device of private persons employing the Act for private ends or for the gratification of private spite or malice*.

It may be noted that at the time of enactment of the Land Acquisition Act, 1894, the Second Select Committee in its report dated 24 January 1894[5] submitted to the Council of the Governor General of India explained the second proviso to the declaration under Section 6(1) in the following terms:

> The object of the amendment we have suggested in the proviso to Section 6 is to enable land to be acquired under the Bill for the purposes of colleges, hospitals and other public institutions which are in some cases only partly supported out of public revenue or the funds of local authorities.

The Second Phase: Legislature Fights Back

The anguish of the legislature was immediately obvious. S K Patil, speaking in the Lok Sabha[6] proposing the Land Acquisition (Amendment) Act, 1962, complained:

> What happened after this Arora case? After this Arora case when the judgment was against those words, a similar case arose in Punjab only last month or three or four months back, in May. They had to acquire some land for air-conditioning. I do not know out of the two, machinery for textile or air-conditioning, which is a larger public purpose. According to me the first is. The textile machinery is surely a larger public purpose. Even then, I do not go into that but the government saw that they were likely to be attacked if they acquired lands under Chapter VII or Part VII. Therefore, they were wise enough and they went to Part II. Part II puts no obligation on the government of any type. Not only they could acquire but they have got to pay some money. Therefore, do you know how much they paid? They paid Rs 100 for the land. Technically they have to pay some money. In the other Part, when it is acquired for a company, the money is to be paid wholly by that company. Therefore in order to satisfy the requirement of law, they paid Rs 100 and acquired the land for themselves which they have a right to do and then they gave it for the air-conditioning plant, etc. The case went to the Court and this judgment of Arora versus the UP Government was quoted in that court also and the judgment of the five judges of the Supreme Court said: 'Whatever it might be, once the state government, in its wisdom, acquires the land for a public purpose, its decision is final and unchallengeable. We have no right to challenge the decision of it because the wording of section 4 of Chapter II does give us any loophole that we might go through it and change the meaning of it. They are competent and the compensation is also not justiciable'. You can see. *Therefore, we are trying to prevent these, that hereafter the state governments should not go to the length of acquiring land under Part II even for companies.* Therefore, my friend opposite (sic) will see that I am restricting the law in order to take away the liberty of the states to acquire lands under Part II in which the final decision is only what they decide and not as is given here and many other things might happen. Here I am making it under Part VII so that all those restrictive measures that have been put including the compensation should be applied to it and it should not be very easy for the state government to acquire it for anything and everything. This is the distinction that is sought to be made.

The proposal to amend the Act did not materialise and S K Patil told the Lok Sabha that a more comprehensive Bill would be placed before the House. It took 22 years for the new amendment to be placed before the Lok Sabha.

On 6 August 1984, Bill No 63 of 1984 was introduced in the Lok Sabha to amend the Land Acquisition Act, 1894. In the Statement of Objects and Reasons it was set out that the

> Promotion of public purpose has to be balanced with the rights of the individual, whose land is acquired, thereby often depriving of him his means of livelihood. *Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the state or an enterprise under it…* The main proposal for amendment are as follows:... (ii) *Acquisition of land for non-government companies under the Act will henceforth be made in pursuance of Part VII of the Act in all cases.*

Piloting the Bill through the Lok Sabha and the Rajya Sabha, the minister Mohsina Kidwai said:

> I would now like to draw the attention of the Honourable Members to some other provisions of the Bill …The scope of the term 'public purpose' has been revised so as to provide for acquisition of land for all socially important purposes, *but at the same time to obviate the possibility of misuse of this provision….*[7]

This is how the Act was amended and a new Section 3(cc) was introduced and *a new Section 3(e) was substituted thus separating companies from government entities. The most important change came in 3(f) where an exclusionary clause was introduced to the expression public purpose making it very clear that acquisition of land for companies was excluded from the expression public purpose in Section 3(f).*

It appears that in some publications the exclusionary rider is shown as a continuation of clause (viii) above. However, in the Bill[8] and subsequent gazette publications of the amended Act the exclusionary rider is set apart from clause (viii) and has a different intent showing that it is exclusion to the entire sub-section. This is the only way to read this exclusionary clause by reading it together with the Statement of Objects and Reasons. The rider is correctly set out in *HMT House Building Cooperative Society vs Syed Khader* (1995 2 SCC 677) and *Jnanedaya Yogam vs K K Pankajakshy* (1999 9 SCC 492).

Third Phase: Judiciary Ignores the Amendment

There are several decisions of the Supreme Court with regard to land acquisition done after the 1984 amendment. These may be divided into four categories. First, where the decision relies on pre-1984 judgments of the Supreme Court and do not notice the critical amendment in Section 3(f). The second are those decisions that reproduce Section 3(f) incorrectly as if the rider is connected to Section 3(f) (viii) alone. The third are those that correctly set out 3(f) and then proceed on the assumption that the amended section makes no difference at all. The fourth categories are those cases that correctly interpret the amended section 3(f).

Dealing with the *third* categories of cases, in *Pratibha Nema vs State of MP* (2003 10 SCC 626) land was acquired under Part II for the establishment of a diamond park. The Supreme Court relied on *Smt Somawanti's vs State of Punjab*,[9] *Jage Ram vs State of Haryana*,[10] *Manubhai Jehtalal Patel vs State of Gujarat*,[11] *Indrajit C Parikh vs State of Gujarat*,[12] *Bajirao T Kote vs State of Maharashtra*,[13] *R L Arora vs State of UP*,[14] *Srinivasa Co-op House Building Society Ltd vs Madam Gurumurthy Sastry*[15] and *Pandit Jhandu Lal vs State of Punjab*[16] and upheld the acquisition under Part II in the following terms:

> One thing which deserves particular notice is the rider at the end of clause (f) by which

> the acquisition of land for companies is excluded from the purview of the expression 'public purpose'. However, notwithstanding this dichotomy, speaking from the point of view of public purpose, the provisions of Part II and Part VII are not mutually exclusive as elaborated later.

This observation is utterly wrong and the decision is in utter disregard of the amendment and deserves to be set aside by a larger Bench.

Every one of the decisions relied upon were in respect of pre-amendment acquisitions though the decisions may have been rendered after 1984. The conclusion of the Supreme Court in this case is utterly retrogressive and is set out below:

> Thus the distinction between public purpose acquisition and Part VII acquisition *has got blurred* under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lie in the fact whether the cost of acquisition comes out of public funds wholly or partly. Here again, even a *token* or *nominal* contribution by the government was held to be sufficient compliance with the second proviso to Section 6 as held in catena of decisions. *The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the government.* In the ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could get imbued with the character of public purpose acquisition if only the government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position.

The decision in Somavanti's case,[17] to the effect that even a nominal contribution by the government would convert an acquisition for a company into a public purpose acquisition under Part II was taken to absurd levels in *Indrajit C Parekh vs State of Gujarat*[18] where it was held that even a nominal contribution of Re 1 would validate the acquisition. Similarly in *Manubhai Jehtalal Patel vs State of Gujarat*[19] the Supreme Court held that "the contribution of Re 1 from the public exchequer cannot be dubbed as illusory so as to invalidate the acquisition". *These utterly irrational decisions eventually decimated the crucial difference between acquisition for companies and acquisition for public purposes. This deplorable trend continued with Pratibha Nema's case.*[20] *Thus the explicit intention of Parliament not to permit state governments becoming agents for companies and misusing the Land Acquisition Act by pretending that acquisition of lands for companies was for a public purpose, was thwarted by the Supreme Court.*

Dealing with the *fourth* categories of cases, though there was a feeble attempt by some Benches of the Supreme Court to restrict acquisitions for companies using the guise of public purpose, these were very few and could be easily distinguished. In *Jnanedaya Yogam vs K K Pankajakshy*,[21] a registered society sought the intervention of the government to acquire land for a religious procession celebrating a festival in the Jagannath Temple. The Supreme Court held that such an acquisition would be governed by Part VII and would not fall within the definition of "public purpose" as set forth in Section 3(f) of the Act.

In *Devinder Singh vs State of Punjab*[22] where the State initiated Part II proceedings to acquire land for a tractor manufacturing company, the Supreme Court after noticing the amended Section 3(f) correctly held as follows:

> When a request is made by any wing of the State or a government company for acquisition of land for a public purpose, different procedures are adopted. *Where, however, an application is filed for acquisition of land at the instance of a 'company', the procedures to be adopted therefore are laid down in Part VII of the Act.*

Though the Court is shown the decision in Pratibha Nema's case[23] the Court declined to follow that ratio and held as under:

> Expropriatory legislation, as is well known, must be strictly construed. When the properties of a citizen is being compulsorily acquired by a State in exercise of its power of Eminent Domain, the essential ingredients thereof, namely, existence of a public purpose and payment of compensation are principal requisites thereof. *In the case of acquisition of land for a private company, existence of a public purpose being not requisite criteria, other statutory requirements call for strict compliance, being imperative in character.*

The Supreme Court then relied on the decision of the SC in *General Government Servants Cooperative Housing Society Ltd, Agra vs Sh Wahab Uddin*[24] and concluded that Rule 4 was mandatory and Companies were required to negotiate with farmers and avoid acquisition of agricultural land. In that case, the Supreme Court held:

> The above consideration shows that Rule 4 is mandatory; its compliance is no idle formality; unless the directions enjoined by Rule 4 are complied with, the modification under Section 6 will be invalid. A consideration of Rule 4 also shows that its compliance precedes the notification under Section 4 as well as compliance of Section 6 of the Act.

This decision however could easily be distinguished on facts as payment by the government for acquisition came after the Section 4 notification. It can therefore be argued that this was a case where the entire contribution for acquisition was to come from a company and that the subsequent payment by government was to cover up for what was essentially acquisition for and paid for by a company.

In *Chaitram Verma vs Land Acquisition Officer*,[25] acquisition was started for construction of a railway siding for a cement plant of TISCO. The high court held:

> The last part of the definition, i e, 'it does not include acquisition of land for companies' is important and brings out the obvious fact that even though a 'public purpose' may be served by acquiring land for companies, the expression 'public purpose' as used in the Act does not include such acquisition… But the use of exclusionary sentences as the end would make the difference and indicate that except for acquisitions for companies which cannot be treated as acquisition for public purpose, all other purposes are included within it… Under the circumstances whatever may be the extent of purpose included within the definition of 'public purpose' acquisition for company is excluded from it. Clearly therefore, an acquisition for a company is to be distinguished from acquisition for a public purpose, and an acquisition for a company even though serving public purpose, cannot, in the context of S3(f) of the Act, be accepted as an application for a public purpose… Legal position was different before the amendment of the definition in 1984 by Act No 68 of 1984. The definition of 'public purpose' in S3(f) of the Act before this amendment did not have any exclusionary clause and was inclusive. Similarly S4(l) of the Act permitted issue of notification only for a 'public purpose'. It was therefore possible to then submit that if 'public purpose' is served by a company, there would be no illegality in the acquisition for a company on the basis of notification mentioning acquisition for a public purpose.

In *State of Punjab vs Raja Ram*,[26] land was acquired for the construction of godowns for the Food Corporation of

India. The acquisition was set aside in the following terms:

> The Corporation being a 'company' compliance with the provision of Part VII of the L A Act had to be made in order to lawfully acquire any land for its purpose. It is not denied that such compliance is completely lacking in the present case.

The Elitist Approach: Its Articulation

The tilt towards corporations and away from the poor was legally articulated in the following way. First, it was said that public purpose is incapable of being defined. Second, that benefit must come to some part of the population (not necessarily the vast majority of the poor: even the rich are part of the public). Third, that the doctrine of eminent domain gives the state vast powers to take people's land. Fourth, the government is the best if not the only judge of what constitutes public purpose.

This body of case law develops in a situation where the state is only too anxious to help corporations for kickbacks. Extensive corruption surrounds land acquisition proceedings. It is the lands of the poor that are invariably taken. Rich farmers and others are able to adroitly avoid acquisition by political lobbying. It is in this situation that the courts develop a hands-off policy thus inadvertently legitimising the expropriation of small farmers' landholdings to facilitate corporate profiteering.

One could speculate as to what direction the courts would have gone if a government had come to power that began the appropriation of the lands of rich farmers for genuinely socialistic purposes such as education and health. It is entirely possible that a new jurisdiction would have emerged.

The decision in R L Arora's case[27] has conveniently been forgotten. The ratio that public purpose should be *directly useful to the public and the public shall be entitled to use the work as such for its own benefit* has never been followed thereafter. This was a pro-people interpretation of section 3(f) of the Act. If rich persons and corporations wanted land for any purpose it was open to them to buy land from the open market on the basis of negotiation with farmers. Only if land was required for a project which was directly useful to the public and which the public could use as of right, would the Land Acquisition Act come into play. But this was not to be. An interpretation was given and followed for decades thereafter, which would allow for corporate takeover of agricultural land with a court not intervening at all.

In Somawanti's[28] case the Supreme Court upheld acquisition for a company manufacturing refrigeration compressors and held such an acquisition to be for a public purpose. In *Jage Ram vs State of Haryana*,[29] relying on Somawanti, the Supreme Court upheld acquisition for a factory manufacturing China-ware and porcelain-ware. Thus, in Somawanti, in an action relating to the taking of lands of farmers the Supreme Court set the bar so low as to make it almost impossible to challenge acquisition proceedings. The acquisition could only be challenged if it was "not a public purpose but a private purpose or no purpose at all". Thus the courts could not play any balancing act between the stated public purpose and the detriment to the public. Proportionality could not be assessed at all. After that everything under the sun met the standard of public purpose.

In *Sooraram Pratap Reddy vs District Collector*,[30] the Supreme Court relied on the dissent in R L Arora's case[31] where it was said "I think it would be unduly restricting the meaning of the word 'useful' to say that a work is useful to the public only when it can directly be used by the public". Arora's case was not followed by reference to a series of American decisions on the point that public interest need not mean that every member of the public should benefit. The American decisions were therefore not relevant at all.

In the same decision (Sooraram) reference is made to *Motibhai Vithalbhai Patel vs State of Gujarat*,[32] (which was for the expansion of Sarabhai Chemicals as if this corporation could not buy land on the open market paying market rates!) where public purpose was seen in such a circular and indirect sense as to include savings in foreign exchange! The Court held "that even if the acquisition of land is for a private concern whose sole aim is to make profit, the intended acquisition of land would materially help in saving foreign exchange in which the public is also vitally concerned in our economic system". On this logic acquisition for a tax-paying corporation would also be in public interest, as the corporation would pay increased taxes on the transactions.

The legal logic, by which the superior courts began to allow all kinds of unkind acquisitions that caused untold misery to the rural poor, *was by adopting almost complete hands off attitude in acquisition proceedings*. In Sooraram's case, the Supreme Court held that "government is the best judge". In *Daulat Singh Surana vs Collector*,[33] the Supreme Court went to the extreme extent of holding that "government has the sole and absolute discretion in the matter". In *Dhampur Sugar (Kashipur) Ltd vs State of Uttaranchal*,[34] the Supreme Court undercut its own role by saying that courts were "ill-equipped to deal with these matters", because acquisition cases dealt with complex social, economic and commercial matters. "It is not possible for courts to consider competing claims and conflicting interests and to conclude which way the balance tilts. There is no objective, justiciable or manageable standards to judge the issues nor can such questions be decided on a priori considerations." This is a point of view that is completely untenable. The superior courts deal with complex commercial matters day in and day out. They draw a balance between competing interests. They lay down justiciable standards where none exists. For the Supreme Court to avoid adjudication of competing interests in land acquisition matters shows that the court was by and large in line with the government's policy of uncontrolled land acquisition.

At the root lay the uncritical reliance on the doctrine of "eminent domain" which has its origin in the colonial period and justified colonial land grabbing all over the world. There is a sizeable and erudite body of literature situating this doctrine in imperial ideology and criticising it for its use as a foundation for governments' forcible acquisitions particularly of the lands of indigenous people. In Sooraram's case, the Supreme Court affirmed this obnoxious doctrine by reference to *Charanjit Lal Chowdhury vs Union of India*,[35] and followed thereafter in a series of cases.[36]

Conclusions

The judiciary appears to have misread the mood in the country particularly after the

1984 amendment. Prior to that, the orientation of nation building probably made judges feel that development was not possible unless acquisition was done freely and with public purpose given the widest possible scope. But to continue with such an approach in the period of globalisation where land acquisitions were done to promote corporate interests with the state becoming an estate agent of the companies, is quite another thing. To disregard, in the manner done, the intent of the 1984 amendment indicates how powerful the urge was among industrialists to grab the lands of farmers. As a result, large tracts of lands throughout the country, mainly of small farmers, have been forcibly acquired and people displaced. There were mass protests against displacement everywhere but the superior judiciary remained unmoved, doggedly anchored to their notions of "development" unresponsive to the distress of farmers, tenants and agricultural labourers and the decline of agriculture. During this period of globalisation from 1990 onwards the union government withdrew credits from agriculture and followed conscious anti-farmer policies rendering agricultural production unremunerative. In this context the compulsory acquisition of lands using this draconian statute was the most cruel blow of them all.

The way forward is for the judiciary to compel all acquisitions for companies to follow the Part VII route and to reverse the decision in Somawanti's case and hold that irrespective of the contribution by government, all acquisitions for companies must follow Part VII. The reason for this approach is not difficult to comprehend. State governments today have come under corporate control so completely that they are only too eager to spend large sums of state funds to assist corporations in the acquisition of lands using the Act. The judiciary must understand that there is grave unrest in rural India and if it is to relate to the rural poor at all it cannot go by the Constitutional Bench's decision of the earlier period. Times have changed. The rural economy is in ferment. With rural ferment everywhere, the time has come for the Supreme Court to heed the dissent of Justice Subba Rao in Somawanti's case as set out above and the observations of the SC in *National Textile Workers Union vs P R Ramakrishnan*:[37]

> We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values.

NOTES

1 Bombay Government Gazette Part VI, and dated 1 February 1894, pp 18-29: Gazette of India Part V, 27 January 1894, pp 23-24.

2 Proceedings of the Council of the Governor General of India: Gazette of India Part VI, 12/03/1892, p 28.

3 S 40. Previous enquiry: (1) such consent shall not be given unless the appropriate government be satisfied, either on the report of the collector under Section 5A, sub-section (2), or by an enquiry held as hereinafter provided –

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 (5 of 1908) in the case of Civil Court.

S 41 Agreement with appropriate government – If the appropriate government is satisfied after considering the report, if any, of the collector under Section 5A, sub-section (2), or on the report of the officer making an inquiry under Section 40 that the proposed acquisition is for any of the purpose referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of Section 40, it shall require the company to enter into an agreement with the appropriate government, providing to the satisfaction of the appropriate government for the following matters, namely:-

(1) the payment to the appropriate government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company;

(3) the term on which the land shall be held by the Company;

(4) where the acquisition is for the purpose of erecting dwelling-houses or the provision of amenities connected therewith, the time within which, the conditions on which the manner in which the dwelling houses or amenities shall be erected or provided;

(4A) where the acquisition is for the construction of any building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which and the conditions on which, the building or work shall be constructed or executed; and

(5) where the acquisition is for the construction of any other work the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.

4 S 6(1) Declaration that land is required for a public purpose – (1) Subject to the provisions of Part VII of this Act, when the appropriate government is satisfied after considering the report, if any, made under Section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a secretary to such government or of some officer duly authorised to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1) irrespective of whether one report or different reports has or have been made whenever required under Section 5A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1) –

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984) shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification.

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some found controlled or managed by a local authority.

5 Bombay Government Gazette Part VI, and dated 1 February 1894, pp 18-29: Gazette of India Part V, 27 January 1894, pp 23-24.

6 Lok Sabha Debates, 3rd Series, Vol 7, and dated 30 August 1962, cols 5129 and 5130.

7 Lok Sabha Debates, 7th Series, Vol 51, No 24, dated 25 August 1984.
Rajya Sabha Debates, Vol 131, No 26, dated 28 August 1984.

8 Bill No 67 of 1982: Gazette of India (Ext), Part II, Sec 2, dated 30 April 1982, pp 14-23, in the Bill No 63 of 1984: Gazette of India (Ext), Part II, Sec 2, No 41, dated 6 August 1984, pp 1-14, and also the Land Acquisition (Amendment) Act, 1984: Gazette of India (Ext), Part II, Sec 1, No 86, pp 1-11, dated 24 September 1984, pp 1-14.

9 (AIR 1963 SC 151).

10 (1971 1 SCC 671).

11 (1983 4 SCC 553).

12 (1975 1 SCC 824).

13 (1995 2 SCC 442).

14 (AIR 1964 SC 1230).

15 (1994 4 SCC 675).

16 (AIR 1961 SC 343).

17 (1963 2 SCR 774).

18 (1975 1 SCC 824).

19 (1983 4 SCC 553).

20 (2003 10 SCC 626).

21 (1999 9 SCC 492).

22 (AIR 2008 SC 261).

23 (2003 10 SCC 626).

24 (1981 2 SCC 353).

25 (AIR 1994 MP 74).

26 (1981 2 SCC 66).

27 *R L Arora vs The State of Uttar Pradesh* (AIR 1962 SC 764).

28 (1963 2 SCR 774).

29 (1971 1 SCC 671).

30 (2008 9 SCC 552).

31 (1962 SUPP (2) SCR 149).

32 (AIR 1961 Guj 93).

33 (2007 1 SCC 641).

34 (2007 8 SCC 418).

35 (AIR 1951 SC 41: 1950 SCR 869).

36 *Commissioner and Collector vs Durganath Sarma* (AIR 1968 SC 394: 1968 1 SCR 561), *Coffee Board vs CCT* (1988 s SCC 263: 1988 SCC (Tax) 308) and *Scindia Employees' Union vs State of Maharashtra* (1996 10 SCC 150).

37 (1983 1 SCC 228).