

LAWXPERTS. UNDERSTANDING THE CONCEPT OF EMINENT DOMAIN.

A. ORIGIN :

- The expression “eminent domain seems to have been first used in 1625 by the international jurist Hugo Grotius in his work ‘De Jure Belii ac Pacis’, now it is accepted principle of constitutional law in almost all important countries
- The Government ‘s sovereign authority to seize private property for public use must be subjected to payment of just compensation originated at English common law and appeared in America as early as the seventeenth century.

B. MEANING:

- Doctrine of ‘Eminent domain’ means the supreme power of the king or the government under which property of any person can be taken over in the interest of general public.
- Eminent Domain is power of the sovereign to acquire property of an individual for public use without the necessity of his consent.
- It is based on two maxims namely
 - ✓ *salus populi supreme lex esto* = the welfare of the people is the paramount law and
 - ✓ *necessita public major est quan,* = public necessity is greater than the private necessity.

C. CONSTITUTION OF INDIA

- The power of the State to take private property for public use and consequent right of the owner to compensate now emerge from the constitution of India.
- In **entry 42 list III of seventh schedule under Indian Constitution**, both union and States government are empowered to enact laws relating to acquisition of property.
- The use of eminent domain power for land acquisition is also justified when the public purpose in question can be served by only a specific piece of land, which has no substitute.

D. POLICE POWER V. EMINENT DOMAIN.

In *Chiranjit Lal v. Union of India*, Supreme Court held that the eminent domain is the inherent right in every sovereign State to take and appropriate the private property belonging to an individual for public purpose. The State under its police power also regulates the use and enjoyment of private property. The police power can, however, be distinguished from eminent domain power. While under police power, State merely regulates the use and enjoyment of property; under the eminent domain, **State can take the property from the owner for public use**

E. JUDICIAL REVIEW AND EMINENT DOMAIN :

The Supreme Court in *Sooraram Reddy v. Collector, Ranga Reddy District*, has articulated the following grounds for review of this power: (i) malafide exercise of power; (ii) a public purpose that is only apparently a public purpose but in reality a private purpose or collateral purpose; (iii) an acquisition

without following the procedure under the Act; (iv) when the acquisition is unreasonable or irrational; (v) when the acquisition is not a public purpose at all and the fraud on the statute is apparent.'

F. Eminent Domain and the Land Acquisition Act

One of the most significant statute concerned with the exercise of the right of eminent domain in India was the Land Acquisition Act, 1894.

Land Acquisition Act, 1894 : Under the 1894 statute there were broadly two forms of recognised expropriation:

one, acquisition for public purpose for governmental use, and two, forced transfer of land from private individuals to corporations for the latter's commercial use. In the case of acquisitions intended to benefit companies, a special procedure was prescribed in Part VII of the Land Acquisition Act, which incorporated additional safeguards to ensure that governments don't abuse their avowed power of eminent domain.'

G. Property rights and the state

- Earlier Right to Property is a Fundamental Right under the list of freedoms = Article 19(1)(f) + Article 31, which provided that state can acquire properties of individual for the public purpose by paying compensation to the landowner, provided such acquisition was backed by suitable legislation.
- In 1978, Parliament enacted the 44th amendment to the Constitution = deleted Article 19(1)(f) and Article 31, and made the right to property to a mere non-fundamental status. Why? Government need to carry upon land reforms to set right the inequalities among the farmers.
- But did it achieve the real purpose of deleting FR? No. By citing "public purpose" = both the Union and the various State governments have routinely acquired land for the benefit of private industry or rich, often at grave costs incurred by small farmers.'

CONCEPT OF EMINENT DOMAIN : State , for PUBLIC PURPOSE, can acquire private properties by paying nominal compensation.

H. LATITUDE OF "PUBLIC PURPOSE"

Preposterous Judgements of SC :

- ✓ "the contribution of Rs.1 from the public exchequer cannot be dubbed as illusory so as to invalidate the acquisition" / Even 1 rupees is good as compensation for the landowner. You cannot challenge it.¹ *Manubhai Jehatalal Patel V. State of Gujarat.*
- ✓ Acquiring Land for Diamond Industry/ park is not bad; as it would generate a "good deal of foreign exchange" and would create "employment potential". *PRATIBHA NEMA & ORS V. STATE OF M.P. & ORS*

¹ "the contribution of Rs.1 from the public exchequer cannot be dubbed as illusory so as to invalidate the acquisition".

I. CURRENT AFFAIRS: 2016:

But this time, SC HELD THAT = the government's acquisition of land in singur for the purported use by Tata Motors Limited to construct a car factory, they held, was in violation of the procedural mandates of the Land Acquisition Act, 1894. *Kedar Nath Yadav v. State of West Bengal (2016)* .

Justice Gowda's ruling, Government attempt amounts to **colourable exercise of power**. "Such an acquisition, if allowed to sustain," he wrote, "would lead to the attempt to justify any and every acquisition of land of the most vulnerable sections of the society in the name of 'public purpose' to promote socio-economic development."

GOOD THING :Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 (LARR Act) = repeals the 1894 ACT. To whittle down this new legislation,

Tamil Nadu, Rajasthan and Gujarat, among others = legislating a new law = permit takings even in the absence of a direct public purpose.

In other States such as Telangana, plans to delete requirement of consent when acquiring property for private companies so long as the acquisition is for a public purpose.

CONCLUSION : After all, in every state where a right to property is considered sacrosanct, those classes of people without property have little to benefit from. But what we have today in India is a selective preservation of property rights, where the least advantaged amongst us also bears the greatest burden in terms of relinquishing ownership of land. No reasonable theory of justice can validate this terrifying anomaly.²

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INTEGRATED PLAN STARTS ON NOVEMBER 06TH 2016.

² THE HINDU.