

BOOK REVIEWS

A. GHOSH'S THE LAND ACQUISITION ACT 1894 (7th ed. 1984). By S.K. Ghosh. Eastern Law House Pvt. Ltd., 54, Ganesh Chunder Avenue, Calcutta-700-013. Pp. [74]+1393. Price Rs. 250: £ 28: \$ 40.

THE ACQUISITION and requisition of property as a subject of legislation is contained in entry 42 of the concurrent list in the seventh schedule to the Constitution of India. Parliament as well as the state legislatures have power to make laws on this subject. The power of legislation has been exercised galore by the state legislatures with the result that there are about a hundred state Acts on this subject in addition to the central Act, namely the Land Acquisition Act 1894. The main reason for the bulk of this book is the reproduction of provisions of the state legislations on this subject at relevant places in dealing with the central Act and also a compilation of the state statutes in part III of the book. Indeed, part I which deals with the Land Acquisition Act of 1894 occupies less than half the book.² Part II reproduces some other central statutes dealing with different properties in which acquisition may be resorted to. Part III dealing with state legislations is just a compilation of all the state statutes³ on the subject. On the subject of acquisition of land, therefore, a court would be more busy with the study and application of the state statutes than the central law.

It is surprising that the basic question of constitutionality of these numerous state statutes has not been raised. The question of constitutionality arises because of article 254 of the Constitution. Article 254(1) reads:

If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which ...is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent list, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

1. A. Ghosh, *The Land Acquisition Act 1894* (7th ed. 1984).

2. *Id.* at 59-640.

3. *Id.* at 816-1293.

The words "repugnant" in this clause and 'inconsistency' used in the title of article 254 have been the subject of construction by the Supreme Court. These words do not merely mean that the state law should conflict with the central law in the sense that compliance with one will mean non-compliance with or disobedience of the other. In the interests of comity a wider meaning has been given to the concept of inconsistency and repugnancy. This meaning is that where both central and the state laws operate in the same field, the two cannot possibly stand together. If the field is fully occupied by the central law then the state law cannot co-exist with it. Among the relevant decisions of the Supreme Court are *M. Karunanidhi v. Union of India*⁴ and *State of Orissa v. M. A. Tulloch & Co.*⁵ If a scrutiny is made of the numerous state statutes it would perhaps be found that many of their provisions occupy the same field as the central legislation.

The book under review is so weighed by the volume of the statutory material within its covers that one does not expect it to be critical either of legislation or of decisions. The commentary by the author is on the central legislation as amended in the states. It is comprehensive in the sense that the author has tried to give reference to all possible decisions of the courts. The book is, therefore, meant for the run-of-the mill practitioners of law and for the courts, who have to decide land acquisition cases in the routine manner. It is not a book raising basic questions of constitutional law and construction of statutes. One, therefore, looks to the book only for providing a reference to all the available statutes and the case law on the subject and not for expressing any refreshingly critical views.

Another unfortunate thing that happened to this book is that the amendment of the Land Acquisition Act of 1894 made by the amending Act of 1984 came too late to be embodied in the text of the Land Acquisition Act to which the main commentary is devoted. The amending Act is reproduced in the book but there is no commentary on these amendments. Such a commentary would of course have been on the underlying reasons which led to these amendments namely the various changes made in the Constitution as a result of the decision of the Supreme Court on article 31.

Students of constitutional law can now look back to the stormy career which article 31 of the Constitution had during its comparatively short life. This article had two principal parts. While article 31(1) guaranteed the right to property by providing that no one shall be deprived of it except by the authority of law, article 31(2) merely provided that compensation shall be payable for acquisition of property for public purposes. Article 31(2) was analogous to the doctrine of eminent domain. It was

4 A I R 1979 S C 898.

5 A I R 1964 S C. 1284.

concerned not with protecting the right to property but with ensuring that the state is enabled to acquire property for a public purpose. The payment of compensation was to be in the discretion of the legislature and was not justiciable by the courts. This objective of the Constituent Assembly could be gathered by a sympathetic interpretation of the article particularly in the light of the debates which took place on it in the Assembly. It was made clear in the debates that the subject of acquisition was dealt with in two distinct parts. On the one hand is the subject of acquisition of private property *ad hoc*. This is to be done under the Land Acquisition Act for not only full market value compensation but also 15 per cent solatium above it. On the other, is an acquisition for a public purpose in the wake of the land reforms legislation or such other economic reforms. For this latter kind of acquisition market value compensation was not to be paid. Doing so, would have been morally as well as legally unjustified. The abolition of landlordism was based on the fact that the ownership of the landlords over areas of land was unjust because they never purchased these lands. Further they had the benefit of the ownership for such a long time that the injustice done to the tiller of the soil had to be redressed as soon as possible. Unfortunately this objective was missed by the Supreme Court who construed article 31(2) as if the intention of the Constituent Assembly was not clear either from the language of article 31(2) or the debates. To get over the unfavourable construction of article 31(1) by the Supreme Court, Parliament repeatedly amended article 31(2) to make it clear that payment of compensation thereunder was not justiciable. Since the Supreme Court would not agree, Parliament had ultimately repealed article 31 altogether by the Constitution (Forty-fourth Amendment) Act 1978.⁶

This background of constitutional law has influenced the construction of the Land Acquisition Act also. The amendment of section 6 by the Ordinance of 1967 and the later amendment of 1984 were the results of the conflicting views held by Parliament and the Supreme Court on the subject of compensation. All these exciting questions of constitutional law are to be read more in a book on constitutional law than a book like the present one on the subject of land acquisition.

As stated above, the book is useful to the practitioner and the courts as a comprehensive compilation of the statutes and the case law thereof. Saying so is a considerable recommendation for the book. But one does not expect a book to be either inspiring or exciting. The printing and binding of the book are satisfactory.

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6. *Supra* note 1 at [61 ff].

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