

SOME SUGGESTIONS*

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I have not had the opportunity of hearing fully my friend Shri Pathak's address to you. Therefore, if in the course of my talk, I repeat some of the ideas already expressed, I crave your indulgence. I thank the organisers of this Seminar for having afforded me this opportunity to take part in the proceedings. When Dr. Sharma suggested some months ago that this Seminar might be held in Madras, I felt flattered. That such an important subject should be discussed in our State by eminent Judges and lawyers is a matter of pride to us. I thought that the discussions should be held in the most comfortable setting of this hill station which claims to be the queen of the hill stations in India. I am sorry that many including the Chief Justice of Madras are unable to be present here. I shall now proceed to offer a few thoughts on the subjects for discussion.

Acquisitiveness is a primal instinct of man. Since early times, individual ownership of property is customary. Our Constitution recognises private ownership of the means of production. Every citizen is free to acquire, hold and dispose of property, subject to any restriction that may be made in the interests of the general public or the interests of the Scheduled Tribes. Prior to the Constitution, there was no guarantee against any law affecting the right to hold property. Compulsory acquisition of land by the State for a public purpose was well known. Various land acquisition laws were made by the States and by the Centre prior to the enactment of the present Land Acquisition Act, 1894. Though "public purpose" was not defined precisely, the law was that the declaration of the intention of the Government that the land was required for a public purpose was enough. *Prima facie* Government was the judge of the existence of the public purpose though it was not the absolute Judge. It could not have said "So I will, so I order". But a court would not easily hold it to be wrong.

After the Constitution came into force, limits were set to the power of State to the compulsory acquisition of property. Article 31(2) of

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the Constitution provides that no property shall be compulsorily acquired except under provision of law which specifies the compensation to be paid or the principles under which compensation is to be paid. In so far as the question of deciding the necessity for acquisition is concerned, the Constitution did not effect any material change. It is established law that the declaration of the Government that the land was needed for a public purpose was final and the Courts were precluded from going behind the declaration, subject to the exception that the declaration was liable to be challenged as being fraudulent when there was a colourable exercise of power. The only practical difficulty which administrators have felt in this matter relates to cases where the land was being put to public use or public purpose. I understand the decisions of the Supreme Court to be that the decision of the Government with regard to the differing degrees of public purpose is final.

The due process clause in the American Constitution has enjoined on the State the obligation to pay just compensation in cases where a citizen is deprived of his property. This theory of eminent domain has now become familiar in India. The right to compensation did not directly flow from this principle, but it was always regarded that the payment of compensation was an essential element in the valid exercise of such a power. Article 31(2) of the Constitution has given constitutional recognition to this principle. The Fourth Amendment to the Constitution has, however, provided that no law relating to compulsory acquisition shall be questioned on the ground that the compensation provided by the law is not adequate. As one who was a Member of Parliament at the time of the introduction of the Fourth Amendment to the Constitution and as one who had participated both in the discussions in Parliament and in the Select Committee, I may be permitted to refer to one or two ideas that were prevalent at that time. We were thinking of the nationalisation of industries and there was a great demand from the Members of Parliament that full compensation need not be paid in cases where industries were taken over. Participating in the discussion I referred to the decisions of the Supreme Court in *Bela Banerjee's* case and pointed out that the word "compensation" had been interpreted by the Supreme Court to mean the exact equivalent or the market value. I said that the use of the word "compensation" might indicate that the entire market value should be paid and that the courts would strike down anything which did not give the market value which means the exact equivalent. The Constitution as amended by the Select Committee naturally took note of the various views expressed by the Members of Parliament and came to the conclusion that the adequacy of compensation should not be justiciable.

The Fourth Amendment really effected a change in the concept of

private property. It marked a shift from the American view of the authority of judicial review protecting private property to the English view of supremacy of Parliament. The American view of the amendment is expressed by Justice Douglas of the U.S. Supreme Court thus:-

Whatever the case, the 1955 amendment casts a shadow over every private factory, land or other individual enterprise in India. The Legislature may now appropriate it at any price it desires, substantial or nominal. There is no review of the reasonableness of the amount of compensation. The result can be just compensation or confiscation—dependent solely on the need of the Parliament.¹

However, I will only say that the decisions of the Supreme Court have not borne out the apprehensions of Justice Douglas. I wish to refer to the decisions in *Vajravelu Mudaliar's* case and *Namasivaya Mudaliar's* case where the court has held that if the compensation fixed is arbitrary or is unrelated to the property or to the time at which the acquisition is made or to both, then it is liable to be held invalid. Therefore, there is no apprehension that the Fourth Amendment has really deprived any individual in the country of the right to hold property. When we administer the nation, we have to take note of the policies which have been endorsed by the electorate and on the basis of which the Government is elected and called upon to function. One of the principles on which the present Government has been called upon to function is the principle of democratic socialism. This is nothing new because, as the Chief Justice of India pointed out, the principle is enshrined in article 39 which provides—

The State shall, in particular direct its policy towards securing—

- (a) * * *
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of the wealth and means of production to the common detriment.

The legislative pattern both in the Centre and in the States is being arranged with a view to implement the Directive Principles. Many enactments of a progressive and ameliorative kind have received the seal of approval from the Courts. Some have not. Agrarian reform can now be enforced without fear of such legislation being held to be confiscatory. But it is possible that in implementing schemes of industrialisation, in acquiring properties for laying roads, highways or putting up factories and manufacturing of consumer goods, the Legislature and the

1. Douglas, *From Marshall to Mukherjea: Studies in American and Indian Constitutional Law* 224. (1956)

executive may be inhibited in the respective spheres by the feeling that their Acts may infringe the Constitution. While malafides or discrimination must be put down by the Courts, a progressive and liberal interpretation of the Constitution should be accorded while considering the validity of legislation undertaken in pursuance of the Directive Principles of the Constitution. Legislation for social welfare, equitable distribution of the fruits of labour, adequate habitation for the less privileged sections of society cannot but impinge on the ownership of property of a few. These are undertaken or enlarged under the pressure of public opinion reflected in the legislatures. Unless judicial interpretation is in consonance with the spirit of the times, amendment to the Constitution is unavoidable.

Sir, I am grateful to you for having afforded me this opportunity for offering a few remarks. I hope I have not provoked anything but thought by my address.