

# CONCEPT OF PUBLIC PURPOSE AND LAND REUSE PLANNING

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## I. INTRODUCTION

The pattern of urbanization which has evolved during the last fifty years has resulted in increasing pressure of population on limited space in urban areas which in its turn has brought the phenomenon of haphazard and chaotic growth of urban sprawl, sub-standard housing, squatting, slums, congestion in traffic, deficiency in open spaces and play fields for schools and over-crowding in houses. The problem is further aggravated by the rapid industrialization which, on the one hand, has a tendency to congregate round big towns for reasons of available facilities in administration, transport, marketing, availability of labour and on the other, utilizes large chunks of land for setting up plants and machinery depriving its use for residential purpose. Another factor that has come to be associated with our urbanization is the landlordism. At the time of 1961 census only 45.2 per cent of the householders in urban areas were owner of their houses. The rest of the urban population, besides the transitorics which are not ignored, are left at the mercy of the landlords whose rapacity requires no imagination in the country where there is a deficit of 114 lakhs of houses.<sup>1</sup> The pressure on land and building creates other social and moral problems like question of public decency, public morals, public health and temptations to lawlessness which have been pointed out in some other papers read at the seminar. The problems can be solved only through a comprehensive programme of development and planning of our urban areas. But this would involve taking of land of private owners. Under our Constitution the State has the power to acquire ownership of private property for public purposes subject to the payment of compensation.<sup>2</sup> It is only if the acquisition is for a public purpose that the private owners can be expropriated. Compulsory acquisition by the State of private property for a private purpose will not be sustained not only against the citizens but against the foreigners as well. This paper studies the concept of public purpose in relation to compulsory acquisition or requisition of property arising out of land reuse planning.

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1. Estimate made by the Planning Commission at the commencement of Third Plan.
2. See for illustration *Kochuni v. State of Madras*, A.I.R. 1960 S.C. 1080.

## II. CONSTITUTIONAL PROVISION

Article 19(1) (f) is a guarantee of fundamental right to every citizen to acquire, hold and dispose of his property whether moveable or immovable, corporeal or incorporeal. The right to acquire, enjoy and dispose of his property is not of unlimited freedom. The Constitution operates to restrict the right of enjoyment and disposal of private property in three ways. Firstly, Clause (5) of Article 19 enables the State to make any law imposing reasonable restrictions on the right to property in the interests of the general public or for the protection of the interest of any scheduled tribe. Regulation of building activity, zoning of housing standard, rent control etc., are some of the illustrations of this kind of control. Secondly, the State can deprive a person of his property if the law authorizing deprivation amounts to a reasonable restriction in the interests of general public. Thirdly, the State can acquire or requisition private property for a public purpose after paying compensation, the adequacy of which is not justiciable. It is the third type of limitation, e.g. the liability of the private property of being compulsorily acquired by the State for public purpose to which we shall confine in this paper. Clause (2) of Article 31 which conditions the exercise of this power of the State runs as follows :—

“No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.”

The two requirements of public purpose and compensation are applicable only where the property of a person is compulsorily acquired or requisitioned by the State. These are not applicable in other cases of deprivation of property under law. This is made clear by Clause 2A, added in 1954 by the Constitution (Fourth Amendment) Act, which lays down that where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.<sup>3</sup>

**Justiciability of Public Purpose**

In regard to the justiciability of the fact of the public purpose the Constitution draws a distinction between the post-Constitution laws and the existing laws. As to the former, Article 31(2) makes the existence of a

3. The Constitution exempts certain categories of laws from the requirement of public purpose and compensation. See Article 31, Cl. (5) and Cl. (6), Articles 31A and 31B.

public purpose a necessary condition of acquisition. It is not a question of policy to be determined subjectively. It is an objective fact and requires reasons to be adduced. The Supreme Court in *State of West Bengal v. Mrs. Bella Banerjee*<sup>4</sup> said, "In as much as Article 31(2) made the existence of a public purpose a necessary condition of acquisition, the existence of such purpose as a fact must be established objectively". It was for this reason that a provision which ousted the jurisdiction of Courts to scrutinise it was held inoperative.<sup>5</sup> It is, therefore, ultimately for the courts to determine if the power conferred or the exercise thereof is for a public purpose.<sup>6</sup>

As to the existing laws, *i.e.*, the laws in force at the commencement of the Constitution, Clause (5) (a) of Article 31 declares: "Nothing in Clause (2) shall affect (a) the provision of any existing law .....". The result is that a pre-Constitution law shall not be invalid if it does not require a public purpose as a condition precedent to the exercise of the power of compulsory acquisition or if it leaves determination of the existence of the public purpose to the subjective determination of the Executive.

The major Central Legislation on the subject of compulsory acquisition by the State is the Land Acquisition Act 1894. This Act empowers the Government, if satisfied that the land is needed for a public purpose, to make a declaration to the same effect and take steps in order to acquire it in accordance with the procedure laid down in the Act.<sup>7</sup> The declaration made by the Government that the acquisition is being made for public purpose shall be final.<sup>8</sup> In other words if the appropriate Government has, after considering every relevant matter, declared that some public purpose would be served by the acquisition, the courts cannot go behind the declaration and shall accept the determination as binding subject to one exception described below. The Land Acquisition Act does not, it may be emphasized here, authorise acquisition of property for a purpose which is not a public purpose although it leaves the determination of the fact if acquisition in a particular case is for a public purpose to the subjective satisfaction of the Executive.

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4. A.I.R. 1954 S.C. 170 at p. 172.

5. *Mohammed v. State of Travancore*, A.I.R. 1952 T.C. 522.

6. *Somawanti v. State of Punjab*, A.I.R. 1963 S.C. 151; *State of Bihar v. Kameswar*, A.I.R. 1952 S.C. 252.

7. Compulsory acquisition can be effected only in accordance with the acquisition law, because it is an inroad into citizen's right to own property—A.I.R. 1966 Ker. p. 87.

8. "(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company as the case may be, and after making such declaration the appropriate Government may acquire the land in manner hereinafter appearing" Sec. 6 (3), Land Acquisition Act, 1894).

The finality of subjective determination, however, is subject to the rule of colourable legislation. This would mean that if it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all, the action of the Government would ultra vires the powers conferred by the Act and its determination of public purpose will be a nullity. In *Somavanti v. State*<sup>9</sup>, Mudholkar, J., observed as follows:—

“The declaration of the Government will be final subject to, however, one exception. The exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only when there is a public purpose.....If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relateable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government would be final.”

*Raja Anand v. State of U. P.*<sup>10</sup>, is a good illustration of the attitude of the courts. In that case the public purpose specified in the notification for compulsory acquisition of land of the plaintiff was “for limestone quarry”. The land owner objected to acquisition on the ground that no public purpose was involved in as much as the limestone extracted from the quarries situated on the acquired land was used by the Government for manufacture of cement which was sold at profit in open market and was not used for any public work of construction. The Court, without deciding whether the production of cement as a commercial enterprise is a public purpose, rejected the argument of the appellant observing: “the declaration made by the State Government in the notification under Section 6 (1) of the Act, that the land was required for a public purpose, is made conclusive by sub-sec. (3) of S. 6 and is, therefore, not open to a court to go behind it and to try to satisfy itself whether in fact the acquisition was for a public purpose.”<sup>11</sup>

Lest a wrong impression be formed, it is necessary to point out here that the courts do not normally interfere with the legislative or executive determination of public purpose. One hardly comes across cases where the legislative or executive decisions of public purpose have been set aside. The courts in this matter start with a presumption, though rebuttable, that there exists a public purpose and on that account the *onus probandi* to disprove it must heavily be upon he who challenges the existence thereof.<sup>12</sup>

9. A.I.R. 1963 S.C. 151.

10. A.I.R. 1967 S.C. 1081.

11. *Ibid.*, at p. 1083.

12. *State of Bombay v. Nanji* (1956) S.C.R. 18.

### Definition and Extent of Public Purpose

While public purpose is made a condition for the exercise of State's power of compulsory acquisition of private property, no definition of the phrase is given in the Constitution. There are a number of cases which have considered the words 'public purpose' but none of them has proposed to lay down a definition or the extent of the expression. Certain general considerations or guidelines relating to the meaning of the expression deducible from these cases may be stated.

(a) *General Interest of the community*—In *Hamabai Franjee Petit v. Secretary of State*,<sup>13</sup> a Privy Council decision, the Government had given certain land in Bombay on lease, under the terms of the lease the Government had the right to resume the possession, subject to paying compensation, if it desired to use it for a public purpose. Government gave notice of their intention to resume possession, with the object of using the land for providing residential accommodation to Government servants at adequate rates. The Privy Council held that the resumption of land was for a public purpose and therefore valid. In the judgement their Lordships quoted with full approval the following observation expressed by Bachelor, J. in the High Court<sup>14</sup>:

“The phrase (public purpose), whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals is directly and vitally concerned.”

The contention of the appellant that there cannot be a “public purpose” in taking land if that land when taken is not in some way or other made available to the public at large was not accepted: “The scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servants.”

The view that what would serve the general interest of the community is public purpose has been approved by the Supreme Court in a number of cases.<sup>15</sup> In *Somavanti v. The State of Punjab*<sup>16</sup> the Supreme Court said :

Broadly speaking the expression 'public purpose' would, however, include a purpose in which the general interest of the community as opposed to the particular interest of the individual is directly and vitally concerned.”

(b) *Concept not static*—The phrase “public purpose” has not a static connotation which is fixed for all times. In *Kameshwar Singh's case*<sup>17</sup>

13. (1915) 39 Bom. 279.

14. (1911) 13 Bom. L.R. 1097

15. *State of Bihar v. Kameshwar* A.I.R. 1952 S. C. 252, *State of Bombay v. Nanji*, A.I.R. 1956 S.C. 294, *Somavanti v. The State*, A.I.R. 1963 S. C. 151 at p. 163; *Arnold Rodricks v. State*, AIR 1966 S. C. 1788.

16. A.I.R. 1963 S C. 151.

17. *State v. Kameshwar*, A.I.R. 1952 S.C. 252.

Mahajan, J. (as he then was) observed, "The phrase public purpose has to be construed according to the spirit of the times in which the particular legislation is enacted"<sup>18</sup> "Public purpose is bound to vary with the times and the prevailing conditions in a given locality."<sup>19</sup> The meaning is elastic and changes with time is nowhere better illustrated than in the interpretation of the phrase "public use" in America.<sup>20</sup> According to the earlier view any purpose relating to functions of the Government would be a public use provided the public have direct benefit out of which land requisitioned for construction of railway tracks, post offices, defence etc., are clear examples. The modern view of public use of necessity had to be made more liberal as the functions of the Government were fast changing and increasing their fold. Accordingly, it began to be held that there is sufficient public use provided it is any way of any use to (not necessarily by) the public.<sup>21</sup>

(c) *Definition not practicable*—Since the concept of public purpose varies from time to time it is not possible to lay down a definition of what public purpose is. In *Somavanti's case*<sup>22</sup> the court emphatically asserted that "it would not be a practical proposition even to attempt a comprehensive definition." Das, J. in the *State of Bihar v. Kameshwar Singh*<sup>23</sup> said, "No hard and fast definition can be laid down as to what is a 'public purpose' as the concept has been rapidly changing in all countries."

(d) *Includes sections of the Community*— It would be no less public use or purpose if the acquired property is of some benefit to a section of the community.<sup>24</sup>

### Application of the Concept

Having noted the essential elements in the concept of public purpose, we shall examine how it has been applied to some fact situations of land acquisition connected with urbanization.

In *State of Bombay v. Bhanj*,<sup>25</sup> the requisition was for housing a person having no housing accommodation. At that time the housing situation in Bombay was acute largely due to influx of refugees. Questions

18. *Ibid*, 274.

19. Per Das J. P. 290.

20. The power of the State to acquire private property for public purpose is referred in America as eminent domain. The requirements of eminent domain are (i) Authority of Law; (ii) Public use; and (iii) Just compensation in lieu thereof.

21. *Clark v. Nash*, (1905) 198 U. S. 361.

22. A.I.R. 1963 S.C. 151.

23. A.I.R. 1952 S.C. at P. 252.

24. *Barkaya Thakur v. State of Bombay*, A.I.R. 1960 S.C. 1203.

25. A.I.R. 1955 S.C. 41.

of public decency, public morals, public health and the temptation to lawlessness and crime, which such a situation brings in its train, at once arose; and the public conscience was aroused on the ground of plain humanity. A race of proprietors in the shape of rapacious landlords who thrived on the misery of those who could find no decent roof over their heads sprang into being. Even the efficiency of the administration was threatened because Government Servants could not find proper accommodation. Milder efforts to cope with evil proved ineffective. It was necessary, therefore, for Government to take more drastic steps and in doing so they acted for the public weal. There was consequently a clear public purpose and an undoubted public benefit.<sup>26</sup>

*In Babu Barkaya Thakur v. State*,<sup>27</sup> where the requisition of accommodation was for the workers engaged by an industrial company the Court held that the requisition was for a public purpose because in an industrial concern engaging a large number of workmen away from their homes it is a social necessity that there should be proper accommodation available for such workmen. Where a large section of the community is concerned its welfare is a matter of public concern. Likewise acquisition of land for a cooperative society for the construction of houses under special schemes is for a public purpose since the public is generally benefited by such scheme even though the direct and immediate beneficiaries may be individuals.<sup>28</sup> Again the condition of public purpose was held to be satisfied where lands were acquired for development into industrial areas.<sup>29</sup>

By the Land Acquisition (Bombay Amendment) Act, 1953 the definition of public purpose in Section 3 was amended so as to authorise "the acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale, with the object of securing further development."

*In Arnold Rodericks v. State of Maharashtra*,<sup>30</sup> the petitioner contended the validity of the law as being beyond the concept of public purpose. It was no purpose since the State would be acquiring the land from one set of individuals and disposing it to another set of individuals

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26. *In Ali Gulshan v. State*, 55 Bom. L. R. 308, premises were requisitioned for housing a member of the staff of a foreign consulate and was held to be for a public purpose.
27. 1960 S. C. 1203.
28. *Thambiran v. State*, A.I.R. 1952 Mad. 756; *Bhagwat Dayal v. Union of India*, A.I.R. 1959, Punj. 83.
29. *Sadrudin v. J.H. Patwardhan* A.I.R. 1965 B. 224.
30. A.I.R. 1966 S.C. 1788.

after some development. The court refuted the contention of the petitioner. Sikri J. speaking for the majority said :—

“Public purpose varies with the times and the prevailing conditions in localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites. It is true that these residential and industrial sites will be ultimately allotted to members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the impugned notifications was not to think of the private comfort or advantage of the members of the public but the general public good. At any rate, as pointed out in (1961) 1 SCR 128 : (AIR 1960 SC 1203), a very large section of the community is concerned and its welfare is a matter of public concern. In our view the welfare of a large proportion of persons living in Bombay is a matter of public concern and the notifications served to enhance the welfare of this section of the community and this is public purpose”.

In the minority judgement Wanchoo, J. (now C.J.), while conceding that the power of acquisition conferred by the Amending Act well came within the concept of public purpose, expressed the view that a transfer by the State to a private person by lease, assignment or sale would be *ultra vires* unless the transfer was made subject to securing further development on the part of a transferee. A transfer without any such stipulation would in effect mean that in an indirect way the State would be acquiring the land from one set of individuals and disposing it of to another set of individuals.<sup>31</sup>

The judicial trend discernible from these cases has been that even a purpose which benefits individuals does not lose the character of a public purpose if such individuals are benefited not as individuals but in furtherance of some scheme or plan aiming at the public welfare or utility.

### Public Purpose and its Diversion

As a general rule, use of the property for a purpose other than for what the acquisition was made, is unwarranted and improper. But it has been held that every case of diversion is not *ultra vires*. English law, however, is more strict in this regard than the Indian and American counterparts. The English Courts are competent to issue injunction against diversion from the original purpose.<sup>32</sup> In India, however, if the Statute has clearly stated the purpose of acquisition, then the use of property for any other collateral purpose would be an unconstitutional user and the executive action may be prohibited by Courts.<sup>33</sup> Where, however, no specific purpose has been clearly indicated by the Legislature, diversion

31. *Ibid.*, p. 1802.

32. *Bailey v. G.W. Rly. Co.* (1884) 29 Ch. D. 434.

33. *Somavanti v. State of Punjab*, A.I.R. 1963 S.C. 151.



for allied purposes may not amount to an unconstitutional act.<sup>34</sup> Government have more latitude in the second category of cases. But even in such cases if diversion is in substance absolutely foreign to the purpose inherent in the statute as found by the Court, the diversion is liable to be checked. In this connection the effect of subsequent legislative intervention through amendment must also be kept in view. In *R.K. Agarwalla v. State of West Bengal*<sup>35</sup>, the Statute was attacked on the ground of diversion. Pending an appeal, the President promulgated an ordinance validating the executive action with retrospective effect, the Supreme Court unanimously held that the action was competent in law. Similar was the outcome of the *Arora Case*.<sup>36</sup>

### Public Purpose And Legislature

It is primarily upon the Legislature to declare what is public purpose. But declaration may be implicit in the statute. So long as there exists general good to the community, sufficient in the opinion of the Court, to constitute public purpose discernible from the provisions of the enactment in question, the courts would not require express mention.<sup>37</sup> But it is always advisable that the Legislature must keep in view that they are going to touch upon a guarantee which is next only to life and liberty and, therefore, can be sacrificed only upon a condition that there was no other better alternative to secure public good. It is, therefore, always expected that the legislature would specify in the body of the Act the public purpose of acquisition to avoid further litigation, proof of facts and unnecessary judicial scrutiny. It is submitted that if a particular law depriving a person of his valuable right to property does not specify any public purpose and the law is apt to have two meanings as established by the person sought to be deprived, the rule of interpretation applicable to taxing laws must be applied in cases of property also and the benefit of such ambiguities must be construed in favour of the person sought to be deprived. The reason is best stated by Lord Blackburn, "Whether the legislature confers powers on any body to take lands compulsorily for a particular purpose, it is on the ground that the using of that land for that purpose will be for public good".<sup>38</sup> The legislatures while considering this question are presumed and expected, as representatives of the people, to know the needs of the people and burden upon the individual affected by the law.

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34. *Luchmeshwar v. Darbhanga Municipality*, (1891) 18 Cal. 99(PC).

35. (1965) 1 S.C.A. 606.

36. *R.L. Arora v. State*, A.I.R. 1964 S.C. 1230.

37. *State v. Kameshwar Singh*, A.I.R. 1952 S.C. 252.

38. *Ayr Harbour Trust v. Oswald*, L.R. 8 A.C. 623. The maxim *salus populi suprema lex* (Welfare of the people is the Supreme Law) can be invoked by legislature when it has clear intent of public good.

## III. CONCLUSION

To conclude, whatever may be the relevance of judicial precedents, one thing in this connection is certain. The concept of public purpose has never been static. Its import and extent has varied with change of time and place. So far there has been no hindrance in the way of the State's efforts in the direction of social collection and welfare. The old and narrower notions as to the sanctity of the private interest of the individual can no longer "stem the forward flowing tide of time and must necessarily give way to the broader notions of the general interest of the community". Town planning and development is obviously in the interest of the general welfare of the community.