

Defining “Public Purpose” in Land Acquisition in Sri Lanka – Lessons from India

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Introduction

Acquisition of lands by the state deprives certain rights of the owner including, right to possession, right to use and enjoyment and right to alienate¹ attached to the owner of private lands, here the state uses the term public purpose when it acquires lands. It is clear that the state has the exclusive power on lands over its territory under certain legislative enactments². It is a well-accepted norm and a characteristic of the law that it should be well defined with regards to its relevancy in certain contexts; otherwise it can be interpreted according to the whims and fancies of the person in authority. The Land Acquisition Act No. 09 of 1950 gives the power to government to acquire private lands under the ambiguous terminology of public purpose. However, the Act does not provide a specific interpretation to the wording “Public Purpose” and the minister has the power to decide in his own discretion to declare lands which are subjected to be acquired. The question raises on the discretion of the minister and it should be a fair discretion rather than arbitrary. Therefore, it is necessary in order to cure the wound that the words public purpose be defined exactly in order to alleviate the arbitrary discretion of the minister.

Research Problem

To find out an exact meaning for “Public Purpose” in Land Acquisition in order to limit the arbitrary power of discretion given to the relevant minister and to well define the “Public Purpose” in the context of the Land Acquisition Act No 09 of

¹ Lee RW, *Introduction to Roman-Dutch Law*, Fifth edition, 121pg.

² Crown Lands Ordinance, No.13 of 1949, The Paddy Lands Act, No. 37 of 1954, The Town and Country Planning Ordinance, No. 13 of 1946, The Paddy Lands Act, No 01 of 1958 etc....

1950. To find a more efficacious answer the author has studied on the Land Acquisition, Rehabilitation and Resettlement Act No 30 of 2013 of India.

Method

This is a literature survey based on Constitutions, Law enactments and case law, Textbooks, Journal articles. In collecting secondary sources library and internet resources have been utilized.

Discussion

Rights attached to a private land owner are highly recognized by the principles of Roman Dutch law. The rights attached to the ownership of a land recognizes what you call as the *Jus in Rem*.³ However, Acquisition of lands by the state deprives all the rights attached to the private ownership of a land. It means the ability under *Jus in Rem* also deprives due to the acquisition of land. The Land Acquisition Act No 09 of 1950 facilitates the law relating to the land acquisition. Often government needs to take private lands for its functions and necessities for the public welfare. Therefore, the government can acquire private lands for the sake of the public. The Social Contract Theory⁴ can justify that such acquisitions providing foundation to acquire private lands from individuals for the sake of entire community. However, there will be a clash when such acquisition is made in a form of *mala fide*. It means the competent authority can acquire private lands stating that the specific portion of land or lands is going to be acquired for the specific public purpose. But, competent authority does not have a *bona fide* intention (hidden agendas) and deploy such tactics to acquire lands for another purpose and to circumvent the actual public purpose which was the give reason for acquiring that land. Due to there being no precise meaning to the words “public purpose” which is the door of permission to

3 “a right enforceable against anyone in the world interfering with that right founded on some specific property accorded legal protection from interference by anyone” <https://www.merriam-webster.com>

4 People conferred their power to the authority to protect their lives, freedom and property and the authority should act to provide protection and welfare for the entire community.

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acquire lands under the Land Acquisition Act No 09 of 1950 issues have raised as follows.

Section 2(1)⁵ of the Land Acquisition Act does not provide an exact meaning for Public Purpose and the above said minister has the ultimate power to decide the Public Purpose according to his controlled or uncontrolled discretion. Also the Act interprets the Public Purpose as **‘includes a purpose which, under this Act or any other written law, is deemed to be a public purpose’**. It should be noted that this interpretation does not provide an exact meaning or a good set of guidelines in order for the minister to discharge his discretionary powers in a proper manner.

In the case of *Horana Plantation Ltd Vs. Hon. Anura Kumara Dissanayake & others*⁶ clearly states that there was an *mala fide* intention on such acquisition and there was no urgency to acquire that land from the applicants. In this case, Justice Suresh Chandra’s statement⁷ disclose that the competent authority has used its discretionary powers for a collateral purpose rather than an expected public purpose in acquiring the disputed lands. Therefore, it is doubtful whether the public purpose which is hidden in the mind of the minister and urgency also contribute to the intention of *mala fide* of the competent authority. *Manel Fernando and another Vs. D.M Jayarathne, Minister of Agriculture and Lands*⁸ Justice Mark Fernando’s view demonstrate that Public Purpose should be disclosed⁹. *De Silva Vs.*

5 “Where the Minister decides that land in any area is needed for any Public Purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice in accordance with subsection (2) to be exhibited in some conspicuous places in that area”

6 SC Appeal No. 06/2009

7 “It would appear therefore that there was a collateral purpose other than the purpose of providing land for flood victims which was purported to be the reason for acquiring the said extent of land from the Estate”

8 2000 1 SLR 112

9 “The minister cannot order the issue of a Section 2 notice unless he has a public purpose in mind. Is there any valid reason why he should withhold this from the owners who may be affected? Section 2(2) requires the notice to state that one or more acts may be done in order to investigate the suitability of that land for that public purpose: obviously that public purpose cannot be an undisclosed one. This implies that the purpose must be disclosed. From a practical point of view, if an officer acting under Section 2(3)(f) does not know the public purpose, he cannot fulfill his duty of ascertaining whether any particular land is suitable for that purpose”

*Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another*¹⁰ court has stated the same idea.¹¹

In the case of *D.F.A. Kapugeekiyana Vs. Hon. Janaka Bandara Tennakone & Others*¹² clearly stated that the acquired land has not been deployed for the relevant Public Purpose when its acquired. Therefore, the rationale of such acquisition can be challenged under the jurisprudential basis of the Social Contract Theory¹³ which is recognized in the Constitution of Sri Lanka.¹⁴

The Land Acquisition, Rehabilitation and Resettlement Act No 30 of 2013 in India section 2(1)¹⁵ comprehensively interpret ‘Public Purpose’ with regard to the specific fields of government functioning. Therefore, there is no doubt for defining the four corners of the meaning of ‘Public Purpose’ and problems relating to defining ‘Public Purpose’ considerably less in order to compare with Sri Lankan context.

Findings

It is noted that the above mentioned judicial decisions were providing an exact interpretation to the ‘Public Purpose’ only contributed by the court decisions. It can be identified as an interference of the judiciary to make justice for the victims of such arbitrary acquisitions. Even the Supreme Court of Sri Lanka has not defined ‘Public Purpose’ exactly and these interpretations depend on the facts of each case. There have been no attempts taken by parliament to define public purpose through any other amendments to the Land Acquisition Act of Sri Lanka. There were few experiences of the side of minister, which acquires land under the section 38 stating urgency. The Land Acquisition, Rehabilitation and Resettlement Act No 30 of 2013

10 (1993) 1 SLR 283

11 “...it would be legitimate for the minister to decline to divest it there is some good reason-for instance, that there is a now a new public purpose for which the land is required. In such a case it would be unreasonable to divest the land, and then to proceed to acquire it again for such new supervening public purpose. Such a public purpose must be a real and present purpose, not a fancied purpose or one, which may become a reality only in the distant future”.

12 S.C. Appeal No. 161/2010

13 Ruler should exercise his power for the welfare and protection of the public.

<http://www.iep.utm.edu/soc-cont/>

14 Article 3 and 4, The Constitution Democratic Socialist Republic of Sri Lanka 1978

15 Appendix 01

in India provides a wide range of interpretation for the 'Public Purpose' without making ambiguous meaning for it. It is clear that the every citizen who became victims of such arbitrary acquisitions do not have competency to seek justice due to the unbearable cost of litigation. The coherent and values of the social contract theory is violated through the arbitrary and unreasonable acquisitions of the minister.

Suggestions

Amend the Land Acquisition Act No 09 of 1950 defining 'Public Purpose' comprehensively without occur ambiguous meanings. With regard to amend Sri Lankan Land Acquisition Act, Parliament may look at the section 2(1) of the Land Acquisition, Rehabilitation and Resettlement Act No 30 of 2013 of India. When considering 'Public Purpose' the relevant authority should concern the proportionality principle in relation to examining the advantage and necessity of acquiring such lands for the public purposes and the unwholesome consequences can be faced by the victims of such arbitrary acquisition.

Conclusion

The lack of an exact interpretation to 'Public Purpose' in the field of land acquisition in Sri Lanka makes a set of problems due to the rights of the people. Specifically, *mala fide* acquisitions unreasonably deprive rights of private landowners and on the other hand, abuse the rights of public for the sake of personal benefits or political vengeance. Therefore, protection of rights of private land owners and the wider community, it is an urgent necessity to define 'Public Purpose' exactly in the Land Acquisition Act No 09 of 1950 ensuring the jurisprudential basis of the Social Contract Theory as well.

References

- The Constitution of Democratic Socialist Republic of Sri Lanka 1978
- The Land Acquisition Act No 09 of 1950
- The Land Acquisition, Rehabilitation and Resettlement Act No 30 of 2013 of India

- Lee RW, *Introduction to Roman-Dutch Law*, Fifth edition
- Van der Walt AJ & Pienaar GJ, *Introduction to the Law of Property*, Juta & Co. Ltd, 2012
- Peiris G.L., *The Law of Property in Sri Lanka*, Volume 01, Second Edition, 1983

Appendix 01

2(1) The provisions of this Act relating to land acquisition compensation, rehabilitation Act and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:- (a) for strategic purposes relating to naval, military air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or (b) for infrastructure projects, which includes the following, namely:- (i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (infrastructure Section) number 13/6/2009-INF, dated the 27th March,2012, excluding private hospitals, private educational institutions and private hotels; (ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute; (lii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy; (iv) project for water harvesting and water conservation structures, sanitation: (v) project for Government administered, Government aided educational and research schemes or institutions: (vi) project for spots. health care, tourism, transportation or space programme; (vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament; (c) project for project affected families: (d) project for housing for such income groups, as may be specified from time to time by the appropriate Government; (e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas: (f) project for residential purposes to the poor or landless or Io persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.