



# Land Acquisition, Rehabilitation and Resettlement: Law and Politics

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## Abstract

This working paper looks at the new Land Acquisition Rehabilitation and Resettlement (LARR) Bill, 2011 and explores key issues within the text of the Bill and the larger political context of land acquisition in India. In particular, it explores issues relating to Eminent Domain and 'public purpose,' rehabilitation and resettlement, compensation, safeguards for 'Project Affected Persons' (PAPs), processes (including the urgency clause), linkages with environment, applicability of the proposed enactment as well as crucial areas of non-applicability. In doing so, the paper also asks larger legal and political questions regarding land acquisition in the backdrop of constitutional debates pertaining to the Bill's implications for federalism and within a detailed analysis of the most recent pronouncements of the Supreme Court. On 'public purpose,' the paper infers that even if the new Bill renders the concept less vague, it will still not stop the Judiciary from looking into questions of abuse in actual land acquisition or use of the land. What the LARR Bill could however do is allow a clearer legal framework within which the Judiciary could look into these questions in general, and on 'public purpose' in particular. The paper also looks at potential scenarios, and in particular, possible intended (or unintended) consequences of the enactment for future urbanisation patterns in India.

## Land Acquisition, Rehabilitation and Resettlement: Law and Politics

Land Acquisition stands at the political faultline of a changing India, undergoing significant transitions: political, economic, social, environmental, spatial. There is keen contestation along a variety of fronts, actors, structures and visions, and with deepening democracy and a savvy 24/7 media, the salience and political articulation of such contestation has become more visible. These debates are part of a greater emerging story that engages not just with processes and governance deficits in the country, but one that also asks questions regarding the future of the country.

The latest draft of the Land Acquisition Rehabilitation and Resettlement Bill, 2011 (LARR Bill) is a formal legal response to such articulations. Whether the law follows the politics or plays harbinger is a matter of debate, yet the task of reading specific issues within LARR, and a detailed nitpicking of clauses, to find all known and unknown devils, will be rendered more comprehensive if such legalese were to be understood within the very complex socio-politics of land itself. This means the LARR Bill has to be read in the context of keen political contestation, a spate of recent decisions on the subject by the Supreme Court and the widely felt need for 'balance' among a wide diversity of voices and stakes. The LARR Bill aims at no less than altering the regulatory landscape and in doing so, may also indirectly unleash a range of other regulatory forces. As an unintended consequence, this enactment could unwittingly also decide future spatial patterns of urbanisation in India. This task of looking for everything under the political sun (and beyond it) calls for more detailed exploration.

## Background

History may help lend perspective, even as, and perhaps because, it repeats itself. Land Acquisition Law, whether

in 2011 or in 1894, are but links in the long chain of institutional arrangements and conveniences, to address the specific issues of the day. Some of these issues have not gone away in a century and a half, and hence the task of drafting new laws to address old issues in a variety of new and old ways.

## Colonial period

The legal trail goes back further than 1894 -to the Bengal Regulation I of 1824, Act I of 1850, Act XXII of 1863, Act X of 1870, the Bombay Act No. XXVIII of 1839, Bombay Act No. XVII of 1850, the Madras Act No. XX of 1852 Madras Act No. 1 of 1854 X of 1861, the Act VI of 1857 -all enacted by a colonial administration initially in the then Presidency towns and later spreading across the country, to facilitate the easy acquisition of land and other immovable properties for roads, canals and other "public purposes" with compensation to be determined by arbitrators appointed for the purpose. These enactments built the bulwark of the colonial administration after the Crown re-established control subsequent to the events of 1857. By then, strategic interests such as cantonment areas, garrisons, telegraph, railways and in turn, their feeder links, pre-dominated the colonial administration's imagination. One way of ensuring greater control and preempting a repeat of 1857 was through the administration's control over land as well as through public infrastructure and defence systems built on the land. There was also the obvious economic utility to be achieved through productive uses of the land itself and its uses for revenue-whether for irrigation, canals, roads, and the like. Some 'Rule of Law,' as variously interpreted, was needed to provide the administrative foundations of Empire.

Little surprise then, that none of these legislations had provided for an opportunity to object to the acquisition of land itself, while allowing the opportunity to raise issues regarding compensation. In fact, the debate on compensation has never been a settled issue, 'market value' being a term as amorphous as 'public purpose' in the 19th century as well. Even in the late 19th century, allegations of inadequacy, corruption and misconduct were rife. The Land Acquisition Act of 1894, meant to bring some uniformity to the Empire (now that the Empire had more firmly established its hold in the thirty seven years after 1857), was clear in the narrowness of its aims. It meant to 'amend the law for the acquisition of land for public purposes and for companies and to determine the amount of compensation to be made on account of such acquisition'. This meant a single law for the control of a single administration - the whole of the colonial empire - where land and its uses became essential to the administration's fortunes, now that land revenue itself had become an important part of the Empire's coffers.

It was only in 1923, after the Non-Cooperation movement became a part of the nation's history and Indian national leaders began to make their first inroads into Local Administration, that the amendment of Section 5A to the 1894 Act was introduced: one that allowed the possibility of raising objections, albeit with a warning on its limitations. The Statement of Objects and Reasons contained in Bill No. 29 of 1923 stated that the Act did not provide that persons having an interest in the specific land had a right to object to such acquisition; the Government too was not duty bound to enquire into and consider such objection. Instead the amendment was supposed to be a

check on the local government, by prohibiting the declaration of any such acquisition for public purposes, until objections were 'considered' by the local government. In other words, the idea of objection was introduced while leaving open the possibilities for interpretation of such objection, and in a manner that did not obstruct land acquisition itself. In short, a road block, for want of a better metaphor. Land acquisition strategy for the colonial administration was rooted in the socio-economic context of extracting the maximum value from land, in a country that was predominantly agricultural.

## Early Independent India

Even after independence and the adoption of the Constitution of India, the 1894 Act continued to be in force, albeit with periodic amendments. The new Nation State built new cities (Jamshedpur, Chandigarh, Bhillai and so on, as part of the Nehruvian vision) and expanded its economic reach through the building of heavy industries as well as linked infrastructure for which land was a prerequisite. 'Eminent Domain' theory or the justification of State's acquisition of land, even if involuntary, for 'public purpose' and for 'compensation' continued as an essential attribute of sovereignty itself. In this light, the rhetoric of 'commanding heights of the State', dams as the 'temples of modern India', the State's predominant role in national development, and the relative deference paid by the early Judiciary to questions of the Executive's determination of what constituted 'public purposes', were all part of this ubiquitous discourse of 'nation-building'. At the same time, while the land acquisition law did not undergo significant changes even after independence, the political context, and the frame within which the debate centred, was changing. India was an independent country now, governed by its own Constitution, a democracy with universal adult suffrage (not just for the propertied), with features of federalism and guaranteeing basic fundamental rights to its citizens.

Land Acquisition, in the new Constitutional scheme, was soon rendered a Concurrent list subject, with power to both Centre and States to make laws on 'requisition and acquisition of immovable property'. The right to property too was initially considered a fundamental right. It was therefore only inevitable for an institutional clash between the specific ability of a colonial land acquisition law and the broader demands of a polity which also included a newly independent Nation State.

The State itself was beginning to show its first signs of internal differentiation in the form of the independent Judiciary. Article 141 of the Constitution stated that the law laid down by the Supreme Court was the binding law of the land. The battle lines between the Executive and the Judiciary were first drawn over the right to property (in Kameshwar Singh's case) in 1951 itself, finally requiring a somewhat innovative heuristic in the form of 'the basic structure' doctrine (i.e. a broad compendium of elements considered essential to a functional democracy, which Parliament, could not abridge) to resolve matters. Subsequently, after the end of the Emergency and the installation of a new Government at the centre, the right to property was changed from a fundamental right to a legal one (through the 44th Amendment in 1978) and no one could challenge an acquisition of private property on grounds of violation of Fundamental Rights.

The Land Acquisition Law of 1894, in other words, could continue to effect land acquisition, so long as Eminent Domain requirements were fulfilled. In other words,

'public purpose' and 'compensation' continued to be the elements for scrutiny in matters of legalese, on matters challenging the validity of acquisition itself. Murmurs about the inadequacy of rehabilitation and resettlement gradually grew louder though, with particularly disenfranchised margins that seemed to bear the brunt of the nation's costs of development. The Nation State itself was becoming a more complex structure, its hitherto largely unquestioned verdict on development beginning to be gradually taken with a little pinch of salt.

## Today's India

In the last twenty-five odd years, democracy has deepened, bringing new actors in the scene (marginalized castes, regional parties, classes, civil society, political society, newer private industry). Within each segment, where coalition politics is now also acknowledged as a political reality, there are a plethora of voices, interests and visions. The State too is far from a uniform behemoth: apart from the Executive, Legislature and the Judiciary as mandated in the Separation of Powers theories, there are numerous centre-state (and now local), debates around federalism.

In such a political framework, debates around land acquisition too have gradually shifted to the states, which otherwise, through the State List, continue to have the political authority to decide on various matters regarding use of 'land', even after the 74th Amendment. There is increasing political babble and bluster, and as inevitable structural fallout, political parties also accuse each other of wrong-doing, depending on the particular state one finds oneself in.

Since 1991, and particularly in the last decade, while the State, in spite of its various internal contradictions, has remained the predominant actor, there is an interesting new element in the discourse: the ability of the State to play the role of a facilitator in acquisition decisions, for private companies, for 'public purposes'. This too, is not a new phenomenon in itself (the 1894 Act itself envisaged such applications, such as the extensive use for railways) but it may be worth asking if the degree of such acquisitions has shown any significant increase over the last few years. Eminent Domain still holds in such cases: the acquisition has to be for a 'public purpose' and 'compensation' has to be paid. In such a scenario, it is little surprise that the Judiciary has become an even more significant player as arbiter among various stakeholders, and particularly regarding the uses of land acquired for ostensibly public purposes. In a political landscape comprising a multitude of competing voices, the term 'public purpose' too has become a subject of multiple renderings, where each voice has an opinion on what is 'public purpose' and perhaps more significantly, what isn't. There is also a fiscal argument opening up, one that imagines the taxation and redistributive machinery (within the newer debates on fiscal federalism, such as the proposed Goods and Services Tax structure), to be tied to land use, and that in turn being possibly used to justify newer forms of 'public purpose' by newer private actors.

Today's political landscape is indeed more variegated than before. Look at the diversity of voices: There is the Centre with its various ministries, not all of whom speak alike, and add to that mix, the coalition partners. Then, there are the states, with multiple parties, regional and national, with diverse histories and particular local specificities. There are increasing though still marginal local governments in rural as well as urban areas. A very active

and powerful Judiciary at the centre and the states has assumed the veritable authority to decide on governance. Democratic constituencies are organized along multiple identities (with civil society, movements, protests, interest groups; strident questions about accountability and governance; various forms of collaboration and contestation). The significant rise of industry and enterprise and wider acknowledgement by the State of private enterprise's salient role in economic growth and nation building is a facet one cannot ignore. The rise of new SEZs (enclaves for high economic productivity enjoying numerous legal exemptions and carved outside ostensibly even municipal governance) and the new industrial townships with its private utilities, gated communities and claims to world-class aspirations however vaguely articulated they may be (and without municipal governance) are also newer phenomena.

Pitted with the State's determination to ensure industrialisation and 'modernisation' (through manufacturing and services) as the primary way of ending endemic poverty is the arrival of environmentalism as a legitimate discourse, no longer in marginal fringes and increasingly asking difficult questions on the ecological and economic costs of such industrialisation. Some attention, even if belated, seems to be finally drawn to the plight of the adivasis, forest dwellers and the tribals who stand historically disadvantaged from the fruits of development and have borne the costs of most of the State's promises. There are debates about the inequities of development as well as its fruits. There is the phenomenon of growing urbanization, with a third of the country living in a fraction of the country's land and producing two-thirds of the country's economic output. In the heady 'rural-urban' political rhetoric are also farmers (rich and poor, wealthy and landless) who are raising the acquisition stakes. Add to the mix the new reach of global capital flows in an increasingly inter-connected economy, along with a seemingly aspirational India, anxious to make its mark at the global stage, as well as at the national.

All of these elements provide the perfect backdrop to understand why land acquisition is back as a prime fulcrum in the great and little Indian political game.

With so many actors, interests and voices, what other choice does the Bill have, in seeking to provide 'balance' in this democracy? Coherence and clarity, through a well-articulated law, is a need that stems from the various voices of the democracy itself. If 'balance' in land acquisition is indeed the crying need of the day, can balance ever be effectively ensured through law, in a fractious political landscape? This is a matter for debate.

The LARR Bill's aspirations are lofty: one look at its preamble removes any doubt about how high its aims are: "to ensure a humane, participatory, informed consultative and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement thereof, and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."

This protean aim is a little different, at least on paper, from the 1894 Act's purpose. Formal law being the tip of the iceberg (acknowledging all questions and challenges regarding formalization and the informal economy, customary ownership, commons, lack of titles, inadequate records, near absence of land market for sufficient price valuation, and so on), it may be worthwhile to ask what the LARR Bill is about and if it would at all be effective in ensuring what its preamble sets out to do.

## The Federal 'Balance'

The LARR Bill, at least in its language, does not tilt the federal balance. It uses the Concurrent List power (Entry 42, List III: 'Acquisition and requisitioning of property') to provide for a uniform central legislation. States continue to have the power to enact their respective legislations, as we have seen some states already in the process of doing so in the last couple of months, since there is political momentum at stake here (such as West Bengal, Kerala, Rajasthan). The legal question is what if there is a conflict. The Supreme Court has been quite clear about the resolution of such issues. Both states and centre can make respective laws under the Concurrent list. On matters of conflict, attempts will be made to read such laws through principles of 'harmonious construction' (read together, basically, find unity and common purposes) and then on the 'pith and substance' of the matter (in layman terms, amounting to discovering essential meanings in the text). Finally if there is 'repugnancy', then the Central Law will prevail to the extent of the 'repugnancy'. In matters of clear opposition, Central legislation prevails on a matter involving the Concurrent List's legislation on the same issue. As far as the law is concerned, the Constitution is clear. That says nothing about political resolution though.

The LARR Bill does not attempt to tread upon troubled federal waters. All it says is that states are free to implement their own R&R schemes, so long as they are above the floor prescribed by the LARR.

S. 100 of the LARR Bill states: 'Nothing shall prevent any state from enacting any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act'. The ball, then, metaphorically, is in the state's half, to do better.

S. 101 of the LARR Bill further remarks that 'where a state law or a policy framed by the Government of a State provides for a higher compensation than calculated under the [LARR Act] for the acquisition of land, the affected persons or his family may at their option opt to avail such higher compensation and rehabilitation and resettlement under such state law or such policy of the State'.

In other words, in a potential conflict on adequacy of R&R, in so far as it is repugnant to the state law on the same issue, the Central law shall prevail. The LARR Bill does not detract from this principle, by explicitly mentioning in its text itself, that the state law or policy on compensation and R&R could be better than the central one, in which case the affected persons have the option of availing the better of the two. Questions of interpretation however arise in cases of legislative 'vagueness', where the Judiciary steps in. As an illustration, in the Calcutta High Court's recent upholding of the new Singur Land Rehabilitation and Development Act, 2011, Justice IP Mukerji also stated that the compensation provisions in

the [Singur] Act were 'vague' and therefore the old provisions of the LAA 1894 should be incorporated into the Singur Act. In such circumstances, the LARR Bill would attempt to at least remove that uncertainty. Supreme Court's most recent statements also aim at removing the 'outdated' LAA 1894 with a new law on land acquisition.

The LARR Bill is based on a premise that states will not balk at the LARR enactment so long as it does not intrude upon their terrain. By carving out R&R as a prerequisite, it also seems to be riding on the current political wave where the dispossessed are increasingly more vocal in demanding entitlements (in the form of adequate compensation and R&R) in exchange for land acquisition. It will not suit a particular state government to publicly and politically oppose such demand. Whether or not states are willing to go all the way on other processes of land acquisition (as earmarked in the LARR Bill) depends on a host of other factors. Political momentum is one such factor (Uttar Pradesh facing an election will be different from Kerala where there has just been one. In West Bengal, the new regime seeks to provide reparations in Singur to build further political credibility. Gujarat, which makes claims of development through incentives for industry, may try its own model in an effort to out-do the centre). The availability of adequate resources is another factor. States could publicly announce that they are willing to comply with R&R but that financial issues keep coming in the way. In short, the federal question will not go away politically: what states do with acquisition depends on who is in power.

The LARR Bill simply tries to raise the bar on R&R and cheekily remarks that states continue to have the right to make their own LARR laws, so long as they do a step better, not worse than what the LARR seeks to provide. In this light, no state can ignore the LARR Bill. The Supreme Court's increasing warnings on abuse of process, also means that the Judiciary will not shy away either from questions regarding the implementation of land acquisition, especially on matters of perceived abuse, irrespective of who makes the law.

## The Judicial 'Balance'

Where the Judiciary draws its own line, is then a matter of legal and political debate as well. The Judiciary drew the 'laxman rekha' of 'basic structure' of the Constitution for the Executive and the Legislature. The Parliament on its part, in order to settle the right to property issue, made it a legal right and not a Fundamental Right under Article 300 A. (as per the 44th Amendment)

Article 300 A of the Constitution states that 'no person shall be deprived of his property save by authority of law'.

There has been some debate in jurisprudential circles as to whether the phrase 'authority of law' in Article 300-A also means law as broadly defined to be 'fair, just and reasonable' or narrowly circumscribed as law simply as enactment, which otherwise survives tests of basic due process. The courts, fully aware of the eventful judicial history of property rights, have since Article 300 A's enactment, not entered the thicket of looking at law from the point of view of fundamental rights. Eminent Domain theory has held for the most part. From that standpoint, acquisition decisions on the part of the State will continue to be enforced, so long as the procedure according to law is followed.

Yet, given the tenor of recent judicial decisions and the

general political climate of the land, there is a sense that the courts may play a more significant role here. It will be interesting to observe whether the Judiciary decides to second-guess the Executive in specific cases on 'public purpose' itself. The latest Supreme Court holding on Article 300 A, in the KT Plantation case, clearly enshrines 'public purpose' and 'compensation' within Article 300 A when acquisition is on the part of the State. In other words, both 'public purpose' and 'compensation' have been 'read into' the language of Article 300A.

In the KT Plantation case, a five judge bench of the Supreme Court, headed by the Chief Justice, also stated variously that the meaning of Article 300 A was that 'a person cannot be deprived of his property merely by executive fiat, without any specific legal authority or without the support of law made by competent legislature...Article 300 A therefore protects private property against executive action...but the question looms large as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation... that law has to be reasonable. It must comply with the other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or beyond what is required in public interest...not disproportionate to the situation or excessive...violation must be of such a serious nature which undermines the very basic structure of the Constitution and our democratic principles...' In other words, the basic structure doctrine has been re-emphasised and it applies to Article 300-A as well.

'Arbitrariness' is a ground for violation of a fundamental right (which the right to property no longer is) and any such move from the Supreme Court towards questioning propriety and exploring possible arbitrariness, could potentially bring back the old debate on Judicial-Legislative-Executive relations in another precarious Separation of Powers debate. It will require a politically interesting case for the Judiciary to decide where to draw the line, even its own, and where to stretch it. Where a number of cases on land acquisition are being brought before the Supreme Court, one does not know which one is a possible violation of the 'basic structure' doctrine. In the absence of legislative clarity, the Supreme Court will proceed on a case-by-case basis but indications are also such that it could lay down broad directions that also assume the power of law. Justice SU Khan evoked rather sanguinary metaphors in the latest Noida Extension cases before the Allahabad High Court, that 'land acquisition is no longer a holy cow but a fallen ox. Everyone is a butcher when the axe falls'.

It is increasing judicial oversight, and not the federal or popular complaints alone, which will decide the need for a coherent land acquisition law. In its absence, or in its abuse, the Judiciary could even enter the debate on 'public purpose' within Eminent Domain as well, not just grapple with abuse of process. This will create another battle ground for the Executive at the Centre to grapple with, a struggle with enormous political, social and economic consequences, if history is any witness. The Supreme Court has most recently clearly stated that the provisions of the Land Acquisition Act of 1894 'do not adequately protect the interests of owners/persons interested in the land...to say the least, the Act has become outdated and needs to be replaced at the earliest with fair, reasonable and rational enactment in tune with the constitutional provisions, particularly Article 300A...we expect the lawmaking process for a comprehensive enactment with

regard to acquisition of land being completed without unnecessary delay...'

No surprise then, that the LARR Bill is being pressed forward with such urgency. The Minister for Rural Development has sought support from multiple parties for the Bill, acknowledging the complexity of its passage. Perhaps responding to the Supreme Court, and particularly to its new enunciation of Article 300A, the LARR Bill incorporates compensation and R&R while also trying to provide some clarity on 'public purpose'. It will take actual cases then for the Judiciary to check whether 'arbitrariness' is so rife so as to violate Article 300A or the 'basic structure' doctrine itself. This tussle over the right to property may then re-emerge. From the Supreme Court's point of view, it will eagerly expect the Legislature to frame a law that does not detract from Article 300 A and probably, go further on compensation and R&R. 'Public purpose' though is a much more compendious concept, one that evades easy clarity.

### Specific Themes within LARR

If the LARR Bill is indeed so germane to India's transition and governance prospects in land, a look at some of the broader aspects of the Bill seems worthwhile.

#### I. Under the LARR Bill, is there any more clarity on "public purpose"?

The term 'public purpose' used to justify land acquisition and the State's inherently sovereign right of Eminent Domain has lent itself to much discussion, particularly in more recent times with greater number of private actors and a wider variety of their roles. This debate has also become more strident with deepening of democratic participation, particularly in recent times. Political protest and unrest have highlighted the displacement and human costs, especially for the marginalized and vulnerable (Dalits, adivasis, landless) in a variety of large scale acquisition areas: forests and mining, dams, SEZs and urban displacement among others.

What exactly constitutes 'public purpose' and when, is a matter largely left to the discretion of the Executive. The Courts have traditionally taken a deferential view of the State's prerogative to decide on 'public purposes'. It has admitted that the term itself has to be 'compendious', 'not static' and that it would not be wise to define it exhaustively, once and for all. It is by its very nature an 'inclusive' definition, one that accommodates many illustrative elements but keeps room for future reasons and contingencies. The mere existence of private companies does not by itself render the purpose less 'public' if other elements of 'public purpose' are otherwise satisfied.

It also appears that "planned development" enjoys a higher degree of legitimacy in explorations of 'public purpose'. There is a suggestion that 'public purpose' is one which benefits a large section of the community rather than particular interests. This raises an interesting possibility of whether the interpretation of 'public purpose' would become wider if the property tax regime (within the new debates regarding fiscal federalism) becomes a major source of revenue, thereby allowing the State to acquire a broader base of tax returns from a more diversified number of private actors, which in turn is spent in the public interest. This particular debate could also intensify around urban areas, as has been seen in some of the recent discussions in USA where the use of private entities in city revitalization has provoked interesting

questions on 'public purpose'.

At the same time, a number of very recent Supreme Court decisions seem to indicate a new trend of an active Judiciary emerging in matters of land acquisition. This recent departure has found echoes in Justice Singhvi's elucidation in the case of Radhey Shyam v the State of Uttar Pradesh:

"It must be accepted that in construing public purpose, a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people especially of the common people defeats the very concept of public purpose. Even though the concept of public purpose was introduced by pre-Constitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under Fundamental Rights and also the Directive Principles. In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part-III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part-III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.' [Italics added]

It appears, when one reads this case with the Constitutional Bench judgement in KT Plantation judgement (where it read 'public purpose' and 'compensation' into Article 300-A) it seems that the Supreme Court could ask deeper questions regarding the legitimacy of 'public purpose' in future, should a suitable case present itself.

In Radhey Shyam's case, Justice Singhvi also mentioned that 'in recent years, the country has witnessed a new phenomena. Large tracts of land have been acquired in rural parts of the country in the name of development and transferred to private entrepreneurs, who have utilized the same for construction of multi-storied complexes, commercial centers and for setting up industrial units.'

In light of such 'phenomena', Justice Singhvi seems to be entering a new thicket of Judicial-Executive relations, while holding out on 'public purpose':

"Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17... The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice. While examining these questions of public importance, the Courts especially the Higher Courts, cannot afford to act as mere umpires.'

In a still more recent land acquisition case, that of M/S Orchid Hotels, Justice Singhvi and Justice Mukhopadhyay were quite categorical in affirming that no change in 'public purpose' would be permitted; that the State having

acquired land for ‘public purpose’ (in this case, a ‘golf cum hotel resort’) could not subsequently transfer the land to private entities for private use; that this amounted to ‘diversification’ of public purpose; and that public purpose ‘cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken’.

From the above recent Supreme Court decisions, it is clear that the judiciary would seek a wider role for itself in determination of what constitutes ‘public purpose’ in use of the land, without necessarily second-guessing the Legislature’s intentions. It will certainly investigate questions of the use of the urgency clause (where due process is largely dispensed with) through very careful lenses of strict scrutiny. It will look into questions of whether compensation has been paid or not. It will look into questions of malafides or ‘colorable legislation’. It will examine if public purpose has been diverted for private use, once acquisition is complete.

The moot question is what will the Judiciary do, when the new LARR enactment is in place? Will it question ‘public purpose’ or will it defer to Legislative discretion? The Judiciary will weigh in all options before plunging into these political waters, given the history of the right to property debates. In a question of blatant abuse, where democratic stakes are high and the Executive is either in paralysis or whose action is not bonafide, or clearly where such “public purpose” is not served, the Judiciary will not look away.

But on shades of gray, the Judiciary, in deference to the principle of Separation of Powers, will not plunge headlong. This is why clarity in the law, especially through the LARR Bill becomes so important. Even if the LARR Bill does render the concept of ‘public purpose’ less vague, it will not stop the Judiciary from looking into questions of abuse in actual land acquisition or use of the land. What the LARR Bill could do then is allow a clearer legal framework within which the Judiciary could look into these questions in general, and on ‘public purpose’ in particular.

So, does the LARR Bill make ‘public purpose’ any clearer?

The LARR Bill retains the legally largely uncontested and undisputed ‘public purposes’ (i.e. strategic interests, national security, infrastructure projects, and so on). These will not be played with. It is also unlikely that the Judiciary will step in here.

However, in keeping with changing socio-political trends particularly since 1991, the term “public purpose” in the LARR Bill has also been expanded to include other newer uses of land, including resettlement. Facilitation by the government for companies in public interest, for manufacturing/services, is also covered under ‘public purpose’, thereby legitimizing the role of private enterprise in post 1991 India. This is also in line with the much quoted judgement of *Kelo v City of New London*, where the existence of private entities itself in city planning for revitalization did not render a purpose (here an Integrated City Development Plan) less ‘public’. Here, the question of whether increase in tax revenues from local revitalization and private entity involvement (whose redistributive benefits are then spread across a larger area) could change ideas of ‘public purpose’, especially in urban areas, is one that requires more serious attention.

However, the LARR Bill also introduces a couple of new categories in the definition of ‘public purpose’ which may open a can of legal worms. Instances are where the

government acquires land in cases where benefits ‘generally accrue to the public’ (undefined) or where it acquires land for private companies or in PPPs or in the provision of land for private companies in the ‘public interest’ for production of goods for the public or provision of public services. In such cases, 80% of consent of the Project Affected Persons (PAPs) is required and the R&R provisions will apply. The 80% consent rider is prior to acquisition, but is it a check on the legitimization of “public purpose” itself? The LARR makes the de-facto, de-jure, so to speak, in such cases, as long as R&R and 80% consent is upheld. This also effectively means that the term ‘public purpose’ in these instances, where land is acquired for companies, for seemingly newer public purposes, will cease to hold much consequential meaning, since such acquisition will essentially be legitimized and the battle will then shift to questions of adequacy of R&R. The argument for the LARR Bill here being that democratic avenues are then also kept open through the 80% consent requirement. Does less than 80% consent mean no ‘public purpose’ here?

The LARR Bill’s ‘public purpose’ definition does not fundamentally re-align the landscape in so far as ‘public purpose’ is concerned. It re-arranges the furniture a bit, without overhauling the rooms too much. But then, didn’t the courts themselves say that ‘public purpose’ cannot be static; it is necessarily compendious; to define would be to limit?

However, what the LARR Bill does is enshrine ‘process safeguards’ to check whether or not a particular acquisition fits the definition of ‘public purpose’.

The Social Impact Assessment, with a public hearing requirement, is a first process check. The Expert Group to appraise the SIA, constituted of ‘independent’ actors, would then check if a particular project fulfils the purpose stated. Then a Government Committee could check if benefits outweigh the losses; if land acquisition is indeed a ‘demonstrable last resort’, that only the minimum area required is being acquired and if there is indeed ‘legitimate and bonafide public purpose’ for the acquisition. The LARR Bill also makes it clear that no change in public or related purpose would be allowed. No change in ownership without permission would be allowed. Where the land remains unutilized for ten years, it would revert to the land bank of the Government. The ‘urgency’ clause is limited to few selected uses. The setting up a separate dispute settlement authority for LARR is another institutional measure.

Are these processes backed by serious consequences in questions of clear abuse? This is largely a matter of implementation. The LARR Bill expects these processes to work as safety valves—the jury is nevertheless out as to whether process is an adequate substitute for substance—whether it is a necessary or sufficient condition.

A comparison on the definition of ‘public purpose’ between the LARR and the LAA 1894, provided in the table below, becomes relevant:

S. No	LARR 2011	LAA 1894 (added by A.O. 1950)
1.	for strategic purposes relating to naval, military, air force, and armed forces of the Union or any work vital to national security or defence of India or State police, safety of the people;	Absent. But land acquired for such purposes anyway. And considered public purpose.
2.	for railways, highways, ports, power and irrigation purposes for use by Government and public sector companies or corporations [Comments : however, railways, highways, electricity under respective Acts not LARR]	for a corporation owned or controlled by the State
3.	for project affected people for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;	Absent. for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State
4.	planned development or the improvement of village sites or any site in the urban area or for residential purposes for the weaker sections in rural and urban areas or for Government administered educational, agricultural, health and research schemes or institutions;	village-sites, or the extension, planned development or improvement of existing village-sites; for town or rural planning; for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned; for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law in a state, or a co-operative society within the meaning of any law in any State; the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority;
A.	the provision of land in the public interest for— use by the appropriate Government for purposes other than those covered under sub-clauses (I), (ii), (iii), (iv) and (v), where the benefits largely accrue to the general public; B. Public Private Partnership projects for the production of public goods or the provision of public services;  the provision of land in the public interest for private companies for the production of goods for public or provision of public services:  Provided that under sub-clauses (vi) and (vii) above the consent of at least eighty per cent. of the project affected people shall be obtained through a prior informed process to be prescribed by the appropriate Government:  Provided further that where a private company after having purchased part of the land needed for a project, for public purpose, seeks the intervention of the appropriate Government to acquire the balance of the land it shall be bound by rehabilitation and resettlement provisions of this Act for the land already acquired through private negotiations and it shall comply with all provisions of this Act for the remaining area sought to be acquired.	the provision of any premises or building for locating a public office, but does not include acquisition of land for companies; but land acquired for companies so long as 'public purpose' fulfilled

If the parameters of the definition on ‘public purpose’ (admittedly with their loopholes) are otherwise met, the legal debate is not about the existence of private companies. In RL Arora’s case itself, the Supreme Court had clearly laid down that the ‘State is empowered to compulsorily acquire land for companies which satisfy the definition of being engaged in an industry which is essential to the life of a community whether or not the purpose for which the company acquires land is a public purpose’. The LARR Bill, in using particular phrases such as ‘accruing general benefits to the public’, ‘public interest’, ‘provision of public goods or services’, does seem to move beyond RL Arora’s holding. This once again raises the fiscal question of whether redistributive benefits (through a wider tax base) are sufficient to ensure the wider ‘public good’, directly or indirectly. The State clearly recognizes the role of private enterprise in development. What is questionable however, is whether such development indeed at all takes place; whether the purpose originally ‘public’ at the time of acquisition has also since been diverted to serve altogether ‘private’ ends (see the Royal Orchid Hotels case); whether there has been clear abuse and malfeasance; and if the proceedings and the law have themselves been taken for a ride. It is here that the Supreme Court appears particularly interested. The LARR Bill, with a plethora of process checks, bureaucratic or otherwise, seems keen to plug this leak.

The LARR Bill will then invoke serious re-thinking on the part of companies who would want to by-pass complicated acquisition processes and head elsewhere, looking for exceptions to the LARR Act. These companies will also balk at the application of R&R provisions (through various government departments and R&R authorities) even in privately negotiated acquisitions, if the trigger of 50 (urban)/100 acres (rural) is set off. Companies have responsibilities just like the State does: that is what the LARR seems to warn, and while it continues to allow companies to acquire land (also as part of ‘public purpose’).

It remains to be seen whether the process enshrined is adequate, efficient or effective enough to prevent misuse of ‘public purpose’ uses.

II. What are the other safeguards or innovations regarding land acquisition that may tilt the political balance back in favour of the ruling coalition at the centre?

The timing of introduction of the LARR Bill; the priority given to the Bill by the newly appointed Minister for Rural Development; the short notice within which the draft Bill was passed by Cabinet and introduced in the Lok Sabha; the upcoming elections in Uttar Pradesh in 2012 in the backdrop of a serious debate emerging on land acquisition in the state; the messy political debates on land acquisition in various states—all point to the significance of the LARR Bill in the current political climate. (Some reports suggest that Anna Hazare may also enter the LARR Bill issue, with predictable questions on whether rural India is being bypassed). Environment considerations were also expected to be given serious thought, given the Minister’s previous, rather eventful, stint in the Ministry of Environment and Forests which created serious debate on sustainable development itself. The idea of ‘safeguarding’ and then providing entitlements as part of redistributive ends, therefore seems to acquire significance in the tenor of the LARR Bill. Some salient aspects of this safeguarding project are:

1. Rehabilitation and Resettlement: The LARR Bill’s most significant innovation seems to be the introduction of R&R as a right (and not as policy) wedded within the acquisition processes of the LARR Bill itself (and not separately, as in previous attempts). This is a significant departure from past practices including the Rehabilitation and Resettlement Bill, 2007 and various R&R policies which did not enjoy the status, legitimacy, and more significantly, the enforcement capability, of law.

As per LARR, 2011, an R&R scheme has to be readied at the time of the notification itself and a separate R&R authority mechanism has been set up to oversee questions of R&R within the process pipeline of the acquisition. LARR not only specifies in detail the nature of rehabilitation to be provided through specific infrastructure facilities and R&R (elements of the R&R award and infrastructural provisions being elaborately laid down in separate Schedules appended to the Bill), it also specifies the detailed bureaucratic frame and the manner in which R&R must happen. Once the government issues a preliminary notification indicating its intention to acquire, the R&R structure also starts operating in parallel (including the Collector, the newly appointed Administrator, the Commissioner, issue of draft Scheme, Award, putting timelines within which the award has to be readied and so on). There can be no declaration of acquisition unless the R&R scheme is also published alongside. There can be no change in land use unless R&R is complied with in full. The LARR Bill envisages the setting up of a national monitoring committee and further up, an LARR authority itself, with full powers of a civil court to oversee disputes. The consequence would be the inevitable rise of a litigation industry around land (which exists in any case) and more fora for resolution of such disputes.

For the record, under the LARR Bill:

- a. Both Land Acquisition and R&R provisions will apply when: Government (central/state) acquires land:
  - (I) For its own use, holding or control
  - (ii) For purpose of transferring to private companies for public purpose (including PPP projects but not highways (state/national))
  - (iii) On request of private companies for immediate and declared use by such companies for public purposes

The exception here is Scheduled Areas where specific law applies (i.e. under the 6th Schedule, Constitution of India)

- b. R&R provisions under the LARR Bill will apply where:
  - (I) A Private company acquires/purchases land (>100 acres in rural areas; >50 acres in urban areas) through private negotiations with the owner, while following due process requirements under LARR (i.e. application to District Collector; Collector-Commissioner process; R&R award; no change in land use if R&R not complied with).

This trigger of 100 /50 acres as the case may be, as well as the R&R process, seems to apply irrespective of the ‘public purpose’ requirement under Eminent Domain (since Eminent Domain applies only to State acquisitions). This is interesting, for it assumes that space, and the quantity of space, becomes a reason to assume “public consequences” of otherwise private actions, such consequences being significant enough to trigger R&R provisions.

- (ii) R&R provisions under the LARR Bill will also apply where a private company requests the Government for acquisition for a 'public purpose' (even if it is a partial acquisition request, R&R provisions to apply to the entire area acquired by the private company)

This means that the LARR Bill ruffles the private commercial waters as well. R&R will apply even to private companies who acquire through private negotiations, once they cross the floor of 100 (rural) or 50 (urban) acres. This also means that R&R provisions will not apply in private company acquisitions below 100 acres in rural areas or below 50 areas in urban. This also leads to a possibility of staying under the radar (eg. 99/49 acres as the case may be) and by using proxy acquisitions methods (i.e. through another company or 'front companies'; through joint ventures and so on). This will create tangled legal debate on the nature of inter-connectedness of entities involved, whether "front" companies are operating, if subsidiaries are involved and so on. Use of exceptions under other laws (such as the SEZ Act exception and possible tweaking of the respective state laws and policies) to stay out of the R&R radar also looks imminent in such a scenario, discussed in greater detail below in the section on Non-Applicability.

## 2. The renewed thrust on 'process'

The LARR Bill creates a number of institutional check posts - each one taking off from where the previous one left- as a mechanism to ensure institutional redress of possible abuse and redress of grievance. The plethora of process mechanisms include Social Impact Assessment (SIA) with provision for public hearing (including Gram Sabha and local municipal consultations as applicable); preparation of documents within timelines (or in their non-compliance, the prospect of risking lapse of proceedings: eg. declaration to be within 12 months of preliminary notification; preliminary notification, if not within 12 months of the SIA, will require a fresh SIA); institution of new posts (Administrator R&R), committees (at government level); public hearings, institutions (National Monitoring committee and a LARR authority with judicial powers and responsibilities). The SIA report which will be appraised by an Expert Group (consisting of two 'non-official social scientists', 'two experts on rehabilitation' and a 'technical expert in the subject relating to the project') to decide on questions of balance (costs- benefits, public purpose, public interest) and so on, where that report will then in turn be considered by a Government Committee. The Committee will further look into questions of public purpose, balance of convenience, minimum area acquired, 'demonstrable last resort' of acquisition and so on, including verification of the 80% consent rider in situations of privately negotiated acquisitions.

The Supreme Court in the recent R. Indira Saratchandra case, in the verdict by Justice Singhvi and Justice Mukhopadhyaya, has held that if the award is not made within two years of the declaration of acquisition, the acquisition proceedings will lapse.

The plethora of processes will inevitably also create opportunities for the bureaucrats to mediate.

How does one create an apparatus that oversees the institutional working of the process, without being rendered complex, byzantine and subject to rent seeking? Do more processes create more transparency or less?

Opacity in turn increases delay and raises costs.

Will the rules to be made under the LARR Bill or the LARR Bill itself create adequate information safeguards that ensure efficient implementation and not rent-seeking. After the enactment of the Right to Information Act (and with newer debates regarding the constitution of the Lok Pal and other Bills for public redress of grievances), it is time to think of innovative ways of creating, sharing, distribution and verification of information. This goes beyond defensive measures required by the strictures of law. The information infrastructure to support such legislations is critical for the implementation of such enactments.

LARR seems to presume that process will be taken care of by keeping layers of bureaucracy as adequate safeguards. This could increase time windows for acquisitions-anything but the 'single window' industry may have wished for. Is that a necessary price for ensuring due process? The question then is: for whom? Who will gain the most from the process safeguards: the PAPs, the industry or the bureaucracy? Or conversely, who stands to lose the most with the new processes and institutions under the LARR Bill: the PAPs (running from pillar to post?); the industry (fighting shy of delays and bureaucratic logjam) or the bureaucrats themselves (multiple authorities, each fighting for turf while attempting vigilant watch keeping)? The LARR Bill places itself at the heart of this quandary.

## 3. The Urgency clause

As far as process goes, the LARR Bill restricts use of the 'urgency clause' to requirements of defence, national security or emergencies arising out of natural calamities. This is an attempt to plug the 'urgency clause' loophole under LAA 1894 which allowed the State to largely willy-nilly dispense with due process requirements ( especially the right to object to a Collector), and even transfer the land for other, private uses. The LAA 1894 did not specify exact circumstances where the urgency clause could be invoked. The LARR Bill also states that now 80% of the compensation has to be paid before taking possession, and an additional amount of 75% of the market value shall be paid where acquisition proceedings have already been initiated.

In the recent case of Devendra Kumar Tyagi v State of Uttar Pradesh, while running down the State's use of the urgency clause (that largely dispenses with due process requirements), Justice Singhvi stated that:

"The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 [of the LAA 1894] but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4) [of LAA 1894]. The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1) [of LAA 1894]."

The Supreme Court's strictures have exposed the urgency clause, especially in cases where more than a year would pass between the notification on urgency and the declaration of acquisition. Still more significantly, those lands would then be used for less urgent reasons-such as residential high rises. The Supreme Court in recent

verdicts has been scathing of such practices. Abuse of the urgency clause has provided an avenue for the courts to question such acquisitions and even ask more direct questions on what goes beneath, 'in the guise of development'. And the urgency clause's misuse provides adequate justification, for the courts to even start asking questions on 'public purpose,' which is the bane of the debate at the first place. From the Executive's point of view, LARR's laudable decision to limit the urgency clause to the very minimum is but a response to the court's recent pronouncements. If the LARR Bill doesn't do it, the courts will. In any case, no change of purpose will be allowed under the LARR Bill.

#### 4. Acquisition of Irrigated Multi-Cropped Land

The first draft of the LARR Bill (dated July 27, 2011) called for a complete halt on acquisition of multi cropped irrigated land. The lessons from Singur seemed clear, where political opposition to land acquisition brought down the longest serving communist government, ironically brought to power on the plank of land reform itself.

By the time the new LARR Bill was introduced in September, some compromises have entered the language of the section that couches itself as 'special provisions that deal with food security'. While no irrigated multi-cropped land shall be acquired, there are three noticeable caveats:

- a. Under 'exceptional circumstances', 'demonstrated last resort' (both legal devils for the future) where such acquisition shall not exceed 5% of total irrigated multi cropped land in the district. Whenever such multi-cropped land is acquired, an equivalent area of culturable wasteland has to be developed.
- b. However, where the land is not irrigated multi-cropped land, where the net sown area in a district is <50% of the total geographical area, such acquisition shall not exceed 10% of such net sown area. This however does not apply to projects 'linear in nature such as railways, highways, major district roads, irrigation canals, power lines and the like' (i.e. what is perceived as essential infrastructure, some of which acquisition is governed by their respective Acts in any case)

This provision is certainly controversial. In calling the general ban on multi-crop land a necessary measure for 'food security', it is at once directed at winning over those particular voices that are vocal about agriculture, environment and the very rural. By doing so, it also send the political message that the State is generally trying to learn its lessons from the Singur episode. At the same time, by creating the exceptions, it is trying to win over the industry as well. This is a delicate political balancing act. In Parliament, depending on the nature of the rural vote bank and the availability of productive land, this debate will turn.

5. Linkages with Environment: It is debatable to what extent environmental considerations find a serious place in the LARR Bill, other than the general desiderata. Environmental considerations-water, biodiversity rich areas, forests, energy-do not find explicit mention, barring an odd line about EIA (wherever done) or a specific reference to the Government Committee (after the SIA and the Expert Group Appraisal) which can cross-check if: such acquisition causes only 'minimum disturbance to the ecology' and if the Collector has otherwise explored the possibility of acquiring waste, degraded and barren lands. It is worth asking what happens to India's prime forest

lands, now that the 'Go No Go' policy on coal mining is on its way out.

Since no exception is carved out for the Forests Rights Act, 2006, does it mean that the acquisition of such areas for mining-related activities is governed by the specific mining related Acts (or the new Bill when enacted) and not by the LARR enactment? What consequence does that hold for the rights of forest dwellers? Does the exception under the Scheduled Areas cover all forests rights or are there big exceptions, where the adivasi once again stands disadvantaged? EIA is not a mandatory requirement under the LARR Bill. Does it mean that consequences of ecological damage would be governed by specific environmental enactments (and Supreme Court oversight) rather than the LARR Bill itself? A word of clarification here is necessary.

6. Project Affected People (PAP): The quest of reaching out to the most vulnerable-those who bear the brunt of acquisition decisions-seems to have found some echoes in the definition of 'affected family'-which includes not just the owners of the land but also those whose primary livelihoods stand affected without necessarily owning the land-this includes forest dwellers, share croppers, agricultural labourers, artisans and also urban dwellers living for the last 3 yrs whose livelihoods are affected. The stage is also set then for a formal acknowledgement of the State, perhaps for the first time, of an institutional tussle between PAPs and companies in cases where large tracts are involved. In particular instances of acquisition in the public interest where the benefits 'largely accrue to the general public' or in the case of PPPs for public goods and services or in acquiring land for private companies for production of goods and services, the requirement for prior consent of 80% of the PAPs renders the political contest legal-institutional validity.

The contest over retaining the 80% consent requirement (applicable in particular instances) will be fought to the hilt. It could be diluted further depending on the nature of the debate. If retained, it could be a lever to address voices that have generally resented the growing rise of the private sector in land acquisition decisions. At the same time, the private sector would consider this requirement a disincentive. The right balance here depends on the political deliberations in Parliament.

However, a legal loophole still persists. PAPs are not defined though, even as a number of related definitions abound: 'affected family', 'persons interested', 'land owners', 'marginal farmers', 'landless' and 'displaced family'.

Are PAPs to be understood as each one of these categories-or-are PAPs a sum of all of them? This question has bearing when it comes to implementation of the 80% consent requirement. When 80% consent is required from PAPs, who will be the ones whose consent is asked for?

#### III. Applicability: Does the LARR Bill really provide a framework to cover the entire expanse of land acquisition decisions in the country? Within the federal set-up, what is outside its reach? What does it not apply to?

This part manifests the circumlocutions of coalition politics, inter-ministerial turf battles within the Central executive, as well as questions of whether political compromise is the only way to move legislation forward, along with attendant questions of how much compromise, by whom, for whom and, somewhat significantly, for what ends.

The earlier draft stated that LARR 2011 would override other legislations. This would have been interesting, given that the SEZ Act, for example, also states that it overrides other legislations. However, no such surprises in the latest LARR draft are seen. The latest LARR draft, cleared by Cabinet and introduced in Parliament in September 2011 clearly mentions that: unless the Central Government specifies by notification (on applicability of compensation and R&R provisions), the LAAR does not apply to many significant enactments pertaining to land acquisition and use, including, the following enactments:

- a) The Special Economic Zones Act, 2005
- b) The Cantonments Act, 2006
- c) The Land Acquisition (Mines) Act, 1885 [will the new Mines and Minerals (Development and Regulation) Bill, 2011 also be among the exceptions?]
- d) The Metro Railways (Construction of Works) Act, 1978
- e) The National Highways Act, 1956
- f) The Petroleum and Minerals Pipelines Act, 1962
- g) Resettlement of Displaced Persons (Land Acquisition) Act, 1948
- h) The Coal Bearing Areas Act, 2003
- i) The Electricity Act, 2003
- j) The Railways Act, 1989
- k) Works of Defence Act, 1903 [do development of ports require a separate legislative exception?]
- l) The Damodar Valley Corporation Act, 1948
- m) The Ancient Monuments and Archeological Sites and Remains Act, 1958
- n) The Indian Tramways Act, 1886

In other words, between August and early September 2011, i.e. even before Parliamentary and Centre –State debate, internal discussions within the Central Government resulted in the dilution of some of the LARR Bill's teeth. The Minister for Rural Development however called the first draft his 'wish-list' and the second an inevitable political compromise. Political compromises also save the Government from tortuous legal wrangles over the supremacy of one Central legislation over the other. At the same time, the LARR Bill does sneak in an exception to the exceptions: it keeps open the possibility in future for the LARR to be made applicable to any of the Enactments which are expressly under the exceptions of the LARR Bill. All that the Central Government needs to do in such cases is to make specific notifications to make LARR applicable in the case of each enactment. This 'exception to the exceptions' can come alive or remain in cold slumber, depending on the political weathervane.

Also for the record, other strategic State interests are governed by their respective enactments: Mining, Coal, Highways and Railways for example are not under the LAAR Bill. The State's historical dominion over strategic defence, cantonment areas, resource extraction, railways and roads continues under these respective specific laws.

Forest Rights provides another dilemma. Unlike the exception carved out for scheduled areas, no such similar autonomy seems to be carved out in the LARR for the Forests Rights Act, 2006. What is the consequence of this, vis a vis non-scheduled areas where forest rights are

involved? When this situation is read with the exception for the Coal Mining Act (to which LAAR Bill does not apply) or the new Mines and Minerals Bill, does land acquisition decisions in areas otherwise governed under Forests Right Act, where mining also predominates, get decided according to the LARR Bill or according to the Coal Bearing Areas Act/new Mines and Minerals Mining Bill? What consequences hold then for the historically disadvantaged adivasi in such land acquisitions?

### **Two scenarios for the private sector outside the LARR Bill**

As far as private sector real estate township development is concerned, if it cannot anymore tweak the LARR Bill, it will look for a way out of what it perceives as onerous procedural and R&R requirements of the LARR Bill. First, there is the question of aggregators who will play technical ball and individually keep under the 100 acres/50 acres radar, stating that, under a strictly literal interpretation of the particular LARR section, the R&R provisions will only apply to a company that exceeds the said limits and not cumulatively to the limits themselves. This means company A for example will stay under 99/49 acres (as the case may be), company B will also stay under 99/49 acres and so on.

There is also a possibility of using proxy acquisitions methods (i.e. through another company; through joint ventures, etc), which will trigger off 'corporate veil' issues on nature of inter-connectedness of entities involved, whether 'front' companies are operating, if subsidiaries are involved and so on.

If pressed, the Supreme Court may hold in these scenarios that the R&R trigger applies whenever 100/50 acres limit is reached, irrespective of whether one or more companies are involved. A clarification in the LARR Bill itself on this would be useful, to pre-empt doubts.

Foreseeing such imminent possibilities, there will be attempts to raise the R&R floor to above 100/50 acres so that more companies can stay under the radar. It is difficult to predict if the LARR Bill will indeed be tweaked at this stage to accommodate such concerns. In such circumstances, private entities will look for options outside the LARR Bill's provisions.

They will find two avenues to come under: first, the SEZ Act and second, integrated townships under respective state Acts and policies (specific township policies and so on). Those who would not come under the either these two options, will willy-nilly be brought into the LARR fold.

Let's look at each scenario:

First, since the SEZ Act is carved out as an exception under the LARR Bill, integrated township development through the private sector will try to come under the SEZ Act and not under the LARR Act. It will use the category of 'non-processing areas' (under the specific provisions of the SEZ Act and the SEZ rules). In such cases, the SEZ Act and the SEZ rules will apply and the integrated township will have to follow all the procedural requirements laid down. However, while the SEZ Act provides an exception, the entire area has to be labeled an SEZ under the SEZ Act and then the 'integrated township' as a 'non processing area' would be a part of the larger SEZ. This is not easy, given the size of the SEZs, the difficulty in labeling them and in getting them notified, and the general political climate, depending on the state(s) such SEZs find themselves in.

So, an easier alternative may be the label of a 'Special Township' or an 'Integrated Township' under respective state Town Planning Acts and relevant state policies on townships. The private sector would try to negotiate with states to reduce the minimum contiguous area for such townships, in cases of privately negotiated land acquisition (less than 100/50 acres as the case may be), thereby also staying under the LARR Bill's R&R radar. This is where the cat and mouse game with the LARR Bill has already begun.

The LARR Bill is clear that states are free to enact their own legislations and policies on land acquisition, so long as those provisions on R&R are not less than what is provided in the LARR Bill. Given the Supreme Court's current predilection for coming down heavily on possible abuse of power (along with an eye on redistribution), in the event of a potential conflict between the central enactment and state provisions, the central enactment is expected to prevail, to the extent of the 'repugnancy'. This will give the LARR Bill precedence.

The figure of 100 acres (rural), which is the R&R trigger under the LARR Bill, is compatible with the 'minimum contiguous area' mandated for a Special Township in Maharashtra. (Also, Karnataka has identified certain areas under Integrated Townships that exceed the 100 acre figure) Curiously enough, the Press Note 3 (2002 Series) on FDI for the development of Integrated Townships had also mentioned the 'minimum area' as 100 acres. However, the latest FDI Policy (October 2011), in the case of 'development of townships', does not seem to reflect any such requirement (while at the same time generally not allowing FDI in the 'Real Estate Business')

This seems to be the LARR Bill's gambit - by keeping alive the option of applying the LARR Bill's provisions in those enactments through specific central notifications, it seems to be second-guessing a possible Supreme Court directive requiring better compensation, more humane land acquisition or even R&R.

This debate will get more interesting in the case of the new National Manufacturing Policy (NMP) of the Central Government which aims to create 100 million new jobs by 2022 by facilitating 'National Manufacturing Investment Zones' or NMIZs, each not less than 5000 hectares in area, which would be labeled 'industrial townships' by the state government, under the proviso to Article 243 Q of the Constitution (which incidentally does not require a municipality to be constituted). The NMP states that 'land has emerged as a major constraint for industrial growth...the Government will take measures to make industrial land available', where the state government would be responsible for the selection of land (also through land banks). The administrative structure of these NMIZs would be a Special Purpose Vehicle (SPV) consisting of the central and state governments and the developer.

The Delhi Mumbai Industrial Corridor (DMIC) project, for example, straddles a number of states, where the Cabinet Committee on Economic Affairs has already sanctioned Rs. 17,500 crores for the development of seven industrial cities along the corridor. Will land acquisition and R&R requirements of these cities (or of the NMIZs under the NMP) be governed under the LARR enactment? If they come under the state route, the LARR Bill states that the state's R&R requirements cannot be less than those prescribed under the LARR Bill. Will these cities then try to come under the SEZ route too? These are political questions as much as legal ones.

In any case, it will also be interesting to observe the LARR Bill's indirect effect on the real estate market in the country. Requirements of R&R, especially with the 100 acre/50 acre floor, could in turn make massive economies of scale difficult to achieve, since there will be efficiency costs of using multiple aggregators and multiple R&R for smaller parcels. The consequence of this could be an anti-monopoly/ anti-trust effect on real estate, which could in turn make international real estate entities think twice before entering the real estate market (currently, in any case, FDI in 'real estate business' is not allowed, while townships are allowed)

### 'Small' 'tall' and 'beautiful' (?) new Townships

As a result of all this, as an indirect consequence, it is possible that future new urban centres in India could become small townships with high-density structures- in a manner that ensures efficiency for industry without fighting afoul of the law. If you cannot stretch horizontally, could you go up then? Small townships, 'inter-gated' (rather than integrated communities?) with environmentally efficient high rises- could that be the Indian urban story of the future? This would indeed be a curious consequence of a minor land enactment, which in the larger scheme of things, could turn out to be no more, or no less, than another historical footnote. This too will be dependent on the resolution of questions regarding optimal FSI viability. The political debate on FSI will vary across locations: newer peripheries will be different from greenfield sites and they in turn will be different from inner city areas.

Will smaller towns get incentivized as a result of the LARR Bill's provisions? Whether the LARR Bill unwittingly creates spatially decentralised and uniform urbanisation depends on which way the states go, in conforming with, or detracting from the enactment. This also depends on which way the Supreme Court's winds blow. Will it enforce uniformity or in keeping with the federal spirit, acknowledge diversity?

In short, the LARR Bill covers a large landscape but leaves out large 'islands' too, where a lot of new developments will occur. Given the short legislative history of the LARR Bill so far, it could be assumed that political factors, would predominate and the LARR Bill to pass muster in Parliament, may have to compromise on some essential areas, where it would otherwise have liked to claim jurisdiction over. These interesting developments in the federal space, with increasing industry negotiations and the greater India story of new industrial growth will also decide the character and spatial dimensions of new townships in India. And the Supreme Court will continue to watch, eagle eyed, over all these, thereby rendering some additional legal complexity to an already potent political concoction.

### III. Are compensation provisions adequate?

Since much of the disgruntlement seems to stem from perceptions of inadequate compensation as much as from abuse of process, the story about compensation, initiated in the late 19th century law, is far from over either.

In KT Plantation's case, the Supreme Court recently read 'compensation' into the requirements of law under Article 300A of the Constitution. Compensation, in previous decisions, has been held to be 'just equivalent of what the owner has been deprived of' (Bela Banerjee's case) and that 'it must not be illusory' (Shantilal Mangaldas case). Yet, the Supreme Court has also held in Bhim Singh's case,

that Rs. 2 lacs was adequate, whatever was the value of the property.

In the recent case of Rajiv Sarin, the Supreme Court held that ‘as mandated by Article 300 A, a person can be deprived of property but in a just, fair and reasonable manner...where the State exercises the power of acquisition of a private property thereby depriving the private persons of that property, provision is generally made in the statute to pay compensation to be fixed or determined according to criteria laid down in the statute itself...the adequacy of compensation cannot be questioned in a court of law, but at the same time the compensation cannot be illusory...the criteria to determine possible income on the date of vesting would be to ascertain such compensation paid to similarly situated owners of neighbouring [forests] on the date of vesting’. In the latest Noida Extension case where dissatisfied farmers appear ready to approach the Supreme Court. These farmers have reported that the 64% hike in compensation as per the Allahabad High Court is inadequate and that they are entitled to the prevailing circle rate of Rs. 18,000 per square metre.

In such a scenario, the LARR Bill needs to provide much need clarity on compensation terms. (R&R details being already provided in the Schedules). The LARR Bill computes market value on the basis of the documentation available with the official records. Market value is the higher of: average sale price of surrounding lands for the past 3 yrs or the price mentioned in the Stamp Act for registration of sale deeds. This is then to be multiplied by a factor of 2 in rural areas and by 1 in urban, plus an amount of 100% more added as solatium. It is yet unclear why the ratio of 2:1 was chosen, if such questions are essentially those of relative economic value, determined by the manner the market operates. This ratio seems to also simultaneously incentivize the transformation of rural areas (with better compensation prices) into the urban, while keeping open the political and institutional avenues for receipt of entitlements specified.

In other words, LARR relies on a retrospective price, based on previous and not future use. LARR seems to raise questions on price and not value, if the price to be paid as compensation does not reflect the changed use of the land. There are examples of recent State Acts which innovate beyond: the new Kerala Bill draft initially discussed the prospect of Redeemable Infrastructure Bonds/Transferable Development bonds instead of cash; Rajasthan’s new Bill looks into the possibility of providing 25% of developed land in lieu of cash for urban development and housing purposes; Gujarat follows a TP Scheme model; there have also been instances of the community organizing themselves to form a corporation (eg. Magarpatta), where farmers pooled their lands and each farmer became a shareholder of the company in proportion to the value of the respective land vis a vis the cost of the total land.

It is the spirit of partnership, as enshrined in the LARR Bill’s preamble, that the LARR Bill may do more to provide, through incentives in the actual benefits of the land acquired for newer and more productive uses. This is what makes opportunity costs come alive. This shifts the political stakes from a purely entitlement driven model for the dispossessed to one that also talks about stakeholders and partners of development.

Of particular relevance also here are the comparisons with the gains that are made by those who do not lose land but

benefit from acquisition in adjoining areas. The LARR Bill does provide however that ‘where the land is acquired for urbanization purposes, twenty per cent of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to cost of acquisition and the cost of development’.

How does one take care of potential value: in commonsense terms, the price paid by a willing purchaser to a willing seller after taking into account the existing and potential possibility of the land? In its absence, it is likely that the usual arguments about computation will continue: lack of land titles, under-valuation of land for stamp duty purposes, information asymmetry, delays pushing cost of land up; lack of speedy implementation and so on. In R&R, the responsibility of the State (and private companies) will be particularly tested. Will implementation of R&R as a precondition be effectively implemented? Is there enough land for R&R, especially to implement the 20% land for land provision? Where the land market is beset with large information and other asymmetries, questions are rife as to whether the State can indeed effectively manage compensation and fair payment of market value.

The immediate question stemming from the compensation and market value is where will the new urbanisation take place? Will there be an increasing number of greenfield sites (whether under the LARR umbrella or as SEZs or under possibly diluted requirements of townships) or are we going to continue to see urbanisation as increasing peripheral development, incrementally across the blurred boundaries?

#### **IV. Does it tilt the balance towards urbanization? Does it at least acknowledge the growing significance of the urban in the Indian socio-political and economic story?**

A third, 31% of the Indian population, living in urban areas, generates more than 65% of the nation’s wealth. Yet, the urban is not yet considered as politically significant as the rural. The LARR Bill is still in a rural frame, at best one that envisions transitions into urban (or ‘urban’?) settlements, even as passing references to urbanization find mention. There is acknowledgement of the urban in various places of LARR such as:

- (i) Vision: The Preamble of LARR: “to ensure a humane, participatory, informed consultative and transparent process for land acquisition for industrialization and development of essential infrastructural facilities and urbanization....”
- (ii) PAP: Definition of “affected family” includes a “family residing on any land in the urban areas for preceding three years prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land”.

This creates a very interesting question of compatibility of newer Government schemes such as the Rajiv Awas Yojana (RAY) with the LARR Bill. Does it mean that, the De-Soto model of formalization of title is a necessary prerequisite for any benefits of LARR to go to the urban poor, in the event the land they occupy is acquired? Or would mere proof of use suffice? Would say, hawkers (whose primary livelihoods are affected) stand on a better footing under the LARR Bill than others who squat on public lands whose primary livelihoods are not affected?

- (iii) Process: a) Social Impact Assessment would have to be carried out in consultation with appropriate local body (equivalent to Gram Sabha) in urban areas; b) The notification processes will have to be followed for acquisition in urban areas as well (copy to be made available at urban local body office); c) The Commissioner R&R would need to conduct post-implementation social audit in consultation with appropriate ULBs.

The SEZs, the NMIZs, the industrial townships, and the integrated townships are all carving themselves out of democratic municipal governance. The local bodies are severely strained in terms of 'funds, functions and functionaries'. The LARR Bill does provide for consultative roles for the urban local bodies in this scenario.

- (iv) Compensation: The urban is factored in the minimum compensation package: factor to be multiplied by 1 in urban areas (eg. 2 in rural areas); also in solatium, final award (factor of 1)
- (v) Public Purpose: The definition of "public purpose" includes: "the provision of land for planned development or the improvement of any site in the urban area or provision of land for residential purposes for the weaker sections in rural and urban area." This seems to be an indication that RAY schemes could be accommodated within the LARR framework.

R&R: a) R&R provisions apply to private company acquisition of >50 acres in urban areas; b) In R&R: for affected families whose primary livelihoods are affected (in addition to Schedule I), there is provision for housing units in case of displacement (in the form of a constructed house of not less than 50 sq.m in plinth area/ if option not to take the house offered, a one-time financial assistance for house construction of Rs. 1,50,000 would have to be provided) Houses, if necessary would be provided in multi storied building complexes (Schedule 2)

- c) Land for land: 'Where the land is acquired for urbanization purposes, 20% of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to cost of acquisition and the cost of development; d) Infrastructural amenities for new villages developed for resettlement: to be connected through public transport to nearby urban area

The R&R provisions once again call to mind the RAY scheme. It may well be that RAY is pre-conditioned on availability of title which the new Land Titling Bill, 2011 also seeks to ensure, and on which LARR Bill's efficacy will be determined. At the same time, while Indira Awas Yojana (IAY) finds explicit mention in the Schedule on R&R, RAY is conspicuous by its absence;

In a nutshell, the LARR Bill while being still situated in a rural frame, envisaging transition to urban scenarios, is yet cognizant that such transitions would only happen where land is being acquired in predominantly rural areas. This is where the productivity of land argument is especially strong: would there be more value for land in selling out or in keeping it, in a country where ties to land are resonant with emotional and social linkages, apart from the pure economic? The debate on multi-crop land is

also significant here. Is the LARR Bill about to change the pristine Gandhian idea of rural the 'self sufficient' arcadia or will India finally go with Ambedkar and Nehru? Or will linkages and smaller towns (inter-connected, democratically governed and less exclusive) provide a crucial 'rurban' transition point?

Who governs the new urban India (with all the various political carve-outs?) This is where the politics confronts the law. In a country with such multiple voices, these are questions that one can no longer ignore. The LARR Bill does not seek to find solutions to the political questions but is inevitably caught among myriad different political voices.

### Conclusion: What does LARR mean for a changing India?

LARR is a legal attempt to ensure that a coherent framework is in place for land acquisition, recognizing the multiplicity of actors involved, the changing political economy with rising democratization and opposition from disenchanting and affected parties; increasing Judicial involvement on State inaction or perceived abuse of power; within the delicate centre-state/ federal balance of India's polity.

In the immediate short run, the LARR enactment will be used in the complex political game of Uttar Pradesh facing an election in mid 2012, and in a scenario of increasing and active Supreme Court intervention. In other words, the enactment, when passed, could become a legal basis for the enforcement of entitlements regarding due process, compensation and R&R, which would be politically articulated as well as resolved through the Supreme Court. The Supreme Court too, perhaps in anticipation of the LARR bill, has also made some observations regarding the 'outdated' nature of LAA 1894 and the need for 'a fair, reasonable and rational enactment in tune with constitutional provisions, particularly Article 300A of the Constitution'. There is also little doubt that the political trigger for the Bill has been long since coming, if the developments of Singur (or more recently in Uttar Pradesh) provide any indication. In the immediate short-run, the Central Government will try to generate political momentum for the Bill, buttressed by the Supreme Court's recent observations that a new enactment be passed without delay. On the other hand, legislative tradition would require the Standing Committee deliberations are complete, a process which could delay the immediate passage of the Bill in Parliament.

In the longer run, however, the LARR Bill is an institutional attempt to bring about legal coherence. Whether its indirect, unintended consequences are the spatial re-arrangement of new, smaller, taller, highly dense, urban townships, or gated enclaves or for that matter more decentralised uniformity-is a vision that speaks as much about the adequacy (or inadequacy) of law, as much as the law's attempted power to generate larger socio-political and economic change.

The key question up for immediate debate however is whether the LARR Bill, by raising the bar for R&R and process, and by attempting to ensure adequate checks and balances through an elaborate bureaucratic apparatus (albeit without an adequately developed information infrastructure), also indirectly stymies the role of private capital in economic development. The LARR seems to be indicating to companies: acquisition applies to you and the State can facilitate your acquisition; "public purpose" too is very broad and inclusively defined; but at least

complete due process: i.e. provide R&R, adequate compensation, and in serious cases which exceed a certain limit, even take consent (under some bureaucratically approved and overseen procedure), of a large majority of the people affected. The percentage of 80% for consent too may change, depending on the Parliamentary debates. Will companies be scared away? Will they go looking for greener and more welcome state governments through various township acts and policies? Are they going to find SEZs as a last resort? Or will there still be a substantial number of acquisitions under the LARR umbrella? Where is equilibrium in this political tug-of-war?

In a country where land titles are so uncertain (even assuming that the new Land Titling Bill 2011 will also be enacted), without a functional land market in most cities, where procedures for transfer of land are best with such information asymmetries, the LARR Bill raises more complex questions about the very adequacy of a single legislation to effectively play the framework for matters so fraught with political, economic and significantly (for a majority), emotional-symbolic resonance. LARR works on a compromise: create the law, lay down the framework (with numerous provisions and caveats as the case may be, for the lawyers to later dissect), so that there is more coherence and clarity, so that, the battles over land, can be fought out institutionally, within the complex politics of the country. The question of balance nevertheless predominates and refuses to go away.

**NOTE:**

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See PK Sarkar as above, page 2

See Radhey Shyam as above; also Land Acquisition Act, 1894

The LAA 1894 has been amended in 1919, 1921, 1923, 1933, 1962, 1967 and 1984. See <http://www.deccanherald.com/content/202342/replace-archaic-land-acquisition-law.html>

See for example, RL Arora v State of Uttar Pradesh and others, decided on February 14, 1964, Justice KN Wanchoo; see also Chiranjit Lal Choudhury v the Union of India and others, decided on December 4, 1950, bench: Justice Hiralal Kania

Constitution (Seventh Amendment) Act 1956; Entry 42 List III/Concurrent List, Constitution of India refers to 'Acquisition and requisitioning of property'; see also Entry 18 list II/State List, 'Land, that is to say, right in and over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization'; also Entry 45 list II/State List: 'Land Revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue for revenue purposes and records of rights, and alienation of revenues'

See Kameshwar Vs. State of Bihar, AIR 1951 Patna 91; I.C. Golak Nath & Ors. Vs. State of Punjab, (1967) 2 SCR 762; His Holiness Kesavananda Bharati, Sripadagalvaru Vs. State of Kerala & Anr., (1973) 4 SCC 225; Smt. Indira Nehru Gandhi Vs. Raj Narain, 1975 Supp. (1) SCC 1; Menaka Gandhi Vs. Union of India, (1978) 1 SCC 248; Minerva Mills Ltd. Vs. Union of India, (1980) 3 SCC 625; Waman Rao & Ors. Vs. Union of India, (1981) 2 SCC 362; Maharao Sahib Shri Bhim Singhji Vs. Union of India & Ors., (1981) 1 SCC 166; I.R. Coelho (Dead) by Lrs. Vs. State of Tamil Nadu & Ors., (1999) 7 SCC 580; see also <http://districtcourttallahabad.up.nic.in/articles/9th%20schedule.pdf>

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KT Plantation Pvt Limited and Another v State of Karnataka; decided on August 9, 2011 (five member Constitution Bench comprising Chief Justice S H Kapadia, Justice Mukundakam Sharma, Justice KS Radhakrishnan, Justice Swatanter Kumar and Justice Anil R Dave); see also Rajiv Sarin and another v State of Uttarakhand and others; decided on August 9, 2011; five member Constitution Bench comprising Chief Justice SH Kapadia, Justice Mukundakam Sharma, Justice KS Radhakrishnan, Justice Swatanter Kumar and Justice Anil R Dave

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See KT Plantation case as above, detailing the various arguments. For example, Seervai, 'Constitutional Law (Chapter XIV), PK Tripathi, 'Right to Property after the

44th Amendment-better protected than ever (AIR 1980 J pg 49-82) see also, VN Shukla's 'The Constitution of India' (ed. Mahendra P. Singh) as above

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Kelo et al v City of New London et al, decided on June 23, 2005; see also PK Sarkar as above at pages 392, 114;

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See State of Gujarat v Shri Shantilal Mangaldas and others, 1969 (AIR) 634, decided on January 13, 1969 see also KT Plantation case as above; also State of West Bengal v Bela Banerjee and others (AIR 1954 SC 170); see also Bhim Singhji case as above

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