

CHAPTER IV

ACQUISITION AND CORPORATISATION OF LAND AND ITS IMPACT ON FARMERS

Acquisition of land goes for the purpose of Corporatisation and for some developmental purposes like the construction of dams, roads, railway tracks etc. Corporatisation of land is taking place for setting up of industrial units and for organised agricultural activities.

Corporatisation and Rehabilitation packages

The government both the Central and the State needs to pay much interest in the rehabilitation and resettlement matters of the displaced people due to various objectives including the corporatisation.

Position in in states other than the state of West Bengal

Rajasthan Experience: - In Rajasthan, the acquisition of land for the corporate houses is done by the state government frequently amending or ignoring the existing laws.²⁹⁸ Till date, three SEZs, two near Jaipur and one in Jodhpur have been operational. In addition to these, five others have received formal approval and ten others²⁹⁹ await formal approval.³⁰⁰ As such, following the 'Jan Adhikar Yatra' organised by the various social action groups following issues have been addressed by the State.

1. Acquisition of land for SEZs;
2. Forced planting of Zatropa for bio diesel³⁰¹

²⁹⁸ Aseem Shrivastava, A betrayal of democracy; Published in The Hindu Sunday Magazine; 23rd October '2007 at pg. 4.

²⁹⁹ It also includes seven Multi Product Zones (MPZs) about 1000 acres each, five of them in Alwar district.

³⁰⁰ Supra note. 298.

³⁰¹ As much as six million hectares in the state, often as the village commons, falsely construed as waste lands.

3. Removal of restrictions as the sale of land owned by the SC/ST groups;
4. Social security for the workers in the unorganised sector of the economy.

The local economy, according to the farmers, local traders and journalists has been in a state of stagnation for several years. Small trade has actually shrunk. The chief mode of income in the district has been the remittance made by the young workers from the working in West Asia. As much as 80% of the young people from the area have moved to the Persian Gulf states in search of better prospects.³⁰² Thus, in a word, the state in these areas has failed to obtain the economic justice for the poor.

Goa Experience: - Goa has always been known for its tourist attraction. The Special Economic Zones (SEZ) controversy in Goa took a new turn with the Centre scrapping as many as eight SEZ proposals. Amid mounting pressure by anti-SEZ activists in Goa the Centre de-notified all the zones in the state. The protesters fearing the implications of SEZ argued that the zones are going to add on further pressure on the already flimsy infrastructure in Goa and may lead to a weakening of the Goan identity. Moreover they were apprehensive that 'outsiders' would deluge Goa in hunt for jobs thus crunching on the opportunities for locals.³⁰³ This finally has forced the state government to give up plans to develop sixteen economic zones. Now the issue is in the Center's court which is seen trying to find a way out of the controversy. One of the measures proposed to avoid further legal complication is to compensate the three

³⁰² Aseem Shrivastava: A betrayal of democracy; The Hindu Sunday Magazine; 23rd October '2007 at pg. 4

³⁰³ <http://indiabusinessweek.com/Government/Policy/SEZ-controversy-in-Goa.html>; visited on 27th November, 2008 at 5.08 PM.

companies for stalling notified projects that were in the final stages of completion.

Orissa Experience³⁰⁴: - Just on the line of Singur and Nandigram in West Bengal, in Orissa, a controversy arose when the state government of Orissa signed a Memorandum of Understanding (MoU) to the setting up of the Iron and Steel plant by the Korean giant Pohang Steel Company (POSCO). Villagers opposed to the POSCO steel plant are being intimidated by the use of force, including the use of paramilitary troops. For the last two and a half years the POSCO Pratirodh Sangram Samiti a coalition of various groups and political parties have been successfully opposing POSCO's steel plant in Jagatsinghpur. During the statutory public hearings in April 2007, the State stationed 15 platoons of armed paramilitary forces in the area thus silencing the expression of local opposition to the project. The Amnesty International issued a report³⁰⁵ urging the Government of Orissa against the use of force, and to follow the democratic process. Such is the level of distrust between the people and the government that the villagers have installed barricades and check posts around their villages. After due protest erupted in violent form against the project by Orissa Bachao Andolon (OBA), some of the people of Jagatsinghpur, completely turnaround from their earlier stand and agreed to give up their land for the Posco steel plant on January 5, 2008 with the conditions as under-

- A sum of 5% share in the profits of the company.

³⁰⁴ Posco controversy

³⁰⁵ Orissa should avoid forced evictions in Jagatsinghpur, instead consult farmers protesting against displacement," Amnesty International Statement on State force build-up in Jagatsinghpur, Orissa. April 11, 2007. <http://sanhati.com/news/193/posco>, visited on 30th March, 2008 at 4 PM.

- A sum of Rs. 25 lakh per acre for the agricultural lands and Rs. 40 lakh per acre for their homestead land.
- Job guarantee for the land less which include Rs. 1000 monthly allowance to the people above 60 and Rs. 3000 per month fro the families who do not have members eligible for jobs, including the landless who were employed as daily wagers in the betel farms.

Against the demands, the POSCO Authority has announced the package which includes inter alia, the followings-

- (ii) The betel leaf cultivators will get unemployment relief for six months.
- (iii) The other agricultural labourers will get pension.
- (iv) At least one person from the project affected families will get direct or indirect employment.
- (v) The oustees from the vested land will get home in the rehabilitation colony because they will not get monetary compensation against the land which is being owned by the government.

However, the compensation to the original land owners is yet to be decided. Recently, the Orissa Government appealed before the Posco and Arcellor- Mittal authority to employ more than one members of a family in their relevant project and in addition to this before the unit starts production necessary trainings and education to be provided to the local people which at the same time both the Posco and Arcellor Authority have accepted.³⁰⁶

Jharkhand: - In Jharkhand, the land- losers apart from being provided elsewhere with one- tenth of the land acquired get Rs. 1000 an acre every month for 30 years with a cap of Rs. 10,000 a month for an individual.³⁰⁷ Again, the state has prepared a draft

³⁰⁶ Reported in The Ananda Bazaar Patrika: 29th October, 2008 pg. 3.

³⁰⁷ Manas Bakshi, From Operation Barga to Singur, The Statesman; 23rd October, 2008 at pg. 7.

Rehabilitation Package by the Department of Industry, Jharkhand³⁰⁸ which interalia includes-

- (i) The industrial houses willing to invest in the state, are required to pay price of the land as fixed by the relevant Gram- Sabha.
- (ii) The very industrial houses must have to run their factories for at least 30 years and pay landowners Rs. 1000 per annum for each acre of land.
- (iii) The state government will give the misplaced farmer or land loser 50% money from the peripheral developmental tax.
- (iv) The investors give 2% of their benefit to the state government every year, in which, the state gives 1% to the land losers.
- (v) Whatever may be the price of the land, a premium of Rs. 1.5 lakh per 1.5 acres of land acquired will be paid to the land less for 30 years.
- (vi) Within 15 years from the date of the acquisition of the land the project work must have to be accomplished. Again, if the party purchasing the land for setting up of the project is not willing to set up the same and sell it to the third party then, a proposal of purchasing the very land at 80% of the price at which the said land was purchased, is to be given first.
- (vii) The land givers will enjoy the option to invest 50% of the compensation money as the equity of the industry that is set up in the land given by the very person.
- (viii) The homeless persons will get homestead land.

³⁰⁸ Reported in The Ananda Bazar Patrika: 2nd August, 2008 at pg. 09. & The Times of India: 21st October, 2008 at pg.4.

- (ix) In addition to the monetary compensation one person from each family will get job in the relevant project.
- (x) To satisfy the minimum requirement of the land losers, if necessary the owner or in case of his death his nominees will get assistance upto 30 years.
- (xi) Again, from the time of the project to be operationalised, 1% of the net profit will compulsorily have to be spent by the relevant corporate body for the social development of the said locality.

The government is expected to survey the persons badly affected especially those who lost their livelihood due to the land given for the relevant project and will arrange for job alternative livelihood means.

Himachal Pradesh: - The Himachal Pradesh Cabinet³⁰⁹ has given it's approval to a Rehabilitation and Resettlement Plan for various hydro- electric projects being executed by the State- owned Himachal Pradesh Power Corporation Limited. It is aimed at providing the best package to each of the project affected family by improving their quality of life in the project area through a better infrastructure, sustainable income, better skills and to make them a part of the development process, to create goodwill for the organisation for a long- term relationship; to ensure that the rights of individual and society, particularly those belonging to the weaker sections of society are adequately protected; creating employment opportunities for local people through various self-employment schemes or indirect employment in project activities, as also to deliver prompt assistance to the local people in extreme hardships. The plan will be prepared on a socio- economic baseline for each project through independent surveys besides providing 100 units of free power every month to each of the project

³⁰⁹ Reported in The Hindu: 11th January, 2009 at pg. 07.

affected families for 10 years. Again the landless will be entitled to draw a resettlement grant ranging from Rs. 25 thousand - Rs.2.5 lakh as a onetime relief in addition to compensation for the land. In addition to these, the SC and ST families, if settle outside the district would be entitled to an additional resettlement grant of 25%.

Arunachal Pradesh Government in addition to the National Hydro-Electricity Policy, 2008 also announced that if the project affected families do not require so much electricity they will be provided with the cash price of the rest amount of electricity allotted for them³¹⁰.

Uttar Pradesh, for instance, the package announced for farmers losing land for the Ganga Expressway project included offer of shares up to 10% of the value of the land lost.

Andhra Pradesh has the highest number of SEZs (54/222) notified in the country, with the formal approval given to 35 and in principle approval for two others as on 10th July, 2008. These SEZs are expected to generate direct employment for 8,90,900 persons and indirect employment to 16,82, 800. Commenting upon the success of setting up of such a large number of SEZs in the State, the Land Acquisition Officer said they have been successful in convincing people to understand the advantages SEZs provide in an area. In addition to this, they offer Rs. 2 to 3 crore for every acre of non-irrigated land and the land losers get jobs too.³¹¹

In Uttarakhand, the Himalayan Environmental Studies and Conservation Organisation (HESCO)³¹² has launched the unique Kisan Bank system with an aim to satisfy the marginal and landless farmers' monetary and technical needs. Thus, the farmers will be

³¹⁰ Reported in The Ananda Bazar Patrika: 12th July, 2008 at pg. 04.

³¹¹ Reported in The Statesman: 11th July, 2008 at pg. 04.

³¹² Reported in The Hindu: 29th January, 2009 at pg. 03.

able to take need based loans for ploughing; sowing and harvesting with due respect and not get humiliated as often happen when a farmer seeks loans from commercial banks or money lenders.

Position in Bengal

Land acquisition in Bengal is a very touchy issue in West Bengal in recent times.

a. Singur: - Conversion of agricultural land in Singur for the Tata project has been a great controversy in recent times. The Land Acquisition Act, 1894 does not provide a strong component of proper rehabilitation for the oustees from the land which is to be acquired. There was rampant dissatisfaction of the farmers regarding the acquisition which took on a political hue. Eventually the Corporate Body namely the TATAs abandoned the project and the land is still lying unused. A report of the visit in Singur is attached as Annexure.

b. Nandigram- After Singur, another controversy developed regarding the acquisition of land in West Bengal. At the root of the controversy was a notification regarding the acquisition of land for setting up of a Chemical Hub in the area. Experience says, the chemical hubs spread over Asia, such as those in the Port of Rotterdam, Jurong Islands, Sanghai, Dahej in Guujrat have been instrumental in bringing about a socio- economic change in the area by the amount of investments they fetch and their huge employment potential. A violent protest was raised by locally unwilling people for acquisition. A report of the visit is attached as Annexure.

c. Rajarhat: - Land prices in Rajarhat, under the jurisdiction of the Bhangor- Rajarhat Area Development Authority (BRADA) have increased by leaps and bounds and with global IT majors like

Infosys and Wipro- setting up of shop, land prices have soared like never before. As a result the following consequences are occurring³¹³-

- (a) Ten years ago, a cottah fetched about Rs. 2000 in the fringe areas of Rajarhat. Now that has shot up to Rs. 2- 3 lakh. Naturally, the farmers who have sold off their lands even a year ago feel cheated.
- (b) In many cases middlemen, working for private firms, are buying land from the farmers and selling it to the firms.
- (c) With a number of firms or companies are buying land in several places, those whose lands fall in the middle of these acquired plots are under pressure to sell their lands too just like the *enclosure movement*³¹⁴ in England nearly a century back.
- (d) With the private companies directly acquiring land from the land owners the bargadars and other '*persons interested*'³¹⁵ are peeved. Thus, they would become losers in the process.

Another incident of conflict that has arisen in recent times is the Rajarhat land deal where the Hidco Authority is pressuring the owners to sell back land for only Rs. 8000/- per cottah³¹⁶ when the existing land prices go the stratosphere. Way back in the Eighties,

³¹³ Suman Chakraborty and Caesar Mandal, Land prices hit the roof at Rajarhat: The Times of India: 29th April, 2008 at pg. 05

³¹⁴ **Enclosure** or **inclosure** is the process which was used to end some traditional rights, such as mowing meadows for hay, or grazing livestock on land which is owned by another person, or a group of people. In England and Wales the term is also used for the process that ended the ancient system of arable farming in open fields. Under enclosure, such land is fenced (*enclosed*) and *deeded* or *entitled* to one or more owners. By the 20th century, unenclosed commons had become largely restricted to rough pasture in mountainous areas and in relatively small parts of the lowlands. <http://en.wikipedia.org/wiki/Enclosure> visited on 24th mApril, 2009 at 3.56 PM.

³¹⁵ Section 3 (b): the Land Acquisition Act, 1894.

³¹⁶ Reported in The Times of India: 12th February, 2008 at pg. 04.

some people had bought small plots for Rs. 800/- per cottah here from Hidco. Here they were the early movers in Rajarhat, long before realtors had realized its worth. Being faced with the refusal of the localities to hand over the land at such a cheaper price and the Court's status quo, it is reported that the Hidco Officials are threatening the land owners to not to sanction the building plans, the necessary electricity and water connections etc. in the relevant area. However, the present Land Acquisition Act, 1894 under the expression 'public purpose' empowers the state to acquire land for village sites, provision of land for town and rural planning, provision for land for residential purposes to the poor and landless and people living in rural areas.³¹⁷ More interestingly, citing a Cabinet decision taken way back in the 1990s the HIDCO authority has already acquired nearly 7,000 acres of land for the new town township under the emergency clause in the Land Acquisition Act, 1894.³¹⁸ A report of the visit is attached as Annexure.

d. Andal: Recently, the West Bengal is experiencing a different sort of movement in Andal regarding the acquisition of land. The government required the land both for aerotropolis and coal mining. The people giving up their land for the aerotropolis project organised themselves under the banner of Andal Bhoomi Rakshak Ebong Krishak Sartha Roksha Committee to voice their support for the aerotropolis project and combat any move to excavate new coal mines in the area along with a demand for higher price and better compensation for their land.³¹⁹ In Andal, in the district of Burdwan, in West Bengal, the landowners are willing to directly deal with the Authority instead of any middleman for the fixation of the price of land to be acquired and the compensation cum rehabilitation

³¹⁷ Section 3(f), The Land Acquisition Act, 1894.

³¹⁸ Reported in The Statesman: 14th October, 2009 at pg. 04.

³¹⁹ Reported in The Times of India: 29th December, 2008 at pg. 03

package. The government's proposal of paying between 7.5 lakh and 11.24 lakh per acre depending upon the fertility and location of land.³²⁰ A report of the visit is attached as Annexure.

Reasons Behind Such Severe Protests on acquisition: - For overall development there needs to have a balance between agriculture and industry so that neither the industry, nor the agriculture suffer. Unfortunately, politics, more than economics has come in the way of Bengal's development. This is leading to industry- agriculture dichotomy. There are a number of reasons for such deadly protests in acquiring the lands for setting up of the industrial units which are as under-

- After Operation Barga, there is the absence of large holdings;
- Land is heavily fragmented and distributed among the people;
- The scheme of compensation on acquisition of land is not attractive.

Till recently, as many as 9587 people, are affected due to the acquisition of land for the developmental purposes in the 18 districts of the state have either not received or have refused the compensation money except in Kolkata and in the District of South Dinajpur. One of the major impediments to fair deal is the affected farmer's inability to prove ownership. In order to remedy this situation, the Government of West Bengal in a New Approach (Amendment Policy on Acquisition of land) w. e. f. 6.6.2006 started for readily paying the land losers against the loss of their land on acquisition.

Therefore the major impediments to land acquisition are:

- Absence of land for land policy for the losers of land;
- Lack of consensus behind the setting up of industry³²¹

³²⁰ Reported in The Statesman 11th February, 2009 at pg. 04.

- Lack of political sensitisation.

Thus, after studying these, it may be submitted that the model that the government has been compelled to follow at the wake of the Singur, Nandigram is not beneficial for the original land owners. Consequently, a question rises that 'when the state is keen to facilitate the private corporate bodies to earn hefty sum, why should the original land owners be deprived?' Hence, there is need to be sensitive to the responses of those who lose land and livelihood to projects for industry, housing and infrastructure, knowing that such developmental projects need space. Acquisition of land for setting up of industrial units is one of the most controversial issues.

Steps Taken By The State Of West Bengal Regarding

Acquisition: Although the importance of industrialisation in West Bengal cannot be denied, it is also equally true that acquiring cultivable land from the farmers would be a suicidal move for the State. This calls for sensitive policy planning and advocacy. The Asansol -Durgapur Development Authority³²² (ADDA) has turned down a proposal to set up an IT Park and SEZ on the land of the closed Jessop factory in Durgapur which is spread over 100 acres.³²³ The Calcutta High Court held the acquisition process was faulty and hence ordered to return the land so acquired. The following steps have been taken by the government-

The state government would not acquire any farmland would not acquire any farmland without the consent of farmers.³²⁴

³²¹ Times News Network: Blame Bandhs for Bengal's plight: The Times of India: 2nd January, 2009 at pg. 4.

³²² Reported in The Times of India: 19th December, 2008 at pg. 03.

³²³ Reported in The Ananda Bazar Patrika: 21st November, 2008 at pg. 4

³²⁴ Reported in the Times of India: 19th August, 2008 at pg. 04.

The Policy of Nothing about Us without Us: The corner stone of the policy is to arrive at a consensus on the acquisition of land through discussions with the affected people, including the landowners, sharecroppers and other dependents on the acquired land. The Land Acquisition Manual, 1991 requires the government to feel the pulse of the people, who would be affected by the acquisition and whether they want the project there and what the price of the land should be.

The draft Bill requires the State government to acquire land by emphasising the need for the investor buying the land directly from the land owners. The state's land is highly fragmented. This will force the private investors to enter into endless negotiations. There will be no guarantee of the farmers' getting a remunerative price of land. However, in recent times the government has decided to allow the private corporate bodies to purchase lands directly from the owners. Presently the government has decided³²⁵ not to give land to private companies at throwaway price, not even in case of public- private partnership ventures. Under the new plan, the private partners have to pay 95% of the total valuation of the land to be leased out as salaami³²⁶ and the annual rent for the land would be 0.03% of the land valuation. However, on earlier occasions, the requiring body used to pay only 10% of the price of the land and the rest 90% of the price used to be paid by the body after the acquisition of land is over. This message has been conveyed by the government when the State Health Department floated tenders seeking private partners for setting up of two modern medical hubs on unused land of two health care establishments in Birbhum and Nadia.

The emerging policy is as follows:

³²⁵ Reported in The Statesman: 13th February, 2009 at pg. 01.

³²⁶ Non- refundable advance payment.

- a. The acquiring body/ purchasing body will not acquire land if is being used as residential area or small industries like zari, jewellery, embroidery, light engineering etc. However, if the land so situated remains unutilised, it will be made a subject of acquisition.³²⁷
- b. The government is preparing the land map for every district in the state. Initially it is engaged with the preparation of map for five districts viz. - Burdwan, Birbhum, Bankura, West Midnapur and Purulia. This map is expected to describe the nature of land for example agricultural,³²⁸ non-agricultural, vested land, mine or minerals etc.
- c. The government has decided not to acquire the fertile agricultural land³²⁹ for the purpose of setting up of corporate units. New industries can come only on lands identified as fallow, mono- crop and where cultivation is dependent solely on rain water. Under very exceptional circumstances such lands may be acquired if it falls in the alignment of the construction of railway tracks and roadways but for this adequate compensation is to be paid. In the absolutely unavoidable event for which an equal acreage of fallow land will be converted into double- crop land with the necessary irrigation facilities to ensure food security in the state.³³⁰
- d. The state, apart from all these, has taken steps as a part of employment generation- skill up-gradation programmes in collaboration with the ITIs in the state, revival of the sick industries by way of One Time Settlement Scheme³³¹ and to

³²⁷ Reported in The Ananda Bazar Patrika: 11th September, 2008 at pg. 05.

³²⁸ Fertile/ non- fertile; mono- cropping, double cropping or multi- cropping

³²⁹ double and multi- crop land

³³⁰ Reported in The Hindu: 13th Aug' 09 at pg. 5.

³³¹ For example revival of Basumati Paper Mill in the state.

provide mechanism for debt reconstructing and to address or take care of environmental issues.

- e. Another step towards expediting the expansion of the National Highway projects in the state the state government has recently opened separate cell which is vested with the entire process of dealing with the same i.e. from speedy acquisition of land, mutation, change of character of land etc. which in earlier occasions were done by the State Land and Land Reforms Department.³³²

The government has changed the policy of acquisition of land for industrial purpose. In order to reduce the cost of developing infrastructure, encouraging the big industrial houses in the less investment prone districts of the state along with the ancillary and downstream industries it is expected to create an industry friendly environment at the instance of problem of acquisition of land for industries in the state. Under this policy, the government will follow the following steps³³³ -

- The state government will acquire land for big industrial projects in the name of the West Bengal Industrial Development Corporation (WBIDC).
- Acquisition of 15- 20% of more land for the ancillary and downstream projects centring round the main anchor projects e.g. the construction of three steel parks in Purulia adjoining Raghunathpur.
- To create basic infrastructures like rail, road, water electricity etc.

Thus, this policy will woo ancillary investors in a way that both the mother plant gets a readymade buyer and ancillaries benefit from practically nil transportation cost of raw materials.

³³² Reported in The Ananda Bazaar Patrika: 25th October, 2009 pg. 19.

³³³ Reported in The Ananda Bazar Patrika: 18th February, 2009 at pg. 06

EMERGING POLICY OF LAND BANK

This an emerging idea in West Bengal after the State went through severe turmoil relating to acquisition of land in Singur and Nandigram in particular and rest of the State in general. Vesting of land in the hands of the State is permitted under the West Bengal Land Reforms Act, 1955³³⁴ and there is no constitutional bar about this as already discussed in earlier chapter. Now the State proposes to consolidate the fallow and unused land across the State and hold it under its ownership for the purpose of investing it for setting up of industry. The only area of concern is that the state should not re classify land and acquires fertile and residential areas for vesting in the land Bank. Such system of Government holding land and selling plots to develop residential and technical area can be seen in the manner the land is given out in Salt Lake in North 24 Parganas. Similar process has been under taken through acquisition in Rajarhaat in North 24 Parganas, Chandmoni, Kawakhali in the district of Darjeeling.

Once the idea of land bank settles in and the State government formulates very strict criteria and procedure for consolidation of fallow land, unused land, abandoned land, low land, non-profitable land, land held by sick industries or closed down industries, etc. Then future furore over land may be avoided.

In many cases of developmental activities, the state feels the scarcity of land while the promoters of on purchasing land keep those lands unused for long without using after constructing the boundary wall and sell those out when the price hikes and earn huge profit at the instance of building of infrastructures at the expense of the government.³³⁵ It has been reported that in Fulbari and Eastern Bypass near Siliguri, the promoters are holding nearly

³³⁴ Section 15

³³⁵ Reported in the Ananda Bazar Patrika: 2nd February, 2009 at pg. 01.

700 acres of land keeping the same idle. Recently, the state government is preparing a policy to acquire such lands to undertake the developmental activities like the construction of market complex, petrol pump, real estate etc. and also use the sum of profit for the development of the area. This is also part of the emerging land bank policy of the State.

There are 218 closed factories near Barrackpur in North 24-Parganas alone. Huge quantities of lands lying unused in a large number of closed jute mills. The government is planning to re-open these units but there are monetary disputes pending in banks, default in payment of dues to the workers or other parties of trade, High Court Ruling, refusal to the prayers to hand over by the Central Government etc. are the constraints. At this the state has appealed several times the Centre to avail the land of the closed industrial units in the state not free of cost but at reserve price while the Central Government is in favour of auctioning those lands. Again, the government laid a proposal before the Centre to either set up industrial units in the closed factories in the state by itself or hand over to the state government where the state will set up industries. Recently, the inauguration of a garment park, Paridhan, at Canal South Road where the very plot was owned by a National Tannery is a welcome step in this regard.³³⁶

In the last decade we see a significant increase in arbitrary land acquisition by the states in the name of acquisition through the safety valve of "public purpose" from the poor and underprivileged mostly who have the only means of livelihood and handing over the same to the MNCs or builders without offering sufficient compensation. Recently, a PIL has been filed by Sanjiv Kumar

³³⁶ Reported in The Times of India: 3rd March, 2009 at pg. 06.

Agarwal for an NGO, *Good Governance of India Foundation*³³⁷ before the Supreme Court seeking restoration of the right to property as fundamental right of every citizen which today is only a statutory right after 1978 to abolish large holdings of Zamindars and rich and their distribution among the landless peasants. The PIL inter alia seeks the government should initiate measures to put the right to property back in the fundamental right basket.

In West Bengal presently 62.48% of land is cultivable. Here nearly 58.08 lakh hectare of land have been brought under cultivation and moreover till date, 33.60 lakh bigha of land have been distributed among the small and landless farmers.³³⁸ State like Maharashtra, Gujarat, Haryana, Tamil Nadu, Karnataka etc. have prepared plots with infrastructure and services which generally allow them to attract more industries. This system is already in existence in some industrially advanced states like Gujarat, Tamil Nadu, Maharashtra, Andhra Pradesh etc. If implemented properly this system may avoid setbacks to industrialisation.

On the positive side -

- i. The concept of land bank is also important as the government can sketch a plan of land use in the state. If the government prepares the land use plan it definitely will result in the rapid socio- economic development of the surrounding regions as well like it happened in Brazil the city of Curitiba.³³⁹
- ii. As the land is acquired for public purpose without declaring/ knowing the nature of the project the cost of the adjoining land will not escalate.

³³⁷ Reported in *The Times of India*: 1st March, 2009 at pg. 07.

³³⁸ Reported in the *Ananda Bazar Patrika* from 17th- 21 February, 2009 at pg. 01.

³³⁹ KP Bhattacharjee: *Rights and Records-II*; Published in the *Statesman*, 28th March, 2009 at pg. 04.

- b. Allotment of such land to the industrial houses as is uncertain the local people especially the land losers may protest against such acquisition.³⁴⁰
- c. A large chunk of vested land has been given to the people in 'Patta' and the government is not interested to return the land given in 'patta'. The government is not willing to take back the relevant lands owing to several reasons may be for social- political reasons. Hence it requires the acquisition of land for the creation of land bank.
- d. It is difficult to acquire the land for land bank in which the project is to come up in future. The industrial parks in almost each district are suffering from problems. Under this system, no one can guarantee about the time frame within which the industrial houses will set up their units.
- e. There is problem in regard to the supply of water and coal which are the backbone of an industrial house for its operation. But presently, in West Bengal, demand is very high while the supply is less.
- f. Land in Bengal is fragmented. Thus it is difficult to acquire a large tract of land for land bank.

Thus, acquisition of land for land bank should be done slowly and cautiously. It requires sensitisation of people as well as responsible political will.

The state has very recently, started the function of constructing 'Land Bank'. In such Land Banks, mainly two sorts of industrial set up will come. In the first type, big industrial houses or in the second, the government may set up industrial parks after

³⁴⁰ Reported in The Ananda Bazar Patrika: 30 the March' 08 at pg. 06. There are a large number of projects which have not started yet still the land has already been acquired a long ago. For example, the acquisition of nearly 400 acre of land for Modular Food Park at Dankuni in Hoogly keeping in mind to set up potato processing units over there. Still the same is lying idle.

developing the necessary infrastructures in such lands.³⁴¹ Outlining the revised plan, the West Bengal Finance Minister Dr. Ashim Dasgupta commented³⁴² 'to solve the problem of procuring land for industries relatively infertile land' would be purchased 'at a fair price' after consulting with the farmers and paying proper compensation.

It is submitted that while acquiring land for land bank, the government must be sufficiently attentive regarding the rehabilitation and employment issues it would get a good public response. Recently the state of Punjab is also walking in the same path to create land bank in the state.³⁴³

LAND FOR LAND POLICY

When people whose main skill is agricultural and suddenly uprooted, there are only two ways to rebuild lost livelihoods. Either they get good quality alternative agricultural land³⁴⁴ and other natural resources that they can harness with the skill and knowledge they possess, or they must be provided alternative productive assets with potentially attractive markets and granted sufficient material support and cushion of time to acquire the necessary new skills by which he can survive. The latter will however take away the farm and they will no longer be farmers. Till date, there is no legal provision or any scheme regarding the allotment of land in lieu of acquired land. Thus the government is not compelled to allot alternative land in lieu of acquired land.

The general response has been to obtain alternative site through court. In *New Review Co- Operative Housing Society v. Special LAO*³⁴⁵ the Supreme Court held that principle cannot be extended

³⁴¹ Reported in *The Ananda Bazar Patrika*: 11th March, 2009 at pg. 10.

³⁴² Reported in *The Statesman*: 21st March, 2009 at pg. 01.

³⁴³ Reported in *The Hindu*: 7th October, 2009 at pg. 03.

³⁴⁴ Cultivable land and support systems

³⁴⁵ (1996) 1 SCC 731.

as a condition in every case. The *Indigenous and Tribal Populations Convention, 1957* organised by the ILO provides³⁴⁶ that where as exceptional measures tribal groups are removed from their land, they should be provided with lands of quality at least equal to that of lands previously occupied by them. It goes on to state that they should be compensated for any "resulting injury or loss" seems very relevant. The Supreme Court in *Jagram v. Union of India*³⁴⁷ has held that in the absence of any scheme for the allotment of alternative sites to the person displaced from their holdings, the landowner cannot claim allotment of alternative land in lieu of the acquired land. In *S. Gurdayal Singh v. Ludhiana Improvement Trust*³⁴⁸ the Supreme Court again reiterated the principle that unless there is any express scheme and the same is in operation, then the alternative sites for commercial purpose cannot be given to the persons whose land has been acquired for public purpose.

Regarding the compensation especially the 'land for land' demand the Supreme Court in recent cases against the argument that new piece of alternative land of equal quality should be given to those dispossessed from land due to acquisition for public purpose, has been asserted. The most forceful pronouncement of the Supreme Court made on this issue was in *Karjan Jalasay Yojna Assargrasth Shakhar Ane Snagharsh Samity v. State of Gujarat*³⁴⁹. Here the case of displacement of the people arose out of the submergence caused by the construction of the dam across the river Karjan. The Court held-

firstly, simultaneously with taking possession of the acquired land from any person in occupation of it, such person shall be provided either alternative land of equal quality but not exceeding three

³⁴⁶ Section 12, ILO Indigenous and Tribal Populations Convention, 1957.

³⁴⁷ 1996 Supp (4) SCC 615.

³⁴⁸ AIR 1997 SC 2573: (1997)5 SCC 138.

³⁴⁹ AIR 1987 SC 532.

acres in area and if not possible, the alternative employment where he would be assured a minimum wages.

Secondly, no possession of any part of the acquired land shall be taken from any person unless and until he is either provided with alternative land or alternative employment which is not temporary in character so that he and the members of his family do not remain without means of sustenance; and

Thirdly, if for any reason the state government is not able to provide alternative land or arrange for alternative employment, the state government will subject to the same exception, pay to the head of the family at the latter's place of residence compensation equivalent to minimum wages of every fortnight during the period of alternative land or employment is not provided.

In the Narmada Hydro- Development Corporation (NHDC)³⁵⁰ case regarding the oustees of the Omkareshwar Project the Division Bench of the Madhya Pradesh High Court comprising of the Chief Justice A.K. Patnaik and Justice Ajit Singh citing the judgements of the Supreme Court in the first and Second Narmada Bachao Andolon Cases, and in the N.D. Jayal Tehri dam case, the High Court has stated that it is a fundamental right of the oustees under Article 21 of the Constitution to be made better-off after displacement, directed the State Government to allot land with a minimum of five acres of irrigable land. The High Court also directed that every adult son of a cultivator must be allotted land even if he is not a title holder. Again, it permitted even those oustees who had been given cash compensation to claim land allotment on their returning 50% of the compensation amount.

In recent times, one of the most successful rehabilitation and resettlement programme has been implemented in Narmada region.

³⁵⁰ Reported in the Hindu: 08th April, 2008 at pg. 13.

Here, at the instance of the construction of the Narmada Dam, in 1984, the affected people³⁵¹ selected a government forest land site at Parveta in Gujarat, about 25 miles from their original village where, about 175 families were shifted and initiated activities to bring the land under cultivation. Though the people had some problems with the land, they were happy with the policy that affected a generous entitlement of a minimum of five acres of agricultural land for each family, regardless of their landholding status. It was the first time in India that such a liberal policy was formulated for a large scale project. However, the major bottleneck in resettlement implementation in Maharashtra was the difficulty in finding sufficient agricultural land for resettling all the project affected persons interested in relocating to Maharashtra. After initial opposition to the proposal to release a patch of degraded forest lands of 2700 hectares at the Southern foothills of Satpura ranges of that land for resettlement by the Department of Environment and Forests of the Government of India, the proposal was finally accorded special approval by the highest decision making authority in the country i.e. the Council of Ministers in May, 1990. It demonstrates the commitment of the Government of Maharashtra to successful resettlement and rehabilitation in Maharashtra. At this, the Narmada Bachao Aandolan, an NGO came out with a comment that it will result in the destruction of the 'last good patch of forests' in the Satpura range in Dhaule District. At this, the State Government pleaded with the Central government to release forest lands at Taloda for resettlement, a rare exception to the general rule by which it is extremely difficult to obtain forest land for any purpose. At this, the Morse Committee, appointed by the World Bank, the chief financier of the project presented a report on the basis of which in 1993 the World Bank withdrew its support citing

³⁵¹ Mainly from the first submerged village, Manibeli.

huge human and environmental concerns. Simultaneously, the mission also prescribed a list of actions for each state and the Narmada Control Authority to clear policy-related bottlenecks in resettlement and improve implementations. Consequently, the then Prime Minister of India in Aug, 1993 accepted almost all the recommendations made by the mission which led the far reaching policy changes in Maharashtra, e.g. land entitlement of landless project affected people raised from 2 acre to 2.5 acres of agricultural land; the land development costs at the resettlement sites fully at the cost of the government; availing of the subsistence allowance for first five years after resettlement was instituted, on the lines of the existing provisions in Gujarat. These policy changes had tremendous impact on the resettlement programme in Maharashtra. Nearly, 400 families took possession of agricultural lands at the resettlement site during the next three months, as compared to about 100 in the entire previous year.

DOCTRINE OF EMINENT DOMAIN v. OPEN MARKET POLICY

The Land Acquisition (Amendment) Bill, 2007³⁵² and the National Rehabilitation and Resettlement Bill, 2007³⁵³ have not yet received the seal of the Rajya Sabha or the assent of the President. These Bills have raised a serious question about handing over the state's right of 'eminent domain' to 'market orthodoxy' in the era of liberalization. Presently, the Land Acquisition Act, 1894 empowers the state to acquire land for public purpose as well as for a company. Interestingly, the Bill does not permit acquisition of land for companies but the government may acquire land for private companies only when private companies acquire at least 70% of the

³⁵² Passed by the UPA government on 26th February, 2009.

³⁵³ Ibid

land requirements through direct purchase, then only the Government will acquire the remaining 30% area. The price of the land will be in the open market and if the landowners are organized, courageous, cautious and confident regarding the price they stand to gain. According to Prof. Amartya Sen, land acquisition should be the last weapon and the same should be very sparingly used by the state for corporate bodies.

It is submitted that If land is allowed to be purchase by private companies, land holders may neither get the correct price nor be rehabilitated. Minimizing the scope of acquisition of land by government may lead to the following situations-

- The land in West Bengal is highly fragmented and most of the land is cultivable. Due to the land reform, in West Bengal land is not only in the control of the owners but other interest groups like bargadars.
- The importance of the government's intervention in land acquisition is for the sake of industrialisation. If the government doesn't go for land acquisition, the farmers themselves would do the same, and in most haphazard manner as possible³⁵⁴ and as the farming class of people doesn't have the necessary bargaining power, they will not be able to evaluate the potentiality of the land which indirectly will affect the interests of them. It may also happen that in the prospective area another competitive industrial body may purchase the land in some other name to halt the project.
- If the industrial bodies and investors directly deal with private land owners, they have to deal with the issue of transfer of

³⁵⁴ Surajit C Mukhopadhyay, The Study- The Politics of Land Acquisition in West Bengal; Published by The Centre for Studies in Social Science, Calcutta. Reported in The Times of India: 20th April, 2007 at pg. 04.

title of small parcels of land with dozens, sometimes even over hundred owners which will give birth to many of problems.

- Government's intervention is needed for better package of rehabilitation and replacement for not only owners but also for the other interest groups like, bargadars, agricultural workers in the very land or in a word '*persons interested*'³⁵⁵ who are also displaced and basically are illiterate, have less bargaining capacity and hence vulnerable.
- The government's involvement ensures some concrete rehabilitation plan with enhanced price land and an emphasis on alternative livelihood security for non-owners and

³⁵⁵ *Persons interested*:- [Sec.3(b)]- The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land or cultivates the land or any portion of it as a '*bargadar*' and after it.

Explanation: A bargadar is a person who, under the system is generally known as '*adhi*', '*barga*', or '*bhag*' cultivates the land of another person on condition of delivering a share of the produce of such land to that person.

A 'person interested' may be categorised as-

- Purchaser before the vesting of land in the state under the Land Acquisition Act if person interested
- Beneficiary of acquisition, if person interested
- Government company, if person interested to challenge the award
- Owner
- Government, if person interested
- Limited interest of Hindu widow
- Reversioners
- Shebait of deity
- Trustees and beneficiaries
- Mortgagor and mortgagee
- Attaching creditor
- Intending purchaser
- Lessee
- Lessee holding over, a person interested
- Tenant
- Statutory tenant
- Persons acquiring interest by long user
- Tenants- at- will

unrecorded sharecroppers and the persons interested with land.

- In the absence of state in land dealing a land broking class will take birth which will deprive the original landowners from his legitimate dues and the government will fail to act as the regulator to protect the small and marginal farming class.
- It is true that if the state doesn't acquire land obviously the government can escape much controversy and at the same time will lose the control over land. This may lead to leaving the lands idle, without using the same for years as they will enjoy the ownership over the land they directly purchased from the owners of the land. Presently, the land acquired by the government if allotted to a corporate body is left without working for a certain period the said land may be taken back by the state. Though the Proposed Amendment Bill the Land Acquisition Act, 1894 is also provides the provision containing a land acquired for a purpose remains unutilised for a specified time, would revert to Government, still there is possibility of misusing the land by the very corporate bodies.
- Recently, the government as per the policy decision after constituting the '*land use board*' the land and land reform department is preparing '*land use map*' with all details including water bodies, mono- crop land, double crop land, irrigated land, forest covers and the national and state highways as well as waste land for industry of each mouza, each block in a district. The land use map is to be prepared in Bankura, and four more districts of Burdwan, Purulia, Birbhum and West Midnapore in the first stroke. However, the map for Bankura district is ready now.³⁵⁶

³⁵⁶ Reported in The Statesman: 11th Aug, 2009 at pg. 04.

- If the private corporate bodies acquire land for their own interests directly from the owners of the land there will be absolute possibility of a well organized land broking system sponsored by the corporate bodies.

Under the present Land Acquisition Amendment Bill, 2007 provides, 'any other purpose useful to the general public for which 70% of the land has been purchased by a person through negotiation, but the remaining 30% is yet to be acquired' is a dangerous provision because the expression 'a person' includes "any company or association or body of individuals whether incorporated or not" and being empowered by this provision, *any realtor, speculator, private companies or by land mafia gang* under the cover of a respectable name. They may invest capital in purchasing land in the name of setting up of the unit but prior to the lapse of time they may sell out the same and earn huge profit out of the same by artificially increasing the price of the very land as when an industry is proposed to set up its unit then the price of the land goes up at a rocketing pace. No provision is there, as yet to stop this.³⁵⁷

- At the same time, the state will loose control to secure agricultural lands and hence the food security of the state will be at stake and everything will go silently. The state must not allow such initiative to come into force.
- The government has declared reservation of 10% of the seats for at least one of the members of the land loosing families for projects. In this regard recently, the Bengal Aerotropolis Projects limited (BAPL) has an agreement with the West Bengal Technical Department under which the 5000 family

³⁵⁷ D. Bandyapadhyay: The Corporatised state- 1: Published in The Statesman: 4th August, 2009 at pg. 06.

members (one from each family) of land loosing families will be trained.³⁵⁸

Considering the above propositions, it is submitted that by allowing the corporate bodies to enjoy the ownership over the land for setting up of their units will be unwise. The government in recent times has declared that the state will not acquire the land as chosen by the industrialists. It will create a land bank. Moreover, the state will let the industrial houses to purchase land directly from the farmers. It is further submitted that the government should allot land for industrial houses on lease for a period of time as they think fit and through this, it should secure a certain percentage of share in the proposed company which will allow the state to earn revenue for the government exchequer which at the same time will allow the government to find the means of supporting the displaced people at least for one generation because the displacement leads to huge loss to the oustees and the relevant corporate body may be compelled to undertake community development programmes in the adjoining areas and thus, play a role as referee to balance the differences in economic and political power between a massive corporate entity and a small farmer.

DOCTRINE OF SUSTAINABLE DEVELOPMENT v.

DISPLACEMENT OF FARMERS ON ACQUISITION OF LAND

For an overall development, there needs to have a balance between agriculture and industry in a way in which, neither the industry, nor the agriculture suffer. Development means an act of improving by expanding or enlarging. It is a continuous process by which value is added to the existing level of economic condition of a country. The right to development cannot be treated as a mere right to economic betterment Nor can it be limited to simple

³⁵⁸ Reported in The Ananda Bazar Patrika: 1st August, 2009 at pg. 03.

construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights.³⁵⁹ Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development. Therefore the adherence to sustainable development principle is a sine qua non for the maintenance of the symbolic balance between the rights to environment including agriculture and development. Weighty concepts like intergenerational equity, public trust doctrine and precautionary principle which are declared as inseparable ingredients of environmental jurisprudence could only be nurtured by ensuring sustainable development."³⁶⁰ Today with the widespread commitment on the term 'sustainable development' there is criticism of differing goals, strategies and opinions. The idea of sustainable development has been applied to both global and local issues. The sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. It implies the handing down to successive generations not only man-made wealth but also natural wealth in adequate amounts to ensure continuing improvements in quality of life.³⁶¹ Therefore it is necessary to formulate a comprehensive rehabilitation and resettlement policy

³⁵⁹ Partha Pratim Paul, Application Of Sustainable Development Principle In Himalayan Region By Supreme Court Of India; Paper presented in the national Seminar on Science, Technology and Development in the Himalayas; Org. by the Centre for Himalayan Studies, University of North Bengal, held on 23rd and 24th March, 2009.

³⁶⁰ N.D. Jayal case

³⁶¹ Brundtland Commission, 1986.

for displacement to sustain the development and not at the cost of the oustees.

The recent *Rehabilitation and Resettlement Policy 2007* is very significant which inter alia speaks of three basic norms, i.e. minimisation of:

- (a) The displacement of people due to the acquisition for projects;
- (b) The total area of land to be acquired for the project, and
- (c) The acquisition of agricultural land for non- agricultural use for the projects.³⁶²

It has been the common picture of every displacement that the displaced people's interests are hardly respected. The *Sardar Sarovar Project in the Narmada Valley, on survey*³⁶³, shows most of the sites lacked amenities like access to markets and employment opportunities, proximity to affordable and cultivable land, trees, clean water, pastures and drainage. No family received land as mandated by the R& R Policy, the government provided them some cash compensation against the fixed property lost which was grossly insufficient to help families make productive investments. No family was found who had been able to rebuild its lost livelihood even after 3- 5 years of displacement. Most farmers lost substantial farmland could not purchase at best a small fraction because the cash compensation was much below the market rate. Pulling out from a project at the protest and continuous violence is undesirable. This is very much painful and agonising. For setting up of industrial units the nature of the land is needed to be converted.

In the last decade there has been a significant increase in illegal acquisition by the states in the name of acquisition through the safety valve of *public purpose* from the poor and underprivileged without offering sufficient compensation. Large scale

³⁶² The Rehabilitation and Resettlement Policy 2007; para 1.4; pg 34.

³⁶³ Rahul Pndey, Skewed development, The Statesman, 11th December, 2008 at pg. 7.

displacements caused by the construction of innumerable SEZs is exposing a long term food insecurity claiming enormous fertile land mass in India. Hence, a socially acceptable rehabilitation policy is the only imperative to this direction. Such displaced people especially the peasants will have to be provided with alternative farmland to rehabilitate them as a community.

Judicial Response: - In the absence of any law on Rehabilitation of the displaced people, the judiciary has responded well in a number of cases to grant relief and rehabilitation to the oustees by giving logical corollary and wide interpretation of Art.21 to recognize the right to mean more than mere survival and mere animal existence. In *Nazir Ahmed v King Emperor*³⁶⁴ the Privy Council held that to acquire land the authority must show sensitivity of mind and it should be done with utmost legal sanctity. In *B.D. Sharma v. Union of India*,³⁶⁵ it was ruled that the overreaching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of the oustees. They should be rehabilitated as soon as they are uprooted. Further, the court provided a time frame by which the rehabilitation must be complete: before six months of submergence. In this regard, the package of compensation must not compel a project affected person to live a life not merely to physical existence or lead a life of mere animal existence because after *Maneka Gandhi*³⁶⁶ and *Francis Coralie*,³⁶⁷ the Art. 21 embody the right to live with minimum human dignity. Again, Article 21 includes the right to livelihood also.³⁶⁸ On this issue, the Supreme Court has held that if the right to life is not treated as a part of

³⁶⁴ [6] AIR 1936 PC 253

³⁶⁵ 1992 Supp (3) SCC 93.

³⁶⁶ *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

³⁶⁷ *Francis Coralie v. Union of India* AIR 1981 SC 746.

³⁶⁸ *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180; (1985) 3 SCC 545.

right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood. In *D. K. Yadav v. JMA Industries*,³⁶⁹ the court held Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced into animal existence. But, in a number of occasions it is seen see that the poor always get a raw deal from the politics of a market driven economic paradigm. The broad contours of this story are the same all over the globe wherever the profit and growth objectives of big capital come into conflict with the livelihood rights of the economically weak, landless labourers, small farmers and artisans in villages, tribals in forests, fishing communities in relevant regions and city based vendors and workers living in slums and other low income areas. Such people are constantly denied their right of livelihoods when they come in the way of commercial projects that demand large- scale acquisition of land, water, minerals, forests and other natural resources. This is how the capital driven market works. The present statutory instruction is to pay the market value of the land in addition to which solatium etc are to be paid. At this point the determination of market value of land is a very significant issue. The judiciary on this issue is not silent on this point. In *Atma Singh (died) through LRs. & Ors v. State of Haryana & Anr*³⁷⁰ the expression 'market value' was a subject-matter of consideration in this case. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in

³⁶⁹ (1993) 3 SCC 258.

³⁷⁰ 2008 AIR 709 , 2007(12) SCR1120, 2008(2) SCC568 , 2007(14)SCALE109, 2007(13) JT473

most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz., a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality³⁷¹ of the acquired land should also be taken into consideration. In *C.E.S.C. Ltd. Vs. Sandhya Rani Barik & Ors.*³⁷² The court held that while determining the amount of compensation, one should attempt to find out the just and reasonable compensation without attempting any mathematical precision in that regard. For the purpose of assessing compensation, the efforts should be to find out the price fixed for the similar land in the vicinity. The difference in the land acquired and the land sold might take on various aspects. One plot of land might be larger, another small, one plot of land might have a large frontage and another might have none. There might be differences

³⁷¹ Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. *Atma Singh (died) through LRs. & Ors Vs. State of Haryana & Anr* 2008 AIR 709 , 2007(12) SCR1120, 2008(2) SCC568 , 2007(14) SCALE109 , 2007(13) JT473

³⁷² 2008 AIR 2873, 2008(10) SCR137 , , 2008(9) SCALE647 , 2008(7) JT485

in land development and location. There might be special features which have to be taken note of and reasonably considered in the matter of assessing compensation. In *Lucknow Development Authority Vs. Krishna Gopal Lahoti and Ors*³⁷³ the court held that the amount of compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. The element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made: (i) *when sale is within a reasonable time of the date of notification under Section 4(1)*; (ii) *it should be a bona fide transaction*; (iii) *it should be of the land acquired or of the land adjacent to the land acquired*; and (iv) *it should possess similar advantages*. It is only when these factors are present; it can merit a consideration as a comparable case. Later on in *State Of Haryana Vs. Gurbax Singh(Dead) By Lrs. & Anr. etc*³⁷⁴ the subject matter of the case was the quantum of compensation payable for the lands acquired from Villages Ratgal, Sunderpur and Palwal. The Division Bench marginally increased the compensation from Rs.99,668/- per acre to Rs.1,25,000/- per acre. The Division Bench justified this increase by observing that there was continuous rise in the prices of land; that though the two transactions were in respect of the small pieces of lands. At this, the Court held that there is nothing wrong in this and, therefore, the appeals filed by the Government of Haryana against the marginal increase are dismissed. Again, in *Madishetti Bala Ramul*

³⁷³ 2008 AIR 399 , 2007(11)SCR921 , 2008(1)SCC554 , 2007(12)SCALE685 , 2007

³⁷⁴ 2008(11) SCC65, 2008(8)SCALE521 , 2008(6) JT659

(D) *By LRs Vs. The Land Acquisition Officer*,³⁷⁵ two notifications were issued separately. Here on the issue of determination of the value of the land acquired the Court held that as the second notification was issued, the first notification did not survive. Valuation of the market rate for the acquired land, thus, was required to be determined on the basis of the notification dated 23.12.1991. The earlier notification dated 16.03.1979 lost its force.

Thus the court has not come yet with the concrete determinants of the market value of the land to be acquired. The factors for determining the value of land differ with states. In West Bengal, one of the important factors of determining the value of land is whether the very land is no cropping, single cropping, double cropping or multiple cropping. Hence a comprehensive mechanism needs to be devised to reduce the pains to be suffered by the displaced people. In *Narmada Bachao Andolan v. Union of India*,³⁷⁶ it was observed that rehabilitation is not only about providing just food, cloth, or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is thus a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitation locations. Further, in *N.D. Jayal and Another v. Union of India*,³⁷⁷ the court held that the right to development encompasses in its definition the guarantee of fundamental human rights. Thus, the courts have recognised the rights of the oustees to be resettled and right to rehabilitation has been read into Article 21. Very recently, in a significant ruling, a division bench constituting *Justices Mr. Altamas Kabir and Mr. Cyreese Joseph* the Honb'le Supreme Court

³⁷⁵ 2007(7) SCR222 , 2007(9)SCC650 , 2007(8)SCALE184 , 2007(8) JT180

³⁷⁶ AIR 2000 SC 3751.

³⁷⁷ (2004) 9 SCC 362.

in some land owners of Narwana in Haryana's Jind district observed that, a right under Section 5 (A) of the land Acquisition Act is not merely statutory but also has the flavour of the Fundamental Rights under Articles 14 and 19 of the Constitution. Again, noting the urgency clause in Section 17 of the Act, under which the concerned land owners can be denied the opportunity to file objections to the proposed acquisition, can be pressed into service only in exceptional circumstances, the apex court directed the land acquisition collector- cum- district revenue officer of Jind, to consider the objections to be filed by the land owners and dispose of the same within a month and then the government would be at liberty to take the appropriate consequential steps after the disposal of the objections.³⁷⁸

Therefore there is an urgent need to set up clear policy for rehabilitation in general and farmers in particular in the event of acquisition of land.

³⁷⁸ Reported in The Statesman: 17th October, 2009.