

CHAPTER- III

LEGAL FRAMEWORK RELATING TO LAND: AN OVERVIEW

"All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights"

-Vienna Declaration and Programme of Action (1993)

The relationship between land and human being is as old as cultivation. The nomadic man did not feel the need of taking land in his control. As man learnt agriculture, and for this land is the utmost necessity, people started to have the land in his control. In this process, stronger persons could bring more land in his control and the weak as the history advanced became landless labourers. Even today the genesis of the structure of power and authority in rural India can be traced to land.

There is an ever changing relationship between land, power and people. The value of land is ever increasing and requires little renewal and replacement. Due to this basic utility, economists consider land as a special kind of property. Today land reform has been proved to be a major instrument of social transformation, especially in an economy based on feudal and semi feudal production relationships. Corporatisation of land means and includes the transferring of lands to the corporate houses for the purpose of setting up of their projects. Today all the state governments are inviting the industrialists to set up their projects in their states.

PART- I

THE CONCEPT OF LAND

Definition: Land is defined as as '*massuages; lands, tenements, heriditaments, of any tenure*¹⁸⁵. The term Massuage is substantially equivalent to a house. Tenement is a large idea used to pass not only lands and other inheritances, but also offices, rents. Heriditament is the largest of all kinds, be it corporeal or incorporeal, real, personal or mixed. The word 'land' is used in the same sense as 'immovable property'¹⁸⁶. 'Immovable property' has been defined as not to include 'standing timber, growing crops and grasses'¹⁸⁷. Land is said to include things attached to earth the Act of 1894¹⁸⁸. However, the Act doesn't contemplate the acquisition of things attached to land without the land itself. It is only the land including the rights which arise out of it and not merely some subsidiary right which is capable of acquisition under the Act. The taking of property which merely injures a franchisee but doesn't interfere with the exercise of it; and it doesn't entitle the owner of the franchisee to compensation for damage to the franchise.

The expression land as discussed under Sec. 3(a) of the Land Acquisition Act, 1894 includes benefits to arise out of land and things attached to the earth or permanently fastened to or anything attached to earth. Under the West Bengal Land Reforms Act, 1955 under section 2(7) land means land of every description and includes tank, tank- fishery, homestead, or land used for the purpose of livestock, breeding, poultry farming, dairy or land comprised in tea garden, mill, factory, workshop, orchard, hat,

¹⁸⁵ Section 3 of the General Clauses Act, 1845

¹⁸⁶ Section 3 (25) of the General Clauses Act, 1897

¹⁸⁷ Section 2(b) of the Indian Registration Act of 1908 and Section 3 of the Transfer of Property Act of 1882 (as amended in 1929)

¹⁸⁸ Sec.2 (a), Land Acquisition Act, 1894

bazaar, ferries, tolls or land having any other sairati interests and other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth; under the definition, the term homestead shall have the same meaning as in the West Bengal Estate Acquisition Act, 1953.

Location in the Constitution: - According to the Constitution, etymologically, "Land that is to say, rights in and over land, land tenures including the relation of land lord and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans; colonization"¹⁸⁹ the same list deals with the duties in respect of agricultural land¹⁹⁰. The government is empowered to legislate on custody, management and disposal of property (including agricultural land) declared by law to be evacuee property¹⁹¹ and acquisition and requisitioning of property¹⁹². Land reform has proved to be a major instrument of social transformation, especially in an economy based on feudal and semi feudal production relationships. The Directive Principles of state policy further provides that *the state* shall strive to minimise the inequalities of income and eliminate inequality in status, facilities and opportunities¹⁹³ and requires that the distribution of ownership and control of the material resources of the community to the common good¹⁹⁴ and to ensure that the operation of economic system doesn't result in the concentration of wealth and means of production to common detriment which includes land. Land being a fundamental factor of production may be acquired by

¹⁸⁹ List II; Entry 18. The Entry 18 of List II, seventh Schedule, Art.246

¹⁹⁰ Entry 47

¹⁹¹ Entry 41

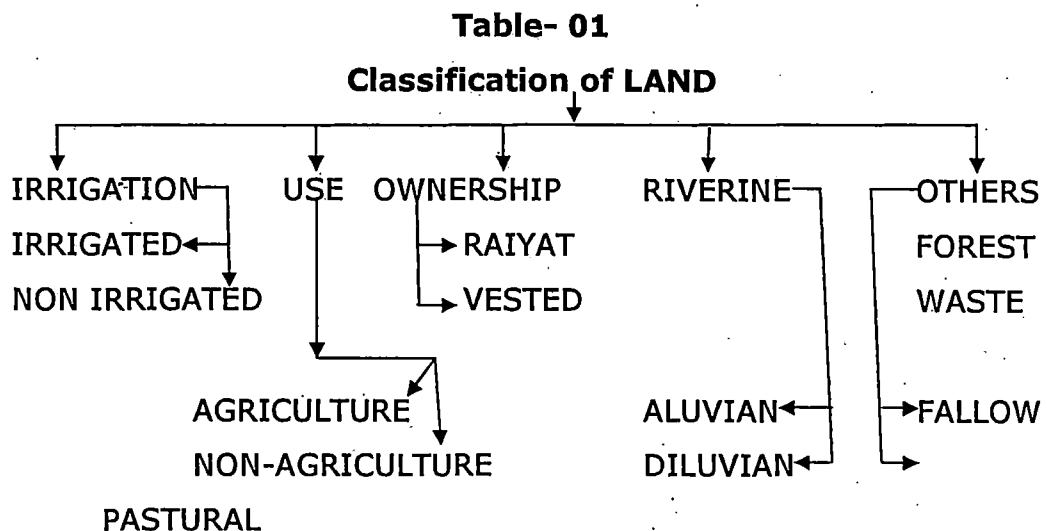
¹⁹² Entry 42

¹⁹³ Art.38

¹⁹⁴ Art.39 (b)

government for private holding for public purposes.¹⁹⁵ The Constitution provides, "where any law makes any provision for the acquisition by the state of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the state to acquire any portion of such land as is within the ceiling applicable to him under any law for the time being in force..... unless the law relating to acquisition of such land provides for payment of compensation at a rate which shall not be less than the market value thereof"¹⁹⁶.

Classification of land:- Land can be classified on the basis of the followings-



Irrigated land: - 'Irrigated area' means an area specified as such by the State Government, by notification in the Official Gazette, being an area which is, or is in the opinion of the State Government capable of being irrigated, at any time during the agricultural year commencing on 1st day of Baisakh, 1377 BS or thereafter, from any state canal irrigation project or State power driven deep tube well or shallow tube well or any other state irrigation project or state

¹⁹⁵ State of Maharashtra v. Basantibai M. Khetan (1986) 2 SCC 516.

¹⁹⁶ Art. 31- A

river lift irrigation project¹⁹⁷. Under the Act of 1955, the Revenue Officer has the power to determine an area to be irrigated area.

Non irrigated land: - The land not falling under section 14K (2) of the WB Land Reforms Act, 1955 and not determined as an irrigated area by the appropriate authority as irrigated area under Section 14 N.

Agricultural land: - Agricultural land means land ordinarily used for purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying fallow¹⁹⁸ for the time being.¹⁹⁹ Such land is used for agricultural works.

- Mono Crop cultivable lands
- Duo or Bi- crops cultivable lands
- Poly or Multi- crops cultivable lands

Non- agricultural land: - Non- agricultural land means land other than agricultural land or other than land comprised in a forest.²⁰⁰

Waste land: - Waste land means any land classified in the record-of- rights published under the Bengal Tenancy Act, 1885, as nutan patit, puritan patit, layek patit, gar layek patit or layek jungal and includes any land or water area which in the opinion of the State Government, has not been adequately used for production of crops or fish for a continuous period exceeding two years but does not include land, forming part of, any homestead, farmhouse, burning or burial ground or any place of worship.²⁰¹

Raiyati land:- It means a person or an institution holding land for any purpose whatsoever. (Section 2(10) of the WB Land Reforms

¹⁹⁷ Section 14K (d) of the West Bengal Land Reforms Act, 1955.

¹⁹⁸ Fallow land is cultivable but has not been used for the purpose of cultivation.

¹⁹⁹ Section 2(a) of the West Bengal Acquisition and Settlement of Homestead Land Act, 1969.

²⁰⁰ Section 2(f) of the West Bengal Acquisition and Settlement of Homestead Land Act, 1969.

²⁰¹ Section 2(5) of the Waste Lands (Requisitioning and Utilization) Act, 1952.

Act, 1955). However, the term raiyat²⁰² means a person who holds land for the purposes of agriculture.

Vested land: - The definition of vested land has not been given under the WBLR Act, 1955. Any land owned by a raiyat in excess of the ceiling area²⁰³ applicable to him shall vest in the State free from all encumbrances. Such land is considered as vested land. Again, any land if acquired by the state for public purposes or for a company under the Land Acquisition Act, 1894 becomes the vested land under the Act.

Alluvial land: - It is the land gained by gradual accession to a plot of land whether from the recess of river or sea and shall vest in the State and the raiyat who owns the plot of land shall not be entitled to retain such land as accretion there to²⁰⁴.

Diluvial land: - It is such type of land which has been swayed away by the river or sea. Initially such types of land had been described under Section 11 of the West Bengal Land reforms Act, 1955 but, this provision has been omitted by the Amendment Act of 2000 w.e.f. 7. 8. 1969.

Excepting these types, lands may be categorised under the following heads-

- **Forest land:** - The land notified by government orders as Reserved Forest (RF), Protected Forest (PF), and Private Protected Forest (PPF). These lands are generally governed by the Forests Acts (Central and State).
- **Pastoral land:** - The land marked for the purpose of animal grazing and fodder growing in every village.
- **Fallow land:** - Fallow land is the land which is cultivable but for various reasons is not cultivated regularly, and thus not

²⁰² Section 2(j) of the West Bengal Acquisition and Settlement of Homestead Land Act, 1969.

²⁰³ Section 14 M 14 Q & 14 R of the West Bengal Land Reforms Act, 1955.

²⁰⁴ Section 12, The West Bengal land reforms Act, 1955.

assessed for revenue on a regular basis. Fallow lands are of two types-

- a. **Permanent Fallow:** - This is the land which is cultivable, but not used for taking crops for a long period of time and thus not assessed for revenue.
 - b. **Current Fallow:** - This is the land which is cultivable, but in a particular year not used to take crops, hence not assessed for that particular year.
- *Land not available for cultivation:* - Such lands may be cultivable, but since it is marked for specific non- agricultural purposes like schools, market, place, roads, playground, jungle jhari etc. not available for agriculture.
 - *Non- Cultivable Wasteland:-* The land which is not fit for cultivation and thus not assessed for revenue purpose is called a non- cultivable wasteland. Generally, it is referred to as 'Wasteland' or 'Banjar'. These lands are rent free.

The definition of the term 'land' in the land acquisition Act, 1894 is not exhaustive. The Act lays down that 'expression land includes benefits arising out of land, and things attached to earth or permanently fastened to earth.' The word 'includes' indicates that restriction intended to lump together in one single term i.e. land- several things of particulars such as soil, building, on it, in charge on it and other interests in it- which all have separate existence capable of being dealt with either in mass or separately, such exigency of each case arising under the Act may require.²⁰⁵ Thus, it is clear that definition of land will include superstructure, if any, existing upon it. For the purpose of the Act, therefore, land includes buildings, and also trees and standing crops.²⁰⁶ This definition is wider than that of immovable property under the Transfer of Property Act, 1882. Significantly, mines and minerals beneath the

²⁰⁵ Government of Bombay v. Isufali Salebhai (1910) 34 B.Om.618.

²⁰⁶ Province of Sind v. Hari Kishan Dass Gulabari AIR 1940 Sind 58.

land are also included in the definition of land under the Land Acquisition Act, 1894. It has also been observed according to the land Acquisition Act, land does not merely mean a firm land but also land covered with water and in calculating market value of land, benefits derived from such water should also be taken into account.²⁰⁷ Property right affects the economic growth in a number of ways like²⁰⁸,

- Secured property right increases the incentives of households and individuals to invest and often also provides them with better credit access; something that not only helps them make such investments but will also provides an insurance substitute in the event of shock.
- In the un-mechanised agriculture, the operational distribution of land affects output, implying that a highly unequal land distribution reduces the productivity.
- Secured land tenure also facilitates the transfer of land at low cost through rentals and sales, improving the allocation of land. It also supports the development of financial markets. Without secured rights the land owners are less willing to rent out their land, which may impede their ability and willingness to engage in non- agricultural employment or rural- urban migration.

Acquisition of land is a major instrument for development for public purpose. If the contention of right to livelihood or right to shelter or dignity of person is given credence; no land can be acquired under the Land Acquisition Act, 1894. The proper balance may be attained through the payment of proper resettlement and rehabilitation programme. Successful resettlement and rehabilitation programme is difficult to achieve for a number of reasons. Displacement causes

²⁰⁷ Nalinakshya Bose v. Secretary of State (1907) 5 CLJ 62 (N).

²⁰⁸ Klaus Deininger: Land Policies for Growth and Poverty Reduction; World Bank's Policy Research Report: A co publication of the World Bank and Oxford University Press, First Published in 2003; at pg. 24.

a psychological trauma that may be difficult to measure in terms of conventional indicators. It is usually accompanied by a prolonged period of transition; full of economic and social uncertainties. The outcome of resettlement programme varies significantly based on the way it is designed and administered. If designed properly and on the basis of a policy, a resettlement programme can be implemented as a regular development programme.

PART- II

LAND REFORMS

India has an uneven distribution of land. Land reform means, in narrower sense, distribution of surplus land to small and marginal farmers and the land less farmers. The UN Food and Agricultural Organization (FAO) organized a World Conference on Agrarian Reform and Rural Development (WCARRD) in Rome in July, 1979 wherein 145 members participated. Para 8 of the Declaration Programme of Action states that 'Sustained improvement of rural area requires fuller and more equitable access to land and water and other natural resources; widespread sharing of economic and political power'. This is known as the Peasant's Charter. In 1974, the World Bank claimed that the redistributive land reform can go a long way towards solving the problem of rural poverty and without which it would be difficult to see much headway being made to reduce poverty in the rural areas. In the same year, the Bank's guidelines for lending to developing countries explicitly stated that the countries where increased productivity can effectively be achieved only subsequent to land reform, the bank will not support projects which do not include land reform. However, the dwindling interest in pursuing agrarian reforms began in 1980's in the

operational ideologies of major Western Countries at 'international institutions'.²⁰⁹

The land reform entails a redistribution of productive assets that would in turn result in a redistribution of income and an improvement in the living standards of the poor, particularly in terms of food security, while not reducing aggregate output over the long term. Basically, land reform is connected with the right to life and livelihood of a huge rural population in India. The land reform measures as adopted in India since independence focus to the major areas like.- (i) *abolition of intermediaries* (Zamindari system in case of Bengal); (ii) *security of tenancy and regulation of rents* (the system of bargadars in Bengal), and (iii) *imposition of ceiling and redistribution of ceiling surplus land among the land less*. It also aims to- *increasing agricultural productivity and doing social justice*. Thus, in brief, through land reform the dependence and unequal social relations that historically existed between landlord and tenant are altered, and a better balance of social, economic, and political power becomes possible. Land reform has divested large landowners who owned huge estates of 10,000 to 20,000 acres of land yet the distribution of ownership holding has remained unequal with 71% of the land being owned by nearly 24% of the land owning households, while, as many as 873 lakh small

²⁰⁹ The policies of Ronald Reagan as US President and of Margaret Thatcher as the British Prime Minister brought a radical move towards the economic growth and support for market forces, especially business interests, while also reducing government intervention except in order to assist big business. Thus, the support for such programmes as the redistribution of private land was quickly put on the sidelines. At this, the third world countries being faced with worsening problems of debt repayments, inflation, balance of payments deficits, and the structural adjustment policies abandoned/ forced to veer away from agrarian reforms. As economic globalization widened and deepened, the consolidation of lands by corporate bodies, especially TNCs for high value export crops means that there is all the more reason for support for agrarian reform to weaken.

and marginal farmers own less than two hectares of land each.²¹⁰ As per the 1991 census, there are seven crores of rural landless labourers eking out of bare existence. Their number is on the increase with 20 lakhs of being added every year.²¹¹ The ineffective land reform is at the root of such a situation.

LAND REFORMS AND INDIA

India inherited a semi-feudal agrarian system. The ownership and control of land was highly concentrated in a few landlords and intermediaries whose main intention was to extract maximum rent, either in cash or kind, from tenants. The land reforms in India have not been very effective. . As a result, agricultural productivity suffered and oppression of tenants resulted in a progressive deterioration of their plight. According to a publication of the Food and Agricultural Organisation (FAO), in India, redistribution of only five percent of farm land coupled with improved access of water, could reduce rural poverty levels by 30%.²¹² But still, the number of utterly poor people in India is about the same as the entire population of the country in 1947. The landless and the near landless (those with less than half an acre of land) make up 43 per cent of rural households in India.²¹³

The Constitution (49th Amendment) Act 1983 was enacted by the Parliament in August, 1984 which put 14 land reforms laws in the Ninth Schedule of the Constitution to provide the immunity to these measures from being challenged in the court of law. The Constitution (81st Amendment) Bill, 1994 was passed in 1995.

²¹⁰ Sanjay Upadhyay & Vidheh Upadhyay: Handbook on Environmental Law: Environment Protection, Land and Energy Laws; Vol.- 3, First publication in 2002, Lexis Nexis Butterworths, Noida; at pg 380.

²¹¹ Id.

²¹² Prof. Gangotri Chakraborty: Land Reforms and Corporatisation of Agriculture: NUJS 2006; at pg.

²¹³ Patralekha Chatterjee: Land Reform in India Necessary but not Sufficient to Fight Poverty; [http\ www. Land Reform in India.mht](http://www.LandReforminIndia.mht) visited on 26th August, 2008.

placing land reform laws in the Ninth Schedule. However, the move towards land reform has not been fully successful due to absence of required forthcoming political will in the country.

Table- 02

LAND REFORMS UNDER FIVE YEAR PLANS

A bird's eye view of Five Years Plans regarding land reforms is given below.

| SL | FIVE YEAR PLAN | STRATEGIES PLANNED |
|-----------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | I | <ul style="list-style-type: none"> • Land Policy that reduces disparity of wealth • Elimination of intermediaries • Elimination of exploitation • Fixing of ceiling |
| 2 | II | <ol style="list-style-type: none"> 1. Left the issue to the States as the subject of land reforms finds place in List II of the Constitution. 2. Increase agricultural production |
| 3 | III | <ul style="list-style-type: none"> • Serious balance of payment problem • Removal of impediments to increased agricultural production arising out of skewed agrarian structure • Elimination of exploitation and social justice in the agrarian system. |
| 4 | IV | <ol style="list-style-type: none"> 1. Food security as its central theme 2. Reviewed the progress of land reforms 3. Emphasis on traditional and small scale sectors as important contributors to economy |
| 5 | V | <ul style="list-style-type: none"> • Better treatment of land reforms • Direct anti- poverty programmes |

| | | |
|---|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <ul style="list-style-type: none"> • Recommendations of the task force on Agrarian Relations, 1972 were incorporated |
| 6 | VI | <ol style="list-style-type: none"> 1. Concern over slow progress of land reforms 2. Observed unsatisfactory implementation of land ceiling laws 3. effective land reforms programme 4. States to implement their own reform |
| 7 | VII | Similar strategy |
| 8 | VIII | Nothing much on land reforms |
| 9 | IX | Nothing much on land reforms |

In May, 1955, the Planning Commission set up a panel on land reforms under the Chairmanship of Gulzarilal Nanda to review the progress of land reforms in the country. The Committee made the following recommendations viz.-

- i. There should be an absolute limit to the quantum of agricultural land which an individual may hold to meet the following objectives-
 - a. to meet the wide spread desire to possess land
 - b. to reduce the inequalities in ownership and use of land
 - c. to reduce the inequality in agricultural income
 - d. to enlarge the sphere of self employment
- ii. Induction of capital investment of land
- iii. Encourage of personal cultivation
- iv. Ending the uncertainty in land sector and
- v. Providing work and security to the landless

This apparently the only serious thought that was given to land reforms apart from those mentioned under the five year plan.

LAND REFORMS AND THE PROVINCES

The national guidelines were formulated at the Chief Minister's Conference on ceiling on 23rd July, 1972 which emphasised basically aimed at-

- (i) the lowering of the level of ceiling;
- (ii) Family rather than individual had been declared as a unit for the application of ceiling.

In 1972- 73 lowering of land ceiling took place by most of the states and legislations in pursuant to them had already been passed in almost all the states providing for a ceiling on land holdings. For example²¹⁴,

Table-03
Ceiling Limit in Some States

| SI | STATES | CEILING AREA |
|----|------------------|-------------------|
| 1 | UTTAR PRADESH | 12.5 acres |
| 2 | PUNJAB & HARYANA | 30 standard acres |
| 3 | WEST BENGAL | 25 acres |
| | KARNATAKA | 18 standard acres |

In Haryana the ceiling has been lowered to 18 acres for perennially irrigated land capable of producing two crops a year, 27 acres for irrigated land capable of producing only one crop and 54 acres of dry land. During the past two decades or so, the state of Karnataka tried to confer occupancy rights to tenants. Many state governments have banned agricultural tenancy but concealed tenancy exists. Many of the affluent states like Punjab and Haryana show a growing tendency towards 'reverse tenancy' in which large farmers lease land from small and marginal ones. In UP, as in many other parts of the country, former feudal lords still own hundreds of

²¹⁴ K.K Dewett, J D Varma, M L Sharma, Indian Economy, S. Chand and Company Ltd. New Delhi, at pg. 402.

acres of land.²¹⁵ However, the success story of land reform is Operation Barga in West Bengal.

LAND REFORMS IN WEST BENGAL

The operation was launched in 1978. It led to the emergence of 1, 500 000 share croppers. West Bengal's tenancy law provides the recorded share croppers permanent and heritable rights as a part of ensuring the social security to them. The state of Bengal was showed the highest rate of growth of 6.5% for agriculture as a result of land reform, while the rate of growth for India was a mere 3%.²¹⁶ The population density in West Bengal is very high and due to well planned land reform the land holding is mostly with the common people. The land is fertile and irrigation facility is adequate. Recently, The Government of West Bengal brought out a comprehensive "Status Report on Land Use" on the basis of data²¹⁷ collected by the Department of Land and Land Reforms. The total area under different categories of land use in the State in 2003-04 was 8.687 million hectares. The share of the net sown area reported is about 63 per cent in the State (46 per cent in India). Interestingly, the extent of land currently under non-agricultural uses is higher in the State than in the rest of the country. The comparative data show that the share of land under non-agricultural use in the State in 2003-04 was 18.5 per cent, as against 7.7 per cent for the rest of the country. The share of fallow land,

²¹⁵ Patralekha Chatterjee: Land Reform in India Necessary but not Sufficient to Fight Poverty; <http://www.inwent.org/E+Z/zeitschr/de202-8.htm> visited on 26th August, 2008 at 6.39 A.M.

²¹⁶ Globalisation of agriculture and rising food insecurity available at <http://www.twinside.org.sg/title/food-cn.htm> visited on 3rd may, 2008 at 9.28 PM

²¹⁷ Suhrid Sankar Chottopadhyay: Another land row; Frontline; Vol. 24, Issue 01: : Jan 13- 26, 2007.

uncultivable land and pastures in the State is only 1 per cent (17.6 per cent in India) and it is classified in four categories: fallow, cultivable wasteland, permanent pasture and other grazing land, barren and unculturable. This small area is concentrated mainly in the districts of Birbhum, Bankura, Paschim Medinipur (West Medinipur), Darjeeling and Bardhaman (mainly the coal-mining blocks). Still, Land Reform in Bengal is a continuing process. It is quite evident from the data as presented by the Minister for Land Reforms in the Bidhan Sabha in recent times. The record is as under²¹⁸.

Table- 04

LAND ACQUIRED UNDER LAND REFORMS AND DISTRIBUTED

| YEAR | Acquired in acres | Distributed in acres |
|----------|-------------------|----------------------|
| 2005- 06 | 2322 | 8136 |
| 2006- 07 | 4135 | 10848 |
| 2007- 08 | 3750 | 10953 |

Thus, the table shows that, in each last three years, the extent of land acquired by the state government for industrial and infrastructural purposes were a fraction of the agricultural land distributed under land reform (and this does not even include the extent of homestead land distributed). Even in 2006- 2007 when acquisitions peaked, the extent acquired was 4135 acres, and the extent distributed under land reform was 10, 848 acres which is about 2.62 times the extent acquired for industry and infrastructure.

Effects of Operation Barga: In 1978, the government launched Operation Barga, a programme that has now recorded the names of

²¹⁸ Source: The Land and Land Reforms Department, Government of West Bengal. (as on February 15, 2008) published in the Hindu on 22nd August, 2008.

approximately 15 lakh bargadars²¹⁹ and educated them about their cultivation rights, thereby raising their economic and social status. Through the policy of Operation Barga and the surplus land distribution among the marginal, poor and backward castes over the years have created a kind of cushion against farmers taking their own lives because of the fear of money lenders or landlords taking away all the produce. The state changed the landlord-bargadar relationship in two fundamental ways,-

- The bargadar rights were made hereditary and thus perpetual regarding the rights of cultivation²²⁰.
- The state guaranteed that the bargadar's right over the receiving of a fair share of the crop²²¹.

Though this change in the tenancy in the state has brought some degree of economic stability among farmers, it has hardly cured the malady²²². The reasons behind this may be summarized as under-

- high landmass-population ratio (the highest in the country),
- small and highly segregated land holding patterns,
- lack of state's agricultural infrastructure,
- only 50% of agricultural land under irrigation²²³,

²¹⁹ <http://www.Vantagepoint.org.in/operationbarga/operationbarga.html> as visited on 26th August, 2008

²²⁰ Section, 15A of the West Bengal Land Reforms Act, 1955.

²²¹ 16 of the West Bengal Land Reforms Act, 1955 75 per cent if the bargadar provides the non-labour inputs and 50 percent if the landlord provides those inputs.

²²² Did Operation Barga save Bengal farmers
<http://www.financialexpress.com/news/didoperationbargasavebengalfarmers/162221/>
as visited on 28th August, 2008 at 3.09 PM

²²³ Id.

- failure to develop agri-industrial markets for farm produce,
- land erosion and river siltation

The transition from village to township and from agriculture to industry is the inevitable stages of development. Agriculture is not just a food producing machine, but the backbone of livelihoods. Literally, the word agriculture means, the science of farming²²⁴. The primary sense in which the term 'agriculture' is understood is 'agar' i.e. field and cultra- cultivation of field and if the term is understood only in that sense agriculture would be restricted only to cultivation of land in the strict sense of the term meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. It also includes the subsequent operations.²²⁵ It also includes horticulture²²⁶; animal husbandry, dairy farming, pisciculture and poultry farming²²⁷.

India is a agriculture dominating nation and West Bengal is not an exception. Land has been distributed among the landless people as a part of land reform but no proper mechanism has yet been devised to ensure that the land so given is purposefully utilized for agriculture. Unfortunately, the farmers suffer when the production is high. Agricultural commodities are of perishable in nature which requires proper storage, processing and marketing. Thus, suffering of the farmers on excess production may be considered as the government's failure. In India, agriculture is considered as a means

²²⁴ Oxford Advanced Learner's Dictionary of Current English: Oxford University Press; Sixth Edition, 2003 at pg. 25.

²²⁵ Income Tax Commissioner v. Benoy Kumar AIR 1957 SC 768; 1957 SCJ 740; 1958 SCR 101; Income Tax Commissioner v. Jyotikana AIR 1958 SC 19; 1958 SCJ 166; W. T. Officer v. Court of Wards AIR 1977 SC 113; Union of India v. R. C. Jain AIR 1981 SC 951.

²²⁶ Income Tax Commissioner v. Benoy Kumar AIR 1957 SC 768; 1957 SCJ 740; 1958 SCR 101.

²²⁷ Section 2(a); The Agricultural Refinance Corporation Act, 1963.

of sustenance, but has not been seen from commercial eyes. Thus, to reduce sufferings of the farmers' food processing industries along with various other are needed to set up which will lessen the risks on over production and at the same time to reduce the cost of production for crops modern agricultural appliances are to be applied.

Thus whatever be the situation, in the absence of proper planning resulting in the eviction of farmers from their land which has sustained them from generations which many a time seems to be unbearable to them due to many reasons like the passion for land as it feeds, maintain their families, past experience regarding acquisition and compensation etc. The demands for land in different spheres of development have brought to the fore the need to reform and update the systems of land statistics in West Bengal and needs to initiate the following programmes stated in the report²²⁸: -

- The government must establish an information system on the land based on annual plot-by-plot verification of land tenure, land use, irrigation and cropping. It has been estimated that such a database can be built over five or six years, and the government will organise the administration and the arrangements for a changeover to such a system of consolidated land records in the near future.
- The government must initiate a programme to create a land bank. District administrations have been asked to provide information on vacant land in the state in the first instance and on significant and unused tracts of land in the private sector in the next instance.

²²⁸ Status Report on Land Use: Government of West Bengal: Published in the Front line: Vol. 24, Issue 01: : Jan 13- 26, 2007.

- The Government of West Bengal will start to evaluate scientifically the demand for land in the State for different development activities. Evaluation will be made, in particular, of the demand for land for cultivation and related activity over a five-year and a 10-year period.

PART III

ISSUES RELATING TO ACQUISITION OF LAND

Land is a fixed asset. It cannot be further extended. Acquisition²²⁹, literally, means something that somebody buys to add what they already own, usually something valuable. Thus acquisition of land means the buying of land for some purpose from the land owners. Under the Land Acquisition Act, 1894, the land is acquired by the state for 'public purpose'. Acquisition of land causes displacement of people. In *Chameli Singh v. State of Uttar Pradesh*²³⁰, the Supreme Court held that "in every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The state exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose." Again, in *New Riviera Co-operative Housing Society v. Special LAO*²³¹ dismissing the proposition of the land owners that such acquisition of land will deprive them of their livelihood, the court held that since the Land Acquisition Act provides for the payments of solatium and other monetary benefits for deprivation of rights of enjoyment of property,

²²⁹ Oxford Advanced Learner's Dictionary of Current English: Oxford University Press; Sixth Edition, 2003 at pg 11.

²³⁰ (1996)2 SCC 549.

²³¹ (1996)1 SCC 731.

therefore any contention that it will deprive their livelihood is unsustainable. Land and property owning *project affected people* (PAP) are inherently the focus of any compensation and rehabilitation policy/ packages.²³² The marginal groups both in terms of their political location and their property ownership status find it difficult to gain recognition as groups deserving a share in the resettlement and rehabilitation process. However, people in an area where a project is yet to come having some economic and social relations with those directly affected by the project lose markets; community resources; and social networks which are not compensated properly.

Land is essential to establish new industries. Land may be corporatised on acquisition by the state by handing over the same to the corporate bodies. Land is a matter which is dealt with under the State List of the Constitution. For meeting of the corporate demand on acquiring land by the government, is definitely going to displace the people at large and supposed to hamper the traditional occupation of people and create problems regarding shelter, bread

²³² The Narmada Dam has been a very significant case. It has revolutionised the issue of compensation for acquisition of land and the issue of rehabilitation and resettlement of the oustees/ displaced people. This is again significant as it required the acquisition of land in multiple states viz, Gujarat and Maharashtra. In Maharashtra, the project- affected persons belonging to 'land- less', 'encroachers' and major sons and daughters (who were more than 18 years as on 1st Jan, 1987) categories found themselves marginalised by the resettlement policy announced by the government which failed to recognise or only partially recognized their claim to an allotment of agricultural land. Understandably, if the composition of the agitating groups are analysed, most of those seeking project- affected person status consist of these marginal groups who are not directly affected, but who can gain something if the scope of the definition of affected person is expanded. However, this tendency is directly linked to the policy entitlements declared by a particular state, and if these are not perceived to be adequate, there would be an all out attempt to resist displacement.

etc. Acquisition of land²³³ for corporatisation may be with the following objectives-

- Acquisition for consolidation of holdings on agricultural purposes,
- Acquisition for setting up of units by corporate bodies.

Acquisition for the consolidation of holdings for agricultural purposes: The acquisition for the purpose of consolidation of land holding is an important step towards the corporatisation of agriculture which has been conferred to the state under Section 39 of the West Bengal Land Reforms Act, 1955 which at the same time suggests the redistribution of the land after acquisition under section 40 of the Act. The acquisition for the purpose of consolidation of holding is welcome and it should be undertaken by the relevant authority at least in every five years as it reduces the cost of production of a crop as produced by a farmer.

Acquisition for setting up of units by corporate bodies: Acquisition of land for Corporate Bodies is another area of discussion. Under the Land Acquisition Act, 1894 the state can acquire land²³⁴ if the intention is satisfying the public purpose clause or for a company. Interestingly, the term public purpose has not been defined in the Act, nor any limitation regarding what is likely to prove useful to the public: both matters left to the discretion of the local government.

Doctrine of Eminent Domain: The doctrine of "Eminent Domain" as developed in the United States²³⁵ is the authority in this direction under which the acquisition can be done on payment of compensation as a condition to exercise the right to expropriation. As pointed in Halsbury's laws of England- "*when parliament has*

²³³ It means the act of getting something or something that somebody buys to add what they already own. Acquisition of land is therefore means, the act of getting or buying land by somebody.

²³⁴ Section 4, The Land Acquisition Act, 1894.

²³⁵ The 5th Amendment Act of the Constitution of the USA.

authorised compulsory acquisition of land, it is invariably provided for the payment of money compensation to the person, deprived of his interest in it." It rests upon the famous maxim '*salus populi est suprema lex*²³⁶ and *necessitus publica major est quam private*²³⁷.

Originally, the framers of the Constitution included the right to property as fundamental right under Article 19 (1) (f) of the Constitution. Article 31 provided for the compulsory acquisition of property. The Supreme Court in *Dwarakadas Srinivas v. Sholapur Spinning and Weaving Co. Ltd.*²³⁸ and in *State of West Bengal v. Subodh Gopal*²³⁹ while interpreting clauses (1) and (2) of Article 31, held that whenever there is any substantial deprivation of property, the question of compensation would arise. In *State of West Bengal v. Bela Banerjee*²⁴⁰ the Supreme Court went a step forward and held that for the compulsory acquisition of property under Art.31(2) just compensation equivalent to the market value of the property was required to be paid. It led to the Constitution 4th Amendment Act, 1955 which provided that no law providing for compulsory acquisition or requisition "shall be called in question in any court on the ground of compensation provided by that law is not adequate and the question of compensation was left to the judgement of the parliament and its adequacy was not left open to be questioned by the court of law." Later the Supreme Court held that²⁴¹ even under the amended Article, compensation meant equivalent of the property taken with its existing advantages and potentialities. In these cases, the Supreme Court also refused to vest the Parliament with unfettered power to determine compensation by the abuse of

²³⁶ The welfare of the people is the paramount law.

²³⁷ Public necessity is greater than private.

²³⁸ AIR 1954 SC 119.

²³⁹ AIR 1954 SC 92.

²⁴⁰ AIR 1954 SC 170

²⁴¹ *Vajravellu Mudaliar v. Collector* AIR 1965 SC 1017; *Metal Corporation* AIR 1967 SC 637; *State of Gujarat v. Shantilal Mangaldas* AIR 1969 SC 634.

legislative process. In *R. C. Cooper v. Union of India*²⁴² (Bank Nationalisation Case) the Supreme Court per majority held that even after 4th Amendment, compensation under a particular class of property sought to be acquired meant equivalent in terms of money of the property compulsorily acquired according to relevant principles which must be appropriate to the determination of compensation." After the judgement of *Bank Nationalisation Case*²⁴³ the Constitution by 25th Amendment Act, 1971 substituted the word, "compensation with amount" in clause (2) under Article 31. Thereafter, the validity of 25th Amendment Act, 1971 was challenged in *Keshavananda Bharati*²⁴⁴ case where the Supreme Court held that the principles laid down under Art. 31 are the general guiding principle applicable to all persons and transactions in fixing the amount which may include the consideration of social justice following the relevant directive principles, particularly in Arts. 39 (b) and (c). In addition to these, the court also held that the amount of the adequacy should be determined on the basis-

- How the amount has to be given otherwise than in cash is not amenable to judicial review.
- The quantum of the amount cannot be a matter of judicial review
- The principles to determine the compensation must be relevant to the consideration and must not be illusory.

However, by the 44th Amendment Act, 1978 the whole Article 31 was deleted from the Constitution and clause (f) of Article 19(1) was also omitted. Consequently, the right to property as fundamental right had been gone away with Article 300-A which only reintroduced Art.31(1) and read as- '*No person shall be deprived of his property save by the authority of law*'. The right to

²⁴² AIR 1970 SC 564

²⁴³ R.C.Cooper v. Union of India (1970) 2 SCC 298.

²⁴⁴ AIR 1973 SC 1461

property thus has been shifted from the category of the fundamental rights to the general category having a constitutional legal right without having the protection as a fundamental right. However, in *Jilubhai Nanbhai Khachar*²⁴⁵ case the Supreme Court has made it clear that when the acquisition is made under the Land Acquisition Act, 1894 and other Acts, the liability of state to pay the just compensation continues even after the deletion of Arts.19 (1) (f) and 31 of the Constitution and relegating the right to property as a constitutional right by incorporating Article 300-A of the Constitution.

Jurisprudentially, Constitutional Rights are superior to that of the Statutory Rights. Thus, a right to acquire property is subject to fundamental right. In the decision of *State of Rajasthan v Basant Nahata*²⁴⁶ the Supreme Court has held that a statutory interdict would be opposed to one's right to property as envisaged under Article 300A of the Constitution. Similarly, in the judgement of *ICICI Bank v SIDCO Leathers*²⁴⁷ the Supreme Court held that while enacting a statute, Parliament cannot be presumed to have taken away a right to property and that right is a constitutional right. It ruled that deprivation of the legal right existing in favour of a person cannot be presumed in construing a statute. It is in fact the other way round and thus, a contrary presumption shall have to be raised. The Apex Court in the *Chairman, Indore Vikas P 'hikaran v Pure Industrial Coke and Chemicals Ltd.*²⁴⁸ referred to Article 17 of the French Declaration of Human and Civil Rights 1789 and the Universal Declaration of Human Rights, 1948, adopted by the General Assembly and held that the property right is also incorporated within the definition of human rights. The Court also held that even the claim of adverse possession has to be read as in

²⁴⁵ AIR 1995 SC 142

²⁴⁶ AIR 2006 SC 3401.

²⁴⁷ AIR 2006 SC 2088.

²⁴⁸ (2007) 8 SCC 705.

consonance with human rights. Very recently, in the judgement of *Lachhman Dass v. Jagat Ram*²⁴⁹ the Supreme Court held that the human right flows from the right to property under Article 300A of the Constitution.

India is a social democratic republic. Property when is seen in the context to its nature retains its basic feature of being fundamental to a person's life. The life and freedom of action of a person is very closely intertwined with the economic activities that it is difficult to separate life from property. According to Hegel, "*if emphasis is placed upon needs, than the possession of property appears as a means to their satisfaction, but the true position is that, from the standpoint of freedom, property is the first embodiment of freedom and so is in itself a substantive end.*"²⁵⁰ In *Kharak Singh v. State of UP*,²⁵¹ the link between right to life and personal liberty with property has been recognised and applied for the first time. However, in *Chameli Singh v. State of Uttar Pradesh*²⁵², the Supreme Court held that "in every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The state exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose." In *New Riviera Co-operative Housing Society v. Special LAO*²⁵³ dismissing the proposition of the land owners that such acquisition of land will deprive them of their livelihood, the court held that since the Land Acquisition Act provides for the payments

²⁴⁹ (2007) 10 SCC 448.

²⁵⁰ G Hegel (Tr. T.M. Knox), *Philosophy of Right* 20 (1958) cited by Bhat, P. Iswara in *Journal of Indian Law Institute*; Vol. 38, (1996) at pg. 114.

²⁵¹ AIR 1963 SC 1295.

²⁵² (1996)2 SCC 549.

²⁵³ (1996)1 SCC 731.

of solatium and other monetary benefits for deprivation of rights of enjoyment of property, therefore any contention that it will deprive their livelihood is unsustainable. Thus, following the above judicial pronouncements, it may be assumed that, if the solatium and other monetary benefits are provided to the project affected peoples (PAP), then deprivation of property may be tenable. In this regard, the package of compensation must not compel a project affected person to live a life not merely of physical existence or lead a life of mere animal existence because after *Maneka Gandhi*²⁵⁴ and *Francis Coralie*,²⁵⁵ the Art. 21 embody the right to live with minimum human dignity.

Legislations regarding Acquisition of Land: - The acquisition of land is done according to the Land Acquisition Act, 1894. Under the Act, 1894 the state is entitled to acquire land²⁵⁶ for public purpose clause or for a company. Land is a matter which is dealt with under the State List of the Constitution. The issue of the corporatisation of land has not been discussed under any Act.

(i) The Land Acquisition Act, 1894:- The Land Acquisition Act, 1894 has been proved to be one of the most significant legislation regarding the acquisition of lands. Land is acquired by the government under the Act of 1894 or any other special or local Acts by virtue of Item no. 4 of List II of the Constitution. The law of land acquisition derives its legitimacy from the juridical principle of the power of Eminent Domain of the state - a power by which the state enjoys "sovereign control over all property in a state, with the right of expropriation". The Land Acquisition Act of 1894 confers upon the Central and State governments this power to acquire land "for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition". Since

²⁵⁴ *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

²⁵⁵ *Francis Coralie v. Union of India* AIR 1981 SC 746.

²⁵⁶ Section 4, The Land Acquisition Act, 1894.

the Act finds a place in the Concurrent List of the Constitution²⁵⁷, various State governments have made necessary amendments in the respective State laws, the latest being a large-scale amendment in 1984 by the Central government. The process of land acquisition starts with a government notification with due publicity of the government's intention to acquire land in a certain locality²⁵⁸. This is followed by a public inquiry²⁵⁹ against objections; a formal declaration of land acquisition by the State government²⁶⁰. The Collector is authorised to invite claims to compensation and, after due inquiry, make an award of compensation²⁶¹. To acquire a land under the Act, 1894, the followings are needed to be satisfied-

- A certificate of existence of public purpose by the Government for acquisition of land is required if the property is acquired under some other Special Acts which doesn't provide for such certificate directly or by implications.
- When such Special Acts provides methods of assessing compensation, it is not necessary to take proceedings under the Act.
- It is not necessary for Railway Authorities to take proceedings under this Act because of the powers given under Sec.7 of the Indian Railways Act though they are subjects to any enactment as to the acquisition of land, yet there is nothing in this Act cutting down the powers specified in Sec.7.
- When the operation of an Act is inducted by special provisions in a subsequent Act, the subsequent amendments of the first Act doesn't operate on the latter Act unless otherwise expressly provided.

²⁵⁷ Entry 42.

²⁵⁸ Section 4

²⁵⁹ Section 5A

²⁶⁰ Section 6

²⁶¹ Section 11

The Act I of 1894 aims at promoting important public interest -*salus populi suprema lex*- which subordinates private interests on speedy payment of compensation which was originally irrelevant prior to the Amendment Act 38 of 1923. Any presumption or rule of construction or of convincing unless just and equitable cannot be applied to compulsory acquisitions of land. Under this Act, following kinds of acquisitions are covered-

- For public purpose (Sec. 6)
- For industrial concern not being a company²⁶² (Sec. 38A)
- For companies for the erection of dwelling houses etc. for workmen [Sec. 40(1) (a)]
- For companies engaged in work for public purpose [Sec. 40(1) (aa)]
- For companies for some work likely to prove useful for public [Sec. 40(1) (b)]
- For public purpose primarily and on behalf of a company (Sec. 6 & 40)
- for railway or other companies with which the appropriate government is bound by agreement to provide land (Sec. 43)

As per Section 40 of the Act, the appropriate government shall not give its consent unless it is satisfied, either on the report of the Collector under sub- section (2) of Section 5A or by enquiry held under sub- sections (2) and (3) of Section 40:

²⁶² According to clause (e) of Section 3 of the Act, the expression 'company' means-

- (i) a company as defined in Section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc) of Section 3 of the Land Acquisition Act;
- (ii) a society registered under the Societies Registration Act, 1869 or under any corresponding law for the time being in force in any state, other than a society referred to in clause (cc) of the Act;
- (iii) a co- operative society within the meaning of any law relating to co- operative societies for the time being in force in any state, other than a co- operative society referred to in clause (cc) of the Act.

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for public purpose, or

(b) that such acquisition is needed for the construction of some work which is likely to prove useful to the public.

Acquisition for Public purpose: - The sovereign power of every state has the authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction. Now, the time has come to define the term public purpose. Interestingly, the term public purpose has not been defined in the Act, nor any limitation regarding what is likely to prove useful to the public: both matters left to the discretion of the local government. Under Sec.3 (f)]²⁶³ the expression 'public purpose' includes-

- The provision of village sites, or the extension, planned development or improvement of the existing village sites;
- The provision of land for town and rural planning;
- The provision of land 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 on plan;
- The provision of land for a corporation owned or controlled by the state;
- The provision of land 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

²⁶³ The Land Acquisition Act, 1894.

the implementation of any scheme undertaken by the government, any local authority or a corporation owned or controlled by the state;

- The provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by the government or by any authority established by the 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 for the time being in force in a state, or a co-operative society within the meaning of any law relating to the co-operative societies for the time being in force in any state;
- The provision of land for any scheme of development sponsored by Government, or with the prior approval of the appropriate Government, by a local authority;
- The provision of any premises or building for locating a public office.

However, the term public purpose does not include acquisition of land for companies. Land can be acquired for the companies under Sec. 3 (e) of the Act of 1894. The expression company means-

- a company as defined under Section 3 of the Company's Act, 1956; other than a Government Company referred to Clause(cc).
- a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a state, other than a society referred to in clause (cc).
- a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any state, other than a co-operative society referred to in clause(cc).

Regarding the law of acquisition for a company to be followed the followings are most important-

- After the notification is issued u/sec.4 for acquisition of land for companies, which must be relatable to public utility, any officer of the company is firstly authorised to make necessary survey u/sec.4(2).
- As the survey is complete, the company will place the report of same before the appropriate government. Thereafter, if the appropriate government is satisfied as to the existence of public purpose and the necessity of the company and gives consent, only then the company will be asked to execute the agreement as laid down in Sec.41 and then the steps of acquisition is initiated.
- Such agreement shall have to be published in the official gazette.
- Such a company must not transfer the land in any manner without the previous consent of the appropriate government.
- Lands for private company cannot be acquired excepting for the purpose of erecting dwelling houses for workmen employed or for amenities connected therewith.
- In case of an industrial concern not being a company and owned by one or more individual and ordinarily employing not less than one hundred women, may have land acquired for the purpose of erecting dwelling houses for their workmen, or for providing amenities directly connected therewith.
- All costs of acquisition must be paid by the company.

Again, the words public utility as used in Art. 226(6) as inserted by the 42nd Amendment Act have a narrower meaning than the words public purpose. Public utility means works or projects like telephone, telegraph, railways etc. which is useful and available to all sections of the public irrespective of caste, creed, community or colour and not merely to a section of the community. But when the

purpose serves, even a section of the public, it is public purpose e.g. if a project is carried out say for Harijans²⁶⁴. In *State v. Ranganatha Reddy*²⁶⁵ the Supreme Court held that a purpose is public if the legislature has declared to be such and the decision of the legislature must be treated with consideration which is due to a co-ordinate department of the Government of the state. However, after, *R. Umrammal v. State*²⁶⁶, the expression public purpose is to be liberally construed and a property can be acquired to satisfy the commercial needs of the government. The Supreme Court has also indicated that the public purpose broadly would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is public purpose or not²⁶⁷. In *Delhi Chemical and Pharmaceutical works v. Union of India*²⁶⁸ the Delhi High Court commented, as the government is the sole judge to decide as to whether the land is required for public purpose and the court cannot substitute its own views. Following the same the Supreme Court in *Gandhi G.N. Sankari Samity v. State of Rajasthan*²⁶⁹ held that the court cannot go into a comparative utility of public purpose and if there be a public purpose to acquire the polo ground, the same cannot be challenged. In *Gadadhar v. State of W.B.*²⁷⁰ the Calcutta high court gave a formula to decide whether a purpose is public or not-

- whether the purpose benefits the community at large or a section thereof and

²⁶⁴ *State of Bombay v. Ali Gulshan*. AIR 1955 SC 810

²⁶⁵ AIR 1978 SC 215: (1977) 4 SCC 471

²⁶⁶ AIR 1986 Mad 63

²⁶⁷ *Srinivasa Co- Operative House Building Society V. Madan* (1994) 4 SCC 675

²⁶⁸ AIR 1971 Del 88.

²⁶⁹ AIR 1994 SC 2329

²⁷⁰ AIR 1963 Cal 565

- whether the government is satisfied about the mode of the acquisition for the declared purpose.

However, if any of the provisions have not been complied with, the declaration is without jurisdiction. In such a case, Art. 226 of the Constitution is applicable. The Hon'ble Supreme Court in *Bajirao T. Cote v. State of Maharashtra*²⁷¹ has held that as the State Government has exercised power under section 4(1) for public purpose and public purpose was mentioned therein, exercise of power cannot be invalidated on account of malafide so long as the purpose is shown and the land is needed or likely to be needed for the purpose subsists at the time of the exercise of power. In *Ravi Khullar and another Vs. Union of India and others*²⁷² the Hon'ble Supreme Court held that the planned development of Delhi for which purpose the land was acquired under Section 4 of the Land Acquisition Act, 1894 is wide enough to include the development and expansion of an airport within the city of Delhi. Thus it cannot be said that the land is actually being utilized for any purpose other than that for which it was acquired. The only difference is that whereas initially the development work would have been undertaken by the Delhi Development Authority or any other agency employed but it, after the constitution of the International Airport Authority of India (IAAI).

Public purpose whether includes company: Although the Land Acquisition Act of 1894 has a separate and slightly different provision for acquisition of land for private companies, the substantive provisions and principles are practically the same; the difference is only in procedural matters. The Supreme Court in *Jage Ram vs the State of Haryana*,²⁷³ has succinctly elucidated the matter "public purpose", as follows: "There is no denying the fact

²⁷¹ 1995 2 SCC 442

²⁷² 2007 AIR 2334, 2007(4)SCR598 , 2007(5)SCC231 , 2007(5)SCALE236 , 2007

²⁷³ AIR 1971

that industrialisation of an area is in public interest and starting of new industry is in public interest. Whether the starting of an industry is in public interest or not is essentially a question that has to be decided by the State government and the declaration is not open to challenge. Unless it is shown that there was colourful exercise of power, it is not open to the court to go behind the declaration." In a case petition filed by *Jat Imran Salim and other Fishermen*²⁷⁴ the Division Bench of the Supreme Court comprising of Chief Justice K.G. Balakrishnan and Justices P. Sathasivam and J. M. Panchal has recently vacated the status quo order on the construction work at Adani Group's Rs. 7400- crore multi- product Mundra SEZ Project promoted by the company in Mundra to come up on 6,000 acre of land in Kutch district. In this case, the petitioners highlighted how the land had been allotted by the state government for making the salt from sea water and for providing jetty in the Mundra port region had been put for private use under the SEZ and the scheme had been sanctioned by the Centre without application of mind. However, the apex court held that the company had not indulged in land grabbing as the acquisition of land was place in accordance with the law after giving a public hearing and paying compensation and premium for rehabilitation. The Supreme Court²⁷⁵ in recent times against an acquisition by the State of Andhra Pradesh has held that acquisition of land by a state government for the development of a project to serve the larger public good would be legal and valid. Dismissing the appeal, the Bench constituted by Justice C.K. Thakkar and Justice D.K. Jain said, "in case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components and to

²⁷⁴ Reported in the Hindu: 10th July, 2008 at pg. 14.

²⁷⁵ Sooraram Pratap Reddy & Ors. V. District Collector, Ranga Reddy Distt. & Ors., 2008(9) SCC552 , 2008(12) SCALE367.

consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters." Hence, Mr. Justice Thakkar commented, "*if the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the state and the public at large it will serve public purpose.*" The Bench also said, "it is primarily for the state to decide whether there exists public purpose or not. Undoubtedly, the decision of the state is not beyond judicial scrutiny. In the appropriate cases, where such power is exercised mala fide or for collateral purposes or the purported action is de- hores the Act irrational or otherwise unreasonable or the so called purpose is 'no public purpose' at all, a writ can undoubtedly interfere. But except in such cases, the declaration of the government is not subjected to judicial review."

Acquisition of land in urgency: The acquisition of land as a general rule, before exercise of power of eminent domain, law must provide an opportunity of hearing against the proposed acquisition. Even without a specific provision to that effect, general law requires raising of objections by and affording opportunity of hearing to the owner of the property. There may be cases of 'urgency' or 'unforeseen emergency' which may brook no delay for acquisition of such property in larger public interest. The issue of 'Urgency' or 'unforeseen emergency' is falling is covered by sub-sections (1) and (2) of Section 17 of the Act which justifies quicker acquisition in the event of *natural catastrophe*, such as floods and earthquake, for the *construction of railways tracks and roads*. In *Nandeshwar Prasad & Anr. v. State of Uttar Pradesh & Ors*²⁷⁶ the Court held that If the Government intends to acquire land in cases of 'urgency' or 'unforeseen emergency' falling under or covered by sub-sections (1) and (2) of Section 17 of the Act, it is still required to follow

²⁷⁶ (1964) 3 SCR 425,

procedure u/s 5A of the Act before issuance of final notification u/s 6 of the Act. It is only when the Government also makes a declaration under sub-s. (4) of s.17 that it becomes unnecessary to take recourse to procedure u/s.5A of the Act. Very recently, the Hon'ble Supreme Court has directed that there is no scope of acquiring land under this clause other than in case of natural disaster.²⁷⁷ However, recently, considering the process of land acquisition inefficient and a biggest stumbling blocks, the Union Minister for Road transport and Highways Mr. Kamal Nath, urged the Chief Ministers of various states to play a proactive role in the process.²⁷⁸

Consent of the Land Owners for Acquisition: Section 11(2), provides for consensual agreement with landowners.²⁷⁹ However, this procedure does not take away the power of the state and the Collector to acquire land from a few recalcitrant owners in case their obduracy stands in the way of achieving a major "public purpose".

Challenging notification on the basis of public purpose:- The supreme court in *Bajirao vs. State of Maharashtra*²⁸⁰ has held that it is very much clear that when state government exercise power under Sec.4 (1) for a public purpose and the public purpose was mentioned therein, the exercise of such power cannot be invalidated on the grounds of malafide and colourable exercise of power so long as the public purpose is shown and the land is needed or is likely to be needed and the purpose subsists at the time of exercise of power. It has also been pointed out that it is primarily for the state

²⁷⁷ Reported in *The Statesman*: 14th October, 2009 at pg. 04.

²⁷⁸ Reported in *The Hindu*: 11th July, 2009; at pg. 14.

²⁷⁹ Suhrid Sankar Chstopadhyay: Another land row ; *Frontline*; Volume 24 - Issue 01 :: Jan. 13-26, 2007

²⁸⁰ 1995 2 SCC 442: (1995) 1 Andh WR 13 (SC)

government to decide whether there exists public purpose or not and it is not for the Supreme Court or High Courts to evaluate the evidence and come to its own conclusion that it is malafide or colourable exercise of power i.e. the exercise of power serves no public purpose or it serves private- public.

Sale of portion of acquired land to the owner after finalisation of acquisition proceedings: If a land once acquired by the government for public purpose, then that land if some portion remains unused, cannot be allowed to sale back to the original owners. In a case, part of the land is unutilised, it has to be used for some other public purpose or else, such land may be put to public auction and the sum so realised can be better utilised for the public purpose as envisaged in the Directive Principles of State Policy²⁸¹.

Compensation on acquisition of land: - Whatever has to be acquired in every case under the Land Acquisition Act, 1894 is the aggregate of rights in the land and not merely some subsidiary rights such as that of a tenant. There is provision under the Act of 1894 which is aimed at making compensation to all persons interested, but the claim on this head are to be adjusted in the apportionment prescribed under Secs. 29 and 30 and do not fall to be considered till after the court has determined the market value of the land under Sec.23 (1). After Jenkins C.J. in *Babujan v. Secretary of State and the Chairman, Gaya Municipality*²⁸² for the purpose of ascertaining the market value of land the court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it. In *Bombay*

²⁸¹ State of Kerala v. M. Bhaskaran Pillai 1997 SC 2703 : (1997) 5 SCC 432

²⁸² 4 CLJ 256.

*Improvement Trust v. Jolbhai*²⁸³, Batchelor J. commented, "reading the act as a whole I can come to no other conclusion than that it contemplates the award of compensation in this way; first, you ascertain the market value of the land on the footing that all separate interests combine to sale and then you apportion or distribute that sum among the various persons found to be interested." in *Chameli Singh v. State of Uttar Pradesh*²⁸⁴, the Supreme Court held that "in every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The state exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose." In *New Riviera Co-operative Housing Society v. Special LAO*²⁸⁵ dismissing the proposition of the land owners that such acquisition of land will deprive them of their livelihood, the court held that since the Land Acquisition Act provides for the payments of solatium and other monetary benefits for deprivation of rights of enjoyment of property, therefore any contention that it will deprive their livelihood is unsustainable. Thus, following the above judicial pronouncements, it may be assumed that, if the solatium and other monetary benefits are provided to the project affected peoples (PAP), then deprivation of property may be tenable.

The Requisitioning and Acquisition of Immovable Property Act, 1952: The Act provides provisions for the requisitioning and acquisition of immovable property for the purposes of the Union. Section 3 of the Act provides, the competent authority, on satisfaction, that any property is needed

²⁸³ (1903)23 Bom 483; 11 Bom LR 674

²⁸⁴ (1996)2 SCC 549.

²⁸⁵ (1996)1 SCC 731.

or likely to be needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned, (a) shall call upon the owner or any other person who may be in possession of the property by notice in writing to show cause, why the property shouldn't be requisitioned and (b) may by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority, dispose of, or structurally alter, the property or let out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order. Section 4 of the Act empowers the competent authority to take possession of the requisitioned property; section 6 of the Act speaks of the release from requisitioning while section 7 speaks of acquisition of the requisitioned property. The Section 8 of the Act tells about the principles and method of determining compensation. Under subsection (3) of the Act, it says, the compensation payable for the acquisition of any property under Section 7 shall be the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition. In *Brij Narayan v. Union of India*²⁸⁶ the Delhi High Court has held that the power of acquisition u/Sec.7 of the 1952 Act of the requisitioned property is not a general power of acquisition and if public purpose exists on account of circumstances outreach Sec.7 (3) of the 1952 Act, then the appropriate Government can take recourse to Sec.4 of the Land Acquisition Act for the acquisition of such property for public purpose. In *Deep Chand v. Lt. Governor of Delhi*²⁸⁷ it was held that the power of requisition under 1952 Act is to requisition of the property for a public purpose and when the public purpose has ceased to exist the property cannot be used for

²⁸⁶ AIR 1989 Del. 119.

²⁸⁷ AIR 1981 Delhi 162 (DB)

residential purpose when that was not the public purpose for which the property was requisitioned. In such cases the government has to release the property from such requisition. Again, in *H. D. Vora v. State of Maharashtra*,²⁸⁸ the Supreme Court has made it clear that if the government wants to take over the property for an indefinite period of time, the government would acquire the property, but it couldn't use the power of requisition for achieving that object by keeping that property under requisition for an indefinite period. So, after a reasonable period of requisition, the government has to take steps for acquiring the property for a public purpose by invoking Sec. 4 of the Land Acquisition Act. In *T.J. Lalvani v. D.M. Torgal*²⁸⁹ it was held that an order in the absence of a proper speaking order i.e. the purpose for which the land is sought to be requisitioned is a public purpose or not is an abuse and colourable exercise of power. Again, in *A. K. Kalra v. Project and Equipment Corporation of India Limited*²⁹⁰, it was held that when the government has been resorted to the 1952 Act to requisition the property and to keep it under requisition for an indefinite period, in spite of the necessity of a permanent public purpose for which the government should have invoked the provision of the Land Acquisition Act, 1894 is an abuse and colourable exercise of power. In *Jiwani Kumari Paraki v. First L.A. Collector of Calcutta*,²⁹¹ the Supreme Court held that when the government has the power and opportunity to acquire the property or part thereof, upon the fulfilment of the conditions mentioned in Sec. 49(1) of the Land Acquisition Act, then the exercise of power by the government to requisition only with the intention to permanently acquiring in an

²⁸⁸ AIR 1984 SC 866: (1984) 2 SCC 337

²⁸⁹ AIR 1981 Bom 147

²⁹⁰ (1984) 3 SCC 316

²⁹¹ AIR 1984 SC 1707: (1984) 4SCC 612

indirect way depriving the lessee of the compensation payable under the L.A. Act, 1894 in lieu of nominal monthly rent is bad and the government must be held to have acted malafide.

Difference between Requisition and Acquisition of Land: -

The state has the power both of requisition and acquisition subject to one condition, i.e., the property acquired or requisitioned must be for public purpose. Normally the expression 'requisition' is taking possession of the property for a limited period in contradistinction to acquisition. In acquisition, the title passes to the acquiring authority while in the other title remains with the owner, while the possession goes to the requiring authority.²⁹²

The Land Acquisition Act and the Urban Land (Ceiling and Regulation) Act, 1976: When the land which the government contemplated to acquire under the Land Acquisition Act or a bulk of them are likely to be acquired under the Urban Land (Ceiling and Regulation) Act, 1976 and payment of compensation as provided under the Act is to be made, the State Government cannot be compelled to acquire such land under the provisions of the Land Acquisition Act. Under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 it is only upon publication of the declaration under Section 10(3) of the said Act such land shall be deemed to have vested to the state free from all encumbrances with effect from the date, so specified. If before the publication of such declaration the land was acquired under the Land Acquisition Act under Section 4 read with section 17(4) of the Act and possession of land has been taken under Section 17(1) of the Act, any declaration under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 in respect of self same land becomes redundant and the acquisition shall be treated to the one under the Land Acquisition

²⁹² Jiwani Kumar Paraki v. First Land Acquisition Collector, (1984) 4 SCC 612: AIR 4 SC 1707

Act and the compensation has to be paid in accordance with the Land Acquisition Act²⁹³

of sub- section(1) of section 23 of the Land Acquisition Act, 1894.

The Special Economic Zones Act, 2005: With a view to provide an internationally competitive environment for exports, the Government of India announced a Scheme in April, 2000. While the policy relating to Special Economic Zones is contained in the Foreign Trade Policy, incentives and other facilities offered to the SEZ developer and units are implemented through various notifications and circulars issued by the concerned Ministries/ Departments. In order to give a long term and stable policy framework with minimum regulatory regime the Special Economic Zones Bill, 2005 was passed in the Parliament. Section 3 of the Act provides the procedure for making proposal to establish the Special Economic Zones. Under this, a SEZ may be established under the Act, either jointly or severally by the Central Government, State Government, or any person for the ,manufacture of goods or rendering services or for both or as a Free Trade and Warehousing Zone. Any person, who intends to set up a Special Economic Zones, may, after identifying the area, make a proposal to the State Government concerned or directly to the Board of Approval for the purpose of setting up of the Special Economic Zone. The Act also prescribes the provision if the Sate Government intends to set up a SEZ, it may after identifying the area, forward the proposal directly to the Board of Approval for the purpose of setting up of the SEZ. Again, the Central Government may after the consultation with the state Government concerned; without referring the proposal to the Board and after identifying the area suo moto set up and notify the SEZ. Again, the Central Government may prescribe the requirements for

²⁹³Md. Sahid Khan v. State of U.P. AIR 1997 All 20.

the establishment of a SEZ, regarding the minimum area of land and other terms and conditions subject to which the Board shall approve, modify or reject any proposal received by it or regarding the terms and conditions, subject to which the Developer shall undertake the authorised operations and his obligations and entitlements. Unfortunately, the Act is not at all conducive to the interests of the farmers. More surprisingly, the government after having introduced a Bill to amend the existing Land Acquisition Act and announced the National Rehabilitation and Resettlement Policy, 2007 as much as 152 SEZs have got formal approval.²⁹⁴ At this, in its report, the Parliamentary Standing Committee led by Dr. Murli Monohar Joshi, in its report recommended that the government should make its SEZ policy more people friendly, particularly farmer- friendly and no further SEZs should be approved or notified till the new legislation was in place after making all necessary amendments in the existing SEZ Act and Rules thereunder. The Panel also called for a scientific study and independent assessment of the impact of SEZs approved or notified so far, on the farmers whose lands were acquired as well as others, like agricultural labourers and local artisans connected with the acquired land. At the same time the Panel also suggested complete debarment of the use of double- cropped, multi- cropped or irrigated land for the setting up of SEZs.

STATE LEGISLATIONS

The West Bengal Estates Acquisition Act 1956: This Act includes the vesting of all estates and the rights of every intermediary therein in the State free from all encumbrances. Basically, the Act of 1953 was enacted for the abolition of intermediaries and the imposition of ceiling limit for certain types of lands. By virtue of sections 4, 5, 6 and 52 of that Act not only the

²⁹⁴ Reported in The Statesman: 25th October, 2008 at pg. 8

rights of intermediaries, raiyats and under raiyats in the estates but also all the estates were vested in the state free from all encumbrances. Sub sections (1) and (3) of Section 6 made it clear that lands of all descriptions were included in estates which had vested in the states. Under Section 6 ceiling limit, however, was imposed for agricultural and non- agricultural land in khas possession. However, the Act didn't impose any ceiling for other classes of land. The Act of 1953 applied to all classes of land, though the ceiling limit was not applicable to all such classes.

The West Bengal Land Reforms Act, 1955: The Act is speaking about the term vesting not the acquisition of land. Vesting means extension of ownership over the private properties beyond a statutory limit. The WB Land Reforms Act, 1955 under Section 14M (1) prescribes the ceiling area. The Government has the authority to determine ceiling area in special cases under Section 14Q. Again Section 14S the Government has the power of vesting of land in excess of ceiling area. In regard to this, the (Amendment) Act, 1981 played a significant role. However the Amendment Act, 1965 excluded tea gardens from the purview of the Act. Again, with the objective of keeping harmony with the policy of the Central Government, the Amendment Act of 1971 was introduced to put a ceiling in case of family holdings to distribute surplus lands to the landless people. Earlier we saw this under the West Bengal Estates Acquisition Act, 1954 for holding the agricultural lands beyond 25 acres. This amendment imposed ceiling on the extent of land under which an individual raiyat may own lands upto 25 acres. The act imposes limitation on transfer and subletting of land so as to prevent accumulation of lands in a few hands of any land being acquired by non- agriculturists. The Act also introduces rational system of assessment on land, consolidation of holdings, formation of co- operative farms and concessions and facilities on such farms.

Opportunity had been extended to further safeguard the interests of the share- croppers, raiyats and tribal raiyats. Again, the grounds for the termination by a bargadar had been restricted, the security of the tenure of a bargadar in respect of at least 1 hectare of land has been ensured and the right of cultivation by a bargadar has been made hereditary. The Amendment Act, 1981 included inter alia the all classes of lands within the same ceiling limits so that ceiling surplus land of all classes can be utilised for the good of the community and can be distributed among the deserving people. Again, the Amendment Act of 2000 initiated the measures to specify the major modes of use of land so as to prevent conversion of agricultural land into purposes which are not strictly agricultural which again amended section 20- B of the Act of 1955 to facilitate the setting up of industry on any land in which there is bargadar. Again, the proposed West Bengal Land Reforms (Amendment Bill), 2006²⁹⁵ held up in the Select Committee includes the issues like the compulsory mutation of within six months of inheritance or transfer in a bid to update land records; compulsory conversion of land records because in many cases the agricultural land is being used by private promoters for the setting up of housing or industrial units without mutation or conversion in the absence of any law on this point as yet. This Bill also includes inter alia, the provision of allowing the sale of 50% of barga land after giving the rights of other 50% to the bargadar and the settlement of tribal land after giving equivalent land in terms of quantum character in the vicinity.

The West Bengal Land (Requisition and Acquisition) Act, 1948: This Act is applicable for the requisition and speedy acquisition of land. Section 3 of the Act says that if the State Government is of the opinion that land is necessary for the

²⁹⁵ The Statesman: 29th December, 2008 at pg. 10.

purposes of maintaining supplies and services essential to the lift of the community, increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas, or for providing proper facilities for transport, communication, irrigation or drainage or for the creation of better living conditions in urban and rural areas not being an industrial or other area excluded by State government by a notification in this behalf, by the construction and reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning: provided that no land used for the purpose of religious worship or used by an educational, charitable or institution shall be requisitioned under this section. Section 4 of the Act provides that where any land has been requisitioned under Section 3 of the Act, the State Government may use or deal with such land for any of the purpose referred to in Sub section (1) of Section 3 as may appear to it to be expedient. Again, the state government may acquire any land requisitioned under Section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub- section(1) of Section 3 [Section 4(1a)]. Again, where a notice as aforesaid is published in the Official gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end [Section 4(2)]. Section 7 of the Act is providing the provisions regarding the payment of compensation against the land requisitioned under section 3 of the Act. As per the said Section, whenever any land is acquired under Section 4, there shall be paid to person interested compensation the amount of which shall be determined by the Collector in the manner and in the manner in

accordance with the principles set out in Sub- Section (1) of Section 23 of the Land acquisition Act, 1894.

The Waste Lands (Requisitioning and Utilization) Act, 1952:

The Act provides for the requisitioning of waste lands for certain public purposes with a view to better utilization thereof and also to provide for certain other matters connected therewith. Under Section 3 of the Act, the Collector, either of his own motion or on application made to him by any person (including a public servant, company, local authority or co- operative or registered society), may, if he is of opinion that any waste land is needed or is likely to be needed for public purpose, by notification in the Official gazette, require all persons interested in the waste land to show cause within such time as may be specified in the notification why the waste land shouldn't be requisitioned under this Act. Section 8 provides for the issue of compensation. It says, where the possession of any waste land is delivered or taken under Section 5, every person interested in such land shall be entitled to compensation for so long as his interest subsists but in no case beyond the date of release of such land from requisition under section 10, the amount of such compensation being determined in the manner and in accordance with the principles set out under sub section 2 and 3 of the Act.

The West Bengal Land Development and Planning Act, 1948:

This Act provides for the acquisition of land for the development of the same for public purposes. Under the Act, Section 4, the State Government may, by notification in official Gazette, declare any specified area specified in the notification to be a notified area if it is satisfied that any land in such area is needed or likely to be needed for any public purpose and the Collector shall cause public notice of the substance of such notification to be given at convenient places

in the locality in such a manner as he may think fit. Section 6 of the Act provides for the declaration for acquisition of land needed for development scheme. Section 7 provides special provision in case of urgency. The Act also provides, after making a declaration under Section 6 and 7 of the Act, the State Government may acquire the land and thereupon the provisions of the Land acquisition Act, 1894 shall, so far as may be apply. Section 8 of the Act provides for the application of the Land Acquisition Act, 1894 subject to the special provision for compensation. However, Section 8(1) provides that if in any case the State government so directs, the Collector may, at any after any declaration is made under Section 6 of the Act take possession in accordance with the rules of any beel, baor, tank or other watery area, or any waste or arable land in respect of which the declaration is made and thereupon such land shall vest absolutely in the State Government free from all encumbrances.

The West Bengal Panchayat Act, 1957: The Act of 1957 provides the provision for the acquisition of land for Gram Panchayats. Section 63 of the Act provides that, where a Gram Panchayat or an Anchal Panchayat requires land to carry out any of the purposes of this Act, it may negotiate with the person or persons having interest in the said land and if it fails to reach an agreement, it may make an application to the District Magistrate for the acquisition of land, who may, if he is satisfied that land is required for a public purpose, take steps to acquire the land and such land shall, on acquisition and on payment of due compensation awarded in accordance with the land under which the acquisition of land was made, shall vest in the Gram Panchyat or, as the case may be, Anchal Panchayat. Interestingly, land, after the Act includes immovable property of any kind and benefits which arise out of land and things attached to the earth or permanently fastened to anything attached to earth.

The West Bengal Utilization of land for Production of Food Crops Act, 1969: The Act provides for the requisitioning of land with a view to better utilization for the production of food crops for meeting the shortage of foodgrains in the state. The Act under Section 3 speaks for the power to requisition of land by the Collector. Under the Act, the Collector may by order in writing, requisition any land if he is of the opinion that such land is suitable for the production of food crops and is likely to be utilised during the current or the ensuing agricultural season provided that no land which forms part of any homestead or cremation or burial ground or of any place of worship shall be requisitioned under this Section. Such requisition shall be made for such period, not extending beyond the agricultural year in which the order under sub-section (1) is made, as may be specified in the order. Section 5 of the Act provides the provision regarding the utilisation of land. As per the very Section of the Act, as soon as may be after the Collector is in possession of any land requisitioned under Section 3, he shall, by order in writing, make over possession thereof for such period not exceeding beyond the current agricultural year as he thinks fit to any person utilising such land for the production of such food crop as may be specified in the order. Sub-section (2) of the Act says, in making over possession of any land under sub-section (1), the Collector shall whenever possible give preference to persons who own no land or less than 0.8094 hectare of land and who are residents of the locality where such land is situated and who intend to bring such land under personal cultivation. The section under Sub-section (3) provides any person to whom possession of any land has been made over under sub-section (1), shall be entitled to do in, on or with respect to, such land all things necessary for utilization of such land for the production of such food crops as may be specified in the order issued under the said sub section. Again, sub-section (4) it provides, nothing in this section shall be deemed

to confer on any person to whom possession has been made over under sub- section (1) the status of a tenant or to confer on him any transferable right. Section 6 of the Act is dealing with the Delivery of produce of its money value to the Collector. Under this, any person to whom possession of any land has been made over under sub- section (1) of Section 5 or who has been allowed to continue to remain in possession of such land under Clause (a) of Section 10 of the Act shall- (a) deliver to the Collector or to any officer authorised by the Collector in this behalf thirty- five percent of the gross produce from such land for any agricultural season or pay its money value to be determined by any Collector in such manner as may be prescribed and (b) after the expiry of the period for which possession has been made over to him under sub- section (1) of Section 5 or he has been allowed to continue to remain in possession under Clause (a) of Section 10, give back possession of such land to the Collector or to any officer authorised by the Collector in this behalf and in default of his doing so the Collector may take possession thereof by force, if necessary. Under sub- section (2) of Section 6, it provides if such person fails to deliver the produce or money value thereof referred to in Clause (a) of sub section (1) within such time as may be fixed by the Collector in this behalf, the money value shall be recoverable as a public demand. Section 7 of the Act provides the provision of Compensation which says, when any land is requisitioned under Section 3 of the act, there shall be paid to every person interested compensation shall be twenty- five percent of the gross produce from such land for the period for which such land has been requisitioned, or it's money value determined under Section 6. but in case of the total failure of crop from such land or if for any reason such land has not actually been utilised, the amount of compensation per annum shall be at the rate of three percent of the market value of such land non the date of the order of requisition. Under the Act, by the term 'persons

interested' includes all persons claiming an interest in compensation to be paid on account of the requisition of land under the provision of this Act and a person shall be deemed to be interested in an easement affecting the land.

The West Bengal Requisitioned Land (Continuance of Powers) Act, 1951: This Act aims to protect the issue of continuance of certain emergency powers in relation to the requisitioned land. The Act under Section 3 provides all requisitioned lands²⁹⁶ shall continue to be subject to requisition until the expiry of the relevant Act and the state Government may use or deal with any requisitioned land for such public purpose and in such manner as may appear to it be expedient. At this, the government enjoys the power to release any land at any time from requisition any requisitioned land. Section 5 of the Act empowers the Government to acquire the requisitioned land for a public purpose by publishing in the Official Gazette a notice. However, sub-section 3 of the Act provides, no requisitioned land shall be acquired under this section except in circumstances like, (a) where any work have during the period of requisition been constructed on, in or over the land wholly or partly at the expenses of Government and the State Government decides that the value of, or the right to use such works should be preserved or secured for the purposes of the State government or (b) where the cost of restoring the land to its determination of the State Government, be excessive having regard to the value of the land at the time and the owner declines to accept release from requisition of the land without payment of compensation for so resorting the land. Section 6 of the Act

²⁹⁶ 'Requisitioned land' means immovable property which at at the commencement of this Act, and is subject to any requisition effected under the rules made thereunder the Defence of India Act, 1939 and continued under the Ordinance and the Act and is held under requisition for any public purpose. [Section 2 (3) The West Bengal Requisitioned Land (Continuance of Powers) Act, 1951].

provides for the payment of compensation which says, in respect of acquisition of land under this Act, shall be the price which the requisitioned land would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and had been sold on the date of acquisition. Again, sub-section 2 provides, in respect of acquisition of land under this Act, shall be (a) the price which the requisitioned land would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and had been sold on the date of acquisition or (b) twice the price which requisitioned land would have fetched in the open market if it had been sold on the date of requisition, whichever is less.

Impacts of land acquisition on farmers

Under the law, government has the power to acquire any kind of property be it land or any property for public purpose following the doctrine of *Eminent Domain*. India is a vastly populated country and so is West Bengal. Here near about 70% of the people are dependent on cultivation. Lands, when acquired according to the provisions of the Land Acquisition Act, 1894 after paying compensation²⁹⁷ against the very land vest in the Government

²⁹⁷ Presently, the award of compensation under the Act of 1894 is given by the Collector on the acquisition of land considering the followings-

- The market value of the land on the date of notification u/ sec.4 of the Act.
- Damages sustained in process of taking possession
- Bonafide loss etc.

But damages likely to be caused after the publication of declaration u/sec.6 or in consequence of the use to which it would be put or any outlay or improvements on, or disposal of the land acquired, made without the sanction of the collector after the date of publication of notification u/sec.4 shall not be taken into consideration. After the award is made by the collector any person may refuse to accept the award and apply to the Collector, who is bound to refer the dispute for determination of the

and afterwards in the company for whom the same have been acquired free from all encumbrances. Acquisition of land is associated with the following conflicting issues -

- Apprehension of inadequate compensation
- Shifting of livelihood pattern
- Uncertainty of Job guarantee
- Fear of losing shelter or place of residence
- Fear of losing balance of food security
- Fear of keeping the land idle after acquisition and there by delaying the enforcement of commitments to the project affected people
- Engulfment of the fertile agricultural lands by industry in the name of development
- Absence of separate policies of acquisition of land for the Urgent and Important projects
- Suffering from mental trauma
- Improper rehabilitation and resettlement policy of the government
- Socio- economic hardship
- Activism of touts/ land sharks in the adjacent areas

Development of state or country should not at the cost of a section of people. Generally, it has been the common picture of every displacement that the displaced people's interest is hardly respected. So, it may be submitted that state needs to pay much interest in the rehabilitation and resettlement matters of the displaced people.

Court of Land Acquisition and any award made by the Land Acquisition Judge amounts to a decree and against which an appeal lies to the High Court. If there is any difficulty in paying the compensation, the Collector can deposit the amount in Court. The claimant can accept the amounts in protest. If the money is lying in the Court, the Court can invest it in proper securities for the benefit of the claimants.