Singur Case and the Idea of Justice

V KRISHNA ANANTH

While the recent Supreme Court judgment in the Singur land acquisition case has provided relief to the people who lost their lands to Tata Motors Limited, the ruling looked at procedural lapses in the land acquisition law rather than question the concept of "public purpose" that is being distorted to include private interests.

The Supreme Court's decision in the Singur land acquisition case on 31 August (*Kedar Nath Yadav v State of West Bengal and Others* 2016) is indeed a rare instance of the relatively poor sections of our society winning a legal battle against the rich and the mighty. It is rare because despite the law of the land, the structure of the justice dispensing system, involving legalese and procedural complexities, takes a long time. Add to this a powerful state apparatus, whose role in the land acquisition procedure is central, willing to bend over backwards to ensure a certain kind of development process and justifying this in the name of a larger good.

The judgment was the result of several contingencies that made the end result different. The apex court ordered that the land, measuring about 1,000 acres, that had been taken away from its owners and handed over to the Tata Motors Limited (TML), should be returned within a period of 10 weeks from 31 August to those who challenged the compulsory acquisition, as well as to those who acquiesced for want of the wherewithal to fight the battle and accepted the compensation.

The contingencies that made the Singur case and its outcome different are: (i) the total rout of the Communist Party of India (Marxist)—CPI(M)-led Left Front in the 2011 state assembly elections; (ii) the fact that the Left Front was replaced in power by the All India Trinamool Congress, whose leader Mamata Banerjee, refused to conform with the neo-liberal agenda on the specific issue of land acquisition and held on to her opposition to forced acquisition of agricultural land, at least in the case of Singur;[1] (iii) the fact that a section of those who lost their land had complete faith in the constitutional scheme (rather than perceiving it as an instrument of the ruling classes) and preferred to appeal to the Supreme Court even after their case was dismissed by the Calcutta High Court in 2008;[2] and (iv) the fact that there are lawyers of repute at the highest level who have refused to be co-opted into the dominant definition of "public purpose" and "development" and remain committed to the "idea of justice" as envisaged by the makers of modern India.[3]

Ideally, the West Bengal government ought to have given up the land acquisition process even before all these developments took place. In a constitutional democracy, where the people are sovereign, the state ought to see the writing on the wall and refrain from forcing its will upon the people. Even where there is a disconnect between the people and the state on what is "public good," the effort ought to be to engage with them rather than wielding a law, especially one that belongs to the colonial era like the Land Acquisition Act, 1894. It is relevant in this context to stress that this colonial law remained valid in the constitutional scheme, protected by Article 31(5) of the Constitution, only because there was a certain want of clarity in the Constituent Assembly over the status of the right to property in independent India.[4]

The historical process, involving Article 31 of the Constitution, the amendments to it and the judicial interventions until the Constitution (Forty-fourth Amendment) Act, 1978, when Article 31 was scrapped, brought to an end a phase that was marked by legal battles by the landowning classes against laws towards building an egalitarian society. In hindsight, it may be argued that although Article 31 of the Constitution was scrapped with the intention of preventing the landed gentry from persistent attempts to frustrate measures at land reforms, it ended up reviving the problematic aspects of the 1894 Act. The return of the doctrine of eminent domain, as against the right of the citizen to own property as a fundamental right (guaranteed by Article 31), ended up working against the small and middle peasants in their battle against the state.

V Krishna Ananth (*krishnananth@gmail.com*) is Associate Professor in History, Sikkim University, Gangtok.

Procedural Lapses

With the right to property no longer a fundamental right, the only window left before the small and medium farmers across the country to save themselves from being dispossessed (with compensation) is procedural lapses by the state in times of such forced acquisition of their land.[5] This has been happening since 1962, when a three-judge bench of the Supreme Court quashed acquisition of farmlands by the Uttar Pradesh government without recourse to a hearing as provided by Section 5A of the 1894 Act.[6] This happened again in the recent past[7] and most recently when the apex court quashed such acquisition of farmlands in Noida in a series of cases.[8]

A close reading of the decision in the Singur case reveals that the compulsory acquisition of land by the West Bengal government, on behalf of the West Bengal Industrial Development Corporation (WBIDC) and handed over to the TML for "development" purposes, was flawed on procedural grounds and hence void. Since the procedure established by law was not followed, and the end-user (TML in this case) had given up the project (after ravaging the 1,000 acres it was given possession of with cement, steel and other material, thereby rendering it unsuitable for agriculture), the Court ordered that the land be handed over to those who were forced to part with it by the state and its instruments.[9]

There are other aspects too that emerge from the judgment as to whether the state government had followed the various sections of the 1894 Act and on whether the ingredients for what constituted "public purpose" were available. The two separate judgments—Justice V Gopala Gowda's and Justice Arun Mishra's—explaining the basis of their conclusion that the acquisition process was bad in law, also throw up questions as to whether the state government was guilty of cheating at various stages of the acquisition process.[10]

Justice Gowda, for instance, found the central question to be answered in this case as to whether the acquisition in Singur confirmed to the definition of "public purpose" under Section 3(f) of the 1894 Act.[11] Based on several documents, including cabinet notes and memos that were part of the case papers, the learned judge held:

> Thus, by no stretch of imagination can the acquisition of lands in the instant case be said to be at the instance of WBIDC, or for the fulfilment of some scheme of the Corporation or the State Government. Thus, it cannot be said to attract Section 3(f) (iii), (iv) or (vi) either.[12]

It was on this ground that Justice Gowda set aside the acquisition process. The learned judge then went on to stress:

> Such an acquisition, if allowed to sustain, would lead to the attempt to justify any and every acquisition of land of the most vulnerable sections of the society in the name of 'public purpose' to promote socio-economic development.[13]

The facts that led the apex court and Justice Arun Mishra to establish that the acquisition, in this instance, was not for a "public purpose" as defined in the 1894 Act, were that the West Bengal government had indulged the TML to scout around for land, identify the land and hold several meetings between the representatives of the private corporate and ministers in the state government. The state government also discussed whether the land in Singur is best suited given its proximity to the seaport, the airport and to Kolkata, promised schools and other facilities for the prospective employees of the proposed company and obtained in writing from the company that the land in Singur was best suited for it as compared to other places that it was offered.[14]

In doing so, Justice Mishra, even while disagreeing with his brother judge, held that the notice under Section 4(1) of the 1894 Act ought to have been "exploratory in nature" which was not the case here. Justice Mishra established, on the basis of records before the court that TML had explored the land in question even before the notice under 4(1) of the 1894 Act was issued. To quote from his judgment: "... it appears that even before issuance of notification under Section 4 of the Act, decision has been taken to acquire the land in question."[15] This, the judge held, had rendered the enquiry under Section 5A, which the apex court had held as "a valuable right" in a catena of cases, into a nullity and hence the entire proceedings bad in law. The enquiry, according to Justice Mishra, was prejudged by the land acquisition officer since the notice under Section 4(1) was bad in law, and this is what led him to declare that the acquisition was illegal.

The point here is that both the judges, even while ordering return of the land as well as the compensation amount to the land-losers, had based their decision only on the ground that the land was taken away without following the procedure established under the law. In other words, if the West Bengal government, in this instance, had not been brazen enough as it was, the dispossession of the landowners would have been held as valid. It may be argued that the apex court could not have done otherwise given the preference in our jurisprudence for the procedure established by law as against the due process of law. However, there is evidence of a shift to the latter principle in our own history of constitutional law.[16]

The Veil of 'Public Purpose'

It is noteworthy here that Justice Mishra also relied on Justice V R Krishna Iyer's judgment in an earlier case on how best to pierce the veil of "public purpose" Here is a long quote from Justice Iyer's earlier judgment that the learned judge recalls in this instant case:

> There may be many processes of satisfying a public purpose. A wide range of choices may exist. The State may walk into the open market and buy the items, movable and immovable, to fulfil the public purpose; or it may compulsorily acquire from some private person's possession and ownership the articles needed to meet the public purpose; If the purpose is for servicing the public, as governmental purposes ordinarily are, then everything desiderated for subserving such public purpose falls under the broad and expanding rubric. The nexus between the taking of property and the public purpose springs necessarily into existence if the former is capable of answering the latter. On the other hand, if the purpose is a private or non-public one, the mere fact that the hand that acquires or requires is Government or a public corporation, does not make the purpose automatically a public purpose. Let us illustrate. If a fleet of cars is desired for conveyance of public officers, the purpose is a public one. If the same fleet of cars is sought for fulfilling the tourist appetite of friends and relations of the same public officers, it is a private purpose. *If bread is 'seized' for feeding a starving section of the community, it is a public purpose that is met but, if the same bread is desired for the private dinner of a political maharajah who may pro tem fill a public office, it is a private purpose.*[17] (emphasis added by author)

It is another matter that Justice Mishra, even after citing this part of Justice Iyer's judgment arrives at a decision that is just the opposite, namely that the test of "public purpose" is fulfilled in the instant case in Singur.

There is another aspect that warrants a brief discussion in the context of the Singur episode and from the evidence that went into the apex court's order that the land ought to be returned to those from whom it was snatched away. This has to do with the CPI(M) as a party and the Left Front in general. Few will disagree that the flashpoints in Singur and Nandigram (where the state had let lose its armed might and ended up killing 14 persons in order to grab the land to be passed over to the Indonesia-based Salim Group for setting up a special economic zone) led to the 34 years of Left Front rule being brought to an end.[18] A detailed discussion on the CPI(M)'s downward slide in West Bengal since then and its present condition is beyond the scope of this article. It is, however, appropriate to delve a bit into the philosophical aspects of such a policy shift, and to recall what Karl Marx had to say about it.

In his critique of Adam Smith and David Ricardo, and their logic that it was only legitimate for the owners of property to earn profits out of it, Marx goes on to inquire as to how this primary accumulation of capital happened. "The so-called primitive accumulation of capital," Marx explains, was achieved by deceit and structural violence perpetrated on the peasants in England of those times by the state, aided by the British Parliament through the Enclosure Acts. Marx writes,

> This primitive accumulation plays in Political Economy about the same part as original sin in theology. Its origin is supposed to be explained when it is told as an anecdote of the past. In times long gone by there were two sorts of people; one the diligent, intelligent, and, above all, frugal elite; the other lazy rascals, spending their substance, and more, in riotous living … Such insipid childishness is everyday preached to us in the defence of property. (Marx 1965: 713–14)[19]

While the Singur tragedy involving the dispossession of the small and the medium farmer belongs to another league—taking away farmlands to build factories to create job opportunities and thus serve the "public purpose"—the fact is that the process involves a lot of similarities in a substantive sense. What is common in both is the proclamation by those in power as to what constitutes the "public purpose" and the determination of whatever constitutes the "public purpose." In the instant case—Singur—the CPI(M) seemed to agree with parties across the spectrum that agriculture is no longer viable in comparison with industries and hence decided to chart out a course it considered best.

Such a consensus exists across the political spectrum and that brings into focus the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, replacing 1894 Act. All political parties believe the new law will ensure justice to farmers in the event their farmland is sought to be converted to non-agricultural purposes. This, however, is not true. If the 1894 Act was rooted in the logic of a colonial politico-legal premise, the 2013 Act is a product of the logic of a neo-liberal politico-legal set-up. In other words, if the 1894 Act was consistent with the Right to Private Property as fundamental to the system, the 2013 Act, in fact, denies to landholders any such fundamental right and even denies them many of those provisions that led the Supreme Court to restore land to the land-losers in recent times. The fact is that the 2013 law seeks to further illegitimate struggles against land acquisition.

For instance, Section 2(1)(b) contains a list of sectors where this act shall apply and this includes acquisition of land for tourism. Tourism is now an industry and land acquisition for setting up resorts, health tourism and any such business propositions is possible under the new act. Such indulgence could have been challenged under the 1894 Act. Likewise, the 2013 Act specifies fair compensation and also lays down the quantum of compensation for land acquired, including the solatium. With this, in the larger context of our jurisprudence (the procedure established by law rather than the due process of law), the scope for stalling indiscriminate acquisition of farmlands in the name of development is considerably restricted. In other words, where it was possible for land-losers in the earlier regime to defend their cause in the higher judiciary against acquisition for building a tourism resort on grounds that it was not a public purpose (as defined under Section 3(f) of the 1894 Act), such a process is no longer possible.

This, and some other provisions in the 2013 Act, render insignificant those other provisions such as Section 4 that mandates a social impact assessment on such alienation of land or Section 16 that presupposes a rehabilitation plan in place before the notification for acquisition of land is issued. These provisions are all about the procedure and are based on a premise that acquisition of agricultural land is an inevitable and indisputable measure in the cause of development and nation building. Similarly, the 2013 Act also contains Section 40, which is as bad as Section 17 of the 1894 Act. It provides for short-circuiting all the steps, including the social impact assessment in the event of an emergency.

In short, the 2013 law is premised upon treating land as a commodity and thus renders fair compensation as the only requirement for compulsory acquisition, an adaptation to the ideology of market economy. This is, in many ways, akin to the primitive accumulation as carried out earlier rather than capitalist transformation and suggests freeing the peasantry as against the bondage of the peasant class to the land.

Ray of Hope

Having said this, Section 3(za) of the 2013 Act—the consent of at least 80% of the project-affected people shall be obtained through a prior informed process to be prescribed by the appropriate government—is what keeps a window of hope open against dispossession of farmlands. This provision was sought to be scrapped by the present regime by amending the act through ordinances, not once but many times, but dropped in the end. That the provision could not be removed is indeed a ray of hope as it suggests people can force a reversal of the consensus across the political spectrum. Niyamgiri in Odisha and more recently Bhatta Parsaul in Uttar Pradesh are illustrations of this.

These, however, were mere flashes. Elsewhere, the resistance has rested

upon initiatives by localised groups outside the mainstream political spectrum. Such resistance movements, carried out by localised leadership, are vulnerable to being suppressed by the state invoking the nation and national security, with a former Prime Minister describing such movements as the nation's biggest threat. However, the state will not respond this way where the movements are led by leaders from the mainstream political parties. Is this something that one can envisage in the future?

NOTES

1 It may be stressed here that Mamata Banerjee, and her party, is as committed to the neo-liberal agenda in its essence notwithstanding her government passing the Singur Land Rehabilitation and Development Act, 2011 within a month of coming to power in May 2011. This law, which provides for taking over the land vested with Tata Motors Limited (TML) by the government and returning that to the land-losers, was challenged before the Calcutta High Court by TML. It lost the case before the single-judge bench of the Calcutta High Court (in September 2011) and then won a partial victory in its appeal before a division bench (in June 2012). The law's constitutional validity is now pending before the Supreme Court. The apex court de-tagged the appeal from the instant case in May 2016 and the 31 August judgment was restricted to determining the validity of the acquisition of land and connected matters alone. It may be surmised, in the context of the August 31 order, that the case involving the constitutional validity of the 2011 Act, may be declared as infructuous as the core issue of returning the land to the land-losers is settled in their favour.

2 Some of these have been discussed in elaborate details in a perceptive essay by Kenneth Bo Nielson (2009) from an anthropological perspective. Though written many years before the 31 August judgment, the essay seems to address a host of issues involving the quagmire of the legal structure, the nexus between the executive and the judiciary (in this instance the Left Front government and the Calcutta High Court leading to the petitions by the land-losers being dismissed in the Calcutta High Court and the persisting hopes among the petitioners of justice in the Supreme Court located far too away from the citadel of the state government).

3 It is significant in this context that TML happened to be the only party that defended the Singur acquisition process in the Supreme Court in this case; the counsel for the Government of West Bengal also argued that the proceedings were vitiated. Interestingly, TML was represented by Abhishek Manu Singhvi, who holds an important position in the Congress party that celebrated the decision. It may be argued that this has to do with the "ethics" of the legal profession and that it is imperative for the Congress party to delve into such conflicts.

4 The legislative history of the 1894 Act was essentially rooted in the principle of Eminent Domain and the context of it surviving the constitutional scheme wherein the right to property was accorded the status of a fundamental right under Article 31. Speaking in the Assembly on 10 September 1949, Jawaharlal Nehru explained this by underscoring the two distinct approaches to property; the individual right to property and the community's interest in that property or the community's right. Nehru added that Article 24 (which became Article 31 in the Constitution as adopted on 26 November 1949), was drafted in a manner that internalised the conflicting interests. See Constituent Assembly Debates, Volume IX, Book 4, pp 1194–98.

5 I have dealt with this extensively elsewhere. See V Krishna Ananth (2015).

6 Speaking for the bench (consisting of Justices P B Gajendragadkar, K C Das Gupta and himself), Justice K N Wanchoo held that under the Land Acquisition Act, 1894, enquiry under Section 5A was a necessary condition for compulsory acquisition of land; and that exception under Section 17 (1)or 17 (4) were applicable only in case of waste or arable land where there were no buildings as such. (*Nandeshwar Prasad and Others vs Government of Uttar Pradesh* 1964, para 11)

7 In *Union of India v Mukesh Hans* (2004), Justice N Santosh Hegde, speaking for his brother judges in the bench (Justices Ashok Bhan and A K Mathur) quashed acquisition of farmlands by the Delhi administration (in Mehrauli village) resorting to provisions under Section 17(1) of the 1894 Act denying the landowners the opportunity to object to such acquisition under Section 5A of the Act.

8 The Supreme Court held acquisition of farmlands in the guise of public purpose in Noida in three successive cases between March and July 2011. These were: *Dev Sharan and Others v State of Uttar Pradesh and Others* (2011), *Radhey Shyam v State of Uttar Pradesh* (2011) and *Greater Noida Industrial Authority v Devendra Kumar and Others* (2011).

9 That agricultural land, once ravaged by cement and asphalt is unsuited to farming is an argument that many have raised, from what they hold as rational and ethical arguments against the Singur Act, 2011. There is substance in this and hence could be the basis for an argument against such forced acquisition of land even in the wake of a semblance of resistance. It can also lend to an argument that conversion of agricultural land for industrial purposes and the ravaging acts shall be put on hold until all disputes are resolved.

10 It may be stressed here that even while the two judges—Justice V Gopala Gowda and Justice Arun Mishra—came up with a common order, they differed with each other on the crucial issue of whether the acquisition of land served a "public purpose" or as to whether it was for a company; and based on this, whether the proceedings were vitiated as acquisition for a company warranted a separate procedure as laid out by Part VII of the 1894 Act and this was not followed. Justice Gowda's decision to strike down the proceedings was based on his reading that the ingredients for "public purpose" were not met and hence it warranted procedures as laid down in Part VII; Justice Mishra, however, held that the proceedings did conform to "public purpose" as required in the law but were vitiated because the notice under Section 4 (1) of the 1894 Act was faulty and also on grounds that the enquiry under Section 5A was prejudiced and hence the proceedings were bad in law.

11 After paraphrasing the various arguments by the counsels in the course of the hearing, he says: "Section 3(f) of the L.A. Act, which defines what public purpose is for the purpose of acquisition of land, clearly indicates that the acquisition of land for companies is not covered within the public purpose. It is in light of this statutory scheme under the provisions of the L.A. Act that it becomes crucial to examine whether the lands in question were acquired for a public purpose or was it acquired by the State Government for a company (TML) in the instant case. See *Kedar Nath Yadav v State of West Bengal and Others* (2016), paragraph 52 of Justice Gowda's judgment.

12 See Paragraph 56 of Justice Gowda's judgment in *Kedar Nath Yadav v State of West Bengal and Others* (2016).

13 *Kedar Nath Yadav v State of West Bengal and Others* (2016).

14 Justice Arun Mishra, in fact, did not find the acquisition bad in law on the same grounds as did Justice Gowda. In his view, the acquisition was in accordance with the definition of "public purpose" as in Section 3(f) of the 1894 Act.

15 The learned judge adds: "Section 4(1) does not require land to be defined or identified but requires locality to be stated so as to file objection under section 5 of the Act. In the instant case the Cabinet has taken a decision to acquire the said land beforehand for which a notification has ultimately been issued under sections 4 followed by declaration under Section 6 of the Act." (*Kedar Nath Yadav and Others v State of West Bengal and Others* 2016, para 32 of Justice Mishra's judgment.)

16 The earliest instance in this regard was when a constitution bench overruled the A K Gopalan decision (AIR 1950 SC 27) in the Bank Nationalisation case (AIR 1970 SC 564) and subsequently in the Maneka Gandhi case (AIR 1978 SC 597) and most substantially in the Olga Tellis case (AIR 1986 SC 597). It may also be noted that the majority decision in the Kesavananda Bharati case (AIR 1973 SC 1461) derived itself on the principle of the due process of law and it was possible only because the judges in the case did not shy away from engaging with the political thicket.

17 *Kedar Nath Yadav v State of West Bengal and Others* (2016), para 13 of Justice Mishra's judgment. Justice Iyer held this way in *State of Karnataka v Ranganatha Reddy* (1977), para 57.

18 Singur and Nandigram, indeed, marked a break in the CPI(M) from its own past, one that was marked by an egalitarian agenda involving the vesting of agricultural land and its redistribution, drawing from the legacy of such struggles as the Tebhaga movement and culminating in "Operation Barga." Notwithstanding the shortcomings, Operation Barga was among the substantive land reforms measures in independent India and helped the party stay on in power for such a long time. A shift away from such commitment had begun in the early 1980s itself but was accentuated after the party returned to power in 2006 under Buddhadeb Bhattacharya's leadership. It may be noted that by this time, the CPI(M) was steered by Prakash Karat.

19 Marx delves deep into this in Part VIII of this work, first published in German in 1867. The English translation first appeared in 1886, three years after Karl Marx's death in 1883.

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