

Chapter 2

2.0 Eminent Domain – Historical Perspective

2.1 Genealogies of Property

Journey to individual ownership of property in the early societies was quite complex and it varied widely across the world. Evolution of individual ownership and establishing the sovereign's right over the land has to come in before the conflict on expropriation can set in. The concept of land becoming a private property did not come at the first stage of development. In most places it started with a communal ownership, and in some it remained with the kings. In China the land belonged to the King and the peasantry had the user rights though some sort of inheritance existed. During Inka civilization in Peru the land was allocated to the sun-god, king-Inca and other people and was reviewed every year. (Allen S. H., *The Evolution of governments and laws* , 1916). In the Aristotle's Ideal State, some part of the land was privately owned. Each citizen had two allotments: one near the urban center, the other near the outskirts of the territory. The rest was held in common, and the produce of this land was used to support common means and religious sacrifices. It is difficult to know exactly when and how the transfer of ownership to individual level started. There are many theories; many propositions. Some of them are discussed below.

Locke's story involves individuals satisfying their needs out of the common largesse. With prosperity, however, comes inequality in the possession of property, which in Locke's proposition the institution of government is to protect (Locke, 1988). David Hume assumes equilibrium has been reached after fighting over resources, to gain the most in the distribution of *de facto* possession by force, cunning, and luck. (Hume, 1978).

In India the concept of ownership of land can be traced to Manu Smriti where it stated (ch.9, rule44) “a field to belong to him who (had) cleared the timber”. Manu used the analogy of ownership of a killed deer to justify his view: “the killed deer to belong to him who first wounded it” (Buhler, 2011). Similar laws were framed in the ancient Rome, where in “Res nullius” or “occupation”, it was mentioned that free land could be owned

by any person who first took possession of the said property (Agarwal, 1993). In China, the State was the only legal owner of all the landed property in the past (Wen-hien-t'ung-kao, 2011). In China as it was in Inca civilizations the allocations were reviewed every year by the king.

In ancient Greece, Aristotle prescribed that there should be private ownership but with a provision that one portion of the land be held in common, and that the nearest possible equivalence of ownership be achieved (Lianos, 2011) (Geschichte, 1963). In Egypt there were evidences of private ownership of land (termed “Nemehew”) under the sovereign authority of the Pharaoh. (Allen J. P., 2004) (The Heqanakht Papyri , 2004). In the Sumerian land laws, pastures were common lands. Villagers owned the cultivable lands, fields, gardens and plantations (Johns C. H., 2004). In Old Testament God’s covenant with Israelite in the Leviticus 25 stated that God owned the land and the Israelites were tenants (Deffinbaugh, 2011). However, user right to property was accepted in the Deuteronomy 2.1-25 (Brodie, 2004).

One thing is common in the above ownership models is that the allodial title of land was not a common practice even in the early societies. The political power (in some cases religious authority) always had some sort of sovereign authority over land. Modus operandi varied. This was evidenced through the king’s authority to change the holdings, fix the tax, change the tax rates every year (early Egyptian dynasties) or could offer special tax rebates in case the land was developed for cultivation or new ponds dug or improved to facilitate water supply (in India) (Project South Asia, 2009).

2.1.1 Tracing the history of Land Acquisition

In spite of varying degrees of authority on the land enjoyed by the king or the clergy, there were great problems in acquiring land from the owner/user. In Babylon during the reign of Cyrus, the priest of Sippara “had to take consent of the owners so that they would raise no difficulty...” when he took up construction of a canal of Shamash (Johns C. H., 2004).

In Egypt land was acquired to build a new capital city- Tell-Amarna during the reign of King Akhenaten (1347 and 1332 BC). No compensation was paid while expropriating the land to build the city, since the king felt that the land “not being the property of any people to lay claim to it...” (http://www.amarnaproject.com/pages/amarna_the_place/ , 2010). But the sermon could not hide the king’s concern of “any people to lay claim”.

Violent conflicts were also reported in the mythologies. During the mythological era of Mahabharata a large forest area was burnt down along with their inhabitants to acquire land for the new capital of the *Pandavas* later named *Indraprastha*. As Chakravarti Rajagopalachari noted in his Mahabharata “Krishna and Arjuna resolved to set fire to the forest and construct a new city in its place” (Rajagopalachari, p. 40). In the Old Testament, King Ahab of Samaria wanted a vine yard from Nabath, a subject, to be a part of his garden since it was close to his house. He offered land for land in exchange. When Nabath refused, he was stoned to death and the king acquired the land.

2.1.2 History of paying just compensation

During the early Sumerian civilization, Manistusu, the King of Kish, when he sought to acquire land to build a city for his son Mesilim, he had to pay a price which appeared to be the average selling price of the land in adjoining locality. As he said “I gave money for the pieces of land; according to the contracts in silver and bronze, to their owners to do no injustice, and to those who would not take money, a field for field, where they preferred, I gave.” (Johns C. H., 2004). This was, probably the first recorded account of compensation for land acquisition. In India Shah Jahan offered the “land for land” compensation to Raja Jai Singh for vacating his garden so that Shah Jahan could build his wife’s memorial, Taj Mahal. Jai Singh accepted the offer and moved. (Badshahnama, TAJ MAHAL, A Temple Converted Into A Mausoleum)

In spite of such a long history of eminent domain conflict and its resolutions, the conflicts over sovereign’s attempt to acquire land from its owners continue, lives are lost, scores injured.

2.1.3 Modern age disputes over Land Acquisition

The days of the Kings as paramount authority of all land are no more and the States have taken up the role unto themselves. In the modern states, people's representatives have made laws articulating the ownership of land and the state's right. Almost every state in the world today permits the government to take private property for public use, paying "just compensation". But this has hardly reduced the conflict between the land losers and the states. There were massive farmer's protest against the government in China over expropriations. (Guangzhong Cao et al, 2008). Six villagers died, and scores were wounded in the ill-famous Dingzhou case in June 2005, which bears testimony of China's growing list of farmer protests. Despite the bloodshed, the villagers remained defiant and held onto to the disputed land (Guang, 2010). Farmers protests claimed 14 lives in India while farmers fought with the administration to stop acquisition of their land for a SEZ project in Nandigram, near Kolkata (Ramchandran S, 2012). In Vietnam, state's ambitious project of Industrialization, known as Manor Project near Hanoi got stuck for more than 2 years. Government used police force to evict the remaining (about 30%) land owners who refused to accept compensation and move out on the government terms (Sun Sheng Han et al, 2008). From Exxon Mobil's Cepu Block in Indonesia to Church's lands in Johannesburg in South Africa, the conflict continues. It is not the developing economies alone, which are facing the social tension while transferring private land for "public use" or for "public purpose", developed economies, are equally facing strong discontents in expropriating land for "public purpose". Evictees are on the war path everywhere. Whether it is Japan's Narita Airport (Japanese Ministry of Land, Infrastructure, Transport and Tourism, 2012) or acquisition of land for London Olympics - protests continue (The Telegraph , 2006).