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DOCTRINE OF EMINENT DOMAIN



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EVOLUTION

The doctrine of eminent domain is originated from the western countries and was followed in India. The word eminent domain is derived from the Latin term 'Eminenes Dominium' which was introduced in the 17th century.

MEANING

Eminent domain is the right of the Central or State Government to acquire private property for public purpose. It is the absolute power over the land within its territory. In India, the Constitution guarantees the citizens the right to acquire, hold and dispose of property which is also a fundamental right of the citizens in the country. Eminent Domain means the government deprives the individual property for the interest of the general public. The authority on the acquisition of land must pay the compensation from whom the land has been acquired. The compensation must be paid by the appropriate government for the land acquired for any public purpose and should not be just compensation.

Eminent domain is governed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) Act, 2013. The act provides the procedure to be followed by the State Government to make the land acquisition constitutionally valid.

MAXIMS RELIED ON EMINENT DOMAIN

- 1) Salus Populi Supreme Les Esto
 - The welfare of the people is the paramount law.
- 2) Necessita Public Major Est Quan
 - The public necessity is greater than the private necessity.



ARTICLE 300-A AND DOCTRINE OF EMINENT DOMAIN

Article 300-A of the Constitution merely says that no person shall be deprived of his property save by authority of law. This right of the individual is curtailed abridged or modified by the State only by exercising its legislative power.

CONDITIONS

- The authority which has enacted the law must be competent to do so.
- The right exercised by the authority must not infringe the fundamental right guaranteed under Part III of the Constitution.
- It must not violate any other provision of the Constitution.

PUBLIC PURPOSE

The Act provides that land can be acquired only by the appropriate government for the benefit of the public. The public purpose has been dealt with in the Law Commission of India to bring the public purpose in the Land Acquisition Act.

COMPENSATION

The compensation shall be granted on the acquisition of land as per the market value of the land determined by the Collector. The Collector shall determine the market value of the land by considering the,

- Market value of the land
- The average sale price for a similar type of land situated in the nearest area or village
- Consented Compensation amount agreed.



CASE LAWS

Case 1

State Of W.B. v. Union Of India, 1963 AIR SC 1241.

Held - This case, therefore, proceeded on a different basis altogether, namely, that the entire territory was directly under the Federal Government and that the Federal Government could exercise its power of eminent domain in respect of that territory.

Case 2

Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai And Others, 2005 SCC 7 627.

Held - Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.

Case 3

State Of Bihar And Others v. Project Uchcha Vidya, Sikshak Sangh And Others, 2006 SCC 2 545.

Held - The word "takeover" would mean that the Government had thought of taking over of the properties and assets of the schools together with the teaching and non-teaching staff. Takeover of schools in the context of the policy decision of the State does not appear to be an expression of an intendment for complete takeover of the management of the school. In the former sense takeover of such schools would be violative of Article 300-A of the Constitution. Article 300-A embodies the "doctrine of eminent domain" which comprises two parts, (i) acquisition of property in public interest; and (ii) payment of reasonable compensation therefore.



Case 4

Daulat Singh Surana And Others v. First Land Acquisition Collector And Others, 2007 SCC 1 641.

Held - The power of compulsory acquisition as described by the term "eminent domain" can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or public at large. The concept of "eminent domain" is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.

Case 5

Sooraram Pratap Reddy v. Collector, 2008 SCC 9 552.

Held - Development of infrastructure is legal and legitimate "public purpose" for exercising power of eminent domain. Simply because a company has been chosen for fulfilment of such public purpose does not mean that the larger public interest has been sacrificed, ignored or disregarded. It will also not make exercise of power bad, mala fide or for collateral purpose vitiating the proceedings.

Case 6

K.T Plantation Private Limited And Another v. State Of Karnataka, 2011 SCC 9 1.

Held - The rule of law as a principle contains no explicit substantive component like eminent domain but has many shades and colours. Violation of principle of natural justice may undermine the rule of law resulting in arbitrariness, unreasonableness, etc., but such violations may not undermine the rule of law so as to invalidate a statute. Violation must be of such a serious nature which undermines the very basic structure of our Constitution and our democratic principles. But once the court finds, a statute undermines the rule of law which has the status of a constitutional principle like the basic structure, the above grounds are also available and not vice versa.



Case 7

T.Chakrapani v. Union Of India, 2011 MLJ 7 858.

Held - The jurisdiction of the Government under the doctrine of "eminent domain" is based on two Latin maxims.

- i) *Isulus populi supremaest* (the regard for public welfare is highest law)
- ii) *Necessitis publica majorest quam private* (Public necessity is greater than private necessity)

The contention, therefore, is that in absence of a public purpose, no law can be enacted, to acquire the land of a private person. The contention is based on the ground, that public purpose has not been defined in the Act.

Case 8

Laxman Lal (Dead) Through Lrs. And Another v. State Of Rajasthan And Others, 2013 SCC 3 764.

Held - Eminent domain is the right or power of a sovereign State to appropriate the private property within the territorial sovereignty to public uses or purposes. It is an attribute of sovereignty and essential to the sovereign government. The power of eminent domain, being inherent in the Government, is exercisable in the public interest, general welfare and for public purpose. The sovereign is entitled to reassert its dominion over any portion of the soil of the State, including private property without its owner's consent provided that such assertion is on account of public exigency and for public good.

Case 9

Kedar Nath Yadav v. State Of West Bengal And Others, 2016 SCC ONLINE SC 885.

Held - The Court also recognised that such instrumentality of the State would have the power of eminent domain. Like the present case, the Court held the Project to be an integrated and indivisible project. We have no doubt that in the present case also, the Expressway as well as the five parcels which are to be developed are part of an integrated and indivisible project.



Case 10

Sudharsan Charitable Trust V. Government of Tamilnadu, 2018 SCC ONLINE MAD 847.

Held - The relevance of the concept 'eminent domain' in the matters of land acquisition. The law is well settled that eminent domain is an essential attribute of sovereignty of every State and, in the exercise of its eminent domain power, the State may take any property from the owner and may appropriate it for public purposes on payment of compensation, as otherwise, no beneficial project involving larger public interest/public utility would come into existence. Hence, the contention that the petitioners cannot be deprived of the property by exercising the power of eminent domain has to be repelled.

DISCLAIMER

This write up has been sent to you for information purposes only and is intended merely to highlight legal maxim. The information and/or observations contained in this issue do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this issue do not necessarily constitute the final opinion of M/s.Wallcliffs Law Firm and should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us on mail@wallcliffs.com.



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