THE TRAVAILS OF LAND USE PLANNING:
COMPENSATION AND URBANIZATION

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I. INTRODUCTION

Among the general forms of social change, urbanization is one of the most unplanned. Urbanization simply happens when certain components in the social infrastructure are present. The containment of the many consequences, good or bad, becomes the task of planning. The jurist as an important member of the community elite is certainly, of necessity, involved in this containment or, more generally, the planning process. Before, however, he can fulfil adequately his role in this process he has the somewhat disconcerting task of ascertaining not only the aspects of legal ordering directly related to urbanization but also of studying the reciprocal impact of law on urbanization and of urbanization on law.

Since the task has to begin somewhere, I have ventured in this paper to look at some aspects of property relations affected by, and in turn

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1. But see Reissman, The Urban Process esp. 169-94 (1964). Reissman there considers urbanization "as a name for the whole process of social change," as well as one of the "four components of that process." He does not think that urbanization refers to "simply an automatic consequence of the other three components" which are: (i) industrialization, (ii) the emergence of a middle class, and (iii) the rise of nationalism.

We do not deny here that "there is a continuous interaction," among all the four components but would regard urbanization, at least in the initial stages, as a function of three components listed by Reissman, and perhaps of many more. We would rather say, employing Robert Merton's superb analysis, that urbanization is a latent function of the factors described by Reissman as "components." See, for the heretically fruitful dichotomy between "manifest" and "latent" functions, Merton, Social Theory and Social Structure 19-84 (2nd Rev. and Enlarged Edn. 1957).

2. A major part of urban planning aims at ameliorating the dysfunctional effects of urbanization. The time is past (or so one would hope) where the process of urbanization was considered to be an evil, even if a necessary one.

Again, only in Utopia all the consequences of urbanization can be remedied by planning relocations of concerned communities, though this does not mean that imaginative planning of our cities, over a long period of the time, will not bring us closer to the cherished patterns of urban growth.

3. This enterprise as a whole will require a sustained multi-disciplinary effort. On the side of urbanization perhaps a special theory of urban growth needs to be

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affecting land use planning, in the obvious belief that the containment of the consequences of urbanization is fatedly related to the past, present, and future patterns of property relations in India. I, of course, examine merely a few segments of the problem and that too not in a wholly satisfying manner. Most of the ideas in this paper are in a quest of cogent rebuttal, and do not appear in any sense in their final guise.

We will then proceed *ad de melieux* with a discussion of two major aspects of land acquisition: (i) the nexus between “public purpose” and compensation; and (ii) some rationales, with their consequences, of governmental action under the Land Acquisition Act, as now amended.

II. FROM PUBLIC PURPOSE TO COMPENSATION

Under the Land Acquisition Act, as it now stands, the question whether a proposed acquisition is for a “public purpose” is not justiciable in the sense that the section 6 makes the declaration a “conclusive evidence,” of the public purpose. This has often been regarded as anomalous since under article 31 (2), even though the judicial decisions legitimate almost all legislative determinations of what constitutes a public purpose, the courts can be invited to examine “public purpose” as one of the conditions of valid governmental action.

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adopted. For an illuminating discussion see Reissman, supra note 1. In the
Indian context, see the valuable studies in Turner, India’s Urban Future (1962)
(Anchor Books, 1964). For a sociological analysis exploring the tendency
in India towards “atomisation of social studies,” see the thought-provoking
essay by Pocock, “Sociologies—Urban and Rural,” IV Contributions to Indian
Sociology 63 (1960). For a recent exposition, on the jurisprudential side, of
some aspects of the interaction between urbanization and law, see Julius Stone,

4. See § 6(3) the Act, reproduced in the Appendix infra at 171 The Land Acquisition
Act, 1894, will hereinafter be referred to simply as “the Act.”

5. Under Articles 31(2) of the Indian constitution acquisition or requisitioning
of property must meet two tests: it must be for a “public purpose” and compen-
sation must be provided for the property taken, even though the adequacy of
the compensation is no longer justiciable. The courts have of course inter-
preted Concept of “Public Purpose” in Article 31(2) of the Constitution of
India, 1950.

It must be noted that despite of asserted “non-justiciable” of public pur-
pose under section 6 of the Land Acquisition Act (see infra note 6) courts may
acquire and can insist that it be a “public” and not a “private” one. In State
of Bombay v. R. S. Nand, A.I.R. 1965 S.C. 291, the Supreme Court further enun-
ciated an additional test of public purpose, namely, that acquisition or compensation
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In Somavanti v. State of Punjab, presenting a complicated fact
situation, the two main issues were that the acquisition proceedings against
the lands of the petitioners were void as acquisition for another company was
not for a “public purpose” generally under the Act nor in contemplates in section 41
of the Act and that a token contribution of Rs. 100/- from governmental resources out
of an estimated compensation of Rs. 4,00,000/- did not satisfy the requirements of section 6,
proviso 2. As we will see, the declared conclusiveness of “public purpose” became related to the issue of compensation in this case.

A main argument in this case by the petitioners was that

... there could be no acquisition for a public purpose unless the Govern-
ment had made a contribution for the acquisition at public expense.

The declaration of the award of Rs. 100/-, made long after the declaration
under section 6 (1) of the Act and in fact a day prior to the commence-
ment of the writ proceedings, and even then omitting to mention as
required, the extent (i.e. whether whole or part) of the Government’s
contribution towards the acquisition for the company, was impugned here as
having so minimal a relationship towards the total amount of the
compensation as to betray a total lack of a public purpose. We need not
rehearse here the niceties of the expression “wholly or partly out of public
revenue” used in the second proviso to section 6 (1) of the Act.

Suffice

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must be for a purpose of a purpose in which “the general interest of the com-

munity” is “directly and vitally concerned.” (at 297. Emphasis added). See also
the cases there discussed. In appropriate situations, it is not impossible for the
courts to extend this very test to the declared finality of public purpose under
section 6 declarations. And of course when the exercise of power is “colourable”
or *mala fide* courts could negate the conclusiveness of the “public purpose,”
though admittedly this will not happen too often. See, generally, Failibiri
Mulljibiri Sonjib v. State of Bombay A.I.R. 1963 S.C. 1890; also see the catego-
rical observations of Mr. Justice Wanchoo (as he then was) in State of West


7. Section 40 gives an inclusive definition of “public purpose” and section 41
supplements, more or less, this definition. See, for recent developments, A. L.
of an Ordinance followed by the Amendment Act of 1962, R.L. Aurora v. State

The land in the present case was earmarked for a refrigeration complex to be
operated by a company. Ordinarily when the land is acquired for a company,
and the entire compensation is paid by it, provisions of Part VII of the Act
would come in operation.

8. See Appendix § 5, 11nd proviso.

9. Somavanti at 166.

10. The expression meaning of the term “part,” See the interesting thesis in
the dissenting opinion of Mr. Justice Subba Rao that “part” does not mean
“particle” and must, therefore, mean a “substantial part.” Somavanti 172-74.
it to note, that the Somawanti majority11 while acknowledging the fact that the state Governments have been acquiring private properties all over the country by contributing only token amounts towards the cost of acquisition12 and that titles to many such properties would be unsettled if we were now to take the view that 'partially at public expense' means substantially at public expense13.

Still clearly reserved its power to judge each situation individually. Mr. Justice Mudholkar categorically observed:

"We should, however, guard ourselves against being understood to say that a token compensation by the State towards the cost of acquisition would be sufficient compliance with the law in each and every case. Indeed the fact that the State's contribution is nominal may well indicate in particular circumstances, that the action of the State was a colourable exercise of its power."

Perhaps, the only factor provoking Mr. Justice Subba Rao's dissent in this case was the majority's refusal to identify the 'partly' of governmental resources as meaning 'substantial part.' Mr. Justice Subba Rao felt that the 'underlying purpose' of the Act is to provide a safeguard against abuse of power. A substantial contribution from public coffers is ordinarily a guarantee that the acquisition is for a public purpose.15

Although the majority legitimates Rs. 100/- as the State's contribution in Somawanti, over Mr. Justice Subba Rao's protests as to the inadequacy of that amount, in the basic approach the decision seems to be unanimous. This approach is that generally public purpose, even when property declared under the Act will be betrayed if no compensation is paid by the State.16 The magnitude of the part of compensation thus payable may vary in different decisional situations. While the Somawanti majority is reluctant to lay down a rule of thumb, the minority is desirous of insinuating the requirement that a substantial part of the compensation should emanate from governmental resources. The majority refusal to accept an a priori standard can scarcely mean that this is for all cases a standard the court will never adopt. It only means that it will be applied as a decisional technique when the courts feel that the decisional situation calls for it. In other words, the Somawanti majority substitutes "sometimes" for the minority's "always."17

If this reading of Somawanti can be sustained, it can be imaginatively employed so as to have some feedback effects on article 31(2) whose requirements for a 'public purpose' and some compensation are analogous (indeed to the point of being identical) to those of the Act. No doubt in the constitutional context we miss a clear provision, to be found in the Act, stipulating that part of the compensation for acquisition should come from governmental resources. But this provision is due to the peculiar setting of the Act, where under its section 6 two kinds of declarations are contemplated, one where the land is to be acquired for a company and the other where it is acquired for a public purpose.18 Evidently, the compensation to be paid for governmental action under Article 31(2) will come from governmental resources, so that the need for a parallel phraseology abates.

It can then be said that even when the adequacy of compensation under Article 31(2) is not subject to judicial determination, it significantly enters in the decisional processes as a factor for evaluation of the character of a given public purpose. Starting from one end of the spectrum of situations, it can be held (as has been with regard to schemes of agrarian reform legislation construing the term in its "widest ambit"19) that the character of public purpose involved is so overriding as to altogether permit no compensation. On the other end of the spectrum, however, may lie situations where some, even substantial, compensation is demanded by the character of the given public purpose.20 Where governmental action is of a kind that can appropriately be taken under the Act, very little justification exists for its adoption under article 31(2). It is submitted that

11. Comprising of Mudholkar J., B. P. Sinha C. J., Rajgopal Ayyangar and Venkataraman Aiyar JJ., Mr. Justice Madhokar delivered the judgment in the case.
13. Ibid.
14. Ibid.
15. Somawanti 172.
17. We must here recall the observations of Mr. Justice Wanchao in the above case (supra note 16) to the effect that the dichotomy between acquisitions for 'public purpose' and for a 'a company' is not a "complete" one. Section 6 declaration could also cover situations where the acquisition is for a company any yet declared to be for public purpose, and part of the compensation is being paid out of state resources. So we have a trichotomy rather than an incomplete dichotomy.
19. This would be the case with most purposes under the Land Acquisition Act.
most measures of urban planning would fall under this category.\textsuperscript{20} In the remaining points of the spectrum will lie other situations, perhaps of infrequent occurrence, wherein it will be more difficult to characterize the nature of the public purpose and its nexus to compensation. These may be situations where the “police power” is exercised by the State\textsuperscript{20a} or where the Union or a State is anxious to avoid action under the Act but prefers instead to act on the authority of article 31(2).\textsuperscript{21}

It is ultimately the nexus between “public purpose” and “compensation” that contains the quintessence of the limits of the State’s eminent domain powers. The judicial severance of this nexus in cases under article 31(2) has unfortunately resulted in an over-emphasis on the idea of “just compensation” and the extremely liberal construction of “public purpose,” as an issue in itself, has further aggravated the situation. One dismaying aspect of this severance is certainly the theoretical inability of the protagonists of just compensation, including some judges, to justify their own demands in a coherent manner. The frequent accusation that these men do not comprehend the need for “socio-economic” reform above all else, though incredibly naive, carries the day for this very reason. A part of the problem is not so much the quantum, and consequently the principles giving rise to it, of the compensation, but the social utility of acquisition, manifest in the declared public purpose. It is only when you restore the nexus between the character of public purpose and the idea of just compensation, that you can accommodate fruitfully the tensions inherent in the exercise of the power of the State and the property right of the individual.

20. Thus for example measures pertaining to slum clearance or relieving housing congestion are more appropriate under the Act than under Article 31(2). In fact, this is how they are normally adopted. The Supreme Court, therefore, has been well justified in ignoring one of the many purposes of the fourth amendment (to the Constitution namely, the clearance of slum areas, in its interpretation of article 31(1)(a) and in solely confining (see supra note 18) its operation to agrarian reform legislation. See generally Vajarelu v. Sp. Dy. Collector A. I. R. 1965 S. C. 1017. No doubt in terms of strict law the argument that there in nothing in the text of the Constitution to warrant a limitation of the operation of Article 31(1)(d) to agrarian reform may look attractive. See A. Sethavond, “Article 31A(1)(d) and the Supreme Court,” 1965 BOM. L. REP. (Journal Section) 105 and R. Nayak “The Right to Property: A New Perspective,” 8 J. I. L. L. 262 (1966). But see for an indication of problems implicit in an advocacy for the judicial abdication of its powers of supervision over non-development tasks, Baxi, supra note 18.


21. Note that the action under this provision is confined only to “promotion of public health” and “prevention of danger to life or property.” The concept of “police power,” even when acceptable to the Indian judiciary, will therefore have to be severely limited to these two types of situations.

21a. That is when it is desired to escape the onerous ceiling of compensation under the Act.

It might immediately be urged against this approach that it exposes public purpose to greater judicial review and further that it departs substantially not merely from the decisional law pattern in India but generally from the common law jurisprudence.

As to the latter consideration we must be wary of holding out patterns of judicial self-restraint derived from the judicial tradition of the Western, and for more affluent, countries. The legislatures there are not, at least in recent times, as agonized by the need to minimize the burdens on state resources as their counterparts in India. In any case, the judiciary can hope for legislative standards of compensation, resulting in, if not ideally, substantially just compensation. Hence, the corresponding diminution in the Western orbit of judicial scrutiny of public purpose and the quiescent acceptance of the legislative determinations of the standard, however partial, of just compensation.

22. See the cases cited by Narain, supra note 8.

23. The outer limits of a public purpose should be a first, a “purpose” and second, “public” (in some sense of that term, see supra note 8) are indeed too moderate. A more vigorous application of the “direct and vital relationship test” is required. The reasoning of the type to be found in State of Bombay v. R. S. Nanji A. I. R. 1956 S. C. 295 overruling a Bombay High Court decision which invalidated a requisition order for the housing of a State Road Transport Corporation official is typical of the general judicial approach (though of course that case was not directly under Article 31(2)). See for other examples 2 Basu, Commentary on the Constitution of India 217-19 (1965).
or the quantum, of just compensation. Hence also the need in India for judicial policy-making to approach as far as possible the "compensation" issue via public purpose.

And finally with regard to the greater subjection to judicial scrutiny of "public purpose," nothing much need be said save that alarms of a large-scale invalidation of "public purpose" may remain quite unfounded. There is already a body of principles which almost amounts to a presumption of the constitutional validity of legislatively determined public purpose. It is only in situations where public purpose is found inimical on a stricter scrutiny that adverse results may ensue. The benefits, however, of a genuine (as distinct from rhetorical) appreciation of the underlying rationales of "public purpose" leading to a moderation on the compensation issue, certainly seem to outweigh the drawbacks. And above all there is in all this a heartening prospect of enhancing the doing of justice to individuals affected by the exercise of state's acquisitory powers.

III. "COMPLETE PLAN" AND "FAIRNESS": TOWARDS A THEORY OF ACQUISITION

What rationales do the provisions of the Land Acquisition Act require to sustain governmental action? This question was perceptively answered in State of M. P. v. Vishnu Prasad. In that case lands in eleven villages were declared as likely to be needed for a "public purpose" (namely, the erection of an iron and steel plant). Section 4 (1) notifications were issued on 16 May 1949. Successive declarations under section 6 were issued with respect to lands in a village named Chawani till the year 1956. Yet another declaration followed with respect to more land in that village on 12 August 1960. This was impugned as void on the plea, inter alia, that the 1949 notification had exhausted its effect, and that in any case successive declarations cannot be issued under one and the same notification.

A unanimous court held that the notification under section 4 (1) of the Act exhausts itself when a declaration is made under section 6 of the Act and that there was nothing in the Act to suggest that successive declarations can be made under the latter section in relation to a locality notified under section 4 (1). In the words of Mr. Justice Wanchoo (as he then was):

There is nothing in ss. 4, 5A, and 6 to suggest that S. 4 (1) is a kind of reservoir from which the government may, from time to time, draw out land and make declarations with respect to it successively.

On this basis, the learned Judge held:

... When once a declaration under section 6 particularising the area out of the area of the locality specified in the notification under section 4 (1) is issued, the remaining non-particularised area stands automatically released.

In arriving at this conclusion Mr. Justice Wanchoo emphasized three contextual features of the situation. First, he noted, was the fact that in an important sense notification under section 4 (1) "freezes" the ceiling of compensation. The market value of the land has to be determined with reference to the date of the notification. Second, and intimately related, is that even when compensation is thus paid for the land acquired, the salient fact remains that the "land is acquired without the consent of the owner." Since this is so, the salutary principle of the "strict construction of the statute" needs to be invoked. And third, and as important, in interpreting the provisions of the Act, the Court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent.

Thus the Court was unable (and rightly so) to appreciate the government contention that in cases of small projects, it can "make up its mind once and for all what land it needs," but that where a large area of land is involved, it "may not be able to make up its mind all at once." Mr. Justice Wanchoo felt that the procedure suggested by the Court (i.e., issuance of fresh notifications under Section 4(1) rather than of successive declarations under Section 6 (1) with regard to the same notification under Sec. 4 (1))

would... be fair to all concerned; it will be fair to government where the prices have fallen and it will be fair to those whose land is being acquired where the prices have risen.


26. Mr. Justice Wanchoo, with Mr. Justice Mudholkar concurring, delivered the judgment. Mr. Justice Sarkar concurred in a separate opinion.

27. Vishnu Prasad at 1600.

28. Ibid.

29. Vishnu Prasad at 1598.

30. Ibid.

31. Ibid.

32. Vishnu Prasad at 1600.

33. Ibid (Emphasis added).
Mr. Justice Sarkar dealing with the same contention rejected it not so much on the seminal grounds of "fairness" (which really resolve themselves in a theory of justice apt for this purpose) but on those of the weaknesses of the substantive plea of the "difficulties" urged on behalf of the government. Somewhat unfortunately (this for reasons we will shortly examine) he assigned the first place to a purely "legalistic" ground:

First, [he said] I do not think that a supposed difficulty would provide any justification for accepting an interpretation of a statute against the ordinary meaning of the language used in it. General considerations of the kind suggested cannot authorize a departure from the plain meaning of the words.  

This view of course is jurisprudentially wholly unsatisfying, whatever its merits be as rebuttal of a "legalistic" argument presented in the case. Nor will we here yield to the strong temptation to discuss this aspect. The second, and in our estimate the paramount, reason was (in the words of the learned justice):

I cannot imagine a Government, which has vast resources, not being able to make a complete plan of its projects at a time. Indeed, I think when a plan is made, it is a complete plan. I should suppose that before the Government starts acquisition proceedings by the issue of a notification under S. 4, it has made a plan for, otherwise it cannot state in the notification, as it has to do, that the land is likely to be needed.

And, finally, reaching the heart of the matter, the learned Justice observed:

The real point, therefore, of the present argument is that the Act should so interpreted that the Government should not be put to extra cost when it has been unable to complete its plan at a time. This seems to me to be a strange argument. First, there is no reason why the Act should provide for the Government's failure to complete its plan. Secondly, the argument is hypothetical for one does not know for sure whether a later acquisition will cost more or less.

Whether on grounds of "fairness" which (we must stress again) are ultimately the grounds of justice, at least in this situation or, on those of disallowing the government to benefit from, in all probability, a lower amount of compensation in situations of phased planning—and indeed these are complementary—the decision of the court cannot but be characterized as enlightened and just. Here the disturbing overtones of article 31 (2) of the Constitution are conspicuous by their absence. Here the power of the government to acquire land is not questioned. There is abundant sympathy with the objectives of the Act. The judgments are marked with wise restraint and a painstaking awareness of what is involved.

About fourteen months after the judgment, on 20 January 1967, the Land Acquisition (Amendment and Validation) Ordinance, 1967, was promulgated by the President of India. The net effect of this Ordinance was to overrule the Vishnu Prasad decision. The Ordinance was followed by a Bill, enacted, after certain amendments, as a law. In its relevant part the amendment authorizes successive declarations under Article 6 (1) of the Act pursuant to article 4 (1) notification. It adds, however, a clear safeguard that no declaration under a notification published after the date of the promulgation of the Ordinance (20 January 1967) "shall be made after the expiry of three years from the date of such publication." Interestingly, it adds a further provision by which simple interest of six per cent per annum will be paid, in certain cases, where the payment of compensation is delayed.

Was this amendment necessary? The cryptic (as is usual) Statement of Objects and Reasons appended to the Bill states that the Vishnu Prasad decision has the effect of unsetting a large number of proceedings for land acquisition.

The parliamentary debates on the Bill, however, reveal more clearly the details. Mr. Anasahib Shinde, the Minister who presented the Bill explaining "the various implications of the Supreme Court judgment" mentioned its possible impact (among other projects) on the Bhandal Steel Project. He obviously felt that unless the governmental actions based on successive declarations under section 6 (1) were validated, the whole construction will have to be dismantled, which of course will not be in the national interest. Obviously, the Supreme Court, had such a situation
been brought to it for adjudication, would not have ordered dismantling of structures over lands acquired prior to, and, contrary to, its ruling in *Vishnu Prasad*. There is almost nothing in the judgment to sustain this reading of the case. Ordinarily, judicial decisions are not so retrospective, and in this particular situation no arguments, nor any categorical judicial pronouncements, were made regarding prospectivity or retrospectivity of the decision. We leave out of consideration here the major problem of due deference to pronouncements of the highest Court in the land but must draw attention to the gratifying fact that a large number of the speakers on the Bill regretted the move for this very reason.46

Apart from validation rationale, such as it is, the other motivation for the amendment was to reassert the government's power to issue successive declarations under section 6 (1), notwithstanding *Vishnu Prasad*. We are concerned with this here as it relates to the compensation issue.

First of all let us, however, examine this relationship of the amendment. No doubt, by focusing on the phraseology of sections 4, 5-A and 6 and reiterating that there is nothing in these sections to suggest the possibility of successive declarations, the Court in fact invited legislative draftsmen to rewrite the sections concerned. In a legal culture where more often than not the legislative response to judicial decisions consists in a shocking use of the technique of amending and validating the legislation under crisis, and where the emphasis is not so much on case by case development of legal doctrines but rather on legislation as a catalyst for legal change and growth, invocation by the courts of rules of interpretation and construction to sustain particular policy outcomes does more harm than good. The draftsman and the legislator merely attend to these aspects of the decisions, leaving aside the substantive policy guidance that the courts seek to offer. When thus the main policy message of a judicial pronouncement is missed, a distressing game of "I Invalidate—You Amend" begins, leading to insoluble ultimate problems of constitutional polity.47

The main thrust of the judgments (particularly of Mr. Justice Sarkar) in *Vishnu Prasad* which we have emphasized earlier has accordingly received scant attention. Mr. Justice Sarkar was endeavouring to direct the government that an implied condition of governmental action under the relevant sections is that the plan for which the acquisition is undertaken must be complete before the action is taken. He was anxious enough to get this message through to the government as is revealed by the following reservation with which he immediately qualified his views:

I would like to observe here to avoid confusion that we are not concerned now with the extension of a completely planned project conceived later.

46. *See e. g.*, Debates Col. 3251-52 (Shri G. S. Rao); 3274-75 (Shri K. L. Gupta, quoting from Mr. Justice Sarkar's judgment).

47. *See infra, supra note 18; and the career of the first *Arora* Decision supra note 7.

The present contention is not based on any difficulty arising out of such a case.48

This means that the question of successive declarations with regard to a subsequent extension of a complete plan is still an open one. We would even say that the question has been left favourably open since so long as the plan is reasonably complete when acquisition action is commenced a subsequent extension of the plan cannot reasonably be debarred on any policy-oriented approach by the Court. It is not altogether unlikely, as we read the judgment, that a subsequent extension of the plan may be permitted under the original Section 4 notification. This because the initial plan would have been complete one and the basic requirement for action under the Act would have been substantially met. To this extent then the amendment interpolates nothing substantial in the body of law: at best it is a good illustration of the prescience with which our draftsmen anticipate development of a decisional trend on the basis of a stated judicial principle.

The more important point is however the general requirement of a complete plan stipulated by Mr. Justice Sarkar. On the important aspect, both the Statement of Objects and Reasons to the amendment bill and the parliamentary debates are silent. While very candid acknowledgements were made on the floor of the House as to the inadequacies of administration under the Act,49 not much attention was given to the very matrix of these inadequacies, which Mr. Justice Sarkar perceptively emphasized in his judgment, namely the basic lack (in most litigious situations) of proper planning at the stage when the proceedings under the Act are commenced. The amendment instead of moving in the direction of repressing the lack, now further encourages its perpetuation by indiscriminately permitting successive declarations in all situations. The mere fact a time limit for three years beyond which declarations under Section 4 notifications will be hereafter invalid does not really alleviate this lack.

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48. *Vishnu Prasad* 1595.

49. *See generally the Debates*. We may quote here the remarks of the Hon'ble Minister by way of illustration:

A piece of land which I was cultivating as a tenant was acquired and the period between the acquisition and the payment of compensation was more than 10 years.

Sir, I know, many times the agricultural lands are acquired for non-agricultural purposes. Sometimes, after acquisition, the lands remain unutilized for no reason and sometimes there are complaints about adequacy of compensation. Even when compensation proceedings are going on considerable delays take place. There are hundreds of instances where compensation was not paid in time. In addition to that there have been administrative delays.

*Debates*, Col. 3291.
A due regard to the "complete plan" rationale of Vishnu Prasad would perhaps have obviated the need to authorize successive declarations under the Act. For the central assumption sustaining this rationale is that if a plan is a "complete plan" it will be possible for the government concerned to issue a consolidated declaration under Section 6(1). Exhaustion of Section 4 notification by such a declaration would pose no problems since no declarations remain to be made.

It might be urged that an urban planner cannot present such a complete plan, and the unfoldment of the successive stages in implementation may reveal many other needs. To this our brief reply (in view of the preceding paragraphs) is that Vishnu Prasad does not stand in the way of their fulfilment. The only requirements of a complete plan implicit in Mr. Justice Sarkar's judgment, seem to be that the purposes for initiation of acquisitive process must be emergent at the level of Section 4 notifications and that effective utilization patterns of the condemned land must also be projected by the plan. This is scarcely a Utopian demand on planners, urban or otherwise.

Coming now to the compensation aspect of the present amendment one does find a marked improvement. The Act, now by first proviso to Section 6(1), introduces a specific time limit of three years within which declarations should follow Section 4 notification. This means that the freezing of compensation would at worst relate back to the market value quantum obtaining three years anterior to the acquisition. Since the amendment is clearly a post-constitutional law, it does not enjoy the protection available to the provisions of the principal act as an "existing law," under Article 31(5)(a). In the light of several decisions, some post-fourth amendment, enunciating the norms of just compensation as a question arises as to the constitutional validity of a statutory authorization to freeze the compensation at an anterior date, even though the period is fixed at three years.

The Indian Law Commission considering in 1958 the freezing of market value under the unamended Section 4 notification felt the date of latter notification "is, in our view, appropriate and needs no alteration."

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51. See Appendix.

52. See infra note 60.

53. See the Law Commission Report, supra note 19 at 20.

54. Id. at 22.

55. Debates, col. 3293.

56. (1963) S. C. R. 559; A. I. R. 1024 S. C

57. Debates, col. 3325.

58. Bela Banerjee at 564.

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Recommending no departure from some of the existing standards of compensation under the Act (namely, potential value and solutum), the Commission reiterated that...it does not follow [from the fact that Article 31(2) does not use the word "just" to qualify compensation] that a responsible legislature would ignore the basic principles underlying the award of compensation and enact a law opposed to the principles of equity and natural justice. The principles for determining compensation adopted in the case of acquisition of large zamindari and jagir estates would obviously be inapplicable to cases where the legislature has to deal with owners of land who are not intermediaries. As far as possible, every one who is deprived of his property by compulsory acquisition should be enabled by the compensation awarded to him to place himself substantially in the same position in which he was before the acquisition. The community which benefits from the acquisition must also bear the burden of justly compensating the owner.54

Mr. A. Shinde, the Minister in charge of the 1967 Amendment Bill, justified the time lag of three years by the fact that it does not substantially exceed the total time for completion of the acquisition proceedings which he estimated to be about twenty-seven to twenty-eight months.55 He further felt that under the Bela Banerjee decision,56

The Supreme Court has held...that after the intention to acquire the land is widely known, some ante-dating is reasonable.57

Bearing the Law Commission's and the Hon'ble Minister's observations in mind, let us look at the decisional law in the matter. In Bela Banerjee the provisions relating to public purpose and to compensation fixed at date anterior to acquisition of the West Bengal Land Development and Planning Act were challenged as violative of Article 31(2). The Act froze the market value of the land to "the 31st day of December, 1948," the date of notification under the Act. Dealing with this aspect Mr. Chief Justice Pataanjali Sastri said:

Considering that the impugned Act is a permanent enactment and lands may be acquired under it many years after it comes into force, the fixing of the market value on December 31, 1948, as the ceiling on compensation, without reference to the value of the land at the time of acquisition is arbitrary and cannot be regarded as the compliance in letter and spirit with the requirement of Article 31(2).58

The learned Chief Justice immediately proceeded to observe:

The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the constitutional requirement, as

54. Id. at 22.

55. Debates, col. 3293.

56. (1963) S. C. R. 559; A. I. R. 1024 S. C

57. Debates, col. 3325.

58. Bela Banerjee at 564.
attitude. By the same token of course, the legislatures, draftsmen and the
governmental authorities should carefully heed to the demands of justice
that courts are stipulating as prime conditions of the constitutional valid-
ity of governmental action.

If, by some mischance, anterior date ceiling under the amended act
is invalidated, a most critical situation will arise. That is that the govern-
ment will either have to alter the Act to include the date of acquisition
as a crucial time factor determinative of the quantum of compensation or
in the alternative the government may consider a move in the direction of
the amendment of the Constitution so as somehow protect the anterior
date ceiling. The latter course is most likely, as acquiescence to judicial
requirements in such policy matters has not been, and sometimes very
regrettably, characteristic of the legislative-judicial relationship in indepen-
dent India. So fateful, however, are both the alternatives that a word
needs to be said about each.

In the first situation, no doubt, the judicial policies will be ideally just
but for that very reason impracticable. For a cardinal assumption here
is that the country, in its present stage of economic development, cannot
afford the acquisition-date compensation in all acquisition situations. Most
of us, at an intuitive level, have merely to grant this assumption. I know
of no jurist who has comprehensively studied the economic bases of this
assumption. Nor is such a study likely, unless it is commissioned on a
multidisciplinary level. It might even be that our unexamined assumption
might stand validated as a result of such endeavours.

Thus it is that the danger of the second course will become imminent
if the judiciary finds itself unable to legitimate, in appropriate cases, the
anterior-date ceiling of compensation. Since Golak Nath62 an amendment
of the constitution to legitimate this ceiling without deference to the judicial
will would be most easy of impugnment. Once again ultimate, and
therefore unanswerable, questions about the constitutional polity will come
to the fore, contributing to the already precarious constitutional situation.
An overruling of Golak Nath by the Supreme Court in all its principles
would be as serious, if not as unfortunate (as some will have it) as its
total reaffirmation.63

The gravity of this prospect leads us again to urge in conclusion
both the legislature and judiciary to fashion tools with which a wise
accommodation between unquestionable demands of justice and agonizing
needs for social reconstruction, often at the expense of these demands,
can be consistently secured.

59. Ibid.
61. See Union of India v. Metal Corporation of India, op. cit., at 643. Also see
Vajravelu op. cit., at 1024-25.
of some aspects of this decision, Baxi supra note 18, at 374-411.
63. See Blackshield “Fundamental Rights and The Institutional Viability of the
Indian Supreme Court,” 8 J. I. L. I. 139 at 163-72 (1966); and Baxi supra note 62,
APPENDIX

Text of Sections 4 and 6 of the Land Acquisition Act 1 of 1894 as amended by the Land Acquisition (Amendment and Validation) Act, 1967

Section 4:

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

- to enter upon and survey and take levels of any land in such locality;
- to dig or bore into the sub-soil;
- to do all other acts necessary to ascertain whether the land is adapted for such purpose;
- to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;
- to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Section 6:

(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders: and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) Every declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

Section 4 of the Land Acquisition (Amendment and Validation) Act, 1967, further provided:

4. (1) Notwithstanding any judgment, decree or order of any court to the contrary—

(a) no acquisition of land made or purporting to have been made under the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, and no action taken or thing done (including any order made, agreement entered into, or notification published) in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground—

(i) that one or more Collectors have performed the functions of Collector under the principal Act in respect of the land covered by the same notification under sub-section (1) of section 4 of the principal Act;
(ii) that one or more reports have been made under Sub-section (2) of Section 5A of the principal Act, whether in respect of the entire land, or different parcels thereof covered by the same notification under sub-section (1) of section 4 of the principal Act;
(iii) that one or more declarations have been made under section 6 of the principal Act in respect of different parcels of the land.
covered by the same notification under sub-section (1) of section 4 of the principal Act;

(b) any acquisition in pursuance of any notification published under sub-section (1) of section 4 of the principal Act before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, may be made after such commencement and no such acquisition and no action taken or thing done (including any order made, agreement entered into, or notification published), whether before or after such commencement, in connection with such acquisition shall be deemed to be invalid merely on the grounds referred to clause (a) or any of them.

(2) Notwithstanding anything contained in clause (b) of sub-section (1), no declaration under section 6 of the principal Act in respect of any land which has been notified before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, under sub-section (1) of section 4 of the principal Act, shall be made after the expiry of two years from the commencement of the said Ordinance.

(3) Where acquisition of any particular land covered by a notification under sub-section (1) of section 4 of the principal Act, published before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, is or has been made in pursuance of any declaration under Section 6 of the principal Act, whether made before or after such commencement, and such declaration is or has been made after the expiry of three years from the date of publication of such notification, there shall be paid simple interest, calculated at the rate of six per centum per annum on the market value of such land, as determined under Section 23 of the principal Act, from the date of expiry of the said period of three years to the date of tender of payment of compensation awarded by the Collector for the acquisition of such land:

Provided that no such interest shall be payable for any period during which the proceedings for the acquisition of any land were held up on account of stay or injunction by order of a court:

Provided further that nothing in this sub-section shall apply to the acquisition of any land where the amount of compensation has been paid to the persons interested before the commencement of this Act.