

# **A Critical Evaluation of the Application of ‘Public Purpose Rule’ in the Compulsory Acquisition of Lands in Sri Lanka**

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## **Background**

The compulsory acquisition of privately owned land by the State exercising its right of eminent domain has been identified as a principle which coexists with the well known conception of absolutism of private property. It is a common feature in most of the jurisdictions, particularly in countries like India, United States of America, Australia, South Africa etc. to allow such right of the State to be exercised subject to the pre qualification that such acquisition should be for a “public purpose”. The Land Acquisition Act (as amended) No. 09 of 1950 (LAA) which facilitates the compulsory acquisition of lands in Sri Lanka is no exception to this common practice. The expression “public purpose” has been identified as incapable of a precise and rigid definition. What is meant by the term “public purpose” may vary from one society to another based on the socio, economic and political concepts that prevail in such a society. Even within a society, the term “public purpose” may take different shapes at different times. Therefore, the State or effectively the government of the day has been identified as the appropriate authority to decide whether a particular purpose is a public purpose or not.

Though public purpose provides the basic justification for the State interference with private property rights, the vagueness of the definition provided in the LAA and the limitless expansionary capacity of the term “public purpose” have resulted in the arbitrary exercise of power in relation to land acquisition. Ministers and other government officials have sought to make use of the public purpose rule for acquisition of land, driven by personal reasons and ulterior motives.

The emerging phase in the Sri Lankan economy with regard to infrastructure developments indubitably necessitates large scale land acquisitions. Thus, the existing position in relation to the public purpose rule would have to be understood in the light of the welfare notion of the state as adopted in Sri Lanka. Furthermore, the power of the executive to deprive people of their land to which they are intimately connected as individuals and as a community, based on the justification of “public purpose” would easily be misinterpreted and may result in the creation of unrest among different communities.

## **Hypothesis**

The apparent vagueness of the definition given to the term “public purpose” in the LAA may be identified as an attempt to allow the public purpose rule to be developed and changed in accordance with the spirit of the times and the needs of the society. But such a vague definition together with the accepted notion that the determination of the public purpose aspect of the acquisition process is a policy decision to be taken by the executive, which should not be subjected to the scrutiny and observation of the judiciary, has limited

the ability of the public purpose rule to be developed in accordance with the needs of the society. The judicial approach towards issues involving acquisition of land has been to address the grievances of the affected parties by looking in to the facts of the each case and to develop adhoc principles regarding the public purpose rule and its application rather than developing a framework within which such a rule may be applied.

In order to ensure a proper balance of interests between the individual property rights and rights of the State, it is hypothesized that the existing law in relation to public purpose rule in land acquisition process be amended in order to grant solidity to such rule and for such purpose the importance of establishing a mechanism of scrutiny and observation by an independent third party would also be addressed in this study.

### **Outcome**

The expected outcome of this study is to identify the manner in which the public purpose rule has been applied in the Sri Lankan context as a justification for the exercise of rights of eminent domain by the State. This study further aims to identify the positive features and the developments in relation to the public purpose rule as witnessed in other jurisdictions which have a similar legal framework in relation to the land acquisition process. Based on such developments, this study intends to propose recommendations to the existing legal framework in Sri Lanka as to the public purpose rule.

### **Methodology**

This research will be conducted as a literature review based on the secondary sources including statutes, text books, electronic data bases, journals etc. In order to ensure that the situation in Sri Lanka is understood in the light of the international developments in this regard, this study will carry out a comparative analysis of the law and practice relating to acquisition of land in India and South Africa.

### **Conclusions**

The issues pertaining to the compulsory acquisition of land by the State would be an important element in the development of a sustainable land policy which would ultimately result in sustainable communities. Therefore, it would be important to amend the public purpose element in the land acquisition process in order to ensure that such a rule is capable of being developed and changed in accordance with the needs of the society.

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