

Preserving People’s Right to Property: Demystifying the Dichotomy of the term ‘Public Purpose’ in case of Acquisition and Requisition of Land

Abu Bakar Siddique & Md. Azhar Uddin Bhuiyan*

Abstract

The power of eminent domain permits the state to override private property rights in matters related to ‘public interest’. The necessity of this power is more or less acknowledged in almost all the countries around the globe. However, crossing the limits or excessive use of this power diminishes property rights of the people. The second part of Art. 42 of the Constitution of Bangladesh provides for extinction of the right to property only by way of compulsorily acquisition or nationalisation under the authority of law. Socially disadvantaged groups suffer extremely when the government takes land with unjust compensation or without compensation for doubtful public purpose. Even the major law relating to Acquisition and Requisition of Immovable Property Ordinance 1982 allows acquisition or requisition of land only in cases of public purpose or public interest. However, in our corpus juris, the term ‘public purpose’ has not clearly been defined. Our judiciary tends to give it a contextual meaning rather than providing a general definition of the term ‘public purpose’. Judiciaries around the world tend to do so. On this backdrop of legal lacuna, this assignment will trace the meaning of the term ‘public purpose’ in cases of acquisition and requisition.

* Abu Bakar Siddique is a LLM student at the Department of Law, University of Dhaka. Md. Azhar Uddin Bhuiyan is a student of LLB at the Department of Law, University of Dhaka.

Introduction

Article 17 of the Universal Declaration of Human Rights recognizes 'right to property'.¹ But this right is not recognized in the International Covenant on Civil and Political Rights (ICCPR)² or the International Covenant on Economic, Social and Cultural Rights (ICESCR).³ The European Convention on Human Rights,⁴ in Protocol I,⁵ article 1⁶ acknowledges a right for natural and legal persons to "peaceful enjoyment of his possessions", subject to the "general interest or to secure the payment of taxes". Right to property is recognized in the International Convention on the Elimination of All Forms of Racial Discrimination which states in Article 5 that everyone has the right to equality before the law without distinction as to race, colour and national or ethnic origin, including the "right to own property alone as well as in association with others" and "the right to inherit".⁷ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognizes the property rights in Article 16, which establishes the same right for both spouses to ownership, acquisition, management, administration, enjoyment and disposition of property, and Article 15, which establishes women's right to conclude contracts.⁸

¹ 'Universal Declaration of Human Rights' <http://www.un.org/en/universal-declaration-human-rights/> accessed 13 November 2016

² 'International Covenant on Civil and Political Rights' <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> accessed 13 November 2016. This covenant has been adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force 23 March 1976, in accordance with Article 49.

³ 'International Covenant on Economic, Social and Cultural Rights' <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx> accessed 13 November 2016. This covenant has been adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force 3 January 1976, in accordance with article 27.

⁴ 'European Convention on Human Rights' http://www.echr.coe.int/Documents/Convention_ENG.pdf accessed 13 November 2016.

⁵ Ibid.

⁶ Ibid.

⁷ 'International Convention on the Elimination of All Forms of Racial Discrimination' <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> accessed 13 November 2016. This has been adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entered into force 4 January 1969, in accordance with Article 19.

⁸ 'Convention on the Elimination of All Forms of Discrimination against Women' <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>

It is often seen that the term ‘public purpose’ is a term the meaning of which is always contextual. It can only be defined in a negative way. Even the judicial authorities in the sub-continent comply with this trend, i.e. the purposes which are opposed to ‘private purpose’, are ‘public purpose’. This will be shown in the subsequent part of this article. In this article lights will be also shed on the violation of human rights in case of acquisition of property without public purpose. However, the issue of providing compensation in case of acquisition and requisition of property is beyond the scope of this article.

Right to property as a constitutional right

The Constitution of Bangladesh recognizes the people’s Right to Property in its Art. 42. In its clause (1) it requires that: “Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law.” That means the people of Bangladesh has the right to private property but it is subject to restrictions. But it is to be noted the term ‘restriction’ needs further elaboration as this term is not defined anywhere in our constitution or in any other law. Constitutional Law Scholar and Former Attorney General for Bangladesh made an important observation in his book on this point that: “The expression ‘restriction’ is not qualified by the word ‘reasonable’. But that does not mean that Parliament has unfettered power to impose any restriction it chooses. The right to property is protected by Art. 31 which mandates reasonable law to interfere with the right. The inclusion of the word ‘reasonable’ in this article would have subjected any restriction imposed by law to a stricter scrutiny. In the absence of this qualifying word, the scrutiny of the reasonableness of any restriction imposed by law under art.31 is a relaxed one.”⁹

Dr. F.K.M.A. Munim, J. observed that the acceptance of ‘socialism’ as one of the fundamental principles of State Policy under the Constitution of Bangladesh has justifiably led to the omission of the qualifying phrase ‘reasonable’ before the term ‘restriction’.¹⁰

accessed 13 November 2016.

⁹. Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd Edition, Mullick Brothers) 378.

¹⁰. FKMA Munim, *Rights of the Citizen under the Constitution and Law* (1st Edition, Oxford University Press, Bangladesh) 287.

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Further, the use of the word 'any' has broadened the scope of restrictions that may be imposed by law.¹¹ But former Attorney General for Bangladesh Advocate Mahmudul Islam disagreed with this view.¹² In the case of **MA Salam vs. Bangladesh(1995)**,¹³ it was held that the second part of art.42 provides for extinction of the right to property only by way of compulsory acquisition or nationalization under the authority of the law and an acquisition of property cannot be questioned. Mahmudul Islam raised one important question. The question is whether parliament can authorize acquisition, requisition or nationalization for any purpose other than a public purpose.¹⁴ After raising this question he opined that: "Art.42 cannot be interpreted in a way which will render the protection of Art.31 nugatory. A law interfering with the right to property will not be reasonable under Art.31 if it does not subserve any legitimate governmental interest and the combined effect of Arts. 31 and 42 is that any acquisition, requisition or nationalization of property to be valid must be for a public purpose."¹⁵

Since the power of eminent domain is an inseparable incidence of sovereignty, there is no need to confer this authority expressly by the Constitution. This power exists without any declaration to that effect, while the existence of the power is recognized, constitutional provisions provide safeguards subject to which the right may be exercised.¹⁶

Under the *Westphalian Model*¹⁷, each state is entitled to sovereign control over its territory. As a result, a state necessarily has the power to create and define the property rights that private actors may hold in land within its territory. Because sovereignty and

¹¹. Ibid.

¹². Islam (above n 9) 365. Mahmudul Islam argued that neither in the Pakistan Constitution of 1956 nor in the Pakistan Constitution of 1962 restriction as regards this freedom was qualified by the expression 'reasonable' so that the question of omitting the expression 'Reasonable' in Art.42 on acceptance of socialism as one of the fundamental principles of State Policy does not arise.

¹³. *MA Salam vs. Bangladesh* [1995] 47 DLR 280.

¹⁴. Islam (above n 9) 378.

¹⁵. Ibid.

¹⁶. Shashank Shekhar, 'Concept of Public Purpose: Its Importance and Usefulness in the Present Scenario' <https://www.scribd.com/doc/309308539/795534121-11-chapter-4-2-1> accessed on 15 October 2016.

¹⁷. See for details, Stéphane Beaulac, 'The Westphalian Model in Defining International Law:Challenging the Myth' <http://www.austlii.edu.au/au/journals/AJLH/2004/9.html#fn1> accessed on 15 October 2016.

property rights in land are interconnected, international law has traditionally had only a minor impact on these rights. But in recent decades, principles of International Human Rights Law have begun to supplant municipal law in situations involving the land rights of vulnerable groups.¹⁸ Sprankling further observed that: “International Law effectively regulates the manner in which certain lands may be used, imposing derivative restrictions on property rights.”¹⁹

The main philosophy behind laws permitting acquisition is ‘*eminent domain*’ power of the sovereign power of the state. The state may directly own lands through acquisition, purchase etc. or by default. That means all lands which are not privately owned by the individuals are owned by the state but in respect of privately owned lands the state has eminent domain power.²⁰

Our Supreme Court has also authorized the state in a negative manner to acquire private property by the decision of the case of **Chairman Bangladesh Steel Mills Corporation v. Masood Reza**²¹; in that case, the court held that: “Property of a citizen can neither be acquired nor be retained by the government unless it is done under proper legislative authorization. A citizen’s property cannot be seized also under colorable exercise of power conferred by the legislature”. This decision indicates that property can be acquired proper legislative authorization.

In another case namely **Zahed Hossain Mia v. Deputy Commissioner, Chittagong and others**²² it was held that, “When the land is urgently required for Government purpose duly serving notice under section 3 and hearing objection under section 4 of the Ordinance, there is no ground to interfere with the Acquisition proceedings.”

It was held in the case of **Abul Basar v. Bangladesh and others**²³ that, when property is acquired and subsequently released the government is not bound to give back the property to the owner.

¹⁸. John G Sprankling, *The International Law of Property* (1st Edition, Oxford University Press) 116.

¹⁹. Ibid.

²⁰. See for details, Sparnkling (above n 18) 211.

²¹. *Chairman Bangladesh Steel Mills Corporation v. Masood Reza* [1978] 30 DLR (AD) 169.

²². *Zahed Hossain Mia v. Deputy Commissioner, Chittagong and others* [1998] 50 DLR (AD) 50.

²³. *Abul Basar v. Bangladesh and others* [1998] 50 DLR (AD) 11.

Acquisition and requisition of property

The leading authority for Land Law in Bangladesh, Dr. Towhidul Islam in his book discussed about the term 'acquisition'. He went on to say that: "Government, semi-government or non-government private agencies or departments carry out development works for public purpose or in public interest. Development works may be carried out in their own lands or in lands taken over by the government with due compliance of certain processes or rules. This process is generally known as acquisition of land."²⁴

In the case of **Lal Singh v. C P Berar**²⁵ the Indian Supreme Court held that, acquisition means the actual transference of the property. To explain the term "acquisition" it can be said that, when there is a need of land for *public purpose* and that work is permanent in nature private land can be taken over by the government, this process is known as Acquisition. Acquisition in every case means the transfer of ownership.²⁶ In other words, it means the act by which a person acquires a property in a thing. In another case it has been defined as coming into possession, obtaining, gaining, or getting it as his own. Finally, it can be said that, when private land is taken over for the development work and the work is permanent in nature, this process is known as Acquisition.

For example, "A piece of land is taken over by the government in a proper place for the establishment of a school which may be considered as Public Purpose with due compliance to the owner of that property it may termed as Acquisition"

By the term Requisition, Professor Dr. Towhid meant that: "Requisition means taking over lands or buildings by the Government for public purpose or public interest for the time being. It is a way forward for acquisition. Normally, huge quantity of lands or buildings is requisitioned at the first instance with the aim of acquisition as it involves fewer formalities."²⁷

²⁴. Mohammad Towhidul Islam, *Lectures on Land Law* (1st Edition, Northern University Bangladesh 2013) 158.

²⁵. *Lal Singh v. C P Berar* [1944] AIR FC 61.

²⁶. *Devi Das Gopal Krishan v. State of Punjab* [1967] AIR (SC) 1895.

²⁷. Islam (above n 24) 158.

The concept of Requisition merely involves taking of domain or control over property without acquiring the right of ownership. From the very nature of Requisition, it is for temporary period.²⁸ Requisition can also be defined as a mere acquisition of possessory right.²⁹ Finally, it can be said that, Requisition involves temporary taking over of land.

For example, “There is a construction of a bridge over highway. In the construction period to keep the normal communication in the highway there need to build a bye-road which will be used in the construction period. For the purpose of that bye-road the private land is taken over and it may be termed as Requisition”.

Though acquisition and requisition of land are the two forms of taking over of land but these two are not same. Acquisition involves absolute transfer of ownership where requisition is not absolute transfer of ownership rather mere taking of domain or control over property without acquiring right of ownership.

Acquisition means the entire bundle of rights which is vested in the original owner of a property should on from him to acquire and nothing should be left in the owner or holder.³⁰ On the other hand, the concept of Requisition merely involves taking of control over property without acquiring rights of ownership. It is only for a temporary period.

After all, we may say that, Acquisition of land is taking over of land and the taking over is permanent in nature where the Requisition is the taking over of land which is temporary in nature.

Normally, huge quantity of land is requisitioned at the first instance with the aim of acquisition as it involves fewer formalities. It is to be mentioned here that, when a property is acquired for a purpose and afterwards the property is not used, the government is not bound to return the property to the person from whom it was taken over; rather the property is kept under the authority of the government as khas land.³¹

²⁸. *Brij Narain v. Union of India* [1988] AIR Delhi 116.

²⁹. *Sharafatullah v. Province of East Pakistan* [1967] 19 DLR 237.

³⁰. *Charanjit Lal Chowdhury v. Union of India* [1951] AIR Delhi 41.

³¹. *Abul Bashar & others v. Government of Bangladesh & others* [1998] 50 DLR (AD)

Philosophy of acquisition and requisition of property

It has always been recognized that the *power of eminent domain* is an essential attribute of sovereignty. This power connotes the legal capacity of the state to take the private property of the individuals for public purposes.³² This power is inalienable and based on the two maxims that (1) *salus populi est suprema lex* i.e., the interest and claim of the whole community is always superior (2) *Necessitas public major est quam private* i.e., public necessity is greater than private interest and claim of an individual.

The concept of eminent domain indisputably finds its roots in the natural law movement. When Grotius first used the term "*eminent domain*," seeking thereby to designate the power of the state over all private property within its bounds, he provided the key for the solution of problems that have arisen in the process of integrating that doctrine into our modern law.³³ As understood by him, the power of eminent domain was limited morally, if not legally, to acquisitions for purposes of public utility and was subject to the liability to compensate the dispossessed owner.³⁴ Briefly stating, the theory of eminent domain created by the natural law movement rested, no matter whether the superior right of the state over private property or the idea of sovereignty was the basis, upon concepts of the power of government. The qualifications imposed by those natural law doctrines upon the exercise of that power fortify this conclusion.³⁵

Munim J. in his book concluded that: "The power of eminent domain is inseparable from the sovereignty of the state and is related to the power of the sovereign to take property for public use without owner's consent. The state cannot contract away this right. For reasons of safety of the citizens, as, when a building is in dilapidated condition, or when fire is spreading, or for the preservation of health, the authorities may have to destroy

³². *United States vs. Jones* [1883] 27 Ed 105,107.

³³. Arthur Lenhoff, 'Development of the Concept of Eminent Domain' [1942] 42 Columbia Law Review 596.

³⁴. Munim (above n 10) 320.

³⁵. Lenhoff (above n 33) 596.

property. Whether, in interpreting the provisions of Article 42, the Courts in Bangladesh would go by the plain words used by the framers of the Constitution or would concern themselves with the concepts of ‘eminent domain’ and ‘police power’ which may make the task of interpretation more different is yet to be seen.”³⁶

It was observed in an Australian case **Ministry of state for the Army v. Dalziel**³⁷ that, “One of the salient features of a fully sovereign power is its legal right to deal as it thinks fit with anything and everything within its territory.”

In the decision of the case of **State of West Bengal v. Subodh**³⁸ it was held that “in relation to deal with property this right, includes the powers of eminent domain i.e., the power of a sovereign state compulsorily to acquire in accordance with law, on payment of compensation, the property of the citizens and non-citizen residing in the state”.

In case of acquisition and requisition, scholars around the world advocated for widening the scope of public purpose citing globalization that in the absence of land acquisition, if this is not permitted, a country will remain a step back compared to other countries. The other argument was that new industrial units established by the acquisition of land would generate a large number of employment. Thus, logic seems to be that industrial development leads to economic development and economic development is national development.³⁹

³⁶. Munim (above n 10) 321.

³⁷. *Ministry of state for the Army v. Dalziel* [1944] 68 CLR 261, 284.

³⁸. *State of West Bengal v. Subodh* [1954] AIR SC 92, 116.

³⁹. Shashank Shekhar, ‘Concept of Public Purpose: Its Importance and Usefulness in the Present Scenario’ <https://www.scribd.com/doc/309308539/795534121-11-chapter-4-2-1> accessed on 15 October 2016.

Demystifying the Dichotomy of the term "Public Purpose"

In many cases due to the excessive emphasis on individual rights, we have been forgetting or ignoring the issues of common good except for which no society or state can function normally.⁴⁰ Compensation system adopted by state machinery has been playing a vital role to promote common good. The concept of 'public purpose' needs to be specified, otherwise the whole object of this doctrine will be frustrated. In this regard Cooter in his book said: "The public use requirement forbids the use of takings to bypass markets and transfer private property from one private person to another. Instead, property must be taken for public use."⁴¹

Since independence of the Indian sub-continent from the British colonizers land has been acquired from people, particularly from farmers, for the purpose of expanding towns/cities by converting agricultural land into non-agricultural land. This has been going on and still going since the division of Pakistan or independence of Bangladesh.⁴² For public purpose or in public interest, the Government can take over others' property by paying compensation. It may be for life or for the time being.⁴³ But it is a matter of fact that the term 'public purpose' is not defined in the interpretation article of the constitution, i.e., Art. 152 or in any statutes in our corpus juris. So, at this point, to fill up this lacuna it requires some dictionary and judicial meanings.

Mitra advocated in his book⁴⁴ saying that the term 'public purpose' is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the context. It varies with the time and state of society and its needs. Whatever furthers the general interests of the community as opposed to the

⁴⁰. Maimul Ahsan Khan, *Jurisprudence: Reconstructing the Ideals of Legality, Politics and Morality* (1st Edition, Law's Empire Publishing 2011) 202.

⁴¹. Cooter, Robert and Ulen Thomas, *Law & Economics* (1st Indian Reprint, Pearson Education Inc. 2004) 176.

⁴². See for details, Xavier Jeyaraj, 'An SEZ with a Difference' 58 *Social Action* 270 (July-Sept 2008).

⁴³. Islam (above n. 24) 158.

⁴⁴. Tapash Gan Choudhury, *Mitra's Legal and Commercial Dictionary* (16th Edition, Eastern Law House 2014) 713.

particular interest of the individual, must be regarded as public purpose. The court also agreed with this view in the case of State of **Bihar vs. Maharajadhiraja Sri Kameshwar Singh of Darbhanga**⁴⁵. Justice Mohammad Munir in his book⁴⁶ also advocated for the same view saying that “there can be no exhaustive definition of Public Purpose and the answer to the question whether a purpose is public or not will depend upon the object to be achieved by such Acquisition.”⁴⁷

The High Court of Dacca held the view that, “Meaning of the Public Purpose is flexible and must be interpreted with references to the circumstance prevailing at a particular time. It is also true that such use or purpose must be for the general good of the public as opposed to the good of a particular individual or group of individuals.”⁴⁸

Mitra defined ‘public purpose’ as any purpose which directly benefits the public or a section of the public is a ‘public purpose’. In the case of **Smt. Venkatamma vs. City Improvement of Trust Board, Mysore**⁴⁹, the Indian Supreme Court also accepted this definition of public purpose. In another case⁵⁰, the court held that the meaning of the phrase ‘*public purpose*’ is predominantly a purpose for the welfare of the general public. In **Smt. Somawabtu vs. State of Punjab**⁵¹, the Supreme Court of India took a different approach. Instead of trying to define the term ‘*public purpose*’ as a whole, the court gave an inclusive definition of this term. The court held that, “Public purpose includes a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals is directly and vitally concerned.”⁵²

In another case Public Purpose or Private Interest was interpreted to mean the benefit of the whole community who are directly and primarily concerned. The same principle was

⁴⁵. *State of Bihar vs. Maharajadhiraja Sri Kameshwar Singh of Darbhanga* [1952] AIR SC 252.

⁴⁶. Muhammad Munir, *Constitutional Law of Islamic Republic Pakistan* (13th Edition, Lahore: PLD Publishers. Co 1996) 392.

⁴⁷. Ibid.

⁴⁸. *Razab Ali v. Province of East Pakistan* [1958] 10 DLR 489.

⁴⁹. *Smt. Venkatamma vs. City Improvement of Trust Board* [1972] AIR Mysore SC 2683.

⁵⁰. *Rustom Cavasjee Cooper vs. Union of India* [1970] AIR SC 564.

⁵¹. *Smt. Somawabtu vs. State of Punjab* [1963] AIR SC 151.

⁵². Ibid.

pronounced in the case of **Arnold Roderick v. State of Maharashtra**. Mere state policy or policy of the party in power is not the same thing as Public Purpose.⁵³

Again, in the case of **Abdus Sobhan Sowdagor and another v. Province of East Pakistan**⁵⁴ it was observed that in the first place the expression '*public purpose*' must include a purpose that is an object or aim, in which the general interest of the community as opposed to the particular interest of an individual is concerned. Secondly, such interest must be directly connected with the order that is being made and must be vitally concerned with the said other.

There will be no *public purpose* in any undertaking or venture in which the Public Interest is served indirectly and in a circuitous way. The nature of the purpose whether it is public or private will depend upon the fact whether it will serve the general interest of the individuals. It is not necessary that the entire community must be benefitted. In circumstances, even benefit to class, such as coolies, can be said to serve Public Purpose.⁵⁵ If the purpose is to benefit an individual or group of individuals directly and the benefit to the people is only incidental, perspective or remote and therefore, it is not *public purpose*.⁵⁶

In the case of **Masudul Islam and another v. the Deputy Commissioner, Dhaka**⁵⁷ and others it was observed that: "Action taken for serving *public purpose* must be shown to be not merely that this specific result will be reached as a final end, but that the public has itself a direct interest in it". In a case, Indian Supreme Court laid down the principle that for a decision as to whether the compensation money paid for acquisition comes from the private individual or public exchequer.⁵⁸

⁵³. *Arnold Roderick v. State of Maharashtra* [1996] AIR SC 1788.

⁵⁴. *Abdus Sobhan Sowdagor and another v. Province of East Pakistan* [1962] 14 DLR 486.

⁵⁵. *Ibid.*

⁵⁶. *Ibid.*

⁵⁷. *Masudul Islam and another v. the Deputy Commissioner, Dhaka* [1995] 15 BLD 493.

⁵⁸. *Ghirdharilal Amratalal Shodhan v. State of Gujrat* [1966] AIR (SC) 1408.

In fact, law does not authorize acquisition and requisition of Property for the benefit of an individual as opposed to the general interest of the community.⁵⁹ This is because benefit of private person is not a Public Purpose.⁶⁰ However, the fact that some individuals will be benefited by an acquisition made for *public purpose* is immaterial. Therefore, a public road cease to be such road merely because it is particularly beneficial to somebody.⁶¹ Similarly if a private company is benefited by an acquisition made for a *public purpose*, the acquisition is valid. The same principle was pronounced in the case of the **R.K Agarwalla v. State of West Bengal**.⁶²

In another case⁶³ it was decided that, the construction of dwelling house cannot be considered necessarily to be *public purpose*. However, in certain circumstances housing scheme for a number of persons can be considered for *public purpose*.

For example, “providing accommodation to the government servant or teaching staff to live in the close proximity to the University Campus and afford to the necessary convenience us a Public Purpose.”

Taking of a foreign consulate has been held to be of *public purpose*.⁶⁴ In a country like ours, establishing new industries is to be considered of Public Purpose.⁶⁵ The same principle was pronounced in the case of **Parshottam Jadavji Jeni v. State of Gujrat and others**.⁶⁶ However, in a case, Orissa High Court held that there is no *public purpose* where property is taken is for industrial concern working purely for its own gain even though the goods produced by the concern may be of use to the general public.

⁵⁹. *Ajit Kumar Das v. Province of East Pakistan* [1958] 10 DLR 69.

⁶⁰. *Bhanji v. State of Bombay* [1952] AIR BOM 1976.

⁶¹. *M/S Bunmans Builders v. Land Acquisition of Deputy Collector of Chittagong* [1962] 14 DLR 617.

⁶². *R.K Agarwalla v. State of West Bengal* [1965] AIR SC 995.

⁶³. *Md Ismail and others v. Government of Bangladesh and others* [1982] 34 DLR 4.

⁶⁴. *State of Bombay v. Ali Gulshan* [1955] AIR SC 810.

⁶⁵. *Ekramul Huq v. Province of East Pakistan* [1963] 15 DLR 568.

⁶⁶. *Parshottam Jadavji jeni v. State of Gujrat and others* [1971] AIR SC 843.

Planned development of a city by the government is a *public purpose*. Taking of land for military purpose is of *public purpose*.⁶⁷

Construction of a cinema hall where films are exhibited by an individual, benefits him primarily. Mere use of the hall by the public on payment does not make the purpose of its making public.⁶⁸

Therefore, it is obvious that any purpose which benefits the Public or section of the public is Public Purpose.⁶⁹

The conventional wisdom that property rights are almost exclusively dealt with municipal laws is turning out to be wrong these days.⁷⁰ John G. Sprankling found much more substance on how the international law affects property rights than the conventional wisdom and he, in his ground breaking work 'International Law of Property' showed that a significant body of law exist what may be called international property law. The Principal of public interest means that a measure interfering with the right to property must be justified by a legitimate public goal.⁷¹ Spranking went on to cite the case of **Former King of Greece vs. Greece(2000)**⁷² where the court observed that, "The notion of '*public purpose*' is necessarily extensive.", given the broad latitude that must be afforded to a state in implementing economic, social and other social policies.⁷³ Cases have held that the public interest requirement is satisfied by state actions to protect the environment,⁷⁴ regulate hunting,⁷⁵ protect fish stocks,⁷⁶ control rents,⁷⁷ protect morals⁷⁸

⁶⁷. *Lila Ram v. Union of India* [1975] AIR SC 697.

⁶⁸. *Abdus Sattar V. Province of East Pakistan* [1965] 17 DLR 40.

⁶⁹. *Brahmanbaria Pourashava v. Secretary Ministry of Land Reform, government of Bangladesh and others* [1999] 51 DLR (AD) 84.

⁷⁰. See for details, Sprankling (above n 18) 4.

⁷¹. *Ibid* 259.

⁷². *Former King of Greece vs. Greece* [2000] 33 EHRR 21, para 87.

⁷³. Sprankling (above n 11) 259.

⁷⁴. *Fredin vs. Sweden* [1991] 13 EHRR 784, para 41.

⁷⁵. *Chassagnou vs. France* [2000] 29 EHRR 615.

⁷⁶. *Alatulkkila vs. Finland* [2006] 43 EHRR 34.

⁷⁷. *Hutten-Czapska vs. Poland* [2007] 45 EHRR 4.

⁷⁸. *Handyside vs. UK* [1976] 1 EHRR 737.

and preserve agriculture.⁷⁹ On the other hand, a deprivation of property undertaken ‘for no reason other than to confer a private benefit on a private party’ would not satisfy the standard.⁸⁰

To sum up, where there is no public interest involved, the state cannot take over private interest of some individuals.⁸¹ On the ground of lack of public purposes acquisition proceedings fail.⁸² Requisition and acquisition for private purpose is illegal.⁸³

Finally, it should be kept in our mind that the concept of *public purpose* is not a constant term rather dynamic. It alters with the alteration of socio-economic condition of the society. This is why, with the onward march of civilization the concept has been broadening.

Therefore, in determining whether a *public purpose* exists or not, all the facts and circumstance are to be closely examined.⁸⁴

Cruel reality in case of acquisition and requisition of lands

With the enactment of Economic Zone Act, 2010 (Act no.42 of 2010),⁸⁵ the political parties irrespective of their colour or ideology, industrialists irrespective of their size and global agents of privatization and liberalization have come together to acquire land and use all their power and money to take the process of globalization to the next level and alienate the people from their own natural resources.⁸⁶ But it has never been easy for the state to acquire land. The country has witnessed the worst kind of battles between people and state within the last few years.

⁷⁹. *Hakansson vs. Sweden* [1991] 13 EHRR 1.

⁸⁰. *Ibid.*

⁸¹. *Jogesh Chandra Lodh v. Province of East Pakistan* [1957] 9 DLR 272.

⁸². *Sankar Gopal Chatterjee v. The Additional Commissioner of Dhaka Division and others* [1989] 41 DLR 326.

⁸³. *Radha Kanta Banik v. Province of East Pakistan* [1970] 22 DLR(SC) 237.

⁸⁴. *State of Bombay v. R. S Nanji* [1956] AIR SC 294.

⁸⁵. Preamble of the Act states that: “Act provision to boost up rapid economic development through industrialization, employment, production and export growth, diversification of backward and underprivileged areas, establishment of economic zone and its development, operation, management and control over the projects. Since, it is necessary to legislate for rapid economic growth through industrialization, employment, production and export growth and diversification of backward and underprivileged areas, establishment of economic zone and its development, operation, management and control over the projects; Therefore, hereby enacted as follows:”

⁸⁶. See for details, Muhammad Abdul Mazid, ‘SEZs in Bangladesh: An evolutionary approach’ <http://www.thefinancialexpress-bd.com/2016/01/30/13267> accessed on 15 October 2016.

As Professor Dr. Towhidul Islam commented that the first and complete legislation for acquisition of land was the Land Acquisition Act, 1894 with the Bengal Land Acquisition Manual, 1917. Afterwards, at the beginning of Pakistan, came the (Emergency) Requisition of Property Act, 1948. Those two were the laws regarding acquisition and requisition of land till 1982. In 1982, the Acquisition and Requisition of Immovable Property Ordinance, 1982 came into force. This is the principal legislation on this point.⁸⁷ This law at once repealed Land Acquisition Act, 1894 and (Emergency) Requisition of Property Act, 1948.⁸⁸ Two Rules were framed under the Ordinance. They are- Acquisition of Immovable Property Rules, 1982 and the Requisition of Immovable Property Rules, 1982. There are some special laws in addition.⁸⁹

Under section 18 of the Acquisition and Requisition of Immovable Property Act, 1982,⁹⁰ the existence of *public purpose* is the foundation of power of the government to require any premises and it is a condition precedent to exercise that power. The government is not empowered to give the property of one private individual to another private individual. Where no benefit to the public is involved, the state cannot acquire private property for the interest of some individual or individuals.⁹¹

No citizen can be asked to part with his property even temporarily unless it is necessary for Public Purpose. Every citizen has a fundamental right to enjoy his property subject to exercise of state power of eminent domain and only when it is necessary for *public purpose*.⁹²

Section 5(2) of the Acquisition and Requisition of Immovable Ordinance, 1982 provides that when the Government, the Divisional Commissioner or the Deputy Commissioner, as the case may be, makes a decision for acquisition of the property under sub-section (1) or the proviso to section 4(3)(b), as the case may be, such decision shall be conclusive evidence that the property is needed for a public purpose or in the public interest. Section 44 of this Act ousts the jurisdiction of Civil Court to inquire into the decision of the

⁸⁷. Islam (above n 24) 159.

⁸⁸. Acquisition and Requisition of Immovable Property Ordinance, 1982, ss 47-48.

⁸⁹. See for details, Islam (above n 24) 159.

⁹⁰. Acquisition and Requisition of Immovable Ordinance 1982, Ordinance no. II of 1982.

⁹¹. *Jogesh Chandra Lodh v. Province of East Pakistan* [1956] 9 DLR 272.

⁹². *Abdur Rouf v. Government East Pakistan* [1970] 22 DLR 193

government or the Divisional Commissioner or the Deputy Commissioner regarding Acquisition.

This kind of absolute authority may create arbitrariness of the said authority. As we see the glaring example of the term ‘*public purpose*’ in the three very recent incidents Arial Beel’s Versailles moment,⁹³Rupganj flees into fury,⁹⁴ affected people set RAJUK office on fire in Uttara.⁹⁵

Conclusion

As the term ‘*public purpose*’ has not clearly been defined anywhere, three organs of the state, i.e., the legislative, executive and the judiciary, take different meaning of the term ‘*public purpose*’. More importantly, the three organs i.e., statutory, judicial and juristic commentaries in Bangladesh have failed to provide an intellectually sound and compelling interpretation of *public purpose*.⁹⁶ Stephen argues that the failure to define the term ‘*public purpose*’ makes the power of eminent enormous, because the power of eminent domain is knotted with the breadth or narrowness assigned to the definitions of ‘public purpose’.⁹⁷ In this Article, a triumph has been successfully made to demystify the dichotomy of the term ‘*public purpose*’. I want to advocate for the legislative definition of the term ‘*public purpose*’ by an amendment of the Acquisition and Requisition of Immovable Property Ordinance,1982, so that the arbitrariness in acquisition and requisition of private property is lessened.

⁹³. Adnan Morshed, ‘Arial Beel’s Versailles moment’

<http://opinion.bdnews24.com/2011/02/08/arial-beel%E2%80%99s-versailles-moment>

accessed on 16 October 2016.

⁹⁴. ‘Rupganj flees into fury: Locals torch army camp over ‘forced’ land purchase for housing project; 15 bullet-hit among 50 injured; army men airlifted’ *The Daily Star* (Dhaka, 24 October 2010)

<http://www.thedailystar.net/news-detail-159753>

accessed 13 November 2016.

⁹⁵. ‘Land Demarcation for Uttara Plots : Affected people set Rajuk office on fire’ *The Daily Star* (Dhaka, 8 July 8 2012) <http://www.thedailystar.net/news-detail-241218>

accessed 13 November 2016.

⁹⁶. Stephen J Jones, ‘Trumping Eminent Domain Law: An Argument for Strict Scrutiny Analysis under the Public Use Requirement of the Fifth Amendment’ [2000] 50 *Syracuse Law Review* 285.

⁹⁷. *Ibid* 286.