

SC notice to Centre on right to property

Dhananjay Mahapatra | TNN

New Delhi: Should the right to property be made a fundamental right? The Supreme Court on Friday issued a notice to the Centre on a PIL, which said the purpose for which the right to property was relegated to a mere statutory right in the late 1970s is no longer relevant.

The PIL seeking restoration of the right to property in the third chapter of the Constitution, which enumerates the fundamental rights of every citizen, argued that it was made a statutory right in 1978 to abolish large land holdings of zamindars and rich and their distribution among landless peasants.

Having achieved the purpose, the government should now initiate measures to put the right to property back in the fundamental right basket, argued senior advocate Harish Salve on behalf of petitioner Sanjiv Kumar Agarwal of NGO Good Governance India Foundation.

He said what was done 30 years ago to address a partic-



VICTIMIZED: Farmers have suffered as lands have been snatched from them for SEZs

ular issue, was now being abused by the government to strip farmers of their land holdings, including agricultural fields, for setting up of Special Economic Zones (SEZs).

Salve told a Bench of Chief Justice K G Balakrishnan and Justice P Sathasivam the situation was grave and needed urgent remedial action.

The Bench issued notice to the Union law ministry seeking its response to the PIL, which challenged the consti-

tutional validity of the 44th Constitutional Amendment, 1978, on the ground that it was violative of the basic structure of the Constitution.

The petition, filed through advocate Gopal Shankar Narayanan, stated that in the recent past acquisition of agricultural land depriving poor farmers of their only means of livelihood has given credence to the need for a debate on making right to property a fundamental right again.

Though the 1978 constitutional amendment was to permit government to acquire land for public purpose without being dragged to courts by zamindars, the alteration of the status of the right to property never intended to harm small landholders, the petition stated.

But in the last decade, in the garb of purported public purpose, land was being snatched away from the poor and underprivileged and handed over to multinational companies and builders without offering sufficient compensation, the PIL said.

SC fight for land right

SAMANWAYA RAUTRAY

New Delhi, Feb. 27: The Supreme Court today agreed to examine if it was time to make property a fundamental right again, three decades after it was downgraded to just a legal right.

A Calcutta resident had moved the court objecting to the widespread land acquisition by governments and citing the unrest in Singur and Nandigram.

A two-judge bench today issued notices to the Centre on Sanjiv Kumar Agarwal's public interest litigation, filed through his NGO, Good Governance India Foundation.

When property was a fundamental right under Article 31 of the Constitution, acquisitions were difficult because of greater court scrutiny. Now, citizens whose land has been acquired for any "public purpose" can do little other than fight for more compensation from the government.

Successive governments had tinkered with Article 31 to push through social causes, such as abolition of zamindari and land ceiling laws, till the Janata Party government reduced it to a legal right in 1977.

The economic situation, however, has changed since then, the petition argues: governments now acquire the property of the poor and the middle class for multinational companies or to set up special economic zones (SEZs).

"It is ironic that the very same enactments aimed at ameliorating the poor and the underprivileged are now being used to take away their land to be handed over to the rich, including large corporations, for alleged public purpose and without adequate compensation," the petition says.

The NGO argues that Article 31 need not have been wholly deleted — and could not legally be deleted since it was part of the Constitution's basic structure — after Article 31A was enacted to take over surplus land from big landholders. Article 31, it says, would have protected small landholders from illegal acquisition, carried out under new economic policies.

"Since 1990, the entire process of reversing nationalisation of key industries, etc, has made a mere fetish of Articles 39B and 39C....," it says. The two articles enjoin the state to follow the socialist goals of land redistribution and use it for the greater good.

"The newly formed policy on SEZs... has as its goal the taking over of properties of individuals, small peasants and farmers... under new-founded ideas that public purposes are best served by private interests (MNCs etc)," the NGO says.

This has ushered in black money and led to political clashes, the NGO, represented by senior counsel Harish N. Salve, claims.

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Will it be back to right to property?

PIL Says Fundamental Right Must As Govt 'Grabbing' Poor's Land

Dhananjay Mahapatra | TNN

New Delhi: Should right to property be made a fundamental right? The Supreme Court on Friday issued a notice to the Centre on a PIL, which said the purpose for which right to property was relegated to a mere statutory right in the late 1970s is no longer relevant.

The PIL seeking the restoration of right to property in the third chapter of the Constitution, which enumerates the fundamental rights, argued that it was made a statutory right in 1978 to abolish large land holdings with zamindars and the rich and their distribution among landless peasants.

Having achieved the purpose behind the legislative action in the late 1970s, the government should now initiate fresh measures to put right to property back in the fundamental right basket, argued senior advocate Harish Salve on behalf of petitioner Sanjiv Kumar Agarwal of Good Governance India Foundation, an NGO. He said that what was done 30 years ago to address a particular issue, was now being abused by the government to strip farmers of their valuable land holdings for acquiring vast tracts of land, including agricultural fields, for setting up SEZs.

Salve told a bench that it was a grave situation and needed urgent action. The bench issued notice to the Union law ministry seeking its response to the PIL, which challenged the validity of the 44th amendment to the Constitution in 1978 on the ground that it was violating the basic structure of the Constitution. The petition stated that in the recent past, the acquisition of agricultural land depriving poor farmers of their only means of livelihood has given credence to the necessity of a fresh debate on making right to property as fundamental.

Though the 1978 constitutional amendment was to permit the government to acquire land for public purpose without being dragged to courts by big zamindars, in the last decade, land was being snatched away from the poor and the underprivileged and handed to rich MNCs and builders in the garb of public purpose.

Maya faces double trouble from SC

The Mayawati government's initial success in the judiciary met with some reverses on Friday as the Supreme Court questioned its decision to set up a DGP level inquiry into the alleged scam in the recruitment of 20,000 constables before sacking all. The court also virtually reversed its earlier interim order green-lighting the state's decision to pull down unsafe government buildings in Lucknow and renovate others mainly for expanding Ambedkar park. But the SC's interim order appears to have come too late as the government, armed with the earlier clearance, has completed most of the demolition work and fresh constructions.

The orders came from different benches. While constable recruitment scam was posted before a bench of Justices D K Jain and R M Lodha, the stay on further demolition came from a bench of Justices B N Agrawal and G S Singhvi. The bench of Justices Jain

and Lodha was critical of the manner in which the Mayawati government had instituted a DGP level inquiry committee. "By what authority was such a committee constituted? Could the DGP do this?" the bench asked the UP counsel.

TRAI, channels in tariff tussle in apex court

Satellite channels and the Telecom Regulatory Authority of India (TRAI) on Friday slugged it out in the Supreme Court over the tariff that consumers pay to watch TV programmes through cable, CAS and DTH. TRAI was peeved at a recent order of the Telecom Disputes Settlement and Appellate Tribunal allowing channels to offer bouquets, forcing consumers to watch, and pay for, what they had not bargained for. The channels said it was wrong of TRAI to club all classes of consumers and say all were being made to suffer. Senior advocate K K Venugopal said 96% of viewers got to see the programmes through cable or CAS and paid very little. TRAI's counsel Harish Salve told a bench that till TRAI worked out fresh rates, the tariff should be put back to the 2004 level. This invited protests from the TV channels. TNN



Property right row throws up tricky question

In Name Of Protecting Ryots, Govt May Herald Zamindari

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The PIL seeking restoration of the right to property in the third chapter of the Constitution, which enumerates the fundamental rights enjoyed by every citizen, argued that it was made a statutory right in 1978 to abolish large land holdings with zamindars and rich and their distribution among landless peasants.

Having achieved the purpose behind the legislative action in the late 1970s, the government should now initiate fresh measures to put 'right to property' back in the fundamental right basket, argued senior advocate Harish Salve on behalf of petitioner Sanjiv Kumar Agarwal of NGO 'Good Governance India Foundation'.

He said what was done 30 years ago to address a particular issue, was now being abused by the government to strip farmers of their valu-

able land holdings for the purpose of acquiring vast tracts of land, including agricultural fields, for setting up of SEZs.

Salve told a Bench comprising Chief Justice K G Balakrishnan and Justice P Sathasivam that the situation was grave and needed urgent remedial action.

The Bench issued notice to the Union law ministry seeking its response to the PIL, which challenged the constitutional validity of the 44th Constitutional Amendment, 1978, on the ground that it was violative of the basic structure of the Constitution.

The petition said in the recent past acquisition of agricultural land depriving poor farmers of their only means of livelihood has given credence to the necessity for a fresh debate on making right to property as a fundamental right again.

Though the 1978 constitutional amendment was to permit government to acquire land for public purpose without being dragged to courts by big zamindars, the alteration of the status of the right to property never intended to harm small landholders, the petition stated. But in the last decade, land was being snatched away from the poor and handed to MNCs, it said.

PIL seeks fundamental right to property

Satya Prakash

New Delhi, February 28

SHOULD RIGHT to property be restored as a fundamental right? Thirty-one years after the right to property was deleted from the list of fundamental rights in the Constitution, a public interest petition has challenged the legality of the 44th constitutional amendment that led to its scrapping.

Petitioner Sanjiv Kumar Agarwal, a resident of Kolkata and the founder of Good Governance India Foundation, contends that Parliament could not have done away with the right to property as a fundamental right as it was part of the basic structure of the Constitution that cannot be altered.

The petitioner further said that there was an immediate need to declare the right to property as a fundamental right in the changed socio-economic scenario when the government was "misusing" the

amendment for the benefit of private companies by acquiring farmers' land "in the name of setting up special economic zones (SEZs)".

In the Keshavanand Bharti case, a 13-judge Constitution Bench propounded the "basic structure" doctrine in 1973. While upholding Parliament's power to amend the Constitution, the court said it was a limited power subject to judicial review. It added that by using the power to amend the Constitution, Parliament could not alter its basic features.

A Bench headed by Chief Justice of India K.G. Balakrishnan, on Friday, issued a notice to the Centre, seeking its response to the plea seeking restoration of Articles 19(1)(f) and 31, which dealt with the right to property and were deleted by the 44th amendment in 1978. However, while deleting the right to property from the list of fundamental rights, the amendment added Article 300A, making it a constitutional right.

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