

United by a common purpose: on the Constitution Bench of the Supreme Court

Entrenched in our commitment to a rule of law is what lawyers describe as *stare decisis*. That is, in plain English, a promise to stand by things decided, to respect and honour precedent. Today, with the Supreme Court seized by a maelstrom of crises, this principle stands deeply undermined. At first, the latest [clash between judges on the court](#) might strike us as a simple contretemps over theories of legal interpretation. But the consequences here are enormous and are already being felt across the country. The Chief Justice of India, Dipak Misra, has now established a bench of five judges, which he will head, and which will commence hearing arguments on March 6, to resolve the conflict. At stake is the court's integrity.

Provision in Land Act

The issue itself emanates out of a divisive provision in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act), which replaced the Land Acquisition Act of 1894. The colonial law had codified powers of eminent domain in strikingly draconian fashion. Landowners were placed at the state's mercy. Government was accorded vast discretion to expropriate land for supposed public use. Requirements of due process were scant, and the amount of money paid in return for land was often derisory, that too in the rare cases where it could be grasped from the exchequer's strong hands.

Judiciary in turmoil

Some might argue that the LARR Act, in repealing the 1894 statute, didn't go far enough in correcting the wrongs of old, and that its basic premise, in re-recognising a wide power of eminent domain, is inherently flawed. But there can be little question that the number of safeguards that the law legislates has made the process of acquisition manifestly fairer. For instance, it compels a social and environmental impact assessment as a precondition for any acquisition.

Besides, it also acknowledges a need for a system of rehabilitation and resettlement for those whose livelihoods are likely to be affected by the transfer of land. At least partly, these protections intend to alter the traditional relationship between the state and the citizen, allowing communal benefit to occasionally trump interests of pure capital.

Compensation the key

One of the provisions, which seeks to give meaning to this larger aim, is Section 24 of the LARR Act. This clause, among other things, concerns acquisitions made under the 1894 law, where compensation payable to a landowner from whom land had been taken prior to the year 2009 has already been determined. In such cases, the new law stipulates, the state ought to have not only taken possession of the land but also paid the amounts determined as due, failing which the entire proceedings will lapse. This means that even where the state has put the land acquired to some use, its failure to pay the holder compensation would render the entire proceeding nugatory.

Two Benches refer land acquisition cases to CJI

Plainly read, Section 24 might seem rather innocuous. But, in January 2014, soon after the law came into force, the state sought to fashion a conservative interpretation of the clause, only for a three-judge bench of the Supreme Court to quickly nip such attempts in the bud. *Pune Municipal Corporation v. Harakchand Misirimal Solanki* was a case where awards had been made by the government prior to 2009. The state argued that each of the landowners from whom land was acquired had specifically been told about the quantum of money that they were entitled to receive.

Since they neither disputed the amount fixed nor came forward to receive the money, the government claimed it deposited cash payable by it into its own treasury. According to it, this action was sufficient to negate the operation of Section 24. Or, put more simply, the landowners, the government said, were not entitled to retake their lands by claiming that they hadn't received their compensation. The Supreme Court, however, thought otherwise.

Ordinarily, the court held, the state is always obligated to pay the landowner money in terms of any award made. It was only in exceptional circumstances, defined in Section 31 of the 1894 statute, that the government could deposit those amounts into a court of law. These included cases where a landowner might have refused to receive compensation, for some reason or the other. But even there, a mere payment into the government's own treasury wouldn't suffice. The law mandated deposit into court. Therefore, the proceedings in all these cases under the 1894 law, the bench ruled, had to be annulled, with lands being returned to their original owners.

High Courts across India almost uniformly adopted this verdict, reversing acquisitions in a host of cases. Indeed, in September 2016, a two-judge bench of the Supreme Court in *Delhi Development Authority v. Sukhbir Singh* recognised the trend. The decision in *Pune Municipal Corporation*, it wrote, was "now stare decisis in that it has been followed in a large number of judgments."

A different reading

Yet, despite the law having been settled so thoroughly, with benefits from its interpretation extending to a number of landowners, including, in particular, poor farmers, on February 8, a divided three-judge bench departed from the decision in *Pune Municipality*. In *Indore Development Authority v. Shailendra*, Justices Arun Mishra and Adarsh Kumar Goel, who comprised the majority — Justice Mohan M. Shantanagoudar partly dissented — found that in cases where a landowner refuses compensation, a payment into the government's treasury was sufficient, and that there was no attendant obligation on the state to deposit this money into court. This reading clearly fits neither with the language of the LARR Act nor the law's larger objectives. But this is one part of the problem. What makes the ruling patently unconscionable, though, is that it roundly disregards *Pune Municipal Corporation*, holding that the bench there showed a lack of due regard for the law.

Stare decisis, a principle foundational to the judiciary's effective functioning, is predicated on a belief that settled points of law ought not to be disturbed. The idea is that a court's rulings should represent a consistent position. If judges are allowed to easily depart from precedent, citizens might find themselves in an impossible position, where the statement of law remains prone to the constant vagaries of human interpretation.

In India, since the Supreme Court declares the law for the whole country, ensuring uniformity in its decisions is especially critical. But achieving this has proved challenging, because the court doesn't sit as one, functioning instead as a series of differently sized panels. Therefore, to ensure that its decisions remain predominantly consistent, the court has carved out rules that make its judgments binding on all benches of the court of an equal or lesser strength. This convention was even expressly acknowledged by a Constitution Bench in *Central Board of Dawoodi Bohra Community v. State of Maharashtra* (2004). There, the court held that a three-judge bench cannot overrule a precedent set by an earlier bench of equal strength, but must, in cases where it thinks the previous bench might have blundered, refer the dispute to the Chief Justice, seeking the creation of a larger panel. Maintaining such a rule not only ensures stability in the court's rulings but also provides the court with the necessary flexibility to correct its errors in appropriate cases.

Ultimately, therefore, the decision in *Indore Development* stems from an act of impropriety. To altogether overhaul problems such as these altogether might require a complete reimagining of

the court's role. Only a larger purging of its jurisdiction, by relieving it of mundane disputes that clog its docket, will allow it to function cohesively. For now, though, to restore even a semblance of institutional integrity, the Constitution Bench must show us that the court still respects rules of precedent, that it recognises its obligation to speak in unison, and that, most significantly, it sees itself as an institution governed by a common and majestic purpose.

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