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Nazul land and the Indian constitution: A legal perspective in relation to state of Punjab

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Abstract

Land is a free gift of the Nature bestowed upon human being for his survival on the Planet Earth. It is a universal phenomenon that all the land of a country either belong to its sovereign/monarch/king or to the government of the day. The origin and growth of human civilization could reveal that the concept of land reforms is an age old concept and still in existence in spite of manifold changes occurred in the socio-economic, political, cultural and global way of life. The study of land and its classification is an important and fundamental aspect in democratic countries like India where achievement of a socialistic pattern of society, social welfare, and equal distribution of wealth and equitable distribution of natural resources is the basic goal and objective of the constitution of India. Nazul Land is the escheated land/property which generally belong to the government and is regulated through the Acts or Rules made by the respective government in the states of India. In pursuance of its land reform policy, the state of Punjab provided Nazul land to the landless families of scheduled castes to fulfill the objective of social justice as enshrined in the preamble and directive principles of state policy of the constitution of India.

Keywords: Nazul, Nazul land, escheat, bona vacantia, constitutional right, legal right

Introduction

The high ideals of the Constitution of India are embodied in its Preamble which proposes to secure to all its citizens, trilogy of justice- social, economic and political. The same ideals echo in one of the Directive Principles of State Policy (DPSP) whereby the state is under obligation to strive to promote the welfare of people by securing and protecting as effectively as it may, a social order in which justice-social, economic and political, shall inform all institution of national life ^[1]. Article 38 (2) of the Constitution further require the state to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations ^[2].

The expression 'Justice' briefly speaking is "the harmonious reconciliation of individual conduct with the general welfare of the society. An act or conduct of a person is said to be just if it promotes the general well-being of the community" ^[3]. Therefore, the attainment of the common good as distinguished from the good of individuals is the essence of justice.

The concept of Social Justice, which the Constitution engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. Thus, social justice is an integral part of justice in generic sense ^[4]. It has been said that social justice is a dynamic device to mitigate sufferings of the poor, weak, dalits, tribals and deprived sections of the society ^[5]. It means the abolition of all sorts of inequities which may result from the inequalities of wealth, opportunity, status, race, religion, case, title and the like ^[6].

When unequal distribution of wealth exists in a society or when social justice is denied to certain sections of the society, laws are enacted to bring about equilibrium. These laws may be designated under "Social Legislation". Social Legislation tries to remove inequalities and to benefit the whole community rather than a few individuals. It adjusts, supplements, and sometime replaces the existing legal system. In others words in addition to ameliorating the social condition of people, it bridges the gulfs that exist between the existing law at the requirement of the society at a given time ^[7].

The framers of the Indian Constitution were great social engineers and the Constitution is an excellent piece of social engineering. The Constitution of India does not seem to be only basic norm of the country, but also an instrument of peaceful political and socio-economic

revolution with a view to balance the conflicting interests in Indian society and securing the satisfaction of the maximum of wants with minimum of frictions^[8]. The framers were well aware of the caste ridden societal imbalance and special problems of backward communities in India. In order to maintain proper balance in the society, they eagerly provided special safeguards to scheduled castes, scheduled tribes and backward classes to ensure socio-economic and political justice to these communities. Protective discrimination^[9] envisaged maintenance of social equilibrium and to serve as an effective instrument of social engineering.

The Directive Principles of State Policy (DPSP) are the light house for the government of the day to secure social and economic justice through social legislations which certainly provides that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good and that operation of economic system does not result in concentration of wealth and means of production to the common detriment^[10]. These are the life giving provisions of the constitution. These principles constitute stuff of the Constitution and its philosophy of social justice. The principles represent the pledge and promises of our Constitution, which is not merely a literary document but a living instrument^[11].

The relationship between land and human being is inseparable. Land is gift of nature for the maintenance and sustenance of mankind on the earth. A historical overview of the origin and growth of human civilization could reveal the concept of land reforms is an age old concept and survived till date in spite of innumerable changes in socio-economic, political, cultural and global way of life^[12]. The subject of land reforms is said to be in existence even during pre-Vedic period. It has been transformed and streamlined by various dynasties of Kings, Monarchs such as Aryans, Dravidians, Hindus, Muslims and the British. This concept is given a modern methodical look during British period through codification of laws.

After the independence of the country, a written Constitution was framed by the law makers which had primarily derived its foundation from the Government of India Act, 1935 and the Universal Declaration of Human Rights (1948). The right to property was given immense importance and was made a fundamental right. The land was made a state subject and the responsibility of carrying out land reforms was assigned to state governments with the pure intention of bringing about suitable changes in the economic structure of rural society so as to remove imbalances in distribution of available land to various social groups. And considerable emphasis was also laid on the need of land reforms during First Five Year Plan in 1951 as it was recognized that 3/4th of the population was dependent on agriculture for their income and this sector provided 49% of the national income^[13]. But in later years there were hindrances to carry on the agrarian reforms due to fundamental right of property. Thus, through the subsequent amendments in the Constitution, the right to property was repealed from the list of fundamental rights and was made a constitutional right under Article 300A of the Constitution^[14].

In India, agriculture is the main source of livelihood for a majority of people living in rural areas, and land continues to be the pivotal property in terms of both income and employment around which socio-economic privileges and

deprivations revolve. Though the members of scheduled castes mostly reside in rural areas and earn their livelihood by working on land, they are most disadvantaged in respect of land. A majority of scheduled castes (77 percent) are landless, without any productive assets and sustainable employment opportunities^[15]. Around 87% of the land holders of scheduled castes in the country belong to the category of small and marginal farmers. So, the land question, particularly for scheduled castes, is concerned with human dignity and freedom from bondage and caste based exploitation in village society^[16].

In recognition of the basic proposition that poor land ownership position of scheduled castes accounts largely for their perpetual poverty and makes vulnerable to social injustice and exploitation. The government of India has made systematic endeavor to protect and promote their rights with regard to control and use of land through land reforms. Land reforms have been treated as one of the principal instruments for the creation of egalitarian rural society, in tune with socialistic spirit, as provided in Preamble and the Directive Principles of State Policy^[17]. But the position in the implementation of various reforms like granting ownership of land to the weaker sections of the society especially to scheduled castes had been hardly satisfactory till date.

In pursuance of its land reforms policy, the Government of Punjab, through the application of The Nazul Lands (Transfer) Rules, 1956, has provided surplus land known as Nazul land i.e., the Land escheated^[18] to the State Govt., in the villages of Punjab to the landless families of scheduled castes by forming their Scheduled Caste Land Owning Cooperative Societies in the state of Punjab. The Directive Principles of State Policy of the Constitution of India played an important role in the formation of these Societies^[19]. Therefore, the purpose of these societies was to uplift the socio-economic status of scheduled castes families by giving them democratic control over its functioning, and thus promoting the Joint Cooperative Farming tendency^[20] among themselves so that they could earn their livelihood and food security, and better utilization of the land be done so as to increase the production of food grains, fodder or other crops required for the community for common good.

2. Some Important Definitions

2.1 Nazul

The term Nazul originated as an acronym Non-Agricultural-ZUDAPI-Land. ZUDAPI is a term in local dialects used for lands that were unsuitable for any purpose in their present state. But British Officers envisaged such unoccupied and un-arable lands near upcoming railways lines, established townships, Agricultural Lands, Mineral Rich Lands etc. that could beneficially be used for human settlement. No cultivated land was to be included. Hence the term Non Agricultural combined with ZUDAPI Land found its place in revenue books as Nazul. During the period of British, the government introduced a special department named as Nazul Department through the applications of Central Province Land Revenue Act, 1917^[21]. The word Nazul is of urdu language for which the English meaning is "Leased".

2.2 Land

Land means land which is not occupied as the site of any building in a town or village and is occupied or has been let

for agricultural purpose or for purposes subservient to agriculture, or for pasture and includes the sites of building and other structures on such land and Banjar land ^[22].

2.3 Nazul Land

The term Nazul Land signifies that surplus land in the state of Punjab which was escheated to the State Government under the provisions of the Hindu Succession Act, 1956 ^[23]. Further, Nazul Lands (Transfer) Rules, 1956 define Nazul Land as (i) The Land situated beyond two miles of the municipal limits, which has escheated to the State Government and has not already been appropriated by the State Government for any purpose. (ii) Such other land as the State Government may make available for being transferred under these rules ^[24].

2.4 Escheat

The term "escheat" signifies the right of the Government to take all property, movable or immovable, in the absence of any heir or successor to such property ^[25]. It is an incidence of sovereignty and the right of escheat belongs to the government only ^[26].

2.5 Bona Vacantia

The expression bona vacantia means that there is no apparent rightful claimant to the property. Under English law, the state's right to bona vacantia is limited only to treasure trove, wreck, waifs, strays, whale or sturgeon. Under Article 296, the state's right to bona vacantia extends to a property which has no rightful claimant. Such property, in all cases, be taken by the state ^[27].

Historical Background of Nazul Land

In the words of Bentham, 'Property and law are born together, and die together. Before laws were made there was no property ^[28]; take away law and property ceases.' This quotation explains the interrelationship of property/land and law in the society. Every society has developed its own rules and regulations to regulate the institution of land/property as per its socio-economic and political conditions. The property/land not only fulfills the basic needs of the human being but it is also a status symbol in the society. In the present scenario, the issues of land ownership and other related aspects cannot be resolved without the understanding of the land structure of the past. Therefore, historical analysis of ownership of land/property can be classified into Ancient, Medieval, British and Constitutional eras. These are discussed briefly here as under.

3.1 Ancient Era

During the Rigvedic period, the Aryans were pastorals and cattle were the main property. So, the land ownership was not prevalent at that time. In the post Vedic period, the use of iron implements in the agriculture forced the people to live at one place. The land ownership reference can be found in the post Vedic book "*Aitareya Brahman*" ^[29] in which it is written that when Vishwakarma Bhuvan donated land to the purohiths for performing yagna then Prithvi protested. This suggests that it was not possible to donate land without the consent of Community. So, the land ownership was based on Community and there was no concept of individual ownership.

During the Mauryan period, Kautilya was in favour of King's control over all agricultural land but he did not

sponsor the notion that the King should be the sole owner of all the land. Manu was perhaps the first person who talked about King's first right of ownership of land. According to him, the King owns half of all that come out of mines as he is the lord of the earth.

The concept of King's ownership over all land was first propounded in the post Gupta period by Sage Katyayan. According to him, the king was owner of all the land and therefore, he had right over one fourth of all the products of land. A similar view was expressed in the Narad Smriti. Thus, at the beginning of the ancient period there was Community ownership of land and by the end of this period the stress was on King's and individual ownership of land even though it appears that these two rights were in conflict with each other.

3.2 Medieval Era

When Muslim rule was established in north India under Delhi Sultanate, there was great change in the pattern of land ownership. The land was divided into three categories. The first one was '*Khalsa*' which was directly under centre, the second one was '*Eka*' which was given to the officers in lieu of their salaries and the third category of land was donated to the scholars and priests.

During the rule of Sher Shah Suri, the '*Jabt*' system was introduced and the tax was based on the size of land holding. All cultivable land was measured and each farmer was given a title deed in which tax to be levied was also mentioned. This action of the State saved the farmers from the exploitation by the zamindars ^[30].

The land revenue was the main source of income of the Mughal Empire. Jagirdars were allowed to collect revenue in certain areas in lieu of their salary and to meet military obligations. It also collected revenue through imperial revenue officers from the khalisa. But the jagirdars had no permanent right over the areas assigned to them. Shahjahan examined all the grants during the previous reigns and started ceiling of land and allowed just 30 bighas to be inherited ^[31].

The zamindars were present in every part of the Mughal Empire and held most significant position in the agrarian structure of Mughal India. Prof. Narul Hasan divides the zamindars into three categories namely primary zamindars who had some proprietary rights over land, secondary zamindars who held the intermediary rights and helped the state in collecting land revenue and Autonomous chiefs who had autonomous rights in their territories and paid a fixed amount to the state ^[32]. The zamindars or state had no right to evict the peasant as long as he cultivated the land and paid the revenue. It seems that proprietary rights in land were not quite developed during Mughal period. There was stratification of peasantry due to inequalities in wealth and status. The villages were loaded with menial workers / dalits who were cheap source of labour and were exploited by the peasants and zamindars equally.

The contribution of Banda Singh Bahadur, a sikh legendary of medieval period, was remarkable in carrying out land reforms in the parts of North India. He abolished zamindari and confiscated huge land holding of zamindars thereby redistributing land equally amongst tillers. It was for the first time in Punjab that peasants became owners of the land irrespective of their castes. His vision of social justice had far reaching effects on the economic life of Punjab which provided the backbone to all future struggles against foreign

dominance ^[33]. But in the later period, the peasantry of lower caste/dalits could not hold the ownership rights of land due to rise of zamindari system again.

3.3 British Era

It is also known as British period. It was in Bengal that the Britshers first tried to solve the problem of land ownership. In the beginning, all the land was considered to be of the ruler and revenue collection was based on contract. After experimenting with several models of revenue collection, Cornwallis accepted that the zamindars had the right of ownership of land and this ownership passed from one generation to another. If a zamindar failed to give promised revenue on time, his land could be auctioned. However, the zamindars lived in the cities and the problem associated with absentee landlordism started cropping up. The ryotwari settlement was prevalent in Madras and Bombay presidencies where zamindars with large estates did not exist where a growing income from land because of periodic revision of revenue was under this system. Another significant objective behind establishment of this system was to protect cultivators from oppressions of zamindars. However, there were some drawbacks like exorbitant land revenue fixation, government's right to enhance land revenue at its own Will, payment of revenue even when the produce was partially or totally destroyed and finally replacement of large number of zamindars by one big zamindar i.e. the State. In Punjab and rest of the north India, the Mahal, who represented the farmers, used to collect revenue and when they failed to deposit revenue on time their ownership of land was also auctioned ^[34].

The contribution of British in the land system of India can be gauged from the codification of laws. Many land related legislations came into being during British period like The Punjab Tenancy Act, 1887 (XIV of 1887), The Punjab Land Revenue Act, 1887(Act No. 17 of 1887), The Punjab Alienation of Land Act, 1900 etc.

3.4 Constitutional Era

The Government of India Act, 1935 secured the right to property and contained safeguards against expropriation without compensation and against acquisition for a non-public purpose ^[35]. The debates in the Constituent Assembly clearly indicate that framers of the Constitution attached much importance to property and incorporate it in the chapter of fundamental rights. In the Constituent Assembly, focusing on the natural rights of individuals to own a property, one group ^[36] argued that the payment of just compensation, while other group ^[37] owing allegiance to the socialistic approach on the right to property went to the extent of arguing that there should be no compensation in case of compulsory acquisition for public good ^[38].

During that period, the Indian National Congress appointed the Agrarian Reforms Committee under the Chairmanship of J. C. Kumarappa, for making an in depth study of the agrarian relations prevailing in the country. The committee submitted its report in 1949 which had a considerable impact on the evolution of agrarian reforms policy in the post-independence period. It recommended that all intermediaries between state and the tiller should be eliminated and the land must belong to the tiller subject to certain conditions ^[39].

Thereafter, the following decades saw clashes between parliament and state legislatures on the one hand and the

High Courts and Supreme Court on the other in cases of expropriation of property, with the Supreme Court striking down land acquisition laws on constitutional grounds and the legislature responding with amendments to the Constitution which redefined property rights. These include the First Amendment (1951) which ousted judicial review of agrarian reform laws and introduced the Ninth Schedule in the Constitution, the Fourth Amendment (1955) which ousted judicial review of the adequacy of compensation, the Seventeenth Amendment (1964) which amended the definition of "estate" in article 31A to include ryotwari settlements, the Twenty Fifth Amendment(1972) which replaced the word "compensation" in article 31(2) with the word "amount" and finally Forty Fourth Amendment(1978) which abolished fundamental right to property ^[40].

So far the issue of surplus land or Nazul land is concerned, Article 296 of the Constitution provides that any property in the territory of India which could have accrued to His Majesty by escheat, lapse or bona vacantia under the Government of India 1935, shall, if the property is situated in a state, vest in such state, in any other case, shall vest in the union. Property vesting in the state by the principle of escheat is not new. It was so provided under the Government of India Act, 1853, retained in section 54 of the Government of India Act, 1858 and section 174 of the Government of India Act, 1935 ^[41]. After the enactment of Indian Constitution, we introduced welfare measures to ensure the constitutional spirit of Preamble and Directive Principle of State Policy. The policy makers emphasized on cooperative model for the rural development through the five year plans. The agrarian reforms led to abolition of zamindari system, ceiling of lands and distribution of surplus land to the weaker sections of the society. Following the spirit of agrarian reforms, the state of Punjab enacted the Nazul Lands (Transfer) Rules, 1956 and thus provided surplus or Nazul Land to the landless scheduled castes families by forming their scheduled castes land owning cooperative societies.

Conclusions

The Nazul land, in the state of Punjab, has been provided by the state government to the scheduled castes landless families during 1955-60 by forming their Scheduled Castes Land Owning Cooperative Societies (SCLO) and thus embark upon them a status symbol in the village society as part of its land reform policy. But such access cannot be equated with ownership of land. These people are still loaded with package of economic exploitation and socio-political un-freedoms and are unable to take the benefits of government schemes like short or medium term credit for crops etc. in the absence of land ownership.

Whatever has been happening in the name of so called "land reforms" in the country and particularly in the state of Punjab is more of land management. Computerization of land records, integration of several land laws in one revenue code etc. are a few examples. These measures are taken primarily to facilitate land markets which are becoming more vibrant now days. But at the same time these measures are more helpful to landowners. The occupiers of Nazul land are still at receiving end as they could not get ownership rights since the last six decades. In such a scenario, the constitutional spirit of justice as provided in the Preamble and the Directive Principles of state policy of the Constitution has been eroded to a larger extent.

In the year 2020, the legislative assembly of Punjab has passed an Act known as The Punjab (Welfare and Settlement of Landless, Marginal and Small Occupant Farmers)- Allotment of State Government Land Act, 2020 to provide as a welfare measure for allotment of land to landless, marginal and small farmers who are in cultivating possession and occupation of Government land for a period of ten years or more and for protecting Government interests of getting reasonable price for its land and for the matter connected therewith or incidental thereto ^[42]. But, it is very astonishing that the definition of land given in this Act excludes the Nazul land from its purview which reflects the political ill Will of the dispensation.

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