

The Singur sham

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Mamata pushed the bill through with no heed to Constitution or legal precedent

The basic facts are well known by now. West Bengal's Left Front invited the Tatas to set up a Nano plant in 2006. About 997 acres of mostly agricultural land was acquired. Some farmers sold willingly, others resented it — violence followed. The Tatas signed a lease, moved in and invested considerably. But low-intensity violence continued. With the government unable to guarantee law and order, the Tatas pulled out in 2008. One of Mamata Banerjee's earliest legislative achievements was the Singur Land Rehabilitation and Development Act, 2011 — a law under which the leased land was taken over and provisions were made for returning some of it to the resentful sellers. But her plans hit a roadblock when the Calcutta High Court declared the law unconstitutional.

At the heart of the controversy was the very nature of the action itself. In 2006, the government gave the acquired land to the West Bengal Industrial Development Corporation, which in turn leased it to the Tatas for 90 years. By taking over the leased land, the Singur Act, the Tatas' counsel argued, had made an "acquisition". That is to say the law acquired the Tatas' property. The Bengal government saw it differently. To them, the effect of the law was to merely end the lease and take "repossession" of land that already belonged to the government. Depending on the nature of the action, different constitutional rules would apply. The high court found that leasehold is also a kind of property and, therefore, in cancelling the lease, the act had in effect acquired property.

A Central law on acquisition of property, the Land Acquisition Act, 1894, already exists. Under Article 254 of the Constitution, if a state legislature makes a law that is inconsistent with the Central law, the president's assent is needed. The high court found that there were "clear and direct inconsistencies" between the Singur Act and the Central law. Rules regarding the purpose and procedure of acquisition, possession and compensation were irreconcilably different. But the president's assent hadn't been taken; Governor M. K. Narayanan had signed it into law himself. The high court found the Singur Act to be in violation of Article 254.

The high court also declared the act unconstitutional on the ground that the specifics of compensation were not provided for. The Tatas argued that they had invested about Rs 18,000 crore in setting up the plant. Several allied vendors had also invested nearly Rs 385 crore in the area. While the act took possession of the leased land, it left all issues of compensation, if any, to the district magistrate. Relying on Supreme Court precedents, the high court concluded that the provision was inadequately drafted because it did not spell

out the basis on which compensation was to be determined. Though poorly structured and written, the legal conclusions are mostly correct.

Three things are worth pointing out. First, what was Banerjee's principal motive? The Singur Act claimed that the land was being repossessed for "socio-economic development", and to return some of it to the disgruntled sellers. No more than 40 acres of land relates to the latter category. If the main objective is to pacify these sellers, then alternative parcels of land could be found.

Second, this misadventure should be a timely reminder to Banerjee in particular and legislators in general that hasty actions do not necessarily produce good acts. The Singur Bill was introduced in the assembly on June 14, 2011, and passed the same day. Even a perfunctory debate would have exposed some of the act's legal limitations. This absence of meaningful legislative scrutiny was not a unique occurrence. Assemblies generally seem to have ceased to take their task of deliberative lawmaking seriously. But at least in some forums, it is a constitutional duty worth holding them accountable for.

Third, the Singur Act raises questions about the governor's role. Once a legislative assembly enacts a bill, it goes to the governor for assent under Article 200. As in this case, the governor may reserve a bill for presidential consideration under Article 201. These decisions — whether to assent to or reserve a bill — must be made independently by a governor. A governor's powers and functions under the Constitution are still somewhat mysterious. But it is clear that there are some independent powers. Matters of assent, I would argue, must be part of this list. Narayanan is said to have expressed displeasure over the government's advice on the Singur Bill. But he was mistaken to act on the advice in the first place. The constitutional course of action would have been to seek separate legal opinion, and act independently on that advice.

Banerjee has promised to appeal in the Supreme Court but this may be an exercise in futility. Unless the Supreme Court decides to overturn nearly six decades of precedents, the Singur Act is unlikely to pass constitutional muster. The injustices of land acquisition for the Nano plant can — and must — be righted. But Banerjee's misadventures will hardly achieve that.

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