

Elders of a previous generation used to say that in Justice *Rajamannar's* Court there was such an atmosphere as described by Justice *Raghava Rao*. I envy the good fortunate of those advocates who practiced before Justice *Rajamannar*.

## CONUNDRUM OVER LAND AND SPECIAL ECONOMIC ZONES (SEZS) IN INDIA

By

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“Laws Change; people die; the land remains” — *Abraham Lincoln*<sup>2</sup>

“The nation that destroys its soil destroys itself” — *Franklin D. Roosevelt*<sup>3</sup>.

In recent past there are a lot of arguments and counter arguments have been generated over the acquiring of land by the Government for creation of special economic zones (SEZs) and this paper succinctly describes emergence of SEZs and its implication on rights of land holders in India.

### 1. Introduction:

In this era of globalization, most developing countries are witnessing a shift away from an import substitution based development strategy to an export promotion policy. In post World Trade Organization scenario the countries around the globe are vigorously promoting special economic zones the purpose of gain edge in exports.

A Special Economic Zone (SEZ) can be defined as a geographical region that has economic laws that are more liberal than a country's typical economic laws<sup>4</sup>. It is a trade capacity development tool, with a goal to

promote rapid economic growth by using tax and business incentives to attract foreign investment and technology. By offering privileged terms, the Special Economic Zones attract investment and foreign exchange, spur employment generation and boost the development of improved technologies and infrastructure. Apart from India and China, the other notable countries which have experimented with Special Economic Zones are Iran, Russia, Ukraine, Poland, Philippines, Kazakhstan and North Korea.

It is pertinent to mention that the China's Special Economic Zones have become a successful venture almost in the entire world and which has attracted and forced the countries to start these in their countries. The most successful Special Economic Zone story till now is that of Shenzhen, China which has grown from a tiny fishing village in the eighties to a city of 10 million which employs around 7 million migrant workers<sup>5</sup>. According to World Bank estimates, as of 2007 there are more than 3,000 SEZs projects taking place in 120 countries worldwide. As on today in our country the Government has permitted 574 SEZs and there are 105 SEZs have in operation throughout the country.

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2. (1809-1865) 16th President of America

3. (1882-1945) 32nd President of America

4. [http://en.wikipedia.org/wiki/Special\\_Economic\\_Zones](http://en.wikipedia.org/wiki/Special_Economic_Zones)

5. French, 2006

## 2. Development of SEZs in India:

India was one of the first in Asian countries to recognize the effectiveness of the Export Processing Zone (EPZ) model in promoting exports, as Asia's first Export Processing Zones was set up in Kandla in 1965 (EPZ)<sup>6</sup>. With a view to overcome the shortcomings experienced on account of the multiplicity of controls and clearances, the absence of world class infrastructure and insatiable fiscal regime and with to attract larger foreign investment in India, the Special Economic Zones policy was announced in April, 2000, by the Ministry of Commerce, the Government of India. The main and avowed objectives for the setting up of Special Economic Zones (SEZs), as enunciated in the SEZs Policy of April 2000, were export promotion, creation of a climate and environment which attracted large foreign investments and promotion of world class infrastructure in a climate of fiscal instability<sup>7</sup>.

It was also felt that the current system of multiple windows, clearances and controls, which discouraged entrepreneurial activity, had to be modified. The Parliament of India has given its nod of SEZ policy by passing the Special Economic Zone Act on 23 June, 2005 and this came into the operation from 10th February, 2006 and the aims of Act clearly states that the generation of additional economic activity and the employment opportunities as well as promotion of all kinds of investments<sup>8</sup>. It is also envisaged that industries located within a SEZ would be net foreign exchange earners for the country. The Act is encompassed into eight chapters covering into fifty eight sections.

## 3. Changing face of Right to Property under the Constitution :

When the constitution was enacted in our

country right to property is recognized as the fundamental right under Article 19(1)(f). If the state under any circumstances infringes citizens fundamental rights, we have right to approach the apex Court of the land for enforcement of our fundamental rights under Articles 32 and 226 of the constitution in form of writs. The principle of eminent domain is indirectly recognized in our constitution under Article 31(1)(2) which empowered the state to take private property of citizens for the public purpose by paying market value of the property. This is also validated by the apex Court of the land in innumerable cases. In *State of Bihar v. Kameshwar Singh*,<sup>9</sup> the Supreme Court clearly held that the compulsory acquisition of private property for public necessity and payment of compensation is indispensable for development. For this purpose way back during the reign of British period an enactment called the Land Acquisition Act was passed in 1894 and this is the act which prescribes procedure for taking of private property for public purpose. By 44th Constitutional Amendment which was carried out in 1978 transferred the right to property from fundamental right to the constitutional right and placed under Article 300A of the Constitution.

## 4. Abuse of SEZ provisions for other than Industrial/enterpreneural activities:

The Special Economic Zone Act 2005 necessitating the Government to take over the property of the private land owners under provisions of the Land Acquisition Act 1894 for establishment of SEZs. The Act provides that SEZ developers can retain 75% of the land for non industrial purpose in which the developers can develop hotels, restaurants, amusement parks, multiplexes, malls, housing complexes etc and only 25% of such acquired land is being used for industrial purpose. Because of this the companies who have promoting the

6. [www.sezindia.org](http://www.sezindia.org)

7. Ministry of Commerce, GOI, <http://www.sezindia.nic.in/sez.asp>

8. Gazette of India, June 23, 2005

9. AIR 1952 SC 252

SEZs have instead of starting the industries indirectly relying on real estate activities. The development of housing and other social infrastructure requirements in the non-processing parts are being given the same fiscal incentives as the business units in the processing area, allowing prosperity in real estate development.

### ***5. Loss of farming lands and inadequacy of compensation:***

The biggest bone of contention in the SEZ skeleton is the building of SEZ units on prime agricultural lands and the displacement of farmers from holding the land and inadequate compensation provided to farmers. For acquisition of land from farmers, two methods are followed. The first is of compulsory acquisition, whereby the so called 'fair' market price is determined by taking an average of recorded sales and adding 30% solatium to it. The other way is to let the SEZ developers' purchase the land directly from the farmers. In either method, the farmer stands at a disadvantage position. In the compulsory acquisition mode, he is at a serious disadvantage because the recorded sales information is rarely disclosed.

The Government has started acquiring the valuable agricultural land in guise of SEZs where on account there are vehement protests have been taking place in different parts of the country notably at Nandigram and Singur, in West Bengal, Gopalpur in Orissa and all other places where the land is being acquired. The farmers whose lands have being acquired are under tremendous strain. There have been scathing campaigns against SEZs by politicians, scholars, media and civil society.

It is estimated that total amount of land expected to be acquired for SEZs across India would be 150,000 hectares<sup>10</sup>. This land is predominantly agricultural land and

typically multi-cropped. This conversion would lead to a loss of 1 million tons of food grains produced annually, thereby threatening the food security of the entire country<sup>11</sup>. It is astonishing to note that close to 1.14 lakh farming households and an additional 82,000 farm worker families who are dependent upon these farms for their livelihoods have displaced due to SEZ projects in our country<sup>12</sup>.

### ***6. Other Issues:***

The other important aspects to be noted down that the Section 49 of the SEZ Act provides that the Government to exempt any or all SEZs from the operation of any central law through a notification which includes the Constitution of India and all labour law legislations and on account this kind of extra ordinary arrangements, one respect we say that the state is forgoing its rights to private individuals and due to absence of labour legislations there is no check on welfare of the employees working in the SEZs and hire and fire policies are very common in hands of owners or developers in the SEZ areas and we could also see that new form of exploitation may take central stage. This is a very serious matter which effects on our sovereignty and rule of law.

The Act further stipulates that internal security in the SEZ areas have to be manned by their own security personnel rather than state police force. These kinds of arrangements are leading to creation of private armies and dangerous repercussion in law and order situation. It is also astonishing to note that for speedy disposal of cases in the SEZ areas the Act permits constitution of special Courts in those areas. If we analyze the SEZ Act in deep perspective it is resulting into damage to the environment of the country as well as violation of human and constitutional rights of land owners.

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10. Data up to 2008

11. CRC 2007

12. Sharma (2006)

The another important issue with regard to the SEZs in India is that much of these are coming around in the well developed areas and near to the metropolitan cities such as New Delhi, Hyderabad, Chennai *etc*, which is resulting into the more burden on overburden cities as the people are forced to migrate to those places where on account it is resulting into huge burden on the metro urbanization, which indirectly causing more demand for lands and whereon account the prices of the land in those areas have been sky rocketing. In addition to this the starting of SEZs in near by metropolises also impacting much haywire on urban town planning management due to wide spread of migration of skilled or unskilled people from far flung areas to these areas in search of greener pastures.

Our finance minister *P. Chidambaram* has recently admitted that the SEZs have become white elephants on our economy and these are resulting into a huge loss to the Government in form of revenue loss as much tax holidays have been doled out. So far our country has pumped around Rs.3,60,000 crore in this sector,<sup>13</sup> and the state exchequer has suffering a revenue loss of more than 1,74,000 crore. The SEZs are being promoted by the Government on cost of tax payers money and day dream of generation of employment and revenue clearly exposed over existence of SEZs since five years.

### 7. Conclusions and Suggestions:

The existing SEZ enactment was passed by the parliament within two days of its introduction without much discussion and its serious repercussions have surpassing now. The existing of SEZ Act 2005 is just completed five years of its enactment and it is now appropriate time review and bring some amendments to attain aims enshrined SEZ Act.

13. 'SEZs in India – The record so far' by *Chandrasekhar C.P.* and *Ghosh Jayati* in the Business Line 27-11-2007.

- i. Under liberal rules of SEZ, the developers have mushrooming into the businesses and recommending and forcing the Government to take over the prime agricultural lands in the country and this should be put to pull stop. Our northern neighbour the Peoples Republic of China considered as home of SEZs operations and it is amazing to note that only 6 SEZs have been permitted by the Chinese Government in all these years and moreover all those SEZs areas have been located on the sea coast and the Chinese Government bans taking over any kind of arable farm land for the development of SEZs. The same methods should be adopted in India and the Government has permitted excessive SEZs all across India particularly near to metropolitan areas and they are converting the valuable agricultural land for the purpose of development at the cost of the poor and help less Indian farmers. The locations of SEZs are near to cities is leading to unthinkable rise of land rates in cities and also in search of greener pastures people all across the country are forced to migrate to cities.
- ii. The SEZ act permits that the state is once its gives permission for the SEZ it does not have effective control of its management and land which has given to such developers and this provision is resulting into the misuse of land acquired and granted under the SEZs. We should incorporate a provision in the SEZ Act that the Government only does have title over the SEZ lands and the companies or developers should be given of only lease hold rights over the lands and if they violate leasehold agreement their lease can be cancelled so it deter them from misutilising the SEZ lands.

- iii. For starting of the SEZs the Government has time and again acquiring arable lands from the farmers under the Land Acquisition Act 1894 and after payment of the compensation to such farmers they have not receiving of any kind of further benefits from the companies. Instead the companies or entrepreneurs are getting huge amount of profits for years together if the SEZs have come up. The SEZ Act should be amended by incorporating that the farmers who have lost their lands should be paid of minimum profits for the period of 10 years and this would considerably lowers dissatisfaction of farmers who are affected by the starting of SEZs in their lands and the farmers who lost the land in development of the SEZs, if they desires he or their dependents must be given of some sort of employment opportunity in the SEZs, this method may lead to considerable opposition in minds of farmers who are vehemently opposing the development of SEZs in their lands.
- iv. The SEZ Act permits only 25% of land should be availed for industrial or other services in the SEZ areas the 75% of SEZ land can be utilized for non industrial activities and this is the major reason for entry of middle players in the picture and increase of land rates due to real estate activities in the SEZ lands. The Act should be amended that the half of the land should be strictly earmarked for industrial purposes in the SEZ areas and other half should be utilized for other activities.
- v. The Government to lessen the burden on urban migration and urban planning should establish the SEZs in different part of the India and much focuses should be paid to starting of these in backward areas so that it would result in less burden on metropolitan cities, considerably lessen the sky rocketing of land prices, equitable development of all areas in India.

If the suitable amendments are not carried out to the SEZ Act of 2005 in years to come we could see much more mushrooming of SEZs in guise of development. The father of nation Mahatma Gandhi once remarked that India lives in villages and if you want to see India and you see its villages, if they are better then only the country will be in better. The purpose of the SEZ Act is to rapid development of the country without causing any harm to tillers of the soil, we have to achieve the sustainable development by respecting rights of agrarian people. It is high time that the Government must see that the Special Economic zones would not become Special Exploitive Zones or Special Entertainment Zones.

## THE ROLE OF ADVOCATES IN ADMINISTRATION OF JUSTICE

By

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The role of advocates constant purpose must be to keep in mind the duty of the lawyers and function of judges is to deliver the *best quality of justice at the least cost in the shortest time.*

Advocates role is multi dimensional in character. Advocates who were an integral part of the administration of the justice. Every advocate is an officer of the Court to