

THE MYTH OF VOLUNTARY LAND POOLING: A LEGAL AND SOCIO-ECONOMIC ANALYSIS OF THE DHOLERA SPECIAL INVESTMENT REGION

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ABSTRACT

High-speed infrastructural growth has become a defining feature of modern economic policy in India, especially by the construction of industrial corridors on a large scale, smart cities, and Special Investment Regions (SIRs). Policymakers have therefore resorted to land pooling mechanisms as a replacement of conventional land acquisition in order to acquire large acres of land to facilitate such projects. The land pooling as a participatory and voluntary model of development enables the land owners to donate their land for planned urban development, with the remaining portions to be given back to them after infrastructure creation. The model has been extensively adopted in the development of the Dholera Special Investment Region in Gujarat, one of the most ambitious greenfield smart city developments in India and a central part of the Delhi-Mumbai Industrial Corridor project.

Despite the theoretical benefits of land pooling, its application has a raised legal and socio-economic controversy. This paper is a critical analysis of the argument that land pooling is a truly voluntary and participatory process of development. The paper analyses the legal provisions governing SIRs, the institutional practice of land pooling, and the social impacts on rural communities, arguing that the concept of voluntariness usually masks institutional imbalances between the development agencies and individual landowners. The article also examines the issues of constitutionality in terms of property rights, accountability of governance and fair distribution of development benefits. Finally, the paper argues that though land pooling can help in infrastructure growth, the legal protection must be enhanced, proper planning procedures and

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participation of communities should be considered so that the development does not come at the cost of the rural livelihoods and social justice.

Keywords : Social Justice, Investments.

INTRODUCTION

The concept of an infrastructure-led development has become one of the central points of economic policy in many emerging economies. In India, industrial development, urbanization and international competitiveness have given rise to ambitious development projects such as industrial corridors, smart cities, and special investment zones. These projects are high land consuming ventures and are usually based in rural or semi-urban areas where agriculture is the dominant economic activity.

Historically, land acquisition for public purposes in India was regulated by the Land Acquisition Act, 1894³, that empowered the state authority to obtain the private property compulsorily for development projects. Nevertheless, the colonial background of the legislation and its perceived inefficacy in safeguarding the landowners also sparked a great social and political debate. This was later superseded by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) Act, 2013⁴, which provided better protection, such as social impact assessments, consent requirements and better compensation schemes. Notwithstanding these reforms, it has become a norm that governments and development authorities have been resorting to other mechanisms of securing land to facilitate infrastructure developments. Among them, land pooling or land readjustment has become highly prominent.⁵ The model is often outlined as a participatory model whereby the landowners willingly donate their land to the development and get back part of the developed land.

³ The Land Acquisition Act, No. 1 of 1894 (India).

⁴ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, No. 30 of 2013, India Code (2013).

⁵ Smita Srinivas, *Land Readjustment and Urban Development in Asia*, 34 Urban Stud. 1483 (1997).

The most notable instance of this model is the construction of Dholera Special Investment Region in Gujarat⁶, which is a component of the bigger Delhi-Mumbai Industrial Corridor project.⁷ The project covers almost 920 square kilometres and aims at changing a large rural coastal area into a technological smart city and a global production centre. Although the project is commonly referred to as a case study in the development of future infrastructure in India and its implementation has sparked a lot of controversy regarding the nature of land pooling and the consequences it has to the rural population. Critics claim that the fact that land pooling is supposed to be voluntary, conceals structural power relations between development authorities and individual landowners. Further, with the transformation of agricultural land into urban structure, the issues of displacement, loss of livelihood, and environmental sustainability are even bigger concerns.

Therefore, this paper will explore the legal and social implications of land pooling in Special Investment Regions. Using the Dholera project as a case study, the paper will aim at assessing whether land pooling is indeed a participatory development philosophy or is it just a reorganized version of land acquisition.

CONCEPTUAL FRAMEWORK: LAND POOLING AND URBAN DEVELOPMENT

Land pooling or land readjustment is an urban planning tool whereby land owners pool their lands for comprehensive development.⁸ Once the development authority establishes the infrastructure (e.g., roads, drainage, public utilities, and open space), the original land owners are resettled on the redistributed land, which are reconstituted plots.

Contrary to the normal practice of land acquisition where all rights of the land are put to the state in exchange of monetary compensation, land pooling enables land owners to have a right to own part of the land after development. The rationale of such a model is that when infrastructure is introduced, the value of a land would go up significantly. Therefore, although the landowners will

⁶ Govt. of Gujarat, Dholera Special Investment Region Development Plan (2013).

⁷ Delhi Mumbai Industrial Corridor Development Corp., Delhi-Mumbai Industrial Corridor: Project Overview (2012).

⁸ UN-Habitat, Land Readjustment: A Tool for Urban Development (2012).

give part of their land to the government in order to construct infrastructural amenities, it is anticipated that the rest of the developed land will be more valuable.

Urban planners usually cite a number of benefits of land pooling.⁹ First, it minimizes the financial load on governments since the expenditure of the governments acquiring big parcels of land is minimized. Second, it enables integrated urban planning because land parcels can be restructured based on a detailed development plan. Third, it is believed to be a less controversial practice in comparison with compulsory acquisition because owners of land are theoretically involved in the process.

Although these benefits are evident, land pooling is associated with great challenges. It involves a complicated inter-relationship of various stakeholders and is largely reliant upon open governance processes. In addition to this, the premise that urban development will equally benefit all the landowners is not quite realistic, especially in cases where development projects are in rural areas with land being linked more to livelihood and cultural identity.

As a matter of fact, land pooling can create an unequal distribution of benefits.¹⁰ Those landowners who live in strategic locations are likely to receive a large economic benefit, whereas other people might be given smaller or less useful areas. Moreover, when the agricultural lands are turned into urban properties, it can destabilize the traditional economies and pose some uncertainty to the rural communities.

These issues indicate the necessity to analyze legal frameworks according to which land pooling schemes are organized and to what degree they guarantee the interests of the communities that are affected.

LEGAL ARCHITECTURE GOVERNING SPECIAL INVESTMENT REGIONS

⁹ Anirban Chakraborty, Urban Land Pooling and Development Policy in India, 52 Econ. & Pol. Wkly. 45 (2017).

¹⁰ Shubham Chaudhuri, Land Pooling and Equity in Urban Development, 46 J. Urban Aff. 213 (2020).

The Gujarat Special Investment Region Act, 2009¹¹ governs Special Investment Regions in Gujarat. This law was enacted to help the establishment of large areas of investment zones that would help in attracting local and foreign industrial investment. The Act gives powers for the creation of regional development authorities with the responsibility of planning and executing infrastructure within designated jurisdictions. These functions are undertaken in Dholera by the Dholera Special Investment Regional Development Authority.

The Gujarat Town Planning and Urban Development Act, 1976¹² regulates land pooling in the area. This law gives power to prepare Town Planning Schemes which restructure land plots in order to develop the urban areas.¹³ In these plans, land owners make a specified amount of their land which is invested in the development of infrastructure and the remaining land is given back to locals as reconstituted parcels.

The town-planning mechanism enables governments to carve a significant amount of every piece of land to be used as a town infrastructure, which includes roads, drainage systems, utilities, and other recreational facilities. This excision gives the state access to large holdings, although the remaining land is reverted to the original owners, which will not invoke compulsory acquisition processes. This legal system raises a number of questions in relation to the balance between property rights and development goals. Even though the law allows a statutory competency to rearrange land parcels, it does not always guarantee effective participation and bargaining rights to land owners.

Furthermore, it is argued by critics that land-pooling plans can bypass procedural protections embedded in modern land-acquisition laws. By way of example, the LARR Act requires elaborated social impact analysis and consent requirements in certain types of projects, where land-pooling

¹¹ Gujarat Special Investment Region Act, No. 11 of 2009 (India).

¹² Gujarat Town Planning and Urban Development Act, No. 27 of 1976 (India).

¹³ Bimal Patel & Hitesh Vyas, Town Planning Schemes in Gujarat, 42 *Econ. & Pol. Wkly.* 225 (2007).

schemes implemented under town-planning legislation might not be subject to similar procedural requirements.¹⁴

THE DEVELOPMENT MODEL OF DHOLERA SPECIAL INVESTMENT REGION

Dholera Special Investment Region is one of the largest infrastructure projects of India. It is located on the western coast of Gujarat, and has been identified as a strategically favorable point of growth of industry due to its closeness to key ports, highways, as well as trade routes. The project is part of the larger Delhi-Mumbai Industrial Corridor that aims at creating a grid of industrialized areas, networked through a state of the art transport and logistics infrastructure.¹⁵ The corridor is expected to increase production space and boost the Indian economy in various states.

The Dholera project sees the creation of a technologically advanced smart city equipped with the latest infrastructure, including automated utility systems, integrated transport networks, and electronic systems of government.¹⁶ The development plan includes industrial complexes, residential townships, commercial areas and social facilities like schools and health infrastructure.

In order to achieve this vision, the authorities have subdivided the area into various town-planning to enable development in phases. The key aspect of this strategy is land pooling, which gives authorities the power to restructure land plots and develop infrastructure corridors without having to rely on massive compulsory acquisition.

However, the scope of the project has raised concerns among the local communities. Many of the villages located in the development area rely on agriculture and livestock as their main economic and social activity; thus, the industrialization and urbanization of the agricultural lands is a significant change in the economic and social environment of the area.

¹⁴ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act §§ 4–9, No. 30 of 2013, India Code (2013).

¹⁵ Delhi Mumbai Industrial Corridor Development Corp., DMIC Project Report (Ministry of Commerce & Industry, Govt. of India).

¹⁶ Dholera Industrial City Dev. Ltd., Dholera SIR: India's First Greenfield Smart City (2019).

THE MYTH OF VOLUNTARY PARTICIPATION

Land-pooling policies have been presented as a voluntary situation in which the owners of land voluntarily donate their land to development initiatives. Theoretically, this model puts landowners as stakeholders and beneficiaries of urban development instead of victims of displacement.

Nevertheless, empirical evidence is pointing to the fact that the voluntary nature of such schemes might be exaggerated.¹⁷ In most cases, structural pressures are faced by landowners who are basically forced to join pooling schemes. As an illustration, non-participation can make a piece of land remote in the development zone, hence reducing the level of its accessibility and market value.

In addition, the power asymmetry of individual farmers and state-supported development authorities may have a significant impact on the negotiation process.¹⁸ Most of the rural landowners do not have access to the legal knowledge and might not have an easy time challenging intricate planning policies.

The other cause of undermining voluntariness of people is that there is a limited magnitude of substantive consultation in the planning process. Even though the detailed procedures provided by the statutes require the use of the public notices and hearings, those measures do not always imply that the landowners have real opportunities of influencing the development decisions. As a result, the involvement in land-pooling schemes can occur in compulsion instead of cooperative work. This casts important doubt as to whether land pooling as an idea is a participatory model of development.

SOCIO-ECONOMIC CONSEQUENCES FOR RURAL COMMUNITIES

Major infrastructure investments have the potential to cause significant socio-economic impacts on the rural population, especially in areas where land is the main source of livelihood and social-

¹⁷ Levien Michael, Land Dispossession and Development in India, 52 J. Peasant Stud. 1 (2015).

¹⁸ Amita Baviskar, In the Belly of the River: Tribal Conflicts Over Development in India (Oxford Univ. Press 2011).

cultural identity.¹⁹ When it comes to the Dholera Special Investment Region, a large percentage of the local population relied traditionally on agriculture, livestock farming, and other economic pursuits involving rural population. The change of the largely agricultural land to industrial and urban infrastructures, hence, is not just an economic change but also a structural change of the local social order.

The decrease in agricultural land is one of the most immediate effects of land pooling and large scale urban planning. The development of such plots change substantially, although land owners have a right to get reconstituted plots back. In many cases, the redeployed plots are used in residential, commercial or industrial purposes instead of agricultural production. As a result of this, the farmers who depended on farming as a predictable means of earning, might be forced to look into other sources of livelihood as opposed to the conventional farming methods. Small and marginal farmers may struggle especially with such transition because they lack the financial resources, education or technical expertise needed to adjust to the urban economic environment.

The other important problem is the unequal allocation of benefits of economic development in the context of infrastructure development. Land values are usually driven sky high when transport networks, industrial clusters and urban amenities are introduced.²⁰ The goodnesses of this appreciation, however, do not always trickle down to the stakeholders evenly. The presence of private developers, real-estate investors, and corporate players who tend to have more financial capacity and access to the market can therefore take up a good part of the economic gains that are created by urban growth. Conversely, original landholders might be getting relatively smaller returns especially when they are forced to sell their reconstituted plots, untimely due to financial reasons or market-related ignorance.

Social stratification in rural communities can also be caused by the reorganization of the land-ownership patterns. The wealthier landholders or those with more access to capital than small farmers and landless labourers can gain more than their share and may be increasingly vulnerable

¹⁹ World Bank, *Urbanization and Economic Transformation in India* (2016).

²⁰ Ramesh Ramanathan, *Urban Land Markets and Inequality*, 50 *Economic & Political Weekly* 67 (2015).

economically. This may enhance inequality in the rural areas and lead to marginalisation of the already vulnerable groups.

Huge infrastructure projects may change the social and cultural life of rural communities. The traditional village set ups are usually typified with the close-knit kinship ties, common farming activities, and group decision making procedures.²¹ The urbanisation which is witnessed in a very short period of time because of various projects like Delhi-Mumbai Industrial Corridor is capable of affecting these social arrangements. The arrival of migrant laborers and new business processes are likely to alter the demographic trends in the area, which will result in changes in cultural values and social structures as well as community communication patterns.

Another important aspect of these changes is the migration dynamics. This is because as more industrial and commercial zones grow they bring labour to other areas leading to population growth and the growth of urban density. Although this process has the potential to create jobs and economic activity, it will strain the infrastructure, housing and social services locally. In the case of long-standing residents, the speed of demographic change may cause the displacement in them although they are physically situated in the same area.

Socio-economic environment also makes big infrastructure complex particularly with environmental issues. Coastal ecosystems like Dholera are ecologically sensitive and prone to natural disasters, including floods, intrusion of saline waters and erosion.²² Drainage patterns and ecological systems can be largely changed due to the construction of vast industrial infrastructure, transportation networks, and urban settlements. Unless environmental planning and mitigation measures are put in place, such developments have the potential to bring about the probability of environmental degradation and long-term ecological imbalance.

JUDICIAL AND CONSTITUTIONAL CONCERNS

The constitutional and legal issues that have been questioned by the introduction of land pooling schemes in major infrastructure projects include property rights, due process, and democratic governance. Even though the right to property was abolished as one of the basic rights by the 44th

²¹ Jan Breman, *The Making and Unmaking of Rural Society*, 49 *Contributions to Indian Sociology* 219 (2015).

²² Ministry of Environment, Forest and Climate Change, *Coastal Regulation Zone Notification* (2011).

Constitutional Amendment of India, it is still safeguarded as a constitutional legal right under Article 300A²³ of the Constitution. Under article 300A, it is stipulated that there will be no one deprived of property without the authority of the law. This is a significant constitutional restriction on the state which stipulates that any deprivation of property would have to be executed in a sound legal procedure which would be just, sensible, and in line with statutory formulations.

When applied in land pooling and infrastructure development schemes, the issue commonly posed is whether these schemes are effective to bypass the procedural protection measures which are commensurate with formal land acquisition legislations. As an example, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013²⁴ caused considerable changes in order to protect land owners by introducing social impact assessment, better compensation terms and consent in some situations. But when the governments employ planning statutes and land pooling mechanisms rather than formal acquisition, this may not necessarily be the same protection and thus in reality will be an indirect form of land acquisition. But, this will avoid some of the accountability mechanisms that are established in current statutes on acquisition.

Courts have thus been very significant in reviewing the development policies which have an impact on property rights and land management. There are a number of petitions disputing the elements of land acquisition, compensation plans and town-planning schemes of the Dholera Special Investment Region, which have been taken to the High Court of Gujarat. The cases are indicative of general conflicts between the goals of fast infrastructure development and the safeguarding of personal property rights. There is a tendency of courts to strike a balance between the powers of a state to achieve economic development and the constitutional mandate that said development does not lead to arbitrary deprivation of property.²⁵

In addition to issues of property rights, land-pooling plans create real issues that concern democratic governance and participatory planning. The 73rd and 74th Constitutional

²³ INDIA CONST. art. 300A.

²⁴ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, No. 30 of 2013 (India).

²⁵ K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 S.C.C. 1 (India).

Amendments²⁶ were presented to strengthen the governance of India in the decentralised systems by giving powers to local self-government institutions - panchayats and municipalities - with the acknowledgement that the local communities should have a significant role of planning and decision making processes that directly affects their economic and social environment.

However, in many cases with large-scale infrastructure projects, such as the Delhi-Mumbai Industrial Corridor, planning becomes devolved to specialised development agencies rather than to local elected governments. These agencies are generally provided by the state, and have extensive administrative independence. Despite such arrangements for ensuring effective planning and coordination, it has the capacity of marginalising the local governance institutions and stifling the community involvement in the developmental decisions involuntarily.

This limited involvement of local authorities may create a democratic deficit at the planning process, particularly where land use, zoning rules, and investment in infrastructures are made without significant consultation with the local communities. The omission of rural landowners and village institutions in decision making structures is a threat to the principles of participatory governance which forms a basis of decentralised democracy.

These constitutional and governmental issues explain why there is a need to have a more balanced institutional structure to balance the development of infrastructure and protection of property rights and democracy. The land-pooling policies can be consistent with the constitutional principles and promote sustainable and inclusive development by putting in place more procedural protections, making planning processes more transparent, and integrating local governance institutions into the development planning decision-making process.

GOVERNANCE CHALLENGES AND INSTITUTIONAL ACCOUNTABILITY

Massive infrastructure undertakings carried out through land-pooling plans present serious concerns regarding governance, transparency, and institutional accountability. In the Dholera Special Investment Region framework, specialised development authorities undertake development planning as opposed to the traditional local governance institutions. Although it is

²⁶ INDIA CONST. amend. LXXIII; INDIA CONST. amend. LXXIV.

generally the role of authorities to guarantee efficiency in administration and coordinated plans, the activities can inadvertently reduce the sphere of democratic participation and supervision.

A single governance issue relates to the concentration of the powers of decision-making among development authorities, that are assigned the responsibilities of planning, zoning, and implementing infrastructures. Statutory authorities including the Gujarat Special Investment Region Act, 2009 have the overall power to prepare development plans, control land use, and to manage town-planning plans.²⁷ Although these powers are meant to facilitate speedy urbanization, they also create a situation whereby the land owners and local communities have little control over decision making processes that have a significant bearing to their property and livelihood.

The other issue is the limited mandate of the decentralised governance institutions set out by the 73rd and the 74th Constitutional Amendments that is focused on participatory planning through the local institutions, like panchayats and municipalities. In many Special Investment Regions, development authorities operate with great independence of these institutions. Consequently, the procedures of planning, which shape the economic and social future of whole regions, can take place without the substantive involvement of the representatives elected by the local population.

Transparency in planning processes also forms another major governance issue. Development schemes, zoning laws, and land-valuation systems are often very technical and hard to understand by the normal land-owners. Without the available information and clear communication by the concerned authorities, the communities to be affected might not grasp the long term effects of the land-pooling schemes.

The multi-layered nature of infrastructure governance is also an added complication in institutional accountability. Major projects like the Delhi-Mumbai Industrial Corridor require coordination between the central government bodies, state governments, development authorities and individuals investing in the project.²⁸ Such a complicated institutional environment can create

²⁷ Shubhagato Dasgupta, Governance of Industrial Corridors in India, 54 Econ. & Pol. Wkly. 34 (2019).

²⁸ Asian Development Bank, Industrial Corridors in South Asia: Policy and Governance Challenges (2018).

ambiguities about responsibility and control, especially in cases where there are disagreements on matters of compensation, land redistribution, or environmental issues.

Enhancement of accountability mechanisms, therefore, is inseparable in maintaining that the development of infrastructure is geared towards values of democratic governance and social justice. Independent regulatory control, planning documentation to be disclosed publicly, and an effective grievance-redressal system are some of the initiatives that can be used to bridge the gap between the development authorities and the communities. Enhancing transparency and institutional accountability will help the policymakers to increase the confidence of the people in large-scale development of infrastructural projects and ensure that policies introduced by the government serve to improve the economic development and at the same time, address the needs of local people.

CONCLUSION

The growing popularity of land pooling as a tool of enabling large scale infrastructure development is part of a general change in India's development stance. Instead of using the traditional land acquisition laws, governments have resorted to other structural frameworks which have a potential to balance economic growth and participatory planning. Theoretically, land pooling is a form of collaboration whereby the owners of the land become partners in the development and the cost and benefits are shared in terms of urban transformation. The case of the Dholera Special Investment Region shows, however, that the mechanics of the latter are much more complicated than how the policy discourse wants to make it appear.

This paper has demonstrated that, despite the fact that land pooling can seem to be a more flexible and less antagonistic policy towards land acquisition, it can simply be constrained by structural power inequalities, which restrict the power of individual land owners to have real choice. The planning frameworks of the institutions bestow significant powers to development agencies and offer comparatively low chances to the affected communities to meaningfully engage themselves in decision-making activities. As a result, the concept of voluntary participation might not fully represent the dynamics that go on in the rural land owners whose lives and social organizations are largely dependent on land.

Moreover, the altering of the agricultural environment into industrial and urban buildings causes great socio-economic issues. The transformation of rural economies to urban economic systems may lead to long term uncertainties in the local community especially when there are no proper mechanisms of livelihood transitioning, compensation and benefits sharing. These problems are exacerbated by the environmental hazards and governance problems that come with the rapid urbanization.

Constitutionally, land pooling mechanisms too need to be considered in regard to property rights and safeguards under Article 300A and the overall principle of democratic decentralisation represented by the 73rd and 74th Constitutional Amendments. The policies of the infrastructure development which marginalize the local governance institutions are likely to compromise the viability of infrastructure policies.

Finally, the problem of policymakers is not to get infrastructure development as soon as possible but to make it socially fair and with legal responsibilities. Enhanced participation in planning, clear valuation and compensatory systems, and incorporation of the local communities into development models are some of the key steps towards attaining this equilibrium. When properly enacted with strong protectionist measures and with participatory governance systems, land pooling is likely to become a truly participative form of urban planning. Devoid of such reforms, however, it will be little more than a redesigned version of land acquisition - that which propels economic interests, even as the basic questions of justice and community welfare remain unanswered.