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Landing in trouble

In the absence of a central law, developers and their allies have been grabbing government land by subtle means

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Land acquisitions are leading to social tensions and blood-letting. Meanwhile, their older and meaner cousin, land grabbing, is attracting the Supreme Court's attention. In a recent judgement, *Mahalaxmi Motors Ltd vs Mandal Revenue Officer*, the court dwelt at length on the meaning of land grabbing and encroachment from the interpretative point of view. Ultimately, the court dismissed the appeal of the company which had 'grabbed' government land to set up a motor vehicles workshop. Though the company had allegedly made huge investments over the course of 14 years, it was ordered to vacate the village land and

hand it over to the Andhra Pradesh government.

What is land grabbing? Few laws, either central or state, have attempted to define it. Recently Spain passed a legislation which enabled developers to use a legal loophole to 'grab' land of the people in a province. It was nicknamed 'land grab law' and condemned by the European Union countries. The AP Land Grabbing (Prohibition) Act fortunately provides a comprehensive definition not only of 'land grabbing' but also of 'land grabber'. There is only one hitch, it runs into two printed pages.

The Supreme Court, in *Konda*

Lakshmana Bapuji vs Govt of AP (2002), discussed the definitions in detail and summarised the elements of land grabbing, which itself takes up a full printed page. Condensing them further, land grabbing would comprise a) an activity of taking possession of any land "forcibly, violently, unscrupulously, unfairly or greedily" without legal right, b) with the intention of illegally taking possession of such lands to construct unauthorised structures for sale or hire.

One of the crucial ingredients of the offence, punishable with imprisonment of up to five years, is the intention to grab the land. Very often, the land in question is bought

from a person who does not have title to the land and is anxious to sell it to a willing buyer. In the Konda Lakshmana judgement, the Supreme Court said that even then the buyer would be a land grabber: "If a person comes into occupation of any government land under the guise of a perpetual lease executed by an unauthorised person having no title to or interest in the land, it cannot but be with a view to illegally taking possession of such land."

If a person creates false documents or appoints a false power of attorney to get the sale deeds registered, the intention is clear. But if the buyer enters into the transaction bona fide, the result might be different. In another Supreme Court judgement, *Gouni Satya Reddi vs Govt of AP* (2004), the Supreme Court emphasised that "the mere fact of not being lawfully entitled to enter into possession by itself would not lead to the inference of land grabbing unless possession is illegally taken with that view in mind. It is a necessary ingredient of land grabbing, that is, the person taking possession must know that he is acting illegally while taking possession... The mere fact of legally not being entitled to the possession would not fulfil the ingredients of the definitions of land grabber and land grabbing."

In the latest case, the Supreme Court dealt with a company which, in 1985, had bought the Inam

land from a person who had no title to it. Since then, the company was trying to assert its claim to the land, in the tribunal and the high court. It had failed all along. The Supreme Court confirmed the findings of the courts below, stating that "only because a person has entered into the possession of land on the basis of a purported registered sale deed, the same by itself would not be sufficient to come to the conclusion that he had not entered over the land unauthorisedly, unfairly or greedily."

The definition of land grabber was further explained and extended to include not only the person who currently held the land, but also his predecessors. Once the land is held to be government land, the logical corollary would be that the state would not lose its right to those who bought the land.

At present there is no central law with special focus on land grabbing or encroachment, though land is fast becoming the most explosive social issue. Politicians, developers and companies exploit this lacuna. A few months ago, a committee on encroachments revealed that 27,336 acres of government land were encroached upon in the Bangalore urban district alone. It recommended that the officials and their protectors should be booked under the Indian Penal Code and the Goonda Act. The men in power cannot be expected to go to that extent, but lawmakers can take a cue from the Andhra Pradesh law.