
ภาคภาษาอังกฤษ

ENGLISH SECTION

A COMPARATIVE STUDY OF MUNICIPAL LAND ACQUISITION PRACTICES FOR SLUM CLEARANCE IN AMERICA, EUROPE AND ASIA

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The urban problems which require planning solutions in Asian municipalities including those in Thailand are not new. What is new is the necessity to grant authority and power to municipalities to solve these problems. Foremost among these new tools for urban development is municipal land and building acquisition for slum clearance; redevelopment and urban renewal.

There is no way to avoid the taking of private property for these purposes, whether that taking be by friendly agreement or by compulsory purchase (expropriation). Experience elsewhere has also demonstrated that it is necessary that private property must be taken in excess of that required for actual "public use," in a redevelopment area. "Public purposes" must also be one of the allowable reasons for the taking of private property, especially in slum clearance programs.

"Public use" can be defined as making available land or buildings for actual use by the public (streets, hospitals, schools, footpaths, parks, playgrounds, etc.)

"Public purpose" can be defined as the taking of property in order to accomplish a public purpose even though the individual piece of property is not utilized for public use.

There are authorizations for condemnation and town planning legislation on the statute books of most countries." ¹ Vienna has had this power since 1929, Hamburg and Berlin since 1930, Paris since 1926, Naples since 1919. In Great Britain, statutory authority to condemn unfit houses and regulate the occupancy of buildings goes back to the Shaftsbury Act of 1851. In the United States, the Federal Housing Authority was empowered to

¹ "Slums", *Encyclopedia of Social Sciences*, Vol. 13-14 (New York: Macmillan & Co.) p.96

expropriate for slum clearance purposes in 1933. The power is not new. Asian countries including Thailand, must devolve this power to municipalities if they are to meet the ever-increasing demands for slum clearance and public, low-rent housing projects.

General Statement of the Power of Municipalities to Take Property

"Eminent domain is an inherent attribute of the sovereignty of the state, to take or authorize the taking (by a municipality) of any private property within its jurisdiction for public use to promote the general welfare, without the consent of the owner upon payment of just compensation therefor, according to the method prescribed by law. The power does not emanate from constitutions or statute. It is older than the constitutions, it requires no constitutional recognition, it is not created or granted by constitution or statute, and is without restriction except as the people have limited it by organic inhibition, namely that the taking must be for a public use and that compensation must be made. It is a reserved right attached to every man's land and paramount to his right of ownership; therefore, no element of contract is present. It arises from the necessities of government and is a continuing power."²

"Of course there can be no doubt of the power of the legislature or of a city by ordinance to authorize the condemnation in excess of the amount actually required for the particular use for which the appropriation is made."³

"Both low rent housing projects and slum clearance have been held by the state courts to be a 'public use' for which private property may be taken in eminent domain proceedings by cities and towns..."⁴

"By condemning property and paying compensation therefor, the municipality... obtains a perpetual and paramount right to use the property in any reasonable way for the purpose for which it was condemned... And the city, as a necessary incident to its title, has the usual rights of a vendor (seller)."⁵

² Mcquillen, *The Law of Municipal Corporations in the United States*, Vol. II, sec. 32.02 (Chicago: Callaghan & Co.)

³ *Ibid.*, sec. 32.23.

⁴ *Ibid.*, sec. 32.61.

⁵ *Ibid.*, sec 32.114.

"The power of eminent domain has been reserved by society in order to ensure that public agencies may acquire the land that is needed for various public purposes.... In recent years, the power of eminent domain has been extended... to include the right to condemn more property than is actually required for the public use than is contemplated. This power, known as "excess condemnation" is justified as a means of solving the problem of odd-shaped lot remnants such as might be created in widening a street or cutting a new street through previously subdivided territory. The acquisition of excess land (or buildings) contiguous to the improvement permits replotting to fit the changed situation and avoids fragmentary lots that are not useable. In some cases, excess land may be necessary to protect or enhance the beauty of public improvements. Finally, excess condemnation *permits the governmental unit to assist in financing the development by the resale of the surplus area and thus to benefit from any increase in land values resulting from the improvements.*"⁶

"Since city planning deals in large part with public property one of the powers involved in carrying out a plan is that of acquiring property for needed public use.... Some individuals prefer not to sell their property for the contemplated improvements regardless of the price. In fact, they do not want to sell to the city or to any private purchaser; they do not want to give up the property. Others are willing to sell but ask an unreasonable price... Where persons are unreasonable in their demands in these cases fortunately there is a remedy available. This is the power of eminent domain...the right of the government to take property for public use upon the payment of fair compensation.... This is an important and essential power, otherwise an unreasonable individual could stand in the way of carrying out public improvements which are made in furtherance of the general welfare.

"Some use has been made of... taking more property than is actually needed for a public improvement.... And if the city wants to resell the excess property it... can recoup a part of the cost of the improvement. The excess property is acquired at a low cost before the public improvement is made; *It can then be sold at an increased price after the*

⁶ Ratliff, *Urban Land Economics* (New York: McGraw Hill, 1949), p. 17.

improvement is made and this profit or difference in purchase and sale price is used to pay the cost of constructing the improvement."⁷

Specific Laws from Various Countries Authorizing Municipalities to Take Property for Slum Clearance

Following is a short list of countries allowing municipalities to take private property for slum clearance, redevelopment or other planning activities. It is only meant to be illustrative, not exhaustive. To cover the subject completely I would have to list the laws of well over 100 countries.

Belgium

The approval of a detailed development plan (by the Minister of Public Works) provides the authorization to proceed with the expropriation needed to complete the work. The expropriation of a zone does not require the previous presentation of a layout plan (plan de tracé) showing the operation to be carried out, nor the indication of the plots destined for sale or to receive buildings adjoining the street lines of new squares and streets. The municipalities have the right to resell the land or building sites which they acquire, including such property which is not utilized for "public use." Schemes of replotting and reallocation of holdings after having been invested with statutory character by Royal Decree... may be put into effect by expropriation, failing friendly agreement of the owners.⁸

France

Expropriation in connection with town and regional planning, enables the State local authorities and certain public establishments to acquire, in default of friendly agreement, in default of friendly agreement, by way of expropriation on grounds of public utility, any landed property required for the erection of housing or for the implementation of the Development Plan. In the case of an approved Development Plan *all the sites comprised in the residential or industrial zone may be expropriated.* The declaration as to public interest is made by the Prefect, if the expropriation has as its object the construction of housing. It is

⁷ Kneier, *City Government in the United States* (3rd ed., New York: Harper & Brothers, 1957), p. 575-6.

⁸ Ronart, *A Synopsis of the Planning Legislation in Seven Countries*, ch. 1, sec. 519 ff., International Federation for Housing & Planning.

pronounced by decree on the report of the Minister of Reconstruction and Housing upon the advice of the National Planning Committee if the expropriation has as its object the installation of other activities as well as housing.

The state or local authorities through the prefect, on advice of the Minister of Reconstruction and Housing, may serve upon the owner of a site susceptible a building and accessible to an existing or new road an order to undertake to build upon his property a building in conformity with the type suggested in the plan for redevelopment. If the owner does not do so within two years, the local authority may immediately purchase the land and use it for redevelopment purposes⁹

Germany

Expropriation is within the power of municipalities provided adequate compensation is paid, and the property so acquired is used to promote the public welfare. The municipality can expropriate property for the following purposes:

Acquisition of land between street-lines for streets and squares and eventually also of remaining portions of ground lying outside the street lines provided these are no longer suitable for building sites; the transformation of private roads into public roads; to acquire land for development areas in which to carry out slum clearance, urban renewal or redevelopment activities; for any municipal needs; for providing land necessary for housing, small workshop premises and industries.

The expropriated land may be sold to a third party.

The amount of compensation for the expropriated property should be fixed by mutual agreement. If friendly agreement cannot be reached an expert appraiser makes a judgement as to the proper amount. If this is not satisfactory, the matter can be contested in the Civil Court.¹⁰

Great Britain

Property in Great Britain is subject to compulsory purchase (expropriation) in order to allow municipalities to secure its use for planning purposes including slum clearance and redevelopment, upon approval of the Minister of Housing and Local Government. The

⁹ *Ibid.*, ch. 2, sec. 549 ff.

¹⁰ *Ibid.*, ch. 3, sec. 537 ff.

Minister can authorize local authorities to acquire compulsorily any land designated in the development plan of the municipality, or land which is adjacent to the development area in order to allow the municipality to develop or redevelop an area as a whole. When property is acquired compulsorily under planning powers; persons living on or carrying on business on the land shall as far as practicable be given the first opportunity to buy back in the area on reasonable terms, provided they are willing to conform with requirements of the plan concerning the development and use of the land. Of course, fair compensation must be paid for any land acquired under compulsory purchase proceedings.¹¹

Israel

One way for a municipality to acquire land is by expropriation and payment of compensation, which happens where the municipality wishes to purchase land that the owner is unwilling to sell. The local authority may expropriate property on the authority of the Minister of the Treasury, and take possession of it, register it at the Land Registry Office. The land must be taken for a public purpose, and in slum clearance work if the municipality so desires, it may sell the property to a third party. The owner can claim compensation for the property by asking the Court to fix the sum or by resorting to arbitration and negotiation to fix the price. The municipality can develop such property as it sees fit, in accordance with a development plan including use for new subdivisions, expansion of industrial zones, new commercial areas, the building of municipal buildings, concessions for special projects and the erection of hotels and theaters on municipal lands. A local authority owning land may lease it for concessions or commercial purposes, and the money received may be quite substantial. "In Tel Aviv today, from the fees paid to us for all the land leased we receive an income almost enough to cover our financial needs for the acquisition of new property."¹²

"To start a slum clearance project you have to prepare a master plan.... Then one must estimate the cost of the scheme to vacate the tenants, pay them compensation or rehouse them on the same land after it has been developed.... *All this expense is borne by the local authority which recovers the expense when the land is sold to private developers or from entrepreneurs having property there....* Satisfying the poor people living in slum

¹¹ *Ibid.*, ch. 4, sec. 527 ff.

¹² Israel Union of Local Authorities, *International Seminar for Local Government Administration*, Vol. II, p. 380.

areas is a big problem. The landowner may not have either the means or the understanding; the tenant sits, waits and does not want to move. In these circumstances, we have to resort to expropriation...."¹³

Netherlands (Holland)

The municipalities may with the approval of the Crown expropriate empty or built-up pieces of land if this land is included in an approved development plan and the compulsory acquisition of the property would implement the plan, or if the expropriation is in connection with the establishment of building lines on the street frontage (voorgevelrooilijnen,) or if the expropriation is connected with the purposes of a slum clearance or redevelopment project. The expropriation may take place in the name of the municipality, but it must first be approved by the municipal council and the Crown. Compensation is always due in the case of expropriation, and the compensation is payable on the "real value" of the property.¹⁴

Switzerland

The compulsory transfer of full ownership rights including the right to sell to a third party, in default of friendly agreement is one means of implementing planning measures in the public interest for municipalities in Switzerland. The property which is expropriated must be for a public purpose, but not necessarily for a public use. The municipality may expropriate land for streets, the erection of public buildings and installations, greenspace, recreation areas, adapting existing buildings to the regulations governing new buildings, slum clearance, development, redevelopment or for the carrying on of private enterprises. Fair compensation is due in respect of property so taken. Failing a friendly agreement, the amount of the compensation is determined by an Assessment Commission whose decision can be contested in the Court.¹⁵

Philippines

"The power of eminent domain is that superior right of sovereignty over property by which private property of its citizens may be taken for public use without regard to the wishes of its owners. This power is delegated to the...municipality. No private property may be taken

¹³ *Ibid.*, p. 383-4.

¹⁴ Ronart, *Op. cit.*, ch. 5, sec. 519 ff.

¹⁵ *Ibid.*, ch. 6, sec. 517 ff.

without just compensation. It is for the Courts to determine just compensation. Before resorting, however, to condemnation proceedings, the... municipality shall exert efforts to purchase the property sought to be taken and proceed only to expropriate the property when the government and the owner fail to agree as to the price or when the latter refuses to sell in which case the price recommended by an Appraisal Committee may be offered as evidence for the Court to appreciate in fixing just compensation.

"The municipality... is authorized by law to condemn more land and property than what is actually needed for specified public improvements..."¹⁶

Municipalities in the Philippines are authorized to expropriate homesites and landed estates within their respective jurisdictions and to sub-divide, redevelop them and to resell them.¹⁷

The Necessity to Have the Power of Excess Condemnation for Slum Clearance, Using Examples of Asian Cities

The concluding report of Professor Elichi Isomura of Tokyo University at the "Seminar on Metropolitan Planning in Asia" held in Tokyo in June, 1964 said :

"In discussing the Asian approach to city planning it is apparent that speedy but equitable processes are required for the implementation of land acquisition..."

"The widespread public acquisition of urban lands has been a noteworthy feature of the Asian planning response. This urban land policy appears to be potentially one of the most effective instruments of metropolitan planning. The financial advantages reaped by the community from this policy can be tremendous. Through a well-designed pattern of leasehold contracts the government (municipality) may secure a wide and sensitive control over development."

A resolution on this subject was unanimously adopted by more than 100 delegates to the Seminar from the following Asian countries: Australia, Ceylon, China, Indonesia, India, Iran, Japan, Korea, Philippines, Thailand, Vietnam. The resolution said :

¹⁶ Cortez, *Provincial and Municipal Law of the Philippines* (Manila: Lawyer Cooperative Publishing Co., 1952) p. 78.

¹⁷ Philippine, *Republic Act*, No. 498, sec. 2106 (f), 2609, and 2625 (n).

"Within the Asian region, systematic acquisition of urban land for public use and development has proved to be one of the most powerful instruments of metropolitan planning; it would appear to be the *only* effective means of capturing for the community the unearned increments in the value of land which result from public investments."¹⁸

New Delhi

"In order to implement the various proposals of the master plan, the prerequisite was possession and control over the use and values of land. It would be possible for Government to provide the various social amenities only when the land values were stabilized and land became available at reasonable prices to bonafide users.... Government decided that in order to gain effective control on the use of land and thus to implement the various proposals contained in the master plan at minimum cost, it should acquire all the land estimated to be required for urbanization until 1981."

The value of about 130,000 rai of land which is practically the entire metropolitan area of New Delhi was frozen in April 1960, and whenever the planning agency desires to acquire land for public purposes, it does so at the market price prevailing at that time. Land in the metropolitan area is only leased back to tenants on a lease basis. The development of the land is carefully controlled and it must be done according to the master plan for slum clearance, redevelopment, etc. This policy also makes available at controlled price sufficient land to the municipality for construction of public housing. Since all land is given only on a leases-hold basis, a regular income from ground rent is assured for the New Delhi municipality. Thus, in New Delhi, "land is expected to become a firm source of income for the municipality for the provision of social and civic amenities to its residents."¹⁹

Singapore

"...All development of land within the State is subject to control in accordance with the provisions of the master plan. If owners refuse to or are financially unable to develop

¹⁸ Report of the Study Group Attending the Seminar on Metropolitan Planning in Asia, Ministry of Interior, Department of Local Administration, Thailand, July, 1964.

¹⁹ Report from the New Delhi Municipality by Shri Dharma Vira, Chief Commissioner of New Delhi, to the Seminar on Metropolitan Planning in Asia, Tokyo, June, 1964.

or redevelop land in accordance with slum clearance and redevelopment plans under the master plan, then they can serve a "purchase notice" on the Government requiring the planning authority to purchase the land and/or buildings at fair market value."²⁰

Djakarta

In Djakarta, the municipality has acquired practically all of the land in the municipality. It leases the land back to private owners and redevelopers in accordance with the master plan on condition that they develop it, redevelop it or use it as stipulated in the master plan and detailed development plans, including those for slum clearance, urban renewal and redevelopment. The income from this rent goes to the municipality which uses it for slum clearance, redevelopment and urban renewal and for providing services to the citizens of the city.²¹

Implications for Thailand's Municipal Administration

Thai municipalities cannot be expected to fulfill their slum clearance and urban redevelopment duties without the power to expropriate land and buildings. If we are to have modern municipal administration, then there must be modern legislative authorizations granted to the municipalities. Failure to do so is a hinderance to modern developments in Thai municipal administration.

Municipalities must be empowered to secure more land than is actually necessary for "public use" as long as the excess land is used for "public purpose." This allows for orderly development or redevelopment of a harmonious whole and a logical redevelopment area in which slums are cleared and improvements are made in public health, sanitation, drainage, traffic circulation, housing, social welfare and the provision of the modern amenities and community facilities of urban life in the latter half of the 20th century. Without such powers, the slum clearance work of Thai municipalities is probably doomed to failure.

²⁰ Report of A.F.C. Choe, Head of Urban Renewal, Housing & Home Development Board, and Tan Jake Hooi, Chief Planner, Office of the Prime Minister, Government of Singapore, to the Seminar on Metropolitan Planning in Asia, Tokyo, June 1964.

²¹ Report of the Honorable Dr. Soemarno Sosroatmodjo, Governor of Metropolitan Djakarta, to the Seminar on Metropolitan Planning in Asia, Tokyo, June, 1964.

In order to protect the owners of the property which is expropriated as much as possible, they should be given the first priority to buy the land back and redevelop it in accordance with the master plan for the area. Such re-purchase should entail the obligation on the part of the owner to immediately construct those facilities which are stipulated in the detailed plans for the redevelopment of the area. In the event that the owners do not have sufficient capital to re-purchase the land, the working out of a system of installment purchase should present no hardship to the ingenuity of municipal officials. Every effort should be made to make the installment terms and conditions as lenient as possible in order to cause no harm or hardship to those whose property is expropriated for public purposes. Failing harmonious agreement with the original owners, Thai municipalities must be empowered to sell the land to third parties, or redevelop themselves. It is perfectly normal and usual to recapture any excess of returns over costs by the municipality and to utilize these funds for further urban renewal work or to provide other services to urban residents.
