

DHOLERA AND THE MYTH OF VOLUNTARY LAND POOLING

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Land pooling is being increasingly promoted as a mechanism for land consolidation, especially for greenfield urbanisation projects. In Dholera smart city along the Delhi Mumbai Industrial Corridor, the mechanism is enabled under the the Gujarat Town Planning and Urban Development Act 1976. In this paper we analyse this law's procedures; its provisions for public consultation, participation and compensation; its colonial and post-colonial antecedents; and the jurisprudence around it. We find that the GTPUDA is grossly inadequate, significantly in establishing the consent of landowners, and in addressing the range of disposessions that the Dholera project engenders.

I. INTRODUCTION

Land pooling is increasingly promoted as a mechanism for urban development that can circumvent the so-called cumbersome or staggered land acquisition process under the 2013 national land acquisition law. The Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act (RTFCTLARRA) 2013 is particularly singled out by a range of pro-business and privatization interests for criticisms against its provisions for consent, social impact assessment, compensation, rehabilitation and resettlement. The land pooling mechanism, premised on the principle that the development authority in charge of undertaking urban development temporarily brings together a group of landowners, is thus preferred for urbanization projects, rather than the RTFCTLARRA, to avoid the latter's contentious provisions. Originally conceived for the expansion of existing cities, the pooling mechanism is now applied to 'greenfield' cities, or for the conversion of existing rural areas to new urban centers as well. Old and new legal and policy formulations that include land pooling are being invoked for land consolidation in various states. There have been intense and often violent contestations over

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rights to land and resources over the last decade in the country, that have involved diverse alliances of big farmers, peasants' and citizens' groups¹ on the one hand, and allied state actors and capitalist investors on the other. In this backdrop, the land pooling mechanism emerges as a renewed attempt by state governments to negotiate a vitiated terrain of conflicting interests and policy provisions over land and resources.

Amaravati Capital City in Andhra Pradesh and Dholera Special Investment Region (SIR; alternatively, Dholera smart city) in Gujarat are two 'greenfield' urbanization projects that are attempting to consolidate land through pooling, with varying results. Of twenty-nine affected villages in Amaravati, pooling has reportedly been successful in twenty-three, although not without resistance; the remaining six villages are largely against the project.² In March 2015, the Andhra Pradesh High Court directed the government not to use force to acquire land from farmers under the land pooling scheme and to exempt farmers who are not willing to participate in the land pooling process.³ Land pooling for Amaravati is implemented under the Andhra Pradesh Capital Region Development Authority Act 2014, modeled on the Gujarat Town Planning and Urban Development Act (GTPUDA) 1976.

In Dholera smart city's twenty-two affected villages, no land has been pooled to date on account of widespread local resistance. While land already in possession of the state has been handed to the Dholera Special Investment Region Development Authority, local resistance to the project remains steadfast. Residents of the twenty-two villages have formed a *Bhal Bachao Samiti* (Save Bhal

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- 1 Peasants here include small and marginal landowners, landless agrarian workers, pastoralists, fisherfolk, forest dwellers and others. Citizens' groups refer to coalitions of individuals, often concerned professionals and representatives of non-governmental organizations (NGOs) that coalesce around contentious issues. They are not NGOs in themselves, but people working voluntarily for campaigns and raising resources through individual donations.
 - 2 M. Chari, *Land pooling strategy for the new Andhra capital could become a model for India's Smart Cities*, SCROLL.IN (August 12, 2015) <http://scroll.in/article/746040/land-pooling-strategy-for-the-new-andhra-capital-could-become-a-model-for-indias-smart-cities> (Last visited on July 6, 2016).
 - 3 *High Court relief to AP farmers*, DECCAN HERALD, (May 1, 2015); <http://www.deccanherald.com/content/475159/high-court-relief-ap-farmers.html> (Last visited on July 6, 2016).

Committee)⁴ and have filed a petition in the Gujarat High Court contesting the project. A recent order has pronounced a stay on all proceedings until the case is resolved.⁵

Following in the footsteps of Gujarat and Andhra Pradesh, the Delhi Development Authority also notified a Land Pooling Policy (LPP) for the National Capital Region in May 2015, although this policy retains the original intent of the expansion of an existing city. However, the implementation of the policy is in limbo as a result of a delay in the declaration of ninety-five villages as ‘urban development areas.’ The policy aims to facilitate the proposed construction of 2,500,000 housing units by 2021, for which ten thousand hectares of land are required under the Master Plan Delhi – 2021. Interestingly, the LPP allows private developers to pool land as the development authority conceives its role as a facilitator in the process of urban expansion.

In this paper we critically evaluate the land pooling mechanism under the GTPUDA, drawing from its implementation in the context of the greenfield Dholera smart city project. We particularly focus on the claims of voluntarism that presume the consent of landowners and other affected parties within the pooling mechanism. These claims are critical to establish the legitimacy that is sought by state actors for the mechanism, especially given the conflicted nature of contemporary land consolidation processes. Is land pooling under the GTPUDA voluntary, and does it establish or violate the consent of landowners and other affected parties? How have the colonial antecedents of the law influenced its evolution and application? Does the jurisprudence and case law around GTPUDA uphold the right of landowners to dissent? We examine the procedures for land pooling; the GTPUDA’s provisions for public consultation, participation and compensation; the colonial and post-colonial legal antecedents of the law; and some significant recent jurisprudence around it. We draw a salient link from the colonial legacy of urban development laws that assert state sovereignty over development processes that are at odds with grassroots democratic participation. We conclude that claims regarding the voluntary nature of land pooling are at best ambiguous, and at worst, outright disingenuous. As we explain below, the threat of eminent domain, disguised by

4 The Dholera smart city project is coming up in the Bhal region along the Gulf of Khambhat.

5 *Gujarat Khedut Samaj v. State of Gujarat*, Writ Petitions 227 of 2014 and 57 of 2015. (Oral Order delivered on December 10, 2015.)

the language of voluntarism, is the stick that backs the carrot of so-called urban development. Further, we demonstrate that compensation under the GTPUDA barely addresses the range of dispossessions that a greenfield urban development project like Dholera engenders.

II. LAND POOLING PROCEDURES AND CONSENT UNDER THE GTPUDA

While the GTPUDA was also historically used for the conversion of rural-agrarian land for expanding existing cities, in Gujarat the law has recently been brought under the purview of the Gujarat Special Investment Region Act, 2009 ('SIR'), enabling its use for greenfield cities. It should be noted that Gujarat's SIR law also allows for the alternate use of the land acquisition law for land consolidation in place of land pooling under the GTPUDA, but it is the GTPUDA that has thus far been invoked for Dholera to avoid the contentious provisions of the RTFCTLARRA. Unlike the latter, the GTPUDA makes no express provisions for establishing consent of affected parties or undertaking social impact assessments. As we explain below, compensation measures under the GTPUDA are grossly inadequate to the loss of livelihoods that urbanization projects like Dholera engender and rehabilitation and resettlement packages for those affected are avoided altogether by giving back partial 'developed' plots to landowners. There are no provisions of plots for the landless affected by the project, even if they are from Scheduled Caste or Scheduled Tribe categories. For all these reasons, the GTPUDA offers an 'easier' mechanism for land consolidation for investors and allied state actors than the RTFCTLARRA. We explain below the issues with consent and compensation that the GTPUDA throws open that are more regressive than the RTFCTLARRA.

Planning, consultation and consent

Development Plan (first stage)

Under the GTPUDA, planning is undertaken in two phases – a development plan (DP) is first prepared for the entire area affected by the project, followed by several town planning schemes (TPS) for smaller portions of the development area. The draft plan is to be prepared within three years of the declaration of the development area for a project, and is initially open for public inspection for two months, inviting objections and suggestions to its terms. The draft can then be modified and published again, inviting further objections and suggestions for incorporation. The state government may then

suggest modifications before the final DP is prepared, and may further invite suggestions and objections with respect to amendments before the DP is finalized. Again, there is no provision for the establishment of consent to the final Plan;⁶ objections and modifications are invited only to the modalities of the Plan, and not to the declaration of the Plan itself. As we point out below however, there is a provision for the landowners to ask for the withdrawal of a scheme, but this is a weak provision as consent is not mandatory.

Town Planning Schemes (second stage)

The TPS are the micro plans for the development of smaller areas of about one hundred hectares as per the final plan. There is no stipulated time period between the final DP and the schemes but the draft schemes have to be prepared within nine months of the declaration of intent to make them. The appropriate authority in consultation with a Chief Planner declares the intent to make the TPS in the official gazette and through advertisements in Gujarati newspapers.

The schemes comprise the physical planning of the scheme and its financial aspects. There are three stages of the TPS — draft, preliminary and final — that serve to expedite the process of implementation.⁷ For the purpose of making the draft scheme, the appropriate authority can call meetings of the owners of the land plots included in the scheme with a public notice. Any person negatively affected by the draft scheme can communicate the same in writing to the appropriate authority within two months of the publication of the draft scheme. The objections are considered by the state government as it deems fit.

Significantly, under Section 66 of the Act, there is an opportunity to make a representation by a majority of landowners for a scheme (not DP) to be withdrawn, before the preliminary scheme is sent on to the state government. Before the Town Planning Officer sends the preliminary scheme to the state government, the local authority and a majority of the landowners of the area can make a representation to the Officer for the withdrawal of the scheme. The

6 We refer to the final Development Plan simply as the Plan to aid readability through the rest of the paper.

7 *Town Planning History*, TOWN PLANNING AND VALUATION DEPARTMENT, GOVERNMENT OF GUJARAT, <http://townplanning.gujarat.gov.in/planning-development-policies/town-planning-history.aspx>.

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Officer can then invite any objections to the representation from other interested persons and forward the representation and any objections to the state government. After making an inquiry as it considers fit, the state government may officially notify the withdrawal of the scheme. It is important to note that this is the *only* space for registering dissent to a scheme (and not to the overall Development Plan).

Once the draft scheme is sanctioned, all land required for development vests in the appropriate authority. Although the ‘right of the land’ remains with the owner, no person can carry out any development in the area without necessary permissions. The final scheme includes the total values of the original and final plots, the benefits for the residents and the general public, the compensation on each plot, the contribution levied on each plot and the increment in the value of land. The final scheme is submitted to the state government, that either sanctions, sanctions with modifications or refuses sanction to the final scheme within three months. Although the Act allows the appropriate implementing authority to make variations in both the final Plan and the final schemes individually, nothing in the Act suggests that schemes could result in amendments to the Plan, indicating a clear ‘top-down’ approach to planning.

After serving appropriate notice to the landowners, the appropriate authority removes, pulls down or alters such building or work that does not comply with scheme specifications. Any variation in the scheme or amendment of regulations of the scheme is now made through an application to the state government. The authority has the power to either grant or refuse permission to retain work, or use of a building or land, with penalties for unauthorised use.

Thus, while the town planning law contains provisions for the participation of local bodies and residents to the extent of a majority petition for withdrawal of a scheme or changes in the modalities of the Plan, it contains no provisions for ascertaining *consent* to land pooling for the project. According to Section 107 of the Act, “Land needed for the purposes of a town planning scheme or development plan shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act.” This potentially renders open the possibility for interpreting ‘public purpose’ under the principle of eminent domain and hence paving the way for forcible acquisition under the RTFCTLARRA, if such an enabling provision is introduced within the

GTPUDA framework. The colonial antecedents of the law establish this link historically,⁸ which renders the voluntary aspect of land pooling even more ambiguous.

There is thus an *a priori* assumption of consent built into the so-called voluntary land pooling mechanism, without any express provisions for establishing it. As such, the mechanism falls far short of the principle of prior informed consent as well as decentralized and democratic decision making in development processes in keeping with the 73rd Amendment Act (Panchayati Raj) provisions. This significant oversight is made glaring by the fact that Dholera and presumably other such greenfield city-making projects are to be developed through public private partnerships. Under the 2013 land acquisition law, in public private partnership projects, seventy percent consent of original landowners is required before a project can be undertaken. The pooling mechanism circumvents consent-based development through the disingenuous language of consultation and voluntary pooling. We turn below to the issues around compensation under the GTPUDA.

Compensation

As there is no ‘forcible acquisition’ or ‘transfer of ownership’ of land under the GTPUDA, the case for compensation for loss of land, it is claimed, does not arise, except for the proportion of the land deducted for the basic infrastructure provisions for town planning. For Dholera, fifty percent of the original plot of land is deducted for infrastructure provision in the city, and the rest of the land remains with the original landowner. The benefit of ‘development’ in terms of the increment in land value after development accrues to the owner, rather than the development agency. The original owner continues to enjoy access to the land without being ‘displaced’.⁹

Under the DP, individual plots of land are marked with their original survey number on a map and all original plots form one consolidated area for planning purposes. In the layout plan, after setting aside the area for roads, streets and public and semi-public spaces, the remaining area is divided into regular plots (evenly allocated plots in designated zones) called final plots. The compensation for the final plots is given out after part of the incremental value

8 See Table 2, *infra*.

9 See, S. BALLANEY, THE TOWN PLANNING MECHANISM IN GUJARAT, INDIA (2008).

is charged as the cost for development. For Dholera, the fifty percent of deducted land is valued at market price, and the rest of the land is returned to the original owners as ‘developed’ plots in re-designated zones as per the Plan. A betterment charge is to be levied on the original owners for the provision of new infrastructure facilities, deducted from the compensation award for fifty percent of the land. In addition in the case of Dholera, each affected family is promised one job per family in the Dholera SIR.

Table 1: Compensation Calculation

<p>Compensation to each landowner= Difference between (Original Plot Value* x Original Plot Area) and (Original/Semi-Final Plot Value** x Final Plot Area)</p> <p>*Plot Value is calculated as the market price at the time of declaration of intent of the scheme.</p> <p>**Final plot Value= Cost of development+ Original Plot Value</p> <p>Total Increment= Final Plot Value x Final Plot Area</p>
<p>Contribution levied on each landowner= fifty percent of the total increment*</p> <p>*The net demand or betterment charges are estimated by taking fifty per cent of the increment in the land value from each plot and deducting the compensation.</p>
<p>Cost of development per unit area of land= Total cost of the scheme/ Total land under final plots</p>

Source: Compiled by authors from the GTPUDA provisions.

In case of conflict on decisions related to the compensation, contribution levied or estimated increment value, the aggrieved party can appeal to the Board of Appeal (comprising the Principle Judge of the City Civil Court, Ahmedabad or the District Judge as the President of the Board and two other persons possessing such qualification and experience as may be prescribed as Assessors) constituted by the state government.

As one of us has argued elsewhere,¹⁰ setting aside the merits or demerits

10 See, P. Sampat, *Dholera: The Emperor's New City*, 51(17) ECONOMIC AND POLITICAL WEEKLY 59-67 (2016).

of the pooling approach to brownfield urban expansion, the incorporation of the town planning law into the SIR Act in Gujarat for a greenfield city poses a peculiar set of issues with regard to benefits and compensation. Some of these issues also apply to brownfield urban expansion. In the process of urbanization, existing agrarian infrastructure, relationships and livelihoods are devalued, as rent accruing from urbanization creates higher order economic value of relations with land in comparison with the former. The primary beneficiaries of the appreciation of land values are presumably large and medium landowners. The extent of land required for a new city implies the loss of a far greater extent of land than in the course of expansion of an existing city. With the re-zoning of land according to the new development plan, landowners do not retain their original agricultural plots, and must relocate. Further, with the development of a new city (or the expansion of an existing city), even if village settlements are protected with buffer zones, the old rural settlements can invariably no longer continue in the same form with the transformation in agrarian relations and the new urban development around such older settlements. This inevitably forces the original inhabitants (landed and landless, including those dependent on those working on land for livelihoods) to move, in search of livelihoods or as they are priced out, for easier living options.

With the disruption of the agrarian economy and the rezoning and subdivision of plots, agricultural livelihoods face severe temporal and physical dislocation, and only large farmers with enough surplus land and the holding power to wait for years for the ‘development’ of the rezoned plots may retain their hold on cultivation and allied agricultural activities. Agrarian livelihoods and resources experience a severe downward pressure with the growth of industry, tourism, construction and other related economic activities and are uncompensated. Given that the skill sets of most rural residents are dependent on agrarian relations, this could result in a serious livelihood crisis, especially for those without adequate landholdings that can transition to rentiering. With immediate attractive returns, the push is towards greater commodification of land and acquiring income from rent as opposed to existing productive agricultural activity, further creating issues around food security and local food sovereignty. Eventually, developing and returning fiftypercent of the land to the original owners can presumably take a few years. In the intervening years, the livelihood and food security options available for local residents who are significantly dependent on land remain unclear. The compensation provisions of

the GTPUDA are thus grossly inadequate to the livelihood losses a project engenders. They undercut the logic of factor multiples and 100 percent solatium that the RTFCTLARRA was at pains to establish to make up the difference between actually existing market rates of land and the officially recorded circle rates.¹¹

While the RTFCTLARRA replaced the colonial Land Acquisition Act 1894 and overhauled crucial aspects related to contemporary land acquisition, the GTPUDA retains fundamental principles and ambiguities established by the colonial Bombay Town Planning Act 1915. We turn below to examine the historical continuities (and some changes) in the legal framework of town planning.

III. ANTECEDENTS OF THE GTPUDA

The land pooling and reconstitution method of urban planning originated in Holland and Germany in the 1890s and was subsequently adopted across the world for planned urban development. Variants of the land pooling mechanism have since been used in countries such as Australia, Japan, Korea, Nepal and even parts of United States. In Europe the process is popularly known as land consolidation. In countries like Germany, land consolidation emerged with the goal of improving the efficiency of farmland by planning rational farmland boundaries.¹² Improved land divisions have been the general objective of all the European land consolidation projects. The process of land consolidation in Europe however, has included Environmental and Social Impact Assessments.¹³

In East Asia, the ‘Land Readjustment’ mechanism is supposed to have played a major role in the development of cities like Tokyo in Japan and Seoul in South Korea. The Japanese model was inspired by the German model and

11 Sampat has argued elsewhere that official market rates of land, or what are known as circle rates, are often depressed by transacting parties to avoid taxes, and compensation based on official rates is inadequate. P. Sampat, *Limits to Absolute Power: Eminent Domain and the Right to Land in India*, 48(19) ECONOMIC AND POLITICAL WEEKLY 40-52 (2013).

12 Lincoln Institute of Land Policy, *Land Pooling: A possible alternative to eminent domain and tool for equitable urban redevelopment*, METROPOLITAN AREA PLANNING COUNCIL BOSTON (2011), http://www.mapc.org/sites/default/files/FINAL_MAPC%20Presentation%20-%20Land.pdf.

13 A. Vitikainen, *An overview of land consolidation in Europe*, 1(1) NORDIC JOURNAL OF SURVEYING AND REAL ESTATE RESEARCH 25-41(2014).

initially targeted agricultural land consolidation and irrigation improvement projects, but was soon used for urban expansion.¹⁴ The Japanese model has faced criticisms on issues of consent, particularly for using persuasive and even coercive techniques for arriving at consensus among landowners.¹⁵

In India, the origins of the town planning schemes can be traced to the colonial Bombay Town Planning Act, 1915 (BTPA), the first town planning scheme that was applied to the Bombay province (which at the time included Maharashtra and Gujarat). The legislation was a response to rapid urbanization as a result of industrialization, especially given the growing textile mills in the region. The objective was largely to control the use of land and development through the instruments of zoning and building regulations, acquire land for public purposes, and recover betterment contributions with respect to land parcels benefiting from improvements.¹⁶

However, the dispersed nature of schemes formulated under the BTPA and the arbitrary application of the law by local authorities resulted in inadequate planning and chaotic growth under the law, incommensurate with the needs of growing urban populations. This gave rise to a more comprehensive town planning scheme and post independence, the Bombay Town Planning Act 1954 (modeled on Britain's Town and Country Planning Act 1947), replaced the 1915 Act. The BTPA 1954 made preparation of macro development plans compulsory along with the micro town planning schemes. It also laid down provisions for survey of the area under jurisdiction by the local authority. However, this law also faced local planning problems and unplanned development in the peripheries, given the long duration of the process involved, and the limited jurisdiction of the local authority.

The GTPUDA 1976 was enacted post the reorganization of the states in 1956, to address these problems and provide for the town planning schemes in detail in accordance with a Development Plan, as discussed above. The 1976 law

14 *Supra* note 11.

15 A. Sorensen, *Conflict, consensus or consent: implications of Japanese land readjustment practice for developing countries*, 24(1) HABITAT INTERNATIONAL 51-73 (2000).

16 Ballaney, *supra* note 8; NEW FORMS OF URBAN GOVERNANCE IN INDIA: SHIFTS, MODELS, NETWORKS AND CONTESTATIONS (I. S. A. Baud & J. De Wit, J. Eds., 2009).

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has been amended several times— one of the major amendments was made in 1999 to expedite the process of land pooling through stricter time limits and approvals process of projects at the draft stage.

As indicated, land is considered as land needed for ‘public purpose’ through the historical development of the laws from the colonial period. This is significant as public purpose has a direct relationship with the doctrine of eminent domain, which enables the forcible acquisition of land. There is no provision for ‘voluntary’ pooling in any of the Indian town planning laws, and none of the laws uses the term ‘pooling’ except in the context of ‘commonly pooled’ land depicted on the layout map for the purposes of creating the Development Plan. There is thus ambiguity with respect to voluntarism as the use of ‘public purpose’ under the GTPUDA can lend itself to the application of the doctrine of ‘eminent domain’ and hence forcible land acquisition, despite avowals to the contrary.

In fact, there is remarkable underlying continuity in the key provisions of the colonial and postcolonial versions of the laws (see Table 2 below for a summary of key provisions under the BTPA 1915, the BTPA 1954 and the GTPUDA), that ignores entirely not just the contemporary context of conflicts over land and resources, but also the development of key postcolonial democratic legal provisions. These include the provisions of the Sixth Schedule of the Constitution, laws such as the 73rd and 74th Constitution (Amendment) Acts 1993 and 1994 respectively, the Panchayat (Extension to Scheduled Areas) Act 1976, or the more recent Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. The lack of appropriate legislative development for town planning is made glaring by the fact that urbanization projects are essentially private sector-led projects. The conflict over land pooling in Gujarat’s Dholera area appears as a reprise of the controversial forcible land acquisitions for Special Economic Zones not so long ago that catalyzed the making of the RTFCTLARRA.

Table 2: Summary Provisions of the BTPA 1915, BTPA 1954 and the GTPUDA 1976

Provisions	BTPA 1915	BTPA 1954	GTPUDA 1976
Land Consolidation Time	No fixed time period for the completion of the scheme	No fixed time period for the completion of the scheme.	Finalization of the scheme within 27 months.
Development Plan	No Development Plan	No Development Plan.	An overall Development Plan to be made and TPS to be based on the Plan.
Schemes	TPS divided into draft and final scheme	TPS divided into draft and final scheme.	TPS divided into draft, preliminary and final scheme
Financing of the scheme	Betterment charges levied on land owners.	Betterment charges levied on land owners.	Sale of reserved plots allowed to finance the scheme in addition to the betterment charges.
Compensation	On the basis of the original plot value	On the basis of the original plot value.	On the basis of the semi final plot value which is determined along with the final plot size.
Betterment charges	Not more than fifty per cent of the difference between final value and original value.	Not more than fifty per cent of the difference between final value and original value.	Not more than fifty per cent of the difference between final value and original value.
Public Participation	Three rounds of public input- draft TPS stage, final TPS stage and financial issues	Three rounds of public input- draft TPS stage, final TPS stage and finally on financial issues.	Seven rounds of public input- draft, preliminary and final stages of TPS and the Plan, and finally on financial issues.

Dissent	Opportunity to make a representation by a majority of landowners for the scheme to be withdrawn before the final scheme is sent to the state government by the TPO who may then invite objections to the representation and forward the details of the representation and objections if any, to the state government. After making an inquiry as it considers fit, the government may, by official notification, withdraw the scheme.	Opportunity to make a representation by a majority of landowners for the scheme to be withdrawn before the final scheme is sent to the state government by the TPO who may then invite objections to the representation and forward the details of the representation and objections if any, to the state government. After making an inquiry as it considers fit, the government may, by official notification, withdraw the scheme.	Opportunity to make a representation by a majority of land owners for the scheme to be withdrawn before the final scheme is sent to the state government by the TPO who may then invite objections to the representation and forward the details of the representation and objections if any, to the state government. After making an inquiry as it considers fit, the government may, by official notification, withdraw the scheme.
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IV. THE JURISPRUDENCE ON THE GTPUDA

The jurisprudence around the land pooling mechanism in Gujarat has reflected this ambiguous nature of the law regarding land consolidation through pooling. Case law suggests that the local authorities have used the loopholes in the law to alter the purpose of pooling. The provisions for the revision of the development plans have constrained the space for the landowners to object to the constant change in land use. The high level of discretion used by the state government in dictating land use was successfully challenged in two important Supreme Court cases discussed below.

In the case of *Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd.*,¹⁷ the development authorities in Surat changed the purpose of pooling from residential housing to an educational complex during the preparation of the development plan. However, no steps were taken by any of the authorities to acquire the proposed land in the next ten years and the plan was again revised after ten years. The claim of the appellant in the Supreme Court involved the interpretation of Section 20 and 21 of the Act – whether the failure to acquire the land within the period would lead to lapse of the reservation even if the final development plan is revised. In its final judgment, the Court held that revision of the development plan as per Section 21 of the Act does not take away the substantial right of the owner. Therefore, the reservation of the land would be considered lapsed at the end of the specified period even in the event of issuance of a revised plan.

The reservation of the same land for purpose of an education complex was once again challenged in the Supreme Court in *Bhikubhai Vithalbhai Patel & Others v. the State of Gujarat*.¹⁸ The appellant claimed that the land had been reserved for educational purposes though there was no material evidence before the State Government to make such a decision. In its judgment the Court held that the “formation of the opinion by the State Government should reflect intense application of mind with reference to the material available on record and ensure that it had become necessary to propose substantial modifications to the draft development plan.” It further pointed out that the State Government did not have unlimited discretion to make modifications and should depend on recorded material and reasons to form an opinion. In the absence of evidence of such material, the Court allowed the appeals and the move of the State Government to designate the land for the educational use was declared void.

While the decisions of the authorities to wilfully change the purpose for pooling was challenged, and the substantial rights of the owner to land upheld, the involuntary nature of the reservation implicit in the challenges to the application of the law did not merit consideration in the arguments or judgment. The transfer of ‘public purpose’ was set aside on merely procedural counts, not

17 Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. & Ors, Civil Appeal No. 8003 of 2002 (Oral Order delivered on December 3, 2002).

18 Bhikhubhai Vithlabhai Patel & Ors v. State Of Gujarat & Anr., Civil Appeal No. 2000 of 2008 (Oral Order delivered on March 14, 2008).

unlike the treatment of public purpose in the jurisprudence pertaining to the land acquisition law.¹⁹

In *Prakash Amichand Shah v. State of Gujarat*,²⁰ the appellant challenged the constitutional validity of the Town Planning Scheme under the GTPUDA in the apex court of the country. The appellant had filed a petition against the reservation of his land by the Surat Municipal Corporation for a town planning scheme despite his objections and low rate of compensation by the authorities. In 1982, the two judge bench of the Supreme Court upheld the decision of the Town Planning Officer determining the amount of compensation in the appellant's case. Subsequently, in 1985, the Constitutional bench of the Supreme Court dismissed the constitutional appeal stating that law did not violate Articles 14, 19(1)(f) and 31 of the Constitution and upheld the validity of the GTPUDA law. While upholding the constitutionality of the Act it said that the inadequacy of the compensation was not justiciable under the Constitution. It also held that there was no scope for discrimination under law given the incapability to precisely determine the appropriate compensation amount for a property. Again, the involuntary nature of the land reservation did not have any bearing on the arguments regarding the use of the law.

The validity of the law and the compensation rates recently became a point of contention in *Gujarat Khedut Samaj & Others v. State of Gujarat*.²¹ As mentioned earlier, the Public Interest Litigation was filed in 2014 in the Gujarat High Court by the state-wide farmers' body Gujarat Khedut Samaj and the residents of twenty-two villages of the Dholera region in Ahmedabad. The PIL challenged the notifications issued to the farmers under the SIR Act in 2009 for their land as unconstitutional. The petitioners further held that since the land was being acquired for industrial development, the government could not take away the land without due compensation to the landowners through due process. On December 10, 2015, the High Court ordered the maintenance of status quo till the disposal of the notification. By June 2016, no village land had been officially pooled for the Dholera smart city.

19 Sampat, *supra* note 10.

20 Prakash Amichand Shah v. State Of Gujarat & Ors, Special Appeal No. 1597 of 1981 (Oral Order delivered on December 20, 1985).

21 Gujarat Khedut Samaj v. State of Gujarat, Writ Petitions 227 of 2014 and 57 of 2015. (Oral Order delivered on December 10, 2015).

V. CONCLUSION

As a measure for circumventing the procedures for establishing consent, social impact assessments and rehabilitation and resettlement under the RTFCTLARRA, land pooling under the GTPUDA falls far short of acceptable norms. Given how critical access to land and resources are for the large majority of people affected by such projects, and that the projects are instituted as public private partnerships (PPPs) between the state and central governments, and global and domestic private investors, developers and consultants, the political question of the right to land and resources also references the vexatious question of sovereignty, and where it flows from constitutionally.²²

The RTFCTLARRA makes clear provisions for consent of landowners in PPP and other private projects. The omission of state-led projects from consent provisions under the RTFTLARRA, and the arbitrary stipulations of seventy percent consent for PPPs and eighty percent for private projects are indeed debatable. But the lack of any consent-based development under the GTPUDA is more regressive. A scrutiny of the historical treatment of pooling for public purpose under the GTPUDA, the salience of the doctrine of eminent domain in its framework, and the jurisprudence around the GTPUDA throw open fundamental questions over the voluntary nature of land pooling.

The compensation provisions under the GTPUDA further privilege large landowners over the peasantry.²³ They devalue existing agrarian relations and infrastructures and enable rentier profits from land by large landowners and developers.²⁴ It is little wonder that Dholera has met little success in consolidating land through ‘voluntary’ land pooling. Dissent in the twenty-two villages impacted by the project continues, and the unfolding dynamics around Dholera smart city will disclose the historical development of land pooling as a viable framework for contemporary land consolidation.

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22 Sampat, *supra* note 10.

23 *Supra* note 1 for the explanation of the term ‘peasant’.

24 Sampat, *supra* note 9; U. Ramanathan, *On Eminent Domain and Sovereignty*, 613, SEMINAR, 71-4 (2010).