

Plenary Talk

on

Economic Analysis of Taking Law from an Economic Perspective, A Reexamination

by

Hans-Bernd Schaefer, Bucerius Law School, Germany

The lecture is on the law and economics of taking and eminent domain power and also deals with taking for private firms in the context of Indian law and legal development. A public taking of private property requires being in the public interest. It is shown, why a full damage award for taking from the state cannot guarantee this. It is shown that full damage compensation for the affected is neither a necessary nor sufficient condition for guaranteeing that taking decisions are in the public interest. Tight legal norms and judicial controls are necessary to achieve the policy goals behind eminent domain power.

If compensation is very generous and if still many taking decisions are not in the public interest and therefore unconstitutional this incentivizes citizens not to fight for their rights and for restitution of the condemned land. A "suffer injustice and cash in" attitude might prevail among the affected. However economic reasoning also leads to propose full compensation of the affected if a taking decision is in favor private firms. The lecture concludes with some economic remarks on the landmark decision of the Apex court in the case Kedar Nath Yadav vs. State of West Bengal .