

FARMERS' USE OF THE COURTS IN AN ANTI-LAND ACQUISITION MOVEMENT IN INDIA'S WEST BENGAL

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Introduction¹

In July 2006 a series of notifications for the acquisition of approximately 1,000 acres of agricultural land in an area known as Singur were served by the Communist-led Left Front Government (LF) of the Indian state of West Bengal. The acquired land in Singur would be converted into an industrial park and - as part of the LF's policy of revitalising the state's ailing industrial sector (Nielsen 2010) - leased out to Indian multi-national Tata Motors, who planned to set up a manufacturing unit that would produce the Tata Nano, the world's cheapest car. The notifications were issued under the Land Acquisition Act of 1894, the legislation under which land acquisition takes place in India.² This Act allows the

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² See Khasnabis (2009) for an account of the evolution of land acquisition acts in India under colonial rule. In post-colonial India every state has the right to amend the provisions of the Land Acquisition Act. There thus presently exists a good deal

government to exercise its right of eminent domain and acquire any land it sees fit, provided that it abides by certain provisions in the said Act. In accordance with these provisions Singur's project affected population, which included many small and marginal farmers (Banerjee 2006: 4719), were offered financial compensation for their losses.³ But while some accepted cash in lieu of land a sizeable segment of local land owners did not. These so-called 'unwilling farmers' - i.e. land owners who refused to give their consent to the government's planned acquisition - organised a movement to protect their farmland. This movement has, in its struggle against the land acquisition, made use of a broad repertoire of contention that has, as I show below, included various forms of public action, contestation and negotiation. Importantly, the farmers and their supporters have also devoted significant time, energy and resources to challenging the land acquisition in both the Calcutta High Court (HC) and the Supreme Court of India (SC).

My aim in this article is to analyse *how* and *why* Singur's unwilling farmers have accessed and made use of the courts with such zeal in their opposition to the state-led expropriation of their farmland. What were their expectations from the court? Why did their court case challenging the land acquisition gain a special significance for them during certain phases of their movement? And how did the HC and SC respond to the unwilling farmers' petitions? The explanatory empirical account I present here is in the form of a largely descriptive chronological narrative that is deeply informed by my own experience from several spells of fieldwork in the acquisition-affected areas of Singur between 2007 and 2009. It was my own personal curiosity that led me to enquire into the relationship between the farmers and the legal system. Before I left for fieldwork I was aware that much of the literature on unofficial law and legal fora in countries of the South,

of inter-state variation with regard to the technical aspects of land acquisition proceedings (Guha 2007: 49).

³ The compensation consisted of the estimated market value plus a 30 per cent solatium (compensation awarded for injured feelings as distinct from financial loss or physical suffering); a 10 per cent incentive offered to those land owners, who agreed not to contest the acquisition; and 12.5 per cent interest (calculated for the period between the publication of the notification and the payment of the award) added to the estimated market value as a one-time amount. In cash terms the compensation for one acre of land in Singur was fixed at 840,000 Rupees for mono-crop land and 1,200,000 Rupees for multi-crop land (Nielsen 2008: 236).

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including India has often stressed the preference of local people for avoiding state law and courts, and for using their own more familiar fora instead. I knew this to be the case in West Bengal also where, according to political scientist Partha Chatterjee, many rural Bengalis *avoid* the law courts altogether as these are seen to be expensive, time-consuming, corrupt and insensitive to the specific demands of fairness in a particular case that only those intimately familiar with local histories and peculiarities could be expected to know (Chatterjee 2009: 43). And my immediate impression was that in this regard my study villages in Singur were no different. Litigation and going to court was socially frowned upon as it threatened to tear families apart, create mutual hostility, and to disturb the ostensibly 'harmonious' life of the village.⁴ Instead, in times of conflict a peaceful and mutually acceptable solution would normally be sought through the intervention of a locally respected mediator who, having listened to all parties to the conflict, would propose an amicable compromise that would for the time being either solve the conflict or prevent it from escalating to socially unacceptable levels.⁵ When I began conducting more in-depth interviews with unwilling farmers in Singur I also realised that many of them had, during the course of their movement to 'save the farmland', more often than not encountered the state's law enforcement agencies and the courts as sites of harassment and intimidation, not justice. Villagers had clashed with the police on several occasions, and hundreds of farmers had been beaten up, including women and the elderly. Many were hospitalised and some continue to suffer permanently from their injuries. Others had been arrested, many of them on false charges, including a two year old girl who was charged with rioting and imprisoned for four days. The many arrests kept movement activists busy raising money to bail the villagers out; and following their release on bail many farmers had regularly to travel many miles at their own expense to attend court hearings that usually produced only adjournments and more meetings. I was therefore surprised to find that some of Singur's unwilling farmers had not only decided to challenge the land acquisition in court, but that

⁴ In practice, litigation over land, property or inheritance was not uncommon. Still, the discourse of 'the peaceful and harmonious village' provided an ideal model for rural life.

⁵ Local mediators as a rule belonged to one of the two dominant political parties in the area. In West Bengal political parties have appropriated many if not most of the social institutions that mediate, and it is not uncommon to solicit a party's intervention in even the most intimate and private affairs (Bhattacharyya 2009: 60).

many more both keenly followed and attributed great importance to the fate of ‘their’ case in the HC.⁶ If courts were generally shunned and not seen as sites of justice; and if other viable forms of contestation were available to them, why did they choose to repose faith in the ability of the law court to deliver justice?

The answer to this question is both complex and multilayered since, as I discovered after closely following the unwilling farmers’ struggles for several years, the farmers did not *consistently* attach special importance to their court case. Rather, it was when other avenues of contestation and of seeking justice had either narrowed or closed entirely that the court case gained significance for the farmers. The courts were thus *one* among several available avenues through which justice could be sought, and the attractiveness of fighting one’s case in court would therefore be highly context-sensitive and dependent on the utility of other available options at a given moment in time. Gaurang Ranjan Sahay provides an illustrative example of this dynamic, albeit on a much smaller scale. Sahay relates how in Bihar some members of the formerly untouchable *chamar* caste were beaten up by the Brahmins. A village level settlement was sought, but when it turned out that the case could not be settled here the *chamars* went to the police and the court for justice. However, when they realised that the court was not going to punish the Brahmins immediately, they beat some of the Brahmins up and withdrew the case (see Gupta 2009: 177-78). I argue here that Singur’s unwilling farmers applied a similar logic of pursuing multiple paths to justice, including but not limited to going to court. I demonstrate the periodic waxing and waning of the farmers’ interest in their case in the extensive empirical narrative that constitutes the second part of this paper.

Yet while the farmers thus believed that the court could *potentially* function as a dispenser of justice, i.e. by producing a verdict in their favour, they also suspected that it in reality functioned in rather unpredictable ways, and that going to court was somewhat of a gamble. The unwilling farmers expected that the court could be influenced and manipulated in a variety of ways, and that it would eventually rule as it pleased. Research from elsewhere in India suggests that legal arenas continue to “bend under the weight of the rupee or the stick” (Moore 1993: 539), and this clearly puts marginal and resource poor groups at a distinct disadvantage when

⁶ A total of 11 petitions challenging the land acquisition had been filed in the HC. Yet the verdict would have consequences for all land losers in Singur, and the unwilling farmers therefore generally felt that this was ‘their’ case, and not the case of individual litigants.

confronting more powerful and influential actors such as state governments. Yet the perceived unpredictability of the courts, and the idea that courts would and could rule as they saw fit, also provided the Singur farmers with a sense of agency and hope: since the court was believed to be capable and likely to rule in an arbitrary fashion, one might just as well try one's luck even in the face of mighty opposition, and in spite of the fact that, as I show later, according to the letter of the law the unwilling farmers were always likely to lose.

To substantiate my argument that going to court is also seen as somewhat of a game of chance, I proceed below to examine some of the classical literature on the introduction and appropriation of British style legal systems and courts in India. Although much of this literature was produced in the 1950s and 1960s, the insights it generated remain relevant for an understanding contemporary India as well. The second section consists of the extensive empirical narrative on the unwilling farmers' use of the legal system, and in conclusion I return to address the questions raised in the introduction.

Games of Chance: Law and the Courts in India

The introduction of legal institutions in the Western mould gradually commenced with the arrival of colonial rule in India. The early trading of the East India Company was done from trading posts along the coast known as 'factories', and within those factories the British dispensed justice according to the law of England. The law empowering them to do so dates back to at least 1661 (Madsen n.d.). British colonial rule became increasingly consolidated during the second half of the 18th century, and by the late 18th century courts were being established in every district of British controlled India, with the procedure in court roughly based on existing procedures in British courts (Cohn 1961: 614). The intention underlying the establishment of such 'British' courts was to have available in India institutions designed to deal with issues related to the twin values that for the English more than anything defined a civilized people, namely the right to property and the rule of law (Metcalf 1998: 1).⁷

⁷ According to Lloyd and Susanne Rudolph (1965: 24), having established the 'rule of law' on the Indian subcontinent was probably the proudest achievement of the British *raj* for most Englishmen. In addition, these new legal institutions were introduced with the aim of securing a full and regular collection of land revenue.

Several studies of the fate of these British style legal institutions in the Subcontinent have shown how their *modus operandi* were not immediately comprehended by those suddenly subordinated to their powers and influence. Most importantly, the jural postulates that underlie British procedural law and British-introduced courts - equality in the eyes of the law and judicial ignorance of the complainants; the idea that economic relations are based on contract rather than status; that the goal is to settle the case at hand and *only* that case; and that the purpose is to reach clear-cut decisions rather than compromises - were clearly at odds with a wide range of adjudication procedures followed in India's villages (Cohn 1988). This often caused confusion and conflict whenever the new British-style 'lawyer's law' met India's myriad local 'law-ways' at many level of society, such as in subdistrict and district courts, and in revenue and welfare offices and in the actions of the police. Yet the obvious lack of fit with indigenous jural postulates did not mean that the court as an *institutional* arrangement was rejected. On the contrary, many in the rural areas quickly learned to use the courts for their own ends, often with astuteness and effectiveness (Cohn 1965, 109) - but rarely as intended:

Villagers use the courts for their own ends, and some villagers are adept at manipulating revenue, police, welfare, and judicial officials to minimize their effect on local institutions and affairs. To the villager, the rights and wrongs in a case were secondary to his ability to manipulate the court through access to minor court officials, the hiring of clever lawyers, the fabrication of evidence, and the marshalling of false witnesses. (Cohn 1965: 104-6).

The result was that the courts were flooded with cases which took years to resolve. This led to a huge backlog of cases, high costs of litigation (although there was no shortage of inexpensive lawyers), oppression of cultivators by those able to manipulate the legal system, and an endemic use of perjury and forgery of evidence and documents, official or otherwise (Cohn 1961, 622). Rather than settling disputes the courts were more often than not used as a form of gambling (Khare 1972, 78) on the part of legal speculators, who used them to wrest property from others. Apparently, the quickest way to ruin a rival - provided one was clever and lucky enough - was to run him into bankruptcy by embroiling him in a law suit (Cohn 1988, 568-9). As a result, rather than becoming dispensers of justice the courts in practice became variously arenas for harassment; places to

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gain revenge; battlegrounds in which to carry out fights to eliminate rivals; or fora where status and prestige could be won. With reference to North India, Cohn notes how:

[a] wealthy Thakur [locally dominant caste of landlords] who went to court looked forward to not just one quick case, but to a series of cases, appeals, adjournments and counter appeals through which a poorer competitor could be ruined. Since British procedure appeared capricious to the Indians, someone with a bad case was as prone to go to court as someone with a good case. The standard was not the justice of his case, but his ability to outlast his opponents. (Cohn 1988: 573.)⁸

As a consequence, and although the British intended to bring 'justice' to the subcontinent, their legal system often produced results that were experienced as injustice (Rudolph and Rudolph 1965, 26). In the words of historian Percival Spear: 'the courts were to the public a great penny in the slot machine whose workings passed man's understanding and from which anything might come except justice' (quoted Cohn 1961: 622).

Yet the enthusiastic litigiousness⁹ displayed by some - often locally dominant - social groups simultaneously made the law courts very unpopular, and success as a litigant did not necessarily translate into social status. Writing about the South Indian village of Rampura sociologist M. N. Srinivas found, based on fieldwork in the late 1940s, that local villagers felt that respectable people ought not to frequent the law courts. Srinivas' villagers opined that disputes were better settled in the village than in the law courts, which were a place one should only go when one had exhausted all other remedies.¹⁰ Accordingly, those villagers who frequented

⁸ Indeed, so successfully was the British style legal system appropriated that in Bengal already by 1815 'chicanery and litigiousness appear[ed] almost universally to have taken the place of violence' in revenue collection (the Marquess of Hastings, quoted Marshall 1987: 140).

⁹ Rudolph and Rudolph (1965: 30), however, have suggested that the apparent rise in litigiousness at least partly reflected the transplantation of disputes to a new location, i.e. the law court, where they were more susceptible of statistical observation.

¹⁰ Writing in the 1970s R. S. Khare (1972: 79-80) similarly argued that the first

the courts excessively were unpopular and had a reputation for being very unscrupulous. Srinivas also noted how much of what went on in a law court made absolutely no sense to the villagers: to them the most significant thing about a court case was that a clever lawyer had to be hired.¹¹ And when a man lost in a government law court it did not mean that he had done wrong or that he would lose face with his fellow villagers; it merely meant that his lawyer had not been clever enough, or that he had been unlucky: “Villagers know that a man who has a right to a thing may lose it in a law court and the man who has no right may win it” (Srinivas 1959: 14).

As mentioned courts in West Bengal are still widely perceived as corrupt, expensive and time-consuming (Chatterjee 2009: 43). In addition they tend to operate slowly. According to recent official figures from the home ministry’s department of justice, nearly 30,000,000 cases are pending in various Indian courts (*Hindustan Times* 2007).¹² This ostensibly means, according to High Court Judge V V Rao, that even if the courts were to stop registering new cases and work only at disposing of the cases on hand, it would take 320 years for all cases - given the present size of the judiciary - to be disposed of (*The Times of India* 2010). In West Bengal alone, according to the state law minister, 1,940,000 cases are presently pending in the lower courts and an additional approx. 200,000 in the High Court (*The Statesman* 2006). Given this slowness of the legal system even a verdict in favour of Singur’s unwilling farmers was likely to arrive too late, i.e. after the expropriation order had been carried out and their farmland converted into an industrial site. And lastly, and perhaps most importantly, the Land

popular reaction among Indians towards the British-style ‘lawyer’s law’ was to shun it and avoid it as far as possible, and to seek morally and socially more desirable informal settlements and out-of-court compromises instead.

¹¹ Elsewhere Srinivas writes:

The villagers did not understand the law or justice which was dispensed in [the law courts]. The legal system appeared to many as a complicated and half-understood game which litigants played by hiring lawyers who were supposed to know the rules. (Srinivas 1980: 114.)

¹² Even more recently, *The Times of India* (2010) reported that the number of pending cases stood at 31.28 million. According to official estimates it takes 15 years on average to finally decide a court case in India (*Hindustan Times* 2010).

Acquisition Act of 1894 does in fact not contain any clause that gives any power to the affected people to prevent the acquisition (Guha 2007: 55), nor is the acquiring agency required to elicit the consent of those affected by the acquisition (Samaddar 2009: 154). Hence, people like Singur's unwilling farmers who seek to prevent or undo a proposed acquisition through the courts as a rule hardly ever win. Against this background the Singur farmers' recourse to the courts appears as a legal game of chance where the chance of winning was small – but not nil.

Resisting the Land Acquisition: From the Streets to the High Court

The unwilling farmers did not immediately take their grievance to court when they first learnt, in May 2006, that their land was targeted for expropriation. Instead they almost immediately organised to resist, and formed a committee - the Committee to Save the Farmland of Singur - to organise their protest movement. Under the committee's guidance a number of public demonstrations, rallies and meetings were held. Other forms of public action were undertaken as well, such as the blocking of railways and roads by movement activists. Attendance varied, but generally several thousand villagers participated. On several occasions the protestors adopted an aggressive and confrontational stance against visiting representatives of the LF and Tata Motors, and on more than one occasion demonstrations organised by the committee were met with police repression. The unwilling farmers' protests generated considerable media and public attention, and many urban NGOs, activist groups and political parties came out in support of the anti-land acquisition movement. This included most significantly West Bengal's leading opposition party the Trinamul Congress (TMC). The farmers' committee had as its president appointed the area's member of the state legislative assembly (MLA), who represented the TMC. In this capacity he brought the Singur issue to the attention of the TMC leadership, including its high-profile supreme leader Mamata Banerjee. Mamata Banerjee lent her full support to the unwilling farmers' movement and came down heavily on the LF for acquiring the land of small and marginal farmers without their consent. She also went on to consistently provide both political, logistic and financial assistance to the movement, and the entry into the protests of the TMC (and other organisations) propelled the Singur protests to the level of state- and nationwide politics. This generated significant public pressure on the LF to withdraw its land acquisition plans in Singur.

When I arrived in Singur for an extensive period of fieldwork in the latter part of 2007, some 16 months after the local protests had started, I interviewed unwilling

farmers about their recollection of those early months of their movement, and almost without exception they remembered this as a time when they had felt confident that their agitation would force the LF to abandon its land acquisition in Singur and to relocate the Tata factory elsewhere. This, however, did not happen. After tolerating the Singur farmers' protests for several months the LF had gone ahead and acquired and fenced the land in December 2006 under heavy police protection. Shortly after it was handed over to Tata Motors, who soon began construction work on the site. Evidently, the unwilling farmers' many months of public protests and movement activities during 2006 had failed to generate the result they desired. So too had the farmers' committee's attempt at arriving at a mediated and negotiated solution. The committee had sent a number of deputations bearing petitions, memoranda and letters of protest to locally influential government bodies such as the block development officer (BDO) and district magistrate (DM). In their petitions the farmers expressed their opposition to the land acquisition, and implicitly urged local authorities to convey this opposition to those higher up in the system. Yet as the fencing of their land began in December 2006 it became apparent that these more 'traditional' attempts at dispute resolution by seeking to bring in locally influential people - the BDO or the DM - as mediators between themselves and the LF had failed.¹³

With both public protests and mediation having ostensibly failed in their objective the law court became an increasingly important arena for the unwilling farmers. Petitions challenging the land acquisition were filed already in 2006, and more followed in 2007. Some were filed by local farmers themselves with the help of legal experts provided by the TMC or by NGOs, while others were filed as public interest litigation by people and organisations sympathetic to the farmers' movement.¹⁴ The many petitions were first heard by the HC in late December 2006, and subsequently hearings continued intermittently almost throughout 2007, particularly during July and August when hearings took place on 24 different

¹³ According to Ranabir Samaddar this form of dispute resolution was never likely to produce any result that would have satisfied the unwilling farmers. It merely gave local movement leaders the honour of being invited to the DM's chamber, but there was in fact nothing the DM could do if the unwilling farmers did not fall in line (Samaddar 2009: 163).

¹⁴ Any Indian citizen can bring any issue before the court if it is deemed to be in the public interest, i.e. regardless of whether the citizen in question has any *locus standi* in the traditional sense or not.

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dates. Occasionally groups of farmers would make the one and a half hour train journey from Singur to the HC to witness the proceedings, although they understood next to nothing of what was being said as they were conducted in English.

While I cannot say with certainty how much importance the Singur farmers attached to the possibility of challenging the land acquisition in court during the early months of their movement, it is telling that of the 11 petitions filed in the HC, seven of them were not filed until 2007, i.e. *after* the land had been acquired and fenced. Evidently recourse to the court had become a more attractive option after the farmers' public protests had failed. And when I embarked on fieldwork in late 2007, it was obvious that the HC case had by then acquired a special significance. For the unwilling farmers prospects were bleak. It was nearly a year since the land had been acquired, and construction work inside the factory compound was well under way, with contingents of police and private guards providing a heavy security cover. The number of public protest rallies and demonstrations undertaken by the unwilling farmers had declined considerably, and many felt disenchanted that the many months of movement activities had not been enough to prevent the acquisition. Now they pinned their hopes on a favourable HC verdict instead. As if to emphasise the importance of the HC case, movement leaders, whom I interviewed at the time, sometimes referred to their movement as a 'legal movement', i.e. a movement which - in addition to obeying the laws of the land - sought justice through the legal system.¹⁵ Likewise, during interviews with unwilling farmers, the interviewee would often and without my encouragement bring up the court case. And in public discourse and discussions the HC case figured frequently. This was especially so during village meetings organised by the farmers' committee. I had expected that these meetings would have devoted considerable time to organising and preparing for various forms of public protests (rallies, roadblocks etc.), but instead a comprehensive report on the progress of their case would normally be the first item on the agenda. The following excerpt from one such village meeting, held in November 2007, brings out the significance of the HC case in the eyes of the unwilling farmers at the time.

¹⁵ On an earlier occasion movement activists had spent considerable time collecting sworn affidavits from some 800 unwilling farmers on official revenue stamp paper, with the explicit purpose of disproving the contents of a flawed status report on the Singur land acquisition prepared by the LF, in a manner that would stand up in court (Nielsen 2008: 237-8).

A village meeting

Some 45 villagers, mostly men, had gathered at around 10 pm on the porch of Mr Manna's house to attend a meeting convened by the local anti-land acquisition committee. It was a cold night and everybody was wrapped in blankets as they sat or squatted on the cool concrete floor of Manna's porch. The committee's president began by welcoming the villagers and thanked them for attending at this late hour. He then immediately proceeded to inform them about a verdict delivered by the HC only days ago in a case related to land acquisition and police atrocities in Nandigram elsewhere in West Bengal. Here the LF had tried to acquire some 14,000 acres of agricultural land for a chemical hub, but had later been forced, amidst violent local protests, to abandon the plan.¹⁶ However, in one clash between villagers and the police many villagers had been killed or injured by police firing. The HC had ruled the firing unconstitutional and avoidable, and had ordered the LF to pay a significant compensation to the next of kin of those killed. In addition the bench had ordered compensation for those raped and molested. The president explained that this verdict was good news for the Singur farmers because Singur and Nandigram were comparable cases since they both concerned forced land acquisition. And so, if the HC had ruled in favour of Nandigram's farmers it should naturally do the same for Singur's farmers, the president opined. Besides, the lawyer Kalyan Bandyopadhyay, who had represented the people of Nandigram in the HC, was also representing the people of Singur in their case – and one would expect Bandyopadhyay's success in the Nandigram case to rub off on his performance in the Singur case as well. The president then added that Siddhartha Sankar Ray was also part of Singur's legal team. In addition to being an eminent lawyer Ray had, the president explained, been the chief minister of West Bengal many decades back, and had gone on to serve as the governor of Punjab and as India's ambassador to the United States: "Normally he will charge many *lakh*¹⁷ to attend a hearing on behalf of his clients, but he has told me personally not to worry about his salary – he will represent us anyway", the president said. The assembled villagers nodded approvingly and appeared pleased at having such eminent lawyers on their side; and the fact that Ray found their case so deserving that he was willing to forego his fee was an added bonus.

¹⁶ The events in Nandigram are described in Ray (2008).

¹⁷ One *lakh* is 100,000 Rupees.

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The president then brought up a recent case from Punjab, where a group of farmers had contested a land acquisition in the Punjab and Haryana HC. They had initially lost, but had subsequently taken their case before the SC, which had overturned the HC's verdict. The SC had found that good agricultural land should not be acquired for setting up factories, and that the state should always try to acquire only barren or waste land.¹⁸ This ruling was good news for several reasons, the president explained. Firstly, since Singur's agricultural land was generally fertile and multi-crop, according to the SC ruling the LF should clearly have acquired less fertile land elsewhere. And secondly, even if the HC were to rule against the Singur farmers they could be confident that an appeal case brought before the SC would give them justice: "In the SC we are sure to win, because if the SC rules in favour of the farmers in the Punjab it will *have* to rule in favour of us as well", the president argued; "The SC is the SC of all of India, so naturally it has to speak with *one* voice. It cannot rule that something that is illegal in Punjab is legal in West Bengal. So in the SC we will surely win", he added. The villagers nodded enthusiastically in agreement, even as the president went on to explain that seeking justice through the legal system could be a long process: "No matter what, our case will go all the way to the SC, because if we lose in the HC we will appeal to the SC; and if the LF loses they will appeal." But as the Punjab case illustrated it would be worth the wait: "We can have confidence in the SC", the president concluded.

The president sat down and encouraged the committee's vice president Mr. Mukherjee to say a few words. Mukherjee was a supporter of a far-left Marxist-Leninist political formation, and, although he welcomed the verdicts on Nandigram and the Punjab, he also - in a more Marxist vein - cautioned the villagers against putting too much faith in the courts:

The court has now produced some favourable verdicts, but it could have done more. It could have issued a stay on construction work on the factory while the case was pending, but it has not done so. To get a good verdict for us we cannot just lean back and relax. We need to keep up our movement activities, including big rallies, marches and demonstrations. This will show the people and the HC that we are keeping a close eye on the case and that we are still serious and angry. It will put pressure

¹⁸ The SC had delivered its verdict in the Punjab case in October 2007. See Ray Choudhury (2008) for a brief report.

on the HC and make it difficult for them to rule in favour of the government.

Mukherjee sat down and a local village leader rose to speak. He too immediately mentioned the Singur farmers' case in the HC and said that he had heard from a friend of his, who often frequented the HC premises, that the lawyers there generally felt that the Singur farmers would win. Many lawyers also personally sympathised with the unwilling farmers, which was good news since they might be able to influence the judges assigned to the Singur case. He also reminded the audience of how the HC had previously embarrassed the LF by ruling that the prohibitory orders it had imposed on Singur in the wake of the actual acquisition of the farmland - to prevent the unwilling farmers from protesting in public - had been illegal.¹⁹ This showed, he concluded, that the HC is not afraid of ruling against the government: "There is hope for us in the HC", he proclaimed. Thus assuaged the villagers rose and headed home.

The Letter of the Law and the HC Verdict

Evidently, by late 2007 a favourable HC verdict had become the unwilling farmers' main source of hope for getting their land back. Mukherjee's comment at the meeting shows that various forms of public action and protest had not been abandoned entirely, but it was clear that their function and purpose had changed: earlier demonstrations and protest rallies had been organised to force the LF to backtrack and undo its land acquisition. Now, ostensibly, they were conducted primarily to influence the HC. Yet when the HC delivered its verdict some two months after the village meeting described above it ruled *against* the farmers, and found that the LF had acted in accordance with the Land Acquisition Act of 1894. Before I discuss the HC verdict it is instructive to briefly introduce the key features of this Act.

¹⁹ When it began acquiring the land in Singur the LF had imposed section 144 of the Code of Criminal Procedure, which it then extended several times. Section 144 specifies the authorities' power to issue order in urgent cases of nuisance or apprehended danger. In the Singur case the HC ruled that the state authorities had abused their power and violated citizen's rights when imposing section 144 (Prahladka et al. 2007).

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The Land Acquisition Act of 1894 - essentially a colonial measure intended to ensure a smooth acquisition of land for mining, roads and railways, or irrigation works - empowers the state government, upon proper preliminary notification, to acquire land in any locality where such land is likely to be needed for any 'public purpose' or for a 'company' (Sarkar 2007: 5). The Act suggests what might qualify as a 'public purpose', but does not offer any definitions. With regards to the notion of 'company' there are some restrictions attached to acquiring land for a government company, while the acquisition of land for a private company is very restricted.

The acquisition begins when the collector issues a public notice to that effect. Those affected by the acquisition plans have the right to object to the District Collector, who is obliged to consider such objections before forwarding his final recommendations to the government. Once a final decision is taken by the government, the collector initiates the process of marking out and measuring the land, and announces that claims for compensation (the award) may be made to him (Sarkar 2007: 6-11). The market value of the land at the time of the publication of the notification 'shall be taken into account' when the award is fixed. Those affected by the acquisition can challenge for example the size of their award and the collector's measurement of their land by going to court (Sarkar 2007: 17-27). They can also refuse to accept the compensation altogether in which case it will be deposited with the court. But in reality there is no provision in the Act which allows the affected population to challenge the acquisition *per se*. Going to court can thus only delay the process or enhance the rate of compensation (Guha 2007: 55).²⁰

In the HC it was the notions of 'private company' and 'public purpose' that

²⁰ The act has been criticised on many accounts. Nowhere does it provide for any compensation for those who till the land without having legal title, such as sharecroppers or labourers. It makes no mention of rehabilitation since as per the Act, the responsibility of the state towards those affected by the acquisition ends with the payment of compensation. Only individual property rights are recognised, whereas community rights over land are ignored so that if village commons are acquired, no compensation is provided (Guha 2007). In addition, a policy that reduces the value of land to a one-time monetary compensation is likely to be experienced as both problematic and unjust in a rural setting like Singur, where land to an extent retains its social and political value, even though the local economy today is by no means strictly agrarian.

emerged as the focal points of legal contestation. The farmers' legal team argued that the initial land acquisition notifications had been vague with regard to whether land was being acquired for a company or for a public purpose, to the extent that the notification could not be considered 'proper'. Yet in the team's opinion it was clear that, since the land in Singur, once acquired, would be leased out to Tata Motors, the entire land acquisition was *de facto* being carried out for or on behalf of a *private* company. This, they argued, meant that the LF had failed to abide by the appropriate provisions of the law. They added that the land acquisition was a scam done with malafide intentions to benefit Tata Motors. Yet the LF's legal team efficiently countered this charge by pointing out that technically it was the West Bengal Industrial Development Corporation (WBIDC) - the premier agency of the State's Commerce and Industries Department - which acted as the acquiring agency. Whatever the WBIDC subsequently did with the land was a moot point from the point of view of the law.

In contrast the notion of 'public purpose' proved more controversial. The key question was: does a car factory constitute a public purpose or not? When confronted with this question by the media the West Bengal Minister of Industries had replied: "of course it is a public purpose, industrialisation means employment generation, it means development of society. The entire people of the state will be benefited" (Nirupam Sen, quoted Chattopadhyay 2006). In the HC the LF's legal team maintained the public purpose nature of the Tata project. Industrial projects like the one in Singur would generate growth and employment that would benefit the entire state. This was true, the LF's lawyers argued, even if one *assumed* that the acquisition was for the benefit of a company: industries generated socio-economic development no matter what. The farmers and their advocates begged to differ. For them acquiring the land of small and marginal farmers by force only to lease it out - with considerable state subsidies²¹ - to a private multinational could not be justified as a public purpose. They saw it rather as a kind of inverse Robin Hood where land was taken from the poor and gifted to the rich: thousands of farmers would lose their livelihood²² because of the land acquisition, but only a

²¹ According to one estimate, the car factory in Singur has been directly subsidised to the tune of 8.5 billion Rupees (Bidwai 2008: 117). The WBIDC provided Tata Motors with a 2 billion Rupees loan at a rate of one per cent; however, in order to extend the loan the WBIDC itself had to take a significantly more expensive loan from the market (Samaddar 2009: 171).

²² More than 10,000 land owners were affected by the land acquisition in Singur.

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few hundred well-educated engineers would find employment in such a hi-tech modern car factory. And Tata Motors would make all the profits. This, the farmers felt, did not qualify as a public purpose.

When the Court delivered its verdict in January 2008 it firstly dismissed more than half of the eleven petitions challenging the land acquisition as 'not maintainable', and treated the remaining petitions as 'almost identical' (Calcutta High Court 2008, 9). In its verdict the HC found:

The materials placed before us do not lead to the necessary or even reasonable conclusion that the Government machinery identified itself with the private interests of the company, forsaking public interest. Public purpose does not cease to be so merely because the acquisition facilitates the setting up of industry by a private enterprise and benefits it to that extent.... On the face of it, therefore, bringing into existence a factory of this kind would be a purpose beneficial to the public even though it is a private venture. (Calcutta High Court 2008: 10-11.)

The HC in other words accepted the proposition that the land acquisition in Singur was legal insofar as it was carried out for a public purpose. It also dismissed the case from the Punjab - mentioned during the village meeting - as not having 'any bearings on the given facts of this case' (Calcutta High Court 2008: 14).

The defeat in the HC provoked an angry response from Singur's unwilling farmers, who almost immediately called rallies and organised road and railway blocks to show their resentment to the public. To explain the implications of the verdict the movement leadership organised another series of village meetings. Here they clarified that this was not really a defeat after all, since the case would have been appealed to the SC by one side or the other regardless of the HC's ruling. Besides, they explained, the HC was just a 'local court' and as such susceptible to manipulation by the powers that be, i.e. the LF. Having been in power in West Bengal since 1977, wasn't it likely that the LF had built up the capacity to meddle with the courts? one leader wondered out loud. One of the HC judges, another movement leader alleged, was 'close to the government', while the other was believed to be hand-in-glove with Tata, for whom he had ostensibly once worked as a corporate lawyer. That was the *real* reason why their petitions had been dismissed, the leader argued. But with the appeal case matters would be entirely different: the SC was the SC of *India*, and as such not entangled in local

relations of power and dominance to the same degree; and here not even the immense political influence of the LF would be able to assert itself. As soon as their lawyers had had a chance to go through the HC's verdict they would begin putting together their appeal case, the leadership concluded. According to the leadership it was thus not that their legal team had argued their case poorly; nor that the letter of the law simply went against them – the problem was that their opponent, the LF, had simply played the legal game more efficiently in this instance.

It was my impression that in spite of the setback in the HC many villagers continued to repose faith in the ability of the SC to eventually deliver a verdict in their favour.²³ It would be an exaggeration to argue that the unwilling farmers conceived of the SC as akin to the an incorruptible and ideal Hindu king,²⁴ who ensures for his subjects *Ram Raja* (just rule) on earth; but to a number of unwilling farmers the SC did indeed appear as a distant and magnificent centre of power that could enforce justice and make even the powerful LF government comply with whatever it wished through a mere stroke of its pen. When I asked the unwilling farmers about their expectations from the SC many simply replied that: 'All we have to do is wait – our work is done'. By this, I believe, they meant that their long struggle for justice on the streets as well as in court was finally coming to an end. Now all they had to do was wait for a favourable SC verdict.

²³ The Indian SC has a reputation for being a people's court. The Constitution gives all Indians the right to petition the SC directly if their fundamental rights are violated and the right to appeal to it in many other cases. Yet from West Bengal a mere 1.7 percent of the cases heard in the HC are appealed, and of the cases relating to fundamental rights and public interest litigation heard by the SC, the SC has ruled increasingly over the last 30 years against the socially disadvantaged. Most of the cases the court decides are brought on appeal by those with money and power (Robinson 2010).

²⁴ The special quality of the ideal Hindu King is that he can never be corrupted. If for some reason justice does not prevail in his realm, or if true justice is not delivered, it is not because of any personal weakness or flaw on the part of the King. The problem rather would be the King's dishonest advisors and ministers who stand between the benign ruler and his subjects and poison his ear - in much the same way as corrupt officials, petty judges, dishonest state ministers, lower court clerks and dodgy lawyers stood between the Singur farmers and the benign SC.

Back to the Streets and Towards Elections

However, signs soon emanated that the SC might not entertain a munificent view of the Singur farmers' cause. In May 2008 the SC refused to stay the HC's order (Venkatesan 2008), and when hearings finally began in the SC in April 2010, the court was quick to proclaim - with reference to the 'company vs. public purpose' controversy - that even if a state were to acquire land for a *private* company, it could in fact serve a *public* purpose nonetheless (Rautray 2010). When this article went to press the hearings had not been concluded, but by now the importance of the SC's eventual verdict had long since decreased significantly for the Singur farmers, whose protests had taken a different turn in the wake of the unfavourable HC verdict. In the summer of 2008, some six months after their defeat in the HC, thousands of people began gathering daily outside Tata's now nearly completed car factory. Many locals joined in, but the majority of the participants were supporters of the TMC and other political parties, who were bussed in from elsewhere. Party leader Mamata Banerjee, who had by then made opposition to forced land acquisition one of her main poll planks, led the demonstration and demanded that Tata Motors return 400 acres of land from inside the factory compound to the unwilling farmers. After prolonged protests (and some failed negotiations) Tata finally relented and announced their departure from Singur. Chairman Ratan Tata said that it would be impossible for him to run a factory under such hostile local conditions in the long run, and accordingly ordered the factory dismantled and moved nuts and bolts right across India to the state of Gujarat. Tata's departure spawned cautious celebrations among Singur's unwilling farmers, and although they soon realised that Tata's withdrawal made little actual difference on the ground as the LF still refused to return any of the acquired land, it had demonstrated that the politics of the street and public agitation had now achieved what the court had not, namely to rid Singur of Tata Motors.

I arrived in Singur for a final round of fieldwork in early 2009, some months after Tata's departure. During my stay a new series of village meetings were held and the SC case figured only sparingly. The odd villager would inquire how the appeal case progressed, or would angrily wonder how much longer they would have to wait for a verdict. But neither the leadership nor most of the villagers showed any urgent interest in the case any more. Instead the talk was about the emergence of an entirely new political situation in the state, one in which their demand would in all likelihood be listened to and met. Since the Singur controversy erupted in 2006

the TMC had opposed the LF's policy of acquiring agricultural land for industrial purposes in a number of localities across the state, and had made the protection of agricultural land a major political issue. This had brought the TMC increasing support from voters at recent successive elections, including local level elections in Singur. With State Assembly elections just two years away, and with the political mood prevalent in the state apparently favouring the TMC, it looked likely that the TMC would be able to oust the LF from power. Were that to happen TMC leader Mamata Banerjee had promised to immediately undo the land acquisition in Singur and return 400 acres to its erstwhile owners. Accordingly, much of the movement leadership in Singur were now engaged in campaigning for the TMC in Singur and elsewhere, believing that they would get the land back if a TMC-led government assumed office in West Bengal in 2011. Rather than relying on the SC to force the LF to give up on Singur, removing the LF altogether through the ballot had now assumed top priority as the swiftest and most realistic route to reclaiming the land. In this endeavour the SC had lost its utility.

Conclusion

The account presented here shows how the courts can both gain and lose importance for subaltern groups in their pursuit of justice. For Singur's unwilling farmers, going to court constituted one part of a larger repertoire of contention which they made use of in their struggle to get their land back. From the outset they pursued the paths of confrontational street politics in combination with local mediation and negotiation, but when these failed to produce the desired result, the court assumed increasing importance as an arena of contestation. In accessing the court a host of allies, including political parties with money and connections, urban-based NGOs, and various legal experts providing free assistance, have been of crucial importance for the farmers.

The idea of the court as ideally a dispenser of justice was thus not alien to Singur's unwilling farmers. The speeches delivered by the movement leadership – and the reception of them by the villagers – testify to this. Importantly, the further removed from local relations of power and dominance the court was physically located, the higher the likelihood of being given 'fair treatment'. Thus, when the HC verdict went against them the farmers dismissed it as just a verdict from a local court that had been manipulated by the LF and Tata Motors – incidentally, the Calcutta High Court is located very close to the state assembly where the LF

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rules supreme,²⁵ and not very far from the headquarters of the LF's largest constituent, the Communist Party of India (Marxist). Hence, their chances were likely to improve when the case was brought in front of the powerful and autonomous SC in Delhi, the farmers felt.

The farmers' point of view that courts were susceptible to manipulation by the powers that be indicates that, while they believed the court *capable* of delivering a 'just' ruling in their favour, they did not automatically *expect* the court to do so. Going to court was also a game of chance, and while this provided the farmers with a sense of agency vis-a-vis the courts – they used various forms of public protest to 'put pressure' on it – it also meant that it would be naive to rely exclusively on the court when it came to reclaiming the land, particularly when their opponent ostensibly had more rupees and wielded a bigger stick. The farmers accordingly never abandoned the strategy of seeking a political rather than a legal solution to their predicament. For a while the politics of agitation was either subordinated to or enlisted in the service of seeking a solution through the court, but when suddenly the politics of agitation and the ballot, resurrected and spearheaded by the TMC, promised to provide a likelier and swifter return of their land than could the SC, the unwilling farmers gradually lost interest in their case, the outcome of which would be irrelevant.

While the empirical case presented here might not be paradigmatic, it shows that Indian courts do constitute an arena where subaltern groups can and do seek justice for themselves. From the point of view of subaltern agency it would be foolish – since the courts ostensibly rule in mysterious ways – not to bring one's case before them, even if one's claim finds little support in the letter of the law, as was the case with the Singur farmers. But it would be a poor subaltern strategy to rely on the courts only. Political mobilisation and confrontation continue to oftentimes provide a swifter and more efficient route to 'justice' than the slow churning of the wheels of the legal slot machine.

²⁵ At the time the LF held 235 out of 274 seats in the state assembly.

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