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What Does The Law Say and Why Is It So Controversial?

● Bharat Dogra

Few legislations in the realm of economic affairs have generated as much debate and fierce criticism as The Special Economic Zones Act, 2005 (Act No. 28 of 2005, dt. 23.6.2005). In the two years since the enactment of this legislation, people's resistance to the implementation of this law has already gained strength at many places, and an increasing number of social activists, movements and distinguished persons from various walks of life have raised the demand for repealing this law. What exactly does this law contain that has evoked such fierce debate and resistance?

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What the Act Says¹

First, this Act defines itself as "An Act for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or in-




cidental thereto.

A critical role in this Act is assigned to the Board of Approval (hereafter referred to as the Board) of senior government officials and a few experts. It is this board which has the power of granting approval or rejecting proposals (or modifying proposals) for SEZs, granting approval for foreign collaboration and investment in SEZs.

The procedure for proposing establishment of SEZs is described in the Act in the following words -

- "(1) A special Economic Zone may be established under this Act, either jointly or severally by the Central Government, State Government, or any person for manufacture of goods or rendering services or for both or as a Free Trade and Warehousing Zone.
- (2) Any person, who intends to set up a Special Economic Zone, may, after identifying the area, make a proposal to the State Government concerned for the purpose of setting up the Special Economic Zone.
- (3) Notwithstanding anything contained in sub-section (2), any person who intends to set up a Special Economic Zone, may, after identifying the area, at his option, make a proposal directly to the Board for the purpose of setting up the Special Economic Zone:
Provided that where such a proposal has been received directly from a person under this sub-section, the Board may grant approval and after receipt of such approval, the person concerned shall obtain the concurrence of the State Government within the period, as may be prescribed.
- (4) In case a State Government intends to set up a Spe-



cial Economic Zone, it may after identifying the area, forward the proposal directly to the Board for the purpose of setting up the Special Economic Zone :

Provided that the Central Government may, -

- (a) after consulting the State Government concerned;
- (b) without referring the proposal for setting up the Special Economic Zone to the Board; and
- (c) after identifying the area,

suo motu set up and notify the Special Economic Zone."


The Act promises a lot of tax exemptions to SEZs, their developers and units existing there, as section 7 says,

"Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -

- (i) a Unit in a Special Economic Zone; or
- (ii) a Developer,

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule."

It is apparent from these provisions of SEZ Act that in the name of increasing exports, it gives arbitrary powers to anyone with adequate financial resources to acquire the land, livelihood base and homes of other people without consulting them, their representatives, panchayat or other bodies. There is not even any mention of seeking the permission, or even consulting those who may be displaced. This is inherently a most undemocratic legislation that has no place in a democracy. What is more there is no



limit on how many SEZs will be set. As huge tax benefits are proposed, more and more developers and units will no doubt be attracted to SEZs, and so this Act opens the floodgates for an endless land-grab by the rich eager to avail of tax concessions and other benefits.

For the administration of SEZ wide ranging powers have been given to the senior official of the Govt. of India who will be appointed as 'Development Commissioner' (DC) for a SEZ. The Act provides for roping in other Central and State Govt. officers who under the chairmanship of DC will constitute an approval committee (AC). The AC/DC have wide-ranging powers to approve units to be set up in a SEZ. In fact even investigation, searches and seizures etc. for violation will be conducted with the approval of the DC (Section 19). In addition the Act provides room for setting up an offshore banking unit (section 17) and an International Financial Services Centre (Section 18) in a SEZ.

Chapter VI of the Act describes the very wide-ranging special fiscal provisions for SEZs in the form of very substantial and lucrative tax concessions, exemptions, drawbacks etc.

Again with DC as chairman, the Central Govt. will constitute an Authority for each SEZ, consisting of some other govt. officers as well as two entrepreneurs of that SEZ (or their nominees) and a few experts. This Authority has also been assigned wide-ranging functions and powers including development of infrastructure for SEZ. However there is no mention in the Act of the powers of the panchayats or other self-government institutions in whose area a SEZ may be located.



The provisions of this Act will apply to all existing SEZs.

The wide sweep of the powers of the DC and the Authority over the people living in and around this area is evident also from section 46 -

"Every person, whether employed or residing or required to be present in a Special Economic Zone, shall be provided an identity card by every Development Commissioner of such Special Economic Zone, in such form and containing such particulars as may be prescribed."

At the same time Section 48 provides a lot of protection to SEZ authorities,


"No suit, prosecution or other legal proceeding shall lie against the Central Government or any Chairperson, Member, officer or other employee of the Board or the Approval Committee or the Authority or Development Commissioner for anything done or intended to be done in good faith under this Act."

Sections 49, 50, 51 and 53 further indicate the very wide extent, the very sweeping nature of the exemptions given and special powers exercised in the context of SEZs

"The Central Government may, by notification, direct that any of the provision of this Act (other than sections 54 to 56) or any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder (other than the provisions relating to making of the rules or regulations) specified in the notification-

(a) shall not apply to a Special Economic Zone or a class





of Special Economic Zones or all Special Economic Zones; or


- (b) shall apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones only with such exceptions, modification and adaptation, as may be specified in the notification:

PROVIDED that nothing contained in this section shall apply to any modifications of any Central Act or any rule or regulation made thereunder or any notification or order issued or direction given or scheme made thereunder so far as such modification, rule, regulation, notification, order or direction or scheme relates to the matters relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits applicable in any Special Economic Zones." (Section 49)

"The state Government may, for the purposes of giving effect to the provisions of this Act, notify policies for Developers and Units and take suitable steps for enactment of any law-

- (a) granting exemption from the State taxes, levies and duties to the Developer or the entrepreneur:
- (b) delegation the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur. " (Section 50)

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument



having effect by virtue of any law other than this Act." (Section 51)

"(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.

A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962)." (Section 53)

II. What the Rules Say²

So far we've discussed the various provisions of the SEZ Act 2005. Now we come to the Special Economic Zones, Rules, 2006 (G.S.R. 54(E) dt. 10.2.2006) (As amended vide GSR 470 (E), dt 10.8.2006)

Section 5 of these rule specifies that for various categories of SEZs the minimum size is 1000 hectares to 10 hectares of contiguous land, but the maximum is not mentioned. Of course recently it was reported in the media, after a lot of opposition to SEZs had taken place at many places, that a maximum limit for one SEZ has been fixed at 5000 hectares, but no maximum limit is mentioned in the original list of rules.

It is also mentioned in this section

"That at least thirty-five per cent or the area shall be earmarked for developing the processing area, which may be relaxed up to twenty-five per cent by the Central Government on recommendations of the Board for the reasons to be recorded in writing:"

Section 4 says, "The Developer or Co-developer shall have at least twenty-six per cent of the equity in the entity proposing to create business, residential or recreational facilities in a Special Economic Zone in case such development is proposed to be carried out through a separate entity or a special purpose vehicle being a company formed and registered under the Companies Act, 1956 (1 of 1956)."

Section 5 says, "Before recommending any proposal for setting up of a Special Economic Zone, the State Government shall endeavour that the following are made available in the State to the proposed Special Economic Zone Units and Developer, namely:-

- (a) exemption from the State and local taxes, levies and duties, including stamp duty, and taxes levied by local bodies on goods required for authorized operations by a Unit or Developer, and the goods sold by a Unit in the Domestic Tariff Area except the goods procured from domestic tariff area and sold as it is;
- (b) exemption from electricity duty or taxes on sale, of self generated or purchased electric power for use in the processing area of a Special Economic Zone;
- (c) allow generation, transmission and distribution of power within a Special Economic Zone subject to the provisions of the Electricity Act, 2003 (No. 36 of 2003);
- (d) Providing water, electricity and such other services, as may be required by the developer be provided or caused to be provided;
- (e) delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 (No.

14 of 1947) and other related Acts in relation to the Unit;

- (f) delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 (No.14 of 1947) in relation to the workmen employed by the Developer;
- (g) declaration of the Special Economic Zone as a Public Utility Service under the Industrial Disputes Act, 1947 (No. 14 of 1947);
- (h) providing single point clearance system to the Developer and unit under the State Acts and rules."


Thus it is clear that a lot of importance will be provided to providing tax-exemption and infrastructures to SEZ while also providing exemptions from labour laws and subjecting workers to the dictates of the SEZ administration.

Further emphasising this section 5A says, "In case of a Special Economic Zone relating to information technology, the following facilities shall be ensured, namely:-

- (a) twenty-four hours uninterrupted power supply at stable frequency in the Zone;
- (b) reliable connectivity for uninterrupted and secure data transmission;
- (c) provision for central air-conditioning system; and
- (d) a ready to use, furnished plug and pay facility for end users."

These rules also provide for speeding up the work of SEZs. Section 6 says,

"(1) The Central Government shall, within thirty days of the communication received by it under sub-section



(10) of section 3 grant a letter of approval in Form B to the person or the State Government concerned or in Form C, if the approval is for providing infrastructural facilities in the Special Economic Zone, incooperating additional conditions, if any, specified by the Board while approving the proposal.

- (2) The letter of approval of a Developer granted under sub-rule (1) shall be valid for a period of three years within which time, effective steps shall be taken by the Developer to implement the approval proposal :


Provided that the Board may, if it is satisfied, extend the validity period for a further period not exceeding two years upon a request made in writing by the Developer or Co-developer."

It is also interesting and important to note that some of the rules are being implemented according to the convenience of the authorities and developers while ignoring the reality. Section 7 says,

"The Developer shall furnish to the Central Government, particulars required under sub-section (1) of section 4 with regard to the area referred to in sub-section (2) or sub-section (4) of section 3 (hereinafter referred to as identified area), with proof of legal right and possession and a certificate from the State Government or the authorized agency that the said area is free from all encumbrances :

- (1) Provided that where the Developer has leasehold right over the identified area, the lease shall be for a period not less than twenty years.

- (2) The identified area shall be contiguous and vacant



and it shall have no public thoroughfare subject to third proviso to clause (a) of sub-rule (2) of rule 5."

Here in the context of the objections being raised by people in many SEZ areas, it may be questioned what exactly is meant by 'vacant' area or the state govt. certifying that "the said area is free from all encumbrances."

Section 11(2) says, "The processing area and Free Trade and Warehousing Zone shall be fully secured by boundary wall or wire mesh fencing having a height of at least two meters and forty centimetres above plinth level with top sixty centimeters being barbed wire fencing with mild steel angle with specified entry and exit points."

Section 11(4) says, "The authorised persons shall only be allowed to enter the processing area of a Special Economic Zone."

The above provisions show to what extent SEZ will be regulated strictly according to the dictates of SEZ authority having wide-ranging powers.

Section 44 shows how particularly agribusiness SEZ will have widespread linkages. " A Unit engaged in production or processing of agriculture or horticulture products, may, on the basis of annual permission from the Specified Officer, remove to a farm in the Domestic Tariff Area, inputs, namely, seeds, fertilizers and chemicals for pre and post harvest treatment, micro nutrients, plant and growth regulators and other organic and inorganic substances used for plant nutrition, insecticides, fungicides, weedicides, herbicides and the following equipments, namely : -" (A long list of equipments, plants and plant parts is given).



As for the main requirement and monitoring Section 53 says, "The Unit shall achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production...."

Section 75 says, "Unless otherwise specified in these rules all inward or outward movement of goods into or from the Zone by the Unit or Developer shall be based on self declaration made and no routine examination of these goods shall be made unless specified orders of the Development Commissioner or the Specified Officer are obtained."

Clearly the incentives, benefits and concessions for SEZ developers and entrepreneurs are simply too many and to make this possible quickly huge powers have been vested in the SEZ authority and in the other government set-up to support SEZs.

III. What Is Wrong With The Act and The Rules

(i) Adverse impact on livelihoods

It is clear that the SEZ law provides very attractive incentives for developers and units located in SEZ. Developers can also benefit a lot from real estate deals, setting up luxury housing units and hotels as also entertainment resorts and expensive hospitals attending to richest sections. To avail of these benefits while somehow meeting the conditions necessary for this, there can be an endless movement of developers and entrepreneur (including speculators dressed up as developers and entrepreneurs) to set up more SEZs or to set up more units in SEZs. No limit on the number of SEZs, or the total area to be occupied by them, has been set. So more and more land will





be occupied by SEZ, regardless of how many units may later become sick or fail to meet the requirements.

This means that the threat of displacement for farmers and other villagers - which is already a very serious threat and a very sensitive issue - will increase immensely and indefinitely as a result of SEZs. Although officials have stated that only land voluntarily given by farmers will be taken up for SEZs, it is well known that in reality this requirement is widely flouted otherwise, why are SEZs being considered in areas where hundreds or even thousands of farmers and villagers have declared themselves to be against the acquisition of their land?

Some officials say that farmers benefit from SEZs as market rates of land go up after the announcement of SEZs. But then they have to answer why so many farmers are protesting against the acquisition of their land? At many places farmers have protested that their land has been taken or is being taken at below market rates. But what is even more important is that cash is not the only question. It has been seen in the many places particularly in the vicinity of urban areas that even when high cash compensation or price has been received by farmers, it vanishes all too soon and sometimes even leads to some serious social problems. On the whole the sustainable livelihood that people had in farming and related activities is preferred by many families, particularly women members and elders. Many farmer families have declared that no matter what the price they don't want to part with their land. In the case of all these farmers it is particularly sad that the SEZ law is increasing the threat of displacement, while actually we should have been thinking about ways and means of





reducing displacement as much as possible.

The cash compensation or price in any case is provided to farmers having clear land titles. But many peasants who have been cultivating land do not necessarily have clear land titles. Some of them have been earning their livelihoods as tenants or sharecroppers. Some villagers are landless farm-workers. Their livelihood depends on farming and related activities but they don't own land. Many villagers particularly poor and landless people and pastoral people also depend on village-community lands in several ways, including grazing for cattle. It is not just the acquisition of farmland but also the village common land that can cause serious harm to the livelihood of villagers. In a cover-story on SEZs, 'Down to earth' magazine has summarised the importance of common land (sometimes wrongly called waste land) for many villagers.

"Acquiring wasteland for SEZs has been touted as an acceptable compromise, but it begs several questions.

...Land classification in India is complex: compartmentalising land into the categories waste and agricultural is not as easy as the commerce ministry imagines. Both these classifications have numerous layers within them. Wastelands, for example, can be land with scrub, grazing land, pasture, land locked within a notified forest (India has 55.2 million ha of wastelands).

"And, of course, there is the issue of people-the poorest, most marginalised in the most backward of states - who depend, for day-to-day survival, on these very 'wastelands'. Most of these lands provide firewood, fodder and other minor forest produce. Meaning, much of the land

classified by the government as waste is actually common property resource (CPR). This makes market-based valuations nonsensical.

"The centre's own survey of CPRs speaks of the rural population's dependence on them. According to the 54th round of the National Statistical Survey. Organisation survey, about 15 per cent of India's geographical area is CPR, including community pastures and grazing grounds, village forests and woodlots, and cultivable wastelands.


".....As far as grazing goes, the survey added that while 56 per cent of rural households reported having livestock, 20 per cent of households depended on CPR land for grazing and 13 per cent collected fodder from it. The data also showed that the smallest villages were most dependent on CPRs, for subsistence."²

Actually farmers of a wider area are adversely affected in addition to the farmers whose land is acquired. As has been seen already in many new industrial townships, Several industries dig very deep bore-wells so that water-shortage is created for farmers in neighbouring areas. Industries start using a high share of other water-sources as well. And water pollution caused by industries also adversely affects farmers of nearby areas.

Several SEZs are being set up in coastal areas. Here the livelihood of traditional fisherfolk in particular will be adversely affected, as also some of the smaller communities like salt-workers.

(ii) Adverse impact on food-security

The food security of our country is already badly




threatened with large-scale imports of staple foods such as wheat, pulses and oilseeds/edible oils. This is at a time when high levels of hunger and malnutrition exist in the country. Hence to meet adequate food needs of people we need much higher levels of production of staple foods. But the quick and large-scale diversion of farmland to industrial projects as well as the adverse impact on the agroecology of nearby areas will adversely affect the food security of the country.

As the livelihood of several farmers, farm-workers, pastoral people and fisherfolk is devastated, of course their food-security will be most adversely affected.

(iii) Colossal Loss of Tax Revenue

There will be a huge loss of tax-revenue to the government due to the wide-range of tax exemptions and related benefits to the developers of SEZ and the units located there. According to various projections of the Finance Ministry, this revenue loss may be to the extent of Rs. 90000 cr. (Rs. 900 billion) to Rs. 160000 cr. (Rs. 1600 billion) over the first four to five years of the creation of SEZs. This is a colossal sum. Many sane voices are questioning the wisdom of this. Down to Earth has summarised several of these objections -

"...The National Institute of Public Finance and Policy (NIPFP), New Delhi, has very pointedly discouraged the kind of tax incentives being offered to SEZs. It says perpetuating tax incentives for exports under the SEZ Act is questionable because the arguments that originally provided the rationale for setting up EPZs and allowing tax concessions for export-oriented units have lost their force



after liberalisation. Secondly, there is no evidence that tax benefits to special zones have helped to promote exports.


"The NIPFP report explains that special consideration towards exports was necessary when India's economy was heavily controlled and protected and EPZs were conceived as 'islands' isolated from the restrictive environment. But in the liberalisation era, with no ban on import of foreign technology or flow of foreign capital, the extension of tax benefits for SEZs seems uncalled for, constituting a needless drain on revenue. Not only are they unnecessary, concessions to SEZs will create market distortions."²


(iv) **Highly Dubious Gains**

There is concern also that the main stated objectives of boosting exports significantly will not be achieved by SEZ. As Manoj Pant, Centre for International Trade and Development has argued in a recent paper published in the Economic Times,

"What are India's principal exports? These are gems and jewellery, textiles and clothing, automobiles and parts and IT services: all exports coming out of naturally developed clusters in areas like Chennai, Bangalore, Tirupur, Delhi and Surat. There is no evidence that the government did anything special to develop the Bangalore or Delhi clusters. In fact, if as the experience with cash compensatory scheme (CCS), of the '80s illustrated many bogus export units are likely to come up only to avail of the incentives.

"In conclusion, the case for SEZs rests mainly on the need to alleviate infrastructure constraints to exports. Yet, since the main constraints are port congestion and trans-






port bottlenecks, it is not clear how SEZs would help. On the other hand, expensive tax giveaways may create perverse incentives for new export units which might make things worse in the long run. In the past three years, exports have grown more than in the 10 preceding years. Surely the proven leaders are doing something right? Why not create SEZs out of existing clusters if export promotion is the main objective?"³

'Down to Earth' has argued that the earlier experience with Export Processing Zones (EPZs) has not been encouraging - "The failure of EPZs was not just about implementation failures. The aim of EPZs was to promote exports and boost foreign exchange earnings. But as things panned out, EPZs turned into zones in which value was merely added to semi-finished goods for exports- what did not happen was the expansion of a manufacturing base geared towards external markets. Consequently the expected growth in exports from India never took place.

"According to a report by the Indian Council for Research on International Economic Relations (ICRIER)- 'Export processing zones in India: Analysis of the export performance' (November-2004)- growth rates of aggregate exports, foreign exchange earnings and employment in EPZ/SEZs started falling since the late 1980s. The share of EPZ/SEZ exports in exports also stagnated. The share of EPZs in total exports increased from 0.07 per cent in 1973 to 4.3 per cent in 2001. And in 2002, their share in exports was slightly lower at 3.8 per cent. The showdown was despite the creation of four zones.

"On the employment front as well, the performance



of EPZs was discouraging. Although employment increased from 70 workers in 1966 to around 89,000 workers in 2002, the average annual growth rate in employment declined within EPZs."³


According to the Resolution of All India Citizens' Convention Against Atrocities in Nandigram and Special Economic Zones,

"The claim of creating lakhs of jobs in SEZs is a complete hoax. It is well known that ever since the policies of liberalisation, privatisation and globalisation were adopted, employment in the organised sector has hardly increased. Thousands of industries have closed down, rendering lakhs of workers unemployed. The private sector depends on automation and mechanisation, or outsourcing to the informal sector under the most exploitative conditions of employment. The corporates, which will establish production units in SEZs, will also seek jobless growth and only a small number of jobs for a highly skilled workforce can be expected in sectors like IT."⁴

(v) Violation of Democratic Norms

SEZ law is inherently anti-democratic as it seeks to legitimise the land-grab of the homes and livelihood places of people by rich persons, companies, developers and governments without the opinion of the affected people being even sought or obtained.

Pointing out other undemocratic aspects of this law, Mahesh Pandya and Hiral Mehta, who are environmental engineers with Paryavaran Mitra, Ahmedabad, say, "SEZs are deemed as industrial townships under Article 243 of the Indian Constitution. This is a dangerous clause, be-




cause the zones are not under the jurisdiction of municipal corporations, nagar panchayats, village panchayats or any other local authority.... Residents of SEZs will have no say in the administration of the zones. The SEZ Act overrides all existing acts, including that pertaining to local-government. When towns under SEZs fall in the hands of a few people with their own rules of administration, imagine the ensuing tyranny."⁵

(vi) **Environmental Havoc**

The SEZ law has initiated a seemingly endless process of more and more farmland or village land being replaced with industries, luxury housing complexes, entertainment centres etc. with their usual heavy demand on water. Several of these industries may be highly polluting ones and/or may involve the use and import of hazardous materials. With the heavy emphasis on speeding up SEZs and the concentration of power in a SEZ Authority/DC, it is quite likely that considerations of environment protection will get scant attention. Such tendencies will be particularly devastating in ecologically sensitive zones like coastal areas and unfortunately there is a heavy concentration of SEZs in and around coastal areas. Many SEZs are being set up near big cities with an eye on bagging lucrative land, but in the process there will be a rapid destruction of ecologically important green areas next to cities.

(vii) **Imbalances in Economy**

SEZs can cause serious imbalances in the economy as units in ordinary areas have to compete against the units in the special economic zones which have many ben-



efits and concessions.

(viii) Violation of Labour Laws

As many powers relating to labour relations are delegated to DC, entry and exit is strictly regulated and SEZ is declared a public utility service under the Industrial Dispute Act, 1947, it is only to be expected that existing protection to labour will suffer terribly in SEZs

(ix) Neglect of Nearby Villages and Settlements

As the heavy construction work in SEZ gets top priority, it is likely that at places other nearby human settlements will not only be neglected but in addition may suffer due to raised land levels in SEZs, drainage of waste water and disposal of waste products from there.


(x) Pressure on infra-structure and basic needs

As the infra-structure is geared up to meeting the heavy needs of electricity, water, construction materials, transport, oil and gas etc. in SEZ areas it is quite likely that the availability of basic facilities and infra-structure to other areas may suffer.

We may conclude this review with extracts from a message sent by Ramsey Clark, former US Attorney-General, to the All-India Citizens' Convention Against Atrocities in Nandigram and Special Economic Zones,

"It is such a harmless phrase- Special Economic Zone- it sounds like an area of rapid development of technology and leaning that will allow the creation of wealth from nothing and enrich the life of a region. What a difference between words and reality! It pushes small farmers- who were at least able to feed their families- off the land,

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introduces industries that pollute the environment while giving only a small minority of the displaced people alienating, low-wage jobs. A tiny minority of transnational corporations, rich people and corrupt officials have an opportunity to make fortunes from speculation in real estate, while most of the displaced people are simply made landless and desperate."⁶

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