

Negotiating Out of Holdouts in Land Aggregation in India

Small Town Lawyers, Contingent Contracts, Social Norms, and Auctions

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Abstract

This a paper about the role of lawyers in small towns in India as the intermediary agents of large corporations. They help resolve disputes among farmers with small land holdings and also negotiate with them to purchase and aggregate a valuable asset i.e., land, for these corporations to expand their operations to serve foreign markets or domestic markets that have grown since 1991. Without these small-town lawyers, infrastructure and multinational corporations would likely rely on the government to aggregate small parcels by exercising eminent domain with low “just” compensation, and then face political problems and higher long-run costs. In fact, it is safe to say that without these small-town lawyers, many corporations (including the likes of Infosys, Satyam, GMR, and GVK) would not have amassed and managed their land-banks which are the most valuable assets on their balance sheets. These small town lawyers leverage contingent contracts, and pressures of social norms, social exclusion, and coalition building in their aggregation efforts. There is evidence to show that they are able to offer integrative negotiation solutions to small landowners, thereby producing lesser resentment among them. They are also able to network with small town lawyers in rival locations of aggregation and create competitive auction markets to exert a downward pressure on reservation prices of small landowners.

1. Introduction

The rapid infrastructure development and industrialization that accompany globalization in developing countries depend on the availability of a prime asset - land. The essence of a capitalist economy lies in the allocation of resources to their best use, and often involves transfers of holdings of land from small land holders to private infrastructure developers and industrialists who can undertake large projects and leverage economies of scale.

Due to systematic land reforms in post-independence India that broke up large holdings of land into smaller units, it is now difficult to find the large pieces of land needed for setting up factories, special economic zones (SEZs), and technology parks in the globalized economy. The shortfall in large tracts of land is somewhat similar to the problem of *anticommons* that occurs as a result of over propertization (see Heller, 1998).¹ The transaction costs of aggregating disparately owned property rights are high and prevent the coordination that is required for production of goods and services. Heller and Eisenberg (1998) theorize that when the problem of *anticommons* is experienced in the field of biotechnology patents (that is, there are too many patent holders with proprietary interest over small elements of knowledge), the high transaction costs of contractually bringing multiple, complementary pieces of knowledge together, coupled with the possibility of hold-outs, retard innovation.²

Currently there are two alternate ways by which small land holdings are aggregated to meet the growing demands of infrastructure and multinational corporations in India:

(1) The government acquires small holdings of land from farmers by an exercise of eminent domain, and transfers the aggregated and contiguous pieces of land to private infrastructure and multinational corporations; and

¹ The Tragedy of the Anticommons: Property in the Transition from Marx to Markets

² Can Patents Deter Innovation? The Anticommons in Biomedical Research

Michael A. Heller and Rebecca S. Eisenberg <http://www.sciencemag.org/content/280/5364/698.full.pdf>

(2) Infrastructure and multinational corporations employ the services of local intermediary aggregators, consisting of small-town, newly turned transactional lawyers to negotiate, mediate long-standing title disputes between farmers, and arrange for purchases on behalf of a single entity.

The first method, which involves the use of eminent domain by the government, usually produces resentment from the original owners. Political backlash is a likely outcome of the coercive nature that is integral to this method (especially from the leftists and the Maoists) even though there is some compensation for the takings. Human rights activists often protest the displacement of small farmers, and argue that the “just” compensation given by the government is not really just. The problem of price discovery in the exercise of eminent domain by the government is also compounded by allegations of corruption and insinuations that the government subsidizes land purchases by big industrial groups at the expense of marginal farmers. Skeptical activists are also likely to question whether there ever is a public interest that is served by the exercise of eminent domain when the ultimate transferees of the property are private corporations, especially multinational corporations. A notable example of these outcomes is the public outcry after the taking and transfer of land to the Tata Motors to build their Nano car project in West Bengal. The Tatas had to withdraw in the face of this opposition. Another example in the news is the opposition to the South Korean steel company Posco, which is trying to set up a steel plant in Orissa. This opposition comes from hundreds of thousands of farmers who are threatened by the possibility of displacement.

The use of eminent domain by governments in globalizing democracies is sometimes questioned by courts that have not yet bought into the merits of globalization or capitalism. While governments may try to invoke eminent domain to solve the problem of holdouts in the aggregation of land, courts that are not yet persuaded by the public interest arguments of eminent domain are likely to exacerbate problems of aggregation by giving interim injunctions against government takings. This is a theme of globalization that India shares with China.

The second method of land aggregation is very different. Acquisition managers and in-house

legal departments of big companies that wish to acquire large pieces of land use intermediary aggregators comprising small-town lawyers and real estate brokers who have contact with rural areas to negotiate deals for them and purchase land from farmers. Because they themselves find it hard to approach, negotiate and strike deals with the farmers directly, corporations “outsource” these tasks to secret intermediary aggregators. There are several specific reasons why corporations and their in-house lawyers find it hard to deal with small landowners and farmers and need to outsource this task. First, corporations face higher reservation prices from land owners. Second, there are often disputes involving multiple claims on small pieces of land due to complicated family and inheritance laws. Third, there are holdout problems that accompany the process of aggregating contiguous tracts of land. Corporations and their in-house lawyers do not routinely specialize in skills needed to solve these problems. Typically, small-town lawyers who are involved in fighting these disputes in lower courts are already familiar with the nitty-gritty details of the disputants and their disputes, their real interests and BATNAs, and the laws that are pertinent to these disputes. They are also thoroughly familiar with the social norms and the local political positions that affect such disputes.

The second method is an increasingly popular method that is being used in aggregating lands in suburban towns and villages that abut cities like Bangalore, Hyderabad, Delhi and Chennai, where there is growing demand for land from infrastructure companies that want to build large projects (housing, logistics parks, office spaces, airports, parks, shopping malls, etc.) and from offshore services companies that require space for their enlarging pool of personnel. Notable examples of infrastructure developers and private companies that use the method of purchases at negotiated prices include the Jindal group, DLF, and Satyam Computers.

When big infrastructure firms or corporations enter the picture and offer prices that are far above market prices prevailing in the absence of aggregation or offer land owners greater expected benefits of settling these land cases (which can take a lifetime to get resolved) in courts, many things happen. First, the small-town lawyers, who until now were only small-time litigators in lower courts, turn into skilled transactional lawyers by exploiting their social skills,

and offer integrative solutions to the disputing farmers. Second, they are able to offer farmers a larger slice of the pie. These lawyers persuade farmers to settle their disputes outside courts in order to sell their claims at much higher prices than what they could ever hope to make in their lifetimes. Given long-standing rivalries, feuds, and strong attachments to ancestral properties, a mediator is absolutely essential for getting multiple landowners to accept an offer even when it is very attractive financially. Finally, even if one farmer holds out, it is possible that the aggregated land is not a contiguous piece and the corporation will not buy it. In the event there are holdout problems, small-town lawyers operating as members of intermediary aggregation partnerships are able to use their social networks to galvanize other owners in the community to exert social pressures to make the unyielding owners sell.

Overall, the method by which land acquisition and aggregation are undertaken via the purchase of many small land holdings at revealed negotiated prices promises to be a better method than the eminent domain method. This is a method that can help avoid generating discontent among small landowners who are “displaced.” The government is not involved, and small landowners displace themselves voluntarily by selling their land. No one displaces them forcibly in the name of globalization or progress. A sense of control and choice is preserved for them. This is in stark contrast to the experience of their counterparts who lose property to eminent domain for questionably “just” compensation.

In what follows, I describe the grassroots level, market method of aggregation of land that stands in contrast to the government method that involves the use of forcible ejection of small property owners from their land holdings. In describing these methods, I also identify reasons why small town lawyers (or STLs), as against corporations (or their in-house counsel), or other players are particularly adept at using these methods. In the next section, I briefly describe my data sources. Section 3.0 outlines the aggregation landscape, and then introduces a model of negotiation in Section 4.0, where I discuss holdout problems and their solutions. Section 5.0 concludes.

How to connect to Corporate Legal Sector (the STL hired by IHC or LF) - what position; segregated; ability to rise; short term issue; can they shift their skill set or develop more?

2. Data Sources

Preliminary data was obtained from semi structured interviews conducted in Hyderabad and three districts of Andhra Pradesh, i.e., Ranga Reddy district, Mehbubnagar district, and Medak district. Field interviews were conducted in the month of January 2012, and telephonic interviews were conducted in February and March 2012.

The sample included the following respondents:

1. Fifteen land owners whose lands were taken by government exercising eminent domain;
2. Ten land owners whose lands were purchased by intermediary land aggregators, who put together large tracts of land for corporations;
3. Four small town lawyers who are currently fighting against land acquisitions by government;
4. Fifteen small town lawyers who were partners in intermediary land aggregation partnerships;
5. Three in-house lawyers of three big corporations who employed intermediary aggregators to aggregate land for them;
6. Three political activists who resisted land acquisition by governments;
7. Twenty local land dealers and real estate brokers who engage in aggregation;

Several of the interviews were conducted in an adversarial focus group setting, but no focus group included a mix between the first, third and sixth types in the above list with any of the other types in this list. Many interviews were also conducted one-one in person and by telephone.

A unique opportunity to interview both, land owners whose lands were taken by eminent domain, as well as their proximate neighbors whose lands were not taken by eminent domain was afforded in an SEZ site in Mehbubnagar district. Similarly, there was also an opportunity to interview owners of land whose lands were bought over by intermediary aggregators, and their neighbors whose lands were not bought over by intermediary aggregators. This was in the

Ibrahimpattanam area close to Hyderabad. This part of the data will be useful in a future study dedicated to undertaking a difference of difference analysis in a qualitative setting.

Most of the respondents were found by a snowballing technique in Hyderabad and surrounding districts, and therefore there is a likelihood that some of the mechanisms found in this study may not have external validity outside this geographic zone.

3.0 Background on Land Aggregation

Land aggregators typically form two types of informal partnerships that operate in the real estate landscape (I will refer to these partnerships in general as “aggregators”). First, there are partnerships of local businessmen that aggregate land for their own local purposes (I will refer these partnerships as “local business aggregators”). They are usually formed by real estate brokers and property developers who want to build housing projects, apartment complexes, shopping malls, and gated communities. Their land requirements vary between 5 and 50 acres. They sometimes have small town lawyers involved as partners. Second, there are partnerships of local individuals who aggregate land not for themselves but for corporations (I will refer to these partnerships as “intermediary aggregators”). They too usually consist of real estate brokers acting as partners, and usually have small town lawyers as partners in their teams. The land requirements of corporations for whom intermediary aggregators work vary anywhere from 10 to a few hundred acres.

Field interviews suggest that market-based methods involve a process in which all aggregators enter into “agreements of sale” with small land owners by giving them a token amount of money (usually 10% of the total sale amount) and a timeframe by which the purchase is to be completed. During the early stages of the process of an aggregation effort, aggregators present themselves as individual persons and not as aggregating partnerships. They do not reveal to land owners that they are engaged in aggregation.

Agreements of sale are not the same as sale deeds. They merely specify the terms and conditions of a sale, but do not actually transfer possession or title. Full payments for the land are not made either. Technically speaking, agreements of sale must be binding, and must lead

to an executed sale deed by way of registration with the land registration office, but in reality serve as contingent contracts for prospective purchasers. The advantage of using agreements of sale as against outright purchases is that with agreements of sale the risk of aggregators to holdout problems is only the token amounts that they have given which are a fraction of the cost of outright purchases.

An aggregator, especially with small town lawyers as partners, knows that it can breach agreements of sale at a low cost. Even if it reneges on these agreements by not completing the purchase in the specified period of time, small landowners do not have the needed incentives to fight protracted legal cases on grounds of specific performance. They would rather wait out the expiration period of the agreements and live their lives without the hassles of legal disputes (the marginal cost of fighting these disputes for the small town lawyers in comparison is next to nothing). The aggregator would of course lose the token amount, but it is small in comparison to the total amount of outright purchases. Further, the aggregator can hold a potential reneging owner to specific performance if the sale does not happen within the stipulated period of time of the agreement of sale. In the event that an owner reneges and does not comply with a sale within the stipulated time, the aggregator partnership may bring a court injunction prevent the continued use of the said property, potentially inflicting huge costs on the small landowner. In other words, the agreement of sale can act as a contingent contract in favor of aggregators due to an in-built asymmetry in strengths and costs of the two parties. The asymmetry of strengths is higher when aggregators have small town lawyers as partners because small town lawyers can bring injunctions preventing the use of lands without much cost.

As noted earlier, the market-based method involves secrecy of the intent of aggregation, the identity of aggregators' partnerships, and identity of ultimate corporate purchasers (if there are any) in the initial phases of the aggregation. But information leaks occur at some stage in the sequence of negotiations causing holdouts. Aggregators leverage social norms and social pressure, and sometimes extralegal coercion to solve the holdout problems they experience. Partners of aggregators also engage in extensive dispute resolution in cases where titles to the

small holdings are in question in courts.

Although the market-based method described above is a dominant method in land aggregation in Andhra Pradesh, field data shows that there is a new innovation that has been recently added to this method - especially by upwardly mobile, entrepreneurial small town lawyers who are able to go beyond their own local areas of operation and partner with other small town lawyers and negotiate with land owners constituting large tracts of land in rival locations. In this modified version, when small town lawyers in aggregation partnerships negotiate with land owners in a rival location for a different contiguous piece of land than the one in their own local area, they create a competitive rivalry and get small land owners in their own local area to lay extra pressure on members of their group who attempt to hold out for a better offer. In other words, they are able to create conditions of competitive auctions between different sets of land owners owning parcels in different contiguous tracts of land, and increase their own outside options in the event that negotiations with one set of land owners in a given location fail. This is a method that has been used in land aggregation efforts in the US, and is called a combinatorial auction method in the literature³.

4.0 Structural features of market negotiations

In this section, I outline a simple model that describes negotiations between aggregators and owners of small parcels of land, and the way in which these negotiations change as more and more owners progressively enter into agreements of sale. I employ the standard ideas of “Zone of Possible Agreement” (ZOPA) and “Best Alternative to the Negotiated Agreement” (BATNA) that are common in negotiation literature [(Fisher and Ury, 2011), (Raiffa, 2003)]. Consider the following illustration of a ZOPA between a small owner and an aggregator, which is represented by a partner acting as an individual purchaser in the negotiations.

³ (Kressin, 2011) – The Holdout Myth Underlying the Current Takings Doctrine.
<http://nyufedsoc.blogspot.com/2011/10/holdout-myth-underlying-current-takings.html>

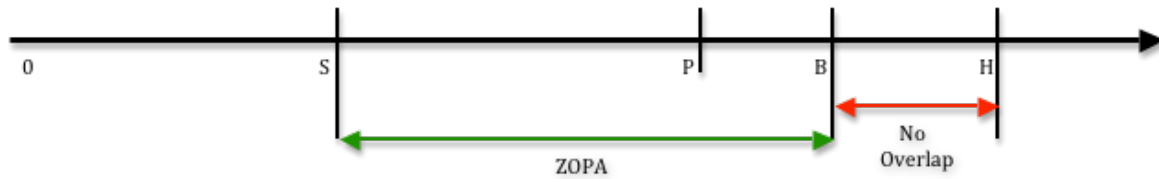


Figure 1

From the above, we notice that whenever a ZOPA exists, by definition there is an overlap in the reservation prices of the aggregator and the owner, and there is some likelihood of a deal being struck. Clearly, it is impossible for deals to be struck when there is no overlap. A major point to notice though is that there is a distinction to be made between BATNAs of the two parties and their reservation prices. For instance, the BATNA of a farmer who is unable to sell his parcel of land may be a continued use of his piece of land for farming or grazing purposes, from which he stands to receive utility. Let us call this $U(\text{BATNA})$. In making a negotiation decision, he will compare his $U(\text{BATNA})$ with the utility he stands to enjoy by selling his land at his reservation price $U[\text{Sale at } S]$. Often times the literature on negotiations conflates alternative sale price with BATNA, but this is valid only in cases in which the best alternative involves a perfect substitute of economic utility.

As one might expect, it is discovered that the reservation price of the aggregator is determined by a prior consideration of its total project cost, and considerations of how much to spend on land. In the case of an intermediary aggregator operating on behalf of a corporation, the reservation price is a function of the deal that it has struck with the corporation. If the intermediary aggregator and the ultimate purchaser have entered a fixed-price contract for the large tract of land, the intermediary aggregator will work backwards and determine the maximum amount of money it is willing to pay each farmer, after deducting a minimum margin that it wishes to keep for itself from the total amount it will receive from the corporation.

Every negotiation is attended by what is classically called the negotiation dance, where almost always, both the parties start off with first offers that fall outside the ZOPA, and slowly start converging within the ZOPA to a single price point P that is mutually acceptable. There is

likely to be a marked difference between first offers made to corporate purchasers who engage in land purchases directly and local individual partners acting secretly on behalf of an intermediary aggregator (which in turn is acting secretly on behalf of a corporation) in the negotiation. When corporations enter the field directly and start negotiating, small land owners tend to jack up their first offers significantly.

But the surprising thing is that land owners also tend to have higher reservation prices when they negotiate with corporate purchasers as against individual purchasers. In other words, small landowners show a tendency to not only bargain from a higher starting point, but also have a higher walk-away price when negotiating with corporations. This is surprising from a purely economic point of view. One expects that the price should not be affected by the identities of the players in a market. Even if it appears that the purchaser is a big player with deep pockets, it should affect the initial offers, but ultimately it should not influence the reservation prices of the seller – especially if the bargain is seen as a part of a one-off sale that is unrelated to a hidden attribute that is fungible and enticing to other businesses and corporations as well.

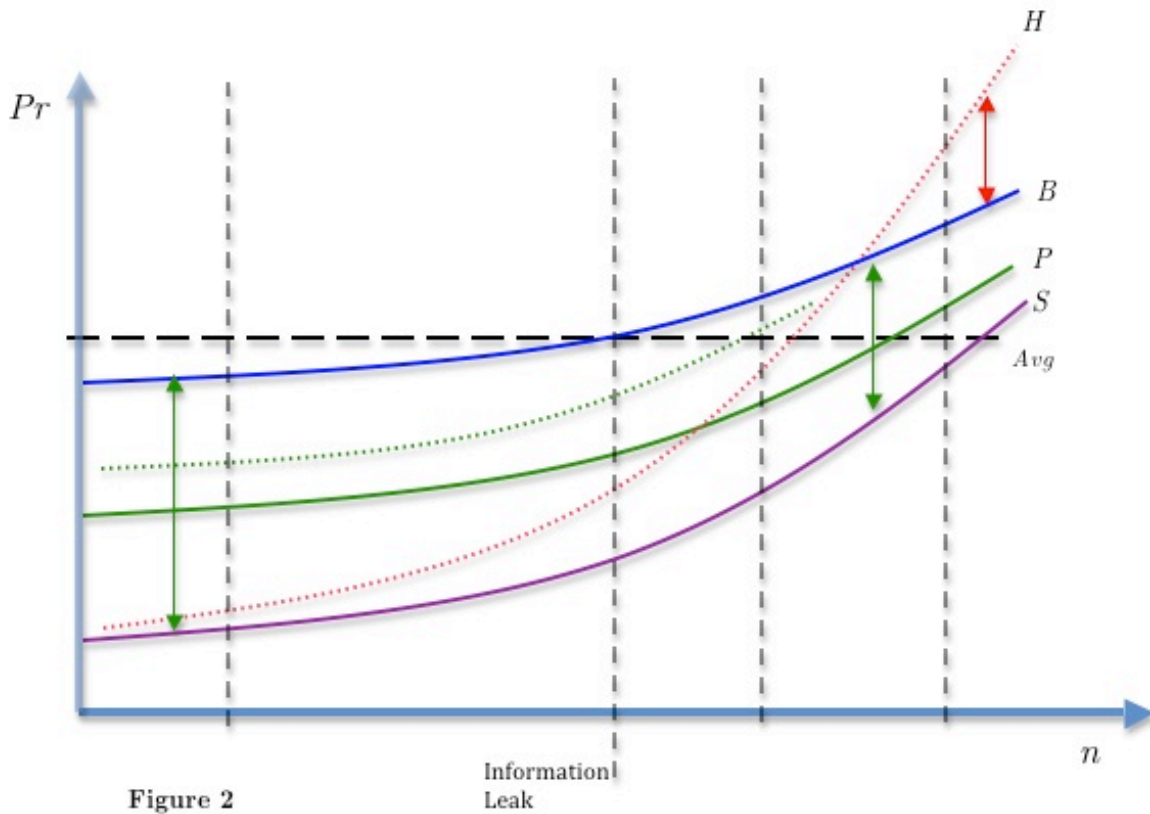
I reason that small land holders experience a heightened sense of value for their property when approached by a big firm that leads them to bargain hard even if it means risking the negotiation. When approached by a corporation, the small landowners are likely to infer that there is something special about their land. They develop an inkling that there is some attribute of their holding that the corporation is aware of but they themselves are not yet fully aware of - such as relative location to an upcoming project (a bigger public road, or railway line, or market). They believe that this attribute will be attractive to other potential big players as well, and that they have reason to be intransigent about a higher bargain price.

One of the first conditions that an individual partner in an aggregating partnership can meet in these negotiations is that he can present the identity of a small individual with a routine use of the purchased land. As an individual, he is able to camouflage the identity of both the aggregator partnership as well as the corporation behind it. Most local real estate brokers, small town lawyers and businessmen can provide this camouflage. But as we shall soon see,

small town lawyers have an advantage over others in this regard.

Next, there is also some evidence to show that the local and non-local identities of purchasers are likely to affect reservation prices of small land owners. Reservation prices of landowners in case of non-local purchasers tend to be higher than in case of local purchasers. This can be due to a variety of reasons, but two explanations stand out prominently. First, it is conceivable that small landowners do not wish to come across as hard bargainers within the local community, where considerations of social capital and networks prevail. But in the case of non-local purchasers, this is not an issue. There are fewer network connections to bother about. But it is also conceivable that in the case of non-local purchasers, small landowners jack up their reservation prices, again because they feel that there is something special about their land, making it attractive to a non-local purchaser. In much the same way that a corporate purchaser can cause small land owners to evaluate their lands at higher prices as compared to local individuals, prospective non-local purchasers, even if they are individuals, signal to the small land owners that there might be an unexamined potential in the land for a higher evaluation. Again, small town lawyers and individuals who operate in areas where land is being acquired satisfy the condition of being from the local area. This is hard for non-local real estate brokers, individual non-local lawyers and corporations to emulate.

Let me now consider how the model describes the variation in reservation prices of small land owners in negotiations – initially when purchasers are seen as individuals, and then when information spreads that they are partners in an intermediary aggregator. In order to do this, I have below an illustration of curves showing the progression of prices.



Curve S represents the movement of reservation prices of small land owners with an increase in number of agreements of sale in a given location and the purchaser is a partner of an intermediary aggregator making secret purchases. Similarly, curve B represents the movement of reservation prices of the intermediary aggregator. The middle curve P is the final negotiated price curve. The model also shows that all the three curves B, P, and S slope upwards, indicating that with more agreements of sale struck, the reservation prices and prices increase. The reason for this upward movement of the reservation prices of the owners S is that information about ongoing land agreements of sale starts filtering down into the community of the small landowners who constitute a particular tract, and the increased demand drives these prices up. The information about the number of agreements of sale of small holdings that trickles down the market must be distinguished from information about the identities of the purchasers. When it is realized that the purchasers are partners of an aggregator, the likelihood of holdouts increases. The increasing slopes of B, P, and S is an outcome of increase in demand

caused by increase in information about the number of agreements of sales and in some measure also by information that the purchasers are partners of an aggregator.

Having said this, it is also important to notice that information about identities of purchasers is more likely to spread in cases of outright sales as against parties entering into agreements of sale. In outright sales, the sale deeds need to be executed at a local land registration office. The land registration office becomes quickly aware that the purchasers are partners of an aggregation team. Because land registration offices act as informal warehouses of market information for local land-owning communities, the likelihood of this information spreading quickly, and causing holdouts increases. In order to shield against this happening, it is common for aggregators to use multiple sub-agents. However, this can increase transaction costs, and has a marginally ameliorative effect.

The vertical intercepts represent the relative positions of the reservation prices of the aggregators and land owners for any aggregator-owner pair in the temporal sequence in which they go to negotiation. The whole sequence of negotiations itself starts with the first pair, and hopefully for the aggregator, culminates in purchases of all the bits without a single unsuccessful negotiation caused by a holdout.

A couple of preliminary observations need to be made about this model. The area under the curve B represents the total budget outlay of the aggregator – or in other words, it is the reservation budget for the entire aggregated piece of land. Let us call it C. But we know that B is a function of two factors: (1) n, i.e., the total number of sellers, and (2) levels of information I about aggregation activity in the market, which is also a function of n, I(n). To keep the model simple, let us construe B as a function n and I, i.e., B(n, I)

Therefore we have $C = \int_1^n B(n, I) dn$

Although aggregators know that purchase price of each negotiation is likely to progressively increase, they make their decisions by a rule of thumb – i.e., assess the average price, i.e., P_{avg} of the entire transaction, and factor in increments over the average, X.

So in actual decision making, purchasers bargain by looking at price as $P_{avg} +$ increments after information leaks.

Since the aggregators have an idea of C , they have an idea of P_{avg} , which is $\frac{1}{n} \cdot \int_1^n B(n, I) dn$

Rational aggregators tend to be anchored at P_{avg} (Kahneman and Tversky, 1979). So, when prices start crossing P_{avg} they calculate the increments above P_{avg} in the following manner:

$$X = \frac{1}{n - j} \cdot \left\{ j \cdot P_{Avg} - \int_1^j B(n, I) dn \right\} \text{ where } j \text{ is the point at which } B(n, I) = P_{avg}$$

It is interesting to note that when small town lawyers encounter each additional owner after crossing the P_{avg} , they are likely calculate the viability of each purchase on the basis of estimating the balance amount they expect to spend on the entire aggregated land transaction, by estimating the increment X as an average of the difference between what they have spent so far and their reservation budget. Some uninitiated aggregators stick to the average of the prices they have sold up to that point defiantly and do not budge because they are scared that they may overshoot their budget. Many land dealers, in contrast to small town lawyers, are more willing to resort to extralegal measures in support of their anchoring points.

Small town lawyers seem to manage this progressive uncertainty rather well. Perhaps they are more used to guarding against anchoring points than others. Perhaps they are also better informed about the costs of taking up extralegal measures and more risk averse than the land sharks who normally occupy this space. Also, as I will discuss later, they are more able than others in forming coalitions of remaining owners to bargain for a single predictable increment above the average, thereby reducing their uncertainty in the negotiations. They are able to pursue a process of aggregation beyond a point where other types of partners in aggregator partnerships feel trapped, and still come out with a handsome profit.

One thing to notice about the curves is that the rate at which S increases is likely to be higher than the rate at which B increases. This is because curve B is constrained by a looming budget

constraint that aggregators are constantly aware of. The different rates of increase between S and B leads to a convergence between the two curves, which has a net effect of reducing the size of the ZOPAs between negotiating parties. When ZOPAs become smaller and smaller, the likelihood of failures in negotiations increases. Failures in agreements even when positive ZOPAs exists is often caused by information asymmetries and behavioral biases. This is a fairly well explained phenomena in negotiations literature (see Bazerman). Whenever first round negotiations start failing at some stage in the process of aggregation, aggregators start pushing sellers of these cases into a common pool of failed negotiations that they will approach at a later time.

4. Holdouts and Solutions - social norms, legal and extra-legal measures

4.1 Holdouts

As shown earlier, the price and reservation price curves slope upwards as the number of agreements of sale increases. They slope upwards on account of two reasons – (i) an increase in information about the number of agreements of sale happening in the community of owners in the location of the aggregation; and (ii) greater information of the involvement of a single aggregator, engaged in a concerted attempt to acquire a large tract of land, entering the market. But the information about the involvement of a single aggregator causes holdouts. Holdouts are represented by curve H, which shows the reservation prices of land owners when aggregators do not use their normal tactics to push it down to the S curve.

The most obvious reasons for holdouts are strategic in nature. Several small landowners, who have the advantage of prior exposure to trading in land and business are likely to holdout temporarily when they know that a substantial amount of money has been sunk by an aggregator. Although the sunk cost to the aggregator of entering into agreements of sale is only a fraction of the cost it would have incurred had there been outright purchases, it can still add up to a significant amount for the aggregator to lose. Temporary holdouts are risky strategies because they can often lead to irreconcilable and permanent deadlocks.

An important question that comes up is how strategic owners decide what their reservation prices are. They know that they do not want the negotiations to break down, and they only want to stall the process of aggregation temporarily with a hope that the aggregator will come back. So, how do they decide the separating point between when the aggregator will come back and when the aggregator will not come back? They have some information about how much the aggregators have invested in the agreements of sale, but do not know the outer boundaries of what the aggregators can spend on total land. The difference between the owners who engage in strategic holdouts and regular owners who bargain hard to get a larger share of the pie that ZOPA constitutes is that those who engage in strategic holdouts are aware of the involvement of an aggregator and its sunk costs, whereas the regular sellers are not. In other words, strategic owners are aware of an aggregator's lowered BATNA due to its sunk costs.

So, one thing that strategic owners can do is try to form coalitions among other owners who have not entered into agreements of sale yet, and demand a price that will not make the aggregators let its sunk cost go a waste. They expect, and rightly so, that aggregators will adjust their prices in order to recover the value of their sunk costs. (See "escalation bias" in Bazerman). [ABC] says, "*anni paisalu pettina tharavatha, vaallu yekkada pothadu?*" *Anni paisalu rakshinchukuntandhuku, vaallu, anney paisalu karchu petttaley kadha?*" – "how will those fellows who have sunk in so much money go away? In the least they will have to spend the amount they have already spent on rescuing what they have spent." This reasoning gives the strategic owners an idea of one part of the puzzle of where to pitch their bargain prices, but still does not give them a complete picture. It cannot still be entirely clear what the upper budget for the aggregator is at this stage. Of course, strategic sellers do distinguish between local business aggregators from intermediary aggregators working for ultimate corporate aggregators because they have a better idea of what local business aggregators want the land for, but have absolutely no clue what corporate entities want to do with the land and what their reservation budgets are. Local business aggregators are typically involved in small housing projects, and strategic owners can predict sales and profits of these projects (***) include later, how this leads to integrative solutions – i.e., partnerships with local business

aggregators ***). They are also likely to know the spending capacities of local business aggregators.

The reason why strategic owners try to form coalitions with other strategic owners is that it reduces the uncertainty about making predictions about the reservation prices of aggregators. When strategic owners act individually, there is greater uncertainty for the aggregator about how much it has to spend on the entire aggregation project. This in turn introduces uncertainty in the negotiations, and might force the aggregator to retreat. This is an outcome that strategic sellers wish to avoid. Their aim is only to take advantage of an aggregator's lowered BATNA and not break down the negotiations permanently.

Similarly, it is also in the interest of the aggregators to encourage coalition formation among strategic sellers so that they can make better predictions about how much more money they need to spend on completing the project. Of course, there are likely to be other problems when strategic owners form coalitions, but counting for all the tradeoffs, aggregators would much rather deal with a single coalition rather than have to deal with multiple strategic sellers disparately [*“addagoliga paisaku kaavali annolu okka degghara kooduthaney, maaku labhamu. Leka pothey, padhi mandi thayyar ayitheyy, yovandki, entha iyyaley no maaku theliyadhū”*]

Not all holdouts are caused by strategic owners. There are also inadvertent holdouts in the aggregation landscape that are caused for reasons that are different from extraction of more money from the aggregators. The first of these inadvertent holdouts is caused by landowners who have title disputes with third parties. It is estimated by small town lawyers that at least 10 to 15 percent of lands in Andhra Pradesh are under litigation. The absence of clear titles due to existence of multiple claims on a single piece of land prevents successful transfers to aggregators. So even if one of the two parties to a dispute in title wants to sell his land, it is possible that the other may want to holdout in order to get a larger share of a settlement price. Disputants are usually not in talking terms with each other and therefore Coasean solutions are not feasible. Aggregators that wish to buy disputed lands give promise of breaking impasses. But as we shall soon see, aggregators have to go to extra lengths to resolve such

problems.

Holdouts may also be caused by landowners due to family reasons or reasons of emotional attachment with the land, leading to owners' reluctance to part with their lands for any amount of money. A significant proportion of rural land is inherited, and such land is often accompanied by an emotional component of "personhood" that is not easy to price in a market (see Radin). Owners may have their ancestors buried in their lands, and they may sometimes treat them as extensions of their families. Practice of rituals to the end of appeasing dead ancestors may involve the continued preservation of lands and tending to them in a special way. Ritualistic sentiments are often intertwined with a justification that cashing in on family inheritances is sacrilegious and shows disrespect for elders and ancestors. Several elderly owners highlight the temporality of money, and in contrast, the enduring value of land – an ageing respondent says with emphasis - "*Paisalu iyaala osthayi, repu pothayi, kaani bhumi yeppatiki untadhi – ee prapanchamu, ee suryudu, ee chandrudu unnathavaruku, ee bhuthalli atley untadhi*" – "money comes and goes – but this 'mother-land' will remain with us as long as the sun and moon exist." It is not surprising to note that this sentiment is somewhat less prevalent among the younger respondents who grew up in a post-liberalized India. Their elders who grew up in more uncertain times, consider land a form of insurance against hunger and poverty provided by their ancestors.

A related type of holdouts is caused by considerations of potential losses in social capital that is attached to owning pieces of land in a neighborhood. Being owners of small holdings of land in a village makes people a part of an invisible community. Land holdings are usually segregated along caste lines (see Schelling), where neighbors are related. Selling land holdings can mean a displacement from these communities, which are important sources of social insurance and social capital. People can show an inclination to cling to the community and refuse to migrate to urban areas where they risk anonymity and a loss in social capital. This is particularly true of elders who grew up in a pre-liberalized era in India.

There are also holdouts caused due to political reasons. If it is detected that the aggregation is

being undertaken by a local business aggregator with strong political affiliation to one of the two or three dominant political parties (Congress, or Telugu Desam, or Communist Party of India), owners of land who are affiliated with a rival party are likely to see the aggregation as a route to greater wealth among the aggregators, which can significantly impact the political balance in the area. More money means greater ability to spend on elections, and greater chances of political success. Political affiliations are often linked to ethnic and caste identities of sellers. Given that partnerships in aggregation are often struck along caste lines (example, Reddy MLA, a Reddy small town lawyer, and a Reddy real estate broker could be an aggregation team), there is a chance of polarizing sellers who do not belong to the caste of aggregators, making them reluctant to sell their lands⁴. Pre-existing political groupings can naturally lead to coalitions against sale of lands, leading to holdouts. However, aggregators solve this problem by taking partners from different dominant political parties.

Finally, there is also a possibility that sellers display a behavioral bias that makes them subject to loss aversion (Kahneman and Tversky, 1979). Land holdings among farmers are seen as sources of livelihood, and farmers are likely to compare income streams from a use of lands that make up their livelihoods, with potential income streams from cashing out on sale of the lands. One expects that they can see a value in depositing cash from land sales in banks and collecting interest, or in investing the cash from sales in alternative businesses that can produce higher rates of return than income streams from their lands. However, the idea of using banks and collecting interest is still a relatively unknown phenomena among poor land owners.

Information about making the right type of deposits that can generate optimal interest rates is scarce among many landowners. Investing in alternate businesses is also perceived to be a risky and an unfamiliar activity. As a result, land owners may prefer having a certain income from using their existing lands than getting an uncertain income from alternate revenue generation activities employing their cash from sales - even if the expected benefits from the alternate revenue generating activities is higher than the sure income that they get from owning and

⁴ Reddy is a caste in Andhra Pradesh

using their lands. This is the classical problem of loss aversion that has been discussed in behavioral economics.

4.2 Solutions

So, how do aggregators solve these various types of holdout problems? As mentioned earlier, the first step that is common to all the methods is an attempt to preserve the secrecy of the involvement of a single individual or entity that tries to aggregate the land holdings. In the case of corporate entities that use intermediary aggregators, not only do the intermediary aggregators try to keep the involvement of the corporation a secret, they also try to keep their own involvement as a partnership a secret. Similarly, local business aggregators also try to keep their activities of aggregation under close wraps. Efforts at entering into agreements of sale are divided among partners if there are multiple members who constitute an aggregator. There are sometimes instances of cheating within aggregating partnerships if they involve more than two partners. An aggregating partner can strike a private deal with a landowner informing him about an impending aggregation process, so that the spoils from the higher price charged by the owner is split between the owner and himself. The loss incurred by the aggregating partnership is divided among more than two partners, leaving more for the cheating partner than for others in the partnership. Ugly and violent fights are witnessed when such behavior is detected, and cheaters are thrown out without any continued interest in the aggregation project. Trust is a precondition to the formation of aggregating partnerships that must operate in conditions of secrecy much like extralegal and underground organizations [(Gambetta, 2010), Mamidi (2011)].

At some point, owners of land develop an inkling that there is an aggregation effort, but the specific details of who the aggregator is, are still not clear. At this stage, intermediary aggregators acting on behalf of corporations admit to the aggregation efforts, but still try to signal that they are doing it on their own as a local business venture and not as a deal for a corporate entity in the background. As noted earlier, there is a difference in perception among sellers about the reservation prices of local business aggregators and of corporations. So, by

preserving the secrecy of the corporation even when the aggregation attempt has been detected, the intermediary aggregator can keep the prices of land holdings down.

Field data shows that different non-lawyer players like real estate dealers, local businessmen and politicians are equally capable of maintaining the secrecy of aggregation or of the involvement of a background corporate entity. However small town lawyers have an advantage over the non-lawyer players. When regular real estate dealers or local businessmen enter into several agreements of sale in a given area, cues of a concerted aggregation activity are more revealing than when small town lawyers do the same. It is not uncommon for small town lawyers to pick up interests in small pieces of land in their regular course of business when they provide services to people in the community. Frequently they receive shares in small land holdings as fees from landowners for fighting their cases in courts, or settling disputes with third parties, or helping them regularize their titles by doing their paperwork in the revenue or *mandal* offices. So, when small town lawyers enter into agreements of sale for aggregation purposes, they can easily disguise their acquisitions in the aggregation activity as proceeds from rendering their legal services in the regular course of their business.

When it becomes amply clear that there is aggregation activity in the market, several landowners who agreed to sell by entering agreements realize that there are some chances that the sales will not be completed. They realize that the chances of the aggregators in completing the sales will depend on whether or not they are able to get everyone who owns pieces of land in the large tract to sell. They keep in close contact with the partners in aggregating partnerships, who give them optimistic reports on completion of the aggregation process and that they will indeed realize the benefits of completed sales. At the back of their minds these landowners also know that they have lost nothing in the process of entering the agreements of sale. In fact they are happy that they have made a bit of money from the initial token amounts they have taken from the aggregators. In the worst-case scenario, the sales may not go through, but they at least get to keep their lands and the token amounts that they know they do not need to return.

The main strategy of aggregators at this stage is to initiate coalition formations among sellers who have already entered into agreements of sale, with a hope that they will contribute to the pressure on the non-cooperative owners who refuse to sell. This is an informal process that involves organizing parties, functions, and social gatherings. What until now was kept a closely guarded secret becomes an open cause for celebration. Partners in aggregators and owners who entered the agreements of sale become new “best friends forever,” with wealth to spend and a shared optimism that the full aggregation process will go through.

With the token amounts that they have received, those who have agreed to sell kick start a new lifestyle, and become members of a new moneyed class jointly with the aggregator partners. Reciprocity and status signaling become important in this new group. New aspirational goals come into existence. Weddings become ostentatious, cradle ceremonies become glitzy, religious festivals become garish, and shopping trips to Dubai and Singapore become common.

Feasts and public functions become opportunities for the neo-rich to flaunt their new-found wealth. Those who did not own vehicles, now own new scooters and motorcycles, and those who owned two-wheelers now have fancy new cars. Some buy costly signals of affluence, including air-conditioned cars and jewelry. They now only drink Johnny Walker Red Label and Teachers Highland Scotch, and not Indian whisky. Conversations at parties frequently turn to holidays overseas, family connections in New Jersey and Texas, and kitty parties replace the more traditional pastimes for women. Bigger TVs in the front drawing rooms of landowners who agree to sell signal the onset of a new lifestyle (Veblen, 1899).

The sudden creation of a new moneyed class has a rather powerful impact on many non-cooperative owners who holdout. The social pressure of exclusion from the shared lifestyles of the cooperative members in the owners’ community is felt in many telling ways. Marriage alliances get struck between families of cooperative sellers while non-cooperative members fall out of the marriage market. Daughters get “exported” to “IT son-in-laws” in San Jose, and sons get visas to pursue IT careers overseas because they can now show bank balances in their visa

applications. Cooperative owners who agreed to sell can also now send their kids to better schools in big cities, or for higher education overseas. Their poorer, non-cooperative counterparts who hold on to their properties can only hope that their kids will become farmers like themselves. New power positions emerge as new nodes of social capital develop in networks.

The resulting pressure from such exclusion forces the hitherto unyielding elders who refused to sell due to emotional and ancestral reasons to change their minds. They do not want to sacrifice the interests of their own families for outdated reasons that they cannot justify to anyone, including their own selves. They too want to get on the bandwagon of selling out and buying an apartment in the city. Slowly but surely, a non-trivial percentage of the non-cooperative sellers come back to the negotiation table.

It is important to note that the festivity and exuberance of the cooperative land owners is tinged by a worry that they will not realize the full benefits of the sale of their lands unless the non-cooperative members sell too. The partners of aggregators waste no time in reminding the cooperative owners that they will miss the opportunity of their lifetimes unless the non-cooperative owners alter their position. They warn about possibilities of downturns in the market, and that the community of land owners risks becoming great losers in the event that the non-cooperative owners do not reconsider their stand.

Meanwhile, during the process of coalition formation, there still remain several non-cooperative land owners who question the authenticity and good faith intentions of partners of aggregators. They are usually the landowners who holdout for strategic reasons. They raise doubts about the longevity of sudden prosperity. They ask for reasons why they should believe in the warnings and exhortations of the aggregators especially if it is clear that the aggregators have vested interests in the matter. In response to accusations of conflict of interests, aggregators try not to deny that they make large profits from the aggregation efforts. They openly admit that they will benefit hugely from the aggregation efforts, and by a much larger magnitude than the owners. But they remind the landowners that it is not rational to compare how much they will

make with what others make. They ask them not to grudge someone else's happiness, but only be bothered about their own benefits and see whether or not they are in excess of what they are likely to get from an open market without any aggregation. They also try to link their own higher earnings to the effort that they have to put into the task of aggregation. In effect, they try to guard the landowners against biases of inequity aversion (Kahneman and Tversky, 1979) that non-cooperative owners may invoke.

5.3 Advantage Small Town Lawyers

The first advantage that small town lawyers have over other types of players in coalition formation is that they come across as people who are interested in the welfare of everyone in the community and not just their own. Their voice of reason is better heard by landowners than the voices of other types of aggregating partners, including the land brokers and politicians. They are seen as people with the least conflict of interest. They do not carry the same stereotypical image of rapacious, self-serving mercenaries that their corporate or western counterparts seem to carry. They are also considered more trustworthy than other players who engage in aggregation. Furthermore, they are more articulate than other types of aggregating partners in explaining the future of land markets to the landowners and the accompanying difficulties associated with holding lands in a changing regulatory scenario. They can couch their arguments in a technical language and talk about uncertainties in property titles under law, and scare the non-cooperators. These are things that other types of aggregating partners cannot accomplish as easily as small town lawyers.

The formation of coalitions of cooperative sellers also has a huge impact in ways other than creating pressures of exclusion. The cooperative owners who entered into agreements of sale now better understand than before that their own happiness beyond the little that they received from the initial token amounts is dependant on whether or not the non-cooperative owners will sell. They have bought into the benefits of affluence, and now they want to sustain it. Their reactions towards the non-cooperative owners range from shows of indignation and irritation, to attempts at rationally and calmly explaining the benefits of cashing out at prices higher

than the prevailing market prices. Some of them become violent, and yet others become persuasive advocates of the communal cause. Some of them talk about why they should not be held hostage by a bunch of irrational fools, and yet others plan punishments and boycotts in the event that the non-cooperative owners do not yield at some stage. On the whole, the community of cooperative owners gets galvanized into a proactive force against unyielding non-cooperative owners.

When coalitions of cooperators proactively engage in actions against non-cooperators, there are likely to be legal ramifications. Should they become violent, they are ably helped by the aggregators, especially the partners who are small town lawyers. The marginal costs of protecting cooperative sellers from criminal sanctions for small town lawyers is next to nothing. When cooperative owners rationally explain the benefits of selling as against holding out, it is the small town lawyers again who are better able to complement the discussions with a professional voice of reason.

Small town lawyers enjoy several other advantages. They have much better information about the titles of non-cooperative owners. This can be of critical importance in bargaining with non-cooperative owners who wish to holdout for strategic reasons. Given the complexities of land laws, non-cooperative owners often overestimate their strength in bargaining. They may be sitting on titles that are not clearly established and subject to further inquiry by courts, and that have remained with the non-cooperative owners simply because they have not been brought up for questioning.

A good example of a questionable title is one that has been transferred to a current holder by a previous owner in violation of family inheritance laws, especially with regard to female children. Many people give out cash as dowry when their daughters are married off, and leave their land to their sons with an implicit agreement of the division. Leaving all the land to sons may be problematic and there may be continued legal interests of daughters in the land by way of formal inheritance laws. So, when the land is subsequently transferred by the sons to non-cooperative owners, it may be possible to question the titles in the hands of the non-

cooperative owners by bringing back a potential female claimant from the past. These problems in title are even more severe in the case of properties that were once held by Muslims whose family laws are considered to be more complicated than Hindu family laws by a mostly Hindu judiciary. Finally, even if there are no kinks in the lineage of titles to properties, small town lawyers are easily capable of fabricating them purely for extortionary purposes.

As just noted, property rights in India in general tend to be imperfect due to the complexities of inheritance laws. The problems that arise out of these complexities are further exacerbated by the sheer length of time it takes for any rights to be established by courts. Because property rights are inherently imperfect due to delays and transaction costs of dealing with inefficient institutions, the ability of any current owner of property to sufficiently insulate his rights against extortionary threats of litigation advanced by lawyers are almost non-existent. Further, there are no formal institutional costs to lawyers who initiate such extortionary litigation.

It is clearly the case that not all cases that small town lawyers threaten to bring against non-cooperative owners have defensible legal substance. But they believe that as long as they can work the system by initiating frivolous cases against the non-cooperators at zero marginal costs, they can gain an upper hand in bargaining with the non-cooperators. As for the non-cooperators, going to a court can be a nightmare because cases can take forever to be resolved. They are likely to suffer irreparable damage in the interim if the small town lawyers can bring injunctions against the use of the properties in consideration. It is rather paradoxical and ironic that the formal legal system is used as a threat rather than a predictable and a just system in such dealings. Small town lawyers justify their use of such tactics by making the argument that the end outcomes increase the happiness of the many, and that resorting to such practices is an inevitable byproduct of the inefficiencies of the system.

There are also other related ways in which small town lawyers can cause extortionary pressure on non-cooperative owners. For instance, they can create easement problems. They can block out convenient road access to pieces of property of non-cooperative owners, and give them highly inconvenient road access that reduces the value of the properties. Here again, the non-

cooperative owners know that getting the courts to protect their rights to reasonable easements is a costly and a time consuming process. Non-cooperative owners want to avoid being in situations where the value of their properties gets lowered below existing market prices.

So, do small town lawyers use this extortionary power in their daily course of business to make a living? After all, courts and the bar associations barely play a role regulating the behavior of lawyers. So, why don't we see a higher incidence of extortionary behavior by lawyers in contexts other than aggregation projects? Small town lawyers, and lawyers in general, are prevented from an indiscriminate use of their extortionary power by prevalent social norms. When small town lawyers start making their living by indiscriminate extortion, people react and inflict punishment. Irresponsible small town lawyers try to avoid a reputation for filing frivolous cases and causing nuisance litigation in society. They can sometimes be violently punished by victims of their threats of extortion if there is social consensus that they extortionary pests in the community. They can function only as long as they have social support for their behavior, or they are not punished for their behavior.

On the flip side, when small town lawyers threaten to file cases against unyielding land owners in aggregation projects that can potentially benefit a majority of land owners, they will not be stopped. They will only be supported by the general community. The behavior of small town lawyers is socially evaluated by an estimation of their contributions and accordingly regulated by the public.

As noted earlier, not all cases that small town lawyers threaten to bring against non-cooperative owners have defensible legal substance. Some of them are fabricated. But small town lawyers know that they can work the system by initiating frivolous cases with nuisance value against the non-cooperative owners at zero marginal costs, and they use these threats to gain an upper hand in bargaining. Non-cooperative owners know that going to a court is a nightmare because cases can take forever to be resolved. They can also suffer irreparable damage if these small town lawyers can bring injunctions against the use of their properties in consideration. When reminded of these possibilities in subsequent negotiations, even the

strategic non-cooperative owners are likely to reconsider their positions of not selling within the ZOPA.

Therefore, it is rather paradoxical and indeed ironic that the formal legal system is used as a threat rather than a predictable and a just system in such dealings. Small town lawyers justify their use of such tactics by arguing that the end outcomes increase the happiness of the many, and that resorting to such practices is an inevitable means to accomplish socially acceptable outcomes.

Small town lawyers are able to achieve solutions with non-cooperative owners in another important way that other players are unable to. They are more capable than others in understanding the real interests of owners who hold out. This is important because it allows small town lawyers to strike integrative deals in their negotiations. They have a better idea of the real interests of owners than other aggregating partners simply because they have repeat interactions with many more members of the community than do other types of aggregating partners. Although politicians too interact with many people on a day-to-day basis, I conjecture that small town lawyers interact with more people in dispute settlements and transactional contexts than even politicians do.

I also conjecture that small town lawyers exhibit lesser zero-sum biases than do other types of aggregating partners. Businessmen usually engage in one-off trades in the land business, and they tend to work with a single issue – i.e., price. They view transactions as processes in which there is a fixed pie to share, and that a gain to one party will mean a necessary loss to the other. In contrast, small town lawyers deal with multi-issue problems on a daily basis, and they gain an expertise in making optimal intra-subjective tradeoffs needed for optimization and joint problem solving better than others.

Consider an example. Small town lawyers in Medak district, working on a 300 acre aggregation project, came up with an innovative way to satisfy intransigent land owners by finding them equivalent pieces of land in alternate locations. They discovered that the real interest of the farmers who were holding out were not strategic but only a preservation of

livelihood. When they understood this, they started buying out alternate pieces of land in a different location outside the boundaries of the land they wished to aggregate and exchanged them with the parcels of landowners in the area of interest. They even sweetened these deals by throwing in small add-ons like free two-room tenements, bore-wells, water pump sets and minor monetary adjustments needed to make the exchanges fair and enticing.

Other aggregators in the landscape were quick to adopt this method. Many now go to negotiations already prepared with alternate pieces of land to exchange in case they discover any non-cooperative owners who are only interested in preserving their livelihood. There are also instances in which aggregators offered alternate pieces of land (or apartments) to entire communities of people who preferred to remain in a proximate location. This was a way of enticing owners with the option of preserving their communities when they move to a new location.

The differential value between the specific pieces of land held by owners in an area under aggregation, and pieces of land held elsewhere is the key to the arbitrage generated by these relocation strategies. The specific pieces of land that constitute an area under aggregation acquire their high value to an aggregator because they make the area under aggregation contiguous. An equivalent piece in a different location, that can give exactly the same utility to an owner of a piece in the area under aggregation, costs far less to an aggregator. The potential for an integrative transaction arises from this difference.

In yet other cases, aggregators also helped otherwise non-cooperative land owners with services unrelated to land transactions - getting kids admissions into engineering colleges or getting them jobs, opening bank accounts, settling marriage alliances, and providing soft loans. Offers of these services unrelated to land transactions also presuppose a superior understanding of the real interests of the non-cooperative owners. Small town lawyers are vastly better than other types of players in this regard.

Small town lawyers have another notable innovation in aggregation efforts that distinguishes them from other types of aggregating partners. Due to their work in the local district courts,

they know small town lawyers from locations other than the ones where they normally operate. As a result, they are able to form partnerships with them and set up aggregation efforts in rival locations in the event that the aggregation efforts in their own normal areas of operation run into problems. So, for example, small town lawyers from Medak, with an ongoing aggregation effort there, are now able to initiate aggregation efforts in Zaheerabad with the cooperation of small town lawyers in Zaheerabad. When they do this, they tell the community of landowners in Medak about it. When landowners in Medak realize that an aggregation effort in a rival location can materialize, they feel the pressure of coercing sales in their own location. As a result, small town lawyers in Medak now have a competitive outside option. They feel a greater pressure in ensuring that aggregation in their own location happens quickly and as smoothly as possible. There is now a competition between owners in one location of aggregation and another area of aggregation, which has the effect of pushing prices down closer to market prices in the absence of any aggregation (Subramanyan, 2010).

Strategically oriented owners in the first location realize that aggregators who engage in opening this type of an auction must incur higher initial fixed costs because aggregators have to invest in initial token amounts now in two locations and not just one. However they also recognize that holding on too hard on to their own positions is likely to push the aggregators to the second location because it may still be worthwhile to the aggregators to pursue this option even after discounting for the losses in token amounts in the location where the aggregation did not succeed. They are also likely to be unaware that small town lawyers have a growing proximity with in-house counsels of multiple corporations – and that they may continue pursuing the first option without losing anything in the end. But small town lawyers know that their proximity with multiple corporations can provide insurance against losing token amounts given in the first location. Finally, there is also the possibility that intermediary aggregators comprised of small town lawyers who are in demand by multiple corporations can now start bargaining for lower token amounts at multiple locations of aggregation activities.

In the end, it is important to recognize that small town lawyers gain their distinct advantages over other types of players because of their networks with other small town lawyers. It is

conceivable that real estate brokers too can start networking with real estate brokers in rival locations and start creating auction markets, but they are inherently local players, with local jurisdictions of trust. They do not have the professional networks that small town lawyers have. Small town lawyers are able to cross boundaries because of their profession.

5.0 Conclusion

This research finds that there is a growing demand for large, contiguous pieces of land in the face of economic growth and globalization. Companies need land to set up factories and large facilities where services are produced.

Two dominant methods of aggregation are found – the first method, involves the intervention of government in exercising eminent domain and taking over land from small owners and transferring the whole to a private entity that pays the equivalent of the just compensation that the government gives the small owners. The price of land in this method is ostensibly equivalent to market price, but a market price discovered ex-post by taking into account prevailing prices of land around the acquired lots. As a result, land costs lesser in the short run for the companies that acquire land by this method. Importantly, this method also solves holdout problems for the acquiring companies. But it has been found that this method produces great resentment in owners, and elicits protests from activists and political movements.

The second method of aggregation does not involve the intervention of the government. Companies and private entities use the services of intermediary aggregators. Intermediary aggregators are usually partnerships of real estate brokers, local businessmen and small time lawyers. They purchase small land holdings without initially revealing the fact that they are aggregators because they want to minimize the reservation prices of sellers, and the possibilities of holdouts. Several holdouts in this process are strategic, but many are inadvertently caused due to social reasons, including behavioral biases of loss aversion among small land owners, who prefer the certainty of an income from the usage of their lands rather than an uncertain, but higher expected income from post-sale cash-flows. It is found that intermediary aggregating partnerships that involve small town lawyers are advantaged in the process of solving these

holdout problems. Small town lawyers bring special attributes in leveraging contingent contracts, social norms in resolving disputes and producing trust among land owners. They are better able to solve holdout problems than any other types of players in the landscape. Small town lawyers have also found innovative, integrative solutions in solving these problems, including creating competitive auction markets between rival aggregation sites, laying a downward pressure on reservation prices of land owners.

This research was conducted in and around the city of Hyderabad, where there has been a huge real estate boom over the last decade. Respondents for this study include small town lawyers, real estate brokers, aggregating businessmen, activists and corporate in-house counsel. Potential sample biases may arise due to the fact that I reached my respondents by a snowball method. There was no way that I could obtain a superset of respondents from any public database and randomize a sample for this study. Secondly, the sample is representative of land aggregation in and around Hyderabad, and therefore several findings may not extend to other parts of India.

There are likely to be huge policy implications – as I write, the LARR bill is being debated in India. The LARR bill seeks to rationalize the process of land acquisition in India. There is a debate about a mixed method of land aggregation – there is provision that states that a private aggregating entity should aggregate a minimum of 70% of land directly through the market and only then be eligible for involving the government in acquiring the balance 30% by eminent domain. This paper makes the case that there should be an effort to collect more quantitative data on possibilities of aggregation without the need of government intervention before any blanket rule is proposed.

The government should also be encouraged to investigate the role of small town lawyers in land aggregation efforts at grassroots level. There is some evidence to show that small town lawyers rely on extralegal means to pressurize non-cooperative owners of land to sell. However, it is well worth realizing that this behavior is an outcome of a systemic failure of formal institutions rather than the moral turpitude of a profession.

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