

leads to no simple prescription for curing the ills of relocation, but it does reveal a great deal about why the governmental system breaks down in coping with this contemporary problem and what can be done to strengthen it.

GOVERNMENTAL RESPONSIBILITY FOR RELOCATION

The question of governmental responsibility for relocation arises out of governmental authority to acquire private property against the owner's will. This authority, called the power of eminent domain, is provided in Federal and State constitutions and may be exercised only when the property is needed for a public purpose and "just compensation" is paid to the owner. The courts traditionally measure "just compensation" in terms of the market value of the real property taken.

Unlike the property owner in a transaction between two private parties, the owner in an eminent domain case is *not* in a position to withhold his property until he feels satisfied that he will be compensated for the full costs of giving it up—including not only the fair market value of the real property being taken, but also the costs of moving personal property and other incidental damages. He is *forced* to give up his property. Therefore, if he is to be "made whole" economically, he must rely on a judicial construction of "just compensation" sufficiently broad to cover the full costs of giving up his property and relocating, or on legislative adoption of a policy of compensating for incidental damages.

JUDICIAL PRECEDENTS

Federal and State constitutions do not set forth any rules or techniques for implementing the guarantee of just compensation for private property taken for public use. Never in the Congress, and only lately in some States, have attempts been made to establish broad legislative policies on the subject; consequently, the courts have assumed the task of developing basic principles for measuring just compensation. They early adopted the concept that just compensation should be measured in terms of market value. Generally, this has been construed to be the cash price agreed on at a voluntary sale between an owner willing but not required to sell and a buyer willing but not required to buy.

The majority of the courts have held that there is no obligation to pay for losses or damages suffered by property owners and tenants as a direct result of land acquisition programs (for example, uselessness of equipment tailor made for a particular building). The courts have held that these damages are not reflected in the market value of the real property the government acquires, or are too speculative. In the case of a lessee, the additional argument is made that since he must stand the cost of removal at the end of his term, the taking does not cause him to incur moving expenses but only changes the time when these expenses occur.³ As a consequence, the courts generally have held that owners and tenants have no constitutional right to compensation for such items as good will, business interruption, costs of mov-

³ State of California, California Law Revision Commission, *The Reimbursement for Moving Expenses When Property Is Acquired for Public Use* (October 1960).