Abstract

The declaration of public use in takings is, in most constitutional systems, a guarantee every individual has against the power of the State to seize his or her property. The institute is of fundamental importance for the protection of (other) individual guarantees from the expropriatory power of the State. However, our Supreme Court’s traditional precedents do not allow its judicial control. This paper analyses what is public use and what is the reason for its importance. Then, it shows that the Supreme Court’s criteria have varied the matter, containing in its development an important exception and several ambivalences. Finally, it explains why it is more adequate to our constitutional principles, to the rights our Constitution grants and to the very nature of the institute of takings for the declaration of public use to be subject to judicial control.

Keywords

Takings, public use, property rights, judicial control, due process of law, expropriation.