Illegal Acquisition in Tribal Areas

The story of illegal land acquisition from scheduled areas in Andhra Pradesh inhabited by tribals points to judicial apathy, bureaucrat connivance and governmental inaction. Cases such as the Polavaram project in Khammam district and the bauxite mining projects show that laws and rules are merrily flouted. It is no wonder that protests are on the rise. This is the third and final part in the series.

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The tribal areas of Andhra Pradesh present a disheartening picture: events are fast overtaking the adivasis, and there is no concerted effort to oppose them. Land and the produce of the forest remain their main source of livelihood, but availability of land is restricted by forest reservation on the one hand and non-tribal encroachment on the other. They cannot move out of the forests and seek livelihood in the strange and – it often seems to them – hostile society of the plains. Where they do, they are exploited ruthlessly by the plains-people. In the forests, their struggle to increase their livelihood opportunities calls up clashes with the forest department and the non-tribals.

Over the years a precarious balance has been struck in the matter, thanks to the assistance the adivasis have received from a variety of political forces, the Naxalites in particular, and social activists, but the balance is ruptured harshly when the government steps in with proposals of forest-based projects. The Polavaram dam on the Godavari river, which will submerge upwards of 270 villages, all of them located in the scheduled area of Khammam, East and West Godavari districts, and the bauxite mining project in the tribal area of Visakhapatnam district, which will displace many more tribal hamlets than the government's plan would admit, are the focus of considerable tribal unrest. Before that, a mention needs to be made about unrest related to non-tribal encroachment on to tribal land, an unrest that has taken severe form from the early 1990s.

Andhra Pradesh has a scheduled area in nine districts, and perhaps the most stringent law prohibiting alienation of tribal land to non-tribals. Not only are non-tribals prohibited from purchasing tribal land, they cannot (ever since the regulation 1 of 1970 was promulgated on February 3, 1970) purchase land even from a non-tribal. The law presumes that all land in the scheduled areas originally belonged to the scheduled tribes. If a non-tribal has got possession of it before there was any prohibition, or with the consent of the agent to the government when purchase with such consent was permitted prior to 1970, he cannot be disturbed. But when he wants to sell the land and leave the forests, the land must not get into the hands of another non-tribal but must be available to tribals. He must sell it to tribals or to the government, which in turn is expected to distribute it to tribals.

The law further presumes that every non-tribal who has land in the scheduled areas has purchased it from a tribal, and puts on such non-tribal the burden of proving that neither he nor his predecessor in title purchased it from a tribal. The law moreover directs the government not to wait for a tribal to complain. An enquiry is permitted to be taken up by the government on its own (suo motu is the legal expression) into all occupation of land in the scheduled areas by the non-tribals, and the burden of proving the legality of their occupation is put upon the non-tribals. This is the substance of the land transfer regulation or LTR as it is briefly called (its full name in all its glory is: Andhra Pradesh scheduled areas land transfer

regulation, 1959 as amended by regulation 1 of 1970).

Ineffective Enquiries

Yet the reality is that out of the 72,000 cases decided under the LTR till September 30, 2005, 33,319 were decided in favour of the non-tribals and 33,078 against them. Of the 3,21,683 acres of land involved in these cases, 1,62,989 acres were confirmed in favour of non-tribals and 1,33,636 against them. If this had been reflective of the ground reality – there has been some kind of prohibition of transfer of tribal land only after 1917 in the Andhra area and 1963 in the Telangana area, and until 1959 tribal land could be purchased by a non-tribal with the consent of the agent or district collector even in the Andhra area – there is nothing much one could have said about it except to ask for a more stringent law. But that is not so. Most of these enquiries took place well before there was any class of even minimally educated persons among the scheduled tribes. The enquiries therefore took place over their heads. They had no idea what was going in the LTR cases, and perforce had to depend upon the honesty of any lawyer they may have engaged (which was not often), the government officials who prepare and keep the records, and the higher government officials who hear and decide LTR cases. And it need not be added that honesty is not a very common attribute of 'vakils' and the 'babus'.

The enquiries also took place behind their backs, in many cases. The suo motu power given to the government to proceed against non-tribals without waiting for a complaint from a tribal sounds like a good thing, but in the given administrative culture, it has perhaps been more of a boon to the non-tribals than to the tribals. In proceedings taken up suo motu by the government, the non-tribal faces only the government. The government does not take the trouble of finding out who among the local tribals may have a claim to the land. It does not publicise the enquiry in the village. The officer hearing the cases (designated a special deputy collector) merely looks into the documents provided by the non-tribal, and if they appear reliable, okays the right of the non-tribal. In the worst case, where the officer is approachable, the non-tribal actually "persuades" him to take up a case against him, gets an order declaring that his occupation is within the law, and uses the order against all subsequent bona fide efforts to enquire into his right.

The early 1990s saw the rise of the first generation of school-educated tribals all over the state. In Jeelugumilli mandal of West Godavari district they found an NGO called Shakthi which had just the kind of activism that the legal situation needed. It taught them the rudiments of the law and the meaning of land records. Joined to the natural militancy of forest-dwellers, it became a potent force. They occupied the land held by non-tribals which they had reason to believe to be adivasi land, unmindful whether in the days of their illiterate forebears some special deputy collector had put his seal of approval on the non-tribal's right to it. And they fought cases before the officers and the courts. Their demand in the matter of the concluded enquiries and the settled rights of the non-tribals was simple: all that happened when we knew nothing about the law or administration. Let all the enquiries be reopened and done afresh, with opportunity to us to contest the

cases. This was a far-reaching but just demand which would require legislative initiative. Needless to say, nothing was done except for an executive order confined to West Godavari district which asked the local revenue officers to sit in the villages and read the land records in the presence of the tribal and non-tribal villagers, take their views, and identify illegality in land occupation of non-tribals for taking further action. That executive order was implemented in just a couple of villages and literally hundreds of acres were found to be under illegal occupation. Thereafter however its implementation was frustrated by the intransigence of the non-tribals.

Role of High Court Exposed

One of the institutions exposed by the struggle of the newly awakened adivasi youth was the high court of Andhra Pradesh. When it was questioned why non-tribals were in possession of so many doubtful acres in West Godavari district, it came to light that one of the reasons was a series of dubious orders passed by the high court. In the 1970s and 1980s, non-tribals of one village after another in the district had made applications to the president of India saying that their village had been wrongly included in the scheduled area and should be excluded. They then filed writ petitions in the high court and got all LTR proceedings in their villages stayed until the president of India takes some decision on their application! That a constitutional court could treat a regulation passed under the fifth schedule to the Constitution so cavalierly is a telling comment on the constitutional world view that prevails with our judiciary. The tribal uprising of West Godavari district shamed the high court into hastily vacating the stay orders.

But this is just the role played by the courts, especially the high court with its extraordinary powers under the Constitution, in matters of land rights of the tribals or other poor under redistributive statutes. Most of these rights are adjudicated by administrative officers exercising some kind of judicial powers (the law calls it a quasi-judicial power). The idea behind putting them outside the purview of the courts and in the hands of the administrative officers appears to have been avoidance of the delay for which civil courts are famous. But the remedy has not been able to avoid the ills of civil litigation. Firstly, most of these statutes provide for a primary forum (the tahsildar or the revenue sub-divisional officer) and one or two appeals within the administration, with a power of review placed in the hands of the government. Nobody knows why such an elaborate adjudicatory regime was devised for laws meant to provide a quick remedy for landlessness. And at any stage in this process the high court can interfere to correct procedural or jurisdictional errors, which will be plenty because the administrative officers know little law and care less. So these cases often travel up and down the hierarchical ladder of primary and appellate authorities, with the possession of the landlord or non-tribal landholders kept intact meanwhile by interlocutory orders of the high court. Which brings us to the second point, namely, that courts in our country have not developed a public law perspective on land disputes under redistributive laws that is distinct from the judicial view of property disputes in private law. In the private law view, the one who is in possession of the property usually has his possession protected until the entire litigation comes to an end. In a proper public law view, once the primary forum passes an order holding the landlord/non-tribal landholder ineligible for enjoying the land, he should be evicted and the land put in the hands of the poor for whom the proceedings are intended, leaving it to the landlord/non-tribal landholder to litigate at leisure up and down the adjudicative ladder. Lack of such a perspective in judicial thinking has meant that a non-tribal who has not an iota of right to the land in his possession in the scheduled areas can enjoy it for decades on the strength of stay orders obtained from the high court while pursuing his rights in the unending adjudication by the babus of the revenue department.

Reforms – A Mirage

The demand for reopening all the thousands of cases decided in favour of non-tribals in the past remains, and its articulate and inarticulate expression is reflected in the frequently reported incidents of clashes between tribals and non-tribals in the scheduled areas. Unless the tribal land struggle takes a much more strong form, it is most unlikely that the government will take any steps to make this possible. For the motto of all land reform measures in India has been to do what little can be done for the poor without hurting the rich too much. Speaking of the scheduled areas of Andhra Pradesh, this is reflected for instance in the grant of ryotwari title to non-tribals in continuous occupation of unsettled land under the ryotwari settlement regulations (regulation 2 of 1970) for scheduled areas. A good opportunity to get hold of a lot of land for distribution to landless adivasis was lost by deciding not to evict such non-tribals. But it was not an innocent mistake, for lobbies of the privileged constantly work to weaken all reform.

Forest land therefore becomes so important for the adivasis. If they are unable to withstand the onslaught of the non-tribals, and if the government will do only so much damage to the privileges of the influential in the interests of the wretched, the only thing the adivasis can do is to fall back on the forests. The law calls this encroachment but the law itself is the encroacher in tribal habitat. It is more properly called customary occupation, a view that at long last the law too has taken, with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, (Act 2 of 2007). For India as a whole, tribal occupation described post-factum as encroachment, plus actual encroachment by non-tribal interests in the forests, is estimated to be 38.58 lakh acres, of which Andhra Pradesh contributes about 7.5 lakhs, which is close to 20 per cent. This state is next only to Assam in the extent of this "encroachment". (These are figures valid up to March 2004.) Andhra Pradesh also has the distinction that not one acre of the tribal occupation called encroachment has been regularised. One does not have a complete break-up of the 7.5 lakh acres, but in an affidavit filed in the high court by the state government some years ago, it was claimed that tribals supported by the Naxalites had occupied upwards of four lakh acres in the forests. Whatever the merits of the argument against deforestation, it is a stark fact that this has made all the difference between destitution and bare existence for the adivasis.

Polavaram Project

And then the projects started coming. Polavaram project on the Godavari river is located in the scheduled area and will displace (according to a 15-year old estimate) a minimum of 276 villages, all of

them located in the scheduled area. The population likely to be affected would be about a lakh and a half, of which slightly more than half are adivasis. This project should in fact have been a test case for the constitutional law of self-governance in the scheduled areas: The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 or PESA as it is popularly called. That law provides for self-governance by the gram sabha in the specific sense of the power to safeguard and preserve traditions and customs, cultural identity, community resources, the power to prevent land alienation, mandatory consultation with the gram sabha or panchayat at the appropriate level in the matter of land acquisition and rehabilitation, etc. It should not have been easy to undertake the project in the face of these formidable-looking provisions, but the government is happily going ahead. While nine mandals will be affected, all of them in the scheduled areas, and the mandal praja parishad (the middle tier of the panchayat system) is the "panchayat at the appropriate level" that has to be consulted for land acquisition and rehabilitation, not a single one of the nine has been consulted. But the work on the project is proceeding apace, notwithstanding serious opposition from the adivasis.

When fears were expressed that even if comprehensive rehabilitation is undertaken, rehabilitation of the adivasis outside the scheduled area would affect them seriously in more than one way, for they would not only be deprived of land, habitations and the natural bounty of the forests, but also the special rights recognised by the special laws applicable to the scheduled areas, the government came forward with the assurance that all the displaced adivasis will be rehabilitated in the scheduled area itself. This sounded so ridiculous that no one took it seriously, for there is no land left unoccupied in the scheduled area, much of it being forests and the rest of it inhabited. It is indeed unlikely that the government will be able to rehabilitate all of them as promised, but it has found a crooked way to accommodate some at least and demonstrate its alleged will. There is a considerable amount of land in the scheduled areas which is under the occupation of tribals but to which some non-tribal has title on paper. The most common instances are lands for which the tribals have fought the non-tribals, and successfully taken into their possession. Another is land for which some non-tribal has acquired ryotwari title in settlement proceedings but tribal occupants of the lands who know nothing of the proceedings continue to be in possession, resisting the efforts of the non-tribal to enter the lands. The non-tribals concerned are only too glad to "sell" that land to the government, take compensation for something which had long ceased to be theirs, or had indeed never been theirs, and leave the forests.

Duplicitous Moves

The government is not acquiring these lands under the Land Acquisition Act. It is aware that if it does, the rights of the adivasis in possession would come in question, for that much-maligned law permits all claimants to the land under acquisition to object to the process. Instead it is straightaway purchasing the land from the willing non-tribals for whom the purchase price is an unsolicited gift. The LTR in fact does not permit this, for it says that a non-tribal wishing to sell land in the scheduled area should try to sell it to tribals and only if he fails to find such buyers the government may buy it. Flouting this regulation, the government is straightaway purchasing such land from non-tribals, evicting the tribals in occupation, and building colonies for rehabilitation of tribals to be displaced by the reservoir in the days to come.

Neat, is it not? Successful adivasi land struggles are defeated, the defeated non-tribal is compensated, the uppity tribals are shown their place, and the government's promise of rehabilitation for the displaced adivasis in the scheduled areas is kept. A revenue divisional officer of Rampachodavaram in East Godavari district, who purchased 572 acres of such disputed land, paying two crores to non-tribals, in the two-month period between March and May 2006, is said to have received much appreciation from his superiors. The babus are certainly efficient when and where they want to be. Alert adivasis moved the high court against this fraud but the high court first insisted that all the non-tribals whose lands have thus been purchased must be impleaded as parties, and then refused to stay the eviction of the tribals in possession of the purchased land, saying that no such blanket injunction can be given. But as all the adivasis to be displaced by the Polavaram dam can hardly be accommodated by such means, there is considerable unrest and agitation in store,

especially in Khammam district where much of the displacement lies, and in whose thickly forested and undulating terrain there is little scope for replicating the trick tried successfully in East Godavari district.

Tragic Tale of Internal Refugees

The northern part of Khammam district along the Chhattisgarh border is the scene of a more violent suppression of adivasi land rights. There are about 35 forest habitations, home to between nine and 190 families each adding up to 1,380 families in total, put up in the last two years and more by Gothi Koya or Muria immigrants from Dantewara district of Chhattisgarh. These are refugees of the salwa judum-Maoist conflict, mostly victims of salwa judum attacks on villages suspected of harbouring the Maoists. Unable to live in Dantewara any longer, these refugees have put up huts in the forests of Khammam district. They have been careful not to cultivate land but have merely put up huts and are labouring in neighbouring adivasi villages for livelihood. Since the conflict in Dantewara started in June 2005, many of these immigrants have entered and put up huts in the Khammam forests prior to December 13, 2005, the magic cut off date for Act 2 of 2007: rights of habitation and usufruct enjoyed by adivasis in the forests prior to that date are protected by that law. And so the forest department personnel of Khammam should not be troubling these people, but they are regularly burning down the miserable huts and trying to drive the immigrants back to Dantewara, which means death or starvation. Sarivela-Kothuru and Sunnam Matka are two habitations that have been set on fire not less than five times, the last time being on September 1 this year. This is a brutal continuation of the Chhattisgarh tragedy beyond that state's borders, and it leaves the adivasis shelterless in the sun and the rain. Parenthetically, it must be said that while India is signatory to international instruments concerning refugees, and has been kind to some such as the Tibetans and Myanmarese, it has no law or policy concerning internal refugees, of whom the most numerous are adivasis, whether driven by hunger or projects or social conflict.

The Bauxite Mining Project

We will end with bauxite mining, which is a more comprehensive saga of riding roughshod over the legal regime applicable to the scheduled areas and the rights of the scheduled tribes. Bauxite ore is available on an extensive scale in a belt stretching from southern Orissa to northern Andhra Pradesh. The whole of it is in the scheduled areas. It is being mined vigorously by Orissa in the districts of Rayagada, Kalahandi and Koraput. Excepting the NALCO's project at Damanjodi, all the others are in the private sector. This is contrary not just to the law but the Constitution as well, for grant of mining lease in the scheduled areas to non-tribals amounts to transfer of land from the government to a non-tribal, which the fifth schedule to the Constitution prohibits, as held by the Supreme Court in Samatha vs State of AP (1997). Not that displacement by a public sector unit is less painful, but what is in issue is the casualness of the whole thing. The government of Orissa has been indulging in bluff, claiming that the Samatha judgment applies only to Andhra Pradesh and not to other states. That is rubbish, but nobody in Orissa has been willing to call the bluff. Since not only mining of ore but its processing to produce alumina for export is also being undertaken in the scheduled area, considerable extent of land is being handed over to the companies. The mine site, the site for the refinery and the captive power plant, and the sites for the ash pond and effluent (red mud) pond, are the actual extents of land taken over, but a lot of land nearby will become uninhabitable and uncultivable once the industry starts. Any unilateral decision of the government in these matters without reference to the gram sabhas of the affected villages is contrary to PESA, but Orissa is going ahead unmindful. Where the administration felt it necessary to have the consent of the gram sabha, it has commandeered the consent by police force. And where it found it had no answer to the resistance of the people, it has put it down by brute force. Three adivasis were killed at Maikanch in Kashipur block of Rayagada district on December 16, 2000, and hundreds have been jailed before and thereafter. The resistance of the adivasis has however been remarkable, especially against the Utkal Aluminium's project at Kucheipadar in Kashipur block.

The bauxite ore extends into the scheduled area of Visakhapatnam district of Andhra Pradesh. Proposals to lease land to a private company for mining and processing the ore were initiated during Chandrababu Naidu's days, but since Andhra Pradesh at any rate cannot say that the Samatha judgment does not apply, the efforts were abandoned. It is typical of Chandrababu's

mindset that he tried to get the fifth schedule to the Constitution itself amended to save his aluminium project. And it is typical of the influence he wielded at Delhi in those days that his proposal was taken as an order and a note prepared by the union ministry of mines for amending the Constitution! Nothing happened, fortunately, and after Y S Rajasekhara Reddy became chief minister, the government decided to cheat the law rather than amend it. Two mining sites have been chosen, and the mining leases have been given to the public sector AP Mineral Development Corporation (APMDC), which will mine the ore and sell it to private concerns that will process it outside the scheduled area. The APMDC is thus a benami for the private concerns. Whatever the legality of this devise (the LTR specifically bars benami transactions in favour of non-tribals), it does not answer the main concern of the adivasis. Bauxite is found on flat-topped hills, and while the government typically points to the small extent of the mine site, which is usually uninhabited, the concern is with the displacing effect the mining will have in the valley around, and the effect on the drainage of water that runs off the bauxite hill. Quite extensive displacement and severe pollution of water sources are certain, and the adivasis are almost unanimously against the project. Since the land losers at the processing sites outside the scheduled area are equally vigorously opposing the land acquisition, the bauxite project of the government is facing serious opposition.

The issue is not to be answered by rhetorically counterposing development of the country to the myopic self-centredness of the few. Either development will be defined to include the needs and aspirations of all, or every project will be a scene of conflict as India heads hungrily towards two-digit growth. Unlike in the trustful days of the past, the notion of development is looked at sceptically by the smallest people today, which is a welcome change. The tendency to pretend that nothing has changed, with its concomitant insensitivity to opposition, inevitably leaves the matter to the police, resulting in broken heads and worse. That is entirely unacceptable, whatever differences there may be about the meaning and need of development. EPW

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