

THE LEGAL FACE OF CORPORATE LAND GRAB IN CHHATTISGARH

There would be little doubt in the mind of even the most cursory observer of contemporary events in Chhattisgarh, that the most burning issue agitating the peasantry and adivasis there today, is displacement on an unprecedented scale - for mining, setting up of industries, dams, sanctuaries, four laning of highways, the posh capital region, and even army and air bases.

Whether it be the sponge-iron belt of Raipur, the cement belt between Raipur and Bilaspur, the coal mines of Koriya, bauxite mines of Sarguja, the power plants of Korba, and above all “Jindal-land” – Raigarh - where the writ of the Jindal company runs - all these areas have been witness to widespread displacement, shockingly inadequate rehabilitation and compensation, and devastation of the environment particularly the clearing of pristine forests, toxic air pollution, drying up of water sources and dumping of ash in the past decade.

But now the pace and extent of the land grab has increased vastly, with not an inch of largely tribal Jashpur left unaffected by prospecting and mining licenses; 34 power plants coming up in the district Janjgir; and 7 cement plants in the newly formed district of Baloda Bazar where units of multinationals Holcim and Lafarge and of the Birla group – Ultratech, Grasim and Century are already situated.

In the entire mineral rich region of Orissa, Jharkhand and Chhattisgarh, where even non-Naxal areas (Posco, Kathikund, Kalinganagar, Narayanpatna, Potka) are seeing brutal police repression, mining seems to be the motivating factor for a ground clearing of the adivasis – if necessary by war, as in Dantewada.

However, the present note does not seek to document the above in any detail, but only deals with a very specific aspect of the above process, namely the legal framework in which it is sought to be legitimized, and some of the serious issues that the “legal face” of this land grab raises. The understanding of these legal processes has come, not so much from an academic study of law, but from our experiences as a group of lawyers organized as “Janhit Peoples’ Legal Resource Centre” in Bilaspur, Chhattisgarh, which tries to provide group legal aid to peoples’ movements, village committees, NGOs, Trade unions etc.

1. Implementation of the PESA Act.

The PESA (Panchayats (Extension to Scheduled Areas)) Act mandates that in the Scheduled Areas the Gram Sabha must be consulted prior to commencing any project in the village and particularly in the case of any activity involving acquisition/ alienation of land. The Gram Sabha is specially empowered to act to prevent land alienation and to restore land unlawfully alienated from a tribal villager.

Section 4 (e) (i) of the PESA Act states that

“every Gram Sabha shall approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;”

Section 4(i) states that

“the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;”

Section 4 (m) states that

“the Gram Sabha is particularly endowed with the power to prevent alienation of land in the Scheduled Areas, and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe”

In practice, either the Gram Sabhas are never informed nor consulted or else people are terrorized into silent acquiescence, or else, easier still, “No Objection Certificates” are forged. Petitions raising the issue of the enforceability of PESA, such as in Lohandiguda Bastar where the Tata Steel was to set up a steel plant, are pending in the High Court but in the meanwhile adivasis are being continually displaced. Here we present two case studies of villages which did try to assert their rights under the PESA Act -

The case of Premnagar:

Premnagar is a village in the Scheduled area of district Sarguja in North Chhattisgarh, where the organization “Gram Sabha Parishad” is active. This village shot into prominence when despite repeated and all sided efforts by the IFFCO to set up a power plant, they failed because of the resistance of the villagers. On 14 occasions the Gram Sabha passed resolutions refusing land for the project, there was vociferous opposition in the environmental public hearing and when the village leaders were arrested, there was a massive gherao of the thana forcing the police to release them.

The administration thereupon struck upon the diabolically clever idea of making the village a “Nagar Panchayat”, thus doing away with the Gram Sabha altogether and effectively short-circuiting the rights of adivasis in a Scheduled area! No matter that it is explicitly stated in Article 243ZC of the Constitution that nothing in the Part IX-A on Municipalities is applicable to the Scheduled Areas. In the past few years hundreds of Nagar Panchayats have been created illegally and unconstitutionally in the Scheduled Areas. Our group “Janhit” is helping the villagers of Premnagar to challenge this unconstitutional act of the Chhattisgarh State.

SECL is demanding damages from adivasis!

The adivasis of Village Choura, district Sarguja under the leadership of the Bharat Jan Andolan had been protesting because, when their lands were compulsorily acquired for mining under the project Mahan -II by the South Eastern Coalfields Limited – a Public Sector Mining Enterprise, not only was the PESA Act violated in that the Gram Sabha was not consulted before such acquisition, but the SECL submitted a forged Gram Sabha resolution to obtain clearances. About 5000 adivasis of nearby villages

decided to march to the Mines Offices to protest on 26th December 2009 (Gram Ganrajya Divas – the day the PESA Act was notified.). The SECL, which has illegally begun mining and destroyed the livelihoods and environment of the adivasi villagers that are probably not measurable in monetary terms, is suing them for the loss of production on that day! A civil suit has been filed by the South Eastern Coalfields Ltd. against 6 adivasis for recovery of 36 lakhs with 9% interest! The defendants include Jangsay – a young adivasi leader of the Bharat Jan Andolan. Needless to say the villages are gradually organizing to see that the future expansion under Mahan III and Mahan IV cannot be carried out without compliance with PESA. Again “Janhit” is helping them to defend themselves and file counter cases on SECL.

2. **Violation of provisions for non-alienation of tribal land.**

The Chhattisgarh Land Revenue Code prohibits the transfer of tribal lands to non-tribals vide Section 170(B). Indeed there are many similar provisions, laws, regulations in different states applying to tribal areas or tribal owned lands prohibiting the alienation of tribal land to non-tribals.

The celebrated majority judgment of “Samatha Vs State of Andhra Pradesh” (AIR 1997 SC 3297) excerpted below has clearly laid down the constitutional logic to the demarcation of the Scheduled areas and the centrality of non-alienation of tribal land in the constitutional scheme, and also prohibited the transfer of government land – forest lands, common lands etc. to any other except a State entity or a Co-operative Society of tribal members. It is interesting that while the Samatha judgment has not been overturned or referred to a larger Bench, several smaller/ co-ordinate Benches have, in the passing i.e without specifically framing the same issue, made deprecating or dissenting comments about this judgment. This ambivalent attitude of the judiciary in “winking” at the transfer of government and forest lands to private parties, particularly mining companies, is a major factor in legitimizing corporate land grab of forest lands and in the Scheduled areas.

“92. The respective contentions give rise to the question: whether the regulation prohibits the State Government transferring its lands to non-tribals?”

93.From the above perspective, having given our deep and anxious consideration to the respective contentions of the learned Counsel for the parties, we are of the considered view that the interpretation put up by Shri Rajeev Dhavan merits acceptance. It is seen and bears recapitulation that the purpose of the Fifth and Sixth Schedules to the Constitution is to prevent exploitation of truthful, inarticulate and innocent tribals and to empower them socially, educationally, economically and politically to bring them into the mainstream of national life. The founding fathers of the Constitution were conscious of and cognizant to the problem of the exploitation of the Tribals. They were anxious to preserve the tribal culture and their holdings. At the same time, they intended to provide and create opportunities and facilities, by affirmative action, in the light of the Directive Principles in Part IV, in particular, Articles [38](#) [39](#) [46](#) and cognate provisions to prevent exploitation of the tribals by ensuring positively that the land is a valuable endowment and a source of economic empowerment, social status and dignity of persons. The Constitution intends that the land always should remain with the tribals. Even the Government land should increasingly get allotted to them individually and collectively through registered Co-operative Societies or

agricultural/ farming Co-operative Societies composed solely of the tribals and would be managed by them alone with the facilities and opportunities provided to them by the Union of India through their Annual Budgetary allocation spent through the appropriate State Government as its instrumentalities or local body in a planned development so as to make them fit for self-governance. The words "peace and good Government" used in the Fifth Schedule require widest possible interpretation recognised and applied by this Court in *T. M. Kannian v. Income-tax Officer, Pondicherry* MANU/SC/0045/1967 : [1968]68ITR244(SC) and *Queen v. Russell* (1882) 7 AC 829.

94. By the Constitution (73rd Amendment) Act, 1992 amended Part IX of the Constitution, the principle of self-Government based on democratic principles at Gram Panchayat and level upwards was introduced through Arts. 343 to 343ZG. As an integral scheme thereof, the Andhra Pradesh (Provision of the Panchayats Extension to Scheduled Areas) Act, 1966 came to be made. Section 4(d) of that Act provides that "(N)otwithstanding anything contained under Part IX of the Constitution, every Gram Sabha shall be competent to safeguard and preserve...community resources." Clause (j) of Section 4 provides that planning and management of minor water bodies in the Scheduled Areas shall be entrusted to the Panchayats at the appropriate level. Under Clause (m)(iii) the power to prevent alienation of land in the scheduled areas and to take appropriate action to restore any unlawful alienation of land of a Scheduled Tribe and under Clause (iv) the power to manage village markets, by whatever name called, are entrusted to the Gram Panchayats. It would indicate that the tribal autonomy of management of their resources including the prevention of the alienation of the land in the Scheduled Areas and taking of appropriate action in that behalf for restoration of the same to the tribals, is entrusted to the Gram Panchayats.

95.The Governor in his personal responsibility is empowered to maintain peace and good Government in scheduled area. The Fifth Schedule to the Constitution empowers him to regulate allotment of the land by para 5(2)(b) read with Section 3 of the Regulation of the land be it between natural persons, i.e., tribals and non-tribals: it imposes total prohibition on transfer of the land in scheduled area. The object of the Fifth Schedule and the Regulation is to preserve tribal autonomy, their culture and economic empowerment to ensure social, economic and political justice for preservation of peace and good Government in the scheduled area. Therefore, all relevant clauses in the Schedule and the Regulation should harmoniously and widely be read so as to elongate the aforesaid constitutional objectives and dignity of person to the Scheduled Tribes, preserving the integrity of the scheduled areas and ensuring distributive justice as an integral scheme thereof. Clauses (a) and (c) of sub-para (2) of para 5 of the Fifth Schedule prohibits transfers inter vivos between tribals and non-tribal natural persons and prevents money-lenders to exploit the tribals. Clause (b) intends to regulate allotment of land not only among tribals but also prohibits allotment of the land belonging to the Government to the non-tribals. In that behalf, wider interpretation of "regulation" would include "prohibition" which should be read into that clause. If so read, it subserves the constitutional objective of regulating the allotment of the land in scheduled areas exclusively to the Scheduled Tribes. Clause 5(2)(b) ensures distributive justice of socio-economic empowerment which yields meaningful results in reality. If purposive construction, in this backdrop is adopted, no internal or external contradiction would emerge. The word "person" would include both natural persons as well as juristic person and constitutional Government. This liberal and wider interpretation would maximise allotment of Government land in scheduled area to the tribals to make socio-economic justice assured in the Preamble and Articles 38 39 and 46. a reality to the tribals. The restricted interpretation would defeat the objective of the Constitution.We are, therefore, inclined to take the view that the word 'person' includes the State Government. The State Government also stands prohibited to transfer by way of lease or any other form known to law, the Government land in scheduled area to non-tribal person, be it natural or juristic person except to its instrumentality or a Co-operative Society composed solely of tribes as is specified in the second part of Section 3(1)(a). Any other interpretation would easily defeat the

purpose exclusive power entrusted by the Fifth Schedule to the Governor. If the Cabinet form of Government would transfer the land of the Government to non-tribals peace would get disturbed, good governance in scheduled area would slip into the hands of the non-tribals who would drive out the tribals from scheduled area and create monopoly to the well developed and sophisticated non-tribals; and slowly, and imperceptible, but surely, the land in the scheduled area would pass into the hands of the non-tribals. The letter of law would be an empty content and by play of words deflect the course of justice to the tribals and denude them of the socio-economic empowerment and dignity of their person.

96. The word "person" in Section 3(1)(a) would, therefore, be construed to include not merely the ' natural persons, in the context of tribal and non-tribal who deal with the land in scheduled areas by transfer inter vivos but all juristic person in the generic sense, including the Corporation aggregate or Corporation sole. State, Corporation, partnership firm, a company, any person with corporate veil or persons of all hues, either as transferor or transferee so that the word 'regulate' in para 5(2)(b) of the Fifth Schedule in relation to the land in scheduled areas would be applicable to them either as transferor or transferee of land in scheduled area. It, thus, manifests the constitutional and legislative intention that tribals and a Co-operative Society consisting solely of tribal members alone should be in possession and enjoyment of the land in the scheduled area as dealt with in various enactments starting from Gunjam and Vizianagaram Act, 1839 to the present regulation.”

The strange case of Janki Sidar:

Two pieces of land in the name of this adivasi woman in the district Raigarh, a Scheduled Area, were fraudulently registered in the name of Monnet Steel (headed by a brother-in-law of Naveen Jindal) in the year 2000 by putting up another woman as Janki Sidar and registering the land in the name of a non-existent adivasi called Amar Singh, of course with the unstinted co-operation of the revenue authorities.

When Janki filed an FIR for fraud, she was fortunate that at the time the City Superintendent of Police was not a “company man”, so a Manager of the Monnet Steel – Shubendu Dey and sundry ‘zameen dalals’ were actually sent to jail for about 3 months before they got bail. The CSP was suitably rewarded by being transferred to Bastar.

The Revision Application filed by the non-existent adivasi in the year 2001 against the case filed by the State under Section 170B of the Land Revenue Code for restoration of the alienated tribal land – with no signature on the application, no vakalatnama, and no appearance in court for 10 years but of course being represented by the most top notch lawyers in Raigarh – remained pending in the court for 10 years despite repeated pleas on Janki’s part for it to be dismissed, until it was taken up by the “Janhit team”. However then, because the record had in the meantime been summoned by the Revenue Board, the original file became untraceable.

A writ petition filed by Janki Sidar in the High Court in the year 2011 was summarily dismissed by Justice TP Sharma at the motion stage. Finally the Writ Appeal before a Division Bench resulted in an enquiry against some clerical staff and permission to Janki to file afresh the Application under Section 170B. The pleas for compensation and enquiry against the erring Revenue Officers for the delay of 10 years were rejected. The application has been filed and we still await restoration of her land.

Janki Sidar alleges that many state officers, from Patwaris to Collectors, made a pretty buck in the course of her case, not to mention at least 7 lawyers whom she engaged from time to time only to be cheated. She talks of her village on the Orissa border where many liquor shops have been set up and it is common knowledge that in

a certain Pushpa Lodge at 12 at night, land registries are carried out. The Patwari of her village, while updating her Land Record in the “Rinn Pustika” actually made one of her land plots vanish!

There are many Jankis. There is Haripriya Patel on whose land at Tapranga Jindal built a colony and then the Jindal security guards lathicharged the protesting villagers while the policemen remained mute spectators. There is Shivlal Sav, a “Nagar Sainik” on whose land Jindal dumped about a hundred dumpers of dust and built a cooling tower. He has an order of ‘removal of encroachment’ from the Collector, but so what? When he approached the High Court he was shocked to find that his land had been acquired 5 years after his complaint for the public purpose of ‘tree plantation’ and the acquisition has been upheld in public purpose. Recently the son of the adivasi Home Minister – Shri Nankiram Kanwar – was caught red-handed using his adivasi status for transferring land of adivasis in favour of the Videocon company for setting up a power plant. Recently Videocon had flown in actor Salman Khan for the Chhattisgarh State’s “Birthday Celebrations” on 1st November in Raipur, and the entire Cabinet stood enraptured while he delivered his five minute dialogues from Dabang, exhorted the people of Chhattisgarh to co-operate with Videocon and flew back. All this would have been quite amusing had the consequences not been so devastating for the livelihoods of so many.

3. **Mining without consent**

“Coal” falls in Part A of The First Schedule of Specified Minerals as annexed to “The Mines and Minerals (Development and Regulation) Act, 1957” and Section 4 holds that no person shall undertake any prospecting or mining operation in any area except under a prospecting license or mining lease granted in accordance with provisions of the Act and the rules thereunder. The Central Government has accordingly framed “The Mineral Concession Rules, 1960” under this Act which provide for grant of mining lease and Section 22 of the aforesaid Rules reads as follows:-

“22. Applications for grant of mining leases. –

.....

(3) (i) Every application for the grant or renewal of a mining lease shall be accompanied by

(h) A statement in writing that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained consent of the owner for starting mining operations;

Provided no such statement shall be necessary where the land is owned by the Government;

Provided further that such consent of the owner for starting mining operations in the area or part thereof may be furnished after execution of the lease deed but before entry into the said area;

Provided also that no further consent would be required in the case of renewal where consent has already been obtained during grant of the lease.”

That Form I of "The Mineral Concession Rules, 1960" also contains the said provision as below at para 3 of the form:-

- "(3) The required particulars are given below:-
- (ix) Brief description of the area with particular reference to the following:
- (a) Does the applicant have surface rights over the area for which he is making an application for grant of a mining lease.
- (b) If not, has he obtained the consent of the owner, and the occupier of the land for undertaking mining operation. If so, the consent of the owner and occupier of the land be obtained in writing and be filed."

Since the Chhattisgarh Land Revenue Code lays down that all minerals below the surface belong to the State, so proceedings are conducted under Section 247(4) of the Code for the purpose of computation of compensation for "surface rights" and for ensuring the payment of such compensation prior to mining activity. However they do not govern either the grant of mining lease or the legality of mining operations which are governed by the over-riding provisions of "The Mines and Minerals (Development and Regulation) Act, 1957" being a Central Act occupying the field. Thus a proceeding under Section 247(4) does not do away with the mandatory grant of consent by private land owners for the grant of mining lease or commencement of mining operations as laid out in the aforesaid Central Act and the Rules thereunder. Section 247 is reproduced below for ready reference:-

"247. Government's title to minerals.-

(1) Unless it is otherwise expressly provided by terms of a grant made by the Government, the right to all minerals, mines and quarries shall vest in the State Government which shall have all the powers necessary for the proper enjoyment of such rights.

(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purpose subsidiary thereto, including the erection of offices, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram lines, and any other purposes which the State Government may declare to be subsidiary to mining and quarrying.

(3) If the Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right it is necessary that all or any of the powers specified in sub sections (1) and (2) should be exercised, the Collector may, by an order in writing, subject to such conditions and reservations as he may specify, delegate such powers to the person to whom the right has been assigned.

Provided that no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.

(4) If, in the exercise of the right herein referred to over any land, the rights of any person are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub Divisional Officer, or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1894 (1 of 1894).

(5) No assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Collector, and unless the compensation has been determined and tendered to the persons whose rights are infringed.

(6) If an assignee of the Government fails to pay compensation as provided in sub-section (4), the Collector may recover such compensation from him on behalf of the persons entitled to it, as if it were an arrear of land revenue.....”

Thus the legal position is absolutely clear. Land is *not acquired* for prospecting/ mining in public purpose. Theoretically the company enters into a lease agreement and is bound to return the land after the lease period in as nearly the original condition as possible. The application for either license specifically asks “Does the applicant have surface rights?” and “If not, *has the consent of the owner and occupier been obtained?*”

In practice, the State utilizes the loophole that consent can be granted even after the lease deed is executed, though actually by the Rules, an incomplete application has to be corrected within 30 days after a notice to that effect has been served, otherwise it is to be rejected. We have obtained a large number of applications made by Jindal Steel and Power, DB Power Group etc. for mining leases. All these applications state against the column “*Does the applicant have surface rights?*” – *No*, and against the following query “*If not, has the consent of the owner and occupier been obtained?*” – “*Shall be obtained as and when required*”!! A lease deed is issued on the basis of this incomplete application and on the basis of the lease deed, a newspaper notice is published asking the private landowners *to come and collect their compensation under Section 247 of the Land Revenue Code to be calculated as per the Land Acquisition Act*. The people, feeling that they have been served with a fait accompli and if they refuse the compensation it would be deposited in the treasury, accept the compensation, *which is then interpreted as consent to mining*. This is the mechanism by which the state machinery is used to coerce people to give up land. Whereas the Supreme Court case in “*Pallava Granites*” (AIR 1997 SC 2098) holds the field in these terms:-

“We find no force in the contention. The right to excavate the mines from the land of private owner is based on the agreement; unless the lessor gives his consent, no lessee has a right to enter upon his land and carry on mining operation. The right to grant mining lease to excavate the mines beneath the surface is subject to the agreement of the land owners, Therefore, with a view to ensure that there will not be any obstruction in working of the mining lease and also for the peaceful operation to the excavation of the mines, insistence on the consent of the landlord is necessary. Therefore, we do not find any illegality in the view taken by the High Court warranting interference.”

The High Court, on this basis, stayed mining operations of the Jindal Power and Steel in Villages Kosampalli and Sarasmaal, district Raigarh.

So far, the experience of peasants in Chhattisgarh is that no land, even that mined by the public sector coal companies like SECL, has been returned to the peasants at all, let alone in its original condition. The record for compensatory afforestation and for dealing with environmental damage is dismal. In Sarguja, where the private Hindalco company took lands of the peasants on lease for

mining bauxite through an agreement entered into by the Collector, the conditions of the peasants being paid yearly rent exceeding what they would have normally gained from agriculture has been blatantly violated. And if at all the displaced adivasi peasants have got employment in the mines, it is as temporary and contractual miners.

4. From a colonial Land Acquisition Act toeven worse?

The British Land Acquisition Act distinguishes between acquisition for public purpose and acquisition for companies. In the latter there are elaborate rules to be mandatorily followed including an inquiry into various aspects – whether there exist alternatives to acquiring agricultural land, whether the company has made adequate efforts to purchase the land etc – and also the company has to enter into an agreement with the State Government inter alia ensuring compliance with the rehabilitation policy of the State. In practice it is being presumed that acquisition for a company is an acquisition for public purpose, a notion that though struck down by the recent judgement of the Allahabad High Court in the Reliance Dadri case, still continues nevertheless.

The only notional protection for people in the present, indeed draconian, Land Acquisition Act is the right to register objections under Section 5A, though of course such objections need not be given any “reasoned” consideration, but courts of law have insisted that since precious property rights are sought to be taken away by this expropriatory legislation, Section 5A must be strictly complied with.

But again, in practice, often Section 17, or the “urgency clause”, is invoked, and under sub clause (4) of this, the rights under Section 5A are done away with. The indiscriminate invoking of this urgency clause, whenever the State perceives a resistance to acquisition from people, has become common in Chhattisgarh and requires to be challenged. Interestingly a notification dated 31.01.2000 of the Madhya Pradesh Government, equally applicable to Chhattisgarh, clarifies that the mandatory consultation under PESA with the Gram Sabha would be applicable even in emergency acquisition proceedings under Section 17 of the Land Acquisition Act. Again this is violated with impunity. Some of the grounds taken in one of the many cases taken up by the Janhit team in regard to land acquisition of a private coal-based thermal power plant in the critically polluted district of Korba are given below:-

Some of the Grounds taken in a PIL filed against the Vandana Power Plant by the villagers of Chhurikala, district Korba:-

- For the reason that an acquisition which was initiated vide the Memo of the Collector dated 28.11.2007 as an acquisition “for industrial purpose” could not have been converted into an acquisition “for public purpose” vide the Memo of the Collector dated 28.04.2008 in a colorable exercise of authority, only to bypass the unanimous opposition of the Gram Sabhas.
- For the reason that the Nagar Panchayat Chhurikala lies in a Scheduled area, therefore compliance with the provisions of the PESA Act were mandatory.

- For the reason that when the acquisition was for a company, the provisions of Part VII of the Land Acquisition Act ought to have been strictly complied with, including the compliance of Rule 4 of the Land Acquisition (for Companies) Rules, the agreement under Section 41 etc.
- For the reason that invoking of Section 17 of the Land Acquisition Act by the Collector, Korba, and also the invoking of Section 17(4) to dispense with the hearing of objections under Section 5A was unreasonable, without any material basis and in a colorable exercise of authority, only to benefit the Respondent Company.
- For the reason that the Land Acquisition Act being an expropriatory legislation, its provisions must be strictly complied with, in letter and spirit.
- For the reason that the Respondent Company could never have been appointed as “Officer” for the purpose of enquiry under Section 4(2) of the Land Acquisition Act.
- For the reason that the Respondent Collector Korba as well as the SDO/ Land Acquisition Officer ought to have made an application of mind and granted effective hearing to the objections made by the affected villagers under Section 9 of the Act and not simply sent them to the company and accepted the replies made by the company.
- For the reason that the permission for establishment obtained by the Respondent Company on the basis of fraudulent and fabricated documents, claiming that Certificates of No-Objection have been issued by various Gram Panchayats and also the Gram Sabhas, cannot be sustained.
- For the reason that the Tehsildar could not have issued Notices coercing the affected villagers into accepting compensation.”

Tragically, although the new proposed Land Acquisition Bill was brought on the anvil ostensibly because of the fierce country wide resistance of the peasantry against land acquisition, far from addressing any of the above serious legal issues, it appears that the new Bill could actually facilitate corporate land grab. We quote an excerpt of a joint critique of several peoples’ movements and political groups:-

- The 2011 Bill does nothing at all to plan or regulate land use. Instead, it gives an arbitrary license to acquire up to 5% of multi crop irrigated land without assessing projects in terms of their impact on food security. The earlier draft required that projects be the “least displacing” option; this has also been removed. The Constitutional powers of municipalities and panchayats over planning are simply ignored.
- A hand-picked "state level committee" consisting almost entirely of bureaucrats makes all decisions. A "social impact assessment" is to be done, but who will do it, and how, is unclear. In fact the SIA is a mirror image of the discredited environment impact assessment process, which Shri Jairam Ramesh himself described as a farce. The SIA can neither consider the rehabilitation plan, nor whether the project is the “least displacing” alternative, nor the question of public purpose – yet the State level committee is supposed to decide all this based on its report. Various public hearings and gram sabha consultations are suggested, but these are a mere formality; the views raised in them are not given any importance subsequently.....

- In the 2011 Bill, the definition of public purpose has been widened even further so that even real estate is exempt from 80% consent by the phrase “any site in the urban area”. Projects that are in "public interest" (which is not defined) or that "produce goods or services for the public" become public purpose. Is there any economic activity which does not satisfy these requirements? Thus land acquisition for practically any project, private or public, will be possible, only subject sometimes to the dubious "80% consent" requirement. Instead of making the process more rational, the Bill is opening acquisition to a free for all, giving private companies access to the state machinery for purposes identified by them. The Bill contradicts itself by first declaring that no change of purpose will be permitted (Cl. 93); and then reverting unutilised land to the government "land bank" (Cl. 95). What is this if not a change of purpose? This is an incentive to acquire large tracts of land on plausible grounds and hold them for later use. ...
- The Bill says that "consent of 80% of the affected families" will be required for some types of acquisition. But it provides no procedure for taking this consent, for determining if it is given freely, for deciding what happens if consent cannot be obtained, and for deciding *whose* consent is to be taken. The Bill provides no sound way for deciding who is affected and who is not; indeed no listing is even made until much later. This is an open invitation for forgery and manipulation. And when will consent be sought? Besides, those being asked for their consent cannot be told about rehabilitation as the package is not even drafted till much later. Besides, to get around this, all that private companies need to do is acquire a little land and approach the government for “partial acquisition” (which could even be for 99% of the total area) (clause 8 proviso read with clause 2(2)).
- Those affected cannot approach local courts - they have to go only to a government appointed State or Central authority, thus undermining the separation of executive and judicial functions. This body can only award increased compensation, and can only be approached through the Collector (Cl. 58). Further, even if the law is violated, the acquisition will go ahead, as Clause 57 bars any court from issuing any stay order. . So if R&R is not provided, people will be displaced anyway, and can spend the rest of their lives chasing their rights in the Authority or courts (if they have the resources to do so). There is a negative provision limiting the scope of intervention by the High Court and Supreme Court.....
- The last straw comes at the very end - Clause 98 and the accompanying Fourth Schedule. *After grandly stating that this law will create a new, just process of acquisition, these clauses exempt a whole range of activities - SEZs, coal mines, highways, uranium mines, railways etc. - from this law entirely.* This is at a time when SEZs and mines have been sites of bloody, violent conflict across the country.”

Any illusion that may be remaining regarding the progressive character of the proposed Land Acquisition Bill is further dispelled when we consider Part IX:-

“PART IX

TEMPORARY OCCUPATION OF LAND

54. Temporary occupation of waste or arable land, procedure when difference as to compensation exists

(1) Whenever it appears to the Appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the person interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken there from, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the State or Central Authority, as the case may be, shall refer such difference to the decision of the Court.

55. Power to enter and take possession and compensation on restoration

(1) On payment of such compensation, or on executing such agreement, or on making a reference under section 54, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

PROVIDED that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.”

When we look back on the agitations at Jagatsinghpur, Odisha; Nandigram, West Bengal; Raigarh, Maharashtra; Dadri and Greater Noida, Uttar Pradesh; Dumka, Jharkhand; or Lohandiguda, Bastar etc. and the many Court verdicts that came in some of those cases which were rare examples of the Courts taking a pro-active stance in interpreting the colonial Act in favour of the peasantry and striking down “colourable exercise” of “powers of eminent domain”, it appears that the present Bill is not only not in consonance with the resounding demands of the peasantry, but is also being passed to restrict the intervention of the judiciary which, for a change, had struck a disharmonious chord in the globalization chorus!

5. Losing communal natural resources

Another serious livelihood issue intrinsically linked with acquisition for companies, mines etc. is the impact on the environment – on the air, water, soil, forest cover etc. There are a number of provisions in the Forest Act designed to preserve forest cover – particularly to ensure the non diversion of forest land to any other purpose. The “Green Bench” of the Supreme Court (the celebrated TN Godavarman case) in fact monitors this all over the country. Unfortunately recent decisions by this Bench - the “Niyamgiri” case is one in point where the Bench overruled its own Centrally Empowered Committee’s report – have often been in favour of companies and then, since they carry the weight of the apex judicial forum, have become unchallengeable.

The Environmental Impact Assessment (EIA) Notification issued by the Ministry of Environment and Forests has a detailed procedure for a project of the "A" category (having significant environmental impact) to get environmental clearance – an Expert Appraisal Committee (EAC) lays down terms of reference; the company accordingly gets a Summary EIA Report prepared; then the same is supposed to be widely disseminated; a public hearing takes place in which the project affected and environmental NGOs can voice their concerns; the local State Pollution Control Board forwards the modified EIA Report; and then finally the EAC grants the environmental clearance.

In practice, there is a fatal defect in the law. There is no locus of a citizen to enforce the pollution laws until the clearance has actually been granted, after which the National Green Tribunal, located at New Delhi, could be moved. Data shows that in only an insignificant proportion of cases filed, is a clearance actually set aside. Enforcement is solely left to pollution control authorities of the State and Union governments. In today's situation where the corporates have a stranglehold over all state institutions, this has meant in practice that every public hearing ends in clearance, no matter that the affected persons might have protested vociferously, or might have been dispersed by lathi charge, or that the project proponents and authorities might have been forced to run to save their lives! Where the law gives such limited scope for intervention it is a virtually impossible task to challenge the bogus "public hearings" and "clearances". With the help of determined and untiring environmental activists who use the Right to Information Act effectively to expose the lacunae of procedure, Janhit is attempting this.

Dainik Bhaskar – the power of the media!

On 28th February 2011, thousands of men and women thronged the site of the public hearing to protest against the captive coal mines for the DB Power Plant. One by one they would line up in front of the mike to address the officers and company managers sitting inside a cage like structure as hundreds of police looked on. Efforts of hired goons of the company to distribute "samarthan patras" failed completely. These are events that the people of Chhattisgarh are quite used to and even after vociferous protests environment clearances are still granted. But the legal issue on which Janhit is challenging the legality of this public hearing is a peculiar one. About a month before the hearing, a Senior Vice President of DB Power executed an affidavit that no mining would be carried out within the Dharamjaigarh Nagar Panchayat where about 47% of the coal bearing land of the project is situated. Then, a day before the hearing, all the prominent leaders of the Nagar Panchayat were summoned by a letter of the district administration to a meeting. There, in the presence of the Collector, SP, local MP etc this assurance was reiterated by the DB Power top management and considerable pressure was brought to bear on them. The assurance was given wide coverage in the Dainik Bhaskar which has the largest readership in the state. But there was no modification in the project proposal whatsoever, nor was there any fresh EIA report (Environment Impact Assessment Report) prepared. Thus when the public hearing was carried out, the people at large were subject to deliberate misrepresentation and fraud with the connivance of the state authorities. The legal issue that has come up is that, since public hearing is only one of the steps in the

process of grant of environmental clearance, and clearance has not yet been granted, has a cause of action arisen yet? And of course, if clearance is granted, then the appropriate forum would be the National Green Tribunal, Delhi! There are Division Bench judgments in Tamil Nadu which say ...yes, a cause of action has arisen because the public hearing is an important and independent step crystallising precious rights of the people, but this matter still needs to be settled for Chhattisgarh.

6. **Implementation of the Forest Rights Act**

The Preamble to the Forest Rights Act speaks of correcting historic injustices and seeks to provide rights – both individual and communal to tribal people and other traditional forest dwellers to live in, cultivate in, gather forest produce in and maintain nistari rights in forests - which since the British era have in the legal framework become “State property” and in which framework the adivasis, who have lived in and co-existed with the forests for centuries, have become “encroachers”. The critics of the Act rightly point out that the Act tries to limit and to privatize/ individualize ownership of forest lands, yet no doubt precious rights have been sought to be recognized by this Act. Chhattisgarh claims to be the “No. 1” State in FRA implementation, however the ground reality reveals something else together, namely:-

1. Around 50% of all claims filed were rejected and the total land for which *pattas* have been granted are less than estimates made of forest encroachments in the erstwhile State of Madhya Pradesh 20 years ago!
2. No community rights applications were accepted or processed and in fact were not even provided.
3. The centrality of the Gram Sabha in initiating the process of granting of forest rights; and the fact that, in the Act, the Gram Sabha is the investigating and certifying authority with regard to whether a forest dweller has been settled on certain land and the period and extent of such settlement has been disregarded in the process. As a result it is the Forest Department that has been the verifying or certifying authority.
4. The provisions in the Forest Rights Act that explicitly lay down that the determination of the rights must be carried out prior to any displacement even when a Forest is declared a Reserve Forest/ Eco-sensitive Area, is of course being violated with impunity. The case of the adivasis displaced from various Reserve Forests such as Achanakmar (district Bilaspur), Udanti (district Dhamtari) or Badalkhol (district Jashpur) are obvious.

However, the issue of greatest concern is that, during the period when the process of determination of the Forest Rights of a forest dwelling community is underway, such communities – particularly adivasis and dalits are being forcibly displaced, despite again explicit provisions prohibiting this. This can be seen clearly in the cases below:-

Case of the Singhdev Yojana and adivasis of Ambikapur – neither here nor there

The State is on a demolition spree in Village Gangapur, right next to the Ambikapur town, in the Scheduled area of district Sarguja. Despite repeated resolutions of the Gram Sabha, the Tehsildar arrived with a posse of police personnel and demolished the houses of a dozen Oraon families, handing them a 7 day show cause notice after the demolition had been carried out! The demolition is ostensibly been carried out for the Tribal Welfare Department!

In 1968-69, a scheme called the "Singhdev Yojana" had been initiated in Sarguja (the erstwhile Rajas of Sarguja were of the Singhdev family, and even today they are the MLAs of the area). In a sense this was a prophetic predecessor of the Forest Rights Act since it entailed denotifying forest lands which had been occupied and cultivated by adivasis for generations, converting them to Revenue land and fixing a Land Revenue on them in preparation for grant of *pattas*. But, as often happens with government schemes, the *pattas* never came. So for the past 40-45 years the adivasis, whose successors/ heirs had their houses demolished recently as "encroachers", had been paying Land Revenue! The greatest irony is that today Vijay Kujur, Lalsu Kujur, Butul Xalxo and others who have suffered cannot even apply under the Forest Rights Act, since the land is no longer forest land. So they are neither here nor there...the historic injustice, referred to in the Preamble of the Forest Rights Act, continues in a different form. The villagers of Gangapur apprehend that the "*tod phod*" has some vested interest behind it, and it must be a way to hand over such land, now made prime by proximity to Ambikapur town, eventually to private persons.

Case of dalit families of Village Chichour-Umariya, district Raigarh.

The standing crops in 60 acres of land of dalits Ganda- Ghasiya communities were grazed by cattle let loose by the dominant caste of the village in leadership of the husband of the woman Sarpanch of the village. Around 5 homes were ransacked and harvested-chopped crops kept in the courtyard of the dalit families were burnt. Though 5 families have received notices for demolition of their houses on account of encroachment, but the fact is that these dalit families had been occupying land classified as "*Chote Jhad Ka Jungle*" for the past 40 to 50 years and were awaiting decision on their application for regular *pattas* under the Forest Rights Act. Their livelihoods are based only on cultivation of these small piece of lands and as household helps. The husband of the sarpanch and other powerful persons abused the authority of the gram panchayat in order to enforce resolutions calling for a complete social boycott of the dalits from the village for some time, i.e. - no one was allowed to communicate with the dalits on pain of a fine of rupees 1000; doctors were not allowed to give any medical services to them; the provision stores and ration shops were prohibited to sell them any commodities. The written complaints given by the dalits revealing cognizable offences were not registered as FIR by the police including the Thana Pusaur and SP of the district.

The Gram Panchayat in this case has misused an Order passed by the Collector, based on erroneous interpretation and application of the order of the Supreme Court in Civil Appeal No. 1132/2011 in SLP(C) 3109/2011, directing removal of encroachments. Whereas the above Supreme Court order had directed the removal of encroachments of common village land grabbed by unscrupulous persons using money power, muscle power or political clout for personal aggrandizement at the cost of village community, and in fact the judgment had specifically mentioned that there were exception to this rule which permitted the Gram Sabha/Gram Panchayat to lease out some of these lands to landless laborers and members of the scheduled caste/tribes, the Collector's Order makes the exception the rule and vice versa!

The above case studies give a glimpse of the gross violations and blatant non-implementation of the relevant laws, which themselves require honing to bring them in line with constitutional obligations and the directive principles. The judicial review of such implementation is also tardy and non-serious.

As a result we are witnessing a massive transfer of lands away from the peasantry, away from adivasis, away from dalits and the poor in general to the corporates and real estate and mining mafia. It is indeed unfortunate that neither the State nor the Union have chosen to take seriously the recommendations of the Planning Commission Expert Group which has anxiously and repeatedly re-iterated that the alienation of land, particularly in the tribal and Scheduled Areas, is one of the major sources of Left Wing Extremism in the State.

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