

April 3, 2010

Mr V K. Duggal, IAS (Retd)
Member Secretary,
The SriKrishna Committee
Room No. 248
Vignan Bhavan Annexe
Maulana Azad Road,
New Delhi

Dear Sir,

This is a submission for the consideration of the Committee. It concerns the sensitive, important and vital issue of tribal land rights as protected by Scheduled V of the Constitution and intended to protect tribal land from the acquisitive tendencies of the non-tribal population and its land hunger.

The problem reached epidemic proportions and the Government of Andhra Pradesh (GoAP), commissioned J.M.Girgliani IAS (retd.) to study the issue of Telengana Tribal Land rights. He presented the "Report of Tribal Land issues in the Telengana Area". This report is dated August 16, 2005.

The attached note gives details based on excerpts of the Report, which needs to be read in its entirety to understand and appreciate the dimensions of the problem. It will enable Committee to gauge the distress caused to the tribal population of Telengana by the settlers. Worse, if possible, are the inaction, abetment, and collusion of successive governments of Andhra Pradesh in violating the tribal constitutional land and human rights. The message conveyed is that of the sheer inability and unwillingness of successive State governments to maintain law and carry out protective measures put in place by legislation or enshrined in the Constitution

With best regards



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VIOLATION OF TELENGANA TRIBAL LAND RIGHTS

BY

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Introduction

“There were two dangers to which subjection to normal laws would have specially exposed these peoples, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was the most part agricultural; and, secondly they were likely to get into the "wiles of the moneylenders". The primary aim of Government policy then was to protect them from these two dangers and preserve their tribal customs; and this was achieved by prescribing special procedures applicable to these backward areas." Simon Commission Report, quoted in *Samatha vs. State of Andhra Pradesh*, Supreme Court of India (K. Ramaswamy, S. Saghir Ahmad, G.B. Pattanaik JJ) 11.07.1997, para 16

Even under the Nizam and under British Rule in the East Godavari Agency Areas (transferred subsequently to Khammam district of Telengana), tribal land rights were subject to exploitation but measure for control were reasonably effective as Telengana was a low-population density and land extensive region and there was very little mobility of farmers to other areas.

Tribals were also given patta for the land they cultivated and this ensured protection by law. In the case of one district, Prof Christoph von Furer-Haimendorf, Advisor on Tribal Affairs, HEH the Nizam's Government of Hyderabad State, reported:

Despite all such obstacles the allocation of land to the tribals of Adilabad, which began in 1944, made good progress. By 1945 a total of 45,417 acres of land had been granted to 3,144 tribals, and by 1949 the amount of land assigned on patta to tribals had risen to 160,000 acres and the numbers of beneficiaries to 11,198. The work continued until about 85 per cent of the tribal householders of Adilabad adequate holdings of cultivable land." (Quoted in the Samata Judgment, para 20)

Nonetheless, the Nizam's government in Hyderabad State recognized the issue of tribal land rights and the protection they needed from exploitation by non-tribals. The Tribal Areas Regulation, 1356-Fasli (1948 AD) and the Hyderabad Tribal Areas Regulation, (Regulation No. III of 1359F –1951 AD) was in force to restrict transfer of land in Scheduled/Notified areas.

The British Government of India legislated the “Agency Tracts Interest and Land Transfer Act of 1917 which sought to limit interest payable by tribals and more vitally, land transfer:

The relevant section of the Act provided that:

“Notwithstanding any rule or law or enactment to the contrary any transfer of immovable property situated within the Agency tract by a member of a hill-tribe shall be absolutely null and void unless made in favor of another member of the a hill tribe.” (Emphasis added)

The language of this section is severe and extreme and left no doubt about the intention to ban any transaction between tribal and non-tribal of immovable property including land. Though there has been a loophole provided in the case of lease agreements (not deemed to be alienations under the Act) have led to dispossession, as the simple tribal people accept no distinction between the two types of transactions. The 1917 Act was the basis for providing the Constitutional special guarantees for tribal land and it was embedded in Schedule V, which identified the particular tribal areas where such transactions could not take place, and if they took place, were null and void.

Pursuant to Simon Commission Report, the Government of India Act, 1935 dealt with excluded and partially excluded areas as per Order 1936 issued under Section 91 of Government of India Act, 1935.

Thus is clear that even under the British Raj, protection of tribal land from non-tribal acquisition was important. This was continued in the Constitution adopted for the independent Republic of India.

The Constitutional Position

The President, by the Scheduled Areas (Part 'B' States) Order, 1950, which became effective from December 7, 1950, exercised the power declaring certain specified areas as Scheduled Areas in Part 'B' States including the State of Hyderabad (Adilabad, Karimnagar, Nizamabad, Warangal, Khammam, Mehboob Nagar Districts).

Chapter VI, Part X of the Constitution deals with "Scheduled Tribes and Tribal Areas". Article 244 provided that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam, Meghalaya, Tripura and Mizoram.

The Fifth Schedule makes the provisions as to the administration and control of Scheduled Area and Scheduled Tribes. It enjoins that the Governor of each State, having Scheduled Areas therein, shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said area.

Special power has been conferred to prohibit or to restrict the transfer of land by or among members of the Scheduled Tribes in such area and to regulate the allotment of land to members of the Scheduled Tribes in such area and to regulate money lending to the tribals in the Scheduled Area.

Andhra Pradesh and Telengana

The main statute governing tribal land and provision of safeguards in Schedule V Areas is: **Andhra Pradesh Scheduled Areas Land Transfer Regulation (LTR), 1959 (Regulation No: 1 of 1959)** as amended in 1970, 1971 and 1978 and the Rules framed under this Regulation in 1969

In Telangana area of the State of Andhra Pradesh, prior to the Regulation and pursuant to Part B State Regulation in Fifth Schedule, the AP Tribal Area Regulation, III of 1359 F promulgated by the Nizam, as Raj Pramukh, of Hyderabad was in effect.

The Regulation came into force on March 4, 1959 in Andhra Pradesh area and in Telangana area with effect from December 1, 1963. Prior to this, the law in Telangana area was in operation prohibiting any transfer of agricultural lands without prior permission. The non-tribals in the Schedule V Area were presumed to have acquired title from tribals unless they are able to prove to the contrary that their possession of properties in the Agency tracts was lawfully acquired.

Situation on the Ground

However, with Independence, merger and economic impulses, there was a considerable influx of non-tribals from high-density populated areas into low-density populated regions, especially the tribal areas. Since most of the tribal areas were in the Godavari river valley and were very fertile, the influx from the Coastal Andhra areas proceeded upwards along the river in the Telengana districts of Khammam, Warangal and Karimnagar. The Coastal Andhra settlers were attracted by the black cotton soils with potential to grow cotton, chilli, tobacco and other cash crops in the cultivation of which they had considerable experience and for which there was a ready commercial market in the Coastal Andhra

The influx became widespread and, finally, with the intervention of the Supreme Court in the 1995 Samata judgment, the situation needed assessment. This three-bench Samata judgment cleared all legal controversy regarding the protection of tribal land and removed any ambiguity that governments had exploited earlier.

The Government of Andhra Pradesh (GoAP), commissioned J.M.Girgliani IAS (retd.) to study the issue of Telengana Tribal Land rights. He presented the “Report of Tribal Land issues in the Telengana Area”. This report is dated August 16, 2005

It indicated widespread violations of tribal rights, which had been guaranteed by the Constitution and were supposed to be monitored by the Governor of the State (who has to

submit an Annual Report to the President on Schedule V Areas). These violations have been going on for at least 53 years and largely by “settlers” from outside the region

As can be seen the LTR was issued in 1959 just after the merger of the Telengana with Andhra State with the avowed purpose of protecting Telengana tribal rights from the expected influx of settlers from the Andhra area. However, it will be noted that the Rules, which are the operative part of any statute, were not issued till 1969 - ten years after the basic law – and mainly due to the Telengana Agitation of that year! The Government issued GO Ms 971, dated 7.10.69, which prohibited assignment of Government Land in Scheduled Areas to non-tribals. Subsequent to this, to favor non-tribals and in relaxation of GO Ms 971, three other Government Orders were issued, which in due course were struck down by the High Court as *ultra vires* the Constitution. This indicates the motives behind the issuance of the LTR, the non-issuance of operative Rules, the subsequent ameliorative GO's and violations despite these Rules and Regulations as detailed below from extracts of the Telengana Tribal Lands report

Main Points

1. The Report states (p.5) “In Govindrao Mandal, in almost all the villages, the land is under cultivation by non-tribals.75% of the population is also non-tribal. Most of the non-tribals are not originally from these villages but are ‘settlers’ from Coastal districts. It is stated that the process started before the 1950’s....The major thrust of infiltration and “detrribalisation” has been during the last ten years. This influx of non-tribals has resulted in tribals leaving these villages...the land occupied by the non-tribals are not only patta lands but also government lands”
2. It further states (p.8) that: “ Like Govindrao Mandal, in Mulug Mandal there is an influx of “settlers”, on the invitation of non-tribals who are originally not inhabitants of this Mandal. The influx is still continuing. A large extent of the land occupied by non-tribal ‘settlers’ is government land. They are not evicted; but pattas have not been granted either to them or to tribals. There are 2,000 acres of Land Ceiling surplus land of which 1,200 odd acres are under occupation of non-tribals. The restoration orders have been issued under LTR for 350 acres. The orders are not being implemented since 1980 due to ”non-tribal resistance”
3. Again (p.10), it states: “In Narsingpet Mandal, one of the Scheduled villages has 2400 acres of Government land of which 1700 acres are assigned to tribals as well as non-tribals. Lambadas and non-tribals have come to the village in large numbers. The Koyas have therefore vacated the village. ...The assignment of government land to the extent of 1,700 acres to non-tribals is in violation of the LTR”
4. It details (p. 15) the extent to which non-tribal settlers will go to protect their illegal possession of tribal land: “In Kothaguda Village there are 21,000 acres

- (worth about Rs 110 cores at the minimum value of Rs 50,000 (per acre) of Billa number lands. A Billa number is a large part of surveyed land that has been left without numbering for whatever reason mainly because at the time of the survey, it was not cultivated though cultivable. In course of time, these unnumbered surveyed lands got occupied by enterprising non-tribals, who brought them under the plough or acquired them informally from tribals, who had started cultivating them. In 1993, the land was surveyed by Assistant Director, Palvancha. In 2002, the MRO's office was blasted and the Survey records were destroyed. “
5. Also: “In Medapllai Village, the Billa no: is 536 acres. Of these 50% Maktadar's portion admeasuring 180 acres was declared as surplus land under the Land ceiling Act. Out of these 90 acres are under submersion and another 90 acres under non-tribal occupation, the Village has no tribal population. (p.15)
 6. Bhadrachalam village was notified under Schedule V. It later became a municipality. However, the Schedule V status de not alter because of this change as Schedule V specifically carefully excluded Hyderabad as well as major Panchayat towns for its ambit. On page 31 the report states: “..a staggering Rs 10,000 crores of worth of government and tribal lands are in the hands of non-tribals in the town for nothing except what may be called authorities turning the Nelson's eye for over one or two decades” (p.31)
 7. Apart for the lands of owned by tribals and government, even sacred temple lands – that too, of a great temple like Bhadrachalam, were not left alone. The Report states:

“ As mentioned above, the current market value of land in Bhadrachalam town is around Rs 4000 per sq yard. ...**the total value of the Endowments lands under encroachment and held in violation of the LTR can thus be estimated at Rs 500-1000 crores , by conservative estimates**(emphasis in original). (p.33)
 8. The Government issued GO Ms 971, dated 7.10.69, which prohibited assignment of Government Land in Scheduled Areas to non-tribals. Thereafter, it issued a three GO's: GO. Ms 41 Revenue dated 12.10.71; GO Ms. 951 dated 4.12.1974 and GO MS 129, dated 13.08.79, which amended the GO MS 971 and, according to the Report “which were intended to benefit non-tribals and protect them against the operation of the LTR.” (p.40).
 9. “The High Court struck down these GO's, but in spite of these clear judgments striking down ALL these three GO's, strangely in all the Mandals of all the three districts, Warangal, Karimnagar and Adilabad, certain lands occupied by non-tribals were identified under GO Ms 41 and excluded from any action for eviction. There is no clear explanation as to why protection was given to the non-tribals under GO Ms 41 Revenue alone, among all the other GO's struck down by the High Court....When a GO is struck down by the High Court , it becomes in

operative, null and void and it cannot be treated as valid....Whether it indicates a deliberate conspiracy or collective naivety or a convenient alibi to avoid taking action, or, to be charitable compassion for the poor occupants (presuming that they are poor which is doubtful. They are powerful), or that eviction may have the unpredictable fall out for the concerned officials, it is totally indefensible.” (p.41) (emphasis in original)

And the Report goes on to detail case after case in Adilabad, Warangal and Khammam districts, which make for painful and sad reading.

To sum up the Report stated (page 23):

“Incredibly vast areas, in some case while villages and at least one whole Mandal and 70% of the lands in another Mandal are under occupation by non-tribals. If that had been the position 50 years ago, the villages would not have found place in Schedule V, inclusion in which is based on tribal population and land under their occupation. Their protection in their habitat and protection of their occupation is the very raison d’etre of Schedule V. Inclusion of an area under Schedule V therefore is by itself sufficient evidence that most of the land is under tribal occupation. That much of it has gone into the hands of non-tribals shows that it has passed off illegally. The presumption in the LTR to this effect is also based on this premise. In this context, to assume that the lands held by the non-tribals are under 50 year old pattas or pre-1970 of pre-1959 pattas is a rationalization of the administrative system’s incapacity to cope with the magnitude of the problem, of putting every case under scrutiny under LTR.”

Conclusion

It will be obvious by just reading the above extracts, and confirmed by a reading of the whole 80-page report, that even the most sacrosanct and vulnerable population – the original primeval Telengana Tribal population of this country - with heavily protected rights guaranteed by the Constitution, monitored specially by the Governor and the President of India have not escaped the greed of the ‘settlers’. The whole process is one of internal colonization by an outside population supported actively in all cases by the inability and unwillingness of the political bureaucratic systems.

A situation that was not allowed to arise in the feudal rule of the Nizam has come about, where “settlers” have been allowed, encouraged and abetted by successive democratic Governments of Andhra Pradesh to violate the Constitutional rights of tribals and dispossessed them of their land, livelihood and driven them from their ancestral villages. To illegally acquire government land in non-Scheduled V Area is one thing, but to acquire tribal land in Scheduled V Areas and to drive out the tribal population for their own ancestral lands and village is quite another matter.

The conclusion from a close reading of this report is that there is systematic attempt by “settlers” from outside the region to dispossess tribals from their land protected by Schedule V in defiance of the Constitutional guarantees and any government action to enforce the law. Worse, successive state governments seem to be complicit in ignoring, allowing, abetting and profiting for such violations. This has been true of all government since 1956. Protection of tribals and their land is not possible under a political government dominated by “settler’s” interests

The situation is so severe that entire tribal villages and Mandals are being ‘detrribalized’. This is an effective ethnic cleansing presided over by the democratic governments of the state which are more inclined to serve the vested interest of “settlers” than protect the vulnerable tribal population – let alone other vulnerable populations

If the successive Governments of Andhra Pradesh could not protect tribal lands and rights which are guaranteed by the Constitution from “settlers”, it is little wonder that they have not been able to do the same for the rest of Telengana population, despite promises, assurances and guarantees at the time of merger and thereafter till date.

A separate Telengana State would be the main bulwark of the tribal population and would rectify and correct the injustices done to the tribal populations. Nonetheless any government would need to pay special attention to remedial action and continued protection of tribal rights as enshrined in the Constitution.