

## PROTECTIVE LEGISLATIONS – REALITIES IN THE FIELD CASE – STUDY OF ANANTAGIRI MANDAL

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The founding fathers of the Indian Constitution had, with right insight, taken into serious consideration, the plight of certain deprived and backward sections of the Indian society and brought into the constitutional framework some special legislations in order to protect their interests. In the tribal context, the protective legislations came into force with the objective of safeguarding the tribal people by the State from the onslaught of the non-tribals as, otherwise, they would be mercilessly exploited of their resources, labor and habitat. However, even a cursory examination reveals that these protective legislations have far from succeeded in protecting the interests of the tribals not only from the exploitation of non-tribals but also from the State itself.

It is this experience we have gained in our work with the tribal people of Anantagiri mandal of Vizag district scheduled area which has shown that protective legislations have been ineffective in rendering justice to the tribals. It is a process, both frustrating and disheartening for, when a non-tribal violates the law, the tribal can approach the State for justice but when the State itself violates the constitutional law, whose door can the tribal knock for justice?

Here I would like to present three case-studies, all in Anantagiri mandal, wherein the State has taken the exploter's role either by design or by willful negligence. First of these is:

**1. BORRA GROUP OF VILLAGES:** Where tribals have been victims of historical injustice. The tribals of these fourteen villages belong to the communities of Nookadora, Kondadora, Bagata, Kutia, Khond and Valmiki and have been inhabiting these hills for hundreds of years following simple agricultural practices, this was supposedly a part of the Jaypore Zamindari and after the Zamindari abolition, the A.P. government took over all the lands and tribal farmers used to pay cess to the S. Kota tahsildar till 1967. In this year, the forest department, by a notification under section 4 of 1882 forest act, notified area as Borra Reserve forest Block and demarcated the forest boundaries leaving Five enclosures of 423 acres for people, the revenue department which was collecting taxes till 1967, stopped doing so after this. On another front, mining leases were issued since 1962 to non-tribals and this started the tribals problem of being displaced by mining and having to work as wage labourers in their own lands. The tribals have been asking the government for settlement of their lands for more than two decades but there has been no response from the authorities.

In this case, the first mining lease was given after the A.P. Scheduled Area land Transfer Regulation of 1959. Two leases were given and one sub-lease was given after the A.P. Scheduled Area LTR (Amendment) Act, Section 1 of 1970 which prohibits transfer of land from non-tribal to non-tribal. The total extent of leases comes to 851 acres. The final notification of the Borra Reserve Forest Block which was issued in 1993 specifies 423 acres for community use in the five enclosures. Since the mining leases are more than 423 acres, a close scrutiny would reveal that the non-tribal leaseholders can encroach onto all of people's lands and also the reserve forest as per their lease orders.

**II. VOLASI PANCHAYAT:** Tribals of Volasi Panchayat who have been living here generation after generation possess settlement pattas or D-Form pattas to a large extent. In 1985, the Village Assistant, whose job it is to ensure that tribals lands are protected, it being a scheduled area, acquired leases for mica, limestone, calcite and quartzite. He undertook mining work in tribal patta lands illegally without any cancellation of pattas, the evidence of which still exists in the form of huge ditches in the middle of tribals lands. A scrutiny of the fair adangal of this village reveals that 46 pattadaars holding 499 acres were affected by the mining operations (shown in the remarks column by the entry 'Mining not done this year'), for obvious reasons this lease-holder transferred his lease by sale to a big business house called Indian Rayon & Industries on 05.01.93 (non-tribal to non-tribal transfer), this again is a transfer after Section 1 of A.P. Scheduled Area LTR Act of 1970 and of the 1991 Amendment by the Governor of the Mines and Minerals Regulation and Development Act of 1957, G.O.Ms.No.259, dated 14.08.91 (which issued that mining leases to those other than tribals or societies of tribals or government corporations is to be cancelled). Out of the 120 acres of the lease transferred to Indian Rayon & Industries, 25 acres is tribal patta land and 95 acres is government banjar land in occupation by tribals. Lands of 87 other tribal farmers have been acquired ostensibly for the "public purpose" of building a 90 ft wide road, 22kms long by the government on behalf of the company. When two tribals of the 87 aggrieved approached the High Court and filed a write seeking justice, the court had given a stay on their behalf and after which the agents of Indian Rayon & Industries accosted the two petitioners, kidnapped one and forcefully obtained their thumb impressions. Following this, the tribals filed a complaint in the local police station under SC/ST Atrocities Act and the tribals are still awaiting action to be taken against the offenders.

**III. KARAIGUDA:** this village forms a part of Konapuram panchayat in Anantagiri mandal and consists of about fifty households belonging to Bagata and primitive tribal group, Parangiporja. The tribals here hollow the legacy of emperor Asoka in their religion of Alekha sect of Buddhism. They are strict vegetarians and maintain rigorous discipline. They possess very fertile lands with rich sources of water for irrigation. Here, a lease was given in the eighties (G.O. not known) to a non-tribal for mining calcite. But at no time did the lease-holder undertake mining operations. In 1995 the Indian Rayon & Industries which is also involved in the second case-study, has taken over from the original lease-holder. On further enquiry, it came to light that A.P. Mineral Development Corporation is also a part of this dealing. The lease extent is, on record, 50 acres while on the other hand, the people have been told that they hold a lease of 111 acres. The village square has two Buddhist temples which are under threat of being demolished to make way for the companies road. Prospecting activity was started in March '95 in the middle of tribal's agricultural fields where there were standing crops. The tribals of Karaiguda have no awareness of this project, have never been informed that their lands would be taken away, they were threatened by the MRO with dire consequences if they did not move out and help the company, the company pitched tents in tribal patta lands, the primary school building has been occupied by them as storage room, a road has been laid by them across the R.F, tribals lands and irrigation canals. Violations of Acts, G.O's and guidelines with regard to scheduled areas and mining.

- source: List of Mining Leases for tribal area, assistant director & Geology Visaakhapatnam.

## **INCONGRUITIES AND DUALITIES IN THE IMPLEMENTATION OF PROTECTIVE LEGISLATIONS:**

The three case–studies explained above are basically to depict the field reality as it exists today–on the one hand, the existence of the constitutional safeguards, the Acts and Regulations passed from time to time by the legislature, the G.O’s passed by the executive – all apparently for protecting the interests of the tribal people. On the other hand, the duality of these policies and regulations in never coming to the rescue of the tribals is discernible in these three cases.

### **THE UNANSWERED QUESTIONS:**

- a) When tribal people have the primary rights over lands in scheduled area, why have tribal land rights not been settled but leases given to non-tribals;
- b) Why are leases granted even on lands which have been settled and pattas given to tribals and the government is helping the leaseholders to dispossess the tribals;
- c) How can non-tribals be given leases in scheduled area inspite of the existence of the A.P. LTR Act 1957 or even allowed transfer of leases from non-tribal to non-tribal in the wake of the Section 1 of 1970 LTR Act;
- d) How can government which is supposed to protect the interests of the tribals, grab their lands on behalf of a private company or its own employees;
- e) Doesn’t intimidating tribals and forcefully occupying their lands and preventing them from seeking justice amount to atrocities against them;
- f) How can lands be acquired and tribals evicted before rehabilitation plan as provided by (i) G.O.Ms. No. 64 of Tribal Welfare SW(T)Dept, dt 18.04.90 which issued consolidated instructions to safeguard tribals in the wake of displacement by Projects, Industries, Mines, Wildlife Sanctuaries, and (ii) G.O.Ms. No.408, Ind&Com, dt16.07.88 which gives strict instructions on the norms to be followed in the case of undertaking mining operations in scheduled areas.

### **DUALITIES IN THE TRIBAL SITUATION:**

- a) People have been living here for generations, yet the forest department reserves the area as R.F and prohibits the tribals from entering it, a company is even allowed to lay roads without prior approval of the central government and no cases are booked on them. Most often, it would be the tribals working as wage labourers for these companies who get booked;
- b) Even decades of dogged and frustrating perseverance by the tribals to obtain pattas yields no results. Yet it takes not more than a week to survey and acquire tribal lands on behalf of the non-tribal lease-holders;

- c) In spite of the legal sanctions of Articles 21, 335 read with 46, and 244, the tribals do not have any title deeds over their lands or any protection of their basic human rights;
- d) There have been various guidelines issued by different ministries like the Ministries of Home Affairs, Water Resources, Environment & Forests, Industry, etc, which laid emphasis on the necessity of not displacing and disturbing tribals and their habitat for any projects and the need to take precautions on safeguarding the interests of the tribals. All these guidelines exist on paper alone and are most often circumvented by the authorities concerned;
- e) A meeting was held in the chambers of the Chief Secretary on 27.10.89 referring to G.O.Ms.No.971 Revenue, dt 07.10.69 (Prohibition of Assignment of government lands to non-tribals) and decided to revoke the mining leases given to non-tribals after 07.10.69 and accordingly, details were sent to all District Collectors asking for a compliance report. Yet no action was taken so far;
- f) Although it amounts to criminal trespass, the tribals are unable to find redressal as it is the state which is sanctifying the violations. Ironically, the tribals are not even aware that it amounts to criminal trespass;
- g) It is not surprising that when a tribal applies for a mining lease, he is rejected on the grounds that it would lead to displacement, environment destruction and pollution (Reference to application of K. Pentayya, a tribal of Kotturu village and that D-form pattas are possessed by the tribals in the mine area, Memo.No.1045/M.II2)/94-1, dated 07.10.94, by the Director, Mines and Minerals Dept, whereas, when non-tribals take up mining, no such limitations are posed by the sanctioning authorities;
- h) It can also be observed that many of these G.O's are dilute and not strong enough to protect the interests of the tribals in the wake of industrialization, and secondly, even these few instructions are not implemented.

### **CONCLUSION:**

The State may justify its change in role and attitude towards protective legislations from one of protector of the tribals to that of exploiter, on the grounds of development of tribals through industrialization. Although the expressed objective of the State is the socio-economic uplift of the tribals, the history of industrialization in tribal areas in the last four to five decades reveals that the tribals have not benefited either in social, economic, health, education or cultural aspects as has been projected. The Tribal Advisory Council which was convened in September 1994 to amend the LTR Act and give sanctions to non-tribals, corroborates the above statement, as it felt that there was no gainful development or benefits to the tribals as a consequence of industrialization. Rather, they have only been losers of their lands, resources and livelihoods. However, the doggedness of the State in violating, circumventing or amending the protective legislations only reflects on its weakness in succumbing to and appeasing the more powerful and influential non-tribal and industrial lobbies.

It is this dangerous trend of sacrificing tribal needs and rights by the State which is most alarming. What is imperative is sensitivity, seriousness and sympathy in strictly implementing the protective legislations with regard to the scheduled areas either in judicial, executive or legislative sanctions.