

Land Laws, Administration and Forced Displacement in Andhra Pradesh, India

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Foreword

This study by Dr C. Ramachandraiah and Dr A. Venkateswarlu has been taken up in the context of large scale acquisition of agricultural lands for Special Economic Zones (SEZs) and other projects which has become an issue of serious contestation in recent years. The study is very timely as land administration and land rights of vulnerable groups of people have become major issues of public concern in recent years. The authors have made a sincere attempt to analyse the land laws and administration, assignment of lands, land acquisition, resettlement & rehabilitation policies etc., in Andhra Pradesh. They have examined two case studies - Kakinada SEZ and Polavaram project - to examine the issues of forced land acquisition and resistance.

At the outset, it should be noted that the state of Andhra Pradesh was bifurcated into Andhra Pradesh and Telangana states with effect from 2 June 2014. This study was taken up before bifurcation. Prior to formation of AP on 1 November 1956, Andhra and Telangana regions were under different kinds of political regimes which had an impact on land tenures and land relations. The AP Ceiling on Agricultural Holdings Act, 1961 was the first major ceiling law enacted in AP. Later, Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act 1973, was enacted after the peasant uprisings in 1960s and 1970s in India.

A lot of lands assigned to the poor were not in their possession. To address this problem, the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 was enacted which was retrospective in operation. Many of the poor are known to have sold their lands due to family exigencies and problems. The government of AP appointed a committee (also known as Land Committee) headed by a cabinet minister, Koneru Ranga Rao, in 2004 to study various aspects of land issues in the state. The Committee noted that there was a lack of effective executive machinery at field level to ensure that poor did not lose lands. It also recommended some amendments to the existing Acts to suit the present day requirements.

In AP, the Scheduled Areas are spread over nine districts and there are 35 identified groups in the STs. The AP Scheduled Areas Land Transfer Regulation (APSALTR) Act, 1959 proscribed the transfer of tribal lands to non-tribals. The authors also discussed the subsequent amendments made to this Act. There has been no systematic effort to check land transfers to non-tribals. The authors present several reasons for this situation based on the existing literature.

The Land Acquisition Act (LAA), 1894 enacted by the British has been followed in India with some modifications/amendments over the years. The Act gives prominence to the 'eminent domain' principle i.e., pre-eminence of the State. The phrase 'public purpose' was neither explained properly in the LAA, 1894 (as amended in 1984) nor

interpreted by the Government itself in the right sense. 'Public purpose' is the justified reason for acquisition of private lands without any safeguards against forced acquisition or for proper resettlement and rehabilitation.

The government of India has enacted a new law, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013). This legislation is expected to provide just and fair compensation to farmers while ensuring that no land could be acquired forcibly. The new law proposes payment of compensation that is up to four times and two times the market value of land in rural and urban areas. This law also links land acquisition and the accompanying obligations for resettlement and rehabilitation, and also social impact assessment. Special safeguards have been put in place for tribal communities and other disadvantaged groups. It is surprising to see several state governments are reluctant to follow the procedures in the new Act for land acquisition. Pressure seems to be building up on the new government at the Centre to amend the Act.

The authors dwelled deep into the way forcible land acquisition was resorted to for the Special Economic Zone at Kakinada (KSEZ) and the massive resistance from public and civil society organisations. The media played an important role in spreading awareness about the movement. Support from well-known social activists in India like Medha Patkar, Sandeep Pandey and K. Balagopal, many intellectuals, and advocates gave a wider visibility to the movement in the country. Some of them also visited the struggle areas at different times.

The Polavaram project has been a contentious one on several grounds. The authors argue, based on field research, that there was an element of pressure and threat by the officials for land acquisition. The officials and middlemen have reduced the Gram Sabhas to rituals due to the ignorance of the villagers. Civil society organizations, advocacy groups and public spirited individuals have played a very active role in raising awareness levels among the affected people regarding their own land rights.

Added to this, after bifurcation of AP, the Andhra Pradesh Reorganisation Act, 2014 was amended and certain revenue mandals and villages that are likely to lose lands and face submergence in Khammam district of Telangana have been transferred to the state of AP to facilitate construction of the Polavaram dam. With this transfer, the submergence areas of this project will now be under AP state which will have the responsibility of providing resettlement and rehabilitation measures.

I would like to appreciate the authors for this timely study and I am sure the present Monograph would make a valuable contribution to the literature on land laws, land administration, and issues of land acquisition.

S. Galab
Director, CESS

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Acronyms

APIIC	-	Andhra Pradesh Industrial Infrastructure Corporation
APSalTR	-	AP Scheduled Areas Land Transfer Regulation Act, 1959
BC	-	Backward Class
BPL	-	Below Poverty Level
CPRs	-	Common Property Resources
GO	-	Government Order
GoAP	-	Government of Andhra Pradesh
GoI	-	Government of India
HRF	-	Human Rights Forum
IL&FS	-	Infrastructure Finance & Leasing Services Limited
KSEZ	-	Kakinada Special Economic Zone
KSPL	-	Kakinada Sea Ports Ltd
LAA	-	Land Acquisition Act, 1894
MoEF	-	Ministry of Environment and Forests
MoU	-	Memorandum of Understanding
NAPM	-	National Alliance of People's Movements
NGOs	-	Non-Governmental Organizations
ONGC	-	Oil and Natural Gas Commission
PESA	-	Panchayats (Extension to the Scheduled Areas) Act, 1996
PAFs	-	Project Affected Families
PCPIR	-	Petroleum, Chemical and Petrochemical Investment Region
PDF	-	Project Displaced Families
PIL	-	Public Interest Litigation
R&R Policies	-	Resettlement and Rehabilitation Policies
SC	-	Scheduled Caste
SEZs	-	Special Economic Zones
SHRC	-	State Human Rights Commission
SPV	-	Special Purpose Vehicle
ST	-	Scheduled Tribe

Preface

The large scale acquisition of agricultural lands in India in recent years for Special Economic Zones (SEZs), thermal power plants, irrigation projects etc., has become an issue of serious political and social contestation. One finds an element of large scale corporate land grab in those projects where the private sector is involved in a big way. In the south Indian state of (undivided) Andhra Pradesh (AP), land acquisition for irrigation projects (known as Jalayagnam) under public sector; and for SEZs, industrial and power projects in private sector have become major issues of contention. Majority of the land losers are small and medium farmers, and tribals whose livelihoods are adversely affected. There has been widespread resistance against forced acquisition of agricultural lands to the extent that the rural people were prepared to face police bullets rather than being cowed down by the might of the State.

The present study was taken up in this context with the objective of examining the land laws and administration in AP and see how the existing laws are implemented, forced acquisition of lands is taking place and how the State is responding to protests by the affected people. Two case studies have been taken up for deeper analysis: Kakinada SEZ and Polavaram irrigation project. This study was conducted during 2010-11. After this, the Parliament has enacted a new law for land acquisition and rehabilitation in 2013, and the state of AP was bifurcated w.e.f. 2 June 2014 to form the state of Telangana. Later, the revenue mandals and villages that are going to be affected by Polavaram project have been transferred from Telangana to the residual state of Andhra Pradesh.

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We have received overwhelming support from many activists and academics in our field visits. Particular mention may be made of Mr. K. Rajendra Kumar and Mr. Rathna Raju of Kadali Network working against the Kakinada SEZ, and Dr. V. Venkatewar Rao, a faculty member in Economics, Government Women's College, Khammam, and Mr. Ankita Ravi, a social activist, for guiding us in the Polavaram project area. Our thanks are due to them. We hope that publication of this research work as a Monograph will facilitate its wider reach to the concerned persons/agencies in the relevant areas.

Dr. C. Ramachandraiah
Dr. A. Venkateswarlu

Chapter-I

Introduction

The large scale acquisition of agricultural lands for Special Economic Zones (SEZs) in India has become an issue of serious political and social contestation in recent years. In the south Indian state of Andhra Pradesh (AP)¹, land acquisition for irrigation projects (known as Jalayagnam) under the public sector; and SEZs and industrial and power projects in the private sector along the east coast (with the Bay of Bengal) have become major issues of contention. Land administration and the rights of the vulnerable groups of people have become important issues of public policy. The majority of land losers in such projects are the small and medium farmers, and tribals. The intended benefits of the SEZs and other projects have also been seriously questioned from the basic decision-making process, the background of the promoters and the unusually large stretches of land acquired for them. Beginning with the famous struggles of Nandigram and Singur in West Bengal (in 2009) to that of Sompeta (July 2010) and Kakrapalli (February 2011) in Srikakulam district of AP, there has been widespread resistance against the forced acquisition of agricultural lands. Several people have died in police firing and many more have been injured in these struggles. The upsurge of public activism against SEZs in Goa in 2007 eventually forced that state government to scrap all 15 SEZs including the three notified ones. In February 2011 the Maharashtra government had to halt the land acquisition process to the Maha Mumbai SEZ promoted by the Reliance group of Ambanis.

The Government of Andhra Pradesh (GoAP), after facing stiff resistance from various opposition parties and people's organizations, had to scrap Government Order (GO) No. 34 for the proposed Coastal Corridor to be set up all along the nine districts of the coast covering an area of 1575 sq.km. But GO No. 373 meant for setting up of the

¹ The state of Andhra Pradesh has been divided into two states - Telangana and Andhra Pradesh - with effect from 2 June 2014. The erstwhile Telangana region in AP is a new state, while the Rayalaseema and Coastal Andhra regions constitute the residual state of Andhra Pradesh. In this Monograph, any reference to the state of Andhra Pradesh denotes the erstwhile composite state prior to the division.

Petroleum, Chemical and Petrochemical Investment Region (PCPIR) as part of the Coastal Corridor has not been repealed. GO 373 was issued on 26 May 2008 for the development of PCPIR between Visakhapatnam and Kakinada cities. The PCPIR is an initiative of the Government of India (GoI) aimed at encouraging the setting up of integrated petroleum, chemicals and petrochemical hubs in the country. Land acquisition proceedings have been started to take over about 60704 hectares of land for the proposed PCPIR which will dispossess and displace several hundred thousand people in 110 villages in Visakhapatnam and East Godavari districts in the Coastal Andhra region. The Andhra Pradesh Industrial Infrastructure Corporation (APIIC) is the designated nodal agency for developing the PCPIR. The APIIC claims that it is in possession of 73 per cent of the land required for the PCPIR which clearly indicates that more than the required amount of land was acquired in the past in the name of public purpose, which is now proposed to be diverted to private companies.

Population Displacement and New Economic Policies

A conservative estimate puts the total number of persons displaced by various development projects (dams, mines, industry, sanctuaries and others) in India during the period 1951-90 at about 21.30 million, of whom 8.54 million (40 percent) were tribal people. Resettlement was done for only 25.0 percent of the displaced persons and tribals. Dams alone accounted for nearly 80 percent of the total displaced people. The 75 percent of displaced persons who were not resettled were forced to become migrant labourers and urban slum dwellers and subjected to traumatic psychological and socio-cultural consequences (Muthyam Reddy, 2006). Displacement of people for development related projects for dams, mines, urban and transportation projects has been the major issue of concern in the world, as the land became more scarce. As far back as 1994, the World Bank reported that dams alone were displacing 4.0 million people annually with 300 dams that were being constructed every year (World Bank Environment Department, 1996, at <http://www.dams.org>).

A lot of land is being acquired by the governments (state and central) for the SEZs without preparing proper rehabilitation and resettlement (R&R) schemes for the affected people. The SEZ Act was passed in India in May 2005. The Act and Rules were notified in February 2006. No proper deliberation and debate took place in the Parliament on such an important issue that was going to affect the future of agriculture, agriculture-dependent population, the whole rural sector, land use, employment generation, urbanization process and other related issues. The attraction of foreign direct investment and export promotion are the two main objectives of the SEZs. The state and central governments would extend a series of concessions, subsidies and incentives under the SEZ Act. The

land acquisition is made by the governments (state and central) by exercising the "public purpose" provisions of the Land Acquisition Act, 1894 as amended from time to time. As the large scale acquisition of lands for SEZs became controversial, protest movements have also increased. The contention was that promoters would get land cheap and make their fortune out of real estate development and indiscriminate speculation. The minimum required processing area is 35 per cent of the land allocated and the rest could be used for residential and recreational facilities (Aggarwal, 2006; Sawant, 2007).

The government of India and different state governments formulated Information Technology (IT) policies through which land and a series of financial incentives were offered to the IT companies. From the IT Policies of the 1990s to the SEZ Act of 2005 the allocation of land to private companies has expanded in scope and extent; from IT and related companies to a wide variety of activities, and from as small as ten hectares to thousands of hectares. Thus, the scope has been enlarged enormously for the big Indian corporate companies and multinational corporations for demanding huge stretches of land and concessions, for which different state governments have been competing in the last few years. In the name of promoting industrialization and attracting investment (domestic and foreign) the state governments seemed to be in a hurry to declare as many SEZs as possible without regard to achieving their objectives. As Patnaik observes, "what we have in India today is not capitalists competing against one another for state government projects, but state governments competing against one another for attracting capitalists" (Patnaik, 2007).

In this context, David Harvey's two concepts appear to be relevant regarding the operation of SEZs. viz., 'accumulation by dispossession' and 'imperialism of the capitalist sort'. Harvey's argument goes like this: "What accumulation by dispossession does is to release a set of assets (including labour power) at very low (and in some instances zero) cost. Overaccumulated capital can seize hold of such assets and immediately turn them to profitable use." Further, he defines 'imperialism of the capitalist sort' as a 'contradictory fusion' of two components: 'territorial logic of power' - a logic, that is, in which command over a territory and its human and natural resources constitutes the basis of the pursuit of power; and 'capitalist logic of power' - a logic, that is, in which command over economic capital constitutes the basis of the pursuit of power (Arrighi, 2005).

Land Acquisition for Irrigation Projects and SEZs in Andhra Pradesh

In Andhra Pradesh also the issue of land acquisition has become important because of acquisition of agricultural land for the purposes of (i) Irrigation Projects or Jalayagnam, and (ii) Special Economic Zones (SEZs).

Jalayagnam - Irrigation Projects

In AP a total ayacut of 6.5 million acres was developed in the past 50 years. The Jalayagnam (a ceremony for water conservation) programme was launched by the government of AP (GoAP) in 2004 by initiating construction of 32 major and 17 medium irrigation projects at a cost of Rs. 650,000 million. It was intended to provide irrigation facilities to an extent of 7.1 million acres besides stabilization of an existing ayacut of 2.13 million acres, provide drinking water to 10.2 million people and generate power to the tune of 2700 MW (mega watts). It also included lift irrigation schemes on major rivers, particularly the Godavari river. The GoAP had acquired 1.14 lakh acres² (46135 ha) of private lands by October 2006 for the on-going irrigation projects, and needed to acquire 43 lakh acres more. The GoAP also brought out a policy on Resettlement and Rehabilitation (R & R) for Project Affected Families (PAFs) on 8 April 2005. Taking up of irrigation projects on such a large scale became controversial in the state as the limited allocations were spread across many projects and the intended benefits were not visible in the immediate future. And the progress of the Jalayagnam has slowed down drastically after the death of the chief minister who initiated it³.

SEZs

The SEZ Act was passed by the Indian Parliament in May 2005, and it received Presidential assent in June 2005. The Act and the Rules were notified in February 2006. As per the Act, an SEZ is "a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs." The SEZs comprise both processing and non-processing areas.

Of the total land of 25843 hectares acquired for 195 SEZs, more than half is intended for only 12 zones designated as "multi-product" while the majority are in IT sector (124) which account for only 3500 hectares. Of the total land acquired, the shares of three states - Andhra Pradesh, Gujarat and Maharashtra - account for about 77 percent. The share of Gujarat is the highest at 32.4 percent (8361 hectares for 16 SEZs) followed by 28.5 percent for AP, (7356 hectares for 53 SEZs) and 15.8 percent for Maharashtra (4093 hectares for 24 SEZs) (Sivaramakrishnan, 2009). Gujarat has more SEZs in the "multi-product" category - hence its high share of land with less number of SEZs.

² One lakh is equal to one hundred thousand.

³ The Government is known to have appointed three Special Collectors and 50 Deputy Collectors to speed up the process of land acquisition in the state (www.jalayagnam.org/index1.php?action=news).

Table 1.1: Number of SEZs in Different States in India

S.No.	State	Number	
		Formally Approved	Notified
1	Andhra Pradesh	109	74
2	Chandigarh	2	2
3	Chhattisgarh	2	-
4	Dadra & Nagar Haveli		
5	Delhi	3	-
6	Goa	7	3
7	Gujarat	45	29
8	Haryana	45	34
9	Jharkhand	1	1
10	Karnataka	57	36
11	Kerala	28	17
12	Madhya Pradesh	14	6
13	Maharashtra	104	63
14	Nagaland	2	1
15	Orissa	11	6
16	Pondicherry	1	-
17	Punjab	8	2
18	Rajasthan	10	8
19	Tamil Nadu	70	57
20	Uttar Pradesh	33	20
21	Uttarakhand	3	2
22	West Bengal	22	11
Total		581	373

Source: www.sezindia.nic.in

Note: Status as on 25 March 2011.

Andhra Pradesh has received formal approval for 109 SEZs out of a total of 581 SEZs approved in India as on March 25, 2010, making it the state with the second highest number of SEZs (Table 1). A.P is preceded by Maharashtra with 104 and is followed by Tamil Nadu with approvals for 70. Of 109 formally approved SEZs in AP, 74 were notified which meant that they were legal entities and could commence operations. Thus, it was both necessary and urgent for the AP government to acquire lands for private developers.

In AP, more than one lakh acres (40500 hectares) of land is known to have been allocated to various companies and SEZs in the last few years⁴. The land allocations vary from about 25 hectares to vast stretches of land which gave rise to suspicions of corporate land-grabbing on a scale never seen before (Table 2). This has further fuelled suspicions

⁴ This does not include about 5500 acres (2226 ha) of the land given to the Shamshabad international airport.

of political/commercial motivations and conflict of interest between the powers that be and the promoters of some of the companies (Box: 1.1).

Box: 1.1

Lands Taken Over but no Industry Comes up

"In the recent past a dangerous phenomenon has developed whereunder vast extents of lands over which agriculture is being carried out are suddenly earmarked for other purposes even without examining the impact of stoppage of agriculture on the food security. Instances are not lacking where thousands of acres were acquired for industrial parks or special economic zones and the first casualty was agriculture, hardly any industry worth its name has come into existence" - Andhra Pradesh High Court (2009).

Justice L. Narasimha Reddy of the High Court expressed anguish at the situation wherein large extents of agricultural lands were being hurriedly diverted for non-agricultural purposes in the name of industries at Toopran in Medak. The Scheduled Caste families were given lands in Muppireddypally and Kallakal villages decades ago which were now resumed in the name of APIIC Park and a car factory.

Land Acquisition and Land Issues in AP

The government has been acquiring private lands by invoking the Land Acquisition Act, 1894 as amended from time to time. As the land administration in AP could not complete the process of record of rights (RoR) in full by updating the information on owners and tenants, there is a problem in deciding as to who should get the compensation and resettlement & rehabilitation package benefits when the affected farmers are displaced from the areas of irrigation projects and SEZs. As per the existing rules, the lands of the tribal people cannot be purchased by non-tribals. But in Bhadrachalam division (a predominantly tribal area) in Khammam district in AP, the non-tribals have taken over the lands of tribals in a big way. The socially and economically backward people were given government lands for cultivation a few decades back. Such lands are known as Assignment Lands which can be cultivated by the assignees but they cannot sell those lands. In AP about 1.71 million hectares of government lands were assigned to 2.9 million landless households during 1969-2002. It has become a matter of serious concern that these assigned lands are being resumed back from the poor by the government in the name of public purpose for the SEZs, irrigation and industrial projects etc.

Table 1.2: Land Allocations to Certain big Projects in AP

Sl. No.	Company/SEZ	Land Allocated	
		In Acres	In Hectares
1	Vanpic	20000	8094
2	Lepakshi Knowledge Park	12240	4953
3	Krishnapatnam port	6150	2489
4	Sri City SEZ	7500	3035
5	Brahmani Steels	14135	5720
6	Kakinada SEZ	7956	3220
7	Mega Indu Park	5190	2100
8	Naval base	4637	1877
9	Achutapuram SEZ	9208	3726
10	Reliance Power	2532	1025
11	Genco Power	1250	506
12	M-C-K-KPCL Plants	3015	1220
13	Unrock Alumina	2351	951
14	Fab City	1200	486
15	Hindupur Industrial Park	1075	435
Total		98439	39837

Note : Only those companies/SEZs that were allocated more than 1000 acres (405 ha)

Source : Eenadu Telugu daily, 19 April 2009, Hyderabad.

New Law for Land Acquisition

The government of India enacted a law in 2013 for land acquisition and rehabilitation after a prolonged process of deliberations. It is known as The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013). It received the assent of the President of India on 26 September 2013. Some salient features of the new Act are presented in Chapter 5.

APIIC and its Land Bank

The Andhra Pradesh Industrial Infrastructure Corporation (APIIC) was formed in September 1993 with the objective of providing infrastructure in identified areas for industrial development. It is a nodal agency for coordinating activities with different departments in the government in promoting the required infrastructure. Over the years it has developed industrial estates in and around Hyderabad and also in other parts of the state. The APIIC's role has become more prominent due to land allocations from mid-1990s onwards especially after 2004 when the Congress came to power in AP. While there was a land bank of 48579 acres (19659 ha) during 1974-2004 with APIIC, the same has increased by two-and-half times to 121,655 acres (49233 ha) within five years during 2004-09. About 60 percent of these lands are government lands. The APIIC

has thus transformed itself into a land broker⁵. Another assessment puts APIIC's assets as 300 industrial parks and 80,000 acres of land bank, and an increase in its turnover from Rs. 62 crore in 2003-04 to Rs. 1,080 crore in 2006-07⁶.

Land Committee in AP

The GoAP constituted a Land Committee in 2004 headed by a minister, Koneru Ranga Rao (hence also known as Koneru Ranga Rao Committee) which submitted its report in 2006. This Committee brought out many glaring instances of non-implementation of several laws relating to land issues including the AP (Ceiling on Agricultural Holdings) Act, 1961. Several findings and recommendations of this Committee have been discussed in Chapter 4. A couple of observations/findings of the Committee that are relevant in the present context are given below:

- About 42 lakh acres of government lands have been assigned to the landless poor since the 1960s. But a significant percentage of these lands are not in their possession due to lack of an effective executive machinery at field level to ensure that the poor do not lose their land.
- Illegal assignment of government lands to non-tribals due to wrong interpretation by the local authorities. Lakhs of acres are in such illegal possession of non-tribals. In Bhadrachalam revenue division of Khammam district alone it is estimated that more than 25,000 acres of government lands are in the possession of non-tribals.

Research Questions

Some of the research questions that we have tried to address in course of the study are:

- How the lands that should have been in the possession of tribals have been going into the hands of non-tribals when the existing laws prohibit the same? When government takes away tribals' lands for irrigation projects, how is it rehabilitating them? This assumes significance because the tribals live in forest areas and depend on forest produce for their livelihood.
- How is the government forcibly taking away the lands assigned to the poor (Assignment lands) several decades back? When the existing laws prohibit transfer/sale of such lands by the assignees, how is it that a significant proportion of such lands have passed into the hands of others?
- To what extent is the judiciary coming to the help of the affected people regarding the issues of forcible takeover of lands vis-a-vis the government?

⁵ Usha Seethalakshmi, "Bhoo Dalareegaa APIIC", *Andhrajaiothy*, Telugu Daily, 7 September 2010.

⁶ "APIIC targets \$ 1 bn. turnover this year", *The Hindu*, 27 September 2007, Hyderabad.

The Present Study

Land acquisition for SEZs gave rise to wide spread protests and violent struggles. Such struggles took place in respect of Nandigram and Singur in the state of West Bengal; and in Kalingapatnam of Orissa state. Very recently, in Chattisgarh state, when tribals were being evacuated, Naxalites began to fight violently against this dispossession of tribal lands, as the government intended to give the land on lease to some MNCs. Apart from a protracted struggle against Kakinada SEZ, farmers and fishermen launched a fierce struggle against thermal plants in the private sector on fertile lands and wetlands that are the major sources of their livelihood leading to deaths and injuries to many in Sompeta (July 2009) and Kakrapalle (February 2011) in Srikakulam district in A.P.

In the light of the on-going contestations and controversies, the present study will examine whether the AP Government is following the land acquisition policies as provided for in the Land Acquisition Act 1894, AP Scheduled Areas Land Transfer Regulation (APSALTR) Act, 1959, "Panchayats (Extension to the Scheduled Areas) Act 1996" (Act 40 of 1996) known as (PESA, 1996) and relevant compensation policies in a transparent way. However, the present study has been taken up with land administration as the central theme in the state of Andhra Pradesh. For a deeper understanding more focus has been given to two specific case studies: 1. Bharachalam division in Khammam district where tribal lands have passed into the hands of non-tribals in violation of the existing laws, and the government has been taking away tribal lands for the Polavaram project (a large irrigation project); and 2. Kakinada SEZ in East Godavari district where thousands of acres of lands have been acquired, and the farmers have been fighting a protracted struggle and many of them continue to keep the lands in their possession though the lands have been acquired.

Objectives

The overall objective of the study is to assess and understand the issues of land laws related to the Scheduled and Tribal Areas, land assignment laws, and land acquisition for SEZs. The specific objectives of the study are:

- (i) To critically review the land reform laws in Andhra Pradesh;
- (ii) To critically examine land laws related to Scheduled and Tribal Areas;
- (iii) To bring out the various aspects of land assignment laws and Government Orders; and
- (iv) To make an assessment of the process of land acquisition and the resistance struggle in Kakinada SEZ, and peoples' perceptions on land acquisition and on the R&R programmes in the Polavaram project area.

Methodology

Most of the study is based on information from secondary sources. We have tried to examine the evolution of the important laws on land and their administration at several stages. We examine what is happening to the persons/households being displaced in the areas of irrigation projects and SEZs. Enquiries are made as to how the issues of displaced families and persons are being rehabilitated and resettled as per the government's guidelines. We also try to capture how far the government machinery related to land administration is working sympathetically with the persons/households being displaced; and how they are being paid compensation according to the framed guidelines.

When large scale displacement occurs, people's livelihoods are badly affected due to dislocation of assets (natural, physical, human, financial and social capitals). Empowerment and capacity building at both the individual level and community level are required to establish sustainable livelihoods. The study will examine whether the R&R policy package, as provided for in G.O.Ms.No.68 of Irrigation and CAD (Projects Wing) Department, 08.04.2005, is strictly adhered to by the GoAP, as the latter has claimed it as the best resettlement and rehabilitation package in the country.

We have travelled extensively in certain affected villages for the two case studies (four villages in Polavaram project - Chatti in Chintur mandal, Koida in Velerupadu mandal, Tekula Boru in Kunavaram mandal, Vinjaram in Kukkunoor mandal; and six villages in Kakinada SEZ- Moolapet, Ramanayyapet and Srirampuram in U.Kothapalli mandal; and Perumallapuram, Kadaripet and Vakadaripet in Thondangi mandal). We have talked to the local people about their perceptions on land acquisition, displacement, resistance struggles etc. We also had conversations with some of the leaders who have spearheaded the struggle (especially in Kakinada). We have also tried to examine the role of the government vis-a-vis the local people in land acquisition.

Structure of the Monograph

This report is organised into eight chapters. A brief review of land reform laws is presented in the second chapter. The third chapter deals with the laws relating to the Scheduled and Tribal Areas. The laws relating to the assignment of lands to the poor and the Land Committee's recommendations in this regard are discussed in chapter four. Chapter five deals with the issues of land acquisition and resettlement & rehabilitation policies for the displaced people in AP. The case studies of Kakinada SEZ and Polavaram project regarding resistance and land administration are discussed in chapters six and seven respectively. A summary of the report and conclusions are presented in the last chapter.

Chapter-II

Land Reform Laws in Andhra Pradesh - A Brief Review

The state of Andhra Pradesh was formed on 1 November 1956 by merging Andhra state (formed in 1953, on separation from Madras Presidency) and Telangana region of the erstwhile Hyderabad state which was under Nizam's rule for several centuries. Being under different set of paradigms before 1956, the two regions experienced different land tenures in agrarian and land relations. The Andhra state, which was under the British rule, had somewhat better agrarian relations and conditions compared to those in the Telangana region. The land reform measures were, therefore, separate for these two regions for abolition of intermediaries and tenancy legislations. The main aspects of the land reforms were: (i) Abolition of Intermediaries, (ii) Tenancy Reform, and (iii) Ceiling on Landholdings. While the first two aspects had separate laws and procedures, under the third there was common legislation for the entire state.

Abolition of Intermediaries

In the Telangana region, the peasants and rural masses were subjected to feudal oppression by illegal exactions and forced labour (Khusro, 1958). An armed struggle was started by the rural peasants under the leadership of the then undivided Communist Party of India (CPI) against the Nizam's tyrannical rule. The struggle was gradually brought to an end after the merger of Hyderabad state into the Indian Union in September 1948. In the Andhra region also there were struggles against the zamindari system, but not on such a serious scale. Thus, in both the regions the abolition of intermediaries like zamindars, jagirdars and inamdars (institutions and persons) became imminent, just as in other parts of India after Independence.

In the Andhra region, the abolition of intermediaries was implemented first through the enactment of the Madras Estates Abolition and Conversion into Ryotwari Act, 1948. By 1956, in Andhra region, out of the total area of 40.7 million acres, 32.0 percent of the area was under zamindari; but the abolition laws were passed to cover only 24.0 percent and implemented in 22.0 percent of the area (Kotovskiy, 1964: 71). Further, the

Andhra Inams Abolition and Conversion into Ryotwari Act, 1956 was enacted by which Inam lands were converted into Ryotwari and were fully assessed (Government of India, 1974: 21). In Telangana the Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli (1948) was enacted by which all Jagirs were taken over by the government and they were integrated with Diwani land by 1950. Again, the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 abolished all Inams except those of religious institutions. Thus, gradually all types of privileges conferred on Zamindars, Jagirdars and Inamdars were abolished and all these lands were brought under Ryotwari tenure (*Ibid.* 22). The entire area under the zamindari system in Telangana was brought into Ryotwari (Kotovsky, 1964: 71). In this context, the Agricultural Census Report 1970-71 mentions that "the system of landholdings and land legislation was different in Andhra and Telangana areas of the state. However, the legislation for abolishing the intermediaries in both the regions has brought about uniformity and has created a class of peasant proprietors who hold land directly from the government" (*Ibid.* 21).

Tenancy Reforms

The tenancy reforms were also carried on separately in the two regions in the state. The tenancy laws have been separately discussed for the two regions, viz., Andhra region (Coastal Andhra and Rayalaseema) and Telangana.

Telangana Region

After the abolition of intermediaries the Hyderabad Tenancy and Agricultural Lands Act, 1950 was enacted to protect the rights of tenants. It was intended to (a) regulate the period of tenure, (b) fix reasonable rent, (c) give the tenant the right to compensation in case of eviction, and (d) restrict the right of the landlord to evict the tenant (Parthasarathy and Prasada Rao, 1969: 67). The Act provided for the creation of protected tenants. In notified areas, the tenants were declared as owners, if they had owned less than a family holding⁶ and the land owner had owned more than two family holdings. The protected tenants to be conferred ownership rights had to pay reasonable price for that land. Altogether, by the mid-1970s, in Telangana, 33,000 protected tenants became owners of 82,000 hectares of land (Appu, 1975). In non-notified areas, the purpose was to provide the tenants with heritable rights depending on the extent of land owned by the tenants and landowners.

⁶The Second Five Year Plan (1956-61) suggested a reasonable ceiling should be fixed at three times the family holdings, where a family holding was deemed to be capable of yielding an annual income of Rs.1200. Thus the suggested ceiling was an income of Rs. 3600/- a year, at the then prevailing prices (GoI, 1976: 72).

However, voluntary surrenders are another name for forceful eviction of tenants by the landowners. A large number of evictions seems to have taken place in the very first year of the working of tenancy legislation. The implementation of tenancy legislation is a function of the degree of consciousness among the peasantry. The implementation was much better in the more conscious regions within the erstwhile Hyderabad state, like in Telangana than in Karnataka or Marathwada areas⁸ (Khusro, 1958: 169).

Andhra region

Compared to Telangana region, the resentment seems to have been less among the peasantry in the Andhra region. The question of tenants was taken up only in 1956 by the government and the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 was enacted. As per Parthasarathy and Prasada Rao (1969:130), this Act provided for (a) fixation of maximum rent, (b) minimum period of lease, (c) procedure for determination of a fair rent in case of disputes and for remission of rent, (d) circumstances under which the landlords could terminate the tenancy, and (e) the machinery for settlement. But this Act failed to achieve any of the objectives. The Act gave the landlords the right to resume the land after the expiry of the lease period. As a result, the tenants were at a disadvantage in bargaining with the landlords and evictions occurred on a large scale. Termination of tenancy by the landlord was easy as this Act had several loopholes. The government brought out an amendment to the Act in the form of Andhra Pradesh (Andhra Area) Tenancy (Amendment) Act 1970. It provided for (i) fixing a fair rent, (ii) automatic renewal of lease, and (iii) pre-emptive rights. Automatic renewal of lease was provided, but the landowner was allowed to take the land back for personal cultivation, if he had owned less than the ceiling limit under the Andhra Pradesh Ceiling on Agricultural Holdings Act 1961. Further, the amendment provided for pre-emptive rights, without seeking to regulate the price of land.

General to both Regions

In the tenancy laws of both the regions, we find (i) the definition of personal cultivation; (ii) provision regarding the surrender of tenancy rights; (iii) provision for the landlord's right to resume the land; and (iv) the conferment of ownership rights on tenants. In both the regions, the definition of personal cultivation seemed to be weak as it was not confined to own labour but provided for hired labour also. The scope for voluntary surrender of tenancy resulted in the forceful illegal eviction of the tenant by the owner.

⁸The erstwhile Hyderabad state had Kannada speaking and Marathi speaking regions that later were transferred to Karnataka and Maharashtra respectively. Telangana was the Telugu speaking region.

However, in the other two provisions, Telangna Tenancy Act seemed to favour the rights of tenants over the land owner (Appu, 1975).

Ceiling on Land Holdings

As far as tenancy reforms were concerned, they were meant for the regulation of rent. But land, being a scarce asset, needed rationing. It was a necessary step in a labour-surplus and land-scarce countries, at least, as a short-run goal without which the tendency towards maldistribution would obviously be high (Khusro, 1973). Thus, the imposition of a ceiling on landholdings was imminent in India. It was also necessitated from the points of view of efficiency, equity, nationalism and democracy (Joshi, 1982). Though the implementation of ceiling laws was not uniform throughout the country, the performance of Andhra Pradesh was one of the lowest.

In Andhra Pradesh, the ceiling on land holdings was first imposed in Khammam district of Telangana region, on an experimental basis in 1955 through an amendment to the Hyderabad Tenancy and Agricultural Lands Act 1950 prior to the formation of AP state. That attempt was nullified by a legal stay order brought by the affected landlords. Later a ceiling law was enacted as the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961. It was a weak law. Though 6 lakh acres of surplus land was expected to be identified in Telangana alone, the surplus land found in the entire state by 1968 was only 55,715 acres (George, 1968). Failure in the implementation of this Act may be attributed, among others, to the following weaknesses and loopholes in the Act (George, 1968; Government of India, 1976: 73):

1. The ceiling imposed was considerably high, varying between 27 and 324 acres. In fact, the ceiling was arrived at on the basis of 4 ½ times the family holding, which was defined as a holding yielding an income of Rs.1200/-. In most states, the ceiling was only 3 times the family holding.
2. The unit of application was an individual, but not the family.
3. In the name of Stridhana, separate holdings were permissible for wife and/ or daughter, which led to the concealment of a lot of land.
4. Added to the high ceiling, the grazing land was permitted to the extent of one third of the ceiling area.
5. Many exemptions were allowed: (i) State or central government land, (ii) co-operative farming, (iii) charitable or religious institutions, (iv) plantations of tea, coffee and

rubber, (v) orchard-raising lands, (vi) specialised lands of cattle breeding etc., (vii) sugarcane farming, (viii) efficiently managed farms and (ix) lands awarded for gallantry.

6. No scrutiny was done of partitions, alienations and benami transfers.

As a result, many manipulations were made to escape from the purview of the Act. Further, in Telangana, though there were restrictions on alienation of lands, all illegal alienations that took place were regularised by the government in 1964 by amending the Hyderabad Tenancy and Agricultural Lands Act, 1950.

But after the peasant uprisings in the 1960s and 1970s (Naxalbari in West Bengal, Srikakulam in Andhra Pradesh, and other struggles), the Government of India started giving guidelines to the state governments to implement land ceilings with a clear vision to neutralize the struggles of the poor for land in rural areas (Joshi, 1982: 90). Then a second round of ceiling laws were enacted in Andhra Pradesh and other states. As per the new guidelines, the following features became common in the Acts (Government of India, 1976: 135):

- (a) Limit of ceiling was reduced to a smaller size, varying between 10 and 54 acres.
- (b) The family was the unit of application with allowance for families with more than five members.
- (c) Every major son was treated as a separate unit.
- (d) It was covered by the Ninth Schedule of the Constitution.
- (e) Exemptions were limited, applicable to lands held by religious, charitable and educational institutions.
- (f) Retrospective effect was given w.e.f. January 24, 1971.

With the above features, a new ceiling law, the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act 1973 was enacted. Though the new law did not make any radical impact, it could achieve better results compared to the 1965 Act. Till recently surplus land to the extent of 237008 ha has been distributed under the provisions of this Act among 458271 beneficiaries (Umamaheswara Rao, *n.d-2*). Out of the declared surplus of 319,659.83 ha, the extent distributed to the poor is about 73.7 per cent (235,674.16 ha). The remaining land has not been distributed due to the following reasons:⁹

- (i) Under litigation in Courts (59643.07 ha)
- (ii) Unfit for cultivation (4164.61 ha)

⁹ Workshop on *Land for the Poor*, February 24, 2005, Hyderabad.

- (iii) Reserved/Transferred for public purpose (6754.67 ha)
- (iv) Covered under miscellaneous reasons/administrative delay (12639.88 ha)
- (v) Readily available for distribution (783.46 ha)

Evaluation of Land Reforms in AP

Joshi refers to the general omissions and commissions of the land reforms in India and concludes that the Government of India and the ruling elites in India brought out land reform measures as 'radical ideology' to be shown on paper, but there was a 'reactionary programme' in implementation (Joshi, 1974). The National Commission on Agriculture also attributed the basic deficiency in the implementation of land reforms in India to the 'lack of political will' where anti-land reform or status-quo elements were able to exercise considerable pull and pressure on political parties as also on the organs of the state (Government of India, 1976: 87).

The National Sample Survey data on tenancy indicates that the shares of tenancy are still quite high though there has been a decline over time. The share of tenant holdings with respect to operational holdings came down from 32.60 to 18.52 percent and the leased-in area declined from 18.60 to 9.15 percent from 1953-54 to 1960-61. Both the shares decreased till 1981-82, but rose to 14.11 percent and 9.57 percent respectively by 1991-92. Again their shares decreased to 12.89 and 8.95 percent respectively in 2002-03 (Venkateswarlu, 2007). But field reports indicate that unreported tenancy is still very high.

The government of Andhra Pradesh did not follow the spirit of the guidelines issued by the Government of India regarding the fixation of fair rent. Even the Planning Commission's suggestion regarding personal cultivation that, in order to be effective, personal supervision should be accompanied by residence during the greater part of the agricultural season in the village in which the land is situated was not taken into consideration by the Tenancy Acts of both the regions in AP (Parthasarathy and Suryanarayana, 1971).

The government of AP has accepted the recommendations of the Land Committee on ceiling surpluses, land and tenancy - the two major concerns in non-tribal areas. It has agreed to "reopen cases of Land Ceilings, wherever the cases have been decided basing on fraud and misrepresentation of facts"(Land Committee Report, 2006, p.35, recommendation number 4.1). The number of such cases and the extent of 'surplus' land likely to be available are not known. But the indications are that, if effectively implemented, this measure could well unearth a sizeable area. The Committee has noted

that the provisions in the existing Tenancy Acts "have given rise to informal tenancy - almost 100 per cent of tenancy that exists is informal," and 55-60 per cent of the lands surveyed in the delta region were under lease. Therefore, taking a realistic view, the Committee recommended that "a loan eligibility card should be issued to the tenants to enable them to access institutional loans so as to garner better gains from cultivation of lands, and the landlords on the other hand are not paranoid about losing their lands if the tenancy is recorded" (Hanumantha Rao, 2007).

Chapter-III

Scheduled Areas and Tribal Land Laws

The British Crown's dominions in India consisted of four political arrangements: (1) the Presidency areas, (2) the Residency areas, (3) the Agency (tribal) areas (excluded and partially excluded areas) where the Agent governed in the name of the Crown but left the local self-governing institutions untouched; and 4) the Excluded areas (North-east India) where the representatives of the Crown were a figure head (Bijoy, 2003; Roy, 2010). In post-Independent India, geographical areas designated in the Fifth and Sixth Schedules are identical to those already delineated by the British as Scheduled Areas. The Fifth Schedule applies to the excluded and partially excluded areas (as in category 3 above) in states other than North-east states, under Article 244(i) of the Constitution. It provides protection to the people living in the Scheduled Areas of nine states in the country from alienation of their lands and natural resources to non-tribals. The Sixth Schedule (Articles 244 and 275) applies to the tribal areas of the North-eastern states.

In India, the Scheduled Tribes (STs) are also referred to as adivasis (original inhabitants). The primary criteria adopted for delimiting certain communities as Scheduled Tribes are: traditional occupation of a definitive geographical area, lack of education, characteristic culture and archaic traits. The Scheduled Tribes possess constitutional protections viz., reservations in legislatures, panchayat raj institutions (PRIs), employment in government jobs, and admission of students in educational institutions etc. There are also specific laws to protect tribal lands. They constituted about 8.6 percent in population of India as per 2011 census.

Scheduled Areas and Scheduled Tribes in AP

There are scheduled areas in nine districts in Andhra Pradesh viz., Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari, Adilabad, Mahbubnagar, Prakasam and Khammam. Of the 35 identified groups in the STs in AP, 27 live in the area of the Eastern Ghats (hill ranges along the east coast of India) spread over several districts (beyond the scheduled areas also).

Approximately 65 percent of AP's forest area is in 8 districts where most of the ST population is concentrated. The 'tribal sub-plan' area (created to provide specific administration for tribals) extends over 31,485 km² in AP, which constitutes the traditional habitat of about 31 tribal groups (Gopinath Reddy, *et al.* 2010a).

Tribal Land Laws in the Pre-Independence Period

In the erstwhile Andhra region of AP, the British enacted the first landmark legislation, the Agency Tracts Interest and Land Transfer Act, 1917 to protect the interests of tribals in the agency areas. The Act prohibits the transfer of lands between tribals and non-tribals without prior consent from the Government or any other prescribed officer. In contrast, the government of Hyderabad state (i.e., Non-British areas) had not provided for any special privileges to the adivasi communities. The Tribal Areas Regulation Fasi 1356 was enacted in 1946 which entrusted all tribal land disputes to tribal panchayats. It prohibited sale or attachment of tribal land and empowered the officials to appoint tribal village officers.

Tribal Land Laws in the Post-Independence Period

Sensing some trouble in the tribal areas of Srikakulam district in the late 1950s, the state government enacted a protective law, the AP Scheduled Areas Land Transfer Regulation (APSALTR) Act in 1959, which proscribed the transfer of tribal lands to non-tribals and also provided for retrieval of tribal lands illegally acquired by non-tribals. Though it was done with good intentions, the government did not take any necessary steps for its enforcement during the next 10 years. In 1969, the High Court of AP pointed out that the regulation of 1959 could not be enforced due to lack of working rules. This regulation was first made applicable only to Andhra region and was later extended to Telangana districts in 1963 superceding the existing regulation (Subba Reddy, 2006).

The APSALTR Act 1959 became effective from 4 March 1959 in the Andhra area. It was extended to Telangana region with effect from 1 December 1963. In the face of rising revolts in the Scheduled Areas of Srikakulam district, the government of AP reinforced the regulation of 1959 with stringent amendments. The amended enactment, which came to be known as Land Transfer Regulation-I (popularly known as Regulation-I) of 1970, provided that the non-tribals could transfer their lands only to tribals or to the government, and could not sell them to other non-tribals. It also postulated a statutory presumption that unless the contrary is proved, any land in the possession of a non-tribal in the scheduled area would be deemed to have been acquired from tribals. But a serious lacuna in this law was that it was not given retrospective effect. When an attempt was made to apply it to a past case and the matter was challenged in the High Court, the

latter ruled that the wording of the regulation allowed only for prospective application and not with retrospective effect.

After Regulation-I of 1970, the transfer of immovable property by a member of a Scheduled Tribe (ST) is governed as follows:

- (i) Any transfer of immovable property situated in the Agency areas by a person, whether or not such person is a member of a ST, shall be null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a Cooperative Society composed solely of members of Scheduled Tribes.
- (ii) Until the contrary is proved, any immovable property in the Agency areas in the possession of a person who is not a member of ST shall be presumed to have been acquired by such person or his predecessor through a transfer made to him by a member of an ST.
- (iii) When no member of an ST is willing to purchase the land, the person intending to sell the land may apply to the Agent or any other prescribed officer for acquisition of such land by the State Government that takes over such land on payment of compensation.
- (iv) Where a transfer is made in contravention of the above provisions, the Agent or Prescribed officer, on application by the concerned persons or on information by a public servant or suo-moto, decree ejectment of any person in possession of that land and restore it to the transferor or his heirs, may assign or sell it to any other member of STs or a cooperative society, composed solely of STs or otherwise dispose it off as if it was a property at the disposal of the state government.

Diluting the Provisions of Regulation-I of 1970

With a view to conferring 'patta' rights (legal titles) on tribal farmers and putting in place proper land records after due survey, the government of A.P made the following regulations (Laxman Rao *et al.* 2006):

- (i) A P Mahals (Abolition and Conversion into Ryotwari), Regulation 1 of 1969: Every tribal farmer in possession of land continuously for a period of one year before the notified date shall be entitled to ryotwari patta only if he is in occupation for a continuous period of eight years and such occupation is not violative of the APSALTR, 1959.

- (ii) A P Muttas (Abolition and Conversion into Ryotwari), Regulation 2 of 1969: This regulation states that no non-tribal ryot (farmer) is entitled to ryotwari patta unless he is in a lawful possession of the said land for a continuous period of eight years.
- (iii) AP Scheduled Areas Ryotwari Settlement, Regulation 2 of 1970: This applies to lands other than those covered by the earlier two Regulations (within Muttas and Mahals). Regarding non-tribals, this enactment also incorporates the same provision as above.

These measures have effectively conveyed to the non-tribals that if they could produce some evidence to show that they were in possession of the lands in the preceding eight years, they could automatically get legal titles ('pattas'). This has considerably diluted the purport of the Regulation-I of 1970 to put to severe test the legitimacy of the possession of land by non-tribals in the scheduled areas. If we recall the legal vacuum that existed during the 1960s, we can imagine how easy it could have been for the non-tribals to fabricate evidence of possession for eight years and secure legal titles under any one of the three regulations mentioned above.

Successive governments also passed a series of executive orders which diluted the provisions of Regulation-I of 1970. Four of them are listed below (Subba Reddy, 2006):

- (a) In 1969, an order was issued to the effect that non-tribals occupying less than 2.5 acres of wetland or five acres of dry land in the scheduled areas should not be evicted unless the land is required for allotment to the tribals.
- (b) In 1971, another order was passed forbidding the eviction of non-tribals occupying less than 2.5 acres of wetland or five acres of dry land if they had been in possession of those lands for 10 years or more. (This implied that how the land was first acquired by the non-tribals should not be gone into).
- (c) In 1974, yet another order was issued to the effect that non-tribals belonging to the Scheduled Castes (i.e. dalits) occupying 2.5 acres of wetland or five acres of dry land should not be evicted if they had been in possession of those lands for five years or more.
- (d) In 1979, a more disturbing order was issued raising the exemption ceiling to five acres of wetland or 10 acres of dry land for all castes of non-tribals and doing away with the duration of possession altogether.

The stark reality is that about 50 per cent of cultivable land in the Scheduled Areas of Andhra Pradesh is under the occupation by non-tribals. The minimum that any government has to do, if it is really interested in the welfare of tribals, is to amend Regulation-I of 1970 so as to give it retrospective effect and to make it override other Acts and Regulations, and enforce it effectively.

In the late 1970s when it appeared that the tribal unrest had subsided, the government, by an executive order (G.O.Ms.No.129, Social Welfare Department, dt.13.08.1979), directed the concerned officers not to evict "for the present" non-tribals occupying upto 5 acres of wet land or 10 acres of dry land in the Scheduled Areas even if such occupation constituted an infringement of the provisions of the earlier regulations. There was a writ petition questioning the validity of this order, and the court declared the order bad in law and doubted the sagacity of the government that tried to set at nought a legislative enactment through an executive order (Subba Reddy, 1988).

Attempt to Repeal Regulation-I of 1970 of LTR 1959

Between 1971 and 1979, in the tribal areas of Khammam and Warangal districts, the cleavage between the tribals and non-tribals was widening day by day on the land issue. A move initiated by the District Collector, Khammam in 1979 to evict the non-tribals holding lands in the scheduled areas had led to the promulgation of an order by the government on the basis of a resolution passed by the Zilla Parishad (district council), which pleaded for the exemption of non-tribal land owners owning upto five acres of wet and 10 acres of dry land from the process of eviction from lands in tribal areas (Janardhan Rao, 1987; 67-68). It is worth noting that though the zilla parishad was not competent to adopt such a resolution, the government responded by passing an Order (G.O.Ms.No.129 cited above) confirming that the non-tribals could hold 5 acres of wet or 10 acres of dry land. Declaration of Lambadas as a Scheduled Tribe by the President of India with effect from 27 July 1977 added nearly 1.6 million people to the number of STs. This measure is known to have been taken to benefit the electoral prospects of the ruling elite which has caused a loss to the native tribals. Vast stretches of land had already passed out of the hands of the native tribes by then (Janardhan Rao, 1998: 120-121).

In September 1983, the High Court of AP struck down the Government Order (G.O.Ms.No.129) and questioned the propriety of this order exempting non-tribals from eviction from tribal lands in Scheduled Areas. The Tribal Advisory Council (TAC), supposed to protect the interests of the STs, resolved to lend support to the government's move. There was large scale opposition from the media, extreme left parties, voluntary organisations, and prominent intellectuals to repeal Regulation-I of 1970 (*ibid.*: p.122).

The High Court of AP quashed this order in 1984 on the grounds that an order issued under a regulation could not go against its spirit. Despite the Court Order, non-tribals continued to occupy the lands on the strength of this Order because of the connivance of the revenue officials with the landlords.

Moreover, non-tribal rich farmers started demanding the relaxation of Regulation-I of 1970 on the ground that they could not purchase a site in towns such as Bhadrachalam to run a shop because it is situated in a Scheduled Area and also could not sell the land they had possessed even on occasions such as the marriage of their daughters. Added to this, they started to demand de-notification of Scheduled Areas and exemption of certain villages in these areas on the ground that the non-tribal population constituted a majority in such villages. This situation is the result of the large influx of non-tribals encouraged by the policies of government (*Ibid.*).

Erroneous Results of the APSALTR

In spite of the existence of such laws over decades, 48 percent of lands in Scheduled Areas have gone into the hands of non-tribals. The utility of LTR as a legally powerful protective measure for land rights of tribals has been reduced to naught. The fact that out of 70,183 cases (pertaining to 315,132 acres) booked under LTR, 47.47 percent (33,319 cases pertaining to 1,62,989 acres) were settled in favour of non-tribals as against 47.13 percent (33,078 cases pertaining to 133,636 acres) in favour of tribals shows how non-tribals have increasingly gained control over tribal lands. There had been no systematic effort to check land transfers to non-tribals (GoAP, 2006: 60).

In a report submitted to the Land Committee on 16th August, 2005 Girglani gave a detailed account of the grabbing of tribal lands in all the three scheduled areas of the state through ingenious subterfuges and even open and uncamouflaged devices that would make any conscientious observer scream in anguish (Girglani, 2007). He noted that:

- (i) In spite of Regulation-I of 1970, the Registration Department continues to register documents of transfer of property in the scheduled villages in the name of non-tribals.
- (ii) Even pattadar passbooks are issued to non-tribals for government lands in the scheduled villages.
- (iii) Licences are issued for commercial and industrial enterprises to non-tribals by gram panchayats in the scheduled villages, involving the use of tribal lands.

- (iv) The tribal areas suffer for want of revenue officers with the posts lying vacant for long periods.

Hari Priya (2010) sums up some of the reasons for the erroneous results of the legislation in the agency areas of A. P:

1. *No access to the Record of Rights:* Tribals have no access to the Record of Rights, and in cases when they are given the pattas, the land is not in their possession. The unsatisfactory state of land records has contributed a lot to the problem of land alienation. The implementation of the LTR Act seems to be restricted to small non-tribal land holdings, while the big (non-tribal) landlords with huge tracts of tribal land remain unaffected.
2. *Incomplete representation:* There are many villages with almost 50-100% tribal population, but these areas have not been declared as the Scheduled Areas. For instance, tribal population is predominant in 1250 villages in Srikakulam district but only 108 villages are included in the Scheduled Areas.
3. *Incompetence and inexperience of the revenue officers:* The revenue authorities are generally not familiar with the provisions of the relevant laws and are generally posted in such areas as a "punishment duty". Lack of knowledge and a feeling of castigation, makes these officers incompetent to handle matters of land-related problems of the tribals.
4. *Money-lending:* Money-lending is one of the earliest routes through which tribal land has been alienated. Owing to acute poverty the tribals take loans at exorbitant rates ranging between 25-50 percent, sometimes as much as 100 percent. Due to the unscrupulous trade habits of the money-lenders, the tribals could not pay back such loans, and the money lenders in turn would take possession of the mortgaged property which usually happens to be the land in their possession.
5. *Lack of investigation:* Lack of investigation into the occupation by non-tribals without verification of the basis of such occupation and assuming that these are all on valid pattas before 1970 or 1959 or 1950, normally subsumed under an all-pervasive phrase - "old pattas".
6. *Marriages:* In many tribal areas, non-tribal men entered into marital relationships with the tribal women and purchased land in the names of tribal wives. Land alienation through polygamy has been found in several districts.

7. *Through tribal servants:* In tribal tracts of East Godavari and West Godavari districts, many non-tribal farmers purchased land in the names of their tribal servants or attached labourers.
8. *Fabrication of tribal certificates:* Non-tribals procure false caste certificates as STs and gain legitimacy to occupy tribal lands.
9. *Industrialisation and privatisation:* In recent years, the territories of the tribal people have been subjected to incursions due to privatization and industrialization in India.
10. *Power projects:* There is pressure from private industries to set up power projects, especially mini-hydel projects in the scheduled areas by harnessing the hill-streams.
11. *Right to property being a mere legal right:* The root of the problem is that the tribes cannot exercise a fundamental right to property under Indian law. Fundamental rights have a special status in the Constitution. Instead the tribals can only invoke a legal right as conferred upon them under Article 300 of the Indian Constitution. Since the tribals' Right to Property is merely a legal right, and not a fundamental right, the state can acquire their property with just compensation by authority of law.
12. *Adoption of non-tribal children:* Fictitious adoption of the non-tribal children by the tribal families is also another method to snatch the lands of the tribals. The non-tribals would persuade the tribals to adopt their children and to buy lands and register them in the names of children.

Industries and Mining in Agency Areas

In a landmark judgement the Supreme Court of India, in the case *Samata vs. Government of Andhra Pradesh* (1997), was of the view that the word 'person' includes the state government, and the transfer of land in Scheduled Areas by way of mining leases to non-tribal people or companies is prohibited by the Fifth Schedule and Section 3 of the Regulation of the LTR Act. Tribals can exploit the minerals in the Scheduled Areas, without disturbing the ecology or the forest, either individually or through cooperative societies with the financial assistance of the state. Transfer of tribal lands to state instrumentalities (i.e. state-owned organisations or corporations) is excluded from prohibition, since a public corporation acts in public interest and not for private gain. Private and public sector industries have been given lands in the Scheduled Areas in contravention of the APSALTR Act and the Fifth Schedule of the Constitution (*Samata*, 2007). The state government is pursuing a policy of inviting private bidders and investors into the tribal areas in the name of economic development.

Forest Laws and Issues

Historically, the relationship between tribals and the state agencies has been antagonistic which gave rise to several uprisings. The widespread commercialisation of forests during the colonial era restricted the traditional rights of tribals. The concept of state ownership of forests came into conflict with the traditional rights and practices of tribals. The state has appropriated large tracts of land without recognising their customary rights. The reservation of forests has been a historical process whereby the indigenous communities are pushed deeper into forests and tribal lands are appropriated by non-tribals (Rao *et al.*, 2006).

The National Forest Policy, 1952 did not consider the needs of the local people. Its aim has been the supply of timber for industrial needs. The same policy continued till 1976. The Indian government continued to envisage the commercial exploitation of forests, now for the 'national' rather than 'colonial' interest. The Forest (Conservation) Act, 1980 was passed with a view to protecting forest and ensuring ecological balance. The state governments were given the privilege to declare any forest as "Reserve Forest". In A.P., forests recognized under Section 15 of the AP Forest Act, 1967 are Reserve Forests. This provision enables the state government to refuse a legal right to the dwellers to occupy the land, evaluate the position of those occupying the land, and if convinced that they are illegal occupants and encroachers, evacuate them in the name of developing forest land. This Act resulted in massive evacuation of tribals from their lands. Only those who had title deeds prior to 1980 were recognized. The Tribal Act, 2005, however, provides for recognizing the rights enjoyed by the tribals before 1980 (Reddy and Kumar, 2010).

The Forest Rights Act came into existence from 1st January 2008. The 'historical injustices' committed through the successive Indian Forest Acts, and the Madras Forest Act, 1882 were redressed through this Act. The stated aim of the Act is to recognise and vest forest rights and occupation of forest land in forest dwellers who have been residing in such forests for generations but whose rights could not be recorded (Springate-Baginski, 2009). The Act will have major implications across AP, both in providing a more secure basis for the livelihood of forest people and also giving the legal provisions necessary to defend them in future. Another important aspect is that of the primacy of Gram Sabha, which is a move towards decentralisation. But the attitude of the authorities has not been positive in conducting the Gram Sabhas (Reddy and Kumar, 2010).

Chapter-IV

Assignment of Lands to the Poor

The land administration in Andhra and Telangana regions was brought under the Unified Board of Revenue for the entire state of AP from 1 November 1956. This was later replaced by Commissioners under the AP Board of Revenue (Replacement by Commissioners) Act, 1977. In the post-Independence period the first policy instructions were issued in Andhra region for assignment of lands as per G.O. No. 1142, Revenue Department, dated 18 June 1954 and this became the basis for other Government Orders later. The main aspects of this Order are:

- (i) Lands at the disposal of the government should be assigned only to landless poor persons who directly engage themselves in cultivation, including ex-toddy tappers, backward communities and weavers.
- (ii) A landless poor person is one who owns not more than 2.5 acres of wet or 5 acres of dry land and is also poor.
- (iii) The maximum extent of land to be assigned to each individual shall be limited to 2.5 acres of wet, or 5 acres of dry land subject to the proviso that in computing the area, lands owned elsewhere by the assignee shall be taken into account so that the land assigned to him together with what is already owned by him does not exceed the total extent of 2.5 acres of wet or 5 acres of dry land.

The assignment of certain class of lands is prohibited: (i) Poramboke (tank-beds, foreshore of tank-beds, cattle stands, grazing lands) and reserved lands (reserved for depressed class members or for any public purpose, such as schools, playgrounds etc.).

The assignment of lands shall be subject to the following conditions: (i) Lands assigned shall be heritable but not alienable; (ii) Preference shall be given to the village where the lands are situated; (iii) Lands assigned shall be brought under cultivation within three years; (iv) No land tax shall be collected for the first three years except for the extent, if any, which has already been brought under cultivation.

The land assignment policy in Andhra area is governed by the Board Standing Order 15 (BSO-15) and the GO.Ms.No.1407 Revenue Department dated 25 July 1958. The assignment policy in Telangana region is governed by A.P (Telangana Area) Land Revenue Act, 1317 Fasli, and the GO.Ms.No. 1406 mentioned above. Nevertheless, the rules governing such assignment of lands and conditions for the grant of the government lands are the same. Some modifications were made in course of time regarding assignment of government lands (GoAP, 2006).

Transfer of Assigned Lands

Over the years it has been found that a lot of lands assigned to poor people were not in their possession. To prevent this trend, the Government of AP passed the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. This Act is a protective legislation and it is meant for the protection and benefit of the genuinely landless poor persons. The alienation of lands assigned to the poor for cultivation or dwelling to any other person is punishable under this Act. The transfer of assigned lands is not possible under any circumstances and under any other law in force. If any document is executed for the purpose of transfer it would be invalid and illegal.

Definitions in the Policy of Assignment of Lands

A landless poor person is a person who does not own any land or who owns land not more than 2.5 acres of wet or 5 acres of dry land and who is an agricultural labourer, as per G.O.Ms. No.1724 (Telangana) and G.O.Ms. No.1725 (Andhra region) and whose annual income does not exceed Rs.11000/- (G.O.Ms.No.900 Revenue Department, dated 11 July 1979 and G.O.Ms.No.940 Revenue Department, dated 24 November 1998). The Tahsildars are the revenue authorities competent to assign the lands. Among the eligible landless poor applicants, preference shall be given to the people in the village where the lands are situated, and to the persons who do not own any land at all. Between Sivoijamadar (one who is in possession of the land) and a non-Sivoijamadar, the former will get preference.

Land Assignment Process and Conditions

The assignment of lands shall be subject to the following conditions:

- (1) Lands assigned shall be heritable but not alienable.
- (2) Lands assigned shall be brought under cultivation within three years.
- (3) No land tax shall be collected for the first three years except for the extent, if any, which has already been brought under cultivation. Water rate shall, however, be charged if the lands are irrigated with government water; and

- (4) Cultivation should be by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family.

The lands assigned to landless persons may be mortgaged to the Government or to a Co-operative Society recognized by the Government including a land mortgage bank, a nationalised bank, State Bank of India and its subsidiaries and all scheduled banks, or the Panchayat Samithi for obtaining any loan for the development of the land.

Main Categories of Assignment of Lands

Under the relevant Board Standing Orders (BSO), the government periodically assigns lands to the landless poor. The state's official record of lands assigned to the landless poor show that 4.25 million acres have been assigned to 2.92 million households. As per official statistics, Andhra Pradesh has assigned more government land to more beneficiaries than any other state in India (GoAP, 2006: p.85). Table 4.1 gives the figures regarding assignment of lands. Although the government has assigned more than four million acres on record, very little is in the hands of the poor despite the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. The poor are believed to have sold their lands (mostly on plain paper) due to exigencies in their families, and the government has not resumed such lands (*Ibid.*).

The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, was an effort to address the problem of large land holdings by prohibiting persons from holding land in excess of certain ceiling limits. Under this Act, Andhra Pradesh has taken possession of approximately 645,599 acres of ceiling surplus lands. An additional 172,249 acres remain outside the government's possession. The most common reason why the government has not taken possession of ceiling surplus land is due to litigation. As of March 31, 2002, the government has distributed a total of 582,319 acres of ceiling surplus to 540,344 beneficiaries as discussed earlier. In some cases, eligible poor individuals and households have been assigned ceiling surplus land, but are not in possession of the same because the land is encroached, often by the original declarant, and they do not have the ability (political, social or physical) to take possession by themselves. In other cases, eligible beneficiaries have settled on the assigned land but have not yet received evidence of their ownership status. In numerous cases, ceiling surplus land has been tied up in litigation for decades.

The Bhoodan (donation of land) movement was started by Acharya Vinoba Bhave in Nalgonda district of Andhra Pradesh during the freedom movement. It has resulted in donations of privately held land to the poor in some places. Table 4.2 provides the details of the land distributed to the poor under the movement. A total of 42,199 beneficiaries had received 112600.7 acres of land as a result of this movement. Of the total beneficiaries, 12,832 were members of Scheduled Tribes, and 4,538 are Backward Castes and others.

The issues plaguing government assigned lands were applicable to the lands received under the Bhoodan movement also. The poor who have been assigned the lands may not be in the possession of the lands, where they are in possession they have no evidence of title, or other circumstances may prevent them from benefiting from the land.

Land Committee's Observations

About 42 lakh acres (1.7 million ha) of government land have been assigned to the landless poor since the inception of this policy in the 1960s. The fact that a significant percentage of these is not in their possession is directly attributable to the lack of effective executive machinery at the field level to ensure that the poor do not lose the land. As mentioned earlier, a Land Committee was set up in 2004 under the chairmanship of Koneru Ranga Rao, a Minister, by the Congress government. This is also known as Koneru Ranga Rao Committee. Its main purpose was "to assess the overall implementation of land distribution programmes of the government and suggest measures for more effective implementation."

Table 4.2: Distribution of Bhoodan Lands in AP

Sl.No.	Name of the District	Number of Beneficiaries	Extent in Acres
1	Srikakulam	2649	11244
2	Vizianagaram	597	355
3	Visakapatnam	1948	4286
4	East Godavari	3354	7173
5	West Godavari	10367	29621
6	Krishna	821	1674
7	Guntur	5912	20071
8	Kurnool	632	1353
9	Nellore	5944	12724
10	Cuddapa	5638	11987
11	Prakasham	1790	2164
12	Chittoor	780	1122
13	Anantapur	925	3737
14	Adilabad	44	142
15	Karimnagar	1414	3703
16	Nizamabad	443	1692
17	Khamamm	1	3
18	Warangal	56	186
19	Mahabubnagar	1	4
20	Ranga Reddy	56	162
21	Nalgonda	22	62
22	Medak	506	506
23	Hyderabad	-	-
Total		43900	113973

Source: C. Umamaheswara Rao, (n.d-2)

The Government has accepted 104 recommendations made by the Land Committee. During the public hearings conducted by the Committee the following major issues have been highlighted regarding the assigned lands (GoAP, 2006: 8-9):

Lands which are assignable but not assigned: There are several instances of huge tracts of land being available for redistribution to the landless poor in the state but not assigned to them.

Lands assigned on paper but physical location not shown: This is the most common problem in assigned lands. This allows for reassignment of the same land several times resulting in compounding the problem with multiple ownership and claims/counter claims.

Lands in occupation of the poor for ages but pattas not given: Because of the inherent non-cultivability of assigned lands, the assignees often do not cultivate them even when the lands are in their possession. Sometimes even cultivable lands are not cultivated as the assignees are poor and do not have adequate capital to invest in the land for cultivation. At other times even when the land is cultivable, family exigencies force them to sell the land for a song. This leads, not infrequently, to alienation (selling) of the lands.

Ineffective implementation of Assigned Lands (Prohibition of Transfer) Act, 1977: This Act prohibits transfer (through alienation/sale to a third party) of lands assigned to the landless poor persons. The lands assigned are heritable but not alienable. In case of breach of this provision, the District Collector, or any other officer authorized by him, may take possession of the assigned land, evict the person in possession by giving him reasonable opportunity, and restore the land to the original assignee or his legal heir. If restoration is not possible, then the land can be resumed by the Government for a fresh assignment.

This Act is retrospective in operation and applies also to transactions of sale prior to the commencement of the Act. The revenue officials rarely resort to this option. Substantial extents of lands, which had been assigned to the landless poor, have actually been alienated and ended up in the hands of the non-poor. After a study of the existing legislations and their implementation, the Committee came to the opinion that the executive must be compelled to perform its role in a professional and systematic manner, which has been almost forgotten during the past decade and half.

The Committee recommended some amendments to the existing Acts to suit the changing reality on the ground and present day requirements in order to strengthen the process by which the poor can gain access to land and retain it. However, in tune with the new development paradigm, which has demonstrated the effectiveness of people's participation

- especially the poor - in social empowerment and economic development, the community should be involved at all stages of land management, especially of the government lands. Both legislative and administrative measures would be required to formally usher in and strengthen the participation of the community in the land assignment process and thereafter.

Recommendations of the Land Committee

The Committee recommended the following measures to enhance the effectiveness of transferring government lands to the landless poor (GoAP, 2006: 12-13):

1. *Gram Sabha Approval:* The assignment proposals of the government lands should be approved by the Gram Sabha.
2. *Reduction of Size of Land Assigned:* Landless poor person shall be redefined as one who owns no land or a person who owns a land of not more than 1 acre of wet or 2 acres of dry land.
3. *Assignment of Land:* The maximum extent of land which may be assigned to a single individual shall be limited to 1 acre of wet or 2 acres of dry land, subject to the provision that in computing the area, lands owned by the assignee shall be taken into account so that the lands assigned to him together with what is already owned by him does not exceed the total extent of 1 acre of wet or 2 acres of dry land.
4. *Recovery of income from Irregular Allottee:* Whosoever acquires D-Form Patta irregularly or fraudulently shall, apart from resuming the land from him, be made to pay double the income drawn from the land from the date of his possession.
5. *Time Limit of 3 Months to Assign Land to the Applicant:* The assignment of land to the landless poor for agricultural purpose shall be granted within 3 months from the date of receipt of application for assignment as per the rules in force.
6. *Government to Purchase Auctioned/Assigned Lands:* Wherever assigned lands come up for auction for non-payment of dues to the credit agencies, the government agencies shall participate in the auction and purchase such lands for assignment to landless poor again.
7. *Assignment Committee Composition to Include Women of Indira Kranthi Patham (IKP):* Composition of the Assignment Committee to be amended to include the Sarpanch and president and secretary of the concerned village organisations of poor women of the IKP, wherever the assignment proposals relate to that village.
8. *Not to Refuse the Proposal of Assignment Committee:* The Assignment Review Committee should not refuse any of the proposed assignment except on the ground of ineligibility of the proposed beneficiaries.

Chapter-V

Land Acquisition and Resettlement & Rehabilitation

A Critical Evaluation

The Land Acquisition Act, 1894

Land acquisition for developmental purposes, i.e., for making roads, constructing dams and irrigation canals, establishing manufacturing industries and for urban development etc., has been going on since long, and has also generated debates on the consequences for the displaced people and for the environment. But in the last decade or so the debate has become intense. The Land Acquisition Act (LAA), 1894 was enacted during British rule for the purpose of land acquisition. In the post-Independence period also, the Indian government has been using the same LAA, 1894 with some modification/ amendments. The Act defends the 'eminent domain' principle i.e., the pre-eminence of the State.

The definition of 'public purpose' under Section 3(f) of the LAA for land acquisition has become a controversial issue over time. Publication of preliminary notification as per Section 4(1) of the Act provides for notification in a regional language of the proposed land to be undertaken at convenient places. Provision for hearing of objections against the acquisition of the land or any land in the locality by any person or as the case may be, is under section 5-A(1). Section 5A(2) deals with the submissions of objections in writing to the Collector (or the designated land acquisition officer) and the latter then submits a report to the appropriate government.

Payment for all the acquisitions and other associated costs has to be made under Section 5 of the Act. Section 6 provides for publication of (2nd) the declaration that the land proposed to be acquired is for public purpose in the official Gazette and in the two daily news papers circulated in the concerned locality. Such declaration causing public notice has to be given at convenient places in the said locality. Notices to all the concerned persons will be served under Section 9 with details of the extent of land to be acquired along with the amount of compensation. Provision for enquiry by the Collector/designated officer over the objections raised, and claims of compensation and, apportionment of

compensation and to make an award etc., have a provision under Section 11. Once the enquiry is concluded, the time limit for passing the award is within two years from the date of publication of the declaration under section 6, as envisaged under Section 11A. If the authority fails to adhere to the time schedule prescribed under the Act, the entire proceedings initiated for land acquisition will lapse. Reference to a court is provided under Section 18 if there are objections in regard to the measurement of the land, the amount of the compensation, and the persons to whom it is payable.

Matters to be considered in determining compensation include the market value of the land on the date of publication of the notification, the damages sustained between the time of the publication and the time of the Collector's taking possession of the land (Section 23). Provision of land for land instead of awarding money as compensation exists under Section 31(3). Acquisition of land for companies for some specified purposes, when proved that it is useful for the public, is governed under sub-sections 40(1)(a), (aa), (b) and (c), with the prior consent of the appropriate government; while such land is non-transferable as per section 44A. Further, no land shall be acquired for a private company, which is not a Government company under section 44B.

Public Purpose

The word 'public purpose' was neither explained properly in the LAA, 1894 (as amended in 1984) nor interpreted by the Government in the right sense. 'Public purpose' is the justified reason for the acquisition of lands. Under Section 3(f) of the Act, land acquisition for public purpose includes: provision of village-site, extension, development or improvement of village sites; provision of land for town or rural planning; land for planned development from public funds; land for a corporation owned or controlled by the state; land for residential purpose or the landless poor, people affected by natural calamities, or to persons displaced, or for the people affected by reason of any scheme undertaken by government or any local authority or a corporation owned or controlled by the State; provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by government. It does not include acquisition of land for companies.

The basic question is whether the use of the Land Acquisition Act by the Government for the acquisition of land for SEZs is at all justifiable in the eyes of the law. Section 44(B) of the Act provides that except for construction of houses for their employees to live in, the Government cannot acquire land for a private company for any other purpose (as per Clause(a) inserted in 1933 in Subsection 1 of Section 40). Till date section 44(B) has not been amended. The land that is now being taken away by the Government from the farmers under the provisions of this Act is handed over to private developers for SEZs. This whole process is in violation of the provisions of the Land Acquisition Act.

The Supreme Court of India found that the power to determine a public purpose is primarily that of the appropriate Government; yet, it retains the power to question that determination also on substantive grounds. In case of a public purpose that is only apparently a public purpose but in reality is a private purpose or other collateral purpose, the Court held that the Government could not justify acquiring land - as, for instance, for a textile machinery manufacturer - as a 'public purpose' (Supreme Court in the case of *R.L. Aurora vs State of Uttar Pradesh*, 1962).

The Collector has to award compensation under Section 11 as per market value, as indicated by the value of neighbouring lands as recorded in the Registration Department. Such compensation for the land would always be less because the recorded values will be less than the actual market value. In such a case, the farmers prefer to go to court under Section 18 in regard to price fixation. To avoid prolonged litigations, the Collector chooses to award a mutually agreeable price and the agreement would be signed. This is the regular agreement award or consent award.

At the time when the LAA was enacted, public activity was largely confined to acquisition of small pieces of land either for roads, public buildings, housing colonies etc. There were no public ventures like large dams submerging thousands of villages. In the post-Independence period, the same Act has been used to acquire large areas of land for irrigation projects and public sector undertakings. After the SEZ Act, 2005, the lands are acquired in large quantities by different governments for private companies. This has become a hugely controversial issue in recent years in several states of India.

When the government acquires land for an irrigation project or some other development project then there is a clear and direct relationship between the acquisition and the public purpose behind the said acquisition, because the body which has acquired the land is itself responsible for the establishment of the project and starts proceeding in that direction. This does not hold true for SEZs since the developer who puts forward the proposal for an SEZ is not the acquirer of the land.

Land Acquisition for SEZs

The SEZ Act does not specify how exactly the land is to be acquired for an SEZ. Though the Act is silent about this, the state government issues notices under the provisions of this Act for acquiring land for the proposed SEZs of some private companies. From the currently available information, it seems that the said notices do not specify for whom and for what purposes the land is to be acquired. Under the Land Acquisition Act, the Government is at liberty to compulsorily acquire land from the land-owner for any 'public purpose' but this begs the question as to whether the setting up of an SEZ can be called a 'public purpose'.

There is no guiding principle in the SEZ Act as to how the land should be used by the developer. How the developers have to allot land to the industrialists is also not clearly specified in respect of rate of rent, mode of rent fixation and selection criteria of industrialists (Sawant, 2007). The time given to a developer is 3 years for the establishment of an SEZ, which is extendable by 2 years i.e., a total of 5 years. If the developer fails to do so, only then the government may take it back or allocate it to a new developer.

The SEZs are also displacing people on a large scale. In coastal states like Andhra Pradesh, some SEZs are located along the sea coast, cutting off fishermen's access to the sea from which the latter eke out their livelihood. In many places, small agriculturists are thrown out of their homelands and, along with them, others who depend on agriculture, such as artisans and rural workers. The Constitution requires the Gram Sabhas to be fully involved whenever decisions that might lead to dislocation of people are taken. The government should recognise the inherent rights of the local communities to resources such as land, water, minerals, forest wealth, etc. All these call for a paradigm change in the attitude of the government (Sarma, 2007).

Resistance of the people to the forceful take-over of their lands has been expressed in various forms. After all their peaceful protests were not heeded to by the government and also the major political parties (who were looked upon as being in favour of the SEZs), the affected people in Polepally SEZ on the outskirts of Hyderabad city contested as independents in the general elections and gained a sufficient number of votes to cause frustration to the mainstream political parties (Box: 5.1). In Maharashtra people in several villages in Raigarh district on the outskirts of Mumbai resisted land acquisition and conducted a referendum in October 2008 against the Maha Mumbai SEZ promoted by the Reliance Industries. The resistance caused such an enormous delay in land acquisition that the government was forced to cancel the SEZ as there was no provision for further extension (Box: 5.2). The response of the State has been very brutal in some other instances when people resisted the takeover of their lands in favour of private companies to set up thermal power plants. Apart from the loss of livelihood, the affected people were also worried that the environmental problems posed by the thermal plants would make their life miserable. Hence the resistance was sustained and organized. When thousands of police swooped on the villages the people stood up leading to firing and killing of people, and scores of men and women getting badly injured. Two such instances, both happening in Srikakulam district of AP are given in Boxes 5.3 and 5.4.

Box: 5.1**Losing Land & Livelihood - Losing Dignity**

"We have lost dignity along with livelihood. Not a sliver of land is left even to bury us after death. We fear nothing now as we stand to lose nothing", Mrs. Sukkamma, a woman from Polepally village on the outskirts of Hyderabad, who lost her land to an SEZ after which her husband is reported to have died of cardiac failure (*The Hindu*, Hyderabad, 21 April 2008). In the general elections held in April-May 2009, the people affected by the Polepally SEZ (on the outskirts of Hyderabad) made their voice heard loud and clear. Seventeen candidates contested for Mahbubnagar Lok Sabha seat and bagged as many as 77,568, votes which could have marred the chances of the Congress candidate. Not yielding to pressure, they doggedly campaigned on barefoot, without fancy vehicles, star campaigners, money and manpower, and mustered enough support to prove their point that they could not be left in the lurch after denying them land, their only source of livelihood. It is a repeat of what they did in Assembly by-elections in Jadcherla in May 2008. At that time, 13 persons contested and secured 13,000 votes, enough to defeat the then sitting legislator of Telanaga Rashtra Samithi party (K. Venkateshwarlu, "Polepally SEZ contestants make their point", *The Hindu*, Hyderabad, 19 May 2009).

Box: 5.2**Maharashtra government halts acquisitions for Mukesh Ambani's SEZ**

Chittaranjan Tembhekar

<http://articles.economicstimes.indiatimes.com> Feb 19, 2011.

MUMBAI: The Maharashtra government ended its land acquisition process for the proposed Maha Mumbai Special Economic Zone (SEZ), one of the country's biggest SEZ plans. The state issued a government resolution de-notifying the land acquisition process for the SEZs, clearly indicating that it would not acquire any more land for the SEZ promoted by Reliance Industries Ltd (RIL) Group chairman, Mukesh Ambani. All land acquired by the government in the past is also to be returned. On hearing news the farmers in the Pen, Panvel and Uran talukas burst crackers in celebration. With a majority of farmers were opposed to surrendering their land and a further extension required to keep the project going, it is now possible that the entire SEZ plan would be scrapped. The project could sail through only if its promoters manage to acquire the land needed privately, which seems to be an impossibility.

The SEZ was planned across 10,000 hectares of land in 83 villages in Raigad district. The project was given approval in 2005. The SEZ was to be built between the upcoming Navi Mumbai airport and Pen towards the south and Uran towards the west. Ambani had projected an investment of Rs 35,000 crore over a period of 10 to 12 years. After the government had initiated the land-acquisition process, thousands of farmers opposed the SEZ saying that fertile, irrigated land was being acquired. Around 1,000 hectares of land have been privately acquired from farmers. It seems that the farmers who sold land indicated their readiness to return the money.

Box: 5.3

Two killed, Five Injured in Firing in Sompeta, A.P

On 14 July 2009 two persons were killed and five sustained bullet injuries in police firing on the local farmers and fishermen who were protesting against a proposed thermal power plant by the Nagarjuna Construction Company (NCC) at Sompeta in Srikakulam district in Andhra Pradesh. The local people, along with the people of Sompeta town, had been protesting against this plant for several months. Hundreds of villagers, including many women, were injured in the lathi charge by the police. Some policemen were also injured. There were also private goons who were wearing blue scarves around their necks, travelled in police vehicles and joined the police in beating up the villagers. The villagers were unarmed and peaceful. The ladies pleaded with folded hands (some even touching the feet of police officers) not to take away their lands and livelihoods. The police suddenly started lathicharge and severely beat up the women and men causing severe injuries to many.

Without any provocation and without any warning, the firing was done from close range (20-30 feet). The bullets hit the victims above waist level (except two who were hit on the thigh and the ankle). Two persons died on the spot, and five persons sustained bullet injuries (including a cameraman of television news channel). All of the victims were unarmed, scattered and very close to or on the road. The eye-witnesses were emphatic in saying that the local sub-inspector was the person who fired from inside the moving police van. The thermal plant was to be located in about 2000 acres (800 ha). Of this 973 acres were wetlands, commonly known as the Beela. The lives and livelihoods of the villages are intricately linked to these wetlands and there is a strong determination to protect them at any cost. These lands were handed over to the NCC through the APIIC by declaring them as degraded, unyielding and lands unfit for cultivation. Further acquisition of lands was in the process.

A Beela is also declared as Important Bird Area (IBA) by Birdlife International UK and Bombay Natural History Society. As per the villagers, the police were acting at the behest of, and in collusion with, the NCC rather than as protectors of law and justice. The District Collector, as Head of the revenue administration, submitted a false and misleading report on the Environment Public Hearing even though about 95 per cent of the participants opposed the project.

On the same day when police firing took place, the National Environment Appellate Authority, New Delhi cancelled the environmental clearance given to this thermal plant on the grounds that several facts were either suppressed or falsely reported to favour the private company for getting the permissions. (Based on the "Independent Fact-finding Team on the Sompeta Firings on 14 July 2010", available with the National Alliance of People's Movements (NAPM), A.P. Chapter, Hyderabad). The GoAP has not, till today, officially scrapped this thermal plant.

Box: 5.4**Two killed in protests against a power plant in Andhra Pradesh**

Two people were killed and two injured on 27 February 2011 when police opened fire to quell violent protests against a controversial thermal power plant in Srikakulam district of Andhra Pradesh. The police opened fire after rubber bullets, teargas shells and baton charge failed to bring the situation under control, a police officer said. The rampaging mobs set a police vehicle on fire and fought pitched battles with the police in the village, about two km from Kakarapally, where East Coast Energy Pvt. Limited (ECEPL) is setting up a 2,640 MW coal-based thermal power plant in 3,333 acres allotted by the government.

The villagers, including fishermen, are trying to stop the work saying that the power plant would damage the ecology of the area and affect their livelihood. A war-like situation prevailed earlier in this small fishing village after the anti-power plant agitation turned violent. Police lobbed tear gas shells and fired rubber bullets on the protesters. Twenty-five people, including seven cops, were injured in the melee when over 200 villagers attacked them with sticks, iron rods and chilli powder.

People of 36 villages are opposing the thermal plant citing destruction of their livelihood and also precious wetland. The fisher men community has been on a relay hunger strike for the last 195 days opposing the power plant. "He suffered bullet injuries in the chest and back. We shifted him to a palm tree. He was gasping for his breath. Though we wanted to stay there, the cops kept firing. Errayya's last words were 'I am dying, you must move on.' We left him and ran to safety," a teary-eyed Venkatrao says.

"We don't have essential supplies. We don't get medicines with police blocking entry and exit points to the villages," rues a fisherman-cum-ryot. "Why are they (cops) swooping down on our villages? Why are they targeting us? If the plant management wants security, let the cops be stationed at the plant site," says a farmer, S Gopal Rao.

Close to Vadditandra junction at a distance of 50 metres, the burnt houses (26 in all) and paddy stocks bear testimony to police barbarism. Police hurled smoke bombs to chase away the residents from the houses. Utensils, vessels, clothes, ornaments and small savings were all burnt as the bombs fell on thatched roofs.

"The cops fed by the plant management are trying to push us out from our homes and villages for setting up the power project. But we would not cower. We would intensify the movement," warns Lakkavaram sarpanch Suggu Ramireddy, who is spearheading the stir. "They want to kill us, let them do it. We are fighting for our livelihood. The district SP and RDO Arun Babu, are acting as stooges of the plant management," charged a villager (*Times of India*, Hyderabad, February 26 to March 2, 2011).

Eminent Domain

The power of compulsory land acquisition for a public purpose and the principle of "eminent domain" have been mixed up quite thoroughly in the debate. The 'eminent domain' principle is not found anywhere in Indian law, modern or ancient. It is an English notion - that the sovereign has supervening right over every body's property - borrowed by the Supreme Court to defend the State's power to effect land reforms. It is part of the failure of Indian jurisprudence that even when the courts wanted to defend good things they have relied on the importation of principles from English law rather than risk looking at the welfare dimensions of the Indian constitution itself. The notion that the state is a trustee of natural resources on behalf of the people is another such principle. It was invoked to defend environmental concerns. Like the principle of eminent domain this one too is class neutral and can turn against the poor, whereas if the courts had relied on the directives in Part IV of the Constitution, they would have found support for land reforms and environmental legislation which is not class neutral and cannot be turned against the poor (Balagopal, 2007b).

The LAA 1894 was less objectionable in its colonial form when its power was confined to acquisition for a public purpose, than its post-colonial amendment of the year 1984 which permitted compulsory acquisition of land for companies too. However, the structure of that law shows that it was intended only for acquisition of small bits of land for purely local purposes like a school or road in a village. It was never intended for massive land acquisition for private projects and industries. A completely new law is needed for such land acquisition, which must have written into it a clear and unambiguous definition of what is public purpose and must encompass the framework of a comprehensive scheme of rehabilitation which will guarantee full protection of livelihood opportunities and community life, devised in a manner that ensures that the scheme as operationalised meets with the satisfaction of the displaced (*Ibid.*).

Need for a new Land Acquisition Act

The Land Acquisition Act 1894 was subjected to criticism over the years mainly in respect of the definition of 'public purpose' which was used as a ploy for forceful acquisition of land of the people by using the State's authority through 'eminent domain' principle. In 2007, the Supreme Court directed the Government of India and all states to furnish their responses on the clause of "public purpose". The Court was acting on a public interest petition (PIL) filed by an association of landless farmers of Karnataka. The petition raised a crucial question as to what constituted the "public purpose" and thereby challenged the legality of Sections 3(f), 4 and 6 of the LA Act as unconstitutional and violative of Articles 14 (Right to Equality), 19 (1) (g), 21 (Right to life and personal liberty) enshrined in the Constitution of India (Equations, 2008).

There was unanimity of opinion across the social and political spectrum that the LA Act of 1894 suffers from various shortcomings. Some of these were:

Forced Acquisitions: Under the 1894 legislation once the acquiring authority has formed an intention to acquire a particular plot of land then it can carry out the acquisition regardless of how the person whose land is sought to be acquired is affected.

No Safeguards: There is no real appeal mechanism to stop the process of the acquisition. A hearing is prescribed but this is not a discussion or negotiation. The views expressed are not required to be taken on board by the officer conducting the hearing.

Silent on Resettlement & Rehabilitation of those Displaced: There are absolutely no provisions relating to the resettlement and rehabilitation of those displaced due to the acquisition.

Urgency Clause: The clause never truly defines what constitutes an urgent need and leaves it to the discretion of the acquiring authority. As a result most of the acquisitions under the Act invoke the urgency clause.

Low Rates of Compensation: The rates paid for the land acquired are the prevailing circle rates in the area which are notorious for being outdated and hence not even remotely indicative of the actual rates prevailing in the area.

Litigation: Even where acquisition has been carried out but the same has been challenged in litigations due to several reasons. This results in stalling of legitimate infrastructural projects.

The New Land Acquisition Act, 2013

The LAA 1894 needed to be replaced by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A. An effort was made by formulating a Land Acquisition (Amendment) Bill, 2007 which sought to amend the various provisions of the LAA 1894 with a view to strike a balance between the need for land for development and other purposes and protecting the interests of the persons whose lands are acquired. However, the Bill of 2007 was subjected to criticism from several platforms including active civil society organisations. Finally the Bill was revised as "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013". The new Bill received the assent of the President of India on 26th September 2013 and came into force with effect from 1st January 2014 as an Act. This new Act is called as "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARRA, 2013)".

A few Highlights of LARRA, 2013

There are several safeguards against arbitrary and forced acquisition of lands, and for resettlement and rehabilitation of the affected persons. The process envisaged is much more participatory in the new Act. Many of these provisions were non-existent in the previous Act. The new Act and Rules can be downloaded from <http://dolr.nic.in/dolr/actandrul.asp>. A few of the provisions are mentioned below.

Land Acquisition and Compensation

Compensation: This Act proposes the payment of compensations that is up to four times the market value for land and assets attached to land and buildings in rural areas and two times the market value in urban areas which includes 100 percent solatium on the market value (Section 26, Section 29, Section 30, and First Schedule).

Retrospective Operation: This Act applies retrospectively to cases where no award has been made after initiating the land acquisition procedures under the previous Act. In such cases, provisions of LARRA, 2013 shall become applicable. Further, in cases where land was acquired five years or more prior to the commencement of the new Act but no compensation has been paid or no possession of the land has taken place, then the land acquisition process shall be started, if required, afresh in accordance with the provisions of the new Act (Section 24).

Social Impact Assessment: A social impact assessment study must be prepared in consultation with the concerned local government, a public hearing must be conducted for the same and such report must be made available to the public in the local language (Sections 4-5).

Special Safeguards for Scheduled Castes and Scheduled Tribes: No land can be acquired in Scheduled Areas without the consent of the Gram Sabhas/Panchayats. A Development Plan shall be prepared where SCs and STs are going to be displaced (Section 41). The Act also ensures that the provisions of Panchayat (Extension to Scheduled Areas) Act 1996 are also applicable in the Scheduled Areas while conducting Gram Sabhas (Section 16.5).

Consent of Majority a must: In cases where the public private partnership (PPP) projects are involved, consent of at least 70 percent of the affected families shall be obtained. In case of acquisition for private companies, consent of at least 80 percent is required (Section 2.2). Thus, this Act ensures that no forcible acquisition of land takes place.

Return of Unutilised Land: In case the land remains unutilised for 5 years or more after acquisition, the land should be returned to the original owner or their legal heirs, or to the Land Bank of the appropriate government (Section 101).

Limits on Acquisition of Multi-Cropped Irrigated Land: This Act stipulates that no multi-cropped irrigated land should be acquired. It can be acquired under exceptional circumstances and with a condition, among other limitations, that equivalent amount of culturable wasteland shall be brought under irrigation. These are special provisions to safeguard food security (Section 10).

Exemption from Income Tax and Stamp Duty: No income tax shall be levied and no stamp duty shall be charged on any award or agreement made under this Act (Section 96).

Share in Appreciated Land Value: Where ownership of the acquired land is transferred to any person for a consideration, without any development having taken place on such land, then 40 per cent of the appreciated land value shall be shared with the original owners (Section 102).

Rehabilitation and Resettlement

Resettlement & Rehabilitation: This is the first law that links land acquisition and the accompanying obligations for resettlement and rehabilitation. Four Chapters (V-VIII) and two Schedules (Second and Third) have been devoted to outlining elaborate processes (and entitlements) for resettlement and rehabilitation. The Second Schedule in particular outlines the benefits (such as land for land, housing, employment and annuities) that shall accrue in addition to the one-time cash payments. Third Schedule is devoted to the provision of infrastructural amenities to secure a reasonable standard of community life in the new villages or colony.

Reduced Qualifying Criteria: To qualify for benefits under this Act, the time period of dependence (on the acquired land) has been reduced to 3 years instead of 5 years for the affected families which do not own any land (Section 3.c).

Affected Family: The definition of "affected family" includes agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans who may be working in the affected area for 3 years prior to the acquisition, whose primary source of livelihood stands affected by the acquisition of land (Section 3c(ii)).

Houses for all Affected Families: All affected families are entitled to a house provided they have been residing in an area for a period not less than 3 years, preceding the date of notification of the affected area, and have been displaced. If they choose not to accept the house they are offered a one-time financial grant in lieu of the same (Sl.No.1 of Second Schedule read with Section 38).

Choice of Annuity or Employment: All the affected families are given a choice of employment or annuity. The employment after training and skill development should ensure statutory minimum wages. A one-time payment of Rs. 500,000/- per affected family is required to be paid, or an annuity that shall pay not less than Rs.2000/- per month per affected family for 20 years, with appropriate indexation (Sl.No.4 of Second Schedule).

Subsistence Allowance: All the affected families displaced from land shall be given a monthly subsistence allowance equivalent to rupees Rs. 3000/- per month for a period of one year from the date of award. If the affected families of SC/ST are displaced from Scheduled Areas, an additional amount of Rs.50,000/- is paid per family (Sl.No.5 of Second Schedule).

Possession of Lands only upon Fulfilment of Conditions of Compensation and R&R: The Collector shall take possession of land only after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the affected persons within a period of three months for the compensation and a period of six months for the monetary part of R&R entitlements commencing from the date of the award. The components of R&R package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award. However, in case of acquisition of land for irrigation or a hydel project, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands. The Collector is responsible for ensuring that the R&R process is complete in all its aspects before displacing the affected families (Section 38).

Offer of Share in Developed Land: Further, if land is acquired there is an offer for developed land as per Sl.No.3 of the Second Schedule which says: "In case land is acquired for urbanisation purposes, twenty per cent of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to the cost of acquisition and the cost of development."

Thus, this historic legislation is expected to provide just and fair compensation to farmers while ensuring that no land could be acquired forcibly, and also links land acquisition with obligations for undertaking resettlement and rehabilitation measures in a time-bound manner. After this Act has been passed, there has been a change in the central government in India in May 2014¹⁰. Already, opposition seems to be growing to the provisions for land acquisition as laid down in the new Act along with growing demands

¹⁰The United Progressive Alliance (UPA) government led by the Congress party has been replaced by the National Democratic Alliance (NDA) government headed by the BJP.

for its amendment¹¹. Pressure seems to be building up on the new government to amend the Act so as to make the land acquisition easier probably as before. One has to see how the NDA government and the BJP will implement this Act in the coming period.

Resettlement and Rehabilitation Policies

In the post-Independence period, the people have been displaced in large numbers for the construction of large-scale irrigation projects and other projects. India's Planning Commission states that by 2006 the total displaced people in the country went up to 40 million approximately. About 40 percent of displaced people since 1950 are tribal people. Furthermore, only less than 50.0 percent of the displaced persons have been rehabilitated. The Land Acquisition Act, 1894, under which the lands and shelters have been acquired can only fix some compensation. Resettlement and rehabilitation (R&R) must extend cash compensation for the overall opportunity costs of people being uprooted from their habitats, i.e., complete social, religious, cultural and material ways of life (Muthyam Reddy, 2006). Most of the pre-1980 projects in India did not have clear-cut R&R plans. The existing R&R policies are the result of concerted struggles by social activists, people's movements, academicians and NGOs. Resettlement was taken on a case-to-case basis and only a few projects offered resettlement in the form of house sites and infrastructure to the displaced people (Ram Babu, 2006).

A Working Group under the Ministry of Environment and Forests (MoEF), Government of India (GoI) made seven recommendations which emphasized that rehabilitation should be viewed from the socio-economic as well as humanitarian perspectives: 1. Land to land, 2. Grants for houses and cattle sheds, 3. Provision of common property resources (CPRs) in the new settlement, 4. Acquiring lands in the command areas, 5. Compensation for the assets lost, 6. Training to oustees for alternate employment, and 7. Tribal oustees to be accommodated as cohesive groups. As a consequence, the Government of AP issued an Order No.145, dated June 24, 1988 which formulated some guidelines to be followed particularly in the case of tribal oustees. Further, the Social Welfare Department issued guidelines by an Order No. 64, dated April 18, 1990. The first clause in it reads as follows in favour of tribals: "Whenever it is unavoidable to take up schemes involving submergence of tribal lands, rehabilitation has to be taken up on land to land basis, and if the extent of land lost by a tribal family cannot be entirely made good by alternative

¹¹ "New Land Acquisition act makes land buy virtually impossible: Amitabh Kant, DIPP secretary", (http://economictimes.indiatimes.com/articleshow/33853173.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, 17 Apr, 2014).

"A.P. seeks changes in new Land Acquisition Act", *The Hindu*, Hyderabad, 18 July 2014.

land, it must be ensured that some land is provided so that the family is not completely uprooted from traditional occupation."

Government of India's Initiatives in the Post-liberalisation phase from 1995

In the post-liberalisation phase, land for private purposes has assumed importance due to private investments and SEZs. In 1995, the Rural Development ministry of the Government of India prepared an approach paper on resettling project-affected persons and elicited the opinion of the state governments. The response of the Andhra Pradesh government was not favourable to project affected persons. It stated that: (1) The suggestion to provide land for land is not acceptable; (2) The state government will not get involved in the purchase of lands by the displaced persons; (3) Subsistence allowance can be paid only for six months; (4) The state government is not in favour of giving preference to the displaced persons in jobs or in allotting shops and contracts. "This kind of response from any democratic government should make one feel aghast. Any enlightened administration should discard it and accept the humanitarian norms of resettlement suggested by the ministry of rural development with a few amendments if necessary" (Subba Reddy, 2006).

The National Rehabilitation Policy, announced in February 2004 by the GoI represented the culmination of several years of efforts towards a model rehabilitation policy for the entire country. The Policy states that displacement of tribal people should be kept to the minimum and undertaken only after the possibilities of non-displacement and least displacement have been exhausted. When displacement becomes inevitable, the displaced should be provided a better standard of living (Laxman Rao *et al.*, 2006)

R & R Policy 2005 in AP

The Government of Andhra Pradesh came out with a policy on Resettlement and Rehabilitation (R&R) for the Project Affected Families (PAFs) on 8 April 2005 through Government Order No. 68 of Irrigation and CAD (Projects Wing) Department. While releasing the Policy, the AP Government claimed that it is offering the best R&R package in the country. As discussed earlier, the GoAP planned to construct several large and medium irrigation projects in the name of Jalayagnam and there was a possibility of large scale displacement of people. This R&R Policy was a response to the Jalayagnam projects. This policy assumed great significance in the light of the government vigorously pursuing the completion of as many as 34 irrigation projects by 2009. Submergence in tribal and forest areas would result in irrecoverable ecological destruction and affect the cultural identity of ethnic tribes. In Polavaram alone, an estimated 2,50,000 people - of whom at least 50 percent were tribals - would be displaced from about 300 settlements.

About 161,775 acres of land would be lost due to submergence in the reservoir including about 8,000 acres of forests.

Some Salient Features of this Policy to Benefit the PAFs

1. A displaced family will get 150 sq. mts in rural areas /75 sq. mts in urban areas of house site free of cost.
2. A family that is below poverty level (BPL) will get one-time financial assistance of Rs.40,000/50,000, and Rs.3,000 towards a sanitary toilet.
3. Allotment of waste/degraded government land to the extent of land acquired from PAFs, who become small or marginal farmers or landless labour.
4. Allotment of land to the PAFs belonging to STs in the project benefited area.
5. Land allotted will be in the names of wife and husband.
6. A grant of a cattle shed (Rs.3,000) to PAF who loses house along with a shed.
7. PAF will get transportation costs to shift materials and cattle: Rs.5,000/-.
8. Income generating scheme grant of Rs.25,000 to artisan/trader/ self-employed PAF.
9. Loss of livelihood of 750 days of minimum agricultural wages is compensated to PAF who becomes landless after land acquisition.
10. PAF who becomes a marginal farmer after land acquisition, will get 500 days of minimum agricultural wages.
11. PAF who becomes a small farmer after land acquisition, will get 375 days of minimum agricultural wages.
12. PAF who is an agricultural labourer/non-agricultural labourer will get 625 days of minimum agricultural wages.
13. PAF who is also PDF will get additional 240 days minimum agricultural wages.
14. PAFs provided with transit accommodation will also get R&R benefits.
15. PAFs getting reservation in the project affected area will get same benefits in the resettlement area also.
16. Resettlement of same community people is to be made in a compact area to protect social harmony.

17. Resettlement area/colony has to provide facilities of basic amenities. In addition to these facilities, all other facilities available in the previous village shall also be provided.
18. Each PAF belonging to STs will get other benefits - (a) preference in allotment of land, (b) additional financial assistance of 500 days minimum agricultural wages, (c) retention of their ethnic, linguistic and cultural identity etc.
19. Constitutional benefits to ST/SC/BC will be available in the new settlement area also.

Chapter-VI

Kakinada SEZ - Forcible Acquisition of Lands

Kakinada SEZ - A Botched Development Model

Kakinada is the district headquarters town of East Godavari district on the east coast of Andhra Pradesh on the Bay of Bengal. The district is located in the fertile delta of the Godavari river though the interior parts of the district fall in the hill ranges of the Eastern Ghats. Agricultural lands in this belt are very fertile. There is a wide range of cultivation of cashew, casuarinas, mango and coconut. There is a large presence of the fishing community in this area. Agricultural labourers mostly belong to the dalit/backward communities. At the instance of Kakinada Sea Ports Ltd (KSPL) the GoAP had recommended the setting up of an SEZ at Kakinada in 2002 with private sector investment. KSPL is a special purpose vehicle (SPV)¹² set up by International Sea Ports Ltd., Singapore in association with Konsortium Logistik Berhad of Malaysia which was already under private sector management.

The public sector Oil and Natural Gas Commission (ONGC), KSPL and the Infrastructure Finance & Leasing Services Limited (IL&FS) entered into a Memorandum of Understanding (MoU) on 31 August 2004 to set up an oil refinery and a port-based Special Economic Zone (SEZ) at Kakinada with ONGC as the single largest shareholder. In the next month (September 2004), the ONGC had signed an MoU with the GoAP to set up a refinery through its subsidiary, Mangalore Refinery Private Limited (MRPL). Later the GoAP has entered into an agreement with ONGC to set up an oil refinery and the Kakinada SEZ (KSEZ) in 2005.

About 9869 acres (3994 ha) of land was to be acquired for this purpose in 16 villages in Kakinada rural and U.Kothapalli mandals¹³. Later Kakinada rural mandal has been

¹² SPV is a new type of off-balance sheet operation known for obtaining loans from other investment banks; and such SPVs are the agencies through which the financial crisis is created - first example is Enron company and latest examples are in the US housing financial crisis.

¹³ A Mandal is an administrative unit below the district level.

dropped and Thondangi mandal was selected for land acquisition. This change of site was known to have occurred at the behest of influential people who had real estate interests in Kakinada rural mandal. The claim of the authorities that the proposed lands for acquisition in Thondangi mandal are dry and yield low incomes has infuriated the local villagers. Agriculture in these areas is dominated by small and medium farmers. Three crops could be cultivated in several villages. The dalit and backward class communities also depend on agriculture either as small farmers or farm labourers. There is also a large fishing community here.

As soon as the GoAP issued notification for acquisition of lands for the ONGC (to develop the oil refinery and KSEZ), the farmers started protesting vigorously. By that time, 'Kadali network' (a civil society organization) had already started its awareness programmes on the impact of the government's move on the sea and livelihoods of fishermen. The farmers forcibly locked the offices of local revenue office, Gram Panchayat office etc. The protests exerted pressure on the state government. As a result the ONGC had changed its project from sea coast to two mandals, viz., U. Kotthapalli and Thondangi. Later the ONGC withdrew from establishing the oil refinery and KSEZ "because of saturation of the refining capacity on the East coast" near Kakinada (Seethamahalakshmi, 2009).

The approval for the KSEZ given by the Ministry of Commerce and Industries, Government of India to the Kakinada Sea Ports Limited, was valid till 24 June 2005 which was extended for one more year up to 30 June 2006. The KSEZ was asked to submit a detailed project report in order to get a formal approval. At this juncture, K.V. Rao, "styling himself as the promoter of KSEZ Pvt Ltd" entered into the scene and had expressed his desire to obtain lands to the extent of about 9869 acres (3994 ha) in two phases (letter dated 23 September 2005 to the GoAP) in the name of establishing the KSEZ. Later the GoAP, through the District Collector, issued several Notifications for the acquisition of lands in several villages (Writ Petition No. 28056 of 2008, A.P. High Court).

While there was a growing opposition from the farmers to the forcible takeover of their lands, the revenue officials and the police, at the behest of the SEZ promoter, have lured and threatened them with an offer of Rs. 3 lakh/acre if sold to the SEZ promoter individually, otherwise the Government will take over in any case by paying only half the amount. The farmers were left with little choice even as the protests were growing. In the process thousands of acres of land was forcibly sold/taken from the farmers and the same registered in the name of K.V. Rao and not in the name of KSEZ. He entered

into individual agreements with the farmers and the sale deeds reveal that he would enjoy absolute ownership. This kind of transaction of a property is illegal once the said property is notified for acquisition under the LA Act. It is deemed to be forceful land acquisition from farmers by violating Sections 4(1), 5(1) and 9(1) of LA Act. Now the question is how have the lands been registered in the name of K.V. Rao. By 2006, KV Rao could purchase about 4,850 acres (1963 ha) of land as against the total requirement of about 9869 acres (3994 ha).

It was the local politicians, especially those of the ruling Congress party, who helped private agencies to facilitate land acquisition. They forced farmers to sell their lands otherwise threatening them with denying/withdrawing welfare schemes of the state government. Further, the private developers offered Rs. 3.00 lakh per acre as the price which was higher than that offered by the Government. Moreover, the Government officials including the police threatened and publicised among the local farmers that if the price offered by the private agency were not accepted then they would not only get less a lower price but would also be subject to forceful acquisition of their land.

The Congress came to power in AP in May 2004 and its chief minister, Dr. Y.S. Rajasekhar Reddy, began to implement the SEZ Act, 2005 very aggressively. The KSEZ assumed importance and its implementation was started. A former government official-turned contractor, K.V. Rao, is known to have got the contract for the sea port construction during the reign of the Telugu Desam Party (TDP). He was later involved in real estate business.

The originally proposed KSEZ was to be located in four mandals viz., Kakinda (Rural), U. Kothapalli, Pithapuram and Samarlakota. It was intended to cover a triangular belt of Kakinada, Rajahmundry and Pithapuram towns between the roadside and the sea coast within distance of 25-30 kms. In this belt, mainly in Gaigalpadu area, already there were already 70 established industries including Nagarjuna Fertilizers, Coramandel Fertilizers, Ruchi Oil Company etc. Most of the lands that were sought to be acquired in the two mandals of U.Kothapalli and Thondangi are very fertile. The ground water level in this area is only at six or seven feet below the ground. In fact, large parts of Thondangi mandal are under tank irrigation; these tanks are filled by the left canal of Dhawaleswaram project. Besides paddy, commercial crops like cashew, casuarinas, mango, coconut are grown on them. The earnings on these crops are said to be any where between 30,000 to Rs 1.00 lakh per acre. The economic and social composition of the 19 notified villages in U. Kothapalli and Thondangi mandals shows that one or two castes like Kapu, Golla, Gouda and Mala were numerically dominant. The agrarian structure here consisted of

small and medium peasantry who depended on agriculture as their main occupation (Srinivasulu, 2009).

Resistance against Land Acquisition

Resistance against SEZ started with the awareness campaigns led by the late K. Balagopal, a well-known civil rights leader and also an advocate in the High Court of AP. He was the state president of the Human Rights Forum (HRF) in AP. People were formed into village organizations (*grama sanghalu*) for solving issues on land after resolutions in village meetings. Also capacity building was done on land laws by imparting training to 300 farmers, agricultural labourers and fishermen, to enlighten the people who were deceived by lawyers during the land acquisition process.

Kadali network, a local non-governmental organization (NGO), had been working in this area for several years on various issues relating to land, environment, livelihoods etc. It collected affidavits from many farmers whose lands were sold to K.V. Rao by May 2006. Some farmers who were compelled to sell their land to the total extent of 2000 acres approached courts. The farmers were in depression. The farmers were cheated by lawyers also. Then they sought legal help of K. Balagopal and also National Human Rights Commission in June 2006.

In August 2007 nearly a thousand policemen tear-gassed and arrested the leaders from Raivarithota and Srirampuram villages. The villagers made every effort to force the policemen out of their village, forcefully closed all the shops so that they could not get any food. Also they dug up the roads so that the police could not ride their vehicles. A case was filed in SHRC against the arrest of leaders from villages. Subhashan Reddy, Chairman of SHRC, ordered the police to vacate the villages and release the leaders and 40 farmers. Later the slogan, "stop SEZ with one rupee" became very popular with the local people wherein thousands of people paid one rupee each as a donation to strengthen the struggle. The SHRC gave a mid-term order prohibiting the acquisition of fertile lands. The people who were resisting SEZs also forcibly removed the fences erected around the acquired lands (Boxes: 6.1-6.3).

The Government also tried to attribute the growing resistance to the infiltration of left-Extremist parties by arresting some of their leaders in January 2008. The media played an important role in spreading awareness about the movement. Several television news channels brought vehicles for live telecast of the situation and covered the police action. Several leaders were also put in jails. Well-known social activists in India like Medha Patkar, Sandeep Pandey and Balagopal participated in a dharna organized by the National Alliance of People's Movements (NAPM), AP Chapter and the Human Rights Forum

(HRF) in Hyderabad as a protest against the SEZ policy in Kakinada. The SHRC passed orders to release all those arrested on bail.

Box: 6.1

Police Swoop on Villages at Night

In November 2008, in 16 affected villages 3,000 Police personnel began patrolling and they were equipped with wireless sets. The police also came with iron poles and fencing materials (barbedwire). People organized themselves into watchdog committees and action committees to organise mass protests. When the police came on the night of 21.11.2008 the people in the villages threatened them by throwing the fencing materials out of the police vehicles. Entire villages turned violent, political parties were alerted.

On 22 November 2008, all the political parties questioned the police why they had come to the village. Local MLAs questioned the police in each village. The Superintendent of Police surrendered himself and begged for pardon from the Thondangi people. The fencing which was already made for the acquired lands was removed on 22.11.2008 (Source: Conversation with K. Rajendra Kumar, Leader of Kadali Network).

Box: 6.2

People Determined to Fight

The officials cheated us. Initially we were told that ONGC would come here. Gram Sabhas were not held. It is not known how much land is acquired. These are very fertile lands but they are showing them as useless lands. Land registrations done in the name of K.V. Rao should be cancelled. Four cases have been foisted on me, and I was arrested in two cases. I am charged with carrying weapons. We will take Gandhiji as inspiration and carry on the struggle -*Chinta Suryanarayana, a farmer.*

MRO Ms. Padmavathi threatened me that I would get Rs. 3.0 lakh/acre if I sold to K.V. Rao or only half that amount if the government deposits the money in the court. Kothapalli police inspector confined us in the station. Hundreds of policemen occupied our lands. Major cases were filed on four of us and minor cases on 32 members in our village. We are prepared to die but not give up lands for the KSEZ. - *Perla Babji, Srirampuram.*

Box: 6.3**Are Villages the Enemy Territory?**

Those villages are not part of an enemy country. No treacherous activities are going on there. People were only pleading that their lands should not be taken away. On them, the government showed its own mark...through the police. They scared and terrorized the adults and the children alike. Nearly a thousand police surrounded 13 villages by dawn. Innocent people were thrashed with lathis. Police tried to erect fences around the lands that have been the property of people for generations. The farmers did not relent at this might of the police. They protested and resisted with all their strength. They foiled the attempt of the police to erect fences around lands.-*Eenadu* Telugu Daily, 24 December 2008, Kakinada.

Support of Intellectuals and Social Activists

Many intellectuals extended support to this struggle at Kakinada, Hyderabad and also at Delhi in different capacities. Pushpendranath, an ex-officer of the ONGC, Achin Srivastava, an economist; Chin from Canada; Sandeep Pandey, Magsaysay Awardee; Ratnamala, a civil rights leader; Prof K. Srinivasulu from Osmania University, Udyalakshmi, K. Balagopal and B. Ramulu from HRF visited the struggle areas at different times. Some of them like Balagopal visited the area many times and provided legal support at Hyderabad. Nearly 350 intellectuals are estimated to have visited these areas and helped in creating awareness among the people.

Further, organizations such as Manishi, Madhumitha, Insaf, NAPM, Fisher Folk Network, Keratam etc., also visited the affected villages. Manishi is a Delhi-based organisation that provides a national platform for critical studies on SEZs. The NAPM is a team with personalities like Ms. Medha Patkar who work on the negative impact of large irrigation projects on the displaced people. Fisher Folk Network works in 9 villages in the affected area. The movement thus gained the support of intellectuals and social activists from all over India who visited, participated, studied and expressed their solidarity in several forms.

The anti-SEZ movement also received support from many leading personalities in legal circles: Syed Salar, Ramdas, Bojja Tharakam, Hema Venkat Rao, Vidya Kumar, A. Lakshmanarao and Muppala Subba Rao. Due to the intervention of some of them, the National Human Rights Commission, the Andhra Pradesh State Human Rights Commission and Legal Service Authority, Hyderabad, came to the rescue of the movement when villagers were arrested and put in jails. Legal petitions were filed in these Commissions and also in the A.P. High Court. Some legal proceedings are still continuing

against the SEZ at several levels of the legal system: Munsif Court, District Court and High Court. Cases have been filed under civil/criminal sections against 450 persons (leaders, farmers, social activists and advocates etc.) who were involved in the movement. Many villagers are still visiting the Munsif Court of Pithapuram regarding these cases.

Adverse Impact on the Villagers

The palm trees of farmers have been felled in about 4,850 acres (1821 ha) after the lands were acquired from farmers by K.V. Rao. Those trees and lands were the source of livelihood for toddy tapping, rearing cattle, goats and cows etc. All these activities have come down significantly. The loss to the farmers is estimated to be of the order of Rs.187.5 crore per annum. Migration is known to have increased from the villages. It has also affected the education of children. Dalits lost their employment and shelter due to displacement. Yadavs lost their trade in livestock and also lost lands. Kapus and Reddys also lost their lands. Artisans lost their toddy business and weaving activities. Fishermen lost sea-food and livelihoods (Source: Based on conversation with K.Rajendra Kumar of Kadali Network). Case studies by Seethalakshmi (2009) on Ramakkapeta panchayat in U. Kothapalli mandal reveal that 450 acres of dry lands have been acquired that affected the livelihood of farmers as well as wage labourers coming from surrounding villages. Most of the Yadava community that depended on livestock rearing in Kadaripeta have been affected.

The anti-SEZ struggle committee (*SEZ Vyathireka Porata Committee*) is a broad-based initiative, in addition to Kadali Network to conduct protest activities since 2007 (Box: 6.4) that included farmers, agricultural labourers and fisher folk. Some farmers were even prepared to return the compensation back to the Government and refused to part with the land. Many farmers who signed sale agreements and received compensation also participated in the legal struggle. Nearly 100 farmers filed affidavits in the courts to the effect that they were deceived by the government officials to become the prey of the developer. Petitions were also filed in the AP High Court. Many farmers also could reoccupy their lands and started to grow crops to some extent. Some of the fields were damaged by the developer after acquisition (Seethalakshmi, 2009).

It is estimated that about 4750 acres (1922 ha) of land is still in the possession of the farmers though it was forcibly sold to KV Rao and the money was received by the farmers. The farmers are refusing to part with their lands. After the ONGC's exit the GMR Group, an infrastructure major, is known to have entered the KSEZ with 51 per cent equity. While the original plan was to develop an SEZ and oil refinery, the GMR seems to be interested in building a huge thermal power plant in the acquired lands. This was never envisaged originally and the blueprint for the SEZ as required by the

Ministry of Commerce, Government of India seems to have not been submitted so far. The agitation against the KSEZ is picking up again with the thermal plant coming to the fore. This is especially so with the fresh memories of the valiant struggles of the farmers and fishermen in Sompeta and Kakrapalli in Srikakulam district in which some protestors were shot dead and scores were injured by the police (in July 2010 and in February 2011 respectively). The affected people are feeling confident that, with an already a protracted and heroic struggle behind them against the KSEZ, they will be able to fight the thermal plant proposed by the GMR Group.

Box: 6.4
Spearheading the Struggle

The 'Kadali' (meaning Sea in Telugu) network played a significant role in the struggle against the KSEZ from initial days of the proposal by the ONGC to set up a refinery. This network was formed in 2004 comprising fishermen, dalits, and farmers. It was earlier involved in a prolonged campaign against land acquisition and the impact of 103 polluting units on environment; air and water bodies in the area. People belonging to fishing Dalit, Adivasi, Kapu, Golla, Yadava, Gouda communities etc. joined the movement against this SEZ. Later other peasant families from Raju and Brahmin communities also joined the protests. Kadali network also mobilized 50 women from 16 villages who also played a key role. They were also involved in defacing and deforming the official boards of KSEZ and sometimes even removing them (Source: Conversation with K. Rajendra, leader of the Kadali network, 6 January 2011).

The leader of the Kadali network, K. Rajendra, hails from the Scheduled Caste community and played a key role in spreading awareness on several issues in the region (even before the KSEZ came into the scene) and had an organized group of volunteers. His previous work on issues of child labour, bonded labour, displaced people etc. established his credibility as an organizer and established personal contacts in the area. This came in handy when the issue of building resistance against the KSEZ became important.

KSEZ Vyathireka Porata Committee (Anti-KSEZ Struggle Committee) is another platform that emerged with farmers, agricultural labourers and fisherfolk to protest against this SEZ since 2007. Some farmers were even prepared to return the compensation back to the Government and refused to part with the land. Around 2600 acres of land has been attached to court in this process (Seethalakshmi, 2009).

Chapter-VII

Polavaram Project -Tribal lands

A Mega Contentious Project

The plan for the Polavaram project was begun in the 1940s across the Godavari river in the state. Over 276 tribal villages spread over 9 mandals in the agency areas of Khammam, East and West Godavari districts were expected to be submerged under the reservoir that would be formed due to the construction of the dam. About 2.5 lakh people were estimated to be displaced. About 53.17 per cent of the displaced people would be tribals and another 13 percent would be dalits. The natural resources, cultural systems and traditional knowledge etc. of all the tribal people are closely tied to the forests and the land they inhabit. With the loss of the forest produce, tubers, leaves, indigenous medicinal systems, common property resources and the land that support human population and livestock etc. the very existence of these communities would become unsustainable (Trinadha Rao, 2006).

As discussed in the first chapter, the state of AP has been divided into two states w.e.f 2 June 2014. A new Act of parliament called the Andhra Pradesh Reorganisation Act, 2014 was passed for this purpose. The said Act has been amended later through the Andhra Pradesh Reorganisation (Amendment) Act, 2014 which is deemed to have come into force on 29 May, 2014. Through this Amendment, certain revenue mandals and villages in Khammam district of Telangana have been transferred to the state of Andhra Pradesh to facilitate the construction of Polavaram dam. With this transfer, the submergence areas of this project now under the new AP state which will have the responsibility of providing resettlement and rehabilitation measures.

The Telangana state has objected to this transfer. This project remains a contentious issue between these two states. Even earlier, this has been one of the highly controversial projects. The upper riparian states of Chattisgarh and Orissa are not fully in agreement with the views of the government of AP. The disputes relate to the potential benefits of irrigation and power generation, the extent of submergence of tribal habitations, loss of a vast stretch of rich forest, loss of flora and fauna, loss of endangered species, project

design, the threat of inundation of several towns downstream in the event of breach of the dam etc. The human rights groups are especially opposed to the displacement of such a large number of tribal people from their habitations when the entire beneficiaries of the project are going to be elsewhere (Balagopal, 2006; Trinadha Rao, 2006; Shukla, 2006; Rama Mohan, 2006; Hanumantha Rao, 2008; Vidyasagar Rao, 2006). It is feared that about 1.06 million people in 10 towns including Rajahmundry city and 3.1 million rural people in 50 mandals of West and East Godavari districts have to live in perpetual anxiety about their as well as the dam's safety, in case the Polavaram dam breaks (Shivaji Rao, 2006).

There are several pending issues but the Ministry of Environment and Forests, Government of India recommended clearance to the project in its meeting on October 19, 2005. The final word is not said yet on this. Meanwhile the GoAP has gone ahead with acquisition of tribal lands, fixing and paying of compensation. Some resettlement colonies also have been built. Even before the foundation stone was laid for the dam, the GoAP had sanctioned works for the construction of the right main canal on November 8, 2004. The Human Rights Forum (HRF) had demanded changing the design of the project based on an alternative prepared by a retired engineer. The changed design, they argued, would yield the same benefits as the existing design but would drastically reduce submergence of the forest and displacement of the tribals (*The New Indian Express*, Hyderabad, 24 March 2011).

Disaster Preparedness Network (a group of 27 local NGOs) has been fighting for the cause of the project affected people in Khammam district since August 2004. This network conducted several activities to raise awareness among the people, and helped all the panchayats in the affected mandals in the district to pass resolutions against the construction of the project. The group made efforts to negotiate with the government on behalf of the villagers for effective rehabilitation prior to construction (Rama Mohan, 2006). Many voluntary organizations such as Suryodaya Samajam and tribal people's associations as Girijan Sanghams, together with 21 organizations and people from all political parties carried out 'padayatras' (foot-marches) across all the tribal villages that would be affected by the project.

The brunt of the problem is going to be faced by Khammam district where 205 habitations (122 revenue villages and 83 hamlets) spread over seven mandals are facing displacement. Among all the 9 mandals, the highest displacement will occur in Kukkunur and Kunavaram mandals. STs account for about 75.67 percent of the affected population in Chintoor mandal and 61.11 percent in Polavaram mandal. Many hamlets are very small

in size. In two-thirds of the habitations (184 out of 276), tribals constitute more than 50.0 percent of the population. In 33.3 percent of the settlements (92 out of 276) the majority are non-tribals. There is 100 percent tribal population in 64 settlements (Table 7.1). Nearly two-thirds of the affected population is concentrated in four mandals viz., Kukkunuru, Kunavaram, Chinthuru and Velairpadu while most of the affected land (40 percent) is in Kunavaram and Kukkunuru mandals. It may be noted from Table 7.2 that a large area of about 73,025 acres (29552 ha) of land has been requisitioned from only four divisions in Khammam district. Of this, nearly 50 percent (36097 acres or 14608 ha) has been acquired and handed over to the project authorities so far. Of this, 25071 acres (10146 ha) is patta land that has been taken over from private people (CESS, 1996; Subba Reddy, 2006).

Misinformation about Displacement

The project affected persons and families have been raising voices of dissent and resentment occasionally. The government officials gave little information or misinformation when they came to Gram Sabhas. When the people of Chatti village in Chintur Mandal of Khammam district were asked about their approval in Grama Sabhas, they refused to give their approval and so the alleged approval was a concocted one (Box 7.1).

Box: 7.1

Fictitious Resolutions of Gram Sabhas

The officials claim that they got the resolutions of Village Panchayat and the Gram Sabha. The fact is that they never held any such meetings with this specific agenda of displacement and resettlement. They concocted the so called resolutions of acceptance. Thus, they claim that all the villagers have accepted for the displacement and consequent R&R which is not true at all. - *People of Chatti village.*

The government officials have been over-publicizing about the R&R package of the GoAP and the people of Chatti village think that it may remain just a promise: "The officials are promising that the government is going to give a good R&R package, as a part of which we will get good facilities - house, school, temple, hospital, drinking water and drainage etc. in the new settlement. They also showed us a model village through a wall poster and also distributed pamphlets about this. They also tried to convince us that we will not have problems of floods every year as is the case now since we are residing beside the Godavari river bank. They insist that it is better to leave this place and also warned us that if we don't go we will be the losers". This is the common refrain in several

Table 7.1: Features of Affected Villages in 9 Mandals in Polavaram project

S. No.	Name of the Mandal	District	% of affected STs	% of affected SCs	% of affected BCs	% of affected FCs	No. with 100 % STs	No. of villages with High Density STs
1	Chinthur	Khammam	75.67	2.78	12.18	9.38	4	10
2	Velairpadu	Khammam	54.13	14.24	17.15	14.48	10	21
3	V.R. Puram	Khammam	53.23	4.14	37.35	5.28	14	26
4	Kukkunur	Khammam	21.46	29.59	25.00	23.96	4	9
5	Kunavaram	Khammam	51.33	13.77	22.00	12.91	9	21
6	Bhadrachalam	Khammam	28.61	22.92	25.91	22.55	0	2
7	Burgampadu	Khammam	13.08	39.08	29.90	17.94	0	1
8	Polavaram	West Godavari	61.11	10.82	13.62	14.45	10	18
9	Devipatnam	East Godavari	51.80	8.30	20.83	18.87	13	22
Total			45.60	16.18	22.66	15.54	64	130

Note: Figures as per 1991 Census.

STs= Scheduled Tribes, SCs=Scheduled Castes, BCs= Backward Castes, and FCs= Forward Castes

Source : CESS (1996: p.37).

Table 7.2: Land Acquisition in Khammam District for Polavaram project

Sl.No.	Special Deputy Collector	Acquired (Cumulative) & Handed Over					Total	Balance
		Requisitions for Land	Patta	Govt. Land	Assignment	Total		
1.	Palavancha Unit-I	17414.86	6260.2	2669.81	408.48	9338.49	8076.37	
2.	Palavancha Unit-II	8625.76	3512.66	1717.62	940.59	6170.87	2454.89	
3.	Bhadrachalam Unit-I	13034.94	4404.24	839.84	132.45	5376.45	7658.41	
4.	Bhadrachalam Unit-II	33949.10	10894.18	3285.30	1031.67	15211.15	18737.95	
Total		73024.66	25071.28	8512.57	2513.19	36097.04	36927.62	

Source: Office of the Special Collector, Land Acquisition, Khammam district for Polavaram project.

villages by the local people. The opinions of the villagers were never taken into account and were even threatened that if they did not accept the compensation now, they would have to face more hardships later (Boxes: 7.2 and 7.3).

Box: 7.2

Gram Sabha as a Ritual

"Gram Sabha was held only once for 2 hours for the purpose of declaring the acquisition of land. It was held as a ritual. We are angry at the government for showing so much interest in this project, at the cost of lives of the people. If shifted from this place, we may become paupers for several reasons. The place we are residing now has a beautiful atmosphere. It is nature's gift in the midst of forest and river bank, and with a variety of trees. But in the R&R village, there is no scope for such a climate and atmosphere". - Ms. Basaboina Soujanya, belonging to SC category, Vinjaram village (Kukkunoor mandal).

Box: 7.3

If you don't accept now, then you have to go 180 km

The officials pressurised the villagers to accept the compensation, by creating fears about having to take it later from the district headquarters of Khammam, travelling 180 km away. The gramasabha was held by the officials and the villagers were told that the government took a decision to build the dam and they must vacate the villages.- K. Appa Rao, Vinjaram village.

The people in the affected villages are very clear in their perception that the Polavaram dam is going to be built to benefit other regions of AP: "It is for political gains by developing the other regions or areas. We are the people in this area who are going to lose 100 percent and the people of other regions are going to gain 100 percent. In such a case why should we sacrifice". "In such a case, either the people who are going to benefit from the water of this project have to compensate us or the government which acts on behalf of them has to compensate in such a way that we should not be subjected to miseries in the next generations. Such a compensation should be more than 10 times that has been announced. So we demand that such compensation-related R&R package should be proposed, and only then we accept the displacement". This is the argument put forward by the villagers.

The people think that the affected people are mostly residing in the villages on the bank of the river Godavari and the forest areas, they lose lot of nature's care and beauty which they have been enjoying life so far and also the benefits of the forest produce. Thus, they

say: "We should get the same ambience as we get in the present village. We should get land in place of our displaced lands, i.e., by land to land package. We should be given cattle sheds built beside our residences in the new village, just as they are now in the present village. Further, there should be sufficient open uncultivated lands for the purpose of grazing the cattle". Further, they are going to lose the benefit of *podu cultivation* from the forest. A tribal family may be cultivating 3-4 acres of patta land and, simultaneously, an additional 5-6 acres of forest land without having a patta called as *podu* cultivation. Because of this, the tribal families are leading comfortable life. If they go to outside areas due to displacement, they will not have opportunities to enjoy the benefits from the forest land. This also fills the minds of the tribals with fear.

The villagers do not believe that the government will implement its own R&R package, let alone the package demanded by them, because they feel that the experiences of the displaced people under Nagarjuna Sagar and Srisailem projects have been very bitter. They feel that the government is trying to deceive them through false promises of providing better facilities. They feel psychologically disturbed by the unilateral decisions of the government. They feel that they have a settled life at the present place. It will take at least a generation to lead a similar stable life and a sustainable livelihood if they leave this place. The package to be given should be in accordance with the socio-economic and cultural values of the tribals so that it is acceptable to most of the people. The Orissa and Chattisgarh state governments have submitted petitions in the Supreme Court as nearly 80 villages are going to be submerged in those states by this project. They have been extending cooperation and solidarity to the struggles opposing this project.

Revenue Administration vs Rural People

The revenue administration has not updated the land records properly and so this causes several problems in the settlement of compensation. Further, the officials have been threatening or forcing the villagers to accept the R&R package for the lands and homesteads. The officials seem to be playing a pro-active role in favour of the government or, in other words, against the rural people.

Effect of Non-updating of Land Records

Several problems have arisen as the land records are not prepared and updated from time to time, sometimes even leading to violent situations. For instance, if an owner with patta/legal title has four sons, and when he dies, the patta is made in the name of his eldest son. The other three sons also will be enjoying the benefits of the land by cultivation i.e., the three sons are entered as cultivators but not as pattadars. In such cases when compensation is given by the government, the cheque is issued only in the name of the eldest son who holds the legal title. The present situation is such that, if the eldest son/brother is somewhat sympathetic, reasonable and has good intentions, he will distribute

the compensation amount among all the brothers without any problems. But in some cases, there are adverse consequences when the eldest son/brother does not wish to distribute the amount as per the actual shares to other brothers. Some times this has given rise to violent incidents and disputes among brothers in the villages (Box: 7.4).

Box: 7.4

Pitfalls of Non-updating of Records

As regards the land purchased by some farmers prior to 1970, the land title/patta was still on the names of the original owners. The pattas have not been changed in favour of the purchasers. Thus, when the compensation was awarded, it was in the name of the earlier owners. If the old owners were good, they shared the money with the purchasers in different ratios, mostly on 50:50 basis. The purchasers were helpless and could not do anything if the previous owners would not give them a share.

The government officials claim that as the houses are any way going to be submerged, there is no need for sanctioning pucca houses in the existing villages. But, at the same time, the government is constructing a black-topped road from Burgampad to Aswaraopet, and also widening the road when these areas are also going to be submerged. The villagers suspect that such acts are done with ulterior motives by the officials and contractors in order to swindle public funds (Box: 7.5).

Box: 7.5

Houses denied but other facilities getting built

Main roads are being built, CC roads are being built within the colony, tribal schools are being built and government offices are being constructed. But pucca houses under Indira Awas Yojana are not sanctioned to the poor on the pretext of submergence. People began to raise the question: "why is the same logic of submergence not being applied to the other government constructions and buildings?"

In the beginning many PAFs, especially the farmers and agricultural labourers, were opposed to accepting the compensation. However, as the big farmers expressed their willingness to accept the compensation, the small farmers became afraid of losing the money if they did not accept it when it was offered. Many people received compensation at the rate of Rs.1.15 lakh per acre. But they will not be able to purchase new land at this rate, as the land rates have gone up to Rs.4.00-6.00 lakhs/acre.

It appears to the villagers that several development activities have been stopped in many of the villages. The banks are not giving loans to the farmers because the lands were

taken over by the government. The only arrangement with the people (unofficially by the officials) in several villages is that they can continue to live in the present habitations until the water is impounded in the dam and submergence warning is given by the government. The government is not sanctioning funds to their village panchayats (eg. Vinjaram village). Though there is a severe drinking water problem in Vinjaram village, no action is taken by the government. In the summer, they get water for drinking and other purposes from 2 km away. The officials are not heeding their request. In contrast, a new road is being constructed at a huge cost of Rs.10 million/km though it is known that this road also will be submerged.

In Koida village most of the villagers have only 2-3.00 acres of patta land. Generally the villagers also undertake 'podu'(shifting) cultivation to the extent of 5-10.00 acres of forest land per family. Podu land is not entitled to 'pattas'. Therefore, there is no compensation for this. Loss of access to this form of cultivation causes a serious strain on the family incomes and the livelihood security of the villagers. In the Gram Sabha of Koida village the officials told the people that they had to leave the village as it was going to be submerged under the project and that it was unavoidable, and that every year their village was being affected by floods from Godavari anyway. They would get a better package if they left the village. The people did not wish to leave the village, and all of them feel mentally upset, because of the uncertainty and risk involved in moving and settling in a new village. The villagers did not fully believe the promises made by the government. But they felt it was unavoidable to leave the village and feared losing many constitutional safeguards that they enjoyed in their original home (Box: 7.6).

Box: 7.6

Tribals may lose constitutional rights after displacement

More important, the adivasis in their present habitat, i.e. the scheduled areas, enjoy a unique set of constitutional rights and privileges, that would no longer be available, once they are uprooted from the present village. This is indeed a serious matter of violation of human rights. In an all-party meeting recently, the AP government officials tried to gloss over this issue by merely suggesting that wherever the displaced adivasis would get resettled, those areas would in turn be notified under the Fifth Schedule of the Constitution! These officials were blissfully unaware of the fact that similar proposals to include some villages under the Fifth Schedule about two decades ago are still languishing in the corridors of the central secretariat. Such false assurances would only diminish the credibility of the government in the eyes of the adivasis (Sarma, 2006).

Corrupt Practices to Provide Compensation to Marginal and Small ST Landholders

Compensation is provided in different forms to tribals and non-tribals. The non-tribals get cash compensation irrespective of the extent of land owned by them. Whereas for tribals, the compensation is provided in two ways: (i) land to land compensation up to the extent of 6.25 acres; and (ii) cash compensation for the land in excess of 6.25 acres. That is, a tribal family will not get any cash compensation if the land owned by them is 6.25 acres or less.

The authorities assured both tribals and non-tribals that they would be allowed to cultivate their lands till the dam is constructed and water impounded in it though officially the land is acquired by the government. In such a case, the non-tribals have double benefits: (a) they get cash compensation immediately and (b) they can enjoy the land so long as the dam construction goes on, say for 10 or 15 years. But tribals who mostly own less than 6.25 acres will get only a single benefit, that is, of cultivating their existing lands till the dam is completed but will not get any cash compensation. Now, in many villages, the tribals also want to get the benefit of cash compensation for which there is collusion of the brokers, revenue officials and lawyers who get some proportion of the amount so obtained from the tribal people. The method adopted is as follows:

In a village, some families within a lineage come together and execute the sale of their lands (mostly brothers/cousins with a common surname) in the name of a single person. The legal document will be signed by all the members. For instance, if eight persons have a total land of 50 acres, then a single person on whose name this sale document is executed would become the owner of 50 acres. Then this person will be entitled to a compensation for 43.75 acres (i.e. land in excess of 6.25 acres). Then all those persons who executed the sale will share the amount in proportion to the land owned by them.

There is a long term danger here. When the land-to-land compensation is to be provided, it will be done only for the one person in whose name the sale deed was executed. Are the tribals not aware of this? They are. Many of them feel that this project may not be completed in the foreseeable future. That feeling is making them take the risk of registering their lands in others' name for the short-term benefit of cash. The collusion of officials is a key factor in this, because, as per the Land Acquisition Act, lands once notified for acquisition cannot be transacted between individual parties privately.

As per a judgement of the AP High Court dated 12.02.2002 in the Case of Sarapu Chinna Potharaju Dora vs. East Godavari District Collector (Writ Petition No. 8476 of 2001), the High Court reiterated the need to follow the procedures in the Scheduled Areas for acquiring land for an irrigation project. It was emphasised that a separate letter of consent, in the form of a written resolution, from each concerned Gram Panchayat in favour of the proposed acquisition of land shall be specifically enclosed with the land acquisition proposal before sending it to the appropriate authority.

Chapter-VIII

Summary and Conclusions

Introduction

This study has been taken up in the context of the large scale acquisition of agricultural lands for Special Economic Zones (SEZs) and other projects in India which has become an issue of serious political and social contestation in recent years. In the state of Andhra Pradesh (AP), land acquisition for irrigation projects, SEZs, and industrial and power projects have become major issues of contention. Land administration and the land rights of vulnerable groups of people have become major issues of public concern. Majority of the land losers are small and medium farmers, and tribals whose livelihoods are adversely affected. There has been widespread resistance against forced acquisition of agricultural lands in several parts of India - West Bengal (Nandigram and Singur), Maharashtra (Raigad district), Andhra Pradesh (Kakinada SEZ and Srikakulam district). Rural people were even prepared to face police firings resulting in deaths and injuries to many. This study is confined to an analysis of the land laws, land administration, assignment of lands, land acquisition, resettlement & rehabilitation policies in AP. Land acquisition issues for Kakinada SEZ and Polavaram irrigation project have been selected for more detailed discussion.

Land Surpluses

The state of Andhra Pradesh was formed on 1 November 1956 by merging the Andhra state (formed in 1953, on separation from Madras Presidency) and Telangana region of the erstwhile Hyderabad state which was under the Nizam's rule for several centuries. Being under different sets of paradigms before 1956, the experience in respect of land tenures and land relations was different in the two regions. The main aspects of land reforms are: (i) Abolition of Intermediaries, (ii) Tenancy Reform, and (iii) Ceiling on Landholdings. The first major ceiling law that was enacted was the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961. It was considered a weak law and the failure in its implementation was attributed to many weaknesses and loopholes.

After the peasant uprisings in 1960s and 1970s in India (the Naxalbari in West Bengal, Srikakulam in Andhra Pradesh, and other struggles), a new ceiling law, the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act 1973, was enacted. Though the new law did not make any radical impact, it could achieve better results compared to the earlier one. It was felt that the Government and the ruling elites in India introduced land reform measures as radical ideology on paper, but the programme was reactionary in implementation. The government of AP appointed a Land Committee headed by a cabinet minister, Koneru Ranga Rao, in 2004 to study various aspects of land issues in the state. The government has accepted its recommendations on ceiling surpluses, land and tenancy. It has agreed to "reopen cases of Land Ceilings, wherever the cases have been decided basing on fraud and misrepresentation of facts".

Scheduled and Tribal Areas

The Fifth Schedule of the Indian Constitution provides protection to tribal people living in the Scheduled Areas of nine states in the country from alienation of their lands and natural resources to non-tribals. The Sixth Schedule applies to the tribal areas of the North-eastern states in India. The Scheduled Tribes (STs), also referred to as adivasis (original inhabitants), have certain constitutional protections. They constituted about 8.6 percent of the population of India as per the 2011 census. In AP the Scheduled Areas are spread over nine districts. There are 35 identified groups in the STs in AP.

The AP Scheduled Areas Land Transfer Regulation (APSALTR) Act, 1959 proscribed the transfer of tribal lands to non-tribals and also provided for retrieval of tribal lands illegally acquired by the non-tribals. This Act was not implemented with the seriousness it deserved. Stringent amendments were made later which came to be known as Land Transfer Regulation-I (popularly known as Regulation-I) of 1970. According to its provisions, non-tribals could transfer their lands only to tribals or to the government, and could not sell them to other non-tribals. It also assumed that, unless the contrary is proved, any land in the possession of a non-tribal in these areas would be deemed to have been acquired from tribals. But it was not given retrospective effect.

With a view to conferring 'patta' rights (legal titles) on tribal farmers and putting in place proper land records after due survey, the government of AP made three regulations: 1. A P Mahals (Abolition and Conversion into Ryotwari), Regulation 1 of 1969; 2. A P Muttas (Abolition and Conversion into Ryotwari), Regulation 2 of 1969; and 3. AP Scheduled Areas Ryotwari Settlement, Regulation 2 of 1970. It turned out that the purport of these three regulations was to inform the non-tribals that if they could produce

some evidence to show that they were in possession of the lands in the preceding eight years, they could automatically get legal titles. It was very easy for the non-tribals to produce such evidence. In course of time, successive governments passed a series of executive orders, which further diluted the provisions of the Regulation-I of 1970. The stark reality is that about 50 per cent of cultivable land in the Scheduled Areas of Andhra Pradesh is under the occupation of non-tribals.

In violation of Regulation-I of 1970, the government issued an order in 1979 permitting non-tribals in occupation up to 5 acres of wet lands and 10 acres of dry land to keep the land in their possession. But the High Court of AP quashed this order in 1984. Despite this, the non-tribals continue to occupy the lands due to the connivance of the revenue officials and the non-tribal landlords. In course of time the non-tribals started to demand de-notification of certain villages from Scheduled Areas on the ground that the non-tribal population constituted the majority in such villages. This situation is the result of large influx of non-tribals into tribal villages.

There has been no systematic effort to check the land transfers to non-tribals. Some of the reasons that led to this situation are: no access to the record of rights (ROR); incompetence and inexperience of the revenue officers; money lending; lack of investigation into occupation of land by non-tribals; non-tribal men entering into marriage with tribal women and purchasing land in the name of tribal wives; purchasing land in the names of their tribal servants; procuring false caste certificates as STs and gaining legitimacy to occupy tribal lands; industrialisation and privatization; setting up of power projects; and fictitious adoption of non-tribal children by tribal families etc.

In a landmark judgement the Supreme Court of India, in the case *Samata vs. Government of Andhra Pradesh* (1997), viewed that the transfer of land in Scheduled Areas by way of mining leases to non-tribal people or companies is prohibited by the Fifth Schedule and Section 3 of the Regulation of the LTR Act. Yet, state governments have pursued a policy of inviting private bidders and investors into the tribal areas in the name of economic development.

The Forest Rights Act, 2008 tried to undo some of the 'historical injustices' of the past and recognized the rights of forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. This Act also gives primacy to the Gram Sabha in deciding several aspects of the development in tribal areas.

Assignment of Lands to the Poor

The first policy instructions for assignment of lands to the poor were given in Andhra

region in 1954 and this became the basis for the subsequent orders later. The maximum extent of land to be assigned to each individual was to be limited to 2.5 acres of wet, or 5 acres of dry land in such a way that the total land owned by a person (including the assigned land) should not exceed 2.5 acres of wet or 5 acres of dry land. Certain class of lands like tank-beds, foreshore of tank-beds, cattle stands, grazing lands, lands reserved for any public purpose, such as schools, playgrounds etc. could not be assigned. The assignment of lands shall be subject to conditions such as: (i) lands assigned shall be heritable but not alienable; (ii) preference shall be given to the village where the lands are situated; (iii) lands assigned shall be brought under cultivation within three years; (iv) no land tax shall be collected for the first three years except for the extent, if any, which has already been brought under cultivation.

Over the years it was found that a lot of lands assigned to the poor were not in their possession. To prevent this trend, the Government of AP brought out The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. This Act was retrospective in operation and applied also to sale transactions prior to the commencement of the Act. The alienation of lands assigned to the poor to any other person for cultivation or dwelling was punishable under this Act. The transfer of assigned lands was not possible under any circumstances and under any other law in force.

The official figures of lands assigned to the landless poor shows that 4.25 million acres (1.72 million hectares) have been assigned to 2.92 million households. Many of the poor are known to have sold their lands due to family exigencies and problems. The Land Committee, 2006 noted that there was a lack of effective executive machinery at field level to ensure that poor did not lose lands. The state government has accepted 104 recommendations made by this Committee. The Committee was of the view that the executive must be compelled to perform its role in a systematic manner. The Committee also recommended some amendments to the existing Acts to suit the changing realities and present day requirements in order to strengthen the process by which poor could gain access to land and retain it. It felt that the mechanics of land administration had been inaccessible to the people at large. The community should be involved at all stages of land management especially of government lands. The assignment proposals of government lands should be approved by the Gram Sabha. A landless poor person would be redefined as a person who owned no land or a person who owned not more than one acre of wet or two acres of dry land.

Land Acquisition and Resettlement & Rehabilitation

The debate regarding land acquisition for various purposes has become intense in the

last decade in India. The Land Acquisition Act (LAA), 1894 enacted by the British in India has been followed by the Indian governments also with some modifications/ amendments. The Act gives prominence to the 'eminent domain' principle i.e. pre-eminence of the State.

Public Purpose

The phrase 'public purpose' was neither explained properly in the LAA, 1894 (as amended in 1984) nor interpreted by the Government itself in the right sense. 'Public purpose' is the justified reason for the acquisition of private lands. Under Section 3(f) of the Act, land acquisition for public purpose includes: provision for village sites, extension, development or improvement of village sites; provision of land for town or rural planning; land for planned development from public funds; land for a corporation owned or controlled by state; land for residential purpose or for the landless poor, people affected by natural calamities, or to persons displaced, or for the people affected by reason of any scheme undertaken by the government or any local authority or a corporation owned or controlled by the state; provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by government. It does not include acquisition of land for companies.

The basic question is whether the use of the LAA by the Government for the acquisition of land for SEZs is at all justifiable in the eyes of the law. Section 44(B) of the Act provides that except for the construction of houses for their employees to live in, the Government cannot acquire land for a private company for any other purpose. Till date section 44(B) has not been amended. The land that is now being taken away by the Government from the farmers under the provisions of this Act is handed over to private developers for SEZs or other projects. The developer in turn can rent it out to industrialists. This whole process is in violation of the provisions of the Land Acquisition Act.

There is no guiding principle in the SEZ Act as to how the land should be used by the developer. How the developers have to allot land to the industrialists is also not clearly specified. The SEZs are also displacing people on a large scale. In AP, some SEZs are located along the sea coast cutting off fishermen's access to the sea from which the latter eke out their livelihood. In many places, small agriculturists are thrown out of their home and land. The Constitution requires the gram Sabhas to be fully involved whenever decisions are taken that might lead to the dislocation of people. The Supreme Court of India found that the power to determine a public purpose is primarily that of the appropriate government, yet it can be questioned on substantive grounds.

At the time when the LAA was enacted, the public activity was largely confined to acquisition of small pieces of land either for roads, public buildings, housing colonies etc. There were no public ventures on the scale of large dams submerging thousands of villages. In the post-Independence period, the same Act has been used to acquire large areas of land for irrigation projects and public sector undertakings.

'Eminent Domain' - Eminently Discardable

The 'eminent domain' principle is an English notion - that the sovereign has the supervening right over everybody's property - borrowed by the Supreme Court to defend the State's power to effect land reforms. It is considered a failure of Indian jurisprudence that even when the courts wanted to defend good things they have relied on the importation of safe principles from the English law rather than risk looking at the welfare dimensions of the Indian Constitution itself. The notion that the state is a trustee of natural resources on behalf of the people is another such principle. Like the principle of eminent domain this one too is class neutral and can turn against the poor, whereas if the courts had relied on the directives in Part IV of the Constitution, they would have found support for land reforms that cannot be turned against the poor.

New Law for Land Acquisition and Rehabilitation

The Land Acquisition (Amendment) Bill, 2007 was intended to amend the LAA, 1894. Regarding the definition of 'public purpose' it proposes to include three kinds of projects: (1) Projects of strategic defence purposes; (2) Infrastructure projects which include construction of roads, highways, bridges, mining activities, generation of electricity, water supply projects etc.; and (3) Projects for 'any other purpose useful to the general public' which is to be carried out by a 'person', which means companies or private individuals.

The main criticism of this Bill are: land acquisition on behalf of a 'person', now brings private purpose into the definition of 'public purpose'; wording like "any other work vital to the state" can be misused to legalise acquisition of land for any purpose; the proposed amendment allows private persons to acquire huge tracts of land to the extent of seventy percent of the requirement and then ask the government to acquire the remaining thirty percent; there is nothing in the Bill to suggest that housing for the urban poor by the state or educational, health and other institutions will be covered in 'public purpose' which indicates a bias against the rural and urban poor; and clauses relating to previous consent and enquiry by the Government under Sections 39 and 40 of the LAA, 1894 have also been done away with now, giving more scope for acquiring land for private companies etc.

In view of these provisions, the proposed Amendment Bill 2007 to the LAA has become more controversial and has been termed pro-industry and anti-people by the activist groups. In the popular psyche a certain kind of refrain came to the fore - that is, the 'public purpose' under the colonial regime was more public whereas the elected governments in India have become more anti-people.

The government of India introduced Land Acquisition (Amendment) Bill 2007 in parliament. This new Bill seemed to make it much easier for the governments to take over peoples's lands. However, this Bill went through several levels of consultations and revisions, and has finally become a law in 2013. In a revised form, it is known as The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013). It received assent of President of India on 26 September 2013.

This historic legislation is expected to provide just and fair compensation to farmers while ensuring that no land could be acquired forcibly. The new law stipulates that in cases where public-private-partnership (PPP) projects are involved or acquisition is taking place for private companies, the Bill requires the consent of no less than 70% and 80% respectively (in both cases) of those whose land is sought to be acquired. The new law proposes the payment of compensation that is up to 4 times the market value of land in rural areas and 2 times the market value in urban areas. This law also links land acquisition and the accompanying obligations for resettlement and rehabilitation. It applies retrospectively to cases where no land acquisition award has been made. A comprehensive, participative and meaningful process (involving the participation of local Panchayat Raj Institutions) has been put in place prior to the start of any acquisition proceedings. Special safeguards have been put in place for tribal communities and other disadvantaged groups. In addition to those losing land, the Bill also provides compensation to those who are dependent on the land being acquired for their livelihood.

After this Act was passed, there has been a change in the central government in India. The UPA government led by the Congress party has been replaced by the NDA government headed by the BJP. Opposition to following the procedures for land acquisition as laid down in the new Act seems to be growing along with growing demands for its amendment. Pressure seems to be building up on the new government to amend the Act so as to make the land acquisition easier. One has to see how the NDA government and the BJP will implement this Act in the coming period.

R&R Policies in AP

The Land Acquisition Act, 1894 can only fix some compensation but not for the overall opportunity costs of getting uprooted from habitats, i.e., complete social, religious, cultural and material ways of life. Most of the pre-1980 projects in India did not have clear-cut R&R policies. The existing R&R policies are the result of concerted struggles by social activists, people's movements, academicians and NGOs. The National Rehabilitation Policy, announced in February 2004 by the government of India was an outcome of several years of efforts towards a model rehabilitation policy for the entire country. This policy states that the displacement of tribal people should be kept to the minimum and undertaken only after the possibilities of non-displacement and least displacement have been exhausted. Persistent lobbying and campaigns by civil society organisations and concerned individuals at the all-India level persuaded the government of India to revise this policy again as the National Rehabilitation and Resettlement Policy, 2007. When the Government of AP was taking up several irrigation projects under Jalayagnam, it came out with a policy on R&R in 2005 for the Project Affected Families (PAFs) and claimed that it was the best R&R package in the country.

Kakinada SEZ

At the instance of the Kakinada Sea Ports Ltd (KSPL) the GoAP had recommended the setting up of an SEZ at Kakinada in 2002 with private sector investment. Later the public sector Oil and Natural Gas Commission (ONGC), KSPL and the Infrastructure Finance & Leasing Services Limited (IL&FS) entered into a Memorandum of Understanding (MoU) on 31 August 2004 to set up an oil refinery and a port-based Special Economic Zone at Kakinada (KSEZ) with ONGC as the single largest shareholder. In the next month, the ONGC had signed an MoU with the GoAP to set up the refinery through its subsidiary, Mangalore Refinery Private Limited (MRPL).

About 9869 acres (3994 ha) of land was to be acquired for this purpose in 16 villages in Kakinada rural and U. Kothapalli mandals. Later Kakinada rural mandal was dropped and Thondangi mandal was selected for land acquisition. This change of site is known to have occurred at the behest of influential people who had real estate interests in Kakinada rural mandal. However, the claim of the authorities that the proposed lands for acquisition in Thondangi mandal were dry and yielded low incomes infuriated the local villagers. Three crops could be cultivated in several villages. Agriculture in these areas was dominated by small and medium farmers. The dalit and backward class communities also depended on agriculture either as small farmers or farm labourers. There was also a large fishing community here.

As soon as the GoAP issued notification for acquisition of lands for ONGC (to develop the oil refinery and the SEZ), the farmers started protesting vigorously. By that time, 'Kadali network' (a civil society organization) had already started its awareness programmes on the likely impact of these projects on the sea and the livelihood of fishermen. Later ONGC withdrew from establishing the oil refinery and the SEZ. The KSEZ was asked to submit a detailed project report for formal approval by 30 June 2006. At this juncture, K.V. Rao, "styling himself as the promoter of KSEZ Pvt Ltd" entered into the scene and had expressed his desire to obtain 9869 acres (3994 ha) of land in two phases in the name of the KSEZ. Later the GoAP issued several notifications for the acquisition of lands in those villages.

There was growing opposition from the farmers to the forcible takeover of their lands. The revenue officials and the police, at the behest of the SEZ promoter, have lured, threatened and publicized among the local farmers that they would be offered Rs. 3 lakh/acre if they sold to the SEZ promoter individually, otherwise the Government would take over the land in any case by paying only half the amount. The local politicians and other influential people helped the private agencies to facilitate land acquisition. They used coercive methods to force the farmers to sell their lands otherwise threatening them of denying/withdrawing the welfare schemes of the state government. The farmers were left with little choice. In the process thousands of acres of land have been forcibly taken from the farmers and registered in the name of K.V. Rao and not in the name of KSEZ so that he enjoyed absolute ownership. This kind of transaction of a property is illegal once the said property is notified for acquisition under the LAA. It is forceful land acquisition from the farmers by violating Sections 4(1), 5(1) and 9(1) of LAA. Now the question is, how could the lands have been registered for K.V. Rao.

By 2006 KV Rao could purchase about 4850 acres (1963 ha) of land against the total requirement of about 9869 acres (3994 ha). Most of the acquired lands were very fertile with the ground water level at just six or seven feet. Migration is known to have increased from the villages. It has also affected the education of children. Dalits lost their employment and shelter due to displacement. Yadavs lost their trade in livestock and also lost lands. A large number of Kapus and Reddys also lost their lands. Artisans lost their toddy business and weaving activities. Fishermen lost their livelihood.

Resistance against KSEZ started with the awareness campaigns led by human rights activists and NGOs. People were formed into village organizations (*gramasanghalu*) and were enlightened on land laws. Kadali network, a local NGO that had been working in this area for several years on various issues relating to land, environment, livelihood etc. played a crucial role in organizing the resistance movement. The Struggle Committee

against KSEZ (KSEZ *Vyathireka Porata Committee*) is another initiative to protest against the SEZ which began in 2007. It included farmers, agricultural laborers and fisher folk. Many farmers who were compelled to sell their lands to K.V. Rao approached courts. The farmers were cheated by lawyers also. The slogan, "stop SEZ with one rupee" became very popular with the local people and thousands of people paid one rupee to enroll themselves to strengthen the struggle. The State Human Rights Commission (SHRC) gave a mid-term order prohibiting the acquisition of fertile lands.

The media played an important role in spreading awareness about the movement. One such instance was live coverage by several television news channels when the police swooped on the villages and put several leaders in jail. Support from well-known social activists in India like Medha Patkar, Sandeep Pandey and K. Balagopal was very helpful in getting the resistance a wider visibility in the country. Many intellectuals at Kakinada, Hyderabad and also at Delhi extended support to this struggle in different ways. Some of them also visited the struggle areas at different times. Nearly 350 intellectuals are estimated to have visited these areas and educated the people. Further, civil society organizations such as Manishi, Madhumitha, Insaf, National Alliance of People's Movements (NAPM), Fisher Folk Network, and Keratam also visited SEZ villages to study the impact of SEZs and to counsel the villagers. Many leading personalities in legal circles like Syed Salar, Ramdas, Bojja Tharakam, Hema Venkat Rao, Vidya Kumar, A. Lakshmana Rao and Muppala Subba Rao either visited the area and/or extended support offering to represent the case of the farmers in the National Human Rights Commission, Andhra Pradesh State Human Rights Commission, Legal Service Authority, Hyderabad, and A.P. High Court. Such interventions were extremely useful when villagers were arrested and put in jail. Some legal proceedings are still continuing against the SEZ at several levels of the legal system including the AP High Court. Cases have been filed under civil/criminal sections against 450 persons (leaders, farmers, social activists and advocates) who were involved in the movement.

The present situation is that about 4750 acres (1922 ha) of land is still in the possession of the farmers though it was forcibly sold to KV Rao and the money was received. The farmers are refusing to part with their lands. After the exit of ONGC, the GMR Group, an infrastructure major, is known to have entered the KSEZ with 51 per cent equity. While the original plan was to develop an SEZ and oil refinery, GMR seems to be interested in building a huge thermal power plant in the acquired lands. This was never envisaged originally and the blueprint for the SEZ as required by the Ministry of Commerce, Government of India seems to have not been submitted so far. The agitation against the KSEZ is likely to pick up again with the thermal plant coming to the fore.

Tribal lands - The Polavaram Irrigation Project

The Polavaram project (across Godavari river in Andhra Pradesh) is expected to submerge about 276 tribal villages spread over 9 mandals in the agency areas of Khammam, East Godavari and West Godavari districts. It is estimated that about 237,000 people would be displaced. About 53.17 per cent of the displaced people would be tribals. The natural resources, cultural systems and traditional knowledge etc. of all these people are closely tied to the forest and the land they inhabit. This has been one of the highly controversial projects in AP. The upper riparian states of Chattisgarh and Orissa are not in agreement with the views of the government of AP. The disputes relate to the potential benefits of irrigation and power generation, extent of submergence of tribal habitations, loss of a vast stretch of rich forest, loss of flora and fauna, loss of endangered species, project designs, threat of inundation of several towns downstream in the event of breach of the dam etc. The human rights groups are especially opposed to the displacement of such a large number of tribal people from their habitations when all the beneficiaries are elsewhere.

There are several pending issues but the Ministry of Environment and Forests, Government of India recommended clearance to the project in its meeting in 2005 which is still controversial. Meanwhile, the GoAP has gone ahead with acquisition of tribal lands, fixing and paying of compensation. Some resettlement colonies also have been built. Even now the human rights forum (HRF) has demanded changing the design of the project based on an alternative model prepared by a retired engineer. The changed design, they argue, will yield the same benefits as the existing design but will drastically reduce submergence of the forest and displacement of the tribals.

The state of AP has been divided into two states with effect from 2 June 2014. A new Act of Parliament called the Andhra Pradesh Reorganisation Act, 2014 was passed for this purpose. The said Act has been amended later through the Andhra Pradesh Reorganisation (Amendment) Act, 2014 which is deemed to have come into force on 29 May, 2014. Through this Amendment, certain revenue mandals and villages that are likely to lose lands and face submergence in Khammam district of Telangana have been transferred to the state of Andhra Pradesh to facilitate the construction of the Polavaram dam. With this transfer, the submergence areas of this project will now be under AP state which will have the responsibility of providing resettlement and rehabilitation measures. Telangana state has objected to this transfer. This project remains a contentious issue between the two states.

Disaster Preparedness Network (a group of 27 local NGOs) raised awareness among the people against the project and is also making efforts for effective rehabilitation prior to construction. Many voluntary organizations as Suryodaya Samajam and tribal people's associations Girijan Sanghams, and representatives from all political parties carried out 'padayatras' (walks through the villages) across all the tribal villages that are going to be affected by this project. In February 2011, the Human Rights Forum (HRF) organised padayatras for two days in raising awareness against this project in the affected villages. The brunt of the problem is going to be faced by Khammam district where 205 habitations (122 revenue villages and 83 hamlets) spread over seven mandals are facing displacement. Among all the 9 mandals, the highest displacement would occur in Kukkunur and Kunavaram mandals of the district. STs account for about 75.67 percent of the affected population in Chintoor mandal and 61.11 percent in Polavaram mandal. About 64 settlements have 100 percent tribal population. Many hamlets are very small in size. In two-thirds of the habitations (in 184 out of 276), the tribals constitute more than 50.0 percent of the population. The non-tribals are in a majority only in 33.3 percent of the settlements (92 out of 276).

About 73,025 acres (29552 ha) of land has been requisitioned from only four divisions in Khammam district. Of this, nearly 50 percent (36097 acres or 14608 ha) has been acquired so far. Of this, 25071 acres (10146 ha) is patta land that has been taken over from private individuals. The people in the affected villages are very clear in their perception that the Polavaram Dam is going to benefit other regions of AP while they are going to lose everything. The officials are promising that the government is going to give a good R&R package with good facilities - house, school, temple, hospital, drinking water and drainage etc. in the new settlement.

The villagers do not believe that the government will implement its own R&R package, let alone the package demanded by them, because they feel that the experiences of the displaced people under Nagarjuna Sagar and Srisailem projects have been very bitter. They feel that the government is trying to deceive them through false promises of providing better facilities. They have a settled life in their present place of residence and are psychologically disturbed by the unilateral decisions of the government. A tribal family may be cultivating 3-4 acres of patta land and, simultaneously, an additional 5-6 acres of forest land (*podu* land) without having a patta. Because of this, the tribal families are leading comfortable life. If they go to outside areas due to displacement, they will not have opportunities to enjoy the fruits of forest land. This also fills the minds of the tribals with fear. The package to be given should be in accordance with the socio-economic and cultural values of the tribals so that it is acceptable to most of the people.

In the Scheduled Areas, the PESA 1996 insists on the approval of Gram Sabhas for land acquisition, which has not been followed properly. Gram Sabhas were held in some villages only merely as a ritual exercise. The villagers were simply told by the officials that the project will be built, that they have to accept the compensation for their land and be mentally prepared to shift to the R&R sites. There was an element of pressure and threat by the officials. Normally the Gram Sabhas are meant to be an assembly of the villagers themselves to debate and decide what they want or do not want. The officials have no role in that. But due to the ignorance of the villagers, the role played by officials and middlemen have reduced the Gram Sabhas to rituals.

Certain kinds of development works are being taken up in some villages: main roads, internal roads, school buildings, government office buildings etc. but pucca houses for the poor are not sanctioned on the ground that the village is going to be submerged. The villagers suspect that such acts are done with ulterior motive by the officials and contractors to swindle public funds. In some villages the development works have also been stopped due to the impending dam. The banks are not giving loans to the farmers because the lands were taken over by the government.

Several problems and sometimes violent situations arise in the affected villages as land records have not been prepared and updated from time to time. This is so especially when the land titles are held in the name of the eldest son after the death of the father. When there is more than one son, the eldest receives the compensation amount. Problems arise while sharing the money which depends on the willingness of the eldest son, otherwise it leads to violence among brothers. This was also the case where the lands transacted prior to 1970 were not updated in favour of the purchasers. Under land acquisition now, the compensation is awarded in the name of the earlier owners. If the old owners were honest, they shared the money with the purchasers in different ratios, mostly on 50:50 basis. The purchasers were helpless and could not do anything if the previous owners would not give them a share. While the official compensation was Rs.1.15 lakh per acre the market rate of the lands in adjoining areas has gone up to Rs.4-6.00 lakhs/acre thus making the lands unaffordable in the new places.

Tribals also fear losing their constitutional rights after displacement. In the Scheduled Areas, they enjoy a unique set of constitutional rights and privileges that would no longer be available, once they are uprooted. This is indeed a serious matter of violation of human rights. The government officials try to gloss over this issue by merely suggesting that wherever the displaced adivasis would get resettled, those areas would in turn be notified under the Fifth Schedule of the Constitution. This is a false assurance. Because

similar proposals to include some villages under the Fifth Schedule about two decades ago are still pending in the central government.

Compensation is provided in different forms to tribals and non-tribals. The non-tribals get cash compensation irrespective of the extent of land owned by them. Whereas for tribals, the compensation is provided in two ways: (i) land to land compensation up to the extent of 6.25 acres; and (ii) cash compensation for the land in excess of 6.25 acres. That is, a tribal family will not get any cash compensation if the land owned by them is 6.25 acres or less. The authorities assured both the tribals and non-tribals that they would be allowed to cultivate their lands till the dam is constructed though officially the land is acquired by the government. In such a case, the non-tribals have double benefits: (a) they get cash compensation immediately and (b) they can enjoy the land so long as the dam construction goes on for several years. But tribals who mostly own less than 6.25 acres will get only a single benefit, that is, of cultivating their existing lands till the dam is completed but will not get any cash compensation.

Now, in several villages, the tribals also want to get the benefit of cash compensation for which they are colluding with brokers, revenue officials and lawyers who get some proportion of the amount as commission from the tribal people. The method adopted is as follows: In a village, some families within a lineage come together and execute the sale of their lands (mostly brothers/cousins with a common surname) in the name of a single person. The legal document will be signed by all the members. For instance, if eight persons have a total land of 50 acres, then a single person on whose name this sale document is executed would become the owner of 50 acres. Then this person will be entitled to cash compensation for 43.75 acres (i.e. land in excess of 6.25 acres). Then all those persons who executed the sale will share the amount in proportion to the land owned by them.

There is a long term danger here. When land-to-land compensation is provided, it will be done only for the one person in whose name the sale deed was executed. Are the tribals not aware of this? They are. Many of them feel that this project may not be completed in the foreseeable future. That feeling is making them take the risk of registering their lands in the names of others for the short-term benefit of cash. The collusion of officials is a key factor in this. Because, as per the Land Acquisition Act, the lands notified for acquisition cannot be transacted among the private parties.

Conclusion

In sum, one may infer that the existing constitutional provisions for preventing transfer of tribal lands into the hands of non-tribals are not implemented in Andhra Pradesh

with the required seriousness that the issue deserves. Similarly the fact that assignment lands are going out of the hands of the poor, despite the laws prohibiting the same, has not been addressed seriously. The many recommendations made by the Land Committee in this regard may not see the light of day given the lack of political commitment to protect the lands of the poor. Regarding land acquisition, one finds that the determination of the State to take possession of land from rural people at any cost either for irrigation projects, SEZs, thermal plants etc., is not matched by its responsibility to respect and follow the existing laws and procedures. One does not find the State machinery showing any empathy towards the rural people who are going to lose lands and livelihood. The promises of the State to provide good resettlement and rehabilitation measures are not fully trusted by the affected people, and they have enough reason to be suspicious. The affected people are neither consulted nor their views respected, including in Tribal areas which are covered under the Fifth Schedule of Indian constitution.

The approach of the State towards the affected people has been that of coercion, threat, intimidation and finally use of a disproportionately large police force to take over the lands. Where the private corporate companies are the project promoters, one finds the revenue and police administration colluding with the private company to intimidate the villagers. The affected people have lost faith that mainstream political parties would protect their interests as they are seen to be hand in glove with the private companies. It is civil society organizations, advocacy groups and public spirited individuals who have played a very active role in raising awareness levels among the affected people regarding their own land rights, the machinations of the officials in violating the rules and colluding with the private companies etc. and have provided legal support to the fighting people. It appears that this is the trend at the all-India level also, in the post-liberalisation phase, as the dominant political parties and also the State are increasingly seen to be siding with private companies.

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