

“Land Bank” and Adivasi in Jharkhand (India) - a back-door entry to grab people’s land for industrialists

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Government refusing to learn a lesson from its past failures to forcibly acquire Adivasi land.

Over hundred MoUs were signed between the Government and companies for acquisition of lakhs of acres of mostly Adivasi land that would result in the displacement of lakhs of Adivasis. People resisted the forcible acquisition of their land. Most companies had to leave Jharkhand empty-handed. The Government reacted by accusing the activists leading resistance movements as being naxals and throwing hundreds of them in jail. Police force was used to suppress people’s peaceful protests even to the extent of opening fire, killing several persons and wounding many more. State violence has instead strengthened people’s intent to protect their rights over *jal, jangal, jamin*.

Government’s action to favour some industrialists has been illegal from start. A good instance is the forcible acquisition of Santal Adivasi land in Pakur district by-passing Santal Pargana Tenancy Act in favour of a private mining company PANEM. The Supreme Court declared this company illegal together with over two hundred other mining companies all over the country. The moment it was declared illegal, the company coolly walked off the area leaving the affected people high and dry. The many provisions for rehabilitating the displaced people as per the MoU signed by the co and the people were left unmet and people have lost everything and have been reduced to the point of destitution. The Government has kept silent and failed to take on the co to fulfill its obligations to affected people.

‘Land Bank’ is the current novel idea of the state govt to grab Adivasi land for industrialists. It is done by demarcating uncultivated land, either of individual families or of the village community or in the village forest. One specific example of one Block in Khunti district will throw light on the matter:

Land Bank in Torpa Block, Khunti Dt., Jharkhand

Uncultivated private land - No of plots: 1568	Uncultivated common land - No of plots: 367	Uncultivated forest land - No of plots: 354
Total identified as acquirable: 10,898 acres	Total identified as acquirable: 683 acres	Total identified as acquirable: 4523 acres
Total already transferred to Land Bank: 1116 acres	Total already transferred to Land Bank: Nil	Total already transferred to Land Bank: Nil
Total still available: 9781 acres	Total still available: 683 acres	Total still available 4523 acres

Thus a grand total of 16,104 acres of ‘uncultivated land’ is slated to constitute the Land Bank in one

(Torpa) block. Several months ago the CM of Jharkhand announced that 1,75,000 acres are available for Land Bank. The present estimate is any body's guess!

The transfer of Adivasi land into Land Bank is illegal for the following reasons:

1) United Nations Declaration on the Rights of Indigenous Peoples, affirms

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. [Article 26]

And they "shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return." [Article 10]

It is sad that Jharkhand govt has ignored this UN directive. Hence forcible creation of Land Bank is unjust and therefore unacceptable.

2) Violation of the Vth Schedule of the Constitution insofar as the very composition of the Tribes Advisory Council at present is unconstitutional. As per clause 4 (1) the TAC must consist of twenty members all of whom should be tribals. Whereas during the past two years the Chief Minister, who is a non-tribal, has made himself the chair person, convened the meetings, prepared the agenda and presided over the meetings. Whatever resolutions / decisions taken during these meetings are unconstitutional and therefore invalid.

3) The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 [PESA] stands violated in the enactment of Land Bank in Jharkhand. Because clause 4(d) stipulates that "every Gram Sabha shall be competent and preserve the traditions and customs of the people, their culture identity, community resources and the customary mode of dispute resolution". Let it be noted that *land is part of 'community resources'*. Again, clause 4(i) "the Gram Sabha or the Panchayats at the appropriate level *shall be consulted before making acquisition of land* [emphasis added] in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in Scheduled Areas". And again "... State Legislature shall ensure that the Panchayats at the appropriate levels and the Gram Sabha are endowed especially with the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe" [4(m)(iii)]. It is important to remember that PESA is not just an Act of the Parliament but is part of Part IX of the Constitution.

Sad but true, the manner in which Land Bank is being enforced is a clear violation of PESA and the Indian Constitution. The fact is the Gram Sabha was not consulted nor its consent sought in the process of identifying and transferring the so-called 'uncultivated land' of individual farmers or the village community. Can there be a greater crime than this?

4) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 [Forest Rights Act] has been sidelined by the Land Bank enforcement by which thousands of acres of 'uncultivated forest land' have been included in it. It is a serious infringement

of Forest Rights Act. The Act stipulates that the village community has the “right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use”[3(1)(i)]. However, the central govt may allow diversion of limited amount of forest land for certain specified facilities namely “schools, dispensary or hospital, anganwadis, fair price shops, electric and telecommunication lines, tanks and other minor water bodies, drinking water supply and water pipelines, water or rain water harvesting structures, minor irrigation canals, non-conventional source of energy, skill upgradation or vocational training centres, roads and community centres provided that such diversion of forest land shall be allowed only if (i) the forest land to be diverted for purposes mentioned in this sub-section is less than one hectare in each case, and (ii) the clearance of such developmental projects *shall be subject to the condition that the same is recommended by the Gram Sabha*”[3(2)] - (emphasis added).

On all counts the enforcement of Land Bank is unconstitutional, illegal and unjust. People are also becoming aware of the cheating game the govt is trying to play with them. They will not be cheated any more. Just as the more than hundred MoUs signed so far have not ushered in the industrialists whose only motive is profit at any cost, this trickery of the govt also will not help ‘Momentum Jharkhand’.

Stan Swamy , February 2017
