



# Balagopal Support pillar for tribals

**T**he news of K Balagopal's demise had been a big blow to the adivasi movement and the struggle of the tribals. He had been a tremendous support to the tribals who silently cope with exploitation, oppression and violence in their daily lives. Balagopal drew attention to an issue that most people failed to understand about the ecological balance: it is the trees and not the forests that are important. The lone solution of resumption of forestland from the possession of tribals to rejuvenate forests does

not address the questions like if forests have to be rejuvenated, why should only tribals sacrifice their land? Why can't the same forests be raised in revenue lands of the government, instead of crops? Why is that only tribals are asked to sacrifice for environment? Why can't every one of us do it? Who does the forest belong to after all?

Balagopal stood as a strong crusader for the adivasi movement for forest rights. More importantly, he also articulated how adivasi opposition to the Polavaram project that is destroying their lives and identity needs to be seen as a democratic demand. Adivasis would find it impossible to find a replacement for him.

## Legal aid for Adivasis

Balagopal provided legal aid to several helpless tribals in the higher courts enabling them for retrieval of thousands of acres of alienated cultivable land from

Securing the land rights of tribals in the agency areas of Andhra Pradesh formed a substantial part of Balagopal's activism. His long-standing friend Palla Trinadha Rao recounts how Balagopal secured thousands of acres of land for the tribals with his strong contention that there was no alternative but to reexamine the founding principles to protect the rights of tribals

## TRIBALS

the possession of non-tribals. Some of the judgements that were pronounced came with his intervention in such cases. He particularly supported the adivasi movements struggling to get legitimacy for their land occupations in the areas of east and west Godavari districts. One such incident was the agitation by tribals of Nelakota of Devipatnam Mandalam for 130 acres of disputed land. The non-tribals had fraudulently obtained settlement pattas for this land. The tribals resumed their rights over the alienated land during their land occupation movement.

The non-tribals filed a writ petition in the Andhra Pradesh High Court and managed to obtain orders in their favour with misrepresentation of facts. They then approached the district collector for implementation of these orders to evict the tribals from their lands. Balagopal filed a counter writ petition in the court on behalf of the tribals seeking a stay on non-tribal interference in the matters related to tribal land cultivation and obtained an interim order to that effect. The high court disposed off the case without affirming the rights of non-tribals and instructed both the parties to settle their disputes in local civil courts. In this way the tribals managed to preserve their land rights.

### Bailing out tribals in false cases

As a lawyer, Balagopal showed himself as the only lawyer of the poor of his generation with a reputation for competence. His arguments in several cases evolved certain principles of jurisprudence/rules of law that are favourable to the tribals. Non-tribals in the agency areas of west Godavari district have been raising land conflicts arguing that the lands which are being cultivated by the tribals belonged to them as they are the settlement Pattadaars. It has been a common practice for the revenue authorities in the mandals to issue land protection orders in favour of non-tribals and further instructing the police to complement their action unlawfully. The police deliberately implicated the tribals in false cases as a way of evicting them from their lands.

After Balagopal's intervention, the Andhra Pradesh High Court gave a

landmark judgement preventing the interference of the police and the Mandal revenue officials (MROs) in tribal land disputes. This enabled adivasis to protect thousands of acres of land under their cultivation in the agency areas of the state.

### Land rights protection

In order to consolidate its vote bank, the government issued orders permitting permanent settlement of non-tribals in the agency areas in direct contravention of the provisions of land transfer regulations. Seeing the looming serious threat that a huge non-tribal population would pose to the very existence of the tribals, Balagopal filed a public interest litigation questioning the legality of the GO.

The government has been the greatest violator of the land transfer regulations in the agency areas. Instead of being a protector of the rights of the vulnerable poor tribals, it often allows by direct and indirect means, several avenues for non-tribals to lay claim to land. In one such case the government permitted commercial activities by the non-tribals in the RTC complex of Paderu. Every time such a violation was brought to his notice, Balagopal obtained the much needed stay order from the high court. Similar stay orders were obtained by him against the decision of the government to permit non-tribals to set up HPCL petrol pumps in Rampachodavaram. He argued that the principle of 'res judicata' (a case that is closed should not be opened again) couldn't be applied in cases related to tribals. The high court observed that the principle of 'res judicata' should be applied with caution and circumspection in adjudicating tribals' rights to land and other opportunities in agency areas. In the course of his defence of these rights, he also brought to discussion another important legal question impacting the right of the indigenous. Foregrounding the vulnerability in which the tribal community lived, Balagopal argued that the tribals

were competent to prefer appeals against the orders issued by the special deputy collector under land transfer regulations, even if they were not parties in the original proceedings. He repeatedly informed the courts about the tactics of collusion in which one non-tribal filed suits against another non-tribal, keeping the actual tribal who cultivated the land out of the litigation. It was only at the appellate stage that the tribals made their appearance.

Balagopal always said that the land transfer regulations were framed with the intention of protecting the lands held by the tribals against the takeover by non-tribals. He emphasised the legislative intent of the regulations and repeatedly brought to the attention of the high court that

He particularly supported the adivasi movements struggling to get legitimacy for their land occupations in the areas of east and west Godavari districts

these regulations allowed for special remedies and flexibility and departure from the regular procedure and principles of the rule of law. Balagopal succeeded in convincing the judiciary to re-examine the founding principles of law in the case of tribals and was instrumental in developing a new precedent in law. In such cases he argued that there was no alternative but to reexamine the founding principles to protect the rights of tribals.

Yet another recurring issue was the jurisdiction of the civil courts in plain areas to adjudicate civil disputes arising in the agency areas. Balagopal argued in the high court that the AP Civil Courts Act was

barred from entertaining civil matters in agency areas and that the Act had no jurisdiction in such areas. Following this, in 2006, the high court passed a judgement that civil courts are barred on grounds of territorial jurisdiction to adjudicate disputes arising out of the scheduled areas and that agency courts alone have the jurisdiction. Using this judgement, Balagopal questioned the legality of the implementation of the decree granted to a non-tribal by the civil court in Rajahmundry. Here the civil court, despite having no jurisdiction to adjudicate this case, had directed the handing over of land in six tribal villages, including the forest land in Mantur estate to the non-tribal. The interim orders passed by the high court in these cases enabled the

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were being harassed and evicted by the forest officials. Balagopal questioned the legality of the actions of the forest officials in evicting these displaced tribals. The tribals got a breather with the high court order in their favour.

This eminent human rights lawyer questioned the anti-advasi activities of the police in the name of anti-Naxal operations in Dandakaaranya and Nallamala forests. Through his fact findings into many cases where the tribals were charged with the 'crime' of being Naxalite sympathisers, he exposed many police atrocities.

### Standard bearer

Balagopal strongly opposed the move of the government to form a tribals battalion in 2006 similar to the adivasi private army under the leadership of Mahendra Karma in Chhattisgarh. His argument was that it would create disturbance, lead to suppression of people's rights and enable the government to inflict violence in the name of development. Similarly, he participated in the campaigns against the rape of tribal women in Vakapally area.

On the issue of large-scale deaths of tribals due to unavailability of public healthcare, Balagopal led fact-finding teams to enquire into these deaths which brought out the gross negligence and indifference of the government towards the marginalised. Based on such findings, he filed public interest litigation raising these issues. The PILs were successful as the high court issued directives to the

AP government to provide healthcare to the tribals in the agency areas of Adilabad district.

Balagopal filed many petitions on behalf of the tribals related to the implementation of the Panchayat Extension to Scheduled Area (PESA) Act which enabled tribal autonomy over the local governance in the scheduled areas. He challenged the move of the Andhra Pradesh state government to turn Bhadrachalam

into a township for 'development' on the ground that it would impede the self-governance of the tribals and obtained a stay order from the high court. Similarly, he also challenged the acquisition of land and rehabilitation process that the government undertook without consent of gram sabhas and Mandal Praja Parishads in the scheduled areas. He also managed to prevent the acquisition of tribal land under the Polavaram project in a few cases.

### Priority to campaigns

Even while arguing the cases of tribal rights violations, Balagopal never assumed that the courts would offer comprehensive solutions to the problems faced by the people. He saw courts as one of the instruments available to the movements, that too in a few suitable cases. That is the reason why he preferred campaigns for tribal rights and issues and expended much of his energy in such campaigns. He participated in many meetings in tribal areas from Adilabad to Srikakulam to educate the tribals in the language of rights.

He participated in many rallies and dharnas organised by the tribals against the anti-advasi policies of the state and expressed his solidarity. His support was invaluable in several campaigns of the tribals against the government move to repeal the 1/70 Land Transfer Regulations, displacement of adivasis under the Polavaram project, bauxite mining project, and forestry projects with the financial assistance of the World Bank. He not only wrote several articles on the anti-tribal policies of the state but also participated in campaigns and motivated the tribals.

Balagopal's aims, practice and thinking are admired by many. But in this era of globalisation it is difficult to emulate his life of integrity and ethics. Having known him for the past 15 years I am unable to accept the fact of his demise. The only real tribute that a tribal rights activist can pay, I think, is by shaping one's practice in accordance with his vision and endeavour.

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tribals to protect nearly 4,000 acres of land.

Balagopal consistently questioned and challenged inside and outside the court the state's violence on tribals. He conducted fact finding inquiries into the atrocities committed by the forest officials when they burned down entire hamlets of the tribals. The gutti koya tribals who had migrated from Chhattisgarh to Khammam to live in the agency areas