

Development in tribal areas and PESA

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Rights of Scheduled tribes in the Scheduled areas have become hostage to the exigencies of development in India's quest for two-digit growth rate. Rapid growth requires substantial utilization of minerals which are to a major extent located under the soil in the Scheduled areas, and their extraction brooks no delay. Coal, which is the raw material for thermal power, is the worst offender because rapid increase of power generation is deemed to be an unavoidable concomitant of growth.

The Scheduled areas of Khammam district of Andhra Pradesh is an area where there are sizable deposits of coal, till recently mined by labour-intensive underground mining which did affect the livelihood rights of the tribal people of the area to a limited extent. But, with open cast mining being resorted to in the interests of greater productivity and cost-efficiency, the effect is taking devastating proportions. Whole hamlets and their fields are proposed to be cleared by force to hand over the land for mining of coal, dumping the top soil ('over-burden' is the technical name) and building the rooms/buildings of the establishment. It is being done by the Singareni Collieries Company, a Public sector concern owned jointly by the State and Central Governments. The land is being cleared as if it is not governed by any special law or laws but only the ordinary legislation like the Land Acquisition Act and Revenue rules and regulations. The take over of the hamlet of Daratogu and parts of neighbouring hamlets Kothagudem, Kothuru, Kishtaram, Lacchagudem and Dubbatogu Gumpu for clearing the lands for Koyagudem Open Cast Project-II in Tekulapalli Revenue Mandal is imminent. So is the take over of Pudukudu Chelka and the neighbouring Mailaram in Kothagudem Revenue Mandal.

The Panchayats (Extension to Scheduled Areas) Act, 1996 (Act 40 of 1996), briefly known as PESA, prohibits any such unilateral acquisition. It is a Constitutional mandate since, by virtue of Art 243 M (4) of the Constitution, PESA is not just an Act of Parliament but Part IX of the Constitution as applicable to the Scheduled areas. Sec.4(d) of PESA gives the tribal gram sabha the right to safeguard and preserve, inter alia, the community resources, which includes the land, the soil, minerals etc. This right precludes taking over of tribal villages and lands in the Scheduled area without intimation and consultation with the gram sabha, and arguably without its consent too. Sec.4(i) of PESA mandates consultation with the panchayat at the appropriate level before land acquisition or rehabilitation is undertaken in the Scheduled areas. And Sec.242-F of the A.P.Panchayat Raj Act has

prescribed the appropriate level as the middle tier: the Mandal Parishad. Such consultation has to be effective consultation, in the terms set out by the Supreme Court in relation to the expression 'consultation' used by the Constitution, in the context of appointment of judges. No such consultation has taken place nor is it contemplated in the above instance of land acquisition for open cast coal mines.

But PESA is not the only special law being violated in the interests of the exigencies of rapid development. The Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), 2006 (Act 2 of 2007). This Act recognises rights in reserve forest land enjoyed prior to 13 Dec 2005. But a lot of such land is being simply taken over for the coal mines, claiming that the tribals are in illegal occupation and have no right to it.

Communist politics in its various shades is very much present in the district, but it is not able to match the speed of the government in organization, updating of the knowledge of the legal rights of the tribals, of the ways of the violation devised by the government, and in discovering ways of overcoming pessimism born of past experience of the adamant attitude of the government and their own inability to overcome it.