

## Orissa land scenario- What a mess!

### Diversity of land tenures - a colonial relic

The present geographical entity of Orissa, prior to formation of Orissa as a separate province in 1936, was divided broadly into two kinds of territorial domains- Mogulbandi (the areas transferred to the British from the Mogul-Afghan-Marhatta rulers, otherwise called British territory) and Gadjat (about 24 small, small Princely states). The British territory was again subdivided into 3 Presidency areas, such Bengal-Bihar, Madras and Central, each having a separate revenue collection and tenancy system of its own. The Bengal revenue system was implemented in districts like Balasore, Cuttack and Puri. Madras revenue system prevailed in Koraput, Ganjam and part of Phulboni districts. The Central Province revenue system was prevalent in Sambhalpur and Nawapada. The so-called 24 princely states were in fact controlled by the British through a subsidiary alliance, under which the princes had freedom in their own internal administration so long as they regularly paid tributes to the colonial authority. Each Princely state had separate land settlements and revenue regulations, which was sanctified by the Government of India Act, 1935 too. As a result, Orissa at the time of its formation and also subsequently at the time of independence inherited a diversity of revenue systems and tenancy laws that prevailed in different parts of the present-day Orissa in pre-independence period.

At the time of formation of Orissa as a separate province in 1936, it comprised six districts, Balasore, Cuttack, Puri, Sambhalpur, Ganjam and Koraput. After independence, all the 24 princely states were also merged with Orissa, and consequently 7 new districts were created: Keonjhar, Dhenkanal, Sundargarh, Bolangir-Patna, Boudh-Khondomol and Kalahandi. During the period 1992 to 1994 a reorganization of districts took place resulting in a total of 30 districts which Orissa has today.

Prior to independence, the revenue administration, in spite of its area-specific diversity, was marked by two basic systems, namely Zamindari system and Raiyatwari system. According to **Zamindari (Landlord) system**, land was held as an independent property owned by an estate or a landlord and revenue was assessed on such land by the Government. Landlords were required to deposit land revenue at the district treasury. One Sub-Divisional Officer assisted by one or more Tehsildars were in charge of revenue collection. There was no revenue administration below this level. The Zamindars had in turn organized their own revenue collection agencies, often involving several layers of intermediaries.

According to **Raiyatwari (Peasant Proprietary) system**, the land belonged to the crown and was held by Raiyats, individuals with a right of occupancy (heritable and transferable). Revenue was assessed on individuals who were the actual occupants of smaller holdings. It was collected through a village headman whose office was hereditary. He was paid a commission of 10% and sometimes received some Jagir land as well. In addition to collection of revenue, he was also required to keep the record of rights up-to-date by carrying out mutations.

The common element of both systems was the neglect of Raiyats, who had to pay a hefty sum towards land tax irrespective of loss of crops due to natural disasters like flood and drought coupled with the neglect of Share-croppers, who neither enjoyed the fixity of tenure nor receive a fair share in the agricultural produce made possible by his labour.

### Paradox of Reforms

Soon after the Congress led provincial government came into power following the elections of 1946 and with the prospect of independence being in close sight, the political leadership, perhaps under

the spell of their pre-independence pledge for radical agrarian reforms, went on a long spree of progressive legislations, as if to undo overnight the colonial system of exploitation that had gone on for ages. However, as everyone knows such initial flurry of reforms proved fiascos, nay counter-productive. Nevertheless it is interesting to recount that Orissa had constituted a 15-member Committee on land reforms as early as 15 Nov. 1946 under the chairmanship of then Revenue Minister N.K.Choudhury (who later became Chief Minister during 1952-57), with the agenda of recommending legislative and administrative measures for an equitable and uniform rent structure, elimination of intermediary interests, prevention of fragmentation, improvement of agricultural production and raise the standard of living of the cultivators. The Committee's basic recommendations, accepted formally in November 1848, sound radical even today, and were based on two basic principles, (1) decentralization of administration and (2) de-provincialisation of land revenue.

On the front of **decentralization of administration**, the Committee recommended constitution of Anchals as administrative units, each comprising one Police station and Tahsil, under the local authority called Anchal Sasan. Anchal Sasan shall consist of one elected body called Anchal Sabha comprising elected representatives from Gram Panchayats, and also an Executive Officer called Anchal Sarvadhikari. The Anchal Sarvadhikari shall administer all estates, tenures and lands vested in the Anchal, in a word, the revenue administration of Anchal. The Anchal Sasan shall also gradually take over the financial and administrative powers and responsibilities in respect of such areas of public concern as education, health, agriculture, animal husbandry, cooperative, cottage industry and rural welfare in general.

On the front of **de-provincialisation of revenue**, the Committee recommended the withdrawal of the legal right of the state to collect a certain portion of the produce of every plot of land (Khajana or Desh Bhag) and vesting of the same in the community to be administered through Anchal Sasan. As regards the assessment and collection of land revenue, it shall be done by Gram Panchayat through a collective exercise by the cultivators or raiyats of the particular village. In the event of a persistent failure by a raiyat to pay, the GP shall be competent to take over his land and return it to him only after realization of the arrears.

Further to the credit of the Committee, in other areas of land administration, it recommended the following-

- Repeal of all existing tenancy laws;
- Providing for definite rights of raiyats;
- Fixing maximum and minimum assessment on raiyats;
- Ban on sub-letting of land except by widows, minors, idiots, lunatics and disabled;
- Protection of Tenants from eviction by raiyats (through Orissa Tenants Protection Act) and along with protection of raiyat's right over tenanted land;
- Restriction of transfer of land in case a person holds less than minimum land;
- Restriction on transfer of land by backward tribes;
- Prevention of fragmentation of land and consolidation of holdings;
- Updating of Records of Rights by Anchal Sarvadhikari; and
- Payment of Desh Bhag in kind to the Government on the approval by Anchal.

### **Orissa Estates Abolition Act, 1951 and its sabotage from within**

The Act which was notified on 23<sup>rd</sup> Jan 1952 contained a detailed scheme for abolition of Estates (Zamindaris) and vesting of them in the Government. Interestingly enough, its Rules were also notified in the same year too. Its illustrious Chapter-3 (Sections 14-17) entitled 'Management of Estates vested in the State', which exists to this day albeit in a severely mutilated form, provided for

the constitution of Anchal Sasan for the purpose of management of the estates vested in the state. As per the Section 15 of the Act, Anchal Sasan shall be a body corporate with perpetual succession and common seal with power to acquire and hold property both movable and immovable, to enter into contract and to sue and be sued against in its corporate name. The next Section provided for constitution of Anchal Fund to be operated by an officer to be known as Anchal Adhikari. As a matter of fact, following the mandate of the Act, 61 Anchals (32 with whole time officers and 29 ex-officios) were created, and administration of Anchal was vested in Anchal Adhikari.

It is worth noting here, though Anchals were constituted, there was neither Anchal Sasan nor Anchal Sabha to regulate them. The Section-14(4) of the Act had mentioned, '*powers, duties and functions of the Anchal Sasan and the constitution of the Anchal Sabha shall be an Act of the State Legislature*'. Thus pending the enactment, the estates vested in the state continued to be managed by the Government as before. The newly appointed Anchal Adhikaris therefore acted on the diktats of the Government just as any normal Revenue Officer of equivalent rank would do. At last, the much anticipated Anchal Sasan Act 1955 was passed in the legislature, but as irony would have it, its provisions couldn't be enforced in absence of notification of necessary rules.

### **Orchestrated Volte-face**

On 12<sup>th</sup> Nov. 1956, Govt of Orissa set up the 'Administrative Enquiry Committee' under the chairmanship of Mr. Samuel Das to examine and review the existing administrative set-up in the light of Govt of India's proclaimed objective of development through national planning. On its recommendation, the system of Anchal administration was given a virtual burial, and a proviso was added to the Section-14(4) saying, "*.. until provisions of the Anchal Sasan Act, 1955 .. defining the powers, duties and functions of the Anchal Sasan, Anchal Sabha and Anchal Adhikari are enforced, the estates vested in the State Government shall ... be managed according to the laws, rules and regulations for the time being in force..*". Samuel Das Committee thus by a stroke of pen pushed the celebrated Orissa Anchal Sasan Act 1951 out into a limbo or suspended animation (Trishanku). From then on, the said Act, though completely defunct, still adorns some leafs of the Statute Book. It however reminds us of the once glorious, strident efforts that some forward-looking leaders of our State, immensely passionate about their vision of Swaraj, honestly undertook, fearing little in advance the reactionary backlash that would soon fall out Octopus like to stamp out every small gain that their nascent but abortive efforts might have yielded to the wretched of the earth.

### **Orissa Tenancy Laws- a lofty non-starter**

**The Orissa Tenants Protection Act, 1948**, an important measure of tenancy reform, was brought in force on 14-2-1948, its main object being to give temporary protection from eviction to actual tillers of the soil. The expression 'tenant' was given a wide definition under Section 2(g) of the Act so as to include Bhagachassis who may be cultivating the lands even of a ryot as tenants. Section 3(1) of that Act conferred freedom from eviction, on those persons who, on 1-9-1947, were cultivating any land as tenants. That section further stated that: "it shall not be lawful for the landlord to evict such a tenant from his land or to interfere in any way with the tenant's cultivation of his land." The Section 7 (1) of the Act conferred exclusive jurisdiction on the Collector to decide certain classes of disputes between a tenant and a landlord. The Sub-sections (6) and (7) of that Section conferred power on the Collector to impose a penalty on the landlord who unlawfully interfered with the possession of such a tenant and to restore possession of the land to that tenant if he had been dispossessed by the landlord. Section 8(1) further provided that : "subject to the provisions of Section 7 all disputes arising between a landlord and a tenant shall be cognizable by the Revenue Court and shall not be cognizable by the Civil Court." There was of course a provision for appeal against the decision of the Collector and also for revision against the decision of the

appellate authority. This Act, though passed in 1948 had been given a retrospective effect from 1<sup>st</sup> Sept. 1947, and after several extensions its terms expired on 15<sup>th</sup> April 1955.

Then came into operation **Orissa Tenants' Relief Act, 1955** on 21<sup>st</sup> April 1955, which was of course given a retrospective effect from 1<sup>st</sup> July 1954. It remained active upto 1965, when Orissa Land Reforms (Amendment) Act came into force. The Act provided for security against eviction, payment of rent to the land owner to be limited to one-fourth of the total produce, a tenant with permanent or heritable right to pay only one-sixth of the value of produce and no collection of any other rent from the tenant by the landlord. Moreover, a small landlord could evict his tenant provided he would cultivate the land himself. The District Collector was vested with adjudication of disputes as regards possession of the land, failure of the tenant to deliver the rent within two months from the due date or his failure to cultivate the land or his use of the land for non-agricultural purposes. It was noticed that in coastal districts, the Act exerted some impact in terms of cases instituted, while in southern and western Orissa, its impact was too marginal.

As regards the failure of both the Acts, the main reason was the oral nature of almost all tenancy agreements, which couldn't be proved during adjudication. The Orissa Land Reforms Act 1960, implemented with effect from 1965, continued the populist refrain of protection and relief to tenancy, but conspicuously failed to deliver any good to the tenants, simple because it, unlike WestBengal, didn't prescribe the enumeration and registration of tenants/ sharecroppers by the Govt, which is the first, indispensable step towards meting out justice to the hapless lot.

#### **Land Reforms Act 1960- a hoax**

While delivering a mortal blow to Orissa Anchal Sasan Act, the Government of Orissa embarked on a cunning scheme of double standards that would on one hand placate the roused aspiration of the people for radical land reforms, and on the other continue to protect and serve the vests interests of all older feudal and intermediary land-owning classes as in colonial days. To give design to new agenda, a Committee on tenancy and allied reforms was constituted on 11<sup>th</sup> Dec. 1957 under the chairmanship of Mr.S.P.Mohanty, Minister for Revenue to recommend on matters related to land reforms. Strangely enough, the Committee submitted its recommendations in record time, i.e. in April 1958 covering 5 subjects (incidents of tenancy where tenants are brought into direct relationship with Govt, grant of voluntary right of purchase of ownership to cultivating tenants, ceiling on holdings, administrative arrangements for land reforms and land records).

Based upon the above Report, the Govt introduced the Orissa Land Reforms Bill, 1959 in the state Assembly on 30<sup>th</sup> March 1959. The Bill was referred to a Select Committee of 28 legislators including Dr.H.K.Mahtab, who was then Chief Minister and Mr.R.N.Singhdeo, an-Ex Maharaja and the leader of opposition, who subsequently became the Chief Minister in 1967. The Committee presented their report on 20 Feb 1960, and the Bill was passed on 1<sup>st</sup> April 1960. However, the Act didn't come into force at once, as its Section-3 of Chapter-1 left it to the discretion of the Government to appoint any date for enforcing any Section of the Act, as deemed proper. Moreover, Section-75 (Power to make Rules) of Chapter-VI (Miscellaneous) of the Act did also confer a discretionary power on the Govt to make Rules on any Section of the Act as and when it wished to. Moreover, the Section-76 of the said Chapter (Power to remove doubts and difficulties) gave the unbridled authority to the executive to issue clarificatory instructions as and when it felt necessary.

As a matter of fact, the OLR Act, 1960 came into partial force more than five years after its enactment, following an Amendment in 1965 i.e. on 17<sup>th</sup> Aug. 1965. Again, different Chapters came into force on different dates. While all the provisions except Ch-III and Ch-IV came into force on 1<sup>st</sup> Oct. 1965, the Ch-III (Resumption of land for personal cultivation) came into force on 9<sup>th</sup>

Dec.1965, and Ch-IV (Ceiling and disposal of surplus land) as late as 7<sup>th</sup> Jan. 1972. Notification of Rules was also made in installments; while the General Rules, 1965 was notified on 26<sup>th</sup> Sept. 1965, the Financial Rules as late as 1975. Both the Act and Rules have undergone a long series of Amendments.

As regards the inordinate delay in enforcement of the Act of 1960, the Statement of Objects and Reasons of the Amendment Act of 1965 explained inter alia that the Government was considering the Act of 1960 in the light of the suggestions on the Act from the Planning Commission and the 17<sup>th</sup> Amendment to the Constitution (June 1964) and therefore took time to amend and as well enforce the Act. Be that as it may, the net result of the delayed implementation of the OLR Act 1960, and that too after diluting it through Amendments, was favourable to the big and absentee land owners, who in apprehension of losing land, could get ample time to do preemptively all sorts of manipulation in league with the corrupt officials to evade the law if at all it comes into force.

The fact that the OLR Act has utterly failed during the intervening 10 years on the front of both redistributive justice and tenancy protection, was borne out by the Statement of Objects and Reasons of Amendment Act of 1974 itself, which inter alia admitted, "*The Orissa Land Reforms Act, 1960 inter alia provides for the imposition of ceiling on agricultural holdings and regulation of the rights of tenants and share croppers in the State of Orissa. ... No surplus land has yet been acquired. The Act however falls short of national guidelines on ceiling on agricultural holdings ..... The tenancy provisions of the Act also need to be amended in the light of the policy formulations set out in the Five Year Plans. After giving careful consideration to the various aspects of Land Reform measures which are necessary in the interest of social justice, it has been decided to amend the provisions of the Orissa Land Reforms Act 1960, with a view to imposing ceiling on the aggregate area of land . . . and modify the provisions relating to exemptions. . . Opportunity has also been taken to further safeguard the interests of tenants and share croppers and persons belonging to Scheduled Castes and Scheduled Tribes.. .*" Despite such robust promise, the Amendment Act of 1974 couldn't effect any tangible change at the ground level in favour of landless persons, tenants or share croppers, since the basic loopholes in the Act were kept in tact allowing the nexus of bureaucrats and landed gentry to manipulate them as before in their favour.

Since then so many amendments have been effected into OLR Act 1960 culminating in the last phase of amendments from 1994 to 2006 that provided for '*Conversion of Agricultural Land for purposes other than Agricultural*' by way of incorporating a new provision i.e. Section-8A. The title of the new section is itself suggestive enough of the diametrically opposite direction in which the Land Reforms Act is being led away from its original promise i.e. protection of agriculture, agriculturists and agricultural production.

### **Constitutional Protection to OLR and certain other Acts- to what end?**

As is well known, the 17<sup>th</sup> Amendment to the Constitution, 1964 was avowedly enacted '*to secure the constitutional validity of acquisition of Estates and place land acquisition laws in Schedule 9 of the constitution*'. The Statement of Object and Reasons of the said Amendment Act inter alia mentioned, "*It is also proposed to amend the Ninth Schedule by including therein certain State enactments relating to land reform in order to remove any uncertainty or doubt that may arise in regard to their validity*". As of today, Orissa Estates Abolition Act 1951, Orissa Land Reforms Act, 1960 and its various Amendments and Orissa Regulation-2 of 1956 have been included in 9<sup>th</sup> Schedule. But the moot point arises, when an Act like OLRA 1960 has conspicuously failed to fulfill the very objectives for which it was enacted, why should Constitution accord a special status of hallow and immunity to it? The same question may be raised about the inclusion in 9<sup>th</sup> Schedule

of certain Central Acts like Mines and Minerals (Development and Regulation) Act, 1957, the hegemonic leitmotif of which has been subject to controversy by different mineral-rich States.

### **Orissa Regulation-2 of 1956**

The Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribe) Regulation 1956 has been in existence for more than half a century, and does, as already mentioned, enjoy the double protection of Schedule-5 and Schedule-9 of the Constitution. What is the result? Besides the Sections 22 and 23 of OLR Act 1960 provide for prohibition of transfer of land from an ST to a non-ST person or from an SC to a non-SC person respectively. However, the Ministry of Rural Development, Government of India in its 2007-2008 Annual Report speaking about tribal land alienation admits inter alia that in Orissa, an overwhelming 43,213 out of 104,644 cases were decided against the tribals. What does it indicate, if not the built-in loopholes in such legislations that have been taken advantage of by the nexus of tribal land grabbers and bureaucrats to scuttle the avowed intentions of the law? In Regulation-2 such bureaucrats as Collector/Sub-Collector in the guise of Competent Authority and in OLRA the concerned Revenue Officer have been given discretionary powers using which they have been legitimizing the alienation of tribal and Dalit land.

### **Orissa Prevention of Land Encroachment Act, 1972 and Rules 1985-**

It aimed at prohibiting unauthorized encroachment of government land, and in certain cases settlement of encroached land in favour of the concerned occupiers. But the experience of its working over the years tells that taking advantage of the discretionary powers entrusted to such Givt officers as Sub-Collector, Tahsildar and Revenue Inspector, they have connived with the vested interests to encroach more and more Government land, harassed the poor landless tribal and Dalit families by way of instituting false cases against them and extorting bribes from them and distributed Patta on the encroached land to the ineligible persons out of extraneous considerations.

### **Orissa Government Land Settlement Act, 1962 and Rules 1983**

Apparently a pro-people legislation, its Section-3(2) reads, *“In the settlement of lands . . . seventy per centum thereof shall be settled with the persons belonging to the Scheduled Tribes and the Scheduled Castes in proportion to their respective populations in the village in which the lands are situated and the remaining lands shall be settled with the other persons not belonging to the aforesaid categories: Provided that if sufficient number of persons belonging to the aforesaid categories are not available in the village in which the lands are situated, or being available, are not willing to accept the settlement of land so much of the land reserved for the said persons as cannot be settled with them may be settled with other persons”*. But the Act concentrated so much discretionary powers in the Tahsildar and his office in the matter of settling the Government land that it was indiscriminately abused to harass or favour the persons on the dictate of their own fancies or that of political leaders or their own bureaucrat bosses.

### **Orissa Consolidation of Holding and Prevention of Fragmentation of Land Act, 1972-**

It aimed at prevention of fragmentation of land and exchange of equitable land in order to facilitate farming on a larger scale. Consolidation means amalgamation and re-distribution of a parcel or parcels of land comprised in different holdings of a unit for the purpose of rendering such holdings more compact. Apparently a constructive initiative, no doubt! From the experience of its progress in selected areas of the State, it has been gathered that it has posed intractable problems to the families, who seek partition of their property, and also to those who like to sell a part of their consolidated holding to a person other than the owner of the adjacent plot with the assurance of a better price. Moreover, consolidation has benefited the big farmers while marginalizing the smaller ones, for whom the less advantageous plots they own are turning gradually unproductive. Sooner or

later they are bound to sell away their small plots of land to the well-off farmers who possess the consolidated holdings and to join the ranks of agricultural proletariat.

### **Paddy Procurement from Farmers- a cruel joke**

The Government has been procuring paddy through its network of agencies and Depots with a view to offer fair price to the paddy growers. But the ground reality is highly disappointing to the farmers. Instead of the procurement personnel reaching to the doorstep of the selling farmers, the latter are being asked to transport their paddy to the Govt notified Depots or Panchayat Depots where the concerned procurement personnel are supposed to be present. It is noticed that when the farmers carry their paddy at own cost to the Depots, they encounter bitter problems, such as concerned personnel not being available there, no place to store the paddy, no body to weigh the paddy and so on and so forth. It so happens, the exasperated farmers feel compelled to sell away their paddy to the nearest rice miller at a much lower rate than the official rate. Thus there is a close nexus operating between the private rice merchant and the procurement officials, its net result being the frustration of paddy farmers and failure of the procurement scheme.

### **Some concluding observations-**

- The messy land scenario that has stalked all through Orissa in post-independence period finds its logical culmination in **Orissa Resettlement and Rehabilitation Policy 2006**, which the Government of Orissa trumpets as the best one in the country. As a matter of fact, its hollow and ambiguous provisions that are devoid of any substance are cunningly shielded by a pompous preamble. There is neither any transparency in the land acquisition process nor any provision for public hearing. Making a mockery of grievance redressal mechanism, the policy compels the displaced people to seek justice from the self-same Revenue Department, who have acquired land from them under the Land Acquisition Act, 1894. Moreover, the State Policy is now a misnomer. There are different policies for different projects, such as one for Kaling Nagar, another for POSCO, still another for Vedanta Aluminium and so on and so forth. Thus depending upon the militancy of the anti-displacement struggle, the R&R package is determined and showing upward change.
- A more or less similar attitude is noticed in respect of implementation of **Forest Rights Act 2006**. Though the Rules of this Central Act was notified in December 2007, its implementation remained a non-starter right upto mid-2009, on the excuse that Orissa High Court had stalled it following a PIL by a group of retired Forest officers. It is now observed that the Government is implementing its provisions in those areas, which are visited by Maoist violence.
- **The Orissa Grama Panchayats (Minor Forest Produce Administration) Rules, 2002** is another instrument of deception to the tribal and other poor people depending upon the collection and sale of minor forest produce for their living. Apparently the Gram Panchayat has been given the powers over collection and marketing of minor forest produce. But as a matter of fact, Gram Panchayat is only the registering authority for the traders, while fixation of the minimum procurement price has been entrusted to Panchayat Samiti. Thus the local collectors of minor forest produce or Gram Panchayat have little control over the price the traders are to pay to the local collectors.
- On the whole, the nexus of bureaucracy-vested interests is getting reinforced day by day, and only where militant struggles in whatever form are raising their banner of revolt, the Government seems to respond to people's aspirations in some way or other, albeit haltingly and hesitantly, nevertheless surely and visibly.

*(Chitta Behera, 4A, Jubilee Tower, Choudhury Bazar, Cuttack-9, Email-  
chittabehera1@yahoo.co.in, Website: www,chittabehera.com, Mobile-9437577546, Dt 3.08.2010*