



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

छठी मंजिल, लोकनायक भवन,

खान मार्किट, नई दिल्ली - 110003

Government of India

National Commission for Scheduled Tribes

6th Floor, Lok Nayak Bhawan,

Khan Market, New Delhi - 110003

Tel. :(O) 011-24635721

Fax :(O) 011-24624628

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अध्यक्ष

(भूतपूर्व सांसद-लोकसभा)

(पूर्व जनजातीय कार्य राज्यमंत्री)

Dr. RAMESHWAR ORAON

Chairperson

(Ex Member Parliament-LS)

(Former Minister of State for Tribal Affairs)

D.O. No.CPNCST/04/2016-301

1/8/2016

Respected Rashtrapati ji,

Subject: Promulgation of Ordinance by State Government of Jharkhand seeking amendment in certain provisions of Chotanagpur Tenancy Act 1908 and Santhal Parganas Tenancy Act 1949.

It has been brought to the notice of Commission that Her Excellency the Governor of Jharkhand has forwarded a proposal seeking assent for promulgation of Ordinance by Government of Jharkhand to Govt. of India for amending the Sections 21,49 and 71A of the Chotanagpur Tenancy Act 1908 and Section 13 of Santhal Parganas Tenancy Act 1949.

In this regard your kind attention is drawn to the **Article 338A (9) of the Constitution of India which interalia mandates that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.** However, the Government of Jharkhand has not consulted this Commission, thereby violating the mechanism in built in the Constitution for safeguarding the interest of Scheduled Tribes.

It is presumed that in case the Commission was consulted then the observations of the Commission with regard to likely adverse impact of these amendments on the Scheduled Tribes would have been brought to your kind notice by the State Government while forwarding the Ordinance.

Handwritten notes: 218, Dir (C), Section 339/Secy/2016, 02.08.2016

In view of above stated position; the Commission would like to draw your kind attention to the following:

1) **At present Section 49 of the Chotanagpur Tenancy Act 1908 permits transfer of lands belonging to Scheduled tribe tenants for the purpose of Industry and mining only.** However, the Government of Jharkhand has proposed amendment to the said Section thereby allowing transfer of land of tribals for any public purpose such as road, canal, railway, cable transmission, water pipelines, school, Colleges, University, Panchayat building, hospitals, anganwadi etc. or any other activity which the State Government may add by way of notifications in the official Gazette.

2) This amendment is extremely dangerous because it literally lifts the restriction on transfer of tribal land as laid down in Section 46,47, and 48 of the Act as it would open floodgates for non tribals to buy tribal lands which would lead to massive land alienation.

3) The Government of Bihar had in its wisdom amended Section 49 in 1996 and removed all purposes except Industry and mining, but contrary to above, amendments have been proposed by Government of Jharkhand for acquiring tribal land for almost all purposes.

4) Consultation with Tribal Advisory Committee (TAC).

It has also been brought to the notice of the Commission that the TAC of Jharkhand has not been consulted while promulgating the ordinance, which violates the spirit of Paragraph 4 of the Fifth Schedule {Article 244(i)} of the Constitution.

5) Violation of Article 213 of the Constitution.

Commission has received the information that Ordinance was signed on 28/6/2016 and on the same date the State Cabinet decided to Summon the Assembly on 22/7/2016.

5

6) After the creation of Jharkhand State, this is the first amendment introduced in amending the revenue laws which will lead to further alienation of tribal land. Thus these amendments will have far reaching adverse economic conditions of the already impoverished tribals.

7) Panchayats Extension in Scheduled Areas Act 1996 (PESA) provisions ignored.

Section 4(d), 4(m(iii)) of the PESA Act, vests powers to Gram Sabha, in the Scheduled areas, the power to safeguard and preserve the Community resources and the powers to prevent land alienation. It is learnt that these safeguards have not been included in the proposed amendments in CNT Act 1908 and SPT Act 1949.

The Commission feels that His excellency may give due consideration to the above facts and concerns for protecting the overall interest of tribals while considering the mentioned proposal of the Government of Jharkhand.

With highest regards.

Yours sincerely,

Rameshwar Oraon.
(Dr. Rameshwar Oraon)

Shri Pranab Mukherjee,
His Excellency,
The President of India,
Rashtrapati Bhavan,
New Delhi, 110004.