

The fight against POSCO in Orissa

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The Orissa High Court's interim order on 9 September 2011 came as a damper for the inhabitants of Dhinkia, Nuagaon and Gadkujang panchayats of Jagatsingpur district, many of whom are vehemently opposing the POSCO steel-cum-captive power plant in the area. Hearing two public interest petitions filed by Nisakar Kahtua and other affected people from the area, the court dismissed their request to order a stay on the acquisition of forest land by the state. It has however, ordered a stay on the acquisition of private land to be transferred to the company.

Prashant Paikray, spokesperson of POSCO Pratirodha Sangram Samiti (PPSS), a group spearheading the anti-POSCO movement for more than six years now, said, "We are happy that the Court has stayed the private land acquisition. It has however denied the diversion of the forest land acquisition under the Forest Rights Act. But this is only an interim order, the hearing will continue. We are hopeful that the final order will go in favour of the people."

The district administration is currently involved in a mindless tree felling exercise as part of its forest land acquisition. A writ petition has been filed by some local social activists mentioning that "50,000 trees have been cut by the government. It is ascertained from the government website that more than 500,000 different trees would be cut down in the area for the proposed steel plant."

While the copy of the interim order is yet to become public, the court ruling is bewildering as environmentalists and forest rights activists say there is no basis for the diversion of forest land and tree felling, which violate India's Forest Rights Act. Moreover, there is no Memorandum of Understanding (MoU) between POSCO and the state government at present. The MoU on the project expired on 22 June 2010 and is yet to be renewed. Prior to discussing the illegalities involved in the POSCO project, we can first throw some light on the project itself and examine the sequence of events regarding the government's role and the people's struggle.

The project

On 22 June 2005 Pohang Steel Company (POSCO), a large South Korean corporation, signed a Memorandum of Understanding with the government of Orissa. This understanding outlined POSCO's proposal to invest USD 12 billion (around 54 thousand crore Indian rupees) and build a 12 Million Tonne Per Annum (MTPA) integrated steel plant, captive port and mines in the Erasama block of Jagatsingpur district. This is tipped as the highest FDI to India. The project requires 4004 acres of land, of which about 2900 acres are forest land; the rest is private. In addition to this, land is also to be provided for railways, road expansion and mine development. This MoU was valid for five years, and stands expired now. A renewed MoU is yet to be signed as both parties are at loggerheads on certain issues. Three panchayats will be affected by the steel and power plant project, namely Dhinkia, Nuagaon and Gadakujang under Kujanga Tahsil.

Clearance for the project

After the signing of the MoU, the state government recommended the central government to consider the POSCO project as a Special Economic Zone (SEZ), for Environment Impact Assessment (EIA) and Coastal Regulation Zone (CRZ) clearances in mid 2006. The project got initial 'in principle' forest and environmental clearances with conditions from the Ministry of Environment and Forests (MoEF) in June 2007. The matter was taken to the Supreme Court, which eventually gave clearance for the forest diversion proposal and ordered the state government to refer the matter to the MoEF, which would take a decision according to the law. With Jairam Ramesh taking charge of the MoEF, and his proactive role in appointing expert committees to inquire into alleged violations of forest and other related laws by the state government, people's hope of obtaining justice was rekindled, only to be dashed later.

On 2 May 2011, the ministry gave final environmental and forest clearance to the project(1), much to people's surprise, as both the expert committees appointed by the Minister, the FRA review committee (headed by Dr N C Saxena) and POSCO review Committee (headed by Ms Meena Gupta), recommended the withdrawal of the project from the area.

Unique people's struggle

The pertinent land in the Jagatsingpur district is considered to be very fertile for the cultivation of betel, paddy and fish. P Sainath, the Rural Affairs Editor of The Hindu, a popular English daily newspaper told me in an interview that, "On one betel farm, over one-tenth of an acre earns a profit of 1.5-2 lakh (2) rupees in a year. This is actually a stunning return while comparing with the input cost." This is one of the reasons why many people and political parties oppose the project's establishment there.

Since the signing of the MoU, people of the area have been opposing the project. The POSCO Pratirodha Sangam Samiti (PPSS) was conceptualized to lead the anti-project movement. Several rallies, protest marches and demonstrations were held by PPSS in the area and around, including the capital of Orissa, as well as the national capital. In due course a pro-POSCO group was established, the United Action Committee (UAC), which supported the project with some conditions. Some say that this group was strategically formed by ruling party leaders (Biju Janata Dal: BJD) in the area and does not in fact have any mass base. Confrontations between the two groups have occurred at different points of time. One member of the anti-POSCO group was allegedly killed by the project supporters. Police had gone to the area and unleashed repressive action against the protesting people. Some people, mostly from Gadkujang and Nuagaon panchayats supported the project, while people from Dinkia panchayat stood firm against it. The leader of PPSS, Abhay Sahoo, was arrested by state police in October 2008 and a number of criminal cases filed against him, with charges of murder, kidnapping, assault and so forth. Criminal cases have in fact been filed against many of the PPSS supporters. As a result, they are unable to leave their villages, even today. In a bizarre human rights violation, while Abhay Sahoo was in the hospital during his arrest (he was ailing then), he was secured to the bed with chains like a dreadful criminal. Following such excesses, human rights activists raised an outcry of gross violations in the area. Support poured in from across the nation and beyond, and the anti-POSCO movement took an international shape. In condemnation of the arrest of Abhay Sahoo and other PPSS activists, a rally was organized from Mandi House to Parliament Street in New Delhi in November 2008. A 'Banar Sena', a protesting wing of children, was formed where even children resolved to fight against the project.

In order to thwart any entry of police and POSCO officials to the area, people raised a barricade at the strategic Balitutha, the entry point to the three panchayats. But in May 2010, police used tear gas, rubber bullets and lathi charges to drive people away from there. Some houses at the entry point were allegedly burnt by the police. Finally in August 2010, the environment minister ordered the state government to stop the land acquisition until a final decision was taken on the matter.

Recent standoff and protest

Armed with the MoEF's final clearance on 2 May 2011, the state administration, without any loss of opportunity, resumed acquiring land from May 18 in the villages of Polang, Noliassahi and Bhuyanpal, where most people were persuaded or threatened to hand over their land in lieu of compensation. Betel vines, the major source of livelihood of the people in the area, were pulled down by the administration. Those opposing the acquisition process were harassed by armed police. Basu Behera, the Panchayat Samiti member of Gadkujang panchayat and vice president of PPSS was injured and bleeding due to the police attack.

The police faced unprecedented resistance when it attempted to enter the Govindpur village in Dinkia panchayat as its next target at the beginning of June 2011, considered to be the bastion of the PPSS. Twenty platoons of armed police were deployed to tackle the situation, with both the District Magistrate Narayan Jena and Superintendent of Police Debadutta Singh present to supervise. More than 3000 people formed a human chain and lay on the ground at the village entry point. Said one protester, Manjulata Dalai of Govindpur village, "If the land goes to the company, we will die anyway. It is better to die now in pursuit of protecting our land than dying after losing the land."

Children's participation



In a novel—and controversial—method, about 600 children formed the frontal barricade and prostrated on the hot sand in the month of June, preventing entry to their villages. The state administration cried foul over the use of children in the struggle, claiming it to be a violation of child rights. After the brutality of May 2010, when more than 100 people were injured, including several women, the villagers felt they had little option but to take the children's help in protecting their

homeland. Priyanka Dalai, a fifth-grade student taking part in the protest said, "We will not leave our land. We will protect it at any cost."

The district administration had gone on record saying they could use force to acquire the land. The situation looked very precarious where the people were lying on the ground under the scorching sun, while the police was ready just 500 metres away. Imposition of section 144 of the Criminal Procedure Code and repeated warnings by the district Superintendent of Police to leave the land fell on deaf ears; people did not budge. Dr B D Sharma, former Commissioner for Scheduled Castes and Scheduled Tribes, told the media during his visit to the area that the determination of the people not to leave their land is unshakable. "People are protesting here



for the last six years. Even then if the administration resorts to using force leading to any loss of life, it would amount to genocide, for which the administration will be fully responsible.”

Children’s participation in the struggle was defended by Abhay Sahoo: “Since the armed police are confronting the democratically protesting people, so the children are compelled to participate in the protest dharanas. I will say it is their higher consciousness that they have come forward to the rescue of their parents and to safeguard their livelihood.”

The National Commission for Protection of Child Rights (NCPCR) visited the area and recommended the state government to vacate the schools occupied by the police and appealed all concerned to create an ambience so that children’s right to education and well being is protected.

Almost all the political parties barring the ruling BJD, thronged to the area extending support to the protesting masses and decried any use of force on the people. CPI, CPI (M), Congress, BJP and other small parties sent their representatives who sat alongside the people and thwarted any possible police action. Well known social activists such as Medha Patkar, Magsaysay award winner Aruna Roy, Swami Agnivesh, Vandana Shiva, trade union leader Gurudas Dasgupta, retired Justice of Bombay High Court Kolshe Patil and Magsaysay award winner Sandeep Pande also sat in solidarity with the people.

The demonstrations continue in Bhubaneswar and New Delhi. The 24-by-7 presence of media, most importantly the electronic media, has allowed for live telecasts and a close watch over the war like situation. Children prostrating under the hot sun caught the attention of people across the globe and sympathy flowed in support of those determined to sacrifice everything for their land. People from 64 countries, in a signed petition, have urged the Chief Minister not to use force and to hold a dialogue with the people. While the government temporarily made a retreat from Govindpur, construction work and tree felling continues unabated in Nuagaon and Gadkujang.

Illegality of the project

There are several legal issues involved in the proposed POSCO project, which are discussed below. Not only are people’s voices being suppressed, but several laws and procedures have been bent to favour the company.

Palli Sabha resolutions ignored

The first and foremost issue relates to the Palli Sabha (3) resolutions of the Dhinkia (held on 21st February 2011) and Gobindpur (23rd February 2011) villages under Dhinkia village panchayat, which dismissed the diversion of forest land to the project. These resolutions were sent to the MoEF by the PPSS, with 1632 out of 3445 voter signatures in Dhinkia village and 1265 of 1907 in Gobindpur village. The state government however, submitted to the ministry that the resolutions were only signed by 69 and 64 voters respectively, which lacks the quorum needed in accordance with the Forest Rights Act (4). Said PPSS spokesperson Prashant Paikray,

We had faxed only two pages of the resolution to MoEF but the complete copy was sent to both the MoEF and state government by registered post. The state government has lied on the number of signatures backing the resolutions. Still unfortunate is that Jairam Ramesh also accepted it unquestioned. The facts have now been presented before the High Court in a petition.

Apart from the ground of quorum, the state government also has raised the issue of the power of the Sarpanch, elected head of a Gram Panchayat, to convene a Palli Sabha and the validity of the resolutions passed. According to the government, “Two resolutions purported to have been passed by the Palli Sabha are not available in the book (recorded by the gram panchayat secretary and signed by the Sarpanch) and are therefore fake ones.” The MoEF also purportedly analyzed various provisions of the Orissa Gram Panchayat Act and the Forest Rights Act, and came to the conclusion that the resolutions are not valid documents. Many legal experts do not agree to the conclusion of the state and central governments. In fact, the Orissa Chief Secretary’s order of 4 February 2009 states that when the Forest Rights Committee in a village wishes to present its findings, there is no need to wait for any government decision to convene any Palli Sabha; only the ward member and Sarpanch have to be impressed upon the need to hold the Palli Sabha. In the records relating to the aforesaid resolutions, the Panchayat secretary writes that he could have not attended the meeting as there is no government order for him to attend, although in reality he has violated provisions regarding attendance. To suit its agenda, the state government has suspended Sarpanch Sisir Mohapatra for having ‘over-stepped his jurisdiction’. Legal expert Prasant Jena opines, “Suspension of a democratically elected Sarpanch in such instance amounts to misuse of power by the state government.” Social activist Aruna Roy demanded his immediate reinstatement as “he has not violated any provisions of the Constitution.”

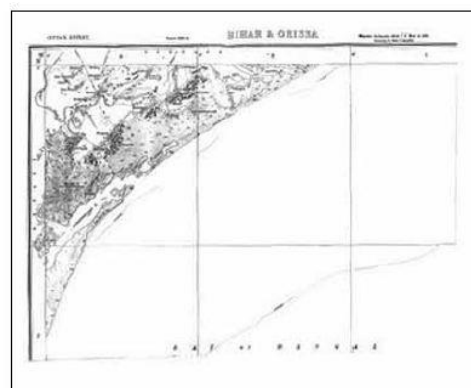
It is clearly visible that the substantive aspects of the FRA have been relegated by the procedural aspects. What is of substance here is that the majority of people in the area oppose the diversion of forest land for the POSCO project. In fact, the current acquisition of forest land by the state government for the purpose of diversion has also not been backed by any Palli Sabha resolution, which is mandatory under section 4(5) of the law and the MoEF guidelines of 30 July 2009. This legal violation is now being contested in the High Court. The state government however, is of the opinion that since there are no tribals and other traditional forest dwellers (OTFDs; non-tribals dependent on forests) in the area, no such resolutions are needed.

Earlier in February 2010, Palli Sabhas in Dhinkia, Govindpur and Nuagaon villages were convened on the direction of the District Collector and passed resolutions rejecting the forest diversion proposals for the project. All these resolutions were overlooked however, while final clearance was granted to the project by the MoEF.

Claims under FRA not settled

The state government’s claim that there are no tribals and other traditional forest dwellers (OTFDs) in the area is incorrect. The 2001 census itself shows there are 23 tribals in Polang village under Kujang Tehsil, which is one of the villages covered under the proposed project.

Under the definition, people living in the area and dependent on the forest for three generations or 75 years prior to 13 December 2005 will be considered to be OTFDs. However, the state government claims that people living there could not have been dependent for 75 years on the

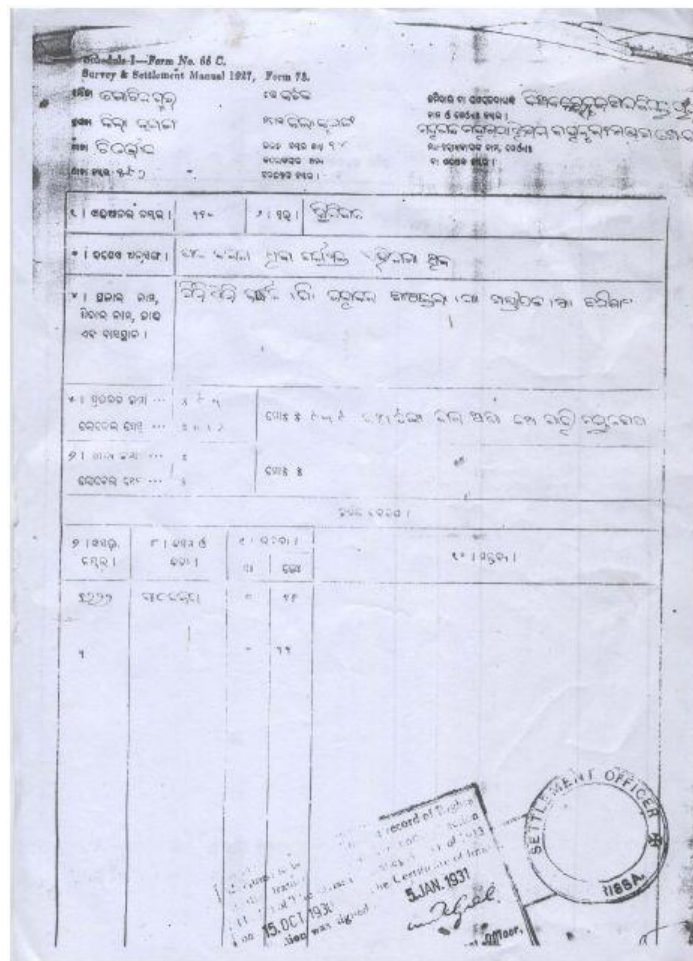


Survey of India map showing existence of forest in Dhinkia, Nuagaon, Gada Kujang in 1928-29

'forest' as only in October 1961 was it declared as forest under the Indian Forest Act. In other words, with the forest only legally existing for 49-50 years, there is no possibility of anyone falling under the category of OTFDs. Contrary to the government's claim however, the Survey of India map shows that as early as 1928-29 the area was forest land under Cuttack district (Jagatsingpur district was part of former undivided Cuttack district). Furthermore, Madhu Sarin, a renowned expert on forest issues, disparages the linkage of period of notification of forest to claims under the FRA. "Under the FRA, the definition of forest includes all kinds of forest, such as unclassified forests, reserved forests, existing or deemed forest, wild sanctuaries, national parks and so on. It does not say that it should be notified in such and such a year. If that was the case then large parts of Orissa are not forest land as large chunks of land in scheduled areas were notified as reserved and protected areas after independence."

Records show existence of traditional forest dwellers

In fact in August 2010, Dr N C Saxena, Chairperson of the FRA monitoring committee constituted by the MoEF and MoTA (Ministry of Tribal Affairs), wrote to Jairam Ramesh and mentioned some ten documents providing the proof of existence of OTFDs in the area. One such document is the record of rights of a Mr Giridhari Bardhan of Govindpur village from 1927, collected from the survey and settlement manual:



Saxena wrote in no uncertain terms that there were violations of the Forest Rights Act in the proposed POSCO area by the state government. Similarly, the majority of the POSCO review committee members

held that there were gross violations of environmental laws, fabrication of evidence, perpetuation of forest rights abuses and suppressing facts relating to the Coastal Regulation Zone. They even recommended prosecution of the authorities who had violated the provisions of the Forest Rights Act (FRA) and other environmental laws.

Ignoring all evidence of such violations, the Environment Minister approved the project. Not surprisingly, four days later, the Minister said on record that he is forced to regularize illegalities many a time!

Prime Minister's pet project

Implementation of the POSCO project is being directly monitored by Prime Minister Dr Manmohan Singh's office (PMO), as it constitutes the highest Foreign Direct Investment in the country. In an April 2007 meeting with Orissa Chief Minister Naveen Patnaik, Manmohan Singh asked the state government to expedite the process of land acquisition for the project. In August 2010, Patnaik met Manmohan Singh and Jairam Ramesh to seek their support for the POSCO project, where Singh assured the Chief Minister 'to hasten the project'. This was despite the MoEF expert committee's adverse report on the project. On many other occasions the PMO has played a key role in facilitating speedy implementation of the project. Environmentalist Ashish Kothari, also a member of the Dr Saxena committee, said "The PMO is directly interested in this project. There is an inside kind of news that India is probably interested in entering into a nuclear deal with South Korea. Taking advantage of this, the South Korean government is backing its own corporate." It is therefore not surprising that the project got forest and environmental clearance despite adverse reports by both expert committees.

According to journalist and food policy analyst Devinder Sharma, "It seems that Jairam Ramesh's heart was for stopping POSCO given the kind of committees he set up to study violations of the law in the proposed area. But he was under pressure from the PMO, which is bent on selling out our national resources to companies in the name of development."

Conclusion

While the September 9 court order has come in handy for the government to continue acquiring land and felling trees in areas where it is facing less resistance, the stay on private land acquisition has given it a jolt. Even though the project has obtained the final clearance from the MoEF, the matter relating to the source of mining is not settled. The High Court has previously set aside the state government's recommendation to provide a licence to POSCO for the Khandahar iron ore mines in Sundergarh district. Moreover, the MoU is yet to be renewed after it expired on 22 June 2010.

In the meantime, Paikray of PPSS says, "Already a petition is lying in the National Green Tribunal challenging the violation of environment norms in our area." Abhay Sahoo asserts "We will fight till the project is shifted out of our area". With both the central and state governments putting their weight behind the project and giving clearances left and right, how far the people can resist is to be witnessed. One can only hope that the violence unleashed by the state in Kalinga Nagar, the steel hub of Orissa, in January 2006 where 14 people were shot dead by the police, is not repeated here.

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Footnote: Pradeep Baisakh is a freelance journalist based in Orissa, India. He has written extensively on transparency law, right to work and food, environment issues, industrialisation and development, women, and tribal rights. His writing can be found at: <http://pradeepbaisakh.blogspot.com/>. He can be contacted through email: 2006pradeep@gmail.com.

(NB: Much of the matter used in this article is reproduced from the author's earlier articles written on the topic.)

1. <http://www.environmentportal.in/files/Posco-final-orders-02052011.pdf>

2. One lakh is equal to one tenth of a million.

3. Palli Sabha is the assembly of adults of a revenue village, synonymous to the generic term Gram Sabha or village panchayat, which is the lowest elected body in India.

4. The quorum under the Forest Rights Act requires the presence of two third of the total voters in the village in the Palli Sabha meeting.