



ASECA CHANNEL

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Letter from All India ASECA to:

1. **Shri Naveen Patnaik,**
Hon'ble Chief Minister,
Govt. of Odisha,
Secretariat,
Bhubaneswar – 751 001
2. **Shri Jual Oram,**
Hon'ble Minister of Tribal Affairs,
Govt. of India,
Shastri Bhawan,
New Delhi – 110 001
3. **Shri Lal Bihari Himrika,**
Hon'ble Minister, ST&ST Deptt.,
Govt. of Odisha, Secretariat,
Bhubaneswar – 751 001
4. **Shri Sudam Marndi,**
Hon'ble MOS, ST&SC Dev. Deptt.,
Govt. of Odisha, Secretariat,
Bhubaneswar – 751 001

Sub: Amendments to Orissa Transfer of Immovable Properties (by Scheduled Tribes) Regulation 2 of 1956.

Respected Sirs,

This has reference to the newspaper reporting on a Consultation Workshop held on 9th October 2015 at Baripada, Mayurbhanj for recommending amendments in the Odisha Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation 1956 (Regulation II of 1956). However, in the Govt. of Odisha website soft file relating to the proposed amendment could not be found.

In the absence of such information, the newspaper reporting has become the only source and from the

newspaper reporting it appears that the amendments are considered on the following provisions/issues:

1. (a) Tribal land cannot be gifted. It is presumed that gifting is not permissible by a tribal person to a non-tribal person.
(b) Permission for mortgage of tribal land can be granted for obtaining loan from different Banks/Financial Institutions for some selective purposes such as, building of residential house, higher studies of children, self-employment, business and for small-scale industries. (U/s 3(B) of Regulation-2/56) provided that, he/she possesses a minimum qualification of 10 class pass U/s 3(B) of Regulation-2/56.
2. In the event of insolvency of the loanee, the Bank/Financial Institutions will be at the liberty to put the mortgaged land to public auction where any person belonging to ST, can participate in the auction sale (U/s 3(B) of Regulation-2/56). In case there are no bidders for the minimum reserve amount, the same would be taken by the Govt. at the benchmark value/price to be decided by the competent authority. The said land would be distributed to the landless or dwelling unit less people in the future.
3. The existing provision of transfer of land by ST person subject to minimum limit of Ac.2.00 of irrigated land and Ac.5.00 of un-irrigated land with the transferee after transfer would be reduced to 1.5 acres of irrigated land and 3 acres unirrigated land. In the urban areas 0.5 acres can be irrigated or non-irrigated land.
4. Even transfer between STs is not allowed

unless the above is fulfilled.

5. Appeal and Review or Revision to be fixed at 5 years and 30 years respectively under Section 3 (3) of the Regulation 2 of 1956. (The Limitation period of 30 years in case of adverse possession of a tribal land by a non-tribal should be lifted and the period of unauthorized occupation be calculated with effect from 04.10.1956 in order to effect eviction U/s 3(B) & 7 D of Regulation-2/56.)

Our proposal to the above point wise amendments:

1. (a) The gifting, transfer, sell of land should be allowed in case of a trust, non-profit company and one person company formed by tribal people for the promotion of education, culture (schools, colleges, training centres, coaching centres, cultural centres), and for development of infrastructure for health, social unity, social usage and identity.

Reason: In the present system, registered societies, associations, trusts etc. are also not permitted to purchase land or acquire land from gifts even though they are managed by tribals and for the tribals' development. The logic is cited as these formations are falling under 'general category'. Thus it has become mandatory for an association formed by and for the tribals to purchase land from others at the exorbitant market price. The outcome is they cannot purchase land due to high cost and eventually deprived of setting up even a school, cultural centres for promotion of their language, history and culture. A saving clause in the formation of these societies, associations, trusts etc. like membership is restricted to tribals only can enable transfer, purchase, bequeath of land in their favour.

1. (b) The requirement of 10th pass should not be made mandatory. The purposes should also not be made restrictive.

Reason: The purpose for which the mortgage is allowed is not for the 10th pass people only. The requirement of higher education can be for the sons of illiterate persons. Any purpose like business,

support for health related issues etc. are basically educational qualification neutral.

2. The distribution of tribal land beneficiaries acquired by the competent authority should be only STs persons.

3. The limit of land holding after transaction should be done away with. It should be left to the land owner to decide.

Reason: By providing the land ceiling, it appears that presently land holding of tribal people is to the extent prescribed which is not true. When average tribal peoples' land holding is below that ceiling what is the purpose of providing the said provision. If this provision is so required, Government should ensure a base line requirement that every tribal people is possessing the minimum land as prescribed in the Regulation. But this is highly unlikely. As such, the proposal is to allow seamless transaction of land as long as the transfer is taking place between/among tribal person(s).

It is appropriate to cite an example as an illustration how a tribal person is deprived of the gains by this ceiling limit. Consider a tribal and a non-tribal person is holding one acre of land in an urban/municipality area. The tribal person was not permitted earlier to sell this piece of land. At that time the loss was huge an enormous. Even if it is proposed to be permitted now to sell half of that land, still he is placed at a disadvantageous position than his counterpart. The non-tribal people are permitted to sell off total land and going by the present market rate, they can earn one crore rupees for that land. Considering that they have a piece of land of one acre only, then also if they retain 4 decimal land for dwelling unit which is sufficient, they earn 96 lakh rupees.

For a tribal people, by restricting them to sell up to 50 decimal of land they are only permitted to earn only 50 lakh rupees thus deprivation to gain economically (that is rupees 46 lakh less) is ingrained in the system through regulation. In the name of protection, actually institutional arrangement is made to deprive them.

It is pertinent to mention that due to this restrictive provision, tribals with one acre of land in the urban centres are the daily labourers or the rickshaw pullers whereas non-tribal people in the same locality with the same land holding have become crorepatis.

4. The transfer, sell of land among tribal people should be made allowed with out any restriction, as it is not violating the principle of non transfer of tribal land to non-tribals.

5. The time limit of appeal, review or revision be kept open as proposed as it will enable correction and provide justice to the aggrieved person.

Sir, We earnestly request that the foregoing proposals should be considered by the panel constituted for finalizing the amendments. A line of direction to the panel from your good office shall be highly appreciated as we expect these proposals would bring in long term benefits to the tribals.

Thanking you,

Yours sincerely,
(P. C. Hembram)
General Secretary

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ORISSA REGULATION NO. 2 OF 1956

{Continued from October 2015 issue}

(1) to pay to the transferor the difference, if any, between the price so fixed and the price actually paid to the transferor.

Provided that where the building or structure has been erected after the commencement of the Amendment Regulation of 2000, the provisions of clause (b) shall not apply;

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Collector.]

4. Notwithstanding anything contained in the Indian registration Act, 1908 no deed of transfer of any immovable property executed in contravention of the

provisions of this Regulation shall be accepted for Registration.

5.(I) No surrender or relinquishment of any holding or a part of a holding by a tenant to a landlord under any law for the time being in force and applicable to such tenancy, such tenant being a member of a Scheduled Tribe, shall be valid unless after such surrender or relinquishment the landlord thereof by whatever name called either settles the said holding or part of the holding as the case may be, with another member of a Scheduled Tribe or else retains it in his possession or settles it with any other person with the approval of the competent authority when such member of a Scheduled Tribes is not available.

(2) Any surrender or relinquishment shall be deemed to be a transfer of immovable property within the meaning of this Regulation and except as otherwise provided in sub-section (1) the other provisions of this Regulation shall, so far as may be applied.

(3) Nothing in this section shall apply to any tenant holding immediately under the State Government.

6. In execution of a money-decree against a member of a Schedule Tribe, no right, title or interest held by him in any immovable property within any Scheduled Area shall be liable to be attached and sold except as and if prescribed.

7.(1) If any person is found to be in possession of any immovable property in contravention of the provisions of this Regulation, then, without prejudice to his liability to ejection under this Regulation, or where any person, having been evicted under any provision of this Regulation from any immovable property belonging to a member of a Scheduled Tribe, continues to be in possession of the same, he shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(2) Where any person, having been evicted under any provision of this Regulation from any immovable property belonging to a member of a Scheduled Tribe, reoccupied the same shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both.

(3) When a Court imposes sentence of fine or a sentence of which fine forms a part, the Court may, when passing judgement, order the whole or any part of the fine to be paid to the member of Scheduled Tribe to whom the immovable property belongs, or to his heirs.

7. A (1) The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the Second class for the trial of the offences under this Regulations, and on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973, to be a Judicial Magistrate of the first class or of the second class, as the case may be.

(2) [An offence under this Regulation may be tried summarily by a Magistrate.

(3) Every offence under this regulation shall be cognizable.]

7 B. Notwithstanding anything contained in any law for the time being in force, where a transfer of immovable property is found to have been made in contravention of the provisions of section 3 and the transferee or any other persons in possession of the property has been evicted therefrom under the said section, the transferee shall not be entitled to the refund of any amount paid by him to the transferor by way of consideration for the transfer.

7 C. Notwithstanding anything contained in any other law for the time being in force,

(a) If any proceedings under this Regulation the validity of the transfer or relinquishment of any immovable property is called in question or if such proceedings are for the recovery of possession of immovable property the burden of proving that the transfer or relinquishment was valid shall lie on the transferee, [for any person claiming the right to the property through the transferee.]

(b) the Court shall, in any suit or proceeding relating to the transfer of immovable property of a member of the Scheduled Tribes, have power to require any fact expressly or impliedly admitted by such member to be proved otherwise than by mere admission.

7 D. In the Limitation Act, 1963 in its application to Scheduled Areas in the Schedule, after the words "twelve

years" occurring in the second column against article 65, the words, brackets and figure "but thirty years in relation to immovable property belonging to a member of Scheduled Tribe specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950" as modified from time to time shall be added.

[7 E. No Civil Court shall have jurisdiction to try and decide any suit or proceeding so far as it relates to any manner which any officer or other competent authority is empowered by or under this Regulation to decide.]

8 (1) The State Government may from time to time make rules consistent with the provisions of this Regulation to carry out the purposes thereof.

(2) All rules made under this section shall be published in the Gazette and on such publications shall have the effect as if enacted under this Regulation.

9 (1) On and from the date of commencement of this Regulation the following shall stand repealed, namely:

(a) The Agency Tracts Interest and Land Transfer Act, 1917.

(b) The enactment mentioned in column 2 of the Schedule to the extent specified in column 3 thereof in so far as they are in force [in the scheduled areas].

(2) Notwithstanding such repeal by this Regulation the repeal shall not affect -

(a) the previous operation of such law or provisions so repealed or the validity, effect or consequence of anything done or suffered there under;

(b) any right, title, privilege, obligation or liability acquired, accrued or incurred under the said law or provisions or

(c) any investigation, legal proceedings or remedy in respect of such right, title, privilege, obligation or liability or

(d) any release or discharge from any debt, penalty obligation liability, claim or demand, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture of punishment may be imposed as if his Regulation had not been made.

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