

POSCO PRATIRODH SANGRAM SAMITI

Villages Nuagaon, Dthinkia, Gadkujang; Erasama Block; Jagatsinghpur District, Orissa

02.02.2011

Shri Jairam Ramesh
Minister of State (I/C) for Environment and Forests
Paryavaran Bhavan
CGO Complex
New Delhi 110 003

Sub:- Any "assurance" of Orissa government in regard to forest dwellers in POSCO area as requested will be false and should be rejected

Dear Sir,

We are writing in regard to your decision on the POSCO project on 31.01.2011. In para 23 therein, you have stated that, should the Orissa government provide a "categorical assurance" that there are no persons in the concerned area who are "other traditional forest dwellers" as per section 2(o) of the Forest Rights Act 2006, the project will be granted "final forest clearance" and may proceed.

Without prejudice to our right to challenge the legality of this decision and of the environmental clearance you have given, or to challenge the interpretation of the Forest Rights Act therein, we wish to put before you certain facts that demonstrate conclusively that there are indeed other traditional forest dwellers in the project area – as per the definition in your order – and that any assurance to the contrary by the Orissa government is therefore false.

We also note that any such assurance would be legally null and void and not change the fact that your Ministry's actions would be illegal. We hope and expect that your Ministry will not abdicate its constitutional responsibilities by accepting such a false assurance purely to facilitate a private company.

The available evidence for the three conditions laid out by para 23 of the order are as follows. We note that on the basis of this and other evidence the majority of the **POSCO Enquiry Committee** reached the following conclusion: "*The Committee finds that the government's own records such as census reports and voters list confirm that there are both other traditional forest dwellers (OTFD) and forest dwelling Scheduled Tribes in the project area and the statement of the District Collector of Jagatsinghpur to the contrary is false" (para II.1, Conclusions and Recommendations).*

For three generations of primarily residing in forests:

- Revenue maps of the villages of Dthinkia, Govindpur and Nuagaon from the 1927-1928 revenue settlement clearly establish that these villages existed, were surrounded by forests and were cultivating lands in this forest area.
- The Survey of India map of the area from 1928-1929 confirms the revenue maps.
- Families in the village have documentary evidence in the form of fines and cess receipts in the names of their ancestors for use of forest produce from prior to 1930.
- Kujang Forest Settlement Report of 1961 explicitly describes grant of forest rights to fishing communities who continue to live in and use this area.
- The Orissa government itself granted compensation to one ST family during the illegal land takeover in July 2010 and records show their presence in the area. These are clearly forest dwelling STs.

For exercise of rights for bona fide livelihood needs:

- Cultivation and occupation of forest land for self-cultivation is not disputed by anyone and is acknowledged by the rehabilitation plan. This is a right under section 3(1)(a) of the Act
- Collection of minor forest produce both for our use as food and as part of our cultivation is standard practice in the area. This is a right under section 3(1)(c) of the Forest Rights Act. Claims for community rights over such produce were filed in Nuagaon, Dthinkia and Govindpur in August 2010.
- Voluntary protection of forests of the people of the area. This is also acknowledged by the rehabilitation plan annexed to your own order, in which the last paragraph refers to the functioning of “Bana Surakhya Samitis” in all the project affected villages and recommends that the people should receive part of the revenue from the sale of the wood in these forest stands. Such protection is a right under section 3(1)(i) of the Forest Rights Act, which recognises the right to conserve, protect and manage any community forest resource which the community has traditionally protected for sustainable use.

For occupation of lands prior to December 13, 2005

- The project MoU came into force in June 2005. It can be no one's case that we were not in occupation of our lands on that date.

In sum, the Ministry is relying on an assurance after its own Committee has made a finding to the contrary. As said by the order itself, it may be noted that the filing of claims is irrelevant.

Actions of the Orissa Government – Findings of Ministry's Own Committees

We hope the Ministry will take into account the following statements from its own bodies:

- The **Forest Advisory Committee**, the statutory body to look into forest clearances, had this to say about the Orissa government's actions: *“the Meena Gupta Committee report clearly indicates a lack of diligence in settlement of forest rights and unless the State Government provides evidence of their serious intent for following observance of due process of law, it appears to the FAC that this is a breach of law.”*
- As noted above the three member majority of the **POSCO Enquiry Committee** stated that there are eligible people in the area.
- We note that even the sole dissenting member Ms. Meena Gupta also said that the documents and claims being made *“need to be looked into”* and considered by the statutory authorities under the Act (p. 15).
- We note that the majority of the **Enquiry Committee** also said that the *“balance of evidence... indicates that [gram sabha resolutions provided by the State government] are fabricated.”* (para II.5, Conclusions and Recommendations).

Thus the Ministry is also is relying on a government that its own bodies have described as being in breach of law, making false statements on record and potentially fabricating evidence. We have been prevented from filing claims by the fact that our area has continuously been under siege and that we are facing daily human rights violations and police brutality. No records or claim forms have been supplied to us.

Legality of Any Assurance by Orissa Government

It may further be noted that any assurance by the Orissa government at this stage is irrelevant to the legality of the forest clearance:

- The eligibility of any claimant under the Forest Rights Act is decided through the three stage process under section 6 of the Act. If the Orissa government intends to give any assurance it

can only do so after implementing the Act properly, which all independent inquiries and the Ministry's own internal committee have agreed has not taken place.

- Section 4(5) of the Act bars the removal of any forest dweller in occupation of forest land until the process of recognition of rights is complete. Diversion of the forest land prior to completion of the process is therefore a criminal offence under the Forest Rights Act, regardless of any "assurance" as your order contemplates.
- The requirements laid down in the Ministry's letter F. No. 11-9/1998-FC (pt) dated 30.07.2009 to all State governments (based on the Forest Rights Act) have not been met, as noted by the **Forest Advisory Committee** as well. The said letter correctly makes no exception for cases where the State government gives any assurance of the kind contemplated in the order. In all cases, certificates from the gram sabha are required stating that the process of the Act is complete and that they consent to the diversion of the forest land. Your order makes no reference to this circular or to the requirements of the Act in this regard.

In short, if the final clearance is granted on the basis of the assurance of the State government, the clearance will still be in violation of law.

Sir, the Forest (Conservation) Act gives your Ministry a certain statutory and constitutional responsibility in matters of forest diversion. The Ministry cannot abdicate this responsibility in order to favour a State government and a private company. If the Ministry is to make decisions on the basis of "assurances" from interested parties against the findings of your own inquiry and advisory committees, there was no need for it to have any regulatory powers at all.

Sincerely,

Prasanta Paikaray - Spokelesson - PPSS

Jaypalram Ghosh - Working President - P.P.S.S - Nuagan - PPSS

Badrul Khan Jaf. Nuagan. PPSS

Dhameswar Das, Nuagan, P.P.S.S

Ramesh Ch. Mantry - Nuagan - PPSS

Deendra Kumar - Dhinkia - PPSS

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