



GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

File No. MFINP/Policy1/2013/RU-IV

Dated 21/01/2013

To

Ms. Nivedita,
Under Secretary,
Ministry of Tribal Affairs
Room No. F-279
August Kranti Bhawan,
Bhikaji Kama Place,
New Delhi- 110066

Sub: Draft Note for the Cabinet on "Policy on Transfer or Alienation of Land Held by Government and Government Controlled Statutory Authorities"

Sir,

I am directed to refer to your letter No. 4/172012 CP &R dated 02/01/2013 (received in the Commission on 08/01/2013) regarding views/ comments of the Commission on the Draft Cabinet Note mentioned above and to say that the subject matter was discussed as Agenda Item No-III in the 43rd Meeting of the Commission held on 21/01/2013.

2. Relevant Extracts from the Summary Record of the meeting of the Commission are enclosed for information and further necessary action. In this Connection, you are requested to ensure that in accordance with the revised instructions issued by the Cabinet Sectt. vide OM dated 16/2/2012, the views of the Commission, as received by the MTA, are placed before the Hon'ble Minister, MTA before communicating final views/comments of the MTA to the sponsoring Ministry viz. Ministry of Finance Department of Economic Affairs. Further, the Ministry of Finance should be requested to include in/ enclose with the note for consideration of the Cabinet the unabridged/ unedited views of the Commission along with the views of the MTA and their responses thereon.

3. It is requested that information about action taken on the views and observations of National Commission for Scheduled Tribes on the subject matter, and the nature and the manner in which those views have been incorporated, may be forwarded to this Commission urgently for including the same in the Annual Report of the Commission.

Yours faithfully,

(K. D. Bhansor) Mrs.
Deputy Director

Encl: As above.

Copy for information to:-

The Secretary,
(Kind Attention:
Shri Harish C. Upadhyay,
Under Secretary)
Department of Economic Affairs,
Ministry of Finance
276-G, North Block,
New Delhi-110001

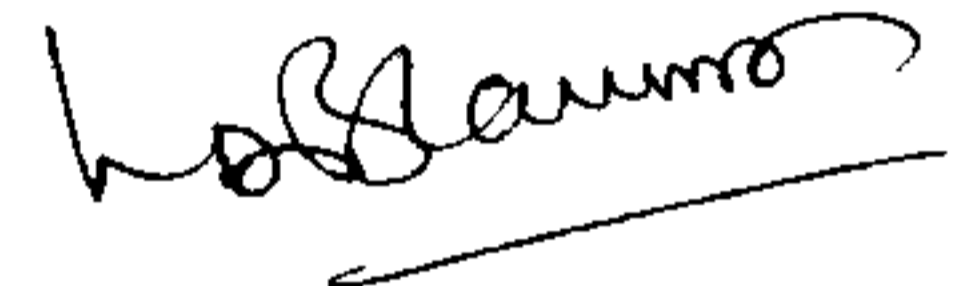
Encl: As above

SSA (NIC)
Assistant Director (Coordination)

Please refer to your letter F. No.10/17/2011-INF/EC dated 17/09/2012, addressed to the Ministry of Tribal Affairs on the subject.

2. Relevant Extracts from the Summary Record of the meeting of the Commission, communicating views/comments of the Commission on the issue are enclosed. In this connection, your kind attention is also invited to para 2 above with reference to the revised instructions issued by the Cabinet Sectt. vide O.M. dated 16/02/2012. It is requested that the action may please be taken accordingly and the nature and the manner in which views of the Commission have been incorporated in the proposed Amendment to the Act may be forwarded to the Commission urgently for including the same in the Annual Report of the Commission.

For uploading on the Website of NCST



(K. D. Bhansor) Mrs.
Deputy Director

EXTRACT

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 43rd meeting of the National Commission for Scheduled Tribes held at 12:30 HRS on 21/01/2013.

The 43rd meeting of the Commission was held at 12:30 hrs on 21/01/2013 in the Conference Room of the Commission in Loknayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Hon'ble Chairperson, NCST. List of the participants is enclosed at **ANNEXURE**. There were three Agenda Items for discussion in the meeting. All the Agenda Items were discussed in the meeting.

2. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below:

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Agenda Item III	Draft Note for the Cabinet on "Policy on Transfer or Alienation of Land Held by Government and Government Controlled Statutory Authorities"
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13. Ministry of Tribal Affairs. Vide, O.M. No. 4/17/2012-CP&R dated 02/01/2013 (received in the Commission on 08/01/2013), have sought the comments of the Commission on the Draft Note for the Cabinet on "Policy on Transfer or Alienation of Land Held by Government and Government Controlled Statutory Authorities" with reference to the Ministry of Finance letter No. 10/17/2011-INF/EC dated 17/09/2012.

14. The Commission noted that the Ministry of Finance letter dated 17/09/2012 was received in the Ministry of Tribal Affairs on 25/09/2012 requesting the comments/ suggestions in the matter within two weeks. However, the comments of the Commission were sought by the MTA vide letter dated 02/01/2013, after a lapse of about four months. The Commission observed that the cases, where the Sponsoring Ministry lays down specific time-frame for the comments/ suggestions, should be forwarded to the Commission on an urgent basis.

15. Joint Secretary, NCST mentioned that the proposed policy is aimed at strengthening the public sector land management, and also to enhance the transparency

and efficiency in alienation or use of public land. The policy proposes a notification by the Cabinet Sectt. for the constitution of a Public Sector Management Committee as per paragraph 21 A of the Draft Note and issuance of the broad policy guidelines by the Cabinet Sectt. for exchange, transfer, sale, lease or licensing of lands held by all Central Government Ministries, Departments, Government controlled Statutory Authorities and CPSUs as per paras 21 B to 21 F read with para 20 of the Cabinet Note.

16. The Commission was informed that the proposed guidelines provides for exchange or transfer of land (Govt. to Govt.), sale of land, lease of land (either a Govt. to Govt. or a Govt. to Private transaction) and licensing of land (either Govt. to Govt. or Govt. to Private Transaction). The sale of land also includes commercial, industrial, residential or institutional purposes.

17. The Commission observed that the views/ comments of the Commission in respect of the Scheduled Areas, as mentioned below, are applicable with regard to the proposed use of land in Scheduled Areas:

The land is the only asset tribals are having and is also the source of their livelihood. Therefore, acquisition of tribal land, leading to their landlessness, is both socially and economically depriving the tribals, who have limited capacity to earn their livelihood outside their habitat and pursue economic activity not involving agricultural land. Sensitivity to these tribal needs must be accounted into the Draft Note for the Cabinet, considering the following views/comments of the Commission:

- i) Tribal lands are not transferable to non-tribals – whether by sale, lease or mortgage, etc. In SLP (civil) 4601-02 of 1997, Samatha Vs. Government of Andhra Pradesh and Ors. the Supreme Court had observed that in the light of the provisions contained in Clause (a) of sub-para (2) of Para 5 of Scheduled V of the Constitution, there is implied prohibition on the State's power on allotment of its land to non-tribals, in the Scheduled Areas, which also limits the State's power to acquire tribal land for subsequent allotment to non-tribals whether for incidental public purposes or otherwise. Any law which seeks to expropriate tribal rights over land must recognize these differences; and provide appropriate and equitable circumstances as well as compensation of rights.
- ii) The acquired land remaining unutilized, it should be returned back to the original tribal owner wherever possible, without insisting on the re-payment of the compensation amount since the livelihood loss caused to the landowners may have eroded the compensation received (as is done on expiry of a lease).
- iii) All other rights of the tribals over the unutilised land should be restored.

- iv) In case the land is subsequently utilized by the Govt. for a commercial purpose (e.g. for real estate development after mining, etc.), the earnings from such activity any alternate use should also be shared with the original land owners in similar fashion for appreciation in land values. Share of earnings from alternative users of land should also be provided, if future land use is of a commercial nature.

The Commission has already observed in the case of similar Legislative Proposals affecting Scheduled Areas that the robust "pre-facto" mechanism have to be grafted to Constitutional provisions which would ensure requisite attention to tribal concerns- foremost of which would be the mandatory inclusion of a separate chapter on Special Provisions for Scheduled Areas/ Scheduled Tribes in every Central or State Legislation affecting the habitat tribals' property rights and enjoyment of lands occupied, the religion, customs and culture of these people and traditional relationship with their environment (as obligated under UN Conventions). The Commission, accordingly recommended that the legislative proposal under consideration by the Government may include separate Chapter on Applicability to Scheduled Areas / Scheduled Tribes.

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