

PD/cy/Adv

F. No 4/3/2009-CP&R/C&LM II
Government of India
Ministry of Tribal Affairs

Shastri Bhawan, New Delhi
Dated :- 27th October, 2009

To,
The Secretary,
National Commission for Scheduled Tribes,
Lok Nayak Bhawan, New Delhi

*2653/Cadun/2009
28/10/09*

Subject:- Proposal of the State Government of Orissa for seeking the assent of the President of India to the ORISSA SCHEDULED AREAS TRANSFER OF IMMOVABLE PROPERTY (BY SCHEDULED TRIBES) AMENDMENT REGULATION, 2009.
Sir,

I am directed to refer to the above subject and to say that the Ministry of Home Affairs has requested the Ministry of Tribal Affairs for the comments on the ORISSA SCHEDULED AREAS TRANSFER OF IMMOVABLE PROPERTY (BY SCHEDULED TRIBES) AMENDMENT REGULATION, 2009.

In this connection it is stated that the Secretary, Ministry of Tribal Affairs, has decided to convene a meeting on 11.11.2009 at 5.00 PM in the Conference Room (Room No. 734-735) 7th Floor, A-Wing, Shastri Bhawan, New Delhi to discuss the issue in details before sending the comments/views on the proposed regulation to the Ministry of Home Affairs.

It is therefore requested to kindly depute the concerned Joint Secretary or a Senior Officer, conversant with the work from your Ministry/Commission to attend the above meeting.

A copy of the background Note received from the Ministry of Home Affairs, in this regard, is enclosed.

Yours faithfully

(Dr. N.K. Ghatak)
Joint Director
Tel: 23383965

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Recd/PD

in open of file & not up immediately

28/10/09

220(CRM-3)

Dr. Rajan

New file in Policy head

29/10/09

Back ground note on the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2009.

1. The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 (Orissa Regulation 2 of 1956) was enacted to control and check transfer of immovable property in the Scheduled Areas of the State of Orissa by the Scheduled Tribes. The said regulation has been amended form time to time, but the problem relating to land alienation still remains partly unsolved for some reason or the other. As per the Regulation 1 of 2002 the transfer of tribal land to non-tribal has been completely banned. Due to imposition of total ban on transfer of land i.e. lease, mortgage, etc., the ST persons are unable to get financial assistance from financial institution by mortgaging their land for opening outlets of oil companies, construction of house and higher study of their children, etc. Since obtaining loan by way of mortgage of land with public financial institution is only limited for agriculture purposes, the financial institutions are not entertaining any other loan application to deserving ST persons. This creates discontentment among the young unemployed ST entrepreneurs as well as other ST persons. The proposed amendment suggested vide Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2009, inter-alia, provides for transfer of immovable property by member of the Scheduled Tribes for the purpose of securing a loan for agriculture, construction of residential house, higher studies of children, self employment, business or establishment of small scale industries with prior permission in writing from the Sub-Collector in favour of any public financial institution. These provisions were not there in the original regulation which used to cause hardship in deserving cases.

2. This amendment also provides that in the event of non-payment of loan obtained from the public financial institution, the immovable property will be put to public auction in execution of any decree for realization of mortgage money. If

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during such auction, the highest bid amount is offered by any person other than a member of Scheduled Tribes, the highest bid amount so offered by that person shall be given wide publicity in such manner as may be prescribed inviting application from the willing persons belonging to Scheduled Tribes to purchase the property at the said auction price, even though he has not participated in the said public auction. The highest bid amount has to be paid by such ST person within a period of ⁶⁰ 15 days from the date of the said publicity and the property shall be sold accordingly to such person belonging to Scheduled Tribes, failing which it will be sold to the person who has first offered the highest bid amount. This amendment further provides that if the Sub-Collector refuses to grant permission under the amended provision, the person aggrieved may within such period and in such manner as may be prescribed prefer an appeal to the Collector, whose decision shall be final.

3. The present Amendment Regulation, 2009 aims to substitute the provision made under Section 3(1) & 3(1)(ii) and insertion of Explanation-III & IV after Explanation-II of Section 3(1) and insertion of a new Clause (1-a) under Section 3(1).

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**COMPARATIVE STATEMENT SHOWING THE RELEVANT SECTIONS AS
THEY EXIST AND AS THEY WOULD READ AFTER THE PROPOSED
AMENDMENT**

EXISTING	WOULD BE
<p>1. This regulation may be called the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2000.</p>	<p>1. This regulation may be called the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2009.</p>
<p>2. Definition</p>	<p>Would remain as same.</p>
<p>3. [(1) Notwithstanding anything contained in any law for the time being in force any transfer of immovable property by a member of a Scheduled Tribe, except by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any agricultural purpose shall be absolutely null and void and of no force or effect.</p>	<p>2. [(1) Notwithstanding anything contained in any law for the time being in force any transfer of immovable property by a member of a Scheduled Tribe, except by way of gift or exchange for public purpose or mortgage executed in favour of any public financial institution for securing a loan granted by such institution for the purpose of agriculture, construction of residential house, higher studies of children, self-employment,</p>

<p>such transfer is made in favour of another member of a Scheduled Tribe;</p>	<p>industry with the prior permission in writing by the Sub-Collector, shall be absolutely null and void and of no force or effect whatsoever, unless such transfer is made in favour of another member of a Scheduled Tribe";</p>
<p>3(1) (ii) in execution of any decree for realization of the mortgage money, no property mortgage as aforesaid shall be sold in favour of any person not being a member of a Scheduled Tribe; and</p>	<p>(ii) in execution of any decree for realization of mortgage money, property mortgaged as aforesaid shall be sold by public auction in favour of any person but where the highest bid amount offered by any person is other than a member of Scheduled Tribe, the highest bid amount so offered by that person shall be given wide publicity in such manner as may be prescribed, inviting application from the willing person belonging to Scheduled Tribe to purchase the property so put to auction, even though he has not participated in the said public auction, by</p>