

Primer on Regulations on Land in Arunachal Pradesh and Need for Reforms

By G.N. Sinha¹

Abstract: *This paper traces the origin of regulation on land in Arunachal Pradesh in a historical perspective. It discusses the notion of property and the different modes of its acquisition. An overview of the main legislation that has a direct bearing on land in Arunachal Pradesh has been presented. Concepts like 'forest' and Unclassed State Forest (USF) have been looked at afresh, and have been discussed keeping in mind customary laws of tribes and the statute laws. The allotment of land, granting ownership to tribals, should be confined to areas devoid of forest and those which are already under their actual occupation. Provisions of the Forest Rights Act 2006 should be invoked to confer ownership rights on forest land to individuals and families who have been occupying it since long. Initiative to confer ownership rights should precede preparation of a white paper on the land and proposal for land reforms.*

Key words: Prescriptive rights, easement, Jhum Land Regulation, tribal rights.

1. Introduction

There was nothing in the hilly territories of northeast India corresponding to the land revenue system of the plains. Nor did the British government consider it necessary to devise a legal basis for land revenue procedure, or to recognize the tribes as having any status in regard to land.

Pt. Jawaharlal Nehru, in his foreword to the second edition of Dr. Verrier Elwin's "A Philosophy for NEFA", said that the avenues of development in this territory should be pursued within the broad framework of five fundamental principles. The second principle "Tribal rights in Land and Forests should be respected" has been the basis of all future enactments on land in tribal areas. The Constitution of India also included customary rights of tribes as having force of law under Article 13.

In view of the special nature of this territory, all the rules applicable in British India were not made applicable here. However, there was shift in policy in 1914 when selected acts, rules and regulations were made applicable to this

¹ G N Sinha, IFS (AGMUT-1983) retired as Principal Chief Conservator of Forests from Government of Arunachal Pradesh in June 2017. He holds an LL.M degree from the United Kingdom.

territory. A special provision was also inserted in Section 14 of the Assam General Clauses Act, 1915, providing that no act of the Assam Legislative Council, in the absence of any special provision to the contrary or special extension or under the Scheduled District Act 1874, shall apply to these Frontier Tracts.

The Assam Land Revenue Regulation, 1886 (Regulation 1 of 1886) was extended to this territory, with the exception of sections 3 to 159 (both inclusive). In other words, the bulk of legislation (Sections 3 to 159) was not extended. This implied absence of land revenue regulation in this territory.

This paper will, therefore, attempt to present an overview of the main regulations impacting use of all kinds of land, and suggest measures to unlock the potential of land for development, as also to meet the rising aspirations of people.

2. Origin of Rights to land

Almost the entire state was under dense forest cover and people inhabited this territory at scattered locations. For their livelihood needs, they invested money and labour for clearing forests, and came to hold land over generations and peacefully. The common maxim of law is that it will not disturb such possession which people have acquired since time immemorial. The people are said to have acquired the property by *prescription* due to long and peaceful usage.

English law has borrowed the notions and concept of property from Roman law. The old Roman law first recognized this principle of *prescription*, and all other systems of law have in one way or another followed it. Old Roman lawyers on the subject have stated that initially the land was ‘nobody’s goods’, *res nullius* and the person who first took and successfully retained possession, became owner by natural law, or got a title by occupancy. This concept of the origin of right to property got embodied in laws across the nations. Such right has three connotations: i) the feeling that long possession ought not to be disturbed, ii) the feeling that everything ought to have an owner, iii) and that ownership resides freely in each individual.

It is thus important to appreciate the juristic connotation of the term “ownership”. Roman lawyers neatly expressed this term by saying that full owner (*dominium*) had the use (*usus*), the whole of the products (*fructus*), the

right entirely to consume (*abusus*), and the right of transferring or alienating at pleasure (*vindicatio*).

2.1. Of separate Rights or Servitudes

The notion of property appears simple but this is not so. This happens with government as well as private lands. A person holds a piece of land which supports bushes and trees and the inhabitants of a neighbouring village have the right to graze cattle on it. This right prevents the owner from ever cultivating his land. Likewise, government may be the owner of forest, but notwithstanding that fact, there may exist rights of grazing and jhumming in favour of the neighbouring village. In such case, the government officer in charge of the forest can never close the whole forest at once and plant it over, nor can he lease out the whole of the grazing field nor cut the grass. In both of these cases, the owner has something less than the absolute or perfect full enjoyment of his property.

In other words, while the property itself remains with the owner and while his ownership is not reduced or altered, still some of the rights which go to make up a perfect ownership have been, as it were, detached in other persons. The sum total of all these detached and separate rights have been called by the Roman lawyers as *servitude*. The English law has no general term for servitude. The English law gives a special name *easement* to one class of these rights. Easement, howsoever long, cannot give rights to a claim of ownership in the estate. Indian Easement Act 1882 is a statute on this subject.

Other mode of origin of right to land is from the principle of *terra nullius* i.e. un-owned lands. This like *res nullius* (i.e. nobody's goods) belong to the sovereign/government. The juristic principle of *terra nullius* was invoked by the British when Captain Cook established a British colony in New South Wales following Declaration of Possession in 1770. In later times, ownership of land was dealt under special statutes like land regulation etc.

3. Early enactments having a bearing on land rights in Arunachal Pradesh

3.1. The Chin Hills Regulations, 1896

Under the provisions of the Chin Hills Regulation 1896, the Deputy Commissioner has the power to eject undesirable persons, not being native of such area, if their continuance is injurious to peace or good administration of the area. This law was enacted to protect tribes inhabiting this region.

3.2. Bengal Eastern Frontier Regulation, 1873

This regulation is widely known for starting the regime of Inner Line Permit in Arunachal Pradesh. Besides, this also deals with some aspects of ownership on land and its attendant produce. Under Section 5, any person found in the possession of rubber, wax, ivory or other jungle product upon his conviction under this regulation, the articles held by him may be confiscated to government by an order to be passed at the time of conviction by magistrate. Section 7 of the regulation prohibits a non-native to acquire interest in land or the product of land beyond the inner line without the sanction of the state government by such officer who may be appointed by the state government.

3.3. Assam Forest Regulation, 1891

A large chunk of the area measuring 32039.00 sq. km (38.27%) has been categorized as Unclassed State Forest (USF) in the records of the forest department. This forms part of the legal status of forests amounting to 61.54% of the geographical area. Such a large extent of USF in the state has been perceived to be an impediment in development of the state.

It may be pointed out that the Assam Forest Regulation, 1891 and Indian Forest Act, 1927 have their common roots in the erstwhile Indian Forest Act, 1878. Where land settlement has not been done, the right of the government on all lands is absolute as per the principle of *eminent domain*. Where land settlement has been done or is in process, the land is under different stages of ownership i.e. easement right holders have different degree of easements or separated rights vested in them.

3.3.1 Unclassed State Forest (USF)

Section 4 and Sections 32 to 36 throw light on the meaning and implications of USF. Section 4 of the regulation empowers the State government to constitute any land at its disposal a reserved forest by publishing a notification in the Arunachal Pradesh Gazette. This is followed by the procedure given under the regulation from Sections 5 to 17.

In North-East India in general, land settlement did not take place in the initial years of the British rule, unlike other states of the country. Therefore, all lands, until allotted to private individuals, belonged to the State. In land revenue settled States this was not the situation.

Chapter IV of the Assam Forest Regulation, 1891 deals with general protection of forests and forest produce in unsettled tracts. In other words, Sections 32 to 36 under this chapter deal with such areas where rights of people have not been settled. These tracts included such forested areas that have not been notified as a reserved forest or forest reserve of any description.

The state government may, by notification in the official gazette, reserve any tree or class of trees on any land at disposal of the government as reserved trees under Section 32. The government, through a notification under Section 33, may prohibit damage to such reserved trees. Section 34 provides measures for protection of unsettled forests belonging to the government. Such rules may regulate or prohibit cutting of jhums, fire, felling of trees, quarrying of stone, cutting of grass and pasturing, hunting, shooting and fishing, etc. Thus jhuming was a privilege and not a right. The state government may authorize any forest officer to charge the fees, royalties or other payments for forest produce whether in transit or otherwise.

Rules relating to USF in the plains district of Assam and North Cachar Hills were issued under Sections 33, 34 (2) (c) (e) (g) (h) and 35 (2). In these rules, the expression USF means any land at the disposal of the State and not included in a reserved or village forest. Extraction of all forest produce, other than for domestic and bonafide use, shall as a rule be suspended from such USF. Since the Assam Forest Regulation, 1891 was extended to Arunachal Pradesh long

back, the above mentioned notifications form part of the applicable law on forest in this territory.

Unclassed State Forest has been under ownership of the State. In this category of unsettled tracts, new reserved forest/ Anchal RF / community forest have been constituted from time to time. The forest department used to issue permits to local people to use this category of land on payment of royalty and monopoly fee etc. till the permit system was abolished by the Supreme Court in 1996.

The provisions of the regulation make it amply clear that ownership of USF is vested in the State government, as has been alluded under the Assam Forest Regulation, 1891 discussed under Para 3.3 and 3.3.1 above.

4.0. The Balipara/ Tirap/ Sadiya Frontier Tract Jhum Land Regulation, 1947

This law conferred on tribes, for the first time, customary rights on land for jhuming. Therefore, this was a departure from the Assam Forest Regulation, 1891 where jhuming was considered a privilege and not a right.

A customary right to jhum land shall be deemed to be established in favour of village or a community when such village or community has enjoyed the right to cultivate or utilize such jhum land for not less than five years prior to making of this regulation 4(1). A customary right to jhum land shall be deemed to be established in favour of an individual cultivator— a) if he inherited the land in accordance with a local custom, b) if he purchased the land prior to the making of this regulation, c) if he purchased the land at any date subsequent to making of this regulation provided it was not contrary to local custom, and finally d) if being a resident of a permanent village, he has brought the land under cultivation and the land has not been cultivated at any time within 30 years preceding his bringing the same into cultivation, provided that such land is within cultivable reach of his own village [Section 4(2)]. The Deputy Commissioner has been designated as Land Conservator under this regulation.

The government may acquire any jhum land required for a public purpose under Section 10. No formal acquisition proceeding shall be necessary, but an opportunity shall be given to those having rights on the land to show cause against

such acquisition, and a reasonable compensation shall be paid for all land required under this section. The customary right to jhum shall also be subject to payment of rents, taxes or any other dues as may be lawfully imposed from time to time by competent authority [Section 9(2)]. In case of default, the Land Conservator may extinguish such rights to land.

This regulation also provides that the Land Conservator may at any time summarily eject without notice, any person who has squatted without authority of any jhumland (Section 11). This means that any person who is occupying land or property to which one has no legal rights may be ejected. Thus, as per the regulation, permission of the Land Conservator has to be taken before start of jhumming. It may be of interest to note that compensation to jhum land holders under Section 10 is due to the customary rights to land (like cultivation, collection of forest produce, use of water channels or any other rights traditionally enjoyed) and not on account of their ownership right to land *per se*. The loss of their easement rights have to be compensated as the government remains the owner of all land excluding specific allotments to individuals. The Land Conservators may also take steps to stop jhumming (not exceeding 10 yrs) if undue soil erosion is being caused or water supply affected (Section 12).

In such situations, the Land Conservator may order reforestation of jhum land in his judgment, as also for ensuring that strips of reasonable width within any jhum land may not be cultivated. The regulation under Section 16 carries penal provision for those who disobey the instructions of the Land Conservator, which may extend to 1 month's imprisonment or with fine not exceeding one hundred rupees or both.

5.0. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA)

This Act is premised on the understanding that historical injustice was caused to tribes and other forest dwellers with regard to their land rights and access in forest areas when forest estates were initially constituted.

This Act recognizes their right to hold and live on forest land, right of ownership and right of resource use. This Act is an instrument to recognize and

vest forest rights in tribes and others inhabiting forest areas. Gram Sabha and village level institutions have to protect the wildlife, forests, biodiversity and ecologically sensitive areas. The Gram Sabha shall be the authority to initiate the process of determination of forest rights of individuals and the community. The District Level Committee shall be the final authority to record and vest forest rights in individuals and family.

Title for land in actual occupation of individual/family/community not exceeding 4 hectares can be given under Section 4(6). Rules have also been made under the Act in 2007. The procedural requirement to record rights enjoyed by tribes has been relaxed as compared with the Civil Procedure Code. This Act has so far not been implemented in Arunachal Pradesh, though some initiative was taken in 2009. There is an urgent need to implement this Act and confer land rights to the members of the tribes.

The Ministry of Tribal Affairs has clarified that the provisions of the Forest Rights Act, 2006 supersede the preceding laws and court judgments and orders thereafter. Thus, FRA overrides the Forest Act wherever the Forest Act is in conflict with FRA. The rights conferred under FRA are recorded in the revenue records at village level, as per state land revenue laws.

6.0. Judicial intervention to protect forests

In the case of T.N. Godavarman vs Union of India in WP(c) 202/1995, the Supreme Court vide their order dated 12.12.1996 made a monumental intervention in tree felling from forests, and the necessity to prepare a management plan for forest conservation. This case is a watershed in the development of environmental jurisprudence in the country relating to forests.

In this order, the Supreme Court, inter alia, defined the term and directed that the term 'forest' has to be understood according to its dictionary meaning and is irrespective of ownership and classification.

The Apex Court in this case appointed two committees – one on identification of forest area of all descriptions, whether notified or not, and the second committee related to availability of timber which can support wood based industries.

The Supreme Court vide their order dated 06.07.2011 in IA No. 1868 of 2007 in W.P © No. 202 of 1995 (Lafarge case) reiterated the order dated 12.12.1996 and directed the State/UT governments to identify forest areas, irrespective of whether they are notified, recognized or classified under any law, and irrespective of the land of such forests and the areas which were earlier forests but stand degraded, denuded and cleared. This shall be used in the preparation of geo-referenced district forest maps containing the details of the location and boundary of each plot of land that may be defined as ‘forest’ for the purpose of Forest (Conservation) Act, 1980. These orders of the Apex Court have to be complied with, and all matters of land allotment and settlement have to be in conformity with these orders.

7.0. Introduction of Land Tenure System in Arunachal Pradesh

In the late 1990s, a need was felt to introduce the Land Tenure System in order to obviate the problems being faced by tribes of Arunachal in getting institutional finance for development of their entrepreneurial ambitions. The evolution of the Land Tenure System has taken place by different policy and legal instruments in this territory. A summary of the main instruments is given below:

7.1. Land Possession Certificate

The government issued guidelines for issue of land possession certificate (LPC) to occupants of land in 1988. This instrument was administrative in nature. The interested applicants may submit an application to the local administrative authority for LPC. This application should be accompanied with a certificate from Forest Department that the land in question does not fall under reserved forest, a certificate from the Village Council/Anchal Samiti that the land is actually owned by him and it is not a joint property, and that the land is free from all encumbrances, and the sketch map of the land duly countersigned by vice-president of Anchal Samiti/ Village Headman.

After inspection of the site, the local administrative authority will issue a notice of ‘no objection’ from the public of the locality and on satisfying himself that the land in question actually belongs to the applicant, he will recommend the case to the Deputy Commissioner, who in turn will recommend the proposal to

the State government for approval. On receipt of approval from the State government, the Deputy Commissioner will issue Land Possession Certificate.

7.2. Arunachal Pradesh (Land Settlement and Records) Act, 2000

The State government enacted this instrument on land, envisaging implementation of a land tenure system in Arunachal Pradesh. This Act included details on revenue divisions and revenue officers, rights over land, survey and settlement of land revenue, land records, realization of land revenue, rights of tenants, etc. This is a legislative instrument.

7.3. Arunachal Pradesh (Land Settlement and Records) Rules, 2012

The State government, in exercise of the power under Section 99 of the Arunachal Pradesh (Land Settlement Records) Act, 2000, and in supersession of the Arunachal Pradesh Allotment of Government Land Rules, 1988, and the Arunachal Pradesh (Land Settlement and Records) Rules, 2002, issued this Act. This legal instrument was an improvement over the previous set of rules, and it was also more exhaustive. It contained more details on procedural aspects. These rules are in tune with land settlement rules prevalent in the rest of the country.

Conclusions

The necessity to confer ownership rights to the members of the tribes is an imperative which cannot be delayed further. There is also a need to implement the Forest Right Act, 2006, so that titles may be given to the members of the tribe on lands falling in the category of forests in their occupation. In so far as implementation of the Land Tenure System is concerned, the statutes on land should be followed. It would also be prudent to put in place a policy on land which will look into the different categories of land, terrain and ecology while considering grant of land to the members of the tribes.

Forest areas from the category of USF situated in the vicinity of villages may be constituted into Village Forests under Section 29 of the Assam Forest Regulation, 1891. Rules should also be framed for their management under Section 30 of the regulation. This will inspire the village communities to protect village forests more actively besides having a sense of ownership.

Besides, orders of the Supreme Court on land, forests and tribal rights have also to be looked into before proceeding in the matter of allotment of land to local people. All these policies, laws and court orders spread over many departments like forest, land management, revenue and social welfare, call for a 'White Paper on Land' in Arunachal Pradesh.

References

- Arunachal Pradesh Code, Volume-I, 1982. Government of Arunachal Pradesh, Law and Judicial Department, Itanagar, Arunachal Pradesh.
- Baden-Powell, B. H. (1882). Manual of Jurisprudence for Forest Officers: Being a Treatise on the Forest Law. Government Press, Calcutta.
- Baden-Powell, B.H. (1974). The Land Systems of British India. Oriental Publishers, Delhi.
- Baden-Powell, B.H. (2003). The Origin and Growth of Village Communities in India. Batoche Books, Kitchener.
- Barpujari, H. K. (1981). Problem of the Hill Tribes North-East Frontier, 1873-1962, Volume-III. Spectrum Publications, Gauhati, Assam.
- Barua, L. K. (2010). India's North-East Frontier: The Colonial Legacy - Incorporating the Continuation of John Mitchell's Report. Spectrum Publications, Guwahati, Assam.
- Das, J.N. (1989). Land System of Arunachal Pradesh, N.M.Tripathi Pvt. Ltd., Bombay.
- Dutta, Narendra Chandra. (1968). Land Problems and Land Reforms in Assam, S.Chand & CO., Delhi.
- Dutta, P. S. and Das, G. (1993). Tribal Land and Forest Rights in Arunachal Pradesh. Land Reforms Unit, Lal Bahadur Shastri National Academy of Administration, Mussoorie.
- Dutta, S. (1998). Studies in the History, Economy and Culture of Arunachal Pradesh. Himalayan Publishers, Itanagar, Arunachal Pradesh.
- Elwin, V. (2006). A Philosophy for NEFA. Directorate of Research, Government of Arunachal Pradesh, Itanagar.
- Gait, E. A. (2011). A History of Assam. Second Edition. Spectrum Publications, Guwahati.
- Luthra, P. N. (1993). Constitutional and Administrative Growth of Arunachal Pradesh, Directorate of Research, Government of Arunachal Pradesh, Itanagar.
- Mackenzi, A. (2007). The North-East Frontier of India. Mittal Publications, New Delhi.
- Osik, N. N. (1999). Modern History of Arunachal Pradesh (1825-1997). Himalayan Publishers, Itanagar.
- Pant, Ruchi. (1996). Legal Appraisal of Unclassed State Forest of Arunachal Pradesh, India– A Case Study of the Lower Subansiri District. Kathmandu, Nepal.

Pant, Ruchi. (2002). Customs and Conservation: Cases of Traditional and Modern Law in India and Nepal. Kalpvriksh and International Institute of Environment and Development, Pune.

Pathak, M. (2005). Tribal Customs, Law and Justice – A Teleological Study of Adis. Mittal Publications, Delhi.

Reid, R. (1997). History of the Frontier Areas Bordering on Assam, From 1883-1941. Spectrum Publications, Guwahati.

Sinha, G. N. (2010). Strengthening Indian Environmental Laws: New Lessons and Approaches. Bishen Singh Mahendra Pal Singh, Dehradun.

Sinha, G.N., Srivastava, Nidhi and Chandra, Subhash (2014) Evolution of Legal Framework for Multiple-Values Sustainable Management of Forests in India In Bhojvaid, P.P. and Khandekar, Neena (2014) Sustainable Forest Management for Multiple Values-A Paradigm Shift, Forest Research Institute, Dehradun, PP. 307-330.

Upadhyay, Sanjay, and Mehra, Shefali (2004). Transit Rules for Forest Products in North East India-The Conflict within; Community Forestry International, and Enviro Legal Defence Firm.

Upadhyay, Sanjay, and Mishra, Apoorva. (2004). Role of Supreme Court and Implications for Community Forestry in North East India; Community Forestry International, USA and Enviro Legal Defence Firm.

Upadhyay, Sanjay, and Upadhyay, Videh. (2002). Hand Book on Environmental Law- Water Laws, Air Laws and the Environment; Vol II; Lexis Nexis- Butterworths-India.

Upadhyay, Sanjay. (2003). Forest Boundaries Confusing Definitions: Economic & Political Weekly, Bombay.

Upadhyay, Sanjay. (2003). Joint Forest Management Some Legal Concerns: Economic & Political Weekly, Bombay.

Upadhyay, Sanjay. (2004). Community Forestry and Policy in North East India: A Historical Legal Analysis; Community Forestry International.

Upadhyay, Sanjay. (2009). Community Forest Resource and Community Forest Rights: Implementation and Institutional Challenges under Forest Rights Act, 2006 – A Forest Governance Learning Group India Initiative, New Delhi.

Upadhyay, Sanjay. (2010). Conserving India's Forests- The Godavarman Story so far, ELDF and WWF-India, New Delhi.

Upadhyay, Sanjay. (2012). Towards Creating a model forest and scheduled Area governance in Madhya Pradesh, Chhatisgarh and Jharkhand- Three Manuals on Forest Rights Act and PESA, New Delhi.

Upadhyay, Sanjay. (2013). A study report on: -Review of Existing Forest Acts, Rules, Regulations and Policy Development to Strengthen Community Natural Resources Management in Assam, Assam Forest Department, Assam, Guwahati.