

Challenges before Kerala's Landless: The Story of Aralam Farm

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Whether from a class perspective or from a community identity perspective, it is undeniably the biggest failure that decades after the land reforms, a good majority of the dalits and adivasis in Kerala remain fully landless. In the context of the Supreme Court verdict of 21 July 2009, which rejected a stay order by the Kerala High Court on important sections of the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999 and the new scenario where the legislature and the judiciary proclaim that the adivasi community has now agreed for alternate land, and therefore, the issue of restoration of land has become irrelevant, this study looks into the story of Aralam farm in Kannur district, where a rehabilitation programme by the state is currently in progress. This study reveals the grim reality of the dalits and adivasi people in a state, where no territory is declared as a scheduled area under the Fifth Schedule of the Constitution.

Struggles waged by the landless at Muthanga, Chengara and elsewhere for more than a decade indicate how Kerala's much-flaunted history of land reforms is becoming increasingly questionable. For the adivasi community, the struggle has been essentially about the restoration of their alienated land. Every piece of law enacted towards this has failed or made to fail; the passing of the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999 by the state assembly was yet another blow. The Supreme Court verdict on 21 July 2009 rejected a stay order by the Kerala High Court on important sections of this act. This verdict has validated the 1999 Act. For the adivasi population of around 3.21 lakh (of which 80% are landless), as far as restoration of their alienated land is concerned, this judgment is a battle lost legally.

In this new scenario, where the legislature and the judiciary proclaim that the adivasi community has now agreed for alternate land, and therefore, the issue of restoration of land has become irrelevant, the attempt is to portray that alternate land is the only solution to the land problem of adivasis. However, it was the complete failure of the state to restore alienated land that had compelled the adivasi movement to accept alternate land only as a strategic move.

Experiments of providing alternate land and rehabilitating and resettling adivasis have been attempted in a few places like Aralam, Sugandhagiri, etc. The initiation of a rehabilitation project and the distribution of land titles are followed by big financial offers; the welfare measures around this are much-celebrated affairs for the governments involved. An in-depth investigation into each of these experiments will reveal the grim reality of the people living in them. In the light of the Supreme Court judgment, I would like to look into the story of Aralam farm in Kannur district, where a rehabilitation programme by the state is currently in progress.

The Kerala government bought Aralam farm (3,060 ha) from the central government as part of a post-Muthanga agreement in 2004 (the details shall be discussed later) with the adivasi community. Half of the farmland would have been used for the rehabilitation of landless adivasis; the rest to remain as a farm. However, the latest move by the present government to convert the remaining part of the farmland into a company, declaring it as an ecotourism project is a clear indication of its priorities. In a cabinet meeting in August 2009, the Kerala government finally decided that a company would be formed under the control of the government at Aralam farm.¹ This is in response to a stay order by the High Court of Kerala against an earlier move by the state government to convert the farmland into a "private limited

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company”.² Whatever the nature of the proposed company, private, public or “under the control of the government” could be, the leaders of the adivasi movement are opposed to it. The story of Aralam farm and attempts towards converting it into a company is crucial today where the landless adivasis and dalits of Kerala are being further denied their basic rights and even what has been agreed in principle for them.

1 Land Reforms: A History of Its Failures

Till independence and the formation of the state of Kerala, the adivasis who lived in the Malabar area did not receive much attention from the authorities. Among other reasons, the powerful non-dalit, non-adivasi communities who controlled the plantations in these areas were successful in the bargaining with the colonial administration for better provisions to maintain their legal and economic status, suppressing the needs of the local population. With the entry of the East India Company and the creation of a huge number of cash crop plantations, adivasis, especially those belonging to the Paniya, Adiya and Kattunaika communities, got completely evicted from these forest areas of Malabar. With the steady growth in timber business and massive deforestation³ for decades, a good majority of the adivasi community became tenants in paddy fields or cash crop plantations. The Paniya and Adiya community suffered the most through slavery and constant displacement since they never “owned” land and had to work for the settlers. The emerging issue of a large number of landless adivasis from the northern part of the state, especially from the districts like Palakkad, Wayanad and Kannur, and the desperate need for their rehabilitation has to be seen in the light of this experience.

Notwithstanding the fact that there is abundance of research and literature available about land reforms in Kerala, it is helpful to specifically look at some of the more recent debates and findings by critics, especially from the dalit and adivasi communities. The implementation of the Kerala Land Reforms Act⁴ passed by the state assembly in 1964 took place in the 1970s. Earlier studies have shown that in the process of the land reforms, the landowners were successful in acquiring huge chunks of the land by declaring them as plantations.⁵ Moreover, in essence, the farmers’ movements, dominated by marginal or large landowners, gave direction to the process of distribution of land as they cut down in a big way the different forms of tenancy. The farmers to whom the benefit of the reforms mainly went to were the intermediate, middle castes/classes – among Christians and a section of the Other Backward Classes (OBCs) who were tenants, occupancy tenants, non-occupancy tenants or fixed rent tenants. In this way, the landowning non-adivasi manoeuvred the act into their advantage and was successful in taking over adivasi land on short-term lease, registering themselves as “tenants”, where the adivasi became the “landlord” (Bijoy and Raman 2003: 1976). Through all these processes, the real landless among the dalits and adivasis who were mostly agricultural labourers were completely left out.⁶

Though in the 1950s or 1960s the dalit and adivasi struggles in the state had criticised the failures in the implementation of the land reforms, these voices were neither heard nor well-documented. However, in the last two decades, it has been difficult to ignore these voices.⁷ Noted intellectual K K Kochu argues

that records on land distribution in the year 1857 show that 3% of Pulayas (dalits), 4% OBCs, 7% Nairs and 5% Christians in the princely state of Travancore were landowners; in comparison to this, with the modern land reforms, the situation has only got worse for the dalits (Kochu 2008: 32). According to Sivanandan (1993), the land reform survey in 1966-67 identified 0.11 million acres of land as available *miccha bhoomi*, the kind of land suitable for distribution. But the land declared as *miccha bhoomi* in 1978 was only 1.5 lakh acres; while only 1.32 lakh acres were ordered by the government to be retrieved for distribution. By 1989, only 92,338 acres of land was taken over the government in which 24,333 acres were distributed among scheduled castes (SCs) and a meagre 5,052 acres were distributed to the scheduled tribes (STs) (Sivanandan 1993). The Tenancy Reforms Act passed in 1970, specifically meant for providing land to the landless, benefited a few, but a large majority were allotted few cents in the so-called “colonies”⁸ designed for them. Even with the creation of these one-lakh colonies, quite a few dalits, adivasis and fish workers were still left out – systemic marginalisation that has only been aggravated in current times.

Whether from a class perspective or from a community identity perspective, it is undeniably the biggest failure that decades after the reforms, a good majority of the dalits and adivasis in the state remain fully landless. There is an increasing number of people living in colonies, a total of 12,500 dalits and 4,082 adivasi colonies, lakhs more as landless. Based on a study by Kerala Sasthra Sahithya Parishad during 2004-05, Sunny Kapikkad points out that upper castes in Kerala own four times and Christians own five times more land than the dalits. As per the land owned per family, the upper castes had 105 cents, Christians 126 cents, Muslims 77 cents, the OBCs 63 cents and dalits only 27 cents. Any enquiry into the differential impact of land reforms on different communities is interpreted by the civil society and the intelligentsia in Kerala as divisive, which is not the case when it is based on a class or regional basis. And this hides the fact that property and power is still with the upper castes. For Kapikkad, the argument that defines the adivasis from Wayanad as farmers, marginal farmers or tenants, lead to invisibilising the invasion and the suppression of the non-adivasi communities into the lives of the adivasi community and also disguising it just as an agricultural issue. In this context, while declaring Wayanad as a special agricultural zone becomes an attractive project, the adivasi demand for self-rule is seen as a divisive tendency (Kapikkad 2008: 10-24). It is the complete denial of the realities around the lives of the dalits and adivasis by the established left intelligentsia and others that forced them to form new coalitions and a separate struggle.

2 Adivasi Land Struggles in Kerala

Adivasi movements in many parts of the country have made it clear that their demand is ownership to land and nothing less. These movements see land as the only path towards a long-term survival of the community; as *the* solution. In today’s context, a demand for ownership to land by any marginalised community inevitably faces severe forms of state repression. It is not surprising, therefore, that in the absence of any response to democratic and peaceful struggles, the landless sections are responding by “encroaching” and “occupying” into a chosen land. What leads to

such a step, whether “illegal encroachment” or “occupation”, is certainly the complete apathy towards the exploitation and abuse of the landless poor and their struggle for survival on an everyday basis.

In Kerala, between 1999 and 2001, 147 starvation deaths were reported from the adivasi community.⁹ Extreme poverty and destitution was not new to the adivasi community, especially in Wayanad area, but the time had become such that it was not news anymore. In the past too, issues like adivasi “unwed mothers”, sexual assault or rape of adivasi women, bonded labour among adivasis or unknown or mysterious deaths rarely got the attention it deserves. The 1990s saw an increase in the exploitation of the adivasi community both in their traditional habitats and in their new struggle sites. Largely, it is in response to these that resurgence of adivasi struggles in many parts of the state and the formation of Adivasi Gothra Maha Sabha (AGMS) happened. The adivasi community under the leadership of C K Janu initiated a land assertion movement during 1994-95, initially in parts of Wayanad district. In 1999, another movement was launched in Kannur by Adivasi Vimochana Munnani (AVM) which C K Janu and other adivasi activists joined in solidarity. This struggle highlighted the plight of around 20,000 adivasi families in Kannur, most of whom belonged to the Paniya community. Though this movement was successful to the extent of getting title deeds for around 500 families, the authorities pointed out scarcity of revenue land as a reason for denial of distribution of title deeds.

In 2001, the AGMS along with others under the banner of Adivasi Dalit Samara Samiti (ADSS) launched a new struggle setting up “refugee camps”, organised a 48-day sit-in-dharna in front of the state secretariat demanding an immediate end to starvation deaths among the adivasis and resettlement for all the landless adivasis across the state. The struggle came to an end in October 2001, when the state government made an agreement¹⁰ promising one to five acres of land to 60,000 adivasi families among others. A few important aspects of this agreement continue to be relevant today. The agreement said that the state government shall demand the central government to declare selected areas for land distribution purposes as scheduled areas; it will take steps to protect the land and culture of adivasis in the state by taking the initiative to make new laws for the same; and considering the increasing number of landless adivasis from Wayanad district,¹¹ with the permission of the central government, the state government will take the initiative to find land and ensure a time-bound distribution of the same. With regard to the existing land acquisition matters, the decision based on the 1999 Amendment Act would depend on the final verdict on the implementation of the same by the Supreme Court.¹² The land promised through this agreement was supposed to be distributed by January 2002. Though a few resettlement programmes were initiated in 2002, the government violated many important aspects of this agreement. Hence, the land assertion movement was launched in Muthanga in Wayanad district. A land assertion movement was launched during the same period in Aralam farm too by landless adivasis entering into the farmland and organising a *gothra pooja* to begin cultivation. However, the events that followed at Muthanga led to a halt of the land assertion movement at Aralam.

3 Muthanga and After

The atrocities and firing that took place at Muthanga¹³ drew attention across the nation to the land struggles waged by the landless in Kerala. It was the most militant phase of the adivasi land struggle; tragically, even the extent of state atrocities adivasis had to face after the Muthanga incident has no parallels in the history of the state. Adivasi women were raped; men, women and children were physically and sexually assaulted; and hundreds went missing. Many adivasi activists including the AGMS leaders C K Janu, M Geethanandan and others were arrested, jailed and tortured.

In the aftermath of the incident, dozens of cases against hundreds of adivasi activists were registered. These cases are used today as a strategy to exhaust their resources and energy, to weaken the movement. Inquiries and investigations from different bodies including the National Human Rights Commission (NHRC), SC/ST Commission, and National Commission for Women (NCW) submitted their reports to the government. However, as is becoming a trend in recent years, reports by bodies like NHRC¹⁴ and a Central Bureau of Investigation (CBI) enquiry on the incident are being used against the adivasi community.

Based on the NHRC report on the Muthanga incident, the state government finally agreed to do a CBI enquiry. It was to the shock of the adivasi community that contrary to their expectations, the CBI charge-sheeted adivasis under serious criminal charges and let the police go scot-free. Soon, around 12 separate cases were charged against the adivasi community, six each under the CBI and the forest department, wherein both have accused the adivasis with serious charges including attempt to murder, waging war against the state, etc. Around 600 adivasis today are being forced to attend court proceedings on a regular basis on each case separately in order to prevent warrants being issued against them. While hundreds of adivasis are forced to travel from Wayanad to the High Court at Ernakulam on a regular basis for these never-ending court processes, there are no cases registered against the police or forest department officials who were involved in the atrocities against the adivasis at Muthanga.

4 The Story of Aralam Farm

Kannur district has around 200 adivasi colonies though it was never counted as an adivasi habitat like Wayanad and Palakkad. A majority are from the Paniya community, which is the most backward community. In the post-1990s, the adivasi movement in Kannur gained the attention of the state and the political parties. The demand of the Aralam farm area to be restored to the hands of adivasis brought back the plight of adivasis in Kannur into the picture. In June 2004, the state government made an agreement with the State Farms Cooperation of India to take over the Central State Farm in Aralam paying Rs 42.09 crore to the centre from the state’s “tribal sub plan fund” for tribal development. As per the government order,

it was ordered to set apart half of the farm for distribution to resettle the landless tribals and retain the other half as farm itself. It was intended to distribute block No 7, 9, 10, 11, 12 and 13 to the adivasis. It was also intended to allot 1/3 of the area earmarked for distribution to tribals from Kannur district and the remaining 2/3 to tribals from Wayanad district.¹⁵

The transaction of the farm from the central to the state government took place using the funds through Tribal Development and

Resettlement Mission (TDRM), which was constituted in November 2001 under the SC/ST Ministry.¹⁶ The use of the tribal sub-plan fund for the purchase of the farm should make it illegal to use this land for any other purpose than tribal welfare. The ADSS expressed its reservations about the plan to retain half of the farm. It was also mentioned in the agreement to give priority to the Paniya adivasi community from Wayanad, who are landless. However, gaining the land and receiving title deeds for their land at the farm was another vital struggle for the adivasis.

It is in the background of the green revolution in the country that the central government showed a special interest in converting parts of the forest land in Kerala into a “scientifically productive” agricultural farm. This was also a time when the planning and implementation of land reforms were discussed and debated widely among different sections of the civil society. When the central government came up with the plan for an agricultural farm in Kerala, Aralam was identified as one of the best priority option considering the quality of the fertile land. Aralam, an alienated land for adivasis, up to the 1950s was a forest area controlled by few local landlords. Much before the 1970s, a good chunk of the area had experienced massive deforestation. The farm has a total area of around 12,500 acres wherein 5,000 acres were earlier declared by the central government as a wildlife sanctuary in 1984.

The farm is located between Kannur and Wayanad district near the border of Karnataka. In the 1950s and 1960s, the farm area had experienced large-scale internal migration for land by non-adivasi communities from all over the state, which coincided with a slow pace displacement of adivasis. It was the Paniya adivasi community that dominated the adivasi population at the farm and its surrounding areas. From the 1970s to 2004, the ownership of the Aralam farm was with the central government. In the earlier process of its handover and conversion from a forest area into farmland, a majority of the adivasis in the area were evicted. Nearly 600 adivasis were allowed to stay back as workers. In the next two to three decades, the farm experienced major development using highly scientific methods of cultivation. It contained mostly cash crops including cocoa, cashew, rubber, pepper, coffee, mango, coconut, etc.

The 1990s saw the farm running into a loss. And it is appalling that by the year 2000, among the many starvation deaths reported, one was from the farm while it was still run by the central government. The plan for sale of the farm coincided with the adivasi land assertion movement; the incident at Muthanga and the political pressure that it created also contributed to it. Some raised their concern that the distribution of the farmland to adivasi families would mean dividing the farmland into small pieces affecting the productivity of the farm. Though the trade unions and the left parties stood against the distribution of the farmland, the adivasi community welcomed the decision. As in many situations of rehabilitation of adivasis whether in a land owned by private companies or by the state, a conflict between the interests of the workers in the existing project and the adivasis who get title deeds for the specified land happened here too. The land struggle at Chengara (Rammohan 2008) in Pattananhitta, which has completed two years, is a glaring example where the workers supported by the CPI(M) are still actively running an

economic blockade against those who “occupied” the plantation land. While Aralam is a promised land – with a proper agreement, in Chengara, it is a planned strategy by the dalit movement to take over land controlled by Harrison Malayalam, a private plantation company. Here too, farm workers are pitched against the landless communities which occupied the land.

Earlier, when the ADSS demanded the entire farmland for redistribution purpose, the workers organised themselves under the banner of Ikya Thozhilali Karshaka Samiti¹⁷ and demanded that the farm should continue as farm and only half the land should be used for adivasi rehabilitation. CPI(M) and a few other party-oriented trade unions demanded the farm be retained and measures adopted for the welfare of the workers at the farm. The CPI(M) successfully managed to organise the farm workers against the rest convincing them that distribution of the farmland meant an end to their livelihood options at the farm. After the transferring of the farmland, workers went on strike; around 800 of them stopped the auctioning of farm products demanding more wages. However, it is in 2006 that the Left Democratic Front (LDF) came up with the plan for an ecotourism project, using the farm for tourist purposes. The LDF also decided to exclude the adivasis from Wayanad from the rehabilitation agreement. From then onwards, it has been an open tussle. The adivasi community got divided along political lines, forming new adivasi group formations; a major setback in the demand of a common rehabilitation agenda for their future in the farmland.

It took two and half years to get the rehabilitation plan started. The delay in the process and the denial of land to the adivasis from Wayanad led to a revival of protests. The adivasi movement launched a fresh land assertion movement at Aralam in 2006. Thousands of adivasis moved into the farmland; the state government was put under pressure to start the distribution of title deeds. The then United Democratic Front (UDF) government had distributed title deeds to 840 families.¹⁸ The initial rehabilitation plan had promised the adivasis with building a house, providing drinking water, tools and financial assistance for farming, other employment opportunities, etc. Hoping these promises to get real soon, more and more adivasis moved into the area. Soon after the LDF came to power, in 2007, in two phases in March and September, the government decided to give title deeds for 1,517 families as a second phase of the land distribution. All of them were from Kannur district.

With the support of Adivasi Kshema Samiti (AKS), a CPI(M) platform of the adivasis, hundreds of families from Kannur moved into the farmland. This led to wide protests from others, especially those from Wayanad. The adivasi struggle at Aralam today has various banners including AGMS, AVM, AKS, etc. A new platform of independent voices was formed called the Adivasi Swasraya Sangham (ASS). The split among the adivasi community on political lines widened with the CPI(M) instigating a campaign against “illegal occupants”. Tensions mounted when the ASS office at the farm given by the farm administration for the welfare activities of the new adivasi settler families was forcefully taken over by the AKS activists with the support of the local CPI(M) leaders.¹⁹ In another incident of clash among these groups, AGMS activists and supporters were attacked and their dharna

site at the farm²⁰ and an adivasi school, a reading room, and few huts were also destroyed by AKS.²¹

Meanwhile, the government had received more than 6,000 applications for title deeds and almost half of them were from Wayanad. But the district collector's office that processed the applications found only 500 applicants eligible as they were from those who were fully landless. Later, the district administration declared that those who own not more than 21 cents of land would also be given title deeds. On this basis, the government declared that 2,000 families would be listed for giving title deeds, while those who are not eligible for title deeds will be considered as encroachers and will be evicted.²² To avoid another Muthanga in the making, the adivasi community this time approached the Kerala High Court to stop their eviction.

The LDF government's attempt in March 2009 to convert the farm into a tourist camp under a private project invited wide opposition from the adivasi movement. When a stay order was issued by the high court against the conversion into a private company, the government tried to convince the court that the land transfer is for the benefit of the adivasi community²³ and that a "tourist farm" would provide immediate employment. The adivasi leadership holds that the present plan to convert the farmland into a company is a deliberate one to evict the adivasis. They fear that once a tourist project takes hold, there is the possibility of dispensing with adivasi huts in the vicinity, which casts serious doubts on the rehabilitation agenda.

5 Rehabilitation and Strategies of Eviction²⁴

The rehabilitation plan promised each "eligible" family that moved in to the farm a title deed for one-acre land along with other amenities which included basic facilities like drinking water, roads, transportation, schools, electricity and houses. They were also to be provided with employment, financial and material assistance to start cultivation, Rs 3,000 per person to build a hut for immediate shelter as a temporary arrangement, Rs 1,000 to buy tools for farming, and Rs 1 lakh to build a proper house later. Along with these, there was also a promise to distribute 10 kg of rice each month for the resettled families.

In the four years of the process from handing over of the farm from the central government to the state, the farm was fully neglected. In the absence of any development activities or maintenance work for a period of time, the farm was already in a state of degeneration. Soon after people moved into the farmland, in the absence of tools to work or the money to buy them, many patiently waited for months in absolute poverty. It was the beginning of another harrowing time in life; in the new circumstances, they were completely unfamiliar and unequipped to handle anything in their everyday life. Two years down the line, in 2008, the promise of basic facilities remained unfulfilled. In the initial stages, some who got title deeds did not know where their land was. Some got very fertile land in places with coconut, cocoa, rubber or cashew plants, while others got title deeds where no human habitation existed, closer to the reserved areas of the forest. Many refused to accept the piece of land saying it is not habitable. Officials told them to put in a written complaint; but nothing happened to their complaints. Some managed to bargain and

occupy the land they preferred. This led to protests about the discrepancies in distribution. There were no criteria whatsoever. And for those who by luck got a "better" place, there was no one to give any help or directions on how to survive there. These families completely lacked any scientific information or basic awareness of taking care of any of the crops that existed in the plantation land. Those who had rubber plants in their piece of land did not know how to tap the rubber. Some even used stones or nails to collect rubber milk. They did not know that rubber milk has to be protected from the rain. And they certainly did not know that one-acre rubber could fetch them Rs 20,000 per month!²⁵ Many of them did not know that they should collect the seeds of a range of crops for the next season. They began to starve when the trees were empty of fruits. And as far as the authorities are concerned, it seemed like their responsibility was over once the title deeds were handed over.

Four years later, some have managed to collect Rs 2,000 from the authorities to make huts. Though this was supposed to be a temporary arrangement and the promised amount for this was Rs 3,000, many continue to live in these temporary shelters. The hardest issues for the families at the farm were of healthcare, education and transport. There is one school for the entire farm, opened in 1982 as a primary school for the children of the farm workers and converted to an upper primary in 1987. Once the children of the farm workers passed out, the number of students came down. In the absence of proper roads, only the children from three colonies nearby have joined school. Things improved once the school started providing mid-day meals and a nominal educational grant to students. According to the school principal, there was a time in 2004 when there were only two students, but today it has 155 students. But considering the number of families who live in the farm, the number of students should be in thousands. The government promised a school bus, but officially it is still under the control of the farm administration. A good majority of children spend their day wandering in the farmland, collecting food.

In this short period, by May 2008, the absence of basic facilities led to the death of 14 people in the farm.²⁶ Whether it is a snake-bite or an ordinary illness, the main reason for death is, of course, the absence of a hospital and proper transport facility. The promise of a mobile hospital in the absence of a health centre also never became a reality. There is no electricity. In the absence of proper toilets and drinking water, the fear and possibility of spread of contagious diseases is high. The government's offer to provide employment also saw no progress. As in the case of the National Rural Employment Guarantee Act (NREGA) experience in many other places, people said many of them never received their employment card since the panchayat members refused to hand them over. Many people waited for months to get paid. Interestingly, those who got work through the scheme, sometimes for 14 days a month, were given work outside the farm. While they travelled out for work, outsiders came in to do their work inside the farm, whether to clear the forest or to do other seasonal jobs. Evidently, there is no link or relationship between the welfare measures for the rehabilitated and the development activities initiated for them.

Then at some point, taking the families for a surprise, the electric fencing surrounding the farm became non-functional. On 17 May 2008 at midnight, few tuskers crossed over to the farmland in the absence of an electric fence, destroyed houses and crops of four adivasi families, and this terrified all. The next day, more than 20 families who were legal inhabitants with title deeds left their homes not to return and soon many others followed. Others, courageous enough to stay on, spent days in fear, locked up in their huts.²⁷ In the next five months, many such attacks by tuskers killed one adivasi woman and injured 11 others severely, destroyed many huts and crops. Adivasis did not consider elephants as their enemies; they said it is the government who put them into such a situation.²⁸

It is in this context that as a desperate move for attention to their issues, in the next three months between June and August 2008, adivasi families from the farm with the support of AGMS, Kerala Pulayas Maha Sabha (KPMS) and others went on a hunger strike from the 1 August 2008 in front of the collectorate in Kannur.²⁹ At the end of six months of satyagraha for a successful implementation of the Aralam farm rehabilitation plan, the present LDF government gave a contract to the Kerala State Nirmiti Kendra³⁰ to make a “model adivasi village” at Aralam. Model houses were to be built in 300 sq feet which later was allowed to be increased to 324 sq feet. The government handed over a total of Rs 35.74 crore to Nirmiti Kendra to build 2,557 houses in a period of 20 months. The “model home” does not include a toilet. The government says, families could make a toilet if interested and will be paid Rs 7,000 on proving its completion. Again, the government would sanction them Rs 10,000 if a family makes a well, on approval. A demand by the AGMS and others to hand over in cash the amount meant for building the house – Rs 1 lakh to each family – was denied. According to the contract, Nirmiti would spend this amount on its own terms; using labour for the construction work, for making and using bricks made from the farmland, training adivasi youth in the area as construction workers, brick makers, etc.³¹ Some of the new model houses have already collapsed in the heavy rains in the recent monsoon, which led to the suspension of the Nirmiti officials and an enquiry into the incident.³² While some are unhappy with the structure and facilities of the new home, others fail to understand why they are provided a house in the absence of anything else to depend on for survival. As of now, the master plan document of TDRM for Aralam remains in paper since there is no coordination of the resettlement work, no monitoring officers and no proper transfer of funds allotted. By 1 July 2008, from the official number of 2,557 families who had received title deeds for their dreamland of one acre at the farm, only less than 300 families remained.³³

By now, many have been living in the farm for more than two years. Those who still stay on do fear that any cultivation will attract elephants. In the complete absence of safety and security, many more were forced to leave, some to their three cent colonies. The removal of the electric fencing by the forest officials was a sinister move to evict those who stayed on – one inviting not much attention but guaranteeing success. Meanwhile, more than 8,000 landless families in Kannur and Wayanad districts are still waiting for a response to their application for title deeds

at the farmland. They look forward to a life where they would be able to relate themselves with the land and their work, holding on to a collective identity. But the hurdles ahead are plenty.

6 Legal Aspects

The primary issue as far as legal matters on adivasi land rights is concerned is that no territory in Kerala is declared as a scheduled area under the Fifth Schedule of the Constitution. However, the states that have no declared “scheduled areas” too are constitutionally bound to enact laws to protect the land rights of adivasis. To apply the provisions of the Panchayat Raj (Extension to the Scheduled Areas (PESA) Act 1996 that provides the possibility of self-governance following the pattern of Schedule V and Schedule VI of the Constitution, it is mandatory for the state to form scheduled areas. In the absence of non-scheduling of the adivasi areas in the state, adivasis are not in a position to enable the provisions of this act.

The Kerala Private Forests (Vesting and Assignment) Act in 1974 recommended assigning 23,000 hectares of forestland to the adivasis, but the provisions of the said act were never implemented. Under the Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Alienated Lands) Act 1975, all transfer of immovable property, possessed, enjoyed or owned by tribals to non-tribal people were made invalid and had to be restored and future transfers prohibited. The land had to be returned to the original owners who would be required to pay a sum equal to the total amount received as compensation. To facilitate this, the government would advance a loan to the adivasis that has to be repaid in 20 years time. The 1975 Act was included in the Ninth Schedule of the Constitution. However, the act remained only in paper. In 1986, the rules operationalising this act were formulated with retrospective effect from January 1982. The state government’s inaction towards its implementation was justified as owing to the “impracticality” of the act. Along with the state government, political parties and settlers vehemently opposed the act. While it faced “organised resistance”, its provision on providing loan to pay compensation to the owners also made it inaccessible to a majority of the beneficiaries. Restoration rarely took place, while encroachments continued and the powerful settlers demanded immediate amendment to the act.

In 1988, a public interest litigation (PIL) was filed in the Kerala High Court by Nalla Thampi Thera against the delay in the implementation of the act. In 1996, disappointed with all the possible excuses and delay showed by the government, the Kerala High Court directed the implementation of the 1975 Act within a time limit of six weeks. However, the state government expressed its inability to implement the 1975 Act since, it said, it wanted to avert a conflict between the tribals and non-tribals. In order to deal with this legal emergency, the state government created a new law. The 1975 Act, which could not otherwise be challenged in any court of law, was repealed and replaced with a new act in February 1999 called the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act.³⁴ According to the new act the restoration of land to adivasis is not needed if the land alienated was below two hectares. Instead of a loan as in the case of 1975 Act, the 1999 Act offered a grant for payment of compensation to the landholder. The new act also promised 40 ares (one acre) of land to all

landless adivasis in the state within two years. However, what is most important here is the fact that claims for restoration of land with a set limit of above two hectares were clearly negligible and so for majority cases the question of restoration never arose.

The 1999 Act primarily dealt with transfer of land unlike transfer of immovable property in the 1975 Act. Land here is defined as “any agricultural land”, so that it comes under the state’s purview. The act was made effective retrospectively from January 1986. Thus, between the two acts, new criteria and a new set of beneficiaries were created. However, according to the government this act was a “permanent solution to the problem of alienation of tribal lands”. Most importantly, settlers felt reassured that the issue of restoration of land would never come up again. However, for a majority of the beneficiaries both the acts remained in paper. The declaration of adivasi areas as scheduled area never became a reality and whatever offered through other legislations remained inaccessible. The passing of this act opened up a new debate on the practicalities around fighting for restoration and the possibilities of demanding alternate land. It unleashed a new militant phase in the adivasi struggle in the state and a different set of strategies and agenda as visible in the 2001 agreement with the government. Meanwhile, the transfer of adivasi lands continued unabated.

A Kerala High Court judgment in 1999 and a division bench judgment in 2000 declared the 1999 Act as discriminatory and violative of the Constitution of India and restored the operation of 1975 Act. It further observed that the 1999 Act was not aimed at protecting the adivasis but protecting the transferees (non-adivasis). It ruled that the act could not override the 1975 Act and that the government of Kerala was guilty of contempt of court for not implementing the 1975 Act. The court pointed out that it was very clear that only less than 10% of the applicants for restoration of alienated lands under the 1975 Act would be entitled to any relief at all. In response to the stay order on the 1999 Act by the high court, the state government filed a special leave petition in the Supreme Court. Thereafter, whenever the issue of land acquisition and restoration of land were raised, the government said, its decision would depend on the final verdict by the Supreme Court. To the dismay of the adivasi community, the verdict by the Supreme Court on July 21, 2009 rejected the stay orders.

The Supreme Court allowed the appeals filed by the state government, and upheld the constitutional validity of the 1999 Act, and consequently, also upheld the repeal of the 1975 Act. The judgment also upheld the classification between agricultural and non-agricultural land in the 1999 Act valid. The court also acknowledges that all forest areas comprise of agricultural land. According to the interpretations in the new judgment, while enacting the 1999 Act, the state could not have deprived the persons who hold non-agricultural land and as far as the compensation to the owners of non-agricultural land is concerned, the 1975 Act would continue to be applied. The judgment states that only those laws which are in derogation of the provisions of the 1999 Act would stand repealed. As far as giving land to the landless is concerned, according to the judgment, the state must allot them land fit for agricultural purpose and such a process should be undertaken and completed as expeditiously as possible, preferably within a period of six months from date.

The implications of the judgment can be far-reaching. This judgment provides a precedent to other state governments in the country to enact similar laws that would now be held constitutionally valid. With the new judgment, in the case of Aralam or anywhere else in the state, alienation of land even in a resettlement area could be legitimised. As far as the issues of restoration and autonomy of adivasi land are concerned, the judgment do not address the need for declaration of scheduled area, instead, it points out the diversity and differences in levels of understanding of autonomy between different adivasi communities. It states that a decision on this matter would also depend upon the type of scheduled tribe category in question and that there is a need to take into consideration the differences between them. The court stated that as far as the 1999 Act is concerned, the intention of the state government is correct since it had consulted many tribal organisations (without specifying them) and that adivasis did not insist on getting the alienated land, but preferred alternate land. It said the state government had taken into consideration the change in the situation by reason of passing of time and ground realities. Based on a study on the tribes of Kerala, the judgment points out how the tribal teachers have not been interacting with the students, and thus, gradually the tribal students have lost respect for their language and began to disregard their language, their culture, and thus, their own “primitive way of life”. Clearly, going by a few visible cases only, the court says that the members of the scheduled tribe are educated and it can be safely presumed that most of them are serving various institutions in the state of Kerala and/or in other parts of India. The judgment also puts the blame on the adivasi community that they had not been able to make effective use of the provisions (of making invalid any land transaction between 1960 and 1975) given in 1975 Act.³⁵ It was in 2001, eight years ago that the adivasi movement and the state government had come to an agreement that one to five acres of land depending on its availability would be given to every landless adivasi in the state. Ironically, the new judgment once again promises one-acre land.

Conclusion

Alienation in itself is a sensitive matter and so is the need for restoration of land. Should land be “restored”? If yes, is that “impractical” due to the state’s inability to face the “organised resistance” against it? If no, then what should be the quantity and quality of alternate land to be given? Both the state and civil society wish to interpret and believe that alienation as such has never happened. Many, who were for or against restoration of land, today prefer to believe it is actually impractical. Alienation is a thing of the past and it is too much of a responsibility on the adivasi community today to prove it though in reality one wonders whether there is any land ever that has not been alienated from the adivasis. Despite this being part of their collective memory, tactically the community is forced in these circumstances to consider the possibility of alternate land as the only available option.

At Aralam, under the state’s initiative forest land was used for non-forestry purposes. Today, it is one of the forest areas that comprises agricultural land. While the state commits itself to providing alternate agricultural land, why half of Aralam

farmland should be converted into a company or a tourism project? In the decades of never-ending legal battles, the adivasi community has experienced and learned the complexities that law can create. They have seen that a change of words or definitions on one piece of legislation on land, restored, alienated, forest, non-forest, immovable property, agricultural, non-agricultural, revenue land, forest land...and the ways in these can be used/misused means a lot to them. It is these lessons that have forced the community too to be strategic in its demands.

The primary demand of the community today is for five acres as alternate land and the inclusion of adivasi areas in the Fifth Schedule of the Constitution in order to make them autonomous regions. The adivasi community today is refusing to buy the excuses on the non-availability of land. With the restoration of land for the landless becoming an issue of dispute, beginning from Muthanga to Chengara and many other struggles in the making, the possibilities of "encroaching" into their alienated land – in the huge number of

Kerala's ever expanding private plantations, trusts, farms and also state corporation lands that are running at a loss or with an expired lease – have become the only alternative left for the landless in the state. And losing in a legal battle in this context might mean the beginning of a more powerful political one. Other than Chengara or Aralam, there are other ongoing struggles too, in Chinnakkal, Nelliampati, etc. As far as the present workers in these plantations are concerned, though it is their livelihood, landlessness is a reality for them too. A good majority of the workers in these plantations too belong to the same marginalised sections of the dalits and adivasis in the state and so a demand for land could certainly include these workers too. In a state that has the highest number of landless adivasis, contrary to the perceptions of the Supreme Court, the only changing "ground reality" is that the long fight against the migrant, upper caste/class settlers within the state has today become a struggle against the state and many big plantation owners and private agriculturalists, working hand in hand.

NOTES

- 1 The cabinet decision of the government on the 19 August 2009 is to launch a company and as per the provisions of the by-laws of the company, it is not meant for the adivasi welfare.
- 2 An ordinance (No 3666/D2/08/SC-ST DD) by the government of Kerala dated 5 February 2009 states the decision to convert the Aralam farmland into a private limited company on which later the Kerala High Court issued a stay order on 17 March 2009 for retaining the farmland.
- 3 For further reading see Sivanandan et al (1986).
- 4 The act was primarily based on the Land Relations Bill passed by the communist ministry in 1959.
- 5 Many such plantations were created during the colonial period and some were handed over to the state government, while many continue under private ownership. These include mainly rubber, tea and coffee plantations. It is alleged that these plantations have later encroached and continue to occupy huge areas of land.
- 6 For further reading see Sivanandan (1993).
- 7 For further reading Sivanandan (1979). Several other writings were published by the Kerala Dalit Sahitya Academy, Dalit Adivasi Padhana Kendram, etc. For example, also see Sivanandan (1993); Mukundan (1995) and Sivanandan (1997).
- 8 It was an eyewitness in response to the demands by the landless among the dalit and adivasi community that the so-called one-lakh colonies were made and the landless poor were given 10, 5 or 3 cents each.
- 9 Many reports on extreme poverty and starvation deaths among adivasis appeared in several newspapers like *Deepika*, *Mathrubhoomi*, *Malayala Manorama*, *Madhyamam* between January 2000 and July 2001. The National Human Rights Commission took note of the issue and enquired into the matter in response to which the Kerala government submitted a report. Though the government denied the reported figure regarding the deaths, it confirmed the prevalence of starvation deaths.
- 10 For details of the agreement see Bijoy and Raman (2003).
- 11 A master plan for tribal resettlement mission in 2002 put the number of landless adivasi families in Wayanad as 25,000.
- 12 An agreement signed between Adivasi Dalit Samara Samiti (ADSS) and the state government on 16 October 2001.
- 13 For a detailed reading on the Muthanga incident see Bijoy and Raman (2003).

- 14 Recent positions taken by these institutions show that in many instances they have de-linked themselves from their autonomous nature and responsibility. One is reminded of the experiences of recent reports by NHRC on Salwa Judum in Chhattisgarh, Batla House Encounter in Delhi or NCW's non-response to issues like sexual assault of women in Chengara, etc. They have been consistently failing to take active and independent positions by which these institutions do not do justice to the effected people any more, but blindly supports the police/state's versions without even a proper investigation into the incidents.
- 15 Government of Kerala, order published by SC/ST Development Department, dated 2 September 2006.
- 16 Government of Kerala, order published by SC/ST Development Department, dated 11 November 2001.
- 17 *Malayala Manorama*, 26 October 2002.
- 18 *The Hindu*, 14 March 2006.
- 19 *Mathrubhoomi*, 23 August 2006.
- 20 *Madhyamam*, 27 March 2007.
- 21 *The New Indian Express*, 27 March 2007.
- 22 *Mathrubhoomi*, 26 March 2007.
- 23 It may be noted that the by-laws of the company as mentioned earlier do not say anything adivasi welfare.
- 24 Parts of the information in this section are based on a special feature on the issue published in *Malayala Manorama* by Anil Kurudath between 1 July and 4 July 2008 and some from other newspaper reports as noted in the references. The most recent information is based on a visit to the farm in June 2009.
- 25 *Malayala Manorama*, 1 July 2008.
- 26 *Malayala Manorama*, 3 July 2008.
- 27 *Malayala Manorama*, 17 May 2008.
- 28 *Malayala Manorama*, 1 July 2008, p 15.
- 29 *Chandrika News*, 8 June 2008, p 3; *New Indian Express*, 17 July 2008.
- 30 Nirmiti Kendra is a programme supported by the government of India started in 1986 to "generate, propagate innovative cost-effective housing".
- 31 Nirmiti, has been giving 30 day-training to adivasi youth living at the farm in batches of 20 each, to become construction workers and pay them a stipend of Rs 125 per day from the funds allotted to them.
- 32 *Mathrubhoomi*, 25 August 2009.
- 33 *Malayala Manorama*, 1 July 2008.
- 34 For details of the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes

Act 1999 and the Kerala Scheduled Tribes Act, 1975 see Bijoy (1999) and Raman (2002).

- 35 S C judgment, 21 July 2009, pp 79-90.

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