

A fraught question in Manipur

The power of eminent domain is not absolute as several extant laws limit the same to protect tribal land and forest



CM N Biren Singh

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NBiren Singh, chief minister of Manipur, recently said that “all lands belong to the state”. He was speaking during a week-long observance of “Van Mahotsav” or the forest festival where a mass tree plantation drive was initiated on 5 July at Mangjol village in Kangpokpi district. The site was at the foothill of the controversial Mount Koubru -- the declaration of the mountain range as a reserved forest in 1968 was recently implemented by the government, and a proposal was also made to announce it as a “protected site” and build a temple at the peak.

After the CM’s comment, local newspapers were flooded with expressions of objection by various community-based organisations and chiefs’ associations of the hill areas of Manipur. They mainly cited Article 371C of the Indian Constitution, which is a special provision with respect to Manipur, that provides for the “constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the Hill Areas” of the state. Accordingly, the Manipur Legislative Assembly (Hill Areas Committee) Order, 1972 intends to “safeguard the interest of the people of the Hill Areas” by reserving all Scheduled matters, relating to the hill areas, within the purview of the Hill Areas Committee. Thus, “every bill in the state, other than a money bill, affecting wholly or partly the Hill Areas and containing mainly provisions dealing with any of the Scheduled matters shall, after introduction in the Assembly, be referred to the Hill Areas Committee for consideration and report to the Assembly provided that if any question arises whether a Bill attracts the provisions of this sub-paragraph or not, the question shall be referred to the governor and his decision thereon shall be final”.

Biren Singh’s statement is based on his



During the forest festival programme

understanding of “eminent domain” according to which the state holds absolute power over all land within its territory. The power of eminent domain may be necessary for “independent existence and perpetuity” of states and such an “attribute of sovereignty cannot be surrendered”. The power, however, mainly applies to acquiring private property for public use and there is due process of law to be followed in the exercise with fair compensation. Any allegation of the state’s failure to follow due process of law and unfair compensation can be reviewed in court.

The impetuous statement made by the CM, however, demonstrates his ignorance of extant laws that were legislated in the course of India’s

democratic journey and, furthermore, he does not seem to have any understanding of the doctrine of “public trust”. The application of eminent domain on community lands and forests of Scheduled Tribes had been a grey area in India. Community land is not a private property and cannot be effectively compensated. Any attempt to acquire such lands is against the customary laws of indigenous communities, which is recognised by the Sixth Schedule of the Constitution. The exercise of the power of eminent domain to acquire resource-rich tribal lands and forests further marginalised tribal people.

In India, the role played by common property resources in the livelihood of tribal people,

their traditional understanding of the ecosystem, and the environmental protection embedded in their cultural life are not adequately recognised. Acknowledging the inadequately recognised forest rights on ancestral lands and habitat, and to address the “historical injustice” to forest-dwelling Scheduled Tribes and other traditional forest dwellers, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was passed in Parliament. It not only recognises and vests forest rights but also the occupation of such forest land by Scheduled Tribes. The Act gives them the “right to hold and live in the forest land” and continue their way of life as a user community of the land and forest. The Act evidently restricts the state’s eminent domain power on tribal land and forest, by giving tribal dwellers the right to not only use forest produce but protect and conserve the forest.

The CM’s statement, along with the pronouncement of Koubru Reserve Forest, contradict the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the United Nations General Assembly in 1992. Article 5(1) of the Declaration states that “National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities”. The declaration of reserved forests in 1968 without the consent of a Standing Committee of representatives from the hill areas of the Union Territory of Manipur was in violation of due process. The disposition of tribal land and their livelihood is in contravention to the UN Declaration.

During the recent UN General Assembly on 15 July 2019, the report of the Special Rapporteur on minority issues called upon the United Nations High Commissioner for Refugees, Secretary General, General Assembly and Human Rights Council to act. The report regarded the treatment of minorities in Assam as a crisis that could easily become a threat to regional peace and security, and thus implored discussions with the Government of India in order to protect the human rights of minorities. A similar situation could emerge soon in Manipur if the impetuous spree of converting indigenous lands into reserved forests continues or tribal people are forcibly evicted from their land as seen in different parts of the country.

The Manipur Land Revenue and Land Reforms Act, 1960 does not apply to hill areas. It clearly indicates that lands in hill areas are not the property of the government under the Act. Furthermore, the declaration of reserved forests in 1968, including the Mount Koubru range, is against this Act. There is a reason behind the exclusion of hill areas, and the CM should understand and appreciate the same.

The power of eminent domain can be misused by a majoritarian government to convert common property resources of indigenous people into state property. Such acquisition of land and forest can be done in the name of public purpose but rather best used by a particular religion or ethnic group, instead of the general public.

The doctrine of public trust, which is recognised by the Indian judiciary, restricts government authority in the management of natural resources. This restriction can be enforced by the judiciary if it harms public interest. The public trust doctrine needs to recognise sustainable ways for the management of common property resources by indigenous communities.