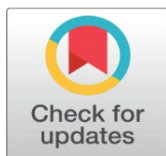


THE EMINENT DOMAIN VIS-À-VIS THE CONSTITUTIONAL AND LEGAL PROVISIONS RELATING TO NORTH EASTERN STATES OF INDIA

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ABSTRACT

The Sixth Schedule and Articles 371A, 371B, 371C, 371G, and 371H have conferred the North Eastern States of India with customary autonomy and self-government, including ownership and transfer of land. The acquisition of land for infrastructural development by the State has been debated in the interface of Eminent domain, a legal principle that allows the government to take private property for public use, with compensation. This principle overlaps with the customary ownership of land by the tribal people. On one hand the Constitution has conferred the tribal people with absolute protection of customary rights while on the other hand the application of Eminent domain have also caused erosion of customary rights and displacement of tribal communities. Further, the developmental schemes of the State is delayed and frustrated in the conflict between the customary law and the statutory law. This paper endeavors to examine the legal framework and the role of judiciary in harmonizing the conflict between Eminent domain of the State with the customary and Constitutional rights of tribal communities of the North Eastern States.

1. INTRODUCTION

The North Eastern (NE) States of India, commonly called the ‘Seven Sisters’, constitutes about eight per cent of the total territory of India. The region holds immense strategic importance to the country in terms of geography, economy, and culture. It also holds a strategic security position, as the area serves as a gateway to Southeast Asia, wherein all the States share international borders. In addition to its cultural and biological diversity, the region is rich in natural resources such as coal, natural gas, petroleum, and limestone, presenting significant economic potential. The colonial administration did not apply the Eminent domain and the Regalian Doctrine, leaving the management of land and its natural resources to the traditional customary institutions. The Sixth Schedule and the special provisions in the Constitution of India for the States of Nagaland, Assam, Manipur, Mizoram and Arunachal Pradesh, *viz.*, Articles 371A, 371B, 371C, 371G, and 371H, have given a unique Constitutional and legal framework that reflects its distinctive demographic, cultural, and political characteristics. The people, by the constitutional framework, enjoy a degree of autonomy in matters of management and ownership of land. The lands are owned by a community or individual protected by customary practices since immemorial. Though various provisions of the Constitution of India address the concept of Eminent domain, like Articles 31A, 296, 297 and 300A, their applicability is limited by the particular constitutional provisions. Similarly, it is with other central laws. This poses a significant challenge for the State in acquisition of lands for public purposes. Thus, on one hand the application of statutory laws in many cases conflicts with

the tribal autonomy enshrined by the Constitution, while on the other hand the progress of developmental work is hindered frustrating innovative welfare schemes of the State. This paper endeavors to examine the legal framework and the judicial intervention in harmonizing the conflict between Eminent domain of the State with the rights of indigenous tribal communities.

2. LEGAL AND HISTORICAL BACKGROUND

The NE States is home to various indigenous tribes with diverse traditions, customs and dialects. The tribes were independent and governed by a village council composed of clan elders headed by a Chief or a Headman. Customs alone regulated society through the ages. In both propriety and social matters, the customs were simple. There were no documents for ownership and transfer of property. Every transaction was through oral agreements in the presence of elders and village councilors. Every individual and clan enjoyed autonomy in the ownership of land and its resources unrestrained by any authority or a supreme. Disputes of property ownership were settled by customary practices by the village council and elders of the clans mutually satisfying both the parties and avoiding adversarial verdict.¹ The village council though appears to be supreme authority, but it only acts as a mediator in settlement of disputes regarding ownership and transfer of property. The village council has no right over the individual and clan land, and the land owners were free to use the land in any ways he desires. No taxes on land and exploitation of land resources were imposed by the village council. Thus, the concept of State ownership of land and its resources were completely unknown to the indigenous societies of the NE region. The village council role was limited to defense of the village, maintenance of peace and adjudication of disputes among the villagers.

Post the establishment of the colonial administration in the NE region, the British government introduced numerous statutory laws² for administration of the region, but did not interfere in the aged customs and traditions of social practices and land tenure system. The Assam Land Revenue Regulation, 1886 was in fact the first statutory law introduced to regulate Estates and the plain lands in the districts of Nowgong, Cachar, Kamrup, Goalpara, Darrang, Lakhimpur and Sibsagar. The Regulation however did not touch the tribal hill areas and was left to Provincial Government to make rules for the regulation of Jhum cultivation.³ But no rules were enacted by the Provincial Government and the customs and traditions continued to be applied in the indigenous areas. Later, the Assam Forest Regulation, 1891 was passed to regulate timber and forest produce and products. The Assam Forest Regulation, 1891 declared Jhum cultivation not as a right but only a privilege subject to control, restriction and abolition by the provincial government.⁴ The Regulation thus for the first time interfered in the land ownership of the indigenous people, but could not be enforced owing to strong resentment of the plain tribes. In the hill areas, the Provincial Government did not pass any notification enforcing the Regulation. Hence, the Assam Forest Regulation, 1891 was never applied in letter in the hill areas. For the plain indigenous areas, the Provincial Government was compelled to pass the Rules Having the Force of Law and Executive Orders Relating to Forests, 1897 which gave the plain tribals the right to hunt, disforest an area up to ten square miles,⁵ cut trees and collect forest resources without the permission of the government.

¹ Settlement and adjudication of disputes were simple but speedy. The disputes were settled satisfying all the parties avoiding adversarial judgments, thereby harmonized any conflict in the society. Such type of settlement of disputes prevents condemnation of the village authority, for all the parties go home satisfied and the rival parties work as brothers from the next morning. In cases where there is a deadlock and the parties refuse to accept the verdict of the village council, the parties were asked to swear and leave the decision to Providence. For instance, among the Naga tribes, the village council would summon the parties and make both the parties swear that if he is lying, misfortune would befall upon him and his family and a reckoning period is observed carefully. If any misfortune happens, like, sickness, death, accident, etc., during the reckoning period, that party is declared guilty. Thus, the customs were simple and just.

² Some of major British enacted statutory laws introduced and applied in the NE region are, Regulation X of 1822, the Garo Hills Act, 1869, the Scheduled Districts Act, 1874, Assam Frontier Tract Regulation 1880, Assam Frontier Tract Regulation, 1884, the Bengal Eastern Frontier Regulation of 1873, etc.

³ In the hill areas inhabited by tribes, the all the lands are covered with forest. A portion of the forest is cleared and cultivated for about two to five years. After the cultivation, the forest is allowed to grow again and regain its soil fertility, which may vary from fifteen to thirty years. The forest is then cleared again and cultivated. This cycle of cultivation is called 'Jhum cultivation.' It is also known as 'Shifting cultivation.'

⁴ Section 10(4) of the Assam Forest Regulation, 1891.

⁵ Chapter – 2, Rule 3 & 4 of the Rules Having the Force of Law and Executive Orders Relating to Forests, 1897

The autonomy in ownership of land and its resources continued post the Indian independence by virtue of the Sixth Schedule to the Constitution of India. This unique constitutional framework under the Sixth Schedule was a result of the demands of the people submitted to the Constituent Assembly through the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee⁶ headed by Gopinath Bardoloi. The distinctive demographic, political and cultural characteristics of the region also reflect the special legal arrangements under the Constitution of India. Subsequently, the State of Assam was bifurcated into seven States⁷ with special constitutional provisions under Article 371 protecting the tribal interests for the States of Nagaland, Assam, Mizoram, Manipur and Arunachal Pradesh. The Sixth Schedule continues in the States of Assam, Meghalaya, Tripura and Mizoram.

3. LEGAL AND CULTURAL CONCERNS OF CUSTOMARY LAND TENURE

The key feature of the land tenure system in the NE region is that the lands are either owned by individual or clans. The State has no ownership right over the land. This system though is a constitutional arrangement in the interest of the tribes; it raises significant legal and administrative concerns. However, owing to the sensitivity attached with the land tenure, developmental schemes of the State could not be smoothly implemented. The conflict between the formal laws and customary laws has resulted in unregulated exploitation of natural resources causing environmental and economic challenges of illegal coal and lime mining, timber and other forest produce. The absolute autonomy of the tribes in the ownership of forest land has also resulted in the over exploitation of fauna, almost leading to extinction of many species due to excessive hunting. The dispute for compensation is another issue that has come in the way of infrastructural development by the State. On the other hand the land acquisition policies of the State have also caused forced displacement of tribal communities.⁸ The ambiguity between the formal and customary laws has raised concern regarding protection of customary land rights under the Central laws and State laws. For instance, the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, recognizes the forest rights and occupation in forest land by tribal communities who have been residing in such forests for generations, however its implementation is incoherent and often does not align with customary practices. Similarly, the Manipur Land Revenue and Land Reforms Act, 1960 has been criticized as “a divisive law designed to create enmity among the people in Manipur”⁹ and depriving the customary rights of the indigenous tribal inhabitants in the low-lying areas of the State.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 has been forcefully enforced in the State of Nagaland despite opposition of civil societies. The Act allows transfer of land by mortgage to nationalised banks, cooperative societies and other financial institutions. This legislation is a colourable law to transfer tribal lands to outsiders and therefore *ultra vires* the constitutional protection of land ownership and transfer of land as per Naga customary law enshrined under Article 371A(1)(a)(iv) of the Constitution of India. Similarly, the Arunachal Pradesh (Land Settlement and Records) Act, 2000 which permits leasing of tribal land to an entity¹⁰ is completely against the protection of tribal lands from outsiders. Such statutory provisions override the protection of customary land tenure of the tribes opening legal loopholes and ambiguities, thereby paving ways for

⁶ Government of India, “Constituent Assembly of India, North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee (Report)”, Vol. 1, Government of India Press, New Delhi, 1947, p. 35-38.

⁷ Assam, Nagaland, Manipur, Mizoram, Meghalaya, Arunachal Pradesh, and Tripura.

⁸ Mahanirban Calcutta Research Group, “Development induced displacement in the north-east India and the R & R policy”. Available at: <http://www.mcrg.ac.in/Sayantini.pdf>

⁹ Manipur Land Revenue and Land Reforms Act is primary reason for unrest in state, Imphal Free Press, 17 March 2024. Available at: <https://www.ifp.co.in/manipur/manipur-land-revenue-and-land-reforms-act-is-primary-reason-for-unrest-in-state>.

¹⁰ By the 2018 amendment Act, Section 90 clauses (1) & (2) of the Arunachal Pradesh (Land Settlement and Records) Act, 2000 was substituted as “Subject to the provisions of this Act or any other law for the time being in force, a land owner may lease out his land to another person or entity for the permissible land use on such terms and conditions as may be agreed upon between him and such person or entity for such period not exceeding thirty three years.” The previous clause (1) before the amendment reads as “Subject to the provisions of this Act, a landowner may lease out his land to another person on such rent not exceeding the maximum rent as may be agreed upon between him and such person but shall not exceed.” Clause (2) reads as “Every lease of land made after the commencement of this Act, shall be for a period of five years and at the end of the said period, and thereafter at the end of each period of live years, the tenancy shall, subject to the provisions of sub-section (3), be deemed to be renewed for a further period of five years on the terms and conditions except to the extent that a modification thereof consistent with this Act is agreed to by both parties.”

exploitation of the tribal land and resources by the outsiders who are powerful. The contemporary reforms in land laws therefore pose a challenge to indigenous land rights, displacement of local communities, weakness of autonomous structures, deforestation and loss of biodiversity, demographic imbalances, social and ethnic tensions, food security and disparity in land ownership. In the tribal communities of NE region, land is deeply intertwined with culture, traditions, economic development and political autonomy. The customary bodies play a supplemental role in both formal administrations as well as in protection of cultural heritage of the tribes. The sudden introduction of formal laws on land governance and management trenching upon the customary land tenure system may jeopardize the autonomy of tribes and gradually lead to loss of identity and cultural erosion. Thus, the enjoyment of fundamental rights of culture and equality is limited with the application of the new land laws creating a challenge to special status of the States, the cultural identity and the political autonomy of the NE States.

4. CONSTITUTIONAL AND LEGAL FRAMEWORK OF THE NORTHEASTERN STATES

Though at the commencement of the Constitution of India, the Sixth Schedule appeared to have been an inclusive law of the indigenous people, however, owing to the political demands of the tribes, Assam was gradually bifurcated and six States were created out of her. The State of Nagaland was created with a special constitutional status with Article 371A¹¹ granting customary autonomy in matters of religious or social practices,¹² customary law and procedure,¹³ administration of civil and criminal justice,¹⁴ and ownership and transfer of land.¹⁵ No Act of the Parliament in respect of the said matters shall apply to the state of Nagaland unless the State Legislative Assembly decides to do so by a resolution.¹⁶ By virtue of Art. 371A of the Constitution, the State enjoys complete autonomy in land tenure as per customary law. The Government of Nagaland exercising the autonomy under Art. 371A issued a Notification in 1973¹⁷ prohibiting the sale and transfer of land to non-indigenous inhabitants. Furthermore, the Bengal Eastern Frontier Regulation, 1873 is a crucial legal instrument that declares that a non-native cannot lawfully acquire any interest in land or product of the land beyond the inner line.¹⁸ The Inner Line Permit (ILP) is enforced in the States of Nagaland, Mizoram, Arunachal Pradesh, Meghalaya and Manipur under the provisions of this Regulation. This ensures the protection of the tribes' land and its resources, a vital aspect that these regulations have been safeguarding since the colonial period. The State of Mizoram also enjoys the same constitutional status under Art. 371G of the Constitution as that of her sister State, Nagaland. In the State of Manipur, the hill districts have special constitutional arrangement for the administration of the tribal areas under Art. 371C.¹⁹ For the tribals of the State of Assam, Art. 371B²⁰ has provided special arrangement for constitution of a Committee consisting of the members of the Assembly from the tribal areas specified in Part-I of the table appended to paragraph 20 of the Sixth Schedule. The Governor of Arunachal Pradesh under Art.371H has special responsibility in the administration of the State.²¹ In addition to the special provisions, in the tribal areas of Assam, Meghalaya, Tripura, and Mizoram²² the Sixth Schedule to the Constitution of India provides for the formation of Autonomous District Councils (ADCs) with legislative, executive, and judicial powers over specific subjects, including allotment, occupation, or the setting apart of land.²³ The ADCs also have the power of management of forest not being a

¹¹ Inserted by the Constitution (Thirteenth Amendment) Act, 1962.

¹² Art. 371A(1)(a)(i) of the Constitution of India.

¹³ Ibid at Art. 371A(1)(a)(ii).

¹⁴ Ibid at Art. 371A(1)(a)(iii).

¹⁵ Ibid at Art. 371A(1)(a)(iv).

¹⁶ Ibid at Art. 371A(1).

¹⁷ Government of Nagaland, Finance Deptt., NO.FIN-B/16-6/69 (Pt) Kohima, the 22nd December, 1973

¹⁸ Sec. 7 of the Bengal Eastern Frontier Regulation, 1873

¹⁹ Art. 371C Special provisions with respect to the State of Manipur was inserted to the Constitution of India by Constitution (Twenty-seventh Amendment) Act, 1971.

²⁰ Art. 371B Special provisions with respect to the State of Assam was inserted to the Constitution of India by Constitution (Twenty-second Amendment) Act, 1969.

²¹ Art. 371H Special provisions with respect to the State of Arunachal Pradesh was inserted to the Constitution of India by Constitution (Fifty-fifth Amendment) Act, 1986.

²² The tribal areas specified in Part-I, Part-II, Part-IIA and Part-III in the States of Assam, Meghalaya, Tripura and Mizoram may be referred to as "the Sixth Schedule Areas".

²³ Paragraph 3 of the Sixth Schedule to the Constitution of India.

reserved forest,²⁴ regulation of Jhum and other form of shifting cultivation,²⁵ establishment of village and towns,²⁶ and inheritance of property.²⁷ Thus, in the Sixth Schedule Areas of Assam, Meghalaya, Tripura, and Mizoram the consent of the ADCs is required for any developmental activity including land acquisition, making the process more complex in these States. The sacrosanct constitutional and legal protection of customs refers to the inviolable rights and practices of the indigenous tribes, which are enshrined in the Constitution and upheld by the legal system. As stated herein, land in the NE region is closely tied with indigenous identity and therefore land is a politically charged issue. Though this protection is crucial for maintain political peace of the region, it has often limited the State's ability to override local norms for public interest and purpose.

5. EMINENT DOMAIN IN THE CONTEXT OF THE NORTH EASTERN STATES

The right to property, which was a fundamental right at the commencement of the Constitution was removed, but after numerous legal and political debates it was relegated to a legal right under Art. 300A²⁸ of the Constitution. Thus, the Eminent domain became a feature of the Indian legal system. Art. 300A provides that "*No person shall be deprived of his property save by authority of law*" meaning that the State can acquire private property for public purpose or for national interest. It also means that the State has ultimate ownership of all land within the territory of India. Even before the Forty-fourth Amendment of the Constitution, the concept of Eminent Domain was taken up by the Supreme Court in the *State of Bihar v. Kameshwar Singh*²⁹ wherein upholding the constitutional validity of the Bihar Land Reforms Act, 1950, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 and the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the court observed that,

"the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised. The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute certainly is in accordance with the letter and spirit of the Constitution of India."

The concept of Eminent Domain, though not expressly inserted in the Constitution in letter, but the framers of the Constitution were very much aware of it, which can be seen by a reading of the omitted provisions of Art. 19(1)(f) and Art. 31(2). In this regard, the Supreme Court observed in *K.T. Plantation Pvt. Ltd. v. State of Karnataka*³⁰ as follows:

"Our Constitution makers were greatly influenced by the Western doctrine of eminent domain when they drafted the Indian Constitution and incorporated the right to property as a Fundamental Right in Article 19(1)(f), and the element of public purpose and compensation in Articles 31(2). Of late, it was felt that some of the principles laid down in the Directive Principles of State Policy, which had its influence in the governance of the country, would not be achieved if those articles were literally interpreted and applied."

Even during the colonial period, Eminent domain was enforced in India by virtue of Land Acquisition Act of 1894 which continued until the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (RFCTLARR Act, 2013) was enacted by the Parliament of India. The RFCTLARR Act, 2013 was passed with the aim of providing a humane, informed and transparent process in the acquisition process for industrialization, development of essential infrastructural facilities and urbanization, particularly with regard to compensation and rehabilitation to the owners of the land and affected families.³¹ Thus, under the Eminent domain the

²⁴ Ibid at Paragraph 3(1)(b).

²⁵ Ibid at Paragraph 3(1)(c).

²⁶ Ibid at Paragraph 3(1)(e) & (f).

²⁷ Ibid at Paragraph 3(1)(h).

²⁸ The right to property under Articles 19(1)(f) and 31 was removed from the Constitution as a fundamental right because it was an obstacle to public infrastructural developments and agrarian reforms. It was also considered as an impediment in achieving equal distribution of wealth and socialism. The Constitution (Forty-fourth) Amendment Act, 1978, replaced Articles 19(1)(f) and 31 with Art. 300A making property as a legal right.

²⁹ AIR 1952 SC 252, (1952) 1 SCR 889.

³⁰ AIR 2011 SC 3430, (2011) 9 SCC 1.

³¹ Preamble to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013.

State has ultimate ownership of all land within its territory, however, the tribal customary law in the NE view land as an individual or communal asset. Further, the tribal communities consider their right as constitutionally protected under the special provisions and Sixth Schedule to the Constitution. Thus, it appears to be a conflict between the constitutional provisions and the customary rights. This entails a study to reconcile these two legal systems to avert any conflicts and delays in development projects.

6. JUDICIAL INTERPRETATION AND EMINENT DOMAIN IN THE NORTHEAST

The courts have played a significant role in harmonizing the conflict between tribal land ownership and the power of the State to acquire land for public purposes. The judicial intervention in the conflict of customary law and statutory law in the development of land laws jurisprudence in the NE States may be examined with the help of some judgements discussed hereinafter. In *Luitang Khullakpa v. Deputy Commissioner of Manipur*³² (hereinafter referred to as *Luitang Khullakpa* case), the Judicial Commissioner of Manipur observed that the tribals do not hold the land under the pleasure of the Government and therefore cannot be evicted, held that, “We are at present concerned only with the question whether the land is Government land and whether the villagers are in possession of it as contended by the respondents only during the pleasure of the Government. I do not find any provision made in the Manipur State Hill Peoples Regulation for the Government to evict the villagers from any particular village at the pleasure of the Government.”³³ The courts, post the *Luitang Khullakpa* case, have delivered judgements based on the absolute ownership of land by the tribals. However, in *State of Manipur & Ors. v. Humdung Victims of Development & Ors.*,³⁴ the Supreme Court of India overruling the judgement of the High Court, which was delivered based on *Luitang Khullakpa* case, held as follows:

“....could cause damage to the interest of the Government in that they will have the effect of making the Government lose its rights in all the lands in hill areas..... when a High Court holds all Government Khas lands in Hill areas belong to private parties in a writ proceeding, on certain assumptions, such holding cannot be allowed to stand and should be set aside.”³⁵

It was contended that the RFCTLARR Act, 2013 does not automatically apply to the State of Mizoram as the State Assembly still needs to pass a resolution enforcing the Act. In other words, clause (4) of Article 371G does not allow an Act of Parliament made concerning the transfer and ownership of land to be automatically applicable to the State unless the State Assembly adopts the same by passing a resolution. The Gauhati High Court, dismissing the argument and upholding the Eminent domain held the object of Clause 4 of Art. 371G is “to protect the rights of the natives of the State of Mizoram and not related to acquisition. The lands to be acquired are for the Central Government and as such, the doctrine of Eminent Domain comes into play in the present case.”³⁶ The Court directed the District administration to complete the land acquisition proceedings as the RFCTLARR Act, 2013, thus ensuring the land owners receive appropriate compensation as per law.

The Courts have established that the Eminent domain overrules the special provisions and the Sixth Schedule to the Constitution of India. Hence, customary laws have no standing before the State’s Eminent domain when acquiring property. However, in the judgements discussed herein, the extent of the rights of the tribals and the applicability of other central laws in the absence of a resolution passed by the State Assembly or the Autonomous District Council were not debated. The recent ruling of the Supreme Court in the *State of Meghalaya v. All Dimasa Students Union, Dima-Hasao District Committee*³⁷ (hereinafter *Meghalaya Mining Case*) can be considered as the latest landmark judgement in matters of customary land tenure and applicability of central laws in the NE States. Firstly, on the ownership of land, the Supreme Court upholding the Constitutional protection of Customary land tenure, observed that:

“Thus, looking to the nature of the land tenure as applicable in the Hills Districts of State of Meghalaya, the most of the lands are either privately or community owned in which State does not claim any right. Thus, private owners of the

³² AIR (1961) Manipur 31.

³³ Ibid at Para 8.

³⁴ AIR 1995 SC 1865.

³⁵ Ibid at Para 7.

³⁶ R. Lalthanzuava v. Union of India, AIR 2018 Gau 20

³⁷ (2019) 8 SCC 177.

land as well as community owners have both the surface right as well as sub-soil right. We are, thus, of the opinion that Tribals owned the land and also owned the minerals, which is an inescapable conclusion.”³⁸

Secondly, on the issue of applicability of Central laws like the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960, the Mines Act, 1952, Coal Mines Regulations, 2017, etc., it was contended that the said Central laws are not applicable in the State in view of the special constitutional status and the local laws enacted by the Autonomous Councils. The Supreme Court refusing the argument, held that “no mining lease is to be obtained for privately owned/community owned land in Hills District of State of Meghalaya is unacceptable and not in a good spirit. Our country being governed by the Constitution of India all the States are to implement Parliamentary Acts in true spirit.”³⁹ Thirdly, on the proprietary rights, the Supreme Court in consonance with the customary laws, held that “in event the mining is carried out by tribals or their assignees as per the provisions of Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960, there can be no objections in carrying such mining under the Regulation and control of State of Meghalaya.”⁴⁰

The customary ownership of land also has the challenge of identifying owners for the disbursal of compensation. In many cases where the State acquires community land for public purposes, multiple and subsequent claims of ownership lead to multiple lengthy litigations, which delays the developmental schemes. *Nuney Tayang v. Kodelum Tayang*⁴¹ is one such example, wherein the High Court directed the authorities to settle the matter amicably among the villagers and make appropriate compensation to the individual land owners. However, the District authorities excluded the names of a few land owners. The excluded ones filed a Writ Petition wherein the High Court directed the District authorities to enquire about their claim and pass appropriate orders per law. The District authorities observed that there were no land records about the said area and, therefore, constituted a Board to enquire into the claims and the apportionment of compensation. The claimant parties claimed that they were not invited to the Board meeting. The District authorities, therefore, reconstituted a Board to re-examine the issue of apportionment of land. However, many new claimants were recorded in the meeting and the District authority notified the appellant to appear before the Board. The appellant filed a Writ Petition praying for a writ of mandamus to direct the District authority to act on the list of 83 beneficiaries and to, accordingly, release the amount of compensation. Subsequently, other claimants also filed Writ Petitions. Thus, numerous petitions for compensation claims were filed in the High Court. On appeal, the Supreme Court remitted the matter back to the District Judge directing to issue fresh notice to all the claimants and thereafter proceed to identify the rightful owners and claimants of the land and apportion the amount amongst them in accordance with law.

It can be seen from the hereinabove rulings that there are unique confrontations of formal laws with the customary laws in the NE States. In such circumstances, the courts are in complex situations to balance the conflict simultaneously keeping the social and political impact of the judgement in maintenance of peace in the society. One chief reason is the absence of clear legal framework to address conflicts between statutory laws and customary laws. Another reason is the lack of statutory legal awareness among the tribal society and the unique and diverse culture of the tribes further makes it difficult to have a uniform code of laws. The political history in some States like Nagaland and Mizoram is another concern that hinders the application of other central laws. However, despite the challenges, the courts have been able to enforce the Eminent domain simultaneously ensuring the land acquisitions are carried out consistent with the tribal land protection laws.

7. CONCLUSION

The object of law is not only to regulate but also to maintain equilibrium in the society. Law thus is a social engineering tool to maintain equilibrium of the conflicting interest in the society. In the absence of law, the society will thus be in chaos hindering the principle of equity. The Eminent domain no doubt may contribute to the development and economic integration of the NE States, however the law and policies must be carefully designed so there is no dispossession and erosion of indigenous rights. Thus, any legal framework and policy must be construed by integrating the special constitutional provisions, which are specific clauses in the Constitution that protect the rights of tribal

³⁸ Ibid at Para 75.

³⁹ Ibid at Para 137.

⁴⁰ Ibid at Para 151.

⁴¹ (2015)17SC C 440,

people, the RFCTLARR Act, 2013, the Eminent domain and engaging the autonomous customary institutions so as to avoid infringing upon the holistic relationship tribal people with their land. As held by the Supreme Court of India in *Meghalaya Mining Case*⁴² the lands are owned by individual or community and the State has no right to claim ownership. The special constitutional provisions are for protection of the tribal land and their customs on transfer and ownership of land. These protections are enshrined by the Constitution and the Constitution is the supreme law. Therefore, the special provisions cannot supplant the sovereignty of the Constitution. All citizens and States must abide by the Constitution. The ownership and transfer of land protected by the special constitutional provisions is not relatable to acquisition of land by the State for public purposes. The said provisions of Art. 371 and the Sixth Schedule are relatable to ownership and transfer of land as per customary law, not acquisition by the State for public purpose.

The land tenure system in the NE States is a complex relationship between constitutional provisions, indigenous rights, and developmental imperatives requiring context-sensitive application of the Eminent domain. The region is ethnically and politically sensitive, and a non-application of mind in the enforcement of Eminent domain would at any time spark social chaos. Therefore, the interface between the State sovereignty over land and the customary land rights of the tribal people must be carefully navigated in the application of statutory laws. The Sixth Schedule and the special provisions of the Constitution under Art. 371 are sacrosanct to the people of the region, for it not only provide their cultural protection but reflects the political history of the region. It further reflects the mandate of the Constitution to respecting the diversity and the distinct identities of the tribal communities of the NE region. It is thus imperative for the State to see that while exercising Eminent domain, the developmental schemes and goals do not come at the cost of the tribal culture and social dislocation.

⁴² Supra Note 37,