

IRREGULARITIES CONNECTED WITH THE POSCO PROJECT
A Summary of Relevant Material Contained in Audit Reports by the Office of the
Comptroller and Auditor General of India

The Comptroller and Auditor of India (CAG) prepares multiple annual reports on the functioning of the various central ministries and state governments. Two of these reports are relevant for us in that they provide a glimpse into the extent of illegal and unethical practices that underlie the POSCO project. These two reports are the Environment Audit Report for the year ended 31 March 2009 (Report No. 17 of 2010-11, hereafter, “EAR”),# and the Land Acquisition and Management section of the Audit Report (Civil) for the State of Orissa for the year ending 31 March 2010, covering the period 2005-2010, with a supplementary report for the six-month period from April 1 to September 30, 2011 (hereafter referred to together as the “CAG Orissa Civil” report).

Deficiencies in the Functioning of the Central Ministry of Environment and Forests

The EAR does not directly mention POSCO, but does provide us some understanding of why MoEF failed in its duties when it came to the POSCO project. The report enumerates a distressingly long list of deficiencies in the functioning of the MoEF—ranging from a near-total lack of monitoring to significant delays in completion of projects to non-achievement of objectives of projects.

Irregularities and Illegality Committed by the State of Orissa

The CAG Orissa Civil report looks at the following issues, among others, related to Land Acquisition and Management by the State of Orissa:

- An audit of the state government’s overall performance related to land acquisition and management.
- Whether land acquisition served any public purpose as defined in the Land Acquisition (LA) Act 1894
- The invoking of emergency provisions in acquiring land,
- Adequacy of monitoring mechanism
- Timely payment of compensation
- Fairness and transparency in acquisition and allotment of land

And points out a string of irregularities by the Orissa government on each of the above issues:

- The state failed to frame a land-use policy despite its 10-year-old commitment to do so
- The state failed to maintain consolidated data on land owned or leased or allotted by it – and so could not provide information on utilization of existing land resources or justification for acquiring private land. The CAG auditors note: “In the absence of such data, we were unable to assess if acquisition of private land was at all necessary, assuming that adequate Government land was not available at a particular location.”
- What land allotment was done, was done arbitrarily.
- Spot audits covering 2005 to 2010 show that the state acquired and allocated a little over 50,000 acres of land to 107 promoters / companies for setting up of industries in 16 districts. Of this, over two-thirds was private land which was acquired under the “public purpose” as defined in the Land Acquisition Act, often illegally using emergency land acquisition provisions. CAG notes that their investigation “leaves enough doubt regarding fulfillment of the “public purpose” [...] in case of acquisition for all these promoters,” and that the state “misused the emergency provision under section 17(4) in many instances

depriving the likely land-losers of the opportunity to be heard.” The use of the emergency provisions is particularly devastating for the land owners because it removes their ability to contest the propriety of acquisition and the opportunity to be heard.

- Additionally, when emergency provisions are used, the law requires that such acquisitions are to be made for a “specific purpose subject to fulfillment of prescribed conditions” and not only the acquisition process has to be completed within six months, but “the ‘public purpose’ for which lands are acquired shall be time bound and it must be expected to be achieved within a period of six months or so from the date of notification under section 4 (1).”
- Even when emergency provisions are not used, the law requires that fair market price be paid for private land being acquired, and that land acquisition proceedings be completed within two years of publication of a declaration by the government that the subject land is to be acquired. But the state consistently delayed proceedings, under-valued private land, and then delayed paying even the lower compensation. The auditors note that not only were there “delays in finalising land acquisition proceedings and payment of compensation to the land-losers[,]” but that the state’s Land Acquisition Officers (LAO’s) valued the land at lower than market value in a way that “tended to help the land buyers, most often industries, at the cost of land-losers, largely farmers.”

CAG notes that none of the above requirements were met in the process of acquiring land for POSCO:

- 437.86 acres of land was acquired under emergency provisions in seven villages of Jagatsingpur district for POSCO, but even two years after acquisition, the land owners had not been awarded any compensation.
- The acquired land has been lying unutilized for more than 6 years since the acquisition, but has not been returned to the owners even though the law requires that it be returned.
- The land has a present market value of Rs 64.22 crores but was acquired for Rs 11.85 crores. The original land owners have neither been paid the difference nor the land returned to them, effectively netting POSCO a profit of more than Rs 50 crores (10 million USD) without having produced an ounce of steel.

The CAG auditors also note that land acquisition records had been falsified by the state. During the initial audit in May 2011, the LAO’s records showed that the only compensation paid until then was an award of Rs 6 lakh for 2.585 acres of land. But by the time of a subsequent reexamination in July 2011, additional entries had appeared in the records, purporting to show that the state had paid compensation for 8.88 acres of land, and that this compensation had been paid between January 2008 and December 2009 - before the first audit! The CAG Civil report dryly notes:

“Apart from being fraudulent, this action on the part of LAO deprived the land-losers of compensation based on current market rates, and consequently transferred the benefit of differential price of land at the time of acquisition and passing of award to the company.”

or more directly

“Special LAO MIP Jagatsinghpur fraudulently passed award of compensation after lapse of LA proceedings by manipulating records thereby depriving the land-losers of higher compensation. The action benefitted the company POSCO (India) Limited”