

Capacity Building and Advocacy for Developmental Change among the Musahar Community in the Villages of Gaya District, Bihar

Access to land and secure ownership rights over it are the key to ownership of a house in rural areas. And access to land for housing in rural areas essentially involves: i) granting the landless poor ownership rights over homestead land on which they have constructed their house, and ii) allotting homestead plots to those without any land. Various laws, policies and regulations for providing these have already been in existence in Bihar since long. Despite this, the magnitude and severity of the problem of rural houseless-ness in Bihar, particularly among the Dalits, is the highest among all the states in the country. In order to address these issues, a project titled *Capacity Building and Advocacy for Developmental Change among the Musahar Community in the Villages of Gaya District, Bihar* was implemented by Deshkal society in partnership with Gram Nirman Kendra and Lok Shakti Shikshan Kendra during 2006-07. It received financial support from DFID India under the first phase of its PACS programme. The project focused on capacity building of the Musahar community for facilitating realization of their right to legal entitlement to homestead land. The experience and critical learnings gained during the processes of implementation of the project are described below..



Types of Homestead Land

The processes for settlement of homestead land depend on the type of land on which a landless labour household resides. There are three major types of homestead land in Bihar—*raiya*, *gairmazarua khas* or *malik* and *gairmazarua aam*—on which the landless poor in rural areas have built their houses. *Raiya* homestead land originally belonged to a landowner, upon which a person was allowed to reside and construct his house. Usually small plots of land were provided to him/her by the employer landowners to settle down. This practice was an essential element of the

traditional *kamiauti* system which evolved to fulfill the requirement of permanent availability of cheap labour for agriculture as well as maintenance of traditional tank irrigation in the Magadh region. When a *raiyat* got a new *kamia* and he had to provide him with somel and including a house plot. He did so with either his own land or asked the landlords for a house and some land for the purpose. In the former case the *kamia* was clearly a service *jagirdar* of the *raiyat*. In the latter case the land was clearly not the *raiyat*'s and the *kamia* was treated in record as a non-agricultural tenant of the village and not given a separate *khatian* (record of right).



Gairmazarua Khas or *Malik* Lands are those that were under the possession of particular landowners under the *Zamindari* System, but after the abolition of *Zamindari* and enactment of land reforms have been vested with the government. Ceiling surplus lands are an example of this category of land. Although legally such lands are vested with the government, dominant landowners in the villages may still have control over it. *Gairmazarua aam* Lands are those that are reserved for common public uses, such as village pasture land. At present, this category of land is vested with the village Panchayats. The system of getting ownership right over *gairmazarua khas/malik* and *gairmazarua aam* land is called '*Bandobasti*' and the legal document of evidence is called the *parwana*.

Processes for Securing Ownership Rights

During the course of implementation of its project, a survey of 19,081 households was conducted in 361 villages spread over 4 blocks of Gaya district in Bihar. After identifying the landless households that needed granting of homestead rights, 2,500 households were selected for initiating the process for providing them legal entitlement to their homestead land. The first step was to submit applications in the Block office on behalf of those people who deserved legal entitlement as per the legal provisions. The format of the application required various types of information regarding the land on which the applicant was residing, such as account number, plot number, *rakba*, *chauhaddi* (area and topography of the land), etc. According to the provisions, this information could be cited in the application only on the basis of two legal records. One was the *khatihan* (legal document of land) and the other was

the village map. Generally, in Bihar, the responsibility of maintenance of both these records lies with the *karmacharis* (local revenue officials). These *karmacharis* are in charge of approximately 30 villages spread over two or three Panchayats. When the *karmacharis* were contacted for the above mentioned records, most of them denied having these. When they were asked as to which office/department could provide us with the records, we were told to contact the land revenue department of the government. Accordingly, we put up requisitions for the records of villages in the district land revenue department. We were dismayed when the official incharge of the land records told us that he did not have the village maps for most of the villages. We were instructed to contact the government press for the records. Interestingly, the Bihar government has only one printing press which prints maps of villages and that press is in Patna (the capital of Bihar). Moreover, the government maps from this press are not meant for private circulation. This was, indeed, a difficult situation as without these records it was not possible to fill up the application forms for homestead land.

At this stage there were two options: i) to confront the administration as it was their duty to make these records available, or ii) to somehow persuade the administrative officials for arranging for the village maps from the government press. If we followed the first option, it became clear that our focus would have shifted from implementation of legal entitlement to the availability of legal records. This could have put us off from our targeted goal. We, therefore, decided at this stage that it would be better to adopt the approach of persuading the concerned officials in the administration for arranging the records. Then followed an entire process of persuading officials from the level of the *karmacharis* to the officer in-charge at the district level. After much running around the records were made available to us. But for getting all these records our organization had to spend a considerable amount of money which would not have been possible for the land less and marginalized community households to manage.

After getting hold of the required records, we started the process of filing the application forms. First of all, the applications were submitted to the *karmachari*, the primary government official at the ground level. His primary responsibility was to verify the applications and recommend them to the Circle Inspector.



Now the challenge before us was to get the applications verified by the *karmacharis*. At this stage the *karmacharis* introduced us to one more actor, *amin*, saying that without him the measurement of land occupied by a family could not be verified. At the Block level the official responsibility of measurement of land lies with the *amin* (land measurement official). In a Block there are normally one or two *amins*. Thus, one *amin* has the responsibility of 150 villages in a Block. When approached for land measurement, it was very convenient for the *amin* to say that he did not have time as he had the responsibility for all the villages of the Block, not just for the villages where we were working. Neither the *karmachari* nor the *amin* had a fixed office. It was very difficult to contact them, more so to arrange a meeting between them. After repeated efforts, we were able to manage a meeting between them. In the process of verification of the applications, we came to know about the different types of land on which the landless labourers, particularly Dalit households resided: *raiyati*, *gair-mazarua aam*, *gair-mazarua khas*, forest and *bhoodan* land being the main types. At this stage itself the *karmacharis* rejected approximately 20 per cent of the applications related to the forest or *bhoodan* land saying that these lands were not under his jurisdiction. He further added that these 20 percent people were residing illegally on those lands and could be evicted any time by the government. The applications, which the *karmachari* found to be correct in his verification, were divided into three categories on the basis of the types of land—*raiyati*, *gairmazarua aam*, and *gairmazarua khas*. Accordingly, he sent applications related to the *raiyati* land for further verification to the Circle Inspector, which were further recommended to the Circle Officer. Thus, the various stages of the administrative machinery involved in the process of settlement of *raiyati* homestead land are *Karmachari* and *Amin*> Circle Inspector> Circle Officer.

The applications related to the *gairmazarua aam* or *gairmazarua khas* land required the recommendation of the *Gram Sabha* and the *mukhia*, the elected Panchayat head, of the respective Panchayats. This was possible only with the initiative of the Panchayat head known as the *mukhia*. Now our task was to mobilize the *mukhia*. We found that it was easy to get the applications recommended by a Dalit *mukhia* because the applicants were primarily from Dalit communities. But this was not the case with the *mukhias* who were from the upper castes or the Other Backward Classes. The non-Dalit *mukhias* created several obstacles in the process of getting recommendation from the Gram Sabhas. For instance, they said that in order to recommend an application there was the need for holding a *sabha* (general assembly of the village), which was not possible without a time-frame of 2-3 months. They also objected to the verification done by the *amin* and the *karmachari*. They also said that it was important for them to get the consent of the landowners so that these allotments do not create any social tension in the village.

These experiences reflect the deep-rooted realities of a caste-divided society and the local power structures and relations. This also shows how the local power structures influence the local state agencies and the administrative/legal processes, put obstacles in the process of implementation of laws and rules meant for empowerment of the marginalized communities. Our immediate challenge was to negotiate with the non-Dalit *mukhias* on the issue of verification of the applications. At the level of dialogues we did not have much success in persuading them to do the needful. Amidst all this, we came to know that if the application has been verified by the *karmachari*, the Circle Officer could exert pressure on the *mukhia* for the speedy verification and outsider could not order a local *mukhia* to recommend the applications. He said that at best he could make a request. As a result the applications remained pending with the *mukhia* for verification.

In the primary phase itself, we had, thus, to negotiate and confront the officials at three levels for the verification of the applications. Meanwhile, there was a change in the Block administration. The Circle Officer was transferred in September 2007 and an Indian Administrative Services (IAS) probationer was posted in his place for training. But he could exercise all the powers given to a CO. Right at the start, this probationary officer created such an atmosphere that let alone the common people, even the well-off could not dare to access him. In this regard, the earlier CO was better as we could at least speak to him. We were at the juncture where the role of the CO was crucial.

Incidentally, we met the Commissioner in-charge of that area and he took an active interest in our programme. He instructed the newly appointed IAS officer to dispose of all the pending applications within a month. This instruction bore desirable consequences. The IAS officer instructed his subordinates to dispose of the applications within a fixed duration, failing which he warned them of suspension. Further, he instructed the non-Dalit *mukhias* to dispose of the submitted applications within a week, failing which he warned them of setting up an enquiry committee on the development projects given to them by the Blocks. We realized that the orders and instructions of the IAS officer had immense impact on the lower officials as well as the *mukhias*. The applications which were lying with the non-Dalit *mukhias* for more than a month were disposed of within ten days.

Now when there was a momentum, the Block did not have the required number of papers and proforma which were required to take the process further. It was not possible to get it printed from the district headquarters within a time limit, because it was outside the jurisdiction of the IAS officer. However the officer agreed that if Deshkal got the required papers and proformas printed, it would be possible to get the work completed within the prescribed

time limit. Deshkal Society took this responsibility and provided the Block office with the required papers. Thereafter, the process which started at the Block level included preparing the proposal, filling up the two check-slips and the format of *parcha* and *parwana* and enclosing with it the recommendations of the *mukhia*, *karmachari*, and the Circle Inspector.

The kind and volume of information required for filling up various check-slips and proformas involved a very complex and tedious process. First of all, in the proposal format, apart from the application, ten such items of information are asked which are difficult to furnish. At the top of one of the check-slips is written 'Check-slip to accompany the proposal for settlement or alienation of government land'. This format has twelve headings and every heading requires 3-11 items of information. This check-slip has to be certified by the *karmachari*, Circle Inspector, Circle Officer, DCLR, SDO, Additional Collector and the Collector. The second check-slip related to the land settlement has 25 headings. It requires the certification of the revenue *karmachari*, Circle Inspector and the Circle Officer.

In the case of *gairmazarua khas* land, the processing route for applications is *Mukhia*>*Karmachari*> Circle Inspector > Circle Officer > Sub-Divisional Officer > LRDC > District Collector. In cases of *gairmazarua aam* land the application is further recommended by the District Collector to the Divisional Commissioner who recommends it for approval to the Land and Revenue Department of the Government of Bihar. Finally, after fulfilling all the requirements, Deshkal was able to file 2,492 applications which included 425 applications for *raiyati* land, 1536 for *gairmazarua khas* land and 531 for *gairmazarua aam* land.

Hereafter, regular follow up and monitoring of the applications had to be done. This involved numerous visits to various offices to find out the status of the applications, and sometimes providing clarifications on queries raised on items of information given in the applications. Since most of the officials generally did not have any commitment towards implementation of the laws and provisions, they had to be goaded many times into taking action and processing the applications at various stages. Obviously, it would not have been possible for the applicants from landless and marginalized communities to do this regular monitoring and follow up on their own, as even gaining access to the offices and officials is a difficult task for them. After continuous efforts made by Deshkal Society during a span of almost two years (2006-08), all the applicants for *raiyati* and *gairmazarua khas* land were finally granted legal entitlement to their homestead land. However, the 531 applications for *gairmazarua aam* land are still pending for decision after moving up and down many times from the Block Office to the Office of the Revenue and Land Reforms Department of the Government of Bihar at Patna.

In the complex legal process described above, the lower officials have to prove at every stage that the information passed on to the upper officials is correct. The senior bureaucrats at the top of the administrative machinery don't have confidence in the officials at the ground level, who are directly involved in and are primarily responsible for the administration at the ground level. The process of sending recommendations to higher officials for their comments and approval together with the distrust that the latter have for the lower officials, leads to a pervasive sense of fear among the lower officials of rebuke and punishment from the higher officials. This fear curtails the space for the lower officials to share the problems they face in their day-to-day work with their seniors. As a result the officials at various levels avoid taking decisions and expediting the work. For example, although the laws and rules regarding settlement of *raiya* homestead land is very simple and can easily be settled under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 at the level of the CO, the cumbersome procedures and lack of clear guidelines and directions are proving to be serious obstacles in their settlement. When a proposal is submitted to the CO, due to some reasons he does not want to take a decision and sends it to the SDO. The SDO likewise avoids taking a decision and sends it to the District Collector who sends the file back with some queries. In this way, the proposal keeps moving to various officials without any concrete decision being taken.

Identifying Administrative/Institutional Impediments

The experience described above shows that the administrative procedures and processes as well as the paper work required for acquiring right to homestead land are so complex and cumbersome that it is very difficult for the rural poor to pursue and acquire their legal right. The Deshkal survey of villages in Gaya District revealed that the major reasons as perceived by the landless households behind not being able to successfully acquire *parcha* and *parwana* were lack of money, lack of time (as the processes are time consuming and landless wage labourers are not able to spare much time from their daily grind of work) and the administrative hurdles.

Interestingly, the survey showed that the major administrative hurdles faced by the landless households in the process of acquiring *parcha* and *parwana* were located at the Gram Panchayat and the Block level itself. Almost 62 per cent of the households faced hurdles at the Gram Panchayat level and 33.27 per cent faced hurdles at the Block level. Considering the tedious and complex processes involved in acquiring homestead rights, it was not surprising to find during the survey that only 14 per cent of the surveyed households had received either *parcha* or *parwana* (legal documents of ownership) for their homestead land. Almost 89 per cent of the households had not even thought of

trying to obtain *parcha* or *parwana*. Many of the households (38 per cent) were not even aware of the existence of the Bihar Privileged Persons Homestead Tenancy Act, 1947 or other rules and regulations for regularization of their homesteads on *gairmazarua khas* and *gairmazarua aam* lands.

Besides the cumbersome and complex processes and tedious paper work described above, the other major administrative impediments that can be identified from the experience are described below.

Lack of Up-to-Date Land Records

In Bihar, land records have not been updated since long. Finding the required land records and cadastral maps of villages is a monumental task. The government departments simply do not care to keep these records updated. Even old records are very difficult to find. Obviously, for a poor landless labour household it is a monumental task to arrange for these records.

Lack of Knowledge and Information among Officials about Laws and Policies

There is no attempt by the government to collect data and information about the number of households that do not have legal ownership right (*parcha/parwana*) of their homestead land. Copies of government circulars and policy guidelines are not available in the Block, Sub-division or District offices, including even the District Collectorate. Due to unavailability of circulars and guidelines, and ignorance about them, different officials are prone to interpret the rules and laws differently. The government has not prepared any official manual which can provide guidelines to officials at various levels for taking appropriate action for implementation of the laws, rules and policies regarding homestead land. The officials, therefore, do not know what they ought to do when somebody submits an application for grant of ownership right (*parcha/parwana*). Besides, since land revenue is no longer an important source of revenue earning for the government, there is also no training of officers these days to familiarize them with the system of land revenue administration, laws and rules. As a result when officers are confronted with issues such as legal ownership of homestead land, they do not know how to take appropriate action to implement the relevant laws and rules.

Shortage of Lower-level Revenue Functionaries

The worst effect of the government drive to reduce the size of its administrative structure has been on the revenue administration, especially at the lower levels. The Bihar government has recently taken the step to merge the offices

of the Block Development Officer (BDO) and the Circle Officer (CO). Therefore, though technically there is a CO for every revenue circle, in substance they do not exist (Report of the Bihar Land Reforms Commission, 2006-2008, Volume I, April 2008). The reason is very simple. The functions of the BDO and CO are quite dissimilar. The BDO as of now is over burdened with numerous activities relating to various Centrally-sponsored rural development programmes. Each BDO has to disburse, supervise and keep account of crores of rupees, and land revenue now being a miniscule part of government's overall revenue earning, he neither has the time nor the interest to look after the functions of the revenue department. Thus, there is a vacuum at the Block level of a senior revenue officer. The supervisory structure at the Block/ revenue circle level is also very thin and fragile. Below the BDO/CO there is only one Circle Inspector (CI) for a revenue circle consisting roughly of 100 villages. Obviously a single CI cannot properly supervise an area of 100 villages. Even if he does its quality can be anybody's guess.

The most unfortunate aspect of the revenue administration in Bihar is that the government has stopped fresh recruitment of the lowest ground-level revenue functionaries called *karmacharis*. As a result a large number of the posts of *karmacharis* are lying vacant, and the existing *karmacharis* have to cover a large number of villages and bear a heavy burden of work. Moreover these *karmacharis* have no fixed office. Noone knows where they stay. One can't approach them at any fixed place, at any fixed hour on any working day. If someone wants to submit an application for settlement of his homestead land, it becomes very difficult to locate and approach the *karmachari* for measuring and preparing the map of the land and verify other records.

The experience discussed above indicates that the complex and cumbersome administrative procedures along with tedious paperwork involved in the process for acquiring legal entitlement to homestead land together with lack of interest and commitment among government officials for implementing the laws, rules and regulations has resulted in a large number of eligible landless households being denied their right to homestead land. In order to ensure the implementation of its laws, rules and regulations, and realization of the right to housing and homestead land for the landless rural poor, the Government of Bihar needs to show political will and effectively address the administrative and procedural issues identified above.