

CHAPTER 6

Safeguarding land rights of Scheduled Tribes

Maintaining the rights of the ST population over their landed properties in Scheduled areas, is one of the primary responsibilities of the Government, under Article 244 of the Constitution. In this regard, the State Government had enacted the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956, which was subsequently amended in 2000. The regulation prohibits transfer of land belonging to ST persons to non-ST persons, with effect from 4 September 2002. Audit analysed the actions of the authorities, designated to adjudicate matters, relating to conflicts on property rights of the ST population and noticed certain deficiencies, as mentioned below:

- *In the absence of fixation of a time limit for disposing of cases, filed under the OSATIP Regulation, out of the total 2,134 pending cases, 1,347 cases had remained pending for more than 10 years and 391 cases had been pending for 6 to 10 years.*
- *In the 20 test-checked cases, involving 66.57 acres of land, despite receipt of enquiry reports from the Tahasildars between July 2008 and September 2021, the cases had not been disposed of by the Sub-Collectors concerned.*
- *In the eight sampled Sub-Collectorates, 90 out of 104 warrants, issued for restoration of 46.141 acres of land, in the names of the STs, had not been executed by the Tahasildars.*

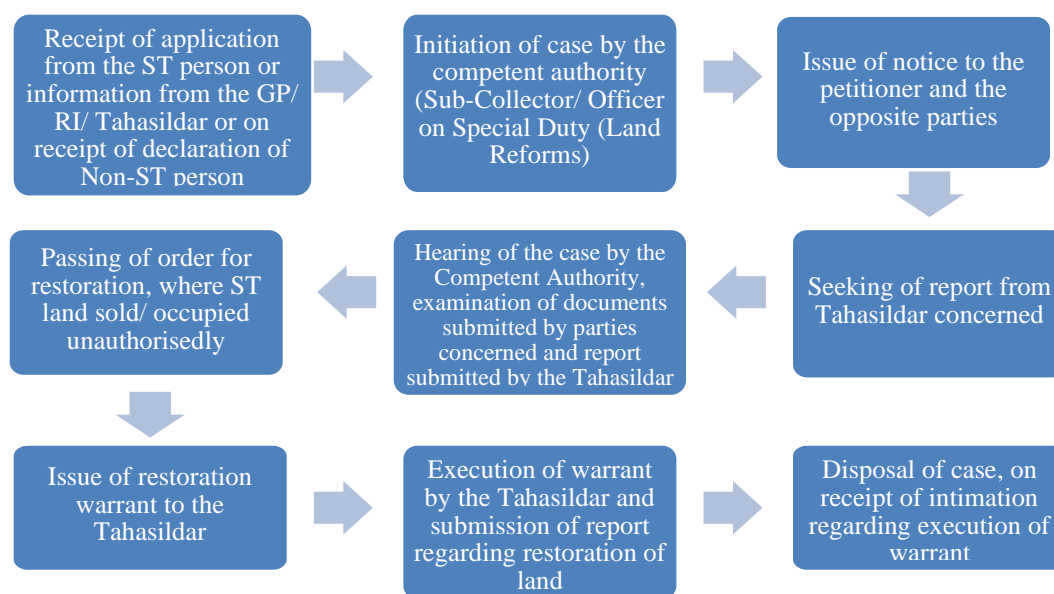
6.1 Regulatory framework

The Orissa Scheduled Areas Transfer of Immovable Property (OSATIP) (by Scheduled Tribes) Regulation, 1956, read with Amendment Regulation, 2000, prohibits transfer of land, belonging to ST persons, to non-ST persons, with effect from 4 September 2002. Clause 3(A) of the OSATIP (Amendment) Regulation 2000, provides that where any person found to be in unauthorised occupation of ST land, the competent authority, may, either on application by the owner, or any person interested therein, or on receipt of information from the Gram Panchayat, or on his own motion, and after giving the parties concerned an opportunity of being heard, order for restoration of possession to member of ST or to his heirs. Further, Clause 3 (B) of the OSATIP (Amendment) Regulation, 2000, also provides that non-ST persons, in possession of agricultural land, acquired from ST persons, between 4 October 1956 and 4 September 2002, shall notify to the Competent Authority, mentioning the circumstances and manner of possession of the land. The information is to be furnished within two years from 4 September 2002. In case, the information is found to be unsatisfactory or the possessor fails to furnish the

information, the agricultural land shall be reverted back to the original ST owner.

The State Government appointed (October 1995 and September 2015) Sub-Collectors⁶³ and Officers on Special Duty (Land Reforms)⁶⁴, to perform the functions of the Competent Authority in this regard, for the respective Sub-divisions, within the Scheduled areas, located in different districts of the State. On receipt of petitions from ST persons or on *suo motu* investigations by the Competent Authority, the instances which appear to be in conflict with the OSATIP Regulation, are investigated, adopting the procedure depicted in **Chart 6.1**.

Chart 6.1: Process of disposal of OSATIP cases



6.2 Inordinate delay in disposal of OSATIP cases

On scrutiny of information and records, made available to Audit, by the eight test-checked Sub-Collectorates⁶⁵, it was noticed that 2,134 cases, involving 1,932.4258 acres of land, as detailed in **Table 6.1**, were pending for disposal, with the Sub-Collectors, as of March 2022.

⁶³ Nilgiri: Balasore District; Ghusmur and Berhampur: Ganjam District; Bhawanipatna: Kalahandi District; Keonjhar and Champua: Keonjhar District; Koraput and Jeypore: Koraput District; Gunpur: Rayagada District; Nabarangpur: Nabarangpur District; Malkanagiri: Malkanagiri District; Baripada, Bamanghati, Kaptipada and Panchpir: Mayurbhanj District; Kandhamal: Kandhamal District; Kuchinda: Sambalpur District and Bonai: Sundargarh District

⁶⁴ Paralakhemundi: Gajapati District; Rayagada: Rayagada District; Baliguda: Kandhamal District; Sundargarh & Panposh: Sundargarh District

⁶⁵ In respect of the Panposh and Sundargarh Sub-Divisions, Officers on Special Duty (Land Reforms) were appointed, but the posts remained vacant and the Sub-Collectors concerned were performing the functions of the Competent Authority

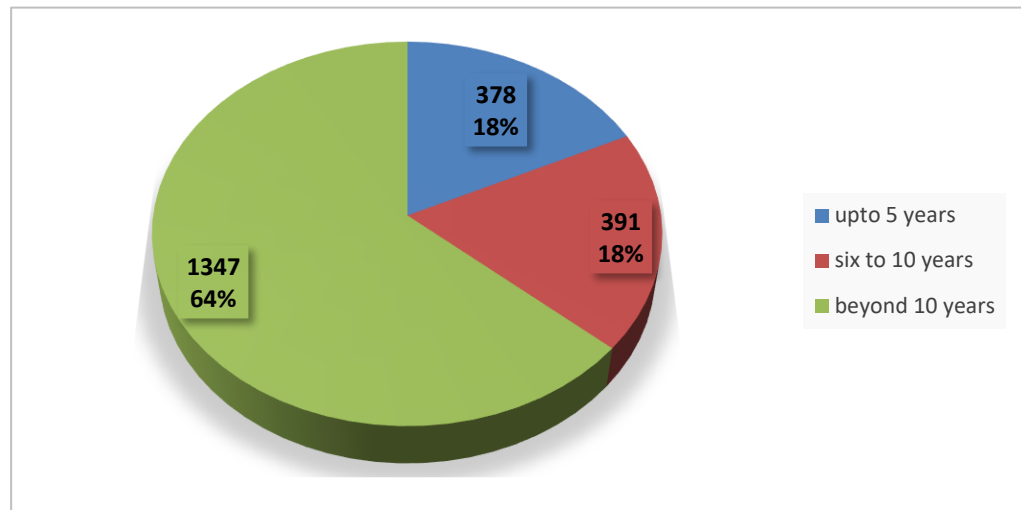
Table 6.1: Pendency of OSATIP cases

Sub-Collectorate	Pendency, as of March 2022		Period of pendency			
	No. of cases	Area in acres	Up to five years	Six to ten years	Beyond 10 years	Could not be ascertained ⁶⁶
Baripada	20	15.09	20	0	0	0
Champua	65	113.843	44	1	2	18
Kalahandi	40	83.7	14	3	23	0
Kaptipada	9	3.58	0	0	9	0
Koraput	1,553	1,211.194	134	269	1,150	0
Nabarangpur	150	265.56	32	16	102	0
Panposh	177	139.8388	68	62	47	0
Sundargarh	120	99.62	66	40	14	0
Total	2,134	1,932.4258	378	391	1,347	18

(Source: Records of the Offices of the test-checked Sub-Collectors)

Audit examined the pendency of 2,116 out of the 2,134 cases, and noticed that 1,347 (64 per cent) cases had remained pending for disposal, for more than 10 years, while 391 (18 per cent) cases had been pending for six to 10 years. The Competent Authorities had not taken effective steps for disposal of these cases, in a time-bound manner. The year-wise pendency of cases is depicted in **Chart 6.2**.

Chart 6.2: Year-wise pendency of cases



Audit scrutinised 221⁶⁷ out of 2,116 pending cases, involving 501.379 acres of land and noticed that:

- No time limits had been fixed in regard to the maximum number of time-petitions⁶⁸ to be allowed, the maximum time by which the cases were to be settled, etc.
- The posts of Officer on Special Duty (Land Reforms), i.e., the Competent Authority, in regard to the Panposh and Sundargarh Sub-divisions, had been lying vacant, during FYs 2017-18 to 2021-22.

⁶⁶ Due to improper maintenance of records

⁶⁷ Baripada: 20, Champua: 05, Kalahandi: 40, Kaptipada: 09, Koraput: 46, Nabarangpur: 75, Panposh: 07, Sundargarh: 19

⁶⁸ Application seeking extension of time for hearing of the case

- The main reasons for pendency of cases were: (i) non-hearing by the Competent Authority, (ii) non-receipt of inquiry reports from the concerned Tahasildars, (iii) seeking of time petitions by the parties, (iv) absence of parties, *etc.* An instance came to the notice of Audit, where the petitioner, failing to get his grievances addressed by the Competent Authority under the OSATIP Regulation, moved the Hon'ble High Court, Odisha, seeking redressal of his grievance, as discussed in **Paragraph 6.5**.
- In 21 test-checked cases, despite receipt of enquiry reports from the concerned RIs/ Tahasildars, stating that the ST land had been under unauthorised possession, the cases had not been settled by the Competent Authorities, as discussed in **Paragraph 6.3**.
- In three test-checked cases, Audit noticed, from the documents available in the case records, that ST lands had been transferred/ occupied unauthorisedly by one Government organisation and two non-ST persons. However, the cases had remained unsettled, as detailed in **Table 6.2**.

Table 6.2: Cases of unauthorised occupation

Sub-Collectorate	Case No.	Date of registration of the case	Area (in acres)	Alleged unauthorised occupant	Date of last hearing by the Competent Authority
Koraput	37/ 09	24.04.2010	0.14	BDO, Pottangi	20 September 2011
Koraput	01/ 22	10.01.2022	2.28	Non-ST person	09 June 2022
Sundargarh	01/ 18	20.03.2018	0.06	Non-ST person	10 August 2018
Total			2.48		

(Source: Records of the Offices of the sampled Sub-Collectors)

- In one case, it was found that the authorities concerned, had failed to address the grievance of an ST person, who had filed a case under OSATIP, as discussed in **Case Study 6.1**

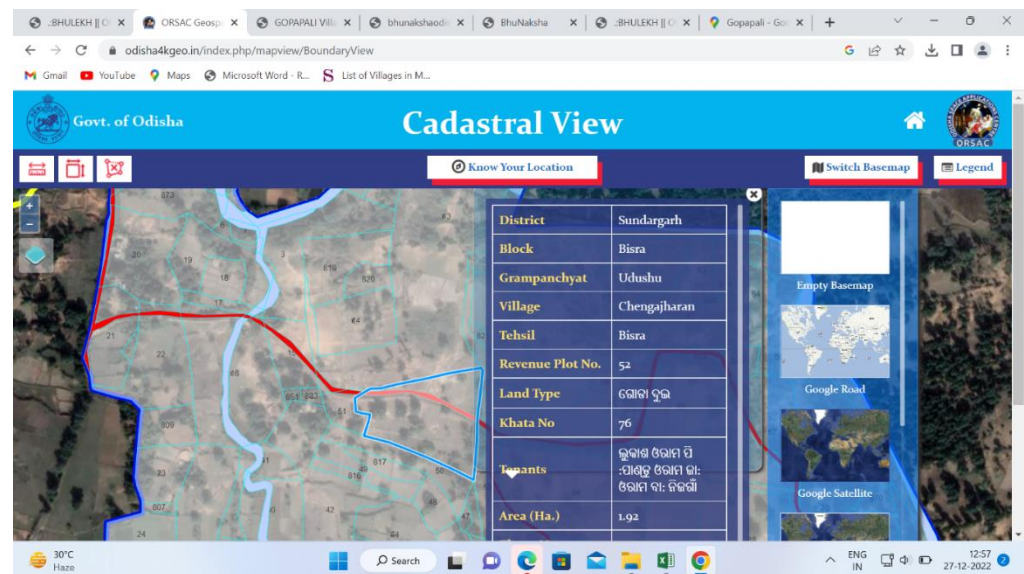
Case Study 6.1

An individual, belonging to the ST community, lodged an FIR (July 2015) in Bisra PS, alleging unauthorised construction of a road on his land, by the Junior Engineer, Public Works Department, Bisra and Sarpanch, Udsu GP. The complainant also approached (November 2015) the Tahasildar, Bisra, for demarcation of his land and deposited the requisite fees. The Tahasildar was to instruct the Revenue Inspector (RI)/ Assistant Revenue Inspector (ARI)/ Amin concerned for demarcation of the boundary with accuracy. The RI/ ARI/ Amin was to prepare a trace map, memorandum of demarcation, obtain signature of witnesses present during demarcation, and submit the report to the Tahasildar. The records made available to Audit, did not indicate any demarcation of the land. The cause of the complainant, not being addressed, the complainant filed (March 2016) a civil suit in the court of Senior Civil Judge, Rourkela, praying for

grant of protection, under the OSATIP Regulation, on the matter of unauthorised occupation of the ST land. The Block Development Officer (BDO), Bisra, submitted before the court, that the petitioner, being a member of the ST community and the civil suit being barred by the provisions of Section 7(E)⁶⁹ of the OSATIP Regulation, the Civil Court had no jurisdiction over the suit. The BDO also submitted before the Court, that the matter would be dealt under the provisions of the OSATIP Regulation. The Court dismissed (December 2019) the petition on the grounds put forth by the BDO.

The complainant again submitted (March 2020) a petition under the OSATIP Regulation, before the Sub-Collector, Panposh. A case, bearing number 02/20, was registered. The Sub-Collector instructed (April 2022) the Tahasildar, Bisra, for submission of the demarcation report and, at the same time, instructed the BDO, Bisra, to submit an enquiry report on the alleged construction of road on the land of the petitioner. The Tahasildar and BDO, instead of submitting reports, as called for, submitted (August 2022) a report, stating that the petitioner did not belong to the ST community. Audit found from the Cadastral view of the plot that a road had been constructed on the petitioner's land. No steps had been taken by the Sub-Collector thereafter, up to September 2022.

Image 6.1: Cadastral view showing construction of road on private land



Audit observed that neither had the Tahasildar responded in demarcating the land of the petitioner, nor had the BDO, Bisra, taken a consistent view over the ST status of the petitioner. The fact, however, remained that the petitioner was in possession of caste certificate, issued by the Tahasildar, Rourkela, in 2009, indicating his category as ST.

Thus, due to the non-responsive approach of the Tahasildar, the BDO and the Sub-Collector, Bisra, over the last seven years, an ST land owner could not get his grievance addressed and the legal protection, available to him,

⁶⁹ Regulation 7 (E): No Civil Court shall have any jurisdiction to try and decide any suit or proceedings, so far as it relates to any manner, which any officer or other Competent Authority, is empowered by or under the Regulation, to decide

as an ST person, became ineffective, due to lack of action by the functionaries responsible for enforcement of the OSATIP Regulation.

In reply, the Sub-Collector, Panposh assured (December 2022) that the case would be disposed of. However, action taken in the matter is awaited (October 2023).

Thus, due to inordinate delay in the disposal of cases, the land rights of the ST members, could not be safeguarded, as per the provisions of the OSATIP Regulation, 1956.

Audit further observed that the RoRs of land owned by ST persons did not contain any endorsement/ mention, declaring restrictions on sale of land to non-ST persons, as per the OSATIP Regulations, which could have curbed occurrence of illegal transactions of land, belonging to ST people. Further, there existed no rules/ guidelines, specifying the manner of maintenance of records of ST lands.

In reply, the Sub-Collector, Koraput, assured that the pending cases would be disposed of, in a time-bound manner. He further stated that the cases were pending due to vacancy of the post of Officer on Special Duty (Land Reforms), since 2015. The Sub-Collectors of Sundargarh, Panposh, Kaptipada and Kalahandi, assured that effective steps would be taken for disposal of the pending cases, while the Sub-Collector, Baripada, attributed the reasons of pendency, to entrustment of the charge of Executive Officer, Municipality, to the Sub-Collector and the Covid-19 pandemic. The Sub-Collectors of Champua and Nabarangpur did not furnish any response (as of October 2023).

The reply furnished by the Sub Collector, Koraput, was not convincing, as the RDM Department had appointed (September 2015) Sub-Collector, Koraput, to perform the functions of the Competent Authority under the OSATIP Regulation, 1956. Further, the replies furnished by the Sub-Collectors were not acceptable, as these were general in nature and without any justified reason.

6.3 Non-disposal of cases, despite receipt of enquiry reports

In 20 test-checked cases, involving alleged unauthorised occupation of 66.57 acres of ST land, the concerned RIs/ Tahasildars had submitted enquiry reports, confirming unauthorised occupation of ST land, between July 2008 and September 2021, as detailed in **Appendix 6.1**. The unauthorised occupants included Government institutions, private companies, private educational institutions, religious institutions and individuals, as shown in **Table 6.3**.

Table 6.3: Categories of unauthorised occupants and manner of utilisation of occupied land

Unauthorised occupants	Land area (in acres)	Manner of utilisation of land
Government organisations (10)	13.44	Construction of School, Medical College, Hospital, Check Dam, Electric sub-station and road
Private organisations (7)	52.12	Mining and allied activities, religious institution, roads and schools
Individuals (3)	1.01	Cultivation
Total	66.57	

(Source: Records of the Offices of the sampled Sub-Collectors and Tahasildars)

Audit observed that, despite the enquiry reports of the concerned RIs/ Tahasildars, having been received between July 2008 and September 2021, they had not been examined by the adjudicating authorities, for their eventual settlement.

Case Study 6.2

Some ST land owners of the Sirijoda village of the Barbil Tahasil, filed (December 2016) a petition before the Secretary, Birsa Munda Co-operative Society Limited, alleging unauthorised occupation of their land, measuring 34.05 acres, by a private company, viz. M.L. Rungta Limited. The Society forwarded (January 2017) the grievance petition to the District Welfare Officer, Keonjhar, with copies to the: (i) Collector, Keonjhar, (ii) Superintendent of Police, Keonjhar, (iii) Sub-Collector, Champua and (iv) Ministry of Tribal Affairs, Government of India. The Collector, Keonjhar, called for (January 2017) an enquiry report from the Sub-Collector, Champua. However, no action was taken on the petition. The Society again submitted (June 2020) a grievance to the Ministry of Tribal Affairs. Subsequently, the Tahasildar, Barbil, reported (November 2020) to the Sub-Collector, Champua, that M.L Rungta Limited had occupied 34.05 acres of ST land forcibly, prior to 1983, for conducting its mining operations and had utilised the same for constructing offices, colony, guest house and hospital. After expiry of the lease period of the mines on 31 March 2020, the said land was occupied by a new lessee of mines. The Sub-Collector, Champua, registered a case in November 2020, but no action was taken. Despite appeals to various authorities, as well as receipt of enquiry report from the Tahasildar, the case had not been settled, as of December 2022.

Thus, due to the inaction of the adjudicating authorities, the legal protection, made available to the STs, as envisaged under the OSATIP Regulation, 1956, was not provided to them, defeating the purpose of the said regulation.

In reply, the Sub-Collectors of Koraput, Panposh, Kaptipada, Sundargarh, Bhawanipatna and Tahasildar, Barbil, assured that steps, for disposal of the ST cases, would be taken.

6.4 Non-execution of warrants and non-correction of RoRs

The Competent Authority, after hearing the parties and examining the inquiry reports submitted by the RI/ Tahasildars concerned, along with the documents submitted by the parties, and upon being satisfied about the allegations made in the petition, is to issue a warrant⁷⁰, for restoration of land in the name of the rightful ST claimant. The restoration warrant is to be executed by the Tahasildar concerned, within the time prescribed in the warrant. After execution of the warrant, the Tahasildar is to return the warrant to the Competent Authority, reporting the fact of execution of the warrant.

6.4.1 Non-execution of warrants

Audit noticed that no register/ consolidated statement, showing details of the restoration warrants issued, executed and returned by the Tahasildars, was being maintained by the Competent Authority/ Tahasildars. Audit scrutinised 104

⁷⁰ Under order 21 Rule 35 of the Civil Procedure Code for restoration of possession

restoration warrants, issued during January 2003 to August 2022, for restoration of 57.506 acres of ST land, in the sampled Sub-Collector/ Tahasildar offices. Of these, 90 warrants had not been executed, five warrants were *sub-judice* and only nine warrants (9 per cent) had been executed.

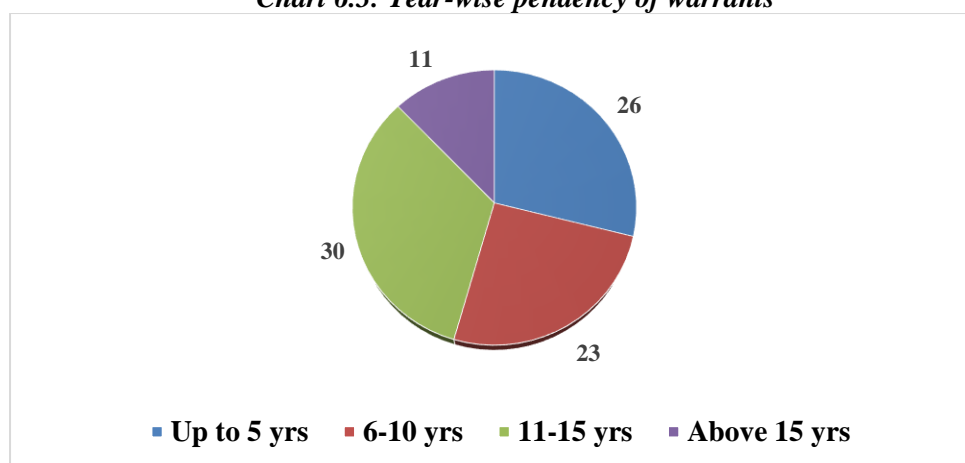
Table 6.4: Overview of warrants issued/ executed

Sub-Collectorate	Area (in acres)	No. of warrants issued	No. of warrants executed	No. of sub-judice warrants	No. of warrants, not executed	Period of pendency
Sub-Collector, Baripada	1.60	7	0	0	7	1 to 12 years
Sub-Collector, Bhawanipatna	4.850	8	3	0	5	4 to 12 years
Sub-Collector, Champua	25.59	12	0	0	12	5 years
Sub-Collector, Kaptipada	13.13	24	0	0	24	4 to 12 years
Sub-Collector, Koraput	0.505	11	0	0	11	1 to 15 years
Sub-Collector, Nabarangpur	1.741	5	0	0	5	4 to 10 years
Sub-Collector, Panposh	9.310	36	6	5	25	1 to 19 years
Sub-Collector, Sundargarh	0.78	1	0	0	1	4 months
Total	57.506	104	9	5	90	

(Source: Records of the Offices of the sampled Sub-Collectorates)

Audit observed that the stipulated time for execution, fixed in the respective warrants (one month), had expired, in case of all the 90 warrants pending for execution (46.141 acres). Periods of pendency of these cases are depicted in **Chart 6.3**.

Chart 6.3: Year-wise pendency of warrants



Audit further observed that there was no mechanism to seek reasons for non-execution of warrants, from the Tahasildars concerned. Only in the case of Sub-Collector, Panposh, Audit noticed that the Sub-Collector had twice reminded the Tahasildar, Birsa, to execute the pending warrants. Issue of such reminders, in other Sub-Collectorates, was not noticed in Audit. The Sub-Collectors, despite having been designated as the Competent Authorities for adjudication

of cases filed under the OSATIP Regulations, failed, both in the timely disposal of the cases, as also in securing execution of the warrants that had been issued by them.

While the OSATIP Regulations aimed at protecting the landed property rights of STs, non-execution of warrants, by the Tahasildars, defeated the purpose of the regulation. However, no responsibility had been fixed on the Competent Authorities, for non-execution of the restoration warrants.

In reply, the Sub-Collectors of Koraput, Sundargarh, Kaptipada, Bhawanipatna and Tahasildars of Semiliguda and Bisra, assured that steps for execution of warrants, would be taken. Responses of the Sub-Collectors of Nabarangpur, Champua and Tahasildar, Lanjigarh were not furnished to Audit (as of July 2023).

6.4.2 Non-correction of records in executed warrants

Audit examined all the nine warrants, executed between June 2010 and February 2013, involving restoration of 8.40 acres of land, and noticed that, in six cases, RoRs of 3.82 acres of land, had not been updated, and they stood recorded either in the names of non-ST persons or were showing as having been transferred to other non-ST persons, even after restoration of land, as shown in **Table 6.5**.

Table 6.5: Restoration of ST land, without correction of RoRs

Case No.	Name of the Tahasil	Land details	Date of execution of warrant
17/06	Bisra	Village: RTU 29, Khata No. 319/738, Plot No. 385/1069, Area: 0.07 acre	Possession was restored on 10 December 2010, but RoR stood recorded in the name of a non-ST person.
42/06	Bisra	Village: RTU 29, Khata No. 319/414, Plot No. 385/1205, Area: 0.05 acre	Possession was restored on 28 September 2010, but RoR had not been corrected in favour of the ST person. Subsequently, the said plot was transferred in favour of a non-ST person and the Tahasildar mutated (17.07.2013) the land, vide case No. 459/2010 (new Khata No. 319/1641). Subsequently, the plot was again transferred, in favour of another non-ST person, vide mutation case No. 174/2016 (Khata No. 319/1784).
100/07	Bisra	Village: RTU 29, Khata: No. 319/1258, Plot No. 385/1627, Area: 0.03 acre	Possession was restored on 28 September 2010, but the plot stood recorded in the name of a non-ST person.
01/10	Lanjigarh	Village: Kashibadi, Khata No. 112/08, Plot Nos. 69 & 70 Area: 1.50 acres	Possession was restored on 30 November 2012, but the land stood recorded in the name of a non-ST person.
48/09	Lanjigarh	Village: Umer, Khata No. 10, Plots No.: 162&166, area 1.44 acre	Possession was restored on 25 February 2013, but the land stood recorded in the name of a non-ST person.

Case No.	Name of the Tahasil	Land details	Date of execution of warrant
46/09	Lanjigarh	Village: Irkuli, Khata No. 25/04, Plot Nos. 10/412, 84/413 & 89, Area: 0.73 acre	Possession was restored on 22 June 2010, but the land stood recorded in the name of a non-ST person.

(Source: Records of the Offices of the test-checked Sub-Collectors and Tahasildars)

In one case (Case No. 42/06), due to non-updation of the RoR, a non-ST person transferred the ownership of land to another non-ST person. Such instances of non-correction of RoRs were fraught with the risk of fraudulent sale of land.

In reply, the Tahasildar, Bisra, assured that the RIs concerned and Record Keepers would be instructed to verify the status of execution of warrants and to submit a detailed report, regarding non-correction of RoRs, in cases where land had been restored to ST person/ mutation of land had been restored with the ST persons. Response of Tahasildar, Lanjigarh, was not furnished to Audit (as of October 2023).

Recommendation 6.1: Responsibility may be fixed on the Tahasildars for default in submitting enquiry reports, as well as for non-execution of warrants, issued by the Competent Authorities, for restoration of land, in favour of the legally entitled ST persons.

6.5 Non-restoration of possession/ non-payment of compensation, for unauthorised occupation of ST land

An area of 2.38 acres of land, under Khata No. 35, Plot No. 215, of village Kunduli, under Semiliguda Tahasil, stood recorded in the name of an ST person. A Community Health Centre (CHC), Kunduli, was constructed during 1966 on the said land, without ownership of land.

One of the legal heirs of the recorded tenant, belonging to the ST community, filed (February 2013) a petition before the Sub-Collector, Koraput, praying for restoration of possession of his land, measuring 2.38 acres⁷¹ at village Kunduli, under the Semiliguda Tahasil of Koraput district. It was mentioned in the petition that the CHC at Kunduli had been constructed unauthorisedly, over his land. A case was registered (May 2013) under the OSATIP Regulation. Due to non-settlement of the case by the Sub-Collector, the petitioner filed (2015) a writ petition before the Hon'ble Orissa High Court, praying for restoration of the land. The Hon'ble High Court directed (24 March 2017) to obtain instructions, regarding disposal of application, by the end of April 2017. The Sub-Collector, Koraput, instructed (February 2020) the Medical Officer (MO), CHC, Kunduli, for compliance. The MO, CHC, Kunduli, intimated (April 2021) that the legal heirs of the recorded tenant were demanding permanent job, which was not under his control. The MO also requested that a Government building be provided for shifting the hospital and handing over of the land to the claimant, without any interruption to public services. The Sub-Collector, Koraput, instructed (December 2021) the Tahasildar, Semiliguda, to take necessary steps immediately, regarding payment of compensation to the ST land

⁷¹ Khata No. 35, Plot No. 215

owner, or shifting of CHC, and to submit the action taken report in this regard, for disposal of the case. In response, the Tahasildar instructed (29 January 2022) the Revenue Inspector, Kunduli, to conduct an enquiry into the matter and submit a report within seven days, for taking further action. However, no report was submitted by the RI concerned. The Tahasildar had also not followed up the matter, for complying with the orders of the Hon'ble Court.

Thus, neither had compensation been paid, nor had possession of the ST land been restored, despite the orders of the Competent Authority.

In reply, the Tahasildar, Semiliguda, assured that appropriate steps would be taken for payment of compensation or shifting of CHC, Kunduli.

6.6 Non-restoration of ST land, unauthorisedly occupied by CHC, Nandahandi

The Sub-Collector, Nabarangpur, disposed of one OSATIP case (34/2013), without further processing, on grounds of having no merit. The case was regarding restoration of 1.12 acres of land (Village: Dangarbheja, Khata No. 245, Plot Nos. 908 & 909, under Nandahandi Tahasil) in favour of an ST land owner. The petitioner again filed (September 2021) a grievance with the Sub-Collector, for restoration of the said land. As per the report submitted (April 2022) by the Tahasildar, Nandahandi, the land stood recorded in the names of three individuals of village Dangarbheja. The CHC, Nandahandi, had also been constructed over the private land, during 1976-77. CHC authorities failed to submit any document in support of their legal occupation of the land. However, no action, regarding restoration of land/ payment of due compensation, to the ST land owner, had been taken by the Sub-Collector.

6.7 Short award of compensation of ₹ 2.27 crore, 'to ST land owners', on transfer of their land to non-ST persons

As per Regulation 3 B (3) of the OSATIP Regulations, 1956, on receipt of the declarations/ information regarding possession of ST land, during 4 October 1956 and ending on the date of commencement of the Amendment Regulation 2000 (4 September 2002), the Sub-Collector is to make necessary enquiry about all such transactions of transfer and if he/ she finds that the member of ST had been defrauded of his legitimate right, he/ she shall declare the transaction null and void. However, as per Regulation 3B(3)(b), where any building or structure has been erected on the agricultural land, prior to such finding, the Competent Authority shall fix the price of such land, in accordance with the principles laid down for fixation of price of land, in the Land Acquisition Act, 1894.

The Supreme Court of India decreed⁷² (November 2003) that payment of compensation under Section 3 B 3(b) to the ST owner of the encroached land was also applicable to cases under Sections 3 (2) and 3-A of OSATIP Regulation 2 of 1956, to determine the quantum of compensation and settlement of land in favour of Non-ST encroachers. In pursuance of the decree, the RDM Department issued (February 2007) a clarification stating that payment of compensation to the ST owner of the encroached land, fixed under Regulation

⁷² Case No. Appeal (Civil) 11483 of 1996, Amrendra Pratap Singh vs Tej Bahadur Prajapati & Others

3 B (3)(b), was also applicable to cases under Sections 3 (2)⁷³ & 3-A⁷⁴ of Regulation 2 of 1956, to determine the quantum of compensation and settlement of land, in favour of non-ST encroachers. The Officer on Special Duty (LR), acting as Competent Authority, could exercise powers, under Section 3 (2) and 3(A) of the OSATIP Regulation 2 of 1956, to entertain cases and to determine the quantum of compensation and settlement of land, with non-ST persons, in accordance with the Orissa Government Land Settlement Act. The modality and procedure for making award for payment of compensation to the transferor (ST person), as provided under Section 3 B 3(b) of Regulation 2 of 1956, was *mutatis mutandis* applicable to the cases under Sections 3 (2) and 3(A) of the said Regulation.

Audit scrutinised 10 finalised cases and noticed that 9.889 acres of ST land had been occupied unauthorisedly by non-ST persons, by construction of dwelling houses/ roads/ buildings. On the basis of mutual consent of the parties, the Competent Authorities (Sub-Collectors of Sundargarh and Panposh) had awarded compensation of ₹2.32 crore, payable to the ST land owners, towards sale of land to the non-ST persons. The Competent Authority had also directed the Tahasildars to mutate the RoRs in favour of the non-ST occupiers.

Further scrutiny revealed that, in regard to one case (Case No. 03/20), the Competent Authority (Sub-Collector, Sundargarh) had passed award of compensation of ₹4.80 lakh, which included ₹2.40 lakh towards BMV of 2.40 acres of land and ₹2.40 lakh towards 100 *per cent* solatium. No amount had however, been paid towards the multiplying factor,⁷⁵ as the land was within 10 kilometers from the urban area. However, in regard to the other nine cases, involving 7.499 acres of land, only the land value of ₹2.27 crore, as per the BMV, had been awarded. Other components of the award, *i.e.*, Solatium of ₹2.27 crore and multiplying factor, had not been paid, due to which there had been short award of compensation of ₹2.27 crore (excluding the amount payable towards multiplying factor).

In reply, the Sub-Collector, Sundargarh, stated that the awarded amount had already been received by the ST land owner, without any objection. The Sub-Collector, Panposh, noted the Audit observation for future guidance.

The reply of the Sub Collector, Sundargarh, is not acceptable, since the award amount should have been paid to the ST land owner, as per the provisions of the RFCTLARR Act, 2013.

Recommendation 6.2: The timeframe for disposal of cases, filed under the OSATIP Regulations, 1956, may be fixed and measures may be taken to ensure that the Competent Authorities dispose of the pending cases, within the specified timeframe.

⁷³ Transfer of immovable property belonging to ST, in contravention to OSATIP Regulation, 2000

⁷⁴ Unauthorised occupation of any immovable property of a member of the ST by way of trespass or otherwise

⁷⁵ The market value of land, fixed under Section 26 of the RFCTLARR Act, 2013, is multiplied by a factor, one to two, based on the distance of the project from urban area