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LEGAL RESOURCE CENTRE

COMPENDIUM OF JUDGMENTS ON THE FOREST RIGHTS ACT 2015–2018

Edited by
Shomona Khanna | Nikita Agarwal

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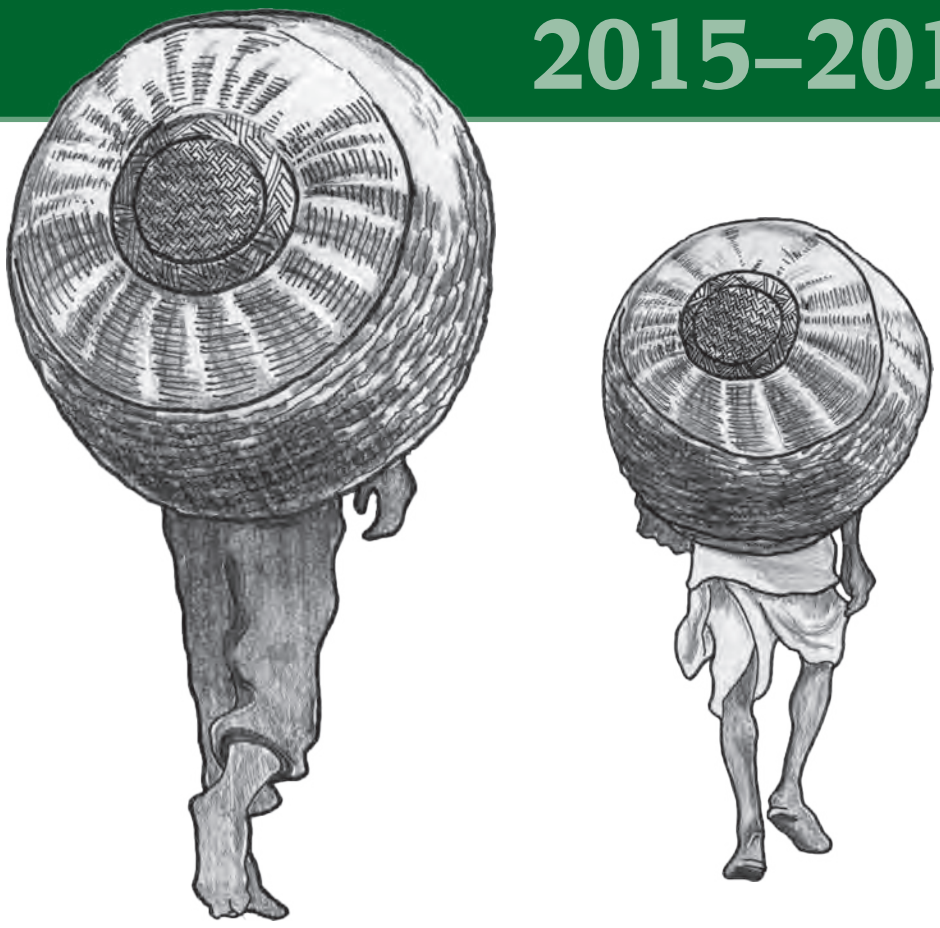

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This publication has been produced with support from Vasundhara, Bhubaeshwar.

NOTE

The judgments and orders in this volume include compilations prepared by the editors up to 30.05.2025. While every effort has been made to ensure accuracy of the legal information provided in this publication, it is advised that before using the same for litigation or advocacy purposes, the content be confirmed from the original order/judgment.

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Editorial inputs: Lovleen Banga, Stellar Quo

Preface

In December 2015, a first of its kind *Compendium of Judgments* on the *Forest Rights Act 2007–2015* was jointly published by the Ministry of Tribal Affairs, Government of India and the United Nations Development Programme.[1] Although the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter 'Forest Rights Act') had been in force for just eight years at the time, already a nascent jurisprudence had begun to evolve around it. While compiling the court decisions for that volume, it came as a surprise that the Forest Rights Act is not just being vigorously argued and asserted, but there had been considerable discussion, debate and even experimentation taking place within the courts around this law.

In the ten years since the first Compendium was released in December 2015, the statutory landscape around environmental conservation and protection has seen enormous change. The stringent controls around diversion of forests for non-forestry purposes have been enfeebled with the amendment to the Forest Conservation Act, 1980 (now called Van Sanrakshan Evam Samvardhan Adhiniyam, 1980).[2] Environmental offences across an array of environmental protection and anti-pollution laws have been decriminalized, with 'ease of doing business' becoming the new mantra.[3] In this increasingly gloomy legislative domain, it becomes all the more urgent to document developments around the Forest Rights Act inside the courts.

The present volume has been conceptualized as a companion to the December 2015 Compendium (supra), picking up where the previous volume left off. The sheer number of court orders and decisions has compelled us to split the developments of the last ten years into two separate volumes; the present volume includes key court orders and judgments from the period 2015 to 2018, and a further volume is under process which will cover the period 2019 to 2024. As with the previous volume, for each judgment, we have included a brief summary and an editorial note where the key legal issues are summarised and contextualized.

It needs no reiteration that tribal and forest dwelling communities are among the most marginalised communities in India. There is extensive evidence that the colonial era forest law and bureaucracy treated forest dwelling communities as 'encroachers' on state-owned forest lands, and this approach unfortunately continued in post-independence India as well. It is also well-documented that Adivasi and forest dwelling communities have faced appalling atrocities at the hands of state machinery.[4] Yet, forest dwellers are averse to approaching courts of law for redressal.

No small part in this hesitation has been played by the fact that forest dwelling and Adivasi communities rarely have the resources to approach courts, where legal proceedings are slow and expensive, apart

[1]Khanna, Shomona, C*ompendium of Judgments on the Forest Rights Act 2007–2015*, Ministry of Tribal Affairs, Government of India and UNDP, New Delhi (2015). Available at https://tribal.nic.in/downloads/FRA/3.%20Compendum%20of%20Judgements%20on%20FRA.pdf

[2]The *Forest Conservation (Amendment) Act, 2023*, as also the *Van Sanrakshan Evam Samvardhan Rules, 2023* and certain Guidelines issued thereunder have been challenged in the Supreme Court in a batch of writ petitions entitled *Ashok Kumar Sharma & Ors. vs. Union of India & Ors*. WP (C) 1164 of 2023, etc.

[3]See, for instance, the *Jan Vishwas (Amendment of Provisions) Act, 2023* which has, among other legislations, amended the *Environment (Protection) Act, 1986* to remove the punishment of imprisonment for contravention of the Act, replacing it instead with monetary penalties. The jurisdiction of courts has also been removed, and has been replaced by bureaucrats designated as Adjudicating Officers.

[4]See, for instance, the 29th Report of the Commissioner for Scheduled Castes and Scheduled Tribes, the late Dr B.D. Sharma.

from being mystified and completely incomprehensible to them. Not only were forest dwellers criminals in the eyes of the law, their traditional and customary ways of life, interwoven with the forests and forest resources, were also perceived as being on the 'wrong' side of the law. Legal professionals representing such communities before the courts in a variety of fact situations clung to the few positive court decisions as if to lifelines. Thus, the decisions of the Supreme Court in *Samatha*[5] and *Pradip Prabhu*[6] were fiercely guarded, even as these were employed to buttress legal arguments both inside and outside the courtroom. The few courageous petitioners who approached the constitutional courts for protection of their traditional rights over forests and forest resources, did so with trepidation, and often found themselves dismayed.

The enactment of the Forest Rights Act has brought a paradigm shift in the architecture of forest law which had existed for almost one and half centuries, and brought the very people who were 'offenders', into their rightful place as right holders. The Preamble states categorically that forest dwelling communities are *'integral to the very survival and sustainability of the forest ecosystem'*[7] and sets out to correct the *'historical injustice'* which had separated these communities from the fullness of citizenship in an independent nation.

Towards this end, the Forest Rights Act provides a simple yet robust mechanism for forest rights recognition which is located within the village-level Gram Sabha or village council, thereby democratizing the decision-making process, and making it accessible in a way the courts have never been. The decision-making then traverses to specially constituted committees at the sub-division and district level. Finally, and this is significant, the Forest Rights Act invests forest-dwelling communities with the authority to protect, conserve, manage, and preserve the forests and biodiversity which form their community forest resources, and also requires them to prevent activities which could result in destruction of such resources (Section 5).

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 (as amended up-to-date) (hereafter 'Forest Rights Rules') provide the necessary detailing for how these mechanisms are to function, laying down numerous procedural protections which are also an inherent part of the law. Executive instructions in the form of guidelines, circulars, and clarifications have been issued by the Central government through the Ministry of Tribal Affairs, which is the nodal ministry for the implementation of this law,[8] even as several state governments have taken this process forward by issuing instructions of their own. Although progress has been uneven and fragmented, it is nothing short of remarkable, with state governments, civil society, community-based organisations, and communities taking up the implementation of this law with vigour and enthusiasm, bringing rights to fruition which only 17 years ago were relegated to the cold desert of illegality.

Since the Forest Rights Act provides a three-tier rights recognition mechanism at the village, sub-divisional and district level, these are the locations where the content and interpretation of the law have most often been asserted, argued, debated, and resolved. Many of these debates have been passionately contested in the public domain, such as the requirement for free prior informed consent of Gram Sabhas before diversion of their community forests for non-forest purposes such as mining. Other contestations, such as the conversion of unsurveyed and forest villages into revenue villages, have been resolved in a more matter-of-fact manner through clarifications issued in the nature of executive instructions and circulars.[9]

An early deterrent to forest-dwelling communities asserting their rights under this new law in courts came in the form of a well-orchestrated challenge to its constitutional validity. In a flurry of activity

[5]*Samatha vs. State of Andhra Pradesh & Ors*. (1997) 8 SCC 191.
[6]*Pradip D. Prabhu vs. State of Maharashtra & Ors*. 1995 Supp (3) SCC 450.
[7]Preamble to the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*, at paragraph 3.
[8]See Sections 11 and 12 of Forest Rights Act.
[9]See, for instance, Guidelines dt. 08.11.2013 bearing F. No. 23011/33/2010-FRA issued by Ministry of Tribal Affairs, on conversion of all forest villages, old habitations, unsurveyed villages, etc., into revenue villages under Section 3(1)(h) of the Forest Rights Act.

almost immediately upon the statute being brought into force (and in one case[10] even prior to that date), numerous writ petitions were filed in the Supreme Court and various high courts by individuals and organisations which were bitterly opposed to the statute. These petitions raised a variety of arguments challenging the constitutionality of the statute, urging the courts to 'stay' its implementation or be faced with decimation of India's forest cover. Although a few initial interim orders were passed curtailing issue of *pattas* without the permission of the court, there has been no 'stay' on the implementation of the Forest Rights Act. On the contrary, some of the interim orders in these cases have categorically directed that the forest dwellers will not be dispossessed illegally and without completing the due procedure as provided under the Forest Rights Act and Rules.[11]

For a community uncertain of its standing before the law for decades, this was not an encouraging start to engagement with the judicial process. Although the Supreme Court transferred this entire batch of petitions to itself, purportedly to ensure a streamlined examination of the constitutional issues arising, its interim order dt. 13.2.2019 marked another watershed moment.[12] This order directed that all forest dwellers whose claims under the Act were rejected be treated as 'encroachers' and summarily evicted. Although this order was quickly placed 'on hold' by the same bench a mere 13 days later,[13] there has been a further chilling effect on the millions of forest dwellers who continue to face egregious violations by state parties. No doubt the decision of the highest court which emerges in this matter will have important implications.

The pendency of these petitions challenging the constitutional validity of the Forest Rights Act has not, however, meant the courts remained silent on questions of law relating to forest rights, or hesitated to render relief in specific situations which came before them. The *Niyamgiri* judgment in April 2013,[14] for instance, made international history when a village-level referendum led to cancellation of a multi-crore mining project. The judgment has since been quoted in a wide variety of court decisions and in different contexts. Several high courts have relied upon it to arrive at remarkable decisions of their own, taking the essential spirit of the Forest Rights Act forward and giving it new strength.

The notion that Gram Sabhas of forest-dwelling communities have a role to play in decision-making on development initiatives is not unique to the Forest Rights Act, finding mention in the Panchayats (Extension to Scheduled Areas) Act, 1996 (or PESA) as well. However, the *Niyamgiri* judgment gives the Gram Sabha's role a constitutional context, and it is for this reason that the decision has been cited with approval in several subsequent decisions, most recently in December 2024 by another three-judge bench decision of the Supreme Court relating to sacred groves.[15]

The body of jurisprudence growing around the Forest Rights Act demonstrates some clear trends in other areas of the law as well. A very large proportion of the cases which are being decided by the constitutional courts relate to writ petitions filed by individuals or specific communities seeking protection from dispossession from their lands. Where previously it would have been very difficult to obtain such judicial directions, with the enactment of the Forest Rights Act, courts have willingly issued protective orders even at the preliminary stage of hearing. While these orders rarely mention Section 4(5) of the Act which mandates that no person shall be dispossessed if the rights recognition process is underway, or Articles

[10]For instance, WP No. 21479 of 2007 *JV Sharma & Ors. vs. Union of India & Ors*. was filed before the High Court of Andhra Pradesh in November 2007, in advance of the notification bringing the Forest Rights Act into force.

[11]For instance, the Andhra Pradesh High Court in an interim order dt. 10.05.2009 in WP (C) No. 21479/2007, *J.V. Sharma & Ors. vs. Government of India & Ors*. directed:

> g) *Further the person in possession of any of the lands shall not in any way disturb or evicted till the disposal of the writ petition.*

[12]Interim order dt. 13.02.2019 in *Wildlife First & Ors. vs. Union of India & Ors*. WP (C) 109 of 2008, Supreme Court of India, pending.

[13]Ibid, Interim order dt. 28.02.2019.

[14]*Orissa Mining Corporation vs. Ministry of Environment & Forests & Ors*. (2013) 6 SCC 476.

[15]*T.N. Godavarman Thirumalpad vs. Union of India & Ors.: In Re: Aman Singh* (2024 SCC Online SC 3778).

21 and 300-A of the Constitution, it is clear that the substantive change in legal regime has enabled constitutional courts to issue protection orders against dispossession. Such orders often manifest the hesitation of constitutional courts in engaging with questions of fact; however, in the rare case a court has crossed this boundary into determination of facts, its decision has been painfully laboured.

Unlike in the previous Compendium of December 2015, this volume includes several interesting decisions where post-rights recognition scenarios have been vigorously contested by the parties, compelling the courts to write detailed and thoughtful decisions. These range from an Adivasi couple struggling to obtain an electricity connection for their homestead,[16] to a large batch of cases relating to auction and sale of minor forest produce.[17]

This volume also includes several judgments where courts have erred in the application of the law, and in a few instances demonstrated the deep-seated prejudices mainstream legal professionals still hold where Adivasis and forest-dwellers are concerned. Forest-dwelling communities and civil-society organisations have developed a robust understanding of the Forest Rights Act and its transformative potential, while the courts still struggle to comprehend its meaning, intent, and even the procedural innovations it has created. Forest dwellers who approach judicial avenues seeking protection of their rights in letter and spirit of the law are often bewildered that the courts view them through a reductive lens, and also baffled at the first principle errors in court orders.

We have made an effort in this volume to address the specific errors in each such case, and point towards possible alternative perspectives and interpretations which can further the robust and holistic approach of the Forest Rights Act. Indeed, some of these decisions are pending in appeal before the Supreme Court at the time of releasing the present volume. It is also a matter of concern that the approach of the courts to other traditional forest dwellers continues to be distrustful, with the plain meaning of the law being contorted in inexplicable ways to decide against them.[18]

Where extremely vulnerable communities are concerned, the response of the courts needs to move away from a hyper-technical approach to one that recognizes the discrimination these communities face at multiple levels. Perhaps the earliest court order under the Forest Rights Act was in response to a writ petition filed by the Muslim *Van Gujjar* community before the Uttarakhand High Court as far back as December 2008.[19] This pastoral community traverses arduous terrain with their herds, from the high mountains of the Himalayas to the plains of the Terai, and faces intense hostility from the forest bureaucracy, and now increasingly from majoritarian communities. The *Van Gujjars* have been unrelenting in their efforts to assert their lawful rights under the Forest Rights Act. And yet, we must acknowledge that the judicial system, by unerringly passing the responsibility back to the executive, has not lived up to their expectations.

Also included in this compendium are a few decisions by the National Green Tribunal, which has only recently expanded its own jurisdiction to matters relating to the Forest Rights Act, even though it is not included in the Schedule of laws over which it has statutory jurisdiction.[20] In another important decision which will have implications on this issue in coming years, the NGT has vested itself with jurisdiction over the Wildlife Protection Act, 1972 as well.[21]

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[16]See, for instance, *State of Kerala & Ors. vs. Ravi C.A. & Ors*. judgment and order dt. 22.09.2015 in WA 1994 of 2015, Kerala High Court, reproduced in this volume.
[17]See *Mohammed Sultan Ahmed vs. Chhattisgarh State Minor Forest Produce (T&D) Cooperative Federation Limited, etc*. (2013 SCC Online Chh 10) reproduced in this volume.
[18]See, for instance, the decision in *Kashinath & Ors. vs. State of Maharashtra & Ors*. (2016 SCC Online Bom 1127) by the Bombay High Court, reproduced in this volume.
[19]*Sattar vs. State of Uttarakhand & Ors*., judgment dt. 04.12.2007, AIR 2008 Utt 18. See Shomona Khanna, *Compendium of Judgments on the Forest Rights Act: 2007–2015*, published by Ministry of Tribal Affairs, Government of India (2016) at p. 568.
[20]See T*hemrei Tuithung & Ors. vs. Union of India & Ors*. (2017 SCC ONLINE NGT 967) reproduced in this volume.
[21]See *Bimal Gogoi & Anr. vs. State of Arunachal Pradesh & Ors*. (2017 SCC ONLINE NGT 731) reproduced in this volume.

The exercise and assertion of rights under the Forest Rights Act is intertwined with a variety of laws, such as laws relating to forest diversion, environmental protection, water and groundwater resources, soil preservation, and even the right to information. However, the laws governing these different areas tend to operate in silos, artificially divorced from each other. As Albie Sachs J. of the South African Constitutional Court has observed in a different context, the law has a tendency to narrow down its perspective to a 'microscopic truth', establishing perimeters and reaching inferences within these narrow and artificial boundaries.[22] The Forest Rights Act challenges this 'microscopic truth' and the resulting unnatural fragmentation of the forest ecosystem, of which forest dwellers are an integral part. Instead, the Act addresses the forests, forest resources, biodiversity and the lives of forest dwellers in a holistic manner.

It is not surprising, therefore, that there continues to be considerable tension between the Forest Rights Act and pre-existing forest legislation entrenched in such compartmentalization. A 2016 civil society report estimated that, if implemented in its true intent, the extent of forest land where forest rights potentially ought to be recognized is 40 million hectares, benefitting 150 million people.[23] The report itself acknowledges this is a conservative estimate. Yet the forest bureaucracy, in particular, has presented stiff resistance to the Forest Rights Act and all that it represents. An updated status report[24] of state-wise implementation of the Forest Rights Act in 21 states published by the Ministry of Tribal Affairs states that of approximately 51 lakh claims filed till the end of 2024, about 24.6 lakh claims (or about 48%) were approved, while 18.6 lakh claims had been rejected. The report also estimates that the forest rights recognised cover only about 7.8 million hectares of forest land, and even within these areas the forest dwellers continue to face challenges.

The Forest Rights Act has been pivotal in providing a powerful vocabulary to the centuries-old struggles of the Adivasi and forest-dwelling communities to regain control over their ancestral homelands. It has provided the legislative landscape for a bold new imagination of self-governance, environmental conservation and property relations, and opened creative pathways for translating complex and critical understanding of forest ecosystems into the formal language of governance. As the collection of judgments in this volume will demonstrate, very few of these articulations have reached the courts so far. It is hoped the present volume provides a deeper and wider understanding of the transformative potential of the Forest Rights Act both inside and outside the court room.

[22]Albie Sachs, *The South African Truth Commission*, 63 Mont. L.Rev. (2002) at page 34. Available at https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=2242&context=mlr

[23]*Potential for Recognition of Community Forest Resource Rights under India's Forest Rights Act: A Preliminary Assessment*, by Rights and Resources Initiative, Vasundhara and Natural Resources Management Consultants (2015) at pp. 5–6.

[24]https://tribal.nic.in/downloads/FRA/MPR/2025/(A)%20MPR%20Jan%202025.pdf

Acknowledgements

Even as the previous *Compendium of Judgments on the Forest Rights Act 2007–2015* went to press in December 2015, our prescient colleague Tusharika Mattoo had begun to compile court material for the next volume. We cannot thank her enough. It has taken ten years, and there have been so many young lawyers, interns, and researchers who have been part of this journey, carried the burden a while, and then gone their way. Gayatri Raghunandan, Kanika Sharma, Khushboo Pareek, Shivank Jhanji, Nitai Hinduja, Maheshwari Mawase, Unmekh Padmabhushan, R. Sai Chandu Goud, Tanishqua Dhar and Anchal Kanthed have all contributed in ways, big and small, keeping this project alive for a whole decade.

Maintaining track of court orders from around the country on the Forest Rights Act is no mean task, and we could not have done this without the meticulously careful work of Subhashini Shriya. Her methodical updates motivated us to launch a less ambitious but more regular newsletter last year, *FRA Updates From the LRC Desk*.

We cannot overemphasise how important the contribution of Campaign for Survival and Dignity, and of the forest rights movement generally, has been in giving this volume its present shape. It is a privilege to engage with activists and community leaders who are relentless in their curiosity about legal developments around the Forest Rights Act, and have demanded that we demystify these developments for them. A special mention here of Sricharan Behera, who sent us a list of questions two years ago and catapulted us into completing this long overdue work. And to our dear friend and fellow traveler Sudha Bharadwaj, for her gentle appreciation which means the world to us.

Many thanks also to Kundan Kumar, Y. Giri Rao, and Tushar Dash, all of whom have held official positions at Vasundhara on and off in the last decade, but have been consistent in holding us accountable to complete this volume and the next! Your friendship and solidarity keep us focused and marching forward.

Our heartfelt thanks to Lovleen Banga, who took on the tasks of editing, planning, putting together, and managing the various pieces of work that went into transforming our raw manuscript into its present published form. She gave us the tough love we desperately needed. Thanks are also due to Dilshad for working on the design and layout, and completing it in record time. It has been a joy to work with you both.

There are no words to thank Arun Ferriera for his artwork and stunning cover illustration. Working with you has been truly humbling while also being thrilling.

And finally, a lot of appreciation for the dedication of the peripatetic team that calls itself the Legal Resource Centre – Sanghamitra Dubey, Astha Saxena, Rahul Shrivastava, Puja, Radhika Chitkara, Amala Dasarathi, Ayesha Nasir Alavi; and to C.R. Bijoy who does (not!) know he is part of this crew.

Shomona Khanna

Nikita Agarwal

30 May 2025, New Delhi

My final words of advice to you are

Educate, Agitate and Organise;

have faith in yourselves and never lose hope.

I shall always be with you

as I know you will be with me.

For ours is a battle, not for Wealth or for Power.

It is a battle for Freedom.

It is a battle for the Reclamation of Human Personality.

Dr B.R. Ambedkar

20 July 1942 at the All-India

Depressed Classes Conference Nagpur

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (No. 2 of 2007)

PREAMBLE

An Act to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwellings Scheduled Tribes and other traditional forest dwellers;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;

AND WHEREAS it has become necessary to address the long-standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

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SUPREME COURT OF INDIA

TABLE OF JUDGMENTS AND ORDERS

Wildlife Trust of India & Ors. vs. Union of India & Ors., etc.

WRIT PETITION (CIVIL) NO. 50 OF 2008, ETC.
SUPREME COURT OF INDIA
29.01.2016 (INTERIM ORDER)
CORAM: J. CHELAMESWAR, ABHAY MANOHAR SAPRE & AMITAVA ROY, JJ.

SUMMARY

This is an interim order passed by the Supreme Court in a batch of writ petitions challenging the constitutional validity of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). When the matter came up for hearing, the Act had already been in effect for almost a decade. Rather than make submissions on constitutional validity, the petitioners drew attention to the fact that at that point, approximately 20.5 lakh claims out of the 44 lakh claims filed under the Act had been rejected across different states in India.

They argued that since these claims were filed by persons in possession of a 'certain parcel of land located in the forest areas', those whose claims had been rejected ought to be evicted from this land. The court directed the state governments to file affidavits providing the following details:

> ...number of claims rejected within the territory of that State and the extent of land over which such claims were made and rejected and the consequent action taken up by the State after the rejection of the claim, with all appropriate data in support of the above-mentioned information within a period of two weeks from today.

The matter was adjourned for two days to address concerns raised by the State of Tamil Nadu in one of the pending petitions before the court.

EDITOR'S NOTE

Pursuant to this order, while state governments filed affidavits providing the information as directed, the court turned its attention to hearing detailed submissions from all parties regarding the constitutional issues before it. Specifically, the court examined the challenge to the constitutional validity of the Forest Rights Act on the ground that Parliament did not have the legislative competence to enact a law relating to 'forest land' under the Constitution of India. These arguments continued well into 2017 when the court passed the following order:[1]

> Having heard the learned counsel appearing for various parties on the above-mentioned question, we are of the opinion that the submissions on the other issues are also required to be heard, to have a comprehensive view of the matter.

Unfortunately, while the court did not return to the constitutional issue at hand, in February 2019 a different bench of the court did pass orders for the eviction of forest dwellers whose claims under the Forest Rights Act had been rejected, accepting the submission of the petitioners that such forest dwellers must be presumed to be 'encroachers'.[2] This order was placed 'on hold' by the same bench two weeks later, placing a stay on eviction of forest dwellers.[3] The main matter relating to the constitutional validity of the Forest Rights Act continues to remain pending.

[1]Order dt. 31.03.2017 in Writ Petition (C) No. 50 of 2008, Supreme Court of India, pending.
[2]Order dt. 13.02.2019 in Writ Petition (C) No. 109 of 2008, Supreme Court of India, pending.
[3]Order dt. 28.02.2019 in Writ Petition (C) No. 109 of 2008, Supreme Court of India, pending.

ORDER

In these batch of matters, the constitutional validity of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and also the questions pertaining to the preservation of forests in the context of the above-mentioned Act, fall for the consideration of this Court.

Mr. Shyam Divan, learned senior counsel for the petitioner placed before us certain statistical data which indicates that as on 30th September, 2015, approximately 44 lakh claims for recognition of the Rights under the above-mentioned Act and grant of Pattas came to be filed before the authorities competent to deal with those claims in various States out of which some of the claims were accepted and some were rejected. From the information placed before this Court by the petitioners, it appears, approximately 20.5 lakh claims were rejected in the above-mentioned 44 lakh claims.

Obviously, a claim in the context of the above-mentioned Act is based on an assertion that a claimant has been in possession of a certain parcel of land located in the forest areas. If the claim is found to be not tenable by the competent authority, the result would be that the claimant is not entitled for the grant of any Patta or any other right under the Act but such a claimant is also either required to be evicted from that parcel of land or some other action is to be taken in accordance with law.

Therefore, we deem it appropriate to find out as to what action was taken against the claimants whose claims have already been rejected. At this stage, we are informed by the Mr. P.S. Narsimha, learned Additional Solicitor General that the action insofar as persons who are unauthorisedly in possession of forest land, is required to be taken by the concerned State Governments and its authorities under the relevant laws in force in each one of the States.

In the circumstances, we are of the opinion that each one of the respondent-States should file an affidavit giving the data regarding the number of claims rejected within the territory of that State and the extent of land over which such claims were made and rejected and the consequent action taken up by the State after the rejection of the claim, with all appropriate data in support of the above-mentioned information within a period of two weeks from today.

List all the matters on Monday, the 15th February, 2016 at 2.00 p.m.

However, insofar as State of Tamil Nadu is concerned, it is brought to our notice that by virtue of an interim order dated 30th April, 2008, the authorities in the State of Tamil Nadu acting under the impugned Act are restrained from issuing any Patta without obtaining orders of the High Court though the examination of the entitlement of the claimants was not barred by the said interim order. In view of the said interim order, the State Government is not in a position to give the information regarding the tenable claims. It goes without saying that no further action could be taken regarding the eviction of the encroachers in view of the said restraint of the authority to adjudicate the claims.

It appears that by an Order dated 6th January, 2015 this Court withdrew the Writ Petition No. 4533 of 2008 pending in the High Court in which the above-mentioned interim order came to be passed and transferred it to this Court, re-numbered as Transferred Case No. 39 of 2015. In view of the above-mentioned facts, State of Tamil Nadu need not file an affidavit referred to earlier, as directed above, for the time being.

Learned Additional Solicitor General as well as learned counsel for the State of Tamil Nadu also prayed that the above-mentioned interim order be vacated. However, learned counsel for the writ petitioner in the transferred case no. 39 of 2015 is not present. We, therefore, deem it appropriate to direct the Registry to list Transferred Case No. 39 of 2015 on Monday, the 1st February, 2016 at 2.00 p.m. for consideration of the above-mentioned prayer of the State of Tamil Nadu.

V. Sambasivam vs. Government of India & Ors.

TRANSFER CASE (C) NO. 39 OF 2015 WITH SLP (C) NO. 11408–09 OF 2009
SUPREME COURT OF INDIA
01.02.2016
CORAM: J. CHELAMESWAR, ABHAY MANOHAR SAPRE & AMITAVA ROY, JJ.

SUMMARY

This is an ongoing writ petition, originally filed before the Madras High Court and subsequently transferred to the Supreme Court, challenging the *vires* of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). It has been tagged with a batch of matters involving the same question of law.[4]

The Government of Tamil Nadu filed a special leave petition (or 'SLP') challenging the interim order dt. 30.04.2008 passed by the Madras High Court when the writ petition was pending before it, which effectively barred the Tamil Nadu authorities from issuing title certificates under the Forest Rights Act without the specific permission of the court.[5]

Having heard arguments in this regard during this and a previous hearing on 29.01.2016[6] the court was of the view that the interim order passed by the Madras High Court should be lifted. The following order was passed:

> Having regard to the fact that except for the State of Tamil Nadu, in all other States, the inquiry regarding the various claims under the above-mentioned Act proceeded substantially, we do not see any justification to hold up the inquiry only in the State of Tamil Nadu. Therefore, we deem it appropriate to vacate the interim order dated 30th April, 2008.

The SLP was accordingly disposed of, while the transferred case remains pending.

EDITOR'S NOTE

The impugned interim order dt. 30.4.2008 passed by the Madras High Court clearly states that *"if claims are made for community rights or rights to forest land and applications are submitted as per Section 3 and 4 of the Act read with Rules 11 and 12 of the Rules, then the process of verification of the claim after intimation to the concerned claimant shall go on."* However, the state government had interpreted the high court's interim order as a 'stay' on the implementation of the Forest Rights Act, bringing the process almost to a complete standstill for eight years. It was only after the Supreme Court categorically vacated this interim order that implementation of the Forest Rights Act commenced in Tamil Nadu in right earnest.

[4]The main matter is Writ Petition (C) No. 50 of 2008, *Wildlife Trust of India & Ors. vs. Union of India & Ors*. The present writ petition, however, was originally filed in the Madras High Court as Writ Petition (C) no. 4533 of 2008, and was transferred to the Supreme Court where it has been numbered Transfer Case (C) No. 39 of 2015.
[5]Interim order dt. 30.04.2008 in Writ Petition (C) No. 4533 of 2008, Madras High Court. See also, Shomona Khanna, *Compendium of Judgments on the Forest Rights Act 2007–2015*, Ministry of Tribal Affairs, Government of India (2016), p. 402.
[6]See interim order dt. 29.01.2016 in Writ Petition (C) No 109 of 2008 in this volume.

ORDER

IA No. 2 of 2015 in T.C.(C) No. 39 of 2015

IA no. 2 has been filed with the prayer as follows:

a) Permit/allow the State of Tamil Nadu to issue patta, community rights to the claimants approved by the Grama Sabha and District Level Committee and

b) pass such other orders as deems fit in the interest of justice.

The background is that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 came to be challenged before the High Court of Madras in a writ petition(C) no. 4533 of 2008. By an Order dated 30th April, 2008, the High Court directed that the process of the verification of the claims under the above-mentioned Act can go on but no certificate of title should be issued pursuant to such verification without obtaining the orders of the High Court.

The vires of the above-mentioned Act came to be questioned in two writ petitions filed before this Court, WP(C) No. 50 of 2008 and WP(C) No. 109 of 2008. During the pendency of the said writ petitions, on an application made by Union of India, this Court passed an order withdrawing the writ petition(C) no. 4533 of 2008. The said writ petition has accordingly been transferred and re-numbered as Transferrred Case (C) No. 39 of 2015.

On 29.1.2016, we passed certain interim directions calling for the data regarding the consequent action taken by the various States in all those cases where the claims preferred by the various claimants were found not to be tenable.

At this stage, it was brought to our notice that insofar as State of Tamil Nadu is concerned, the question of taking any consequential action pursuant to the rejection of the claims would not arise in view of the fact that no final decision regarding any claim has been taken because of the above-mentioned interim orders passed by the Madras High Court. At that stage, it was brought to our notice that the instant application IA No. 2 filed by the State of Tamil Nadu is pending. Therefore, we directed the said application to be listed today.

Heard M. Yogesh Kanna, learned counsel for the State and Mr. Ashok Kumar Singh, learned counsel for the writ petitioner before the Madras High Court.

Having regard to the fact that except for the State of Tamil Nadu, in all other States, the inquiry regarding the various claims under the above-mentioned Act proceeded substantially, we do not see any justification to hold up the inquiry only in the State of Tamil Nadu. Therefore, we deem it appropriate to vacate the interim order dated 30th April, 2008. We make it clear that the action, if any, taken pursuant to the inquiry conferring any right on any of the claimants would be subject, of course, to the result of the transferred case.

IA no. 2 of 2015 stands disposed of accordingly.

SLP(C)....CC No. 11408–09 of 2009

Taken on board.

In the light of the order passed in IA No. 2 of 2015 in T.C.(C) No. 39/2015, learned counsel for the petitioner seeks permission to withdraw the special leave petitions. Permission is granted. The special leave petitions are accordingly dismissed as withdrawn.

ALLAHABAD HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Chhote Lal & Ors. vs. Union of India Thru Secy. & Ors.

WRIT-C NO. 40491 OF 2013
ALLAHABAD HIGH COURT
26.07.2013
CORAM: SHEO KUMAR SINGH & BRIJESH KUMAR SRIVASTAVA-II, JJ.

SUMMARY

The writ petition was filed by 20 petitioners, who sought protection under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Right Act'). The petitioners also referred to Guidelines dated 19.11.2009 issued by the District Collector, Mirzapur. Pertinently, the content of these guidelines is not clear.

The court observed that the prayer is for a direction to the competent authority as provided in Section 6 of the Forest Right Act, and there is no opposition to this prayer by the state government.

Accordingly, the merits of the case were not examined, and the court simply permitted the petitioners to file fresh representations for claims under the Forest Right Act before the competent authority, and issued the following direction:

> It will be the concern of the concerned competent authority to proceed as provided under the Act and to pass appropriate orders in accordance with law within shortest possible time preferably within a period of two months from the date of receipt.

The court also directed that '*except in accordance with law there will be no interference in the rights of the petitioner*'.

EDITOR'S NOTE

Although this is a brief judgment and follows a similar approach to a myriad other court orders in petitions by forest dwellers seeking protection under the Forest Right Act, it is important as being one of the few decisions on the said Act that have emerged from the Allahabad High Court. For that reason, it is a pity it remains unreported in the official law reporters.

JUDGMENT

Heard learned counsel for the petitioner, Sri Kaushik learned Add. Solicitor General of India assisted by Sri Vikas Srivastava who appeared for respondent no. 1 and Sri S.K. Yadav, learned Addl. Chief Standing Counsel who appears for District Administration.

In view of the submission advanced from both sides and in the light of the facts so stated this court is not go to into the details for disposing this petition, as keeping the matter pending will be futile exercise and that will just delay the finality of the things.

Petitioner claims protection as provided in The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of various Rights) Act, 2006.

In this connection learned counsel for the petitioner has also referred to the guidelines issued by the District Collector, Mirzapur dated 19th November, 2009 which has been annexed at page 34 of the writ petition.

The prayer is for a direction to the competent authority as provided in Section 6 of the aforesaid Act in respect to which there is no quarrel and thus the claim of the petitioners needs to be attended within a reasonable time.

Accordingly, we need not to go into the merits of the matter so as to record a finding either way but at the same time we propose to dispose of this petition by giving following directions:

i) Petitioner is to file certified copy of this order along with fresh representation annexing copy of earlier representation, if any, and other documents on which reliance is sought to be placed for redressal of his grievance within a period of fifteen days from today before the competent authority.

ii) On receipt of the move it will be the concern of the concerned competent authority to proceed as provided under the Act and to pass appropriate orders in accordance with law within shortest possible time preferably within a period of two months from the date of receipt of the move.

iii) It is observed that except in accordance with law there will be no interference in the rights of the petitioner.

It is made clear that this Court has not expressed any opinion on merits as we have not gone into the merits of the petitioner's claim and thus decision of the concerned competent authority will be his independent exercise as may be permissible in law.

With the aforesaid directions, this petition stands disposed of.

Amar Singh & Ors. vs. State of Uttar Pradesh & Ors.

WRIT-C NO. 9104 OF 2015
ALLAHABAD HIGH COURT
18.02.2015
CORAM: DHANANJAYA YESHWANT CHANDRACHUD, C.J. & SUNEET KUMAR, J.
CITATION: 2015 SCC ONLINE ALL 4982

SUMMARY

The petitioners, who are residents of village Rampur Thakra, District Bijnore, claimed occupation over land which was declared as a Reserve Forest by the state government under section 20 of the Indian Forest Act, 1927 (or 'IFA'), as far back as in 12.07.1968.

Thereafter, proceedings were initiated to evict the petitioners under the IFA. A writ petition challenging those proceedings had been dismissed, after which proceedings for eviction were resumed and an order of eviction was passed on 09.12.2013. The petitioners raised an additional plea before the Forest Settlement Officer (or 'FSO') that they are "other traditional forest dwellers" (or 'OTFDs') within the meaning of Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The court observed that after a notification under Section 20 of IFA is issued, any rights vis-à-vis the forest stand extinguished in terms of Section 9 of the said Act. No claims were made prior to the Section 20 IFA notification nor any appeal filed within the limitation period against the notification or the extinguishment of rights. In the eviction proceedings also, the court noted, *"the petitioners failed to produce any substantial evidence to demonstrate that they were in occupation of the land at the time of notification issued on 12.7.1968 under Section 20 of the Act."* The court further observed that to establish a claim as an OTFD under the Forest Rights Act, one needs to be residing in, and dependent on the forest land for his livelihood for at least three generations prior to 13.12.2005.

The court noted that the petitioners had failed to bring any cogent material on record, either before the FSO or before it, to prove that the land in question had been under their possession for three generations, or that they had occupied it prior to 1968 when it was notified was a Reserve Forest. Since the petitioners could not produce evidence to prove that they are OTFDs, the court could not find fault with the FSO's order, and accordingly dismissed the writ petition.

EDITOR'S NOTE

The court has erred in reaching the conclusion on several counts. For one thing, whether or not a forest dweller qualifies as an OTFD under the Forest Rights Act, must be determined by the rights recognition mechanism provided under the said Act of 2006. It is for the Gram Sabha, and thereafter the committees at the sub-divisional and district level, to examine the claim whether an applicant is an OTFD. And it is the Gram Sabha which determines whether the evidence in support of such claim satisfies the requirements of the Act and Rules, which are different from the standard of 'cogent evidence' a court of law ordinarily would demand.

The court has also erred in proceeding on the basis that the petitioners must establish their possession of the land in question for 75 years prior to 13.12.2005, and demonstrate they occupied the land prior to its notification as a Reserve Forest in 1968. The Forest Rights Act, on the contrary,

requires that a forest dweller must be in possession of the land in question on 13.12.2005, and must establish they have been forest dwellers, in this or any other forest area, for 75 years before that. Since the Forest Rights Act does not vest title or ownership in the claimant, the transfer of title through statutory fiat on 12.07.1968 is also not relevant. The statutory requirements under the Forest Rights Act are founded on powerful historical reasons and a culmination of a robust and lengthy legislative process.[7] The court ought to have remanded the matter for determination by the statutory authorities under the Forest Rights Act.

JUDGMENT

1. The petitioners, 20 in number, are all residents of village, Rampur Thakra, Tehsil and District Bijnore. They are assailing the order dated 9.12.2013 passed by the second respondent, Forest Settlement Officer, District Bijnore rejecting their claim of occupying reserved forest land pursuant to the directions by this Court on 16.9.2013 in *Amar Singh v. State of U.P. through Collector.*[1]

2. The land in dispute over which the petitioners claim dependency on the forest land, was declared a reserved forest by the State in exercise of powers conferred under Section 20 of Indian Forest Act, 1927.[2] Village Rampur Thakra was declared a reserved forest area on 12.7.1968. Section 20 is extracted below:

   20. Notification declaring forest reserved.

   (1) When the following events have occurred, namely:-

   (a) the period fixed under Section 6 for preferring claims have elapsed and all claims if any made under that section or Section 9 have been disposed of by the Forest Settlement Officer;

   (b) if any such claims have been made, the period limited by Section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the District Judge; and]

   (c) all lands (if any) to be included in the purposed forest, which the Forest Settlement Officer has, under Section 11, elected to acquire under the Land Acquisition Act, 1984 (1 of 1984), have become vested in the Government under Section 16 of that Act,

   The State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

   (2) From the date so fixed such forest shall be deemed to be a reserved forest.

3. As a consequence of the publication of a notification under Section 20, section 9 would indicate that all rights in respect of the land shall stand extinguished from the date of publication of such notification. Section 9 reads as follows:

   Section 9: Extinction of rights – Rights in respect of which no claim has been preferred under Section 6, and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished, unless before the notification under Section 20 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6.

4. It is neither the case of the petitioners before us or before the Forest Settlement Officer District, Bijnore that the petitioners had agitated their rights as required prior to the publication of notification

[7]For a detailed analysis of the historical reasons for the enactment of the Forest Rights Act, 2006 and the legislative scheme adopted thereunder, see *Undoing Historical Injustice: Reclaiming Citizenship Rights and Democratic Forest Governance through the Forest Rights Act* by Madhu Sarin, in 'Democratizing Forest Governance in India' by Sharadchandra Lele and Ajit Menon (eds.) Oxford University Press, New Delhi, 2014.

under Section 20. The Forest Settlement Officer on the contrary, in the impugned order, has noted that earlier proceedings were initiated against 47 encroachers, including the petitioners, for eviction from the reserved forest land notified in 1968. The aggrieved persons had preferred a petition being writ petition no. 53504 of 2004 (Ram Kumar Jatav v. State of U.P.) which was dismissed on 2.9.2011. Consequently measures were taken to free the forest land from the encroachers. Section 23 of the Act would provide that no right could have been acquired over a reserved forest except as provided thereunder. Section 26 of the Act prohibits use of a reserved forest for any other purpose. Section 23 is as follows:

> 23. No right acquired over reserved forest, except as here provided.—No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under Section 20 was issued.

5. On the dismissal of the writ petition in *Ram Kumar Jatav* (supra) on 2.9.2011, notices dated 24.3.2012 were served upon the encroachers and a public notice was published on 1.4.2012 calling upon the aggrieved persons to substantiate their claim upon the land before the second respondent on 4.4.2012. The impugned order has noted that some of the encroachers appeared on the date fixed but failed to adduce any substantial evidence regarding their claim and possession over the land notified as reserved forest. On 17.4.2014 all the 47 encroachers upon forest land were ordered to vacate the land within 15 days failing which the department would be constrained to take coercive action as admissible in law. Several writ petitions were filed (writ petition no. 4451 of 2013), including the petition (writ petition no. 44543 of 2013) filed by the petitioners which was disposed of with a direction to the respondents to consider their representations. The Forest Settlement Officer, Bijnore in the impugned order has noted that the petitioners failed to produce any substantial evidence to demonstrate that they were in occupation of the land at the time of notification issued on 12.7.1968 under Section 20 of the Act.

6. The petitioners raised an additional plea before the Forest Settlement Officer to recognise their possession as "Other Traditional Forest Dwellers" defined under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.[3]

7. The Act of 2006 defines the expression "Other Traditional Forest Dwellers" under sub-clause 'o' of Section 2 as follows:

> 2. Definitions.- In this Act, unless the context otherwise requires-
>
> (o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th Day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.
>
> *Explanation.- For the purpose of this clause, "generation" means a period comprising of twenty first years.*

8. In order to fall within the expression "other traditional forest dwellers", it must, however, be demonstrated that any member or community was primarily residing and dependent on forest or forest land for bona fide livelihood for at least three generations prior to 13.12.2005; "generations" would mean a period comprising of 25 years. The Forest Settlement Officer has noted that the petitioners do not dispute that the land being claimed by them is a reserved forest notified under Section 20 of the Act. Hence there is no dispute regarding the ownership or title of the land. The petitioners had failed to show before the second respondent that they are in possession of the land notified as forest land prior to 1968. No document or material was placed before the second respondent nor has been placed before us to substantiate that the petitioners were in possession of the land in question for three generations prior to December, 2005. Since no cogent material has been brought on record to show that the petitioners had a right to possession upon the forest land for three generations, we are unable to find fault with the impugned order.

9. For the reasons stated herein above, the writ petition fails and is accordingly, dismissed.

Baliram vs. State of Uttar Pradesh & Ors.

MATTERS UNDER ARTICLE 227 NO. 6514 OF 2015
ALLAHABAD HIGH COURT
19.11.2015
CORAM: SUNEET KUMAR, J.
CITATION: 2015 SCC ONLINE ALL 6354

SUMMARY

The petitioner, a Scheduled Tribe, had been cultivating two hectares of forest land since 1978. After the state government declared the area as a Reserve Forest, the forest department officials started interfering with his cultivation of the land, including filing criminal cases. The final notification of the Reserve Forest was issued under Section 20 of the Indian Forest Act (or 'IFA') in 2008.

The petitioner filed objections before the Forest Settlement Officer (or 'FSO') in 2012. These objections were dismissed on the ground of *laches*, and on the ground that such objections cannot be considered after the notification has been issued under Section 20 IFA. The petitioner's appeal before the Additional District and Sessions Judge was also dismissed, as was his review petition.

The petitioner accordingly approached the High Court by way of these proceedings.

The court proceeded on the basis that under Section 9 of the IFA, once the final notification is issued, all rights in the forest land stand extinguished, and since the petitioner did not file any objections prior to this date, he has no right to do so now.

An additional plea was raised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') that the petitioner is entitled as an 'other traditional forest dweller' in terms of Section 2(o) of the said Act. The court observed:

> The Forest Settlement Officer noted that the petitioners do not dispute that the land being claimed by them is a reserved forest notified under Section 20 of the Act. Hence there is no dispute regarding the ownership or title of the land.

Accordingly, the court dismissed the petition.

EDITOR'S NOTE

It is surprising that the court decided to dismiss the petition in this manner. The underlying misconception that declaration of a Reserve Forest somehow vests '*title and ownership*' in the forest land in the state is reinforced in this decision. Clearly, the court has misdirected itself in this regard, in spite of the fact that the Forest Rights Act, and the substantive change in law resulting therefrom, has been pointed out to it. The judgment is bad law and ought not to operate as judicial precedent.

It is also worth noting that this case emerges from the special rights recognition mechanism established by the Supreme Court of India in the *Banwasi Sewa Ashram* case,[8] to address precisely this kind of scenario where forest dwellers were unable to submit objections prior to the issue of notifications under Section 20 IFA, and found their rights '*extinguished*'. The high court has ignored

[8]See, for instance, *Banwasi Sewa Ashram vs. State of Uttar Pradesh* (1987) 3 SCC 304.

the orders of the Supreme Court in the aforesaid matter, and even the limited relief such orders could have provided have been denied to the petitioner.

JUDGMENT

1. The applicant belongs to Scheduled Tribe, is in cultivatory possession of gata no. 2914 (Ga) admeasuring two hectares situated in village Kota, Robertsganj, since 1385 fasli (1978). In 1977-78 the State Government notified District Mirzapur (now District Sonebhadra) reserved forest under the Indian Forest Act.

2. It is contended that the forest officials thereafter started interfering in the possession of the tenure holders, criminal cases were registered at the behest of Vanvasi Sewa Ashram. It is alleged that in 2012 the forest officers restrained the applicant from carrying agricultural activity over the land in dispute against which the applicant filed objections on 25 August 2012 before the third respondent Forest Settlement Officer, District Sonbhadra, which was registered as Case No. 1401 (*Bali Ram vs. Forest Department*) under Section 9/11 of the Indian Forest Act. The forest department in their objections stated that the land in dispute is recorded "Jungal" prior to the abolition of zamindari, the time for raising objections as directed by the Hon'ble Apex Court being until 31 July 1987 has since expired, further, notification upon being published under Section 20 of the Indian Forest Act, the dispute attained finality. The third respondent upon considering the evidence and material available on record rejected the objection filed by the applicant on 6 May 2013 for the reason that the objection is barred by laches, further, cannot be considered after notification being issued under Section 20 of the Indian Forest Act. Aggrieved, applicant filed an Appeal being Appeal No. 96 of 2014 (*Baliram vs. Forest Department and another*) which was rejected by the Additional District and Sessions Judge, Anpara, at Obra on 28 July 2015 for the reason that the appellate authority would have no jurisdiction. Review petition filed thereafter was also rejected on the ground that after publication of notification under Section 20, the appellate forum would have no jurisdiction.

3. The petitioner is assailing the orders referred to herein above.

4. It is not in dispute that on 25 November 2008 the area including the land in dispute was declared a reserved forest by the State in exercise of powers conferred under Section 20 of the Indian Forest Act 1927.

5. Section 20 is extracted:

   20. Notification declaring forest reserved.-(1) When the following events have occurred, namely:-

   (a) the period fixed under Section 6 for preferring claims have elapsed and all claims if any made under that section or Section 9 have been disposed of by the Forest Settlement Officer;

   (b) if any such claims have been made, the period limited by Section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the District Judge; and]

   (c) all lands (if any) to be included in the purposed forest, which the Forest Settlement Officer has, under Section 11, elected to acquire under the Land Acquisition Act, 1984 (1 of 1984), have become vested in the Government under Section 16 of that Act,

   The State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

   (2) From the date so fixed such forest shall be deemed to be a reserved forest.

6. As a consequence of the publication of a notification under Section 20, section 9 would indicate that all rights in respect of the land shall stand extinguished from the date of publication of such notification. Section 9 reads as follows:-

9. Extinction of rights.- Rights in respect of which no claim has been preferred under Section 6, and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished, unless before the notification under Section 20 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6.

7. It is neither the case of the petitioner before us or before the Forest Settlement Officer that the petitioner had not agitated his right as required prior to the publication of notification under Section 20. The impugned order would note that the objections filed earlier was considered and rejected which was affirmed in appeal.

8. Section 23 of the Act would provide that no right could have been acquired over a reserved forest except as provided thereunder. Section 26 of the Act prohibits use of a reserved forest for any other purpose. Section 23 is as follows:-

23. No right acquired over reserved forest, except as here provided.-- No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under Section 20 was issued.

9. The learned counsel for the applicant raised an additional plea to recognize their possession as "Other Traditional Forest Dwellers" defined under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

10. The Act of 2006 defines the expression "Other Traditional Forest Dwellers" under sub-clause 'o' of Section 2 as follows:

2. Definitions.- In this Act, unless the context otherwise requires-

(o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th Day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

Explanation.- For the purpose of this clause, "generation" means a period comprising of twenty five years.

11. In order to fall within the expression "other traditional forest dwellers", it must, however, be demonstrated that any member or community was primarily residing and dependent on forest or forest land for bona fide livelihood for at least three generations prior to 13.12.2005; "generations" would mean a period comprising of 25 years. The Forest Settlement Officer noted that the petitioners do not dispute that the land being claimed by them is a reserved forest notified under Section 20 of the Act. Hence there is no dispute regarding the ownership or title of the land.

12. For the reason stated herein above, the petition being devoid of merit is, accordingly, dismissed.

13. No cost.

ANDHRA PRADESH HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Mandapaka Katam Swamy vs. Additional Agent to Government & Ors.

WRIT PETITION NO. 28699 OF 2008
ANDHRA PRADESH HIGH COURT
29.12.2008
CORAM: GOPALA KRISHNA TAMADA, J.
CITATION: 2008 SCC ONLINE AP 789

SUMMARY

The petitioner originally filed proceedings seeking ejectment of a non-tribal (respondent no. 4) under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1970 (or '1970 Regulation'). Orders were passed by the Special Deputy Collector and the Appellate Authority in favour of respondent no. 4, against which the petitioner filed a revision petition. Finding no progress taking place in the revision petition, and apprehending dispossession, the petitioner approached the high court in this writ petition.

Before the high court, the petitioner invoked Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') to argue that respondent no. 4 does not meet the criteria laid down to be considered an 'other traditional forest dweller' under the Act.

The court disposed of the writ petition at the admission stage with a direction to the Appellate Authority to dispose of the revision petition pending before it within eight weeks, after affording opportunity to the petitioner to be heard and raise all contentions as raised before the high court.

EDITOR'S NOTE

An interesting question of law arises in this case regarding the intersection, if any, between the Forest Rights Act and the 1970 Regulation (and other laws prohibiting land alienation of tribals). The court, however, did not take the opportunity to decide this question, leaving it open for examination in a future case.

JUDGMENT

1. Initially second respondent filed LTRP No.220 of 2003 under the provisions of A.P. Scheduled Area Land Transfer Regulation I of 1959 as amended by 1 of 1970 before the Special Deputy Collector, (Tribal Welfare) Rampachodavaram seeking ejectment of the fourth respondent from the land to an extent of Acs.14.42 cents in Sy.No.73 in Pdatamamidi Village, Gangavaram Mandal in East Godavari District and after due enquiry, the Special Deputy Collector passed an order dated 3.2.2004 in favour of the fourth respondent holding that the possession of the fourth respondent over the said land is not violative and ultimately dismissed the said LTRP No.220/2003. Aggrieved thereby the petitioner carried the matter before the first respondent in C.M.A. No.67 of 2005, which was dismissed on 1.12.2008. Assailing the same, the petitioner in this writ petition preferred a revision before the third respondent and along with the revision, the petitioner also filed an application seeking suspension of the order passed by the first respondent. However, as no orders have yet been passed on the said application, the petitioner approached this Court and filed the present writ petition apprehending dispossession.

2. Heard the learned Counsel for the petitioner and also the learned Government Pleader for Social Welfare. The learned Counsel for the petitioner has drawn my attention to Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 wherein the words "other traditional forest dweller" is defined according to which any member of community who has for at least three generations prior to the 13th day of December 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs and contended that the fourth respondent does not come under the purview of said definition.

3. Having regard to the submissions made by the learned Counsel for the petitioner, this Court is of the view that the present writ petition can be disposed of at the stage of admission as follows:

4. In the result, the writ petition is disposed of directing the third respondent to dispose of the revision pending before it within a period of 8 weeks from the date of receipt of a copy of this order and pass appropriate orders thereon after affording an opportunity of personal hearing to the petitioner. However, pending disposal of the same, the order passed by the first respondent in CMA No. 67 of 2005 dated 1.12.2008 shall be suspended. However, the petitioner is at liberty to raise all the contentions, which are now raised in this writ petition before the third respondent in the revision. No order as to costs.

Konithi Kannaiah & Ors. vs. Government of India, through Ministry for Tribal Welfare & Ors.

WRIT PETITION NO. 26255 OF 2010
ANDHRA PRADESH HIGH COURT
11.12.2013
CORAM: A. RAMALINGESWARA RAO, J.

SUMMARY

The petitioners were members of the Gotti Koya tribe, a Scheduled Tribe. They filed the present writ petition seeking protection of their rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). Their grievance was that the state government was attempting to dispossess them from their lands (located inside a Reserve Forest) and relocate them to a faraway, unsurveyed and unrecognised village. They claimed to be eking out their livelihood by doing agricultural operations and collecting minor forest produce since the time of their forefathers.

The state government argued that the petitioners have not been in occupation of the said lands since time immemorial, but have, in fact, come from the neighbouring state of Chhattisgarh and occupied these lands only in 2007. The state also argued that the petitioners are not '*wholly*' tribes as recognised by the state of Andhra Pradesh. Finally, the state submitted that as per the road map for implementation of Forest Rights Act, the claims were to have been filed by 31.05.2008 before the Forest Rights Committee, but the petitioners filed no such claims.

The court, seeing that there were competing factual claims presented before it, passed an order giving liberty to the petitioners to establish their '*identity, status and right to the land claimed*' before the respondents in accordance with the Forest Rights Act. If the petitioners successfully established these conditions, the respondents were directed to consider their forest rights claims. A time limit of three months was issued for completing this enquiry process.

The court further directed that the petitioners should not be dispossessed from the land in their occupation until the completion of the enquiry. The writ petition was accordingly disposed of.

EDITOR'S NOTE

Although the judgment does not refer to a previous decision of the same court in *Podium Devaiah vs. Government of India*,[9] it clearly echoes the same concerns, and attempts to find a solution along the same lines. This judgment demonstrates that the court is alive to the ongoing tragedy of thousands of Scheduled Tribes of the *Gotti Koya* tribe having fled from conflict torn Chhattisgarh to the forests of adjoining Andhra Pradesh, only to find they are unable to claim their lawful forest rights as they are not notified as Scheduled Tribe in this state. It is also heartening to see that the court has simply ignored the argument that rights under the Forest Rights Act can somehow be restricted by a 'road

[9]Judgment dt. 18.04.2011 in Writ Petition 2133 of 2009, Andhra Pradesh High Court. Cited in Shomona Khanna, *Compendium of Judgments on the Forest Rights Act 2007–2015*, Ministry of Tribal Affairs, Government of India (2016) at page 92.

map' prepared by the state government. Judgments such as this have expanded the interpretation of the Forest Rights Act as a beneficial legislation with an inclusive rather than hyper-technical approach.

However, the struggle of the *Gotti Koyas* of Chhattisgarh who fled to Andhra Pradesh during the Salwa Judum movement remains unresolved until the time of writing, despite positive judicial precedents such as this.

JUDGMENT

1. This writ petition is filed challenging the action of the respondents in trying to dispossess the petitioners from the reserved forestlands situated in reserved forest, 5 km. Away from Tuniki Cheruvu Panchayat, Dummugudem Mandal, Khammam District, without following the procedure prescribed under the Forest Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and the Rules made thereunder.

2. It is the case of the petitioner that they are all Schedule Tribes residing in the forest area since the time of their forefathers by doing agricultural operations. Act 2 of 2007 was enacted recognizing their rights over forest and without following the procedure prescribed under the said Act, they are being dispossessed from their lands to a faraway place called Tuniki Cheruvu Gram Panchayat, Dummugudem Mandal, Khammam District, which is un-surveyed and un-recognised village. They are eking out their livelihood by collecting minor forest produce.

3. The respondents filed a counter stating that the petitioners are Scheduled Tribes residing in the plain areas of Bhadrachalam (North) Forest Division in Tunikicheruvu Reserved Forest area, but they are not wholly tribes as contended by them. The petitioners are residing in the reserved forest area since 2007 only and clearing the reserved forest area i.e., Tuniki Cheruvu Reserved Forest in Compartment No.32 and a case was also registered against the petitioners vide P.O.R.No.003373/68, dated 03.09.2007 and they are not in occupation of any forest land from the time of their forefathers as alleged by them. As per the road map for implementation of R.O.F.R. Act, 2006, the last date for receipt of the claims by the Forest Rights Committee was 31.05.2008 and none of the petitioners have made any claim before the Forest Rights Committee constituted under the said Act of 2006. It is the case of the respondents that there is no reserved forest within the vicinity of Tuniki Cheruvu Gram Panchayat and no un-surveyed and un-recognised villages in Bhadrachalam Revenue Division. The petitioners have migrated from adjacent areas of Chattisgarh State and they are called Gotti Koyas. The Gotti Koyas are not one of the recognised Scheduled Tribes by the Government of Andhra Pradesh. There is a lot of difference between the Scheduled Tribes living in the Khammam District and Gotti Koyas who have migrated from Chattisgarh with regard to their nomenclature, customs, appearance, dressing, life style and food habits. The petitioners are not enrolled in any of the villages and there is no proof of identity also.

4. Heard the learned counsel for the petitioners and the learned Government Pleader for the respondents.

5. In view of the conflicting claims with regard to the status of the petitioners as Scheduled Tribes within the State of Andhra Pradesh, the petitioners are given liberty to establish their identity, status and right to the land claimed by them before the respondents under the provisions of Act 2 of 2007 and if the petitioners are successful in this regard, the respondents may consider their case under the provisions of the Forest Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order and if the petitioners are aggrieved, they can seek appropriate remedies available to them under law. Till the completion of the enquiry, the petitioners shall not be dispossessed from the lands in their occupation.

6. Subject to the above observation, the writ petition is disposed of. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

Bhanoth Raja & Anr. vs. Government of Andhra Pradesh & Ors.

WRIT PETITION NO. 17469 OF 2011
ANDHRA PRADESH HIGH COURT
09.09.2015
CORAM: C.V. NAGARJUNA REDDY, J.
2015 SCC ONLINE HYD 517; (2016) 1 ALD 201; (2016) 3 ALT 451

SUMMARY

The petitioners were husband and wife, belonging to a Scheduled Tribe, whose forefathers had been in possession of the forest land in question in Nagaram Village, Khammam District, for more than nine decades. They had been eking out their livelihood from this forest land. They filed claim applications, along with many others in their village, under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') which were still pending.

The petitioners stated that while they were carrying out agricultural operations using a tractor, forest department officials entered their land, stopped the agricultural operations, forcibly took away the tractor, and told them that the tractor would be returned only if they vacated the land. The petitioners claimed protection from the forest department under Section 4(5) of the Forest Rights Act, which provides that no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the forest rights recognition and verification procedure is complete.

The state government submitted that the land is under the Narayanaraopeta Reserve Forest and hence, exclusively 'belongs' to the Forest Department. It disputed the submission that the petitioners had been raising agricultural crops since 1980, deemed them encroachers, and denied that any *pattas* were issued in this forest. In support of this assertion, the state government submitted that this land had been earmarked for *kanuga* (bio-diesel) plantation. The petitioners had uprooted the seedlings planted by the forest department, for which petitioner no. 1 had been arrested, and he had made a statement before the judicial magistrate admitting to having committed the offence.

Additionally, the forest department submitted the Forest Beat Officer, who was a member of the Forest Rights Committee (or 'FRC'), inspected the land and found the petitioners were not in possession of the land, and made an endorsement on the application to this effect. As such, the petitioners' claim under the Forest Rights Act stood rejected.

The court held that the procedure adopted by the respondents is patently contrary to the procedure prescribed under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 (or 'Forest Rights Rules'), which specifically provide that the FRC, after intimating the petitioners and the forest department, physically go and verify the nature and extent of the claim. The court observed:

> Contrary to this procedure, even as per the submission of the learned Government Pleader for Forests (TS), the Forest Beat Officer exercised the power of the FRC himself by making an endorsement and not processing the applications of the petitioners further. From the scheme of the Rules, the Forest Beat Officer has no such power. Even if he is a member of the FRC, he cannot exercise the power of the FRC by himself alone.

On the issue whether the petitioners were in possession of the land, the court found that the remand report in the criminal case clearly showed that the petitioners were working the land in question to prepare it for further cultivation, by uprooting the harvested cotton crops.

The court concluded that the action of the state government in trying to dispossess the petitioners from the land in question is in violation of Section 4(5) of the Forest Rights Act "*as their applications for grant of pattas are not disposed of in accordance with law and are deemed to be pending.*" Accordingly, the writ petition was allowed.

EDITOR'S NOTE

It is refreshing indeed to come across a decision where the court has proceeded strictly in accordance with the law, not only in terms of the substantive content of the statute, but also with regard to the precious procedural rights therein. The court has correctly deprecated the interference by the forest department through the Forest Beat Officer in the decision-making process under the Forest Rights Act and Forest Rights Rules, a structural problem manifest in different forms across the country.

JUDGMENT

1. At the interlocutory stage, the writ petition is taken up for hearing and disposal with the consent of the learned counsel for the parties.

2. The petitioners, who are husband and wife, averred that they belong to schedule tribe and that from the time of their forefathers, their family has been in possession of Acs.4.20 guntas of land in survey No. 76 of Nagaram Village, Paloncha Mandal, Khammam District, for more than nine decades. It is their further case that as they are entitled for conferment of rights over the forest land for cultivation under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short the Act), they have submitted application Nos. 34 and 35 on 22.05.2008 along with several other scheduled tribes and till the date of filing of the writ petition, they have not received any information of their applications i.e., either accepting or rejecting the same. The petitioners also averred that on 31.05.2011, while they were carrying on agricultural operations by engaging a tractor bearing No. AP 20 Y 1018, the officials of the respondents headed by respondent No. 5 highhandedly entered into their land, stopped agricultural operations, forcibly took away the tractor and kept the same at the premises of respondent No. 4 on 31.05.2011 itself and stated that unless the land in question is vacated, the tractor will not be released. The petitioners claimed protection under Sub-Section (5) of Section 4 of the Act, which postulates that no member of a forest dwelling scheduled tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

3. On behalf of the respondents, respondent No. 4 filed a counter-affidavit. It is, inter alia, stated in the counter-affidavit as under:

4. That there is no patta land included in the reserve forest of Narayanaraopeta block from survey No. 76 as stated by the petitioners. That the petitioners illegally entered into the reserve forest Narayanaraopeta block, which was notified under Section 19 of the Andhra Pradesh (Telangana Area) Forest Act, 1355 Fasli, along with tractor bearing No. AP 20Y 1018 in order to grab the forest land. That the plea of the petitioners that from their forefathers, they are in occupation of the land in question is not correct. That the land occupied by the petitioners falls under the jurisdiction of Narayanaraopeta reserve forest and accordingly, the same exclusively belongs to the forest department and that the plea of the petitioners that they have been raising agricultural crops since 1980 is not correct. That during the year 2007-08, an extent of 30.00 hectares of area was selected by the Forest Department for raising bio-diesel (kanuga) plantation under RIDF XII scheme, vide respondent No. 2 sanction order, dated 14.03.2008, and that as per the said order, advance operations like clearance of miscellaneous growth, uprooting of slumps and dragging of cut growth have been taken up during the month of

March, 2008 and pre-planting works i.e., ploughing and planting have been taken up in the months of June and July, 2008. That on 07.11.2008, when the petitioners entered into the plantation area i.e., Narayanaraopeta reverse forest, removed the planted kanuga seedlings and tried to occupy the reserve forest land, a case vide POR No. 83/77 was registered on 07.11.2008 itself and petitioner No. 1 was arrested and was produced before the Additional Judicial First Class Magistrate, Kothagudem, for remand. That the said petitioner admitted the offence and gave his written statement before the Magistrate.

5. As regards the applications of the petitioners filed before the Forest Rights Committee (FRC) for grant of pattas, the counter-affidavit averred that the said applications were rejected as they were made in respect of the land, where bio-diesel plantation was raised during the years 2007-08 and 2008-09. In support of the averments made in the counter-affidavit, the deponent filed the remand application pertaining to petitioner No. 1, filed in the Court of I Additional Judicial First Class Magistrate, Kothagudem.

6. By order, dated 23.06.2011, this Court, while admitting the writ petition, granted interim direction to the respondents not to dispossess the petitioners from the land in their occupation referred to above pending further orders. The matter was heard on 26.08.2015. During the hearing, this Court has specifically asked the learned Government Pleader for Forests (TS) about the details of disposal of the applications of the petitioners as the counter-affidavit is silent with regard thereto.

7. Today, at the hearing, the learned Government Pleader for Forests (TS) submitted that the Forest Beat Officer, who is one of the members of the FRC, inspected the land and as he found the petitioners not being in possession of the land, he made an endorsement on their applications and therefore, the applications were not further processed. This procedure adopted by the respondents is patently contrary to the procedure laid down in Rule 12 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 (for short the Rules). Under this rule, the FRC shall, after due intimation to the claimant concerned and the Forest Department, visit the site and physically verify the nature and extent of the claim and evidence on the site; receive any further evidence or record from the claimant and witnesses; and ensure that the claims are verified when such individuals, communities or their representatives are present. Further, the Forest Rights Committee shall then record its findings on the claim and present the same to the Gram Sabha for its consideration. Contrary to this procedure, even as per the submission of the learned Government Pleader for Forests (TS), the Forest Beat Officer exercised the power of the FRC, himself by making an endorsement and not processing the applications of the petitioners further. From the scheme of the Rules, the Forest Beat Officer has no such power. Even if he is a member of the FRC, he cannot exercise the power of the FRC by himself alone. It is not the pleaded case of the respondents that the FRC members at any point of time have visited the land claimed by the petitioners after notice to the latter and received any evidence on record from the petitioners and other witnesses with regard to their possession. Thus, while dealing with the applications of the petitioners, the respondents acted contrary to the spirit of the Act and the Rules made thereunder. At the end of the hearing, the learned Government Pleader for Forests (TS) has fairly conceded that the applications of the petitioners have not been disposed of by the FRC as they were not forwarded by the Forest Beat Officer to the FRC. In the light of these admitted facts, the plea of the respondents that the applications of the petitioners were rejected is without any basis and the same is accordingly rejected.

8. As regards the stand taken by the respondents that the petitioners are not in occupation of the land in question, the learned counsel for the petitioners has rightly relied upon the contents of the remand application vide POR No. 94/77, dated 31.05.2011, and the remand report filed before I Additional Judicial First Class Magistrate, Kothagudem. The relevant portion of the remand report reads as under:

9. The accused produced before the IIIrd Addl. Judicial Magistrate, Kothagudem for remand and charge sheet also filed in this case vide CC No. 192/2010 and the case is pending trial in the Court. The accused released on bail and in the same area again he engaged the Tractor for uprootal of cotton crop which was raised in last year and preparing the land for further cultivation.

10. No better evidence than the above reproduced statement contained in the remand report sent by respondent No. 4 is required to show that the petitioners had been in possession of the land by raising cotton crop during the previous year i.e., 2009-2010 and they were preparing the land for raising a fresh crop when the tractor was seized on 31.05.2011 and criminal case was registered. Therefore, this Court is not able to accept the stand of the respondents that the petitioners have for the first time tried to encroach upon the land in question on 31.05.2011.

11. In the light of the above discussion, this Court is of the opinion that the action of the respondents in trying to dispossess the petitioners from the land admeasuring Acs.4.20 guntas in survey No. 76 of Nagaram Village, Paloncha Mandal, Khammam District, is in violation of the provisions of Sub-Section (5) of Section 4 of the Act as their applications for grant of pattas are not disposed of in accordance with law and are deemed to be pending.

12. Accordingly, the Writ Petition is allowed as prayed for.

13. As a sequel to allowing the writ petition, W.P.M.P. No. 20993 of 2011 and W.V.M.P. No. 2777 of 2011 shall stand disposed of.

Jangamma Bapu & Ors. vs. Divisional Forest Officer & Ors.

WRIT PETITION NO. 5594 OF 2007
ANDHRA PRADESH HIGH COURT
05.01.2016
CORAM: CHALLA KODANDA RAM, J.
CITATION: 2016 SCC ONLINE HYD 28

SUMMARY

This writ petition was filed by 234 petitioners who were forest dwelling Scheduled Tribes, Scheduled Castes and Backward Castes living in two forest villages in Karimnagar District. The petitioners had filed applications for regularization of their occupation under the Guideline dated 18.09.1990[10] issued by the Central government's Ministry of Environment and Forests (or 'MoEF'). They argued that they were entitled to such regularization having lived in these forests to eke out their livelihood for many decades, and therefore should not be evicted.

At the interim stage, the court had directed examination of the petitioners' claims. First, the government was asked to file a status report, and thereafter the District Collector and District Superintendent of Police were directed to conduct a spot inspection and file a report accordingly. Also at the interim stage, the court had directed *status quo* on possession.

Although considerable evidence regarding possession was put forth by the petitioners, including preliminary offence reports (PORs), eventually the petitioners' arguments were restricted to ensuring due process of law for eviction in terms of the Andhra Pradesh Forest Act, 1967.

The state government argued that these petitioners were not in possession of the forest land, and in any case they could not urge rights over Reserve Forest land except under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The court eventually took the view that there was no evidence in support of the petitioners' claims. It held that in the present case "*even the innocuous relief of the petitioners not to evict them without following due process of law cannot be granted*". The writ petition was dismissed.

EDITOR'S NOTE

It is unfortunate that neither the court nor the counsel for the petitioners examined the substantive rights which flow to the petitioners under the Forest Rights Act, which was enacted to deal with precisely such fact situations, and also provides a mechanism for determination of the factual matrix far better than a court can do even with all the resources at its command. As it is, the present judgment is *per incuriam* as it has not proceeded in accordance with the law applicable to the present case, namely, the Forest Rights Act.

[10]Circular dt. 18.09.1990 bearing F. No. 13-1/90-FP(1) issued by Ministry of Environment & Forests, Government of India.

JUDGMENT

1. The petitioners filed this writ petition for issuance of writ of Mandamus declaring the action of the respondents in not regularizing their occupation of the land in Sy. No. 15, Mothukupalli Village and Sy. No. 1, Domala Madaram Village, Malhar Rao Mandal, Karimnagar District, and threatening to evict them, as arbitrary and illegal.

2. There are 234 petitioners in the writ petition. As per the averments in the affidavit filed in support of the writ petition, all the petitioners belong to SC, ST and BC communities and are eking out their livelihood through agriculture. They assert that they are in occupation of Ac.600 in Sy. No. 15 of Mothukupalli Village and Sy. No. 1 of Domala Madaram Village in Malhar Rao Mandal for more than three and half decades. Their forefathers belong to the said two villages, which are forest villages. They abandoned the villages a few decades ago after an outbreak of cholera and migrated to Edlapalli, which is neighbouring village, and started cultivation in the above-mentioned lands. The petitioners made representations dated 11.09.2006, 17.11.2006 and 11.12.2006 to the 2nd respondent-District Collector seeking to regularize their occupation of the land in the respective Survey numbers and to grant pattas in their favour. The petitioners assert that in view of Circular No. 13-1/90 FP(1) dated 18.09.1990 issued by the Government of India, Ministry of Environment, Forests & Wildlife, declaring that the encroachers in the Government and Forest lands are entitled for regularization and no action need be taken to evict them, they are entitled to be granted pattas.

3. This Court on 16.04.2007 directed the learned Government Pleader to file a status repot touching upon the claims of the petitioners as to the possession over the land in question. Thereafter on 23.04.2007 this Court while observing that the respondents have filed counter affidavits disputing the claim of the petitioners, asserting that none of the petitioners are in possession of the forest land, specifically directed the District Collector and District Superintendent of Police, Karimnagar, to visit the spot personally or to depute the officers of the concerned division, and file a report reflecting the state of affairs as to the possession or otherwise over the land in question. On 11.10.2007 the report came to be filed before this Court. Thereafter the writ petition was admitted on 2.11.2007 and interim direction was granted in W.P.M.P. No. 7127 of 2007 directing the parties to maintain status quo with regard to the possession of the land in question.

4. Smt. Vasudha Nagaraj, learned counsel appearing for the petitioners by drawing attention of this Court to the panchanama dated 30.11.2005, would submit that the panchanama itself would prove the possession of the petitioners over the land in question and no further evidence as such is required. She also submits that even before filing of the writ petition, in 2006 itself representations have been made for regularization, and further, the fact that in 2005 and 2006 forest offence cases came to be filed against certain of the individuals would leave no manner of doubt that at least some of the petitioners are in possession of the land. Ultimately, she would urge that considering the fact that the petitioners are in possession and enjoyment of the land in question by cultivating the same and their social status and financial inability to protect themselves, even if they are required to be evicted the respondent authorities may be directed to follow the due procedure prescribed under Section 20(4) of the A.P. Forest Act, 1967.

5. On the other hand, Smt. Pramada, learned Government Pleader vehemently opposes for granting of such relief. She submits that the land in question admeasuring Ac.4319 in Sy. No. 1 of Domalamadaram Village and Ac.1923 in Sy. No. 15 of Mothukupally Village was notified as Tadicherla Reserve Forest under Section 18 of the Hyderabad Forest Act, 1326 Fasli vide G.O. No. 1144, dated 24.12.1354 Fasli and published in Gazette No. 2, dated 10.01.1355 Fasli. She further submits that none of the petitioners are in possession of the land except 14 individuals in an extent of Ac.36.07 in Sy. No. 1 of Domala Madaram Village. As a matter of fact, when certain individuals tried to occupy the forest land by cutting the forest growth, Forest Offence Cases have been booked against them on 30.11.2005. She further submits that the prayer of the petitioners in the writ petition for grant of pattas by regularizing the alleged occupation of the petitioners cannot be granted, as the subject land is a reserve forest and Circular dated 18.09.1990 referred to above by the petitioners, is contrary to the provisions of the A.P. Forest Act, 1967, and hence, no pattas can be granted in favour of

anyone, except the eligible persons under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

6. Heard learned counsel for the petitioners and learned Government Pleader for respondents.

7. Though the learned counsel for the petitioners pleaded for regularization of the petitioners alleged occupation, ultimately she confined her argument to the one that the petitioners shall not be dispossessed without following due process of law, particularly under Section 20(4) of the A.P. Forest Act, 1967.

8. It may be noted that there are 234 petitioners claiming themselves to be in occupation of the land in Sy. No. 15 of Mothukupalli Village and Sy. No. 1 of Domala Madaram Village, but no specific boundaries of the area, or specific extents in which each of them alleged to be in occupation, was stated in the writ petition. Except the assertion that they are in occupation of the land in question, there is no prima facie material before this Court to come to a conclusion that the petitioners are in occupation of the land in question.

9. On the other hand, the assertion of the respondents in the counter affidavit and the documents filed in support of the same, reveal that there was concerted effort by the individuals to destroy the forest growth for the purpose of cultivation. Even assuming that some of the petitioners are the ones who were sought to be prevented from cutting the forest growth, it cannot be said that they are in possession of the land in question since the very entry into the forest land and the attempt to cut the forest growth being an offence and prohibited by the Statute, and the same cannot be used as a ruse to claim possession, and thereafter, seek protection of land. A person, who seeks to violate law cannot seek protection under law.

10. In the facts of the present case, there being no material in support of the claim of the petitioners, even the innocuous relief of the petitioners not to evict them without following due process of law cannot be granted.

11. Accordingly, the writ petition is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

BOMBAY HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Kashinath & Ors. vs. State of Maharashtra & Ors.

WRIT PETITION NO. 738 OF 2016
HIGH COURT OF BOMBAY AT NAGPUR
08.02.2016
CORAM: B.R. GAVAI & P. N. DESHMUKH, JJ.
CITATION: 2016 SCC ONLINE BOM 1127

SUMMARY

The petitioners were 'other traditional forest dwellers' (or 'OTFDs') and had submitted claims for recognition of their forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). They approached the court seeking a direction to the state government to relax the requirement of 75 years residence in a forest as a pre-condition for grant of rights to OTFDs. They argued that this has been done for forest dwelling agriculturists such as themselves in the adjacent districts of Bhandra and Gadchiroli.

The petitioners argued that in light of Section 4(3) and Section 3(1)(g) of the Forest Rights Act, persons who are in possession of forest land on or before 13.12.2005 are entitled to the protection of their rights. Since the petitioners were in possession of the lands since 1962, and it had been in their possession for two generations, they argued that the state government should relax the condition of possession for three generations, and grant them *pattas*.

The court closely examined the Forests Rights Act, particularly, its Statement of Objects and Reasons, its detailed Preamble, and the scheme of the legislation. It observed that although the cut-off date for occupation is the same, being 13.12.2003, there is a difference between the eligibility criteria for 'forest dwelling Scheduled Tribes' in Section 2(c) and OTFDs in Section 2(o) of Forest Rights Act. Where the OTFDs are concerned, they should be in possession of the land and should depend on the said forest or forest land for *bona fide* livelihood for three generations. It accordingly observed:

> The harmonious construction of the two conditions, therefore, would lead to the conclusion that insofar as the "other traditional forest dwellers" are concerned, they would be entitled to benefit of the Act only in the event that they establish that for a period of 75 years prior to 13th December, 2005 they are in occupation of the forest or forest land and bonafidely depending on the same for their livelihood.

Regarding relaxation of the statutory requirement of three generations, the court was of the view that framing of policy is the exclusive domain of the state government, and beyond the jurisdiction of a constitutional court. The writ petition was accordingly, dismissed.

The court went on to observe that '*ecology and forest are necessarily to be preserved for the future generations*' and that the implementation of Section 4(2) of the Forest Rights Act with regard to declaration of Critical Wildlife Habitats is '*necessary in order to ensure that the wildlife is effectively protected and there is no danger to the wildlife in the critical wildlife habitat*'. Accordingly, the court directed the Ministry of Environment and Forests (or 'MoEF') to complete the procedure for recognizing Critical Wildlife Habitats in national parks and sanctuaries as expeditiously as possible, and in any case within six months. The court further directed that all conditions under Section 4(2) of the Forest Rights Act protecting the rights of forest dwellers be complied with.

EDITOR'S NOTE

Forest dwelling communities in India have been historically itinerant, as are other indigenous peoples across the world. They travel from one forest area to another, sometimes by reason of their cultural and social practices, and at other times because of multiple relocations due to development projects. For this reason, while enacting the Forest Rights Act, Parliament was careful to use the term 'occupation' of forest land rather than 'possession' when it comes to the cut-off date of 13.12.2005. To make matters clear, the Ministry of Tribal Affairs issued a clarification as far back as 09.06.2008[11] that the OTFDs should be forest dependent for three generations. To insist, as the court has done, that the forest dwellers establish they have been dependent on the very same piece of forest land for 75 years prior to 13.12.2005 would be a virtual impossibility, and for all practical purposes exclude all OTFDs from the protection of the Forest Rights Act. Having examined the Statement of Objects and Reasons, the Preamble, and the scheme of the Forest Rights Act in some detail, it is surprising that the court erred so gravely in arriving at a decision to dismiss the writ petition entirely.

It is also arguable whether the court ought to have issued *suo motu* directions regarding declaration of Critical Wildlife Habitats when the rights recognition process under Forest Rights Act is far from satisfactory and ridden with all manner of problems.

JUDGMENT

1. Rule returnable forthwith. Heard finally with the consent of the learned Counsel for the respective parties.

2. The petitioners have approached this Court seeking a direction to respondent Nos. 1 and 2 to decide their representations and to take a policy decision of relaxation of any of the conditions which would come in the way of granting any right, title or interest in respect of forest lands occupied by them.

3. The petitioners have further approached for a direction to respondent Nos. 1 and 2 to grant right and title and 'patta' in respect of forest lands occupied by the petitioners and others on the line of the 'patta' granted to the agriculturists in the adjacent districts of Bhandara and Gadchiroli as per the provisions under sections 4(3), 4(5) and 4(6) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as "***the said Act***").

4. It is the contention of the petitioners that, in view of the provisions of sub-section (3) of section 4 and clause (*g*) of section 3 of the said Act, such of the persons who are in possession of forest land on or before 13th day of December, 2005 are entitled to protection of their rights. It is the contention of the petitioners that they are in possession of the lands encroached by them from 1962 onwards and the said lands are in their possession since two generations and therefore, the State Government should relax the condition of possession being of three generations and grant 'patta' in favour of the petitioners.

5. Perusal of the impugned order rejecting the cases of the petitioners would reveal that the cases of the petitioners have been rejected on the ground that the documents in their possession do not show that they were in possession of the lands for three generations.

6. It is vehemently contended by Mr. S.S. Dhengale, learned Counsel for the petitioners that the State Government has power to relax the condition of requirement of possession of three generations and therefore, it is necessary in the interest of justice that this Court should direct the State Government to frame the policy thereby relaxing the said condition.

[11]Circular dt. 09.06.2008 bearing F. No. 17014/02/2007-PV&V (Vol. VII) issued by the Ministry of Tribal Affairs, Government of India in exercise of its powers under Section 12 of the Forest Rights Act.

7. The Statement of Objects and Reasons of the said Act would reveal that the said Act was enacted since it was noticed that the reservation processes for creating wilderness and forest areas for production forestry somehow ignored the bona fide interests of the tribal community from legislative framework in the regions where tribal communities primarily inhabit. The Statement of Objects and Reasons would further make it clear that it was noticed that the simplicity of tribals and their general ignorance of modem regulatory framework precluded them from asserting their genuine claims to resources in areas where they belong and depended upon. The Statement of Objects and Reasons would further reveal that it was recently that forest management regimes have initiated action to recognise the occupation and other right of the forest dwellers and have in their policy processes realised that tribal communities who depend primarily on the forest resource cannot but be integrated in their designed management processes. The Statement of Objects and Reasons further states that there is a recognition of the fact that forest have the best chance to survive if communities participate in the conservation and regeneration measures. It is further stated that insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forest and forest lands. It further states that this historical injustice now needs correction, before it is too late to save our forests from becoming abode of undesirable elements.

8. The Statement of Objects and Reasons further states that it was proposed to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Scheduled Tribes. The Act, therefore, has been enacted for the purpose of laying down a simple procedure for recognition and vesting of forest right in the forest dwelling Scheduled Tribes and it provides for adequate safeguards to avoid any further encroachment on forest. It is stated in the Statement of Objects and Reasons that the Act addresses the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to the Scheduled Tribes dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.

9. It could thus be seen that the Act is basically enacted so as to strike out a balance between conservation of forest and the rights of tribals who were traditionally residing in the forest areas. The Act is enacted with an intention that conservation of forest exists with recognition of rights of the tribals who were traditionally residing in the forest areas. The Statement of Objects and Reasons does not refer to other traditional forest dwellers. However, it appears that the Parliament in its wisdom has also decided to recognise rights of the other traditional forest dwellers who were residing in forest areas for generations together.

10. It would be relevant to refer to clause (c) of section 2 of the said Act so also clause (o) of section 2 of the said Act, which read thus:

> *"2 (c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;*
>
> *"2 (o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs. Explanation:— For the purpose of this clause, "generation" means a period comprising of twenty-five years."*

11. It could be thus seen that insofar as 'forest dwelling Scheduled Tribes' are concerned, the said term would mean the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities. Whereas, insofar as 'other traditional forest dwellers' are concerned, the said term would mean any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs. The explanation to clause (o) of section 2 removes the ambiguity and states that the clause "generation" means a period comprising of twenty-five years.

12. No doubt that Mr. S.S. Dhengale, learned Counsel for the petitioner is justified in relying on the provisions of sub-section (3) of section 4 of the said Act.

13. For considering the submissions of Mr. S.S. Dhengale, learned Counsel for the petitioner, it will be relevant to refer to the entire Scheme of section 4 of the said Act which reads thus:—

*"**4. Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.** — (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in—*

(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;

(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest right holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:—

(a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;

(b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 (53 of 1972) that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;

(c) the State Government has concluded that other reasonable options, such as, coexistence are not available;

(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;

(e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;

(f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package.

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

(6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.

(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

(8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition."

14. Clause (1) of section 4 of the said Act would reveal that notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government recognises and vests forest rights in the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3. Sub-section (2) of section 4 permits the forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries to be subsequently modified or resettled. However, the proviso thereof provides that no forest right holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the conditions are satisfied. These conditions are: (a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration; (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 (53 of 1972) that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat; (c) the State Government has concluded that other reasonable options, such as, coexistence are not available; (d) a resettlement or alternative package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government; (e) that the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing; (f) that no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package. Proviso thereto provides that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

15. Sub-section (3) of section 4 of the said Act on which Mr. S.S. Dhengale, learned Counsel for the petitioner heavily relies provides that the recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005. Sub-section (4) of section 4 makes the right conferred by sub-section (1) heritable but not alienable or transferable. It further provides that it shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin. Sub-section (5) thereof provides that save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and

verification procedure is complete. Sub-section (6) provides that where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares. Sub-section (7) provides that the forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act. Subsection (8) thereof enables the persons who are not actually in occupation of the land in question on the date of commencement of the Act to get benefit of provision of the said Act if they establish that they were displaced from their dwelling and cultivation without land compensation due to State development inverventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

16. It could thus be seen that though the cutoff date for determination of occupation of forest land is 13th day of December, 2005, the criteria for such determination under the said Act are different for the "forest dwelling Scheduled Tribes" as compared with "other traditional forest dwellers". The Act itself provides that insofar as "forest dwelling Scheduled Tribes" are concerned, it is sufficient for the claimants to show that they are in occupation of the land on 13th day of December, 2005 and depending on the forest lands for bona fide livelihood needs. However, insofar as "other traditional forest dwellers" are concerned, the Act itself requires that they should be in possession of the land and should depend on the said forest or forest land for bona fide livelihood for three generations. The explanation to clause (o) further makes it clear that one generation would mean 25 years. The harmonious construction of the said two conditions, therefore, would lead to the conclusion that insofar as the "other traditional forest dwellers" are concerned, they would be entitled to benefit of the Act only in the event that they establish that for a period of 75 years prior to 13th December, 2005 they are in occupation of the forest or forest land and bona fidely depending on the same for their livelihood.

17. Undisputedly, the petitioners have not even claimed that they are in possession of the forest land occupied by them for a period of 75 years prior to 13th December, 2015 which is a cut-off date. In that view of the matter, we find that the contention of the petitioners is without substance.

18. Insofar as the prayer by the petitioners for a direction to the State Government to take a policy decision of relaxation of the condition which would come in the way of granting any right, title or interest in respect of the forest lands occupied by the petitioners is concerned, we find that there are two hurdles in the way of the petitioners. The first is the policy to be framed is exclusively within the domain of the State Government and the Courts cannot issue specific direction to frame a policy in a particular manner. Secondly, when the Act itself provides the relevant criteria, a direction to the State Government to frame a policy contrary to the statutory provisions, in our considered view, would be much beyond our jurisdiction under Article 226 of the Constitution of India.

19. In that view of the matter, we find that there is no merit in the petition.

20. However, while we examine the issue in the present petition, one more aspect needs to be taken into consideration. Time and again we have observed that the ecology and forest are necessarily to be preserved for the future generations. No doubt that the Act has been enacted with a noble purpose to protect the rights of the forest dwellers who are dependent on the forest for generations together. However, at the same time, the Act has also taken care to see to it that the rights of the forest dwellers in "*critical wild habitats*" can be modified or resettled subject to stringent conditions regarding rehabilitation of said dwellers. We find that an exercise is required to be undertaken by the State Government under sub-section (2) of section 4 of the said Act, which is necessary in order to ensure that the wild life is effectively protected and there is no danger to the wild life in the critical wild life habitat.

21. We, therefore, direct the Central Government, through the Ministry of Environment and Forest to complete the procedure for recognizing the "*critical wild habitat of National Parks and Sanctuaries*" as expeditiously as possible and in any case, within a period of six months so that necessary steps for protection of wild life is taken. No doubt that while doing so the State Government will have to comply with the condition as required under sub-section (2) of section 4 of the said Act so that the rights of "*forest dwellers Scheduled Tribes*" or "*other traditional forest dwellers*" are duly taken care of.

22. The petition is, therefore, rejected with the above observations.

23. No order as to costs.

24. The Registrar (Judicial) of this Court is directed to forward a copy of this Judgment and Order to the Secretary, Ministry of Environment and Forest so as to take necessary action in pursuance to the directions aforesaid. The learned Government Pleader is requested to forward a copy of this Judgment and Order to the Secretary (Revenue and Forest Department), Mantralaya, Mumbai so that he can pursue the matter with the Central Government for ensuring compliance of the aforesaid directions.

Sanjay Ghudandeo Mahajan vs. The Deputy Commissioner (Resettlement), Nagpur & Ors.

WRIT PETITION NO. 6826 OF 2015
HIGH COURT OF BOMBAY AT NAGPUR
11.07.2016
CORAM: A.S. CHANDURKAR, J.

SUMMARY

On a complaint filed by the petitioner, the Respondent no. 4, one Smt. Sangita Shankarrao was disqualified from the post of Sarpanch of the Gram Panchayat by the Additional Collector. The allegation against her was that she and her husband had encroached upon government land, and as such she was disqualified from holding this office under the Maharashtra Village Panchayats Act, 1959.

The Additional Collector had reached a finding that there was unauthorized construction by Respondent no. 4. On an appeal filed by her, the Deputy Commissioner (or 'DC') took the view that rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2006 (or 'Forest Rights Act') were required to be taken into consideration. Accordingly, the DC sent the proceedings back to the Additional Collector, directing that the nature of encroachment and its regularization be reconsidered. The petitioner filed this appeal against the DC's order of remand.

The high court was of the view that as none of the parties had invoked the Forest Right Act, the DC's order which remanded the case to the Additional Collector was unnecessary. Rather, the court held that the appeal ought to have been decided on the issue of disqualification, based upon the order of the Additional Collector. Accordingly, the court set aside the order of remand, and restored the appeal before the DC. The court also noted that Respondent no. 4 had been divested of the charge of Sarpanch, and directed that this situation would continue until the appeal was decided.

While leaving the merits of the matter open, the writ petition was disposed of.

EDITOR'S NOTE:

The Bombay High Court has adopted a hyper-technical approach, by taking a view that because the Forest Rights Act was not raised as an issue by either party in the proceedings before the DC, the officer did not have the authority to require the Additional Collector to re-examine the matter. This is odd. Both the DC as well as the Additional Collector are administrators performing quasi-judicial functions. If a statute is brought to their attention which goes to the heart of the matter—whether the Respondent no. 4 is an encroacher or a rightholder—is it justified to ignore such law, just because the legal argument was not raised at the right time? That this relates to an elected representative of the fourth tier of representative democracy, who also happens to be a woman, is even more baffling. Denial of the right to participate in electoral democracy to forest dwelling communities simply by labelling them as 'encroachers' is a far cry from the stated objective of the Forest Rights Act to 'undo historical injustice'.

JUDGMENT

1. Rule. Heard finally with the consent of the learned Counsel for the parties.

2. The petitioner is aggrieved by the order dated 10-11-2015 passed by the respondent no. 1 in the appeal preferred by the respondent no. 4 challenging her disqualification under provisions of Section 14(1)(j3) of the Maharashtra Village Panchayats Act, 1959 (for short, the said Act).

3. The petitioner had filed an application under Section 16 of the said Act seeking disqualification of the respondent no.4 on the ground that she and her husband had committed encroachment on Government land bearing Survey No.23. In the reply filed by the respondent no.4, this stand was denied. The Additional Collector by order dated 5-9-2015 recorded a finding that unauthorized construction had been undertaken by the respondent no.4 and its regularization had been sought as per the application dated 4-7-2015. It was further observed that the documents pertaining to ownership of said land were not placed on record by the respondent no.4. On that basis, the respondent no.4 was held disqualified to hold the office of Sarpanch of the Gram Panchayat. Being aggrieved the respondent no.4 filed an appeal before the Dy. Commissioner. By the impugned order, the Dy. Commissioner remanded the proceedings to the Additional Collector to take into account the nature of encroachment and the aspect whether the same had been regularized.

4. Shri V. G. Dhage, the learned Counsel for the petitioner relied upon the report of the Sub-Divisional officer dated 8-7-2015 and submitted that the said report clearly indicated the encroachment committed by the respondent no.4. He submitted that the respondent no.4 did not raise any ground with regard to the provisions of the Forest Rights Act, 2006 and, therefore, it was not necessary to remand the proceeding for fresh consideration. He submitted that the Additional Collector had rightly disqualified the respondent no.4 and she was not entitled to continue as Sarpanch of the Gram Panchayat.

5. Shri K. M. Kuthe the learned Counsel for the respondent no.4 supported the impugned order. According to him, there was no encroachment committed by the respondent no.4. He submitted that the provisions of Section 14(1)(j3) of the said Act were amended in the year 2006 and as the alleged construction was prior to said date, the respondent no.4 could not be disqualified on that basis. He submitted that the aspect of encroachment was not clearly proved and, therefore, the proceedings had been rightly remanded for fresh consideration. Shri K. L. Dharmadhikari, the learned Assistant Government Pleader for the respondent nos.1,2,3 and 6 supported the impugned order. Shri B. M. Kharkate, learned Counsel appeared for the respondent no.5.

6. Perusal of the material on record indicates that in the application for disqualification a specific case has been pleaded with regard to Government land bearing Survey No.23 as being owned by the Government on which an encroachment has been alleged to be made by the respondent no.4. In the reply filed by the respondent no.4, this fact has been denied and it has been stated that the construction in question was existing for many years and even prior to her election. The report of the Sub Divisional Officer dated 8-7-2015 was placed on record before the Additional Collector and on that basis, the Additional Collector decided the said proceedings. In the appeal preferred by the respondent no.4 there is again reference to the long standing possession and denial of any encroachment. The Deputy Commissioner, however, proceeded to remand the proceedings on the ground that the rights under the Forests Rights Act, 2006 were required to be taken into consideration. It was neither the case of the petitioner nor the case of the respondent no.4 that the provisions of the Forest Rights Act, 2006 were involved. The appeal was required to be decided after considering the application for disqualification, the reply and the order passed by the Additional Collector. Considering the material that is placed on record, I do not find that the remand of the proceedings was necessary in absence of any issue relating to the Forest Rights Act, 2006. In that view of the matter, the appellate Authority would have to decide the appeal afresh on merits.

7. According to the learned Counsel for the petitioner after the order of disqualification was passed by

the Additional Collector, the charge has been taken of the post of Sarpanch from the respondent no.4 on 29-12-2015. This fact is disputed by the learned Counsel for the respondent no.4 on the ground that the same has been done without considering the relevant provisions of law. However, considering the fact that the respondent no.4 has been disqualified by the order passed by the Additional Collector and the appeal is required to be decided afresh, the interests of justice would be met if the appeal is directed to be decided within a period of two months from the date of appearance of the parties.

8. In view of aforesaid, the order dated 10-11-2015 passed by the respondent no.1 is set aside. The appeal is restored to file for being decided afresh. The parties shall appear before the Deputy Commissioner on 25-7-2016. The appeal shall be decided within a period of two months from said date. Till the appeal is decided, the present position shall continue without prejudice to the rights of the parties. The points on merits are kept open. The petition is disposed of in aforesaid terms. No costs.

Vanashakti, a Public Trust & Anr. vs. State of Maharashtra & Anr.

PUBLIC INTEREST LITIGATION NO. 131 OF 2014
BOMBAY HIGH COURT
16.08.2016 (INTERIM ORDER)
CORAM: SHANTANU KEMKAR & MAKARAND KARNIK, JJ.

SUMMARY

The petitioners were concerned with the conservation of vulnerable wildlife, and the failure of the government to create Critical Wildlife Habitats (or 'CWH') as mandated under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') in the state of Maharashtra. They filed this writ petition seeking writs of mandamus, among other remedies, directing the respondent state to take immediate action in identifying CWHs, address forests and vulnerable wildlife species facing extinction in Maharashtra, and implement measures for their protection and revival. One of the directions they sought were for the government to "*take appropriate measures forbidding human and other activities dangerous and/or detrimental to the survival of endangered wildlife flora species*".

The court took strict note of the fact that the state and Central government had not filed their reply to the petition since 2014, despite several opportunities having been afforded to them, and that no effective steps had been taken for identifying and demarcating CWHs in Maharashtra.

The state government sought two weeks to submit further details regarding the steps taken. The central government also undertook to file a detailed reply on the steps undertaken, and on the suggestions offered by the petitioners. Accordingly, the court granted both the respondents two weeks' time to file their affidavits.

EDITOR'S NOTE

As noted in the order, this case has been pending in the Bombay High Court since 2014. The petitioners profess to be wildlife conservationists, and on their persistent submissions, over the years, the court has passed numerous orders to the state and Central government. The reluctance of the Central and state government to declare CWHs requires a separate analysis.

It is worth pointing out that among the preconditions for declaration of a CWH under Section 4(2) of the Forest Rights Act, the very first condition is that '*(a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration.*' The petitioners, on the other hand, have been pressing for directions '*forbidding human and other activities*'. In 2019 on a forceful intervention by KHOJ, a local NGO working for the advancement of forest dwellers' rights, the court took note of the attempts to by-pass the preconditions mandated under Section 4(2).[12] It directed that the mandates under the Act be strictly followed, including setting up of an Expert Committee and active involvement of local communities in the decision-making process. Preliminary examinations on the ground revealed that the implementation of the Forest Rights Act in the proposed CWH areas was far from complete. This important intervention prevented a serious miscarriage of justice.

[12]See Order dt. 09.09.2019 in PIL 131 of 2014, *Vanashakti Public Trust & Anr. vs. State of Maharashtra & Anr*. Bombay High Court, pending.

ORDER

1. Parties, through their counsel.

2. Through this Petition, the Petitioners have prayed for the following reliefs:

"(a) To issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent No. 1 to identify and demarcate 'Critical Wildlife Habitats' as mandated in the FRA Act.

(b) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to identify and submit a list of wildlife species that are facing extinction or threatened in their original habitats and also the measures adopted to ensure the revival of such species.

(c) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent No. 1 to take appropriate measures forbidding human and other activities dangerous and/or detrimental to the survival of endangered wildlife flora species.

(d) To direct the Respondents to determine 'Critical Wildlife Habitats' in Maharashtra and take immediate steps to prevent further degradation of forests and critical wildlife areas in accordance with measures as suggested in para 19 of the Petition and/or such other measures as the Court deem proper."

3. In the Petition, the Petitioners have suggested the following measures to be taken for preventing further environment degradation and effective protection and conservation of wildlife and for proper and effective maintenance of Critical Wildlife Habitats:

"a) Respondent No. 2 shall oversee the work of Respondent No.1 of identification of CWH and ensure that contiguity of forests is maintained/developed and steps are taken to connect sanctuaries with one another in the same ecological habitat to ensure species survival.

b) Recovery plans for revival of critically endangered species must be submitted with time frame and monitoring committee be set up to oversee its implementation and progress. Periodic report must be submitted to this Court. NGO members to be part of the Committee. Plans submitted must also mention funds allocated for the purpose.

c) Rivers that are home to threatened species of wildlife must be kept free from constructions and dams. If permitted the projects must have to submit a conservation plan to this Court before carrying out any work relating to construction on the ground.

d) Demarcation and mapping of forest areas should be undertaken Grid wise.

e) Species which are listed as threatened must be given additional protection measures of which the respondents must submit before this Court. A list of all threatened Avifauna and flora in Maharashtra should be submitted before this Court withing a period of six weeks from date of order. Latest technologies viz. Global Position System (GPS) and Geo Tagging be used to determine the Critical Wildlife Habitats and proper records of same be maintained.

f) Relevant data pertaining to CWH be regularly uploaded on the internet/website of the Respondents and the same be monitored Grid wise.

g) In case of violations of CWH, the concerned district collectors, deputy conservators of forests at circle level and village panchayats at village level be made accountable.

h) The in event to such violations, range forest officer shall take immediate steps to reforest the site and monitor it for regeneration.

i) Periodic progress report enlisting measures taken to protection and improvement of CWH be prepared and published at such interval as may be considered appropriate.

j) All data and information relating to CWH and any additions or alteration to same be published on the official website of the Respondents at such interval as may be deemed appropriate.

k) Strict punishment be provided for any violation CWH."

4. We find that this Petition is pending since 2014 but till date in spite of repeated time being given to the State as well as Central Government, they have not filed reply as yet. Today the learned counsel for the Central Government has placed on record the Minutes of the Meeting held on 2nd August, 2016. However, we find that no effective steps have been taken for identifying and demarcating "Critical Wildlife Habitats" in and around Maharashtra under Section 2(b) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

5. The learned Counsel for the Petitioners submit that this is high time and the Respondents-State as well as the Central Government have to act immediately. The learned AGP appearing for the Respondent-State submits that the affidavit has been already filed to that effect. However, further affidavit in regard to the steps which have been taken will be filed within two weeks. The learned counsel for the Central Government also undertakes to file detailed reply of the Petition stating therein that what steps have been taken as yet in regard to the reliefs claimed in the Petition and the suggestions made by the Petitioners in the Petition.

6. Let these affidavits be filed by the State and Central Government within two weeks. The matter be listed on 13th September, 2016.

Ramlal Buda Jamunkar & Ors. vs. Asst. Forest Conservator, Melghat Tiger Project, Paratwada & Ors.

WRIT PETITION NO. 5797 OF 2015
HIGH COURT OF BOMBAY AT NAGPUR
08.12.2016
CORAM: PRASANNA B. VARALE, J.

SUMMARY

This writ petition was filed by forest dwellers residing inside the Melghat Tiger Reserve in Maharashtra, challenging an order passed by the Asst. Forest Conservator without providing them a hearing. While the exact nature of the order is unclear, it probably follows the government policy of relocation of forest dwellers from inside Tiger Reserves. The petitioners argued that a Gram Sabha resolution was passed in support of their claim, and affirming that they have been in possession of the said forest land prior to 2005. Again, while the statute was not mentioned, it is presumably a claim under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). The petitioners also placed on record their claims, which were pending before the Collector, Amravati.

The respondent state government vehemently challenged these submissions as well as the documentation produced by the petitioners. They argued that the Tiger Reserve was notified in 1994, at which time the village of the petitioners was not included in the list of villages eligible for rehabilitation.

Noting that there are numerous disputed facts in this case, and that claims are pending before the Collector, the court declined to interfere in this case. Without expressing any opinion on merits, the court granted liberty to the petitioners to pursue the proceedings before the Collector.

EDITOR'S NOTE

Neither the facts nor the final decision in this case are particularly unique. What does stand out, however, is the vehemence with which the state government opposed the forest rights claims of the petitioners. The state government also actively perpetuated a common misconception by arguing that the notification of the tiger reserve took place in 1994.

In fact, 'Tiger Reserve' as a statutory category came into existence only in 2006 through an amendment to the Wildlife Protection Act, 1972 (or 'WLPA'), prior to which it was merely an administrative category with no independent legal status. A key pre-condition for declaration of a Tiger Reserve under the WLPA is completion of the rights recognition of forest dwellers in the area, which has clearly not been done in the Melghat Tiger Reserve. For the state government to argue that the notification of the Tiger Reserve was issued in 1994, 12 years prior to the statutory provision for such notification coming into force, demonstrates how the historical injustice the Forest Rights Act seeks to undo is continuing to be perpetuated by a recalcitrant state.

JUDGMENT

Heard.

By this petition, the petitioners challenge the order passed by the respondent no.1 Assistant Forest Conservator, Melghat Tiger Project, Paratwada, dated 27.02.2015.

The sum and substance of the submissions of the learned counsel for the petitioners was that the petitioners were cultivating the land in the forest area for quite some time. It was submitted that without giving an opportunity of hearing to the petitioners, the orders were passed against the petitioners. Reliance was also sought to be placed on certain documents, namely the resolution passed by the Gram Sabha.

Mr. Shukul, the learned counsel for the respondent nos.1 and 2 vehemently opposed all the contentions raised in the petition. It was submitted by the learned counsel for respondent nos. 1 and 2 by referring to the voluminous record placed before this Court along with the reply that an opportunity of hearing was granted to the petitioners. The learned counsel further submitted that many issues raised by the petitioners are in the nature of disputed facts such as their so called occupation over the area of land, which is a protected forest area, the resolution passed by the Gram Sabha, a document which *prima facie* shows that there is scoring in the dates etc. The learned counsel further submitted that though it is claimed by the petitioners that their village is a proposed village for rehabilitation of the tribal and the villagers, the Government Notification dated 15.02.1994 nowhere refers to the village of the petitioners. The learned counsel submitted that the petitioners had appeared before the competent Court, where the offences lodged against the petitioners were proceeded. The learned counsel also invited my attention to the copies of map placed on record.

As this Court was of the opinion that there are many disputed facts and the questions are involved in the present petition and this Court was not inclined to entertain the petition, the learned counsel for the petitioners by inviting my attention to the document at Annexure 3 submitted that the petitioners have approached the respondent no. 4 – Collector, Amravati. The said document shows that the petitioners have lodged their claim in respect of their cultivation rights in the forest land on the backdrop of rejection of their claim by the District level Committee. It is stated in the said document that the petitioners are cultivating the land prior to year 2005 and they have submitted certain documents/evidence to that effect. The learned counsel for the petitioners submitted that the petitioners be permitted to prosecute the said proceedings before the respondent no.4 – Collector, Amravati.

Considering the submissions of the learned counsel, the petition is disposed of with the observation that this Court is not inclined to show any indulgence in the orders impugned in the present petition and the petitioners are at liberty to prosecute the proceedings before the respondent no. 4 – Collector, Amravati in view of the document placed on record at Annexure 3.

It is made clear that as this Court has not expressed any opinion on merits of the proceedings before the Collector, Amravati initiated by the petitioner, the respondent no.4 – Collector, Amravati to decide the proceedings before him on its own merits, needless to say, by giving equal opportunity of hearing to the parties before him.

No order as to costs.

Lalba Nana Bethekar vs. Sub Divisional Officer & Ors.

WRIT PETITION NO. 1233 OF 2016
HIGH COURT OF BOMBAY AT NAGPUR
10.04.2017
CORAM: Z.A. HAQ, J.
CITATION: 2017 SCC ONLINE BOM 1730

SUMMARY

The petitioner belonged to the Korku Scheduled Tribe in Maharashtra. His claim for recognition of forest rights under Section 3 of the Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') was rejected by the District Level Committee (or 'DLC') without giving any proper reason. Pertinently, his claim had been approved by both the Gram Sabha in a resolution, and by the Sub-Divisional Level Committee (or 'SDLC'), which in turn had sent it to the DLC.

When asked for an explanation by the court, the respondent state government stated that the petitioner's application was rejected because he failed to provide the birth and death certificates of his forefathers to substantiate his Forest Rights Act claim.

The court examined in some detail the scheme of the Forest Rights Act, and observed that the DLC is an adjudicatory authority under the Act. The court found it egregious that DLC had not only rejected the petitioner's claim without recording reasons, but had also failed to record any findings as to why the decisions of the Gram Sabha and the SDLC were not acceptable. The DLC had failed to discharge its functions under the Forest Rights Act, and by acting in a high-handed manner, had subjected the petitioner to serious prejudice, and also frustrated the very object of the Act.

It was held that *'not only has the District Level Committee (DLC) committed a blunder by passing the impugned order dt. 20.04.2011, but has also tried to justify the illegal act through misleading statements'*. The court expressed its strong objection to the DLC's process of requiring the petitioner to provide the birth and death certificates of his ancestors, when there is no such requirement under the Forest Rights Act or its Rules.

The order of the DLC was set aside, and the court directed the DLC to reconsider the application of the petitioner in accordance with law and in a time-bound manner, preferably within two months. The court also directed the DLC to pay compensation of Rs. 10,000 to the petitioner.[13]

EDITOR'S NOTE

This judgment is a very useful precedent, in that it flawlessly summarizes and interprets the Forest Rights Act in its true letter and spirit. Although the petitioner's claim was remanded back to the DLC, the imposition of costs would hopefully deter another adverse decision.

[13]A similar order was passed by the same judge, on the same date, in a similar case: *Chhannu Pilu Bhusum vs. The Sub Divisional Officer & Anr*: WP (C) 315/2015, Bombay High Court, Nagpur Bench.

Another important aspect of this judgment is that it addresses the deeply prejudiced, illogical and often illegal demands made by implementing authorities on claimants under the Forest Rights Act, in this case the demand for birth and death certificates of ancestors. There is a need for proper documentation of these egregious attempts by government officials to pervert the implementation of a beneficial legislation like the Forest Rights Act.

JUDGMENT

1. Oral leave to implead the Collector District Level Forest Rights Committee Coordinator, Amravati as respondent No. 3 is granted at the request of learned Advocate for the petitioner. The amendment be carried out forthwith.

2. Heard Shri Y.P. Kaslikar, Advocate for the petitioner and Ms. Tajwar H. Khan, A.G.P. for the respondents.

3. **Rule**. Rule made returnable forthwith.

4. The petitioner claiming to be "Korku", which is recognised as Scheduled Tribe in the State of Maharashtra, applied for recognition of forest rights as per section 3 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short "Forest Rights Act, 2006"). This application is rejected by the impugned order.

5. The impugned order is cryptic and no reason is recorded for rejection of application of the petitioner except that the petitioner (applicant) is not eligible as per the provisions of law.

6. In response to the notice issued by this Court, the respondents have filed their reply. In paragraph No. 7 of the reply, it is stated that the petitioner has failed to produce birth certificates and death certificates of his forefathers for establishing the rights claimed as per Forest Rights Act, 2006. In view of the stand taken in submissions filed before this Court, the learned A.G.P. was asked to make the record available at the time of hearing. Accordingly, the record is made available.

7. The Forest Rights Act, 2006 is enacted with the object of recognizing and vesting the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in forests for generations but whose rights could not be recorded. The Act provides for the framework for recording of forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. The Forest Rights Act, 2006 is enacted by the Parliament after it was felt necessary to address long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

8. Section 2(c) and section 2(o) of the Forest Rights Act, 2006 define the "*forest dwelling Scheduled Tribes*" and "*other traditional forest dweller*" as follows:

   "2(c) 'forest dwelling Scheduled Tribes' means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribes pastoralist communities."

   "2(o) 'other traditional forest dweller' means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

   Explanation — For the purposes of this clause, 'generation' means a period comprising twenty-five years.

9. Looking to the background of the forest dwelling Scheduled Tribes and other traditional forest dwellers, Chapter IV is introduced in the Forest Rights Act, 2006 which provides for the Authorities and procedure for vesting of forest rights. Section 6(1) which falls in Chapter IV of the Forest Rights

Act, 2006 provides that the Gram Sabha shall be the Authority to initiate the process for determining the nature and extent of individual or community forest rights or both, that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers. It is provided that after receiving the claim, the Gram Sabha has to verify the claim and prepare a map delineating the area of each recommended claim in such manner as may be prescribed and then pass a resolution and forward a copy to the Sub-Divisional Level Committee. Subsection (2) of the Forest Rights Act, 2006 provides that any person aggrieved by the resolution of Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and Sub-Divisional Level Committee shall consider and dispose such petition. The first proviso below subsection (2) of section 6 provides limitation of 60 days from the date of passing of the resolution by Gram Sabha for filing the petition to the Sub-Divisional Level Committee and the second proviso below sub-section (2) of section 6 lays down that the petition shall not be disposed against the aggrieved person unless he is given an opportunity to present his case. Sub-section (4) of section 6 lays down that any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within 60 days from the date of decision of the Sub-Divisional Level Committee. The first proviso below sub-section (4) of section 6 lays down that no petition shall be preferred directly before the District Level Committee against the resolution of Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee. The second proviso below sub-section (4) of section 6 provides that the petition shall not be disposed against the aggrieved person unless he has a reasonable opportunity to present his case. Sub-section (6) of section 6 lays down that the decision of the District Level Committee on the record of forest rights shall be final and binding.

10. The Scheduled Tribes and other Traditional Forests Dwellers (Recognition of Forest Rights) Rules, 2008 (for short "Forest Rights Rules, 2008") are made in exercise of the powers conferred by section 14(1) of the Forest Rights Act, 2006. Rule 3 of the Forest Rights Rules, 2008 provides for procedure to be followed for convening Gram Sabhas and election of Forest Rights Committee. Rule 4 provides for the functions of the Gram Sabhas. Rule 5 provides for the constitution of Sub-Divisional Level Committee. Rule 6 provides for the functions of the Sub-Divisional Level Committee. Rule 7 provides for the constitution of District Level Committee. Rule 8 provides for the functions of District Level Committee.

11. Rule 11 of the Forest Rights Rules, 2008 lays down the procedure for filing, determination and verification of claims by Gram Sabha. Rule 12 of the Forest Rights Rules, 2008 provides for the process of verifying claims by Forest Rights Committee. Rule 13(1) and Rule 13(2) refer to the evidence which can be considered for determination of various rights. Sub-rule (3) of Rule 13 lays down that the Gram Sabha, the Sub-Divisional Level Committee and the District Level Committee shall consider the evidence/evidences referred in sub-rules (1) and (2) of Rule 13 for determining the forest rights.

12. Under the scheme of the Act and the Rules, burden to substantiate the claim is not placed on the member of forest dwelling Scheduled Tribe or other traditional forest dwellers. A duty is cast on the Gram Sabha to initiate the process of determining the nature and extent of forest rights and to prepare a list of claims and to maintain a register containing such details of the claimants and their claims.

13. The Gram Sabha initiated the process and passed a resolution on the recommendation of Forest Rights Committee recognizing the right of the petitioner. The proposal was forwarded to the Sub-Divisional Level Committee which approved the proposal of the Gram Sabha and referred it to District Level Committee. Surprisingly, the District Level Committee rejected the claim of the petitioner without recording any reasons and without recording that the resolution of the Gram Sabha or the decision of the Sub-Divisional Level Committee is improper or unsustainable.

14. Sub-section (2) of section 6 of the Forest Rights Act, 2006 provides that any person aggrieved by the resolution of Gram Sabha may prefer a petition to the Sub-Divisional Level Committee. In the present case there is nothing on the record to show that the resolution of Gram Sabha was challenged by anybody before the Sub-Divisional Level Committee. The resolution passed by the Gram Sabha was

perhaps forwarded to the Sub-Divisional Level Committee as required by sub-section (1) of section 6 of the Forest Rights Act, 2006. Again there is nothing on the record to show that the decision of Sub-Divisional Level Committee was challenged before the District Level Committee as per subsection (4) of section 6 of the Forest Rights Act, 2006, however, the claim of the petitioner is rejected by the District Level Committee without recording any reasons and giving a complete go-bye to the provisions of the Forest Rights Act, 2006 and the Forest Rights Rules, 2008. Rule 8 provides that the District Level Committee shall ensure that the requisite information under clause (b) of Rule 6 has been provided to Gram Sabha or Forest Rights Committee to examine whether all claims specially those of primitive tribal groups, pastoralists and Nomadic Tribes have been approved keeping in mind the objectives of the Act and to consider and finally approve the claims and record of forest rights prepared by the Sub-Divisional Level Committee. The provisions of the Act and the Rules show that a duty is cast on the Gram Sabha, the Sub-Divisional Level Committee and the District Level Committee to ensure that the claims of the claimants are approved keeping in mind the objectives of the Act, however, attitude of the District Level Committee is like an adjudicatory authority. The Forest Rights Committee, the Gram Sabha and the Sub-Divisional Level Committee having concluded in favour of the petitioner recording his claim of forest rights under the Act, the District Level Committee could not have rejected the claim of the petitioner without recording reasons and without recording a finding that the report of the Forest Rights Committee and the resolution of the Gram Sabha are not acceptable in view of the evidence which is required to be considered as per Rule 13(1) and 13(2) of the Forest Rights Rules, 2008 while determining the forest rights. The District Level Committee has not discharged its functions as required under scheme of the Forest Rights Act, 2006 and the Forest Rights Rules, 2008. The District Level Committee which comprises very highly placed officials and is entrusted with the work of fulfilling the objectives of the Forest Rights Act, 2006 has acted in a highhanded manner because of which not only the petitioner is put to a serious prejudice but the very object of the Act is frustrated.

15. The hypocrisy of the officials of the respondents is reflected from the stand taken before this Court in paragraph No. 7 of the affidavit filed on behalf of the respondent Nos. 1 and 2. It is stated that the petitioner has failed to produce birth certificates and death certificates of his forefathers for establishing his rights as per the Forest Rights Act, 2006. The District Level Committee has not only committed a blunder while passing the impugned order but the illegal act is tried to be justified before this Court on the basis of misleading statement and misrepresentation. The learned A.G.P. has not been able to point out that under the scheme of the Forest Rights Act, 2006 and the scheme of Forest Rights Rules, 2008 the claimant (tribal) is required to produce the birth certificates and death certificates of his forefathers to substantiate his claim. In fact, as recorded above, it is the duty of the various Committees to gather the evidence and verify the rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers.

16. In the present case, I find that the concerned Authorities have mechanically dealt with the claim of the petitioner. The conclusions of the Range Forest Officer at the end of the report dated 14th August, 2009 does not make any sense inasmuch as the report does not consider the entitlement of the petitioner in the light of the provisions of Rule 13(1) and Rule 13(2) of the Forest Rights Rules, 2008.

17. In view of the above, the following order is passed:

    (i) The decision of the District Level Committee dated 20th April, 2011 communicated to the petitioner by the communication dated 25th July, 2011 is set aside.

    (ii) The matter is remitted to the District Level Committee for considering the matter afresh as per the provisions of the Forest Rights Act, 2006 and the Forest Rights Rules, 2008.

    (iii) The District Level Committee shall take decision according to subsection (5) of section 6 of the Forest Rights Act, 2006 and communicate it to the petitioner till 30th June, 2017.

    (iv) The District Level Committee shall pay costs of Rs. 10,000/- (Rs Ten Thousand Only) to the petitioner within two months by demand draft, after verifying that the petitioner is having an account in a nationalised bank.

18. Rule is made absolute in the above terms.

Kamlakar Lachayya Olalla vs. State of Maharashtra & Ors.

WRIT PETITION NO. 649 OF 2012
HIGH COURT OF BOMBAY AT NAGPUR
14.09.2018
CORAM: B.P. DHARMADHIKARI J.
CITATION: 2018 SCC ONLINE BOM 2684

SUMMARY

The petitioner claimed to be an 'other traditional forest dweller' (or 'OTFD') as defined under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). The District Level Committee (or 'DLC') had rejected his claim, on the ground that the land claimed to be under cultivation (in Mauza Janampalli) was separate from his actual place of residence, which was at Sironcha. Further, the petitioner had failed to prove that he and his predecessors had resided in the forest for three generations or 75 years.

The petitioner submitted that the distance between his place of residence and the land under his cultivation was only two kilometers, and that the DLC's inference was perverse. He also argued that claims of other similarly placed persons had been approved, and therefore the impugned order was discriminatory and contrary to Article 14 of the Constitution of India.

The respondent state government argued that it is not enough that a person's livelihood is dependent on forest produce/ forest land; they must also prove that they have been living in the forest for three generations. It was also submitted that the distance between the residence of the petitioner and his cultivation is more than 30 kilometres.

After examining the submissions as well as the provisions of the Forest Rights Act, the court took the view that to fulfil the requirement of Section 2(o) of the Act, it is not sufficient to demonstrate dependence and residence in the forest. The court observed:

> It is to be demonstrated that this residence and dependence both are in existence for at least 3 generations i.e. for period of 75 years prior to 13-12-2005. Petitioner therefore has to plead that his grandfather or great grandfather also resided in same forest and primarily earned livelihood because of said forest or then forest land, bona fide. Petitioner has not pleaded accordingly.

The court further examined the scheme of the Forest Rights Act to conclude that the emphasis is on occupation of the forest by a community as a whole, and individual self-cultivation must be as a member of such community. Since the petitioner, an OTFD, had not argued that he was part of such a community, nor was he a Scheduled Tribe, he is not entitled to the benefit of the Forest Rights Act.

While dismissing the writ petition on these grounds, the court also observed that it appeared that the Forest Rights Act was being misused or abused. It therefore directed that a Public Interest Litigation be registered on the strength of this order, and also appointed an *Amicus Curiae* (friend of the court) to assist the court.[14]

[14]Pursuant to the court's directions in this judgment, a public interest litigation was registered entitled *Court on its own motion vs. State of Maharashtra & Ors.* PIL No. 121 of 2008 before the Nagpur bench of the Bombay High Court. However, after the court recorded that *"the basic issue involved in this public interest litigation is pending for adjudication before Hon'ble Apex Court"*, at a hearing on 13.3.2019, the PIL was adjourned *sine die* vide order dt. 12th February 2020 by a Division Bench comprising R.K. Deshpande and Amit B. Borkar, JJ. It is not, however, clear which proceeding before the Supreme Court is being referred to.

EDITOR'S NOTE

The Single Judge has completely misdirected himself in the present case, by interpreting the Forest Rights Act in a manner entirely inconsistent with its actual meaning and intent. In a beneficial legislation, if the court must expand on the letter of the law, it must cohere with the spirit and purpose of the law. In the present case, however, the court has interpreted Section 2(o) to mean that for a claimant to meet the criteria of three generations, they not only must demonstrate their own dependence on the forest, but also that of their father and grandfather. This is not stated in the Act or Rules anywhere, and indeed, cannot be the case.

The court goes on to state that an individual claim for self-cultivation by an OTFD must demonstrate that the claimant is the member of a community. Not only is this not a requirement under the law, the opening portion of Section 3(1) of the Forest Rights Act clearly states that forest rights can be *"individual or community tenure or both"*.

The court has also not taken note of the circular dt. 09.06.2008[15] issued by the Ministry of Tribal Affairs clarifying unambiguously that 'primarily residing' means forest dwellers who may spend most of their time working in the forest, irrespective of whether their dwelling houses are outside the forest. The court ought to have been aware that, unlike farmers in industrial farms in First World countries, agricultural communities across India have dwelling houses at a distance from their cultivation fields, and forest dwelling communities are no different in this regard.

JUDGMENT

1. Heard Advocate Morande for petitioner and Shri N.R. Patil, learned AGP for respondents.

2. Question is whether denial of allotment of land for cultivation to petitioner under the Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as "2006 Act") is contrary to his rights as a forest dweller or then contrary to the Constitution of India.

3. Advocate Morande submits that the application made by eligible person travels through three committees which function at different levels. Last committee has found petitioner not staying at a place where his ancestors were staying and also not at a place where piece of land claimed to be under cultivation is located. He points out that actual place of residence at Sironcha and location of land in adjacent village at Mauza Janampalli (Chek) is separated just by two kilometers. Inference of not residing as drawn by the committee presided over by Collector is therefore perverse.

4. Learned AGP has invited my attention to object of the Act, the definition contained in section 2(o) and also the scheme of section 3 of 2006 Act. He submits that not only livelihood has to be on the basis of forest produce or forest land but it has to be so for three generations. The stay of such person in forest therefore may be for three generations.

5. Both learned advocate and learned AGP have relied upon the provisions of 2006 Act.

6. One of the contentions of petitioner is one Ramabai Katterya Durgam residing at Sironcha has been given piece of land in area of Village Janampalli (Chek) and thus different treatment has been extended to petitioner thereby violating Article 14 of the Constitution of India. Learned AGP has disputed this.

7. Findings recorded by Collector in the impugned order dated 17-9-2010 show that petitioner has encroached upon forest land at Mauza Janampalli (Chek). He and his ancestor resided at Mauza Tekada, Tahsil Sironcha. The impugned order finds that family is not residing even in village where

[15]Circular dt. 09.06.2008 bearing F. No. 17014/02/2007-PC&V (Vol III) issued by Ministry of Tribal Affairs, Government of India. It must be noted that circulars such as this are issued by the said Nodal Ministry in exercise of its statutory powers under Section 12 of the Forest Rights Act.

forest land is located. Petitioner claims that he is residing at Sironcha which is just two kilometers away from Janampalli. Learned AGP, on the strength of Google Map, has attempted to urge that distance between Janampalli and Tekada is in excess of 30 kilometers. He claims that as crow flies, distance may be in excess of 15 kilometers. I need not delve into that controversy. These facts and distances are mentioned because Collector finds stay of petitioner and his family at Tekada but does not point out the distances between these locations.

8. In this backdrop, when the object of 2006 Act is looked into, its purpose is to recognise and vest forest rights and occupation in forest land in forest dwelling Scheduled Tribe and other traditional forest dwellers. The Act contemplates such handing over of rights with responsibility for sustainable use, conservation of biodiversity and maintenance of ecological balance. It also mentions that forest rights on ancestral lands and their habitat were not adequately recognised in consolidation of State forests during colonial period. Petitioner does not claim to be a person belonging to any Scheduled Tribe. He claims to fall under the residual part namely "other traditional forest dweller". This phrase is explained in section 2(o) to mean any member of community who has for at least 3 generations prior to 13th day of December, 2005 primarily resided in and who depend on forest or forest land for bona fide livelihood needs. Explanation to this definition clarifies that word "generation" employed means a period comprising 25 years. Thus, this definition in plane simple language mandates the primary residence in forest and also additionally, dependence on forest or forest land for bona fide livelihood needs. Petitioner showing his residence in forest or dependence on forest is not sufficient. It is to be demonstrated that this residence and dependence both are in existence for at least 3 generations i.e. for period of 75 years prior to 13-12-2005. Petitioner therefore has to plead that his grandfather or great grandfather also resided in same forest and primarily earned livelihood because of said forest or then forest land, bona fide. Petitioner has not pleaded accordingly.

9. Petitioner himself states that his ancestors resided at Tekada and he has come to Sironcha. He is also not claiming stay/residence in forest. At the most on account of cultivation, he may depend upon forest land for livelihood needs but that by itself is not sufficient to clothe him with any right. Such encroachment also cannot be viewed as bona fide.

10. Provisions of section 2(c) define "forest dwelling Scheduled Tribes" to mean the member or community of Schedule Tribes primarily residing in and dependent on forest or forest land for bona fide livelihood needs. It also includes Scheduled Tribe Pastoralist communities. Provisions of section 3(1) show that rights mentioned in that section which secure livelihood or community tenure or both are accepted as forest rights. Under Clause (a), right to hold and live in forest land under individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of such community is recognised as a forest right. Under sub-section (3) of section 4, recognition of vesting of forest rights is subject to condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied the forest before 13-12-2005.

11. Scheme therefore shows emphasis on occupation of forest by a community as a whole and then use of forest land for earning livelihood bona fide jointly by community or then for self-cultivation by an individual member of such community. Any individual who is not part or member of such community therefore cannot aspire and seek protection of 2006 Act. Here admittedly, petitioner is not member of any Scheduled Tribe. He claims to be other traditional forest dweller. This definition also obliges him to be a member of a community. Petitioner therefore has to show that his encroachment or use of forest was as a member of some community as part of joint act of that community. There is no such pleading.

12. The contention that a lady by name Ramabai Durgam has been allotted forest land in identical situation now needs to be considered. Allotment letter dated 25-2-2011 clearly shows that the lady belongs to Scheduled Caste (Mahar). She is therefore not a Schedule Tribe. Material on record does not show that she is not residing in forest in which her right is recognised. Effort to compare the case of petitioner with case of said lady is therefore erroneous. Wrong allotment in one case cannot be cited as precedent.

13. In ancient India, normally caste system originated as part of and is associated with society which had some discipline. Tribals never resided as part of such society but were away in seclusion in various pockets in the country. They had their own culture and at times, had no religion also. The 2006 Act recognises such tribals or other communities who at least for 3 generations before 13-12-2005 continue to reside in forest i.e. since 75 years prior thereto and earn their livelihood through forest as defined in section 2(c) or section 2(o) of 2006 Act.

14. From arguments advanced by petitioner, it appears that encroachers not so residing who have brought forest land under cultivation and were not members of any "community" may also be getting benefit of the welfare legislation i.e. 2006 Act. If object and spirit of 2006 Act is kept in mind, it may have relevance only for small community or small number of people. In present facts, the village level committee and Gramsabha have recommended the claim of petitioner for allotment.

15. As it appears that the provisions of the Act are being misused or abused, Registry to register a PIL on the strength of this order. Advocate Omkar Deshpande present in Court is appointed as Amicus to assist the Court in the matter.

16. Learned AGP waives notice for respondents in it.

17. List that PIL for further consideration in presence of appropriate bench as per roster assignment on 19-9-2018.

18. Subject to this, writ petition is **dismissed**. Rule discharged. No costs.

Baburao & Ors. vs. State of Maharashtra & Ors.

WRIT PETITION NO. 2604 OF 2017
HIGH COURT OF BOMBAY AT NAGPUR
23.10.2018
CORAM: R.K. DESHPANDE & VINAY JOSHI, JJ.

SUMMARY

The petitioners were a group of 21 forest dwellers seeking the court's directions to the respondent state government '*to decide the claim of the petitioners for regularization of encroachment*'.

In an affidavit in reply on behalf of the respondents, the Sub-Divisional Officer (or 'SDO'), Chandrapur pointed out that this petition had become infructuous since the claim of all but two of the petitioners had been decided in accordance with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') during the pendency of this case. The claims of the remaining two petitioners were under consideration before the Sub Division Level Committee (or 'SDLC'), and would be decided within one month.

Accepting these submissions, the court gave liberty to the respondents to decide the claims of the remaining two petitioners within a month, and liberty to the parties challenge these decisions under the Forest Rights Act, if aggrieved.

The court issued a further important direction:

> Besides these petitioners, if the claims of any other persons are not yet decided, the decision be also taken within the said period.

With these directions, the writ petition was disposed of.

EDITOR'S NOTE

Prior to the enactment of the Forest Rights Act, the procedure for 'regularizing encroachments' in forest areas was contained in executive instructions[16] issued by the Ministry of Environment and Forests, and these were notoriously hard to enforce. This is an interesting case where the petitioners came before the court seeking the lesser relief of 'regularization of encroachments', and it is the respondent state government and the court which turned around and granted them a significantly more substantial relief under the Forest Rights Act. The court then proceeded to issue an order *in rem*, extending this direction – that pending claims under the Forest Rights Act be decided in a timely manner – to all persons whose claims remain undecided. As such, this is a very powerful decision indeed.

JUDGMENT

1. Rule, made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

[16]Circulars dt. 18.09.1990 bearing File No. 13-1/90-FP (1) to FP (6) issued by Ministry of Environment & Forests, Government of India, which included, *inter alia*, guidelines on regularization of 'encroachments on forest lands'. These guidelines are known as the '1990 Guidelines' in common parlance.

2. This petition seeks direction to the respondents to decide the claim of the petitioners for regularization of encroachment.

3. In response to this petition, it is stated in Para 2 of the reply filed on behalf of the respondent No.3 SubDivisional Officer, Mul, District Chandrapur, as under:

> "2. At the outset it is further submitted that the instant petition has become infructuous as the claim of the petitioners excluding petitioners No. 19 and 21 has been decided by the Sub Divisional Level Forest Committee in accordance with law in the month of June and July, 2018 itself. So far as claim of the petitioners Nos. 19 and 21 is under consideration of the same Committee and same would be decided within one month. The decision passed by the said Committee can be challenged before the District Level Forest Rights Committee under the provision of section 6(4) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. ..."

4. In view of above, the respondents are at liberty to decide the claims of the petitioner Nos. 19 and 21 within a period of one month from today. Besides these petitioners, if the claims of any other persons are not yet decided, the decision be also taken within the said period. The parties shall be at liberty to challenge the order, if they are aggrieved by such order. All questions are left open to be agitated in appeal.

5. The petition stands disposed of. No costs.

Motiram Bhivaji Tigote & Ors. vs. State of Maharashtra & Ors.

WRIT PETITION NO. 8991 OF 2016
HIGH COURT OF BOMBAY AT AURANGABAD
07.12.2018
CORAM: S.V. GANGAPURWALA & R.S. AVACHAT, JJ.

SUMMARY

The petitioners were forest dwellers, who had filed this writ petition asserting their rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). During the pendency of the petition, the Gram Sabha (respondent no. 6) passed a resolution in their favour, approving the allotment of the land in question for cultivation. The petitioners, accordingly, submitted that under the Forest Rights Act, this resolution is required to be forwarded to the Sub-Divisional Level Committee (or 'SDLC') for its decision, which in turn, must forward it to the District Level Committee (or 'DLC'). The petitioners sought directions along these lines.

The court directed that the Gram Sabha resolution be forwarded to the SDLC, which must take a decision '*in accordance with law and procedure*' and forward the same to the DLC. The DLC thereafter must decide the matter. Strict time frames were fixed for each stage of the process.

Since the Gram Sabha had not appeared in the matter despite several opportunities and adjournments, the court also directed the petitioners to communicate this order to the Gram Sabha. With these directions, the petition was disposed of.

EDITOR'S NOTE

Although a bare perusal of this judgment does not provide sufficient detail regarding the exact cause of action, it is clear that the matter relates to a delay in decision-making on the petitioners' claim for forest right to cultivation land. The court's order directing time-bound decision-making by SDLC and DLC on the petitioners' claim is very welcome. It is also a reminder that far too often, claims under the Forest Rights Act remain pending for long periods before various authorities under the Act. This generates tremendous uncertainty for forest dwellers, contrary to the stated objective of the Act to ensure 'tenurial security'.[17]

JUDGMENT

1. Heard Mr. Kurundkar, learned Advocate for the petitioner and Mr. Badakh, learned Assistant Government Pleader.

2. The notice before admission to respondent nos. 6 and 7 were served. However none appeared for them. Thereafter this Court issued notices of final disposal to respondent nos. 6 and 7. The notices of final disposal are also served upon respondent nos. 6 and 7, still none appears for them.

[17]The need to address the long-standing insecurity of tenurial and access rights of forest dwellers is identified as a key objective of the Forest Rights Act in its Preamble.

3. Mr. Kurundkar, learned counsel submits that during the pendency of the writ petition the Gram Sabha – respondent no. 6 has passed a Resolution on 29.01.2018 in favour of the petitioners for allotment of the writ land for cultivation to the petitioners. Under the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 the Resolution is required to be forwarded to respondent no. 8 – Sub Divisional Level Committee and after the Sub Divisional Level Committee takes decision upon it, it is to be forwarded to respondent no. 9 – District Level Committee. Respondent nos. 6 and 7 be directed to forward the Resolution to respondent no. 8.

4. In case, the Resolution is passed by respondent no. 6 – Gram Sabha (ExhibitJ), then the same shall be forwarded by respondent nos. 6 and 7 to respondent no. 8 within a period of six (6) weeks. The respondent no. 8 shall take decision upon it in accordance with law and procedure within a period of three (3) months of the receipt of the Resolution from respondent nos. 6 and 7 and shall further forward it immediately to respondent no. 9. Respondent no. 9 shall eventually decide it within a period of three (3) months from the date of decision of respondent no. 8. The petitioner shall communicate and serve this order upon respondent nos. 6 and 7.

5. The writ petition accordingly stands disposed of. No costs.

CHHATTISGARH HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Mohammed Sultan Ahmed vs. Chhattisgarh State Minor Forest Produce (T&D) Cooperative Federation Limited, etc.

WRIT PETITION (TAX) NO. 79 OF 2012, ETC.
CHHATTISGARH HIGH COURT
10.01.2013
CORAM: SATISH K. AGNIHOTRI, J.
CITATION: 2013 SCC ONLINE CHH 10

SUMMARY

A batch of 23 writ petitions were filed stating similar facts and questions of law, and were disposed of by this common judgment.

The petitioners, who are engaged in the business of *tendu* leaves, were granted tenders floated by the respondent federation after which the purchase agreements were executed. As part of the purchase agreements, tax was leviable and payable. In 2005, the state government enacted a law requiring the payment of 25% value-added tax (or 'VAT') on *tendu* leaves. In 2006 the state government granted partial exemption of this tax on 'minor forest produce' reducing it to 4%, and subsequently raising it to 5%.

The petitioners argued that *tendu* leaves are 'minor forest produce' and should be entitled to the reduced tax rate of 5%.

The state government argued that since there is a special legislation relating to *tendu* leaves, namely, the Madhya Pradesh Tendu Patta (Vyapar Viniyanam) Adhiniyanam, 1964, these cannot be treated as 'minor forest produce', and the petitioners are not entitled to exemption from the payment of the full VAT.

The court relied upon a decision of the Supreme Court where it was held that *'there could be nothing like exemption of goods from tax unless goods are exigible to tax.'*[18] It is undisputed that 'minor forest produce' as such, is not exigible to tax. However, there are certain forest produce, such as bamboo, *tendu* leaves, etc. which are exigible to tax under different entries. Thus, the exemption also would be applicable to only those minor forest produce which are exigible to tax.

The court was of the view that since these petitions involve mixed questions of fact and law, the petitioners are at liberty to prefer an application before the Commissioner, VAT Act, for exemption under relevant law, to be decided by the Commissioner in a time bound manner.

EDITOR'S NOTE

Although this decision dates back several years, and the legal landscape has altered since then, it is nevertheless interesting. It is a telling commentary on the nature of persons who have access to the justice system that a large number of *tendu patta* traders[19] approached the court and vehemently sought exemption from taxes, while relying upon the Forest Rights Act.

[18] *Reliance Trading Company vs. State of Kerala* (2006) 147 STC 111 (SC).
[19] This batch consisted of a total of 23 separate writ petitions, each filed by a separate *tendu patta* trader or trading company.

JUDGMENT

1. W.P. (T) No. 79, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 91, 93, 94, 96, 97, 98, 99, 100, 101, 103, 104, and W.P. (T) No. 107 of 2012, involve common facts as well as one and the same question of law, require to be decided by common order.

2. As all the facts are common, the facts and documents referred in the first petition, i.e., W.P. (T) No. 79/2012, are being taken for consideration. The petitioners are engaged in business of Tendu leaves. A tender was floated by the respondent No. 1/Federation for advance sale of Tendu Leaves for collection season 2012. The petitioners submitted their offer which was accepted and communicated to the petitioners by the respondent No. 1 on 16.012012 (Annexure P/1). The petitioners executed a purchase agreement with the respondent No. 1/Federation. Payment for each lot, as per the conditions contained in the agreement, was to be made in four instalments i.e., on 04 October, 2012, 19 November, 2012, 4 January, 2013 and 15 February, 2013. As per condition No. 8, tax leviable was to be paid along with instalments and purchasers were required to pay the Value Added Tax (for short 'the VAT') under the Chhattisgarh Value Added Tax Act, 2005 (for short 'the VAT Act'). The petitioners were directed to pay VAT at the rate of 25% on purchase of Tendu leaves. In the meantime, the State Government issued a notification on 31.03.2006 (Annexure P/4) granting exemption partly so as to reduce the rate of tax on minor forest produce to 4%. The said notification was valid for the period 01.04.2006 to 31.03.2008. By notification dated 31.3.2008 (Annexure - P/5), the exemption on final minor forest produce was further extended for the period from 1.4.2008 to 31.3.2012 reducing the rate of tax to 5%. Thereafter, on 24.03.2012 (Annexure P/6), by notification validity of the notification (Annexure P/5) was extended up to 31.03.2013.

3. Shri Shashank Dubey, learned Senior counsel appearing with Shri Anand Mohan Tiwari, learned Advocate for the respective petitioners, would submit that the Act of 2005 does not contain any definition of minor forest produce but the Chhattisgarh State Forest Policy, 2001 (for short 'the Policy, 2001') (Annexure P/7) defines it as "non timber forest produce, including Tendu Leaves". Further, in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short 'the Forest Rights Act, 2006'), it has been defined as "non timber forest produce including Tendu Leaves". Shri Dubey further submits that in Schedule II part III (Annexure P/11), Tendu Leaves is mentioned at serial No. 5, however, no rate of tax is mentioned in column (3) thereof. In column (4), rate of 25% is mentioned under section 8(ii), however, in the Act, 2005, there is no section 8(ii), as it was omitted in 2006.

4. It is further urged that the petitioners are not liable to pay 25% tax on purchase of Tendu Leaves, but only 5% under notification dated 31.3.2008 (Annexure - P/5).

5. On the other hand, Shri Sanjay K. Agrawal, learned Advocate General appearing with Shri Pankaj Shrivastava, learned Panel Lawyer for the State/respondent No. 2 and Shri Kachhwaha, learned Advocate appearing for the respondent No. 1/Federation, would submit that the petitioners had entered into an agreement with the respondent No. 1, wherein clause 8 of the purchase agreement is very specific. The State Government, by notification dated 01.09.2006, has amended the VAT tax for transaction of Tendu Leaves at the rate of 25%. The petitioner ought to have approached the Assessing Authority before filing the present writ petition. The petition is premature and on the ground of availability of alternative remedy, this petition is not maintainable. Once the specific rate has been notified for the Tendu Leaves, it cannot be considered as minor forest produce for the purpose of the taxation, irrespective of the definition of minor forest produce in other Acts. Besides, the State is fully competent to impose different rate of taxes for different minor forest produce. Shri Agrawal, would further submit that vide amendments in CG VAT (Amendment) Act, 2006 (No. 26 of 2006) (for short 'the Amendment Act) w.e.f. 01.04.2006, Tendu Leaves is exigible to tax at the rate of 25%.

6. Learned Advocate General would next contend that there is a special Act dealing with the trade in Tendu Leaves namely Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 (for short 'the Adhiniyam, 1964') and as such, Tendu Leaves cannot be treated as minor forest produce. Thus,

the petitioners are not entitled to exemption under the exemption notification dated 30.03.2006 (Annexure P/4). Shri Agrawal would further submit that the contention of the petitioner that under the Policy, 2001, and the Act, 2006, the minor forest produce has been defined as "non timber forest produce including tendu leaves", therefore the Tendu Leaves cannot be taxed at the rate of more than 5%, is fallacious and without substance, because under no circumstances, when there are separate entries in Schedule II for forest produce and there is a separate entry for Tendu leaves, taxable at the rate of 25%, it cannot be said that the Tendu Leaves, being a minor forest produce, is entitled to benefit of exemption.

7. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

8. Initially, the rate of tax in respect of Tendu Leaves was in column No. 4 under Section 8 (ii) of the Act, 2005. Section 8 is charging section which provides that there shall be levied on goods specified in Schedule II, a tax at the rate mentioned in the corresponding entry in column (3) thereof. Subsequently, by Amendment Act, 2006, schedule II of the principal Act, 2005 was amended and the column No. 3 was omitted and column No. 4 was re-numbered as column No. 3 and 'Rate of tax under Section 8 (ii)' was substituted by 'Rate of tax under Section 8 percent'. Thus, the defect in Schedule II was amended and the rate of tax was brought under column No. 3 and as such, rate of tax was in accordance with the charging section 8. Thus, there is no infirmity with regard to Schedule II for the purpose of rate of tax.

9. Shri Dubey, on behalf of the petitioners, without amending the pleadings, argues that since the amending Act was not in accordance with the provisions of section 15A of the Act, 2005 which provides for amendment of Schedule, the amendment is not proper and cannot be relied upon. Section 15A provides for amendment by way of notification by the State Government in Schedule II. It is further provided in subsection (3) of section 15A that every notification issued under sub-section (1) shall, as soon as may be, laid on the table of the Legislative Assembly. The gazette publication was also made, moreover, there was no change in the rate of tax as prescribed in the Schedule II. The same rate of tax, which was provided in column No. 4 was renumbered by Amendment Act and was brought under column No. 3 in accordance with the requirement of section 8 of the Act, 2005. The Act was amended by the State Legislature. Thus, it cannot be held that proper procedure for notification as prescribed under section 15A of the Act, 2005 was not followed and, as such, the same is vitiated. There is also no pleading to that effect except oral submission, as aforestated, advanced by learned counsel for the petitioners. Thus, on both counts this contention of the petitioners is noticed to be rejected. If the power to amend Schedule II has been conferred upon the State Government, the same can be exercised by the delegator also, i.e., legislature. There is no challenge to the validity, constitutionality of the amending Act. Thus, Tendu Leaves was exigible to the tax at the rate of tax of 25% under Schedule II.

10. As regards applicability of the exemption notifications dated 31.3.2006 (Annexure- P/4) and 31.03.2008 (Annexure P/5), period of which has been extended till 30.04.2013, it will be applicable to only those goods or class of goods, which are exigible to tax as specified in schedule - II of the Act, 2005. There is no taxable entry separately for minor forest produce. The exemption notifications provide for granting exemption to minor forest produce partly so as to reduce the rate of tax to 5%. This tax exemption is available to all the minor forest produce. The State Government, in its return dated 26.11.2012 has clearly stated that minor forest produce are in several entries, as follows:

> "9….However, by perusal of certain specific entries in Schedule I like entry No. 4 - aquatic feed, poultry feed and cattle feed including grass, hay and straw, entry No. 5 - Betel leaves, entry No. 17 - Firewood excluding casuarinas and eucalyptus timber, entry No. 22 - fresh plants, saplings and fresh flowers, entry No 32 - leaf plates and cups, pressed or stitched (Done and pattal), entry No. 42 - Sabai grass and rope made of sabai grass, entry No. 44 seeds of all types other than methi, dhaniya and the seeds which are covered by the term "oil seeds" specified in section 14(vi) of the Central Sales tax act, 1956 (No. 74 of 1956), entry No. 51 Toddy, Neera and Ark would reveal that although they are the forest produces but since for tax purpose, a specific entry entries have been

made in Schedule I of Chhattisgarh Value Added Tax, 2005 by which these products although being the minor forest produce, have been exempted from taxation by making separate specific entries."

11. Clause 4.5 of the Policy, 2001, defines minor forest produce as under:

"4.5 Conservation of Minor Forest Products (MFP) Non timber forest produce called the Minor Forest Products or MFP like Tendu leaves, Sal seed, imli, Chironji, Kullu and Dhawra gum, Kosa cocoon, Honey etc….."

12. Minor forest produce has also been defined in Section 2 (i) of the Forest Rights Act, 2006, which reads as under:

"2 (i) 'minor forest produce' includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;"

There is no other definition in any other provisions including the Adhiniyam, 1964.

13. It is fairly admitted by Shri Agrawal that there is no separate entry, however, it is contended that wherever the separate entries for Tendu Leaves have been made, that would not come under the purview of the exemption.

14. The issue as to whether exemption would be available to such goods, which are not exigible to tax came up for consideration before the Supreme Court in the matter of ***Reliance Trading Company v. State of Kerala***,[20] it was observed that "there could be nothing like exemption of goods from tax unless goods are exigible to tax." There is no dispute that minor forest produce as such, is not exigible to tax. Forest produce like Bamboo, Tendu leaves etc. are exigible to tax under different entries. Thus, the exemption is applicable to all the forest produce which are eixigible to tax. The exemption will certainly be applicable to only those minor forest produce, which are exigible to tax.

15. In view of the foregoing, since these petitions involve mixed question of facts and law, liberty is reserved to the respective petitioners to prefer an application before the Commissioner, VAT Act, if so advised, for exemption under the above stated notification. In that event, the Commissioner, will decide the same in accordance with law, as early as possible, preferably within a period of four weeks from the date of receipt of the application. The petitioners will also be at liberty to make an application for grant of stay in the payment of the tax, if so advised.

16. With the aforesaid observation and direction, all these petitions stand disposed of.

17. No order as to costs.

[20](2006) 147 STC 111 (SC).

Tribal Development and Training Institute Rajpur vs. Union of India & Ors.

WRIT PETITION (PIL) NO. 14 OF 2015
CHHATTISGARH HIGH COURT
19.12.2016
CORAM: DEEPAK GUPTA, C.J. & SANJAY AGRAWAL, J.

SUMMARY

The petitioner, a non-governmental organization (or 'NGO'), filed this public interest litigation (or 'PIL') stating that a large number of Scheduled Tribes are residing in dense forested areas for many years, on government forest land. They are hence entitled to reside in the land and use it in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The court examined the provisions of the Forest Rights Act at some length, and in particular examined the detailed three-tier procedure under Section 6 of the Act for individual and community forest rights recognition. It also examined the range of forest rights under Section 3 of the Act.

The court was of the view that there can be no doubt that forest dwellers are entitled to rights under this law. However, even if these people are poor and uneducated, the procedure prescribed under Section 6 of the Forest Rights Act must be followed. The person who claims such right must approach the Gram Sabha and thereafter the Sub-Divisional Level Committee and District Level Committee for recognition of his rights. These rights cannot be granted by order of the court in a PIL, nor can such rights be granted by the Collector.

Accordingly, the court rejected the writ petition as being non-maintainable as a PIL, taking care to clarify that the rights of individual forest dwellers shall be determined in accordance with law as per their own merits.

EDITOR'S NOTE

On first reading, the judgment of the high court may appear harsh and unresponsive. However, the court has taken the correct approach. The mechanism for rights recognition under the Forest Rights Act must not be viewed as some form of beneficence by the state. Rather, the exercise of authority under the Forest Rights Act by the Gram Sabha of forest dwellers is vital to the restoration of grassroots democracy. The Gram Sabha is a vital building block for such communities to protect, preserve, manage and conserve their traditional community forest resources under Section 3(1)(i) of the Act, to exercise their authority over the forest ecosystem under Section 5, and build community resource conservation plans as provided under the Forest Rights Rules. Attempting to operationalise the Forest Rights Act in a top-down manner would deprive the Gram Sabhas of the opportunity to undertake these important tasks, and defeat the very purpose of the Act.

JUDGMENT

1. In this Public Interest Litigation, the Petitioner which is a NGO, claims that a large number of members of the Scheduled Tribes are uneducated and residing in dense forest areas. The contention of the petitioner is that these tribal persons are in possession of some Government land which has

been in their use for a long time and they are entitled to reside in the same land and use the land in terms of Section 6 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short 'the Act of 2006').

2. There is no manner of doubt that forest dwellers including Scheduled Tribes, who are living in these forests, are entitled to certain forest rights in terms of Section 6 of the Act of 2006. Section 6 of the Act of 2006, however, prescribes a procedure for vesting such forest rights. It reads as follows:

"**Section 6. Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof** (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and disposed of such petition:

Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional officer to the District Level Committee for a final decision.

(4) Any person aggrieved by the decision of the Sub-Divisiona l Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Division Level Committee and the District Level Committee shall consider and dispose of such petition.

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee.

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.

(6) The decision of the District Level Committee on the record of forest rights shall be final and binding.

(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.

(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled

Tribe members and at least one shall be a woman, as may be prescribed.

(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

3. Therefore, the Gram Sabha is the authority to initiate the process for determining the nature and extent of an individual and community forest right in such forest lands. The Gram Sabha will have to pass a resolution either in favour or against the person claiming rights in the forest land. However, the Gram Sabha is not the decision-making body. It is only a recommendatory body and the same has to be sent to the Sub-Divisional Level Committee which, after going through the recommendation of the Gram Sabha, shall dispose of the same.

4. The second proviso to Section 2 clearly lays down that the Sub-Divisional Level Committee has to give hearing to a person who has filed an Appeal against resolution of the Gram Sabha and no order should be passed against him without giving such person an opportunity of hearing. The Petitioner is a NGO and has filed this petition on behalf of all these persons who are not even named in the petition. It may be true that these persons are uneducated. It may be true that they are very poor but that does not mean that the procedure prescribed under Section 6 of the Act of 2006 is not to be followed. This Court cannot, in a PIL, give general directions that the rights of all unidentified persons should be determined. The person who claims such right must approach the Gram Sabha and the Sub-Divisional Level Committee for vesting of his rights. These rights cannot be granted in a PIL. In case the Petitioner which is a NGO and is actually interesting in prosecuting the case of the poor persons, nothing prevents the Petitioner from assisting or helping these persons to draft and file the Petitions to the Gram Sabha concerned. However, the applications must be filed by the aggrieved person.

5. What can be granted to these forest dwellers are the rights mentioned under Section 3 of the Act of 2006 and nothing more than that. Subsection(a) of Section 3 of the Act of 2006 lays down the right to hold and live in the forest land under the individual or common occupation for habitation or self-cultivation is a right which can be granted. Even this provision does not permit the Collector to grant ownership rights under the Act. It is right of user and not the right of ownership, which can be conferred under Section 3(a) of the Act of 2006.

6. We therefore reject the Writ Petition as being not maintainable as a PIL. However, the rights of the individuals shall be determined in accordance with law as per their own merits.

Arvind Netam & Ors. vs. Union of India & Ors.

WRIT PETITION (PIL) NO. 26 OF 2017
CHHATTISGARH HIGH COURT
27.07.2017
CORAM: THOTTATHIL B. RADHAKRISHNAN, C.J. & SHARAD KUMAR GUPTA, J.

SUMMARY

The petitioners are forest dwellers from villages in Kanker and Narayanpur districts, seeking mandamus directions to the Chhattisgarh state government to address their claims in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). They also sought a writ of certiorari to declare null and void the Stage-1 and Stage-II forest clearances, as well as the environmental clearance granted to the Bhilai Steel Plant for the Raoghat Mining Project. Being a Scheduled Area under the Fifth Schedule of the Constitution of India, the petitioners also sought implementation of the Panchayats (Extension to Scheduled Areas) Act, 1996 (or 'PESA').

The court opined that since the clearances were granted *'way back in 2008 and 2009'* it is *'too late in the day to subject them to judicial review'*. Regarding the Forest Rights Act, the court took the view that this is not a matter for writ jurisdiction, but rather *'has to be carried out with requisite vigour by the administrative authority concerned'*. The writ petition was accordingly disposed of with a direction to the Chhattisgarh state government to *'do the needful'* in relation to the issues raised.

EDITOR'S NOTE

It is quite disheartening when a court refuses to exercise its power of judicial review using the trope of 'too late in the day', even when blatant illegalities in the grant of forest and environmental clearances have been pointed out. When such violations impact the constitutional and statutory rights of a protected class of persons, namely the Scheduled Tribes, the court ought to be more conscious of its role as the 'sentinel on the *que vive*', the guardian of the fundamental rights of the poorest of the poor.

This decision is under challenge before the Supreme Court, which has issued notice to the respondent state government and other parties. A more judicious decision is awaited.[21]

JUDGMENT

1) This Writ Petition is instituted on 31.01.2017 for the following reliefs:

   i. Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus the Government of Chhattisgarh to complete the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 in all villages of Kanker and Narayanpur district and in particular in those listed in this petition;

[21] *Arvind Netam & Ors. vs. Union of India & Ors.* SLP (C) No. 16987 of 2018, Supreme Court of India; pending.

ii. Issue a writ of certiorari or any other writ, order or direction in the nature of mandamus to quash and to declare null and void the Stage- I Forest clearance dated 24 November, 2008 and Stage- II Forest Clearance dated 05 August, 2009 granted to the Bhilai Steel Plant for the purpose of the Raoghat mining project;

iii. Issue a writ of certiorari or any other writ, order or direction in the nature of mandamus to quash and to declare null and void the Environmental Clearance dated 4 June, 2009 granted to the Bhilai Steel Plant for the purpose of the Raoghat mining project;

iv. Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus to the Government of Chhattisgarh implement the Panchayat (Extension to Scheduled Areas), 1996; and

v. Pass such other order as may be deemed fit in the facts and circumstances of this case."

2) Reliefs 2 and 3 sought for in this writ petition instituted in early 2017 are of such nature that it will be too late in the day to subject to judicial review, the sanction for forest clearance granted way back in 2008 and 2009. All the more so, in the light of the fact that environment clearance was given to Bhilai Steel Plant for the purpose of Raoghat Mining Project on 04.06.2009.

3) Be that as it may, the primary thrust of the Writ Petition appears to be the complaint that the claims of the villages Kanker and Narayanpur districts are not appropriately addressed by the statutory and other public authorities who are duty bound to do so in terms of the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This is an issue which, rather than being taken up at this end in writ jurisdiction, has to be carried with requisite vigour by the administrative authority concerned.

4) In the light of what we have stated herein above, this writ petition is ordered directing the fourth respondent to do the needful in relation to the issues relating to what is stated in the immediately proceeding paragraph and to have such issues placed for consideration before the competent authority, if such issues are already raised and pending as of now before the State Government. This Writ Petition is ordered accordingly.

Sant Kumar Netam vs. State of Chhattisgarh & Ors.

WRIT PETITION (PIL) NO. 21 OF 2018
CHHATTISGARH HIGH COURT
25.04.2018
CORAM: PRASHANT KUMAR MISHRA & RAM PRASANNA SHARMA, JJ.

SUMMARY

This is a common judgment arising out of two separate public interest litigations (or 'PILs'), filed by two different petitioners, one of whom is Scheduled Tribe. Both petitioners prayed for quashing of the entire tender process of two rounds of sale of *tendu patta*, a minor forest produce (or 'MFP'), for the collection year of 2018 as undertaken by the Chhattisgarh State Minor Forest Produce (Trading & Development) Cooperative Federation Limited. They argued that bids accepted through the tender process were inexplicably low, resulting in a loss to the exchequer of a 'whopping' Rs. 300 crores. The petitioners accordingly sought an investigation by the Central Bureau of Investigation (or 'CBI') into alleged corruption through cartelization in the tender process. Further, directions were sought to the state government to redress the loss of livelihood likely to be caused to the tribal *tendu patta* plucking families.

The petitioners further challenged the tender process for being arbitrary on grounds of corruption and went into the technical details of the same. They argued that the state is bound by the public trust doctrine to protect the interests of both the exchequer and the tribals. Section 2(i) read with Section 3(1)(c) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') recognise the forest right to MFP, and therefore the acceptance of bids at inordinately low rates affects the forest rights of tribals. They also argued that the government was obligated by the Chhattisgarh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 to set up an Advisory Committee, and the selling price of *tendu* leaves should have been fixed in consultation with the Committee.

The respondents alleged that these petitions were filed with the sole intention of frustrating the tender process, and if allowed, tribals will suffer huge losses by causing uncertainty in plucking, storing and disposal of *tendu* leaves in the current year. It was pointed out that *tendu patta* collection is a seasonal activity which takes place during a few brief months before the monsoon.

The court analysed the e-tendering process, the rates of *tendu patta* in Chhattisgarh as well as other states, annual sales, and other factors to conclude that *"the fall in price of tendu patta for the year 2018 is not on account of any illegality or corruption of the Federation or its officers nor as a result of cartelization, but is purely based on market condition or market forces."* (at para 42)

Finding no substance in the arguments of the petitioners, the writ petitions were dismissed.

EDITOR'S NOTE

Prior to the enactment of the Forest Rights Act, *tendu patta* had been nationalised; indeed the legislative architecture as well as administrative mechanisms which support such nationalisation continue to remain incongruously in place. In many states *tendu patta* is the most valuable non-timber forest produce emerging from forest areas, and its production is closely entwined with the market economy. After its inclusion in the list of MFP as a forest right in the Forest Rights Act, efforts by tribal and forest dwelling communities to assert their lawful right to this valuable forest produce have met with intense resistance.

Even though the court did not give any finding on the argument of the petitioners that the forest right to MFP under the Forest Rights Act was violated, this judgment is useful in demonstrating the vehement opposition to the assertion of such a right, even in the context of a public interest writ petition. A cursory reading of the judgment would reveal that the issue was intensely contested. As per records, apart from the official respondents, there were 249 private respondents opposing the two lone petitioners.

JUDGMENT

1. In these two Public Interest Litigations (PILs), the petitioners, claiming themselves to be the public spirited persons, one of them namely; Sant Kumar Netam, being a tribal, have prayed for quashment of the entire tender process of first and second round of sale of tendu patta for the collection year 2018 undertaken by the respondent-Chhattisgarh State Minor Forest Produce (Trading & Development) Cooperative Federation Limited (hereinafter referred to as 'the Federation') and consequently direct for fresh tender. Petitioners have also prayed for a criminal investigation by an independent agency like Central Bureau of Investigation (CBI) in respect of corruption and scam in allotment of lots/units to the successful bidders. Prayer has also been made to direct the respondent State to make good the loss of livelihood likely to be caused to the tribal tendu patta plucking families.

2. Facts of the matter, as projected in the writ petition, are that tendu patta is one of the principal minor forest produce generating revenue for the State and the tribals, as tendu patta is available mainly in tribal dominated areas and the pluckers are mostly tribals. Tendu Patta being a natural resource is a State largesse, which is sold/allotted/ disposed of by the Federation by inviting tenders. According to the petitioner, the revenue earned by sale of tendu patta to bidders is firstly utilised for payment of wages to the pluckers at the rate of Rs.2,500/- per standard bag and, thereafter, out of the profit, 80% is distributed to the plucker families and 5% each to the Federation, the District Union and the Primary Societies. The remaining 5% is used to compensate loss making primary societies. The amount so paid to the tribals is, thus, their main source of livelihood and most of them are Below Poverty Line (BPL) families, therefore, in case of substantial loss or decrease in the amount of revenue earned by sale of tendu patta, the livelihood of the tribal families is severely affected.

3. For the collection year 2018, the Federation issued the Notice Inviting Tender (hereinafter referred to as 'the e-Tender') on 28-11-2017 for disposal of tendu leaves of 951 lots. The interested bidders submitted their bids via e-mode and in the first round, the bids were received for as many as 650 lots, out of which 549 were approved while the remaining were rejected. The Federation has accepted the bids which are ranging from above (+) 15% to (-) 51% compared to last year's rates and, as such, whopping loss is caused to the Federation, as the accepted bids are shockingly low.

4. According to the petitioner, the tender of first round has caused loss to the tune of Rs.200 crores to the State, which smells of deep rooted corruption on account of cartelization to play fraud on the exchequer and the tribals. The Federation, thereafter, proceeded to invite second round of bids in respect of the remaining 451 lots and again bids have been accepted in the same manner causing further loss to the tune of Rs.81 crores to the exchequer. In this round, the tender committee has approved the bids below up to 51%. In the second round, 153 lots were finalised and 72 were rejected, therefore, now almost 250 lots are remaining for disposal in the third round of tender.

5. The petitioners would state that by virtue of public trust doctrine, the natural resources belong to the people of this country of which the Government is only a trustee, therefore, the State is bound to protect the interest of the exchequer and the tribals. In earlier years, the irregular and arbitrary bids were cancelled in 2007 & 2008 to protect the interest of the tribals, but in this year the Federation has not acted fairly raising serious doubt and suspicion of foul play and corruption on account of cartelizing. Petitioners would further state that in the first round itself the Federation has accepted the bid of a bidder who were as low as 19th or 20th in terms of bid amount.

6. Petitioners would further plead that the tender process is undertaken by the Federation on the basis of standard terms and conditions which have been prevailing since long. After submission of bids in e-form, the same are opened on-line and the results are placed for finalization of the tender

committee of the Federation. As per the recommendation of the committee, the Federation, acting through the Managing Director, issues the final allotment order and a formal contract and agreement called as 'purchaser's agreement' is executed between the Federation and the successful bidder. In the year 2017, the rates quoted by the bidders were on higher side, therefore, it earned enhanced profit to the Federation to be passed on to the tribals as enhanced bonus. Petitioners would also state that collection of tendu patta takes place between April – June of every year, therefore, the Federation floats tender for sale of tendu patta ***as advance sale***. In the e-tender itself, it is mentioned that the lots were to be advertised as many as in three rounds in case the Federation does not receive the satisfactory bids or/and until all lots/units are sold and as a matter of practice, tenders are called for selling the lots even after three rounds and those lots which remained to be sold on completion of the tender process are managed by the Federation.

7. In para 8.31 of WP PIL No.21 of 2018 filed by Sant Kumar Netam, it is pleaded that on-line tender process requires very few days to be completed, the season of tendu leaves is yet to commence from April, therefore, the tenders are required to be cancelled & rejected for inviting fresh tenders to get better rates.

8. On the strength of above pleadings, Shri Sunil Otwani, Shri Sudiep Shrivastava and Shri Sanjay Kumar, learned counsels appearing for the petitioners, would submit that the Federation has accepted bids at a shockingly low price causing whopping loss to the exchequer, which would ultimately affect the earning of the tribals by way of distribution of bonus. They would submit that in the first round itself the Federation has accepted bids of such bidders who are down below up to 19th position in the descending order of the value of their bids. The Federation should have called fresh bids after all H-1 bids were either accepted or rejected due to exhaustion of their purchasing capacity. By not inviting bids de ***novo*** for the remaining lots, which have not been allotted to H-1 bidders, the respondent authority has caused loss to the exchequer and has promoted cartelization of tendu patta traders.

9. Learned counsel would strenuously urge that the officials of the Federation and the concerned Department of the State Government have indulged in corruption of scam proportion which needs to be investigated by the CBI, as it amounts to amassing of illegal wealth, which is punishable under the provisions of the Prevention of Corruption Act. Learned counsel would next argue that under Section 2 (i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 read with Section 3 (1)(c), the tribals have been conferred with the forest rights, therefore, acceptance of bids at an enormously low rate affects the rights of the tribals vitiating the tender process.

10. Learned counsels would refer to the documents (Annexure – P/9 in WP PIL No.21 of 2018) to highlight acceptance of bids as low as 20th in the order of bidding price. They have cited the tender process adopted by the State of Madhya Pradesh, which accepts only H-1 bidder.

11. To buttress their contentions, learned counsels for the petitioners would place reliance upon the decisions rendered by the Surpeme Court in **State of West Bengal and Others v Committee for Protection of Democratic Rights, West Bengal and Others,[22] Narmada Bai v State of Gujarat and others,[23] Centre for Public Interest Litigation and others v Union of India and others,[24] Natural Resources Allocation, In Re. Special Reference No.1 of 2012,[25] Bhubaneswar Development Authority and another v Adikanda Biswal and others,[26] Ram Kishun and others v State of Uttar Pradesh and others,[27] Master Marine Services (P) Ltd. V Metcalfe & Hodgkinson (P) Ltd. and Another,[28] Institute of Law and others v Neeraj Sharma and others,[29]** decisions rendered by the High Court of Chhattisgarh in **Ajit Pramod Kumar Jogi v High Power Certification Scrutiny**

[22](2010) 3 SCC 571.
[23] (2011) 5 SCC 79.
[24] (2012) 3 SCC 1.
[25] (2012) 10 SCC 1.
[26] (2012) 11 SCC 731.
[27] (2012) 11 SCC 511.
[28](2005) 6 SCC 138.
[29]2014 AIR SCW 6357.

Committee and Another,[30] M/s Bhawna Enterprises v State of Chhattisgarh & Anr.[31] and the decision of the High Court of Madhya Pradesh in **Aman Traders v State of M.P. and Another.[32]**

12. Shri J.K. Gilda, learned Advocate General appearing for the State, Shri R.N. Singh, learned senior counsel, Shri A.S. Kachhawaha & Shri Apoorva Kurup, learned counsels appearing for the Federation, would argue, ***per contra***, that the petitioners may be the public spirited persons, but the present petitions do not involve any element of public interest. They would submit that the petitions have been preferred with an oblique motive to frustrate the entire tender process, which would benefit none. In the eventuality of the petitions being allowed, at this juncture, the tribals shall suffer loss, as there would be uncertainty in respect of plucking, storing and disposal of tendu leaves. Learned counsels would further submit that the entire e-tendering process for disposal/sale of tendu leaves is time tested and has withstood scrutiny by the High Court on various occasions, therefore, branding the same as arbitrary, improper or irrational process, is entirely misplaced.

13. Shri J.K. Gilda, learned Advocate General appearing for the State and Shri A.S. Kachhawaha, learned counsel appearing for the Federation have taken this Court through the entire tender process to demonstrate the inbuilt fairness through a very rational and logical bidding process. Referring to the history of collection of tendu patta and the corresponding revenue generated for the last so many years, they have tried to demonstrate that the present year is a lean year for the business of tendu patta, therefore, it has not generated desired revenue for which the State or the Federation cannot be blamed. According to them, produce of tendu patta in a particular year and the price which it would fetch in the market is not completely within the control of the State as host of market factors govern such complicated price fixation. They would submit that price fixation of any commodity being a market dependant phenomenon, generation of reduced revenue cannot be a foundation for presumption of any corruption. They would also vehemently submit that there is absolutely no factual foundation set out in the petitions to, ***prima facie***, point out any element of corruption. Mere rhetoric and oral submission of corruption is not sufficient to smell corruption and direct an enquiry.

14. To substantiate their contentions, Shri J.K. Gilda, learned Advocate General and Shri R.N. Singh, learned senior counsel would place reliance upon the decisions rendered by the Supreme Court in **State of Uttar Pradesh and Others v Vijay Bahadur Singh and Others,[33]Center for Public Interest Litigation and Another v Union of India and Others,[34] Raunaq International Ltd. v I.V.R. Construction Ltd. and Others,[35] Union of India v Rajasthan High Court and Others[36]** and the decisions of the High Court of Madhya Pradesh in **Hari Om v State of M.P. and another,[37] H.N. Sundresh v State of M.P. and others,[38]** and **Mukesh and Co. Tobacco Products (P.) Ltd. v Madhya Pradesh Rajya Laghu Vanopaj (Vyapar Evam Vikas) Sahakari Sangh Limited and others.[39]**

15. Shri Kishore Bhaduri, learned counsel appearing for the CBI, would submit that for the present the CBI has no role to play in the contest between the petitioners and the State or the Federation.

16. Shri K.A. Ansari, learned senior counsel, Shri Prateek Sharma, Ms. Sharmila Singhai, Shri Vipin Singh, Shri Devesh Kela, Shri Anup Mazumdar, Shri Basant Dewangan, Shri Pritam Tiwari, Shri Ali Asgar, Shri Akshay Pawar, Shri Abhishek Agrawal, Shri K. Rohan, Shri Parag Kotecha, Shri Sanjay Agrawal, Shri Chandresh Shrivastava and Shri Pawan Kesharwani, learned counsels appearing for the respective respondents would support the submission raised by the State and the Federation.

17. To appreciate and dwell on the rival contentions, it would be necessary for us to understand the entire tender process, which is set out infra.

[30]WPC 2104 of 2017 (decided on 30-1-2018)(DB).
[31]AIR 2007 Chhattisgarh 74.
[32]2013 (1) MPLJ 699.
[33](1982) 2 SCC 365.
[34](2000) 8 SCC 606.
[35](1999) 1 SCC 492.
[36](2017) 2 SCC 599.
[37]1987 SCC Online MP 23: AIR 1987 MP 212.
[38]MANU/MP/0422/1989.
[39](1990) MPLJ 694.

18. It is not in dispute between the parties that the on-line tender process of the Federation for disposal/ sale of tendu leaves is invoked since 2013. According to the State, the computerised bidding process started as early as 1989-90. The Federation issued on-line e-tender notice for advance sale of tendu leaves for collection season 2018 on 28-11-2017 for three rounds of bidding. The tenderers/bidders were informed to download the tender notice by a particular date mentioned against the three rounds with corresponding dates for submission of on-line tender and the date of on-line opening of tender for each of the round. The tenderer is required to submit the Earnest Money Deposit (EMD) based on his own calculation of his purchase capacity and bidding capacity. A bidder is said to have purchase capacity upto 12.5 times of the value of the EMD and he can bid upto 10 times of his purchase capacity. If in a particular round the bidder exhausts his purchase capacity upon acceptance of his bid for lot or lots, he is treated to be disqualified for the remaining lots in that round. As soon as the bidder who has bidded highest for a particular lot, but is otherwise disqualified due to exhaustion of his bidding capacity, the next bidder in order of preference becomes the highest bidder for the lot where the exhausted bidder is the highest bidder. This method of consideration of a bid in a particular round goes on till the Federation decides to accept the bid upon consideration of the cut off/upset price. It is this method of acceptance of bid of a bidder, who is placed down below, is the bone of contention between the parties.

19. The above method of tendering is provided in the terms and conditions of the e-tender notice which provides that every tender shall be accompanied by an EMD of a sum which shall in no case be less than 8% of the purchase capacity declared by the tenderer in the tender form as per the details given in the condition No.13(i) and the amount of purchase capacity will be 12.5 times of the EMD and the tender shall be considered on the basis of such accepted purchase capacity. It is further stated that in case of successful tenderer EMD shall in the first instance be adjusted upto the limit of 10% of sale value towards payment of security deposit.

20. Condition No.6 of the e-tender notice provides for manner of filling tender. It says, a tenderer can submit only one tender for the purchase of one/several lots and he shall submit separate offer in his tender form for each lot showing his order of priority for the purchase of the lots. The offer must be made showing rate per standard bag and not in lump sum amount. The tenderer should enter particulars of his first priority lot at the serial number 1, particulars of his second priority lot at serial number 2 of the tender form and so on. The tenderer will not be allowed to change his order of priority shown by him in the tender form under any circumstances. The offers for different lots can be made in such a way that the total purchase price of the lots for which rates are tendered does not exceed 10 times the amount of purchase capacity, but the offers will be accepted only up to the limit of purchase capacity. If the total purchase price of offers submitted by a tenderer is beyond the limit of 10 times the purchase capacity, then such offers (in the order of priority) as are more than this limit, will not be taken into consideration.

21. Under clause 8 of the tender notice, the Government/Federation has reserved right to fix different cut off levels/upset prices for different lots or class of lots or lots of different areas in deciding allotment of lots to different tenderers.

22. Form No.2 with the e-tender form shows the manner in which the lot priority, purchase rate per standard bag and purchase price is to be quoted. In this form, as soon as the tenderer enters the amount of EMD it automatically generates his purchase capacity and the bidding capacity in the manner indicated in the preceding paragraph.

23. Upon acceptance of the tender, the tenderer is required to pay full purchase price with the tax payable on him in four equal installments on or before 5-10-2018, 22-11-2018, 5-1-2019 and 20-2-2019. A rebate of 2% of purchase price is offered to a tenderer who makes full payment of the purchase price of the lot along with all due taxes upto the due date of 1st installment.

24. By the time, the petition (WP PIL 21 of 2018) was preferred in the first week of March, two rounds of tender process were already over and the third round was in progress. Based on the rate at which tenders have been accepted in the first and second round, the petitioners have highlighted that

there is loss of revenue to the State. According to the petitioners, such loss has occurred mainly for the reason that the Federation has not only accepted the highest bid but has also accepted the rate quoted by the next bidder upto the level of 19 or 20. It is this method of acceptance of bid, which has been assailed as arbitrary, irrational amounting to corruption as it has occasioned loss of revenue to the State.

25. Referring to the acceptance of bid of bidder No.20 for Kudumkela Unit (Lot No.621); bidder No.16 for Lotan Unit (Lot No.626); bidder No.14 for Katra, Majhgavan Unit (Lot No.545); bidder No.13 for Girna, Sukhipali Unit (Lot No.463); and bidder No.13 for Tolge Unit (Lot No.634), it is impassionately argued that when the highest bidder has quoted 60-70% higher rates it is beyond comprehension as to why bidders at lower numbers have been considered for acceptance.

26. To justify the acceptance of rate, apart from the bidding process, the State/Federation have placed material before this Court to demonstrate that the market price of tendu leaves has gone down in all the adjoining tendu patta producing States, therefore, there is a pattern of market behavior, which has led to the price fixation of tendu leaves during 2018 season at a lower rate.

27. In course of hearing, the Federation has produced document, copy of which was supplied to the petitioners also, depicting the rise and fall in percentage of sale of tendu patta in various years in the State of Chhattisgarh. The figures are reproduced hereunder:

Collection Year	Average Sale Rate Obtained (In Rs. Per Standard Bag)	Rise or Fall in Percentage w.r.t. Previous Year
2004	787.00	–17.68
2005	906.00	15.12
2006	951.00	4.97
2007	1985.00	99.26
2008	1434.00	–24.33
2009	1748.00	21.90
2010	2170.00	24.14
2011	2619.00	20.69
2012	3772.00	44.02
2013	2461.00	–34.76
2014	2345.00	–4.71
2015	2656.00	13.26
2016	4693.00	76.69
2017	7945.00	69.29
2018	5847.00	–26.41

28. Similarly, comparison of average sale rate of tendu patta in the States of Telangana, Maharashtra, Andhra Pradesh, Madhya Pradesh, Chhattisgarh in the year 2017 and 2018 has been provided by the Federation. The figures provided to the Court are reproduced hereunder:

State	Sale rate in 2017 (Rs. Per standard bag)	Sale rate in 2018 (Rs. Per standard bag)	Fall in rate in 2018 w.r.t. 2017 in %
Telengana	5834	1839	68.48
Maharashtra	4606	2177	52.74
Andhra Pradesh	14871	3858	74.06
Madhya Pradesh	5732	4847	15.44
Chhattisgarh	7945	5847	26.41

29. The respondents have also shown the market condition and total collection of tendu patta in Chhattisgarh from the year 2012 to 2018;which is also reproduced hereunder:

Year	Total no. of bidders in 1st round	Purchase capacity of all bidders in 1st round of tender in Rs. Crore	Actual collection of tendu leaves in lac SB	Total sale value obtained in that year in Rs. Crore	Market Condition
2012	392	1213.14	17.15	646.90	Excellent
2013	149	387.29	14.71	362.13	Slump
2014	104	300.76	14.27	334.74	Slump
2015	161	605.11	13.01	345.50	Improved Market
2016	291	1318.65	13.61	638.89	Excellent
2017	302	2412.92	17.10	1358.65	Outstanding
2018	138	710.92	NA	900*	Slump

30. The above mentioned figures of collection of tendu patta, average sale rate in different States and the percentage of rise and fall with respect to the previous year's collection would unerringly demonstrate that whenever the preceding tendu patta collection year was good or excellent or outstanding year, the following year was a slump year. This happens because due to excellent or bumper crop in the previous year, there is glut or abundance of tendu patta in the market for consumption in that year and the following year, therefore, there is less demand of tendu leaves in the succeeding year resulting in reduction in the sale price on the economic principle of demand, supply and price. This also happens because the traders having purchased tendu patta in abundance in the previous year, their purchase capacity is affected as the amount invested is yet to generate income before the onset of bidding process of the following year, therefore, the bidding price goes down. The trade of tendu leaves having its own peculiar characteristic, inasmuch as, the plucking has to take place in April, May and early June, before onset of monsoon and the same has to be stacked and stored in the godowns before rains and, as such, neither the bidding process nor sale of tendu leaves can be deferred awaiting the market of rise and generate revenue to the State/Federation's satisfaction.

31. The above discussion on the e-tendering method, the history of collection of tendu leaves in a particular year, the rate in that particular year, and the comparable rates in other tendu patta producing States would show that firstly there is no interference of any individual or extraneous factor in the bidding process, nor there is any possibility to manipulate price of tendu patta in a particular year, which otherwise depends on so many factors including the availability of tendu leaves of previous year, therefore, to say that there is large scale corruption resulting in loss upto Rs.300 crores to the State is only an imagination of the petitioners. In an on-line bidding system any person who is entitled and permitted to bid as per the tender conditions can submit tender sitting anywhere in the country or globally. The process of submission and acceptance of tender is computer generated, once the Federation decides the cut off or upset price. In e-tendering process cartelization is ordinarily not possible. In any case, the petitioners have only raised a plea of cartelization without substantiating as to the name of the persons involved and the manner in which cartelization has been done. The rate of tendu patta in other State would clearly demonstrate that there is slump in the market, therefore, it is not a case of corruption or cartelization.

32. Learned counsel appearing for both the parties have referred to the synopsis/proposal submitted before the IDC to strengthen their respective submissions. IDC is a high power committee chaired by the Forest Minister, along with 8 other senior officers of the rank of Principal Secretary of Forest, Finance, Commerce & Industry, Tribal Development, Principal Chief Conservator of Forest, Managing Director of the Federation. The documents concerning the proposal for fixation of cut off price for the year 2018 and its acceptance by the IDC would demonstrate that the IDC/Federation

has considered the average sale price and average cut off price of the previous year along with the rate of tendu patta in other tendu patta producing States. It nowhere suggests that relevant factors have been ignored and irrelevant or extraneous matters have been considered while fixing the minimum and maximum cut off price. The e-tender document particularly clause 8 (ii) confers right to the Federation to fix different cut off levels/upset prices for different lots or class of lots or lots of different areas in deciding allotment of lots to different tenderers. Thus, fixation of cut off or upset price is a part of tender process made known to all tenderers in the tender document itself and the acceptance of tender has taken place only after the fixation of cut off/up set price.

33. It has been argued by the petitioners that the Awarodh Moolya would mean cut off price and not upset price, therefore, no upset price has been fixed before acceptance of tender, therefore, the entire process is illegal, however, the tender document itself has not provided for any date on which cut off price/upset price would be fixed. Tender document speaks of the cut off/upset price at the same place and the expression is interchangeable in the context of the present tender.

34. It is well known that when the Government disposes/sales a commodity, the object is to achieve better rates, therefore, nondisclosure of cut off price/upset price while selling tendu patta would generate more competition amongst bidders, therefore, nondisclosure or cut off price is not arbitrary.

35. In **Mukesh and Co. Tobacco Products (P.) Ltd.** (supra), the Division Bench of the High Court of Madhya Pradesh, while dealing with the similar tender process and similar challenge, would observe thus at para 6:

> '6…It, therefore, cannot be inferred that merely because a lower offer has been accepted in respect of a given lot, the respondent has committed any illegality because it may as well be that by the time the tenderer's priority in respect of a given lot comes for consideration, his purchasing capacity may either be exhausted or reduced so as to disentitle him to purchase that particular lot. In this process, no fault could be pointed out by the learned counsel for the petitioners. True it is that while working out the aforesaid method in selecting purchasers in respect of different lots, mistakes may be committed and it was not denied by the respondents that some mistakes were committed in process of selecting purchasers and in accepting their offers. It was, however, submitted that those mistakes have been corrected. No better method of ascertaining the best purchaser for a given lot was suggested by either of the petitioners. That being so, the respondents did well to apply the process mentioned above in accepting the offers of the various tenderers in respect of different lots. The criticism levelled by the learned counsel for the petitioners that due weight has not been given to the priorities in selecting purchasers in respect of different lots of Bidi leaves is not sound and must be rejected.

36. Petitioners have also referred to the provisions contained in Sections 5 & 6 of the Chhattisgarh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 (hereinafter referred to as 'the Act, 1964') to argue that the Government should have formed advisory committee and the price at which the tendu leaves are to be sold should have been fixed in consultation with the said committee but the same having not been done there is statutory violation in fixation of price and, as such, the entire tender process should be quashed.

37. A bare reading of the provisions contained in Sections 6 & 7 of the Act, 1964 would manifest that constitution of advisory committee and consultation by the State Government with the committee is for purchase of tendu leaves and not for sale of tendu leaves. There is no question of fixing any price for sale of tendu leaves because effort of the Government is to earn maximum sale price. The trade in tendu leaves including sale or disposal of tendu leaves has been left to be undertaken by the agents to be appointed by the State under the powers conferred under Section 4 of the Act, 1964. The argument with reference to Sections 6 & 7 of the Act, 1964 has no substance and it deserves to be rejected.

38. Invocation of public trust doctrine, fixation of upset price, corruption, etc., by learned counsel for the petitioners, on the strength of judgments of the Supreme Court in **Committee for Protection of Democratic Rights, West Bengal** (supra), **Narmada Bai** (supra), **Centre for Public Interest Litigation (2012) 3 SCC 1** (supra), **Natural Resources Allocation** (supra), **Bhubaneswar Development Authority** (supra) and **Ram Kishun** (supra), may not detain this Court for the reason that on comparison of rates of tendu patta for 2018 season in different tendu patta producing States,

history of the rates in the State of Chhattisgarh for the last more than 10 years, the phenomenon of slump year and bumper year as has been considered in the preceding paragraphs has impressed us to hold that there is no, ***prima facie***, evidence of illegal or arbitrary act based on corruption or nefarious design to benefit any particular tenderer. The public trust doctrine can be invoked only when there is proof of misuse of public funds or arbitrary disposal of State largesse on a throwaway price, which is not the case here.

39. The foundation for calling in question the entire tender process is on the allegation of the Federation having accepted lower bids upto level 19 or 20, however, the prevailing e-tendering system for sale of tendu leaves permits such process. The price quoted by the purchaser/bidder is the price which he considers it to be appropriate and suitable to him for various reasons. It also depends on elimination of tenderers due to exhaustion of the bidding capacity. If a bidder is not fit for consideration as it has exhausted its capacity the price fixation depends on the rates quoted by the bidders who is next in line. Such method of bidding has been found valid by the Division Bench of the High Court of Madhya Pradesh in **Mukesh and Co. Tobacco Products (P.) Ltd.** (supra),

40. In respect of price fixation the Supreme Court in **Centre for Public Interest Litigation (2010) 8 SCC 606** (supra) has held thus at paras 16 & 20:

    16. The price fixation in a contract of the nature with which we are concerned, is a highly technical and complex procedure. It will be extremely difficult for a court to decide whether a particular price agreed to be paid under the contract is fair and reasonable or not in a contract of this nature. More so, because the fixation of price for crude to be purchased by the GOI depends upon various variable factors. We are not satisfied with the argument of the appellants that the nation has suffered a huge financial loss by virtue of this arbitrary fixation of crude price. As a matter of fact, the figure mentioned by the appellants of Rs.3,000 crores as a loss under this head of pricing is based on incorrect fact that the consortium is charging $ 4 per barrel as premium. It is because of this factual error that the appellants came to the conclusion that under the contract the GOI had agreed to purchase the crude from the consortium at an inflated price. We also take note of the fact that under the agreement the respondents are bound to give a discount of $ 0.10 per barrel on the price of the crude fixed on the basis of the international market rate which, prima facie shows that the fixation of price is reasonable since under all given circumstances the said will be less than the international market price for Brent crude.

    xxx xxx xxx

    xxx xxx xxx

    xxx xxx xxx

    20. It is clear from the above observations of this Court that it will be very difficult for the courts to visualise the various factors like commercial/technical aspects of the contract, prevailing market conditions both national and international and immediate needs of the country etc. which will have to be taken note of while accepting the bid offer. In such a case, unless the court is satisfied that the allegations levelled are unassailable and there could be no doubt as to the unreasonableness, mala fide, collateral considerations alleged, it will not be possible for the courts to come to the conclusion that such a contract can be prima facie or otherwise held to be vitiated so as to call for an independent investigation, as prayed for by the appellants. Therefore, the above contention of the appellants also fails.

41. Similarly, in **Raunaq International Ltd.** (supra) the Supreme Court observed thus at para 16:

    16. It is also necessary to remember that price may not always be the sole criterion for awarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committee's special knowledge plays a decisive role in deciding which is the best offer. Price offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of

the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work, can be legitimately paid in order to secure proper performance of the contract and good quality of work-which is as much in public interest as a low price. The court should not substitute its own decision for the decision of an expert evaluation committee.

42. Having considered the whole gamut of the pleadings/allegations, the e-tender process undertaken by the Federation, the history of quantity and rate of tendu patta generated for the last many years, the nature of trade of tendu patta and the market forces, which govern the price fixation of tendu patta in a particular year and the comparable price in other States, we have no hesitation in concluding that the fall in price of tendu patta for the year 2018 is not on account of any illegality or corruption of the Federation or its officers nor as a result of cartelization, but is purely based on market condition or market forces.

43. Price fixation is essentially a job of the expert, which should be left to the body, who is well versed with the trade in question and the Court should not venture into the territory as it is the beyond the scope of judicial review as held by the Supreme Court in **Center for Public Interest Litigation, (2000) 8 SCC 606** (supra) and **Raunaq International Ltd.** (supra).

44. In course of hearing, we confronted learned counsel appearing for the petitioners that if the whole or any part of the tender process is quashed and re-tender is ordered, but the Federation fails to generate more revenue than it has earned for the concerned lot and resultantly it runs into losses, who will compensate the Federation or the tribals, who are the ultimate beneficiaries, learned counsel would submit that the petitioners have no means to compensate the Federation and the tribals.

45. As an upshot, for the above stated reasons, we find no substance in both the writ petitions (PILs). Accordingly, both the petitions are liable to be and are hereby dismissed and the interim order stands vacated. The parties shall bear their respective costs.

GAUHATI HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Gojendra Mushahary & Ors. vs. State of Assam & Ors.

WRIT PETITION (C) NO. 2301 OF 2015
GAUHATI HIGH COURT
11.08.2016
CORAM: ARUP KUMAR GOSWAMI, J.

SUMMARY

The petitioners were traditional forest dwellers belonging to Koch Rajbangshi community, a Scheduled Tribe, residing in two neighbouring forest villages in Kokrajhar, Assam. They sought recognition of their rights flowing under Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'), particularly under Section 3(1)(h) of the Act which gives them the right to conversion of old habitations, unsurveyed villages, and forest villages, into revenue villages.

The petitioners submitted that they had inadvertently filed their application before the Secretary, Forest Department of Assam. Since their villages are within the jurisdiction of the Bodoland Territorial Council[40] (or 'BTC') it was the Additional Chief Conservator of Forest, BTC which was the appropriate authority to hear their claims. Accordingly, the petitioners sought liberty to file an appropriate representation before the Additional Chief Conservator of Forest, BTC.

Since the respondents had no objection to this request, the court disposed of the writ petition allowing the petitioners to file an application in accordance with law before the Additional Chief Conservator of Forest, BTC. It also fixed a time frame of six months for the completion of the process thereafter.

EDITOR'S NOTE

Here again, a procedural error was committed by both the petitioners' counsel as well as the court. It is the BTC which has jurisdiction over the final stages of the recognition of forest rights under Forest Rights Act, and not the Forest Department. Be that as it may, this is a positive step in the direction of conversion of the large number of forest villages in Kokrajhar District into revenue villages, thereby enabling their access to a host of statutory rights under the Forest Rights Act, as well as welfare and infrastructural facilities under various central and state government convergence schemes.

JUDGMENT

Heard Mr. A.R. Sikdar, learned counsel for the petitioners. Also heard Mr. T.C. Chutia, learned State counsel, Mr. D.C. Borah, learned Central Government Counsel, Ms. K.M. Talukdar, learned standing counsel, BTC and Mr. P.K. Bora, learned standing counsel, Forest Department.

[40]The Bodoland Territorial Region was included in the Sixth Schedule to the *Constitution of India* in 1993, and the Bodoland Territorial Council was established through a constitutional amendment in 2003. See, paragraph 3B, Sixth Schedule, *Constitution of India*.

The petitioners claim to be traditional forest dwellers and they seek the rights flowing to them under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Mr. Sikdar has, at the very outset, submitted that though the petitioners had submitted a representation dated 11.01.2014 to the Commissioner & Secretary to the Government of Assam in the Environment & Forest Department, it is the Additional Chief Conservator of Forests, BTC, who is the appropriate authority, and, therefore, at the first instance, it will be necessary for the petitioners to ventilate their grievance before the said authority. He further submits that if the said authority recognises the petitioners to be authorized dwellers then necessary approval has to be obtained from the State Government.

In that view of the matter, Mr. Sikdar submits that this writ petition may be disposed of giving liberty to the petitioners to file appropriate representation before the Additional Chief Conservator of Forests, BTC.

Learned counsel appearing for the respondents have no objection to the prayer made by Mr. Sikdar, learned counsel for the petitioners.

Accordingly, the writ petition is disposed of providing that the petitioners may submit a representation before the Additional Chief Conservator of Forests, BTC and in the event of filing of any such representation, the same shall be considered in accordance with law and necessary steps as may be warranted be taken. The exercise shall be completed within a period of 6(six) months from the date of submission of the representation.

With the above observations and directions, the writ petition stands disposed of.

Tara Kanta Saikia & Ors vs. State of Assam & Ors

WRIT PETITION (C) NO. 5157 OF 2012
GAUHATI HIGH COURT
10.08.2017
CORAM: ACHINTYA MALLA BUJOR BARUA, J.
CITATION: 2017 SCC ONLINE GAU 603

SUMMARY

The petitioners, in possession of land located in the Uriamghat Forest Range of Assam since 1979 and 1994, filed this writ petition for setting aside the eviction notice issued by the Forest Department. They further sought directions to complete the process of recognition and verification of their forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). They argued that the Forest Rights Committee has recommended approval of their forest rights under the Forest Rights Act.

About petitioners 3 to 23, the court held that they have neither argued nor established that they are 'traditional forest dwellers' within the meaning of the Forest Rights Act. In fact, they were found to have leased the land in question from petitioners 1 and 2. Hence, their occupation of forest land was not within the purview of the Forest Rights Act, and *"they have no discernible legal right"* to the forest land.

About petitioners 1 and 2, the court directed the state government to examine their claim to live in the forest, and determine whether they satisfy the requirements of Section 2(c) or Section 2(o) of the Forest Rights Act. The court directed the Chief Secretary of Assam, who is also the Chairman of the State Level Monitoring Committee[41] (or 'SLMC'), to conduct this enquiry. In the interim, protection from eviction was granted to petitioners 1 and 2.

EDITOR'S NOTE

Ordinarily, the law requires that in such a situation, the matter be referred back to the Forest Rights Committee of the Gram Sabha.[42] In the present matter, seeing the potentially influential nature of Petitioners 1 and 2, the court exercised its inherent power to refer the matter to the SLMC. Be that as it may, it is difficult to understand why the court refused to entertain the forest rights claims of petitioners 3 to 23 who were allegedly tenants in the same lands. The Forest Rights Act does not prohibit forest dwellers from submitting claims merely because they have entered into informal tenancy arrangements with other, more powerful, people.

JUDGMENT

1. Heard Mr. M.U. Mandal, learned counsel for the petitioners. Also heard Mr. S.S. Roy, learned counsel for the state respondents.

[41]The State Level Monitoring Committee is set up under Section 9 of the Forest Rights Act and does not have adjudicatory powers under the statute.

[42]Rule 12A (6) of the Forest Rights Rules, 2008 states as under:

The Sub-Divisional Level Committee or the District Level Committee shall remand the claim to the Gram Sabha for re-consideration instead of modifying or rejecting the same, in case the resolution or the recommendation of the Gram Sabha is found to be incomplete or prima-facie requires additional examination.

2. The petitioner Nos. 1 and 2 namely, Sri. Tara Kanta Saikia and Sri. Pratap Gogoi claim to be in possession of a plot of land measuring 20 bighas since the year 1979, which is located within the Uriamghat Forest Range. The petitioner relies upon a certificate dated 15.04.2007 of the Forest Range Officer, Uriamghat range.

3. The petitioners also rely upon a certificate dated 12.10.2003 of the Asstt. Commissioner and Executive Magistrate (Border) 'C' Sector Uriamghat, Dhansiri, Sarupathar, wherein, it is certified that the petitioner No. 1 has been in possession of another plot of land measuring 90 bighas since the year 1994, wherein, it is also stated that no objection has been raised from any corner in this respect. The petitioners also claim to have submitted a representation dated 12.11.2010 before the Minister of Food, Civil Supplies & Consumer Affairs, Minority Development and Haj Committee wherein it was requested to direct the respondent authorities not to disturb the possession and also not to evict them from the land in question.

4. The petitioners have also mentioned about certain Forest Rights Committee being constituted wherein in a general meeting held on 19.12.2009, a resolution was adopted indicating that the petitioners have a legal right to remain in the forest area under the Schedule Tribes and other Traditional Dwellers (Recognition of Forest Rights) Act, 2006 as well as under the Schedule Tribes and other Traditional Dwellers (Recognition of Forest Rights) Rules, 2007.

5. Accordingly, the Forest Committee indicated that the respondent authorities in seeking to evict the petitioners from the forest land have violated the statutory provision of the aforesaid Schedule Tribes and other Traditional Dwellers (Recognition of Forest Rights) Act, 2006 and Schedule Tribes and other Traditional Dwellers (Recognition of Forest Rights) Rules, 2007.

6. This petition has been preferred for setting aside the eviction notice issued by the respondent authorities requiring the petitioners to vacate their occupation from the concerned forest land and also for a further direction to the respondent authorities to complete the process of recognition and verification of the forest right that may be accrued to the petitioners under the Act of 2006 and Rules 2007.

7. The respondent authorities have relied upon an affidavit-in-opposition dated 13.06.203 of the concerned DFO, wherein, it is stated that the seal and signature of the certificate dated 15.04.2007 and 15.06.2017 appears to be false. It is further stated that on spot verification through the Additional Deputy Commissioner, Golaghat, it was revealed that the petitioner No. 1 had leased out the land under his occupation in favour of the petitioner Nos. 3, 9, 10 & 11 of the present petitioner.

8. A stand has also been taken that the Forest Right Committee referred by the petitioner is an entity without any sanction of law and not in confirmity of the provision of rule of 3(1) of the Forest Dwellers Rules 2007. The respondent also referred to the enquiry report of the Additional Deputy Commissioner, wherein there is a finding that the petitioner No. 1 is illegally occupying nearly 2 bighas of forest land.

9. In the aforesaid premises, the question for determination before this Court is as to whether the writ petitioners have any right under the aforesaid Forest Dwellers Act 2006 or under the Forest Dwellers Rules 2007 and further as to whether the respondents have followed the due procedure of law in requiring the petitioners to vacate the occupation of the forest land.

10. From the affidavit filed by the respondent DFO which is not controverted by the petitioner, it appears to this court that the petitioner Nos. 3 to 23 are occupying the concerned forest land on the basis of certain lease arrangement with the petitioner Nos. 1 and 2.

11. It is also noticed that in respect of petitioner No. 3 to 23, no specific stand has been taken by the petitioners that they are schedule tribes or other traditional dwellers.

12. In such view of the matter, no discernible legal right can be seen in respect of petitioner Nos. 3 to 23 to further continue their occupation of forest land and that their case of occupation of the forest

land is not covered under the purview of the Forest Dwellers Act 2006. In respect of petitioner Nos. 1 and 2, it is noticed that they are making a claim that they are in occupation of the concerned forest land from the year 1979 and 1994 in respect of different plots of land. Therefore, in order to arrive at a conclusion as to whether the petitioner Nos. 1 and 2 are also to protection under the Forest Dwellers Act 2006 and Forest Dwellers Rules 2007, a factual determination is required to be made as to whether the petitioner Nos. 1 and 2 are schedule tribes or any other forest dwellers in order to enable them to avail the right under the Forest Dwellers Act 2006.

13. Section 2(c) of the Forest Dwellers Act, 2006 defines forest dwellers to mean the members of the Scheduled Tribes Community who primarily reside in forest areas and who depend on the forests or forest lands for bona fide livelihood and includes the Scheduled Tribe pastoralist communities.

14. On the other hand, Section 2(o) of the Forest Dweller Act 2006 defines Schedule Tribes to mean any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in forest areas and who depend on the forest or forests land for their bona fide livelihood needs."

15. In view of such provision of Forest Dwellers Act 2006, the right claimed by the petitioner Nos. 1 and 2 can be adjudicated in a better manner, if the respondent authorities undertake an exercise to arrive at a conclusion as to whether the petitioner Nos. 1 and 2 satisfy any of the requirements of either section 2(c) or section 2(o) of the Forest Dwellers Act 2006.

16. If the respondent authorities after undertaking the exercise arrives at a conclusion that the petitioner Nos. 1 and 2 do satisfy the requirements of either section 2(c) and 2(o) of the Forest Dwellers Act 2006, they shall also give a due consideration to the claim of the petitioners of their right to live within the forest land. In the event, upon the consideration being given, the respondent authorities find that the writ petitioner Nos. 1 and 2 do not satisfy the requirement of either Section 2(c) and 2(o) or that they do not have any right to live in a forest land, the respondent authorities would be at liberty to take any appropriate measure against the petitioners as may be available under the law.

17. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order.

18. The aforesaid determination be made by the respondent No. 1 being the Chief Secretary to the Govt. of Assam on the strength that the Chief Secretary is the Chairman of the State Level Managing Committee, which has been constituted under Rule 9 of the Forest Dwellers Rules 2007.

19. In undertaking the exercise, the petitioner Nos. 1 and 2 shall also be given an opportunity of hearing and also be allowed to produce any materials that they may desire to produce to substantiate their case.

20. In terms of the above, this petition stands closed.

21. Till the aforesaid period of three months within which the exercise is to be completed, the occupation of the petitioners land in question inside the Urimanghat Reserve Forest shall not be disturbed by providing that the restrain order shall not remain in effect after 20.11.2017.

22. The petitioner shall produce a certified copy of this order within seven days and the Chief Secretary shall complete the proceedings within a period of three months thereafter.

On the death of Birendra Das through his legal representative Raj Deep Das & Ors. vs. State of Assam & Ors.

WRIT PETITION (C) 4569 OF 2012
GAUHATI HIGH COURT
04.12.2018
CORAM: MICHAEL ZOTHANKHUMA, J.

SUMMARY

The petitioners claimed to be other traditional forest dwellers (or 'OTFDs') under the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). For more than 80 years, they had been living in the forest land in Churala village, Lowaipoa forest range, Assam, under the jurisdiction of Divisional Forest Officer, Karimganj. In this writ petition they challenged a direction issued by the Deputy Conservator of Forest (or 'DCF') finding that the petitioners are encroachers and liable to be evicted under Section 72(c) of the Assam Forest Regulation, 1891 (or '1891 Act').

The petitioners relied upon a judgment[43] passed by the Gauhati High Court in a previous writ petition filed by them, where the court had directed the respondents *"not to disturb the petitioners occupation of forest land without following the due process of law"*. They argued that this direction was not followed by the forest department before issuing the impugned eviction order, in that they should have been given a notice as well as an opportunity of being heard prior to any such decision being taken by the respondents.

Rather than oppose these submissions, the respondent state government submitted that the petitioners would not be evicted until a decision is taken as to whether they are other traditional forest dwellers (under the Forest Rights Act) or encroachers (under the 1891 Act), which would only be done after giving them prior notice and an opportunity of being heard.

The court directed the respondents to not evict the petitioners from the occupied land till the decision is arrived at on whether the petitioners are encroachers or not. The respondents were further directed to issue a notice to the petitioners and provide them an opportunity of being heard prior to arriving at any such decision.

EDITOR'S NOTE

It is interesting that in a previous round of litigation, even before the Forest Rights Act had come into force, the court protected the petitioners' right to due process prior to an eviction proceeding. In this judgment, the Forest Rights Act was applied in full force. Section 4(1) of the Act contains a *non-obstante* clause, the effect of which is that the statute supersedes the provisions of legislations such as the 1891 Act insofar as forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers are concerned. Section 4(5) further mandates that they cannot be evicted from

[43]Judgment and order dt. 02.02.2007 in Writ Petition (Civil) No. 7663 of 2001, Gauhati High Court. Note that this writ petition was filed in 2001, long before the enactment of the Forest Rights Act, and the judgment was passed in 2007, almost a year before the Act came into force on 31.12.2007.

forest land under their occupation until the rights recognition and verification process is complete. Naturally, any such eviction process must strictly follow the 'due process' standard.[44]

In the present case, the court's direction that the petitioners be given a notice, and provided an opportunity to be heard, opens an important space for assertion of forest rights under the Forest Rights Act, both through presenting this as a ground in opposition to the eviction proceedings as also for submission of forest rights claims, if not already done.

JUDGMENT

Heard Mr. C Baruah, learned counsel for the petitioners. Also heard Mr. A Das, learned standing counsel, Forest Department, appearing for respondent Nos.1 to 7.

The petitioners claim themselves to be the traditional forest dwellers residing since long at Churala village, under Longai Beat, Lowairpoa forest Range, under the jurisdiction of the Divisional Forest Officer (DFO), Karimganj, Assam.

The petitioners have challenged the direction issued by the Deputy Conservator of Forest (DCF), Assam on 14.06.2012 for eviction of the petitioners and the consequential directions issued thereafter, whereby, the eviction of the petitioners, as encroachers, under Section 72(c) of Assam Forest Regulation, 1891 was ordered.

The petitioners counsel submits that the petitioners had earlier filed WP(C) No.7663/2001 with respect to the earlier attempt of the State respondents to evict the petitioners. WP(C) No.7663/2001 was thereafter disposed of vide order dated 02.02.2007, by directing the respondents not to disturb the petitioners occupation of forest land without following the due process of law. He submits that the due process of law was not followed by the respondents, prior to issuance of the letter dated 14.06.2012 issued by the DCF, Assam and the consequential directions passed thereon. The petitioners counsel also submits that the earlier order of this Court passed in WP(C) No.7663/2001, requires the respondents to follow the due process of law prior to the respondents taking a decision to evict the petitioners. The petitioners should have been given notice and also should have been given an opportunity of being heard, prior to any decision being taken by the State respondents.

Mr. A Das, learned counsel for respondent Nos.1 to 7 submits that though the petitioners are encroachers, no prior notice was issued to the petitioners, prior to the direction passed by the DCF in his letter dated 14.06.2012 and the consequential directions passed thereon. He submits that the petitioners shall not be evicted from the land they are occupying, until a decision is taken by the State respondents with regard to whether they are traditional forest dwellers or encroachers. He submits that the State respondents shall issue prior notice to the petitioners and give them an opportunity of being heard, prior to a decision being taken by the State respondents.

I have heard the learned counsels for the parties.

The petitioners case is that they have been living in the forest land for more than 80 (eighty) years and they are protected by the *Scheduled Tribes & other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*, (hereinafter referred to as '2006 Act'). Under Section 2(c) of the 2006 Act, a member of the Schedule Tribe community is required to be primarily residing in a forest village and has to be dependent on the forest land for his bonafide livelihood. Under section 2(o) of the 2006 Act, a person has to be residing in and be dependent on the forest and forest land for bonafide livelihood needs, for at least three generations prior to 13.12.2005.

Having stated the above, as the State respondents counsel has submitted that a decision will be taken by the State respondent with regard to whether the petitioners are to be evicted from the land that they are occupying after notice is issued to the petitioners, this Court directs the State respondents not to evict the petitioners from the occupied land till a decision is taken by them, as to whether, the petitioners are encroachers or not. A decision should be taken by the State respondents after issuing notice to the petitioners and giving them an opportunity of being heard prior to a decision being taken by them.

The writ petition is accordingly disposed of.

[44]For a detailed discussion on the law relating to forcible evictions in the context of the Forest Rights Act, see Radhika Chitkara and Khushboo Pareek, *The Right to Land: A Study on Legality of Forced Evictions*, NLUD Journal of Legal Studies Vol. 2 of 2020, page 69.

Silarai Rabha & Anr. vs. State of Assam & Ors.

WRIT PETITION (C) 106 OF 2016
GAUHATI HIGH COURT
12.12.2018 (INTERIM ORDER)
CORAM: KALYAN RAI SURANA, J.

SUMMARY

The petitioners are Scheduled Tribes belonging to the Rabha and Boro communities, residing within the Subansiri Reserve Forest. They filed this writ petition for processing of their claims under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The petitioners submitted that although the claims of similarly situated persons were approved, their claim for forest rights was not processed and the 'land title certificate' was not issued. It was further argued that it was not open for the state authorities to sit over their recognised rights.

The respondent state government submitted that nearly 670 individual and 19 community claims had been approved by the District Level Committee (DLC), Dhemaji and title certificates disbursed. They argued that *'the rest of the claim petitions were not verified by the forest officials and those cases were not considered for lack of proper verification.'*

In this interim order, the court directed each respondent state authority, by designation, to file an affidavit disclosing the impediment in carrying out the necessary verification and conducting the DLC meeting for consideration of the claim made by the petitioners. On failure to do so, each of the said officers were directed to be present in person, along with the relevant records, on the next date of hearing.

EDITOR'S NOTE

In this case, the claims of the petitioners were in limbo as these were *'not verified by the forest officials'*, even though there is no procedure in the Forest Rights Act or Rules which permits claims verification by forest officials once these have been forwarded to the DLC. This interim order demonstrates the formidable authority of a constitutional court when it speaks for the petitioners who have come before it seeking protection of fundamental and statutory rights.

Unfortunately, the petitioners remained unrepresented in subsequent hearings, and eventually the matter was closed for non-prosecution in 2022.

ORDER

1) Heard Mr. A.K. Das, learned counsel for the petitioners as well as Mr. S. Dutta, learned Standing Counsel for the Forest department i.e. respondents No.3, 6 and 9 and Mr. A. Chakraborty, learned Junior Government Advocate for the respondents No.1, 2, 7 and 8. None appears on call for the Land and Revenue Department or for the P & R D, Department and respondents No.10 and 12.

2) The petitioners No.1 and 2 herein projects that they are tribal persons belonging to S.T. community of Rabha and Boro communities respectively. In this writ petition it is claimed that the petitioners are the residents within Forest land area of Subansiri Reserve Forest prior to 13.12.2005, which is the

cut-off date on or which the Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006 had conferred certain right upon the forest-dwelling communities regarding land and other resources.

3) It is submitted that while the claim of similarly situated persons were considered, but the said authorities have not processed the claim of declaration of right of the petitioners. Therefore, they have not been granted the 'Land Title Certificate'.

4) From the stand taken in the affidavit-in-opposition of the respondent No.8, it is projected that 670 numbers of individual claims and 19 community petitions have been approved by the District Level Committee (DLC), Dhemaji on 23.10.2009 and disbursed the Forest Land Title Certificate on 13.11.2009 during the period of visit of the then Chief Minister of the State. However, the rest of the claim petitions were not verified by the forest officials and those cases were not considered for lack of proper verification.

5) The learned counsel for the petitioners submit that it is not open for the State authorities to sit over the recognised right of the petitioners.

6) Accordingly, (i) The Commissioner and Secretary of The Department of Welfare of Plain Tribes & Backward Classes (respondent No.2), (ii) The Commissioner and Secretary to the Department of Environment & Forest Government of Assam (respondent No.3), (iii) The Commissioner and Secretary to the Department of P & RD (respondent No.4),(iv) Principal Secretary to the Department of Land and Revenue (respondent No.5), (v) The Principal Chief Conservator of Forest (respondent No.6), (vi) Deputy Commissioner, Dhemaji (respondent No.7), and (vii) The Project Director, (ITDP) Department of Welfare of Plain Tribes and Backward Classes shall positively file an affidavit before this Court disclosing the impediment in carrying out the necessary verification and DLC meeting for consideration of the claim made by the petitioners herein.

7) On failure of the said authorities to file an affidavit on the next date fixed, the said Officers are directed to be present in Court along with the relevant records concerning the claim made by the petitioners herein for their rights under the above referred Act of 2006.

8) Let a copy of this order be provided to the learned Standing Counsel for (i) The Forest Department, Development of Welfare of Plain Tribes and Backward Classes, (ii) P & RD, (iii) and to the learned Government Advocate for the State for doing the needful.

9) List the matter on ***28.01.2019***.

GUJARAT HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Lakshmiben Nathabai Vagela vs. State of Gujarat & Ors.

SPECIAL CIVIL APPLICATION NO. 1998 OF 2011
GUJARAT HIGH COURT
08.03.2013
CORAM: Z.K. SAIYED, J.

SUMMARY

This petition was filed under the Electricity Act, 2003 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') by a forest dweller whose rights had been recognised under the Forest Rights Act inside a wildlife sanctuary. The petitioner made an application to respondent no. 2, the Paschim Gujarat Vij Company Ltd. (or 'PGVSL), for an electricity connection. The application was rejected on the ground that permission from the National Board for Wild Life (or 'NBWL') or 'wildlife clearance' under the Wild Life Protection Act, 1972 (or 'WLPA') and permission from the Ministry of Environment and Forests (or 'MoEF') or 'forest clearance' under the Forest Conservation Act, 1980 (or 'FCA') are required in advance.

The petitioner sought a writ of mandamus seeking directions to PGVCL to provide the electricity connection without demanding any further clearances from the remaining respondents, that is, from MoEF and NBWL.

The respondents forcefully argued that the clearances were essential, and the electricity connection cannot be granted without them.

Agreeing with the submissions made by the state government, the court passed an order directing the petitioner to make an application for wildlife clearance and forest clearance for the electricity connection, and also issued a further direction to PGVCL to forward the petitioner's application to the concerned authority, being the Standing Committee of NBWL and MoEF.

Accordingly, the writ petition was disposed of with this direction that

> The said Authorities are directed to consider and decide the application in accordance with law preferably within six months from the receipt of the application forwarded.

EDITOR'S NOTE

This judgment proceeds on an erroneous reading of the law, in particular Section 4(7) of the Forest Rights Act, which states as under:

> 4(7). The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forestland, except those specified in this Act.

This provision makes it perfectly clear that forest rights are conferred and exercised free of all legal encumbrances and procedural requirements. The use of the word 'including' in conjunction with clearance under the FCA means that similar clearances such as those under the WLPA are also exempted. Being *per incuriam*, the present judgment has little precedent value.[45]

[45]A similar writ petition, being SCA 1999 of 2011 titled *Rambhai Bhikhabhai Makwana vs. State of Gujarat & Ors.* was disposed of by the Gujarat High Court with similar directions.

JUDGMENT

1. By way of this petition under the provisions of Electricity Act, 2003 and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006, the petitioner seeks following prayers:

   [a] By an appropriate Writ, order and/or direction and/or by Writ of Mandamus directing the Respondent no.2 to provide the electric connection forthwith without demanding any further certificate from the Respondent no.3 to 5.

   [b] Pending hearing and till the final disposal, the Respondent no.2 electric company be restrained from forfeiting the deposits made by the respective Petitioner as explained herein before in detail.

2. The facts of the case in brief are such that the petitioner being agriculturist the land within the settlement area of Forest Department and his name is in Farmers Diary as Khedut Pothi. The petitioner with a view to get connection of electricity, applied before the respondent No.2 and he paid amount of Rs.150/- and the respondent issued the receipt. Even the petitioner is a settlement farmer within the forest department which reflects from form Nos.8 and 9. The electric connection was approved to the petitioner by respondent No.2 and accordingly, the petitioner made payment as per requirement towards the new service connection charges, connection security deposit and cost agreement fees. The respondent No.2 wrote a letter to the petitioner informing that since the area concerned is within the Forest Department, the connection is yet not given as the Forest Department has denied for providing electric connection. The petitioner also informed the respondent No.4 about the same. The respondent No.2 wrote a letter to the petitioner to produce permission letter from the respondent No.4 for the purpose of electric supply. The petitioner has right, title and interest in the land which is recognised under the Forest Rights Act, 2006 and also Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act, 2006. As per the case of the petitioner, the respondent No.2 is bound to give electric connection to the petitioner. Therefore, the petition is filed by the petitioner with a direction to provide the electric connection to the petitioner.

3. Learned advocate Mr. Karia for the petitioner submitted that the respondent No.2 PGVCL may be directed to make an application to respondent Nos.3 and 4 so as to forward the application for WildLife Clearance to the Authority i.e. Standing Committee of National Board for Wildlife, New Delhi and also forward the application to Ministry of Forest and Environment at New Delhi for clearance under Forest Conservation Act to give electric connection to the petitioner in the sanctuary without charging NPV from petitioner.

4. Learned advocate Mr. Sinha for respondent No.2 has not opposed the submission of the learned advocate for the petitioner subject to further direction to the petitioner to make an application to respondent No.2 PGVCL which in turn shall take further action as may be directed by this Court.

5. Learned AGP submitted that if the respondent No.2 makes an application to the respondent Nos.3and 4, the respondent Nos.3 and 4 shall forward such application to the Standing Committee National Board for Wildlife, New Delhi, for Wild Life Clearance and also forward the same for clearance under the Forest Conservation Act for the purpose of electric connection to be given to the petitioner, then the said Authority may be directed to consider such application in accordance with law.

6. In view of the statements of the learned advocates for the parties, the petitioner is directed to make an application before the respondent No.2 PGVCL for Wild Life Clearance and clearance under the Forest Conservation Act. The respondent No.2 is further directed to forward such application of the petitioner to the respondent Nos.3 and 4. The respondent Nos.3 and 4 are directed to forward such application to the Authority i.e. Standing Committee of National Board for Wildlife, New Delhi and Ministry of Forest and Environment, New Delhi and said Authorities are directed to consider and decide the application in accordance with law preferably within six months from the receipt of the application forwarded by respondent Nos.3 and 4. In view of above direction, the petition is disposed of. Rule is made absolute to the aforesaid extent.

All India Tribal Unity Development Council & Ors. vs. District Collector & Ors.

WRIT PETITION (PIL) 13 OF 2010
GUJARAT HIGH COURT
04.09.2013
CORAM: BHASKAR BHATTARCHARYA C.J. & J.B. PARDIWALA, J.

SUMMARY

This order was a culmination of a prolonged series of litigations and petitions relating to numerous attacks and assaults on tribals in Southern Gujarat by state government functionaries. In the present writ petition, the petitioner sought directions to the respondent authorities to protect the tribal people and forest dwellers from harassment, torture and atrocities meted out by the Forest Department. Further directions were sought to investigate into the grievances and complaints of the tribal people and forest dwellers.

The respondents submitted that all the complaints filed by the petitioners, as well as those included in the petition, would be disposed of within three months.

Based on this commitment, the court disposed of the writ petition with a direction to the Commissionerate of Tribal Development of the Gujarat state government to hear the concerned complainants and dispose of all the complaints within three months.

EDITOR'S NOTE

Details of the nature of harassment and violence suffered by the tribal populations represented in this case are not available. Nor are there any details of the action taken by the state government to bring the erring Forest Department officials to book, as directed by the Gujarat High Court. Hence it is difficult to assess how effective the directives of the court were in this particular case. What is noteworthy is that forest dwelling and tribal communities had, very soon after the enactment of the Forest Rights Act, stopped accepting the violence meted out by state officials on the ground that they are 'encroachers', and begun to explore avenues for redressal and justice, including through the writ jurisdiction of constitutional courts.

JUDGMENT

In this Public Interest Litigation, the petitioner has, inter alia, prayed for direction upon the respondent authorities to protect the tribal people and forest dwellers of Southern Gujarat from the harassment, torturing and atrocities allegedly done by the officials of the Forest Department, and for further direction upon the respondents to investigate into the grievances and complaints of the tribal people and forest dwellers which are annexed to this Application at Annexure-'E' collectively.

It appears that in paragraph 5 of the affidavit-in-reply, the State respondent has undertaken to look into the matter with a total redressal of the grievance.

Ms. Desai, the learned AGP appearing on behalf of the respondents, submits that the respondents will dispose of all those complaints which are annexed at Annexure-'E' to this Application within three months of time from today.

Such being the position, we dispose of this Application by directing the authority of the Commissionerate of Tribal Development of Gujarat State to dispose of all the complaints which are collectively marked as Annexure-'E' to this Application within three months after giving an opportunity of hearing to the concerned complainants.

The Writ Petition (PIL) No.13 of 2010 is, thus, disposed of with the above direction.

Katiyabhai Dushiyabhai Vasava & Ors. vs. State of Gujarat & Ors.

SPECIAL CIVIL APPLICATION NO. 901 OF 2016
GUJARAT HIGH COURT
08.02.2016
CORAM: R.M. CHHAYA, J.
CITATION: 2016 SCC ONLINE GUJ 4242

SUMMARY

The writ petition was filed by 73 forest dwellers who had not been given basic facilities like road, electricity, drinking water, etc. even though they were paying tax to the Panchayat (tax receipts from the Panchayat were placed before the court). They also stated that houses belonging to two of the petitioners were burnt by the Forest Department in a bid to evict them. Two of the petitioners had filed an application before the District Collector, Tapi but there was no action taken.

The court observed that the grievances raised by the petitioners needed to be attended to by the highest authority of the Forest Department, and issued a number of directions. Most important among these, the Gujarat High Court directed the state government to depute an officer of the rank of Deputy Conservator of Forests (or 'DCF') to look into the grievances of each of the petitioners individually, after giving an opportunity of being heard to one representative of the petitioners.

The court further directed that the writ petition itself be treated as a representation under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'), and allowed the petitioners to place additional evidence before the DCF. A three-month deadline was given to the state government for carrying out this exercise. With this order the writ petition was disposed of.

EDITOR'S NOTE

The court, while clearly moved by the plight of the petitioners, chose to proceed in a manner removed from the Forest Rights Act, that is, by treating the writ petition as an application for recognition of forest rights, and replacing the three-tier rights recognition mechanism under the Act with a single hearing before the DCF.

This erroneous deviation by the court from the procedure under the Forest Rights Act had tragic consequences, as is apparent in subsequent proceedings a few months later (see below).[46]

JUDGMENT

1. Heard learned counsel for the respective parties.

2. At the outset learned advocate for the petitioners seeks permission to delete respondent No. 3. Permission granted. Respondent No. 3 stands deleted.

[46]Judgment dt. 08.08.2016 in *Bruhad Ahemdabad Adivashi Bhil Shikshit Yuvak Mitra Mandal vs. State of Gujarat & Ors.* WP (PIL) No. 109/2016, Gujarat High Court, reproduced in this volume.

3. Learned advocate for the petitioners has taken this Court through the relevant provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (the Act). Learned advocate for the petitioners have ventilated their grievances that since even after 68 years of independence the petitioners, who are the forest dwellers, have not been given basic facilities like road, electricity, drinking water and it appears that houses belonging to petitioner Nos. 20 and 50 are burnt, as contended by the learned advocate for the petitioners. Petitioners have also annexed photographs to that effect.

4. Record of the petition further shows that two of the petitioners have also filed a short application dated 25.05.2015 to the District Collector, Tapi. Learned advocate for the petitioners have also relied upon receipts of the tax and it is submitted that almost all the petitioners have paid the tax to the panchayat. It is submitted that the petitioners stay in the forest area and are illiterate persons and therefore they have till date not asserted their rights before the authority.

5. Considering the provisions of the Act and the grievances which are raised in this petition the same deserve to be attended to by the highest authority of the State of the Forest Department.

6. In light of the aforesaid therefore respondent No. 1 is hereby directed to depute an officer of a rank of DCF, who shall look into the grievances of the petitioners. Memo of this petition shall be treated as representation. Authority, so deputed by respondent No. 1, shall look into the cases of all 73 petitioners individually and shall give an opportunity of being heard to one representative of the petitioners. Such exercise shall be carried out by the respondent authority preferably within a period of three months from the date of receipt of this order, especially keeping in mind the provisions of the Act.

7. Petitioners shall serve a copy of the paper-book of this petition to respondent No. 1 authority, along with copy of this order, within a period of seven days from today. It is also provided that it would be open for the petitioners to produce any/further documentary evidence in support of their case. It is clarified that this Court has not expressed any opinion on merits.

8. With these observations, the petition is disposed of at this stage. Direct service permitted.

Damor Kalaji Dhanji & Ors. vs. State of Gujarat & Ors.

SPECIAL CIVIL APPLICATION NO. 19640 OF 2015
GUJARAT HIGH COURT
28.03.2016 (INTERIM ORDER)
CORAM: AKIL KURESHI & Z.K. SAIYED, JJ.

SUMMARY

The petitioners approached the court after the Collector rejected their applications under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') on the ground that they had only recently come into possession of the forest lands on which their huts were situated. The petitioners, however, asserted they had been in possession of the land for several years, relying upon several orders imposing fines on them for unauthorized occupation of the said forest land.

Based on these '*prima facie materials*', the court admitted the writ petition, and further directed both sides to maintain *status quo* with respect to the possession of the land and the dwelling units in question.

EDITOR'S NOTE

At the time of writing, this case is still pending before the Gujarat High Court. Once it is finally heard and decided, it could well result in an important decision on the nature of evidence required to establish a claim under the Forest Rights Act. Although Rule 13 of the Forest Rights Rules clearly includes records of fine payments for so-called 'encroachment' as evidence in support of a forest rights claim, in many jurisdictions, such material is perceived as evidence of wrongdoing and illegality.

ORDER

Petitioners seek to assert their rights under the Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006. The Collector, however, has rejected their applications on the ground that the so called possession of forest lands on which petitioners' huts are situated is recent. The petitioners, however, rely on the several orders of fine imposed for having in unauthorized occupation of forest lands. Such orders were passed several years back and pertain to the same survey number on which their huts are presently existing. In view of such prima facie materials on record, **writ petition is ADMITTED** for further consideration.

Both sides shall maintain status quo with respect to the possession of the land and the dwelling units in question.

Bruhad Ahmedabad Adivashi Bhil Shikshit Yuvak Mitra Mandal vs. State of Gujarat & Ors.

WRIT PETITION (PIL) NO. 109 OF 2016
GUJARAT HIGH COURT
08.08.2016
CORAM: R. SUBHASH REDDY, C.J. & VIPUL M. PANCHOLI, J.

SUMMARY

This judgment is a follow up to a judgment dt. 08.02.2016 in SCA 901/2016[47] (see above). In that judgment, the court directed the writ petition be treated as a representation under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'), and deputed a Deputy Conservator of Forests (or 'DCF') to look into the grievances of each of the petitioners, after giving a representative an opportunity to be heard. The court further allowed the petitioners to place any additional evidence before the DCF.

In that case, the petitioners approached the court seeking protection of their rights under the Forest Rights Act, pointing out that the state Forest Department had burnt some of their houses in an attempt to evict them.

The present writ petition was filed as a PIL by a social organisation, seeking directions to the state government to stop forcefully removing the forest dwellers from their houses and to grant them *'alternative houses for their residence'*. It was submitted that the directions of the court in the previous judgment had not been followed by the state government. Instead of giving them an opportunity of being heard, the DCF had decided to reject their claims. Further, the facilities sought by them were provided to another village, Satkasi, and not to them.

The state government raised a number of arguments, significant among them that the families referred to in the petition are not from Gujarat but had come from Maharashtra and had illegally trespassed in the forest area for commercial cultivation, including by cutting trees.

After considering the arguments and submissions, the court was inclined to agree with the state government. It held that in its previous judgment in SCA 901 of 2016, an opportunity was given to the families to substantiate their claims under the Forest Rights Act. The court held:

> ...the said Act is confined to those persons who primarily reside in forest area and depend on forest and forest land for their livelihood. The claimant must be a member of the Scheduled Tribes scheduled in that area and must have been resided in the forest area since last three generations i.e. since last 75 years. (at para 18)

With regard to the 85 families on whose behalf the petition was filed, the court noted that they:

> ...have failed to produce any material to suggest that they are residing at the place in dispute since number of years as prescribed in the Act of 2006 and therefore the benefit claimed under the Act of 2006 would not be available to them. (at para 19)

The writ petition was, accordingly, dismissed.

[47] *Katiyabhai Dushiyabhai Vasava & Ors. vs. State of Gujarat & Ors.*, Order dt. 08.02.2016, Gujarat High Court, reproduced in this volume.

EDITOR'S NOTE

The court misdirected itself in the previous judgment in SCA 901 of 2016, where it made a substantial deviation from the statutory procedure and mechanism for rights recognition under the Forest Rights Act. This decision was simply a culmination of a litany of legal errors. A close reading of the facts of this case indicates that the claimants belonged to a forest village. The court failed to notice that there are special provisions for collective recognition of forest rights under such forest villages, in addition to the three-tier rights recognition procedures and the expanded rules of evidence under the Forest Rights Act and its Rules.

Instead of directing that the Gram Sabha of the concerned village receive and examine claims as prescribed under the Forest Rights Act and its Rules, the court chose to direct the writ petition be treated as a claim, the hearing be conducted by a high-ranking forest official, namely a DCF, and additional evidence be produced before such officer. These are fatal errors, and the events which followed demonstrate how easily the process of justice can be thwarted by a state machinery which serves notices to the wrong addresses, insists upon strict rules of 'evidence' instead of those provided under the Forest Rights Rules, and proceeds to disbelieve even those few claimants who were able to produce voter identity cards.

JUDGMENT

1. By way of this writ petition which is in the nature of Public Interest Litigation, the petitioner has prayed for the following relief/s:

   "(A) Your Lordships be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction to the respondents to stop the vacating of their house/huts by forced to the respondents.

   (B) Your Lordships be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction to the respondents directing them to take appropriate action pursuant to the notice issued by them for resettlement of the group of tribal people.

   (C) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to direct to grant stay on operation of the respondents, state to vacate premises/houses/huts and grant peoples alternative houses for their resident."

2. Heard learned advocate Mr. Narpatsinh Vasava for the petitioner and learned Government Pleader Ms. Manisha Lavkumar for the respondents.

3. Learned advocate for the petitioner submitted that petitioner is a social worker and doing welfare activities through an organization. The present petition is filed in public interest. It is contended that the group of tribal are cultivating forest land since 2000 and they are residing in small houses/ huts in the forest nearby village Satkashi, Taluka Songadh, District Tapi. The Gram Panchayat, Amalpada has also collected house-tax from this group of people. However, there is no facilities of road, electricity, drinking water, school and there is no medical facility available to such persons. Learned advocate has referred to the order dated 02.02.2016 passed by this Court in Special Civil Application No.901 of 2015, a petition filed on behalf of 73 families of the said group, wherein this Court has issued direction to the respondents to depute an officer of a rank of DCF who shall look into the grievance of the petitioner and after giving opportunity of being heard to the representative of the petitioner, appropriate steps shall be taken within a stipulated time limit. It was also directed to take an appropriate decision keeping in mind the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as 'the Act' for short). It is contended that though this Court has given direction to give an opportunity of being heard to the petitioners, notices were sent at wrong address so that the said 73 families cannot make a representation.

4. Moreover, after passing of the order by this Court, the officers of the respondents are harassing the aforesaid group of persons. It is also alleged that Forest Department has made a team for harassment to the said people and the said team has burnt the houses/huts and the members of 85 such families were forced to go out from their house. Learned advocate has referred the photographs annexed with the petition.

5. Learned advocate for the petitioner further contended that after the notice was issued by this Court on 08.06.2016, when the said notice was served, respondents forcibly tried to dispossess the aforesaid members of 85 families from possession and therefore when the said aspect was pointed out to this Court on 17.06.2016, this Court passed an order whereby the respondents were directed to maintain status quo with regard to possession. In spite of the same, respondent authorities harassed such families and therefore this Court may pass appropriate order giving necessary direction to the respondent authorities.

6. On the other hand, learned Government Pleader submitted that the families whose reference is made in the petition are in fact hail from the State of Maharashtra and are staying at village Akkalkuva, Taluka: Nandarbar, a region in Maharashtra which is near to the southern part of the Gujarat interstate border area. In fact such families have illegally trespassed in the forest area for commercial cultivation and cut the trees in the forests. They are frequently caught roaming in the protected and reserved forest areas of South Gujarat. 73 families had earlier preferred Special Civil Application No.901 of 2016 before this Court, wherein the petitioners of the said petition have prayed for different relief/s. This Court by an order dated 08.02.2016 directed the respondent authorities to take appropriate decision in accordance with law. As per the direction given by this Court, the respondent authorities have duly informed the petitioners with regard to giving an opportunity of hearing to be held on 10.03.2016 at village Satkasi, Taluka Songadh, District Tapi. On 28.03.2016 at the office of the DCF, Vyara, such hearing was kept. At the time of hearing and after hearing, documents furnished by the Talaticum-Mantri, Sarpanch and Joint Forest Management Committee have been examined and it was found that the petitioners are not residing at village families were returned back with an endorsement that they are not residing at given address. The DCF, Vyara, therefore, visited Satkasi village personally and during his meeting, the local villager viz. One Shri Maganbhai Dungariyabhai of Satkasi village had informed that petitioner No.1 of Special Civil Application No.901 of 2016 is originally resident of village Dabh, Taluka Akkalkuwa, Maharashtra and he was resided in his house as tenant and was working in Central Pulp Mill (Songadh) as daily wager. In fact the said petitioner was not domicile of the said village. Such information was corroborated by other residents of the said village as well as the Gram Panchayat. Similar such statement of several other villagers were also recorded. It is further pointed out that Van Adhikar Samiti, Satkasi Juth Gram Panchayat, Aamalpada had given the statement that none of these 73 people were domicile of Satkasi village nor they were farming on forest land. Learned Government Pleader has referred to some of such statements.

7. In the aforesaid factual background, learned Government Pleader submitted that the Act of 2006 is confined to those who primarily reside in forest area and those who depend on forest and forest land for their livelihood and for claiming right under this Act, the claimant must be a member of the Scheduled Tribes scheduled in that area or must have been residing in the forest for 75 years. Thus, in the facts of the present case, the aforesaid 85 families are not eligible to claim their rights under the Act of 2006.

8. It is thereafter contended that on 31.03.2016, 64 out of 73 persons remained present at the Division Office, Vyara along with their advocate and at that time they claimed that they are residing in forest area in village Satkasi since decades. Other 44 out of 64 such persons were unable to produce any evidence to show that they are residing at reserved forest area of Satkasi village. Other 20 persons out of 64 have produced evidence such as Election Card, Aadhar Card, which were issued by the State of Maharashtra. Thus, it is clear from the record that such persons are not residing in the forest area since decades and therefore a detailed report was prepared by the Range Forest Officer, Tapi and Vajpur and Mamlatdar Songadh and pursuant to the said report, Collector, Vyara had called for a

meeting with the District and Taluka Level Officers on 10.05.2016. From the report it is clear that the aforesaid 73 families have never resided in the forest area. Learned Government Pleader has denied the allegation made in the petition that the respondent authorities have harassed in any manner to the 73 families as alleged in the petition.

9. Learned Government Pleader thereafter submitted that petitioner has tried to mislead this Court by producing photographs of some other place by stating that the forest staff is harassing people and forced to vacate their house. Learned Government Pleader referred to two sets of photographs; one is of Toran Pani Forest Area of Tapi Range, whereas the another is of Satkasi village. At this stage, it is contended that pursuant to the order of status quo granted families had tried to enter into reserved forest area wherein at the check post they were stopped by the officials of the forest department as they were neither in possession of the forest land nor the resident of Satkasi village.

10. Learned Government Pleader therefore, submitted that this public interest litigation is in fact not in public interest and the petitioner has tried to misguide this Court by making certain false averments against the respondent authorities and the petitioners are trying to establish that they are resident in the area since long. Therefore, when the petition is not filed with bona fide intention, this Court may dismiss the same.

11. Learned advocate Mr. Narpatsinh Vasava appearing for the petitioner in rejoinder submitted that the respondent authority has not given an opportunity of hearing as directed by this Court in the earlier round of litigation. In fact the notice sent by regd. post by the respondent authority was dispatched at wrong address so that the concerned person cannot remain present for hearing before the authority. Learned advocate submitted that the concerned persons are residing at Toran Pani Forest and the notices were sent at Kuilivel branch post office under Sagbara sub post office, which is more than 50 km away from Toran Pani Forest. It is further contended that the group of people for whom the petition is filed were earlier residing and working at Vajpur fort where Ukai dam is constructed and therefore they left the said place. It is further submitted that the facilities of road, electricity, drinking water and medical assistance were provided to the villagers of Satkasi village, whereas the group of people for whom the petition is filed are residing in interior forest i.e. more than 15 kms away from village Satkasi. Learned advocate for the petitioner, therefore, requested that the relief/s prayed for in this petition be granted.

12. We have considered the submissions canvassed on behalf of learned advocate appearing for the parties. We have gone through the material produced on record. It has emerged from the record that 73 families for whom the present petition is filed had earlier preferred Special Civil Application No.901 of 2016 before this Court in which they have ventilated their grievance that since even after 67 years of independence, the petitioners who are forest dwellers have not been given basic facilities like road, electricity, drinking water. It was their case that they have paid their tax to the Panchayat and stayed in forest area and they have till date not asserted their rights before the authority. The learned Single Judge after considering the provisions of the Act of 2006 directed the respondent authorities to look into the grievance of 73 petitioners individually and give an opportunity of hearing to one representative of the petitioners.

13. From the affidavit filed by the respondent authorities, it is clear that the respondent authorities have duly informed the petitioner with regard to giving an opportunity of hearing to be held on 10.03.2016 at village Satkasi, Taluka Songadh, District Tapi. Thereafter, on 28.03.2016 at the office of DCF, Vyara, hearing was kept. At the time of hearing, the documents furnished by the Talati-cum-Mantri, Sarpanch and Joint Forest Management Committee have been examined and it was found that the petitioners are not residing at village Satkasi. The notices sent by RPAD to those 73 families were returned back with an endorsement that they are not residing at given address. The DCF, Vyara, therefore, visited Satkasi village personally and met the local villagers. Statements of some of the villagers were recorded. During that visit, it was found that petitioner No.1 of petition being Special Civil Application No.901 of 2016 is originally resident of village Dabh, Taluka Akkalkuwa, Maharashtra and he was resided in the house of one Maganbhai Dungariyabhai as tenant. It was also found that the said person was working in Central Pulp Mill (Songadh) as daily wager. The other

residents of the village also corroborated the said statement given by Shri Maganbhai Dungariyabhai. Moreover, Van Adhikar Samiti, Satkasi Juth Gram Panchayat, Aamalpada families were domicile of Satkasi village nor they were farming on forest land.

14. In para 4.2 of the present petition, the petitioner has averred that more than 85 families were affected by burning their houses/huts in the forest nearby village Satkasi, Taluka: Songadh, District: Tapi, whereas in para 1 of the affidavit-in-rejoinder, it has been stated that though the officers are aware that the concerned persons are residing at Toran Pani Forest, the notices were sent at Kuilivel branch post office. Thus, from the averments made by the petitioner itself, it is clear that different stand is taken in the petition as well as affidavit-in-rejoinder with regard to the place of residence of 73/85 families.

15. It is further revealed that on 31.03.2016, 64 out of 73 persons remained present at the Division Office, Vyara along with their advocate. At that time, they claimed that they are residing in forest area in village Satkasi since decades. Further, from the affidavit filed by the respondent authorities it is clear that out of 64 persons who remained present, 44 persons were unable to produce any evidence to show that they are residing at reserved forest area of Satkasi village. Other 20 persons out of 64 have produced evidence such as Election Card, Aadhar Card, etc. However, such cards were issued by the State of Maharashtra. The Range Forest Officer, Tapi and Vajpur, therefore, prepared a report. The Mamlatdar, Songadh has also prepared a report. Such reports were sent to Collector, Vyara who called a meeting with the District and Taluka Level Officers on 10.05.2016. From the report, it is clear that 73 families have never resided in the forest area as contended by the learned advocate for the petitioner. Learned Government Pleader has further contended that when this Court granted order of status-quo in the present proceedings, some of the people from 73 families had tried to enter into reserved forest area and at the check-post they were stopped by the officers of the forest department as they were neither in possession of the forest land nor the resident of Satkasi village.

16. In view of the aforesaid facts, we deem it proper to make reference of the relevant provisions of the Act of 2006. Section 2(c) & (o) of the Act of 2006 provide thus:

"2. In this Act, unless the context otherwise requires. -

xxx xxx xxx

(c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities."

xxx xxx xxx

(o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest land for bona fide livelihood needs.

Explanation.- For the purpose of this clause, "generation" means a period comprising of twenty-five years;"

17. Thus, in view of the aforesaid facts and circumstances of the present case, we are of the considered view that the respondent authorities have verified the details as to whether the 73 families who have filed petition being Special Civil Application No.901 of 2016 are actually residing at the place in question or not. A detailed report is prepared on the basis of the material collected and when the petitioners have failed to produce any material to suggest that they are residing at the place in question since three generations i.e. since last 75 years, this Court cannot enter into the disputed questions of fact while exercising the powers under Article 226 of the Constitution of India.

18. From the aforesaid provisions contained in the Act of 2006, it can be said that the said Act is confined to those persons who primarily reside in forest area and depend on forest and forest land for their

livelihood. The claimant must be a member of the Scheduled Tribes scheduled in that area and must have been resided in the forest area since last three generations i.e. since last 75 years.

19. From the aforesaid discussions, it is clear that 85 families for whom the petition is filed have failed to produce any material to suggest that they are residing at the place in dispute since number of years as prescribed in the Act of 2006 and therefore the benefit claimed under the Act of 2006 would not be available to them. Accordingly, we see no merit in the present writ petition and hence it is dismissed. Interim relief stands vacated.

Suvera Bachubhai Dhirabhai & Ors. vs. State of Gujarat & Ors.

SECOND APPEAL NO. 267 OF 2014
GUJARAT HIGH COURT
30.09.2016 (INTERIM ORDER)
CORAM: Z.K. SAIYED, J.

SUMMARY

The matter, pending adjudication, appears to be a statutory Civil Appeal in a property dispute civil suit. It also appears that the trial court delivered the judgment without duly considering the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). The forest rights holders came in appeal to the Gujarat High Court.

By the present order, the court framed the substantial questions of law that arose for adjudication including:

> **(A) Whether the Lower Courts have ignored the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act…**

Another issue framed by the high court was whether the approach of the trial court was biased and prejudicial, since the suit had been filed by forest dwellers against the government.

EDITOR'S NOTE

Very few cases have come to light where forest dwellers have sought to assert their forest rights in a civil suit. The developments in the present case could prove important in advancing the jurisprudence around forest rights and the Forest Rights Act.

ORDER

Heard learned advocate for the appellants and learned Assistant Government Pleader for the respondents.

Second Appeal is admitted considering the following substantial questions of law.

(A) Whether the Lower Courts have ignored the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act in view of letter at Annexure– A.

(B) Whether the Lower Courts have erred in holding that the appellants were not in possession of the suit land bearing survey nos.51, 52 and 53 ignoring abstract of Village Form No.7/12 produced at Exhibit 43, 44 and 45 on the record showing cultivation of present appellants.

(C) The Lower Courts below have failed to consider the intimation issued by Forest Department produced at Annexure – A?

(D) That approach of Trial Court is biased and prejudicial as suit is filed against the government while not considering the right of forest dwellers.

Kathud Ravidasbhai & Ors. vs. State of Gujarat & Ors. etc.

SPECIAL CIVIL APPLICATION NO. 11559 OF 2017, ETC.
GUJARAT HIGH COURT
02.08.2017
CORAM: J.B. PARDIWALA, J.

SUMMARY

This judgment dealt with two batches of writ petitions seeking enforcement of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') and the Forest Rights Rules. In both the batch petitions, the petitioners sought enforcement of the high court's judgment dated 03.05.2013 in *ARCH Vahini*[48] which related to widespread illegalities in the implementation of the Forest Rights Act across Gujarat. In the *ARCH Vahini* judgment, the court had directed the authorities to re-open and re-examine the claims rejected on the grounds mentioned in the petitions, and ordered that cogent reasons be provided for rejection or modification of claims.

In the *first* batch of petitions, the petitioners sought a re-examination of their forest rights claims, and an opportunity to be heard in person and present the required documents and other additional evidence.

The respondent state government argued that committees, in compliance with the *ARCH Vahini* judgment, have been constituted and the applications of the present petitioners are under consideration, and they sought some time for the same. The respondents further submitted that the petitioners will be accorded appropriate opportunity to be heard, and assistance will be provided to them to put forward their case before the committees, including placing additional evidence.

The court relied upon the assurances of the state government to conclude that no further adjudication was required, stating as follows:

> In short, the learned Government Pleader has assured the Court that a committee would look into the matter transparently and fairly and no injustice would be done with any of the applicants. If, ultimately, for any good reason, the application has to be rejected, then reasons would be assigned by passing an appropriate order, and at that point of time, the documents, on which reliance is place, would also be supplied so that the applicant concerned can meet with those while taking up the matter before the higher authority. (at para 10.4)

The court disposed of these writ petitions, directing the state government to comply with its order as well as with the 2013 *ARCH Vahini* judgment, in a time-bound manner, preferably within eight weeks.

The grievance voiced in a *second* set of petitions was that although the authority concerned issued the *sanad* (or forest rights *patta*) to the petitioners, the actual physical possession of the land in question was still to be granted to them. The petitioners, therefore, sought allotment, earmarking, and handing over of possession of the lands.

[48] *Action Research & Ors. vs. State of Gujarat & Ors.* 2013 SCC Online GUJ 2583. See Shomona Khanna, *Compendium of Judgments on the Forest Rights Act: 2007 to 2015*, Ministry of Tribal Affairs, Government of India, page 235–264.

The respondent state government informed the court that there were factual discrepancies in the claim applications of these petitioners and that their claims should not have been granted in the first place. In its affidavit, the state government placed details about how these claims were approved by the Forest Rights Committees of the Gram Sabhas, but on subsequent verification by the Forest Department, it was found that these are dense forests and there was no cultivation there. Therefore, the state intended to review a total of nineteen cases. Here also, the petitioners would be granted the opportunity to be heard and produce necessary evidence for the purpose of re-verification.

Satisfied by the assurance of fair procedure and the state's willingness to comply with the court's earlier orders, the petitions were disposed of with a direction that the exercise of re-verification be completed within eight weeks.

EDITOR'S NOTE

The large number of petitioners compelled to come before the Gujarat High Court seeking enforcement of the directions in the 2013 *ARCH Vahini* judgment is itself an indicator that the state continues to be resistant to the idea and implementation of the Forest Rights Act. The first part of this judgment falls within this category.

About the second part of the judgment, relating to re-verification of forest rights titles already issued, it must be pointed out that there is no provision in the Forest Rights Act to revoke forest rights titles after they have been granted. The 2013 *Arch Vahini* judgment permitted the re-opening of rejected claims, but not of titles already granted. In situations where forest rights titles have been wrongly granted, a mechanism for revoking these titles must be found in ordinary civil law. While directing the state government to re-verify the titles *'in accordance with law'*, the high court missed an opportunity to explore what such legal mechanism could be. The court also did not hold the state government accountable for using satellite imagery to 'confirm' forest rights claims when this has been categorically prohibited by the court itself in the *ARCH Vahini* judgment, by the Forest Rights Rules, and multiple executive instructions.[49]

JUDGMENT

1. As the issues raised in all the captioned petitions are interrelated, those were heard analogously and are being disposed of by this common order at the admission stage itself.

2. As such there are two sets of the petitions. One set of the petitions comprises of the Special Civil Application No.11285 of 2017 with Special Civil Applications Nos.11559 of 2017 to 11569 of 2017. The other set of the petitions comprises of the Special Civil Applications Nos.11028 of 2017 to 11046 of 2017.

3. Let me deal with the first set of the petitions. For the sake of convenience, the Special Civil Application No.11285 of 2017 is treated as the lead matter.

4. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs;

   "(A) Direct the respondents and respondent State of Gujarat in particular to re-constitute District Level Committee/s for District Tapi and Sub-Divisional Level Committee/s in all the Talukas of District Tapi including the talukas of Songadh by appointing 3 elected members from the Taluka and District Panchayats as the case may be, elected in the last 2016 election for Taluka and District Panchayats, as per the recommendations of the District Panchayat, Tapi in accordance with Rule

[49]See, for instance, Circular dt. 28.04.2015 bearing D.O. No. 23011/18/2015-FRA on 'Training and use of technology for proper implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006' issued by The Secretary, Ministry of Tribal Affairs, Government of India.

5 *and 7 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012.*

(B) Direct the respondents and the respondent no.4 in particular to decide the applications of the petitioners Tribals for recognition and vesting of forest rights in their favour with respect to the land in question which they have been cultivating or provide them with alternative piece of land in accordance with law within a stipulated period of time.

(C) To direct the respondent No.4 Sub-Divisional Level Committee for Taluka Songadh, District Tapi to provide the petitioners Tribals with opportunity of being heard in person and in writing before deciding their applications as provided in the Act and Rules.

(D) To direct the respondent no.4 Sub-Divisional Level Committee for Taluka Songadh, District Tapi to allow petitioner Tribals to be represented before the SubDivisional Level Committee, Taluka Songadh, District Tapi by representative/s or by an advocate in view of the fact that petitioners tribals are illiterate or semi-literate.

(E) To direct the respondent no.4- Sub-Divisional Level Committee for Taluka Songadh, District Tapi to allow the petitioners tribals to present additional evidence, documentary and others, in addition to what they have presented along with their application, in accordance with law, Rules and guidelines issued by the Government of India and as per the judgment and orders passed by the Hon'ble Supreme Court and this Hon'ble High Court particularly in Writ Petition (PIL) No.100 of 2011 decided on 3.5.2013.

(F) To direct Sub-Divisional Level Committee to provide physical cop of documents and satellite images being relied upon by them in the process of deciding the application of the petitioners tribals.

(G) To direct Sub-Divisional Level Committee to pass reasoned order on the applications and observe with reasons as to why applications of the petitioners tribal/s supported by documentary and other evidence recognised by the Act, the Rules framed thereunder and the guidelines is being rejected and why the documentary evidence presented by the committee or the constituents of the Committee are being relied upon to reject the applications.

(H) To direct the respondent no.4 Sub-Divisional Level Committee for Taluka Songadh, District Tapi to provide documentary evidence as well as the satellite images in advance to the petitioners tribals or grant adjournment to meet with the same in the event Sub-Divisional Level Committee is to rely upon this evidence to counter the claim of the petitioners tribals and reject the applications or partially allow the same;

(I) To direct the respondent no.4, Sub-Divisional Level Committee to hold open hearing and allow others to attend to the hearing for transparency, fairness sand openness in sofar as recognition and vesting of forest rights are concerned.

(J) ending the admission, hearing and final disposal of this application, be pleased to grant ad-interim / interim relief in terms of prayer (A).

(K) Pending the admission, hearing and final disposal of this application, be pleased to grant ad interim / interim relief in terms of prayer (B).

(L) To grant any other and further reliefs that may be deemed fit and proper and in the interest of justice."

5. The genesis of this litigation lies in the judgment and order of this Court dated 3rd May, 2013 passed in the Writ Petition (PIL) No.100 of 2011. The Writ Petition (PIL) No.100 of 2011 was filed in the public interest by the Action Research in Community Health & Development (ARCHD), a registered public trust and a society working for the welfare of the tribals of the Gujarat with the following prayers;

"I. Quash and set aside all the orders of rejection of claims of tribals and other forest dwellers who have preferred the claims under the [Forest Rights Act] and the Rules, by Sub-Divisional Level Committees and District Level Committees in 12 districts, namely: Narmada, Dangs, Vadodara, Sabarkantha, Banaskantha, Valsad, Navsari, Tapi, Surat, Bharuch, Panchmahal, Dahod; and to direct them to consider and decide all these claims afresh.

II. Quash and set aside the instructions given by the respondents and the Resolution dated 20-1-2010, Circulars dated 6-3-2010, 12-3-2010 and 23-3-2010 and letters dated 27-5-2010, 3-6-2010 and 12-7- 2010 referred to and annexed as annexures K, L, M, N, P, S and T in so far as they are contrary to the provisions of the Forest Rights Act and the Forest Rights Rules, as mentioned in this petition or are contrary otherwise, and the respondents may be directed not to issue any directions/ instructions that are against the provisions of this Act and the Rules; and to direct the respondents to decide the aforesaid claims keeping in mind the Forest Rights Act and the Rules.

III. Direct the respondents to consider not only record based evidence only, but all the evidences that are envisaged under the Rule 13, including physical evidences and approve forthwith all claims that have minimum two of these evidences.

IV. Declare that the way Satellite Imageries have been used is highly unscientific, defective, unsatisfactory and illegal; and to quash the rejection of claims based on the use of these imageries and to direct that if they are to be used in future the same may be used in a scientific manner in the way suggested by the petitioners and to direct that in that case too, it may be used in a transparent manner with active involvement of the claimants and the Gramsabhas and also that it may be used only as one of the evidences, and the claims may not be rejected solely on the basis of the same.

V. Direct the respondents to consider the cut-off date of 13-12-2005 for deciding the claims and not 1980;

VI. Issue directions to the respondents that in case of the claims of Other Traditional Forest Dwellers, Genealogy may be considered as sufficient evidence to establish residence for 3 generations and to provide additional evidences like voters lists, settlement records, etc. to the claimants/Forest Right Committees;

VII. Issue directions to the respondents not to outright reject claims over lands where the claimants have been evicted by the FD before or after 2005 but to treat their claims as claim for in situ rehabilitation as per Section 3(1)(m) and then take appropriate decisions.

VIII. Issue appropriate instructions to the State Government and Sub-Divisional Level Committees and District Level Committees to provide reasonable opportunities to the affected claimants to present their case before any order is passed against their claims;

IX. Initiate prosecution against the responsible officers and others, who have passed resolutions, sent circulars and/or gave instructions, etc., contrary to the Forest Rights Act and the Rules as mentioned in the petition and thereby knowingly violated the provisions of this Act and the Rules and committed the offence under Section 7 of the Act;

X. To monitor and supervise the implementation of the Forest Rights Act, more particularly decisions of claim applications of the tribals and other forest dwellers and evolve mechanism for proper implementation of the said Act; as the same concerns the very life and livelihood of more than one lakh tribals and other forest dwellers.

XI. Direct the respondents to expedite the process of recognition of Community Rights over forest resources including right to protect, conserve, regenerate forests for sustainable use and cover all villages in the same and also to expedite the process of conversion of forest settlement villages into revenue villages.

IX. During pendency of this petition direct the respondents, particularly the Forest department, not

to evict any person from the forest lands under their occupation or harass any persons who have filed the claims for individual rights under this Act and whose claims may have been rejected, partially approved or pending.

Any other relief or direction."

6. Along with the Writ Petition (PIL) No.100 of 2011, one another Writ Petition (PIL) No.168 of 2012 was also tagged. The Writ Petition (PIL) No.168 of 2012 was filed in the public interest by the Van Kanun Bachau Samiti, a committee constituted by the local tribals of the four talukas, namely, Songadh, Uchhal of Tapi District, Umarpada of Surat District and Sagbara of the Narmada District with the following prayers;

"I. Quash and set aside all the orders of rejection of claims of tribals and other forest dwellers who have preferred the claims under the Forest Rights Act and the Rules, by Sub-Divisional Level Committees and District Level Committees in 3 districts, namely, Narmada, Tapi, Surat; and to direct them to consider and decide all these claims afresh.

II. Quash and set aside the instructions given by the respondents and the Resolution dated 20-1-2010, Circulars dated 6-3-2010, 12-3-2010 and 23-3-2010 and letters dated 27.5.2010, 3-6-2010 and 12-7-2010 in so far as they are contrary to the provisions of the Forest Rights Act and the Forest Rights Rules, as mentioned in this petition or are contrary otherwise, and the respondents may be directed not to issue any directions/instructions that are against the provisions of this Act and the Rules; and to direct the respondents to decide the aforesaid claims keeping in mind the Forest Rights Act and the Rules.

III. Direct the respondents to consider not only record-based evidence only, but all the evidences that are envisaged under the Rule 13, including physical evidences and approve forthwith all claims that have minimum two of these evidences.

IV. Declare that the way Satellite Imageries have been used is highly unscientific, defective, unsatisfactory and illegal; and to quash the rejection of claims based on the use of these imageries and to direct that if they are to be used in future the same may be used in a scientific manner in the way suggested by the petitioner and to direct that in that case too, it may be used in a transparent manner with active involvement of the claimants and the Gramsabhas and also that it may be used only as one of the evidences, and the claims may not be rejected solely on the basis of the same.

V. Direct the respondents to consider the cut-off date of 13-12-2005 for deciding the claims and not 1980;

VI. Issue directions to the respondents that in case of the claims of Other Traditional Forest Dwellers, Genealogy may be considered as sufficient evidence to establish residence for 3 generations and to provide additional evidences like voters lists, settlement records, etc. to the claimants/Forest Right Committees;

VII. Issue directions to the respondents not to outright reject claims over lands where the claimants have been evicted by the FD before or after 2005 but to treat their claims as claim for in situ rehabilitation as per Section 3(1)(m) and then take appropriate decisions.

VIII. Issue appropriate instructions to the State Government and Sub-Divisional Level Committees and District Level Committees to provide reasonable opportunities to the affected claimants to present their case before any order is passed against their claims;

IX. Initiate prosecution against the responsible officers and others, who have passed resolutions, sent circulars and/or gave instructions, etc., contrary to the Forest Rights Act and the Rules as mentioned in the petition and thereby knowingly violated the provisions of this Act and the Rules and committed the offence under Section 7 of the Act;

X. To monitor and supervise the implementation of the Forest Rights Act, more particularly decisions of claim applications of the tribals and other forest dwellers and evolve mechanism for proper implementation of the said Act; as the same concerns the very life and livelihood of more than one lakh tribals and other forest dwellers.

XI. Direct the respondents to expedite the process of recognition of Community Rights over forest resources including right to protect, conserve, regenerate forests for sustainable use and cover all villages in the same and also to expedite the process of conversion of forest settlement villages into revenue villages.

XII. During pendency of this petition direct the respondents, particularly the Forest department, not to evict any person from the forest lands under their occupation or harass any persons who have filed the claims for individual rights under this Act and whose claims may have been rejected, partially approved or pending.

Any other relief or direction."

7. Both the petitions, in the public interest, came to be disposed of by a common judgment, wherein this Court issued the following directions;

"45. In such circumstances, we would like to dispose of both the petitions by issuing following directions which will protect the interest of the claimants as well as the State.

I. The respondents are directed to strictly comply with Rule 13 and the amended Rule 12-A while disposing of a fresh claim application or a review application, which is already disposed of. In other words, even if a review application has been disposed of then in such circumstances the respondents shall reconsider the claim after complying with Rule 13 and Rule-12A of the Rules.

II. According to the respondents there are 1,28,866 pending claims as on 7th February 2013. We direct that all such claims be decided by strictly complying with Rule 13 and the amended Rule 12-A.

III. The respondents are directed to take into consideration the following evidences while deciding the pending 1,28,866 claims.

(a) Field verification panchnamas along with photographs describing the physical attributes of the land indicating occupation prior to 2005 and 2007.

(b) Records of Civil and Criminal Court cases.

(c) Receipts or purchase agreement from erstwhile Princely States.

(d) Government records like above receipts issued by the Forest Department.

(e) Revenue Department receipts.

(f) Satellite imageries and/or maps prepared from imageries other than BISAG and/or maps prepared from other authorized imageries.

(g) The applications made in the past i.e. before 2005 for regularization of the claimed lands.

IV. We direct the State Government to recall or withdraw the instructions as contained in Annexures K, L, M, N, P, S and T, in light of the amended Rule 12-A.

V. The respondents shall assign cogent reasons for rejection or modification of the claim, according to the Government guidelines dated 12th July 2012 and the amended Rule 12-A. The copy of such decision should be made available to the claimant at the earliest.

VI. The respondents are directed to communicate the decision of rejection or modification of the claim, according to Government guidelines dated 12th July 2012 and the amended Rule 12-A, so as to enable the claimants to approach the higher forum in accordance with law.

VII. The respondents are directed to expedite the process of deciding the pending 1,28,866 claims as well as the process of recognition of community rights over forest resources and also expedite the process of conversion of forest settlement villages into revenue villages.

VIII. I The order of status quo passed by us in Civil Application No.5630 of 2012 shall continue till the disposal of 1,28,866 claims which will be in tune with the provisions of Section 4, Clause (5) of the Act."

8. Mr. A.J. Yagnik, the learned counsel appearing for the writ applicants submitted that although the Division Bench of this Court, while disposing of the two public interest litigations, referred to above, has dealt with each and every aspect and appropriate directions have also been issued, yet, till this date, there has been no substantial progress in the matter.

9. Ms. Manisha Luvkumar Shah, the learned Government Pleader appeared for the State-respondent along with Mr. Sharma, the learned AGP and submitted that there has been a substantial compliance with the directions issued by this Court in the judgment referred to above. The learned Government Pleader invited the attention of the Court to a detailed affidavit-in-reply filed on behalf of the respondent No.3, duly affirmed by one Sureshbhai Kodarbhai Rathod, Project Administrator, Songadh, District: Tapi, wherein it has been stated as under;

"4. The above petition has been preferred with prayer to reconstitution District Level Committee for the District Tapi and Sub Divisional Committee in all Talukas of the District Tapi including all the Talukas by appointing three elected members from the Taluka and District Panchayats as the case may be, elected in the year 2016 election for Taluka and District Panchayats as per the recommendation of the District Panchayat, Tapi in accordance with Rules 5 and 7 of the Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012. The petitioners have also prayed for recognising their right vested in land for the purpose of cultivation or provide alternative parcel of land for cultivation purpose. The petitioners have also sought opportunity of being heard and present their case in writing before the authorities and that as most of the petitioners are uneducated, their advocate may be permitted or any appropriate representative so as to present their case. The petitioners have basically relied upon Writ Petition (PIL) 100 of 2011 its order dated 03.05.2013 while seeking the said reliefs.

5. As far as the grievance with reference to reconstituting the committee is concerned, the committees at sub divisional District Level as well as State Level are already in existence duly constitute under the requirement of the Act to be specific a per Section 6. The Constitution of the committees at Sub Divisional Level and District Level is as per the Government Resolution dated 01.02.2017. The copy of the said resolution dated 01.02.2017 is annexed herewith and marked as Annexure I.

6. I say and submit that comprehensive exercise has been already carried out by the State Authorities while considering the cases falling under the Schedule Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 pursuant to their applications which were made between year 2008 to 2011. The claims were raised by the petitioners as per Form-A which has unique identity number, the said form was to be filled up by all eligible tribes claiming their right under the Act and pursuant to their applications, their rights were required to be crystalised and considered under the scheme. It is not the case of the petitioner that no such exercise has been till date carried out, in fact, comprehensive exercise has already been carried out and on the basis of such exercise case of various eligible individuals have already been considered, however, the cases which were rejected at the give point of time the same were required to be reconsidered in view of the directions of the Hon'ble Court in Writ Petition (PIL) No.100 of 2011.

7. I say and submit that, even after the considering of numerous cases, certain cases have remained pending due to insufficient information and details provided by the respective claimants or due to illegitimate claims raised by such individuals, who otherwise, cannot be covered under the said scheme. Therefore, it appears that the present petitioners would be falling in either of the

above categories and seeking proper information, straightway, the present petition has been preferred.

8. The brief summary of the exercise carried out pursuant to the implementation of Schedule Tribe and other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 is a sunder:-

The application is required to be made in Form A, said application is thereafter, considered by the Village Forest Rights Committee under section 6(1). Once the said application is considered, the same is thereafter, required to be decided as per section 6(1) and if anybody is aggrieved of the said decision, an appeal is required to be preferred before the sub divisional level committee under section 6(2) and once it is considered, under section 6(3) for the purpose of final decision it is to be forwarded to the District Level Committee and if anybody is aggrieved the said decision, an appeal is required to be preferred within 60 days before the District Level Committee under Section 6(4). In fact, Clause 6(4) itself speaks about reasonable and ample opportunity therefore, the anxiety and concern that proper opportunity would not be given is ill found. The decision of the District Level Committee as per Clause 6(6) is to be treated as final decision. In fact, the State Level Committee has also been constituted for the purpose of supervision of the said activity.

9. I say and submit that the roles and duties of all the respective committees have been clearly identified, so that appropriate decision can be taken. The Village Committee calls for details, carries out inquiry, on the basis of which resolutions are issued as per the provisions. Thereafter, the same is to be looked into by the Sub Divisional Committee it may inspect the site and make a report and, thereafter, finally District Level Committee would look into the issue and take final decision if at all already not taken in favour of the applicants pursuant their claim. Therefore, the mechanism is clearly prescribed in the Act which is properly complied with.

10. As far as the District Tapi is concerned, the District Level Committee had considered application which was made from 2008 to 2013 and as many as 11,947 applications have been considered by the respective committees. It is further submitted that the District Level Committee has till date allowed as many as 5286 applications and as many as 6661 applications were to be reconsidered as per the directions of the Hon'ble Court out of which 6468 cases, the sub divisional committee had considered and nearly 193 cases appears to be pending before the District Level Committee. Therefore, the committees have acted as per the scheme and have properly taken decision, however, at the same time when such huge number of applications are considered and decided by the committees it is bound to take some time, especially when the same have been reconsidered in view of the judgment of the Hon'ble Court in the Writ Petition (PIL) 100 of 2011.

11. I say and submit that in the present set of petitions, the main grievance appears to be with reference to pending applications, it is submitted that as mentioned hereinabove in view of the above mentioned factual as well as legal position, the cases of the present petitioners were reconsidered and pursuant to the reconsideration, the sub divisional committee has already taken decision under section 6(2) and thereafter as per the statutory requirement under section 6(3) formalities has been carried out and final decision would be duly communicated in near future. The petitioners or similarly situated individuals who are found to be eligible, appropriate orders would be passed and in case of any adverse orders, they can raise appropriate grievance under section 6(4). The petitioners would be communicated orders within a period of 20 days. The petitioners would also be given ample opportunity to pursue their cases, even section 6 provides for same and therefore, anxiety and concern is ill found."

10. Having heard the learned counsel appearing for the parties and having considered the materials on record, the picture that emerges is as under;

10.1 In view of the specific averments made in the affidavit in-reply, the relief prayed for in terms of para-9(A) has been taken care of. The committees have been constituted in accordance with the directions issued by the Division Bench of this Court. So far as the prayer in terms of para-9(B) is concerned, I am given to understand by the learned Government Pleader that it would take about

eight weeks to decide the applications of the writ applicants so far as the recognition and vesting of their forest rights is concerned.

10.2 The learned Government Pleader also submitted that appropriate opportunity will also be given to the concerned applicant to put forward his case before the committee concerned before taking the final decision. So far as the prayer in terms of para-9(D) is concerned, it is submitted by the learned Government Pleader that there is no provision as such to permit an advocate or any representative to appear before the committee on behalf of the tribal applicant. However, the learned Government Pleader has assured that the members of the committee would render all possible help to the applicant if the applicant is unable to put forward his case effectively.

10.3 The learned Government Pleader also clarified that it would be open for the tribals to adduce the additional evidence, if they intend to, before the committee.

10.4 In short, the learned Government Pleader has assured the Court that a committee would look into the matter transparently and fairly and no injustice would be done with any of the applicants. If, ultimately, for any good reason, the application has to be rejected, then reasons would be assigned by passing an appropriate order, and at that point of time, the documents, on which reliance is place, would also be supplied so that the applicant concerned can meet with those while taking up the matter before the higher authority.

11. In view of the above, no further adjudication is necessary. Let the scrutiny of the applications be completed within a period of eight weeks in accordance with the directions issued by the Division Bench of this Court referred to above, more particularly, keeping in mind Rule 12, 12A and 13 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012.

12. With the above, all the petitions are disposed of.

13. I shall now consider the second set of the petitions. For the sake of convenience, the Special Civil Application No.11028 of 2017 is treated as the lead matter.

14. By this writ application, the writ applicants have prayed for the following reliefs;

"(A) To direct the respondents and particularly the respondent District Level Forest Rights Committee, respondent Collector, respondent Deputy Conservator of Forest and District Superintendent of Police to implement the order dated 11.10.2013 which is at Annexure A passed in favour of the petitioner no.1 in its true spirit and object and ensure that the petitioner no.1 is handed over physical possession of the land in question in presence of witnesses after measurement of the land with earmarking of boundaries with the help of khuntas and issue the extract of village form no.6, 7x12 and 8 with his name incorporated in the same as owner of the land in question and issued Sanad of the land, if necessary AND BE FURTHER PLEASED to direct the respondents to allow petitioner no.1 to cultivate the land so allocated by an order dated 11.10.2013;

(B) Direct the respondents not to prevent the petitioner no.1 from cultivating the land in question allotted to him by an order dated 11.10.2013 at Annexure A by the respondent District Level Forest Rights Committee;

(C) Direct the respondent Department of Forest and respondent District Superintendent of Police to provide protection to the petitioner no.1 for cultivations of the land in question if necessary and as and when approached by the petitioner no.1;

(D) Pending the admission, hearing and final disposal of this application, be pleased to pass an order in terms of prayer (A);

(E) Pending the admission, hearing and final disposal of this application, be pleased to direct the respondents not to prevent the petitioner no.1 from cultivating the land in question so allotted by an order dated 11.10.2013 at Annexure A;

(F) Pending the admission, hearing and final disposal of this application, be pleased to direct the respondent District Level Forest Rights Committee to submit an action taken report with respect to the grievance of the petitioner no.1 farmer raised in the present petition;

(G) To grant any other and further reliefs that may be deemed fit and proper and in the interest of justice."

15. The grievance voiced in this set of petitions is that although the authority concerned has issued the Sanad, yet, till this date, the writ applicants have not been put in actual physical possession of the land in question. An affidavit-inreply has been filed in each of the petitions explaining why the particular writ applicant has not been put in actual physical possession of the land despite the fact that the Sanad has been issued in their favour. So far as the Special Civil Application No.11028 of 2017 is concerned, an affidavit-inreply has been filed on behalf of the respondents Nos.1 to 4, duly affirmed by Dr. K. Sasikumar, D.C.F, Vyara, inter alia, stating as under;

"4. I say and submit that the present set of petitions have been preferred with the prayer that respondents may be directed particularly District Level Forest Right Committee, the Collector, The Deputy Conservative Forest to implement the order dated 11.10.2013 at Annexure-A to the petition in its true spirit and object ensuring that the petitioners is handed physical possession of the land in question after measuring the land and earmarking boundaries with the help of Khuntas and issue appropriate Form No.6, 7x12, and 8 as per the said order. The prayer has been raised not to interfere with the cultivation actively carried out by the petitioner on the basis of order dated 11.10.2013, other consequential prayers have been raised with reference to cultivation and submission of an action taken report.

5. I say that the rights and the entitlement as claimed by the present petitioners is on the basis of Schedule Tribes and other traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 and Rules as well as guidelines thereunder.

6. I say that the Schedule Tribes and other traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 came to be published on 02.01.2007, and thereunder, with a view to achieve the objectives of the said Act, a comprehensive scheme in form of statutory enactment has been framed.

7. As far as the grievance with reference to reconstituting of the committee is concerned, the committee at Sub Divisional, District Level as well as State Level are already in existence duly constitute under the requirement of the committee at Sub Divisional level and District Level is as per the Government Resolution dated 01.02.2017. The copy of the said resolution dated 01.02.2017 is annexed herewith and marked as Annexure-I.

8. The chapter-2 which comprises of Section 3 deals with the forest rights of the Schedule Tribes and other Traditional Forests Dwellers on the Forest Land, right to hold and live in the forest land and community rights such as nistar, and whatever the name may be as per the said intermediary regimes, rights of ownership, access to collect, use and dispose of minor forest produce as traditional collected community rights in nature of entitlement such as fish and other products water products, grazing, traditional seasonal resources, access of nomadic or pastoralist communities, right of habitat, right of raising disputes, right of conversion of pattas/lease/grant etc. The recognition of said rights and their restoration and vesting is covered under Chapter-3 comprising of Section 4 and 5 of the said Act. For the purpose of carrying out the activities for proper implementation of Chapter 2 and Chapter 3, the appropriate authorities and procedure is prescribed in Chapter 4, the initiation point is from the stage of Gram Sabha, thereafter, Sub Divisional level Committee, thereafter, the District Level Committee and for the purpose of monitoring State Level Committee. There are various sets of petitions preferred one is with reference to deciding the pending applications and the other sets of petitions with reference to the prayers mentioned hereinabove in paragraph-4.

9. It is submitted that as far as District Tapi is concerned, as many as 11,647 application were received out of which 5286 applications were decided between the year 2008 to the year 2015 and 6661 applications were rejected. However, at given point of time two writ petitions in nature

of PIL came to be preferred having number writ petition (PIL) 1000 of 2011 and writ petitions were disposed of by an oral order dated 03.05.2013, whereby, the Hon'ble Court was pleased to consider the rejection of applications for as many as 12 Districts and various other prayers were also made with reference to measure evidence and the cutoff date to be considered till 13.12.2000 and other consequential prayers were made. The Hon'ble Court had considered all the issues and by way of (CAV) judgment, the said petitions came to be disposed off. The Hon'ble Court had also considered the whole scheme and had disposed of the petitions with certain directions in paragraph 45, wherein, as many as 8 directions were issued. It is pursuant to the present district Tapi had reconsidered the above mentioned rejected cases, which are 6661 in number and as far as present petitioners are concerned, the decision has been taken by the Sub Divisional Committee which would be communicated to the parties is near future.

10. *I say and submit that, as far as above captioned group of petitions are concerned, they are with reference to allotment, earmarking and handing over the possession of the lands to the petitioners as per order dated. 11.10.2013.*

11. *I say and submit that, as the Gramsabha had practically entertained all the applications, the major burden was casted upon the sub divisional level committee under section (2) and section 6(3), the same committee pursuant to the observations of the Hon'ble High Court in the above mentioned writ petitions had carried out comprehensive exercise and has decided 6468 cases, the decision of which would be communicated to the respective parties in near future. If anybody is aggrieved of such decisions, the appropriate grievance can be raised under section 6(4) of the Act, challenging before the District Level Committee.*

12. *I say and submit that the present set of petitions have been preferred on the ground that their cases have already been considered and certificate have been issued along with the order and allocation and therefore, only handing over the vacant and peaceful possession of the identified parcel of land is yet pending.*

13. *I say and submit that as far as present set of petitions are concerned, these are the cases, which have been comprehensively considered pursuant to directing in the all writ petitions (PILs) as passed by the Hon'ble High Court. However, it appears that while carrying out such massive exercise to deciding the claims some error or mistake has been committed, the present set of petitions arise out of the claims which otherwise, ought not to have been entertained, in view of insufficient evidence, false claims little casual approach on part of Gramsabha by referring these cases and because of oversight while examining the said cases on the basis of requirement of the Act, rules and guidelines.*

14. *I say and submit that as per the section 6(1), the Gramsabha has to initiate the process for determining the nature and extent of individual or community forest rights or both which are required to be given to forest dwellers' within the local limits of jurisdiction has falling under the Tapi District. On examining the formalities and procedure carried out under section 6(1), with a veiw to execute the order dated 11.10.2013 at page no.16 as pursuant to which udder rule 8(H) read with section 3(1)(A) Title for Forest Land under occupation is to be issued.*

    Therefore, it appears that the order has been passed, however, the certificate as per Annexure-2 Rule 8(H) in nature of title and description has not been issued. Only once the said title for Forest Land under occupation as prescribed under 8(H) is issued, the rights can be termed to be exhauste. However, in the present set of petitions, there are discrepancies found in claims.

15. *I say and submit that in the above captioned group of petitions, the requirement under rule 13(3) pertaining to evidence for determination of forest rights have not been fulfilled i.e. only one evidence has been produced therefore, claim form as per rule 11(1)(A) which is Form A under Rule 6(1) which is Annexure 1 to the rules was not supported by proper evidence, therefore, under 6(1) itself, at the stage of Gramsabha, such case ought to have been scrutinised and rejected. However, the Gram Sabha Borda passed resolution overreaching its jurisdiction in favour of the petitioners, who belong to Pipripada, Manipada and Borda for lands situated in compartment No.123 & 124 situated at*

Limbi, Serula Gram panchayat. Therefore, while examining any right of land the vilalge Gram Sabha of Borda was required to consider all details and only after proper scrutiny, such application were required to be forwarded to Limbi, Serula Gram Panchayat for appropriate consideration.

16. *It appears that the claims was improperly raised with irregularities, however, the same have been wrongly considered for the purpose of orders at Annexure A page no.16. After the said order, the Forest Department was requested to identify, measure and physically examine all lands by the office of the Conservator of Forest, certain glaring aspects surfaces such as tree in huge numbers are standing since years and it is in extremely dense forest region on the said parcel of land as claimed on the basis of Form A.*

17. *It is pertinent to note that Form A clearly prescribe the claimants to disclose extent of forest land occupied for habitation as ell as cultivation as per section 3(1)(A) of the Act, therefore, it appears that wrong information and disclosures have been made in Form A raising the claim and therefore, claim is illegal and cannot be entertained. On perusal of the form simply on paper random measurement have been disclosed claiming to be residents of Pipripada, Borda & Maunipada. In fact Compartment No.123 and 124 falls under village Serula under Limbi Gram Panchayat. At the given point of time when the lands were shown to be Range Forest Officer and the same were physically verified, by the village level committee of Serula has clearly reported that no land is shown to be cultivated and it was also proposed that the case are not required to be considered. Therefore, it appears that the present orders have been passed purely because of oversight, otherwise, the process as carried out by the forest right committee and the Deputy Conservator of Forest, clearly discloses that no such lands were actually occupied and cultivated. Therefore, it appears that while considering the cases, the Forest Right Committees of the villages concerned, because of some mistake, has included the names of the present petitioners in the list prepared and therefore, the claims were proceeded further and ultimately has resulted in the present situation. The copy of the claims form filed by the petitioners is at Annexure II i.e. Form A. The copy of the list wrongly disclosing the name of petitioners is at Annexure iV. The copy of the map prepared by the Range Forest Officer and the Forest Right Committee also clearly opines that such lands are not required to be allotted. The copy of the said sealed map is Annexure V.*

18. *I say and submit that the said aspect came to knowledge of the authorities after exercise was carried out pursuant to the order dated 11.10.2013, when the surveying was carried out by the outsourced Agency Wap Co. Ltd., the said exercise to identify and the measure the land also reported that the land is not identified and no cultivation or any occupancy has been found on the said parcel of land. The copy of the said report is annexed herewith and marked as Annexure VI.*

19. *The forest right committee, Serula also affirms the fact that no such residential or agricultural activity has been found on said parcel of land in its report dated 26.10.2015, on the basis furnished by Forester Sherula by the way of communication dated 26.10.2015 along with Panchnama. The copy of the said report dated 26.10.2015, communication dated 26.10.2015 and Panchanama, are annexed herewith and marked as Annexure VII "Colly" along with the photographs.*

20. *It is submitted that when forest department came to know about the present situation, Deputy Conservator of Forest, Vyara reported and requested President of District Level Forest Right committee vide their letter dated 04.07.2016 and 05.07.2016 to take the matter as under revision and cancel the older order and its copy was forwarded to Member Secretary, District Level Forest Right Committee (Annexure VIII).*

21. *I say and submit that irrespective of the above mentioned facts, circumstance and documentary evidence, even today the District Level Committee concerned is ready to carry out exercise with reference to claims of the present petitioners, if they are able to disclose and provide evidences about the land under their occupancy, rightly falling under their village or any other nearby, village which is clearly identified, supported by resolution. In fact, the difference between those two villages i.e. Sherula and their residential village is more than 25 kms. (Map Attached Annexure IX) therefore, it created doubt how such claims were raised. Without discrimination to said contentions, the District Level Committee is ready to reconsider the cases of petitioners afresh in accordance with law."*

16. Thus, the plain reading of the reply would suggest that the State is not satisfied with the inquiry undertaken by the respective committees. There has been a lot of discrepancies on many factual matters. The State intends to review all the nineteen cases at the earliest and, thereafter, take an appropriate decision in accordance with law. However, the learned Government Pleader has assured that before taking any decision, the concerned applicant would be given an opportunity of hearing and it will be open for the concerned applicant to adduce necessary evidence in support of any query which the authority may raise for the purpose of reverification. Let this exercise be also undertaken at the earliest and completed within a period of eight weeks from today.

17. With the above, the second set of the petitions are also disposed of.

    Direct service is permitted.

Kalvan Group Gram Panchayat & Anr. vs. State of Gujarat & Anr.

SPECIAL CIVIL APPLICATION NO. 2205 OF 2018
GUJARAT HIGH COURT
01.03.2018 (INTERIM ORDER)
CORAM: A.J. SHASTRI, J.
CITATION: 2018 SCC ONLINE GUJ 909

SUMMARY

The petitioner Gram Panchayat filed this petition aggrieved by a public notice auctioning and allotting part of its Panchayat area for collection of minor forest produce. The tender was issued by the Gujarat State Forest Development Corporation (Respondent no.2). The Panchayat sought to carry on the collection and sale of minor forest produce through its member forest dwellers and cooperative societies.

The petitioner Panchayat contended that the resolution of the Gram Sabha as presented by the respondent corporation was, in fact, a printed format in which the signature of the sarpanch was obtained in advance. This was not a resolution of the Gram Sabha—in fact, the Gram Sabha had not passed any such resolutions in the year 2018. Similarly, a communication that accompanied this 'resolution' was also not issued by the petitioner. The Panchayat therefore alleged 'mischief' on the part of the corporation.

These allegations were vehemently disputed by the respondent corporation which insisted that the sarpanch, who also happened to be one of the petitioners, had personally signed the resolution and the communication.

The court took note of these serious allegations. *Prima facie*, the court found that the communication had been signed by the sarpanch, along with an attached note which appeared to have been written by him. The resolution of Kalvan Gram Sabha also seemed to have been signed by the sarpanch, and it had the seal of the Gram Panchayat. Further, the court was of the view that before it arrives at any conclusion, these allegations need to be looked into by a competent authority. It observed that the proper authority to undertake this enquiry is the Sub Divisional Level Committee (or 'SDLC') as provided under Section 6(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') and the Forest Rights Rules (as amended in 2012).

The court accordingly directed the petitioner Panchayat and the respondent Corporation to approach the SDLC. The SDLC was, accordingly, also directed to afford proper opportunity to the parties to place their case and to thereafter present its findings in the form of a report which was to be supplied to the court within 10 days.

Notably, the auction process was not stayed by the court even though it observed that the process would be subject to its final decision.

EDITOR'S NOTE

Subsequent to this order, the SDLC conducted an enquiry and submitted a report to the court, which was also taken on record. However, when the matter came up for hearing on 24.04.2018,[50] the petitioner's counsel stated he had express instructions to withdraw the petition, hence no final decision was taken on the controversy at hand.

This is a pity. Falsification and fabrication of Gram Sabha decisions to benefit dominant elites strikes at the heart of the Forest Rights Act and the decentralization of forest governance it seeks to achieve. When such instances come to light before a court of law, they must be addressed through *suo moto* actions, even if the petition is withdrawn by the petitioner.

It is also unfortunate that the court did not stay the auction process until the enquiry was conducted and the enquiry report was perused.

ORDER

1. The present petition under Article 226 of the constitution of India is filed for seeking following reliefs:

   "9. a) Your Lordships may be pleased to admit and allow this petition;

   b) Your Lordships may be pleased to issue a writ of mandamus and/or certiorari and/or any other appropriate writ, order or direction in the nature of mandamus and/or certiorari quashing and setting aside the Public Notice issued by respondent No. 2 dated 30.01.2018 (Annexure-B) directing them not to auction the and/or allot the unit of the petitioner gram panchayat for collection of minor forest produce allowing the petitioner panchayat to carry on the collection and selling of minor forest produce through its dwellers and cooperative societies constituted thereof.

   c) Pending admission, hearing and/or final disposal of this petition, Your Lordships may be pleased to stay the on-line public notice dated 30.01.2018 (Annexure-B) issued by respondent No. 2 notifying auction for Ijara of the unit of the petitioner Gram Panchayat.

   d) Such other and further relief as Your Lordships may deem just, fit and expedient be granted in favour of the petitioner.

   e) Costs of this petition be provided for to the petitioner."

2. Basically, the main challenge is with respect to a Public Notice issued by the respondent No. 2 on 30.01.2018 in respect of auctioning and allotting unit for the petitioners - Gram Panchayat for collection of minor forest produce. However, during the course of hearing of this petition, some strange circumstance erupted in which a contention is raised by Mr. Y.N. Ravani, learned advocate with Mr. Vivek V. Bhamare, learned advocate for the petitioners that the resolutions which are reflecting on page 65 and the communication dated 22.01.2018 reflecting on page 68 is not passed nor issued by the petitioners Panchayat nor signed by the Sarpanch. It has been contended that these resolutions were in a printed format kept with a signature of Sarpanch ready of previous year and the respondent No. 2 - Corporation akin to Article 12 of the authority has just filled a gap and utilised this resolution and the communication dated 22.01.2018 for this current year of 2018 for the purpose of allotment. As a result of this, Mr. Ravani, learned advocate has voiced out a serious mischief at the instance of respondent No. 2 - Corporation in respect of utilizing such resolutions of Gram Sabha.

[50]Order dt. 24.04.2018 in Special Civil Application No. 2205 of 2018, *Kalvan Group Gram Sabha Panchayat vs. State of Gujarat*, High Court of Gujarat at Ahmedabad.

3. As against this, Mr. Kunal Vyas, learned advocate appearing for Nanavati Associates has vehemently disputed this fact and has contended that it is on the contrary Sarpanch who has signed personally this resolution, copy whereof is given and even page 68 communication is also given personally by the Sarpanch who has now chosen to challenge by way of petition. In view of this serious issue which has been erupted, such serious allegations inter se deserves to be taken note of before considering the ultimate relief prayed for in the petition.

4. ***Prima facie***, this Court finds that this communication dated 22.01.2018 at page 68 is signed by petitioner - Sarpanch and there is a specific note contained which also appears to have been written by Sarpanch. It is also emerging from page 65 that the said resolution of Kalvan Gram Sabha is also bear the seal of group Gram Panchayat and signed by Sarpanch. The signatures on page Nos. 67 and 68 are appearing similar but the very fact that this printed resolution allegedly used by respondent-Corporation for the current year as alleged, is required to be verified and inquired into by a competent authority, more particularly when Mr. Ravani, learned advocate, has stated that for the current year 2018, the Panchayat has neither passed any resolution nor taken any decision nor the Sarpanch has signed for the current year.

5. In view of the aforesaid situation, before coming to any conclusion, this Court deems it proper to allow the authority to examine the same and for that purpose the Scheduled Tribes and Other Traditional Forest Dweller (Recognition of Forest Rights) Act investing powers in Sub Divisional Level Committee by virtue of Section 6 of Sub Section 2 to examine this veracity and authenticity of resolution, and additionally, even under the amended Rules of 2012, the Sub Divisional Level Committee is authorized to examine the resolution and maps of the Gram Sabhas to ascertain the veracity of the case after proper scrutiny.

6. In view of this situation, this Court for the time being is directing the petitioner and the respondent No. 2-Corporation to approach the Sub Divisional Level Committee at Sabarkantha which is to be constituted forthwith by the respondent authority and with these materials namely, the resolution passed by Gram Sabha and the communication letter dated 22.01.2018 within a period of three days from constitution of committee. The petitioner to approach Committee. Upon receipt of this material, after giving proper opportunity, the Sub Divisional Committee is directed to examine and place the report before this Court within a period of 10 days from such approach by petitioner.

7. This Court has clarified that the present order will not come in the way of the process which is going on with respect to auction being undertaken, as the process is subject to the outcome of the present proceedings.

8. Stand over to ***15.03.2018***. Direct service ***today*** is permitted.

Rajuben Ratnagarbhai Suryavanshi vs. State of Gujarat & Ors.

MISC. CIVIL APPLICAION 795 OF 2018
GUJARAT HIGH COURT
16.07.2018
CORAM: R. SUBHASH REDDY, CJ & VIPUL M. PANCHOLI, J.
CITATION: 2018 SCC ONLINE GUJ 3881

SUMMARY

The forest dweller petitioner had filed this contempt petition against the respondents for violating the *ARCH Vahini* judgment.[51] In the 2013 *ARCH Vahini* judgment, the Gujarat High Court had issued detailed directions to the state government to re-examine 1,28,866 claims under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). The court had further invoked Section 4(5) of the Forest Rights Act to direct maintenance of *status quo* with regard to dispossession of these forest dwellers until their claims were re-examined and disposed of in accordance with the court's directions.

The petitioner, who was one of those protected under the *ARCH Vahini* judgment, alleged that the respondent state government had violated the order of *status quo* by interfering with her possession of, and construction on the forest land. Further, she argued that no decision was communicated to her on the status of her claim.

The Deputy Conservator of Forest submitted that pursuant to the *ARCH Vahini* judgment, the petitioner submitted an application claiming land in one forest compartment, but later in 2018 submitted another representation claiming possession over land in a different forest compartment. It is from this new representation that the contempt petition arises.

The court perused the materials on record and found that there was no evidence to show that the respondents had willfully and deliberately violated the directions issued in the *ARCH Vahini* judgment. It further noted that the petitioner's claim was pending before the respondent authority.

The court accordingly directed the respondents to decide the petitioner's claim within a period of two months and to communicate the order to her. The court clarified that it had not gone into the merits of the petitioner's claim, which must be considered in accordance with the provisions of the Forest Rights Act. Accordingly, the matter was disposed of.

EDITOR'S NOTE

The 2013 *ARCH Vahini* judgment of the Gujarat High Court remains one of the most progressive judicial pronouncements on the Forest Rights Act. The court laid down an unambiguous interpretation of the law, supplementing this with categorical directions to the state government necessary to advance the implementation of the Forest Rights Act in letter and spirit. The afterlife of this landmark judgment, however, has been afflicted with the same malaise as so many important public interest judgments – the executive simply failed to follow the court's directions.

[51] *Action Research in Community Health & Development & Ors. vs. State of Gujarat through Chief Secretary/Chairperson & Ors.* 2014 SCC Online Guj 2583. Judgment and order dated dt. 03.05.2013 ('ARCH Vahini case'). See also Shomona Khanna, *Compendium of Judgments on the Forest Rights Act 2007–2015*, Ministry of Tribal Affairs, Government of India (2016) at page 235.

This malaise is reflected in the innumerable petitions and applications that have been brought before the Gujarat High Court seeking implementation of the directions in *ARCH Vahini*. Since these directions are in the nature of a mandamus writ, failure of the state machinery to follow them does amount to contempt of court. Yet we find in the present case, as happens in many other such matters, that the court was loath to hold the state government accountable. Thus, the cycle repeats itself, over and over again.

JUDGMENT

1. This Misc. Civil Application is filed under the provisions of the Contempt of Courts Act, 1971, alleging that the respondents have violated the directions issued in the order dated 3.5.2013 passed by this Court in Writ Petition (PIL) No. 100 of 2011.

2. Writ Petition (PIL) No. 100 of 2011 is disposed of in a group of petitions, which are also filed by way of Public Interest Litigations wherein, the claims of tribals and other forest dwellers under the provisions of Forest Rights Act were rejected. This batch of petitions was disposed of with directions as contained in paragraph 45 of the judgment, which read as under:

"45. In such circumstances, we would like to dispose of both the petitions by issuing following directions which will protect the interest of the claimants as well as the State.

(I) The respondents are directed to strictly comply with Rule 13 and the amended Rule 12-A while disposing of a fresh claim application or a review application, which is already disposed of. In other words, even if a review application has been disposed of then in such circumstances the respondents shall reconsider the claim after complying with Rule 13 and Rule-12A of the Rules.

(II) According to the respondents there are 1,28,866 pending claims as on 7th February 2013. We direct that all such claims be decided by strictly complying with Rule 13 and the amended Rule 12-A.

(III) The respondents are directed to take into consideration the following evidences while deciding the pending 1,28,866 claims.

(a) Field verification panchnamas along with photographs describing the physical attributes of the land indicating occupation prior to 2005 and 2007.

(b) Records of Civil and Criminal Court cases.

(c) Receipts or purchase agreement from erstwhile Princely States.

(d) Government records like above receipts issued by the Forest Department.

(e) Revenue Department receipts.

(f) Satellite imageries and/or maps prepared from imageries other than BISAG and/or maps prepared from other authorized imageries.

(g) The applications made in the past i.e. before 2005 for regularization of the claimed lands.

(IV) We direct the State Government to recall or withdraw the instructions as contained in Annexures K, L, M, N, P, S and T, in light of the amended Rule 12-A.

(V) The respondents shall assign cogent reasons for rejection or modification of the claim, according to the Government guidelines dated 12th July 2012 and the amended Rule 12-A. The copy of such decision should be made available to the claimant at the earliest.

(VI) The respondents are directed to communicate the decision of rejection or modification of the

claim, according to Government guidelines dated 12th July 2012 and the amended Rule 12-A, so as to enable the claimants to approach the higher forum in accordance with law.

(VII) The respondents are directed to expedite the process of deciding the pending 1,28,866 claims as well as the process of recognition of community rights over forest resources and also expedite the process of conversion of forest settlement villages into revenue villages.

(VIII) The order of status quo passed by us in Civil Application No. 5630 of 2012 shall continue till the disposal of 1,28,866 claims which will be in tune with the provisions of Section 4, Clause (5) of the Act."

3. It is the case of the petitioner that, though there is a direction contained in the order, more particularly in paragraph No. 45 (VIII), the respondents have violated the orders of status quo by interfering with the possession and construction.

4. Affidavit-in-reply is filed on behalf of respondent No. 4 i.e. Deputy Conservator of Forest, South Dang Forest Division, Ahwa, District Dang. While denying the various allegations made by the petitioner, statements are made in paragraph Nos. 5 and 6, which read as under:

"5. It is respectfully submitted that the petitioner pursuant to the Order dated 03.05.2013 in Public Interest Litigation No. 100 of 2011 made an application to the Committee along with the documents wherein, the petitioner had claimed land in Compartment No. 132. A copy of the Annexure along with an application made by the petitioner indicating that the petitioner is claiming the parcel of land in Compartment No. 132 is annexed herewith and marked as **ANNEXURE-R/1**.

6. It is respectfully submitted that the petitioner in is representation for the first time in the year, 2018 claimed possession over Compartment No. 133. It was never the case of the petitioner that the petitioner was claiming any parcel of land under Compartment No. 133 and considering the original application of the year, 2008, the petitioner is claiming possession in Compartment No. 132. For the first time in the contempt petition, the petitioner has claimed right in land situated in Compartment No. 133. A copy of the illustrative Map showing location of Compartment No. 132 and 133, the land under the possession of the applicant, Van Kutir and Pumping Well Station is annexed herewith and marked as **ANNEXURE-R2**."

5. Though it is the case of the petitioner that she is in possession of Compartment Nos. 132 and 133, but in view of the material placed by learned Assistant Government Pleader along with the reply affidavit, it is clear that her request is confined to parcel of land in Compartment No. 132 only. In that view of the matter, it cannot be said that the respondents have wilfully and deliberately violated the directions issued by this Court.

6. It appears that the claim of the petitioner is pending before the respondent authority. Learned Assistant Government Pleader, Mr. Devnani, on instructions, has submitted that such application is to be considered by the competent committee. In view of the directions contained in the order passed by this Court, there appears to be reason for not deciding the application so far. As it is the case of the petitioner that no decision is communicated on the claim made by her, we deem it appropriate to dispose of this application, by directing the respondent/competent committee to decide the claim of the petitioner, if not decided earlier, within a period of two months from the date of receipt of this order and communicate the same to the petitioner herein. It is made clear that, we have not gone into the merits of the claim of the petitioner. Such claim is to be considered in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

7. With the aforesaid direction and observation, this Misc. Civil Application is disposed of.

HIMACHAL PRADESH HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Devi Singh vs. State of Himachal Pradesh & Ors.

CIVIL WRIT PETITION NO. 888 OF 2018
HIMACHAL PRADESH HIGH COURT
09.07.2018
CORAM: SANJAY KAROL, ACTING CJ & AJAY MOHAN GOEL, J.

SUMMARY

The petitioner was a member of a Scheduled Tribe asserting his rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). The petitioner challenged the eviction order passed by the concerned Collector (Forest)-cum-Divisional Forest Officer under the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (or '1971 Act') holding the petitioner to be an encroacher.

This eviction order was challenged by the petitioner on the grounds that he was not granted an adequate opportunity to be heard, and the concerned authority had not considered his right accruing under the Forest Rights Act. The petitioner relied upon provisions in the Constitution of India relating to fundamental rights, as well as directive principles of state policy to assert that *'economic, social empowerment of Scheduled Tribes has been enshrined as a Fundamental Right guaranteed by the Constitution of India'*. (at para 4).

The court noted that the impugned order had been passed by the Collector-cum-DFO without assigning any reasons. It set aside the order for being violative of the principles of natural justice, and remanded the matter back to the appropriate authority for a fresh decision, which was to be taken within a three-month time period. The court further directed the petitioner to appear before the authority as and when required and place any additional material before it.

The court issued specific directions to the appropriate authority to decide the matter in accordance with law, and assign reasons while passing orders. Liberty was also granted to the petitioner to approach the state government, bringing to its notice the applicability of the Forest Rights Act *'to enable the State to take appropriate decision thereupon, in accordance with law'*.

EDITOR'S NOTE

Section 5 of the 1971 Act empowers the Collector to evict unauthorized occupants on public property. However, Section 4(1) of the Forest Rights Act contains a *non-obstante* clause, the effect of which is that the Forest Rights Act supersedes the provisions of the 1971 Act insofar as forest rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers are concerned. Further, under Section 4(5) of the Forest Rights Act, forest dwellers cannot be evicted from forest land under their occupation until the rights recognition and verification process is complete. Careful adherence to protective legislations when dealing with Scheduled Tribes becomes even more important in a place like Kinnaur, which is a Scheduled Area under the Fifth Schedule to the Constitution of India.

The court approached the issue with scrupulous care by referring the matter back to the appropriate authority under the 1971 Act, with a specific direction that the decision must articulate its underlying reasons and must be 'in accordance with law', a clear message that the Forest Rights Act must be taken into consideration. The Himachal Pradesh High Court has taken a similar approach in other such matters coming before it.[52]

[52]A similar judgment was passed by a Division Bench of the Himachal Pradesh High Court in *Prem Kumar vs. State of Himachal Pradesh & Anr.*, CWP 686 of 2018, on 08.10.2015, reproduced in this volume.

JUDGMENT

The petitioner has prayed for the following reliefs:-

"i) Issue a writ of certiorari to quash Annexure P-1 i.e. judgment dated 27.3.2018 passed by the respondent No.4.

ii) Issue a writ of mandamus directing the respondent authorities not to give effect to Annexure P-1 i.e. judgment dated 27.3.2018 passed by the respondent No.4.

iii) Issue a writ of mandamus directing the respondent authorities to process the claim of the petitioner as filed under the Scheduled Tribes and other traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 and Rules framed thereafter.

iv) Call for the records pertaining to the case at hand.

v) Direct the respondent authorities to pay the cost of the petition.

vi) Such other order, which this Hon'ble Court deems fit and proper, may also be passed in favour of the petitioner, in the interest of justice and fair play."

2. Impugned order dated 27.3.2018, passed by the Collector (Forest)-cum-Divisional Forest Officer, Kinnaur, Forest Division at Reckongpeo has held the writ petitioner to be an encroacher and, as such, eviction orders under the provisions of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971) stand passed.

3. The challenge to the impugned order dated 27.03.2018 is laid on two counts; (a) principles of natural justice stand violated, inasmuch as, no adequate opportunity of hearing and filing reply was ever afforded to the writ petitioner; and (b) rights of the petitioner under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and its applicability to the premises in question were never considered.

4. Our attention is also invited to the averments made in para 11 of the writ petition, which reads as under:-

"That other than the aforesaid on a conjoint reading of the preamble of the constitution, Fundamental Right contained therein and the directive Principles enshrined therein specifically Article 14, 19, 21, 38, 39, 46 it becomes evident that social, economic empowerment of the Scheduled Tribe is an objective sought to be attained by the implementation of the Constitution of India. Therefore, economic, social empowerment of Scheduled Tribes has been enshrined as a Fundamental Right guaranteed by the Constitution of India."

5. In response to the said averments, the Chief Conservator of Forests (T) Rampur Forest Circle at Rampur, who has filed his affidavit on 7th May, 2018, has simply averred as under:-

"The contents of this para are admitted and needs no submission."

6. After the matter was heard for some time, we deem it appropriate to dispose of the present petition on the following mutually agreed terms:-

a) For the reasons that principles of natural justice stood violated and that order dated 27.3.2018 stood passed by Collector (Forest)cum-Divisional Forest Officer, Kinnaur, Forest Division at Reckongpeo without assigning any reasons, the same is quashed and set aside;

b) The original proceedings pending before the appropriate authority under the provisions of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 is restored for decision afresh;

c) Parties undertake to fully cooperate and appear before the said authority on 20th July, 2018;

d) Liberty is reserved to the parties to place additional material before the appropriate authority, if so required and desired;

e) The appropriate authority shall decide the proceedings, in accordance with law, within a period of three months from today, after hearing all concerned,

f) While passing orders, the appropriate authority shall assign reasons, copies whereof shall be supplied to the parties;

g) Liberty is reserved to the writ petitioner to approach the Court again, if need so arises subsequently; and

h) Liberty is also reserved to the petitioner to approach the State, bringing to its notice the applicability of the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) act, 2006, to enable the State to take appropriate decision thereupon, in accordance with law.

We clarify that all issues are left open.

Petition stands disposed of, so also miscellaneous applications, if any.

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Prem Kumar vs. State of Himachal Pradesh & Anr.

CIVIL WRIT PETITION NO. 686 OF 2018
HIMACHAL PRADESH HIGH COURT
08.10.2018
CORAM: SURYA KANT, CJ & AJAY MOHAN GOEL, J.

SUMMARY

Asserting his rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 (or 'Forest Rights Act'), the petitioner filed this writ petition challenging an eviction order issued by the state government, purportedly in compliance with an order passed by the high court directing removal of encroachment from public properties.

In a previous writ petition filed by the same petitioner, the Himachal Pradesh High Court had directed the petitioner to file a representation before the state authorities who should consider the representation and decide it on merits in accordance with law, after giving the petitioner an opportunity of being heard. It was further directed that reasons be assigned, and communicated to the petitioner if the representation was decided against him.[53]

The petitioner came before the court again in this writ petition, arguing that the court's previous order was not complied with, and that he was simply issued a show-cause notice for allegedly being in unauthorized possession of land, after which he was evicted and dispossessed. He claimed that had an opportunity of hearing been granted to him, he would have successfully been able to demonstrate that he was entitled to the land in question under the Forest Rights Act.

The respondent state government opposed these submissions, insisting that sufficient opportunity had been granted to the petitioner, after which he had been evicted.

The court disagreed with the state government, and issued directions that the petitioner may submit his claim in accordance with the provisions of the Forest Rights Act. It further directed that such a claim be considered and decided within a period of three months, uninfluenced by the directions issued by the court for removal of unauthorized encroachments.

EDITOR'S NOTE

This is a significant judgment where the court has safeguarded the rights of a forest dweller even after he had been evicted and dispossessed, insisting that the matter be re-opened and decided in accordance with law. The court put its own earlier directions regarding removal of unauthorized encroachments in abeyance, and accorded primacy to the petitioner's rights under the Forest Rights Act. Although Section 4(1) of the Forest Rights Act is not mentioned, this approach reaffirms that where forest rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers are concerned, it is the Forest Rights Act that shall be accorded primacy.

[53]Judgment and order dt. 12.03.2018 in CWP 444 of 2018, *Prem Kumar vs. State of Himachal Pradesh & Ors*. Himachal Pradesh High Court.

It is worth quoting the relevant paragraph of the previous court order, which succinctly delineates the due process rights of a forest dweller in an eviction matter:

> (W)e dispose of the present petition with the direction that the petitioner shall file a representation, venting out his grievance(s), within a period of three days from today before the respondents/competent authority, who shall consider and decide the same on merit, in accordance with law, by affording an opportunity of hearing to the petitioner, within a period of two weeks thereafter. Needless to add, if the order is not in favour of the petitioner, then authority shall assign reasons while deciding the representation, which shall be communicated to the petitioner.[54]

This is an important reminder that the Forest Rights Act grants not only substantive forest rights but also provides important procedural, due process rights which are protected under Article 21 of the Constitution of India.

JUDGMENT

1. The petitioner is primarily aggrieved by the eviction order, which the respondents have passed in compliance to the directions issued by the Court regarding removal of encroachment from public properties.

2. A perusal of the reply reveals that the petitioner was allegedly in unauthorized possession of land measuring over 400 bighas. The petitioner was served with a show-cause notice. In furtherance to the directions issued on 12th March, 2018 in the earlier writ petition filed by him, i.e., CWP No. 444 of 2018, he is stated to have been given an opportunity of being heard.

3. The grievance of the petitioner, on the other hand, is that only the notice was served and no opportunity of hearing was granted. It is further claimed that should there be an opportunity of hearing, the petitioner would have made out a case for retention/allotment of land under the provisions of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006.

4. On the other hand, learner State counsel submits that the eviction order has been given effect and possession of the land has been taken.

5. In light of categorical stand taken on behalf of the respondents, but having regard to the petitioner's plea that he is entitled to allotment/retention of land in terms of the provisions of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the writ petition is disposed of with the direction that the petitioner may submit his claim petition, in accordance with the provisions of the above cited Act and such claim be considered and adjudicated within a period of three months, uninfluenced of the directions issued by this Court for removal of unauthorized encroachment. Pending application(s), if any, shall also stand disposed of.

[54]Ibid., para 5

Shyam Kumar vs. State of Himachal Pradesh & Ors.

CIVIL WRIT PETITION NO. 3041 OF 2018
HIMACHAL PRADESH HIGH COURT
28.12.2018
CORAM: SURYA KANT, CJ & AJAY MOHAN GOEL, J.

SUMMARY

The petitioner in this case was involved in a mining business and approached the high court after being concerned with widespread illegal mining taking place in the area which had already been allocated to him through auction, while he awaited various pending clearances.

The Director Industries of the state government had issued a tender notice for the sale of minor minerals, namely '*sand, stone and bajri*' in Bilaspur district, Himachal Pradesh. In the auction, the petitioner was the highest bidder, his bid was accepted, and accordingly, he deposited 25% of the bid amount with the state government. A Letter of Intent was also issued to him.

Thereafter, the petitioner applied for various clearances, some of which were granted to him. However, the issue regarding the rights of the local residents under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') remained pending. Necessary recommendations under the Forest Rights Act had been made by the Sub Divisional Officer, Jhandutta, but were still pending consideration before the Deputy Commissioner (or 'DC'), Bilaspur. Environmental clearance from the central government's Ministry of Environment and Forest (or 'MoEF') also remained pending. Meanwhile, the petitioner alleged that large-scale illegal mining was going on in the area auctioned to him.

The court disposed of the writ petition on the first hearing itself, with a direction to the DC to decide the issue of the rights of local residents under the Forest Rights Act within one month, and for the state geologist to take follow-up action, if necessary, within another month. Directions were also issued to the MoEF to expedite the decision on the pending application, and to the police authorities to take necessary steps to prevent illegal mining.

EDITOR'S NOTE

Since the court decided this writ petition at the very first hearing, it is natural that only the state authorities were represented through counsel, while forest-dwelling communities who may have forest rights in the area earmarked for mining remained unrepresented. Ordinarily, this would have resulted in complete invisibilization of the Forest Rights Act, and it is a pleasant surprise that not only was the issue of forest rights of local residents raised, but the court issued specific directions to the DC, who is the Chairperson of the District Level Committee under the Act, to take a decision on the applications pending before him in a time-bound manner. This is even more remarkable because Bilaspur district does not fall in the areas notified under the Fifth Schedule to the Constitution of India in the state of Himachal Pradesh, where a statutory mandate exists to obtain the consent of the Gram Sabha prior to the grant of minor mineral leases.

JUDGMENT

1. At the outset, on the prayer made by learned counsel for the petitioner, the description of respondent No. 6 in the memo of parties is ordered to be corrected. The said respondent shall be read as "Sub-Divisional Officer (Civil), Jhandutta, District Bilaspur, H.P.". Registry to carry out necessary correction in the cause title.

2. Issue notice of motion to the respondents. Mr. Ashwani K. Sharma, learned Additional Advocate General, and Mr. Bal Ram Sharma, learned Senior Panel Counsel, accept notice on behalf of respondents No. 1 to 7 and respondent No. 8, respectively.

3. Having regard to the nature of order we propose to pass, it is not necessary to seek any counter-reply from the respondents.

4. The Director Industries, Government of Himachal Pradesh vide Tender Notice dated 23rd December, 2017 decided to auction the sale of Minor Minerals in District Bilaspur, including at Jhareri-I situated over Khasra No. 100, total area measuring 08-16-23 Hectares in the Revenue Estate of Village Jhareri. The Minor Minerals to be extracted were 'Sand, Stone and Bajri'. The tender was opened on 28th January, 2018 and the petitioner being the highest bidder, his bid was accepted. 25% of the bid amount was deposited and Letter of Intent dated 23rd April, 2018 was issued.

5. The petitioner thereafter is said to have applied to obtain the requisite Clearances like demarcation, approval of Mining Plan under Rule 35 of Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2015 as well as for Environmental Clearance under EIA Notification.

6. Though, it appears that various Authorities have granted requisite NOCs/Clearance Certificates to the petitioner but the fact remains that the issue regarding rights of the local residents under the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, for which necessary recommendations have been made by Sub Divisional Officer (Civil), Jhandutta, on 19th September, 2018, is still pending consideration before the Deputy Commissioner, Bilaspur.

7. Similarly, it appears that the petitioner is required to obtain NOC/Clearance from the Ministry of Environment, Forest and Climate Change, Government of India, namely, respondent No. 8. For the purpose of aforesaid Clearance, the petitioner had applied on 9th June, 2018 through on-line but the decision on his application is still awaited.

8. Meanwhile, the allegation of the petitioner is that large scale illegal mining is going on in the area auctioned to him, as a result of which both, the State as well as the petitioner, are suffering irreparable loss.

9. Having heard learned counsel for the parties and keeping in view the nature of issues involved in the instant writ petition, we deem it appropriate to dispose of the same with a direction to the Deputy Commissioner, Bilaspur to take a decision with regard to rights of the local residents in terms of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 within a period of one month. The follow-up action, if any required to be taken by the State Geologist, shall be taken within one month thereafter.

10. Similarly, it is imperative upon the Ministry of Environment, Forest and Climate Change, Government of India, to take its decision on the pending application dated 9th June, 2018 (Annexure P-12). The Additional Principal Chief Conservator of Forests (C), who is stated to be the Officer-in-Charge in that Ministry, is consequently directed to take an appropriate decision within a period of two months.

11. Adverting to the petitioner's allegation re: illegal mining, it goes without saying that the Minor Minerals are State's assets and it is duty of the State Agencies to ensure that no illegal extraction is allowed. We, thus, direct the Deputy Commissioner, Superintendent of Police and the District Mining Officer, Bilaspur to take all necessary steps to ensure that no illegal mining in the area is allowed to take place.

12. The writ petition is disposed of with aforesaid directions. Pending miscellaneous applications, if any, also stand disposed of accordingly.

JHARKHAND HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Puitu Sijui & Ors. vs. State of Jharkhand & Ors.

WRIT PETITION (CIVIL) NO. 5588 OF 2011
JHARKHAND HIGH COURT
16.01.2012
CORAM: NARENDRA NATH TIWARI, J.

SUMMARY

The petitioners were tribals who had filed claims for recognition of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). However, even as the said claims were pending before the District Level Committee (or 'DLC'), the state government took steps to forcibly dispossess the petitioners, and further, illegally demolished their houses.

The petitioners filed the present writ petition seeking mandamus directions to the state government to decide their claims in accordance with the Forest Rights Act. Further, they sought compensation for the unlawful demolition of their houses.

The respondent state government argued that the petitioners unlawfully grabbed forest land, and their claims had been rejected by the DLC. The petitioners refuted these arguments with their own version of the factual situation, arguing that the claims had been wrongly rejected.

The court took the view that *'the said tangled issues of facts cannot be adjudicated upon and decided by this Court in its writ jurisdiction'*. Accordingly, it disposed of the writ petition after giving liberty to the petitioner to approach the *'appropriate legal forum for redressal of their grievance'*.

EDITOR'S NOTE

The court has clearly taken an incorrect approach, both with regard to expressing its inability to enter into the 'tangled' questions of fact in its writ jurisdiction, and in remanding the claims back to the same state authorities. It is not unusual for constitutional courts to engage in far more complicated fact situations. Further, failing to recognise that once the DLC has exercised its powers wrongly or failed to exercise the same, it is the writ court that is the *'appropriate legal forum'* for the redressal of grievances of persons such as the petitioners. Accordingly, this decision is not good law and would not operate as a judicial precedent.

JUDGMENT

In this writ petition the petitioners have prayed for direction on the respondents to decide their claims for grant of Pattas/recognition of their rights under the provisions of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and also for compensation for the houses which have been illegally demolished by the respondents.

According to the petitioners, they being Members of Scheduled Tribes and the residents of the area from the time immemorial, are entitled to get Pattas/recognition of their rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter to be referred as the said Act). The petitioners claim their individual right under the provisions of the said Act and applied for grant of pattas/recognition of their rights. The said application/representation is still pending before

the Deputy Commissioner-cum-Chairman, District Level Committee, Seraikella-Kharsawan, but in the meanwhile the respondents forcibly dispossessed the petitioners from their houses/land.

The respondents have opposed the petitioners' prayer and submitted that the petitioners' claim is wholly false and frivolous. The same was considered at the District Level Committee. After scrutiny it was found that the claimants have conspired for maliciously grabbing the forest land and that their claim is not tenable. The said committee has rejected the petitioners' claim.

Replying to the same, learned counsel for the petitioner submitted that there are 13 petitioners. They have made their claims in respect of different plots, whereas the respondents have rejected the claim only against Plot Nos. 1451 and 1450.

Heard learned counsel for the parties and considered the facts and materials on record. The petitioners have raised their claim that they are residents of the land in question and the land has been in their possession for quite a long time and they are entitled to the benefit under the said Act, whereas the respondents have denied and disputed the petitioners' claim. The said tangled issues of facts cannot be adjudicated upon and decided by this Court in its writ jurisdiction.

This writ petition is, therefore, disposed of giving liberty to the petitioner to approach the appropriate legal forum for redressal of their grievance.

Ramchandra Bhagat & Ors. vs. Union of India & Ors.

WRIT PETITION (PIL) NO. 1729 OF 2015
JHARKHAND HIGH COURT
04.01.2017
CORAM: D.N. PATEL & RATNAKER BHENGRA, JJ.

SUMMARY

The petitioners were members of the Forest Rights Committee of village Jala in Latehar district of Jharkhand, which is a Scheduled Area under the Fifth Schedule of the Constitution of India. They had submitted a consolidated claim for recognition of their community forest resource (or 'CFR') right under Section 3(1)(i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'), which was duly approved by the Gram Sabha and the Sub Divisional Level Committee (or 'SDLC').

The District Level Committee (or 'DLC') rejected the CFR claim. The present writ petition was filed challenging this decision of the DLC, asking the Court to quash it, and issue directions for the claim to be decided in accordance with law.

After hearing the parties at the admission stage, the court was of the view that the appeals pending before the DLC ought to be decided before the court intervenes.

Accordingly, the court passed an order directing the DLC to dispose of the appeals filed by the petitioners in accordance with law as expeditiously as possible.

EDITOR'S NOTE

The petition was wrongly marked as a 'public interest litigation', since it is an assertion of rights by the members of the Forest Rights Committee of the concerned village community. It may be noted that the CFR claim was rejected by the DLC on a ground that is contrary to law on the face of it, namely, that the land in question has been earmarked for coal mining as part of the Ganeshpur coal block. The court failed to recognise that once the DLC has exercised its powers wrongly or failed to exercise the same, it is the writ court which is the *'appropriate legal forum'* for redressal of grievances of persons such as the petitioners.

JUDGMENT

1. Counsel for petitioners has very fairly submitted that this petition is pressed only for one prayer that several villagers have preferred appeals for their forest rights and the said appeals are pending before the District Level Forest Rights Committee, Latehar, respondent No.6. These appeals may be decided by the respondent No.6 in accordance with law and on the basis of evidences on record.

2. Having heard counsels for both the sides and looking to the facts and circumstances of the case, we, hereby, direct respondent No.6 i.e. District Level Forest Rights Committee, Latehar to dispose of the appeals of these petitioners, if at all they are pending, in accordance with law, rules, regulations, Government policies applicable to the facts of the case and in accordance with the evidences on record as expeditiously as possible and practicable.

3. This Public Interest Litigation is disposed of, with this observation.

Nirmala Devi & Anr. vs. State of Jharkhand & Ors.

WRIT PETITION (PIL) NO. 5405 OF 2015
JHARKHAND HIGH COURT
18.04.2018 (INTERIM ORDER)
CORAM: APARESH KUMAR SINGH & RATNAKER BHENGRA, JJ.
CITATION: 2018 SCC ONLINE JHAR 298

SUMMARY

This Public Interest Litigation is related to a coal mining project in Pakri-Barwadih, Hazaribagh, Jharkhand, and the acquisition of 2500 acres of forest land for this purpose by the National Thermal Power Corporation (or 'NTPC'). The petitioners sought cancellation of the acquisition and possession of forest land. They alleged manipulation of records and violation of due legal procedure, including under the Forest Conservation Act, 1980 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

This was an interim order, through which the court dismissed the petitioners' application to implead the Ministry of Tribal Affairs, Government of India, while simultaneously allowing the impleadment of the Ministry of Environment, Forests, and Climate Change.

EDITOR'S NOTE

By a subsequent judgment and order dated 13.09.2019, this public interest litigation was dismissed on the basis of allegations raised by the respondent state government that there are serious criminal cases pending against the petitioners. The court held that *'clean credentials as required under Rule 4 of the Jharkhand High Court (Public Interest Litigation) Rules, 2010 for filing Public Interest Litigation'* had not been provided.[55]

The court clearly missed the point of the Forest Rights Act at multiple levels. For one thing, the Forest Rights Act is a beneficial legislation, and the statute itself names the Ministry of Tribal Affairs as the nodal ministry under Section 11. The court ought to have sought the assistance of the nodal ministry in ensuring that there have been no violations of this law in the present case by the respondents, regardless of the credentials of the petitioners.

It would also be interesting to examine whether the provisions of the 2010 Jharkhand High Court Rules are being misused to disbar PILs from being brought before the high court by persons facing criminal proceedings, especially when it has become commonplace to file frivolous criminal cases against human rights defenders. Perhaps it would have been more prudent for the court, in public interest, to consider whether far-reaching violations of environmental and forest conservation laws by a large corporation such as NTPC are outweighed by individual criminal offences allegedly committed by the petitioners.

[55]Judgment and order dt. 13.09.2019 in *Nirmala Devi & Anr. vs. State of Jharkhand & Ors.,* WP (PIL) No. 5405 of 2015, High Court of Jharkhand at Ranchi.

JUDGMENT

1. Supplementary affidavit filed by the petitioners in W.P. (PIL) No. 5405/2015 is rather vague and perfunctory and does not disclose all relevant material details of credentials of the petitioner, specially the petitioner no. . Learned counsel for the petitioners seeks one more indulgence to supplement the said affidavit.

2. Through I.A. no. 2422/2018 in W.P. (PIL) No. 5732/2016, petitioners have prayed for impleadment of the Ministry of Forest, Environment and Climate Change, Government of India and also the Ministry of Tribal Affairs, Government of India as Respondents in the instant case. In the main writ petition, petitioners have prayed for cancellation of acquisition and possession of forest land, alleging manipulation of records and without following the due legal procedure. Consequential prayers have also been made. The subject matter of the instant writ petition related to acquisition of the land for the purposes of mining of coal in the area Pakri -Barwadih in the district of Hazaribagh.

3. According to the petitioners, NTPC has so far acquired 2500 acres (1105.47 hectares) of forest land for the said purpose. In the process, there has been violation of Forest Conservation Act, 1980, Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Petitioners had earlier impleaded the concerned Department of the State of Jharkhand, State Pollution Control Board, District Authorities and NTPC as such. Considering the nature of the subject matter where diversion of forest land in violation of the provisions of Forest Conservation Act, 1980 is involved, petitioners have sought implementation of Minitry of Forest, Environment and Climate Change (MoEF&CC), Government of India as well.

4. We have considered the submission of the learned counsel for the parties. On being satisfied with the prayer made in the aforesaid light, petitioners are permitted to implead the Ministry of Forest, Environment and Climate Change, Government of India as necessary correction may be made in the main body of the writ petition by the Registry. We are however not inclined to permit impleadment of the Ministry of Tribal Affairs as no grounds are made out in support of the said prayer for the present. Let the entire pleadings along with its enclosures be served on the learned ASGI representing the newly added Respondent No. 14 within a week.

5. Let the matters be listed after summer vacation. I.A. No. 2422/2018 stands disposed of.

6. Let the name of Mr. Rajiv Sinha, learned ASGI be reflected in cause list henceforth on behalf of Union of India.

KERALA HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Mallika & Ors. vs. The Tahsildar Mannarkkad & Ors.

WRIT PETITION (CIVIL) NO. 19702 OF 2009(G)
KERALA HIGH COURT
18.08.2009
CORAM: V. GIRI, J.

SUMMARY

The petitioners claimed to be members of the Hindu Mudukka community, a Scheduled Tribe, and legal heirs of one K.R. Parameswaran Nair, who had acquired land in Agaly Village in 1960. The land was under cardamom cultivation. After his death, forest officials trespassed onto the property and tried to demarcate it as forest land. The heirs therefore filed this writ petition seeking protection of their rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The respondent state government opposed the petitioners' claims on a number of grounds. It asserted that the petitioners are neither Scheduled Tribes nor legal heirs of the deceased, and they are therefore not entitled to any benefits under the Forest Rights Act. The state government further pointed out that the petitioners have not filed any application to raise their forest rights claims before the Gram Sabha, as is required under the Forest Rights Act.

Accordingly, the court directed that, while the issues raised by the parties are left open, the petitioners may file an application before the Gram Sabha and pursue the remedies available to them.

EDITOR'S NOTE

It would be quite interesting to see how the Gram Sabha responds to a claim by a family that is raising a rather unconvincing claim under the Forest Rights Act, both about their Scheduled Tribe status and the nature of the claim. The court has rightly remanded the matter to the proper statutory authority, namely, the Gram Sabha, which will examine the claim, if submitted at all, in a transparent manner and in the presence of a majority of the adult members of the village.

JUDGMENT

1. The petitioners are the legal heirs of one K.R.Parameswaran Nair, who is stated to have acquired a land having an extent of 10 acres in Survey No.2019 of Agaly Village from its original jenmi one Moopil Nair in the year 1960. Parameswaran Nair had obtained registration under the Cardamom Rules and is stated to have cultivated the property with Cardamom. He died on 30.4.2006. According to the petitioners, they belong to Hindu Mudukka community, which is recognised as a scheduled tribe.

2. The forest officials had trespassed into the property and tried to demarcate the same. The petitioners have objected to it and they claim that they are entitled to the protection under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.This writ petition has been filed essentially praying for a direction to the respondents to take appropriate action to see that the rights of the petitioners as Scheduled Tribes, are recognised under the Act.

3. A detailed counter affidavit has been filed by the respondents. It is, inter alia, contended that the petitioners have no right to contend that they are the legal heirs of Parameswaran Niar and hence the disputed property shall be assigned to them. It is further contended that they are not Scheduled Tribes and they are not entitled to any benefits under the Scheduled Tribes Act of 2006.

4. It is further stated in the counter affidavit that the petitioners have not filed any application before the Grama Sabha or Panchayat raising a claim under the Act. If an application is filed, the Panchayat is bound to consider that on the basis of the advice of Forest Rights Committee. As the petitioners are not entitled to the benefits under the said Act, the relief sought for in the petition cannot be granted, it is contended.

5. In the circumstances, learned counsel for the petitioner submits that the petitioners' contentions may be left open, with liberty to file an application before the Grama Sabha, as mentioned in the counter affidavit of the respondents.

6. The contentions of either parties are left open. The petitioners shall pursue their remedies before the Grama Sabha, as mentioned above.

Writ petition is disposed of as above.

Ramakrishnan vs. State of Kerala & Ors.

WRIT PETITION (CIVIL) NO. 13884 OF 2012 (L)
KERALA HIGH COURT
15.10.2014
CORAM: A. MUHAMED MUSTAQUE, J.

SUMMARY

The petitioner, a member of a Scheduled Tribe residing on forest land, submitted this claim under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). Although his claim was recommended by the Forest Rights Committee (or 'FRC'), the District Collector rejected it on the ground that the petitioner's name had not been included for the grant of benefit by the Sub Divisional Level Committee (or 'SDLC'). The petitioner filed this petition challenging the rejection of his claim by the District Collector.

When the court directed the respondent state government to provide the reasons for the SDLC's decision, it turned out that the SDLC had not, in fact, considered the petitioner's claim at all. The state government's earlier submission regarding the SDLC's decision was inadvertent.

The court directed the Revenue Divisional Officer, who is the Chairman of the SDLC, to process this application, take a decision regarding this matter within eight weeks, and take the necessary follow-up action. The writ petition was disposed of with these directions.

EDITOR'S NOTE

This decision, while brief, demonstrated how careless the state government often is in the implementation of legislations such as the Forest Rights Act, which seek to benefit the most marginalised communities in the country, and how hyper-vigilant communities must be to ensure their statutory rights are not erased through some administrative 'inadvertence'.

JUDGMENT

1. Petitioner is a tribal residing in the forest land. The petitioner claims benefit of Scheduled and other tradition forest dwellers (Recognition of Forest Rights) Act 2006. It seems, petitioner's name has been recommended by the Forest Rights Committee as per Ext.P5. Petitioner approached this Court. This Court directed the District Collector to consider the petitioner's claim. The District Collector rejected the petitioner's claim stating that the sub-division committee which is the authority to act upon the recommendation of the Forest Rights Committee had not included the petitioner's name for grant of benefit. It is challenging the decision of the District Collector, the petitioner has approached this Court. The District Collector's order is produced as Ext.P8.

2. This Court directed the learned Government Pleader to obtain reasons for not recommending petitioner's name to Sub division Committee as referred in Ext.P8 order of the District Collector. Learned Government Pleader on instruction submits that in fact the sub-division committee had no occasion to consider petitioner's recommendation and reference is made in Ext.P8 inadvertently, based on the direction of this Court with reference to other lists recommended by the Sub-division committee.

3. In view of the fact that the petitioner's name has been recommended by the Forest Rights Committee, the 5th respondent Revenue Divisional Officer being the Chairman of the Sub-Division Committee shall take decision in this matter based on Ext.P5 within a period of eight weeks from the date of receipt of a copy of this judgment and also to take such follow up action as required under the above Act for granting benefit to the petitioner.

The Writ Petition is disposed of.

Ravi C.A. vs. State of Kerala & Ors.

WRIT PETITION (CIVIL) NO. 10163 OF 2015
KERALA HIGH COURT
21.08.2015
CORAM: V. CHITAMBARESH, J.

SUMMARY

The petitioner, a member of a Scheduled Tribe, challenged the order passed by the Divisional Forest Officer (or 'DFO') which refused to grant him permission to draw an electricity supply line to his land, in which he had been granted a *patta* under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The petitioner had applied to the Kerala State Electricity Board (or 'KSEB') seeking an electricity connection. The KSEB forwarded this application to the Forest Department since the electricity line had to be drawn along a road between two teak plantations that were managed by the Forest Department. The DFO objected to the drawing of the electricity supply line on the ground that relevant permissions need to be obtained from the central government as it is for a non-forest purpose and falls within Section 2 of the Forest Conservation Act, 1980 (or '1980 Act').

The petitioner, in addition to urging his right to electricity as a forest dweller under the Forest Rights Act, also argued that many other tribals living in the area had been granted electricity connections recently and continued to enjoy those connections. Therefore, the order of the DFO was discriminatory.

The court deputed an Advocate Commissioner, who filed a detailed report confirming that several new electricity connections had been given in the area between 2012 to 2014, and in none of these were permissions under the 1980 Act sought or obtained. Pertinently, no cutting of trees was required for drawing up the line, and the road was a *pucca* road connecting one village to another.

The court rejected the DFO's submissions that the existing electricity connections had been *'given from existing connections and not drawing new lines'*. It took note of the sketch submitted by the Advocate Commissioner, which clearly showed that the route of the proposed electricity line was along a *pucca* road between two teak plantations, and would not actually cross a forest area or involve the cutting of any trees. Observing that there is a public right to the road, the court observed:

> ...public right have been admitted over the said road which is perhaps in tune with Section 22 of the Kerala Forest Act, 1961 enacted after Ext.R2(a) notification. It is reasonable to think that such public rights should also enable the petitioner or the Kerala State Electricity Board to draw electricity supply line of course without impeding the traffic along the road.

The court held that when wireless communication and pipelines can be drawn through the forest area without the central government's permission, drawing an electricity line to the house of a tribal should be treated in the same manner, especially when he is availing a benefit under a government scheme to which he is legally entitled (in this case, the Grameen Vydhuti Karan Yojana). It observed:

> **At any rate one cannot expect a tribal to move the Central Government and obtain permission to draw electricity supply line for energising his house built on a land possessed by him for years. I find the stand of the Forest Department extremely unreasonable especially when the Kerala State Electricity Board is ready to provide electricity connection to the petitioner under the scheme.**

The DFO's order refusing to grant an electricity connection was quashed, and the respondents were directed to provide an electricity connection to the petitioner before 15.09.2015.

EDITOR'S NOTE

The Forest Department's stand in the present case demonstrates the deep prejudice that persists within the forest bureaucracy against forest-dwelling communities, so that a person who had received a forest rights *patta*, when he seeks to elevate his standard of living through a simple electricity connection, finds his path obstructed by the 1980 Act. It is interesting that the court decided not to rely upon the specific provision under Section 4(7) of the Forest Rights Act, which states that forest approval under the 1980 Act is not required when forest rights are recognised, and yet arrived at a decision which is not only legally accurate and sound but also satisfies the demands of justice.

Notably, the decision of the single judge was affirmed by the Division Bench of the same court a few months later, when an appeal by the state government against this judgment was dismissed.[56]

As an aside, while contemplating the teak plantations on either side of the road, the court observed that *'it is extremely doubtful as to whether a plantation could be treated as a forest in the strict sense.'* This observation, while astute, is in the nature of *obiter dicta* and perhaps one ought not to make too much of it.

JUDGMENT

1. The petitioner is a tribal whose building constructed on the puramboke land possessed by his predecessors for long has been numbered and assessed by the grama panchayat evidenced by Ext. P2 residential certificate. The petitioner belongs to the Pulaya community recognised as a scheduled caste under the Constitution (Scheduled Caste) Order, 1950 evidenced by Ext.P3caste certificate. The petitioner put in Ext.P4 application for electricity connection under the Rajeev Gandhi Grameen Vydhuti Karan Yojana fully funded by the Central Government. The Kerala State Electricity Board was convinced of the entitlement of the petitioner to the benefit of the scheme aforesaid and forwarded the same to the Forest Department. This was done since the electricity line has to be drawn along a road flowing in between two teak plantations owned by the government and managed by the Forest Department.

2. Ext.P4 application was however returned by Ext.P9 letter on the basis of Ext.P10 order of the Divisional Forest Officer who objected to the drawing of the electricity supply line along the road in question. The Divisional Forest Officer on the basis of Ext.P11 report of the Forest Range Officer took a stand that permission should be obtained from the Central Government. Such permission was allegedly necessary under Section 2 of the Forest (Conservation) Act, 1980 ('the Act' for short) since the same was for non-forest purpose. The petitioner asserted that several others in the area are enjoying the electricity connection for long and that he cannot be discriminated against in the matter. The petitioner relied on Ext.P12 reply to the query under the Right to Information Act, 2005 which reflected that several electricity connections have been given in the recent past. It is under these circumstances has the present been filed seeking to quash Ext.P10 order and to direct the respondents to grant electricity connection to the petitioner.

3. I heard Mr. K.J. Kuriachan, Advocate on behalf of the petitioner, Mr. M.P. Madhavankutty, Senior Government Pleader as well as Mrs. P.K. Radhika, Standing Counsel for the Kerala State Electricity Board.

[56] *State of Kerala vs. Ravi CA & Ors.* WA No. 1994/2015 in WP (C) No. 10163/2015, reproduced in this volume.

4. An Advocate Commissioner was deputed by this court who filed a detailed report to the effect that several new connections have been given in the area in the years 2012, 2013 and 2014. There is no case for the respondents that such connections were given after obtaining permission under the Act which came into force on 25.10.1980 or that the petitionerstands on a different pedestal. The curious stand of the Divisional Forest Officer in the objection to the report of the Commissioner is that such connections were given from existing lines and not drawing new lines. I fail to understand as to how such a distinction could be made when electricity connections have been given to home stays even as per Ext.P12 reply. The petitioner has already done the wiring and the electricity connection has to be given well before 30.09.2015 on which date the scheme expires under which the expenses will be met by the government. It is precisely to help the people like the petitioner in the lower strata of the society has the scheme been brought about by the Central Government to provide electricity to their houses fully funded by them.

5. The sketch produced along with the report of the Commissioner shows that the route along which the electricity line is to be drawn is a pucca road in between two teak plantations. Ext.R2(a) notification produced by the Divisional Forest Officer shows that the 'road is admitted mainly to give access to Sy. Nos. 493/1, 494/1 and to the path leading to Chanthirathil Chal'. The house of the petitioner is in Chanthirathil Chal and there is no way to enter the property of the petitioner from the main road on the south other than the road in question. Thus public right have been admitted over the said road which is perhaps in tune with Section 22 of the Kerala Forest Act, 1961 enacted after Ext.R2(a) notification. It is reasonable to think that such public right should also enable the petitioner or the Kerala State Electricity Board to draw electricity supply line ofcourse without impeding the traffic along the road.

6. The Kerala State Electricity Board have in their counter affidavit conceded that no cutting or felling of trees are required for drawing the electricity supply line except lopping of a few branches of some plants. On either sides of the road are only teak plantations and it is extremely doubtful as to whether a plantation could be treated as a forest in the strict sense. Moreover wireless communications and pipe lines can be drawn through the forest area even without permission of the Central Government under Explanation (b) to Section 2 of the Act. The drawing of electricity supply line should be similarly treated especially when the same is drawn only for the purpose of giving connection to the house of the petitioner beyond and not for any industrial activity.

7. The Bombay High Court in **Goa Foundation and another Vs. The Konkan Railway Corporation (AIR 1992 Bombay 471]** has held that no explicit order is necessary under Section 2 of the Act. This is because such permission of the Central Government should be deemed to be implicit when a railway line is being laid through the forest area in Konkan region. The contention of the petitioner that such permission should be deemed to be implicit when availing the benefit of the scheme brought about by the Central Government cannot be brushed aside. At any rate one cannot expect a tribal to move the Central Government and obtain permission to draw electricity supply line for energising his house built on a land possessed by him for years. I find the stand of the Forest Department extremely unreasonable especially when the Kerala State Electricity Board is ready to provide electricity connection to the petitioner under the scheme.

8. Ext.P10 order refusing electricity connection to the house of the petitioner is hereby quashed. The scheme aforesaid expires on 30.09.2015. The respondents are directed to provide electricity connection well ahead. The exercise shall be completed before 15.09.2015. The house of the petitioner shall be energised without delay.

The Writ Petition is allowed. No costs.

State of Kerala & Ors. vs. Ravi C.A. & Ors.

WRIT APPEAL NO. 1994 OF 2015 IN WRIT PETITION (C) NO. 10163 OF 2015
KERALA HIGH COURT
22.09.2015
CORAM: K. SURENDRA MOHAN & SHAJI P. CHALY, JJ.

SUMMARY

This writ appeal was filed by the state government against the single judge's judgment[57] quashing the order of the Forest Department that refused to draw an electric line through the area in question under the Rajeev Gandhi Grameen Vidhyuti Karan Yojana (or 'the Scheme') and granting an electric connection to the first respondent. The first respondent was a Scheduled Caste and his wife was a Scheduled Tribe residing inside the Thattekkad Reserve Forest.

Pertinently, the Scheme was a central government-funded initiative for providing electricity connections to marginalised communities, including members of the Scheduled Caste and Scheduled Tribe communities. The first respondent and his wife had applied for an electricity connection under the Scheme for their home.

The Gram Sabha in its meeting approved the request to the Kerala State Electricity Board (or 'KSEB') to provide this electricity connection, and the KSEB sanctioned the electricity line. However, when the application was forwarded to the state Forest Department, it insisted that prior approval of the Central government is required as per the Forest Conservation Act, 1980 (or '1980 Act'). The challenge by the couple to this refusal came up before a single judge of the high court, and was allowed.

This writ appeal was filed by the state government, where the Forest Department contended that the electricity line will pass through teak plantations situated in a Reserve Forest, which will hinder the felling of trees, harvesting the crop and forest regeneration, destroy the forest, and affect the animals and birds in the forest area.

The applicants (who are respondents here) contended that Section 3(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') entitles forest dwellers to facilities such as electricity and telecommunication lines. It was also argued that the electricity line will travel a total of 1.7 km, all of which is along a public road.

The court arrived at the conclusion that the applicant's right to an electricity connection cannot be denied. It was of the view that granting an electricity connection to the applicants is in accordance with a scheme specifically targeted at Scheduled Tribes who are known to reside mostly within forest areas. It was of the view that the Scheme being an initiative of the Central government, its approval under the 1980 Act was implicit for this purpose. The court reiterated the finding of the single judge that taking an electricity line along a public road cannot be said to be creating a new right in an existing forest, and for this reason it is not a violation of the Kerala Forest Act, 1961. Accordingly, the Division Bench was of the opinion that there is no *"illegality or legal infirmities"* in the judgment of the single judge, and the appeal filed by the state government was dismissed.

[57] *Ravi C.A. vs. State of Kerala & Ors.*, judgment dt. 21.08.2015 in WP(C) No. 10163 of 2015. The judgment and summary are to be found supra in this volume.

In addition, the court directed the officers of the KSEB to provide an electricity connection to the applicants well before the expiry of the government scheme, and directed the state government to *'cooperate with the Kerala State Electricity Board in order to draw the electric line as per the stipulations mentioned in the order'*.

EDITOR'S NOTE

The present judgment makes no reference to the specific provision under Forest Rights Act, namely Section 4(7), which states as under:

> 4(7). The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forestland, except those specified in this Act.

Thus, there is a statutory exemption whereby forest clearance under the 1980 Act is not required when rights under Section 3 of the Forest Rights Act are recognised. It is interesting that the Division Bench of the Kerala High Court reached a just and fair decision, without reference to this provision, simply employing basic principles of equity and fairness. It is also interesting that while the state Forest Department vigorously opposed the grant of the electricity connection to the applicants, the state KSEB equally supported their application.

The reasoning of the court opens up interesting new avenues of legal argument in support of forest rights grounded in principles of equity and fair play, and which are arguably outside the realm of the Forest Rights Act. Notably, not being satisfied with the detailed judgments of the single judge as well as the Division Bench, the state government filed a special leave petition before the Supreme Court challenging this decision, which was also dismissed in 2016.[58]

JUDGMENT

1. This writ appeal is filed by Respondents 1 to 3 against the judgment of the learned Single Judge in W.P.(C) No.10163 of 2015 dated 21.08.2015, by which the learned Single Judge quashed Ext.P10 order passed by the 2nd appellant, refusing to draw electric line through the area in question and the Respondents were directed to provide electricity connection well ahead of 30.09.2015 and the exercise was directed to be completed before 15.09.2015.

2. Brief facts for the disposal of the appeal are as follows:

   1st Respondent herein is residing within the Thattekkad Forest Section of Kothamangalam Forest Division for the last more than 65 years. 1st Respondent is a Scheduled Caste belonging to Pulaya community and his wife belongs to a Scheduled Tribe. They are residing within the aforesaid area 1½ kms. away from the public road. The Grama Sabha of Ward No.1 of Keerampara Grama Panchayath in its meeting held on 10.08.2014 had decided to request the Kerala State Electricity Board (for short, "the K.S.E.B") to provide electric connection to the house of the 1st Respondent. In accordance with the said decision, 1st Respondent carried out the wiring works in the house. The possession of the property of the 1st Respondent is evidenced by Ext.P2 and his caste certificate is evidenced from Ext.P3. Anyhow, the said basic facts are not in dispute.

3. The Government of India have launched a project by name Rajeev Gandhi Grameen Vidhyuti Karan Yojana (shortly called R.G.G.V.Y) and hereinafter called the "Scheme", fully financed by the Government of India to provide electric connection to Scheduled Castes and Scheduled Tribes. Accordingly, 1st Respondent applied for electric connection under the said scheme, which is

[58]Vide order dt. 05.02.2016 in SLP(C) No. 3853 of 2016 in *State of Kerala vs. Ravi C.A.*, the Supreme Court of India held as follows:
No ground for interference is made out to exercise our jurisdiction under Article 136 of the Constitution of India. The special leave petition is dismissed accordingly.

evidenced by Ext.P4 and along with the same, Ext.P4(a) was also submitted which is an application under Form-A, seeking prior approval under Sec. 2 of the Forest (Conservation) Act, 1980 ('the Act' for short). Other attendant documents that were required under the scheme were also produced by the 1st Respondent along with the application submitted under the scheme. As required under the scheme, Ext.P5 bond was also executed.

4. Accordingly, K.S.E.B sanctioned and agreed to draw the line to the residential house of the 1st Respondent under the scheme and the 3rd Respondent has executed the required undertaking in stamp paper before the Forest Department agreeing to pay the Net Present Value and Additional Net Present Value of the land required towards laying of 1.70 k.m. L.T. Line through forest area in connection with electrification of Koottikkal area, Thattekkad in favour of the 1st Respondent. 4th Respondent had also issued a certificate to the effect that no tree cutting is required for drawing the line and that only the cutting of branches of trees are required. Even though necessary steps were taken by K.S.E.B., the 2nd appellant on the basis of the report of the 3rd appellant refused to accord sanction to draw the line vide an order dated 23.01.2015 and this was conveyed to the 1st Respondent by the K.S.E.B by a letter dated 25.02.2015. It is thus impugning Ext.P10 order dated 23.01.2015, the writ petition was filed.

5. The 2nd appellant herein has filed a counter affidavit refuting the allegations made by the 1st Respondent and contended that the distance of 1.70 k.m. required for drawing the line is occupied by three Teak Plantations situated in the 'Thattekkad Reserve Forest' and therefore the line passing through the Plantations will be a hindrance for felling/harvesting the crop and regeneration. It was further contended that drawing electric line through the Reserve Forest is a non-forestry activity which requires prior approval of the Government of India under Sec.2(2) of the Forest (Conservation) Act, 1980 and therefore without obtaining the prior approval, the drawing of line could not be effected to the house of the 1st Respondent by the K.S.E.B. Apart from the same, the contention raised by the 1st Respondent that even though within the same forest area several persons were provided with electric connection including the Thattekkad Bird Sanctuary, was denied by the appellants.

6. Apart from this, other contentions are raised stating that the attempt of drawing electric line through the forest area will cause destruction to large extent of forest area for the benefit of a single family. It was also contended by the appellants that the attempt is to provide electricity connection to a Resort situated in the said area. Therefore, appellants have justified Ext.P10 order passed by the 2nd appellant. On the other hand, K.S.E.B. has filed a counter affidavit stating that they were attempting only to implement the scheme launched by the Central Government and the expenses for drawing the entire length of line, estimated at Rs.4,55,871-75 was being met by the Central Government.

7. Learned counsel for the 1st Respondent has contended that Sec.2(2) of the Forest (Conservation) Act, 1980 deals with restriction on the de-reservation of forests or use of forest land for non-forest purpose and therefore the said provision has no application for drawing of electric line. Learned counsel has specifically invited our attention to the said provision and the Explanation thereto and contended that the "non-forest purpose" mentioned thereunder is nothing but breaking up or clearing of any forest land or portion thereof for the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants and any purpose other than reafforestation, but it does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes. Learned counsel has also invited our attention to the relevant provisions of the Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006, which is a Central Act extending to the whole of India, except the State of Jammu and Kashmir and specifically invited our attention to Sec.3. Sec.3 deals with forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers, which includes right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of forest dwelling Scheduled Tribe or other traditional forest dwellers. Apart from other rights, sub-sec.(2) reads as follows:

"(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980 (69 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:--

(a) schools;

(b) dispensary or hospital;

(c) anganwadis;

(d) fair price shops;

(e) electric and telecommunication lines;

(f) tanks and other minor water bodies;

(g) drinking water supply and water pipelines;

(h) water or rain water harvesting structures;

(i) minor irrigation canals;

(j) non-conventional source of energy;

(k) skill upgradation or vocational training centres;

(l) roads; and

(m) community centres:

Provided that such diversion of forest land shall be allowed only if,--

(i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and

(ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Grama Sabha."

On a reading of sub-section (2), it is clear that electric and telecommunication lines is one of the facilities extended to members of the Scheduled Tribes and other traditional forest dwellers.

8. The Board has also contended that no manner of deforestation will happen consequent on the drawing of line and that only lopping of branches of trees alone was required. It was emphatically stated by the K.S.E.B that no cutting of Teak woods are required for drawing the electric line. It was also contended that in accordance with the terms of the scheme, Board has taken every step to provide electric connection to the 1st Respondent and there are no laches or lapses on the part of the K.S.E.B for doing the same.

9. The learned Single Judge in order to evaluate the situation, appointed an Advocate Commission and the Commission submitted a report explaining the factual situation prevailing in the area through which the line is proposed to be drawn and stated that there are other electric connections situated in the forest area, from which the connections were provided to few houses and Home Stays inside the area which comes under the Bird Sanctuary. Apart from the same, the Advocate Commissioner has pointed out that in other areas of the Forest Division also electric connections were provided. It was specifically reported by the Advocate Commissioner that the proposed length of the electrification work is 1.7 Kms. And it is to be carried out through a road having width of 3.6 metres and on either side of the road, there are teak plantation. It was also reported that the forest road is the only route, to access the house of the 1st Respondent. The Commissioner has also prepared a sketch, appended along with the report. Objections were filed by the appellants to the Commission Report.

10. After evaluating the factual situations and the objections raised by the appellants, learned Single Judge found that public right through the road from which the line was proposed to be drawn has been admitted in view of Ext.R2 (a) notification which is dated 31.03.1917. It was further held that such public right should also enable the 1st Respondent or the K.S.E.B to draw electric supply line without causing prejudice to the traffic along the road. The learned Single Judge also found that in view of the scheme launched by the Central Government, the permission of the Central Government should be deemed to be implicit. In that view of the matter, learned Single Judge allowed the writ petition, quashing Ext.P10 order passed by the 2nd appellant and issued directions to the K.S.E.B to provide electric connection to the 1st Respondent. It is challenging the said order, this writ appeal is filed by the appellants.

11. Heard the learned Special Government Pleader for Forests, Sri. M.P. Madhavankutty, Sri.K.J. Kuriachan, Advocate on behalf of the 1st Respondent and Smt. P.K. Radhika, learned Standing Counsel for K.S.E.B.

12. So far as the entitlement of the 1st Respondent to avail the benefit of the scheme, and other factual situations are not disputed by the appellants. But, according to the appellants, without prior approval under Sec.2(2) of the Forest (Conservation) Act, 1980, no activity could be carried out in the forest area. Even though the Board has preferred Ext.P4 (a) seeking prior approval and the 1st Respondent has submitted Ext.P4 along with the said sanction request, no permission has been granted by the Central Government. Therefore, the 2nd appellant cannot grant permission to draw the line through the forest area. Apart from other contentions, learned Special Government Pleader contended that if the line is allowed to be drawn in the area in question, it will affect the Teak plantations as well as the animals and birds in the forest area. Learned Special Government Pleader reiterated the contention that the attempt of the 1st Respondent and the Board is only with the intention of securing electric connection to a Resort owner. On the other hand, learned counsel for the 1st Respondent contended that it was purely based on the scheme launched by the Central Government, the application of the 1st Respondent was processed by the Board and no manner of difficulties will be caused due to the drawing of line and it will not affect the Teak plantations or other plantations in any manner. It was also contended that the entire line was proposed to be drawn through the road which is the public road in view of the recital contained in Ext.R2(a) and he has invited our attention to clause-B of Part-II of the Government Order dated 31.03.1917, by which it was stated that this road is admitted mainly to give access to survey number 493/1, and 494/1 and to the path leading to 'Chanthirathil Chal'. Learned counsel further contended that admittedly, the Board has proposed to draw the line through the said road and therefore no manner of prejudice will be caused to the appellants. The Board has also supported the arguments advanced by the learned counsel for the 1st Respondent and contended that the Board is prepared to carry out the directions issued by the learned Single Judge and they have already collected necessary materials at the site in accordance with the directions of the learned Single Judge.

13. The contention raised by the Special Government Pleader that the electric connection is sought for by the 1st Respondent in order to help a nearby Resort owner cannot be sustained at all, in view of the fact that even though an Advocate Commission was taken out by the 1st Respondent and at the time of inspection, Advocate Commissioner was accompanied by the Government officials and the K.S.E.B officials, the appellants have not made any attempt to establish that there was such a Resort situated in the forest area.

14. Having considered the rival submissions, we have come across Ext.R2(a) by which an access road having the width of 12 feet is provided by the Government for access to the public. The provision for the said road was mentioned in Ext.R2(a) under Part II under the heading public rights now admitted. The appellants have not disputed that it is through the said road mentioned in Ext. R2(a) that the K.S.E.B proposes to draw electric line to the residence of the 1st Respondent. The next aspect is whether Sec.2(2) of the Forest (Conservation) Act, 1980 applies to the fact situation. According to us, for two reasons the same will not apply: (1) on a reading Sec.2, it is explicit and clear that the intention of seeking prior approval is for the purpose of carrying out the de-reservation

of Reserved Forests or the non-forest purpose, leasing out etc. etc. The drawing of electric line through an access road provided by the State Government cannot be said to be an activity of non-forest purpose because Explanation to sec.(2) as stated above, clearly specifies the nature of non-forest purposes and therefore we have no hesitation in holding that in the fact situation drawing of electric line through the access road can be permitted without securing prior approval of the Central Government. Secondly, the scheme specified above is launched by the Central Government with the intention of providing electricity connection to the members of Scheduled Tribes and Scheduled Castes and therefore one cannot be heard to say that the Central Government has not taken into account the necessity of providing electricity connection to a tribe residing in a tribal area within the forest area, especially when it is common knowledge that the tribal people mostly reside within the forest areas.

15. So also, at the time of hearing, a copy of the Scheme was provided to us and as per the said Scheme, among other activities, electrifying all villages and habitations as per new definition is one of the aims. Further, paragraph 5 of the Scheme takes care of '**Rural Household Electrification of Below Poverty Line Households**' and under the said heading, the following three types of activities are undertaken:

    (i) BPL households will be provided free electricity connections. The rate of reimbursement for providing free connections to BPL households would be Rs.2200 per household.

    (ii) Households above poverty line are to pay for their connections at prescribed connection charges and no subsidy would be available for this purpose.

    (iii) Wherever SC/ST population exists amongst BPL households and subject to being eligible otherwise, they will be provided connection free of cost and a separate record will be kept for such connection.

    Therefore, as provided under 5(iii), the persons who belong to SC/ST are entitled to get connection free of cost if they are below poverty line, irrespective of the area of their existence. On an evaluation of the entire scheme also, it can be seen that the intention of the Central Government is to provide electric connection to each and every villager on special terms and conditions provided under the Scheme.

16. That apart, we find force in the contention of the learned counsel for the 1st Respondent that in view of the Scheduled Tribe and other traditional forest dwellers (Recognition of Forest Rights) Act, 2006, providing electric connection to the members of the tribe is taken care of. Admittedly, the wife of the 1st Respondent is the member of a Scheduled Tribe and that apart, the 1st Respondent is a member of the Scheduled Caste and a traditional forest dweller, which fact is not disputed by anyone. Therefore, the 1st Respondent is entitled to get benefit of the said provision also. The learned Special Government Pleader has also brought our attention to Sec.22 of the Kerala Forest Act and contended that no person will acquire any right in the Reserved Forest except under limited circumstances like grant or contract in writing made by or on behalf of the Government or by or on behalf of some person in whom such right or the power to create such right was vested when the notification under Sec.19 was published or by succession from such person. But, according to us, Ext.R2(a) Government Order provides a 12 feet wide road through the property in question and therefore even going by Sec.22 of the Act, there is a grant provided to the public. Therefore, viewed in any circumstances, one cannot reach a finding that the 1st Respondent is not entitled to secure the connection extended under the scheme. The learned Single Judge has considered the entire legal and factual aspects and arrived at a conclusion that the 1st Respondent was entitled to get electric connection under the scheme and that the prior approval if any is implicit under the scheme in view of the same launched by the Central Government. The learned Single Judge has relied on the judgment of the Bombay High Court in '***Goa Foundation and another v. The Konkan Railway Corporation***' [AIR 1992 Bombay 471) to arrive at such a conclusion. Learned counsel for the 1st Respondent has invited our attention to paragraph 7 of the said judgment which read thus:

"7. x x x x x x x x x x x x x x x There is no merit in the submission because the project has been approved by the Central Government and the Railway Ministry which is carrying out the exercise is a part of the Central Government. The use of the forest land for providing railway line is not going to affect or damage the existence of forests and the complaint of the petitioners on this count is devoid of any merit.

x x x x x x x x x x x x x x x".

We are also agreeable to the proposition so followed by the learned Single Judge in view of the said judgment and in the nature of facts situations which have arisen in this case.

17. On the other hand, learned Special Government Pleader has invited our attention to another Division Bench judgment of the Bombay High Court in '***Vilas Shankar Donode v. State of Maharashtra and Others***' [2008 KHC 7467] and contended that no manner of activity inside the forest area can be carried out without prior approval of the Central Government. But, according to us, the fact situations narrated in paragraph 3 of the said judgment establishes that the same is entirely different from the fact situations in the case at hand because there, the attempt was to construct a road by a member of the Legislative Assembly belonging to the ruling front and that too, by cutting and removing several trees, forest produce and that too by misusing his official position. Therefore, the facts of the said case have no application to this case.

18. In our view, by launching the scheme, the Central Government has the avowed object of providing electricity connection to the members of Scheduled Castes and Scheduled Tribes and therefore it cannot be heard to say that the Central Government did not take into account the provisions of the Forest (Conservation) Act, 1980. We do not find any illegality or other legal infirmities warranting our interference in the judgment of the learned Single Judge in the appeal.

19. The learned Single Judge has directed the K.S.E.B to provide electric connection latest by 15.09.2015 and since that period is over, we direct Respondents 2 to 4 to provide electricity connection to the 1st Respondent on or before 25.09.2015 since the last date fixed for the scheme is on 30.09.2015. The appellants are directed to cooperate with the K.S.E.B in order to draw the line as per the stipulations contained above, in view of the Scheme getting exhausted on 30.09.2015.

Resultantly, appeal fails and accordingly the same is dismissed, subject to the modification in the above direction.

Devaki vs. Chief Conservator of Forests & Ors.

WRIT PETITION (CIVIL) NO. 3582 OF 2016 (W)
KERALA HIGH COURT
02.02.2016
CORAM: A. MUHAMED MUSTAQUE, J.
CITATION: 2016 SCC ONLINE KER 3028

SUMMARY

The petitioner sought a writ of mandamus directing the state government to clear a road obstructed inside a forest due to the shooting of a film in Kannur District. She also sought directions for appropriate prosecution proceedings under Section 7 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2006 (or 'Forest Rights Act') against the concerned Forest and Police Officials.

As the road had been re-opened by the time the matter came up for hearing, the court disposed of the matter. However, it granted liberty to the petitioner to take up proceedings before the 'appropriate authority' regarding the violation of Section 7 of the Forest Rights Act.

EDITOR'S NOTE

It is quite unusual to see court decisions where Section 7 of the Forest Rights Act is agitated. It is more unusual still to see it being relied upon in a case relating to a film shoot inside a forest area, for which presumably necessary permissions from the state Forest Department were already in place, but permissions from the concerned Gram Sabha had not been obtained. The operative portion of Section 7 states as under:

> 7. Offences by Members or officers of Authorities and Committees under this Act. Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees.

The criminal offence provisions of the Forest Rights Act are rarely used, and it is heartening to observe that these are being articulated in writ proceedings before a constitutional court.

JUDGMENT

1. The petitioner has approached this Court seeking the following reliefs:

   i) Issue a writ of mandamus, any other writ, order or direction, directing the Respondents 1 to 3, to remove the obstruction of forest road due to Film Shooting in Ward No. 13 of Kolayad Panchayath in Kannur District.

   ii) To Direct the Forest and Police officials to initiate appropriate prosecution against the erring officials as per the provisions of Section 7 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

iii) To Pass orders and such other relief's that this Honourable Court may deem fit and proper to grant, in the interest of justice.

iv) Provide cost of the proceedings.

2. It is submitted that, in respect of the first prayer, grievance is redressed as the road has been opened.

3. In respect of the second prayer, this Court is of the view that, the petitioner is free to take up the matter before the appropriate authority, in accordance with law. If the petitioner moves such authority, the same shall be considered in accordance with law.

The writ petition is disposed of as above.

T. A. Gangadharan vs. District Collector & Ors.

WRIT PETITION (CIVIL) NO. 38183 OF 2010 (W)
KERALA HIGH COURT
14.06.2017
CORAM: K. VINOD CHANDRAN, J.
CITATION: 2017 SCC ONLINE KER 20276

SUMMARY

The petitioner, an Other Traditional Forest Dweller (or 'OTFD'), filed this writ petition challenging the District Collector's order denying him a *Vanavasi*[59] certificate. This certificate was required by the petitioner to obtain a trademark for honey obtained from the forest, which he intended to export.

In a previous writ petition filed by the petitioner, the Kerala High Court had directed the District Collector to take a decision after verifying the documents submitted.

The respondent state government opposed the writ petition on two grounds. First, it argued that the petitioner did not meet the eligibility criteria under Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') under which a claimant must be a member of a community which has primarily resided in and depended upon the forests for his bona fide livelihood needs for three generations.

Second, the state government argued that under Section 6 of the Forest Rights Act, there is a statutory hierarchy for forest rights claims to be considered. The District Collector, by himself, is not the authority to take such a decision under the Act.

The court acknowledged that although it had previously directed the District Collector to decide the matter '*(i)t is also trite that while the statute prescribes certain authorities, this Court cannot confer authority on a person/officer, who is not so constituted as an authority under the statute.*' The District Collector ought to have rejected the application on jurisdictional grounds rather than reject it on merits.

Thus, the court set aside the order of the District Collector and directed the petitioner to approach the appropriate authority. The petition was partly allowed in these terms.

EDITOR'S NOTE

The decision-making process outlined in the Forest Rights Act and its Rules emerged from bitter experiences with pre-existing mechanisms under colonial and post-colonial forest legislations, and also the failure of mainstream judicial processes to address these concerns.[60] The rights recognition mechanism under the Forest Rights Act and Rules is, therefore, a hard-won processual justice right.

Yet, we have seen in many cases (included in this as well as its companion volumes), a casual tendency among courts to refer cases to authorities that are not vested with such authority under

[59] *Vanavasi* means forest dweller in colloquial Hindustani.
[60] Khanna, Shomona, *Historical Wrongs and Forest Rights: Nascent jurisprudence on FRA and participatory evidence making*, in India's Scheduled Areas: Untangling Governance, Law and Politics by Varsha Bhagat-Ganguly and Sujit Kumar (eds.) Routledge, Oxon (2020).

the law, usually the District Collector. Therefore, the court's acknowledgment of its error in this judgment needs to be appreciated. While the petitioner's entrepreneurial efforts to trademark and export honey are commendable, whether such an initiative falls within the framework of the Forest Rights Act must be scrutinised by the Gram Sabha of the forests from where such honey is being extracted, as required by law.

JUDGMENT

1. The petitioner is aggrieved with Ext.P10 order passed by the District Collector, refusing Vanavasi certificate to the petitioner. The petitioner's contention is that he had been a forest dweller as described under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 (for brevity 'the Rules'), filed an application for such certificate, so as to obtain a trade mark for the honey he is said to obtain from the forest and intends to export to other countries.

2. The petitioner was before this Court with a writ petition, which was disposed of by Ext.P8. Therein the District Collector was directed to take a decision after verifying the certificates produced by the petitioner. Such a verification was carried out by the District Collector and Ext.P10 order was passed refusing the same, which is impugned herein.

3. The learned Special Government Pleader appearing for the State would take me through the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for brevity 'the Act') and points out that the definition of other traditional forest dweller as contained in Section 2(o) of the Act would not take in the petitioner. It is submitted that only a member or community who has for atleast three generations prior to the 13th day of December, 2005, primarily resided in and depended on the forest or forest land for bona fide livelihood needs, would come under the definition. The documents produced by the petitioner itself would indicate otherwise, is the contention of the State.

4. Be that as it may, it is also contended by the learned Special Government Pleader that the District Collector is not the authority conferred with power under the enactment. Section 6 of the Act is pointed out to show that there is a hierarchy of authorities, to consider the nature and extent of the forest rights of an individual or community. Sub-rule (1) of Section 6 of the Act provides for such an application to be considered at the first level by the Grama Sabha of the Panchayat and then by the Sub Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee constituted under the Act. The petitioner has to necessarily follow the said procedure, is the contention raised. The District Collector is only the Chairman of the District Level Committee and he cannot by himself take a decision.

5. True, this Court had directed the District Collector to take a decision, but, however had not spoken on the authorities under the Act. It is also trite that while the statutes prescribes certain authorities, this Court cannot confer authority on a person/officer, who is not so constituted as an authority under the statute. In such circumstance, the District Collector could have very well rejected the application on the ground that he has no jurisdiction to consider the same. In any event, Ext.P10 has to be set aside for lack of jurisdiction however, this will not lead the petitioner being granted the Vanavasi certificate, for which he could approach the appropriate authority.

6. The writ petition would stand partly allowed, setting aside Ext.P10 but however, rejecting the claim of the petitioner, which he could agitate before the appropriate authority. No costs.

Promod K.P. vs. State of Kerala & Ors.

WRIT PETITION (CIVIL) NOS. 21051-F ETC. OF 2016-U
KERALA HIGH COURT
21.12.2017
CORAM: A. MUHAMED MUSTAQUE, J.
CITATION: 2017 SCC ONLINE KER 23419

SUMMARY

The petition was filed by forest dwellers holding forest *pattas* under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). They filed this writ petition challenging the state government's denial of permission to cut *anjili* and jackfruit trees from their forest *patta* lands.

The respondent state government argued that the petitioners cannot be permitted to cut and remove trees from forest lands, as this would violate the Forest Conservation Act, 1980 which restricts the use of forest land for non-forest activity. It relied upon the Special Rules of 1993[61] for assignment, settlement, and regularisation of forest lands under occupation prior to 01.01.1977, as well as a series of circulars issued under these Rules, which mandate that government permission is required prior to cutting of trees in these lands. Further, the land can only be used for the purpose for which it is assigned.

To examine whether the petitioners have a right to cut trees under the Forest Rights Act or are governed by the government orders issued under the 1993 Rules, the court undertook a detailed examination of the nature of rights conferred by the Forest Rights Act. It observed:

> This enactment was brought in, to recognise the rights of forest dwellers. It appears that the Parliament felt that, for sustainable use and conservation of bio-diversity and maintenance of ecological balance of the forest, the rights of the forest dwellers are to be protected. The said Act recognised traditional forest dwellers as integral to the very survival and sustainability of the forest eco system. The forest dwellers are occupying forest from time immemorial and it is their natural habitat. Their natural right is associated with forest. They cannot be disintegrated from forest eco system. Their life and livelihood are part of forest eco system. Their natural rights have been recognised through the Act 2/2007.

At the same time, the court took the view that the right conferred under the Forest Rights Act is an occupancy right, and the owner and holder of the land continues to be the state government. Therefore, while the petitioners can hold the forest land in perpetuity as the right is heritable, they cannot be permitted to cut and remove trees except to the extent permitted by the Forest Rights Act itself. Thus, the court held that:

> Section 3(a) of the Act allows individual to hold forest land for self-cultivation for livelihood. If an occupant of a forest land, to whom a title has been given as a part of self-cultivation, planted tree for livelihood, certainly, he/she can be permitted to cut and remove such trees. Felling of trees, otherwise, is only permitted in accordance with the

[61]The *Kerala Land Assignment (Regularisation of Occupation of Forest Lands Prior to 1.1.1977) Special Rules, 1993*, were issued in exercise of powers under the *Kerala Government Land Assignment Act*, 1960. The validity of these Rules has been upheld by the Kerala High Court (in AIR 2000 Ker 121) and the Supreme Court of India (in (2009) 5 SCC 373).

other provisions of the [Forest Rights] Act. Based on the title to occupy, no forest dwellers are entitled to cut and remove any trees so long as the restriction under the [Forest Conservation] Act would apply to such areas.

Therefore, the petitioners were granted the right to cut those trees which they had planted themselves as part of self-cultivation. In addition, any tree that poses a danger to the forest dwellers could also be cut, but the tree would belong to the government. The court accordingly directed the Chief Conservator of Forests to take a decision on the petitioner's claim in terms of the articulation of law laid down in this judgment.

EDITOR'S NOTE

Whether forest rights as contemplated under the Forest Rights Act include the right to cut trees has been a vexed issue for many years. This judgment takes a welcome step towards resolving this question and provides a sound legal rationale as well. Most importantly, it lays down a clear method for resolving situations where conflicts arise between the Forest Rights Act and other pre-existing forest laws. By distinguishing forest rights under the Forest Rights Act from usufruct or title rights under the 1993 Rules, this judgment is an important precedent for future disputes which may arise. Without adverting to it, the judgment has made a clear explication of the meaning and intent of the *non-obstante* clause in Section 4(1) of the Forest Rights Act.

JUDGMENT

1. This bunch of writ petitions is filed by tribal/forest dwellers, who were given rights to forest land under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (herein after referred to as the "Act 2/2007"). They approached this Court aggrieved by the denial of permission to cut and remove Anjili trees and Jackfruit trees from the settlement area.

2. The petitioners, trace out their right for cutting and removing trees based on the Act 2/2007 and also with reference to some of the Government Orders. In this context, it is necessary to understand the nature of right devolved upon them in the light of legislative history related to conservation of forest land.

3. Parliament enacted Forest (Conservation) Act, 1980 (herein after referred to as the "Act 69/1980"') with a view to conserve forest land. The Act 69/1980 placed restriction on use of forest land for non-forest purpose; particularity prohibited deforestation, without the permission of the Central Government. Act 69/1980 was enacted, essentially, with the intention of preserving forest and to prevent felling of naturally grown trees.

4. The State of Kerala is having a vast area of forest land and reserve forest. The Government of Kerala, by virtue of the provisions under Section 7 of the Kerala Land Assignment Act 1960, formulated rules for assignment, settlement and regularisation of forest lands which under occupation prior to 01.01.1977. By virtue of the said Rules, forest land can be assigned on registry for the purpose of personal cultivation or for house sites or for shop sites as the case may be, provided assignee or predecessor/successor-in-interest should have been in occupation of the land prior to 01.01.1977. It appears that a list of assignable lands have already been prepared. The assignment is based on payment of lump sum land value. The land assigned under these Rules were also heritable and alienable; but can be used only for the purpose, for which it was assigned. There was a challenge against these Rules before this Court and this Court by judgment reported in: (***Natural Lovers Movement v. State of Kerala***) [AIR 2000 KER 131] held that Rules are not arbitrary. Ultimately, the Hon'ble Supreme Court also affirmed the above judgment of this Court. It is appropriate to refer para 39 of the judgment of the Hon'ble Supreme Court, reported in (***Natural Lovers Movement v. State of Kerala***) [(2009) 5 SCC 373] which is extracted below.

39. Undisputedly, the object of the 1980 Act is conservation of forest and to prevent depletion thereof. Therefore, the court is bound to interpret the provisions of that Act (sic in a way) which would further the object of the legislation. After enforcement of the 1980 Act, the State Governments were denuded of suo motu power to deal with reserved forest or forest land and permit use thereof for non-forest purposes. They could do so only after obtaining prior approval of the Central Government. However, as large tracts of reserved forests and forest land had been occupied by landless poor, who also undertook cultivation for their sustenance many decades before the enactment of the 1980 Act, and there was demand from several quarters that old occupation of the forest land may be regularised, the Government of India, after taking note of the recommendations made in the Forest Ministers' Conference and the committee appointed by it, issued guidelines for grant of approval to the decision taken by the State Governments before the enforcement of the 1980 Act ie. 25.10.1980 to regularise encroachments made on forest land and/or use thereof for non-forest purpose. This necessarily implies that where the State Government had not taken any policy decision to regularise pre 25.10.1980 occupation/encroachment of forest land, no order for regularisation of such occupation/encroachment can be passed without obtaining prior approval of the Central Government in terms of Section 2 of the 1980 Act which, as mentioned above, contains a non obstante clause.

5. The Special Rules, 1993 did not contemplate cutting and removing of trees. Therefore, it would depend upon the restriction referred to in the patta or the Government Order issued. The Government, in fact, issued an order in the year 1993, dated 15.03.1993, as G.O. (MS) 23/93/Forest, permitting, cutting and removing of certain types of trees mentioned therein. By virtue of that Government Order, the assignee under the Special Rules 1993 are entitled to cut and remove the trees. Thereafter, the Government issued another order vide G.O. (M.S) No. 36/93/Forest, dated 19.05.1993, whereby it cancelled the permission to cut Anjily and Jackfruit trees from the forest land. Again, the Government issued another order on 27.05.2015 granting permission to cut and remove Anjili and Jackfruit trees from the forest land, assigned under the Special Rules, on obtaining permission from the forest and revenue authorities.

6. Taking note of the practical difficulty in obtaining permission from the revenue and forest authorities, the Government by order, dated 09.07.2015, dispensed with such permission. It is to be noted that the Government in the order dated 27.05.2015 and all subsequent orders, allowed the assignee under the Special Rules, 1993 as well as the occupant under the Act 2/2007 to cut and remove trees.

7. Pending writ petition, the Government issued another order dated 27.05.2017. By the said order, Government placed restriction for felling trees and ordered that it can be felled only for the specified purpose mentioned therein.

8. The Government has filed a counter affidavit in this matter. According to the Government, the petitioners are not having any title over the property. Further, if the petitioners are permitted to cut and remove trees from the protected forest, reserve, sanctuaries and national park, it will have an adverse impact on the entire forest land. But, the Government can permit cutting and removing of trees for the construction of residential house and for other requirement as specified in the latest Government Order dated 27.05.2017.

9. The issue in these writ petitions arise in the context of the Act 2/2007. This enactment was brought in, to recognise the rights of forest dwellers. It appears that the Parliament felt that, for sustainable use and conservation of bio-diversity and maintenance of ecological balance of the forest, the rights of the forest dwellers are to be protected. The said Act recognised traditional forest dwellers as integral to the very survival and sustainability of the forest eco system. The forest dwellers are occupying forest from time immemorial and it is their natural habitat. Their natural right is associated with forest. They cannot be disintegrated from forest eco system. Their life and livelihood are part of forest eco system. Their natural rights have been recognised through the Act 2/2007.

10. The Act 2/2007 defines forest dwelling scheduled tribes and other traditional forest dwellers in Section 2(c) and (o), respectively. The said definition would go to show that the right conferred under the Act 2/2007 is to protect those who are residing in the forest and depend on the forest or forest land for bona fide livelihood. The Act 2/2007 no where contemplates any assignment of land in favour of such class of persons. What is conferred upon such occupants is certain enumerated forest rights, as referred in Section 3 of the Act 2/2007. In order to confer such right, the Forest Right Committee is constituted. The claim of forest dwellers will have to be routed through the Committee referred under the Act and Rules. Thus, what is assigned is not the land but "forest right" in the land. The said fact is also clear from Section 4(1) of the Act 2/2007.

11. As seen from the scheme of the Act 2/2007, it confers two types of rights; community right and individual right. Section 3 of Act 2/2007 delineate forest rights. It is appropriate to refer section 3 of the Act 2/2007, which is extracted hereunder:—

    3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers:— (1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:—

        (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

        (b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

        (c) right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

        (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

        (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

        (f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

        (g) rights for conservation of Pattas or leases or grants issued by any local authority or any State Government on forest land to titles;

        (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

        (i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

        (j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

        (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

        (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land or any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

(2) Notwithstanding anything contained in the Forest (Conservation Act, 1980 (59 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:—

(a) schools;

(b) dispensary or hospital;

(c) anaganwadis;

(d) fair price shops;

(e) electric and telecommunication lines;

(f) tanks and other minor water bodies;

(g) drinking water supply and water pipelines;

(h) water or rain water harvesting structures;

(i) minor irrigation canals;

(j) non-conventional source of energy;

(k) skill upgradation or vocational training centres;

(l) roads; and

(m) community centres:

Provided that such diversion of forest land shall be allowed only if, -

(i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each cases; and

(ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

12. The claim of the petitioners in these writ petitions is based on individual right. They claim unfettered right to cut and remove trees from the settlement area assigned to them. The question is, whether they can be permitted to cut and remove trees either based on the Act 2/2007 or based on the Government Orders.

13. As already adverted, the assignment of forest right to the forest dwellers is essentially recognizing the occupancy right to occupy the forest land. That transfer does not include transfer of forest land to the forest dwellers. Thus, the State continued to be the holder of the land, having control of such forest land. Ownership and possession to hold the land belongs to the State, even though, the right to hold forest lands perpetually can be claimed as heritable in terms Section 4(4) of the Act 2/2007. Since the forest dwellers do not keep possession or ownership over the land, they can be permitted to cut and remove trees only in accordance with the provisions of the Act 2/2007.

14. The Act 69/1980 is the enactment against deforestation. In the light of the provisions under the said Act, it is not possible to permit the assignees to cut and remove trees from any reserve forest or forest land for any non forest purpose, except with the prior approval of the Central Government. However, the Act 2/2007 permits assignees to cut and remove trees for the specific purpose mentioned therein.

Under Section 3(2) of the Act 2/2007, the Central Government can permit diversion of forest land not exceeding 75 trees per hector for certain purposes mentioned therein. Thus, the felling of the trees can be permitted only in accordance with the provisions of the Act 2/2007.

15. It is equally important to note that certain rights are given to individuals under the Act 2/2007 and the Act 69/1980:—

16. Section 3(a) of Act 2/2007 allows individual to hold forest land for self-cultivation for livelihood. If an occupant of a forest land, to whom a title has been given as a part of self-cultivation, planted tree for livelihood, certainly, he/she can be permitted to cut and remove such trees. Felling of trees, otherwise, is only permitted in accordance with the other provisions of the Act 2/2007. Based on the title to occupy, no forest dwellers are entitled to cut and remove any trees, so long as the restriction under the Act 69/1980 would apply to such areas.

17. It is also to be noted that there is no transfer of interest involved in terms of the Act 2/2007 while giving title of the forest land to the forest dwellers for occupation. What is given is only a right to have occupation. The forest rights conferred upon the dwellers are in the nature of permissions to occupy the forest land and use it for the purpose for which permissions are granted. Therefore, as a matter of right, the forest dwellers or occupants, who are given title cannot be permitted to fell trees, from the land where prohibition of the Act 69/1980 would apply.

18. The Government, in fact, diluted the provisions of the Act 69/1980, by allowing cutting and removing of trees. The Government cannot issue any order without previous approval of the Central Government. Any Government Order issued permitting felling of trees contrary to the Act 69/1980 is legally unsustainable.

19. So far as the issue in these writ petitions are concerned, this Court is of the view that, if the petitioners are given title under the Act 2/2007, they can be permitted to cut and remove any trees, which they have planted as a part of self-cultivation for livelihood. No doubt, if any tree pose danger to the dwellers, that also can be permitted to cut and remove. However, those trees belong to the Government and not to the dwellers. In respect of the trees planted and cultivated by the dwellers, the Government cannot claim any right over it, as it is a part of permitted activity and the dwellers can appropriate it.

20. Therefore, in the light of the discussions made above, these writ petitions are disposed of, directing the Chief Conservator of Forests to take a decision on the claim of the petitioners. The Chief Conservator of Forests can only permit the petitioners to cut and remove trees which were planted as part of self-cultivation. Appropriate decision shall be taken within a period of two months. The Government Orders issued contrary to law declared by this Court shall be withdrawn by the Government.

21. The writ petitions are disposed of as above. No order as to costs.

MADHYA PRADESH HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Rajesh Shrivastav vs. State of Madhya Pradesh & Ors.

WRIT PETITION NO. 6198 OF 2010
MADHYA PRADESH HIGH COURT, JABALPUR BENCH
09.01.2013 (INTERIM ORDER)
CORAM: S.A. BOBDE, CJ & K.K. TRIVEDI, J.
CITATION: 2013 SCC ONLINE MP 276

SUMMARY

This Public Interest Litigation (or 'PIL') was directed against the government's decision to transfer 11,121.21 hectares of reserved and protected forest lands in the Badwara and Dheemarkheda Forest Ranges for commercial plantation to the Madhya Pradesh Rajya Van Vikas Nigam Limited (or 'MP RVVNL'), arrayed as respondent nos. 5 and 6. The petitioner stated that the entire area comprised mixed deciduous forests and could only be replaced by similar nature of forests, not by commercial crop plantation, as that would adversely affect the ecological balance of the area and harm the fauna.

In a previous hearing, on 30.01.2012, the court *'decided to call upon the Director of the Tropical Forest Research Institute (TFRI) to find out whether the proposed plan of having a commercial forest will have a negative impact on the ecological balance of the area in question'*.[62]

This was a follow-up interim order. The court, in response to the argument of MP RVVNL that they were only removing 'over wood', took the view that this was unacceptable, as removal of over wood is the same as removal of trees. The court directed the state to not remove any trees except in accordance with law, citing Sections 38-O and 38-V of the Wildlife Protection Act, 1972 (or 'WLPA'), which mandates the state to protect the rights of forest dwellers and obtain their consent.[63]

Accordingly, the court directed that *'the respondents shall take care to ensure that the aforesaid provisions are strictly complied with before any action for removing any trees is taken.'* While observing that the respondents would be entitled to begin plantation work in the area, the court also directed that the preservation of wildlife would be the responsibility of the forest officials, whether the area is being worked on by the Van Vikas Nigam or otherwise.

EDITOR'S NOTE

This PIL was filed in 2010, in which orders are being passed from time to time. The focus of the petitioners as well as the court was on the proposed felling of trees by the MP RVVNL, which may adversely impact wildlife. In its previous orders, the court expressed its concern regarding the replacement of mixed deciduous forests with commercial plantations, and prohibited the felling of trees in the area. Subsequently, the court accepted the Tiger Conservation Plan, duly approved by

[62]Order dt. 30.01.2012 in WP 6198 of 2010, Jabalpur High Court, pending.
[63]Section 38V(4) and (5) of the *Wildlife Protection Act*, 1972, state that while preparing a Tiger Conservation Plan, the state shall ensure that the rights and interests of the people living in the Tiger Reserve do not get violated, nor will any Scheduled Tribes or Other Traditional Forest Dwellers be resettled or have their rights adversely affected due to creation of areas for tiger conservation without their consent.

the National Tiger Conservation Authority, subject to strict compliance with the conditions in the plan.[64] It also sought status reports from time to time. However, there was no mention of the forest dwellers who may have rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the WLPA. The matter is pending at the time of writing.

ORDER

Having heard the matter for sometimes, we are of the view that the stand of the respondents, M.P. Rajya Van Vikas Nigam that they are only removing over wood is wholly unacceptable in view of what Van Vikas Nigam means by the term "over wood". It is apparent from paragraph 4 of the additional submissions dated 10.12.2012 that what contemplated by "removal of over wood" is "removal of trees". Removal of trees cannot, by no stretch of imagination, be permitted in the garb of removal of over wood, hence we are constrained to direct Van Vikas Nigam not to remove any trees on any ground except in accordance with law. "In accordance with law" in this context would mean compliance of section 38-O and 38-V of The Wild Life Protection Act, 1972. The said provisions read as under:-

> **38-O. Powers and Functions of Tiger Conservation Authority**.- The Tiger Conservation Authority shall have the following powers and perform the following functions, namely:—
>
> (a) to approve the Tiger Conservation Plan prepared by the State Government under subsection (3) of section 38V of this Act;
>
> (b) evaluate and assess various aspects of sustainable ecology and disallow any ecologically unsustainable land use such as, mining, industry and other projects within the tiger reserves;
>
> (c) lay down normative standards for tourism activities and guidelines for project tiger from time to time for tiger conservation in the buffer and core area of tiger reserves and ensure their due compliance;
>
> (d) provide for management focus and measures for addressing conflicts of men and wild animals and to emphasise on co-existence in forest areas outside the National Parks, sanctuaries or tiger reserve, in the working plan code;
>
> (e) provide information on protection measures including future conservation plan, estimation of population of tiger and its natural prey species, status of habitats, disease surveillance, mortality survey, patrolling, reports on untoward happenings and such other management aspects as it may deem fit including future plan conservation;
>
> (f) approve, co-ordinate research and monitoring on tiger, co-predators, prey, habitat, related ecological and socio-economic parameters and their evaluation;
>
> (g) ensure that the tiger reserves and areas linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for ecologically unsustainable uses, except in public interest and with the approval of the National Board for Wild Life and on the advice of the Tiger Conservation Authority;
>
> (h) facilitate and support the tiger reserve management in the State for biodiversity conservation initiatives through eco-development and people's participation as per approved management plans and to support similar initiatives in adjoining areas consistent with the Central and State laws;
>
> (i) ensure critical support including scientific, information technology and legal support for better implementation of the tiger conservation plan;

[64]See, for instance, orders dt. 02.04.2014 and 30.09.2014 in WP 6198 of 2010, Madhya Pradesh High Court, pending.

(j) facilitate ongoing capacity building programme for skill development of officers and staff of tiger reserves; and

(k) perform such other functions as may be necessary to carry out the purposes of this Act with regard to conservation of tigers and their habitat.

(2) The Tiger Conservation Authority may, in the exercise of its powers and performance of its functions under this Chapter, issue directions in writing to any person, officer or authority for the protection of tiger or tiger reserves and such person, officer or authority shall be bound to comply with the directions:

Provided that no such direction shall interfere with or affect the rights of local people particularly the Scheduled Tribes.

38V. Tiger Conservation Plan. - (1) The State Government shall, on the recommendation of the Tiger Conservation Authority, notify an area as a tiger reserve.

(2) The provisions of sub-section (2) of section 18, sub-sections (2), (3) and (4) of section 27, sections 30, 32 and clauses (b) and (c) of section 33 of this Act shall, as far as may be, apply in relation to a tiger reserve as they apply in relation to a sanctuary.

(3) The State Government shall prepare a Tiger Conservation Plan including staff development and deployment plan for the proper management of each area referred to in sub-section (1), so as to ensure—

(a) protection of tiger reserve and providing site specific habitat inputs for a viable population of tigers co-predators and prey animals without distorting the natural prey-predator ecological cycle in the habitat;

(b) ecologically compatible land uses in the tiger reserves and areas linking one protected area or tiger reserve with another for addressing the livelihood concerns of local people, so as to provide dispersal habitats and corridor for spill over population of wild animals from the designated core areas of tiger reserves or from tiger breeding habitats within other protected areas;

(c) the forestry operations of regular forest divisions and those adjoining tiger reserves are not incompatible with the needs of tiger conservation.

(4) Subject to the provisions contained in this Act, the State Government shall while preparing a Tiger Conservation Plan, ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve.

Explanation .....

(5) Save as for voluntary relocation on mutually agreed terms and conditions, provided that such terms and conditions satisfy the requirements laid down in this sub-section, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected for the purpose of creating inviolate areas for tiger conservation unless—

(i) the process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons is complete;

(ii) the concerned agencies of the State Government, in exercise of their powers under this Act, establishes with the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities of the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat;

(iii) the State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consulation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of co-existence, are not available;

(iv) resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfils the requirements given in the National Relief and Rehabilitation Policy;

(v) the informed consent of the Gram Sabha concerned, and of the persons affected, to the resettlement programme has been obtained; and

(vi) the facilities and land allocation at the resettlement location are provided under the said programme, otherwise their existing rights shall not be interfered with.

The respondents shall take care to ensure that the aforesaid provisions are strictly complied with before any action for removing any trees is taken. They shall, however, be entitled to commence the plantation work in the area. In the meanwhile, we further direct that as far as preservation of wild life is concerned, it shall be the sole responsibility of the forest officials, whether in the area being worked on by the Van Vikas Nigam or any other area.

List the matter after four weeks.

Raghunath Singh Gond vs. State of Madhya Pradesh & Ors.

WRIT PETITION NO. 7774 OF 2014
MADHYA PRADESH HIGH COURT AT JABALPUR
09.07.2014
CORAM: R.S. JHA, J.

SUMMARY

The writ petition was filed by a claimant under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or, 'Forest Rights Act') whose claims were pending for a long time before the Sub Divisional Level Committee (or 'SDLC').

The court took the view that since disputed questions of fact were involved in this case, the jurisdiction of the court under Articles 226 and 227 of the Constitution of India could not be exercised. Accordingly, the court disposed of the writ petition granting liberty to the petitioner to move an appropriate application (for early hearing) before the Sub-Divisional Officer (or 'SDO'). The court also clarified that no findings on merits have been made by it, and the SDO is free to consider all aspects, including whether the petitioner is an encroacher or not.

EDITOR'S NOTE

The stereotype of an 'encroacher', which permeates the state machinery responsible for the implementation of the Forest Rights Act, found mention in this brief order, even as the court, quite ironically, stated that it has not reached any finding on whether the petitioner is such an encroacher or not.

Clearly, the court did not understand the purpose of the Forest Rights Act or the mechanism for rights recognition under it. The SDO does not exercise quasi-judicial powers under the Forest Rights Act, rather it is the six member SDLC that examines and collates the claims before it, upon the recommendation of the Gram Sabha. It is disingenuous to presume that all that is required is for the petitioner to move an application for an early hearing before the SDO. If only addressing the endemic delays in disposal of Forest Rights Act claims across the country were so simple.

JUDGMENT

Heard on the question of admission.

The petitioner has filed this petition praying for a direction to the respondents to grant him lease under the provisions of the Scheduled Tribes and Other Traditional Forest Dweller (Recognition) of Forest Rights Act, 2006.

From a perusal of the petition and the averments made by the petitioner therein, it is apparent that the matter has been referred to the Sub Divisional Officer, Patan before whom it is pending adjudication. It is further clear that the petitioner has not moved any application for early hearing or for early adjudication of the proceedings that are pending before the S.D.O Patan.

In view of the aforesaid undisputed facts, as it is apparent that the petitioner's matter is already pending before the S.D.O Patan for adjudication and as the petitioner cannot be permitted to take up parallel remedies, More so as the claim of the petitioner requires adjudication in respect of disputed questions of fact which cannot be gone into under Articles 226 & 227 of the Constitution of India, the petition filed by the petitioner is disposed of with liberty to the petitioner to file an appropriate application in that regard before the concerned S.D.O before whom the matter is pending adjudication.

It is made clear that this Court has not expressed any opinion on the merits of the case and, therefore, the S.D.O would be at liberty to take into consideration all aspects including the aspect as to whether the petitioner is an encroacher on forest land and has deliberately made encroachment with a view to take advantage of the provisions of the Act, and take a decision thereon in accordance with law by either accepting or rejecting the claim of the petitioner by passing a reasoned order.

With the aforesaid liberty and observation, the petition, filed by the petitioner stands disposed of.

Budhasen vs. State of Madhya Pradesh & Ors.

WRIT PETITION NOS. 223 OF 2009, ETC.
MADHYA PRADESH HIGH COURT AT JABALPUR
19.02.2015
CORAM: A.M. KHANWILKAR, C.J. & R.S. JHA, J.
CITATION: 2015 SCC ONLINE MP 206

SUMMARY

This was a common decision in a batch of seven writ petitions. The petitioners filed these petitions seeking directions to the respondent state government to grant them *pattas* on forest land under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). On earlier occasions when the petitioners had approached the court seeking such relief, they were directed to make representations to the appropriate authority under the Forest Rights Act, namely the Sub Divisional Level Committee (or 'SDLC'). The petitioners made representations before the appropriate authority under the Forest Rights Act, which found that the petitioners had failed to substantiate their claims. Thereafter, the petitioners assailed the SDLC's decisions in these writ proceedings.

The court noted that the SDLC found the petitioners '*to have encroached upon the forest land and have committed offences*'. This was a finding of fact, in which the writ court was loath to interfere. The court observed that petitioners have failed to avail of the remedy of filing statutory appeals before the District Level Committee (or 'DLC'), and they cannot challenge the order passed by the SDLC in these proceedings before the high court. Accordingly, the writ petitions were dismissed.

EDITOR'S NOTE

From the brief judgment, the entire factual matrix is not clear, including whether there were cogent reasons for so many petitioners to approach the high court instead of exercising their statutory right to appeal before the DLC. Hence, we cannot comment on this portion of the decision. However, the court appears to have misdirected itself in failing to note that the Forest Rights Act actually provides that so-called 'encroachment' and 'offences' can afford some of the most reliable evidence that a claimant is, indeed, a forest dweller whose rights were not previously recognised. The purpose and object of the Forest Rights Act, as articulated in its lengthy Preamble, seems to have been lost upon the court. Unfortunately, review petitions filed subsequently against this judgment were also dismissed by the court.[65]

JUDGMENT

These petitions have been listed under category "**admission matters more than five years old**".

The matters were listed on 09.02.2015 under the same category. As none appeared in any of these matters - presumably because of the call given by the Bar Association to boycott this Court, by way of indulgence, the Court deferred the hearing till today. Even today, the situation has not changed.

The relief claimed in these petitions is to direct the respondents to grant Pattas of forest lands to the petitioners. The petitioners had approached this Court on earlier occasion when those proceedings were

[65]Judgment dt. 14.08.2015 in R.P.No.165/2015, *Sohan Singh Thakur vs Union of India*, Madhya Pradesh High Court.

disposed of with liberty to the petitioners to make representation to the appropriate Authority. As a consequence, the petitioners made representation to the appropriate Authority who in turn considered the claim of the respective petitioners and have found as of fact that the concerned applicant had failed to substantiate his right much less for grant of Patta. The decision so rendered by the appropriate Authority is amenable to challenge before the District Level Committee. The petitioners have not availed of that statutory remedy provided under the Rules of 2008. This factual position stated in the reply-affidavit has remained uncontroverted.

It is well established position that the High Court should be loath to examine disputed questions of fact. The fact whether the concerned petitioner was eligible for grant of Patta depends on bundle of circumstances which the petitioner was required to establish and substantiate before the appropriate Authority. The finding of appropriate Authority on consideration of that material being a finding of fact cannot be made subject matter of challenge by way of writ petition. The scope of judicial review is circumscribed. Moreover, the petitioners having failed to avail the opportunity of statutory appeal coupled with the fact that they have been found to have encroached upon the forest land and have committed offences, the question of entertaining challenge to the order of the Sub Divisional Level Committee which has been passed in exercise of statutory obligation under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules and Regulations framed thereunder, cannot be countenanced. Hence, **dismissed**.

CONC No. 1919/2014

In view of the dismissal of main writ petitions, we refuse to invoke contempt jurisdiction.

Accordingly, contempt petition is also **disposed of**.

Katku Singh Baiga & Ors. vs. Union of India & Ors.

WRIT PETITION NO. 21189 OF 2015
MADHYA PRADESH HIGH COURT AT JABALPUR
22.07.2016
CORAM: SANJAY YADAV, J.
CITATION: 2016 SCC ONLINE MP 10406

SUMMARY

The petitioner, a member of the Baiga Scheduled Tribe, relied upon an earlier judgment dated 16.01.2014 passed by the high court in a similar case.[66] In that judgment, the court had stopped any dispossession of forest land until forest rights were verified, and directed that the procedure prescribed under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') and Rules be strictly followed. In the present order, the court directed that the same directions be applied *mutatis mutandis* to this case as well.

EDITOR'S NOTE

The Baigas are classified as a 'particularly vulnerable tribal group' and are among the most marginalised tribal communities in India. The present judgment demonstrates that when a good judgment is passed in a particular case, as was done in the 2014 judgment referred to, it has cascading positive results for many such future cases.

JUDGMENT

Taking into consideration the nature of relief sought for by petitioners, tribals in occupation of forest land, this Court agree with the contention made on behalf of petitioner that petition can be disposed of in terms of order-dated 16.1.2014 passed in WP-10519-2009, which was disposed of in the following terms—

> "Counsel for the respondents/State in all fairness submits that in view of the Central enactment of the Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the State Authorities are obliged to follow the procedure prescribed under the said Act and the rules framed thereunder. In other words, the dispossession of concerned forest dwellers/tribals will be done only after due verification of their rights, if any. In view of this submission, nothing more is required to be done in the present petition. Needless to observe that it necessarily follows that the State Authorities shall not act upon the impugned order and instead initiate proceedings under the Act of 2006 and rules framed thereunder before resorting to eviction of any of the forest dwellers.

[66] *Baiga Mahapanchayat Madhya Pradesh vs. State of Madhya Pradesh*, Judgment dt. 16.01.2014 in WP No. 10519/2009. See *Compendium of Judgment on the Forest Rights Act 2007 – 2015* by Shomona Khanna, Ministry of Tribal Affairs Government of India (2016) at page 382.

The affected party will be free to challenge the decision to be taken by the State Authorities on case to case basis.

Petition is disposed of accordingly."

Present petition is also **disposed of** in the same terms.

In other words, order-dated 16.1.2014 passed in WP-10519-2009 would be ***mutatis mutandis*** applicable in the present case also.

Ramlal & Ors. vs. State of Madhya Pradesh & Ors.

WRIT PETITION NO. 8677 OF 2016
MADHYA PRADESH HIGH COURT AT JABALPUR
10.01.2017
CORAM: SANJAY YADAV, J.

SUMMARY

The petitioners were forest dwellers asserting their rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). They sought directions to the respondent state government, and particularly the District Collector, Khandwa, to initiate the procedure for verification and recognition of forest rights and to decide the same in a time-bound manner. They also sought protection against dispossession.

During the hearing, the petitioners' counsel restricted their prayer to a direction to the District Collector, Khandwa to decide the petitioners' claims. The court granted this prayer and further gave a three-month deadline for this process to be carried out in accordance with the provisions of the Forest Rights Act. It did not, however, express any opinion on the petitioners' entitlement to forest rights *pattas* under the Forest Rights Act.

EDITOR'S NOTE

The judgment in this case took the familiar approach of issuing directions to the state government to decide the claims of the forest dwellers in a time-bound manner. It did not go into the specific structural issues that resulted in the delay, thus missing another opportunity to pass directions that would have resulted in systemic change.

JUDGMENT

Though learned counsel for the petitioner prays for further fifteen days time to file rejoinder; however, it transpires from order dated 16.12.2016 that on the prayer made on behalf of petitioner for filing rejoinder 15 days time was granted with a further stipulation that if the rejoinder is not filed within the said period, no further time shall be granted and right to file rejoinder shall be closed. In view whereof no further opportunity can be granted to the petitioner to file rejoinder.

Heard on admission.

Petitioners have claimed following reliefs:

(i) That the Hon'ble Court may kindly be pleased to issue direction to the Respondents to initiate the procedure of verification and recognition of Forest Rights of the Petitioners and similarly situated other claimants and complete the same within a timeframe.

(ii) The Hon'ble Court may kindly be pleased to direct the respondents to not dispossess the petitioners and other claimants until the process of verification and recognition of their Forest Rights is complete in terms of the provisions of the Forest Act, 2006.

(iii) Any other relief which the Hon'ble Court may deem fit and proper under the facts and circumstances of the case may also be granted.

However, when the matter is taken up for hearing on admission, learned counsel for the petitioners confines his relief to direction to Collector, Khandwa to decide the representation which forms the subject matter of Annexure P-2 within a specified time.

Learned Government Advocate appearing for the respondents has no objection if such a direction is given to the respondents to consider the representation preferred by the petitioner on 8.12.2015.

Taking into consideration the submissions made on behalf of parties, the petition is disposed of with a direction to Collector, district Khandwa to decide the representation preferred by the petitioners on 8.12.2015 (Annexure P-2) within a period of three months from the date of communication of this order.

It is reiterated that this Court has not expressed any opinion as to entitlement of the petitioner for Forest Patta under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. It is further made clear that Collector would be at liberty to pass such order in consonance with the provisions contained under the Act of 2006.

Chhatru Baiga & Ors. vs. Union of India & Ors.

WRIT PETITION NO. 16737 OF 2014
MADHYA PRADESH HIGH COURT AT JABALPUR
14.02.2017
CORAM: SUBODH ABHYANKAR, J.

SUMMARY

The petitioners, who belong to the Baiga and Gond Scheduled Tribes, filed this petition aggrieved by the respondent state government for not following the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). The petitioners sought the court's direction to the respondents to renew their *pattas*, and not destroy their crops or interfere in their peaceful possession of forest land. They also sought the court's direction to the state government to quash all forest offence cases registered against them. In support of these prayers, the petitioners relied upon an earlier decision of the same court in Writ Petition No. 21189 of 2015.[67]

The state government acknowledged that the Forest Rights Act applies to the petitioners, and further submitted that if applications were presented before the concerned authority, these would be processed in accordance with law.

Expressing its inability to delve into questions of fact, the court directed the petitioners to submit a detailed application raising all their grievances before the concerned authority within two weeks, which should be decided in accordance with law with a reasoned speaking order.

EDITOR'S NOTE

The enactment of the Forest Rights Act recognises that forest dwellers are entitled to forest rights, and are not, in fact, committing forest offences under various forest laws. However, it is a matter of concern that despite the statutory advancements, forest dwellers continue to be treated as encroachers in their own lands. It is heartening to see a line of decisions emerging from the Madhya Pradesh High Court attempting to remedy this situation, although in the present judgment this question was left open.

JUDGMENT[68]

Petitioner before this Court is aggrieved by the inaction on the part of respondents to follow the provisions of ***Anusoochit Janjaati Aur Anya Parampragat Van Nivasi (Van Adhikaro Ki Manyata Adhiniyam Niyam*** 2012 read with Rule 2006) in respect of the members of Scheduled Caste and Schedule Tribe category. The petitioners made the following relief in the petition:

A. That this Hon'ble Court be ordered to respondent No. 6 & 7 to renew the patta of the petitioners & the farmers as per annexure A, B & C C1 C2 C3 C4 & C5.

[67]Order dt. 22.07.2016 (*supra*) in *Katku Singh Baiga & Ors. vs. UOI & Ors*. Writ Petition No. 21128 of 2015, Madhya Pradesh High Court. See also *Baiga Mahapanchayat Madhya Pradesh vs. State of Madhya Pradesh*, Judgment dt. 16.01.2014 in WP No. 10519/2009 in Shomona Khanna, *Compendium of Judgments on the Forest Rights Act 2007–2015*, Ministry of Tribal Affairs Government of India (2016) at page 382.
[68]Some typographical errors in this judgment have been corrected for easier reading, without changing the meaning in any way.

B. That this Hon'ble Court be ordered to respondent No. 6 to 11 and 14 to 26 not to interfere in the peaceful possession of the petitioner over the land in question by way of (damaging) the crops by the cattle of the respondents.

C. That this Hon'ble Court be ordered to quash all the forest act cases against the Farmers who were belonging to scheduled tribe caste pending before the courts all over the state of M.P.

D. That this Hon'ble Court be ordered to respondents to pay the damages as they deem think fit to this case.

E. That this Hon'ble Court be ordered to pass any other alternative remedy as they deem fit for this case.

F. That this Hon'ble Court be ordered to pass an appropriate order/ direction for the whole state to stop this kind of illegal activity.

Petitioners have also relied upon the decision of this Court passed on 22.07.2016 in W.P.No. 21189/2015 (Katku Singh Baiga & Others Vs. Union of India & others).

In return the State has submitted that they are governed by the Scheduled Tribe Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Rules framed thereunder in the year 2007 wherein detailed procedure has been prescribed as to how the land is allotted to tribes claiming to be the residents of forest area.

Respondents have further submitted that if the petitioners submit application before the concerning authority with their grievances regarding grant of Patta, the same shall be considered in accordance with the provisions of the Act of 2006.

Under these circumstances, this Court cannot delve into the merits of the case and it is directed that the petitioners shall submit a detailed application raising all their grievances before the concerned authority under the aforesaid Act of 2006 within a period of two weeks from today and the authority shall decide the petitioners' application, in accordance with law, by passing a reasoned and speaking order, within three months from the date of receipt of certified copy of this order along with the application.

It is made clear that this Court has not expressed any opinion on the merits of the case.

Accordingly, the petition stands disposed of.

Hazarilal Gurjar vs. Union of India & Ors. etc.

WRIT PETITION NOS. 1289 OF 2015 ETC.
MADHYA PRADESH HIGH COURT AT INDORE
07.03.2017
CORAM: S.C. SHARMA, J.

SUMMARY

This was a batch of writ petitions in which the petitioners sought directions that they be permitted to file applications before the Collector, Rajgarh, who would decide the same in accordance with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

Agreeing to this request, the court passed an order in the terms sought, with a further direction that the application be decided within six months.

EDITOR'S NOTE

The Madhya Pradesh High Court disposed of this batch of petitions in a single judgment, and other matters[69] were also decided similarly. It is a matter of concern that in all these matters, the court directed that the applications be decided by the Collector, Raigarh. This can be misinterpreted as a circumvention of the procedure under the Forest Rights Act and Rules, where applications are first examined by the Gram Sabha. Indeed, even at the level of the District Level Committee, the Collector cannot take any decision independently of the other members of the said Committee.

JUDGMENT

The petitioner before this Court has filed an IA.No.1121/2017 in Writ Petition No.1289/2015 for disposal of the petition and his contention is that the petitioner be permitted to file an application before the Collector, Rajgarh and the Collector, Rajgarh be directed to decide his application under the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The prayers appears to be a genuine prayer.

Resultantly, after hearing learned Government Advocate, present petition stands disposed of with a liberty to the petitioner to submit an application before the Collector, Rajgarh and if such an application is preferred, the same shall be decided in accordance with law, keeping in view the provisions as contained under the Act of 2006, within a period of six months from the date of receipt of such application.

With the aforesaid, all the writ petitions stand disposed of.

[69]Order dt. 03.04.2017 in *Amar Singh Gurjar vs. Union of India & Ors*. WP 1298/2015, and orders dt. 07.03.2017 in *Prabhulal Gurjar vs. Union of India & Ors*. WP 1298/2015, *Bhagwan Singh Gurjar vs. Union of India & Ors*. WP 1304/2015, *Jairam Gurjar vs. Union of India & Ors*. WP 1305/2015, and *Prem Singh Gurjar vs. Union of India & Ors*. WP 1313/2015, High Court of Madhya Pradesh.

Ram Swaroop Yadav vs. State of Madhya Pradesh & Ors.

WRIT PETITION NO. 3471 OF 2017
MADHYA PRADESH HIGH COURT AT JABALPUR
04.04.2017
CORAM: SUJOY PAUL, J.

SUMMARY

The petitioner filed this petition seeking the court's directions to the state government to set aside the show cause notice dated 30.01.2017, which, according to the petitioner, was issued *'without any authority of law'*.

The petitioner submitted that he has legal rights to occupy and continue performing agricultural activities on the land in question under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The respondent state government argued that the show cause notice was issued under Section 80(A)(1) of the Indian Forest Act, 1927 (or 'IFA') which empowers the state government to summarily evict persons in unauthorized possession of forest land, provided they are given an opportunity to explain why such an order should not be passed.

Relying on judicial precedent from the Supreme Court that a show cause notice by itself should not be struck down unless it is totally *non est* due to lack of jurisdiction, the court held that there was no reason to interfere with the said show cause notice. It disposed of the petition granting liberty to the petitioner to file his response before the authority which had issued the notice in the first place.

EDITOR'S NOTE

Section 80A has been introduced in the IFA through an amendment passed by the Madhya Pradesh state legislative assembly and provides for summary eviction. In a situation where tribal forest dwellers face an imminent threat of eviction, the 'opportunity to show cause' provided barely meets the standard of natural justice, especially when the balance of power is tilted heavily against them. In the present case, if the court was not inclined to examine the substantial questions arising relating to conflict of laws, at the very least it ought to have provided the petitioner with protection against dispossession while his rights under the Forest Rights Act are being determined. Indeed, such protection is mandated under Section 4(5) of the Forest Rights Act.

JUDGMENT

For this petition filed under Article 226 of the Constitution takes exception to the show cause notice dated 30.1.2017 (Annexure-P/7). Criticizing this notice learned counsel for the petitioner submits that in view of the right created in favour of the petitioner under the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act of 2006), the impugned show show cause notice is without authority of law. By taking this Court to various documents filed with this petition, it is submitted that the petitioner has legal right to occupy and continue the agricultural activity on the land in question, the show cause is liable to be interfered with.

Prayer is opposed by Shri Santosh Yadav, learned PL.

It is seen that the show cause notice was issued under Proviso to Clause-I of Section 80 (A) of the Indian Forest Act, 1927. The said Act mandates that no order of ejection under Subsection shall be passed unless the person to be ejected is given a reasonable opportunity of showing cause why such an order should not be passed. In the show cause notice, respondents have given a liberty to the petitioner to file reply and file valid documents in support of his contention. As per the language employed in Proviso to Section 80(A) primafacie I am unable to hold that the impugned notice was issued without authority of law. The scope of interference at the stage of issuance of show cause notice is limited. In the case of *Special Director and Another Vs. Mohd. Ghulam Ghouse and Anr. [(2004) 3 SCC 440]* the Apex Court has held as under :-

> **...**Unless the High Court is satisfied that show-cause notice was totally nonest in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court.
>
> (emphasized supplied)

In view of this judgment, it is clear that even if any jurisdictional issue is involved in relation to the show cause notice, the recipient of notice may file his objection/response, which will be dealt with by the authority, who has issued the show cause notice. At this stage whether the petitioner has valid documents or not cannot be gone into by this Court. I find no reason to interfere against the show cause notice. Petitioner, if advised may file his response with alleged relevant documents before the authority, who has issued the show cause notice. This Court has no doubt that if such reply is filed the competent authority will deal with this in accordance with law.

With the aforesaid observation, petition is disposed of.

Rameshwar vs. State of Madhya Pradesh & Ors.

WRIT PETITION NO. 15941 OF 2016
MADHYA PRADESH HIGH COURT AT JABALPUR
18.04.2017
CORAM: SANJAY YADAV, J.

SUMMARY

The tribal forest dweller petitioner was denied rehabilitation when his village, situated in Nauradehi Wildlife Sanctuary, was displaced upon the creation of a Critical Tiger Habitat. He filed the writ petition seeking benefits accruing from the rehabilitation policy. He argued that rehabilitation had been granted to all other eligible families but denied to him.

The court adverted to the guidelines dated 25.02.2008 issued by the National Tiger Conservation Authority, where the term 'family' had been defined for the purpose of determining eligibility for the relocation package. Among other things, the guideline limited the eligibility criteria to persons who have attained the age of majority. The guideline further stated that:

> All other definitions will strictly follow the provisions described in Wild Life (Protection) Act, 1972, and the Scheduled Tribes and Other Traditions Forest Dwellers (Recognition of Rights) Act, 2006.

The respondent state government argued that the petitioner was a minor on the relevant cut-off date, that is, on 01.05.2013, and therefore he did not fulfill the eligibility criteria.

The court agreed with this submission and observed that no material was provided by the petitioner to prove he had attained majority on the cut-off date. Accordingly, the writ petition was dismissed.

EDITOR'S NOTE

The observation of the court that the petitioner had not placed any material to prove his age is contradicted by its own reference to the Committee, which cites the primary school register where his date of birth is recorded as 14.01.1993. This would make him over 20 years of age on the cut-off date of 01.05.2013. The court did not reach a finding that this record is false. Nor is the source of the so-called cut-off date (1.5.2013) cited in the judgment. Be that as it may, the court failed to take note of the final sentence of the guideline, namely, that the provisions of the Wildlife Protection Act, 1972 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 be strictly followed. Whether this imperative in the guideline was followed remains unaddressed.

JUDGMENT

Grievance raised by the petitioner is against non-grant of benefit of rehabilitation in lieu of displacement from village Chakkpipla Tehsil Deori, District Sagar which is situated in Nauradehi Forest Sanctuary.

That in order to resettle the habitants of the village within the reserve sanctuary, the State Government has framed a policy in furtherance to the guidelines issued by National Tiger Conservation Authority. That vide revised guidelines dated 25.02.2008, issued by the Authority 'eligible family' for rehabilitation came to be defined in the following terms:

"No. 3-1/2004-PT National Tiger Conservation Authority
(Statutory Body under the Ministry of Environment and Forest, Govt of India)

Annexe No. 5, Bikaner House, Shahjahan Road, New Delhi-11,
E-mail,dirpt-r@nic.in Telefax-23384428

To,

The Chief Wildlife Warden (s)

All Tiger States

Subject:- Revised guidelines of the ongoing centrally Sponsored Scheme of Project Tiger. Ref: Letter dated 21-02-2008 of even number from this Ministry.

Sir,

Kind reference is invited to the correspondence cited above, relating to the revised guidelines of the ongoing Centrally Sponsored Scheme of Project Tiger. The following clarification is provided relating to definition of "family" vis-avis the revise/enhanced relocation package from the core/critical tiger habitants.

Definition of an eligible family

A "Family" would mean a person, his or her spouse, minor sons and daughters, minor brothers or unmarried sisters, father, mother and other members residing with him/her and dependent on him/her for their livelihood. A family would be eligible for the package from only one location where it normally resides even if it own land in other settlements requiring relocation.

1. A major (over 18 years) son irrespective of his marital status

2. Unmarried daughter/sister more than 18 years of age

3. Physically and mentally challenged person irrespective of age and sex

4. Minor orphan, who has lost both his/her parents

5. A widow or a woman divorcee

All other definitions will strictly follow the provisions described in Wild Life (Protection) Act,1972, and the Scheduled Tribes and Other Traditions Forest Dwellers (Recognition of Rights) Act, 2006.

Yours Faithfully,

Sd/-

(Dr. Rajesh Gopal)

Member Secretary (NTCA)"

That, Annexure P/2, reveals that the case of eligible families were considered for rehabilitation and except the petitioner all others who were found eligible has been benefited. In respect of petitioner the Committee found that on cut off date i.e. 1.01.2013 the petitioner was found to be minor. This fact is reflected in the order dated 1.05.2013; wherein it is observed:

"आवेदक कि प्रा शा पीपल द्वारा जन्म तिथि प्रमाण पत्र दाखिल पणजी क्र 364 पर दर्ज जन्म तिथि 14/01/1993 अंकित है जबकि आवेदक के बड' भी श्री महेश बल्ड शिवसिंग की उम्र प्रा शा पीपल के दाखिल खारिज क्र 363 पर 12/12/1994 अंकित है जो कि संभव नहीं है आवेदक की दाखिल खारिज पणजी के दर्ज अनुसार आयु सनदिन्ध होती है जिसके माँ से आवेदक की उम्र कट ऑफ डेट 01/01/13 को 18 वर्ष से काम पी गई। अतः खंड स्तरीय समिति में लिये गये निर्णय अनुसार ग्राम पीपल के विस्थापन के लिये विस्थापन पैकेज हेतु अपात्र"

Thus, the petitioner being not eligible have been denied the rehabilitation. There being no material on record to establish that on 1.01.2013 the petitioner had attained majority.

In view whereof, since no relief can be granted, petition fails and is **dismissed**. No costs.

Ajay & Ors. vs. Forest Department & Ors.

WRIT PETITION NO. 4326 OF 2015
MADHYA PRADESH HIGH COURT AT INDORE
12.05.2017
CORAM: VIVEK RUSIA, J.

SUMMARY

The petitioners were long-time residents of Village Umari, District Alirajpur, and were granted forest rights titles under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). On receipt of a complaint from the Forest Department that the titles were wrongly issued, the Sub Divisional Officer (or 'SDO'), Jobat issued a report that their forest rights titles be cancelled. The petitioners approached the high court challenging this order, and challenging the authority of the SDO to issue an order cancelling forest rights.

In a previous order, the court had directed the respondent state government to seek instructions on *'whether the Sub-Divisional Officer is a competent authority to recommend for cancellation of forest rights (Van Adhikar Patra)'*.[70]

The court examined the procedure for rights recognition as detailed in Section 6 of the Forest Rights Act, and the role of the Sub Divisional Level Committee (or 'SDLC'), of which the SDO is a part. As such, the court held that the SDO does not have any jurisdiction to recommend the cancellation of forest rights titles granted to the petitioners. Accordingly, the order cancelling the titles was set aside.

The court further observed that if the SDLC so desires, it may initiate action against the petitioners under the provisions of the Forest Rights Act.

EDITOR'S NOTE

Cancellation of forest rights titles, once granted, is a legal issue that has haunted the Forest Rights Act since its inception. In this judgment, the court clearly held that the SDO, acting on his own, has no authority to cancel titles. If the SDLC initiates any such action, then it must act within the four corners of the Forest Rights Act. And since there is no provision for the cancellation of titles under the Forest Rights Act, this seeming reprieve granted to the state administration is meaningless.

JUDGMENT

1. The petitioners have filed the present petition being aggrieved by letter dated 06.04.2015 by which the Sub Divisional Officer, Jobat, District Alirajpur has recommended for cancellation of forest rights granted to the petitioners.

2. The petitioners are permanent resident of Village Umari, Tehsil Jobat, District Alirajpur. Since the petitioners were cultivating the land for more than last 20 years, therefore, they were given forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the rules made thereunder. The provisions of the said Act made applicable to the State of M. P. w.e.f. 31.07.2014 by which all Collectors were directed to decide the issue of grant of forest rights to the Tribes. The petitioner were granted lease hold right of the land by Annexure P/3.

[70]Order dt. 22.02.2017 in *Ajay vs. Forest Department*, WP 4326 of 2015, Madhya Pradesh High Court.

3. A complaint was made to the Collector that Van Adhikar Patra has wrongly been issued to the petitioners. After enquiry to the said complaint, the Sub Divisional Officer submit its report. Vide Annexure P/1 Sub Divisional Officer has submitted the report that the petitioners are not entitled to get Van Adhikar Patra which are liable to be cancelled. Hence, the present petition was filed.

4. Vide order dated 22.02.2017 this Court has directed the State Government to seek instructions whether Sub Divisional Officer is a competent authority to recommend for cancellation of forest rights (Van Adhikar Patra).

5. Today on instructions Shri Pushyamitra Bhargava, learned Deputy Advocate General submits that there is a provisions of constitution of Sub Divisional Level Committee under Rule 6 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 to hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights. Under Section 6 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 the Gram Sabha is the authority to initiate the process for determining the nature and extent of individual or community forest rights. The Gram Sabha shall then pass a resolution to that effect and thereafter shall forward a copy of the resolution to the Sub Divisional Level Committee. Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub Divisional Level Committee constituted under sub-section (3) and the Sub Divisional Level Committee shall consider and dispose of such petition. Therefore, if any dispute about the entitlement of the rights of the petitioner are concerned, it is for the Sub Divisional Level Committee to adjudicate. Keeping in view of the above statement, the Sub Divisional Officer has no jurisdiction to recommend cancellation of the forest rights given to the petitioner.

6. Accordingly the impugned order dated 06.04.2015 is hereby set-aside. However, if the Sub Divisional Level Committee may desire may initiated proceedings against the petitioners under the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and rules made thereunder.

7. The petition stands allowed. No order as to costs.

Ram Swaroop Yadav vs. State of Madhya Pradesh & Ors.

WRIT PETITION NO. 8535 OF 2017
MADHYA PRADESH HIGH COURT AT JABALPUR
07.07.2017
CORAM: SUBODH ABHYANKAR, J.

SUMMARY

The petitioner, an agriculturist, filed this writ petition seeking directions to the state government to decide his application in accordance with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (or 'Forest Rights Act') and to not *'initiate any proceeding of dispossession against him.'*

The court found the prayer to be 'reasonable' and disposed of the petition directing the state government to decide the application of the petitioner in accordance with law and in a time-bound manner, preferably *'within three months of receiving the certified copy of the order passed today'*. The court also directed that the petitioner should not be dispossessed from the land in question until a decision has been taken by the respondents with regard to his application.

EDITOR'S NOTE

While this is a positive decision, the fact that it was necessary at all is emblematic of the entrenched prejudice against forest dwellers even a decade after the enactment of the Forest Rights Act. It is a very basic principle of law that no person can be dispossessed from a property while proceedings relating to their legal right are underway. This principle has been reiterated under Section 4(5) of the Forest Rights Act, in the form of a statutory injunction. Thereafter, the state government issued a circular on 18th February 2008 reiterating this principle. And yet the petitioner was compelled to approach a constitutional court for such a simple legal protection.

JUDGMENT

With the consent of learned counsel for the parties, the matter is heard finally.

The petitioner herein is an agriculturist and he is aggrieved by the inaction on the part of respondents to decide the application filed by him under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The petitioner is also relying upon a circular issued by the State on 18.2.2008 whereby it is directed to the Collectors and the Divisional Forest Officers to not to initiate any proceeding of dispossession against the occupants of forest lands whose application for grant of Patta is pending before the competent authority. Since the petitioner has also filed such an application, it is prayed that the same may be directed to be decided.

The prayer appears to be reasonable. Hence, the petition is disposed of with a direction to the respondents to decide the petitioner's application in accordance with law within a period of three months from the date of receipt of certified copy of the order passed today.

It is further directed that till the petitioner's application is decided by the respondents, he shall not be dispossessed from the land in question.

Accordingly, the writ petition stands disposed of.

Deceased Bhawari Bai through Legal Representatives vs. Union of India & Ors.

WRIT PETITION NO. 2776 OF 2017
MADHYA PRADESH HIGH COURT AT INDORE
15.09.2017
CORAM: VIVEK RUSIA, J.

SUMMARY

The petitioner filed this writ petition against the District Collector's order rejecting his application seeking allotment of land to him by way of succession. His mother, Bhawari Bai, who was since deceased, had filed an application under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') which was rejected. In an earlier writ petition filed by her[71] the high court had directed that her claim be reconsidered by the authorities, but she died before that could be done.

On her death, the petitioner filed an application before the Collector that the land be allotted to him by way of succession, which was rejected.

The court held that the rights of Bhawari Bai ended with her death and that an application under the Forest Rights Act cannot be transferred by way of succession. If the petitioner wished to be allotted land under the said Act, he should apply through an independent application. With this, the petition was disposed of.

EDITOR'S NOTE

Since the implementation of the Forest Rights Act is still at a nascent stage, the issue of succession of forest rights has come up very rarely, if at all. Hence, this is an interesting judgment where the court strictly followed the letter of the law, while also permitting the petitioner to file a fresh and independent claim under the Forest Rights Act. In such a claim he would be required to establish his own eligibility as a forest dweller within the meaning of Section 2 of the Act.

JUDGMENT

Petitioner has filed the present writ petition being aggrieved by order dated 9.3.2017 passed by the Collector, District—Rajgarh.

Initially the Bhawari Bai filed an application before the Collector for allotment of Government land Survey Nos. 3/3, 4/2, 6/1 and 44/3 under the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

When the said application was dismissed, the Bhawari Bai filed a writ petition No.7590 of 2016. By order dated 22.11.2016 the petition was disposed of with a direction to consider the claim of the petitioner and decide the same. Thereafter, Bhawari Bai has expired on 9.12.2016. Hajari Lal being son of Bhawari Bai

[71]Judgment dt. 22.11.2016 in WP No. 7590 of 2016, *Bhanwari Bai Gurjar vs. Union of India & Ors.* Madhya Pradesh High Court, Indore Bench.

has filed the application that the land be allotted to him. The learned Collector rejected the application that Bhawari Bai, who applied has expired. The Hajari Lal has filed the present petition in the name of BhawariBai. The right of Bhawari Bai has been come to an end after her death.

The application for allotment cannot be transferred to the petitioner—Hajari lal by way of succession. Let Hajari Lal applied independently for allotment of the land under any Policy or Rules of the State Government. The issue of allotment of the land to the Bhawari Bai has come to an end.

Petition is disposed of.

Bhuru vs. State of Madhya Pradesh & Ors.

CRIMINAL REVISION NO. 3759 OF 2017
MADHYA PRADESH HIGH COURT AT INDORE
01.08.2018
CORAM: G.S. AHLUWALIA, J.

SUMMARY

The applicant, a Scheduled Tribe, was found cultivating forest land by a forest guard during patrolling. He was arrested and charged under Section 26 (I-J) of the Indian Forest Act, 1927 (or '1927 Act') even though his application for recognition of forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') was pending. The trial court convicted him, and by way of sentence, granted him the benefit of the Probation of Offenders Act, 1958. Accordingly, he was released on the condition that he would not repeat the offence during the next three years, that he would plant and look after at least 50 plants, and would hand over the possession of the forest land to the forest department.

In his appeal against this conviction, the applicant argued that his claim under the Forest Rights Act was pending, and as provided under Section 4(5) of the Act, until the recognition and verification process was completed, he was entitled to maintain his possession over the forest land. Documents in support of this argument were submitted before the appellate court for the first time. The appeal was, however, dismissed as well.

The present judgment arose from the criminal revision petition filed by the applicant, challenging the decisions of the trial court and appellate court. The high court dismissed the petition on two grounds.

First, the court was of the view that the documents supporting the petitioner's argument that he was a forest-dwelling Scheduled Tribe whose claim under the Forest Rights Act was pending, were not submitted in evidence in accordance with Section 391 of the Criminal Procedure Code.[72]

Second, the court was of the view that to satisfy the eligibility criteria of a forest-dwelling Scheduled Tribe as defined under Section 2(c) of the Forest Rights Act, a claimant must establish that they primarily reside in forests. As the applicant was a resident of village Talawali, a revenue village, he had not established that he primarily resides in a forest area. Therefore, the applicant could not claim to be a forest-dwelling Scheduled Tribe, and was not entitled to the protection of Section 4(5) of the Forest Rights Act. The high court dismissed the revision petition, upholding the conviction and sentence of the applicant.

EDITOR'S NOTE

As far back as June 2008, anticipating that a narrow interpretation of the eligibility criteria under the Forest Rights Act could defeat the primary purpose of undoing historical injustice against forest dwellers, a clarification was issued by the Ministry of Tribal Affairs under Section 12 where this issue was addressed directly, as follows:

[72]Section 391 CrPC corresponds to Section 432 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* which has replaced it. There is no change in the content of the provision.

> The matter has been examined in consultation with the Ministry of Law & Justice and it is clarified that the implication of using the word 'primarily' is to include the Scheduled Tribes and Other Traditional Forest Dwellers who have either habitation, or patches of land for self-cultivation for livelihood, and would, therefore, be primarily spending most of their time either in temporary make shift structures or working on patches of land in such areas irrespective of whether their dwelling houses are outside the forest or forest land. Therefore, such Scheduled Tribes and Other Traditional Forest Dwellers who are not necessarily residing inside the forest but are depending on the forests for their bona fide livelihood needs would be covered under the definition of 'forest dwelling Scheduled Tribes' and 'Other Traditional Forest Dwellers' in Section 2(c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.[73]

Ten years later, a single judge of the Madhya Pradesh High Court has adopted an excessively technical interpretation of the term 'primarily reside in…forests or forest lands' to deny the benefit of the Forest Rights Act to a forest dweller in conflict with the criminal law. Incongruously, the court relied upon the material placed before it to reach this conclusion, even while opining that this same material had not been placed in evidence in the proper manner as required by S. 391 CrPC. Even more baffling is the fact that Section 26(1-J) of the 1927 Act relates to killing/ catching of elephants. The order of the court merely points out that the applicant was found cultivating the forest land and charges of encroachment were framed against him.

It is unfortunate that the court chose to reach such a finding after acknowledging that the applicant's claim under the Forest Rights Act was still under consideration by the statutory authorities.

No appeal seems to have been filed, and therefore this erroneous interpretation of law has not been reversed. It is hoped the matter will be decided by a larger bench in a manner that coheres with the intention of the lawmakers.

JUDGMENT

1. This criminal revision under Section 397/401 of CrPC has been filed challenging the judgment and sentence dated 27/9/2017 passed by the First Additional Sessions Judge, Jhabua in Criminal Appeal No. 176/2016 by which the judgment dated 20/10/2016 passed by the JMFC, Jhabua in Criminal Case No. 1742/2015 by which the applicant has been convicted under Section 26 (1-J) of Indian Forest Act and has been given the benefit of Probation of Offenders Act.

2. The necessary facts for the disposal of the present revision in short are that it is alleged that on 22/7/2015 a Beat-Guard Naval Singh (PW-1) posted in Mokampura Beat Division Jhabua had gone on patrolling in Kalyanpura Beat No. 270. There, the forest department had dug pits with the help of the JCB Machine. He found that the applicant, by cultivating the forest land, was trying to encroach upon the forest land for the purposes of cultivation. Accordingly, a POR was registered. The applicant was arrested and, after completing the investigation, the complaint for offence under Section 26 (1-J) of Indian Forest Act, 1927.

3. The charge under Section 26 (1-J) of the Indian Forest Act was framed by order dated 17/12/2015 and after recording the evidence and examining the accused/applicant, the trial Court, by judgment dated 21/10/2016, convicted the applicant for offence under Section 26 (1-J) of Indian Forest Act and, after extending the benefit of Probation of Offenders Act, released him on the conditions that he would not repeat the offence of the similar nature during the next three years and would plant at least 50 plants and would look after them and would also hand over the possession of the forest land to the Forest Department etc., and the appeal filed by him has also been dismissed.

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[73]Circular dt. June 09, 2008 bearing F. No. 17014/02/2007-PC&V (Vol. VII) issued by Ministry of Tribal Affairs, Government of India. See also *Frequently Asked Questions on the Forest Rights Act*, Ministry of Tribal Affairs, Government of India (2015, republished 2019) at page 8.

4. Challenging the judgments passed by the Courts below, it is submitted by the counsel for the applicant that in fact the applicant is a Forest Dwelling Scheduled Tribe as defined under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short "Act, 2006") and since his application for conferment of forest rights was pending, therefore, in the light of Section 4 sub-Section 5 of the Act, 2006, the applicant was entitled to maintain his possession over the forest land till the recognition or verification of the procedure is completed. It is further submitted that although the applicant did not produce any document before the trial Court in support of his contentions that his application for conferment of the forest rights was pending, however, those documents were placed on record in the appeal and without considering the effect of those documents in detail, the appellate Court, in paragraph 14 of the judgment, came to the conclusion that it cannot be inferred from the documents placed on record that the forest rights were already confirmed in respect of the land under encroachment. It is submitted that the appellate Court did not consider the effect of Section 4 sub-Section 5 of the Act, 2006 and, therefore, the judgment and sentences passed by the Courts below are perverse and they are liable to be set aside and the applicant is entitled to be acquitted.

5. Heard the learned counsel for the applicant as well as the State.

6. It is undisputed fact that the applicant did not place any document on record before the trial Court to show that he had ever made any application for grant of forest rights in respect of the land which is in his possession as a trespasser/encroacher. However, he filed certain documents before the appellate Court.

7. I have perused the record of the appellate Court. It appears that the applicant, without supported by an application under Section 391 of CrPC, had filed some photocopies of the documents along with a printed list of documents to claim that the Gram Sabha has passed a resolution recommending the conferment of the forest rights on the applicant in respect of the land in dispute and the matter was recommended by Van Adhikar Samiti and the said proceedings were pending for final adjudication. Similarly, the applicant has not filed any application under Section 391 of CrPC before this Court also for taking the additional evidence on record.

8. The first question for determination is that whether the appellate Court, without there being an application under Section 391 of CrPC, can look into the additional documents/evidence filed by the applicant along with a printed list of documents or not.

9. Section 391 of CrPC reads as under:-

> **"391. Appellate Court may take further evidence or direct it to be taken.** – (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.
>
> (2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.
>
> (3) The accused or his pleader shall have the right to be present when the additional evidence is taken.
>
> (4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

10. Thus, it is clear that in order to lead further evidence, it is essential for the appellant to prove that the additional evidence is necessary for the disposal of the appeal and the appellate Court, after recording its reason, may either take said evidence by itself or direct it to be taken by a Magistrate or by a Court of Sessions/Magistrate. Therefore, it is clear that the appellant, relying upon the additional evidence, must prove, by filing the necessary application, that the additional evidence is essential for the just decision of the appeal. The applicant shall also be under obligation to clarify as to why he did not place such documents on record before the trial Court. In the present case, the appellant did not file any application under Section 391 of CrPC before the appellate Court for taking the

additional evidence on record for prima facie establishing that the said documents are essential for the just decision of the appeal/case. There is also no explanation as to why such documents were not placed on record before the trial Court. Under these circumstances, this Court is of the considered opinion that without supported by an application under Section 391 of CrPC, the applicant could not have filed the additional evidence along with a printed list of documents on record. However, as the appellate Court has considered the effect of the documents filed before it, therefore, it becomes essential for this Court to consider that whether the documents which were placed on record as an additional evidence by the applicant before the appellate Court were essential for just decision of the appeal or not.

11. Section 2 sub-Section (c) of the Act, 2006 defines Forest Dwelling Scheduled Tribes as under:-

> "forest dwelling Scheduled Tribes"means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;

12. From the plain reading of this Section, it is clear that only those persons shall be treated as "forest dwelling Scheduled Tribe" who primarily resides in and depend on the forest or forest land for bonafide livelihood needs and includes the Scheduled Tribe pastoralist communities. Thus in order to take advantage of Section 2 sub-Section (c), the appellant must prove the following ingredients:-

    (i) that he is the member of a community of scheduled tribe **who primarily resides in**, and

    (ii) depend on the forest or forest land for bonafide livelihood needs.

13. In the present case, undisputedly the applicant is the resident of a village falling within the Gram Panchayat and Gram Sabha, therefore, prima facie it appears that the applicant does not reside in the forest area, but he is the resident of revenue area. Merely because the applicant is a member of the Scheduled Tribe who has encroached upon the forest land would not mean that he would automatically become a "forest dweller Scheduled Tribe" entitled for the forest rights over the forest land under his possession/encroachment.

14. I have gone through the documents which were filed by the applicant before the appellate Court from which it merely appears that the Gram Sabha as well as Van Adhikar Samiti had recommended the name of the applicant for grant of forest rights, but it is nowhere mentioned that the applicant primarily resides in forest area. On the contrary, the fact that the resolution was passed by the Gram Sabha clearly shows that the applicant is the resident of village Talawali falling within the jurisdiction of Gram Sabha. There is nothing on record to show that whether this village Talawali falls within the forest area or not. In absence of this prima facie evidence, it cannot be presumed that the applicant primarily resides in forest area. Although, the Van Adhikar Samiti as well as Gram Sabha might have recommended the name of the applicant for grant of forest rights on the land under encroachment by the applicant, but that by itself would not make the applicant entitled to take advantage of Section 4 sub-Section 5 of the Act, 2006 unless and until first ingredient of "forest dwelling Scheduled Tribe" i.e. the applicant must prima facie reside in the forest area is satisfied. Under these circumstances, it is clear that once the applicant cannot be said to be the "forest dwelling Scheduled Tribe", then he cannot take advantage of pendency of the proceedings for grant of forest rights under Section 4 sub-Section 5 of the Act, 2006 and is not entitled to retain his possession over the land in question as a trespasser/encroacher during the pendency of the said proceedings.

15. It is fairly conceded by the counsel for the applicant that even till today the forest rights have not been conferred on the applicant so far.

16 Once this Court has already come to a conclusion that the applicant is not entitled for the protection of retaining his possession over the forest land as provided under Section 4 sub-Section 5 of the Act, 2006 for the simple reason that the applicant has failed to prove that he is the "forest dwelling Scheduled Tribe", this Court is of the considered opinion that the Courts below did not commit any mistake in convicting the applicant for offence under Section 26 (1-J) of the Indian Forest Act.

17. So far as the question of sentence is concerned, the trial Court, subject to certain conditions, has already extended the benefit of Probation of Offenders Act to the applicant. Under the facts and circumstances of the case as the applicant has already been given the benefit of Probation of Offenders Act, in the considered opinion of this Court, the said order does not require any interference.

18. Accordingly, the conviction and sentence passed by the JMFC, Jhabua by order dated 21/10/2016 in Criminal Case No. 1742/2015 and passed by the First Additional Sessions Judge, Jhabua by judgment dated 21/9/2017 in Criminal Appeal No. 176/2016 are hereby affirmed.

9. This revision fails and is accordingly **dismissed**.

MADRAS HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

A. Sannasi vs. Secretary to Government, State of Tamil Nadu & Ors.

WRIT PETITION NOS. 6343 OF 2015, ETC.
MADRAS HIGH COURT
09.03.2015
CORAM: T.S. SIVAGNANAM, J.

SUMMARY

A series of similar writ petitions were disposed of by the Madras High Court through this common order. The petitioners sought directions to the respondent state government to consider their case for the issue of *pattas* under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

In an earlier writ petition[74] which arose out of eviction proceedings initiated by the Forest Department, the court had passed a considered order directing the Fast Track Court to hear and dispose of the appeals expeditiously, and in the meantime the petitioners were not to be evicted, nor were they to make any fresh encroachments.

Placing reliance upon this earlier order, the court disposed of the present batch of writ petitions with a direction to the Principal District Courts at Namakkal and Salem to hear and dispose of the appeals filed by the Forest Department after hearing both the parties, preferably within six months.

The court also directed the respondents to not evict the petitioners, and further directed the petitioners not to encroach or embark on permanent construction activities on the land in question during the pendency of the proceedings.

EDITOR'S NOTE

The previous judgment in Writ Petition 3215 of 2014 could not be located. It would have been interesting to examine the procedure adopted by the Forest Department in attempting to evict forest dwellers who have rights under the Forest Rights Act, and the legal strategies adopted by the forest dwellers to avert such eviction drives. Be that as it may, it is interesting that the Madras High Court provided protection against eviction to a large number of forest dwellers while the district courts examined the legality or otherwise of the state government's attempts to evict them from their lands.

JUDGMENT

1. Heard Mr. V. Thirupathi, learned counsel for the petitioners; Mr. V. Jayaprakash Narayanan, learned Special Government Pleader accepting notice for the respondents 1, 3 and 4 in WP. Nos. 6343 to 6351, 6333 to 6342, 6418 to 6426, 6475 to 6385/2015; Mr. M.L. Mahendran, learned Government Advocate accepting notice for the respondents 1, 3 and 4 in WP. Nos. 6439 to 6448/2015 and Mr. Inbanathan, learned Government Advocate appearing for the respondents 2 and 5 in all the writ petitions and with their consent, the writ petitions are disposed of at the admission stage itself.

[74]W.P. 35215 of 2014 etc., Madras High Court.

2. Since the issue involved in all these writ petitions is one and the same, the above writ petitions are disposed of by the following common order.

3. It is to be stated that the prayer sought for in these writ petitions was earlier dealt with by this Court in WP. Nos. 35215 to 35234/2014 etc. and batch and the same were disposed of on 09.01.2015. The operative portion of the order in WP. Nos. 35215 to 35234/2014 etc. and batch reads as follows:-

"12. In view of the above, while rejecting the prayer to quash the impugned proceedings, the writ petitions are disposed of with a direction to the Fast Track Court, Namakkal to hear and to dispose of the appeals filed by the Forest Department in CMA No. 32/2011 etc., after hearing the parties, as expeditiously as possible, preferably within a period of six months from the date of receipt of this order. It is made clear that all the petitioners who are respondents in the appeals, shall co-operate in the expeditious disposal of appeals, without taking unnecessary adjournments.

13. It is made clear that the respondents should not evict the petitioners. The petitioners are directed not to encroach or put up any permanent construction or encumber the lands in question, during the pendency of the proceedings before the Fast Track Court, Namakkal……"

4. In the light of the above, these writ petitions are disposed of in the same line by directing the Principal District Courts at Namakkal and at Salem, to dispose of the respective appeals filed by the Forest Department, after hearing the parties, as expeditiously as possible, preferably within a period of six months from the date of receipt of this order. It is made clear that all the petitioners herein who are respondents in the appeals, shall co-operate in the expeditious disposal of appeals, without taking unnecessary adjournments.

5. It is made clear that the respondents should not evict the petitioners. The petitioners are directed not to encroach or put up any permanent construction or encumber the lands in question, during the pendency of the proceedings before the Principal District Courts at Namakkal and at Salem. No costs.

Fisherman Care vs. Union of India & Anr.

WRIT PETITION NO. 32068 OF 2013
MADRAS HIGH COURT
05.07.2016
CORAM: SANJAY KISHAN KAUL, CJ & AND R. MAHADEVAN, J.
CITATION: 2016 SCC ONLINE MAD 15974

SUMMARY

This writ petition was filed by Fishermen Care, a registered association, against the respondents Union of India through its Ministry of Environment, Forests and Climate Change, and Department of Animal Husbandry, Dairy and Fisheries. The petitioners sought a writ of mandamus directing the Union of India to take immediate steps for securing the fundamental rights of traditional fisher folk, including implementation of a recommendation made in the Swaminathan Committee report[75] to enact a separate legislation for fisher folk along the lines of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The court observed that there can be no mandamus issued to the legislature to enact a legislation. However, it is open for the government to refer to the recommendations of the Swaminathan Committee report and take a decision on whether to enact such a law.

EDITOR'S NOTE

In recent years the demand for a separate legislation similar to the Forest Rights Act which protects the rights of traditional fishing communities, both along the coastline and in inland water bodies, has been raised from time to time. Till the time of writing, however, no such initiative has been taken by the Central government.

JUDGMENT

1. A report of the Ministry of Environment and Forests relied upon by the petitioner contains Clause 7.2.3. in respect of recommendations made by Prof. M.S. Swaminathan, to the Parliamentary Committee reviewing the aspect of the traditional rights of the fishermen community. The recommendation is for enacting a separate legislation on the lines of the Traditional Forest Dwellers Act, 2006.

2. It is the submission of the petitioner that the decision was taken in principle by the then Government and the only issue was as to which Ministry should propose the draft legislation. In this behalf, our attention is invited to the letter dated 22.08.2009 of the then Ministry of State for Environment and Forests addressed to the Ministry of Agriculture seeking action since fisheries sector was listed under the Ministry of Agriculture as per allocation of business rules. The petitioner submits that nothing has happened since then.

3. It is trite to say that there can be no mandamus issued to enact a legislation. There is a new Government in power. However, it would be within the domain of the Government to go into the

[75] *Serving Farmers and Saving Farming, 2006: Year of Agricultural Renewal,* Third Report. National Commission on Farmers, Ministry of Agriculture, Government of India.

recommendations of the report referred to aforesaid and take a decision on the same, i.e. whether to enact or not a legislation as proposed.

4. The matter may, thus, receive the attention of the concerned Ministry being the Ministry of Agriculture.

5. Writ petition, accordingly, stands disposed of. No costs.

K. Kuppuswamy vs. Principal Secretary Government of Tamil Nadu & Ors.

WRIT PETITION NO. 12182 OF 2017
MADRAS HIGH COURT
05.05.2017
CORAM: V. PARTHIBAN, J.

SUMMARY

The petitioner sought court directions to the respondent state government to consider his representation under Sections 3 and 4 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') read with Rules 11 and 12 of the Forest Rights Rules, 2008, and to grant forest rights for the *patta* sought.

The petitioner, whose main occupation was agriculture, argued that he belonged to a Scheduled Tribe community called 'Malayalis', who inhabit the Periya Kalvarayan Hills and Chinna Kalvarayan Hills in Villpuram district, Tamil Nadu. His family had been residing in Aanaimaduvu village for over a 100 years, and had been dependent on forest land for their livelihood.

A claim under the Forest Rights Act filed by the petitioner was approved by the Gram Sabha as far back as in 2008, and forwarded to the concerned authorities. Thereafter, he also submitted a representation in 2017, but no action or decision was forthcoming.

Allowing the writ petition, the court issued directions to the district administration to examine the representation made by the petitioner, and *'to consider the grant of patta in accordance with law in force, on the subject matter and on merits'*. A timeframe of six weeks was fixed for this exercise, and with further directions that until such a decision, the *status quo* should be maintained.

EDITOR'S NOTE

A series of almost identical judgments were passed by the court on the same date in cases emerging from the same area.[76] This is definitely unusual. The judgment itself was more or less along the same lines as numerous other decisions emerging from different high courts.

JUDGMENT

1. The petitioner has filed this petition seeking a writ of Mandamus directing the respondents to consider the petitioner's representation dated 03.03.2017, as per Sections 3 and 4 of the Scheduled Tribe and Other Traditional Forest Dwellers, (Recognition of Forest Rights) Act, 2006 read with Rules 11 and 12 and grant patta under the provisions of the Section 3(1) the Scheduled Tribe and Other Traditional Forest Dwellers, (Recognition of Forest Rights) Act, 2006.

2. The case of the petitioner is that he is a Scheduled Tribe residing in Aanaimaduvu Village, Kalvarayan Hills, Sankarapuram Taluk, Villpuram District. According to the petitioner, his family has been

[76]Judgments dt. 5.5.2017 in WP 12176/2017, WP 12179/2017, WP 12163/2017, WP 12157/2017, WP 12180/2017, WP 12166/2017, WP 12161/2017 and WP 12171/2017, Madras High Court.

continuously residing in the said Hills for more than 100 years, for generations doing agriculture and surviving in the forest with the available facilities and resources.

3. According to the petitioner, the entire area by name Periya Kalvarayan Hills and Chinna Kalvarayan Hills are inhabited only by Tribal Community called as 'Malayalis'. According to the petitioner all the inhabitants were depending on the agricultural income for their survival.

4. The petitioner is in possession and enjoyment of the said lands along with his family members. According to the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the right of the Tribal people for the purpose of occupation in forest land and any forest dwelling has been recognised and as per the provisions of the Act, patta or lease grant can be issued by the local authority or the State Government.

5. According to the petitioner in terms of the provisions of the above said Act, Gram Sabha, Vanchikuzhi submitted a report as early as on 30.07.2008 to the Revenue Divisional Officer, Kallakurichi containing details of the forest land occupied by the petitioner herein.

6. In the above circumstances, the petitioner has approached the respondents 3 and 4 for grant of patta in terms of the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act.

7. In this connection, the petitioner has also submitted a representation dated 03.03.2017 but according to the petitioner, no action has been forthcoming and no decision has been communicated to the petitioner as on date. In such circumstances, the petitioner has approached this Court seeking issuance of Writ of Mandamus.

8. Heard Mr.R.A.S.Senthilvel, learned Additional Government Pleader, who takes notice for the respondents 1, 2, 3 and 5 and Mr.Inbanathan, learned Government Advocate, who takes notice for the fourth respondent.

9. Considering the limited directions sought for in the writ petition, this Court is of the view that a direction is to be issued to the respondents 3 and 4, in terms of the prayer sought for in the writ petition.

10. In view of the above, the respondents 3 and 4 are directed to consider the representation said to have been made by the petitioner on 03.03.2017 or any other date, as per the provisions of Sections 3 and 4 of Scheduled Tribe and Other Traditional Forest Dwellers, (Recognition of Forest Rights) Act, 2006 and consider the grant of patta in accordance with law, in force, on the subject matter and on merits. Such an exercise shall be initiated and completed within a period of six weeks from the date of receipt of copy of this order.

11. With these directions, the writ petition is disposed of. Till the decision is taken on the representation made by the petitioner, status quo as on today shall continue. No costs.

G. Dharmaraj & Ors. vs. State of Tamil Nadu & Ors.

WRIT PETITION NO. 18196 OF 2017
MADRAS HIGH COURT
19.07.2017
CORAM: M. SATHYANARAYANAN & N. SESHASAYEE, JJ.

SUMMARY

The petitioners had earlier filed a writ petition seeking protection from eviction under the Tamil Nadu Forest Act, 1882 (or '1882 Act'), and to assert their rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). It was the petitioners' case that they had been in possession of the land in question for several generations, and fall within the definition of 'Other Traditional Forest Dwellers' (or 'OTFDs').

The high court had previously passed an order allowing the petitioners to submit additional material, and directed the respondents to decide the matter within three months after holding a proper enquiry.[77]

Based on these directions, the petitioners submitted additional representations to verify their claims through tax receipts, voter IDs, electricity consumption charge receipts, etc.. However, the respondent state passed a cryptic order rejecting their claims. The present writ petition challenged the validity of the respondent's decision.

The respondent state government claimed that the land in question was declared a 'Reserve Forest Area' under the 1882 Act in January 1995, and the petitioners, who were living adjacent to the Reserve Forest, had only recently encroached upon this land. The state government also challenged the petitioners' claim of being OTFDs.

The court examined the meaning of OTFDs under Section 2(o) of the Forest Rights Act, and also looked into the definition of 'bonafide livelihood needs' as defined in Rule 2(b) (wrongly described as Section 2(b)) of the Forest Rights Rules. Further, it examined the documents submitted by the petitioners before the respondent state, and found as follows:

> This Court, on a perusal of the documents enclosed in typed set of documents, is prima facie of the view that no document has evidenced that for sustenance of needs, the petitioners are depending upon the produce resulting from self-cultivation, and that the documents produced are only the income tax receipts and other receipts evidencing statutory levies and payment of electricity consumption charges, and for possession they have also enclosed the Voter Identity Card issued by the Election Commissioner. (at para 9).

It then reached a finding that the petitioners were encroachers and not OTFDs. The writ petition was dismissed.

[77]Order dt. 19.12.2016 in Writ Petition No. 566 of 2014, Madras High Court.

EDITOR'S NOTE

This decision is problematic at multiple levels and *per incuriam*. For one thing, even though the court referred to the Forest Rights Rules, it failed to examine whether the fresh material and representations submitted by the petitioners were examined by the Forest Rights Committee, verified through a joint on-site verification process, and approved by a resolution of the Gram Sabha, all of which are necessary procedural requirements under these Rules. In proceeding thus, the court also overlooked the statutory purpose outlined in the Preamble to the Forest Rights Act, namely, to undo historical injustice against forest dwellers.

Further, the court has leapt to the erroneous, and far too common, conclusion that failure to establish a claim under the Forest Rights Act automatically renders a claimant an encroacher in the eyes of the law. On the contrary, the 1882 Act and the Tamil Nadu Forest Lands (Eviction of Encroachments) Rules, 1981 framed thereunder, require that the authorities issue a notice to such alleged encroachers and provide them with an opportunity to defend themselves. This opportunity stands extinguished as a result of this judgment, which is unfortunate.[78]

JUDGMENT

1. By consent, the writ petition is taken up for final disposal. Mr.S.Santhana Raman, learned Additional Government Pleader (Forests) accepts notice on behalf of the respondents 1 to 4 and Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the fifth respondent.

2. The claim of the petitioners is that their forefathers are in occupation of the lands in Survey No.404, Keezhakhanavai Village, Velur Panchayat, Perambalur Talu, Perambalur Disitrct, and after their demise, they are residing in the lands in question for more than three generations (90 years) and initially action was contemplated under Section 68-A of the Tamil Nadu Forest Act 1882, and therefore, they filed the writ petition in W.P.No.566 of 2014 against the respondents praying for an issuance of writ of mandamus, forbearing the District Forest Officer, Perambalur, from evicting the petitioners from the dwelling houses in the lands in Survey No.404, Keezhakhanavai Village, Velur Panchayat, Perambalur Taluk, Perambalur District, without conducting enquiry and passing orders under the Schedule Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act, 2006 and Rules framed thereunder (in short Act and Rules), based on their representation dated 13.8.2013. The petitioner would state that the writ petition was entertained and counter affidavit was filed by the third respondent. The Hon'ble First Bench of this Court, vide order dated 19.12.2016, granted liberty to the petitioners to furnish further materials apart from the materials already submitted by them in their representation dated 13.8.2013, and also granted a month's time to produce the same, and further directed the respondents to take a decision on the same within a maximum period of three months thereafter, after holding a proper enquiry.

3. The petitioners would further submit that after the disposal of the said writ petition on 19.12.2016, they have submitted a further representation dated 13.01.2017 to the respondents enclosing the documents establishing that their forefathers continued to remain in possession of the said lands for three generations in the form of tax receipts, electricity consumption charges receipts, voter ID cards and other materials. However, the third respondent without considering the content of the representation submitted by the petitioners and also the documents filed by them, has passed a cryptic impugned order dated 21.03.2017, rejecting their requests. Therefore, the petitioners have filed the present writ petition challenging the legality of the said order.

4. Mr.K.Thilageswaran, learned counsel appearing for the petitioners has invited the attention of

[78]For a detailed examination of what constitutes due process of law in the context of the Forest Rights Act and Forest Rights Rules, see Radhika Chitkara and Khushboo Pareek, *The Right to Land: A Study on Legality of Forced Evictions*, NLUD Journal of Legal Studies Vol. 2, 2020.

this Court to the above stated Acts and Rules and would submit that the petitioners fall within the definition of "Other Traditional Forest Dwellers" under Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, as well as the definition of "bonafide livelihood needs" meant under Section 2 (b) of the said Rules, and also provided all the supporting documents to that effect. Therefore, it is obligatory on the part of the third respondent to consider the representation along with the documents and pass appropriate orders, but without doing so, the third respondent has passed a cryptic order without assigning any reason thereby affecting the fundamental and constitutional rights of the petitioners and hence, prays for interference.

5. Per contra, Mr. M.Santhana Raman, learned Additional Government Pleader (Forests) appearing for the Forest Department has invited the attention of this Court by referring to the counter affidavit filed in writ petition W.P.No.566 of 2014 and would submit that admittedly the land in question was declared as " Velur Reserved Forest Area" and it was also notified as " Reserved Forests" under Section 16 of the Tamil Nadu Forest Act, 1882, with effect from 01.01.1995, and the petitioners are only the recent encroachers, and originally they were residing outside the boundary and thereafter, encroached the adjoining reserved forest areas and started putting up constructions. It is the further submission of the learned Additional Government Pleader (Forests) that the petitioners did not satisfy the definitions of Section 2(o) as well as Section 2(b) of the Acts and Rules, and taking note of the same, the third respondent has rightly passed orders rejecting their requests made under the said Acts and Rules framed therein and therefore, prays for dismissal of the said writ petition.

6. This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

7. It is relevant to extract the definitions under Sections 2(o) and 2(b) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008:

"**Section 2(o)**: other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bonafide livelihood"

Section 2(b): "bona fide livelihood needs" means fulfilment of sustenance needs of self and family through production of sale or sale of produce resulting from self-cultivation of forest land as provided under clauses (a), (c) and (d) of Sub Section (1) of Section 3 of the Act;

As per Section 2(o) of the Acts and Rules, any member or community for atleast three generations prior to 13.12.2005 would have primarily resided in and who depend on the forest or forests lands for bonafide livelihood needs. As per 2(b) of the Acts and Rules, would contain that other traditional forest dwellers, shall fulfill sustenance needs of self and family through production or sale of produce resulting from self-cultivation of the forest land as provided under the relevant proviso of Section 3(1) of the said Acts and Rules. Section 2(3) of the Acts and Rules also defines that the claimants means an individual, group of individuals, family or community making a claim for recognition and vesting of rights listed in the Act;

8. The petitioners in the typed set of documents also enclosed the documents to prove and substantiate that they come within the definition of"other traditional forest dwellers".

9. This Court, on a perusal of the documents enclosed in typed set of documents, is *prima facie* of the view that no document has evidenced that for sustenance of needs, the petitioners are depending upon the produce resulting from self-cultivation, and that the documents produced are only the income tax receipts and other receipts evidencing statutory levies and payment of electricity consumption charges, and for possession they have also enclosed the Voter Identity Card issued by the Election Commissioner.

10. In the considered opinion of the Court, unless and until the petitioners fulfill the relevant provisions of the aforesaid Acts and Rules, they are not entitled to avail the benefits of the said Act for the said reason that once the forest is declared as a Reserved Forest, without the permission of the competent

authority, no one cannot enter upon the forest. Since the above said Act and Rules provides that the petitioners are under obligation to prove and substantiate their claim that they are "other traditional forest dwellers", in the considered opinion of the Court, from the materials placed before it, the petitioners are the encroachers of the land in question and not "other traditional forest dwellers".

11. In the light of the reasons assigned, this Court is of the view that the claim made by the petitioners lack merit and the writ petition deserves to be dismissed.

12. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Salem Maavattam Pappanaickenpatti Ooratchi Malaivazh Makkal Vivasaya Sangam vs. Chief Secretary and Chairperson, State Level Monitoring Committee & Ors.

WRIT PETITION NO. 32839 OF 2018
MADRAS HIGH COURT
11.12.2018
CORAM: D. KRISHNAKUMAR, J.
CITATION: 2018 SCC ONLINE MAD 11992

SUMMARY

The petitioner, an association or '*Sangam*' of forest dwellers, approached the Madras High Court for consideration of the association's representation to the respondents, seeking the grant of *pattas* under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') for its members. This representation had been sent after the due recommendation of the Gram Sabha.

Members of the petitioner *Sangam* had filed individual applications for the issuance of *pattas* under the Forest Rights Act. On the basis of the Gram Sabha's recommendation, these were forwarded to the Block Development Officer, who in turn forwarded them to the District Level Committee (or 'DLC'). However, no action was initiated thereafter by the authorities.

It was submitted that in a previous writ petition filed by another *Sangam* of forest dwellers, the Madras High Court had granted a similar relief.[79] The petitioner *Sangam* was unaware of those proceedings and could not implead itself as a party in that writ petition. When it approached the authorities seeking the issuance of *pattas* to its members in the light of the said judgment, the authorities refused to do so on the pretext that the judgment was only applicable to the members of that organisation.

The respondent state government opposed the writ petition on the ground that the petitioner Sangam had no *locus standi* since the applications for grant of *pattas* were not filed by the Sangam but by members of the Sangam. Whether these were genuine applications was also disputed.

The court refrained from expressing any opinion on the merits of the case, and *'taking into consideration the plight of the members who belong to the Scheduled Tribe'*, it directed the DLC to pass appropriate orders on merits in accordance with law, preferably within a period of four months.

[79]Judgment dt. 20.10.2009 in *Salem Mavatta Ezhpulli Malaivazh Makkal Nala Sangam vs. State of Tamil Nadu & Ors*. 2009 SCC OnLine Mad 1650. See also, Shomona Khanna, *Compendium of Judgments on FRA: 2007–2015*, published by Ministry of Tribal Affairs, Government of India (2016) at page 407.

EDITOR'S NOTE

This is yet another case that demonstrates the obdurate refusal by government personnel to implement the Forest Rights Act in letter and spirit. Every opportunity to obstruct the rights recognition process has been deployed – from refusal to implement a previous constitutional court judgment because the petitioners were not a party there, failing to respond to representations, to simply not taking any decision on the claims duly forwarded in accordance with law. Adding insult to injury, this writ petition was opposed on the ground of *locus standi* when the members of the petitioner Sangam were admittedly claimants under the Forest Rights Act.

As the high court's order itself records, the petitioner had filed a writ petition earlier as well, which was withdrawn in 2018 when the forest department responded to its representation during the pendency of that case. It can only be hoped that being sent back to these same authorities for a decision on these forest rights yielded positive results.

JUDGMENT

1. The writ petition has been preferred by the petitioner Sangam seeking to consider the representation for issuance of patta to its members for an extent of 4 Acres each in the lands in S. No. 1/1 of Malayalapatti Village, Attur Taluk, Salem District under the Provisions of the Forest Act, as resolved and recommended on 15.08.2017 by the 5th respondent/Pappanaickenpatti Village Panchayat Grama Sabha.

2. According to the learned counsel for the petitioner, the Salem Mavatta Ezhupuli Malaivazh Makkal Nala Sangam filed an appeal in W.A. No. 376 of 2008 and the same was allowed by the Division Bench of this Court on 20.10.2009 in the light of "Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Since the petitioner viz., Salem Maavattam Pappanaickenpatti Ooratchi Malaivazh Makkal Vivasaya Sangam (in short 'Sangam') were not aware of the said proceedings initiated in the aforesaid order, they could not implead themselves as a party. Pursuant to that the petitioner Sangam approached the authorities seeking to issue patta, in the light of the Division Bench order. But, the respondent did not consider the petitioner's representation, as the said order is only applicable to the members of the Salem Mavatta Ezhupuli Malaivazh Makkal Nala Sangam. Hence, the petitioner had filed WP. No. 33267 of 2016 seeking to consider the representation. In the meanwhile, 6th respondent responded the petitioner's representation. Consequently, the said Writ Petition was withdrawn as infructuous on 26.10.2018.

3. Learned counsel for the petitioner submitted that the petitioner Sangam has made individual applications as per the prescribed form for granting patta to the Grama Sabha under Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

4. On the basis of the said recommendation made by the Grama Sabha, the 5th respondent has forwarded the applications to the 4th respondent to consider the relief sought for by the members of the petitioner's association. On 08.11.2017, 4th respondent also forwarded the said applications to the 2nd respondent and 6th respondent. Till date, there was no action initiated by the respondents for issuance of patta to the applicants/the members of Sangam.

5. Further, the petitioner has sent a detailed representation on 13.08.2018 to the respondents to consider their applications for granting patta to an extent of 4 acres each in Survey No. 1/1, Malayalapatti village under the provisions of the Forest Act. On the basis of the recommendations made by the 4th respondent, no order has been passed. Hence, the present Writ Petition.

6. The learned Additional Government Pleader would strongly object that the *locus standi* of the petitioner's association by submitting that the members of the petitioner Sangam made individual applications to the authority concerned for granting of patta. Therefore, the association has no locus standi to file the present Writ Petition before this Court and further submitted that the said application has to be considered only by the 2nd respondent who is the District Level Committee for

granting of patta under the Forest land and further the respondent also disputed the genuineness of the members of the petitioner's association to claim rights under this Act.

7. By considering the aforesaid submissions and objections as rightly pointed out by the learned Additional Government Pleader, the 2nd respondent is the competent authority to consider the claim of the application made by the concerned applicant.

8. Therefore, without expressing any opinion including the *locus standi* of the association in filing the writ petition before this Court, and taking into consideration the plight of the members who belong to the Schedule Tribe, this Court is inclined to direct the 2nd respondent to pass appropriate orders on merits and in accordance with law as expeditiously as possible preferably within a period of four (4) months from the date of receipt of a copy of this order. It is made clear that the 2nd respondent has to strictly verify the genuineness of the individual member in the Sangam, who filed the application and pass appropriate order after providing an opportunity to the individual applicant.

9. Accordingly, the Writ Petition is disposed of. No costs.

ORISSA HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Amruti Pradhan vs. State of Odisha & Ors.

WRIT APPEAL NO. 70 OF 2016
ORISSA HIGH COURT
20.06.2016
CORAM: VINEET SARAN C.J. & B.R. SARANGI, J.
CITATION: 2016 SCC ONLINE ORI 334

SUMMARY

A writ petition was filed seeking compensation for the death of the petitioner's husband after being attacked by a wild animal when he had gone into a Reserve Forest area to collect mushrooms, which is a minor forest produce (or 'MFP'). The petitioner had sought compensation under the Wildlife (Protection) (Orissa) Rules, 1974 (or '1974 Rules'), and when this was denied, she approached the high court. Her writ petition was dismissed by the single judge, and she filed this writ appeal against that order.

While acknowledging that death was caused by a wild animal, the respondent state government disputed the petitioner's claim, arguing that under Section 27 of the Orissa Forest Act, 1972, it is an offence for any person to go inside a Reserve Forest for any purpose, including removal of MFP.

The court noted that the 1974 Rules had been framed under the Wild Life Protection Act, 1972, and Rule 45-AA provides for compassionate payment on account of human kills by specified animals. However, Rule 45-DD categorically exempts such payment where death occurs as a result of illegal activity or unauthorized entry inside a forest area. In these circumstances, the court held, no compassionate compensation can be paid to the petitioner. The writ appeal was dismissed.

EDITOR'S NOTE

It is unfortunate that the petitioner did not rely upon the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act'). If she had done so, the court would have been compelled to address the stark conflict between the provisions of the legislations relied upon by the state government to deny her compensation for the death of her husband, and the Forest Rights Act which recognises the collection of MFP, including mushrooms from a Reserve Forest, as a forest right. Accordingly, this decision is *per incuriam* and cannot be considered a good precedent.

JUDGMENT

1. The husband of the appellant died on account of attack by wild animal in the reserved forest area. The writ petitioner-appellant claimed compensation under the provisions of the Wildlife (Protection) (Orissa) Rules, 1974. When no such compensation was paid, the appellant filed the writ petition bearing W.P.(C) No. 24319 of 2012 praying for a direction to the respondents for payment of compensation under the aforesaid Rules, 1974 (wrongly mentioned in the prayer as Wildlife (Protection) (Orissa) Amendment Rules 2011). The writ petition having been dismissed vide order of the learned Single Judge dated 14.01.2016, the present appeal has been filed.

2. Mr. S. Mohanty, learned counsel for the appellant submitted that the claim for payment of compensation was made under the Rules, 1974 whereas the learned Single Judge, while dismissing the writ petition, considered the provisions of the Orissa Forest Act, 1972 and hence the said order dated 14.01.2016 passed by the Single Judge is liable to be quashed.

3. Mr. B.P. Pradhan, learned Addl. Government Advocate has pointed out that under Section 27 of the Orissa Forest Act, 1972, it is an offence for any person to go inside the reserved forest area for any purpose, including removal of any forest produce.

4. The admitted facts of the case are that the husband of the appellant had gone into the reserved forest area for collecting mushroom, when he was attacked by wild animal and had succumbed to the injuries. The appellant claims that under Rule 45-AA of the Rules, 1974, compensation of Rs. 2.00 lakh is to be paid in case of death being caused by attack of the wild animal.

5. The Parliament has enacted an Act, to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country, called "The Wild Life (Protection) Act, 1972 (hereinafter referred to "1972 Act"). Section 64 of the 1972 Act states about the power of the State Government to make Rules. As per sub-section(1) of Section 64, the State Government may, by notification, make rules for carrying out the provisions of 1972 Act in respect of matters which do not fall within the purview of Section 63. In exercise of the powers conferred by Section 64 of the 1972 Act, the State Government has framed the Rules called "The Wild Life (Protection)(Orissa) Rules, 1974 (hereinafter referred to "1974 Rules"). Chapter-VAA has been substituted by incorporating Rule 45-AA to 45-JJ. Rule 45-AA and Rule 45-DD being relevant are extracted hereunder:

> **"45-AA. Compassionate payment on account of Human Kills**- In case of death of human beings caused by attack of Tiger, Leopard, Elephant, Crocodile, Sloth Bear, Indian Wolf locally called as 'Ram Siala', Boar, Gaur and Wild Dogs within a forest area or within a belt of five kilometers from the limits thereof compassionate payment of Rupees one lakh shall be made
>
> **45-DD. Exception in certain cases**- Notwithstanding anything contained in Rules 45-AA, 45-BB, and 45-CC, no compassionate payment shall be made under the said rules:
>
> (i) for any case of death or injury caused a reserve forest, sanctuary, National Park, Game Reserve or inside a closed area if the entry of the human being thereto was not legally authorized:
>
> (ii) for any case of death or injury caused during the period when the human being was engaged in an illegal activity punishable under the Wild Life (Protection) Act, 1972, the Orissa Forest Act, 1981, the Orissa Kendu Leaves (Control of Trade) Act, 1961 and the Rules made thereunder:
>
> (iii) for any case of death of cattle caused inside a reserved forest, Sanctuary, National Park, Game Reserve or inside a closed area"

6. The appellant claims compensation in view of the provisions contained in Rule 45-AA but Rule 45-DD of 1974 Rules provides for exception in certain cases. Sub-rule(1) of Rule 45-DD specifies that no compassionate payment shall be made under the rules, in case of death or injury caused in the reserved forest area, if the entry of the human being thereto was not legally authorized. It is not the case of the appellant that her husband was legally permitted to go inside the forest area for collection of mushroom. The husband of the appellant had entered into the reserved forest area at his own risk for which he was legally not permitted and as such, the case of the appellant would not be covered under the provisions of Rule 45-AA and would be squarely covered by the exception Clause (i) of Rule 45-DD of 1974 Rules.

7. The State legislature has enacted an Act to consolidate and amend the laws relating to protection and management of forests in the State called "The Orissa Forest Act, 1972". Section 27 of the said Act states about offences. The husband of the appellant having admittedly entered into the reserved forest area for the purpose of removal of forest goods, which is not legally authorized, is liable for commission of offence punishable under the said provisions of the Act.

8. On perusal of the provisions referred to above, it appears that the language of the provisions of the Act read with the Rules are very plain and simple. In ***Jugalkishore Saraf v. Raw Cotton Co.***

Ltd., AIR 1955 SC 376, the apex Court held that cardinal rule of construction of statute is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. The said principle has be reiterated in ***Shri Ram Daya Ram v. State of Maharashtra, AIR, 1961 SC 674, Electrical Manufacturing Co. Ltd. v. D.D. Bhargava, AIR, 1968 SC 247, Mohammad Ali Khan v. Commissioner of Wealth Tax***, AIR 1997 SC 1165, Colgate Palmolive (India) Ltd. v. M.R.T.P. Commission, AIR 2003 SC 317, ***State of Rajasthan v. Babu Ram***, AIR 2007 SC 2018, ***State of Haryana v. Suresh***, AIR 2007 SC 2245

9. There is no ambiguity in the provisions of the Act and Rules referred to above and giving a plain meaning to the same it appears that the husband of the appellant having violated the provisions of the Act and Rules by entering into the reserved forest area, where his death was caused by the wild animal, for the purpose of collecting forest produce, it would not entitle the appellant to claim compensation, particularly when exception has been given under Rule 45-DD of the 1974 Rules that no compensation is to be paid in case of death or injury caused inside reserved forest area.

10. In the above view of the matter, this Court is of the considered opinion that the claim made by the appellant for grant of compensation due to the death of her husband has no merit.

11. Accordingly, the writ appeal stands dismissed.

Shri Khirod Chandra Naik & Ors. vs. Grama Sabha (Village Committee), Nisangapur & Ors.

REGULAR SECOND APPEAL NO. 176 OF 2015
ORISSA HIGH COURT
04.10.2016
CORAM: DEBAPRATA DASH, J.

SUMMARY

Six appellants/ plaintiffs, heirs to one Nilambar Naik, had filed a suit seeking a declaration of their rights over the forest land in question. Their case was that 30 years ago, Nilamber Naik had made the land fit for agriculture, and they had been in possession of this land ever since. However, after the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') came into force, the Gram Sabha (respondent/defendant no.1) passed a resolution recognizing the forest rights titles of other forest dwellers, who were also arrayed as defendants in this case. The plaintiffs, being aggrieved by this decision, filed a suit for declaration claiming adverse possession. The Senior Civil Judge and the District Judge both decided against them, after which they filed a statutory second appeal before the high court.

The respondent Gram Sabha as well as other defendants denied that the plaintiffs were in possession of suit land at any given point of time. They claimed to be other traditional forest dwellers (or 'OTFDs') under the Forest Rights Act, and submitted that their rights over the land, which is forest land, were correctly recognised by the Gram Sabha. The recommendations of the Gram Sabha regarding the same were said to be based on proper field enquiry, which was also confirmed by government officials.

The high court noted the necessary ingredients for a claim of adverse possession, and that the burden of proving adverse possession falls on the person who claims the title. Both the lower courts, after examining all the evidence before them, had concluded that the plaintiffs had not provided such proof. The court went further and noted that in 1993, encroachment proceedings were initiated against Nilamber Naik for unauthorized possession of the suit property, for which he had duly paid a penalty. It took the view that:

> once the penalty has been paid, there comes the clear acceptance of the title of the true owner relegating and placing the possessor in the position as that of an unauthorized occupant.

The court also refused to examine the legality of the decision of the Gram Sabha and other authorities recognizing the forest rights of the defendants, stating that this is a matter for the authorities under Forest Rights Act to examine.

The appeal was, accordingly, dismissed.

EDITOR'S NOTE

A cursory search of the Orissa High Court's website revealed that the plaintiffs/ appellants in this case belong to the powerful Naik community, whereas the forest dwellers arrayed as defendants belong to the Dolai caste, which is a socially and educationally backward class in Odisha. Unfortunately, it is quite commonplace for a socially powerful group of persons to claim 'ownership' over lands that

rightfully belong to marginalised communities, and assert their claim in a court of law, in this case under the principle of adverse possession. That the defendants were able to withstand such efforts through three successive courts is quite remarkable. No small part of this success is due to the fact that the original suit was filed before a civil judge, where the defendants were able to participate and lead evidence.

JUDGMENT

1. This appeal has been directed against the judgment and decree passed by the learned District Judge, Gajapati in R.F.A. No. 23 of 2013 confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Parlakhemundi in C.S. No. 49 of 2010.

   The above noted six appellants, being the legal representatives of one Nilambar Naik had filed the suit for declaration of their title by virtue of open, peaceful and uninterrupted possession of the suit land for upward of the prescribed period with the prayer for mandatory injunction directing the respondents (defendant nos. 1 to 4) to so prepare the land records in their name and for permanently restraining all the respondents from disturbing in the peaceful possession and enjoyment of the suit property by them.

2. For the sake of convenience, in order to bring in clarity and avoid confusion, the parties hereinafter have been referred to as they have been arraigned in the trial court.

3. Plaintiffs case is that their predecessor-in-interest Nilambar Naik had made the suit land fit for agriculture by clearing the bushes and as such he continued remain in possession of the suit land for more than thirty years. Whereafter plaintiffs being his legal representatives are in cultivating possession of the same. It is stated that the question of recognition of the forest dwellers as to their rights as such arose in view of coming into force of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Right) Act. So in the year 2010 as provided in the said Act, Grama Sabha being constituted, the resolution had been passed therein over the rights of defendant nos. 5 to 19 as above so as to be recognised and accordingly for preparation of the record in respect of the suit land. Plaintiffs being aggrieved by the same and apprehending further action in that direction detrimental to their rights and interest as above, filed the suit.

4. Defendant nos. 1 to 4 in the written statement denied the factum of possession of the suit land by Nilambar as also the plaintiffs at any point of time. It is also stated that the defendant nos. 5 to 19 have been in possession of the suit land which is of forest kisam, and they being tribal forest dwellers, their rights as such over the said land have been rightly recognised in consonance with the provision of the Act governing the field. It is also stated that the defendants are in possession of the said land having their houses and have also grown the trees over there. The recommendation of the Gram Sabha is asserted to be correct and that is said to be based on proper field enquiry. Correctness of which has further been ascertained through Government officials.

5. Defendant nos. 5 to 14 in their written statement have denied the factum of possession of the suit land at any point of time by Nilambar. They stated that Nilamber had never cleared the bushes over the suit land and made it fit for cultivation. The claim of possession of the suit land by the plaintiffs had also been denied. The action of the body constituted under the Act are thus said to be just and proper. They claim that they have in possession of the suit land not as trespassers having made forcible entry over the suit land but as the traditional forest dwellers satisfying all the legal requirements as per the provisions of the Act and as such to have been rightly so recognised.

6. Faced with rival pleadings, the trial court framed six issues. Rightly taking up the important issues i.e. issue nos. 4, 5 and 6 for decision at first, upon analysis of evidence and on their assessment in the back drop of the rival pleadings, the claim of right, title, interest and possession of the plaintiffs over the suit land has been rejected. It has been said that neither Nilambar nor these plaintiffs have perfected their title over the suit land by adverse possession and they are also not in possession. This finding has resulted in dismissal of the suit.

7. The plaintiffs being aggrieved by such dismissal of the suit had filed the first appeal under section 96 of the Code of Civil Procedure. The first appellate court sitting over to examine the sustainability of the findings of the trial court on the crucial issues together, as it appears has taken up the exercise of appreciation of evidence afresh at its level being the duty bound and as ordained by law.

8. Scrutinizing the evidence on record and upon their assessment and considering the same along with the pleadings, ultimate conclusion has remained the same as that of the trial court. Thus the plaintiffs having failed in their attempt to get the order of dismissal of the suit set aside, have filed this second appeal under section 100 of the Code.

9. Learned counsel for the appellants submits that here the courts below have committed grave error both in law and fact by not recording the findings in favour of the plaintiffs that they have perfected the title over the suit land by way of adverse possession having remained in open, peaceful and continuous possession in so far as the suit land is concerned since the time of their predecessor-in interest for much more than the prescribed period. Therefore according to him, the courts below ought to have also held that as the appellants have the rightful claim in terms of the section 2(d) and section 3 of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, the action of the defendant nos. 1 to 4 to be illegal. It is also submitted that the overwhelming evidence being on record as regards the open, long and continuous possession of the suit land by the plaintiffs, the courts below ought to have accepted the same that it was by exhibiting the hostile animus denying the title of the true owner, and claiming that to the knowledge of the true owner they have been in possession as such. These according to him, are the substantial questions of law which arise in the case for certification for the purpose of admission of this appeal.

10. The suit for declaration of title is founded upon the plaintiffs case of open, peaceful and continuous possession of the suit land for more than the prescribed period. The courts below have recorded the concurrent findings that the plaintiffs have not been able to establish their case of acquisition of title over the suit land by adverse possession specifically pleading and proving all those facts or showing any such circumstance in the direction for fulfillment of the legal requirements.

11. The settled position of law in relation to the doctrine of adverse possession is that a person who claims title over the immovable property by virtue of adverse possession has to plead and prove all those legal requirements that the possession has been open, peaceful and continuous exhibiting hostile animus and in denial the title of the true owner claiming the same unto himself and to the knowledge of the true owner. The classical requirements are 'nec vi', 'nec calm' and 'nec precario'. The settled position of law is clear that mere possession of the land by the possessor for any length of time whatever it may be, does not enure to the benefit of the possessor in establishing the claim of acquisition of title by adverse possession and that itself is not enough. The burden of proof as above thus lies upon the person who claims title as such.

12. Having read the judgment of the courts below carefully, very important aspect strikes to the mind of this Court which seems to have been completely lost the sight of the courts below and that itself if taken into account in its proper prospective and put to pass through the legal prism, the foundation of the plaintiffs' case may not remain visible in the eye of law. Admittedly, an encroachment proceeding has been initiated against the father of the plaintiffs in the year 1993. The document on that score has been proved by the plaintiffs. In that very proceeding, the plaintiffs themselves admitted that their father Nilamber had paid the penalty and thus have remained in unauthorized possession, accepting his status as that of an unauthorized occupant. This document is Ext.7. The pleadings merely remain that the possession in spite of that continued as before with Nilambar and then came to the hands of the plaintiffs. Undoubtedly, just initiation of an encroachment proceeding has nothing to do either in arresting the period of continuity in possession or giving any different colour to its nature and manner. Unless, it is specifically proved that the possessor has been physically driven out from the possession on the strength of an order passed in the encroachment proceeding in accordance with law mere initiation of the encroachment proceeding is of no fatal consequence in any way in so far as the claim of acquisition of title by the possessor is concerned. But once the penalty has been paid, there comes the clear acceptance of the title of the true owner relegating

and placing the possessor in the position as that of an unauthorized occupant. In that situation prior possession for any length of time even for a moment if we assume to be with the fulfillment of the legal requirements loses all its significance in the eye of law and the same places the possessor in no better footing than that of a mere trespasser. In such a case, the possessor's claim of title by adverse possession would again arise if he pleads and proves that after payment of fine in the encroachment case from a particular date he began to possess as its owner denying the title of the true owner and asserting the same unto to himself and that too it must again cover the prescribed period running afresh from that very date of possession exhibiting hostile animus. The possessor for the purpose must show all such circumstances which would lead to conclude all those aforesaid. But here what is found that there remains neither such pleadings nor evidence on those scores when it is also not said and proved that the fine had been paid under threat or being coerced and thus not voluntarily.

For the above discussion and reasons, even without taking any view over the discussion of the evidence and the reason assigned by the courts below in recording the concurrent findings, on this above particular score, this Court is left with no option but to say that there remains no flaw with the said ultimate findings either in the matter of appreciation of evidence or construction of pleading or application of the settled legal principles.

13. The provision of section 2(o) of the Act defines "Other Traditional Forest Dwellers" means any member of the community who has at least for last three generation prior to the 13th December, 2005 primarily resided in and who depends upon the forest or forest land for bona fide livelihood needs. The emphasis, besides the member of the community residing in forest and depending on the forest is that the forest land must be in his use for last three generation prior to the cutoff date i.e. 13.12.2005 having bona fide livelihood needs. The plaintiffs in the suit have made a claim of their rights over the suit land as such and that it ought to have been recognised under the provisions of the Act. The lower appellate court as is seen has made necessary discussion on this aspect at page-8 of the judgment. Leaving aside the same, the above claim of the plaintiffs as laid clearly appears to be misconceived in view of the findings that they have failed to establish their claim of title by adverse possession standing with the reasons in support of such finding as discussed above. In the suit, the court is not required to examine the legality or propriety of the action of the bodies and the authorities under the Act in the matter of recognition of rights of those defendants, if any, and the subject matter being confined only to the non-recognition of such rights, if any, of the plaintiffs, there remains no scope to delve into that fact here.

In view of the aforesaid discussion and reasons, the submissions of the learned counsel for the appellants fail.

14. Resultantly the appeal stands dismissed. No order as to cost.

Manobadh Pujari vs. State of Odisha & Ors.

WRIT PETITION (CIVIL) NO. 2290 OF 2013
ORISSA HIGH COURT
27.08.2018
CORAM: K.S. JHAVERI & K.R. MOHAPATRA, JJ.

SUMMARY

The petitioner challenged the distribution of forest land for residential and agricultural purposes within the Jharigaon Protected Reserve Forest (or 'PRF') area to displaced persons from Bangladesh and to other landless persons belonging to the Scheduled Caste and Scheduled Tribe categories.

The respondent state government refuted these averments and clarified that the forest land was distributed inside Jharigaon PRF to only those applicants who fulfilled the criteria under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') and Rules framed thereunder. Enquiry was conducted as required under the law regarding their possession of the land, duly approved by the Gram Sabha, the Sub Division Level Committee (or 'SDLC') as well as the District Level Committee (or 'DLC'), and only thereafter were titles issued. The state government further argued that the Forest Rights Act and Rules *'supercedes all the prevailing rules for its implementation'*.

The court found the writ petition devoid of merit and dismissed it.

EDITOR'S NOTE

The stand taken by the state government is worth appreciating, in that it correctly deferred to the findings of the Gram Sabha, the SDLC and the DLC while allowing the claims of the forest dwellers in the Jharigaon PRF. Especially significant is the state government's acknowledgement that the Forest Rights Act and Rules supersede all other prevailing laws, an iteration of the *non-obstante* clause in Section 4(1) of the Act. This judgment foregrounds the transformative potential of the Forest Rights Act in correcting 'historical injustice' perpetuated against the most marginalised communities in the country.

JUDGMENT

By way of this writ petition, the petitioners have challenged the illegal action of the opposite parties in allotting/distributing the land to any displaced person who hailed from Bangladesh as well as other landless S.C. and S.T. persons of the locality inside the Reserve Forest area for their residential/agricultural purpose.

Counter affidavit has been filed by opposite party Nos.1, 3 4, 5 and 8. Paragraphs-6 and 7 of the said counter affidavit are reproduced below:

> *"6. That as regards the averments made in para-2 of the writ petition it is humbly submitted that it is not a fact that the Government has disbursed the land to any displaced person hailed from Bangladesh or any landless SC/ST person of locality inside the Reserve Forest.*

With due regard to the prevailing the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules, 2007 forest land has been distributed to eligible applicants inside the Jharigaon PRF who have fulfilled the criteria as envisaged in above Act/Rule.

The title issued to Sri Ramachandra Santa and Sri Nilo Santa both hail from Ekamba village and belong to Schedule Tribe. They have duly applied the application form in Form-A duly enquired by the authorities regarding their possession, duly approved by Forest Right Committee followed by Gram Sabha, Sub-divisional Level Committee (SDLC) and District Level Committee (DLC). The action taken is based on the provision of the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules, 2007.

7. *That as regards the averments made in para-3 of the writ petition, it is humbly submitted that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 & Rules, 2007, supersedes all the prevailing rules for its implementation. Further the land distributed is in PRF area notified vide SRO No.504/80 dtd.22.04.80. (Copy of which is annexed herewith as Annexure-A/5) and not coming under the purview of Village Forest Rules as expressed by the petitioner."*

In that view of the matter, no relief can be granted to the petitioners. The writ petition being devoid of merit deserves to be dismissed.

Accordingly, the writ petition stands dismissed.

RAJASTHAN HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Vailas Das Dhurve Gond vs. State of Rajasthan & Ors.
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Vailas Das Dhurve Gond vs. State of Rajasthan & Ors.

WRIT PETITION (CIVIL) NO. 9812 OF 2016
RAJASTHAN HIGH COURT
17.01.2017
CORAM: MOHAMMAD RAFIQ, J.

SUMMARY

In an earlier writ petition,[80] the high court had directed the removal of certain dwellings in Jaipur. The petitioner, a Scheduled Tribe, filed this writ petition stating that the authorities were trying to remove his dwelling in Chetan Kacchi Basti, Jaipur in purported compliance with the court order, and that the order had been passed without hearing him.

The petitioner argued that as a tribal who had been residing in the Kacchi Basti since 1983, he had rights under Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The court held that the present writ petition was not maintainable because a writ petition cannot be a remedy for an order passed in another writ petition. The petitioner was given leave to file a review/recall application/appeal against the earlier court order.

EDITOR'S NOTE

This judgment is an example of the hyper-technical approach courts often take in matters relating to the rights of marginalised communities. Such an approach does not serve the larger purpose of justice in a matter relating to tribals who are about to be evicted from their homes. It is not far-fetched to imagine a different approach, where the court could exercise its inherent powers to transcend a technical fault in the format of a petition by addressing the substantive right sought to be enforced, especially when a person might be rendered homeless in the time it takes to remedy the format error.

JUDGMENT

Contention of learned counsel for the petitioner is that the respondents in the present writ petition are seeking to remove Chetan Kacchi Basti, Mental Hospital, Behind Sethi Colony, Jaipur in purported compliance of order dated 30.11.2016 passed by Coordinate Bench of this Court in Arjun Lal Sethi Nagar Vikas Samiti & Another Vs. State of Rajasthan & Others(S.B. Civil Writ Petition No. 13049/2011). Learned counsel for the petitioner submitted that aforesaid judgment has been passed without hearing the petitioner and without impleading him as party. The petitioner is member of Aadiwasi Community included in the Scheduled Tribe. He is having house house/residence in the aforesaid Kacchi Basti since

[80] *Arjun Lal Sethi Nagar Vikas Samiti & Anr. vs. State of Rajasthan & Ors.*, W.P. 13049/2011, order dt. 30.11.2016, Rajasthan High Court.

1983, even as per the survey conducted by Jaipur Development Authoirty. Learned counsel sought to place reliance on Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers(Recognition of Forest Rights) Act, 2006 to argue that even the Parliament has recognised the right of members of Scheduled Castes and Scheduled Tribes to hold and live in the forest land under the individual or common occupation for habitation of for self-cultivation for livelihood, therefore, the respondents ought to have considered claim of the petitioner for regularisation at the same place.

Present writ petition may not be maintainable because the action of the respondents which they are taking is in purported compliance of the aforesaid judgment passed by this Court. If the petitioner is aggrieved, he may file review/recall application in the aforesaid case or even file appeal with the leave of the Court to assail the correctness of the aforesaid judgment. Writ petition cannot be a remedy for redressal of grievance of the petitioner.

With the aforesaid liberty and observation, writ petition is dismissed as not maintainable.

Stay application also stands dismissed.

UTTARAKHAND HIGH COURT

TABLE OF JUDGMENTS AND ORDERS

Mohd. Shafi & Ors. vs. State of Uttarakhand & Ors.

WRIT PETITION MISC. SINGLE NO. 3043 OF 2015
UTTARAKHAND HIGH COURT
04.12.2015
CORAM: U.C. DHYANI, J.

SUMMARY

The petitioners belonged to the Muslim Van Gujjar community, who are semi-nomadic pastoralists. They filed this writ petition seeking directions to the respondent authorities not to dispossess them or interfere with the fodder and crops on the agricultural land in their possession, which was situated in the Tarai East Forest Division. They submitted that the fodder and crops on these lands were vital to their livelihoods and their animals' survival.

The court observed that it had previously issued directions in such cases to the state government to decide the representations made by the parties under Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') with a speaking and reasoned order as per law. The respondent state government expressed its willingness to adopt the same approach in this case as well.

Accordingly, the court directed the state government to decide the representation of the petitioners by way of a reasoned and speaking order in accordance with the Forest Rights Act, at the earliest and not later than eight weeks. With this order, the writ petition was disposed of.

EDITOR'S NOTE

This judgment joins the ranks of numerous orders and directions issued by the Uttarakhand High Court directing state government authorities to decide the claims of the Van Gujjar community in the state in accordance with law, and more precisely, in accordance with the Forest Rights Act. Indeed, perhaps the very first court order directing the state government to implement the Forest Rights Act was passed by the same high court, and related to the same community, that is, the Van Gujjars.[81] Translating these orders into reality, however, continues to remain a challenge for the Van Gujjar forest dwellers.

JUDGMENT

By means of present writ petition, the petitioners seek writ in the nature of mandamus commanding the respondent authorities not to dispossess and interfere the petitioner no. 2 to 25 in severing the fodder and crops for their and their animal's livelihood on the agricultural land of 61.5 acres in their possession situated at Compart 4 and 6, Surai Range, Tarai East Forest Division, Tehsil Khatima, District Udham Singh Nagar.

[81] *Sattar vs. State of Uttarakhand & Ors.*, judgment dt. 4.12.2007, AIR 2008 Utt 18. See, Shomona Khanna, *Compendium of Judgments on the Forest Rights Act: 2007–2015*, published by Ministry of Tribal Affairs, Government of India (2016) at page 568.

In continuation of order dated 23.10.2013, passed by a co-ordinate Bench of this Court in WPMS no.1627 of 2013 and modification application no. 670 of 2013, in the self same writ petition, innocuous prayer of learned Senior Counsel for the writ petitioners is that respondent no. 5 be directed to decide the representation of the petitioners by a reasoned and speaking order, in accordance with law, in the light of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers(Recognition of Forest Rights) Act, 2006.

Considering the contents of the writ petition, it is the submission of learned Addl. C.S.C. for the State that if such a direction is given by this Court, respondent no. 5 shall dispose of the representation of the petitioner, as per law.

Writ petition is, accordingly, disposed of by directing respondent no. 5 to decide the representation of the petitioners by way of a reasoned and speaking order in the light of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, in accordance with law, at an earliest possible, but not later than eight weeks of the production of certified copy of this order along with representation before said authority.

Interim Relief Application no. 13652 of 2015 also stands disposed of.

Mahendra Singh vs. State of Uttarakhand & Anr.

CRIMINAL MISC. APPLICATION NO. 480 OF 2016
UTTARAKHAND HIGH COURT
02.05.2016
CORAM: SUDHANSHU DHULIA, J.

SUMMARY

The applicant in this case invoked the inherent powers of the high court under Section 482 of the Criminal Procedure Code for quashing of criminal proceedings ongoing before the Chief Judicial Magistrate (or 'CJM'), Udham Singh Nagar. These criminal proceedings arose from a complaint filed by the Divisional Forest Officer, Tarai Central Forest for an alleged offence under Section 26 of the Indian Forest Act, 1927. Summons were accordingly issued by the CJM.

The applicant argued that he had been unlawfully evicted from the forest, contrary to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The court opined that the question of whether the Forest Rights Act applies or not cannot be dealt with by the high court. Therefore, it cannot interfere in the matter. However, it provided the applicant liberty to raise all these arguments before the CJM.

EDITOR'S NOTE

The continuing criminalization of forest dwellers under colonial forest laws such as the Indian Forest Act, 1927, despite the enactment of the Forest Rights Act in 2006, is quite alarming.[82] Although there was no legal infirmity in the decision of the high court not to exercise its inherent powers, this judgment remains a missed opportunity to address a widespread problem impacting forest-dwelling communities across Uttarakhand and the rest of the country.

JUDGMENT

1. A complaint has been moved by the respondent no.2/ Divisional Forest Officer, Tarai Central Forest, Division, Haldwani, Nainital under Section 26 of the Indian Forest Act, 1927 before the Chief Judicial Magistrate, Udham Singh Nagar, which has been registered as complaint case no. 3108 of 2012. After recording the statement of the complainant under Section 200 of Cr.P.C., the learned Magistrate issued summons to the applicant way back in the year 2012. Although, according to the applicant, he was not served such notice till the filing of the present application. Again on 15.02.2016 summon has been issued to the applicant and the date was fixed for 30.04.2016 by the court concerned. Hence the present application filed under Section 482 of Cr.P.C., invoking the inherent jurisdiction of this Court.

[82] Khanna, Shomona et.al. *Criminalisation of Adivasis and the Indian Legal System*, Indigenous Peoples Rights International, November 2021, Baguio City, Philippines.

2. Heard Mr. M.S. Pal, Senior Advocate for the applicant, Mr. P.S. Saun, Deputy Advocate General, for the State and perused the record.

3. Learned senior counsel for the applicant- Mr. M.S. Pal has relied upon certain provisions of Schedule Tribes and others Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and says that the manner in which they have been evicted is not applicable in the present case. This aspect cannot be dealt with in a criminal jurisdiction of this Court, it is yet to establish whether the aforesaid law is applicable in the present case or not. Moreover, it is not the appropriate forum where the application of the said act can be appreciated by this Court.

4. Considering the facts and circumstances of the case, no interference is being called for by this Court in the matter. The applicant would be at liberty to raise all arguments before the learned Magistrate, which shall be dealt with in accordance with law. The proceeding shall go on in accordance with law.

5. The Registrar General of this Court is hereby directed to furnish a copy of this order to the learned Chief Judicial Magistrate, Udham Singh Nagar, for onward compliance, inasmuch as, it is the opinion of this Court that already much delay has been caused in this matter, since it is pending since 2012.

6. With the aforesaid observations, the application filed under Section 482 of Cr.P.C., stands disposed.

Van Gujjar Vishtapan Nistaran Samiti & Ors. vs. Union of India & Ors.

WRIT PETITION MISC. SINGLE NO. 1658 OF 2017
UTTARAKHAND HIGH COURT
14.07.2017
CORAM: SUDHANSHU DHULIA, J.

SUMMARY

The petitioners, members of the Muslim Van Gujjar community, filed this petition seeking directions to the state government to consider their case for rehabilitation under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The court was of the view that this matter could not be considered by it, and dismissed the writ petition with a direction to the petitioners to *'either approach the appropriate authorities or to file a Public Interest Litigation'*.

EDITOR'S NOTE

The unrelenting efforts of the Muslim Van Gujjar community in Uttarakhand to assert their lawful rights under the Forest Rights Act have been admirable. At the same time, there is a need to examine how the judicial system, by unerringly passing the responsibility back to the executive, has not lived up to the expectations for justice of this extremely vulnerable community. A separate examination is required of the judicial response when approached by communities facing discrimination at multiple levels.

JUDGMENT

The petitioner claims to be the members of Muslim Van Gujjar Committee. According to the petitioner, as per the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, they were entitled for being rehabilitated, but this benefit is not being given to them, although similarly situated persons have been treated to be the Forest Dwellers and have been rehabilitated.

Considering the nature of the issue raised before this Court and the appreciation of facts, this Court is of the considered view that this matter cannot be looked into by this Court at this stage, and the petitioners may either approach the appropriate authorities or file a Public Interest Litigation, considering the larger issues raised in this matter.

No interference is called for by this Court. The writ petition stands dismissed.

Noor Baksh & Ors. vs. State of Uttarakhand & Ors.

WRIT PETITION MISC. SINGLE NO. 3022 OF 2017
UTTARAKHAND HIGH COURT
30.11.2017
CORAM: MANOJ K TIWARI, J.

SUMMARY

The petitioners were Muslim Van Gujjars seeking protection of their interests under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') and Rules framed thereunder. They contended that the respondent state government was trying to evict them from lands that had been in their possession since the time of their ancestors.

Without going into the merits of the case, the court directed the respondents to consider and decide the representations made by the petitioners through a speaking order within six weeks. It also directed that the petitioners be heard individually with regard to whether they have rights under the Forest Rights Act and Rules, as well as other related policies. The decision taken must be communicated to them.

The court also granted the petitioners protection from eviction until such a final decision is taken.

EDITOR'S NOTE

Perhaps the earliest court orders under the Forest Rights Act were in response to cases filed by Van Gujjars before the Uttarakhand High Court as far back as December 2008.[83] There have been numerous petitions thereafter, this being only one among them. Yet the recognition of forest rights of Muslim Van Gujjars in this Himalayan state proceeds at a snail's pace, a reflection of the multiple layers of discrimination this community continues to face.

JUDGMENT

The petitioners in the writ petition have prayed for the following relief:-

> *"(a) Issue a writ, order or direction in the nature of mandamus directing the respondents not to create hindrance in use of dwelling place of the petitioners.*
>
> *(b) Issue a writ, order or direction in the nature of Mandamus directing the respondents to rehabilitate the petitioners as per Government Policy at some suitable places which are earmarked for rehabilitation of the Gujjar community".*

The contention of the petitioners is that they are Van Gujjars and their interest is protected by the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. In pursuance to the said Act, Rules known as Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest

[83] *Sattar vs. State of Uttarakhand & Ors.*, judgment dt. 4.12.2007, AIR 2008 Utt 18. See Shomona Khanna, *Compendium of Judgments on the Forest Rights Act: 2007–2015*, published by Ministry of Tribal Affairs, Government of India (2016) at page 568.

Rights) Rules, 2007 have been framed by the State while exercising the powers under Section 14 (1) and (2) of the Act.

In the writ petition, the petitioners have contended that the respondents are trying to evict the petitioners from the land in question which they claim, they are in possession and living since their ancestors.

To pursue their remedy and to retain their possession, they have already submitted representation before the Director, Rajaji National Park.

Without expressing any opinion on the merits of the case, the writ petition is disposed of with a direction to respondent No. 3 to consider and decide the representation submitted by the petitioners by passing a speaking order, within six weeks from the date of presentation of this order.

Respondent no. 3 while deciding the representation, will hear the petitioners individually as to whether their rights of retention falls within the ambit of the Act and the Rules framed thereunder as well as other related policies in relation thereto.

The decision taken on the said representation should be communicated to the petitioners.

Till decision is taken, the petitioners shall not be evicted.

CENTRAL ELECTRICITY REGULATION COMMISSION

TABLE OF JUDGMENTS AND ORDERS

Power Grid Corporation of India Ltd. vs. Rajasthan Rajya Vidyut Prasaran Nigam Limited & Ors.
RP NO. 6/RP/2017 IN PETITION NO. 280/TT/2015 | 05.07.2017 | 2017 SCC ONLINE CERC193

Power Grid Corporation of India Ltd. vs. Rajasthan Rajya Vidyut Prasaran Nigam Limited & Ors.

REVIEW PETITION NO. 6/RP/2017 IN PETITION NO. 280/TT/2015
CENTRAL ELECTRICITY REGULATION COMMISSION
05.07.2017
CORAM: A. S. BAKSHI & M. K. IYER, MEMBERS
CITATION: 2017 SCC ONLINE CERC 193

SUMMARY

The petitioner, the Power Grid Corporation of India, filed this review petition against an order of the Central Electricity Regulation Commission (or 'CERC') where the petitioner's prayer for condoning the time over-run in its project (Maithon Gaya Transmission line traversing the states of Jharkhand and Bihar) had been only partially allowed.

The petitioner sought condonation of the entire over-run period, arguing that the delay resulted from the circular dated 03.08.2009[84] issued by the Ministry of Environment and Forests (or 'MoEF'). This circular required the consent of Gram Sabhas under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') before forest clearance could be granted. The Investment Approval for the project was acquired in August 2008, and they could not have anticipated the additional requirements mandated in the 2009 circular. Owing to these requirements, the petitioner undertook the 'cumbersome task' of holding meetings and discussions with the Gram Sabhas of 85 villages (in six districts involving seven forest divisions and corresponding 14 blocks, spread over two states, namely, Jharkhand and Bihar). The clearance from the last Gram Sabha was obtained in July 2011. The 2009 circular amounted to a 'change-in-law' event, it was argued, and the resulting delay was not in its hands.

The CERC rejected this argument, as follows:

> 'As regards the Change in Law, we notice that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 came into effect from 1.1.2008 which is prior to 29.8.2008 when the Investment Approval was accorded. In other words, the Review Petitioner was aware of the requirements under the said Acts and Rules. The Review Petitioner should have factored the timeline realistically in the Investment Approval after taking into account the procedural requirements of the said Act and the Rules.' (at para 11).

The CERC refused to condone the delay, and the review petition was accordingly rejected.

[84]Circular dt. 03.08.2009 bearing F.No.01-9/1998-FC (pt) regarding Diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 – ensuring compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, issued by Ministry of Environment and Forests (as it then was), Government of India.

EDITOR'S NOTE

The issue of time over-runs resulting from the 'cumbersome' requirement of obtaining Gram Sabha consent under the Forest Conservation Act, 1980 (or 'FCA') has been raised in numerous cases before the CERC. The explication of law in the present judgment is spot-on—that the Forest Rights Act, which came into force on 1.1.2008, is the source of this requirement, and not the circular dated 03.08.2009 issued by the MoEF.

Unfortunately, while courts and tribunals have largely remained true to the letter and spirit of the Forest Rights Act, the MoEF has made numerous efforts to circumvent the requirement of Gram Sabha consent, finally culminating in the Van Sanrakshan Evam Samvardhan Niyam, 2023 (2023 Rules) which all but erased the mention of such a requirement. The 2023 Rules are under challenge in a batch of writ petitions[85] in the Supreme Court where one significant ground for challenge is the violation of the Forest Rights Act.

JUDGMENT

1. The instant review petition has been filed by Power Grid Corporation of India Limited (PGCIL) under Section 94(1)(f) of the Electricity Act, 2003 (the Act) read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014, seeking review of the order dated 31.3.2016 in Petition No. 280/TT/2015, wherein the tariff for 2014-19 period was allowed for **Asset-I**: Balance portion of 400 kV D/C Maithon Gaya transmission line CKT II including multi circuit, **Asset-II**: Balance portion of 400 kV D/C Maithon Gaya transmission line CKT I including multi circuit, **Asset-III**: 1 no. 400 kV Line Bay at 765/400 kV Gaya Sub-station (Koderma II Bay) and **Asset IV**: 765 kV Line Bay at 765/400 kV Gaya Sub-station associated with 765 kV S/C Gaya Balia transmission line under common scheme for 765 kV pooling stations and network for NR, import by NR from ER and from NER/SR/WR via ER and common scheme for network for WR and import by WR from ER and from NER/SR/WR via ER in Eastern Region for the 2014-19 tariff period.

2. As per investment approval dated 29.8.2008, the instant assets were scheduled to be commissioned within 48 months from the date of investment approval and hence the assets were to be commissioned progressively upto 1.9.2012. However Assets I, II, III and IV were commissioned on 8.9.2014, 30.12.2014, 30.12.2014 and 8.1.2015 respectively. Thus, there is time over-run of 24 months and 7 days in case of Asset-I and 28 months each in case of Asset-II to IV. The time over-run was attributed to serious law and order situation, Right of Way issues and delay in obtaining of forest clearance. The time over-run of 28 months in case of Assets IV was condoned and time over-run of 16 months in case of Assets-I, II and III was condoned and accordingly IDC and IEDC for the period not condoned was disallowed. The relevant portion of the order dated 25.4.2016 is extracted hereunder:—

   "19. In case of Assets I, II and III, the petitioner submitted the proposal for forest land in May, 2010 and got the final clearance on 8.11.2012 after 26 months. We are of the view that the time taken for getting forest clearance is beyond the petitioner. However, the petitioner has not submitted the time considered in the investment approval while claiming the delay. The processing time including preparatory activities for submission of proposal will have to be completed by the petitioner within a year to complete the project within schedule date of commissioning. In view of above consideration, we have considered that the petitioner would have factored 12 months for getting forest clearance. Hence, time over-run of only 14 months (after excluding 12 months) due to delay in forest clearance is condoned. It is further observed there were problems due to naxalites and hence this time over-run of 2 months is also condoned. Accordingly, we have

[85] *Ashok Kumar Sharma & Ors. vs. Union of India & Ors*. etc. WP (C) No. 1164 of 2023, etc. Supreme Court of India, pending.

condoned the total delay of 16 months in case of Assets I, II and III. Thus, we have disallowed the delay of 8 months and 7 days in case of Asset-I and 12 months in case of Asset-II and III.

20. In case of Asset-IV, the petitioner submitted that the asset could have been commissioned only after commissioning of 400 kV D/C Maithan Gaya line and 400 kV D/C Kodarma Gaya line as per original scheme. However, the completion of 400 kV D/C Maithan Gaya line and 400 kV D/C Kodarma Gaya line got delayed due to pending forest clearance. Therefore, to commission the Asset-IV, an interim arrangement was approved and completed on 30.12.2014. Thereafter, the Asset-IV was commissioned on 8.1.2015. We are of the view that the time taken for commissioning the Asset-IV is beyond the petitioner and hence 28 months delay are condoned.

21. The Hon'ble Appellate Tribunal for Electricity in its Judgment dated 27.4.2011 in Appeal No. 72/2010 has held that the additional cost due to time over-run due to the factors beyond the control of project developer shall be capitalised.

22. The time over-run of 16 months in commissioning of Asset-I, II and III and 28 months in commissioning of Asset-IV is beyond the control of the petitioner and it cannot be attributed to the petitioner. As per the judgement of Hon'ble Tribunal, the additional cost due to time over-run not attributable to the petitioner shall be capitalised. Accordingly, the time over-run in case of the instant assets is condoned and accordingly IDC and IEDC for the delay is allowed to be capitalised."

3. Aggrieved by the order dated 31.3.2016, the review petitioner has filed the instant review petition. The review petitioner has prayed for condonation of the full period of time over-run in case of Assets I, II, and III. The review petitioner has submitted that while disallowing the time over-run in case of Assets I, II, and III, the gravity of change of law, Right of Way issues and delay in obtaining of forest clearance issues was not considered by the Commission. Accordingly, PGCIL has filed the instant review petition on the ground that there are apparent errors in the impugned order and sought review with respect to the following grounds:—

   (a) Issuance of the notification dated 3.8.2009 by Ministry of Environment and Forest (MOEF) subsequent to the Investment Approval dated 29.8.2008, amounts to change-in-law events. Non-consideration of such events in the order dated 31.3.2016 is a sufficient ground for review of the impugned order.

   (b) Non-consideration of certain documents evidencing the ROW issues and its cascading effect which were not adequately considered is an error apparent on the face of record; and

   (c) Certain documents and events could not be brought on record at the time of adjudication of the Tariff Petition No. 280/TT/2015 as the contract entered into with the contractors had expired and the documents were not traceable. The review petitioner even after the exercise of due diligence, failed to produce the said documents at the time of hearing of the tariff petition. Subsequently, the documents were traced and filed in the Review Petition for proper adjudication of the instant review petition and for appreciation of the material facts.

4. The review petition was admitted on 19.4.2017 and notices were issued to the respondents directing to submit their replies. However, none of the respondents have filed any reply.

5. During the hearing on 13.4.2017, learned senior counsel for the review petitioner submitted that the MOEF vide order dated 3.8.2009, directed all State Governments to ensure compliance of Forest Rights Act, 2006, which inter-alia required NOC and written consent from each Gram Sabha (in which at least 50% of the members were present) and subsequent certification of the same by the respective State Governments. Learned senior counsel submitted that the requirement was made mandatory for submission of forest proposal which consumed a lot of time leading to time over-run. Learned senior counsel further submitted that in the case of Koderma-Gaya line, the Commission in order dated 30.3.2016 in Petition No. 132/TT/2015 had condoned the entire time over-run under

similar circumstances and accordingly, requested to condone the time over-run in commissioning of the instant assets.

6. The Commission while admitting the Review Petition vide interim-order dated 19.4.2017 directed the Review Petitioner to place details of the number of Gram Sabhas from which clearances were required to be obtained in compliance with the Forest Rights Act, 2006 and the time taken for the same. In response, the review petitioner, vide affidavit dated 16.5.2017, has submitted that discussions were initiated with the Gram Sabhas of the villages through which the transmission line was passing for obtaining the consent of the land owners. The Review Petitioner has submitted that consent of the 50% of the members present at the Gram Sabha is a pre-requisite for submission of the forest proposal as per the MOEF Notification dated 3.8.2009. The instant case required forest clearance from 3 DFOs in Jharkhand and one DFO in Bihar. Holding Gram Sabha in each village was a cumbersome and time consuming exercise and it delayed the submission of forest proposal. The Review Petitioner has submitted that this process required holding meetings and discussions in 85 villages (in 6 districts involving 7 forest divisions and corresponding 14 blocks). The clearance from the last Gram Sabha was obtained in July, 2011 (around 6 months from the date of approaching the Gram Sabhas).

7. The Review Petitioner was directed, vide RoP dated 23.5.2017, to submit the timeline considered at the planning stage for obtaining forest clearance and the reasons for filing application for forest clearance on 3.9.2009, when the Investment Approval was on 29.8.2008. In response, the Review Petitioner, vide affidavit dated 28.6.2017, has submitted that the as per the L2 network, detailed survey of the land was to be completed by July, 2009, i.e. 10 months from the date of Investment Approval, However, due to certain exigencies, the detailed survey took 12 months instead of 10 months envisaged. A Period of 300 days from the date of Investment Approval was considered for forest clearance as per the procedure and guidelines of MOEF. As regards the reasons for delay in filing of the application for forest clearance on 3.9.2009, while the Investment Approval was received on 29.8.2008, the Review Petitioner has submitted that the route alignment, preliminary survey and detailed survey were prerequisites for preparation of forest proposal and were included in the scope of contract. The route alignment work was started in September, 2008 after the Investment Approval and was completed as targeted in LOA in July, 2009, inspite of Left Wing Extremism, because of the proper scheduling of work by the Review Petitioner. After survey and finalisation of route, information regarding plot no., mouza, area of land and tree details were to be furnished for Land Scheduling by concerned Circle (C.O.) and thereafter NOCs from the concerned Dy. Commissioners were to be obtained. These details were submitted for Land Scheduling in July and September, 2009 in 7 Forest Divisions. Due to the time consumed for detailed survey and subsequent land scheduling process, which were beyond the control of the Review Petitioner, the initial forest proposal could be submitted only on 24.9.2009 and 31.8.2009.

ANALYSIS AND DECISION

8. We have considered the submissions of the review petitioner. The review petitioner has filed the instant review petition seeking condonation of the time over-run disallowed in case of Assets I, II and III and has further prayed for allowing the IDC and IEDC which were disallowed in the impugned order. As regards time over-run, the review petitioner has contended that the reasons for time over-run were submitted in the affidavit dated 31.10.2015 which were not adequately considered by the Commission in the impugned order. We did not find any affidavit dated 31.10.2015 on record. However, the petition was filed on 31.10.2015 in which the petitioner had stated that time over-run in case of Assets I, II and III occurred due to delay in forest clearance for Maithan-Gaya line owing to Maoist threat which hindered survey of the line and the MOEF order dated 3.8.2009 which directed all State Governments to ensure compliance of Forest Rights Act, 2006 which inter-alia required NOC and written consent from each Gram Sabha and certification of the same from the respective State governments. The compliance of these conditions being cumbersome and time consuming exercise, considerably delayed the forest proposal submission was considerably delayed. Thereafter,

the forest clearances for Bihar and Jharkhand were received 16 months after submission of proposal in State of Bihar and 26 months in the state of Jharkhand. Further, Maoist activities also led to delay in completion of the project.

9. We have gone through the contents of the main petition and the impugned order. We note that these reasons for time over-run, submitted in the main petition were considered by the Commission in the impugned order and accordingly, part of the time over-run in commissioning of Assets I, II and III due to the above said reasons was condoned. Hence, we are not able to agree with the contention of the Review Petitioner that its submissions in the main petition were not considered. In our view, the Review Petitioner is seeking re-appreciation of the submissions made in the main petition which is outside the scope of review and therefore, the ground for review on this count fails.

10. The Review Petitioner has submitted that certain documents in support of its contention that the reasons for time over-run are not attributable to the Review Petitioner. The Review Petitioner has submitted that these documents were not at its disposal at the time of filing the main petition. The Review Petitioner has requested to consider the documents in the interest of justice and condone the time over-run. The Review Petitioner has relied upon Order 47, Rule 1, of Code of Civil Procedure and has contended that the said provision allows review on discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge or could not be produced by the Review Petitioner at the time when the impugned order was passed. In the instant case, the documents which have been produced now were available and were within the knowledge of the Review Petitioner at the time of filing of main petition. The Review Petitioner has submitted that after the contract with the contractor expired, the documents were consigned to the site office and hence could not be produced at the time of filing or during the course of arguments of the main petition. We are unable to agree with the Review Petitioner that these documents could not be produced as the same was available with site office. The site offices are functioning under the command and control of the corporate office of the Review Petitioner. Had the Review Petitioner carried out due diligence to search for all the relevant documents, the Review Petitioner could have traced these documents from the site office and filed them alongwith the main petition. In our view, this is not a case where the document was not within the knowledge of the Review Petitioner, but a case where the Review Petitioner has not been able to trace the documents on account of absence of proper system of maintenance and retrieval of old records. The case of the Review Petitioner does not meet the requirement of order 47 Rule 1 of the CPC and therefore, there is no error apparent on the face of record and accordingly, the review on this count is not allowed.

11. The Review Petitioner has also submitted that the notification dated 3.8.2009 by MOEF was issued subsequent to the Investment Approval dated 29.8.2008, making it mandatory to comply with the specific provisions of 'Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter 'The Forest Act, 2006'), and this amounted to change-in-law event which led to delay in commissioning of instant assets. As regards the Change in Law, we notice that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 came into effect from 1.1.2008 which is prior to 29.8.2008 when the Investment Approval was accorded. In other words, the Review Petitioner was aware of the requirements under the said Acts and Rules. The Review Petitioner should have factored the timeline realistically in the Investment Approval after taking into account the procedural requirements of the said Act and the Rules. Further, the letter dated 3.8.2009 merely stressed upon the need for strict implementation of the provisions of the said Acts and Rules. The Commission while passing the impugned order has kept all relevant provisions of the Act and the Rules in view including the letter dated 3.8.2009. The Review Petitioner is arguing the case on merit while adverting the various provisions of the letter dated 3.8.2009 which falls outside the scope of review. In our view, there is no ground for review on this account.

12. The Review Petitioner has also contended that in similar circumstances, in case of ***Koderma-Gaya*** line, the Commission in order dated 30.3.2016 in Petition No. 132/TT/2015 had condoned the entire period of time over-run whereas the Commission has disallowed a period of 8 months and 7 days in

case of Asset I and 12 months in case of Assets II and III. In our view, the facts of both cases are not similar and the decision regarding the extent of condonation of time overrun has been taken based on merit of each case.

13. The Review Petitioner had not explained with the help of Pert Chart the time which was envisaged for different activities for implementation of the project and time actually consumed for execution of the project. The Review Petitioner submitted a L2 network which only contains the route alignment, route approval and detailed survey besides the schedule of activities for Supply & Erection of Tower Package. The L2 network does not show the time envisaged in the Investment Approval and the actual time taken for execution of various activities including the forest clearance. Despite clear cut directions, the Review Petitioner has not submitted the Pert Chart in the absence of which the impact of time over run vis-a-vis the efforts made by the Review Petitioner to mitigate the time over-run cannot be realistically assessed. The process involved for taking forest clearance is being presently taken by the Commission as 12 months which is expected to be factored in the Investment Approval by the Review Petitioner. The time over run beyond this period is condoned as case to case basis subject to proof to the satisfaction of the Commission that the factors were beyond the control of the Review Petitioner. The Review Petitioner has taken 26 months to obtain forest clearance reckoning the same from the date of application to the forest authorities. After adjusting 12 months, the entire period of 14 months have been condoned beyond SCOD. Apart from the 14 months, 2 months have been condoned on account of Maoist violence. The balance of 8 months and 7 days in case of Asset I and 12 months in case of Assets II and III has not been condoned. The relevant portion of the order is extracted below:—

    "19. In case of Assets I, II and III, the petitioner submitted the proposal for forest land in May, 2010 and got the final clearance on 8.11.2012 after 26 months. We are of the view that the time taken for getting forest clearance is beyond the petitioner. However, the petitioner has not submitted the time considered in the investment approval while claiming the delay. The processing time including preparatory activities for submission of proposal will have to be completed by the petitioner within a year to complete the project within schedule date of commissioning. In view of above consideration, we have considered that the petitioner would have factored 12 months for getting forest clearance. Hence, time over-run of only 14 months (after excluding 12 months) due to delay in forest clearance is condoned. It is further observed there were problems due to naxalites and hence this time over-run of 2 months is also condoned. Accordingly, we have condoned the total delay of 16 months in case of Assets I, II and III. Thus, we have disallowed the delay of 8 months and 7 days in case of Asset-I and 12 months in case of Asset-II and III."

14. In the light of the above discussion, we are of the view that, there is no scope for review of the impugned order merely because time over run has been condoned in full in Petition No. 132/TT/2015 where the facts of the case are completely different.

15. In view of the above, the review petitioner's prayer for condonation of the entire period of time over-run in case of Assets I, II and III is not allowed. Consequently the corresponding IDC and IEDC are also not allowed.

16. This order disposes of Petition No. 6/RP/2017.

CENTRAL INFORMATION COMMISSION

TABLE OF JUDGMENTS AND ORDERS

D. Suresh Kumar vs. PIO M/o Environment, Forest & Climate Change

CIC/SA/A/2015/000297
CENTRAL INFORMATION COMMISSION
31.03.2016
CORAM: M. SRIDHAR ACHARYULU, IC
CITATION: 2016 SCC ONLINE CIC 3948

SUMMARY

The Central Information Commission (or 'CIC') by an order dated 18.09.2015 had taken note of the fact that the officials and Public Information Officers (or 'PIOs') of the Ministry of Environment & Forests (or 'MoEF')[86] have the duty to inform all the laws, regulations, and notifications issued under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') to the tribals and the other forest dwellers under the Right to Information Act, 2005.[87] The CIC also took note of the fact that these two laws are not being implemented. Instead, pre-Independence laws were being used that went against the interests of tribals and forest dwellers. Accordingly, the CIC had directed the Forest Conservation Division of the MoEF to provide a reply informing the appellant about the status of action taken under the Forest Rights Act regarding the Polavaram Project within one month. Further, it had directed that in the future, the villagers of all 276 affected villages ought to be duly informed before any action is taken about their rights under the Forest Rights Act.

Additionally, the order dated 18.09.2015 also directed the respondent government of Andhra Pradesh to furnish status update of action taken on the various representations made to it, within one month. Failure to do so would attract penalty of Rs. 250/- per day and might extend to the maximum penalty.

In the present order, on the assurance of the respondent that the information sought had been provided, the penalty proceedings were dropped, and the appeal was closed.

EDITOR'S NOTE

This is a rare case where the CIC relied upon the statutory rights of tribals under the Forest Rights Act to direct provision of information to them regarding a large dam project. That this information is actually made available was ensured by the CIC by invoking the penalty provisions under the Right to Information Act, 2005; again, these provisions are rarely used.

Interestingly, in a related decision on the same date (*D. Suresh Kumar vs. PIO 2016 SCC Online CIC 3949*) the CIC reiterated its direction to the MoEF to pay Rs. 15,000 as compensation to the same applicant for inordinate delay in providing information to him despite specific directions to this effect.

[86]Now, Ministry of Environment, Forest and Climate Change.
[87]*D. Suresh Kumar vs. PIO, Ministry of Environment, Forests & Climate Change*, 2015 SCC OnLine CIC 8184. See also Shomona Khanna, ed., *Compendium of Judgments on the Forest Rights Act-2007–2015*, Ministry of Tribal Affairs, Government of India, pp. 648–654.

JUDGMENT

1. Appellant is not present. Mr. Rajagopal Prashant, Asstt. Inspector General of Forests represents Public Authority.

FACTS

2. Commission by its Order dated 18.09.2015 had passed the following direction:

"20. It is surprising that some PIOs and other officers of the Ministry of Forests & Environment are not implementing the right to information of the tribals and others in forests guaranteed by legislations and continuing their functioning under pre- Independence laws which did not serve interests of forest dwellers and thus denying their rights both under Forest related laws and RTI. They have a duty to inform under all legislations, regulations, notifications and circulars as explained above to inform the tribals and other forest dwellers. Especially when there is a threat of displacement, the victims of so called development are entitled to recognition and certification of their rights under the FRA, and information about which cannot be denied or delayed. If this information is delayed beyond the replacement, it amounts to denial of information and their right to live in forest etc also. The Commission therefore orders the Forest Conservation Division of Ministry of Environment and Forests to give point-wise reply to the appellant and inform him current status of action taken under FRA within a period of one month from the date of receipt of this order. In fact, the state has a duty to inform all the villagers in 276 villages going to be deprived of rights accrued under Forest Rights Act even before they have been accrued and accredited. Hence the Ministry has to take necessary steps immediately to inform the affected villagers about their recognized rights under this law, before they are displaced.

21. The Commission also directs respondent Authority and Government of Andhra Pradesh to provide information about the action taken on various representations from the people of affected villages of Polavaram project complaining about non-implementation of Forest Rights Act, copy of report submitted by any officer visiting the affected areas/villages in pursuance of order dated 2nd February 2011, and action taken thereon, communication about this between Ministry and Government of AP, with certified copies, copies of all correspondence relating to Forest Clearance, etc to the applicant within one month from the date of receipt of this order. Delay beyond a month will attract penalty provision of Rs. 250/- per day which might extend to the maximum penalty.

22. The Commission directs the PIO to show cause why penalty should not be imposed against him for not furnishing information despite the order of First Appellate Authority and compensation be given to appellant, within 21 days from the date of receipt of this order. With these observations and directions, the appeal is disposed of."

DECISION

3. Respondent Officer stated that copy of the entire file pertaining to grant of Indira Sagar Polavaram project had been provided to the appellant on 29.10.2014. However, they again provided the entire information in compliance of Commissions Order on 07.10.2015. He also stated that in case the appellant has not received anything, he can contact the office and they will provide the copies to him. Having heard the submission and perused the record, Commission holds that sufficient information has been furnished to the appellant and drops the penalty proceedings. With this observation, the present appeal is disposed of.

NATIONAL GREEN TRIBUNAL

TABLE OF JUDGMENTS AND ORDERS

Paryawaran Sanrakshan Sangharsh Samiti Lippa vs. Union of India & Ors.

APPEAL NO. 28 OF 2013
NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH
04.05.2016
CORAM: SWATANTER KUMAR & SONAM PHINTSO WANGDI, JJ. (JUDICIAL MEMBERS) WITH DR. D.K. AGRAWAL (EXPERT MEMBER)

SUMMARY

The villagers of Lippa (one of the villages affected by the Kashang Hydro Electric Project) formed the petitioner organisation and filed this appeal[88] seeking quashing of the approval for diversion of forest land granted to the Hydro Electric project, which had been granted by Ministry of Environment and Forests (or 'MoEF'), and was notified by the state Forest Department.

The petitioner organization raised several arguments challenging the grant of forest approval to the project, including the likely adverse impacts of the project on climate change, loss of livelihood, tree cover, and irrigation facilities for the 200 families residing in Lippa and surrounding villages, proximity to the Lippa-Ashrang Wildlife Sanctuary, and so on. The primary argument, however, was that in accordance with MoEF's circular dated 03.08.2009, which stated that for forest approval to be issued, rights recognition process under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') must be complete, and consent of concerned Gram Sabhas must have been obtained. It was further argued that the Gram Sabhas had not been consulted as required under Section 4(d) and 4(i) of the Panchayats (Extension to Scheduled Areas) Act, 1996 (or 'PESA').

The respondent state government had not recognised a single claim under the Forest Rights Act filed by the villagers, and the affected Panchayats had passed resolutions opposing the project. Nor had the state government ensured any rehabilitation or resettlement for the project affected persons.

The state government argued that rights and concessions over the forest land involved in the project had already been settled under the Forest Settlement of Sutlej Valley Bushahar State in 1921, which the people of the area had been enjoying unhindered ever since. They also argued that the MoEF circular was dated 03.08.2009, whereas the proposed forest land diversion was initiated by the state government in March 2008, and therefore the provisions of the Forest Rights Act were not attracted in this case.

On the agreement of counsel for all parties, the tribunal disposed of the appeal on 04.05.2016 with directions to the user agency and the state government to comply with the provisions of the Forest Rights Act.

The tribunal accordingly directed the state government to consult with the Gram Sabhas of the concerned villages regarding forest clearance within a period of three months. The Gram Sabhas were also directed to consider all community and individual claims under the Forest Rights Act, religious and cultural claims, impact on livelihood, and also examine the mitigation measures to

[88]The appeal has been filed under Section 18(1) read with Section 16(e) of the *National Green Tribunal Act, 2010.*

offset the adverse impact of the project. A Judicial Officer of the rank of District Judge was requested to be present to ensure transparency and confidence of the villagers in the proceedings. A report was to be submitted to the tribunal once these proceedings were completed.[89]

The appeal was accordingly disposed of.

EDITOR'S NOTE

It is interesting that the tribunal did not refer to the judgment in the *Niyamgiri* case[90] while issuing directions which are very similar, down to the oversight of Gram Sabha proceedings by a judicial officer of the rank of a District Judge. Be that as it may, this judgment is a sterling addition to the rich jurisprudence emerging around the Forest Rights Act and the requirement to obtain free, prior, informed consent of forest-dwelling communities before their traditional forests are diverted for any developmental activity.

Although this was a consent order, the project proponent, Himachal Pradesh Power Corporation Ltd., filed a statutory appeal before the Supreme Court, which it then withdrew after the matter came up for hearing.[91]

After a year, the state government informed the tribunal that the petitioners were not cooperating, and it had received only 51 claims, several of which had defects. After hearing all the parties concerned, the tribunal passed an order on 23.10.2017 giving the petitioner claimants two weeks to file all their claims, in default of which the respondents could continue with the project.

ORDER

1. The Appellant is an organization formed by the villagers of Lippa, one of the villages affected by the Kashang Hydro Electric Project in Kinnaur District of the State of Himachal Pradesh. They have filed this appeal under Section 18(1) read with Section16(e) of the National Green Tribunal Act, 2010 seeking to assail the order of the Department of Forest, Government of Himachal Pradesh dated 15.01.2013 according sanction for diversion of 17.6857 hectares of forest land, order dated 22.03.2011 issued by the Ministry of Environment and Forests, Government of India (the Respondent No.1) granting Stage I Forest Clearance and order dated 14.06.2011 also issued by the Ministry of Environment and Forest granting final approval for diversion of 17.6857 hectares of forest land for construction of 130 MW Integrated Kashang Stages II and III Hydro Electric Project in favour of M/S Himachal Pradesh Power Corporation Limited in the Kinnaur District of Himachal Pradesh.

2. The Integrated Kashang Project proposed by the Respondent No. 3 viz., the Himachal Pradesh Power Corporation Limited, with installed capacity of 243 MW has four stages that harnesses the Kashang river generating 195 MW from the power house installed for the river and 48 MW from the Kerang stream from the power house installed on its right bank.

3. We need not enter into the details of the four stages being irrelevant for the purpose of this appeal but, suffice it to note that the 17.6857 hectares of forest land required for the Stages II and III of the project fall under Kalpa and Pooh Sub-divisions in Kinnaur District of the State of Himachal Pradesh (the Respondent No. 2) consisting of four Panchayats i.e., Pangi and Telang in Kalpa Sub-division and Lippa and Rarang in Pooh Sub-division. It is stated that the entire project would require diversion of

[89]The case was disposed of on 23.10.2017 vide order of the National Green Tribunal directing the claimants to file applications within two weeks from the date of the order, in default of which the state government can continue with the Project.
[90]*Orissa Mining Corporation vs. Ministry of Environment and Forests & Ors*. (2013) 6 SCC 476.
[91]Order dt. 08.09.2015 in Civil Appeal No. 8345 of 2016, *Himachal Pradesh Power Corporation Ltd. vs. Paryavaran Sanrakshan Sangarsh Samiti Lippa & Ors*. Supreme Court of India.

a large area of forest land measuring about 119.6 hectares from the cold desert region lying on the tree line limit at an elevation of 2000 to 3155 meters and that during the past decade there had been a gradual decrease in the forest cover in Kinnaur which now constitutes only 10% of the geographical area of the district. It is alleged that the Forest Clearance was granted by the Respondent No. 1 and the Respondent No. 2 State Government without giving due consideration to this aspect.

4. Apart from the above the appellant has also taken objections as set out hereunder in seriatim:

(i) Although one of the conditions stipulated in the Environment Clearance dated 16.04.2010 granted by the Ministry of Environment and Forest required that, as the Wild Life Sanctuary existed at a distance of 1.5 km from Stage IV, clearance from the Standing Committee of National Board of Wild Life (NBWL) under the Wildlife (Protection) Act, 1972 should be obtained, no such permission had been sought for. This, as per the Appellant, was also in violation of the order of the Hon'ble Supreme Court dated 04.12.2006 in Writ Petition No.460 of 2004 in the matter of Goa Foundation v/s Union of India by which it was directed that all projects falling within 10 km from National Parks and Sanctuaries should be sent to the Standing Committee of the NBWL.

(ii) That when the project consisting of four stages was an integrated one with the total installed capacity of 243 MW for which a single Environment Clearance had been granted for all the stages, similar approach also ought to have been adopted in granting forest clearance. However, the project proponent was applying for forest clearance separately for each of the stages. By adopting such piecemeal approach the project proponent was projecting low area of forest and thus was misleading. In the present case involving Stages II and III of the project, the justification sought to be given was that it was limited only to 17.6857 hectares when actually it was 61.89 hectares that was required to complete all the four stages and 57 hectares just for laying transmission lines.

(iii) That although the Forest Advisory Committee (FAC) under the Forest Conservation Division of the Respondent No. 1 in its meeting held on 25.10.2010 to discuss on the diversion of 17.6857 hectares of forest land for 130 MW Integrated Kashang Stages II and III Hydro Electric Project, had sought for information from the Respondent 3 on the seasonal river flow analysis of the two rivers, ecological impact of diversion of water on aquatic fauna and flora and the surrounding natural vegetation and wildlife habitat values and detailed muck disposal plan on the basis of studies undertaken by a reputed institute like GB Pant Institute of Himalayan Environment & Development in collaboration with reputed naturalists/ecologists/wildlife specialists, however in its subsequent meeting held on 11.02.2011 the committee accepted the version of the state government that such study had already been carried out by Indian Council of Forestry Research and Education (ICFRE) in the EIA report.

(iv) That no study has been carried out to assess the impact of drying up of Kerang stream on the vegetation and forest cover.

(v) That as the project lies on the Chilgoza pine belt, the very existence of the species which is already endangered, will be under threat thereby jeopardizing the livelihood of the community which heavily depends on the tree for their sustenance.

(vi) That Respondent No. 2, the State Government, and Respondent No. 3, the project proponent, have failed to comply with the Forest Rights Act, 2006 thereby violating Condition 16 of the 'In Principle' Forest Clearance granted by the Respondent No. 1 vide letter dated 22nd March, 2011. Condition 16 categorically required the user agency to obtain the clearance under the provisions of Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 before final approval and to submit certificate towards the final settlement of all claims and rights over the proposed forest land under the Act along with the Advisory dated 03.08.2009. Although in the year 2009 the Respondent No. 2 had initiated the process of filing claims under the Forest Rights Act, 2006 in Kinnaur, a tribal district, not a single claim has been recognised. To the contrary, the stand taken by the Respondent No. 2 in its compliance report dated 22.03.2011 submitted to the Respondent No. 1, was that the rights and concessions over

the forest land involved in the proposal were already settled as per the Forest Settlement of Sutlej Valley Bushahar State of 1921 AD.

(vii) That while the entitlements provided under the Forest Settlement of 1921 were merely concessions and dependent upon the exercise of discretionary powers of the State, the concessions provided under section 3 (1) (a), (b) and (c) of the FRA are conferred as legal rights. Thus the rights traditionally enjoyed by the residents of the villages including Lippa village have been recognised under the Forest Rights Act, 2006 and the grant of approval for diversion of forest land without settlement under the Act was illegal.

(viii) The diversion of the forest land is also in violation of the Panchayats (Extension to Scheduled Areas) Act, 1996 in as much as Kinnaur district lies in Schedule-V area where the provisions of the Act applies. Under section 4(d) of the said Act, every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution. Section 4 (i) makes it mandatory to consult the Gram Sabha or the Panchayat at the appropriate level before acquiring any land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas. Since the project proponent has failed to comply with the provision there is a clear violation of the Act even notwithstanding the fact that the affected Panchayats have passed resolutions opposing the project.

(ix) Loss of livelihood and irrigation facilities have not been considered while approving diversion of forest jeopardizing the existence of 200 families of Lippa village. The diversion of Kerang stream will prevent the huge loads of silt flowing from the Pager stream near the village threatening the safety of the villagers. It has also become uncertain as to whether the discharge of water left after diversion of the stream will be sufficient to meet the irrigation requirements for the village.

(x) While approving diversion of forest land, impact on climate change has not been taken into consideration having regard to the fact that the project lies in the snow bound high altitude where any increase in temperature would cause heavy precipitation resulting in natural calamities like landslides.

5. Based on the above, the appellant seeks to quash the Forest Clearance granted by order dated 15.01.2013 passed by the Department of Forest, Government of Himachal Pradesh and orders dated 22.03.2011 and 14.06.2011 passed by the Ministry of Environment and Forest granting stage I of Forest Clearance and final approval for diversion of 17.6857 hectares of forest land respectively for construction of 130 MW Integrated Kashang Stages II and III Hydro Electric Project in favour of M/S Himachal Pradesh Power Corporation Limited in Kinnaur District of Himachal Pradesh.

6. As would be apparent from the foregoing, we have dealt with the grounds of challenge to the impugned orders at some length, as it was felt essential to put in perspective the issues in ***lis*** in the appeal but, for the reasons that shall be stated hereafter, it shall not be necessary to deal with all those for the purpose of its disposal.

7. In the replies filed by the Respondents they have denied all material allegations and have sought to justify the impugned orders as being correct which as per the were issued after taking into consideration all relevant factors. Since the orders being assailed primarily are the ones issued by the Respondent No. 1, the reply filed by them would be crucial and, therefore, require deeper consideration, particularly on those aspects which are germane for disposal of this appeal. We may enumerate those as under:-

(i) It is not disputed by the Respondent No. 1 that the FAC had desired that a study on various environment aspects should be carried out by reputed institute like GB Pant Institute of Himalayan Environment & Development in collaboration with reputed naturalists/ ecologist / wildlife specialists. However, this was not insisted upon as the State Government had submitted that such studies had already been carried out by the ICFRE. Apart from this the FAC had also taken into consideration the presentation made by the project proponent. It was only thereafter that the FAC had recommended the proposal for diversion of 17.6857 hectares of forest land for

construction of 130 MW Integrated Kashang Stages II and III Hydro Electric Project but subject to fulfillment of certain conditions.

(ii) On the question as regards FAC having ignored the impact of the project on Lippa – Asrang Wildlife Sanctuary and the project proponent having failed to take approval from the NBWL as stipulated in the Environment Clearance letter dated 16.04.2010, it was stated that the Ministry had accorded Stage – I approval on 22.03.2011 based on the recommendation of the FAC subject to fulfillment of certain conditions. Later, following the compliance of those conditions, the Ministry accorded Stage II approval on 14.06.2011 *inter alia* on the condition that the State Government shall implement the recommendations of the Standing Committee of NBWL on the EIA/EMP of the project area and its impact on Lippa and Asrang Wildlife Sanctuary.

(iii) As regards the allegations of various factors and concerns likely to have disastrous impact on the fragile ecosystem of the area being ignored, it is stated that adequate provision and safeguards have been made by laying down site – specific conditions to secure maximum protection and conservation of flora and fauna of the area.

(iv) On the question of non-compliance of condition 16 of the 'In Principle' Forest Clearance dated 22nd March, 2011 issued by the Ministry making it obligatory to obtain clearance under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006, it is fairly conceded that the Ministry had accepted the compliance report of the State Government indicating firstly, that the proposed diversion of 17.6857 hectares of forest land had been initiated on 20.03.2008 whereas the advisory by the MOEF for compliance of the Forest Act, 2006 had been issued only on 03.08.2009 and Secondly, that the rights and concessions on forest land involved in the proposal were already settled as per Forest Settlement of Sutlej Valley Bushahar State of 1921, which the people were already enjoying unhindered since then and, therefore, the provisions of the Advisory dated 03.08.2009 were not attracted.

8. The foregoing are the only aspects specifically dealt with by the Respondent No. 1 in its reply. Notably, the issue as regards the violation of the Panchayats (Extension to Scheduled Areas) 1996 as alleged in the appeal has not been traversed leaving us to draw our conclusion consequential thereto.

9. Respondent No.3, the project proponent, has resisted the appeal by filing an elaborate reply wherein preliminary objection has been raised on the maintainability of the appeal primarily as being barred by limitation.

10. After the pleadings were complete, parties were heard at length on the 10th and 11th February 2016. It is of relevance to note that this appeal was listed for hearing along with Appeal No. 14 of 2011 in the matter of ***Bhagat Singh Kinnar v/s Ministry of Environment and Forests & Ors.*** as in both the cases the same project was involved as would be evident from order of the Tribunal dated 26.03.2013. The only difference being that while in Appeal No. 14 it was the Environment Clearance granted for all the four stages of the 243 MW Kashang Hydro Electric Project that was being assailed, in the present appeal the question is limited to the Forest Clearance granted for Stages II and III of the 130 MW Kashang Integrated Hydro Electro Project. Appeal No. 14 has since been disposed of by judgement dated 28th January, 2016 under which a Committee has been constituted to ensure compliance of the latest standards and proper implementation of the mitigation measures.

11. During the course of the arguments on 11th February, 2016, we had expressed our ***prima facie*** view that there was noncompliance of Condition 16 of the Forest Clearance dated 22nd March, 2011 issued by the Ministry of Environment and Forests thereby establishing statutory violation of the Forest Rights Act, 2006.

The Department of Forest, Government of Himachal Pradesh accorded sanction for diversion of 17.6857 hectares of forest land by their impugned letter dated 22.03.2013. On being asked by us, it was fairly conceded by the Learned Counsel for parties that the appeal may be disposed of by issuing necessary direction for compliance of the condition which inter alia required the user agency to obtain clearance under the provisions of ST & OTFD (Recognition of Forest Rights) Act, 2006 in the light of the Panchayats (Extension of Scheduled Areas) Act, 1996 and such other directions as would be found appropriate by this Tribunal. The arguments were thus concluded relieving us of the task of dealing with all the issues and the details of the facts and circumstances of the case.

12. Before proceeding further, we have felt an imperative need to make some observations, having noticed the magnitude of and the scale at which hydro projects are being set up in the State of Himachal Pradesh. We are conscious of the fact that the jurisdiction of this Tribunal is confined to the enforcement and compliance of the laws set out in Schedule I to National Green Tribunal Act, 2010. At the same time, there can be no manner of doubt that the activities associated with the hydel projects and its consequences would fall within the ambit of those statutes as would be evident from various proceedings instituted before the Tribunal, not discounting the present one

13. From the order of the Hon'ble High Court of Himachal Pradesh dated 23.12.2009 in CWPIL No. 24 of 2009 it is revealed that there were as many as 150 hydel projects under varying stages of construction in the State as on the date of the order. We do not know how many more have been added thereafter. By the said order, a High Level One Man Committee constituted of one Mr. Ajay Shukla, Additional Chief Secretary (Forest) was appointed directing him to submit a report on various issues as set out in the order. The report submitted by the Committee is, to state the least, most alarming. We may reproduce portions of the report which reads as under :-

"I would, however, like to begin with a caveat in order to place hydel projects in states like Himachal in their proper environmental context. All policy makers must understand, and accept, that hydel projects in mountainous terrains, constrained by the requirement of design, technology, geography and finances, shall inevitably cause damage to the environment during construction phase. There cannot be totally environment friendly hydel project in the Himalayas. The results of blasting, excavating, tunneling, cutting, tree-felling, diverting of rivers – all these are bound to have a severe and damaging effect on the environment and ecology of the area affecting water sources, green cover, wild-life. Conditions imposed on the project developers can only attempt to minimize these effects but cannot do away with them altogether. It is therefore for the concerned governments, both at the centre and the states, to weigh the pros and cons decide whether this is a cost worth paying and if the answer is in the affirmative then they must accept that there is always be collateral damage in the process. The responsibility for such damage has to be shared between the government and the project. It would be naïve to believe that mere imposition of a few conditions while according clearances would prevent any environmental impact.

RECOMMENDATIONS

(1) *During our visits to the major river basins of the state - Sutlej, Beas and Ravi- we found that the main valleys have already been saturated with hydel projects every few kilometers and now projects are being allotted in ever increasing numbers in the side valleys of the tributaries. The effects of such large scale felling of trees, dumping of muck and diversion of waters over the entire river basin (not just a few isolated spots) has never been studied by the govt. before allotting these projects.* **Individual EIAs and EMPs for individual projects do not address the larger concerns for, where environmental impacts are concerned, the whole is larger than the sum of the parts**. *Unlike the pure manufacturing process where the incremental cost of production is always a declining figure, in matters of environmental costs (such as in generation of hydel power) the incremental environmental cost is always an increasing figure as environmental impacts accumulate, in other words, the environmental cost of producing the second megawatt of power is more than that of producing the first megawatt. The Committee therefore recommends that the state govt. should carry out basin-wide EIAs for all the river basins of the state and till these are finalised no more hydel projects should be allotted or, where allotted their clearances should be withheld*. [This is precisely what has been ordered by the Forest Advisory Committee of the MoEF in respect of more that 100 proposed hydel projects in the Ganga basis of Uttarakhand, as per a Times of India report on 17.6.2010]."

[Underlining supplied]

14. Our conviction on the adverse consequence on the environment highlighted by the One Man Committee as reproduced above appears to be well justified in view of the reply Annexure A-9 furnished by the Executive Engineer, IPH Division R/Peo, District Kinnaur, Department of I& PH, Government of Himachal Pradesh in response to an application under the RTI Act. The letter reveals that as many as 167 water sources have been adversely affected in the project areas of Karcham Wangto HEP which is another project on the same river. The number of water sources that have dried up and where discharge of water have been affected or reduced in the same area are 35 and 66 respectively. These illustrate the adverse effect on only one aspect of the environment within just one project area. We can, therefore, well imagine the cumulative impact of the 150 projects.

15. Deeply perturbed, this Tribunal by order dated 04.02.2015 issued direction upon the Ministry of Environment and Forests to file a specific affidavit answering as to whether or not, in the EIA Report in respect of the Kashang project, cumulative impact assessment of the other existing, under construction and hydro projects proposed in the same section, was taken into consideration. In compliance to the said direction the MOEF filed an additional affidavit dated 03.03.2015, which in our view contained grossly inadequate information. Far from being specific, the MOEF in their affidavit, apart from being vague, is found to be clearly evasive leaving us to arrive at the only conclusion that no cumulative assessment was carried out at all.

16. From the above, we are left with a deep sense of foreboding and serious anxiety on the future of the State and its progeny. Article 48A of the Constitution of India enjoining the State to endeavor to inter alia protect and improve the environment is not a mere incantation. It rather casts a heavy burden upon the State. Under Article 51 A (g) duty has been imposed upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. The Hon'ble Supreme Court has re-emphasized this position in ***Fomento Resorts and Hotels Limited and Another vs. Miguel Martins and Others: (2009) 3 SCC 571***. Of course, earlier Part IV of the Constitution of India under which these Articles fall, was considered not to be enforceable but, now its infraction has been held to violate right to life enshrined under Article 21.

17. No doubt, the concept sustainable development has been evolved in the interest of development for larger public interest. However, in ***Association for Environment Protection vs. State of Kerala and Others : (2013) 7 SCC 226***, it has held that the 'doctrine of public trust' makes it incumbent upon the Government to protect the resources for enjoyment of the general public rather than to promote their use for private ownership or commercial exploitation to satisfy the greed of a few. Reference can also be made to in *Intellectual Forum, Tirupathi vs. State of A.P. and Others (2006) 3 SCC 549, Sarang Yadwadkar & Ors. Vs. The Commissioner, JNNURM Office* Original Application No. 2 of 2013 decided on 11-07-2013, *Puran Chand & Ors. Vs. State of H.P. & Ors*. Appeal No. 48 (THC)/2012 decided on 2-02-2016. It has been held that while invoking this principle, balance has to be struck between the development needs and environmental degradation. Enunciating the concept of 'public trust', *M. C. Mehta Vs. Kamal Nath (1997)1SCC 388 also Indian Council of Enviro-Legal Action Vs. Union of India (1996) 5SCC 281*. It is trite that environment, ecology and the bounties of nature are for every citizen and the State is the trustee of these and is responsible to appropriate these in a just and equitable manner without being influenced by unwanted commercial exploitation. The doctrine of 'public trust' initiated by the Courts charges the State with such responsibility with the object to meet inter generational equity by resorting to the principle of sustainable development. We may also usefully refer to ***State of Tamil Nadu vs. M/s Thindstone : AIR 1981 SC 711***.

18. We have adumbrated with the foregoing principle in a rather prolix manner but, it has been done so as an effort to impress upon the State of Himachal Pradesh the folly of allowing hydel projects in the State at such alarming scale which was highlighted earlier manifestly resulting in serious consequences to its ecology and environment and, the very life and livelihood of the people in whose benefit the State claims to have allowed the projects.

19. We, therefore, hope and expect that the State of Himachal Pradesh will give serious consideration to what we have alluded to and the anxiety expressed by us and consider reviewing its decision on those projects where actual works have not yet commenced or have just commenced.

20. Reverting back to where we left, as noted already, the parties having agreed that directions maybe issued on the admitted position discussed earlier, when the arguments were closed. It would thus be unnecessary for us to deal with the various contentions raised by the parties except to direct as follows:

    (i) The Respondents No.1 and 2 shall ensure that the entire proposal pertaining to Forest Clearance in respect of Stages II and III of 130 MW Kashang Integrated Hydro Electric Project is placed before the Gram Sabha of villages Lippa, Rarang, Pangi and Telangi in Kinnaur District of Himachal Pradesh as prescribed under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 as required under Condition 16 of the Forest Clearance dated 22.03.2011 issued by the Ministry of Environment and Forests;

    (ii) On the matter being referred to it, the Gram Sabha shall consider all community and individual claims which would bring within its ambit religious as well as cultural claims which would include impact on (a) places of worship likely to be affected by the construction works and activities cognate thereto; (b) Silt load in Kerang Stream caused by the diversion of water from the Kerang stream to Kashang stream and (c) the livelihood of the villagers caused by loss of forest land, landslides and possible loss of water sources due to the project.

    (iii) The Gram Sabha shall take up with the project proponent mitigation measures to offset the adverse impact of the project.

    (iv) While conducting the proceedings, the Gram Sabha shall, so far as it is possible, follow the process, guidelines and the procedure prescribed by the Ministry of Environment and Forests in its various letters from time to time.

    (v) In order to ensure transparency and confidence of the villagers in the proceedings, the presence of a Judicial Officer of the rank of District Judge or such other Judicial Officer of the same rank be requested.

    (vi) It shall be ensured that the entire proceeding is completed in not later than three months from the date of commencement of the proceeding before the Gram Sabha.

    (vii) On completion of the proceedings to the satisfaction of all, the Respondents No. 1 and 2 shall submit a report before this Tribunal by way an affidavit duly sworn by competent Officers.

21. With the above directions and observations this appeal stands disposed off.

22. No order as to costs.

Bimal Gogoi & Anr. vs. State of Arunachal Pradesh & Ors.

APPEAL NO. 30 OF 2015 (SZ)
NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE
24.10.2017
CORAM: P. JYOTHIMANI, J. (JUDICIAL MEMBER) & P.S. RAO (EXPERT MEMBER)
CITATION: 2017 SCC ONLINE NGT 731

SUMMARY

The appellants filed this appeal challenging the forest clearances (stage I and II) granted by the Ministry of Environment & Forests (or 'MoEF') to the Demwe Lower Hydroelectric Project in Lohit village, Arunachal Pradesh. The environmental clearance for the project had already been upheld in a previous judgment[92] where, among other things, the issue of public hearing had been raised. The present appeal related only to the forest clearances obtained under the Forest Conservation Act, 1980 (or '1980 Act').

A number of grounds were raised by the appellants. One such ground was that the forest clearances granted by the central government were based on false information submitted by the state government. At least 882.73 hectares of the total forest land that would be affected by the project was community land, and the project would greatly affect the socio-cultural/ religious values of the local Mishmis, a community designated as Scheduled Tribe. Consent of the Gram Sabhas, as required by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act') was also not obtained. The appellants argued that the Forest Advisory Committee (or 'FAC') should have sought compliances under the Forest Rights Act at the outset before granting any forest clearance.

The respondent state government submitted that at every stage of the clearance process, for over four years, detailed scrutiny was carried out by the competent authorities. It drew the tribunal's attention to the fact that implementation of the Forest Rights Act had been completed in the affected areas, and relied upon a previous judgment[93] of the tribunal to argue that the issue of diversion of forest land was raised in 22 affected Gram Sabhas, and that public notice was issued calling Gram Sabha meetings. The state government submitted that:

> the entire issue relating to FRA has been discussed including location of Parshuram Kund and the Gram Sabhas have resolved along with beneficiaries' names with the consent of people towards the diversion of land for the project. Therefore...the argument that there is violation of FRA is unfounded.

The tribunal examined at length various issues which ought to have been considered by the Standing Committee of the National Board for Wildlife (or 'NBWL') when making its recommendation regarding whether 'wildlife clearance' should be granted under the Wild Life Protection Act, 1972, and accordingly held that this decision *'is not in accordance with the established principles of law'*. For this reason, the Stage 1 and Stage 2 forest clearances were suspended until the NBWL

[92]*North East Affected Area Development Society vs. MoEF & Ors.* Appeal No. 8 of 2011. Judgment dt. 13.01.2015, National Green Tribunal.
[93]Ibid.

reconsidered the matter afresh in accordance with law. However, the tribunal did not go into the issue of Gram Sabha consent under the Forest Rights Act.

EDITOR'S NOTE

There was a clear attempt by the state government to obfuscate the statutory distinction between a *public hearing* under the Environment Impact Assessment notification for the purpose of an environmental clearance, with the necessary *consent of affected Gram Sabhas* for the purpose of forest clearance under the 1980 Act. This conflation is contrary to law and should be strongly opposed. There is no finding in the judgment on this issue.

The judgment is interesting, however, for an innovative legal principle developed by the tribunal. It observed that although the Wild Life Protection Act, 1972 is not within the tribunal's jurisdiction (not being listed in the Schedule to the National Green Tribunal Act, 2010), since the forest clearance under the 1980 Act is consequential upon the decision of the NBWL, the tribunal can examine whether the Standing Committee of the NBWL has exercised its powers in accordance with law (at para 82). Such reasoning can and should be extended to other laws adjacent to the 1980 Act such as the Forest Rights Act.

JUDGMENT

1. The issue involved in this appeal relates to Demwe Lower Hydroelectric Project (HEP) (1750 MW) in Lohit District of Arunachal Pradesh undertaken by M/s. Athena Demwe Power Ltd. The project envisages construction of a Concrete Gravity Dam of 163.12 m height above deepest foundation level (124.8 m above average river bed level) across river Lohit in Lohit District, Arunachal Pradesh by the 3rd respondent being the project proponent. The Ministry of Environment, Forest & Climate Change (MoEF & CC) has granted Environmental Clearance (EC) for the said project on 12.2.2010. The appellant herein, has challenged the validity of the said EC before the Principal Bench of the NGT in Appeal No. 8 of 2011. The Tribunal, in which one of us (Justice Dr. P. Jyothimani was a party), in its final judgment dated 13.1.2015, has dismissed the appeal, upholding the validity of the EC granted by the MoEF & CC.

2. The present appeal which was originally filed before the Principal Bench of NGT as Appeal No. 92 of 2013 is directed against Stage I Forest Clearance and Stage II Forest Clearance dated 1.3.2012 and 3.5.2013 respectively granted by the MoEF & CC under Section 2 of the Forest (Conservation) Act, 1980 (FC Act) and the subsequent order of the Government of Arunachal Pradesh, Department of Environment and Forest, Itanagar dated 26.7.2013 granting permission for diversion of 1415.92 ha (1408.30 ha surface land + 7.62 ha underground land) of forest land for construction of HEP in favour of the 3rd respondent, was subsequently transferred to the Southern Zone Bench and re-numbered as Appeal No. 30 of 2015.

3. The impugned orders, as stated above, are assailed by the appellants who are the environmental activists from the North East. In fact, when the Stage I clearance was granted on 1.3.2012 that was challenged before the Principal Bench and the said Appeal No. 27 of 2012 came to be disposed on 21.11.2012 based on an earlier decision of the Tribunal rendered in *VIMALBHAI v. UNION OF INDIA* (Dated 7.11.2012 in Appeal No. 7 of 2012) holding that Stage I Forest Clearance cannot be assailed in appeal. The said appeal came to be disposed of granting liberty to the appellant to pursue their remedy at the appropriate stage. The Principal Bench of NGT in *VIMALBHAI's* case has also held that in the event of filing of such appeal it will be open to the persons aggrieved to assail the order/ clearance granted by the Central Government under Section 2 of the FC Act which forms integral part and sole basis of the order passed by the State Government. Therefore, the appellant seeks to challenge in this appeal Stage I & II Forest Clearance and the consequential order passed by the State Government with various conditions.

4. The project in question and its ecological impact and other features have been elaborately dealt with, while upholding the EC. The challenge of the impugned order in this appeal is on the basis that the Forest Clearances have been obtained from the Government of India based on wrong and misleading and inadequate information submitted by the Government of Arunachal Pradesh. The appellant has cited some of the instances of challenge which include the contents of the proposal by the Principal Secretary, Department of Environment and Forest of the State of Arunachal Pradesh wherein the Government is stated to have informed that rare/endangered species of flora and fauna in the proposed site are not significant and the area does not form part of National Park/Sanctuary/ Biosphere Reserve or Elephant Corridor etc, and that the area does not have importance from archaeological point of view.

5. The case of the appellants is that the location of the proposed project is in the midst of several ecologically and culturally important sites and there are a variety of common wild animals and birds and it is one of the 34 biodiversity hotspots identified globally and therefore the project would have impact on the flora and fauna. Further, the appellants refer to a scientific inspection conducted by the Deputy Conservator of Forests (Dy.CF) which according to them is a misleading information. To a question 'Whether forest area proposed for diversion is important from wildlife point of view or not?' the reply given by the Dy.CF is in the negative. On the other hand, it is the case of the appellants that there are several Schedule I species available in the area and by the proposed project of diversion of forest land natural migratory routes of species will be affected. In respect of vegetation, it is stated by the Dy.CF that effect of removal of trees will have little impact since the area proposed for diversion is along the river bank and it is a small area in the valley. This is also misleading. According to the appellants this is unscientific and arbitrary and in the case of 1400 ha of forest land deliberate suppression has been made as if only an insignificant portion of the forest land will be affected. Again in respect of a question that whether the proposed diversion is affecting socio cultural/religious values, the answer is given in the negative and according to the appellants the site is known as Tailung by the local Mishmis and it involves larger portions of community forest which are connected with social and cultural life of the community and therefore a simple word of 'No' is a clear case of suppression.

6. The appellants also state about an answer given by the Dy. CF to a question as to whether the project is situated in the area forming part of National Park, Wildlife Sanctuary, Biosphere Reserve, Tiger Reserve, Elephant Corridor and as to whether any rare/endangered/unique species of flora and fauna are available in the area and as to whether any protected archaeological/heritage site/defence establishment or any other important monument is located in the area, the answer for all these questions is simple 'No'. The appellants find fault with the report of the Dy.CF that various species mentioned in Schedule I of the Wildlife (Protection) Act, 1972 have been wrongly recorded like Sloth Bear is called as *Belusus greinus* which is actually called *Melursus ursinus*. Likewise, the Himalayan Black Bear is described as *Selenarctos tibetanua* which is actually called as *Ursus thibetanus* and therefore even the scientific names are not properly given in respect of the species present in the area. In respect of a question regarding the requirement of forest and as proposed by the user agency is whether unavoidable or barest minimum for the project, the answer given is 'yes' and that is without any explanation which in fact requires detailed opinion and scientific recommendation. In cases of the National Park or Wildlife Sanctuary, Tiger Reserve etc., a description of all sites of ecological significance and rich in wildlife and bio diversity and which are going to be impacted by forest diversion, ought to have been described which has not been done.

7. The appellants also challenged the impugned orders on the ground of wrong and inadequate information of wildlife habitats, biodiversity rich areas and ecologically and culturally sensitive areas. It is the case of the appellants that while obstruction sought to be created on forest land which will destroy the natural migratory route of wild aquatic fauna, there is no mention about the same. The appellants also referred to the Important Bird Area (IBA) and Chapories of Lohit River which covers the entire riverbed of the Lohit from Brahmakund Bridge to the Assam - Arunachal Pradesh border which forms an area crisis crossed by numerous channels turning it into a complex of waterbodies, riverine islands, grasslands and forests. Substantial portions of downstream stretches of the Lohit

River are part of forest land. It is also referred about the absence of mentioning of a potential Ramsar site. A reference is also made about the statement of Dr. Anwaruddin Choudhury mentioning the area as a Wild Buffalo conservation site in Arunachal Pradesh whose population is shrinking in Upper Brahmaputra Valley. It is stated that even though Kamlang sanctuary is mentioned, it is not revealed that the area diverted falls within Ecologically Fragile Zone be declared around Kamlang sanctuary. A reference is also made about the Wildlife Conservation Strategy 2002 adopted by the Indian Board for Wildlife stating that areas within 10 KM of National Parks and Sanctuaries are to be declared as Ecologically Sensitive Area (ESA) under the Environment (Protection) Act, 1986. A reference is also made about Arunachal Pradesh State Biodiversity Strategy and Action Plan and the Demwe Lower project submergence extends 23 KM upstream including submergence along the Tidding river which is part of this identified Conservation Priority Site.

8. The appellants have also raised about the presence of medicinal plants particularly the project of the MoEF & CC and UNDP on Medicinal Plants Conservation Areas (MPCAs) in Arunachal Pradesh. Further, the site description of proposed Parashuram Kund is significant and by the proposed project it is likely to be affected. A reference is made about the Expert Opinion of Dr. Darshan Shankar of the Institute of Ayurveda and Integrative Medicine, Bangalore who has written to the leading national level environmental NGO Kalpavriksh. Further, Parashuram Kund being a cultural heritage site of great importance, will be affected by the project and diversion of forest land and there is no reference about the same in the proposal given by the State Government. A reference has also been made about the Bengal Florican and the Wild Buffalo which are available in abundance and are likely to be affected by the project. The appellants have also referred to the cost benefit analysis provided in the diversion proposal wherein it is stated as a minimum impact on the environment which may be compensated in terms of Net Present Value (NPV) for diversion of forest land. In the absence of any explanation as to how the minimum impact will be caused particularly shifting agriculture which is a dominant traditional land use in the hills of North East India which forms the livelihood of the people living in the area maintaining bio diversity and food security and that was not considered in the Demwe Lower Project.

9. The appellants have also referred to certain anomalies in the process of compliance with regard to Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act, 2006 or FRA) stating that by diversion, at least 882.73 ha of the forest land will be affected being community land. The appellants have stated that the Forest Rights Act, 2006 requires 'consent' from each of the concerned Grama Sabhas for the proposed diversion and according to the appellants it includes those in whose jurisdiction the compensatory and ameliorative measures for the project are required to be done and such consent of Grama Sabhas have not been obtained by the State and therefore the provisions of the Act is impacted and without obtaining 'consent' from the Grama Sabhas if the project is allowed to be proceeded, it will result in *fait accompli* situation. Since the Forest Advisory Committee (FAC) is examining the ecological and social viability of stage I clearance, compliance of FRA should have been done and it is only after such exercise is completed the decision making process will be completed. There cannot be FAC appraisal without compliance to FRA. Therefore, the FAC before appraisal, ought to have called for FRA compliance, which has not been done in this case. Inspite of deficiency of FRA, the FAC has appraised the project as it is seen from the copy of the letter dated 19.11.2012 from Sri V. Kishore Chandra Deo, Tribal Affairs Minister addressed to Ms. Jayanthi Natarajan, Minister of Environment and Forest. The appellants have also referred to an objection raised by one, Soblam Malo, a resident of Lohit District that without the compliance of FRA, the FAC has proceeded for appraisal on 8.5.2013 bringing out a decision of the Hon'ble Supreme Court that non consideration of FRA 2016 at Stage I approval is of violation. The members of FRA 2016 were also informed about the impact of the project of religious, cultural and spiritual significance and therefore requested not to grant Stage II clearance for the project.

10. The appellants have also raised the issue of non application of mind by the FAC. FAC meeting of 7.5.2010 desired to have information of justification of large area required for permanent colony, area for temporary use, large temporary work force, the hydrological aspects of a number of dams

at different heights of river and its impact on wildlife in the area. It is the case of the appellants that the present project is not the only first project of the private company and there are other projects like 1415 MW Kalai I project in the upstream of Lohit river which was granted scoping clearance under the EIA Notification, 2006. Further, on the same day viz., 6.8.2007 the scoping clearance was given to the original 3000 MW Demwe project, apart from granting scoping clearance to 1250 MW Hutong II project. In the next meeting of the FAC dated 20.5.2010 the Demwe Lower HEP project which is stated to be the first of total five dams proposed on the Lohit river, was recommended by the committee with certain conditions and according to the appellants there is lack of application of mind since what was required by the FAC on 7.10.2010 was not discussed particularly relating to the impact on wildlife in the area and there is nothing to show that the issue has been discussed. According to the appellants one of the conditions of recommendation that the State Government will carry out a study on the impact of the project on wildlife and submit a report has no meaning after such recommendation has already been made. The finding of the FAC that the land which is a part of large area viz., jhum land and that the government has already issued acquisition notification and therefore it is not possible to reduce the extent of community jhum land, as part of forest land is irregular.

11. The applicants have also referred to the judgment of the Hon'ble Supreme Court rendered in *KARNATAKA INDUSTRIAL AREA DEVELOPMENT BOARD v. C. KENCHAPPA*, (2006) 6 SCC 371 wherein the Supreme Court has directed that before acquiring land, the consequences and adverse impact of development on the environment must be comprehended and therefore the acquisition cannot be a ground for setting aside the claim of community jhum land. According to the appellants, when a comparison of FAC decisions dated 7.5.2010 and 20.5.2010 recommending the project, is made, it is contradictory and therefore it is nothing but total non application of mind. The appellants have also referred to the hydrological aspect of a number of dams at different heights stated in the minutes of the meeting 7.5.2010 which failed to record any of its reasons for the discussions relating to the said hydrological aspect. Such non discussion particularly relating to aquatic life, adjoining forest land, ecological character etc., impacts the recommendation redundant. The appellants have also raised about the non consideration by FAC on the Kamlang Sanctuary hydro ecological changes and their impact on downstream Assam in particular the Dibru Saikhowa National Park and Biosphere Reserve. According to the appellants the whole project affects the hydro dynamics of the Kaziranga National Park cumulatively which are the foot hill projects on the four major rivers in Brahmaputra river basin viz., Subansiri, Slang, Dibang and Lohit.

12. After the appraisal by the FAC, the Standing Committee of the National Board for Wildlife (NBWL) has not conducted any enquiry on the complaint of Akhil Gogoi as referred from the MoEF. The former Union Minister of State for Environment and Forests (independent charge) Sri Jairam Ramesh who is stated to have held a public consultation, has written a letter to the then Prime Minister of India on 10.9.2010 raising serious concern for drawing the attention of the Government of India and according to the appellants this concern has not been considered before the grant of Stage I and Stage II approval. The complaint of Akhil Gogoi which was also forwarded by the Government of Arunachal Pradesh has not been considered by the Standing Committee of NBWL. The complaint made by the said individual along with the reply of the Arunachal Pradesh Government was not placed before the Standing Committee. In the meeting of the Standing Committee held on 13.5.2011 wildlife clearance letter of February, 2012 has not mentioned about this.

13. It is the case of the appellants that Dr. Asad Rahmani, Director, Bombay Natural History Society who is one of the members of the Standing Committee constituted by NBWL was directed to make a site visit has endorsed by saying that the project will affect Wildlife and views of such non official members and objection stated to have been made by the representation of Akhil Gogoi which was supported by at least seven members of the Standing Committee of NBWL have been brushed aside. The appellants have also stated that Hoolock Gibbon ape is extremely rare and confined to only Arunachal Pradesh in India and construction of the Demwe Lower HEP is going to affect the habitat of Hoolock Gibbon. The appellants have also assailed several conditions given in the State Government order reproducing them from Stage I and Stage II forest clearances particularly referring

to clause that the entire reservoir area shall be declared as a Reserved Forest complaining that it is not only irresponsible and that after making the ecologically sensitive forest areas to be submerged, there is no purpose to declare as Reserved Forest, particularly when Indian Forest Act, 1927 is not applicable to the State of Arunachal Pradesh and therefore the conditions become meaningless as per Assam Forest Regulation, 1891.

14. It is the case of the appellants that various conditions of Stage I clearance are opposed to the precautionary principle and conditions are imposed after FAC appraisal, rendering Stage I approval meaningless, particularly when the condition states that the State Government will carry out study on the impact on the wildlife. One of the conditions is a comprehensive study is to be conducted on ecological impact on the environmental changes by the State Government in consultation with the Central Government and the study to be conducted involving Indian Institute of Technology (IIT), Roorkee. The appellants have also stated violations of the provisions of Wildlife (Protection) Act, 1972 that no prior permission from Chief Wildlife Warden of Assam was obtained. The prior permission from Chief Wildlife Warden of Assam as per the said Act cannot be dispensed with on the basis that clearance is sought for from the NBWL Standing Committee, since the project site is located within 10 KM radius of Kamlang Sanctuary. It is stated that the non official members of the Standing Committee had a overwhelmingly uniform view that prior approval of Chief Wildlife Warden of Assam must be obtained under Section 35(6) of the Wildlife (Protection) Act, 1972 but the then Minister for Environment Ms. Jayanthi Natarajan while ignoring the uniform recommendations of all the non official members, ordered granting of clearance without dealing with the issue relating to permission from Chief Wildlife Warden of Assam. The appellants have also stated that the Forest Clearance granted for the project is in violation of the order of the Hon'ble Supreme Court in *LAFARGE UMIAM MINING PVT. LTD. v. UNION OF INDIA*, (2011) 7 SCC 338 particularly with reference to non compliance of National Forest Policy, 1988. Therefore, raising all the said issues the appellants have chosen to challenge the impugned Forest Clearance.

15. The 1st respondent State of Arunachal Pradesh in the reply dated 28.1.2014 has raised a preliminary objection that the attitude of the appellants is not bonafide in challenging the consequential order of the Government of Arunachal Pradesh dated 26.7.2013 which was given in furtherance of Stage II Forest Clearance granted by MoEF & CC. According to the 1st respondent, the FC granted by the State Government dated 26.7.2013 in earlier proceedings falls within the State of Arunachal Pradesh and both the appellants are not the people belonging to the State of Arunachal Pradesh and therefore filing of the appeal according to the 1st respondent, is an abuse of process of law and liable to be dismissed. It is further stated that the clearance given by the State Government is based on the recommendation granted by the FAC/MoEF & CC and the State Government has not done any independent activity. A reference is also made by the 1st respondent that even in the appeal filed against the EC granted for the project, impleadment application to implead State of Assam was rejected by the Tribunal in the order dated 18.3.2013 stating that State of Assam is neither a necessary nor a proper party for the determination of the issue and concealing the said fact the appellants have mischievously arrayed the State of Assam as 6th respondent. The diversion area is located 70 KM away from the nearest border of State of Assam and therefore the appellants cannot be a party to this appeal. Even though the point of maintainability is raised based on the period of limitation that the appeal has been filed nine days after the expiry of 30 days limit, the said issue is not pressed, since the 1st respondent has given detailed reply on merits of the appeal. The 1st respondent at the outset states that most of the apprehensions raised by the appellants in the present Forest Clearance case are related to the EC particularly relating to the public hearing process, appraisal of the project by EAC etc.

16. It is stated that some objections were raised by the NGOs M/s. Kalpavriksh Environment Action Group, M/s. Krishk Mukti Sangram Samiti and others during FAC and all the objections and representations were placed before the respective committee or authority which has deliberated upon the issues and thereafter resolved by EAC, FAC and Standing Committee of NBWL before granting respective clearances. Therefore, raising of the same issues by the appellants which were already raised challenging the EC proceedings, is with an ulterior motive. Various grounds raised

while challenging EC are again reiterated in this proceeding which is not permissible particularly when the scope of FC under Section 2 of FC Act is different from grant of EC under EIA Notification, 2006. The various issues raised against the EC proceedings in Appeal No. 8 of 2011 which are repeated against the FC proceedings in this appeal, are narrated by the 1st respondent as follows:

i. Impact on cultural sites like Parshuram Kund, Nimke etc.

ii. Impact on Kamlang Wildlife Sanctuary

iii. Impact on IBA Site/Chapories/Beels/Dibru-Saikhowa National Park in the downstream areas of the project

iv. Impact on downstream wildlife i.e., Wild Buffalos, Hog deer, Tiger, Fisheries and Dolphins etc.

v. Downstream impacts due to flow variation

vi. Impact on Biodiversity Conservation Priority Sites like "Demwe-Sewak-Tidding Pass"

vii. Impact on Parashuram Kund Medicinal Plant Conservation Areas (MPCA)

viii. Impact due to cumulative influx of labour

ix. Cumulative impact of multiple projects in the Lohit basin

x. Post clearance study contrary to Precautionary Principle

xi. Impact of Catchment Area Treatment (CAT) Plan and Compensatory Afforestation and forest rights

xii. Non consideration of complaint of Mr. K. Krong and Mr. Akhil Gogoi on forest violations etc.

17. It is the case of the State Government that State of Arunachal Pradesh is in the North Eastern most part of the country having immense Hydroelectric Power Potential and the State is drained by major river basins viz., Tawang, Kameng, Subansiri, Dikrong, Siang, Dibang, Lohit and Tirap and the Hydroelectric power potential in the State is assessed as 57,000 MW which is more than **⅓rd** of the total Hydroelectric power potential in the country which is 1,48,700 MW. The average per capita power consumption in the State is only 503 KWH (2009 - 2010) which is far below the National average of 739 KWH particularly when the country is facing power deficit of 10.6% and the North East facing 14.1% shortage during 2012 - 2013 and the project in question is to narrow down the prevailing power deficit of the country as a whole. The State is unable to go for much needed industrial development till recent years except Hydro Electric Projects for which huge potential is available and therefore the 1st respondent has formulated and notified the State Hydro Power Policy which is in consequence of the Central Government policy by allotting certain projects to Independent Power Producers (IPP) for development under public private partnership. The project is being executed under joint sector with the Government of Arunachal Pradesh and the State Government is having a stake of 26% equity in the project and the State is going to be immensely benefited by the development of this project when once it is implemented. The State would be benefited with free energy revenue of about Rs. 30,705 Crores during 40 years of its operation and after 40 years the project will be transferred to the Government of Arunachal Pradesh. The 1st respondent has also stated about various developmental activities and benefits of the said project.

18. The Forest (Conservation) Act, 1980 permits unavoidable use of forest land for development purposes and balance the conservation of forests with sustainable development of the country contributing to the better environment, health and economy and therefore the feature of the Act is regulatory and not prohibitory in nature. While denying the allegation that the 1st respondent has concealed certain information and there is deliberate lack of application of mind, furnishing of misleading information, the 1st respondent has chosen to give chronology of events leading to grant of FC. It is stated that the FC has been granted after detailed scrutiny by various competent authorities at

every stage from Part I to Part V, by making site visit by the officials of the Forest Department of the State Government, independent site visit of the project area by the Additional Principal Chief Conservator of Forest, MoEF & CC, Regional Office, Shillong, consideration by FAC, detailed scrutiny by MoEF and appraisal by the NBWL standing committee. Therefore, the project was reviewed at various stages spanning over a period of more than four years. Therefore, it cannot be said that FC was granted with non application of mind. It is stated that the Government of Arunachal Pradesh has granted permission to the 3rd respondent project proponent to carry out the field survey and investigation works for the project on 24.1.2008. It is further stated that as per the requirement of FC Act, the 3rd respondent has submitted forest diversion proposal of the project in Form A to the Nodal Officer with all details. The said proposal was forwarded to the District Forest Officer, Lohit on 5.11.2008 for completing part II of the proposal which includes enumeration of trees etc. As the proposal for diversion falls in the territorial limits of Namsai Forest Division, Anjaw Forest Division and Lohit Forest Division, the Nodal Officer on 19.12.2008 has directed that DFO, Lohit shall be the coordinating officer for all the three divisions for submission of proposal. Afterwards, the DFO, Lohit on a perusal of the proposal on 21.2.2009 has raised queries relating to the identification of the land which was answered by the user agency on 25.3.2009. After the receipt of the approval from the EAC of MoEF & CC for change of installed capacity to 1750 MW, revised proposal in Form A of Part I was submitted by the user agency on 19.6.2009. The site inspection was carried out by the DFO including feasibility study of the proposal, preparation and certification of maps etc., including presence of any rare/endangered/unique species of flora and fauna/protected archaeological/heritage site/defence establishment etc.

19. Thereafter, the Conservator of Forests undertook site inspection in the proposed area for diversion on 4.11.2009 including dam complex, muck dumping area, construction of permanent colony, diversion tunnel outlets and proposed submergence area and found that there is no violation of FC Act noticed, project area falls partly in Denning RF and partly in Kamlang RF and the balance area falls in community land/community forest land, that the requirement of land and the proposal is barest minimum, that the river bank area is in open type forests, that the general composition of forests is eco class I viz., tropical semi evergreen forests, that most of the species are below 61 CM girth, that in Kande area most of the species are of under girth with no commercial value or local domestic uses, that the density of vegetation is 0.4 and that the user agency has been advised to take up infrastructural and socio economic developmental activities through Catchment Area Treatment Plan. The Chief Conservator of Forests, who is the Nodal Officer under FC Act, on receipt of Part III Spot Inspection Report of DFO and CCF, satisfied with the recommendation, forwarded his recommendation along with part IV to the Principal Secretary, Department of Environment and Forests, Itanagar on 8.12.2009.

20. The Principal Secretary, after going through the complete proposal, in the absence of any adverse comments, forwarded the State Government's recommendation along with the proposal to the Secretary, MoEF & CC, Government of India, on 23.12.2009 with a request to convey necessary approval under Section 2 of the FC Act, highlighting that the forest type of proposed area is eco class I open forest with varying density ranging from 0.1 to 0.4, that the rare/endangered species of flora and fauna in the proposed site is not significant, that the area does not form part of National Park/Biosphere Reserve or Elephant Corridor etc, that the area does not have importance from archaeological point of view and that the proposal does not involve any violations of FC Act. It is also stated that the proposal of the government contains all annexures viz, list of common plants, list of common animals and birds. The proposal of the State Government is not as if what was found in the area are deliberately suppressed as stated by the appellants. The enumeration of trees is in accordance with various guidelines and based on the details of site inspection by DFO and the area proposed for diversion excluding river bed is only about 900 ha (9 sq km) which is very small compared to the total area of Lohit valley which is more than 5,000 sq km. As far as Archaeological importance particularly with reference to Parashuram Kund it is located 1,300 m along the river course (800 m aerial distance) downstream from the dam axis and Nimkey is located in the upstream and above the reservoir submergence level and both of them are not forming part of the areas proposed for diversion. Further, in so far as it relates to Parashuram Kund, the EAC has considered

that adequate mitigation measures which form part of EC have been taken and Parashuram Kund Improvement Society has also given NOC.

21. With regard to National Park/Sanctuary/Biosphere Reserve/Elephant Corridor etc., Kamlang Wild Life Sanctuary (KWLS) is not located within the study area viz., within 10 KM radius of the project site i.e., the dam is located around 11.8 KM along the river and around 8.5 KM aerial distance from the nearest boundary of KWLS and is also not forming part of forest diversion proposal. In so far as it relates to MPCA, it is stated that it does not fall within the project area as its elevation is 576 M and the Full Reservoir Level (FRL) of Demwe Lower HEP is 424.8 m and therefore MPCA is also 150 M above FRL and no construction is envisaged at that level and that there was no adverse impact. The preservation of endangered species is adequately taken care of and the EAC and NBWL standing committee have considered all these issues.

22. The cost benefit analysis provided by the Forest Department is as per the guidelines published by the Government of India and the proposal is for diversion of 1415.92 ha of forest land and the cost benefit analysis has been evaluated accordingly. The evaluation of loss of forests has been made and around Rs. 9.01 Crores is estimated towards crop compensation, and no loss of animal husbandry and public facilities are found and there was no displacement or oustees in the project and therefore there is no resettlement and the environmental losses are compensated in terms of NPV of about Rs. 103 Crores for the diversion of forest land. Again regarding evaluation of benefits various aspects have been stated in detail including various welfare measures like provision of free fuel to workers etc. Therefore, cost benefit analysis has been completely studied. In addition to that, it is stated that furtherance to the direction of the Inspector General of Forests, MoEF, New Delhi, the Additional PCCF, Regional Office, MoEF, Shillong inspected the project on 26.3.2010 which contains legal status wise break up of the land proposed for diversion, wildlife, vegetation, the study relating to any violation of the FC Act, rehabilitation of displaced persons if any, cost benefit ratio, recommendations of the Regional Chief Conservator of Forest, utility of the project and number of Scheduled Castes/ Scheduled Tribes to be benefited by the project, effect on socio cultural, religious values by the proposed diversion, situation of the Protected Area and all other relevant information have been referred in detail. The forest diversion proposal of Demwe Lower (1750 MW) HEP has been placed before the FAC, MoEF in the meeting held on 7.5.2010. The FAC has called for certain information, as elicited above. On the said query, the 3rd respondent in the communication dated 17.5.2010 submitted all the information to the MoEF with a copy to CCF and Nodal Officer, Government of Arunachal Pradesh. Thereafter, the FC met on 20.5.2010 and considered the submissions of the user agency 3rd respondent and after having satisfied that the details are in accordance with the proposal, has recommended the project, subject to various conditions. The FAC examined and noted that the present proposal is first HEP where high hydro electric potential has been recognised and the aspect of delinking of HEP's from basin study was advised in the report of the Inter Ministerial Group, Government of India which decided not to hold up EC and FC of individual projects for want of basin wise study. It is stated that the Task Force on Hydroelectric Projects Development, Government of India, comprising of Minister of Power and Minister of Environment and Forest, Minister of Water Resources, Minister of Rural Development, Minister of New and Renewable Energy, representative of Planning Commission in the meeting held in October, 2010 unanimously recommended that process of grant of EC and FC could be continued pending completion of sub basin wise impact assessment studies for major tributaries of Brahmaputra river. The cumulative impacts of multiple projects/basin study raised in the instant forest appeal are relating to EC which have already been dealt with by the Tribunal. The government of Arunachal Pradesh in the communication dated 6.8.2010 has furnished the legal status of the forest land to the MoEF.

23. On the objection raised by M/s. Kalpavriksh, the NGO, subsequent to the MoEF proceedings dated 25.6.2010, the user agency in the communication dated 4.1.2011 submitted a detailed reply on the apprehensions raised by the said NGO. In the mean time, for the compliance of the conditions of EC, the user agency has submitted necessary application on 3.12.2010 for wildlife clearance from the Eco Sensitive Zone angle to the State Government, due to the proximity of Kamlang Wildlife Sanctuary which is within 10 KM radius. Based on the direction of the National Environmental

Appellate Authority in the Appeal made against EC, PCCF cum Chief Wildlife Warden, Arunachal Pradesh, Itanagar has constituted a three member committee to study the downstream effects of the project on IBA/Chapories and Dolphins on 17.1.2011 for consideration by NBWL. On receipt of the complaint regarding violation of FC Act in respect of illegal tree felling by the user agency, CCF, Eastern Circle, DFO, Namsai and DFO, Lohit have undertaken field visit on 19.2.2011 on the direction of the Principal Chief Conservator of Forests to make enquiry regarding tree felling. A report was filed reporting that there was no tree felling in the area. In so far as it relates to the complaint of Mr. Akhil Gogoi, the FAC in the meeting held on 10.3.2011 considered the said representation, after getting clarification from the project developer. The FAC desired that the issues will be dealt with by the competent authority viz., State Government and NBWL Standing Committee. The FAC examined the proposal along with the issues raised by the screening agency and recommended for optimization of colony area and saving of trees. Therefore the allegation of non application of mind has no jurisdiction. The complaint of Mr. Akhil Gogai received by the MoEF was forwarded to the Standing Committee of State Board for Wildlife (SBWL), Government of Arunachal Pradesh which in its meeting held on 27.5.2011 has considered the same due to its proximity of KWLS and falling within 10 KM radius. After detailed examination, having satisfied that the finding of the report on river Dolphins and important bird habitats, the Standing Committee of SBWL concluded that there are no adverse down stream impacts foreseen on the river Dolphins. The 1st respondent has also reproduced the summary of the findings of the report regarding Important Bird Habitats and River Dolphins.

24. It is also stated that the Standing Committee of the State Board for Wild Life has examined the contents of the complaint of Mr. Akhil Gogoi pertaining to the wildlife aspects relating to impact on wildlife and found that the concern raised by Mr. Akhil Gogoi is lacking merits. Thereafter, the government of Arunachal Pradesh by its communication dated 14.6.2011 has sent the proposal to the NBWL Standing Committee for its consideration. Therefore, at every level there has been detailed consideration of the concern raised by everybody and it cannot be said that the entire process is without application of mind. The complaint regarding forest violation has already been raised by the appellants in the EC proceedings which was considered by the Tribunal. In fact, the finding on the concern of the complainant Mr. Akhil Gogoi regarding various aspects, highlighting various issues was already raised by the private parties. It is stated that the Standing Committee on NBWL in the meeting held on 14.10.2011 examined the recommendations of the Standing Committee of State Board of Wildlife on KWLS and also considering the apprehensions raised in various representations including that of Mr. Akhil Gogoi, has constituted a sub committee, comprising two members to make a first hand assessment. Subsequently, the Standing Committee of NBWL in the meeting held on 13.12.2011 while appraising the project for wildlife clearance has carried out detailed scrutiny on various wildlife issues which includes the issue relating to downstream impact on Dibru-Saikhowa National Park and Biosphere Reserve Chapories of Lohit river, impact on grassland ecology and grassland dependent species such as Bengal Florican, Impact on Gangetic Dolphin, daily fluctuation of water and its adverse impact, impact on Asiatic wild buffalo along with impact on MPCA, Parashuram Kund etc. After examination of the same, the project was granted NBWL clearance by its recommendation the MoEF & CC on 11.2.2012. The NBWL Standing Committee has imposed various conditions. In so far as it relates to downstream impact of Dibru Saikhowa National Park, Biosphere Reserve, Chapories of Lohit river, IBA, impact on grassland ecology and grassland dependent species etc., issues were raised by the appellants before the Tribunal in the appeal relating to EC and the same has been elaborately dealt with by this Tribunal.

25. After the receipt of NBWL clearance, the State Government in its letter dated 17.2.2012 addressed to the Secretary, MoEF, has requested grant of approval of the Central Government under Section 2 of FC Act and for diversion of 1415.92 ha of forest land for the project. The MoEF, after considering the NBWL clearance and the State Government report and after satisfied with the recommendations of the State Government and NBWL, granted Stage I Forest approval to the project on 1.3.2012 subject to certain conditions. Thereafter, the Government of Arunachal Pradesh on 22.3.2013 submitted detailed compliance report to the MoEF for the grant of Stage II Forest Clearance enclosing documents relating to FRA over the proposed diversion area, optimized layout plan of

colony area, study report on wildlife impact on project area, details of forest payments i.e., NPV, CA etc. paid by the user agency along with compliance of other conditions. The MoEF being satisfied with the compliance of Stage I FC dated 1.3.2012, has granted Stage II FC to the project on 3.5.2013 reiterating the conditions stipulated by the NBWL Standing Committee which also relates to the cumulative impact assessment study. After the receipt of the Stage II Clearance from the MoEF, the Government of Arunachal Pradesh issued consequential order on 26.7.2013. Therefore, according to the 1st respondent, when such elaborate measures have already been taken for the sustainable development and all the authorities have dealt with every aspect of the project, there is nothing for the appellants to continue to complain that the impugned orders are passed without application of mind and therefore the appeal is liable to be rejected.

26. Respondent Nos. 2, 4 & 5 viz., MoEF & CC, FAC and NBWL respectively in their reply dated 16.1.2014 filed through the Senior Assistant Inspector General of Forests, Ministry of MoEF, New Delhi have raised the preliminary objection of limitation by calculating the date from the Stage I clearance on 1.3.2012 and Stage II clearance on 3.5.2013 while the appeal came to be filed on 10.9.2013. That apart, it is the case of the 2nd respondent that the 4th and 5th respondents are not necessary and proper parties. It is further stated by the said respondent that the Government of Arunachal Pradesh has submitted a proposal to obtain prior approval of the Central Government under Section 2 of the FC Act on 23.12.2009 for diversion of 1415.92 ha of forest land (1408.30 ha surface land + 7.62 underground land) for the construction of 1750 MW Demwe Lower Hydroelectric Project in Lohit District of Arunachal Pradesh in favour of the 3rd respondent. The total land involved for the construction of the said project is about 1589.97 ha out of which 174.05 ha land is non forest land and the balance 1415.92 ha is forest land. The Regional Office of MoEF, Shillong by its letter dated 26.3.2010 submitted the site inspection report, as requested by MoEF by letter dated 28.1.2010. The report covered various aspects which include component wise break up of the total forest land requirement, justification for diversion of forest land, legal status of forest land, details of vegetation and wildlife aspects, compensatory afforestation scheme, catchment area treatment plan, reclamation plan, Parashuram Kund, Kamlang Wildlife Sanctuary, Cost benefit ratio etc.

27. The Chief Conservator of Forests, Regional Office of MoEF, Shillong in his report, while dealing about the impact on wildlife, has stated, after explaining in detail, that the impact on terrestrial fauna is not expected to be much significant. It was found to be not an area of migratory routes of animals. A detailed Wildlife Management Plan under the Bio Diversity Conservation Plan has been included in EMP which includes habitat improvement, improvement of footpaths, construction of watch towers, check dams, wildlife estimation, immunization, fire control, surveillance, eco development, anti poaching activities, awareness programmes, capacity building, conservation of vulnerable species etc. That apart, the socio cultural and heritage site has also been explained in detail and has stated that release of normal lean season flow for a period of 7 days during Makar Sankranti Mela in Parashuram Kund in the month of January may be ensured. It is also stated that during constructional phase better provision has been made to supply sufficient water by undertaking diversion through a 6 m dia pipeline so that water for bathing and taking a dip in the Kund is allowed at normal level by maintaining sufficient downstream water flow through a separate 40 MW installed unit of power generation. An additional amount of Rs. 10 Crores has been earmarked for the maintenance of Parashuram Kund to be utilised for creating amenities, infrastructure and as a safeguard as decided by the local people. The water flow is directed to be maintained to avoid drying of Parashuram Kund at any time. Further, various alternative routes and alignment were considered on the non forest land and it was stated that the Hydro Electric Project structures invariably have to be located across the river and in Arunachal Pradesh most part of the river course is legally declared forest land and therefore project components like submergence, construction of diversion structures, power house etc. necessarily require diversion of forest land. Out of 1408.30 ha of surface forest land diversion sought for the project is 290.24 ha for temporary purpose and 1118.06 ha is to be diverted permanently which includes 502.92 ha of river bed. Therefore, excluding river bed the forest land under permanent diversion is 615.14 ha and this is the unavoidable minimum requirement of diversion of forest land for the project. Regarding the suggestion for alternative proposal, from techno-economic and environmental point of view, the present proposal was considered to be quite

ideal. Even alternative proposal in respect of diversion has been considered at all levels viz., the State Forest Department, Government of Arunachal Pradesh and ultimately after considering all the aspects the present diversion of forest land with the required conditions was found to be essential. About 290.94 ha of surface land of forest being taken for temporary purpose is to be handed over back to the State Forest Department after completion of the project the land will be utilised either for community forest purpose or to be maintained by the project authorities as a green cover. The local people have supported the project since the development will help the area for improvement and generation of employment etc. The EIA and EMP have been prepared by CISMHE University of Delhi. EMP includes Bio Diversity Conservation Plan with Forest Protection Plan and Wildlife Conservation. As per the EC condition, MoEF has stipulated that clearance from NBWL to be obtained since Kamlang Wildlife Sanctuary is situated within 10 KM. Various protective measures required to be taken during monsoon season when the river is in spate particularly drift wood and its removal to avoid any damage to various structures of the dam have been considered in detail. The FAC after examination of the proposal and site inspection in the meeting held on 7.5.2010 that this being the first HEP proposed in the private sector in Arunachal Pradesh where hydro electric potential is high and as the project is located at the tail end, has recommended the case. However, the FAC sought further information as elicited above. After obtaining compliance the FAC again considered in its meeting held on 20.5.2010 along with the presentation made and recommended the proposal for diversion.

28. It is stated that in the meanwhile complaints were received from Mr. Khapriso Kaong, Minister Arunachal Pradesh and Mr. Akhil Gogoi raising objections regarding violation of FC Act. The complaints were discussed in the FAC in the meeting held on 10.3.2011 and noted that in principle approval to the project is yet to be granted and FAC desired that the complaint may be enquired into by the State Government and NBWL Standing Committee and copy of the complaint was forwarded to them. It is stated that the State Government has submitted the report regarding the above complaints which is stated to have made study about the down stream impact and forwarded the recommendations to the NBWL Standing Committee. The NBWL Standing Committee on 14.10.2011 and 13.12.2011 examined the recommendation of the SBWL and thereafter clearance for the project was granted on 11.2.2012. Taking into consideration the recommendation of the Standing Committee of the NBWL and the report of the State Government, Stage I Forest Clearance was granted by the Central Government on 1.3.2012 and subsequently the State Government has furnished the compliance report on 22.3.2013 regarding compliance of conditions of Stage I approval and thereafter the Central Government has granted Stage II approval on 3.5.2013. Apart from raising the points that the appeal is not maintainable, the said respondents have raised the point that Stage I approval cannot be assailed in the appeal by relying upon the judgment of NGT in *VIMAL BHAI v. UNION OF INDIA* (Appeal No. 7 of 2012 dated 7.11.2012). While replying on the factual matrix of the case, the said respondents have reiterated that inspection has been carried out at every stage and the proposal was considered by every authority, including FAC which is an Expert Body and only thereafter the approval came to be granted. Regarding Forest Rights Act, 2006 it is stated that the State Government in its compliance report has submitted certificates from the District Commissioner of Anjaw and Lohit Districts apart from the resolutions of the Gram Sabhas and it was only after consideration of relevant factors and exercising due diligence Stage II FC approval was granted. It is reiterated that in the meeting of FAC on 7.5.2010 various aspects have been deliberated and it was only after complete application of mind and after considering the representation further decision was taken on 20.5.2010 recommending the proposal of diversion of forest land. The said respondents also relied upon the judgment of the Hon'ble Supreme Court in *KENCHAPPA's* case to show that ecological study has been made before recommending the FC. After the State Government has submitted its compliance report on 22.3.2013 as per the conditions of FC approval which includes IBA and MPCA, the Stage II clearance was accorded by MoEF on 3.5.2013 which according to the said respondents, is in accordance with law. While reiterating the statement made by the 1st respondent Government of Arunachal Pradesh it is stated that the respondents have already taken undertaking from the user agency that the said respondents also rely upon the judgment of the Hon'ble Supreme Court in *LAFARGE UMIAM MINING PVT. LTD. v. UNION OF INDIA*, (2011) 7 SCC 338).

29. The 3rd respondent user agency in its reply dated 30.9.2013 while raising the preliminary issue regarding limitation, has also raised the misjoinder of parties stating that in the FC proceedings, the 4th respondent FAC which is not a juristic entity, granted approval under Section 2 of the FC Act and therefore it cannot be sued and the 4th and 5th respondents are neither necessary nor a proper parties. It is stated that the 5th respondent NBWL is constituted under the Wildlife (Protection) Act which is not within the purview of NGT Act, 2010 and for want of jurisdiction the 5th respondent is not a necessary party. The respondents 4 and 5 are the advisory bodies to the MoEF, the 2nd respondent which alone is the authority to grant clearance. Therefore the appeal filed by including respondents 4 and 5 is an abuse of process of law. The 3rd respondent has stated that the arraying of State of Assam as 6th respondent which has nothing to do with the issue involved in this appeal except that State of Assam is located 70 KM downstream from the project site, is also not called for. In fact, the area covered under the FC which is the subject matter of appeal, falls within the State of Arunachal Pradesh and not in Assam and therefore the State of Assam is neither a necessary nor a proper party. The 3rd respondent has also reiterated that in fact when EC was challenged in the appeal there was an attempt to implead the State of Assam and the Tribunal in the order dated 18.3.2013 has held that the State of Assam is neither a necessary nor a proper party and inspite of the same the appellants have chosen to array the 6th respondent State of Assam and therefore the appeal is liable to be dismissed for misjoinder of parties.

30. The 3rd respondent has referred to the power supply position of India in 2012 - 2013. While the requirement was 998,114 MW, the availability was 911,209 MW and there was a power deficit of 86,905 MW which is 8.7%. Again in respect of peak demand there has been power deficit of 12,159 MW which is 9.0%. According to the 3rd respondent the project in question is an environmental friendly project in contradistinction to any other project which is inherently polluting the nature. To meet the energy requirement and finding that the thermal power and others were comprising maximum capacity from coal while the share of Hydro power was only minimum of 17.55% and various studies have established that the hydro thermal power mix for India is to be in the ratio of 60: 40. Further, the thermal power has raised the fuel cost and leads to air pollution emitting SOx, NOx and fly ash and particulate matter. It was in those circumstances, hydroelectric power has been looked into as one of the major sources of power generation in the country. According to the 3rd respondent, the FC Act makes a regulatory mechanism reflecting the collective will of the nation protecting biodiversity and natural heritage permitting only unavoidable use of forest land for developmental projects. The objections and observations made in this appeal have been duly considered by EAC, FAC, NBWL Standing Committee and MoEF. The proceedings in the Forest Clearance is made at various stages starting from Part I from the project developer, Part II by DCF/DFO, Part III by CF, Part IV by Nodal Officer/PCCF and Part V by Secretary of Forests of State Government, supported by other reports and FC Act, 1980 before forwarding the proposal to the Central Government in the MoEF and after following the requirements the MoEF granted the FC after appraisal by FAC.

31. The 3rd respondent would state that the project has obtained all clearances including Central Electricity Authority, Central Water Commission, Geological Survey of India, clearance of Seismic Design Parameters by National Committee on Seismic Design Parameters, consent for establishment from the State Pollution Control Board, clearance from wildlife angle by NBWL Standing Committee, EC from MoEF, in principle approval by Mega Power Status from MoP, clearance from Ministry of Defence, NOC from State Cultural Affairs & Heritage Department, NOC from Water Resources Department pertaining to irrigation and flood control sectors, FC from MoEF and consequential orders from the State of Arunachal Pradesh. It is stated that land measuring 714.32 ha was handed over to the 3rd respondent by the Government of Arunachal Pradesh, contracts have been signed including Long Term Access and Central Electricity Regulatory Commissions. The break up of forest land diverted for 1750 MW Demwe Lower HE project is given by the 3rd respondent in its reply as follows:

"The break-up of Forest Land diverted for 1750 MW Demwe Lower HE Project is given below:

S.No.	Particulars	Land in ha		Percentage
A	Total Forest Land	1415.92		
B	Underground Forest Land	7.62		
(A-B)	Total Surface Forest Land	1408.30		100%
A	Under Submergence	969.44		69%
I	River Bed		478.92	34%
ii	Community Forest Land		309.18	22%
iii	Reserve Forest		181.35	13%
B	Project Components	438.86		31%
I	River Bed		24.01	2%
ii	Community Forest Land		399.50	28%
iii	Reserve Forest		15.35	1 %

Category wise Forest Land

(A-B)	Total Surface Forest Land	1408.30		100%
a	River Bed		502.92	36%
b	Community Forest Land		708.68	50%
c	Reserve Forest		196.70	14%

32. An area of 290.24 ha of forest land is diverted for temporary use and after the project is completed it will be handed over back to the State Forest Department and the submergence area will be declared as Reserve Forest by the State Government. Therefore, the permanent diversion would be 88.61 ha land for project components and the submergence area will be declared as Reserve Forest. The particulars of land acquisition have also been provided by the 3rd respondent.

33. While controverting the allegation of lack of application of mind and furnishing misleading information as false, the 3rd respondent has stated that scrutiny by the competent authority at every level was given in detail particularly Part I Forest Advisory Committee's consideration and it was reviewed at every stage spanning over a period of more than four years and therefore it is inappropriate to state that the FC was granted either hurriedly or without detailed scrutiny and without application of mind. It is stated that permission was granted for carrying out topographical survey and geological investigation in the project area by the State Forest Department in the letter dated 24.1.2008 and subsequently the proposal for forest diversion was submitted on 8.10.2008. The MoEF in the FC Rules, 2003 has provided detailed guidelines and details have been furnished for proposals seeking prior approval for diversion of forest land for non forest purposes and accordingly Form A of Part I was submitted in appropriate manner. Part I proposal was considered by DFO who raised queries on 21.2.2009 with regard to the status/identification of land for Compensatory Afforestation and Catchment area Treatment Plan etc. and subsequently Form A of Part I was submitted by the 3rd respondent under Section 2 of FC Act to the State Government on 19.6.2009 for installed capacity of 1750 MW. Thereafter, the DFO has examined the factual details and forwarded his finding in the format as per Part II to the Conservator of Forest on 12.8.2009 along with site inspection report with all details. On receipt of Part II from the DFO, the CF has undertaken site inspection on 4.11.2009 in the proposed project area and completed Part III in the format and forwarded along with his recommendations with the inspection report to CCF and Nodal Officer on 6.1.2009. The CCF-Nodal Officer completed Part IV and forwarded his recommendation to the Principal Secretary, Forests of State Government on 11.12.2009. On receipt of Part IV, the Principal Secretary, Department of Environment and Forest, Itanagar completed Part V and forwarded the State Government's recommendation to MoEF on 23.12.2009 requesting to grant approval under Section 2 of the FC

Act. On receipt of the said proposal from the State Government, the IG, Forest, MoEF in his letter dated 28.1.2010 requested CCF, MoEF, North East Region, Shillong to carry out site inspection to be placed before the FAC. The Additional PCCF, Shillong made site visit and submitted his report to the MoEF on 26.3.2010, inter alia highlighting the aspect relating to the legal status of forest land, component wise break up of the total forest land requirement, alternatives considered, reclamation plan, wildlife aspects, Parashuram Kund and Kamlang Wildlife Sanctuary etc. The said report was sent by MoEF to FAC which in its meeting held on 7.5.2010 desired to have additional information. The 3rd respondent has made detailed presentation before the FAC in the meeting held on 20.5.2010 which includes Wildlife Management Plan, details of cascading effect of development of the Lohit river basin and proposed safeguard measures and influx management etc.

34. After detailed discussion, FAC on 20.5.2010 has recommended the proposal for granting FC subject to the conditions. Thereafter, the 3rd respondent on 2.8.2010 and 4.10.10, submitted details of the project including land acquisition to MoEF. There was a post appraisal of the project by FAC based on the representation of NGO in which the 3rd respondent on 4.1.2011 submitted its reply regarding the representation which relates to impacts in downstream areas, impacts of flow variation (on wildlife habitat), impacts on Parashuram Kund, Lohit river basin study etc. On 20.1.2011 the 3rd respondent has given another clarification on the proximity of KWLS and requested that the grant of FC should not be linked to wildlife clearance as the project does not involve diversion of land from KWLS. The FAC in the meeting held on 10.3.2011 has considered the representations and objections forwarded by the MoEF and desired that the further investigation and inspection is required. As further consideration is required, the matter was sent to the State Government on 29.3.2011 to consider before passing Stage I approval. Likewise, in respect of proximity of KWLS the meeting held on 27.5.2011 has considered the finding including the representation of Mr. Akhil Gogoi and concluded that no adverse impact is envisaged on Dolphins and IBA sites and forwarded the report to NBWL on 14.6.2011. Likewise, the State Government has forwarded its report based on its further enquiry to IG, Forest on 10.8.2011. The NBWL Standing Committee in the meeting held on 14.10.2011 and 13.12.2011 has examined in detail the recommendation of SBWL particularly relating to the impact of the project on the downstream issues related to Dibru-Saikhowa National Park etc. and being satisfied that the mitigation measures have been proposed, the NBWL has granted clearance to the project on 11.2.2011. Thereafter, the MoEF, after considering that the NBWL Standing Committee has examined the report of the State on the issue raised by Mr. Akhil Gogoi and having satisfied with the recommendations of the State Government and NBWL Standing Committee, has granted Stage I Clearance on 1.3.2012. Subsequently, the State Government on 22.3.2013 has submitted compliance report on the conditions stipulated in Stage I Clearance. The MoEF after being satisfied about the compliance, has granted Stage II FC on 3.5.2013 which was followed by the State Government granting clearance on 26.7.2013.

35. While denying the allegations made by the appellants in various paragraphs, it is stated by the 3rd respondent that the appellants have not chosen to mention as to how the State of Assam is affected by tree cutting when it's border is 60 KM away from the project site. It is further stated that the proposal has undergone detailed scrutiny before the FC was granted which has taken more than four years for finalising the issue. It is reiterated that the authorities at every level inspected the place and followed the guidelines framed under the Forest Conservation Rules, 2003 before granting prior approval for diversion of forest land for non forest purpose. It is stated that in respect of wildlife as per Part II Appendix of Forest Conservation Rules, 2003 as subsequently amended it enables the DFO to file relevant details based on the site inspection which has clearly mentioned that no species of RET category were available in the area proposed to be diverted. It is reiterated about the list of common animals and birds which are mentioned. A reference is made to the remark made by the Additional PCCF - Regional Office of MoEF, Shillong which clearly indicates about the wildlife existing in the area particularly relating to 24 faunal species. It is reiterated that various issues raised in the appeal have already been finally disposed of by the Tribunal while deciding about the validity of the EC granted for the project.

36. In so far as it relates to vegetation, the same has been considered by FAC and it is not proper for the appellants to state that no study has been carried out. Further, the enumeration of trees has also been done by the DFO who made specific recommendation and there is no question of any misleading information given by the 3rd respondent or the government in this regard. Likewise, in respect of socio cultural sites also the 3rd respondent refers to various findings regarding Parashuram Kund and Nimkey sites while stating that in the EC proceedings the issue has been finally decided. It is also stated that the EAC has dealt with the mitigation measures which were stipulated while granting EC which is prior to the grant of FC. The 3rd respondent made a reference to EAC which has addressed the issue in the meetings held on 22.10.2009 and 1611.2009 while considering the EC proposal. The 3rd respondent has also referred to the findings of various Advisory Committees and the reasons and comments and therefore it is stated by the 3rd respondent that when every authority at every stage has considered and gave report in detail and therefore it is not open to the appellants to continue to allege that there is non application of mind. The aspect of impact on Kamlang Wildlife Sanctuary has been evaluated by the Addl. CPCF, Shillong.

37. In so far as the claim of ecologically sensitive zone, it is stated that the draft proceedings of ESZ were already taken care by the NBWL Standing Committee while granting NBWL clearance in the said angle. A reference is made about the direction of the Hon'ble Supreme Court which has stated that prior recommendations of the SBWL and NBWL Standing Committee are required only when the proposal requires diversion of land from wildlife sanctuary. As the project does not involve any diversion of land from Wildlife Sanctuaries, Wildlife Clearance and prior approval of the NBWL are not required and in any event the project has been referred and considered by the MoEF for clearance of EAC as well as the recommendation by NBWL.

38. Regarding medicinal plants, the 3rd respondent has referred to the relevant extract of Biodiversity Strategy and Action Plan, 2008 which relates to Dichu valley located on the river Dichu along the border of India Tibet and Myanmar, part of the Mc Mohan Line far away in the upstream of Lohit river, approximately 130 KM upstream and there is no adverse impact by virtue of the present project on the medicinal plants in the area. Further, MPCA sites is yet to be notified.

39. The 3rd respondent has also referred to the issue of Parashuram Kund and states that the dam site is located 1,500 m upstream along the river and 800 upstream from Parashuram Kund and the project EMP clearly contemplates maintenance of lean season flow particularly for 7 days during Makar Sankranthi Mela and in fact financial provisions have also been made for the development of the area concerned and that is also the case in respect of cost benefit analysis particularly relating to the calculation of NPV based on the direction of the Hon'ble Supreme Court on *GODAVARMAN THIRUMULPAD v. UNION OF INDIA*, (2006) 1 SCC 1 followed by various recommendations of CEC which is filing report to the Hon'ble Supreme Court periodically. The CEC takes into consideration the value of timber and fuel, value of non timber forest products, value of fodder, value of eco tourism, value of bio prospecting, value of ecological services of forest, value of flagship species and carbon sequestration value.

40. In respect of Forest Rights Act, 2006, it is stated that implementation of forest rights have been duly studied and there is no violation or procedural lapse during the implementation of FRA. It is also stated that in respect of Grama Sabhas in their meeting have shown that the claims were received and recognised the forest rights along with the beneficiary's name and therefore it cannot be said that FRA in respect of Scheduled Tribes' settlements and their benefits were not considered. It is reiterated that after a long procedure that went on throughout for four years during which the forest authorities considered the issues from time to time about the implication of the project in question and ultimately the Forest Advisory Committee which has deliberated on 7.5.2010 and which in fact wanted more particulars from the State Government and after compliance, has considered threadbare again on 20.5.2010 before recommending issuance of FC subject to various conditions to be fulfilled. Even thereafter it took nearly two years for issuance of FC since the clarifications on various implications were further sought by various authorities and it was only after thorough satisfaction of all authorities concerned the FC came to be issued. The 3rd respondent while denying

the apprehensions raised by the appellants about the conditions stipulated in the FC stated that the conditions have been imposed applying the precautionary principle and after thorough deliberations on environmental aspects and taking them into consideration and concern of regulatory authorities who allow developmental projects by stipulating additional mitigating measures so that the objective of sustainable development with which economic and social development can be achieved, is fulfilled concurrently. The FC has been granted only after clearance of EC and clearance from wildlife angle after the careful consideration by the concerned impact assessment and wildlife divisions in the MoEF. River basin studies and downstream study have been thoroughly verified by the EAC, MoEF as it was held in detail in the judgment of the NGT while dealing with the issue of validity of EC. The further study by the IIT, Roorkee which has been stipulated in the conditions during the construction of the project and further studies are to continue concurrently and mitigation measures are to be complied with.

41. Regarding the violation of Wildlife (Protection) Act, 1972 it does not come under the purview and jurisdiction of NGT and in this regard the judgment of the NGT dated 24.9.2013 has been referred to in respect of the case relating to Punjab and Haryana directing the Registry of NGT to retransfer the case of Punjab and Haryana for appropriate orders. The 3rd respondent has also stated that there is no violation and care has been taken regarding the on going project and therefore the conditions stipulated by the Hon'ble Supreme Court in *LAFARGE UMIAM MINING PVT. LTD. v. UNION OF INDIA*, (2011) 7 SCC 338 have been followed. It is also stated that the NBWL in fact considered in detail the proposal for the project from the said angle in the meetings held on 14.10.2011 and 13.12.2011 in which all the issues raised in the appeal as well as in the EC which includes SBWL, NBWL, Demwe Sewak Tidding, Parashuram Kund, Medicinal Plants were dealt. The legal grounds raised by the appellants are denied by the 3rd respondent project proponent.

42. It is the contention of Mr. Ritwick Dutta, learned counsel appearing for the appellants that the issue involved in this case is limited only to the subject matter of Forest Clearance and it is a merit review as opposed to judicial review and the appellants have challenged the legal validity as well as the correctness of the orders passed under the Forest (Conservation) Act, 1980. He has also referred to the judgment of the Hon'ble Supreme Court in *BOMBAY DYEING & MFG. 98 CO. LTD. v. BOMBAY ENVIRONMENTGAL ACTION GROUP*, (2006) 3 SCC 434 wherein the Hon'ble Supreme Court has held that in the matter relating to the environmental challenges the superior court has to consider on the factual matrix as to whether the action challenged is a legislative action or an executive action. If it is an executive action it must be decided as to whether the discretion conferred upon the statutory authority has been properly exercised and as to whether the discretion is in consonance with the principles of the act. It is also to be considered as to whether the relevant factors which are affecting public interest and the principle of sustainable development which forms part of the constitutional law, have been taken into consideration and whether the statutory principles have been followed by complying with substantial processes and procedures under law.

43. The learned counsel has insisted that the Forest Clearance has to be quashed for failure to discharge the statutory obligation under the provisions of the FC Act as well as the National Forest Policy which mandates that diversion of forest must be subject to careful examination by specialists from the point of social and environmental costs. According to the learned counsel on the factual matrix no such examination was undertaken by the FAC. The learned counsel would assail the validity of FC and violation of principle of Public Trust Doctrine on the basis that the impugned decision violates the principle related to preservation of natural resources and in this regard he has referred to various judgments of the Hon'ble Supreme Court including *M.C. MEHTA v. KAMALNATH*, (1997) 1 SCC 388, *FOMENTO RESORTS & HOTELS LTD v. MINGUEL MARTINS*, (2009) 3 SCC 571 apart from *T.N GODAVARMAN THIRUMULPAD v. UNION OF INDIA*, (2012) 2 SC 2 and (2006) 1 SCC 1. Reliance is also placed on the judgment in *NATURAL RESOURCE ALLOCATION* IN RE, SPECIAL REFERENCE NO. 1 OF 2012, (2012) 10 SCC 1. Further, the learned counsel would rely upon the judgment in *CENTRE FOR PUBLIC INTEREST LITIGATION v. UNION OF INDIA*, (2012) 3 SCC 1. He also would rely upon the judgment in *CENTRE FOR ENVIRONMENTAL LAW v. UNION OF INDIA*, (2013) 8 SCC 234. Therefore, according to the learned counsel there is a mutual public trust doctrine in respect of which law is well settled by a series of judgments of the Hon'ble Apex Court.

44. The learned counsel also challenged the FC on the basis of abuse of discretion, non application of mind and without due care and caution and without responsibility in the exercise of discretion. According to the learned counsel, the FAC and MoEF have abused the discretionary power while the Minister exercised discretion when the statutory law does not confer any such power while considering grant of wildlife clearance. He also challenges the validity of the impugned order on the ground of non consideration of relevant facts relying upon the judgment in ***S****ACHIDANAND PANDEY v. STATE OF W.B*, (1987) 2 SCC 295. The learned counsel also submits that the Minister for Environment and Forest has acted beyond the jurisdiction in overruling the majority opinion of the Members of the Standing Committee of NBWL under Wildlife (Protection) Act, 1972 which does not confer such power to the Minister. On the factual matrix of the case, it is the submission of the learned counsel that the impugned FC is liable to be quashed for violation and non consideration of natural resources and also not following the judgment of the Supreme Court in *LAFARGE UMIUM PVT LTD v. UNION OF INDIA*, (2011) 7 SCC 338. As per the National Forest Policy, 1988, the forests of Arunachal Pradesh must be safeguarded and there is a need for careful studies by the Experts when forest diversion is proposed. The MoEF as well as the State Government failed to show as to how the diversion of 1415.92 ha of forest land is in consonance with the National Forest Policy, 1988. The learned counsel also would submit that the FAC did not undertake any careful examination of the forest diversion proposal. The learned counsel relied upon the judgment in *ZENIT MATAPLAST P. LTD. v. STATE OF MAHARASHTRA*, (2009) 10 SCC 388 and the *STATE OF TAMIL NADU v. SHYAM SUNDER*, (2011) 8 SCC 737.

45. Ecological sensitivity of Arunachal Pradesh has been ignored by FAC and MoEF and the project was approved in a routine manner which according to the learned counsel is arbitrary. In this regard the learned counsel would rely upon another project regarding diversion of 1165.66 ha of forest land for 3097 MW Etalin HEP in the Dibang Valley District of Arunachal Pradesh wherein the MoEF & CC has insisted the impact and ecological sensitivity of the State of Arunachal Pradesh. He would submit that on the facts it is clear that the FAC and MoEF have approved the project in a mechanical and casual manner. There was no document to show that the project is cleared by application of mind. The attitude of the authorities in considering the file as a mere paper work is clear from the proceedings and they failed to consider the object of law laid down as principles by the Hon'ble Supreme Court in *MUNICIPAL CORPORATION OF DELHI v. ASSOCIATION OF VICTIMS OF UPHAAR TRAGEDY*, (2013) 1 SCC (L&S) 305. The learned counsel submits that there was no proper approval obtained from the Standing Committee of NBWL. The project has been agreed only by few members of the Standing Committee and 8 out of 12 disapproved the project while the remaining members kept silent. There is nothing to presume that NBWL is an Advisory Body as per the scheme of Wildlife Act, 1972. Therefore, the approval ought to have been obtained from the Standing Committee. In view of the order of the Hon'ble Supreme Court in *GOA FOUNDATION v. UNION OF INDIA* (W.P.460 of 2005 dated 4.12.2006) wherein there was a direction to MoEF to refer to the Standing Committee of NBWL wherever the ESZ is involved and in fact based on such direction the MoEF has issued guidelines on 15.3.2011. To substantiate his contention that the Standing Committee of NBWL is not an Advisory Body but it is a decision making authority to take collective decision, the learned counsel has relied upon the order of NGT in *AMIT KUMAR v. UNION OF INDIA* (O.A. No. 138 of 2013 - 2013 CC Online NGT 757) wherein the NGT has referred to the word 'order' and not 'recommendation'. Therefore, the Standing Committee of NBWL is a distinct and separate legal entity and not a part of MoEF.

46. The learned counsel has also contended that the proposal itself is a concealment of material information particularly relating to endangered species of flora and fauna and has failed to explain the various species including Tigers and Leopards which are found even at the elevation of 1500 m. While controverting the contentions of the learned counsel appearing for the State of Arunachal Pradesh that the Wildlife (Protection) Act, 1972 is not within the jurisdiction of this Tribunal, it is his submission that the subject matter is the Eco Sensitive Zone around National Park and Sanctuaries which is under the Environment (Protection) Act, 1986 and consideration of project within 10 KM is in view of the order of the Hon'ble Supreme Court in *GOA FOUNDATION v. UNION OF INDIA* (W.P. 460 of 2004). It is his further submission that the wildlife clearance is referred to while considering the Forest Clearance Stage I for 1750 MW Demwe Lower Project. The conditions of wildlife clearance

have been reproduced verbatim in the Forest Clearance Stage I and therefore on the factual matrix of this case Wildlife Clearance is an integral part of the process based on which Forest Clearance was granted. While it is true that the Wildlife (Protection) Act, 1972 is not within the purview of NGT and not included in the Schedule of NGT Act, the issue is relating to Eco Sensitive Zone around the Protected Area and hence it comes under the purview of the NGT as per the Act. The further contention of the learned counsel for the appellants is that the objection raised by the learned counsel for the State of Arunachal Pradesh that Wildlife Clearance was in compliance of conditions of EC and it cannot be raised in this appeal relating to FC is not correct and in fact while deciding about EC the Tribunal in the judgment dated 13.1.2015 has not chosen to deal with the Forest Clearance and the said judgment was upheld by the Hon'ble Supreme Court. He has also referred to various instances wherein FAC itself has referred the project to the Standing Committee of NBWL prior to the grant of Stage I Forest Clearance. Therefore, according to the learned counsel the examination by NBWL Standing is forming part of the decision making process based on which the Forest Clearance was granted and therefore it is an integral part of the process.

47. Per contra, Mr. A.D.N Rao, learned counsel appearing for the State of Arunachal Pradesh, the 1st respondent herein has referred to various notes submitted in respect of various issues like Parashuram Kund, FRA, Wildlife aspect, application of mind while granting Forest Clearance, NBWL Clearance granted by MoEF & CC, permission from Chief Wildlife Warden, Assam in respect of fluctuations in Dibru Saikhowa National Park and Cumulative Impact Assessment Study. The learned counsel submits that as against the EC granted by MoEF & CC dated 12.2.2010 in the appeal filed before this Tribunal the following issues were considered and decided viz., impact on Parashuram Kund, Nimke, downstream impact on Dibru Saikhowa National Park, IBA site, Chapories/Beels/fisheries Wild Buffalos, Hog Deer, Tiger, and Bengal Floricans etc. The said appeal against EC was also in relation to cumulative impact of multiple projects in the Lohit basin, cumulative impact of large influx of labour, impact of NBWL clearance and in respect of all those issues the NGT has already dealt in detail in the judgment dated 13.1.2015 and the said judgment has been confirmed by the Hon'ble Supreme Court in the order dated 18.7.2016 and in as much as the issue has attained finality, the same cannot be permitted to be reagitated. The learned counsel has also referred to the portion of the judgment of NGT in Appeal No. 8 of 2011 dated 13.1.2015 wherein the Tribunal has dealt with two aspects of preserving Parashuram Kund and proper muck disposal. Likewise, the implementation of Forest Rights Act also. It is the case of the learned counsel that the issue relating to diversion of forest land has been raised in all 22 Grama Sabhas 10 in Lohit District and 12 in Anjaw District adhering to the procedure and provisions of Scheduled Tribes and other Forest Dwellers (Recognition of Forests Rights) Act, 2006. Further, it is his case that in Lohit District, FRA has been implemented sub-division wise in 10 Grama Sabhas viz. Khawmai/Sambrow, Langmeh (L/B Lohit), Langmeh (L/B Lang), Langjong, Pram/Pramaun and Kandey Area in Mawai - I Grama Panchayat of Namsai Sub Division and Pumla, Dumla and Tayluliang in Duraliang Gram Panchayat of Tezu sub division. Likewise, in Anjaw District the FRA has been implemented in 12 Gram Sabhas and in addition to that public notices were issued calling Gram Sabha meeting providing three months time. In addition to that newspaper publications were made in Eastern Mail (English) and Digaru and Miju (Local Language) in the entire Districts of Lohit and Anjaw. It is the case of the learned counsel that the entire issue relating to FRA has been discussed including location of Parshuram Kund and the Gram Sabhas have resolved along with beneficiaries' names with the consent of people towards the diversion of land for the project. Therefore, it is his submission that the argument that there is violation of FRA is unfounded.

48. In so far as it relates to the issue of Wildlife aspect in respect of Demwe Lower (1750 MW) HEP the learned counsel after referring to the submissions already made on 21.3.2017, controverted the allegation made that the issue relating to Wildlife was not properly deliberated by the State Government and MoEF and submitted that NBWL Standing Committee has scrutinised the project in detail and granted the Wildlife Clearance to the project. Keeping in view the proximity of Kamlang Wildlife Sanctuary the State Board for Wildlife forwarded the recommendations to the NBWL Standing Committee after examination of wildlife aspects in detail. The mitigation measures and management plans suggested in Wildlife Management Plan in EAC approved by MoEF, form part of

EC and Wildlife Clearance was granted by NBWL after site visit of Dr. Asad Rehmani and Mr Pratap Singh. It is further stated that the FAC has directed to constitute a three member committee and in furtherance of FAC direction, the State Government has constituted a three member committee to study the impact of the project on the wildlife and after site visit and considering various reports, a comprehensive report on the impact of project activities on the wildlife of the project area was submitted by the Government of Arunachal Pradesh to MoEF & CC with various recommendations and additional mitigative measures and after examination and having satisfied with the same, the MoEF & CC has granted Stage II Forest Clearance for the project in 2013.

49. In respect of the allegation regarding the presence of RET species in the project area and errors in listing of scientific names of species by the DFO, it is the submission of the learned counsel that the working plan which is applicable for the area gives the indicative list of wildlife for the entire Lohit Forest Division spanning over an area of 2401.97 sq.km and not restricted to the forest area subjected to diversion which is just 1415.92 ha (14.15 sq.km). During the site visit of Addl. PCCF, Regional Office of MoEF & CC the three member committee of DFOs has explained and shown the area and the existence of RET species in the proposed diversion area viz., 1415.90 ha is not found and therefore the remarks of the Principal Secretary, Department of Environment & Forests, Government of Arunachal Pradesh cannot be found fault with and the references to some of the species while referring to a vast area of 2401.97 sq.km of Rohit Forest Division there are chances of some typographical errors while compiling the working plan and more errors pointed out by the appellants have crept in, in the report prepared by the three member committee which was submitted as part of compliance of in-principle Forest Clearance of the project. The learned counsel has also referred to some of the species name which are wrongly printed according to him.

50. While dealing with the apprehension on presence of Tigers in the project component area, Mr. A.D.N. Rao submits that the appellants have misrepresented the definition of the project area and therefore their contention is wrong The project area as per the Terms of Reference granted by MoEF & CC in the letter dated 25.3.2008 includes catchment area, submergence area and the project area will be acquired for various project appurtenances area, area within 10 KM from the main project component viz., Dam, Power House etc. However, as per the FC Act and the Rules, the project area in respect of forest proposal is the area of forest land proposed for diversion. The provisions of the Act and the Rules make it clear that in the EIA report the project area refers to the area to be acquired for various project appurtenances i.e., project components area and area within 10 KM from the main project component. However, the term 'project area' mentioned in the forest proposal is in relation to the actual diversion of forest land viz., 1415.92 ha (14.15 sq.km). Based on the primary survey no RET species were found in the project component area. However, the presence of RET species in Influence Zone i.e., 10 KM radius of the project component area based on secondary literature due to proximity of Kamlang Wildlife Sanctuary and in catchment area, have been mentioned in the EIA report. Therefore, according to the learned counsel, it is the misrepresentation by the appellants in respect of the term 'project area' as defined in the EIA/EMP study.

51. The learned counsel has also mentioned about apprehension raised by the appellants regarding the presence of Hoolock Gibbon in Project Component Area which is unfounded based on the above said logical conclusion. While referring to the issue relating to application of mind in granting Forest Clearance, the learned counsel has referred to the submission made on 21.3.2017. Highlighting the issues in a chronology he has again stated that the proposal was reviewed at various stages spanning over a period of more than 4 years and the Forest Clearance was granted after the clearance from the NBWL Standing Committee. Therefore, it is not proper to say that the FC was granted without detailed scrutiny and without the application of mind. He has also referred to the application made by the 3rd respondent in October, 2008 as to how the proposal was returned by the DFO by raising query which was answered in March, 2009 and the DFO carried out inspection and submitted his findings in Part II to the Conservator of Forest in August, 2009 and that was followed by various stages and ultimately the FCA in the meeting held on 7.5.2010 wanted further details which were submitted on 20.5.2010. The FAC has recommended the case after obtaining clarification and on considering the inspection report. He has also submitted that the very fact that as per the directions

of FAC the 3rd respondent has submitted that about 37,108 no. of trees would be retained and the forest area required for the temporary use will be restored and handed over back to the State Forest Department makes it clear that all aspects have been considered. Therefore there is total application of mind by these authorities at every stage. He has also referred to the post appraisal by FAC as has been explained by us in the earlier portion of the judgment. It is his case that the NBWL sub committee comprising of Dr. Asad Rahmani and Mr. Pratap Singh visited the project site and downstream areas and both the members did not agree with each others' view and submitted separate reports before the Standing Committee of NBWL. The Government of Arunachal Pradesh submitted detailed response to the views expressed by Dr. Asad Rehmani in his report submitted before the NBWL Standing Committee. The Standing Committee of NBWL on 13.12.2011 has considered reports of Dr. Asad Rehmani and Dr. Pratap Singh along with the detailed response of the State Government considering the impacts on Dibru - Saikhowa National Park and Biosphere Reserve, Chapories of Lohit River etc including Parashuram Kund. The endorsements made by the non official members on the report of Dr. Asad Rehmani were duly recorded in the minutes of the meeting dated 13.12.2011 and the PCCF, Government of Arunachal Pradesh has given point wise clarification to the observations raised by the non official members. The learned counsel submitted that after detailed examination of the view expressed by them and after satisfied with the mitigation measures the clearance from the Standing Committee of NBWL was granted to the project by giving a speaking order dated 11.2.2012 and this was followed by Stage I Clearance by detailed consideration at every stage. According to the learned counsel more than four independent site inspections were undertaken by various officers of statutory bodies of the State Government and MoEF & CC viz., DFO, CCF, PCCF, three member committee of DFO's and Expert Members of NBWL. Therefore, the contentions of the appellants as if there has been concealment of information and deliberate lack of application of mind, giving of misleading information are all incorrect.

52. In so far as it relates to the clearance from the NBWL Standing Committee, it is his contention that as per the provisions of Wildlife (Protection) Act, 1972 prior recommendations of State Board of Wildlife and Standing Committee of National Board for Wildlife are required only for such proposals requiring diversion of land from Wildlife Sanctuaries/National Parks. Since Demwe Lower HEP does not involve any diversion of land from Wildlife Sanctuary/National Park, Wildlife Clearance is not required under the Wild Life (Protection) Act, 1972. However, it is based on the direction of the Hon'ble Supreme Court in *GOA FOUNDATION* case which inter-alia stipulated that till Eco Sensitive Zones are declared by the concerned States around the Protected Areas, all cases where environmental clearances are proposed for the activities within 10 KM zone, be referred to Standing Committee of NBWL for consideration of proposals under ESZ angle. Even before granting such clearance, on receipt of the proposal the Chief Wildlife Warden has visited the project site and examined the proposal in detail and recommended to the Principal Secretary for consideration by the NBWL Standing Committee in June, 2011. The NBWL Standing Committee has considered the proposal on 27.5.2011 and forwarded its recommendations to the NBWL Standing Committee after examining inter alia wildlife aspects in detail and after due deliberations on various aspects. Subsequently, the NBWL Standing Committee in its meeting on 14.10.2011 has considered the project wherein non official members raised concerns on downstream impacts due to the project like flow fluctuations during the peak operations of the project, impact on IBA/Chapories, impact on Dibru-Saikowa National Park etc. In response to the said observations of the non official members, PCCF, Government of Arunachal Pradesh informed that impact assessment study had been done by the State Wildlife Department on the downstream stretch of river Lohit and it was found that there would be minimal impact on wildlife fauna in the downstream areas. After detailed consideration of both official and non official members to get a clear picture of the possible impact on the aquatic and other fauna downstream of Lohit river, again the committee decided to constitute a team of Dr. Asad Rahmani and Dr. Pratap Singh who visited the project site and downstream areas and both of them did not agree with the view of other. The State Government has also submitted a detailed response to the views expressed by Dr. Asad Rahmani and Mr. Pratap Singh before NBWL Standing Committee which in its meeting held on 13.12.2011, has considered the site visit reports with all relevant factors and the Chairperson of the Standing Committee who is the Minister, said that it

will look into the comments and views of the committee and take appropriate decision. It was after taking all these aspects into consideration the MoEF & CC has granted Wildlife Clearance to the project on 11.2.2012. According to the learned counsel, the views have been properly recorded in the minutes of the meeting dated 13.12.2011 and only after considering the comments of the non official members the project was granted clearance by the NBWL Standing Committee on 11.2.2012. According to the learned counsel all these issues are forming part of EC which has been upheld by the NGT and confirmed by the Hon'ble Supreme Court.

53. While dealing with the next issue of permission from the Chief Wildlife Warden, Assam in respect of flow fluctuations in Dibru-Saikhowa National Park, the learned counsel referred to an earlier submission on behalf of the State Government dated 21.3.2017 and reiterated that Lohit river traverses a distance of more than 70 KM along the river course downstream of Demwe Lower HE Project and the project lies entirely within the State of Arunachal Pradesh. As the confluence point of Lohit river is located in Assam 105 KM downstream, the learned counsel has also referred to the WAPCOS's report in this regard. The learned counsel has also referred to the submission made by MoEF & CC in its counter affidavit stating that the aspect relating to impact on Dubru-Saikhowa National Park was adequately considered. Therefore, it is the contention of the learned counsel for the 1st respondent that the contention of the appellants that impact on Dibru-Saikhowa National Park was not considered, is misconceived. The learned counsel has also referred to the issue relating to Cumulative Impact Assessment by referring to the earlier submission made on 21.3.2017 and would submit that the assessment study was made in the Lohit river basin in March, 2009 by entrusting it to WAPCOS, the Government of India Undertaking and was considered by the EAC in August, 2016 which includes the study on effect of Peaking Power Generation in Lower Siang HEP, Demwe Lower HEP and Dibang Multipurpose HEP on Dibru-Saikhowa National Park and recommended the approval to Lohit Basin Report and that was subsequently approved by the MoEF & CC on 13.10.2016.

54. While dealing the arguments of the learned counsel appearing for the appellants regarding the National Forest Policy, 1988, it is the case of the learned counsel that the Forest Clearance was in conformity with the guidelines of the National Forest Policy and there is no violation of any of the directions given by the Hon'ble Supreme Court in *LAFARGE UMIAM MINING PVT. LTD v. UNION OF INDIA*, (2011) 7 SCC 338 wherein the Supreme Court has directed that the principles/ guidelines prescribed in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 and Forest (Conservation) Act, 1980. The learned counsel has also referred to the direction of the Supreme Court in *GOA FOUNDATION* case wherein the Supreme Court has directed that all cases where EC were granted and where activities are within 10 KM be referred to the Standing Committee of NBWL. Therefore, according to the learned counsel in the absence of declaration of Eco sensitive Zones under the Environment (Protection) Act, 1986 the requirement for clearance of the NBWL Standing Committee in cases where EC has already been granted and activities are within 10 KM of Protected Areas originated in pursuant to the said direction of the Hon'ble Supreme court which has been followed in this case. In the instant case, the project does not involve any diversion of land from Protected Area i.e., Kamlang Wildlife Sanctuary. However, in the absence of declaration of ESZ around Kamlang Wildlife Sanctuary and considering the direction of the Supreme Court dated 4.12.2006, an application was submitted for consideration by the NBWL Standing Committee from ESZ angle. Therefore, according to the learned counsel complete procedure has been followed and it was only after detailed examination of the project clearance was granted by the NBWL Standing Committee. According to the learned counsel, on a perusal of the Wildlife (Protection) Act, 1972 it is evident that the NBWL Standing Committee is an Advisory Body to the MoEF & CC and in as much as the Wildlife (Protection) Act, 1972 is not within Schedule I of the NGT Act, the Tribunal has no jurisdiction to decide about this issue. It is reiterated by the learned counsel that the Hon'ble Supreme Court has confirmed the judgment of the NGT dated 13.1.2015 upholding the EC on merits.

55. Mrs. Sumathi, learned counsel appearing for the respondent Nos. 2, 4 and 5 including MoEF & CC while reiterating the facts of the case, has submitted that the Inspection Report of the Regional Office

of MoEF & CC, Shillong dated 26.3.2010 covers all aspects viz., component wise break up of the total forest land requirement, justification for diversion of forest land, legal status of forest land, details of vegetation and wildlife aspects, compensatory afforestation scheme, catchment area treatment plan, reclamation plan, Parashuram Kund, Kamlang Wildlife Sanctuary, Cost Benefit Ratio etc. It is stated that the government has taken precautionary measures for protecting Parasuram Kund and its surroundings and also taken note of adequate protection measures to be taken and has made financial provision for the local area development project by providing Rs. 10 Crores and for preservation and maintenance of Parashuram Kund. It is the contention of the learned counsel that the Chief Conservator of Forests, Regional Office, Shillong has detailed various alternative routes of alignment and ultimately concluded that the present route for diversion is most appropriate and the said diversion of forest land has been considered at all levels of the State Forest Department which is essential and a possible milestone in the cascade development on the river Lohit and development of power sector in the State which in turn shall provide power to meet the national requirement. The learned counsel has submitted that the detailed EIA and EMP have been prepared by CISMHE, University of Delhi, EMP which includes Biodiversity Conservation Plan, comprising of Forest Protection Plan and Wildlife Conservation, CAT Plan, Fisheries Development Plan, Public Health Delivery System, provision of free fuel along with energy conservation measures, Muck Management Plan, restoration of construction areas, landscaping and creating of green belt around the reservoir. A budgetary allocation of Rs. 305.147 Crores has been made for the Environment Management Plan and as per EC, MoEF & CC has stipulated that as the Kamlang Wildlife Sanctuary is located within 10 KM distance from the project and therefore clearance from the NBWL must be obtained. Accordingly, the proposal was considered in the NBWL Standing Committee meeting entrusting the work to two members of the committee to inspect the site who made separate reports, one rejecting the proposal and another supporting the proposal and after considering both, the decision was taken by the Standing Committee of the National Board for Wildlife in accordance with the powers under Section 5-C of the Wildlife (Protection) Act, 1972. Ultimately, Minister of State (Independent Charge) Environment and Forests after discussing in the 24th meeting of the Standing Committee of NBWL and after discussing with the Ministry officials accorded recommendation for the project. After the complaints were received from Mr. Akhil Gogoi and Shri Khapriso Kaong, Minister line Arunachal Pradesh they were forwarded to the NBWL Standing Committee on 14.6.2011 and were considered and it was after considering the recommendation of the NBWL Standing Committee and the report of the State Government Stage I approval was granted by the Central Government on 1.3.2012 for diversion which was followed by Stage II approval on 3.5.2013 after the compliance of conditions laid down in Stage I approval. The learned counsel has submitted that the local people are happy and supporting the project since it encourages industrialisation and generation of employment in the area etc. The project is providing Hydro Electricity not only for the State but also for the entire country. The learned counsel has also referred to various Review Applications filed by the appellants herein against the judgment in Appeal No. 8 of 2011 which came to be dismissed. The learned counsel has also referred to the observation in the judgment of the Hon'ble Supreme Court in *NARMADA BACHAO ANDOLAN v. UNION OF INDIA* where the Hon'ble Supreme Court has explained about the sustainable development concept and therefore it is the submission of the learned counsel that the appeal deserves to be dismissed.

56. Mr. Tarun Johri, learned counsel appearing for the 3rd respondent while contending that the issues which are already decided while granting EC which was upheld by the Tribunal and ultimately confirmed by the Hon'ble Supreme Court, shall not be permitted to be raised again in this appeal even if they happened to be overlapping issues in the Forest Clearance. The learned counsel has reiterated the submission of res judicata regarding impact on Parashuram Kund and Nimkey, downstream impact due to peak operation of project, cumulative impact of multiple projects in Lohit basin, post clearance study, cumulative impact of large influx of labour and impact on KWLS etc. The learned counsel has also referred to the chronological events of Forest Clearance starting from Part - I on 8.10.2008 and subsequent verification by DFO and particularly submits that in Part II Forest Proposal there is a list of common animals and birds found in the project area and stated that the list is indicative list of wildlife for the entire Lohit Forest Division spanning over an area of

2401.97 sq.km and not forest area covering diversion viz., 1415.92 ha. He has also referred to the term 'project area' in respect of forest proposal as per the provisions of the Forest (Conservation) Act, 1980 and the rules made thereunder. The learned counsel has taken us to part III of Site Inspection made by DFO followed by filing of Part IV by Nodal Officer, PCCF Office and subsequent site inspection particularly referring to certain extracts from the Site Inspection of the Regional Office of MoEF & CC, would submit that excluding the river bed, the forest land under permanent diversion is 615.14 ha and the proposal for diversion was considered necessary at all levels of Forest Department and Government of Arunachal Pradesh apart from the possible milestone and the cascading effect on development on the river Lohit and development of power sector in the State and the national requirement as recommended by the Regional Chief Conservator of Forest. As per the EC granted MoEF & CC has stipulated that the Kamlang Wildlife Sanctuary is at a distance of 10 KM from the project and hence clearance from the NBWL is essential. In the light of the details and the information considered by NBWL, the contention of the learned counsel appearing for the appellants that RET species were not referred, has no meaning. The further contention of the learned counsel is that the point raised by the appellants about the cost benefit analysis as inadequate, as totally baseless and misleading. He has referred to FAC meeting held on 7.5.2010 and subsequent compliances made by the 3rd respondent to IG, Forest, MoEF & CC followed by the 2nd meeting of FAC on 20.5.2010 in which various aspects including reduction in number of trees to be cut, maintenance of minimum flow and Fisheries Management Plan, Wildlife Management Plan, Safeguards for the Influx Management have been considered in detail and having satisfied with the site inspection report and the clarifications submitted by the 3rd respondent, the State Government recommended the project for Forest Clearance subject to various conditions. The learned counsel has also explained about the details of the subsequent compliance of conditions of the project regarding the layout of the colony area. Further, to the effect that the remaining area 36 ha having purposeful construction density would not be used for construction activities and would be kept as greenbelt which indicates the keen interest shown by all the stakeholders regarding environment. He has also referred to the 3rd meeting of the FAC II dated 10.3.2011 wherein objections and representations of Mr. Akhil Gogoi have been considered in respect of the impact on various issues and desired that the State Government should make further enquiry and submit to the NBWL Standing Committee. Accordingly the State Government has made enquiry along with the NBWL Standing Committee and therefore even post recommendation enquiry has been gone into detail and therefore it cannot be said that there is non application of mind in considering the proposal. This was followed by the Standing Committee of NBWL which has made appraisal regarding the project on 25.11.2011. Considering the objections and representations and having satisfied the NBWL Standing Committee has concluded that no adverse impact was foreseen by the proposed project during the construction activity and the NBWL has recommended the project and verified the provisions for Wildlife Management Plan and EMP report. Therefore the concern raised by Mr. Akhil Gogoi has been addressed by the Expert Committee. The learned counsel has referred to the operative portion of the extract of the NBWL Standing Committee minutes which states that the proposed construction of 1750 MW Demwe Lower HEP is located outside the boundaries of Kamlang Wildlife Sanctuary. Apart from that a number of streams of the river Lohit report and observations made regarding the representation made by Mr. Akhil Gogoi to contend that the NBWL Standing Committee has also considered the representation. He also submits that in addition to the above, as per the direction of the MoEF & CC the State Government has also considered the complaint of Mr. Akhil Gogoi. When the matter was referred for appraisal by the NBWL Standing Committee again on 14.10.2011 the project was considered when non official members raised concern on downstream impact. To have clear picture again, the NBWL Standing Committee itself has nominated two of its Members consisting of Dr. Asad Rahmani and Shri. Pratap Singh to make a first hand assessment and the sub committee visited the project site and different reports were submitted by the sub committee members. The differing reports were considered by the Standing Committee and the Chairperson of the committee thereafter has taken appropriate decision, as it is seen in the minutes of the meeting dated 13.12.2011 of the Standing Committee of NBWL. The MoEF & CC has passed speaking order on 11.2.2012 stating that the Chairperson viz., the Minister has considered and recommended on

behalf of the NBWL Standing Committee. In accordance with the relevant orders of the Supreme Court clearance of NBWL was done for the project subject to certain additional measures.

57. The learned counsel would submit that the proceedings of the MoEF & CC dated 11.2.2012 is a speaking order, assigning the reason and no fault can be found in it. Subsequently Stage I clearance was granted on 1.3.2012 followed by stage II clearance on 3.5.2013. The learned counsel has referred to the various issues raised at length and considered between Stage I and Stage II clearances including compliance report made by the State Government. The Forest Clearance granted by the State of Arunachal Pradesh dated 26.7.2013 is a consequence of the decision of granting Stage II clearance by MoEF & CC and therefore according to the learned counsel the entire happenings of events which are adequately recorded, show that there is total application of mind by all the authorities concerned. In so far as certain mistakes found in listing the names of species, it is stated that when compared to such large extent of Lohit Forest Division, the forest diversion is only a fraction viz., 14.15 sq.km. or 1415 ha and it is just 0.60 % of the forest area of the entire Lohit Forest Division and therefore the list of fauna described relates to the entire Lohit Division Working Plan. The learned counsel has referred to the contents of reply filed by the 3rd respondent and other respondents including Government of Arunachal Pradesh. While contending that the issue on Parashuram Kund and cost benefit analysis are all the subject matters which were already dealt while deciding about the validity of EC. He reiterates the implementation of FRA as submitted by the 1st respondent State of Arunachal Pradesh and also regarding the consideration of issue by the 22 member Grama Sabhas in Lohit District and adjoining District. He also highlighted application of mind by FAC. That apart, while referring to the conditions stipulated in FC, it is stated that the concern of the appellants regarding declaration of reservoir area as Reserve Forest under the Assam Forest Regulation and Indian Forest Act has been taken care of by the State Government. He also reiterates the submission made by the State Government dated 21.3.2017 on the issue of granting permission by the Chief Wildlife Warden, Assam in respect of downstream impacts in Dibru-Saikhowa National Park as contended by the learned counsel Mr. A.D.N. Rao pointing out the distance of 70 KM along with river course downstream within the State of Assam. It is also his contention that in fact Dibru Saikhowa National Park was considered in detail by this Tribunal in Appeal No. 8 of 2011 while deciding about the validity of EC by referring to Para 93 of the judgment and therefore it is not open to the appellants to raise the issue once again.

58. In so far as it relates to the allegation of violation of the National Forest Policy, it is stated that the FC itself is granted as per National Forest Policy, 1988 and there was no violation and adequate care is taken for conservation/protection of environment in respect of ongoing projects as held by the Hon'ble Apex Court in *LAFARGE UMIAM MINING* case. It is also stated that even under the EIA Notification, 2006 the EAC has comprehensively dealt with environmental aspects including dam safety, downstream impact, minimum environmental flow, protection measures for Parashuram Kund, geological and seismicity aspects, sedimentation and silt flushing, Kamlang Wildlife Sanctuary etc. It is the case of the learned counsel that the NBWL Standing Committee has considered the project from ESZ angle based on the judgment of the Supreme Court in *GOA FOUNDATION* case and at every level careful scrutiny has been made by various authorities as per the National Forest Policy, 1988 and it is not correct to state that a lethargic attitude has been shown by the authorities while granting the impugned FC. The learned counsel also made a specific reference about the functions of NBWL Standing Committee and submitted that a reference to the direction of the Hon'ble Supreme Court in *GOA FOUNDATION* case. A reference is made in respect of the powers of the NBWL Standing Committee which according to the learned counsel is to advice the Central Government and therefore the performance is that of an advisory nature for regulating the activities in the area adjoining to Protected Areas. He has also referred to some of the aspects of the guidelines framed to contend that the NBWL Standing Committee is only an advisory body of the Central Government and therefore the advice of the NBWL Standing Committee can be overruled by MoEF & CC. He has referred to various meetings of the NBWL Standing Committee to contend that every one of the issues has been considered by the Standing Committee. Finally, the learned counsel has referred to the jurisdiction of NGT in dealing with the provisions of the Wildlife (Protection) Act, 1972 and submitted that in as much as it does not form part of any one of the enactments enumerated under

Schedule I of the NGT Act, the Tribunal has no jurisdiction to decide the validity or otherwise of a decision taken under the Wildlife (Protection) Act, 1972, particularly the decision taken by the NBWL Standing Committee which is under the Wildlife (Protection) Act, 1972. The learned counsel has also referred to a decision of the Principal Bench in Appeal No. 10 of 2013 and Appeal No. 21 of 2013 wherein in an issue relating to Punjab and Haryana it was held that the Wildlife (Protection) Act, 1972 does not come within the purview of the NGT Act. Therefore, the appellants cannot challenge the NBWL clearance in the rejoinder, while the present appeal is relating to only challenging the FC. Therefore, Mr. Tarun Johri submits that the appeal has no merits and liable to be dismissed.

DISCUSSION AND CONCLUSION:

59. After hearing the learned counsel appearing for the parties elaborately and having referred to the volumes of documents filed including various reports and also by referring to the provisions of various enactments and making our anxious thoughts involved in this case, the broad issue to be decided is as to whether the FC granted for Demwe Lower Hydroelectric Project (HEP) (1750 MW) in respect of diversion of 1415.92 ha of forest land in Stage I Clearance dated 1.3.2012 followed by Stage II Clearance dated 3.5.2013 granted by the MoEF & CC and the consequential order of Government of Arunachal Pradesh dated 26.7.2013 granting permission for diversion, is in accordance with law or liable to be set aside on various grounds raised by the appellants.

60. In fact, when the validity of EC was argued before the Principal Bench of NGT in Appeal No. 8 of 2011, the appeal relating to challenge of FC in Appeal No. 92 of 2013 (PB) was also posted along with Appeal No. 8 of 2011 and was heard along with Appeal No. 8 of 2011. However, the appeal relating to EC in Appeal No. 8 of 2011 was taken up separately and judgment was pronounced by the Principal Bench on 13.1.2015. and thereafter the present appeal pertaining to FC in Appeal No. 92 of 2013 (PB) was heard for some time in Delhi and after transfer to the South Zone Bench renumbered as Appeal No. 30 of 2015.

61. The appellants have earlier challenged the EC granted for the project viz., 1750 MW Demwe Lower Hydro Electric Project dated 12.2.2010 by the MoEF viz., 2nd respondent in Appeal No. 8 of 2011. The appellants have raised various issues relating to the presence of one, Mr. Abraham during the scoping stage of EAC while considering the project contending that his presence would vitiate the proceedings of EAC and consequently the EC. Apart from this the appellants have also raised about the scoping under the EIA Notification, 2006 as to whether any decision taken in scoping can be challenged or it should be treated finally. The more relevant aspects of the contention of the appellants herein in the EC proceedings, is relating to the consideration of EAC. The issues are (1) effect of the project on the cultural heritage of Parashuram Kund (2) Appraisal of proceedings done as per EIA Notification, 2006 (3) Delinking of the basin study from the EC and its effect (4) Effect of peaking operations of the project (5) Effect on Biodiversity including the effect on Dibru-Saikhowa National Park (6) Cumulative impact study and (7) Muck disposal and suggested sufficient safeguards. The said seven grounds which form part of Issue No. 2 of Appeal No. 8 of 2011 was discussed in the said judgment and ultimately it was held that sufficient safeguards have been taken for preserving Parashuram Kund and its water flow has been duly considered by EAC by application of mind. The said part of the issue regarding Parashuram Kund was discussed in the said judgment dated 13.1.2015 in paragraphs 81 to 85 which are as follows:

> *81. The first and foremost point in this regard relates to the affect of the project on the cultural heritage of Parasuram Kund. This point can be clubbed with the 7th point in the said category namely "muck disposal" whether suggested sufficient safeguards.*
>
> *82. While speaking about the history of the mountainous and multitribal north-east frontier region called Arunachal Pradesh and its tradition and mythology and while observing that it has a long international border with Bhutan, China and Burma now called Myanmar and also observing that the Tribals of North Eastern States are historically protected, the Hon'ble Apex Court in State of Arunachal Pradesh v. Khudiram Chakma reported in 1994 Supp (1) SCC 615, referring to Parasuram Kund observed as follows:*

"The history of the mountainous and multitribal north-east frontier region which is now known as Arunachal Pradesh ascends for hundreds of years into the mists of tradition and mythology. According to Puranic legend, Rukmini, the daughter of King Bhishmak, was carried away on the eve of her marriage by Lord Krishna himself. The ruins of the fort at Bhalukpung are claimed by the Akas as original home of their ancestor Bhaluka, the grandson of Bana Raja, who was defeated by Lord Krishna at Tezpur (Assamuy). A Kalita King, Ramachandra, driven from his Kingdom in the plains of Assam, fled to the Dafla (now Nishang) foothills and established there his capital of Mayapore, which is identified with the ruins on the Ita hill. A place of great sanctity in the beautiful lower reaches of the Lohit River, the Brahmakund, where Parasuram opened a passage through the hills with a single blow of his mighty axe, still attracts the Hindu pilgrims from all over the country".

83. *Mr. Ritwick Dutta contends that in as much as Parasuram Kund has got an aesthetic value on the religious point of view, while approving any project which is likely to affect its sanctity should be carefully considered while deciding about the effects of such project on the said Kund. According to him this has not been considered as per the requirement. It is not in dispute that during the auspicious days of Makar Sakranti, for a period of 10 days before and after, Hindu devotees visit the Parasuram temple situated nearly 100 ms away from Parasuram Kund and large number of people take sacred bath in Parasuram Kund before climbing up to Parasuram temple and the Hanuman Temple situated adjacent to that. Therefore it is clear that Parasuram Kund is a place in the running water where devotees take their sacred bath before reaching the temple. Admittedly it is not the temple which is affected by the project but even according to the appellant it is the running water called Parasuram Kund which may be affected either by the unregulated flow of water due to the project or by accumulation of muck either during the time when the project construction is on or subsequently. On the other hand it is the contention of the learned Counsel for the project proponent which is also not in the much dispute that Parasuram Kund is located 100 ms along the river from dam site of Demwe Lower HE Project and the temple is located on the Hill on the left Bank river about 100m high from river bed. On a reference to the 31st meeting of the EAC held on 21st and 22nd October, 2009 it is clear that the EAC has taken note of the objection raised to the above said effect and it was ensured from the developer that continuous flow of water will be maintained downstream through a separate diversion channel of 6m dia and during the operation period, continuous water will be released downstream through a separate 40 MW installed unit which shall run 24 hours continuously to release 35 cumecs of water downstream to maintain the needs at Parasuram Kund. It is also informed that during the time of bridge construction by which traffic is regulated heavy machinery was used apart from huge blasting operations and that had no impact on the Kund. It was also informed that regarding the impact of flow variations from 35 cumecs to 1729 cumecs especially during the month of January when the normal flow is stated to be around 400 cumecs, a flow regulation with the project would take place and during the said month of January when Parasuram Kund Mela takes place, 1 unit of 342 MW will be operated as determined.*

84. *It is stated by the project proponent that regarding the tourism at Parasuram Kund even though as on date there is no major infrastructure, provisions are being made for developing infrastructure, sewage/sanitations facilities, marketing complex, shelter, recreation areas with a provision of Rs. 2 Crores. It is seen in the minutes of the said meeting that the amount of Rs. 2 Crores would be enhanced to 10 Crores which was agreed by the developer which amount is directed to be used to ensure that no adverse impact takes place during the construction and operation stage. It was also directed by the EAC that during Mela period the release of water must be regulated. Regarding the sedimentation and silt flushing which includes the muck formation, it was informed that regarding the periodic reservoirs flushing, CEA/CWC has set certain guidelines and that the reservoir operation and all necessary precautions shall be taken and the reservoir be maintained at the MDDL during the period of monsoon. This was again considered by the EAC in its meeting held on 16.11.2009. It was confirmed that a warning system to be installed at Parasuram Kund, that there shall be no damage to the water body;*

Hill-Flora-Fauna, that there shall be no encroachment in the entire temple area, that efforts to beautify and develop the area should be taken up and that the availability of water to the devotees should not be hampered. The EAC has also taken note of the commitment made by the project proponent to implement the conformation of the SPCB. Therefore, it is clear that sufficient safeguard has been taken for preserving Parasuram Kund and its water flow that has been duly considered by the EAC on its application of mind.

85. In the impugned EC also the MoEF while imposing specific conditions has clearly specified in Clause 17 and 18 as follows:

"The project will release normal lean season flow for a period of 7 days during mela (Sankranti) period in Parsuram Kund, in the month of January as per the condition stipulated by the Parashuram Kund Improvement Society.

"The financial allocation for the protection of the Parasuram Kund should be enhanced from Rs. 2 crores to about Rs. 10 crores as suggested by the EAC. The said amount would be utilised for creating appropriate amenities infrastructure, structures and safeguards etc. as decided by Parasuram Kund Improvement Society who are looking after the developmental activities related to the Parasuram Kund".

In such view of the matter we are of the considered view that the said two aspects of preserving Parasuram Kund and proper muck disposal have not only been considered but answered properly and therefore we are of the view that the effect of Demwe Lower HEP 1750 MW does not effect the cultural heritage of Parasuram Kund and sufficient safeguards has been taken up for an effective muck disposal."

62. Regarding delinking of the river basin study in respect of the EC it was held in the said appeal that sufficient safeguard has been provided in the EC which states that any appraisal of river basin study should be upon the project proponent. Relevant paras of the judgment in Appeal No. 8 of 2011 are extracted as follows:

"87. As far as the decision regarding delinking of basin study from EC and its effects, it is the contention of the learned Counsel appearing for the appellant that the condition in the impugned EC which states in Clause no. 16 as follows:

"The project since falls in Lohit Basin and at present the Basin Studies is ongoing and it was stipulated during the grant of TOR for scoping that the Environmental Clearance for Demwe Lower HEP should not be linked with the completion of basin studies. However, any recommendations that emerge out from the basin studies shall be a binding on the project developer in future", makes it clear that as the Lohit Basin Study is ongoing, the same need not be linked with the issuance of EC. It is his contention that the said condition is abnormal specially when it also states that any recommendations that emerge out from the basin study after completion will bind the project developer in future has no meaning because by that time the project would have come into effect. According to him it is putting the cart before the horse".

88. On the other hand it is the case of the project proponent as well as the MoEF that the delinking of Lohit basin study from the projects have been done in similar cases like Kalai-II HEP for TOR, Hutong II HEP 1250 MW in Anjaw district, Anjaw HEP 280 MW, Raigam HEP 96 MW on Dalai river in Anjaw district and Gimliang HEP 99 MW on Dav river in Anjaw district. It is also their case that delinking process for grant of environmental clearance to the projects from completion of the river basin study is a well practised procedure and the same has been followed by EAC on earlier occasion in respect of EC granted for Gongri HEP 90 MW, Nafra HEP 96 MW, Divvin HEP 125 MW which were granted in the year 2010 and 2011 and that the basin study which was allotted in 2008 was completed in July 2011. Likewise EC was granted in respect of Teesta Stage VI HEP 500 MW, Teesta Stage III HEP 1200 MW, Roler HEP 36 MW, Jorethang, Loop HEP 96 MW in the year 2004 to 2007 while the basin study was completed

in the year November, 2007. It is also stated that in respect of TATO and HEP 700 MW, EC was granted on 27.06.2011 while the Siang basin study which was allotted on 23.12.2010 is still in progress. Likewise it is pointed out that EC was granted on 19th May, 2011 regarding Sangtong, Karchham HEP 402 MW while its Sutlej basin study was allotted on 26.02.2011 which is still pending. It is also pointed out that EC in respect of Selisep 400 MW was granted on 02.06.2012 while the Chenab Basin Study was directed to be continued. In addition to that many other instances have also been pointed out wherein while river basin study are going on, they were delinked from EC proceeding.

89. The report of inter ministerial group prepared by the Government of India 2010 to evolve a suitable framework to guide and accelerate the development of hydro power in North Eastern Region has categorically decided that studies in the Basin should be taken up by CWC but that will not hold up the EC of individual projects. In as much as it is not in dispute that in respect of many other projects it has been the practice that regarding the hydro electric power projects, the pendency of river basin study cannot be an impediment for granting EC we cannot presume that the EC proceedings will be vitiated by the delinking process. In fact sufficient safeguard has been provided in the EC specifically stating that any result of river basin study should be binding upon the project proponent."

63. Regarding peaking operation in Lohit River, again the finding of EAC was considered by this Tribunal in the said appeal in respect of the flow of water and it was found that the river Dolphins were recorded in Brahmaputra Main Stream. However, during low water flow period, the upstream limit of Dolphin distribution in river Lohit is upto Tengapanimukh which is 72 KM downstream along the river from Demwe Lower HEP and therefore the likelihood of the presence of Dolphins in the upstream of Tengapanimukh was found to be negligible and it was held that the downstream impact including on the habitat of Bengal Florican has been taken note of by the MoEF by taking steps for preservation of the said species as observed in the following paragraphs in the judgment:

"90. In respect of the effect of peaking operation, a reference to the data analysis taken for 19 years regarding the flow in Lohit river shows that the said river is well acquainted with flow variability ranging from 200 cumecs to more than 12000 cumecs. It is also seen that more than 54 per cent times the flow in Lohit River at Dam site is more than 1000 cumecs out of which about 33.23 per cent time flow is about 1729 cumecs which is the designed discharge of Demwe Lower HEP. It is also seen that even during non monsoon months of December, January and February the river rejoin experience large discharge varying in the range from ranging from minimum of 1010 cumecs to 1373 cumecs and during monsoon season, the same will be operated at MDDL by keeping the natural flow regime since no storage is allowed. During lean season the flow at dam site will vary between environmental flow release and design discharge from power generations. It is stated that to minimise the impacts of downstream ecologically, detail assessment of environmental flow release is carried out by M/s WEAPCOS as part of Lohit Basin study and the same has been considered by the Expert Appraisal Committee as also the MoEF. In such circumstances we have to necessarily come to a conclusion that the effect of peaking operations of the projects has been thoroughly considered by the EAC. Regarding study of effect on biodiversity including Dibro-Saikhowa National Park, it is clear from the records that as the Government of India has been implementing the National Wetlands Conservation Programmes (NWCP), and as per the guidelines for conservation and management of wetlands in India prepared in June 26, 2009 the Government has identified nearly 15 wetlands and there are no wetlands from the State of Arunachal Pradesh, except 3 namely Depar Beel, Urpad Beel and Sone Beel which are located about 501 km, 557 km and 529 km respectively from Demwe Lower Project. It is also clear that chapories of Lohit River have not been identified as wetlands of national importance. The chapories of Lohit river stated by the appellants relying upon BMHS publication is stated to be located about 33 km away downstream from the project site. The chapories are the elevated regions provide retreat and shelter for animals during flood. A study made by a three Member Committee constituted by the National Environment Appellate Authority covering 60 kms of river stretch from the dam

site of Demwe Lower HEP in Assam/Arunachal Pradesh Boarder, found that no endangered bird species including Bengal Floricam were recorded by the Committee.

91. *To study the variation between design discharge of 1729 m 3/s and average river discharge of 400 m 3/s, four representative cross sections at the identified chapories were taken and variation in water level was assessed by the Committee which shows that maximum water elevation in all 4 locations remain well below the lowest elevation of representative chapories. The project being run of the river scheme is not likely to retain the inflow and sediment/silt/ boulders/nutrients etc and during monsoon, river flow would be released normally and it was found during the field visit that none of the Avian/fauna/species were encountered and their presence in area was also negated by the local communities. Regarding the river dolphins it was found as seen in the GOAP Committee that dolphin were recorded only in Brahmaputra main stream. However, during low water period, the upstream limit of dolphin distribution in the river Lohit is Tengapanimukh which is stated to be located about 72 km downstream along the river from Demwe Lower HEP. Therefore it was found that the likelihood of the presence of dolphins in the upstream of Tengapanimukh during dry season is negligible. It is found to be not an ideal condition for habitat of dolphins owing to limitations of low depth. There has been interaction with local communities including fisherman by the committee who conformed the non availability of dolphins in the downstream dam. Regarding the globally threatened avian species stated to have been situated in chapories like Bengal Florican, Swam Francolin, Lesser Adjutant, white beak Duck, Jerdom's Babbler, Indian Skimmer and Black-breasted Parrot Bill, the same are not regularly found and the impact of the project was found to be negative. Therefore the EAC has considered the downstream impacts including those on the habitat of Bengal Florican and MoEF is stated to be taking steps for conservation and preservation of the said species in the entire country.*

92. *Relating to the downstream flow characteristics, the studies show various data's taken of 95% dependable year to consider the worst case. Catchment area proportion method was used for working out contribution of each tributary on 10 daily basis in the downstream stretches.*

93. *Regarding the impact on Dibru-Saikhowa National Park (DSNP), it is seen from the minutes of EAC that it was at its direction and as part of Lohit Basin studies the flow variations at Dibru-Saikhowa was undertaken by M/s WAPCOS which has filed its report to MoEF and it was stated that the National Park is situated about 105 km downstream of the project. It is also stated in the report that the flow in lean season at DibruSaikhowa National Park in Lohit River varies between 400-700 cumec while the maximum discharge of peaking of Demwe Lower would be at 500 cumec at National Park which is well within the range of natural flow. The report thus concluded that there is no other effect on non monsoon peaking operation, as the submergence level at all times remain below the lowest elevation of the park. All these facts have been thoroughly considered by the EAC as it is seen in the minutes of its three meetings."*

64. Again under the said caption the cumulative impact study on divergent subjects including maintenance of minimum flow and fishery aspects was considered and held that there has been total application of mind in that regard. Therefore, in respect of the above said issues the findings of the Tribunal have become final and since the Hon'ble Apex Court has confirmed, it is not necessary for this Tribunal at this stage again decide the same.

65. In this appeal the appellants have challenged the Stage I Forest Clearance dated 1.3.2012 granted by the MoEF, followed by Stage - II Forest Clearance dated 3.5.2013 and the consequential order of the State Government dated 26.7.2013. Under the impugned order dated 1.3.2012 the MoEF viz., the 2nd respondent has granted Stage - I Forest Clearance on the basis of the proposal of the State Government and recommendation of FAC under the Forest (Conservation) Act, 1980 (FC Act) for diversion of 1415.92 ha (1408.30 ha surface land + 7.62 ha underground land) of forest land for construction of Demwe Lower Hydro Electric Project (1750 MW) in favour of the 3rd respondent in Lohit District of Arunachal Pradesh, subject to various conditions. The conditions stipulated in Stage - I Forest Clearance include that the entire reservoir area should be declared as a Reserved

Forest under the Indian Forest Act, 1927 with regulated fishing rights and that no further clearance to any other HEP on Lohit would be considered without a study on the cumulative impact on aquatic life, adjoining forest land, ecological aspects which has to be done by the State Government with a specifically drawn up expert team on the subject. The further condition stipulates that the State Government will carry out a study on the impact of the project on the wildlife of the area and submit the report with mitigative measures before final approval. It further states that no damage to the flora and fauna of the area shall be caused. In addition to the above said conditions there are conditions which direct a comprehensive study be conducted on the ecological impacts of the environmental changes and mitigation thereof, associated with the project, a cumulative assessment to be conducted presuming all the proposed dams are constructed on the Lohit River and on the basis of consideration of any subsequent proposal and upstream river stretches. Further, the State Government is directed in consultation with the MoEF to commission Indian Institute of Technology (IIT), Roorkee to conduct the studies related to ecological impacts and cumulative impacts of the project stating that the study by IIT will not precede the construction of the project but will continue and the mitigation measures proposed in the study will be complied with concurrently. At this point of time it is relevant to note that the contention of the learned counsel appearing for the appellants is that these studies which are directed to be carried out post clearance have no meaning when once the project starts.

66. Stage II Forest Clearance, which is granted by the MoEF on 3.5.2013, refers to the compliance report submitted by the State Government on the Stage I Clearance which is otherwise called in-principle approval. The said compliance report is dated 22.3.2013 which particularly relates to Condition Nos. 20 21, 22 and 23 of the Stage I Clearance which is as follows:

(xx)	A comprehensive study will be conducted on the ecological impacts of the environmental changes and mitigation thereof, associated with the commissioning of the project.	The draft Terms of Reference (TOR) for said study has been submitted to the Asstt. Inspector General of Forests (FC), MOEF vide letter no. FOR-199/Cons/2007/Vol-I/559-60 dated 19th March 2013 for approval. Copy of draft ToR is enclosed **(Annexure-VIII).**
(xxi)	A cumulative impact assessment shall be conducted presuming all the proposed dams are constructed on the Lohit River. This study should be made the basis of consideration of any subsequent proposal on upstream river stretches.	The draft Terms of Reference (TOR) for said study has been submitted to the Asstt Inspector General of Forests (FC), MoEF vide letter no. FOR-199/Cons/2007/Vol-I/559-60 dated 19th March 2013 for approval. Copy of draft ToR is enclosed **(Annexure-VIII).** On receipt of TOR approval from MOEF, the said studies shall be commissioned to India Institute of Technology (IIT), Roorkee.
(xxii)	The State Government in consultation with this Ministry will commission Indian Institute of Technology (IIT), Rorkee to conduct the studies proposal related to ecological impacts and cumulative impacts of the project.	The draft Terms of Reference (TOR) for said study has been submitted to the Asstt. Inspector Generla of Forests (FC), MoEF vide letter no FOR-199/Cons/2007/vol-I/559-60 dated 19th March 2013 for approval. Copy of draft ToR is enclosed **(Annexure-VIII)**. On receipt of TOR approval from MOEF, the said studies shall be commissioned to India Institute of Technology (IIT), Roorkee.

(xxiii)	The above mentioned studies by the IIT, Roorkee will not precede construction of the project, but will continue, and mitigation measures proposed in the studies will also be complied with concurrently.	The User Agency has furnished undertaking at (**Annexure-XVII**).

67. The State Government has given the background of Lohit basin as stated above and also the impact of hydro power project stating that implementation of such natural resource project inherent challenges on the environmental and social impacts both potentially positive and negative, are expected. It is stated that the implementation of water resources projects increase the possibility of general socio economic development of the region particularly in rural areas of developing countries. It is stated that it provides infrastructure viz., electricity, road, water supply and distribution network etc which acts as stimulus for further development and economic growth. The compliance further refers to the assessment for the environmental and social aspects of the Hydro Electric Project and impact downstream areas by changing the water flow, water commissions, physical structure of river basin and flood plain. It is stated that in the Lohit basin cascade hydro functioning site of development a total of 13 hydro electric projects have been identified so far and notably the Demwe Lower HEP which is the lower most project of river Lohit, is in advanced stage of execution. Based on the EAC direction for separate Lohit basin study, the work was entrusted to M/s. WAPCOS covering the projects proposed to be developed in which is the main Lohit river. Further, pursuant to the direction of EAC, a simultaneous study on the impact during peaking operation of Demwe Lower HEP and Dibang Multi purpose project at Dibru Saikhowa National Park has also been conducted by M/s. WAPCOS as a part of Lohit basin study and the study has been concluded and it is binding on all projects. The compliance also speaks about the upstream study and there was a three member Expert Committee to examine the same upto about 160 KM stretch of Lohit river and a comprehensive study was prepared which was considered by the Standing Committee of State Board for Wildlife, Arunachal Pradesh and subsequently by the Standing Committee of NBWL and the directives of the FAC that no further clearance to any other project on Lohit would be considered without study on the cumulative impact of aquatic life etc and that has been included in Stage I Forest Clearance for the project in question.

68. It is stated that regarding the directions of the Standing Committee of NBWL two separate studies, one relating to "cumulative impact assessment for all the proposed dams on the Lohit River" and another "comprehensive study and ecological impact associated with the commissioning of the project" shall be concurrently taken up by IIT, Roorkee during the execution of the project. Similar studies have been recommended by different divisions of MoEF viz, ST Division and WL Division with respect to cumulative and downstream impact and as per the EP stimulus M/s. WAPCOS has completed the basic study on the down stream of the project. It is stated that the scope of the basic studies have already been covered including the down stream study by M/s. WAPCOS. All the said studies are stated to be under a fixed time frame and segment wise falling in three segments. It is based on the said compliance report of the State Government, the 2nd respondent MoEF in ST Division granted Stage II Forest Clearance under Section 2 of the Forest (Conservation) Act, 1980 for diversion of forest land with various conditions on 3.5.2013 which is also impugned in this appeal.

69. A reference to Stage II Forest Clearance dated 3.5.2013 shows that the Central Government has considered the compliance report on Stage - I Clearance. The conditions contemplated under Stage II Clearance are certainly not synonymous to that of conditions prescribed in Stage I clearance and therefore it cannot be contended that post clearance conditions are imposed. It is true that while granting Stage II FC there is one condition viz., Condition No. 9. The mitigative measures suggested on the study conducted as per condition No.xiv of the in-principle approval will be implemented at the cost of user agency. Condition No.xiv of the Stage I FC (in principle clearance) states that the State Government will carry out a study on the impact of the project on the wildlife of the area and submit the report with mitigative measures before final approval. The final approval being one granted by the concerned State Government which in this case was granted by the Government of Arunachal Pradesh on 26.7.2013 which is also impugned in this appeal. In the final order passed by

the Government of Arunachal Pradesh dated 26.7.2013 completing the process of Forest Clearance, there is no clause synonymous to Clauses 20, 21, 22 and 23 of the Stage I Forest Clearance as elicited above. Therefore, there is no gainsaying that after the grant of clearance, comprehensive and cumulative impact assessment study is directed to be made. On the other hand, the final order of Government of Arunachal Pradesh dated 26.7.2013 gives various directions particularly to the user agency viz., the 3rd respondent directing to comply with various conditions stipulated in the EC, recommendations of the State Board for Wildlife and implementation of conditions stipulated and comprehensive report to be made to the State Government. In fact, it is stated that in the event of failure of the project proponent to deposit the amount, the MoEF will withdraw the Stage II Forest Clearance. There is one more direction in the State Government's order under the item "any other condition" which states that the Additional Principal Chief Conservator of Forests (Central) Regional Office, Shillong may impose various conditions from time to time in the interest of conservation, protection and development of flora and fauna of the area. All these conditions show that there is application of mind by the authorities at every point of time.

70. It is seen that the State Government has forwarded the forest proposal to the MoEF in December, 2009 and thereafter at the instance of MoEF Additional Principal Chief Conservator of Forests, Regional Office, Shillong visited the site and submitted a Site Inspection Report to the MoEF in March, 2010 covering all aspects relating to the forest land, alternatives considered for the location of the project on the wildlife aspect of Kamlang Wildlife Sanctuary etc and thereafter the proposal was considered by the FAC in the meeting held on 7.5.2010. A reference to the minutes of the meeting of the FAC dated 7.5.2010 shows that FAC has considered the proposal and found that it is the first HEP in private sector in Arunachal Pradesh where Hydro Electric Potential has been recognised. It is stated that the project is located at the tail end and there will be a total of five dams on the Lohit river and therefore the FAC desired to have further information on the following:

    i. the justification of large area for permanent colony,

    ii. the justification of large area for temporary use,

    iii. the safeguards to ensure meeting the needs of the large temporary work force,

    iv. the hydrological aspect of the number of dams at different heights of rivers and its impact on aquatic life, adjoining forest land ecology etc.

    v. the impact on the wildlife of the area

71. With the above direction, the FAC has desired to consider the proposal again.

72. The user agency viz., the 3rd respondent has submitted its response to IG, Forest, MoEF on 17.5.2010 wherein it is stated that the user agency will take utmost care to reduce the tree felling by optimally using the area for infrastructure and construction facility and for the muck dumping area. It is further stated that the trees enumerated between FRL and FRL-4m would be retained without any felling. The reply further states about the minimum flow of water and Fisheries Management Plan stated to have been physically evaluated by the EAC during EC appraisal. Further, with regard to the alternate arrangement for the migratory fishes, as suggested by EAC, the reply of the 3rd respondent refers to Condition Nos. 6, 12 and 13 of Special conditions of EC which are as follows:

    "vi) During the construction period, continuous water shall be released downstream through a separate diversion tunnel of 6 m dia as proposed and during the operation period, continuous water will be released downstream through a separate 40 MW installed unit, which shall run 24 hrs continuously to release 35 cumec of water downstream to maintain the needs at the Parasuram Kund as well as for maintaining the aquatic life in the downstream.

    xii) The proposed reservoir of the dam should be declared as protected area with provision for development and conservation of fish species

    xiii) The proposed fisheries development on the reservoir or the tributaries of Lohit River should

be implemented within the timeframe. Three hatcheries are proposed for the indigenous species, viz. Tor putitora, T. Mosal, T. Tor, Acrossocheilus hexagonolepis, Labeo rohita, L. Dero, Schizothorax richardsoni, Schizothoraicthys progastus are suggested. A total budget of Rs. 456.25 lakhs is allocated for this purpose and the proposed plan should be implemented in consultation with the State Fisheries Department."

73. The reply also speaks about the Lohit river basin study. That apart, the reply contains about the Wildlife Management study stating that the detailed list of trees and faunal aspects were considered by rendering the Inter Disciplinary Study by the Mountain and Hill Environment (IDSMH), Delhi University in collaboration with North East Hill University, Shillong as a part of the comprehensive EIA study. The study was stated to have been carried out to describe the faunal elements in the region starting from general understanding of faunal elements based on available literature and working plan of the Forest Department, apart from considering the Wildlife Management Plan of the project area. It also states about the primary and secondary data, communication of EIA study including that of upper radius of included area (10 KM radius) and the catchment area of Lohit basin reveals data on Wildlife which includes 50 species of mammals, 59 species of birds, 34 species of reptile and 45 species of butterflies. However, only 24 species of mammals 28 species of birds and 30 species of butterflies were recorded during the study from the project area recognising the need of conservation and likelihood of existence of faunal elements in the influenced and catchment area. Therefore, a comprehensive wildlife management plan was drawn taking note of the existing wildlife profile in the region as well as customs, culture and traditional rights of the locals, considering the significance of the area under the Biodiversity Action Plan as per the Biological Diversity Act, 2002. The Environment Management Plan and Fisheries Development Plan have also been enclosed with the said reply made by the 3rd respondent pursuant to the consideration by FAC dated 7.5.2015 as stated above. The FAC at its meeting on 20.5.2010 has considered the reply filed by the User Agency viz., 3rd respondent. The FAC having found that the project being the first HEP in the private sector in Arunachal Pradesh where hydro electric potential has been recognised and as the project is located at the tail end and it is the first of total five dams proposed on the Lohit river, has recommended the project with following further conditions:

    i. "Standard condition of CA and NPV.

    ii. No further clearance to any other HEP on Lohit would be considered without a study on the cumulative impact on aquatic life, adjoining forest land, ecological, aspects which has to be done by State Government with a specifically drawn up expert team on the subject.

    iii. The project proponent will explore the possibility of shifting the proposed colony to an area with lesser tree density to substitute the high tree density area. The objective is to save as many trees as possible out of total 43,000 trees. The project proponents will submit this alternative before final approval with the approval of State Government.

    iv. The State Government will carry out a study on the impact of the project on the wildlife of the area and submit the report with mitigative measures before final approval.

    Any tree felling will be done under strict supervision of the state Forest Department."

74. After such recommendations were made by FAC, which were based not only on thorough study of the entire issue but also considering the reply filed by the 3rd respondent user agency subsequent to post appraisal of the project by FAC based on representation made by Kalpavriksh of Pune, an NGO in respect of which responses were called by MoEF. The 3rd respondent replied on 4.1.2011 responding to the observations made by Kalpavriksh relating to impact in the downstream area, impact of flow variation (on wildlife habitat), impact on Tailung/Parashuram Kund, Lohit river basin study, delinking Demwe project Relivings of Forest Rights Act (FRA) for area submergence, Catchment Area Treatment and Compensatory Afforestation. The representation given by various stakeholders in the meeting held on 10.3.2011 desired that the competent authorities viz., State Government and Standing Committee of NBWL should consider before the Stage I approval is granted. In the meantime, the Standing Committee of NBWL has been advised by MoEF based on a direction of the

National Environment Appellate Authority, in the interim order passed in appeal No. 9 of 2010 to consider the upstream effects of Demwe Lower HEP project on river Lohit and important bird areas.

75. It was thereafter, the matter which has been hitherto considered by FAC under the Forest (Conservation) Act, 1980 has been referred to the State Board for Wildlife which has considered the issue in its meeting held on 27.5.2011. Dealing with the proposal for diversion and relying upon the study made by the Committee constituted by the PCCF and Chief Wildlife Warden, Government of Arunachal Pradesh has noted that the aspect of bird species, migration vis-a-vis fish were examined by EAC of MoEF as part of EC and adequate measures with financial provisions have been made and Fisheries Management Plan approved by the MoEF. The SBWL has also desired certain additional measures to be taken viz.,

    (1) the Government of Arunachal Pradesh may likely to study evolve any suitable scheme to work out the preventive/ameliorative measures in close consultation with local community for effective implementation and monitoring of conservation and management of the downstream area i.e., Floporia area.

    (2) the Activities pertaining to education and others due to will post and media binding apart from active involvement of community in developing and implementing Conservation and Management Plan to be undertaken.

76. The SBWL as per the direction of the MoEF, has also considered the observations made by Mr. Akhil Gogoi relating to the impact of Wildlife Habitat and ultimately recommended the case by submitting the same to the State Government for referring to MoEF. Thereafter, the Government of Arunachal Pradesh viz., the 1st respondent on 14.3.2011, has sent the proposal with the recommendations of the SBWL to the Standing Committee of NBWL. It is seen that the Government of Arunachal Pradesh has given various explanations to the queries raised by the Standing Committee of NBWL which ultimately considered the proposal on 14.10.2011 under the Chairmanship of the Hon'ble Minister of State (independent charge) for Environment and Forest. The committee has considered the views of Dr. Madhusudhan of Nature Conservation Foundation, who mentioned that the mining area was left adjoining Kamlang Sanctuary and birds were regularly seen in this area. He also made a statement that the impact of the project will be felt downstream and it will be large beyond the physical area of the project depending upon the manner in which the water in the river would be regulated. He also submitted that the fishing activity in the river as well as agriculture and river transportation and livestock rearing might adversely get impacted by the project. Another Member of the Standing Committee of NBWL Dr. Asad Rahmani pointed out that the proposed dam would have significant negative impact on land and wildlife, the "chapories" of Lohit river and Dibru Saikhowa National Park, both of which designated as Important Bird Areas containing "critically endangered" bird species including Bengal Florican which is a Schedule I Species under the Wildlife Protection Act. Another Member Ms. Prerna Bindra pointed out that State does not rest on the said project alone and there would be many more projects to come up in Arunachal Pradesh's Lohit basin. She also stated that the protected aerial distance of 8.5 KM from the Kamlang Wildlife Sanctuary was the distance from the proposed dam site, and that the distance of the reservoir created as part of the project would be just 50 mt from the sanctuary. However, the Chief Conservator of Forest and Forest Secretary, Members of SBWL who are also the members of the Standing Committee of NBWL have stated that the impact assessment study have been made by the State Wildlife Department on the downstream stretch of Lohit river. They also submitted that the minimum flow available subsequent to the operationalization of the Hydro Electric Project would be maintained at 20% level even during lean season. It was after considering the objections raised by the non-official members of the Standing Committee of NBWL, the Standing Committee has decided finally under the Chairmanship of the Hon'ble Minister of State to constitute a Team consisting Dr. Asad Rahmani, and Sri. Pratap Singh to get a clear and balanced picture of the possible impact on the aquatic and other fauna downstream of Lohit river and get a first-hand assessment on the impact of wildlife desiring to convene a separate meeting to discuss the important issue in November, 2011. Dr. Asad Rahmani and Mr. Pratap Singh after conducting inspection have given separate reports which were discussed by the Standing

Committee of NBWL in its 24th Meeting held on 13.12.2011. It is seen that the non-official members supported the report of Dr. Asad Rahmani for rejecting the proposal, whereas Arunachal Pradesh State Government representative supported the proposal. The Official Memorandum of MoEF dated 11.2.2012 issued by the Deputy Inspector General of Forests states by referring to the report of Dr. Asad Rahmani, that there was lack of data and the need for further study, but also refers to the main concern of non-official Members of the Standing Committee of NBWL that during Diurnal fluctuation of water flow from the dam through the peaking operation between 1200 - 1279 QMC which is projected to cause corresponding variation in water level 105 km down stream upto Dibru-Saikhowa National Park and it will have detrimental effect on conservation of ecosystem including habitats of Bengal Florican and Wild Buffalo. The said communication of the D.I.G, Forest dated 11.2.2012 as stated above, mentions that keeping the fact into consideration that it is a clean energy project, the Standing Committee of NBWL held on 13.12.2011, under the Chairmanship of Minister of State (Independent Charge), Environment and Forest recommended the clearance on behalf of the Standing Committee of NBWL as per the relevant orders of the Hon'ble Supreme Court with additional measures viz.,

(1) A comprehensive study will be conducted on the ecological impacts of the environmental changes and mitigation thereof, associated with the commissioning of the project.

(2) A Cumulative Impact Assessment shall be conducted presuming all the proposed dams are constructed on the Lohit River. This study should be made the basis of consideration of any subsequent proposal on the upstream river stretches.

(3) The State Government in consultation with this Ministry will commission Indian Institute of Technology (IIT), Roorkee to conduct the studies related to the ecological impacts and cumulative impacts of the project.

(4) The above mentioned studies by the IIT, Roorkee will not precede construction of the project, but will continue concurrently and mitigation measures proposed in the studies will also be complied with concurrently."

77. The communication further states that the Official Memorandum is issued with the approval of Minister of State (Independent Charge), Environment and Forest and the Chairperson of the Standing Committee for NBWL incorporating the said four conditions stated in the Official Memorandum dated 11.2.2012. The said four conditions were incorporated as Condition Nos. 20, 21, 22 and 23 in the Stage I Forest Clearance dated 1.3.2012, the subject matter of challenge in this appeal along with the other conditions. This was followed by the Stage II Clearance and the consequential order of the State Government.

78. The narration of the above said facts would clearly shows that the views of the Standing Committee of NBWL constituted under the Wildlife (Protection) Act, 1972 has been taken into consideration cumulatively for the purpose of issuing Forest Clearance under the Forest (Conservation) Act, 1980 for the project in dispute. It is relevant to state at this point of time that as far as the Forest Clearance for the project in question it is covered under the Forest (Conservation) Act, 1980 and the rules made thereunder in 2003. Section 2 of the Forest (Conservation) Act, 1980 requires approval of the Central Government either for dereservation of forests or use of forest land for non-forest purpose. The said approval is granted by the Central Government based on Forest Advisory Committee recommendation under Section 3 of the Forest (Conservation) Act, 1980.

79. Rule 3 of the Forest (Conservation) Rules, 2003 stipulates the composition of Forest Advisory Committee which is as follows:

"3. **Composition of the Forest Advisory Committee**. - (1) The Forest Advisory Committee shall be composed of the following members, namely:—

(i) The Director General of Forests, Ministry of Environment and Forests, - Chairperson.

(ii) The Additional Director General of Forests, Ministry of Environment and Forests - Member.

(iii) The Additional commissioner (Soil Conservation), Ministry of Agriculture - Member.

(iv) Three non-official members who shall be experts one each in Mining, Civil Engineering and Development Economics - Member

(v) The Inspector General of Forests (Forest Conservation), Ministry of Environment and Forests. - Member Secretary.

80. As per the Forest (Conservation) Act, 1980 and the Rules made thereunder, it is based on the FAC recommendation, the FC is granted by the MoEF. But, as we have elicited above, on the factual matrix of this case, while FAC has made proposal on various occasions, at one point of time since the issue relating to Eco-Sensitive Zone is involved in this case, as per the decision of the Hon'ble Supreme Court, a reference was made to the State Board for Wildlife which is constituted under the Wildlife (Protection) Act, 1972 and after the Standing Committee of the State Board has considered, it was referred to the Standing Committee of NBWL which is also constituted as per Section 5-A of the Wildlife (Protection) Act, 1972 which reads as follows:

"Constitution of the National Board for Wild Life.—

(1) The Central Government shall, within three months from the date of commencement of the Wild Life (Protection) Amendment Act, 2002 (16 of 2003), constitute the National Board for Wild Life consisting of the following members, namely:— (a) the Prime Minister as Chairperson; (b) the Minister in-charge of Forests and Wild Life as Vice-Chairperson; (c) three members of Parliament of whom two shall be from the House of the People and one from the Council of States; (d) Member, Planning Commission in-charge of Forests and Wild Life; (e) five persons to represent non-governmental organizations to be nominated by the Central Government; (f) ten persons to be nominated by the Central Government from amongst eminent conservationists, ecologists and environmentalists; (g) the Secretary to the Government of India in-charge of the Ministry or Department of the Central Government dealing with Forests and Wild Life; (h) the Chief of the Army Staff; (i) the Secretary to the Government of India in-charge of the Ministry of Defence; (j) the Secretary to the Government of India in-charge of the Ministry of Information and Broadcasting; (k) the Secretary to the Government of India in-charge of the Department of Expenditure, Ministry of Finance; (l) the Secretary to the Government of India, Ministry of Tribal Welfare; (m) the Director-General of Forests in the Ministry or Department of the Central Government dealing with Forests and Wild Life; (n) the Director-General of Tourism, Government of India; (o) the Director-General, Indian Council for Forestry Research and Education, Dehradun; (p) the Director, Wild Life Institute of India, Dehradun; (q) the Director, Zoological Survey of India; (r) the Director, Botanical Survey of India; (s) the Director, Indian Veterinary Research Institute; (t) the Member-Secretary, Central Zoo Authority; (u) the Director, National Institute of Oceanography; (v) one representative each from ten States and Union territories by rotation, to be nominated by the Central Government; (w) the Director of Wild Life Preservation who shall be the Member-Secretary of the National Board.

(2) The term of office of the members other than those who are members ex officio, the manner of filling vacancies referred to in clauses (e), (f) and (v) of sub-section (1), and the procedure to be followed in the discharge of their functions by the members of the National Board shall be such, as may be prescribed.

(3) The members (except members ex officio) shall be entitled to receive such allowances in respect of expenses incurred in the performance of their duties as may be prescribed.

(4) Notwithstanding anything contained in any other law for the time being in force, the office of a member of the National Board shall not be deemed to be an office of profit."

81. Section 5B of the said Act enables the NBWL at its discretion to constitute a Standing Committee of National Board for Wildlife consisting of the Vice-Chairman of the NBWL, who is the Minister in charge of the Wildlife, the Member Secretary and not more than 10 members to be nominated by the Vice-Chairperson from amongst the members of the National Board. Section 5B which relates to the constitution of the Standing Committee reads as follows:

"Standing Committee of the National Board.—

(1) The National Board may, in its discretion, constitute a Standing Committee for the purpose of exercising such powers and performing such duties as may be delegated to the Committee by the National Board.

(2) The Standing Committee shall consist of the Vice-Chairperson, the Member-Secretary, and not more than ten members to be nominated by the Vice-Chairperson from amongst the members of the National Board.

(3) The National Board may constitute committees, sub-committees or study groups, as may be necessary, from time to time in proper discharge of the functions assigned to it."

82. This Tribunal is conscious of the fact that having been constituted under the NGT Act, 2010, it has jurisdiction only in respect of the enactments mentioned under Schedule I. The enactments under the said Schedule does not include the Wildlife (Protection) Act, 1972 and therefore in normal circumstances this Tribunal would not venture to deal with any decision either of SBWL or NBWL. But the factual matrix of the case which we have taken efforts to explain in detail clearly shows that while deciding FC under the Forest (Conservation) Act, 1980 the Government has invited a decision by NBWL under the Wildlife (Protection) Act, 1972 as it involves Ecologically Sensitive Area and it was based on the decision taken by the Standing Committee of NBWL, FC itself which is challenged in this appeal, has been granted and therefore one cannot brush aside the validity or otherwise of the decision taken by NBWL on the factual matrix of this case while deciding about the validity or otherwise of the impugned Forest Clearance both Stage I and Stage II and the consequential State Government Clearance granted under the Forest (Conservation) Act, 1980.

83. Having come to such conclusion, it is incumbent on our part to examine the decision taken by the Standing Committee of NBWL. Even if the Standing Committee of NBWL which is a delegated authority of NBWL itself is taken as an Advisory Body for NBWL to take a decision, the question is as to whether having constituted as per the Section 5B(2) of the Wildlife Protection Act, 1972, it will be open to the Chairperson to just like that brush aside the views of the majority of the members of the Standing Committee of NBWL. The communication of the Deputy Inspector General of Forest dated 11.2.2012 which refers about the Standing Committee of NBWL met on 13.12.2011 does not in any manner give the reason for brushing aside the views of the non-official members of the Standing Committee. Having constituted a Statutory Standing Committee as per the provisions of the Central enactment and in the absence of the method of decision to be taken by such Standing Committee, we are of the view that either the Chairperson who happens to be the Hon'ble Minister of State should have given proper reason for rejecting the objection of majority of the non official members or the decision ought to have been arrived at based on the opinion of the majority of the members of the Standing Committee of National Board. Neither of these acceptable principles are followed in making a decision under the Wildlife (Protection) Act, 1972 by the Standing Committee. Even though the Standing Committee of NBWL is a recommendatory body, the same being a Statutory Committee, is bound by the laudable principles of justice and fair play while taking a decision particularly in respect of the region which is admittedly an ecologically sensitive area. If any convincing reason is given by the Standing Committee of NBWL, it stands differently for this Tribunal while considering the validity or otherwise of the same. In the absence of any reason but only to reject the majority of the non-official members who happened to be experts in the field and whose objections have been elicited in the communication of the Deputy Inspector General of Forest dated 11.2.2012, in our considered view and in all fairness either the Hon'ble Minister incharge of the Forest or the Standing Committee of NBWL should have taken the decision with proper reason. In the absence of

any acceptable reasons, we have no hesitation to hold that the decision of the Minister as if it is the decision of the Standing Committee of NBWL which forms the basis of the granting of FC in this case under the Forest (Conservation) Act, 1980, is not sustainable in law.

84. However, as we have clearly decided with elaborate discussion regarding the other authorities under the FC Act, particularly that the FAC has dealt with every aspect of the issues involved in the project in question and in fact considered the objections raised by the outsiders and therefore, there is no question of non-application of mind and also taking note of the fact that in the appeal, where EC was questioned, many of the issues were answered by us even though the issue relating to the FC which is peculiar and based on the Forest Policy of the Government, has not been discussed in detail, we do not want to set aside the impugned FC both Stage I and Stage II and the consequential order of the State Government on that basis. On the other hand, we are of the view that in the interest of justice, the Standing Committee of NBWL, if desires, should consider all the issues afresh, taking into consideration the views expressed by the majority of the members and also to have a fresh look on the ecologically sensitive area in respect of which various points have been raised which we have elicited in our judgment and take a decision. Till such decision is taken, we consider it necessary to suspend the impugned FC both Stage I and Stage II and the consequential order of the Government of Arunachal Pradesh, so as to enable the Standing Committee of NBWL to have a fresh look on the issue based on which the 2nd respondent shall pass appropriate orders.

85. Accordingly, the appeal stands partly allowed, holding

(1) That there is no illegality or infirmity in the proceedings of the authorities under the Forest (Conservation) Act, 1980 during the consideration of the proposal of the project in question by FAC and other authorities under the Act.

(2) However, the decision taken by the Standing Committee of NBWL dated 13.12.2011 as it is explained in the Official Memorandum of MoEF dated 11.2.2012 is not in accordance with the established principles of law and hence the Standing Committee of NBWL shall reconsider the issue relating to Demwe Lower Hydro Electric Project and pass appropriate orders within a period of six months from the date of the judgment.

(3) Till such orders are passed, the impugned FC Stage I dated 1.3.2012 and Stage II dated 3.5.2013 issued by the MoEF and the consequential order of the Government of Arunachal Pradesh dated 267.2013 relating to diversion of 1415.92 ha of Forest Land for construction of Demwe Lower Hydro Electric Project (1750 MW) in Lohit District of Arunachal Pradesh stands suspended.

(4) After the appropriate directions/orders are passed by the Standing Committee of NBWL as per the direction given above it will be open to pass suitable further orders by the MoEF in respect of the project.

86. However, on the facts and circumstances of the case, there will no orders as to cost.

Themrei Tuithung & Ors. vs. Union of India & Ors.

REVIEW APPLICATION NO. 46 OF 2016 (EZ)
NATIONAL GREEN TRIBUNAL, EASTERN ZONE
06.12.2017
CORAM: S. P. WANGDI, J. (JUDICIAL MEMBER) & B.S. SAJWAN (EXPERT MEMBER)
CITATION: 2017 SCC ONLINE NGT 967

SUMMARY

The present review petition arose out of a challenge to the forest clearance granted under Section 2 of the Forest Conservation Act, 1980 (or, '1980 Act') by the Union Ministry of Environment and Forests (or 'MoEF') and the State of Manipur, for diversion of 595 hectares of forest land for the Thoubal Multipurpose Project in Manipur. The proceedings were initiated by tribal villagers from the affected area. Their petition had been dismissed by the tribunal[94] and they filed a review petition against that decision.

The applicants raised a number of objections, but key among them was that the tribunal had committed an error apparent on the face of the record in deciding that there was no requirement to adhere to the stipulations under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or 'Forest Rights Act').

The review petition was opposed by the central as well as the state governments. The respondents submitted that the position taken by the Ministry of Tribal Affairs (or 'MoTA') in the present case was that since the land had been purchased from the villagers through their elected village authorities, the Forest Rights Act had been followed 'in spirit', and therefore technical adherence to the Act was rendered unnecessary. They also raised a preliminary objection to the jurisdiction of the tribunal to decide matters relating to the Forest Rights Act.

As regards the preliminary objection, the tribunal dismissed it as follows:

> Appeal No. 04 of 2014 was not filed against the non-compliance of the Forest Rights Act per se, but was against the Stage II Forest Clearance (FC) granted for the project one of the conditions of which was compliance of this law. The scope of the Appeal, therefore, would bring within its ambit the question on the non-compliance FRA thereby negating the objection raised on behalf of the Respondents which thus stands rejected. (at para 17)

The tribunal also rejected the respondents' argument that compliance with the Forest Rights Act was not necessary. It held that as per the MoEF's circular dated 03.08.2009,[95] compliance with the statutory requirements of the Forest Rights Act is imminent and unavoidable while considering a grant of clearance under the 1980 Act. This requirement was also made a specific condition of the Stage-1 clearance to this project in 2010. While acknowledging that the land has been acquired as

[94]Judgment dt. 26.02.2016 in Appeal No. 04/2014/EZ; etc. *Themrei Tuithung & Ors. vs. State of Manipur & Ors*. National Green Tribunal, Eastern Zone. The NGT had dismissed the challenge to the forest clearance on, inter alia, the following reasoning:

> *It is our considered view that as the project has commenced since 1980 when FR Act was not born and Agreed Terms and Conditions have already been signed and Rehabilitation and Resettlement packages have been provided to the affected people, the FR Act should not come as a hindrance at this stage and as observed by the MoTA, this should be an exception as 80% of the construction is over. (at paragraph 22).*

[95]Letter dt. 03.08.2009 bearing F. No. F 11-9/1998-FC(pt) issued by the Ministry of Environment and Forests, Government of India.

far back as 1993, and rehabilitation measures implemented, the tribunal held that the Forest Rights Act deals with *'wider aspects as would appear from Section 3 thereof'*. It took note of the guidelines dated 12.07.2012[96] issued by MoTA and the judgment of the Supreme Court in the *Niyamgiri* case,[97] after which compliance with the Forest Rights Act has been made obligatory.

The state government argued that due clearance had been obtained for the transfer of forest land from the village authorities of the affected villages. The tribunal, however, remained unconvinced '*whether it was a willing clearance and as to whether the compensation and the rehabilitative measures provided were to the satisfaction of the displaced persons*'. It is not sufficient to follow the requirements of the Forest Rights Act only in spirit, but rather the letter of the law must also be complied with, the tribunal opined.

As a result, the tribunal allowed the review petition and directed the state government and the department of Irrigation and Flood Control to ensure compliance with the requirements of the Forest Rights Act, by duly consulting the Gram Sabhas or their equivalents in the areas concerned. It also directed that all efforts be made to bring all prior actions in compliance with the Forest Rights Act as well.

EDITOR'S NOTE

This decision of the tribunal is a landmark for a number of reasons. For one, it put to rest the longstanding debate regarding whether the tribunal has jurisdiction to examine matters relating to the Forest Rights Act, a statute which is not included in the Schedule to the National Green Tribunal Act, 2010. Even more importantly, this decision expanded the application of the judicial precedent in the *Niyamgiri* case to a situation where the forest land in question constitutes community-owned forests which had been duly 'acquired' more than a decade before the Forest Rights Act came into force. It is not surprising, therefore, that the present decision is the subject of an appeal in the Supreme Court of India, filed by the state government of Manipur.[98]

JUDGMENT

1. This is a Review Application under Section 19 (4)(f) of the National Green Tribunal Act, 2010 read with Rule 22 of the NGT (Practices and Procedure) Rule, 2011, filed by the Review Applicants for review of the judgment dated 26.02.2016 passed by the Tribunal in Appeal No. 04/2014/EZ dismissing the Appeal.

2. Review of the judgment has been sought for on as many as six grounds. Appeal No. 04/2014/EZ had been filed by the review Applicants challenging the Forest Clearance (FC) under Section 2 of the Forest (Conservation) Act, 1980 granted by the State of Manipur vide letter dated 15.01.2014 to the Thoubal Multipurpose Project proposed at the tri-junction of Ukhrul, Senapati and Thoboul Districts of Manipur for diversion of 595.00 ha of forest land on the grounds as under:—

   (a) The Forest Clearance was granted in violation of the National Forest Policy, 1988.

   (b) The Forest Clearance was bad for non application of mind to the relevant facts. (c) The FAC in 2009 had bypassed the important aspects of forest clearance process prescribed by the earlier FAC in 1993.

[96]Guidelines dt. 12th July, 2012 bearing F. No. 23011/32/2010-FRA [Vol.II (Pt.)] Ministry of Tribal Affairs, Government of India. These Guidelines have been quoted with approval and at length by the Supreme Court in the *Niyamgiri case* (see below).
[97]*Orissa Mining Corporation vs. Ministry of Environment and Forest & Ors.* (2013) 6 SCC 476.
[98]*State of Manipur & Anr. vs. Themrei Tuithang & Ors*. Civil Appeal No. 4290 of 2018, Supreme Court of India, pending.

(d) The grant of such forest clearance amounted to condoning the violation of the Forest (Conservation) Act, 1980 committed by the project proponent which would not be in the interest of ecological justice and future of forests in the country.

(e) The acquisition of forest land prior to the grant of forest clearance defeated the purpose of scrutiny of the FAC and was contrary to law laid down by the Hon'ble Supreme Court in the case of *Karnataka Industrial Area Development Board v. Kenchappa*: (2006) 6 SCC 371.

(f) FAC while dealing with the matter had taken a casual and lackadaisical approach in dealing with the crucial issue of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short FR Act).

(g) Grant of forest clearance was in violation of the judgements of the Hon'ble Supreme Court in Orissa Mining Corporation v. Ministry of Environment and Forest: (2013) 6 SCC 476 and also in *Lattarng Urinium Mining Private Ltd*. v. UoI: (2011) 7 SCC 338.

3. After the affidavits were filed in opposition to the Appeal, several issues were framed of which issue No. (D) was "whether the Forest Rights Act, 2006 is applicable in the instant case?

4. We have referred specifically to this issue being the sole issue which would be relevant for disposal of this Review Application.

5. As already observed as many as six grounds were raised to assail the impugned judgement dated 26.2.2016 (hereinafter referred to as the impugned judgement). However, during the course of hearing Mr. Ritwick Dutta, Ld. Advocate for the Review Applicants, in fairness submitted that he would not press all of those except the inter- related grounds No. (B) &(D) which are summed up as follows:—

"(B) The Hon'ble tribunal erred in concluding that the issue of Forest Rights Act were a "dead issue".

"(D) The Hon'ble Tribunal erred in its conclusion regarding the applicability of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 inasmuch as it has been observed in the impugned judgement the Forest Rights Act was not applicable in the present case since the project had commenced since 1980 when the FR Act was not even born and that this should be treated as an exception since 80% of the construction is over.

6. It was submitted that the aforesaid conclusion was an error apparent on face of record for the following reasons:

D1. The compliance of the FRA flows from the condition contained in the Forest Clearance dated 15th January, 2015, which is the subject matter of this Appeal. Condition No. (xii) clearly states "**all other conditions under different rules, regulations and guidelines including environmental clearance shall be complied with before transfer of forest land"** (emphasis supplied).

In fact, the Stage I Forest Clearance dated 11th January, 2010 clearly states that the approval is granted "subject to the fulfillment of ..... conditions", which include "All other conditions under different rules, regulations and guidelines including environmental clearance and the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 shall be complied before transfer of forest land."

Since the Forest Clearance was granted in 2015, all the laws which are applicable on the date on which the Clearance are applicable. Therefore, the Forest Rights Act is very much applicable in this context.

D2. In addition, the finding is directly contradictory to the letter and spirit of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act"). The preamble to the Forest Right Act states: "Whereas it has become necessary to address

the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who are forced to relocate their dwelling due to State development interventions" (emphasis supplied). From this, there is a clear statutory recognition that past practices have been unfair on forest dependent tribals and communities. To justify past activity - which have admittedly been conducted illegally without any mandatory clearance - to exempt the application of the Forest Rights Act which seeks to correct historical injustice will lead to miscarriage of justice.

D3. Furtherance, this goes against the requirement of the judgment of the NGT in O.A. 167/2013 in this case, which required the MoEF and MoTA to examine the FRA issues in the Mapithel project, which states:

"having heard all the respective Counsel, and taking note of the facts that the project proposal has been made in the year 1988, clearance of the first stage having been granted in 2010 and is pending for more than 25 years and without expressing any opinion on the merits, we are of the view that certain directions must be given to the MoEF as well as the Ministry of Tribunal Affairs to expedite the matter in public interest. Accordingly, we direct the Ministry of Tribal Affairs with whom the proposal sent by the MoEF is pending, to forward their comments forthwith to the MoEF within a period of one week from the date of receipt of the copy of the order.

On receipt of the comments from the Ministry of Tribal Affairs, the Ministry of Environment and Forests shall pass appropriate orders on the proposal given by the State of Manipur in respect of the second stage clearance by following the procedure in accordance with law, including all the memoranda issued by the Government of India from time to time in this regard."

Therefore, clearly, the order accepted the fact that the issue of forest rights should have been considered in the process of Forest Clearance.

7. On the first ground, essentially it was the contention of Mr. Ritwick Dutta, Ld. Advocate for the applicants that while in the first instance, it was held that in the impugned judgement that the Appeal would not be barred by *res judicata* on the finding that in the earlier OA being OA No. 167/2015/EZ, the challenge was against the illegal construction of the project before grant of Final (Stage II) Clearance which was a violation of the Forest (Conservation) Act, 1980 and, in the latter i.e., the Appeal No. 4 of 2014, it was for quashing the order granting Stage II (Final Forest Clearance) to the project under the Forest (Conservation) Act, 1980 on various grounds including non-compliance of the Forest Rights Act against which there was no categorical finding that had been arrived at on the grievance expressed relating to breach thereof and that of the Forest (Conservation) Act, 1980. This, as per the applicants, was an error apparent on the face of the record having regard to the fact that compliance of the Forest Rights Act was one of the conditions of Stage I clearance.

8. On ground (D), it was contended that the findings in paragraph 22 of the impugned judgement to the effect that "it is our considered view that the project has commenced since 1980 when FR Act was not born and Agreed Terms and conditions have already been signed and rehabilitation and Settlement packages have been provided to the affected people, the FR Act should not come as a hindrance at this stage and as observed by the MOTA, this should be exception as 80% of the construction is over" according to the applicant is an error apparent on the fact of the record. The primary reason as to why the finding is an error on the face of the record has been set out in the Review Application in ground D1 of the Review Application which we have reproduced earlier.

9. The finding that the cause was a dead issue as they had not preferred an appeal against the order of the Tribunal dated 20/11/2013 in O.A. No. 167/2013 giving a green signal to the project despite the submissions made on the non-compliance of the FRA 2006 and the Forest (Conservation) Act compliance, was patently erroneous highlighting that the order required the project proponent to obtain forest clearance "following the procedure in accordance with law and all memoranda which could bring within its ambit compliance of the MOEF memorandum dated 3/8/09 referred to earlier.

10. In their reply affidavit, the Respondents No. 1 and 3 at the threshold, raised objection to the maintainability of the Review Application on various grounds. We need not deal with all of those except the one relating to delay in filing the Appeal and the other being the want of jurisdiction of the Tribunal to entertain the review application on account of non-implementation of the Forest Rights Act, as it is not one of the statutes included in the Schedule I of the NGT Act, 2010 over which the Tribunal can adjudicate.

11. The reason for delay in filing the Review Application is that although the judgement was pronounced on 26.2.2016, it was only the operative part that was read out and the full text of it came to the knowledge of the applicants only on 2.3.2016 when they checked the website of the NGT on that date. Thus, the application having been filed on 2.4.2016, it is within 30 days as prescribed under Rule 22 of the NGT (Practices and Procedure) Rules, 2011. This has also been categorically stated in the MA 822/2016/EZ seeking for condonation of delay in filing the Appeal.

12. The respondents, however, contended that the grounds set out for condonation of delay was not tenable. It was argued that the fact that the Ld. Counsel for the Appellants was present in Court when the judgement was pronounced would belie the fact that the applicants were not aware of the full text of the judgement and that the period of limitation commenced from that very date which according to them would constitute "specific constructive knowledge of the applicants". It is further contended that as a matter of standard procedure, once a judgement is uploaded by the NGT, it is deemed to have been published and presumed to be available in the public domain and further, but rather vaguely and with unmistakable uncertainty, that the judgement was uploaded in all probability on 29.2.2016.

13. Upon consideration of the pleadings and the submissions of the learned counsel for the parties, we do not find any reason as to why we should disbelieve the grounds set out by the Applicant as the reason that prevented them from filing the Review Application within the period prescribed therefor.

14. It is of relevance to note that even in the Review Application, specific pleading has been made on the point of limitation taking the very ground set out in the application for condonation of delay. This averment amongst others has been affirmed as true and to the best of knowledge of the Applicants. The Respondents on their part have failed to substantiate the assertion that the impugned judgement was uploaded on the website of the NGT on the very date of the judgement or any other date thereafter.

15. Accordingly, the delay in filing the RA stands condoned.

16. The next objection is on the jurisdiction of the Tribunal to hear the matter pertaining to Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (referred to as FRA for short).

17. Appeal No. 04 of 2014 was not filed against the non-compliance of the Forest Rights Act per se, but was against the Stage II Forest Clearance (FC) granted for the project one of the conditions of which was compliance of this law. The scope of the Appeal, therefore, would bring within its ambit the question on the non-compliance FRA thereby negating the objection raised on behalf of the Respondents which thus stands rejected.

18. After having held so on the preliminary objections, we may proceed to consider the Review Application in its merits confined to the limited question which the Applicants have restricted themselves to.

19. Section 19(4) (f) empowers the Tribunal to review its own decision the procedure for which is laid down under Rule 22 of the NGT (Practices and Procedure) Rules, 2011. The enabling provisions under Section 19(4)(f) of the NGT Act, 2010 and the NGT (Practices & Procedures) Rules, 2011 do not prescribe the parameters of exercise of such power. Undeniably, therefore, it would be necessary for

the Tribunal to invoke the provisions of Sec. 114 and Order 47, Rule 1 of Code of Civil Procedure as a guiding principle.

20. The relevant portion of Order 47, rule 1 of CPC reads as follows:—

"Application for review of judgement. (1) Any person considering himself aggrieved—

a) By decree or order from which an appeal is allowed, but from which no appeal has been preferred,

b) By a decree or order from which no appeal is allowed, or

c) By a decision on a reference from a Court of Small Causes.

and who, from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for *any other sufficient reason*, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order."

21. The submission of Mr. Ritwick Dutta, Ld. Counsel for the Review Applicants was that, apart from the findings in the impugned judgement suffering from an error apparent on the face of the record, it would also fall within the mischief of "*any other sufficient reason*" contained in Order 47, Rule 1. It was argued that if the finding of the Tribunal is held not to be an "error apparent on the face", it would certainly constitute "any other sufficient reason" requiring the Tribunal to review its decision.

22. There are a catena of decisions of the Hon'ble Supreme Court as well as the High Courts which have set at rest the question as to what would constitute "an error apparent on the fact of the record" and "*any other sufficient reason*". The twin phrases appearing in the Order 47, Rule 1 CPC found to have been succinctly explained and the principle laid down in *Chajju Ram v. Neki,* by the Bombay High Court in its judgement dated 27.2.1922: where it has been held as follows:—

> "Their Lordships have examined numerous authorities, and they have found much conflict of judicial opinion on the point referred to. There is plainly no such preponderance of view in either direction as to render it clear that there is any settled course of decision which they are under obligation to follow. Some of the decisions in the earlier cases may have been influenced by the wider form of expression then in force, and these decisions may have had weight with the learned Judges, who, in cases turning on the subsequent. But their Lordships are unable to assume that the language used in the Codes of 1877 and 1908 is intended to leave open the questions which were raised on the language used in the earlier legislation. *They think that Rule 1 of Order XLVII must be read as in itself definitive of the limits within which review is today permitted, and that reference to practice under former and different statutes is misleading. So construing it they interpret the words "any other sufficient reason" as meaning a reason sufficient on grounds at least analogous to those specified immediately previously*."
>
> **(Underlining Supplied)**

23. This decision was followed in *Bisheshwar Pratap Sahi v. Parath Nath* reported in AIR 1937 (36) Bomb LR II 79 and by the Federal Court in *Sir Hari Sankar Pal & v. Anath Nath Mitter*: AIR 1949 FC 106.

24. The proposition of law thus enunciated having not been set aside or superseded by any later judgement of either the High Courts or the Hon'ble Supreme Court, still holds good. It, therefore, remains no more ***res integra*** that the words "any other sufficient reason" must be taken as meaning a reason sufficient on grounds at least analogous to those specified immediately previously, i.e., inter alia "error apparent on the face of the record" and "for any other sufficient reason". In this regard, we may also refer to the judgement of a larger Bench of the NGT, Principal Bench, New Delhi, dated 1st September. 2015 in R.A. No. 20 of 2015 and R.A. No. 21 of 2015 and R.A. No. 21 of 2015, in the matter of *S.P. Muthuram v. UOI*.

25. It is also settled principle of law that an error which is not evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of the record justifying the court to exercise the power of review. It is further trite that the first and foremost requirement of entertaining a review petition is that the order of which review being sought for, suffers from an error apparent on the face of the order and permitting the order to stand will lead to failure of justice.

26. On the anvil of the law discussed above, we may examine as to whether the grounds B and D set out in the Review Application would fall within the ambit of review jurisdiction of the Tribunal.

27. It must be borne in mind that Stage-I clearance for the project was granted by the MOEF vide order dated 11.01.2010. OA No. 167/2013 was filed by the Review Applicants primarily on the ground that the project was commenced with without obtaining the requisite permission under the Forest (Conservation) Act, 1980. During pendency of this O.A. final approval for diversion of 595 Ha of forest land under section 2 of the Forest (Conservation) Act, 1980, was granted which led the Tribunal to dispose of the OA leaving it open to the aggrieved parties to work out their remedy in the manner known to law with the direction that the conditions contemplated by the Government of Manipur in their letter dated 15th January 2014 shall be strictly followed by the project proponent.

28. This was followed by Appeal No. 4/2014/PB/8/EZ being filed on various grounds including non-compliance of the requirements of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short FRA 2006). Appeal 4/2014/PB/8/EZ was dismissed by the Tribunal vide judgement dated 26.2.2016 and it is this judgement that is being sought to be reviewed in this Review Application.

29. It would be relevant to note that the Stage-I clearance had been granted on 11.01.2010 of which condition No. 18 reads as follows:

> *"18. All other conditions under different Rules, Regulations and Guidelines including Environmental clearance and Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, shall be complied before transfer of forest land." (italics for emphasis)*

30. Preceding the forest clearance MOEF letter dated 3.9.2009 was circulated to the Chief Secretaries, Administrators of all the States and Union Territories except J & K which being of significance is reproduced below:—

"F. No. 11-9/1998-FC (pt)
Government of India
Ministry of Environment and Forests
(FC Division)

Paryavaran Bhawan, CGO Complex, Lodhi Road,
New Delhi - 110510.
Dated: 03.08.2009

To

The Chief Secretary/Administrator

(All State/UT Governments except J&K)

Subject: Diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 - ensuring compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

Sir,

In continuation to this Ministry's letter of even number dated 30.07.2009, I am directed to invite the attention of the State Government to the operationalization of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which has become effective from

01.01.2008. It is observed that the proposals under the Forest (Conservation) Act, 1980 are being received from different States/UT Governments with the submission that the settlement of rights under Forest Rights Act, 2006 (FRA) will be completed later on.

Accordingly, to formulate unconditional proposals under the Forest (Conservation) Act, 1980, the State/UT Governments are, wherever the process of settlement of Rights under the FRA has been completed or currently under process, required to enclose evidences **for having initiated and completed the above process, especially among other sections, Section 3(1)(i), 3(1)(e) and 4(5)**. These enclosures of evidence shall be in the form of following:

a. A letter from the State Government certifying that the complete process for identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion, with a record of all consultations and meetings held;

b. A letter from the State Government certifying that proposals for such diversion (with full details of the project and its implications, in vernacular/local languages) have been placed before each concerned Gram Sabha of forest- dwellers, who are eligible under the FRA;

c. A letter from each of the concerned Gram Sabhas, indicating that all formalities/processes under the FRA have been carried out, and that **they have given their consent to the proposed diversion and the compensatory and ameliorative measures if any**, having understood the purposes and details of proposed diversion.

d. A letter from the State Government certifying that the diversion of forest land for facilities managed by the Government as required under Section 3(2) of the FRA have been completed and that the Gram Sabhas have consented to it.

e. A letter from the State Government certifying that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present;

f. Obtaining the written consent or rejection of the Gram Sabha to the proposal.

g. **A letter from the State Government certifying that the rights of Primitive Tribal Groups and Pre-Agricultural Committees, where applicable, have been specifically safeguarded as per Section 3(1)(e) of the FRA.**

h. **Any other aspect having bearing on operationalisation of the FRA**. The State/UT Governments, where process of settlement of Rights under the FRA is yet to begin, are required to enclose evidences supporting that settlement of rights under FRA 2006 will be initiated and completed before the final approval for proposals. This is issued with the approval of the Minister of Environment and Forests.

(C.D. Singh)
Sr. Assistant Inspector General of Forests"

31. It would, therefore, unambiguously appear from the above letter that compliance of statutory requirements provided under the FRA 2006 is unavoidable while considering grant of FC under the Forest (Conservation) Act, 1980 after FRA 2006 had come into force on 01.01.2008.

32. The requirement of this circular appears to have been complied with by the MOEF while granting State-I clearance by imposition of condition No. 18 making it incumbent upon the State Govt. to comply with the Act. This was also the specific direction of the Tribunal while disposing off the OA No. 167 of 2013 as would appear from the portion of the order dated 16.01.2014:—

> "Accordingly, the application stands closed. Needless to state that it will be open to the parties aggrieved, to work out their remedy, in the manner known to law. It is made clear that the conditions contemplated by the Government of Manipur in the approval order dated 15th January, 2014 shall be strictly followed by the project proponent."

33. The case of the Review Applicants is that the finding arrived at by the Tribunal in its judgement dated 20.6.2016 in Appeal No. 4/2014/PB/8/EZ on this aspect was an error apparent on the face of the record as it was held that the issue on the transfer of Forest (Conservation) Act had practically become a dead issue after the finality of the final approval order of clearance granted by the State of Manipur because the project had commenced since the year 1980 when FRA was not born and agreed terms and conditions had already been signed and rehabilitation and re-settlement packages had been provided to the affected people and, as observed by the MOTA, non- compliance of the FRA should be made an exception as 80% of the construction was over. The gross error apparent on the face of the record in arriving at such conclusion, according to the Ld. Counsel for the Applicants, would also be evident from the condition (xxii) of the final approval of the State Govt. for diversion of 595 Ha of forest land to the project on 15.1.2014 which provides that *"all other conditions under different rules, regulations and guidelines including Environmental Clearance shall be complied with before transfer of the forest land." (Italics added)*

34. The Respondents on the other hand would strongly argue that the question of compliance of the FRA had been referred to the Ministry of Tribal Affairs (MoTA) and in their response, the Ministry had expressed that since the land in question, as informed by the State Govt., had been purchased from the affected villagers through their duly elected village authorities (equivalent of Gram Sabha), the spirit of the Act had been followed in the case. It was further submitted that the MOEF had cleared the acquisition as a unique isolated case notwithstanding the provisions of the FRA 2006 and the circumstance leading to the acquisition on the condition that it should not be treated as a precedent. It was contended that the land for the project had been acquired in the year 1993 onwards after payment of due compensation and rehabilitative measures provided to the displaced villagers.

35. The Tribunal having considered all these aspects had finally dismissed the Appeal rejecting the contention made on behalf of the applicants that FRA 2006 had not been complied with.

36. We have given our thoughtful consideration to the entire facts and circumstances of the case, submissions of the Ld. Counsel of the parties and have perused the records. In our view, there appears to be substance in the submission made on behalf of the Applicants as we find that the eminent and unavoidable requirement of compliance of the FRA 2006 mandated under Stage-I Clearance and in the letter of the MOEF dated 03.08.2009 appears to have been overlooked by the Tribunal in arriving at the impugned finding of the judgement even when order dated 16.1.2014 disposing off OA 167/2013 made it clear that the conditions contemplated by the Government of Manipur in the approval order dated 15th January, 2014 shall be strictly followed by the project proponent clause (xxii) of which inter alia required compliance of the conditions in the Stage-I Forest Clearance. The rights prescribed under the FRA 2006 are obviously statutory which requires compliance both in its letter and spirit and not merely in the latter.

37. In the present case, it has no doubt been observed that acquisition of land in question had been made in the year 1993 onwards under agreed terms and conditions of a contract. While we do not find any reason as to why we should not accept the stand of the State respondents that all rehabilitative measures had been provided and compensation duly paid to the persons whose lands were acquired, the question that arises is as to whether this would be sufficient to fulfil the statutory requirements prescribed under the FRA 2006 when admittedly the Act had come into force with effect from 1.1.2008 and condition No. 18 of the Stage-I Clearance granted on 11.01.2010 had specifically stipulated the necessity to comply with the Act. That apart, compliance of the Environment Clearance was also a mandate prescribed under Clause (xxii) in the final Forest Clearance granted 15.1.2014. The answer to these questions, in our view, would certainly be in the negative for the reason that FRA deals with wider aspects as would appear from Section 3 thereof. The stated case on behalf of the state no doubt is that due clearance had been obtained for the transfer of forest land from the village authorities of the affected villages but, we are not certain as to whether it was a willing clearance and as to whether the compensation and the rehabilitative measures provided were to the satisfaction of the displaced persons.

38. It would be pertinent to observe that one of the objects of enacting the FRA was that it "***had become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Schedule Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development intervention***". *(Italics added)*. The profound nature of the Act and its statutory object have been articulated most succinctly ***in Orissa Mining Corporation Ltd.v. Ministry of environment and Forests: (2013) 6 SCC 476***. Without going into the details of the judgement, relevant portions of which begins from paragraph 38 to 57, we may just observe that compliance of the law on the part of the State has been made obligatory and even brought to the fore the problems faced by the Ministry of Tribal Affairs (MOTA) which were impeding the implementation of the Act in its letter and spirit and the fact that for proper and effective implementation of the Act, it had issued certain guidelines which were communicated to all the States and Union Territories vide their letter dated 12.7.2012 the operative part of which has been reproduced in paragraph 57 of the judgement.

39. The purpose of the above discussions is only to emphasise the compelling nature of the FRA 2006 which clearly appears to have been overlooked and not to deal with the findings in the impugned judgement in its merit.

40. For the aforesaid reasons, we are inclined to agree that an error apparent on record has arisen in arriving at the impugned findings in the judgement pertaining to compliance of FRA 2006.

41. In the result, the Review Application is allowed subject to the following directions:—

    1. While desisting ourselves from prohibiting continuance of the ongoing works of the project, which is also not the case of the Applicant, we direct the State respondents No. 1 & 3 i.e., the State of Manipur and the Irrigation and Flood Control Department, Government of Manipur, to ensure that the FRA, 2006 is duly complied with in the light of the averments contained in paragraph 9 of the Memorandum of Appeal (i.e., Appeal No. 04 of 2014) and sub paragraphs thereunder, so far as it may be practicable.

    2. All efforts shall be made to bring the actions taken thus far while carrying out the project by the project proponent, in accord with the provisions of FRA 2006.

    3. The State respondents shall ensure that the Gram Sabha of the area or its equivalent is consulted as required under the Act.

    4. The entire exercise in respect of the directions in 1, 2 & 3 above shall be completed within a period of three months.

42. No order as to cost.

In December 2015, a first of its kind ***Compendium of Judgments on the Forest Rights Act 2007–2015*** was jointly published by the Ministry of Tribal Affairs and UNDP. In the ten years since that volume was released, there have been numerous court decisions on the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, even as the statutory landscape around environmental conservation and protection has seen significant change.

The present volume is meant as a companion to the December 2015 Compendium, picking up where the previous volume left off. It includes key court orders and judgments from the period 2015 to 2018, along with brief summaries and contextualization.

The Forest Rights Act has been pivotal in providing a powerful vocabulary to the age-old struggles of Adivasi and forest-dwelling communities to regain control over their ancestral homelands. It provides the legislative landscape for a bold new imagination of self-governance, environmental conservation, and property relations, having opened creative pathways for translating complex and critical understanding of forest ecosystems into the formal language of governance. The present volume provides a deeper and wider understanding of the transformative potential of the Forest Rights Act both inside and outside the court room.

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