

IN THE SUPREME COURT OF INDIA
(Civil Original Jurisdiction)

I.A.No. of 2019

In

Writ Petition (Civil)No.109of 2008

In the matter of:

Wildlife First &Ors. ...
Petitioners

Versus

Ministry of Environment & Forests &Ors. ...
Respondents

And in the matter of:

Ministry of Tribal Affairs
Through Secretary
Shastri Bhawan
New Delhi - 110001 ... Respondent No.2/
Applicant

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| 1. | Application for modification of order dated 13.2.2019 passed in the present writ petition with Affidavit | |

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ADVOCATE FOR THE APPLICANT:

under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (“**Act**”). A copy of order dated 13.2.2019 is annexed as **Annexure A-1** (pg. ____ to ____).

Background of forest rights of tribal

2. It is a historical fact that in the colonial era, British had diverted abundant forest wealth of the nation to meet its economic needs. While procedure for settlement of rights was provided under statutes such as the Indian Forest Act, 1927, these were hardly followed on the ground. As a result, tribal and forest dwelling communities, which had been living within the forests in harmony with the environment and the ecosystem; continued to live inside the forests in a precarious state of tenurial insecurity, a situation which continued even after independence due to highly marginalised nature of such communities.
3. The importance of the symbiotic relationship between forests and forest dwelling communities also found recognition in National Forest Policy, 1988, which states as under: -

“Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations, should be to associate the tribal people closely in the protection, regeneration and development of forests, as well as to provide gainful employment to people living in and around the forest.”
4. Under the aforesaid context, the Parliament enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (“**Act**”) after

rigorous and democratic consultative process, including examination by a Parliamentary Committee.

5. This statute was enacted with an intent to correct the historical process by which tribal and other forest dwelling communities in the country, were alienated from their right to habitation and right to occupy and hold forest land and forest produce. The statute is predominantly enacted to protect the marginalized socio-economic class of citizens and balances the right to environment with right to life and livelihood. The Act followed a series of legislative precedents and administrative measures by the Central government and various State governments, to recognize forest dwellers rights over land, community lands, forest produce and ancillary matters, with a respect for both forest ecology and the right to livelihood of forest dwellers.
6. The Act is an example of the constitutionally mandated protective legislation under Article 15(4) of constitution of India which specifically empowers the state to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
7. This Hon'ble Court in the case of **Orissa Mining Corporation v. Ministry of Environment and Forests, (2013) 6 SCC 476** recognized the Act as an embodiment of the fundamental right to life with dignity enshrined in Article 21, as also the right to protect and preserve religious and cultural rights enshrined in Articles 25 and 29 of the constitution of India. The Act also enfoldes the fundamental duty to protect the natural environment including forests, as enshrined under Article 51-A(g) of the constitution.

8. In the case of **BanwasiSeva Ashram v. State of Uttar Pradesh &Ors., (1986) 4 SCC 753**, this Hon'ble Court took judicial notice of the fact that Adivasis have been using the forests as dwelling place for generations and using the forest produce for their livelihood: -

"1... It is common knowledge that the Adivasis and other backward people living within the jungle used the forest area as their habitat. They had raised several villages within these two tehsils and for generations had been using the jungles around for collecting the requirements for their livelihood-- fruits, vegetables, fodder, flowers, timber, animals by way of sport and fuel wood."

9. This Hon'ble Court in the case of **Animal and Environment Legal Defense Fund v. Union of India &Ors. (1997) 3 SCC 549** held that while every attempt must be made to preserve the ecology of forests, the right of tribal living in the forests must also receive proper consideration: -

"11. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration."

10. The aforesaid constitutional provisions and judicial precedents demonstrate that the residing of forest dwellers in forest areas and sustaining through traditional practices is not antithetic to the environment and forest ecosystem, but rather integral to the same. The implementation of the Act in letter and spirit is therefore not only a legislative requirement, but a constitutional imperative.

International covenants

11. The close relationship between forest dwelling communities and protection of the environment is recognised by a host of international conventions and declarations, which are binding on India: -

- i. The “**United Nation Universal Declaration on Human Rights**”, to which India is a signatory, takes into account the fact that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;
- ii. The “**UN Convention Concerning Indigenous and Tribal Populations,(1957)**”, - this Convention, which has been ratified by India, relates to “*protection and integration of indigenous and other tribal and semi-tribal populations in independent countries*”. Under the said convention, a commitment is made to include protection of customary and traditional rights of such tribal and semi tribal communities, and the protection of their right to ownership, collective or individual, over the lands which they have traditionally occupied;
- iii. The “**UN Declaration on Rights of Indigenous People**”, to which also India is a signatory, adopted on 13 September 2007, urges the member countries to recognize the rights of indigenous peoples. A key provision of the declaration contained in Article 26 enjoins members states to protect the rights to the lands, territories and resources which they have traditionally owned, occupied and used;
- iv. The “**UN Convention on Biological Diversity**” to which India is a party, advocates preservation of indigenous knowledge and practices under Article 8(j);
- v. The “**Rio Declaration on Environment and Development**” proclaims (Principle 22) that

indigenous peoples and tribal communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices;

- vi. The "**Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (UN Food and Agriculture Organisation, 2012)**" provides detailed Guidelines on protection of traditional tenurial rights of indigenous peoples and other communities, towards the advancement of the goal of eradicating hunger;

12. Further, international conservation organisations in recent years have strongly advocated respect for the relationship between forest dwelling communities and forest conservation. For instance, in 2000 the IUCN World Conservation Union - the world's largest conservationist organisation - and the WorldWide Fund for Nature issued a joint document titled "**Principles and Guidelines on Protected Areas and Indigenous / Traditional Peoples**" resolved that "*there should be no inherent conflict between the objectives of protected areas and the existence, within and around their borders, of indigenous and other traditional peoples.*"

13. At the international level, India has actively participated in the formulation of these legal principles and is constitutionally bound to ensure that these are implemented within the country in letter and spirit.

Scheme of Forest Rights Act

14. The preamble inter alia provides the object of the Act to: -

"to recognise 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.” (emphasis added)

15. Thus, the Act is made with an object to recognize the rights in “forest dwelling Scheduled Tribes” (**FDST**) and “other traditional forest dwellers” (**OTFDs**) who have been residing in forests for generations but whose rights have not been recorded.
16. Section 2(c) defines FDSTs as 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.
17. Section 2(o) defines OTFDs as 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.
18. Section 3 defines the rights of FDSTs and OTFDs such as right to hold and live on forest land; community right of nistar; right to collect forest produce; right to access biodiversity etc.
19. Section 4 vests the rights available in Section 3 to FDSTs and OTFDs.
20. Section 5 enumerates the duties of holders of forest right like duty to protect the wildlife, forest and biodiversity etc.
21. Section 6 provides the procedure and vesting of forest rights. Section 6(1) provides that Gram Sabha shall be the authority to initiate the process of determining the nature and extent of forest rights of FDSTs and OTFDs by receiving claims, consolidating and verifying them and preparing a

map delineating the area of each recommended claim. The Gram Sabha would then pass a resolution to that effect and forward the copy of the same to the Sub-Divisional Level Committee. Under Section 6(2) any person aggrieved by the resolution of Gram Sabha may prefer a petition before the Sub-Divisional Level Committee, which shall consider and dispose of the petition. Under Section 6(4) any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition before the District Level Committee, which shall consider and dispose of such petition. Under Section 6(6), the decision of the District Level Committee is final and binding.

22. From the scheme of the Act, it is evident that the implementing the Act and procedure of vesting of rights of FDSTs and OTFDs is with the state governments.
23. The applicant has been periodically monitoring the implementation of the Act with the state governments. In its review of implementation of Act in states hit by left wing extremism, which have high tribal populations, the applicant in its letter dated 12.9.2014 noted various problems in the implementation of the Act. It was noted that the rejection of claims under the Act was found to be very high, which was due to wrong interpretation of the Act. Appropriate procedure for filing of claims was not being followed due to lack of awareness at Gram Sabha level. Reasons for rejection of claim was not communicated to claimants and thus they are not able to prefer appeals. In view thereof, various directions were issued to the state governments. A copy of letter dated 12.9.2014 is annexed as **Annexure A-2** (pg. ____ to ____).
24. In its letter dated 10.4.2015, the applicant reiterated the concerns that had come to its knowledge like high rate of

rejection of claims; non-communication of rejection order; State Level Monitoring Committee meetings not taking place regularly who have to ensure that no tribal is removed till the process under the Act is complete. The state governments were called upon to remedy the situation for effective implementation of the Act. A copy of order dated 10.4.2015 is annexed as **Annexure A-3** (pg. ___ to ___).

25. Again in its letter dated 27.7.2015, the applicant noted that a large number of cases are rejected due to lack of evidence or incomplete evidence. It was directed that the district administration is expected to assist the Gram Sabhas by providing forest and revenue maps. It was stated that the claims rejected for insufficient evidence or which requires additional examination, may be re-examined. It was requested that technology such as satellite imagery may be used for consideration of claims. Detailed guidelines are issued for using technology for ascertaining the claims under the Act. A copy of letter dated 27.7.2015 is annexed as **Annexure A-4** (pg. ___ to ___).
26. In the letter dated 12.8.2015, the applicant raised concerns regarding imposition of unrealistic timelines in deciding the claims under the Act. It was stated that the timelines must not deprive rightful claimants of their rights under the Act. A copy of letter dated 12.8.2015 is annexed as **Annexure A-5** (pg. ___ to ___).
27. It is submitted that this Hon'ble Court by order dated 29.1.2016 in W.P. (C) No.50/2008 had directed the state governments to furnish data regarding number of claims rejected and the action taken after the rejection of claim.
28. After the aforesaid order was passed, the applicant on 5.2.2016 had addressed a letter to all state governments

that in order to place the complete information before this Hon'ble Court, it may be necessary to provide the details of the process of rejection of claims including communication of reasons of rejection; opportunity of appeal; and claims which were being re-examined due to improper rejections. A copy of letter dated 5.2.2016 is annexed herewith as **Annexure A-6** (pg. ___ to ___).

29. The applicant by letter dated 29.6.2018 addressed to all state governments noted various issues that arose in implementation of the Act including high rejection of claims; non-communication of rejection orders; lack of reasons in the order; raising of frivolous objections etc. It was noted that forest authorities are immediately attempting to evict tribal where rejection is made even without awaiting the decision of appeal. A copy of order dated 29.6.2018 is annexed as **Annexure A-7** (pg. ___ to ___). This was contrary to Section 4(5) of the Act which restricts the eviction till the recognition and verification procedure is complete.
30. In terms of order dated 29.1.2016 in W.P. (C) No.50/2008, some of the state governments filed the data of rejection of claims. However, the said data did not provide the details of rejection as was requested by the applicant in its letter dated 25.2.2016.
31. It is under aforesaid background, this Hon'ble Court, based on the data provided by the state governments, by order dated 13.2.2019 directed that the FDSTs and OTFDs whose claims have been rejected must be evicted.
32. It is submitted that as a result of the order dated 13.2.2019 passed by this Hon'ble Court a large number of tribal and other forest dwellers would be liable to be evicted by the

state governments without observance of due process of law. In the respectful submission of the applicant, under the Act, the rejection of a claim does not ipso facto lead to eviction of a tribal. There is no provision in the Act that provides for eviction after a claim is rejected. If a claim is rejected, then the appropriate state government would be obliged to resort to appropriate provisions to evict a person from the forest in accordance with law.

33. Further, the applicant respectfully states that the Act is a beneficial piece of legislation and deserves to be construed liberally in favour of the FDSTs and OTFDs. The FDSTs and OTFDs are extremely poor and illiterate people and not well informed of their rights and procedure under the Act. They live in remote and inaccessible areas of the forest. It is difficult for them to substantiate their claims before the competent authorities. The applicant has time and again attempted to sensitize the state governments while deciding their claims. However, notwithstanding, it has come to light that the claims of FDSTs and OTFDs were rejected in a summary manner where no due opportunity is provided to the claimants. The rejection orders are not communicated or the same are without reasons. It is also noted that in certain cases, eviction orders are issued even before the appeals under the Act are exhausted.
34. In such circumstances, it is uncertain whether the data furnished by the state governments accurately indicates whether the rejection orders were passed after observance of due process of law; compliance with principles of natural justice and whether appeal mechanisms have been properly exhausted. Without such information and compliance with the mandate of law in letter and spirit, the eviction of such tribal, would amount to serious miscarriage of justice.

35. It is, therefore, respectfully prayed that this Hon'ble Court may consider modifying its order dated 13.2.2019 and direct the state governments to file detailed Affidavits regarding the procedure followed and details of the rejection of claims and till then the eviction of tribal may be withheld. The eviction of tribal, without such information would cause serious prejudice to such tribal who have been residing in forests for generations.
36. The applicant has prima facie case in his favour and the balance of convenience is in favour of the applicant and against the Petitioner/ other Respondents. The applicant would be greatly prejudiced if the present application is not allowed. An order allowing the present application would achieve the ends of justice.

P R A Y E R

In the facts and circumstances the above Petitioner respectfully prays that this Hon'ble Court may be graciously pleased to: -

- (a). pass an order modifying order dated 13.2.2019 and directing the state governments to file detailed Affidavits regarding the procedure followed and details of the rejection of claims of FDSTs and OTFDs under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and withhold eviction proceeding till such time; and
- (b). pass such other and further order(s) as may deem fit in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

Place: New Delhi
Date: .2.2019

ADVOCATE FOR APPLICANT

Deponent