

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. _____ of 2019

in

Writ Petition (C) 109 of 2008

IN THE MATTER OF:

Wildlife First & Ors. ...Petitioners

Versus

Ministry of Forest and Environment & Ors. ...Respondents

AND IN THE MATTER OF:

1. Adivasi Dalit Majdoor Kisan Sangharsh,
Through its Convenor, Pavitri Manjhi,
R/o Village Khokharoama, PS Gharghoda,
District Raigarh, Chhattisgarh.
2. Sarv Adivasi Samaj, Bastar, Sambhag,
Through its President, Prakash Thakur,
Adivasi Vishram Greh, Chtirakot Road,
Jagdapur, Chhattisgarh.
3. Ashish Beck,
R/o Muktipara, Fundurdihari,
Ambikapur, District Surguja,
Chhattisgarh. ...Applicants/Impleaded

I.A. No. _____ of 2019

Application for Impleadment

(For Index, see inside)

Filed on:

ADVOCATE FOR APPLICANT/IMPLEADER: SATYA MITRA

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APPLICATION FOR IMPEADMENT PARTY RESPONDENTS

IN WRIT PETITION 109 OF 2008

To,

The Hon'ble Chief Justice of India

And His Companion Justices of the
Hon'ble Supreme Court of India

The humble petition of the
Petitioners abovenamed.

Most Respectfully Showeth:

1. This Application is being filed by organisations and persons working in Chhattisgarh among tribal and non-tribal forest dwellers in the State for many years. The present matter affects the livelihood and existence of tribal and non-tribal forest dwellers and therefore, they are filing this impleadment application to place their point of view before this Hon'ble Court.
2. The principal submission made by the applicants is that The Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter "Act") was passed to regularise and safeguard the stay inside forest areas of eligible tribals and other traditional forest dwellers who are covered by the Act. The Union of India and all the state governments and UTs have seriously defaulted in the implementation of the Act both in respect of individual forest rights as well as community forest rights. As a result of this deliberate negligence the claims of eligible persons has not been considered at all, and if considered this consideration has not been in accordance with the law. Government officials and particularly those from the forest and revenue departments have opposed this statute right from the inception and have taken many

steps to sabotage the legislation. As a result, many claims have remained unattended to for over a decade. During these proceedings this Hon'ble Court has been told that many claims have been rejected but the truth is that these rejection orders have not been communicated to the claimant tribals. Secondly, wherever orders have been communicated these are non-speaking orders containing no reasons at all. Thirdly, no legal aid was provided to the tribals by the State Legal Aid Services Authorities and, as a result, many of them remained unaware of their rights including their rights regarding an appeal and the procedures for filing appeals. The applicants have hereinafter also dealt with the other major defaults in the implementation of the Act.

3. Strangely, this petition was filed without making any tribal organisation working on this issue and striving for implementation of the Act a party to the case. The petitioners knew well who these tribal organisations were and where they were situated. Yet they deliberately chose not to make them parties in order to take them by surprise. This Hon'ble Court has time and again held that a petition filed without impleading the necessary and proper parties deserves to be dismissed.
4. This application is adopted as a parallel impleadment application to the I.A No. 59870 of 2019 dated 9 April 2019, filed before this Hon'ble Court.
5. We now proceed to set out hereinafter instances of widespread non implementation of the Act across the country.

NATIONAL

6. Forest dwelling communities across the country have had long standing socio-cultural relations with the Forest. The colonial forest governance framework disrupted the relationship by restricting local access and forest use. This resulted in the loss of access to forests as a material resource, beside loss of cultural identity and connection. Forest landscape dwelling populations are amongst the poorest of the poor. Their poverty reflects a history of institutionalised disenfranchisement; having their customary forest land expropriated, and use rights negated by feudal states, by the colonial state and subsequently after independence.

The Applicants highlight the historic injustice suffered by the forest dwelling communities through a report titled "Redressing the 'historical injustice' through the Indian Forest Act, 2006: A Historical Institutional analysis of contemporary forest rights reforms" by IPPG. The relevant extract from the report is as under:

"The range of forest rights deprivation scenarios on the ground is very diverse and location specific depending on the prior situations of these groups, the historical processes through which the state has extended its estate and the local interpretations of rules. The major ones are summarised below:

Rights deprived during the regular forest reservation / settlement processes: As explained above, across India

forest people lost rights in 'their' customary property according to due legal processes, under an annexationist regime where local people had little bargaining power.

Rights deprived during irregularities in forest settlement/reservation processes and un-surveyed village: There are a vast number of cases where the forest settlement process were either not properly conducted, not completed or people were not notified, or where all areas were not checked. Some villages have not been surveyed at all and so rights have not been recognised. A particular issue here is the declaration of vast tracts of land as 'deemed' forests where the due legal process of settlement of rights was not subsequently followed and so, with no exercise to record use rights all rights are extinguished by default.

Estate acquisition: In South West Bengal, immediately after independence, the state acquired private forest estates. However, in extinguishing the previous owners rights it also neglected the pre-existing local users arrangements with them. In failing to recognise the continuity of normal livelihood forest use rights that users had enjoyed from the previous owners, it criminalised them.

'Encroachment': This has become an over-riding category, encompassing those whose lands which were declared state forests without recognising their rights; those displaced from their ancestral lands for 'development' projects without rehabilitation who were compelled to clear and occupy new forest land, and also those who have occupied lands declared state forests either due to land scarcity / poverty or as a consequence of their traditions of moving to new locations due to disease or declining land productivity.

'Forest villages': Bonded labour settlements were established by Forest Departments, mainly of forest tribal peoples, to provide labour for forestry operations. These villages, still existing in North Bengal, remain an anachronism in which subjects endure severely circumscribed rights and receive no social provisions other than via the Forest Department.

'Primitive Tribal Groups': Tribes who have been classified as 'primitive' (i.e. original, first, early, ancient) by the state according to anachronistic criteria. This includes 'hunter-gatherers', shifting cultivators and other non sedentary groups. These groups have endured particular deprivation because their livelihoods are inconsistent with the administrative land use categories, as they often avoid contact with outsiders, including

administrators, and as they tend to be non-literate. They can more easily fall foul of legal processes which they are less likely to be aware of or contest.

Tribals without 'Scheduled Tribe' status: A large number of tribes were either left out of scheduling altogether or were scheduled in one place but who have moved elsewhere for different reasons and lost the status. Both are deprived of the benefits of positive discrimination (including under the FRA.)

Sacred groves: There has been a widespread traditional practice of conserving local forests as sacred areas. Forest Departments have no special provisions for treating sacred groves differently from other areas of forests, and they have often been incorporated in the state forest estate and felled (destroying the biodiverse ecosystem) as part of 'normal' felling operations. Only some on private land have persisted (Deb 2007).

National parks/sanctuaries: Establishment of national parks and sanctuaries has often led to extinguishment of peoples use rights in protected areas without due legal process. Those who have inadvertently become residents of parks can also suffer from all sorts of service provision and access deprivations. As per information submitted to the Supreme Court, 60% of India's national parks and 62% of wildlife sanctuaries

have not completed their process of rights settlement, subjecting hundreds of thousands of people to an extremely restrictive regime without acknowledging their rights.

Revenue forest boundary disputes: The revenue and forest departments maintain separate land records for the areas under their respective jurisdictions. But there are many anomalies between these records. Both Revenue and Forest Departments often have the same land in their respective records. The "forest area" in the country, in the records of the Revenue Department, is 7.66 million hectares less than that recorded as such by state Forest Departments. These 7.66 million hectares (an area twice the size of Kerala) are disputed between the two departments. The government has no idea whether these areas actually have any forests or not. Revenue departments have distributed leases/'pattas' for these which the forest department terms illegal, under the Forest Conservation Act 1980.

Joint Forest Management: There are now more than 100,000 ad hoc Joint Forest Management committees formed based solely on administrative provisions with no legal basis. In some cases common forests and cultivated lands with unclear tenure have been brought under JFM by the Forest Department leading to

evictions of cultivators and provoking conflict between villagers”

True Copy of the report of the IPPG titled “Redressing the ‘historical injustice’ through the Indian Forest Act, 2006: A Historical Institutional Analysis of Contemporary Forest Rights Reforms” is attached with the parallel impleadment application, that is I.A. No. 59870 of 2019 dated 9 April 2019, as Annexure P-1. For the sake of brevity the same has not been attached again with the present impleadment application.

7. The Act recognises the historical injustice meted out to scheduled tribes and other traditional forest dwellers. It seeks to secure traditional rights over forest land and community forest resources, and establish democratic community based forest governance. The process of recognition and verification laid out in the Act is currently the only legal process for determining the rights of people on forest land. The Act has opened up avenues to reimagine forest governance, and heal and strengthen the relationship between forest and people. It has the potential to harness local creativity and ingenuity for forest conservation. The Act recognises rights over community forest resources and empowers the gram sabha to prepare conservation and management plans. There are about 200 million forest dwellers who directly depend on forest resources for livelihood. The Act has extraordinary potential for ensuring livelihood security and poverty alleviation through sustainable and community

based management of forests for these people. In spite of the national protections, provided through the Act, for tribal communities', widespread violations – most notably failures to effectively implement the provisions of the Forest Rights Act – have continued. State Governments and related agencies have either refused to recognise forest dwellers' rights, or have withdrawn them after recognition; the authorities have consistently made deliberate efforts to withhold the Act' settlements and misrepresent its provisions. Land has been taken from forest dwelling communities without their consent or any consultation of the Gram Sabhas, often by force – and the perpetrators have not been punished. In many cases, the land has been acquired through deception; since the forest dwellers are largely unaware of the Act's provisions, they are vulnerable to forgery. These communities also have received inadequate reparations for eviction. Finally, State Governments have devolved authority for the implementation of the Act to the Forest Departments; in most States, the Forest Departments continue to treat forest dwellers as 'encroachers' and thus create further obstacles for the proper implementation of the Act. The Applicants rely on the Report of the National Committee on the Forest Rights Act titled "Manthan" – A joint committee of Ministry of Environment and Forests and Ministry of Tribal Affairs, Government of India. The relevant extracts of the Report are as under:

"11.1 Status of implementation

However, the current state of implementation is characterised by a series of serious problems, including in particular:

1. Constitution of Gram Sabhas is at the panchayat level, rather than at the village/hamlet level. As is evidently clear from section 2(g) and 2(p) of the Act, the gram sabhas are to be convened at the hamlet level in schedule V areas, and the revenue village level or traditional village or habitations and settlements in other areas. However, in a number of states, such as AP, WB, and UP, these are being called at the panchayat level, which is illegal.

2. Extensive and wrong rejections/recognitions, primarily due to hasty enquiries and lack of a thorough examination of the rejected /recognized cases by senior officials or the higher level committees. Claimants whose cases are rejected are not given any "reasonable opportunity", as provided in Rule 4(c). Decision rejecting the applications has not been communicated to the claimant in writing anywhere, with the result that the people have not been able to exercise the right to appeal. The Tribal Development Departments of the state governments have neither cross-checked the work being done at the village level by the revenue and forest

officials, nor did they engage any outside agency to do independent assessment.

3. Powers of the FRC and GS are exercised by the village level officials, and the non-officials of the FRC and GS are just putting their signatures to the reports written by the officials. The village level enquiry reports have not been verified (not even one percent) by block or district level officials. Neatly devised systems of processing of claims at various levels has not been operationalized, except in few areas of some states.

4. As per rule 10, the State Level Monitoring Committee has to devise criteria and indicators for monitoring the process of recognition and vesting of forest rights; and monitor the process of recognition, verification and vesting of forest rights in the State. It was for the Tribal Department in the States to develop qualitative indicators, call meetings with peoples' representatives, hold public consultations, put pressure on the Revenue and Forest Departments at the district level to do justice to the forest dwellers, and improve communication between officials and the people. In most states, on the other hand, it appears that monitoring has been only statistical with a focus on quick disposal, rather than on ensuring that all occupations are regularised as per law, fair play is

observed in the field, and adequate field verifications lead to enhanced satisfaction and improved livelihood opportunities.

5. In almost no instance has the SDLC pro-actively provided maps, documents, and evidence to FRCs and GSs, though this is required by the FRA.

6. Though the FRA provides for multi-stakeholder verification and decision-making at various levels, in many places the opinions of forest staff/officers appear to have over-ridden all else. This is due to lack of interest and capacity in Tribal Department officers and lack of confidence and concern in the Revenue Department officers to handle matters of forest rights. The Tribal departments are used to giving scholarships and grants to beneficiaries, but have no experience of dealing with programmes that require inter-departmental coordination. Most nodal officers, without much of capacity building inputs given to them, were thus quite happy collecting statistical information (often from FD) on FRA, but took no initiative in verifying the figures, arranging for a supervision architecture, or assessing the quality of performance of districts. The Tribal Department officers are seen as very low in the hierarchy as compared to the Chairman and hence had hardly any say in the matter and hardly took any

initiative. The show was seen and projected primarily as Chairman's or FD show.

7. Evictions are reportedly taking place in violation of Section 4(5) of the FRA, which states: "Save as otherwise provided, no member of FDST or OTFD shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete". There have been widespread reports of evictions in violation of this provision, before and during the tenure of the Committee. There is little evidence that such illegal actions have been dealt with seriously by either state governments or by MoEF and MoTA.

8. OTFDs: The committee has observed that, in all the states where FRA is being implemented, OTFDs have been generally excluded from the claims process on the grounds that they have not been cultivating the claimed plot for 75 years. MoTA needs to clarify that the requirement "for at least three generations prior to December 2005" applies to the residency clause only, and relates to the recognition of a non-Scheduled Tribe person as an OTFD under the Act; this requirement does not relate to the parcel of land for which a claim is being made, or to the forest on which other rights are being claimed. The claimant need not have occupied the land, or been using the forest, for 75 years. If s/he was

primarily residing for 3 generations in forest or forest land and is dependent on the forest as of 13 December 2005 for her/his bona fide livelihoods needs as defined in Rule 2(b) of the FRA Rules, s/he would be eligible under the Act.

9. Only a few states have been able to use application of the spatial and remote sensing technology mainly GPS or PDA for demarcating the boundary and measuring area of plots for individual forest rights because of lack of capacity building in the application of this technology.

10. There are no national level data on the status of FRA implementation specifically with regard to PTGs. The various processes of the FRA have hardly reached them and the progress of implementation is very poor.

11. As per the provisions of FRA forest dwelling communities are eligible to forest rights even in the protected areas (PAs). But no consolidated picture of the status of its implementation is available at the national level. No state is maintaining such data or analyses separately, nor are MoEF or MoTA asking for them. There is however, a clear trend of initially denying the rights under FRA within PAs at the ground level in some states. In many states it has been wrongly believed, or conveyed, that tiger reserves are exempted

from the FRA. It has also been wrongly conveyed that FRA does not apply if rights of people have been previously settled under the WLPA, even if people might still be residing within or depending on the resources of the PA, and also the FRA does not apply to villages where resettlement is part of an ongoing process that began before the FRA was promulgated.

12. PESA and FRA provisions, especially on MFP, need to be rationalized so that people come forward to claim and there is no conflict later on.

13. Non-recognition of community forest resource rights and other non-land rights”

True copy of the report by National Committee on the Forest Rights Act of Ministry of Environment and Forests and Ministry of Tribal Affairs, Government of India, titled “Manthan” is attached with the parallel impleadment application, that I.A. No. 59870 of 2019 dated 9 April 2019, as Annexure P-2. For the sake of brevity the same has not been attached again with the present impleadment application.

8. The applicants also rely on the report titled “Promise & Performance: Ten years of Forest Rights in India”, to highlight the status report regarding the implementation of the Act after 10 years of its inception. The relevant extracts of the report are as under:

“The performance of FRA has been diverse across, and even within, the states. Research for this report revealed the poor data collection and reporting system of FRA implementation in most states. In most states, only IFRs have been recognized and only a few states have implemented the CFR provision. For the whole country (excluding the five north-eastern states and J&K), only 3 per cent of the minimum potential of CFR rights has been achieved in the years from 2006 to 2016.

Analysis of the overall performance of FRA above shows a certain pattern (see data below). Laggard states have either not started implementing FRA, or have performed extremely poorly. The low performing states have a very low level of implementation compared to their potential (less than 2 per cent). IFR focused states have only implemented IFR (individual occupancy) and ignored CFR and CR implementation. CFR laggard states have implemented both IFRs and CRs, but have ignored implementation of the most important CFR rights. Finally, the better performing states show substantial efforts in implementing both CFRs and IFRs. Maharashtra stands out in the area of CFRs recognized in the state, while also recognizing IFRs. However, it needs to be emphasized that even Maharashtra’s CFR recognition drive has only achieved

18 per cent of the total potential for CFRs in the state. Similarly, Odisha, another well-feted state, has recognized barely 6 per cent of its CFR potential. Thus, the revolutionary potential of FRA remains untapped.

<i>S.No.</i>	<i>CATEGORIES</i>	<i>STATES</i>
<i>1.</i>	<i>Laggard states No or extremely poor performance</i>	<i>Assam, Bihar, Goa, Himachal Pradesh, Tamil Nadu, Uttarakhand, Haryana, Punjab, Sikkim</i>
<i>2.</i>	<i>Low performing states Achieved less than 2% of minimum poten- tial</i>	<i>Rajasthan, West Bengal, Karnataka, Jharkhand</i>
<i>3.</i>	<i>States with only IFR Implementation.</i>	<i>Tripura, Uttar Pradesh</i>
<i>4.</i>	<i>States which have ignored CFRs but imple- mented CRs and IFRs</i>	<i>Telangana, Andhra Pradesh, Madhya Pradesh, Chhattisgarh</i>
<i>5.</i>	<i>States with both IFR - CFR implementation</i>	<i>Maharashtra, Odisha, Kerala,</i>

		<i>Gujarat</i>
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SECTION III: KEY BOTTLENECKS IN MEETING THE POTENTIAL OF FRA

Institutional and structural challenges: The performance of FRA has been very poor, reflecting deep structural and institutional issues. Absence of political will is the key obstacle in achieving the potential of FRA at the national and state levels. At the national level, this is reflected in the lack of capacity-building effort in the nodal MoTA and in not providing dedicated budgetary support to MoTA for FRA implementation. There is no mission mode to ground this largest land and forest reform in India's history. Lack of political will has also allowed MoEFCC to function as if FRA doesn't exist, as evidenced by its passage of Compensatory Afforestation Funds (CAF) Act, 2016 and its continued support to JFM and VFRs, all conflicting with provisions of FRA. Similar hurdles are being experienced at the state level.

Weak nodal agency: MoTA is the central nodal agency for the implementation of FRA, but is understaffed and under-resourced to supervise this massive task. One Secretary, assisted by two Joint Secretaries, one Deputy Director General and an Economic Advisor, handle not

only FRA-related work, but a plethora of other responsibilities. Against the sanctioned strength of 137 employees, only 101 are in place. No separate budget provision has been made to implement FRA.

MoTA has however, fallen woefully short of addressing the implementation challenge faced by FRA because of the above-mentioned constraints, and lack of support from the Government of India. Many states have ignored the clarifications, guidelines and directions issued by MoTA, but mechanisms for holding such states accountable within India's federal structure remain weak.

Lack of cooperation by MoEFCC and opposition by forest bureaucracy: Due to the long-standing territorial jurisdiction of forest departments on forest land and a much-empowered forest bureaucracy, forest departments of many states have been obstructing the recognition of rights. Practically all the states' promise and performance reports document several cases of the forest department obstructing the claim and recognition process by not cooperating in the verification proceedings, raising illegal objections to the claims, imposing JFM on areas claimed as CFRs, refusing to sign titles approved by DLCs and carrying out evictions where claims have been filed but not yet processed.

Across the country, forest departments have largely been hostile, at best apathetic, to FRA with forest bureaucracies effectively dictating the agenda of FRA implementation.

Poor functioning of DLCs and SDLCs: Formation of DLCs and SDLCs has been delayed in several states. In many cases, the composition of DLCs/SDLCs violates the statutory requirement with over-representation of forest officials. Meetings of DLCs/SDLCs are not regular. The DLCs/SDLCs often send claims and titles to the forest department for approval in violation of rules and procedures.

Undermining legal authority of gram sabhas: The legal authority of the gram sabha for determining the nature and extent of rights, and governance of forests is often seriously undermined by the bureaucracy. In many states, gram sabhas are being organized at the panchayat level (Chhattisgarh, Andhra Pradesh, Telangana, West Bengal), although FRA mandates village/hamlet level gram sabhas. After amendment in the FRA Rules in 2012, reconstitution of FRCs with two-third ST members has not taken place in many states. There is lack of support from the state agencies for awareness and capacity building of the gram sabha and FRCs on FRA.

Continued evictions of right holders in violation of FRA: Despite the FRA, widespread evictions of forest dwellers, severe damage to their legally mandated livelihood practices, and willful non-recognition of rights before forest diversion, have continued through the decade. These evictions have been both from Protected Areas and areas outside them. Large-scale illegal evictions of right holders in violation of FRA have been reported from Himachal Pradesh, Telangana, Andhra Pradesh, Karnataka and Assam.”

True Copy of the report titled “Promise & Performance: Ten Years of Forest Rights in India” is attached with the parallel impleadment application, that I.A. No. 59870 of 2019 dated 9 April 2019, as Annexure P-3. For the sake of brevity the same has not been attached again with the present impleadment application.

9. The Ministry of Tribal Affairs (MoTA), (nodal agency responsible for the implementation of the Act), has been publishing status reports on the claims filed and distributed under the Act since May 2008. These reports are based on the reporting by the State Governments. The update report dated 31 October 2018, reflects that 42,10,378 claims (40,64,741 individual and 1,45,637 community claims) have been filed and 18,79,372 titles (18,08,819 individual and 70,553 community claims) have been distributed. The data presented in these reports does not present any analysis of trends, progress and

challenges in claiming and distribution of titles over CFRs. In most states, figures for claims and titles for public utilities under Section 3(2) of the Act are confused with CFRs under Sec 3 (1) and reported as 'community rights' alongside CFRs. The reports do not give disaggregated figures for rights over nistar, rights over MFP collection, and the right to conserve and manage the Community Forest Resource (CFR), etc. This is despite the fact that on 3rd December 2012, in a National Consultation organised by MoTA, with relevant officials from all state governments, the reporting format for states was revised to provide detailed and disaggregated information with respect to CFRs. Barring a few states like Odisha other states continue to provide information as before. Many states still do not report on the status of CFR implementation, indicating clearly that this is still not a priority.

True copy of the Status Update Report on FRA dated 31.10.2018 by the Ministry of Tribal Affairs is attached with the parallel impleadment application, that is I.A. No. 59870 of 2019 dated 9 April 2019, as Annexure P-4. For the sake of brevity the same has not been attached again with the present impleadment application.

10. The applicants also rely on the report titled "Trends and Directions in the Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 after Twelve Years" by the Tata Institute of Social Sciences, Mumbai, to highlight the status report regarding the implementation of the Act after 10

years of its inception. The relevant extracts of the report are as under:

“The analysis of available database on forest rights implementation across India reveals that the level of implementation is uneven and inconsistent. Specifically, with reference to large number of rejections and pending of forest rights claims, we have observed the following major concerns—

1. The claimants are not informed or given explanation in writing the reasons for rejecting their claims by the Sub-Divisional Level Committee (SDLC) and District Level Committee (DLC) authorities.
2. There is no serious effort at the SDLC and DLC level to avail the required documents and information to the Gram Sabha to file their claims.
3. Regular meetings of SDLC and DLC are not taking place to expedite the process of pending claims.
4. SDLC members insist upon a particular type of evidence to process the claims.
5. Claims of Other Traditional Forest Dwellers (OTFDs) are arbitrarily rejected or not processed at the SDLC and DLC level. The provisions for the recognition of OTFDs rights are misinterpreted and misunderstood by the implementing agencies.

Discussion with Gram Sabhas and forest rights claimants in the above states reveal that the SDLC members insist upon that the claimant should be 75 years old and, in many cases, it is also found that the OTFDs claims are rejected because the claimant was not occupying the land for 75 years.

6. There has been no attempt to prepare Record of Rights (RoR) by the district administration in the post-recognition of forest rights claims.”

True copy of the report titled “Trends and Directions in the Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 after Twelve Years” by the Tata Institute of Social Sciences, Mumbai is attached with the parallel impleadment application, that is I.A. No. 59870 of 2019 dated 9 April 2019, as Annexure P-5. For the sake of brevity the same has not been attached again with the present impleadment application.

CHHATTISGARH

11. The tribal population of Chhattisgarh constitutes 31% of the total population of the state, while SC communities constitute 12% of the population. Gonds are the prominent tribe in the state, followed by Abhuj Maria, Bison, Horn Maria, Muria, Halboa, Bhatra, and Dhurvaa (Indianetzone, 2010). Abhuj Maria, Baiga, Birhor, Hill Korwa, and

Kamar are the five Particularly Vulnerable Tribal Groups (PVTGs) found in Chhattisgarh. The schedule tribe population here is approximately one tenth of STs in the country. The recorded forest area in Chhattisgarh is around 59,772 sq. kms which constitutes 44.21% of its geographical area and also 8.7% of the total recorded forest area of India with 11 wildlife sanctuaries and 3 National parks covering around 4.79% of the geographical area. The update report dated 31 October 2018, published by MOTA reflects that in Chhattisgarh, a total of 8,87,665 claims have been filed with 8,56,150 being Individual Forest Rights claims and 31,515 Community forest Rights claims. Of these, a total of 4,16,359 claims have been distributed with distribution of 3,98,181 Individual forest Rights claims and 18,178 community forest rights claims. The rejections have been found to be rejected at the level of Gram Sabha. The decisions of Gram Sabha are by and large influenced and dominated by external agencies like forest department in many cases. A lot of rejections have happened in the offices of forest department without following the due process of physical verification. The procedural lapses with regard to claim filing and recognition process suggest that that the constitution of FRC were hurried with absence of adequate quorum in FRC. The recommendation for rejections have been submitted to the SLDC without providing sufficient reasons. This has led to exclusions of many claims that have been rejected under influence of revenue and forest officials. Acknowledgement receipts of claim applications and written applications and written intimation of rejection of claims are

not issued to the claimant. In Chhattisgarh, reports suggest that there have been numerous procedural violations in granting IFR and CFR in the high-pressure mining area. The process of receipt and recognition of claims are full of discrepancies. There has been poor recognition of CFR too and the data suggests low rate of achievement in both the categories. With utter disregard to the laid procedure under the Act, the CFR titles have been given to the Joint Forest Management Committees. The Rights for grazing and collection of minor producers have been given under the working plan of the forest range. The applicants are not given fair opportunity of being heard before rejection or modification of their claims. The reasons for rejection or modification are not given and the claimants are not given any information about the appeal procedure. The authorities have also resorted to filing criminal cases against the tribal leaders and representatives for pushing for the implementation of the Act.

12. Ghatbarra village (Schedule V area) in District Sarguja falls in the core zone of Parsa East Kete Basan (PEKB) coal mines. The coal blocks are spread over 2,700 hectares. Even after resistance from the locals and NGOs to mining on a joint study of Ministry of Coal and MoEF&CC, the permission was granted to the concerned company managing the coal block. The company running the Coal Block has used every method to sideline the implementation of the Act and the mines illegally. In an unprecedented move, the government cancelled the CFR titles issued to the community on a

complaint filed by the coal mining company that the CFR titles were interfering in their coal mining operations.

13. Korba, which has 66 per cent forest area, 66 per cent tribal population is considered the power hub with large reserves of coal blocks. Here, the FRC under the Act was formed only in 2014 after the organisations pushed SDLC to look in to the implementation of FRA in Pali Block. Out of the 476, as many as 317 households are still called 'encroachers' as they have not received their titles despite having a legitimate claim under the Act. The provisions of the Act are being torn and wrecked by the authorities to facilitate diversion of forest land for mining and other projects. Illegal circulars issued by the state government to subvert the provisions of FRA and deny CFR of villages across Chhattisgarh. There is illegal interpretation of "Community Forest Rights" to restrict it to only Clause 3 (2) which provides for diversion of forests for basic infrastructure like schools, hospitals, etc. One such issue is the circular issued by FD for the conversion of forest village to revenue village. A circular dated July 17, 2013 was issued by Principal Chief Conservator of Forests to various collectors and corresponding Divisional Forest Officers regarding the process of implementation of FRA provisions in 420 villages whose status had converted from forest village to revenue village. This circular contains several provisions which marginalize and violate the individual and community forest rights of forest-dwellers of these 420 villages.

14. The Applicants rely on the Report titled "*National Research Study on Implementation of Forest Rights Act in Neighbouring States of Odisha*" to highlight the non-implementation of the Act in Chhattisgarh. The relevant extract of the report is as under:

"4.2.5 Implementation of FRA in the Study Districts:
Narrative Analysis

4.2.5.1 Committees at different Level:

Constitution of Forest Right Committee

In all study villages, FRCs were initially formed in the year 2008 following up on the official notification of the FRA rules. The FRCs were formed in gramsabha meetings held mostly at GP level, however it is doubtful whether most of the GS had proper quorum as could be found in the case of study villages . The FRCs were formed in a hurried fashion within a small period of time and with little or no information about it at the village level. This appears to be same across the state as the government fixed up a time line for formation of FRCs and other required bodies under FRA. As found in the study villages, representation from para (hamlet) or ward has been taken as an approach for selecting FRC members. In one study village, voting was carried out to select the President of FRC (and through consensus in other villagers). Different categories of persons appeared to have played an important role in FRC constitution. The most common and prominent role has been that of the

GP secretary and FD personnel in addition to school teachers, supervisors of tribal hostels etc.

However we found membership of FRCs varying in different places and in at least three study villages, we found that there are no women members in the FRCs. In all studied FRCs, the GP Secretary has been found to be the ex-officio secretary of the FRCs and has been found to play the dominant decision making role. This appears to be a general situation throughout the state as our interactions with different stakeholders suggested. It was observed that the FRC proceedings have not been maintained in separate registers and a single register contains proceedings of several FRCs under a GP. In all cases studied, we found such combined registers lying with the GP secretaries and not in custody of the concerned FRC. For the study villages, the FRC proceedings could not be located for several villages especially those related to the first phase of FRA implementation which happened in the year 2008. It was also found that since the GP secretaries also change, sometimes at more frequent interval, there is absence of proper handover of charge and documents. The quorum of gramsabha organized for FRC formation could not be verified in many cases due to lack of data but in some of the cases, we have found that the gramsabha quorum has been extremely low. E.g. in village A under Bilaspur,

it was found that only 10.4% of the GS members were present during FRC formation. However the FRC president claimed that around 125 – 150 people participated in the meeting but the records pointed otherwise. However where there have been external facilitation, things have been better for example in village B under Korba, around 47.44% of GS members were present during FRC constitution. This might be still not the best situation but things have more problematic in other cases. In our discussions at the study villages, it took lot of time for people to actually identify FRC in their villages; they are much more familiar with the VSS formed under JFM and would normally start talking about it when asked about the FRC. Only when one started asking if anybody has recently got 'patta' over forest land (on bejakabja land) and if they know of any committee/ person who were dealing with it, then they would remember and most of the time they would not talk about any committee rather would talk about some persons who would have been 'incharge' of the patta process. In the study villages, we could found different approaches to committee constitution. In at least two cases, we found the FRC presidents is also a forest chowkidar and in this way have an obligation towards the forest department and our interaction with civil society members working in other districts suggested similar

trend in many parts of the State. This might adversely affect impartial functioning of FRC. In our interaction with multiple stakeholders it was observed that Forest Chowkidars or villagers attached with forest department or their program have been made FRC presidents. We have found instances of FRC's decisions being influenced by the Forest Department. This has come out clearly in case of village in Bilaspur, where several Baiga persons allege that their applications were rejected even before formal acceptance for consideration by the FRC (or the GS). It also serves as a tool of control over FRC decision making by the forest department. Representation of women in FRCs and their active participation in its affairs has been inadequate in the study villages.

Level of FRC constitution has been found to be varied in the study areas. In Dhamtari, in all the study sites, the FRCs have been found to be at the level of gram panchayat and in case of forest village it has been formed at their level and attached to the nearest gram panchayat. In Korba, which happens to be a fully scheduled area, the FRCs have been found to be constituted at the level of Panchayat.

Constitution of Sub Divisional Level Committee and District Level Committee

The compositions of DLCs have been as per provisions of the Act. It was found that there has been no regularity of DLC meeting. Based on the proceedings available with the study team, it appears that all the DLCs only met when claims have been forwarded by the SDLC for consideration or minister's visit has been planned for an area for distribution of titles. There have been no regular meetings to review progress of FRA implementation. As per records available with the study team, following has been the frequency of DLC meetings in the study districts. Some of the key issues pertaining to functioning and performance of DLCs are briefly discussed below:

- Government officers have been found to play a dominant role in the functioning of DLCs. Though in terms of numbers and as provisioned under the law, there is adequate representation of PRI members including women members, their active participation in conduct of DLC is lacking. [L] [SEP]
- There has been lack of initiative on part of DLCs to organise trainings and facilitate wide publicity of the Act and Rules especially at the level of panchayats and villages. [L] [SEP]
- The filing of monthly progress report is highly irregular and there is lack of consistency with regard to data on FRA implementation.

- Our interactions with SDLC members across the study districts reveal that meetings of SDLC have been highly irregular and it appears, especially in the early stages of implementation that proposals of claims might have been directly prepared by the forest department and SDLCs have been bypassed. As is evident from the above table, we could not locate proceedings of SDLCs for some years and the concerned person expressed ignorance about presence of any more documents. It was suggested that other proceedings would be lying with the forest department, however in some of the forest offices that we visited, we failed to locate any SDLC proceedings.

Process and Approach Adopted for Filing, Verification and Recordings of claims

4.2.5.2 Individual Rights Call for claims by Gram Sabha

While there is a three- generation (75 years) clause for OTFDs, our discussion with few GP secretaries revealed that they were under the impression that even tribals have to be in occupation of the claimed land for at least 25 years from the official cut-off date. They said to have learnt this in meetings organized by the local administration and especially by the forest department. When we made clarifications in this regard to one such GP secretary in Dhamtari there were 3-4 people sitting in the same room and were listening to our conversations.

On hearing our clarification, one of them immediately replied that they have not been able to apply as their occupation was less than 25 years though their residency is much older. In spite of clarification issued by MoTA on the periodicity, there appear to be utter confusion at lower level including tehsil/forest division level. The common understanding has been that the concerned land needs to be under occupation for a particular period rather than actual residency of the concerned person. Another approach to understanding the '25 year's clause' for the tribals could be that it makes the case for only pre-80 occupations and can be a misunderstanding by the forest department. This is also a product of insufficient understanding of the law and such distorted interpretation continues to exist at least up to the panchayat level till this date. This might have also prevented many potential claimants from applying.

Submission of claims at FRCs and Acknowledgement

The claim forms have been filled and collected by different entities in the villages. It has been normally collected by the staff of Forest Department or the GP Secretary. The mandated role of FRCs in carrying out this process could not be found in the study villages. It was also observed that the concerned FRCs were actually

unaware of any such role of theirs in the first place. In none of the study sites, any acknowledgement for receipt of claim forms has been provided. This appeared to be a general situation across the State as could be observed through our interaction with multiple stakeholders.

Recording of claims by FRC

In the study sites, we found that list of claimants has been prepared as a part of the FRC proceedings. However in all cases, this does not reflect the actual number of original applicants as we came across instances where decision whether to admit a claimant's application for consideration have been made without any verification arbitrarily by the FRC president or the FRC under the influence of forest department or by forest department staff/ parwari by themselves.

Also in many cases the list appears to be partial or the list has not been made for different phases. There does not exist any list of original applicants, rather the only list that exist is that of persons considered for recognition of their rights (approval or rejection). In most of the FRCs we were unable to find proceedings of the earlier phases of FRA implementation. It was also found that the FRC proceeding files is kept with the GP Secretary and not

with the concerned FRC. As most of the FRCs have been constituted at the panchayat level which also has more than one village, separate registers have not been maintained for different villages. Also in places where FRCs have been constituted at the village level and there are more than one village under the GP, proceedings of all FRCs were found to be maintained in a single register (e.g. FRCs under Mandeli GP) and lying with the GP secretary. This is also probably due to the fact that GP secretaries have been made FRC secretary in violation of FRA rules.

Verification and Mapping

However in study villages and some of the sites that we visited out of the study areas (especially in Bilaspur area), people allege that the panchnamas have been made without any field verification and that signatures of villagers as witnesses were actually obtained in the empty panchnama forms when the claim applications were filled in. Several village representatives suggested that they were told by the forester that signature of witnesses would be required send the forms to higher level (upar bhejne ke liye). Few elders in one village under Bilaspur suggested that verification reports have been

prepared by patwaris and foresters by sitting in their offices without conducting any ground verification and they have virtually decided as to whose claim should be approved. Several GP secretaries have similar contentions.

In the study villages, it was found that no maps have been provided to the FRCs to facilitate claim verification process. This appears to be a common situation across the State. One senior forest official suggested that neither the tribal department nor the revenue department has provided requisite support in the claim making and verification process. The revenue department failed to provide patwaris to assist claim verification process (It may be noted here that mostly retired patwaris are being used in assisting the claim verification process). The senior officer further suggests that these patwaris just behaved like Moghul era Todarmals who were keen on extracting money from the villagers.

Approval by Gram Sabha and recommendation to SDLC

It was observed that after receipt of the claim applications, a lot of them were sorted out in preliminary screening in the gramsabha meeting or amongst FRC members or dominant few of the villages without any due field verification. One Baiga person from Aamadobe,

whose application was 'rejected' through such process was only able to sit outside the Gram Panchayat hall and was told about the rejection. As the President said that, wohan kaat chhantkiye (we did some screening out there). The forest guard was also present in the meeting and appears to have influenced these kinds of decisions. This appears to be a common situation across study villages. This appears to be a general situation across the State as our interactions with various other stakeholders reveal.

We also came across instances where claims have been considered and approved in the FRC meeting rather doing it in gramsabha as mandated under the Act. In most of the study villages, most of the FRC members have been found to be grossly unaware of its objectives and functioning. One such FRC member of village A under Bilaspur district belongs to the Baiga community (PTG). He does not know anything except that he was chosen as one of the member of FRC and has never attended any of its meeting or work. He had also filed claim for land but his claim was rejected as being post 2005 clearance (though there has been no written intimation). Based on the records available with the study team, it was found that in one of the gramsabha meetings for considering claims, only 14.6% of the

members were present in Aamadobe (Bilaspur), 6.14% members were present in Bagdara (Korba) and 23.5% members were present in Moolgaon (Dhamtari).

Modification, Rejection and appeal

As found in the study villages, all rejections have technically happened at the level of gramsabha though the gramsabhas hardly functioned as per the spirit of law and rules of FRA. Scrutiny of available proceedings of SDLC and DLC for the study district does not indicate a single rejection at their level. This appears to be a common situation across the state as could be observed through our interaction with multiple stakeholders. The rejections including the process of exclusion have been of two types: a lot of claims were not admitted in the first place as FRC members/ President normally guided by the FD staff/ patwaris decided that such cases are navtorh (new forest clearances) and rejected without any due physical verification. Secondly, for other claims rejected, though there is mention of the same in some of the FRC proceedings, most of them do not detail out or even briefly mentions reasons of rejection. In none of the study villages, we came across instances of appeal. In one area (out of our study site) in Dhamtari, we came across an instance of appeal by a community of displaced

persons to SDLC and DLC. This process was aided and facilitated by a local NGO. However after their appeal option until DLC was exhausted, they approached the ST/SC commission. The communities claim that their rights exist on the claimed land as per law which has been ignored by the authorities while deciding on their appeal. They allege that SDLC and DLC decisions have solely relied on report of the forest department and recommendation of the concerned gramsabha which has been always against their settlement.

4.2.5.3 Community Rights

Process and Approach Adopted for Filling, Verification and Recordings of community rights.

There have been no initiatives on facilitating recognition of community forest resource rights as mentioned under Sec 3 (1). The only development until completion of the study has been printing of Form C and its distribution in some areas including few villages. By government's own admission, 70% of GS have not claimed for community forest resource rights (Source: CoG, 2012). In addition, where local NGOs have been actively involved in facilitating FRA implementation, there have been some instances of initiation of processes for claiming rights

over community forest rights as provisioned under Sec 3(1) of the act. In at least two villages in Bilaspur district and 5 villages in Dhamtari district (out of our study areas), we have come across instances where the process for filing claims for community forest resource rights was underway and in at least two cases they were in an advance stage to forward their recommendation on CFR claim to the SDLC. It was learnt that similar civil society initiatives are being undertaken in several other parts of Chhattisgarh. However there is absolute lack of awareness from village level to sub-division level with regards to provisions under Section 3 (1) and especially those related to community forest resource rights. When discussed about community rights, people tend to refer to the developmental rights. Even higher officials also tend to talk about the '13 facilities' only during discussions. The idea of rights over community forest resources appeared something that is difficult to comprehend by stakeholders at different levels including local communities. However people are aware about nistar rights but this understanding may not cover the expansiveness of community forest resource rights as provisioned in the law.

True copy of the report titled "*National Research Study on Implementation of Forest Rights Act in Neighbouring States of*

Odisha' published by Scheduled Castes & Scheduled Tribes Research and Training Institute, Bhubaneswar (2013) is attached herewith as Annexure A-1 at page no. ____ to ____.

Prayer

13. In light of the facts and circumstances of this case, the Applicant/Impleader prays before this Hon'ble Court as under:

- a) that the Applicant be permitted to be impleaded as a party respondent in the present Writ Petition;
- b) pass any other such order/direction as this Hon'ble Court may deem fit in the facts and circumstances of this case.

FILED BY

SATYA MITRA

Counsel for the applicants

Drawn by: Siddharth Seem

Date:18.6.2019

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. _____ of 2019

in

Writ Petition (C) 109 of 2008

IN THE MATTER OF:

Wildlife First & Ors. ...Petitioners

Versus

Ministry of Forest and Environment & Ors. ...Respondents

AND IN THE MATTER OF:

Adivasi Dalit Majdoor Kisan Sangharsh & Ors. ... Impleaders

AFFIDAVIT

I, Prakash Thakur, s/o Late L. R. Thakur , aged about 52 years, President of abovementioned Impleader No. 2 organisation, Sarv Adivasi Samaj Bastar Sambhag, r/o Adivasi Vishram Greh, Chtirakot Road, Jagdalpur, Chhattisgarh, do hereby solemnly affirm and state on oath as under:

1. That I am the President of the abovementioned impleader No. 2 organization and as such I am well conversant with the facts and circumstances of this case and hence authorised to swear the present affidavit.
2. That the impleaders have not filed any other or similar petition before this Hon'ble Court.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. _____ of 2019

in

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AND IN THE MATTER OF:

Adivasi Dalit Majdoor Kisan Sangharsh & Ors. ... Impleaders

AFFIDAVIT

I, Ashish Beck, s/o Edmon Beck, aged about 37 years, r/o Muktipura, Fundurdihari, Ambikapur, District Surguja, Chhattisgarh, do hereby solemnly affirm and state on oath as under:

1. That I am the abovementioned impleader No. 3 and as such I am well conversant with the facts and circumstances of this case and hence authorised to swear the present affidavit.
2. That the impleaders have not filed any other or similar petition before this Hon'ble Court.