

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

Union of India & Ors.

...Respondents

AND IN THE MATTER OF:

Adivasi Chetna Shikshan Seva Samiti,

Through its Secretary, Benedict Damor,

Reg. No. Ind/1048/92,

Regd. Office: Near Bus Stand, Jhabua,

Madhya Pradesh- 457661.

...Applicant/Impleader

I.A. No. _____ of 2019

Application for Impleadment

(For Index, see inside)

Filed on:

ADVOCATE FOR APPLICANT/IMPLEADER: SATYA MITRA

INDEX

Sl. No.	PARTICULARS	Page No.
	Application for Impleadment	
	Annexure A-1 True copy of the report of MoEF/MoTA Committee on Forest Rights Act, titled "Implementation of Forest Rights Act in Madhya Pradesh: Report of Field Visit, 20-24 May, 2010".	

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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 Adivasi Chetna Shikshan Seva Samiti, which is a tribal organisation working in Madhya Pradesh 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.

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

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 impleadement 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.

MADHYA PRADESH

11. Madhya Pradesh is one of the most important states vis-à-vis the implementation of the Forest Rights Act, 2006. It is home to a large population of Scheduled Tribes and Other Forest Dwellers (22,600 villages are considered forest dependent, including at least 1 crore STs). Madhya Pradesh has a large area, close to 95,000 sq. km. of forest lands, and has also had a history of conflicts between the state agencies and forest dwellers over forest rights. Madhya Pradesh also has a large number of Protected Areas, and its people have suffered displacement under various dam projects, and the ST population includes a number of Primitive Tribal Groups.

12. The Impleader/Applicants also rely on the report of MoEF/MoTA Committee on Forest Rights Act, titled "Implementation of Forest Rights Act in Madhya Pradesh: Report of Field Visit, 20-24 May, 2010". The relevant extract from the report is as under:

"3. Individual Rights: Limitations in outcomes: In spite of the abovementioned efforts, there are significant shortfalls and lacunae in the implementation that need to be addressed urgently. These lacunae are both of outcome and of process. Since the FRA is attempting to change both the distribution of rights but also the process of forest governance, both outcome and

process aspects become important. First, about outcomes:

- a. Coverage not complete, many areas missed: A number of remote villages have not been reached. E.g., villages in Betul on the border with Chhindwara district, or remote parts of Alirajpur. No process has been initiated at all in these parts.
- b. Claims 'misplaced': Claims filed by villagers, for which they have acknowledgement, are not showing in government records at all. In Dhega village, where villagers showed receipts but their claims were not to be found in either accepted or rejected list. It is happening in at least Alirajpur and Rewa districts and also Dhega village in Harda, where the number of claims for which acknowledgements have been issued by the GSs is greater than the number in the government list. We suspect this to be happening in many areas.
- c. Claimants discouraged from filing: The administration has often taken the short-cut of using the 1993 'list of encroachers' provided by the Forest Department as the list of legitimate claimants under FRA. As a result, in the field, many potential claimants who may not be in this list are told that they are not eligible. For some claimants

the area is reduced since they were cultivating less area in 1993. At the same time, this list is not available to the public to substantiate their claims.

- d. Inappropriate grounds for rejection: While some of the rejections are clearly on valid grounds (people claiming rights to land that is not actually being cultivated)¹, we also found cases where the grounds for rejection were either not given at all or were inappropriate. For instance, in a village in Betul, the reason was given as “land identified for resettling refugees”, which cannot be reason (since clearly the land had not been occupied by refugees but by tribals). Since rejections are not being communicated (see below) and right to appeal has not been explained, these rejections are not being re-examined.
- e. Rights of displaced persons not addressed: Madhya Pradesh has a large number of communities or persons affected by dam-related displacement, e.g. Sardar Sarovar, Tawa dam, Narmada Sagar, Omkareshwar dam, etc. Several of these people did not get properly resettled, and many of them are living on encroached lands in various parts of the district. Specific cases of Tawa and Onkareshwar oustees were brought to our notice.

- f. Rights of communities in and around Protected Areas not addressed: The FRA process has simply not been initiated in and around Protected Areas, in spite of the categorical requirements laid down in the Act.
- g. Special cases of PTGs, Mankars, Nayaks, Banjaras: There are significant numbers of people belong to primitive tribal groups (PTGs) in Madhya Pradesh, but there has been no attempt to address the special problems they face and special provisions made for them in the Act vis-à-vis right to habitat. Similarly, communities like the Mankars, Nayaks and Banjaras are effectively tribal, but not designated as STs due to some quirks of fate. The state has not addressed their situation.
- h. General neglect of OTFD claims and some very selective acceptance: A review of the data provided by the state shows that although 1.33 lakh claims were submitted by OTFDs, only 1868 claims had been approved and the rest were rejected. Also noteworthy is that these acceptances are primarily only in 4 districts: Burhanpur, Bhopal, Seoni and Dindori. In other districts, the rejection rate is 100%. Our field verification showed that in one Forest Village (Chandni, in Burhanpur), some OTFDs were given pattas even though they did not

meet the 75 year criterion, (they had moved there nearly 50 years ago, when the Forest Village was settled/re- settled). But in another Forest Village (Dhega), the applications of 29 Gowlis, who have been living there and cultivating land (and also involved in dairying) for about 30 years were rejected. The reasons for OTFD claim rejections in most places were that they could not prove 75 years residence & cultivation. We conclude that a) there has been no attempt by the state to figure out how 75 years residence can be proved (usually old settlement records can be useful), b) no attempt properly apply the MoTA guideline about how to interpret the clause 'residing in and dependent upon forest land', and c) selective relaxation in a few places for reasons that are not made clear and not applied uniformly. At a policy level, the question of whether OTFDs are required to prove 75 years of residence in the village or also 75 years of cultivation of forest land, and whether such a requirement is fair to many non-ST but poor communities (such as Scheduled Castes) needs to be re-examined.

4. Community Forest Rights claims have not been made at all. We did not come across a single claim filed, let alone

processed, that pertained to community rights over forest. The claims listed in FRA monitoring data under CFR category by the government all pertain to either requests for forest land diversion for developmental activities (sec.3(2)) or minor claims for access to community graveyards, ponds, temples, etc, averaging to 1.5 hectares per claim. In spite of some circulars issued from Bhopal, frontline Tribal Welfare officials are not at all cognizant of the CFR provisions (they continue to think development rights are same as CFRs). They admitted that they did not make any efforts to publicise this provision or to facilitate the filing of CFR claims.

5. Serious lacunae in process: The entire exercise has been done in a mission mode, with the objective of processing and finishing off the claims exercise. But the Act has a strong focus on process as well, and only an adherence to process will ensure proper implementation in cases that are complicated or outside the mainstream. Moreover, activation of the Gram Sabha and autonomous functioning of the FRCs is required for the long-term governance of community forests as spelt out in the Act. We observed that:
 - a. Non-effectiveness of FRCs and GSs: In most places, the FRCs are non- functional. The secretaries of the

FRCs are simply signing on the claims forms without applying their minds, sometimes on blank forms that are filled out later on. The FRCs are not involved in verification of claims—it is typically the Forest Department's staff and maybe Revenue Department staff. The so-called resolutions passed by the Gram Sabhas are mostly on paper, without any real meetings or due deliberation by the adult general body of the village. The constitution of FRCs is also often a flawed process, with JFM committees becoming FRCs. Although MoTA reiterated that 2/3rd of the general body has to be present for quorum of Gram Sabha to be fulfilled, this is clearly not happening.

- b. Unfulfilled role of Tribal Welfare department: The Act envisages the Tribal Welfare department (TWD) as the nodal agency to initiate and facilitate implementation, precisely because of the long-standing conflict between the Forest Department and the forest-dwelling communities. To discharge this role, the TWD is required to play a role *independent* of the Forest Department and to act as a champion of (ST and other) forest dwellers' rights. This means that providing forms, providing inputs, facilitating form-filling, facilitating screening, etc. should be done only by the TWD, not the FD.

But in fact, the work has been done largely by either FD's frontline staff (Forest Guards) or Revenue frontline staff or Panchayati Raj staff (such as Secretary of Gram Panchayat). These people are then exercising their power in various ways, including selective facilitation, demanding bribes for filling and forwarding forms, etc. The TWD also has not gone out and identified potential claimants and publicized the act amongst them.

- c. Denial of rights through incomplete process: Although the fraction of rejections is quite high (2.5 lakhs out of 4 lakhs), we found no evidence that the rejection decisions had been systematically conveyed to the claimants, and that they had been told about their right to appeal within 60 days. We found no evidence of appeals having taken place, which is quite surprising and indicative of lack of information, not lack of disagreement with decisions of the SDLC or DLC.
- d. Misleading cutoff date: Everywhere, villagers and activists are under the impression that there is a cutoff date for filing claims, and that date is 30 June 2010. This date was a revised version of the cutoff date announced by the MP government for completing the mission. But the Act does not specify or permit any such time limit.

- e. Forest villages not converted to Revenue villages: Although the process of accepting individual claims in Forest Villages has been initiated, the conversion of Forest Villages (वन माम) into Revenue Villages (राजःव माम) has not yet taken place. Title deeds have been given individually, but it is not clear whether all residents are receiving rights (in fact, they are not), and also the common land within the village is not being converted to revenue land.
- f. Mutation of land records not happening: More generally, the process of mutation of land records is not being completed, so that the lands to which pattas have been issued are remaining as 'forest lands' in the records (and in fact not entering the database of the land records and survey settlement (भू अभिलेख एवं बँदोबःत) agency. Although the rules clearly specify that this mutation has to take place, the MP government appears to have passed the responsibility back to MoTA by asking for directions. Moreover, given that neither the forest boundaries nor the revenue boundaries in MP state's land records have been digitized and geo-referenced, the PDA-based survey and sketch of these lands has generated limited benefits. Unless these PDA-derived sketches are somehow linked to

existing land records, they will not be of much value. Similarly, there is no evidence that the DLCs are using remote sensing data to verify the ground situation of 2005 where the claims are being contested or decisions appealed against.

- g. Forms for Community Forest Rights: The TWD distributes both forms together (individual claims and community claims), so claimants are filling both forms and submitting them, although the community claim form is to be filled only by the Gram Sabha or FRC. Moreover, the pattas for community rights are being issued in the name of the persons who lead the community claim process, rather than in the name of the Gram Sabha or village.
- h. Non-availability of evidence: Forest offence cases constitute an important potential piece of evidence of cultivation or occupation of forest lands. But several claimants (especially those who have been affected by floods, fire, repeated evictions, etc) have indicated that they do not have these documents, and are not getting access to Forest Department records to obtain copies. may not have these documents with them. But access to Forest Department records is not being given to the public.”

True copy of the report of MoEF/MoTA Committee on Forest Rights Act, titled "Implementation of Forest Rights Act in Madhya Pradesh: Report of Field Visit, 20-24 May, 2010" is attached herewith as Annexure A-1 at page no. _____ to _____.

Prayer

13. In light of the facts and circumstances of this case, the Appliant/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:26.4.2019