



## Wildlife First &Ors.

v

## Ministry of Environment & Forests &Ors.

A Critical Analysis

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The Indian judiciary has been proactive, seeing the recent trends of environmental activism, for the conservation and protection of ecological balance. These decisions are based on the impact of anthropogenic activities and for the welfare of environment and habitat of wildlife whether it is forest, river, mountain or marine ecosystems. The case that is the focal point of this paper has elements of conservation of forest areas but there is an underlying ‘injustice’ that will be discussed as we proceed. Before understanding the case, it is important to understand the concept of forest rights of scheduled tribes and other traditional forest dwellers. A specific legislation for the purpose of protecting forests and related rights was passed, known as the Schedule Tribe & Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 also called FRA. The Act passed with the object of undoing the “historic injustice” done to the forest dwellers. The Act recognizes the rights of the forest dwellers over forestland and resources, which they have been using as part of their livelihood.

A claim is made either for individual or community rights by the people/communities covered by the FRA. This is a plain reading of the Act, which is unambiguous on the grounds of eviction of rejected claimants therefore being unjust towards certain communities.

Writ filed in the Supreme Court by Wildlife First NGO and some other civil societies collectively, to challenge the Constitutional validity of the Schedule Tribe & Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 also known as FRA and also the questions pertaining to the preservation, conservation and protection of forests in the context of the Act. The details regarding claims made under the FRA that were placed before the court by the petitioner in 2016 showed that of the 44 lakh claims filed before appropriate authorities in the different States, 20.5 lakh claims (46.5%) were rejected. The order of 2016 went on to observe: “Obviously, a claim in the context of the above-mentioned Act is based on an assertion that a claimant has been in possession of a certain parcel of land located in the forest areas.”

The petitioners, Wildlife First & Others<sup>1</sup> seek to challenge the FRA and sought the eviction of forest dwellers whose claims were rejected under the law. This meant that their contention was that the forest dwellers, whose rights had been rejected, should not continue their dependence on forests for shelter, food or other resources. Which seems to be increasing the vulnerabilities of an already vulnerable and indigenous rural settlement, thus leaving them exposed to harsher social and economic problems such as homelessness, loss of income, lack of nutrition, starvation and illiteracy due to lack of resources.

Interestingly, in this case it appears as if a civil society institution, Wildlife First, an NGO was pitted against the state. But closer examination may reveals that it was, in fact, Wildlife First and the state together, that had joined forces against the most vulnerable communities in the country living in areas constitutionally protected from encroachment even by the state.

In a recent order passed by the Supreme Court, on February 2019, the court addressed the affidavit submitted for the eviction of rejected claimants. The following were the requirements put up by the court-

- Eviction ordered from the following twenty onestates-Andhra Pradesh, Assam, Bihar, Chattisgarh, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Odisha, Rajasthan, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh & West Bengal
- Compliance report to be submitted by the respective Governments of the aforementioned States, on or before July 24th 2019, before the next hearing is conducted
- Bench directed Forest Survey of India for the satellite survey to determine encroachment positions

The SC order was passed on the basis that “If the claim is found to be not tenable by the competent authority, the result would be that the claimant is not entitled for the grant of any Patta or any other right under the Act but such a claimant is also either required to be evicted from that parcel of land or some other action is to be taken in accordance with law”. In other words, the claimant cannot contest the decision of the authority, said the court. With respect to action to be taken against those “unauthorisedly in possession of forest land”, the States were then asked by the Supreme Court to report on concrete measures taken to evict the Scheduled Tribes and Other Traditional Forest Dwellers from the forest. In the very next paragraph, which pertained to the State of Tamil Nadu, the order referred to action against those people whose claims had been rejected as “eviction of encroachers”.<sup>2</sup>

“The most obvious one has to do with the meanings attached to the rejection of claims. According to the 2014 report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities in India, constituted by the Government of India (Xaxa Committee), 60% of the forest area in the country is in tribal areas — protected by Article 19(5) and Schedules V and VI of the Constitution. With

<sup>1</sup> Wildlife First & Ors. v. MoEF & Ors MANU/SCOR/14380/2018

<sup>2</sup> <https://www.thehindu.com/opinion/lead/without-land-or-recourse/article26344370.ece>

specific reference to claims under the FRA, reiterating the finding of several other studies that have documented the deep procedural flaws in processing claims, the Xaxa Committee observed that “claims are being rejected without assigning reasons, or based on wrong interpretation of the ‘OTFD’ definition and the ‘dependence’ clause, or simply for lack of evidence or ‘absence of GPS survey’ (lacunae which only require the claim to be referred back to the lower-level body), or because the land is wrongly considered as ‘not forest land’, or because only forest offence receipts are considered as adequate evidence. The rejections are not being communicated to the claimants, and their right to appeal is not being explained to them nor its exercise facilitated.” The mere rejection of claims by the state therefore does not add up to a finding of the crime of “encroachment”- the sheer volume of rejections should instead set alarm bells ringing in the court of procedural improprieties.”<sup>3</sup>

Legally speaking, any claim rejected can be challenged and the claimant cannot be evicted solely a particular reason. In fact, the apex court had passed a similar order on January 29, 2016, in the same case<sup>4</sup>, asking “state governments to file affidavits detailing the number of claims rejected and why they have not been evicted within two weeks. This order was immediately followed by a clarification by the Union Ministry of Tribal Affairs (MoTA) the nodal ministry for the implementation of FRA on February 5, 2016. In this clarification, the ministry had pointed towards the process to be followed after a claim is rejected and the need to put that data in court along with the data on just the number of rejected claims.”<sup>5</sup> There were no such affidavits filed, no concrete data was collected and in the subsequent hearing in 2019, there was no reference to previous court directions and the non-performance of State governments on the SC order.

“In order to place the complete information before the honourable court, it may be necessary to provide details of the process that is followed in case of rejection of claims, including communication of reason, opportunity of appeal, and cases where claims are being re-examined due to wrongful rejection,” the clarification said. The claimant has to be informed about the reasons for the rejection, if the claim is rejected. Then, the claimant has 90 days to appeal against it. “No petition of the aggrieved person shall be disposed of, unless he has been given a reasonable opportunity to present anything in support of his claim,” the law says.

### **Effect of business, commerce and corruption**

- The replacement of old Land Acquisition Act, 1894 with the new Land Acquisition Rehabilitation and Resettlement, 2013 has caused an increase in the compensation and necessary Social Impact Assessment, due to which diverting of forest land with vested rights of forest dweller would be difficult. Therefore, rejection of such claims would make it easier for the state governments to divert such forestland to private companies or for the purpose of other economically beneficial activities.

<sup>3</sup> <https://www.bestcurrentaffairs.com/virginus-xaxa-committee-tribal-affairs/>

<sup>4</sup> Wildlife First & Ors. v. MoEF & Ors 2016 SC

<sup>5</sup> <https://www.downtoearth.org.in/news/forests/does-the-supreme-court-order-mean-eviction-of-forest-dwellers-right-away--63315>

- The governments have stakes in the land, because if they give rights to the adivasis. STs & OTFDs in the forest, the process of permission for diverting such land for commercial/business purpose would be difficult, where 80% consent of landowners for private projects and 70% consent of landowners for PPPs is necessary. This vested interest is not in public interest and should have been an issue of concern for the court while giving order.
- Liberalization, privatization and market pressure on government forces policy makers to divert land to these industries for economically profitable use.
- Decisions like this can lead to being anti-forestland owner (or person/community with vested forest rights) and pro-bureaucracy as well as supportive of civil societies, in this case 'Forest First' NGO.
- It can be established that people belonging to tribes are ill equipped to partake of the benefits of industrialization, as they lack the requisite education and skills to get jobs. Therefore, any decision on industrial activities should be done in consultation with local communities, in practice, despite presence of legislation. This also means that there is need for necessary implementation, which is the duty of the government to ensure.

Taking the example of Niyamgiri case<sup>6</sup>, where for a mining project in forest area, land was diverted to Sterlite. The court observed that land considered sacred by the community couldn't be diverted for non-forest activity, specially an activity that would lead to the degradation of forestland including the flora and fauna, while having detrimental the local indigenous communities as well as the scheduled tribes. The court upheld the power given to Gram Sabha and village councils to protect their land, as local bodies have better knowledge about their community resources, rather than diverting such land for economically profitable yet environmentally catastrophic action by Sterlite Industries now known as Vedanta Ltd.

Major conflict persisted after the Supreme Court landmark judgment on the concept of property rights versus economic development.<sup>7</sup> The state government owned mines, did not take into consideration the vulnerabilities of Dongria Kondh i.e., the tribal community in the area, who are the inhabitants, but looked forward only for bauxite mines that would bring nearly billion dollars into the economy. It is certain that such profits would not have in any way helped in the improvement of the situation of the locals or the forest area exploited, which shows that the court was mindful while giving its decision on halting of such activities in the forest area.

A deeper analysis of this case can show that the state government, going against the public interest of the local communities and only for the financial benefits that it would have received as revenue from such state owned forestland, supported the industry involved. The question of whether there was any collusion, which has been hidden from public knowledge, or any other corrupt practices ensued on the part of the state government will be unknown. But it can be established that in this case, the government did not take consultation of the locals before diverting such land, vested financial interest of the industries in untapped and unexploited forest areas

<sup>6</sup> Orissa Mining Corporation Ltd. v Ministry of Environment & Forests, 2013 6 SCC 476

<sup>7</sup> <https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/theres-no-mine-but-is-it-all-fine-on-niyam-hills/articleshow/63763978.cms>

is significantly large but the court's recognition of customary and cultural rights favoured the indigenous inhabitants. This was a victory for the people and the environment.

A critical study of the case and other social and environmental concerns, some questions arise, that have neither been addressed by the courts nor by any other civil societies.

First question being; What is the role of the different governmental bodies involved and can it be considered as a lack of accountability of duties and responsibilities of various governmental bodies? Court mandated order given to Chief Secretaries of all states concerned for the eviction to be carried out with submission of compliance report before next hearing. But there was no information about the reasons of rejected claims, on the basis of which such eviction was to be carried out. MoTA had no role in implementation of FRA, which seems to be irrational. The Central and State governments, along with the MoEF should have taken the initiative in ensuring implementation, institutional mechanisms that promote autonomy and restrain interference in self-governance, which should have been addressed by the Court, before ordering eviction.

Second question; Why didn't the SC ensure the status of implementation of FRA, instead of passing order for eviction of rejected claimants? If the State Governments actually follow the order given by the SC, the immediate result will be the forced eviction of over one million people belonging to the Scheduled Tribes and other forest communities. Most of these areas marked for eviction fall under areas listed in the Schedule V and Schedule VI of the Constitution and there is no reference to the implications for governance in such areas and whether the SC has the authority to order evictions of Scheduled Tribes from Scheduled Areas. A democracy treats people as citizens and not subjects, where the written Constitution affirms the people who are sovereign, how can the supreme judicial body become a part of the dismantling of an entire constitutional apparatus that prescribes the non-derogable boundaries to 'Adivasi' homelands.

Third question; Why did the organizations challenge the FRA after 10-12 years of implementation? The organizations challenging the constitutional validity of a statute nearly after a decade may seem lazy but can also be opportunist. It may have been in the name of 'forest conservation' but it would also have been easier for diverting forestland for non-forest purposes to large industries.

Fourth question; Who shall be responsible to rehabilitate the evicted forest dwellers and what land can be diverted for such action? Whether it was the responsibility of the court, central ministries- MoEF or MoTA, State Governments, Gram Sabha, Gram Panchayat or any other.

Fourth question; What recourse could be availed by the rejected claimants after the order of SC? SC ordered eviction without review or appeal of rejection of claim and anyone who had information about such process; it would have been long drawn and continuous, if initiated. But most forest dwellers did not have proper means of recourse to file for appeal. In my opinion, court order stands to be in gross disregard of the rights of rejected claimants as any one could not contest the decision of the authority and no reason was given for such rejection.

Fifth and most important question; Is the SC not obligated to protect the rights of Scheduled Tribes and other vulnerable communities under the Constitution? Why is such obligatory responsibility missing in the SC

ordered eviction? At a fundamental level, some special protections under the Constitution are guaranteed, especially with the current scenario of judicial activism. The Article 19 clause 5, in the Fundamental Rights chapter of the Constitution, specifically obligates the state to make laws “for the protection of the interests of any Scheduled Tribe” and deems it ‘vital’. The SC ordered the eviction in complete disregard of this core and express fundamental right (higher priority) protection to Adivasis which is different from legal protection, which protects them from a range of “state and non-state intrusions in Scheduled Areas as well as from the perennial threat of eviction from their homelands”. With respect to action to be taken against those “unauthorisedly in possession of forest land”, the States instead have been asked by the SC to report on concrete measures taken to evict the STs and OTFDs from the forest. The order referred to action against those people whose claims had been rejected as “eviction of encroachers”.

In conclusion, as the conflict between protecting land rights and promoting industrial and infrastructure development continues, there comes a requirement of a different approach. When the model of development has been that some people have to lose so that others can benefit. This is a disparity that needs to be resolved equitably through a joint efforts of the state as well as the central government, civil society action that does not deprave vulnerable communities and their well being and local participation in decision making for local communities in the actions of private or government actors.

The inability and inefficiency in government action at all levels, starting from gram sabha, panchayat, state department, state governments, central ministries and the whole government system, including the judiciary, for proper implementation of the FRA has to be ensured. The understanding of “encroachment” is that those forest dwellers whose claims under the FRA have been rejected are encroachers, which is creating injustice towards such a vulnerable community. A major lacking among these communities is the information regarding provisions of FRA, which give the claimants the right to appeal against the rejection of their claims. This is not only putting them in a far worse situation than before, with the SC and the governments unable to protect their fundamental rights under the Constitution rather than ensuring proper implementation of existing laws, interpretation of law and equity between development, social and environmental concerns. There should also be a mechanism to ensure that state and local governments are working for the collective development, without infringing on the rights and claims of the most vulnerable among their citizens, to keep a check on corruption and proper regulation of non-forest activities in forest areas, especially industrial activities, which may be more harmful than beneficial in the long run.

There is a need of a more efficient governance, widespread awareness and information about the claims and rights of the citizens, easy legal recourse for vulnerable and underprivileged as well as a moral and ethical obligation towards the three pillars of sustainable development- Social, economic and environmental equity.