

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (PIL) No.14 of 2015**

Tribal Development And Training Institute Rajpur Distt. Balrampur,
Chhattisgarh, Through President Smt. Pushpanchala Choudhary, W/o
Shri Munna Lal Choudhary, Aged About 58 Years, R/o Naki (Rajpur),
Thana & Tahsil- Rajpur, Distt. Balrampur, (Chhattisgarh)

---- Petitioner**Versus**

1. Union Of India through Secretary Indian Forest Department
Mantralaya, New Delhi
2. State Of Chhattisgarh Through The Secretary Forest Department,
Mantralaya, Capital Complex, Mahanadi Bhawan, Raipur, District-
Raipur, (Chhattisgarh)
3. Chief Conservator Of Forest, Raipur, Distt. Raipur, (Chhattisgarh)
4. Collector Balrampur, Distt. Balrampur, (Chhattisgarh)
5. Divisional Forest Officer, Forest Division Balrampur, Distt. Balrampur,
(Chhattisgarh)
6. Assistant Commissioner, Tribal Welfare Development, Balrampur, Distt.
Balrampur, (Chhattisgarh)

-----Respondents

For Petitioner:	Shri Sunil Sahu, Advocate.
For Respondent/UOI:	Shri NK. Vyas, Advocate.
For Respondents/State:	Shri YS Thakur, Additional Advocate General.

Hon'ble The Chief Justice**Hon'ble Shri Justice Sanjay Agrawal****Order on Board****Per Deepak Gupta, Chief Justice****19/12/2016**

1. In this Public Interest Litigation, the Petitioner which is a NGO, claims that a large number of members of the Scheduled Tribes are uneducated and residing in dense forest areas. The contention of the petitioner is that these tribal persons are in possession of some Government land which has been in their use for a long time and they are entitled to reside in the same land and use the land in terms of Section 6 of the Scheduled Tribes and Other

Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short 'the Act of 2006').

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

“Section 6. Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof-

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

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

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

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

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

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

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

Committee.

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

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

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

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

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

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

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

4. The second proviso to Section 2 clearly lays down that the Sub-Divisional Level Committee has to give hearing to a person who has filed an Appeal against resolution of the Gram Sabha and no order should be passed against him without giving such person an opportunity of hearing. The

Petitioner is a NGO and has filed this petition on behalf of all these persons who are not even named in the petition. It may be true that these persons are uneducated. It may be true that they are very poor but that does not mean that the procedure prescribed under Section 6 of the Act of 2006 is not to be followed. This Court cannot, in a PIL, give general directions that the rights of all unidentified persons should be determined. The person who claims such right must approach the Gram Sabha and the Sub-Divisional Level Committee for vesting of his rights. These rights cannot be granted in a PIL. In case the Petitioner which is a NGO and is actually interesting in prosecuting the case of the poor persons, nothing prevents the Petitioner from assisting or helping these persons to draft and file the Petitions to the Gram Sabha concerned. However, the applications must be filed by the aggrieved person.

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

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

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE