

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPPIL No. 62 of 2019**

- Nitin Singhvi S/o Late N. C. Singhvi, aged about 58 years, R/o H.I.G.-3 Sector-3, Shanker Nagar, Raipur, District- Raipur (CG) - 492007.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Additional Chief Secretary, Forest Department, Government Of Chhattisgarh, Mahanadi Bhawan, Atal Nagar, Raipur (CG)
2. Secretary, Tribal and Scheduled Caste Development Department Room No. S-4, Mahanadi Bhawan, Atal Nagar, Raipur (CG)
3. Principal Chief Conservator of Forest, Forest Department, Aranya Bhawan, North Block, Sector-19 Naya Raipur, Chhattisgarh.
4. Principal Chief Conservator of Forest (Wildlife), Forest Department, Aranya Bhawan, North Block, Sector-19 Naya Raipur, Chhattisgarh.
5. Commissioner Tribal and Scheduled Caste Development Department, Block D, Ground Floor, Indrawati Bhawan, Atal Nagar, Raipur, Chhattisgarh.
6. Managing Director Chhattisgarh State Forest Development Corporation, Atal Nagar, Raipur (CG)
7. Divisional Manager, Kawardha Project Division, Office Divisional Manager, Kawardha Project Division, CG State Forest Development Corporation Limited, Kawardha (CG)
8. Union of India, Through Secretary, Ministry of Tribal Affairs, Government of India, 7th Floor, A- Wing, Ministry of Tribal Affairs, Shastri Bhawan, New Delhi.
9. Secretary. Ministry of Environment & Forest and Climate Change, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi.
10. Secretary, Panchayat and Rural Development Department, Mantralaya, Naya Raipur (CG)
11. National Tiger Conservation Authority, Ministry of Environment & Forest, Bikaner House, Annexe-V, Shahjahan Road, New Delhi.
12. Field Director Udanti-Sitanadi Tiger Reserve, District- Dhamtari, Chhattisgarh.
13. Dr. Anoop Bhalla S/o J.D. Bhalla, aged about 62 years, R/o Devsthal Amol Vihar Airport Road, Near PTC Mana Crossing

Raipur (CG)

14. Salikram Sidar, S/o Anesar Sidar, aged about 52 years, R/o Sidarpara, Village Nilupara, Block & Tahsil Tamnar, District Raigarh (CG)
15. Mansingh Sidar, S/o Chamar Singh Sidar, aged about 40 years, R/o Village Sakta, Block & Tahsil Tamnar, District Raigarh (CG)
16. Shivpal Bhagat S/o Ramchandra Bhagat, aged about 32 years R/o village Sarasmal, Block & Tahsil Tamnar, District Raigarh (CG)

---- Respondents

For Petitioner	:	Mr. S.Dangi & Ms. A.Singhvi, Advocates
For Respondent-State	:	Mr. SC Verma, Advocate General with Mr. Sudeep Agrawal, Dy. Adv. General & Mr. V. Sharma, Dy. Govt. Advocate.
For Respondent No.6 & 7:	:	Mr. Animesh Tiwari, Advocate

Hon'ble Shri P. R. Ramchandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per P.R. Ramchandra Menon, CJ

05/11/2019

1. Encroachment into the forest lands by the strangers, with intent to establish their right in due course and claim title, and the lethargy on the part of the State/officials concerned in taking appropriate remedial measures, simultaneously taking steps to allot forest lands to the persons of choice of the respondent State, are highlighted in this writ petition filed as a 'public interest litigation'.
2. The petitioner has produced various records including reports submitted by the respondent No.11- National Tiger Conservation Authority and other statutory bodies, which virtually support the case projected by the petitioner. The relevant photographs show the lie and location and also the plight of the area as it remains

as on date. When the matter came-up for consideration before this Court on 6.9.2019, we admitted the writ petition and passed the following order:-

“.....After hearing learned counsel for the Petitioner and after going through the materials and records, we find that the view that the matter requires urgent attention.

In the said circumstances, the writ petition is admitted. I.A. No. 2 of 2019, application for waiver of the locus standi rule, stands allowed.

Considering the prayer in I.A. No. 3 of 2019, application for grant of interim relief, all further proceedings for recognition and grant of forest rights or forest title under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in the State, will stand stayed for a period of two months.....”

3. The interim order passed by this Court staying all further proceedings for recognition and grant of forest rights or forest title under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 for a period of two months, has been sought to be vacated by filing a petition as IA No.9/2019 from the part of the respondent State. A detailed return dated 4.10.2019 has also been filed by the State, producing various documents as part of the record. The petitioner has filed rejoinder dated 22.10.2019 in response to the return filed by the State Government.
4. We have heard Mr. Saurabh Dangi, the learned counsel for the petitioner and also Mr. Satish Chandra Verma, the learned Advocate General for the State.
5. Mr. Verma, learned Advocate General submits that the

insinuation levelled against the State by the petitioner is not correct or sustainable and that appropriate steps are being pursued only in accordance with the relevant provisions of the statute in all respects. It is also pointed out that the subject-matter involved in this petition is pending consideration before the Apex Court in WPC No.109/2008 and connected cases, in which various interim orders have been passed by the said Court. The State has already filed an affidavit in response to the directions given by the Apex Court and the matter is listed for consideration on 26.11.2019. By virtue of pendency of the proceeding before the Supreme Court as above, it is no more necessary to proceed with this matter, submits the learned Advocate General.

6. Mr. Dangi, learned counsel representing the petitioner submits that the challenge in the matter pending consideration before the Apex Court is mainly as to the vires of the statute i.e. Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and as to the non-implementation of the orders of eviction already passed by the State. The prayers raised by the petitioner in this writ petition are something different and hence it requires to be considered by this Court, as put-forth by learned counsel.
7. For better appreciation of the facts and figures, we find it appropriate to extract the prayers raised in the present writ petition;-

“10.1 The Hon'ble Court may kindly be pleased to constitute a committee to conduct an inquiry into the matter of grant of forest rights granted under the Act of 2006.

10.2. The Hon'ble Court may kindly be pleased to direct the respondents to cancel the forest rights allotted to the tribals/OTFD which are not in consonance with the provisions of the Act.

10.3 The Hon'ble Court may kindly be pleased to direct the respondents to evacuate the illegal occupants whose claims have already been rejected or are found to be illegal.

10.4. The Hon'ble Court may kindly be pleased to direct the Field Officer of the Udanti-Sitanadi Tiger Reserve to take immediate action against the responsible persons/officers who are involved in the illegal felling of trees in the tiger reserve.

10.5. The Hon'ble Court may kindly be pleased to direct the respondent state authorities to take immediate steps so that no further illegal felling of trees can take place in the forest declared as tiger reserves.

10.6. The Hon'ble Court may kindly be pleased to pass any further orders, as it may deem fit, in the facts and circumstances of the case.”

8. With regard to the issue pending consideration before the Apex Court, an interim order was passed on 7.3.2018, whereby all the State Governments (which includes the State of Chhattisgarh as well) have been directed to file a tabular statement in the form of an affidavit indicating the following aspects;-

- “(i) The number of claims for the grant of land under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;
- (ii) The claims should be divided into claims made by the Scheduled Tribes and separately by other traditional forest dwellers;
- (iii) The number of claims rejected by the State Government in respect of each category;
- (iv) The extent of land over which such claims were made and rejected in respect of each of the two

categories;

(v) Action taken against those claimants whose claims have been rejected;

(vi) The status of eviction of those claimants whose claims have been rejected and the total extent of area from which they have been evicted;

(vii) The extent of the area in respect of which eviction has not yet taken place in respect of rejected claims.”

9. Thereafter, another order came to be passed on 13.2.2019 by the Supreme Court; relevant portion of which dealing with the affairs of the State of Chhattisgarh is in the following terms;-

“RE-AFFIDAVIT FILED BY THE STATE OF CHHATTISGARH

The affidavit filed by the State of Chhattisgarh indicates that against 20095 claimants, whose claims have been rejected, have to be evicted, whereas action has been taken only against 4830 claimants of STs and OTFDs.

Let the Chief Secretary to the State of Chhattisgarh ensure, by way of an affidavit, that where the eviction orders have attained finality, whether orders are carried out. It shall also be indicated in the affidavit as to how many claims are still pending for verification. A compliance report be filed on or before the next date of hearing.”

10. It is brought to the notice of this Court that the eviction proceedings giving effect to the orders already passed with regard to the claims which were rejected, came to be stayed as per the order dated 28.2.2019 passed by the Apex Court, at the instance of the Central Government and the matter is listed for consideration on 26.11.2019.
11. Learned Advocate General submits that an affidavit dated 18.7.2019 has been filed from the part of the State before the Apex Court pursuant to the direction given by the Apex Court as mentioned above. It has been pointed out in Para-7 of the said affidavit that during verification, it was found that in many cases

the intimation of rejection was not provided to the claimants whose claims were rejected/not recommended and therefore in such cases, the due process has to be followed in accordance with the Rules, 2007 and Section 12A (3) of the FR (Amendment) Rules, 2012. It has also been pointed out that the respondent concerned has taken the decision to review and reconsider all such cases in which the infirmities in complying with the rules and procedure have been noted. It is further pointed out that in respect of each and every point sought to be clarified by the Apex Court, detailed version has been given including as to whether the 'Three-Tier Monitoring Committee' has supervised the eviction procedure; which virtually is to the effect that there were several lacunas and lapses in the matter of supervision, by virtue of which the State Government has already issued orders for review and reconsideration of all such cases. The gist of the steps sought to be pursued by the State in the said circumstance, is discernible from Para 25 to 28 of the affidavit filed before the Apex Court, which are reproduced below:-

“25. Since the State Government had reached to the conclusion that large number of applications have been rejected without proper examination, therefore state government has decided that after reconstitution of Forest Right Committee the cases which have been recommended by Gram Sabha and Sub Divisional Level Committee for acceptance, partial acceptance and rejection and have been accepted partially accepted and rejected by the District Level Committee be remanded to the Gram Sabha for verification and review and the matter be decided at Sub Division Level Committee and District Level Committee as per the recommendation of Gram Sabha. The direction was also issued to re-organize the Gram Sabha and

Forest Rights Committee by 30.06.2019.

26. That at present the State Government has directed to decide afresh all the claims received under the Act, 2006 at the Gram Sabha Level for recommendation to Sub Divisional Level and thereafter at District Level so that all the claims can be decided strictly in accordance with the provisions of the Act, 2006 and the Rules, 2007. The detailed guidelines have already been issued by the State of Chhattisgarh to all the Collectors of the district vide its circular dated 22.01.2019, 14.02.2019, 25.02.2019 and 06.06.2019. The State Government has also decided that while reconsidering the claims received under the Act, 2006, the claims which have been rejected will be given top priority and this will be considered in the first phase. In this context, the direction issued in Para no.4 of Circular No.F-10-11/2007/25-2 part dated 06 June 2019 is available for perusal of this Hon'ble Court.

27. That State Government is taking entire exercise afresh and has re-constituted the Forest Rights Committee, Sub Division Level Committee and District Level Committee under the Act, 2006 read with Rules, 2007 and after re-examining the entire claims, the exact figure would come about the category wise details of such incumbents who have occupying this areas belonging to Scheduled Tribe and Other Traditional Forest Dwellers Category and such persons who cannot be treated as tribals. So far as State Government is concern at present there is no report from District that any land is being occupied by the persons who cannot be treated as tribals.

28. In addition to the submissions made hereinabove, it is relevant to highlight that the State of Chhattisgarh has, as a matter of policy decisions, decided to review/reconsider the decisions/orders/resolutions by which the IFR claims of the claimants were rejected."

12. In Para-29 of the affidavit it has been asserted that the State Government will try its level best to complete the entire exercise of reviewing/reconsidering the applications/claims received under the Act, 2006 within a period of two years. It has been further undertaken in Para-30 that the State is committed towards its obligation to protect and preserve the rights of the tribals and shall take all measures to ensure that the rights of

the 'Forest Dwellers' are duly preserved & protected and further ensuring that no encroachment or illegal trespassing is carried out in forest land, besides assuring that the respondent State shall undertake all the steps in ensuring effective implementation of the Act, 2006 and the Rules, 2007 in its letter and spirit.

13. With reference to the above materials on record, the learned Advocate General submits that the prayers raised by the petitioner in Para 10.1 to 10.6 are virtually covered. It is also asserted that there is no dispute with regard to the prayers, in particular Prayer No.10.4 & 10.5 to cause to take necessary steps against the persons/officers concerned who are involved in the illegal felling of trees in the tiger reserves and to see that no further illegal felling of trees can take place in the forest declared as 'tiger reserves'.
14. In the above facts and circumstances of the case, we are of the view that no parallel adjudication does require to be made by this Court in the present petition so far as the issue said to be projected in this writ petition is virtually in seisin of the Apex Court in WPC No.109/2008 and connected cases. That apart, it is quite open for the petitioner, if so advised and if it is sustainable, to move the Apex Court by way of appropriate proceedings to protect the public interest involved, as sought to be exposed in the present writ petition.
15. In view of above, we dispose off this writ petition without

prejudice to the rights and liberties of the petitioner, as above, to be pursued in accordance with law and further without expressing anything with regard to merits involved. So as to facilitate such exercise, we find it appropriate to extend the validity of the interim order passed by this Court on 6.9.2019 by a further period of 'one month', within which appropriate proceedings could be pursued in this regard.

Sd/-

(P.R. Ramchandra Menon)

Chief Justice

roshan/-

Sd/-

(Parth Prateem Sahu)

Judge