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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.219 OF 2022

Dhananjay Tulshidas Prabhu,
S/o Tulshidas Prabhu, Age 58 years,
Indian National, Occ.-Agriculture
R/o H.No 109/10, Xeplem,
Uguem Sanguem — Goa.

....Petitioner

Versus

1. STATE OF GOA

Through the Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

**2. DIRECTORATE OF TRIBAL
WELFARE - Through the Director
Shrama Shakti Bhavan, 5th Floor,
Patto — Panaji Goa.**

**3. THE DEPUTY COLLECTOR,
REVENUE (SOUTH GOA),
Office of the Deputy Collector,
Revenue Branch, Matanhy Saldanha
Administrative Complex near KTC Bus
Stand, Margao, Goa.**

**4. DISTRICT LEVEL COMMITTEE
Under Scheduled Tribes and Other
Traditional Forest Dwellers (Recognition
of Forest Rights) Act; Through the
Chairperson, Office at the Collector,
South - Goa.**

**5. SUB-DIVISIONAL LEVEL
COMMITTEE Under Scheduled Tribes**

and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Act;
Through the Chairperson,
Office at the Deputy Collector & SDM,
Quepem – Goa.

6. GRAM SABHA OF VILLAGE LOIN
Uguem - (FOREST RIGHTS
COMMITTEE), Through the Member
Secretary, Office at Village Panchayat of
Uguem, Sanguem – Goa.

7. Chief Conservator Forest Forest
Department Goa Van Vhaban Altinho
Near Joggers Park Panaji Goa 403001

....Respondents

Ms Gautami Kamat, Advocate for the Petitioner.

**Mr S. Priolkar, Additional Government Advocate for the
Respondent Nos.1,2,3,4,5 & 7.**

CORAM: M. S. SONAK, J.

DATE : 13th JULY 2023

ORAL JUDGMENT :

1. Heard Ms Gautami Kamat for the petitioner and Mr S. Priolkar, learned Additional Government Advocate for the respondent nos.1,2,3,4,5 & 7.

2. Ms Kamat states that even respondent No. 6 is duly served. However, there is no appearance on behalf of respondent no.6 in the order that is proposed to be made, further notice to respondent no.6 is not necessary.

3. Rule. The rule is made returnable immediately with the consent of the learned Additional Government advocate.

4. The challenge in this petition is to the impugned letter/decision dated 17.11.2017 made by the District Level Committee and the decision dated 19.05.2016 made by the Sub-divisional Level Committee under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (said Act).

5. Section 6 of the said Act provides for the authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and the procedure thereof.

6. Section 6 of the Act reads as follows:

“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 the 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 subsection (3) and the Sub-Divisional Level Committee shall consider and dispose 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 the decision of the Sub-Divisional 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.”

7. Consistent with Section 6 of the said Act, the petitioner, who claims to be a traditional forest dweller, applied for rights regarding

forest area admeasuring 28,375 sq mtrs. before the Gram Sabha as contemplated by sub-section (1) of Section 6 of the said Act.

8. The Gram Sabha, by its resolution (undated), approved the petitioner's claim and made a recommendation to the Sub-Divisional Level Committee.

9. The Sub-Divisional Level Committee examined the resolution of the Gram Sabha in its meeting held on 19.05.2016. The Sub-Divisional Level Committee accepted the Gram Sabha's resolution concerning the petitioner, but only to the extent of 12000 sq. mtrs. of forest land. Ms Kamat points out that the basis for scaling down this area is not reflected in the Sub-Divisional Level Committee's decision dated 19.05.2016.

10. Therefore, the petitioner, aggrieved by the decision of the Sub-Divisional Level Committee, preferred a petition to the District Level Committee (DLC) on 18.04.2017. The DLC on 20.03.2017, upheld the above decision. There is no record of any hearing given to the Petitioner. Although this petition was preferred beyond the prescribed period of limitation, there is a reference to the petitioner coming to know about the Sub-Divisional Level Committee's decision later. The petitioner urged the District Level Committee to consider the petitioner's claim concerning the area of 28,375 sq. mtrs. and not merely 12000 sq. mtrs.

11. By communication dated 17.11.2017, the Deputy Collector (Revenue), South Goa at Margao, informed the petitioner that the District Level Committee had already considered the petitioner's claim and granted the area of 12000 sq. mtrs. after following the due procedure. Aggrieved by this, the petitioner has instituted the present petition.

12. Ms Kamat pointed out that the petitioner is a forest dweller and due to ill health and Covid 19 pandemic could not institute this petition earlier. This petition was instituted on 14.10.2021. She further submitted that no opportunity of a hearing was granted to the petitioner before the District Level Committee, who considered the petitioner's petition dated 18.04.2017. She referred to the provisions of Section 6 of the said Act. She pointed out that a petition under Section 6(4) of the said Act should not have been disposed of by the District Level Committee unless he was given a reasonable opportunity to present his case.

13. Mr Priolkar learned Additional Government Advocate submitted that the District Level Committee had even earlier examined the petitioner's case; therefore, there is no infirmity in the communication dated 17.11.2017.

14. In my judgment, once the petitioner's petition against the decision of the Sub-Divisional Level Committee was accepted as a

petition under Section 6(4) of the said Act, the same should not have been disposed of by the District Level Committee without giving reasonable opportunity to the petitioner to present his case. Besides, the District Level Committee should have made a reasoned order in the matter.

15. Considering the Scheme of Section 6 of the said Act, the petitions referred to therein are broadly like appeals. The authorities, like Sub-Divisional Level Committee and the District Level Committee, are directed by the law to hear the aggrieved party before making any final decision. Such a hearing cannot be regarded as an empty formality. Such reasonable opportunity of hearing or presenting a case is a facet of principles of natural justice and fair play.

16. Further, another facet of the principles of natural justice and fair play is to make reasoned decisions. It is the reasons which are the live link between the mind of the decision maker and the conclusion recorded by the decision maker. Without any reasons, it is impossible to know whether the petition of the aggrieved party was considered and disposed of after due application of mind.

17. Therefore, though this Court has nothing much to say on the ultimate decision of either the Sub-Divisional Level Committee or the District Level Committee, the decision-making process, in this case, is wanting, and interference is warranted.

18. Accordingly, the DLC's decision dated 20.03.2017 and the communication on behalf of the District Level Committee dated 17.11.2017 are hereby quashed and set aside. The District Level Committee is directed to grant the petitioner an opportunity for hearing and a reasonable opportunity to present his case before this petition against the Sub-Divisional Level Committee's decision dated 19.05.2016 is considered and disposed of. The District Level Committee must pass a reasoned order while disposing of the petitioner's petition. The petition must be disposed of on merits.

19. The petitioner to now appear before the Collector, South Goa at Margao on 07.08.2023 at 3.00 pm and file an authenticated copy of this order. Based upon the same, the Collector can request the District Level Committee to afford an opportunity of hearing to the petitioner on a suitable date and after that dispose of the petitioner's petition dated 18.04.2017 on merits.

20. The rule is made absolute in the above terms without any order for costs. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.