



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5376/2022

Lalman Ramlal Dhandekar

...Versus...

**Divisional Level Committee, Through its Secretary being Additional
Commissioner, Tribal Development Department, Amravati and others**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. N.B. Rathod, Advocate for petitioner
Mr. S.B. Bissa, AGP for respondent Nos.1 to 3

CORAM : ROHIT W. JOSHI, J.

DATE : 10/12/2025

1. The petitioner in the present petition is a resident of village Pastalai. The petitioner has challenged the order dated 09/04/2021, passed by the Divisional Level Committee under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of the Rights) Act, 2006 (for short hereinafter referred to as "Act of 2006"), whereby although the Divisional Level Committee has recognized the forest rights of the petitioner, it has directed that the petitioner will not be entitled to physically enjoy the said rights.

2. In the Gram Sabha of village Pastalai held on 01/05/2011, certain forest rights were recognized and accordingly a proposal was forwarded to the Sub Divisional Committee for further consideration. The Sub Divisional Committee has refused to recognize the forest rights since the village is located within the Critical Tiger Habitat Area. The

District Committee has concurred with the opinion of the Sub Divisional Committee. The present petitioner, had therefore, preferred appeal before the Divisional Level Committee.

3. Perusal of the order passed by the Divisional Level Committee will demonstrate that it had arrived at a finding that although the village is located within Critical Tiger Habitat Area, that by itself cannot be a ground for rejecting the claim of forest rights of the petitioner. The Committee had found that Gram Sabha of village Pastalai passed a resolution, accepting rehabilitation package and except one percent of the villagers, all other villagers were already rehabilitated at other places. Perusal of the order will demonstrate that two to four families refused to shift from the village. It is observed that since all the villagers were rehabilitated elsewhere except for three or four families, the petitioner cannot be allowed to enjoy the community forest rights. The Committee has observed that possibility of human wildlife conflict also cannot be ruled out, in the event, petitioner is allowed to enter the forest. The Committee has thereafter observed that compensation for community forest rights is required to be paid to the petitioner and other families, who continued to reside in the village as per Section 42 (3) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short hereinafter referred to as "RFCTLARR Act, 2013"). It has thereafter observed that since Rules for computation of compensation of forest rights in monetary terms were not finalized, it was not possible to determine the amount of compensation payable to the residents of village.

4. Mr. Rathod, learned Advocate for the petitioner contends that there is no provision under the Act and the Rules, which enables the Committee to prevent the forest dwellers from enjoying community forest rights, which are recognized under the Act of 2006, on the ground that decision to make payment of compensation as per Section 43 (2) of the RFCTLARR Act, 2013 is taken.

5. At the outset, Mr. Bissa, learned Assistant Government Pleader contends that the petition should be not entertained on merits, in view of Writ Petition No.3261/2020 filed by the petitioner along with five other residents of village Pastalai. He contends that the order impugned in the present petition has a reference in the said petition and the Division Bench of this Court in its judgment dated 10/11/2022 has directed the residents in the said petition to comply with the order dated 09/04/2021, which is impugned in the present petition.

6. The objection that challenge to the order dated 09/04/2021 cannot be entertained in view of judgment in Writ Petition No.3261/2020 is liable to be rejected. In this regard, reference can be made to paragraph 9 of the judgment, wherein it is observed that order dated 09/04/2021 is passed by the Divisional Level Forest Rights Committee during the pendency of the said petition and that the parties will be bound by the said order, unless the same is modified in appropriate proceedings. In the considered opinion of this Court, the said petition does not foreclose the right of the petitioner to challenge the order passed by the Divisional Level Committee, which is impugned in the present petition.

7. Mr. Bissa, learned Assistant Government Pleader contends that decision to make payment of appropriate compensation is taken and that as and when the Rules are finalized, compensation would be paid to the petitioner. He contends that since the village is located within the Critical Tiger Habitat Area, the petitioner should not be allowed to physically enjoy the forest rights and he is rightly prevented by the Divisional Level Committee from exercising such right. However, the learned Assistant Government Pleader is unable to point out any provision, which enables the Divisional Level Committee to pass such order.

8. It needs to be stated that after the Resolution was passed by the Gram Sabha initiating process for recognition of community forest rights, undisputedly all residents of village Pastalai have shifted elsewhere by accepting resettlement package. Only two to four families continued to reside in the village. It is also not in dispute that the community forest rights are sought to be exercised within Critical Tiger Habitat Area. Since the impugned order does not refer to any specific provision under which persons entitled to community forest rights can be prevented from exercising the said rights, it will be appropriate that the matter is remanded to the Divisional Level Forest Rights Committee to reconsider the appeal on its merits. In dealing with the appeal after remand, the Divisional Level Forest Rights Committee must deal with subsequent development of resettlement of majority of the villagers elsewhere and should also take into consideration Section 4 (2) of the Act. The Committee should also consider as to whether after resettlement, Pastalai can be termed to be a

‘village’ or ‘forest village’ within Section 2 (p) and 2 (f) of the Act respectively.

9. In view of the above, order dated 09/04/2021 passed by the Divisional Forest Rights Committee, Amravati in Appeal No.72/2020-21 is quashed and set aside. The Divisional Forest Rights Committee is directed to decide the appeal afresh in accordance with law.

10. Respondent No.1 - Divisional Level Committee is directed to decide the appeal afresh on or before 30/04/2026.

11. Writ Petition is partly allowed and disposed of accordingly. No order as to costs.

(ROHIT W. JOSHI, J.)