

25.02.2019

Addendum to our News Release of 21.02.2019

Supreme Court Order on FRA – additional facts to correct the misleading narrative

1. 14.77 lakh claims have been rejected by Gram Sabhas themselves

There has been considerable outrage on the rejection of 11.91 lakh claims even though this was based on due process prescribed under law with two levels of appeal to ensure natural justice. When this is seen along with the fact that Gram Sabhas themselves have rejected 14.77 lakh claims (MoTA statement of September 2018), it becomes clear that there is indeed a flood of bogus claims. This is also backed by satellite imagery analysis by various independent institutions and MoTAs Saxena Committee. And this is what the Supreme Court order of 13.02.2019 is focusing on.

2. Three Orders of the Supreme Court have consistently focused on rejected claims

Various opinions have been published on the 13.02.2019 order. However, it is important to know about two other major orders:

Extract from the Order dt. 29.01.2019 delivered by a bench headed by Justice Chelameshwar –

“...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. 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.”

Therefore, we deem it appropriate to find out as to what action was taken against the claimants whose claims have already been rejected. At this stage, we are informed by the Mr. P.S. Narsimha, learned Additional Solicitor General that the action insofar as persons who are unauthorisedly in possession of forest land, is required to be taken by the concerned State Governments and its authorities under the relevant laws in force in each one of the States.”

In the circumstances, we are of the opinion that each one of the respondent-States should file an affidavit giving the data regarding the number of claims rejected within the territory of that State and the extent of land over which such claims were made and rejected and the consequent action taken up by the State after the rejection of the claim, with all appropriate data in support of the above-mentioned information within a period of two weeks from today...”

Extract from the Order dt. 07.03.2018 delivered by a bench headed by Justice Madan Lokur –

“...Under the circumstances, we issue a fresh direction to all the State Governments to file a tabular statement in the form of an affidavit indicating the following:-

(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.

The cut-off date for providing this information is 31.12.2017..."

News Release

21.02.2019

The Supreme Court Order on Forest Rights Act does not affect genuine claimants

On February 13th 2019, a three-judge bench of the Supreme Court headed by Justice Arun Mishra issued an extremely important order in WP 109 of 2008 to ensure protection of forests, which have been severely affected due to ineligible/bogus claimants under the Forest Rights Act (FRA). Such claimants continue to occupy a huge area of forestland, including within National Parks and Sanctuaries, even though their claims have been rejected after due verification and an appeals process.

Wildlife First, along with Nature Conservation Society and Tiger Research and Conservation Trust, the petitioners in this matter, wish to present key facts regarding this case since there appears to be a lot of misunderstanding in the media on the latest Order of the Supreme Court.

Upon hearing Sr. Advocate Shyam Divan and AOR PK Manohar in great detail, and considering the magnitude of bogus claims and the never ending process of re-verification, the Supreme Court passed an important Order containing the following key directions to 17 States. These States had filed affidavits admitting the quantum of **rejected claims, which add up to 11, 91,327**. The Order directs that:

“...The Chief Secretary shall ensure that where the rejection orders have been passed, eviction will be carried out on or before the next date of hearing. In case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this Court...”

“...It is directed that where the verification/reverification/review process is pending, the concerned State shall do the needful within four months from today and report be submitted to this Court.

Let Forest Survey of India (FSI) make a satellite survey and place on record the encroachment positions and also state the positions after the eviction as far as possible.

Let the requisite affidavits be filed on or before 12.07.2019. List the matters on 24.07.2019”.

This makes it amply clear that the Supreme Court is presently focusing only on recovery of forest land from bogus claimants whose claims stand rejected. In other words, it has not directed any action in its 13.02.2019 Order against lakhs of claimants who have been granted titles over a whopping 72.23 lakh hectares of forest land as per the September 2018 official statement of Ministry of Tribal Affairs (MoTA).

Background:

1. The FRA is a law meant for recognizing pre-existing forest rights only and thus not a land grant or land distribution act. Only those people in actual occupation of forest land as on 13th December 2005 are eligible as per law. Further, people belonging to Other Traditional Forest Dwellers (OTFD) category, who form the bulk of the claims, have to establish a continuous 75-year occupation for eligibility.

2. After the enactment of the FRA in 2006, as per the September 2018 statement of MoTA, a total of 42 lakh claims over forest lands including within pristine National Parks and Sanctuaries were filed by tribal people and ‘Other Traditional Forest Dwellers’ (OTFD), a nebulous category of people not defined in the Constitution.

3. An analysis of the said official data reveals that a total of 18,89,835 titles have been granted and a massive 72,23,132 ha or 72,000 sq km of public forest land (almost the size of Assam State) have been granted and converted to individual and community ownership in bits and pieces across the country.

4. Apart from loss of forests, granting such wide ranging rights in scattered parcels of forest land is causing deleterious impact in the form of habitat fragmentation or breaking up of large forest blocks into smaller pieces. Fragmentation has been scientifically established as the most serious threat to long-term conservation of forests and biodiversity.

5. Based on due process prescribed under law with two levels of appeal, a total of 19,34,345 claims stand rejected as on 30.09.2018 as per the MoTA statement of which individual claims are 18,88,066. **Importantly, 14,77,793 claims have been rejected at the Gram Sabha level itself as per the said statement.**

6. While MoTA statements do not provide data on actual extent of forest land occupied by rejected claimants, the estimated area could be in excess of 19 lakh ha by applying the average area of an approved individual claim.

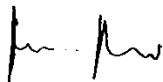
7. Several independent agencies including the Saxena Committee appointed by MoTA itself, TERI appointed by Maharashtra Government and Bhaskaracharya Institute of Space Applications for Gujarat Government have already documented fresh clearing of forest land after the 2005 cut-off date by satellite imagery analysis. Satellite imagery evidence of forest encroachment / loss has been considered by the CAG as well and accepted by the Supreme Court and High Courts in many other cases.

8. In order to protect National Parks and Sanctuaries, which are sensitive habitats of highly endangered wildlife, and which occupy just less than 5 % of India's landscape, one salutary clause was included in the FRA. This provides for notification of National Parks and Sanctuaries as Critical Wildlife Habitats from where people can be resettled. Shockingly, even though over 72 lakh ha of forestland has been granted under the FRA since 2008, **not one hectare of Critical Wildlife Habitat has been notified as yet.**

We request you to kindly publish the correct position based on the Order of the Supreme Court. We also request that this factual note be shared with those who report on this subject and to the edit desk, to ensure accuracy of reporting on this complex subject.

Sincerely

For Wildlife First



Praveen Bhargav

And on behalf of Kishor Rithe - Nature Conservation Society and Harshwardhan Dhanwatey – Tiger Research and Conservation Trust

Petitioners in Writ Petition 109 of 2008