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Government of India
Ministry of Tribal Affairs

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Date: 13th February, 2015

The Secretary to the Governor of Maharashtra
Mumbai.

Subject: Inter relationship between Forest Rights Act and PESA with special reference to Minor Forest Produce (MFP) - Clarification regarding

Sir,

I am directed to refer to the e-mail dated 13.11.2013 received from the Secretary to the Governor of Maharashtra seeking clarification on a number of issues on the above subject and to say that the issues raised in the e-mail referred to above have been examined by this Ministry and clarification to the points raised is given as under:

	Issue	Clarification
a)	In light of the apparent contradiction between the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 (hereafter "PESA") and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter 'FRA'), which provision will take precedence?	The Panchayats (Extension to Scheduled Areas) Act (PESA), 1996 enables extension of panchayats to the scheduled areas. While doing so it envisages additional provisions for empowerment of people given the special nature of scheduled areas. Various State legislations relating to land, water, forest excise, money-lending etc. are to be amended in-line with the spirit of PESA Act. Most of these laws are State legislations. Some of the matters like Minor Forest Produce (MFP) are often covered under executive instructions or Rules and not under any Act. The MFP restrictions, which prevent forest dwellers from having full rights over it arise out of the executive instructions and therefore, violate PESA. The Forest Rights Act (FRA) and PESA are kindred statutes, which empowered people and were framed to undo the historical injustice against tribals and forest dwellers since the colonial period through reservation of forests, restriction of entry to forests and prevention of forest dwellers from forest rights which had been enjoyed by them over generations. The difference is that the FRA is a self-contained Act along with Rules and makes specific provisions on several types of forest rights. The Forest Rights' Committee is a sub-committee of the Gram Sabha and therefore, enjoys all the

		power of the Gram Sabha envisaged under PESA. Therefore, there is no conflict between PESA and FRA. If this prospective is kept in mind then there will be no reason to perceive any conflict between FRA and PESA.
b)	How can ownership of MFP vest in the Gram Sabha under PESA, and also in the forest rights holder under FRA?	The notion of ownership under PESA and FRA is quite different from the commonly understood notion of private property. Individual rights are nested within the right of the Gram Sabha
c)	Between the Gram Sabha and the Committee under Section 4(1)(e) FRA, where does the decision-making power lie?	The power of decision-making with respect to MFPs clearly lie with the Gram Sabha, and the Committee is its delegate, or executive arm. The actions of the Committee are subject to approval by the Gram Sabha
d)	Who can auction and/ or dispose of the MFP-- forest rights holder or the 4(1) (e) committee?	<p>All MFPs are not to be auctioned. The right to dispose of MFP covers the entire gamut of activities as described under Rule 2(1)(d), subject to the powers of the Gram Sabha under Section 5 of the Act. Where the MFP right vests in an individual, groups of individuals, or family, again the disposal of such MFP covers the entire gamut of activities as described under Rule 2(1)(d), but would be subject to the powers of the Gram Sabha under Section 5 of the Act. An important underlying principle of FRA is that no produce should go out of the village/ community until the needs for the same within the village/ community have been satisfactorily met. This prevents the conversion of MFPs for commercial use at the cost of local needs, and also ensures that the rights of local artisans who use the MFPs as raw materials are protected.</p> <p>Where the Gram Sabha is the sole owner, that is, of MFPs which are not collected/ used by any individuals or family in the community, the auction and disposal of the MFP falls within the power and domain of the Gram Sabha. • The Gram Sabha can either carry out this process itself, or authorize the Committee under Rule 4(1)(e) to carry out this function, but in the event that it does so, the Committee performs this function as a delegate of the Gram Sabha and not in its own right. All its decisions, in addition, are subject to the approval of the Gram Sabha</p>

<p>If the use of income and sale of produce is the prerogative of the Committee under Rule 4(1)(e), can it be exercised without a reference to the right holders under FRA?</p>	<p>It would be quite incorrect to assert that the use of income and sale of produce is the prerogative of the Committee under Rule 4(1)(e). The Act and the Rules create space for a multiplicity of mechanisms and methodologies, and steer clear from taking a prescriptive approach.</p> <p>Even where the Gram Sabha is the sole owner of the MFP, it is the decision-making authority for deciding the use of income and sale proceeds of the MFP. At most, it delegates this power to the Committee, so that all actions of the Committee are in accordance with prior decisions of the Gram Sabha, or decisions taken by the Committee must be subsequently vetted and approved by the Gram Sabha. The Act and the Rules, however, visualize many other methods of sale, such as where the right holder is an individual, group of individuals or family. In such cases, the right to collect use, and dispose of the minor forest produce also includes, according to Rule 2(1)(d), the right to sell, and therefore to the sale proceeds. Sales of MFP can also be effected through cooperatives or associations or federations of rights holders. Therefore it would be incorrect to prescribe that the power is vested in any one body, such as the Committee aforesaid.</p>
<p>In case, the right to dispose of MFP is with the forest right holders can they dispose of MFP to anybody, or are they constrained to sell it to the Gram Sabha or the agency fixed by Gram Sabha only?</p>	<p>A conjoint reading of Section 3(1)(c) and Rules 2(1)(d) clearly indicates that such an interpretation of the right to MFP would be quite incorrect, and there cannot be any restriction upon the MFP right to the effect that it be sold only to the Gram Sabha or its agent. Such an interpretation would lead to particular hardship for forest dwellers who depend on low value MFPs for their livelihood can use, in particular those where value addition is a result of the labour invested in the collection and extraction, often in dangerous conditions.</p> <p>As stated earlier, where the owner of the MFP is an individual, group of individuals, or family, they are expected to adhere to the decision of the Gram Sabha under Section 5 and the Committee under Rule 4(1)(e) to the extent that the disposal and sale of the MFP impacts the sustainability of the resource. Save such restriction, the right to disposal cannot be curtailed</p>
<p>In PESA, it is clear that the ownership of the MFP is with</p>	<p>As has been stated earlier, before reaching a conclusion that there is a contradiction between</p>

the Gram Sabha. However, it needs to be clarified that if in a Gram Sabha, a group has already staked claim to minor forest produce under FRA then what happens to the right of ownership of the Gram Sabha under PESA? Will it be coterminous, and how? Or, Section 13 of FRA is to be interpreted to say that PESA will prevail and only the rights of Gram Sabha are to be ensued?

PESA and FRA, it is important to examine carefully whether the source of the conflict is not a lack of compliance of the State level legislation with the parent law. If after such an examination, a contradiction continues to manifest, this is easily addressed through a harmonious construction of the two statutes, since they are, in essence, kindred spirits.

Both PESA and FRA adopt a unique perspective on the notion of ownership, as noted earlier. Failure to foreground such a perspective of the ownership of MFP would, indeed, result in the failure of both FRA and PESA



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