

No.23011/02/2014-FRA
Government of India
Ministry of Tribal Affairs

Shastri Bhawan, New Delhi
Dated: 7 March 2014

To

The Chief Secretaries of all States/Union Territories

The undersigned is directed to refer to the circular dated 3rd August 2009, issued by the Ministry of Environment & Forests (FC Division), Government of India, regarding compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short 'FRA, 2006') while proposing for diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980, and further circulars pursuant thereto, in particular the circular dated 5th February 2013 and 15th January 2014 exempting linear projects from the requirement of obtaining consent of the Gram Sabha under FRA 2006.

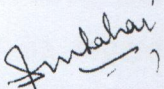
2. In this connection, the correct position of law is given as under:

- i) The Ministry of Tribal Affairs is the competent Ministry relating to FRA 2006. Provisions of FRA 2006 need to be strictly construed keeping in view the legislative intent of the said Act and primacy of the Gram Sabha in democratic governance. The Act does not provide any exemption to any category of projects. Even if Ministry of Environment & Forests does not insist on compliance to FRA for linear projects, it cannot be said that this authorizes the land acquisition/transfer authorities to violate FRA.
- ii) Compliance with the provisions of FRA 2006, in no way, counters basic developmental initiatives, particularly in less developed Scheduled Areas. In fact, Section 3(2) of the Act expedites projects meant for forest dwellers.

- iii) Section 5 of the FRA 2006 empowers the holders of forest rights, the Gram Sabha and the village level institutions, to protect wildlife, forests, water catchment areas, biodiversity and the cultural and natural heritage of forest dwellers, and to "ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with" [Section 5(d)].
- iv) The central role of the Gram Sabha in developmental initiatives is not unique to the FRA 2006. It also finds mention in the Panchayats (Extension to Scheduled Areas) Act, 1996 ('PESA') where consultation with Panchayats is a necessary pre-condition for alienation of any land in the Scheduled Areas for development projects. Mention may also be made of The Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which requires consent of the Gram Sabha for acquisition of land in Scheduled Areas for development.
- v) The role of the Gram Sabha in this process has received affirmation from the Supreme Court in a recent decision in *Orissa Mining Corporation vs. Ministry of Environment and Forests & Ors*, 2013 (6) SCALE 57, wherein the Apex Court has foregrounded the central role of Gram Sabha (which in the case of Odisha should be read as meaning *Palli Sabha*) in entertaining and determining upon community or individual forest rights claims. To be specific, at para 59 of the judgment, the Hon'ble Supreme Court clearly states that "the Gram Sabha is also free to consider all the community, individual as well as cultural and religious claims, over and above the claims which have already been received from Rayagada and Kalahandi districts. Any such fresh claims be filed before the Gram Sabha within six weeks from the date of this judgement. State Government as well as the Ministry of Tribal Affairs, Government of India, would assist the Gram Sabha for settling of individual as well as community claims." The Court reiterates that a proper process has to be followed for determination of community forest resource rights, and that the **decision has to be taken by the**

Gram Sabha. In view of this, the aforementioned circulars dated 5th February 2013, 5th July 2013 and 15th January 2014 of the Ministry of Environment & Forests are also against the directions of the Hon'ble Supreme Court.

3. In view of the above, compliance to FRA is a mandatory requirement before forest land can be diverted. Failure to do so would be a violation of law.
4. This issues with the approval of Hon'ble Minister, Tribal Affairs & Panchayati Raj.


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Director