

ANALYSIS ENVIRONMENT

Tribal Panel Invokes Special Powers to Evaluate States' Implementation of Forest Rights Act

Four months after opposing the new forest conservation rules as a violation of the Forest Rights Act, the National Commission for Scheduled Tribes is now set to evaluate the documents on FRA implementation submitted by state governments to the Supreme Court.

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Tribal Panel Invokes Special Powers To
Evaluate States' Implementation Of Forest
Rights Act

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Prudhviraj Rupavath



ENVIRONMENT 28/FEB/2023

New Delhi: On February 20, the Supreme Court of India ordered the court registry to hand over copies of all the

documents submitted by state governments in a case challenging the constitutionality of the **Forest Rights Act** (FRA) to the National Commission for Scheduled Tribes (NCST), a constitutional body which safeguards tribal rights. The documents include more than 30 sets of undisclosed papers.



The long-drawn court **case** – filed by wildlife advocacy groups campaigning for the preservation of forests – threatens the forest rights of tribals and forest dwelling communities guaranteed by the landmark law passed in December 2006.

In an unprecedented move, the NCST wrote a letter,

accessed by Land Conflict Watch, to the Supreme Court Registrar on February 3 invoking special powers to get these documents. The special powers, granted through Article 338A, clause 8(d) of the Indian Constitution, empower the commission to demand “any public record or copy thereof from any court or office”.



नि.स./अध्यक्ष/रा.अ.जजा.आ/2023

Date:03.02.2023

The Registrar,
Supreme Court of India,
Tilak Marg, New Delhi-110001
e-mail : supremecourt@nic.in

Subject: - Request to provide all documents of Writ Petition (C) No. 000109 of 2008 (*Wild Life First Trustee AMD & Anr. v/s Ministry of Forest and Environment & Ors.*)

Dear Sir/Madam

This has reference to the subject mentioned above The National Commission for Scheduled Tribes requires certain documents in compliance of its mandate as enshrined under Article 338A of the Constitution of India.

The National Commission for Scheduled Tribes is a Constitutional body under Article 338A of the Constitution of India. The commission is empowered under Article “338A clause 8d (*requisitioning any public record or copy thereof from any court or office*)”. The NCST would like to have copies of complete set of the writ petition along with counter affidavits and additional affidavits (if any) filed till date.

In this regard, I am directed to request you to provide copies of all the documents as mentioned above within 15 days.

The NCST’s letter.

With the apex court’s latest order, the tribal panel will now get access to a complete set of the documents pertaining to the case, including counter affidavits and additional affidavits filed. This means that the NCST will be able to evaluate the implementation of the FRA across states.

O R D E R

A Letter has been received from the Director of National Commission for Scheduled Tribes, requesting for copies of complete set of Writ Petition (C) No. 109/2008 along with counter affidavits and additional affidavits, if any, filed in the said case, till date.

As requested, Registry to forthwith provide soft copies of the documents sought for.

Thereafter, the matter be listed before the Hon'ble Court, as per rules.

PAVANESH D.
Registrar

The Supreme Court order.

This is the first time that the commission has used these powers to get documents from the Supreme Court.

“Only parties involved in the case can get access to these documents on request. NCST, despite not being a party in the case, is able to get the documents as it invoked its powers,” said Rahul Choudhary, founder member of the Legal Initiative for Forest and Environment (LIFE), a trust advocating reforms in environmental laws.

What is recorded in these documents?

The FRA recognises land ownership rights on recorded forests for tribal and traditional forest dwellers. Tribal households can claim ownership of up to 10 acres of

forest land if they submit evidence that they resided in and have been dependent on forests for their livelihood on or before December 13, 2005.

In the case of other traditional forest-dwelling families, they are required to provide evidence that they were dependent on the claimed forest land for the last three generations (75 years) prior to December 13, 2005. The law also guarantees community and habitat forest rights.

The Act and its rules lay down the processes to be followed by states for granting land titles (*pattas*) to eligible claimants. And to implement the law, states are required to ensure functioning gram sabhas and sub-divisional level and district level committees – bodies which scrutinise the claims – as there is no cut-off date for receiving applications.

Also read: [Environment Ministry's New Forest Diversion Rules Are Bad News for Forest Rights](#)

If the claims are rejected, reasons for the rejection are to be recorded and communicated. The applicants are then given an opportunity to appeal such rejections. However, it has been **observed** that states often fail to provide this opportunity to the claimants.

The states' submissions record the following in detail:

- status of FRA implementation;
- reasons for rejecting claims seeking land titles;
- status of review of rejected claims;
- status of evictions from forest lands; and
- procedures followed or to be followed for evicting forest dwellers whose claims get rejected.

The Supreme Court case was being heard by a three-judge constitutional bench and the final hearing was scheduled for November 10, 2022. But the retirement of Justice Indira Banerjee, one of the three judges, has put it on hold. A new constitutional bench is yet to be formed to start the final hearing.

Why is the commission taking a stand?

The commission recognises the significance of implementing the FRA to safeguard the rights of tribals, said an NCST official who requested anonymity.

“The court documents will help the commission to evaluate the performance of states in implementing the law,” he said. The official added that based on the documents, the commission will submit comments and recommendations to the states and the Union government.

The NCST, a constitutional body which usually maintains a low profile, has been taking a stand on the crucial law, even going against ministry decisions to steamroll changes in its forest conservation policies. Last year, the commission had opposed the new Forest Conservation Rules, **notified** in June 2022, arguing that the rules violate the FRA.

The rules, under the Forest Conservation Act (FCA), 1980, specify conditions for development projects seeking forest lands. They are used by the Union government whenever a public or private entity wants to cut down forests to set up a mining or infrastructure project, to evaluate proposals at two stages of clearance.

In October 2022, four months after the rules were notified, NCST chairperson Harsh Chouhan sent a letter to Union environment minister Bhupendra Yadav asking the minister to put the rules on **hold**, as they violate the FRA. But the ministry **ignored** the commission’s request.

In the same letter, the commission had also rejected the defence of the new rules provided by the tribal ministry in parliament.

“The current rules have done away with the requirement of seeking consent altogether and have left the process of recognition of rights to be carried out after Stage 1 clearance or even Stage 2 clearance,” **stated** Chouhan in his letter.

The chairperson also stated that the rules have done away with the “consent clause” specified in the previous rules.

The previous rules notified in 2014 and 2017 mandate that the authorities should recognise forest and land ownership rights of forest dwellers under the FRA and also obtain the approval of gram sabhas before approving ‘Stage 1 clearance’ for proposals seeking diversion of forest lands.

Around the same time, in August 2022, the commission also **formed** a working group – which includes members of the civil society – to examine the implementation of the FRA.

Where it all started

The main petitioners in the case include three wildlife advocacy groups, Wildlife First Trustee, Nature Conservation Society and Tiger Research and Conservation Trust. These groups filed a petition in the Supreme Court in 2008 questioning the constitutional validity of the FRA. The non-profits urged the court to re-examine the rights granted under the law.

The Union environment ministry, tribal ministry and all state and union territory governments are respondents in the case.

Since August 2008, the apex court has passed 81 orders in relation to this case. While hearing the same case, in a turn of events, the apex court on February 13, 2019 **directed** states to evict people from forest lands whose claims were rejected. It was estimated then that almost 17 lakh individuals would have been evicted across the country. The order, however, was **stayed** within two weeks after the intervention of the tribal ministry, which highlighted gaps in the rejection process adopted by different states.

Also read: [Has the J&K Administration Completely Misunderstood the Forest Rights Act?](#)

Since then, the court has sent about 240 notices to state chief secretaries asking them to submit affidavits with details on the status of FRA implementation.

With the COVID-19 pandemic and resultant lockdowns, no hearing was held between January 22, 2020 and September 13, 2022.

What we know about FRA implementation

According to tribal ministry [data](#), at the end of November 2022, of the total 42,97,245 individual claims for land titles filed at gram sabhas across 21 states, about 50%

received land titles and 39% claims were rejected, while the remaining claims are still pending at various levels of scrutiny.

Similarly, of the total 1,69,372 claims filed seeking community forest rights, titles were distributed to 61% communities, while 24% got rejected and 15% claims remain pending.

The tribal ministry claims that ownership of about 68 lakh hectares of land has been given to forest-dwelling households and communities under the FRA.

However, not every state processes such claims or furnishes clean data. In the northeastern states of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Sikkim, no forest rights claims get filed as a majority of the forests, the states claim, are already under the possession of tribal communities.

In states like Haryana, the government maintains that there are no tribal and forest dwelling communities in the state. In states like Assam and Bihar, governments have failed to furnish accurate data on the extent of land distributed under FRA.

Prudhviraaj Rupavath is a researcher on land and forest governance at Land Conflict Watch, an independent network of researchers studying land conflicts, climate change and natural resource governance in India.

Edited by Jahnabi Sen.

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