



**UNDERSTANDING THE
INTERPRETATION OF ‘EVICTION’
BY THE RECENT ORDER OF
SUPREME COURT BY CASE STUDY
OF WILDLIFE FIRST & OTHERS V
MINISTRY OF ENVIRONMENT &
FOREST & OTHERS**

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This paper intends to throw light on the concept of rights under the Forest Rights Act, the obligation the statute entails on the government in protection of such minorities and what happens if such rights are not redeemable? The question of the obligation of Supreme Court towards protection of vulnerable communities vis-à-vis environment conservation can be scrutinized by understanding the reason behind such petition filed by an NGO. The direction of Supreme Court for a state carried eviction in 22 states, which was recently stayed and whether any other direction such as checking the implementation of FRA could have been more effective. Another question would rise if eviction would have been carried out is, whose responsibility would it be to rehabilitate the displaced forest dwellers??

A specific legislation for the purpose of protecting forests and related rights was passed, known as the Schedule Tribe & Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 also called FRA. The Act passed with the object of undoing the “historic injustice” done to the forest dwellers. The Act recognizes the rights of the

forest dwellers over forestland and resources, which they have been using as part of their livelihood.

A claim is made either for individual or community rights by the people/communities covered by the FRA. This is a plain reading of the Act, which is unambiguous on the grounds of eviction of rejected claimants therefore being unjust towards certain communities.

The preamble of the Act recognizes rights of forest dwellers and Scheduled tribes on forest/ community resources vested which includes sustainable utilization, conservation of biodiversity and maintaining balance of ecology as responsibilities attached with such vested rights. It addresses the colonial and historical injustices, while recognizing the traditional dwellers as integral to the survival and sustainability of the forest system by addressing the insecurities.¹ The Act defines important terminologies to clearly demarcate the ambit of jurisdiction.² The consecutive provisions recognize these rights, permitted activities and responsibilities of those whose rights are recognized under the Act.³ The procedure and processes of vesting if such rights are clearly mentioned along with the duties towards forests whose rights are vested under this Act.⁴ Several recognized authorities under the Act are the Gram Sabha, to initiate the process, then subsequently Sub-divisional Level Committee, constituted by the state government, which shall consider and dispose such petitions, for any person aggrieved by the decision, the District Level Committee shall consider and dispose such petition, and for any person aggrieved by the

¹ The Schedule Tribe and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, Preamble.

² Supra § 2.

³ Supra § 3.

⁴ Supra § 4 & 5.



decision, the State Level Monitoring Committee shall monitor the process of recognition and vesting.⁵ Although section 6 clearly indicates the process of recognition, the authorities involved and limitation periods, the vesting of rights has not been ensured in practicality and the nodal agency i.e., the Ministry of Tribal Affairs does not have any role to play in ensuring the implementation of this Act. Subsequent provisions of the Act discuss the offences and penalties, composition of authorities and powers of the central government. The Act does not in anyway discuss the aftermath of rejection of claims, and impliedly does not talk about the process of eviction to be carried out in case where claims are not maintainable.

The Indian judiciary has been proactive, seeing the recent trends of environmental activism, for the conservation and protection of ecological balance. These decisions are based on the impact of anthropogenic activities and for the welfare of environment and habitat of wildlife whether it is forest, river, mountain or marine ecosystem. The case that is the focal point of this paper has elements of conservation of forest areas but there is an underlying 'injustice' that will be discussed as we proceed. Before understanding the case, it is important to understand the concept of forest rights of scheduled tribes and other traditional forest dwellers.

Writ filed in the Supreme Court by Wildlife First NGO and some other civil societies collectively, to challenge the Constitutional validity of the Schedule Tribe & Other Forest

Dwellers (Recognition of Forest Rights) Act, 2006 also known as FRA and also the questions pertaining to the preservation, conservation and protection of forests in the context of the Act. The details regarding claims made under the FRA that were placed before the court by the petitioner in 2016 showed that of the 44 lakh claims filed before appropriate authorities in the different States, 20.5 lakh claims (46.5%) were rejected. The order of 2016 went on to observe: "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."

The petitioners, Wildlife First & Others⁶ seek to challenge the FRA and sought the eviction of forest dwellers whose claims were rejected under the law. This meant that their contention was that the forest dwellers, whose rights had been rejected, should not continue their dependence on forests for shelter, food or other resources. Which seems to be increasing the vulnerabilities of an already vulnerable and indigenous rural settlement, thus leaving them exposed to harsher social and economic problems such as homelessness, loss of income, lack of nutrition, starvation and illiteracy due to lack of resources.

Interestingly, in this case it appears as if a civil society institution, Wildlife First, an NGO was pitted against the state. But closer examination may reveals that it was, in fact, Wildlife First and the state together, that had joined forces against the most vulnerable communities in the country living in areas

⁵ Supra § 6.

⁶ Wildlife First & Ors. v. MoEF & Ors
MANU/SCOR/14380/2018



constitutionally protected from encroachment even by the state.

In a recent order passed by the Supreme Court, on February 2019, the court addressed the affidavit submitted for the eviction of rejected claimants. The following were the requirements put up by the court-

- Eviction ordered from the following twenty one states- Andhra Pradesh, Assam, Bihar, Chattisgarh, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Odisha, Rajasthan, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh & West Bengal
- Compliance report to be submitted by the respective Governments of the aforementioned States, on or before July 24th 2019, before the next hearing is conducted
- Bench directed Forest Survey of India for the satellite survey to determine encroachment positions

The SC order was passed on the basis that “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”. In other words, the claimant cannot contest the decision of the authority, said the court. With respect to action to be taken against those “unauthorisedly in possession of forest land”, the States were then asked by the Supreme Court to report on concrete measures taken to evict the Scheduled Tribes

and Other Traditional Forest Dwellers from the forest. In the very next paragraph, which pertained to the State of Tamil Nadu, the order referred to action against those people whose claims had been rejected as “eviction of encroachers”.⁷

“The most obvious one has to do with the meanings attached to the rejection of claims. According to the 2014 report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities in India, constituted by the Government of India (Xaxa Committee), 60% of the forest area in the country is in tribal areas — protected by Article 19(5) and Schedules V and VI of the Constitution. With specific reference to claims under the FRA, reiterating the finding of several other studies that have documented the deep procedural flaws in processing claims, the Xaxa Committee observed that “claims are being rejected without assigning reasons, or based on wrong interpretation of the ‘OTFD’ definition and the ‘dependence’ clause, or simply for lack of evidence or ‘absence of GPS survey’ (lacunae which only require the claim to be referred back to the lower-level body), or because the land is wrongly considered as ‘not forest land’, or because only forest offence receipts are considered as adequate evidence. The rejections are not being communicated to the claimants, and their right to appeal is not being explained to them nor its exercise facilitated.” The mere rejection of claims by the state therefore does not add up to a finding of the crime of “encroachment”- the sheer volume of rejections should instead set alarm bells

⁷<https://www.thehindu.com/opinion/lead/without-land-or-recourse/article26344370.ece>



ringing in the court of procedural improprieties.”⁸

Legally speaking, any claim rejected can be challenged and the claimant cannot be evicted solely a particular reason. In fact, the apex court had passed a similar order on January 29, 2016, in the same case⁹, asking “state governments to file affidavits detailing the number of claims rejected and why they have not been evicted within two weeks. This order was immediately followed by a clarification by the Union Ministry of Tribal Affairs (MoTA) for the implementation of FRA on February 5, 2016. In this clarification, the ministry had pointed towards the process to be followed after a claim is rejected and the need to put that data in court along with the data on just the number of rejected claims.”¹⁰ There were no such affidavits filed, no concrete data was collected and in the subsequent hearing in 2019, there was no reference to previous court directions and the non-performance of State governments on the SC order.

“In order to place the complete information before the honourable court, it may be necessary to provide details of the process that is followed in case of rejection of claims, including communication of reason, opportunity of appeal, and cases where claims are being re-examined due to wrongful rejection,” the clarification said. The claimant has to be informed about the reasons for the rejection, if the claim is rejected. Then, the claimant has 90 days to appeal against it. “No petition of the aggrieved person shall be disposed of, unless he has been given a reasonable opportunity to

present anything in support of his claim,” the law says.

Despite having such mechanisms in place, sine 2016, and no rejected claimants have taken legal recourse nor has there been any increase in the number of granted vested forest rights, according to available data. There has been no improvement in the process of Gram Sabha’s duty in creation of a consolidated data bank of granted rights. But Gram Sabha has majorly failed in providing the reason for rejection of claims, which not only curbs rights of the most marginalized communities, but also hinders the process of appeals, on the basis of which aggrieved persons may file to appellate authorities. Orders given by the court in 2016, to the state governments have also not been followed and the upcoming hearing for this case, it will be easier to see that concerned authorities, have been unprepared to address issues arising from FRA, have lacked in the proper implementation of the Act and not been efficient enough in information dissemination to the communities that ought to benefit from this legislation. This shoes that there is gross misconduct in the part of empowered authorities starting from Gram Sabha all the way up to the nodal ministry in the performance of duties and responsibilities it holds towards the citizens.

Some questions that arise from studying this case are:

First question being; What is the role of the different governmental bodies involved and can it be considered as a lack of accountability of duties and responsibilities

⁸ <https://www.bestcurrentaffairs.com/virginius-xaxa-committee-tribal-affairs/>

⁹ Wildlife First & Ors. v. MoEF & Ors 2016 SC

¹⁰ <https://www.downtoearth.org.in/news/forests/does-the-supreme-court-order-mean-eviction-of-forest-dwellers-right-away--63315>



of various governmental bodies? Court mandated order given to Chief Secretaries of all states concerned for the eviction to be carried out with submission of compliance report before next hearing. But there was no information about the reasons of rejected claims, on the basis of which such eviction was to be carried out. MoTA had no role in implementation of FRA, which seems to be irrational. The Central and State governments, along with the MoEF should have taken the initiative in ensuring implementation, institutional mechanisms that promote autonomy and restrain interference in self-governance, which should have been addressed by the Court, before ordering eviction.

Second question; Why didn't the SC ensure the status of implementation of FRA, instead of passing order for eviction of rejected claimants? If the State Governments actually follow the order given by the SC, the immediate result will be the forced eviction of over one million people belonging to the Scheduled Tribes and other forest communities. Most of these areas marked for eviction fall under areas listed in the Schedule V and Schedule VI of the Constitution and there is no reference to the implications for governance in such areas and whether the SC has the authority to order evictions of Scheduled Tribes from Scheduled Areas. A democracy treats people as citizens and not subjects, where the written Constitution affirms the people who are sovereign, how can the supreme judicial body become a part of the dismantling of an entire constitutional apparatus that prescribes the non-derogable boundaries to 'Adivasi' homelands.

Third question; Why did the organizations challenge the FRA after 10-12 years of implementation? The organizations challenging the constitutional validity of a statute nearly after a decade may seem lazy but can also be opportunist. It may have been in the name of 'forest conservation' but it would also have been easier for diverting forestland for non-forest purposes to large industries.

Fourth question; Who shall be responsible to rehabilitate the evicted forest dwellers and what land can be diverted for such action? Whether it was the responsibility of the court, central ministries- MoEF or MoTA, State Governments, Gram Sabha, Gram Panchayat or any other.

Fourth question; What recourse could be availed by the rejected claimants after the order of SC? SC ordered eviction without review or appeal of rejection of claim and anyone who had information about such process; it would have been long drawn and continuous. If initiated. But most forest dwellers did not have proper means of recourse to file for appeal. In my opinion, court order stands to be in gross disregard of the rights of rejected claimants as any one could not contest the decision of the authority and no reason was given for such rejection.

Fifth and most important question; Is the SC not obligated to protect the rights of Scheduled Tribes and other vulnerable communities under the Constitution? Why is such obligatory responsibility missing in the SC ordered eviction? At a fundamental level, some special protections under the Constitution are guaranteed, especially with the current scenario of judicial activism. The Article 19 clause 5, in the Fundamental Rights chapter of the Constitution,



specifically obligates the state to make laws “for the protection of the interests of any Scheduled Tribe” and deems it ‘vital’. The SC ordered the eviction in complete disregard of this core and express fundamental right (higher priority) protection to Adivasis which is different from legal protection, which protects them from a range of “state and non-state intrusions in Scheduled Areas as well as from the perennial threat of eviction from their homelands”. With respect to action to be taken against those “unauthorisedly in possession of forest land”, the States instead have been asked by the SC to report on concrete measures taken to evict the STs and OTFDs from the forest. The order referred to action against those people whose claims had been rejected as “eviction of encroachers”.

In conclusion, as the conflict between protecting land rights of tribals and conservation of forests continues, there comes a requirement of a different approach. When the model of development has been that some people have to lose so that others can benefit. This is a disparity that needs to be resolved equitably through a joint efforts of the state as well as the central government, civil society action that does not deprave vulnerable communities and their well being and local participation in decision making for local communities in the actions of private or government actors. Concept of eviction is not mentioned in any of the legislations that are specific to forests and conservation. The FRA specifically does not address the issue of ‘eviction’ in case of rejection of claims, then the SC can be said to be indulging in over-interpretation of law, which marginalizes the most vulnerable communities in India.

The inability and inefficiency in government action at all levels, starting from gram sabha, panchayat, state department, state governments, central ministries and the whole government system, including the judiciary, for proper implementation of the FRA has to be ensured. The understanding of “encroachment” is that those forest dwellers whose claims under the FRA have been rejected are encroachers, which is creating injustice towards such a vulnerable community. A major lacking among these communities is the information regarding provisions of FRA, which give the claimants the right to appeal against the rejection of their claims. This is not only putting them in a far worse situation than before, with the SC and the governments unable to protect their fundamental rights under the Constitution rather than ensuring proper implementation of existing laws, interpretation of law and equity between development, social and environmental concerns. There should also be a mechanism to ensure that state and local governments are working for the collective development, without infringing on the rights and claims of the most vulnerable among their citizens, to keep a check on corruption and proper regulation of non-forest activities in forest areas, especially industrial activities, which may be more harmful than beneficial in the long run.

There is a need of a more efficient governance, widespread awareness and information about the claims and rights of the citizens, easy legal recourse for vulnerable and underprivileged as well as a moral and ethical obligation towards the three pillars of sustainable development- Social, economic and environmental equity.
