

**F. No. 23011/23/2012-FRA
Government of India
Ministry of Tribal Affairs
FRA Division**

**F-280, August Kranti Bhawan,
Bhikaji Cama Place, New Delhi-110066**

Dated: -

05/04/2019

To,

**Shri Sharwan Kumar Verma
Dy. Inspector General of Forests
Ministry of Environment, Forest and Climate Change
Indira Paryawaran Bhawan,
Jor Bagh Road, Aliganj, New Delhi -110003**

**Subject: - Compliance of the Scheduled Tribes and Other Traditional
Forest Dwellers (Recognition of Forest Rights) Act, 2006-
regarding**

Sir,

I am directed to refer to Ministry of Environment, Forest and Climate Change's (MoEFCC's) letter no. 11-43/2013-FC, dated 26.2.2019 on the above subject and to state that the observations made by the competent authority in Ministry of Tribal Affairs (MoTA) on the said MoEFCC's circular are as under: -

- (1) There is possibility of a contradiction in second last para of the said circular dated 26.2.2019 of MoEFCC. It states "*It is clarified that within the time period stipulated for compliance of stage I condition, Deputy Commissioner shall complete the process of compliance of FRA (including forwarding its findings to the concerned CF)*". However, subsequently, in same para, it states that "*compliance under FRA is not required for consideration of in principle approval*".
- (2) In connection with (1) above, following is stated: -
 - (i) The proposal for diversion of Forest land for non-forest purpose are considered by MoEFCC in two stages. Stage 1 clearance is when in principle approval is given for the project and by the end of stage II, all other statutory and regulatory clearances, such as environment, water etc as mandated have to be obtained by the project proponent. The time lag between stage I and State II varies from 2-3 years

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(ii) MoTA's view, which was communicated, to MoEFCC after discussion with them, vide OM No. 23011/18/2014-FRA dated 14.12.2015, was that *the above said time period may be effectively utilised by the State Govts in taking steps towards compliance of requirement under FRA and this will then meet the requirements of both FCA and FRA without causing any hindrance to either of the two Acts.*

(iii) Subsequently, however, in the discussion held in the meeting with officers of MoEFCC on 12.01.2018 under the chairmanship of Secretary (TA) to harmonise the working of the two Ministries (MoEFCC&MoTA) to ensure that the rights of the tribals are not affected, the **views arrived at / decisions reached with regard to** obtaining FRA clearance in respect of project was that '*while MoEFCC had maintained that it would be required to be obtained by project proponent at stage II of FCA clearance, the views of MoTA is that this would prove to be fait accompli as by that time the project proponents would have made sufficient progress and the tribals living in the forest area earmarked for use by project would be put to a great disadvantage and it has been seen that many a times the project applies for FRA clearance only in the last minute and this results in the project getting delayed for want of FRA clearance and as such, the project proponent should produce proof of having initiated FRA clearance process at the point of going in for Stage I FCA clearance itself.*' A copy of MoTA's OM No. 23011/04/2013-FRA dated 6.2.2018, forwarding therewith a copy of Record of Discussions held in the above said meeting to MoEFCC, is enclosed for perusal in this regard.

(3) (i) on perusal of para (1) above, in conjunction with para (2)(iii) above, it has been clearly observed by MoTA that mutually agreed / decided views (between MoEFCC & MoTA) to the effect that, proof of having initiated FRA clearance process should be produced at the point of going in for stage I FCA clearance, as already mentioned in para 2 (iii) above, have not been kept in view by MoEFCC while issuing circular dated 26.2.2019.

(ii) Moreover, on perusal of MoEFCC's circular dated 26.2.2019 in conjunction with their own FRA Amendment Rules, 2016, it has also been observed by MoTA that while FCA amendment rules talks of compliance of FRA before Stage I, second last para of circular dated 26.2.2019 talks of Compliance of FRA in the time lag between stage I and stage II clearance.

(iii) On further perusal of MoEECC's said circular dated 26.2.2019, it has further been observed by MoTA that the said circular, which is about the stage of compliance of FRA, has been circulated to Principal Secretaries / Secretaries (Forest) of all states / UTs, but it has not been endorsed to MoTA, who is the competent Ministry relating to FRA as per Allocation of Business Rules and as such even if MoEFCC does not insist on compliance to FRA, it cannot be said that this authorises them to violate FRA.

(iv) Violation of FRA is a punishable offence under section 7 of FRA and an authority deemed to be guilty of an offence under FRA are liable to be proceeded against if found that due diligence has not been exercised to prevent commission of such offence.

- (4) Keeping in view of above, MoEFCC is requested to clarify the contradiction, as mentioned in para (1) above and to modify their circular dated 26.2.2019, under reference, in accordance with the discussion held in the meeting with officers of MoEFCC on 12.01.2018 under the chairmanship of Secretary, as already mentioned in para 2(iii) above.

This issues with the approval of Secretary, Ministry of Tribal Affairs.

Yours faithfully,

Uttam Kumar
(Uttam Kumar Kar) 05/4/2019

Under Secretary Govt. of India

Copy to:-

1. The Principal Secretary/Secretary (Forest) All States / UT Govts.
2. The Principal Secretary/Secretary (Tribal Welfare Departments), All states / UT Govts.
3. Prime minister's Office
4. Secretary, Ministry of Mines, Government of India
5. Secretary, Ministry of Coal, Government of India
6. Secretary, Ministry of Petroleum and Natural Gas, Government of India
7. Principal Chief Conservator of Forests, All State / UT Governments
8. All Regional Offices, Ministry of Environment, Forest and Climate change (MoEF&CC), GOI.
9. Joint Secretary in -Charge, Impact Assessment Division, MoEF&CC, GOI
10. All Assistant Inspector General of Forests / Directors in the Forest Conservation Division, MoEF&CC, GoI/Director, ROHQ, MoEF&CC, GoI/TO(FC)/TO(ROHQ).
11. Technical Director, NIC, MoTA with a request to place a copy of the letter on website of this Ministry.
12. Sr. PPS to the Secretary, MoEF&CC
13. Sr. PPS to the Director General of Forest & Special Secretary, MoEF&CC, GoI
14. Sr. PPS to the Addl. Director General of Forests (Forest Conservation), MoEF&CC, GoI.

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No. 23011/04/2013- FRA
Government of India
Ministry of Tribal Affairs
FRA Division

216-J, D – Wing,
Shastri Bhawan,
New Delhi - 110001
Dated: 06th February, 2018

OFFICE MEMORANDUM

Subject: Meeting held for discussing issues related to Ministry of Tribal Affairs and Ministry of Environment, Forest and Climate Change in the context of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006.

The undersigned is directed to refer to Meeting held on 12/1/2018 under the Chairpersonship of Secretary, Tribal Affairs with the officers of Ministry of Environment, Forests and Climate Change (MoEF&CC) for harmonizing the working of the two Ministries to ensure that the rights of the tribals are not affected and to enclose a copy of the Record of Discussions of the same for information and action as deemed appropriate.

Encl: As above

Yours faithfully,

(Roopak Chaudhuri)
Deputy Secretary to the Government of India
Tel. No.23387444

Ministry of Environment, Forest and Climate Change,
(Kind Attn: Mr. CK Mishra, Secretary)
Indira Pariyavaran Bhawan,
Jor Bagh Road, Aliganj, New Delhi, 11003.

Copy for information:

1. Shri Vinod Kumar Tiwari, JS (FRA& Livelihood), Ministry of Tribal Affairs, Shastri Bhawan, New Delhi.
2. Shri Rajesh Aggarwal, JS (A), Ministry of Tribal Affairs, Shastri Bhawan, New Delhi.
3. Shri Jaideep Singh Kochher, Economic Advisor, Ministry of Tribal Affairs, Shastri Bhawan, New Delhi.
4. PPS to Secy (TA), Ministry of Tribal Affairs, Shastri Bhawan, New Delhi.

Handwritten notes:
PPS
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For immediate duplication

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Record of discussions held in the meeting with officers of Ministry of Environment, Forests and Climate Change (MoEF & CC) on 12/01/2018 under the Chairpersonship of Secretary (TA).

A meeting was held under the Chairmanship of Secretary (TA) with officers of MoEF & CC. The following officers were present in the meeting:

- (i) Shri Siddhanta Das I.F.S., DG Forests-cum-Special Secretary, MoEF & CC
- (ii) Shri Vinod Kumar Tiwari, JS (FRA & Livelihood), MoTA
- (iii) Shri Rajesh Aggarwal, JS (A), MoTA
- (iv) Shri Jaideep Singh Kochher, Economic Advisor, MoTA
- (v) Shri Sanjay Kumar, DIG (NTCA), MoEF & CC
- (vi) Shri Roopak Chaudhuri, DS (FRA & Livelihood), MoTA

2. Secretary (TA) welcomed the officers of MoEF & CC and stated that the meeting had been called for to harmonize the working of the two Ministries to ensure that the rights of the tribals are not affected. The issues taken up were as follows:

- Need for initiating FRA Clearance process by project proponent before arriving at the juncture of Stage II clearance.
- Compensatory Afforestation Fund Act, 2016.
- Identification and suitability of Non-forest land for Compensatory Afforestation under Forest Conservation Act 1980 – regarding identification of Land Bank for Compensatory Afforestation (CA).
- Conferring Rights under Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 in critical Tiger Habitats in the context of direction issued by National Tiger Conservation Authority in March 2017.
- Voluntary relocation of settlements from Reserve Forests and Protected Areas which are not declared as Critical Wildlife Habitat under the Scheduled Tribes and Other Tradition Forest Dwellers (Recognition of Rights) Act, 2006.
- Requirement of keeping MoTA in loop when issuing any order which has bearing on FRA and STs.

3. The above issues were then discussed in detail and the views arrived at /decisions reached as are under:

- (i) With regard to obtaining FRA clearance in respect of projects it was observed that while MoEF & CC had maintained that it would be required to be obtained by project proponent at Stage II of FCA clearance, the views of MoTA were that this would prove

to be fait accompli as by that time the project proponents would have made sufficient progress and the Tribals living in the forest area earmarked for use by project would be put to a great disadvantage. It has been seen that many a times the project applies for FRA clearance only in the last minute and this results in the project getting delayed for want of FRA clearance. It was suggested that the project proponent should produce proof of having initiated FRA clearance process at the point of going in for Stage I FCA clearance itself.

This was agreed to by MoEF & CC which will take further action in this regard.

- (ii) With regard to Critical Wildlife Habitat (CWH) attention of MoEF & CC was drawn to the instructions issued earlier by the NTCA (28/03/2017) to the Chief Wildlife Wardens of all Tiger Range States directing them that in absence of guidelines of notification of Critical Wildlife Habitats, no rights shall be conferred in Critical Tiger Habitats. MoEF & CC was requested to keep MoTA in the loop while deciding such issues so that the requirements of FRA, 2006 can also be suitably addressed while taking decisions in the matter so that the interest of Forest Dwelling Scheduled Tribes and OTFDs are protected. MoEF & CC was also informed that MoTA has already communicated its nominee in the form of Principal Secretaries, Tribal Welfare Department of the States for the Committee to be constituted by MoEF & CC for identification of CWH.

MoEF & CC agreed to the suggestion and stated that on 04/01/2018 they have circulated a guideline to all states on CWH for comments. They would be sharing the same with MoTA for comments / suggestions and also rewording the same as per the requirement of the ministry.

Voluntary Relocation – It was shared by both MoTA and MoEF & CC that in many areas forest dwelling STs as well as OTFDs are volunteering to relocate from deep inside forest to either periphery of such forests or outside such forests though the areas of their original residence may or may not be in Protected Area or CWH. Officers of both ministries agreed to support such voluntary relocation and work towards facilitating the same under the relevant regulatory framework.

- (iii) Regarding the utilization of CAMPA fund, MoTA officers recalled the assurance given on the floor of the House of Parliament by the then Minister EF & CC Shri Anil Madhav Dave regarding approval of the Gram Sabah. Officers of MoEF & CC assured

that the commitment given by the then minister (Shri Anil Madhav Dave) still stands. Provision will be made in the Compensatory Afforestation Fund Rules, which is under preparation, to incorporate the above concern.

- (iv) MoEF & CC was requested to make Working Plans more explicit and also to add disclaimer therein to the effect that in the event of conflict with Tribal Rights, the latter shall prevail.

This was agreed to by MoEF & CC.

- (v) With regard to setting up of Land Bank, MoEF & CC officers explained that compensatory afforestation is generally taken up on non-forest land. The land so offered for compensatory afforestation need not necessarily be in the vicinity of the land being diverted for non-forest purposes, but may be located at some other place, which may be far away from the forestland diverted for non-forestry purpose.

Secretary (TA) desired that in order to have close monitoring on the land being diverted for non-forest purposes and land given in lieu thereof for compensatory afforestation, a robust land record management should be put in place by MoEF & CC. This suggestion was well taken by the MoEF & CC.

MoTA officers highlighted the need for a prior consultation by MoEF & CC before issuing any order having an impact on FRA process, outcome or on Tribal Rights. MoEF & CC agreed to evolve a mechanism of prior consultation in all such cases.

- 4. The meeting ended with Secretary (TA) and Senior officers of MoTA thanking the officers of MoEF & CC for making it convenient to attend the meeting wherein several important issues could be discussed and resolved.

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