

Centre set to dilute tribal rights over forestland

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Affidavit filed in Vedanta case says government can acquire forests in public interest by ‘extinguishing’ tribal rights

The Central government seems to have changed its stance on allowing forest dwellers and tribal people have the final say in allowing forestland diversion for mining and other projects. In an affidavit filed in the Supreme Court in the ongoing Vedanta case, the Union Ministry of Environment and Forests (MoEF) reiterated that mining in Niyamgiri hills, sacred to the Kondh tribals of the area in Odisha's Kalahandi district, cannot be allowed. But at the same time the document has sought to dilute the powers of the gram sabha to veto a project under the Forest Rights Act (FRA), and this move is likely to open the gates for other such projects elsewhere.

FRA states that forest dwellers cannot be resettled from forestland unless their traditional rights over such land are recognised, and a 2009 order of MoEF had made it mandatory for all the projects which require forestland diversion to obtain consent of the affected gram sabhas (village councils).

The affidavit filed in the apex court on February 15, however, says such consent will be required only in cases where "displacement of large number of people" is involved and which "affect the quality of life of the people".

The ministry said that for the projects for which diversion of such forest is "unavoidable" where rights of the forest dwellers are recognised, the rights may be "circumscribed or extinguished using the eminent domain of the state".

The principle of eminent domain is used by the state to acquire private land for a cause it thinks is in public interest. "By leaving the terms "displacement of large number of people" and "quality of life" undefined and asserting its "eminent domain", the government is in way saying it can take forestland from wherever it decides to. It can decide where the forest dwellers will have the say in vetoing the project and where they will not," said environment lawyer Ritwick Dutta.

Flip and then flop

This is in clear contrast to the previous position taken by the government in the same case in December last year where it said the forest dwellers protected by the FRA cannot be displaced except for making forest areas inviolate for wildlife. Interestingly, while MoEF has maintained that Vedanta cannot be allowed to mine in Niyamgiri hills where the Kondh tribals have been protesting against the proposed mining, it has not even mentioned its 2009 order that requires consent of affected gram sabhas for forest diversion in its affidavit.

It said the proposed mining will violate the fundamental rights of Dongria Kondh, a particularly vulnerable tribe which has been protecting and worshiping Niyamgiri forests for centuries as their sacred deity.

Diversion of these sacred groves and land for mining will undermine the customary rights of Dongria Kondhs to manage their own affairs in the matter of religion and fundamental right to conserve the culture of their own, says the affidavit. To buttress its argument, the government has said in the affidavit that diversion of forest should "ordinarily" be not allowed in the cases where it adversely affects the rights of the primitive tribal groups (PTGs) such as Dongria Kondhs and pre-agricultural communities, the most vulnerable among scheduled tribes. "While it may set a precedent to stop destructive projects in the PTG habitats, the government still wants to keep its window open by using term 'ordinarily'," said Ashish Kothari of non-profit Kalpvriksh.

It may be recalled that the then environment minister [Jairam Ramesh had rejected Vedanta's proposal to mine in Niyamgiri forests more than two years ago](#), saying the project violated forest laws. The state-owned Orissa Mining Corporation in a joint venture with Sterlite Industries had proposed to mine bauxite from the hills for global mining giant Vedanta's alumina refinery in nearby Lanjigarh. Vedanta challenged the government's decision in 2011.

[It claimed the apex court had already cleared the project in two consecutive judgements in November, 2007 and August, 2008](#). The company said MoEF does not have jurisdiction to overrule Supreme Court's decision. The court will hear the matter next on February 19.