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MOST IMMEDIATE
COURT MATTER

No.23011/22/2010-FRA
Government of India
Ministry of Tribal Affairs
(FRA Unit)

Shastri Bhavan, New Delhi-110001
Dated, the 2nd May, 2013

To

Shri Santosh Kumar Sarangi,
Commissioner-cum-Secretary,
SC and ST Development Department,
Government of Odisha,
Bhubaneswar

Subject: Directions under Section 12 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (In short Forest Rights Act) to comply to the Hon'ble Supreme Court judgement dated 18th April, 2013 in W.P(Civil) No. Writ Petition (Civil) No. 180 of 2011 in Orissa Mining Corporation vs Ministry of Environment and Forests

Sir,

As you are aware the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 180 of 2011 in Orissa Mining Corporation vs Ministry of Environment and Forests has delivered a judgement dated April 18, 2013 wherein there are specific directions to the State of Orissa and this Ministry with regard to ensuring both, due recording of the Forest Rights as well as the protection of cultural and religious rights of STs and OTFDs over 660.749 hectares of forest land where the Orissa Mining Corporation (OMC) is proposing to undertake the Bauxite Mining Project (BMP) in the districts of Rayagada and Kalahandi.

This is to bring to your notice especially Paras 56, 57, 58, 59, 60, 62 and 63 of the said judgement that emphasize the central role of Gram Sabha (which in the case of Odisha should be read as meaning Palli Sabhas) in entertaining and adjudicating upon community forest rights claims. The judgement further emphasises the role of the Gram Sabhas in safeguarding the customary and religious rights of the STs and other TFDs under the Forest Rights Act (para 56); and the importance of PESA and specifically Section 4(d) which mandates the Gram Sabha's competence to safeguard and preserve the traditions, customs, cultural identity and community resources (Para 57). More importantly the judgement emphasizes that the questions relating to religious rights including right of worship of the tribal communities in the Niyamgiri Hills have to be considered and decided by the Gram Sabha (Para 58).

It further observes that whether the diversion of 660.749 hectares of forest land for the BMP affects the religious and cultural rights especially their right to worship their deity - Niyamraja has not been placed so far before the respective Gram Sabhas for their active consideration and decision. Para 59 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."

Para 60 and 62 also lays down a process and a timeline within which the claims have to be considered and decision has to be taken by the Gram Sabha in the presence of senior judicial officers as observers.

In view of the above, a number of time bound action(s) are required to be taken by the State Government in compliance of the aforesaid Supreme Court judgement. The following directions are being issued under Section 12 of the Forest Rights Act to the authorities prescribed in Chapter IV of the Act for compliance:-

- a) Issue an advertisement in all the local newspapers (especially the ones in the vernacular language that are widely read in the districts of Kalahandi and Rayagada) that all STs and OTFDs living anywhere in these districts (para 63) who wish to claim individual or community rights as per the FRA or cultural and religious rights over any part of the 660.749 hectares of forest land should submit their applications to the concerned Palli Sabha with a copy to the designated officer of the Department of Tribal Affairs of the Orissa Government as well as to the Ministry of Tribal Affairs at the Centre. Copy of such notification should be sent to all the civil society and NGOs that are active in these two districts, so that complete transparency is maintained in the identification of claims. In addition, it should be publicly posted in all villages and settlements within Kalahandi and Rayagada districts, even if they are far from the forest area proposed to be transferred to OMC. This will ensure that there is no allegation of subjectivity in the selection of Palli Sabhas where the meetings will be finally held as per the directions of the Supreme Court. The advertisement should clearly mention all the rights recognised in the Forest Rights Act, including in particular the right to habitat of PTGs, the right to community forest resources, rights over grazing, fishing and water bodies, rights to minor forest produce, and the FRA's recognition of any other traditional right (s. 3(1)(l)).
- b) Simultaneously the Odisha Government may prepare a list of villages and hamlets that have been traditionally grazing their cattle, collecting minor forest products, protecting forests, worshipping deities or otherwise using the forest land demanded by OMC for the BMP. The list should include those villages where the primitive tribal groups exercise or may wish to claim habitat rights as defined in section 3(1)(e) of FRA over any part of the proposed mining lease (PML) area. Such a list will obviously include those villages too from where community or habitat claims under FRA over the PML were already received by the FRCs or the Palli Sabhas in the past, irrespective of the final order on such claims by the DLC. Old Survey and Settlement reports and the Forest Working Plans should also be consulted to identify the villages which have had traditional access to the PML area. It has already been clarified by this Ministry through its letter dated June 9, 2008 to all state secretaries in charge of Tribal Welfare that the term 'primarily' reside in would include 'such Scheduled Tribes and other traditional forest dwellers who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs'. The Frequently

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Asked Questions issued by the Ministry in December 2012 also clarify the meaning of the right to habitat in the following manner "Further, the right to community tenures of habitat and habitation may be recognized over customary territories used by the PTG for habitation, livelihoods, social, economic, spiritual, cultural and other purposes. In some cases the habitats of PTGs may overlap with forest and other rights of other people / communities." (point 7, bullet point 2)

- c) The draft list of villages prepared as described above should be shared with the Ministry, made public through news advertisements and posting in the concerned villages, and sent to all stakeholders so that complete transparency is maintained, and the list can be corrected if any village is left out. After the posting of the list, representations for inclusion of village shall be invited within ten days. The process of identification of the concerned Palli Sabhas may be completed within a maximum period of 15-20 days of receiving this direction. It is hoped that this will include all such villages from where people access the forest area of Niyamgiri falling in the BMP area either as habitat or for collecting MFPs, or whose religious rights would be affected by the diversion of forest area for mining.
- d) Thereafter the concerned Palli Sabhas having a claim in the BMP Project or PML area and those dependent on such area shall be proactively sensitized regarding the Supreme Court judgement as well as their religious rights under PESA and FRA. For this it is necessary that independent experts familiar with the FRA should accompany government officials in the area.
- e) The concerned SDLC and DLC members may be actively involved, on a campaign basis so that every possible effort is made to sensitize the concerned Palli Sabhas and its residents about the nature of rights that can be claimed and recognised and the consequence thereof.
- f) It is further directed that the state machinery ensure that the entire proceedings of the Palli Sabhas take place independently and completely uninfluenced by any vested interests or any form of coercion. The State Government may also ensure that people attend the meetings of the Palli Sabha without any fear or influence. The meetings have to be held within the jurisdiction, i.e. the geographical limits of the Palli Sabha so that a large number of people are able to participate and express their views fearlessly.
- g) A full video and audio graphic record of the meeting(s) and of the proceedings therein and the members present, be made and the records may be kept in pursuance of the guidelines issued by the Ministry of Panchayati Raj vide their Office Memorandum dated December 8, 2011 as evidence.
- h) The Court has directed that an officer equivalent of a district judge has to verify the above. You may also request public representatives namely the MPs the MLAs to be present as observers during the meeting of Palli Sabhas. In addition, observers may also be sent from the representatives of the third party in the Supreme Court case. No company representatives should be included in accordance with the court order.

- i) The decisions of the Palli Sabhas, the video and audio graphic recordings of the meetings and the reports of the observers should be communicated to the MOEF, through the State Government, with a copy to this Ministry.
- j) This is further directed that this Ministry be informed regarding the steps taken to place all forest rights and religious rights issues before the Palli Sabhas and other such steps being taken by the state. Copies of all advertisements, claims and other documents issued in the course of these proceedings may also be sent to this Ministry.
- k) The proceedings of the Palli Sabhas along with all the documents of evidence and claims may be submitted to this Ministry as soon as Palli Sabhas in the area take the decision as directed by the Hon'ble Supreme Court.

Should you require any assistance of any kind in helping you with the above process please inform as soon as possible so that the mandate of the Hon'ble Supreme Court is complied with in both letter and spirit. As you are well aware, there is a provision of taking up FRA related activities out of the Grants under Article 275(1) of the Constitution.

The State Government should take the necessary actions in compliance of the aforesaid directions and for implementation of the Judgement on top priority and the Ministry of Tribal Affairs be kept posted of the developments on regular basis.

Yours faithfully,



(Dr. Sadhana Rout)

Joint Secretary to the Government of India

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