

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

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**APPEAL NO. 83 OF 2014**

**IN THE MATTER OF:**

1. Shri Hira Singh Markam  
S/o Shri Devsay Markam  
Aged 73 years  
R/o Gulab Nagar, Mopka,  
Bilaspur-495006, Chattisgarh
  2. Pillu Patawi  
S/o Shri Kejuram Potai  
Aged 71 years  
R/o 8, Senior H.I.G,  
Sector-3, Shankar Nagar,  
Raipur- 492007, Chattisgarh
  3. B.P.S. Netam  
S/o B.R. Netam  
Aged 66 years  
R/o C/116, Achman  
Behind Vijeta Compex, Guru Ghasidas Colony,  
New Rajendra Nagar,  
Raipur-492001, Chattisgarh
  4. S.R. Netam  
S/o Shri Mohan Singh Netam  
Aged 64 years  
R/o O/18, Anupam Nagar, Shankar Nagar  
Raipur-492007, Chattisgarh
  5. Kalyan Singh Patel  
S/o Late Shri Dukhooram Patel  
Aged 45 years  
R/o Shahid Nagar, Birgaon,  
Raipur -493221
- .....Applicants

Versus

1. Union of India  
Through its Secretary  
Ministry of Environment, Forest and Climate Change  
Indira Paryavaran Bhawan  
Jor Bagh Road  
New Delhi -1100030

2. State of Chattisgarh  
Through its Principal Chief Conservator of Forests  
Aranya Bhawan, Medical College Road  
Raipur -492001, Chattisgarh (India)

3. South East Central Railway  
Through its General Manager  
Bilaspur -495004

4. State of Orissa  
Through its Chief Secretary  
Secretariat Building  
Bhubaneswar -752001  
Orissa

.....Respondents

**COUNSEL FOR APPLICANT:**

Mr. Ritwick Dutta, Sr. Adv., Mr. Rahul Choudhary, Mr. Utkarsh Jain,  
Ms. Meera Gopal, Ms. Geetanjali Sreedhar and Ms. Sukriti Kashyap,  
Adv.

**COUNSEL FOR RESPONDENTS:**

Mr. Vikash Malhotra, Adv. for Respondent No. 1

Mr. Apoorv Kurup, Ms. Needhi Mittal, Avanish Rathi and Mr. A.P.  
Mayee, Adv. for Respondent No. 2

Ms. Shipra Shukla, Adv. for Respondent No. 3

Mr. Krishnan Venugopal, Sr. Adv. Mr. Yashraj Singh Deora, Ms.  
Asmita Singh, Mr. Shyam Agrawal, Mr. Ardhendumauli Kr. Prasad  
Ms. Ragya V. Singh, Mr. Shashank Saxena, and Ms. Sanjana Saddy,  
Adv. for Respondent No. 6

**JUDGEMENT**

**PRESENT:**

**Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)**

**Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)**

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**Reserved on: 4<sup>th</sup> September, 2018**  
**Pronounced on: 14<sup>th</sup> September, 2018**

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

**Dr. S.S. GARBYAL, (EXPERT MEMBER)**

In this Appeal filed on 10.11.2014, the applicant has challenged the order of Forest Clearance granted by the State of Chattisgarh on 23.05.2014 for the diversion of 83.12 ha. of additional forest land in East Bhanupratappur forest division for the non-forest purpose under Section 2 of the Forest (Conservation) Act, 1980 for construction of the Phase I of the Dalli-Rajhara –Rawghat Railway Line. The Appellant had also challenged the Stage I forest clearance dated 16.04.2010 and the stage II Forest Clearance dated 12.05.2014 granted by the MoEF&CC. However during submissions made on the last date of hearing they have confined their appeal to forest clearance granted by the State of Chattisgarh dated 23.05.2014 only. They have accordingly requested the Tribunal to pass orders quashing the forest clearance dated 23.05.2014 granted by the State of Chattisgarh.

2. The applicants have submitted that the Forest Dept. of Chattisgarh have not fulfilled the requirements of official memorandums of the Ministry of Environment and Forest dated 30.07.2009 and 03.08.2009 whereby the settlement of rights under the Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act, 2006 have to be settled before the proposal for the diversion of the forest under Section 2 of the Forest (Conservation) Act, 1980 can be forwarded by the State Government to the Central Government. It has been stated that the settlement of rights has not taken place for people from the project area. It has also been stated that the proposal of the Forest Department, State of Chattisgarh did

not enclose any evidence that portrayed that the process has been initiated and/or completed even though such evidence is necessary as per the Official Memorandums of the Ministry of Environment and Forests dated 30.07.2009 and 03.08.2009.

3. The letter dated 30.07.2009 addressed to the Chief Secretaries/Administrator of all the States and UT Governments except J&K by the Ministry of Environment and Forest (FC Division), displayed at Annexure-A-12 reads as Under:-

***I am directed to invite the attention of the State Government to the operationalization of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which has become effective from 01.01.2008. It is observed that the proposals under the Forest (Conservation) Act, 1980 are being received from different States/UT Governments with the submission that the settlement of rights under Forest Rights Act, 2006 (FRA) will be completed later on.***

***Accordingly, to formulate unconditional proposals under the Forest (Conservation) Act, 1980, the State/UT Governments are, wherever the process of settlement of Rights under the FRA has been completed or currently under process, required to enclose evidences for initiating/completion of the above process. These enclosures of evidence shall be in the form of following:***

- a. A letter from the State Government certifying that the complete process for identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion, with a record of all consultations and meetings held;***
- b. A letter from each of the concerned Gram Sabhas indicating that all formalities/processes under the FRA have been carried out, and that, having understood the purposes and details of proposed diversion, they have given their consent to it.***

- c. A letter from the State Government certifying that the diversion of forest land for facilities managed by the Government as required under section 3(2) of the FRA have been completed and that the Gram Sabhas have consented to it.**
- d. A letter from the State Government certifying that proposals for such diversion (with full details of the project and its implications, in vernacular/local languages) have been placed before each concerned Gram Sabha of forest-dwellers, who are eligible under the FRA;**
- e. A letter from the State Government certifying that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present;**
- f. Obtaining the written consent or rejection of the Gram Sabha to the proposal.**
- g. Any other aspect having bearing on operationalization of the FRA.**

**The State/UT Governments, where process of settlement of Rights under the FRA is yet to begin, are required to enclose evidences supporting that settlement of rights under FRA 2006 will be initiated and completed before the final approval for proposals.**

4. And the letter at Annexure A-13 dated 03.08.2009 from the Ministry of Environment and Forests (FC Division) addressed to the Chief Secretaries/Administrator of all the States/UT Governments except J&K reads as under:-

**In continuation to this Ministry's letter of even number dated 30.07.2009, I am directed to invite the attention of the State Government to the operationalization of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which has become effective from 01.01.2008. It is observed that the proposals**

**under the Forest (Conservation) Act, 1980 are being received from different states/UT Governments with the submission that the settlement of rights under Forest Rights Act, 2006 (FRA) will be completed later on.**

**Accordingly, to formulate unconditional proposals under the Forest (Conservation) Act, 1980 the State/UT Governments are, wherever the process of settlement of Rights under the FRA has been completed or currently under process, required to enclose evidences for having initiated and completed the above process, especially among other sections, Sections 3(1)(i), 3(1)(e) and 4(5). These enclosures of evidence shall be in the form of following:**

- a. A letter from the State Government certifying that the complete process for identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion, with a record of all consultations and meetings held;**
- b. A letter from the State Government certifying that proposals for such diversion (with full details of the project and its implications, in vernacular/ local languages) have been placed before each concerned Gram Sabha of forest-dwellers, who are eligible under the FRA;**
- c. A letter from each of the concerned Gram Sabhas, indicating that all formalities/processes under the FRA have been carried out, and that they have given their consent to the proposed diversion and the compensatory and ameliorative measures if any, having understood the purposes and details of proposed diversion.**
- d. A letter from the State Government certifying that the diversion of forest land for facilities managed by the Government as required under section 3(2) of the FRA have been completed and that the Gram Sabhas have consented to it.**
- e. A letter from the State Government certifying that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present;**

**f. Obtaining the written consent or rejection of the Gram Sabha to the proposal.**

**g. A letter from the State Government certifying that the rights of Primitive Tribal Groups and Pre-Agricultural Communities, where applicable, have been specifically safeguarded as per Section 3(1)(e) of the FRA.**

**h. Any other aspect having bearing on operationalization of the FRA.**

**The State/UT Governments, where process of settlement of Rights under the FRA is yet to begin, are required to enclose evidences supporting that settlement of rights under FRA 2006 will be initiated and completed before the final approval for proposals.**

5. The Respondents have submitted that in the Forest (Conservation) Act, 1980 there is no provision for requirement of completing the settlements of rights under the Scheduled Tribes and other forest dwellers (Recognition of Forest Rights) Act, 2006 before sending proposals for diversion of Forest (Conservation) Act, 1980.

The Section 2 of the Forest (Conservation) Act, 1980 reads as under:-

**2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other Authority shall make, except with the prior approval of the Central Government, any order directing:-**

- (i) That any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;**
- (ii) That any forest land or any portion thereof may be used for any non-forest purpose;**
- (iii) That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization**

**not owned, managed or controlled by Government;**

**(iv) That any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.**

And there has been no insertion or deletion regarding settlement of rights of the Scheduled Tribes or the Traditional Forest Dwellers in any of the amendments brought out subsequently in the Forest (Conservation) Act, 1980.

6. The Respondents have also brought to our notice a letter dated 05.02.2013 from MoEF (FC Division) addressed to the Principal Secretaries (Forests) of all the States/Union Territories which reads as under:-

***I am directed to refer to this Ministry's letter of even number dated 03.08.2009 wherein this Ministry issued detailed guidelines on submission of evidences for having initiated and completed the process of settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.***

***This Ministry has received representations from various Ministries to exempt projects like construction of roads, canals, laying of pipelines/optical fibres and transmission lines etc. where linear diversion of forest land in several villages are involved from the requirement of obtaining consent of Gram Sabha, as stipulated in this Ministry's said letter dated 03.08.2009.***

***The matter has also been examined by an inter-ministerial Committee. The Committee after examination of the matter had inter alia recommended that a resolution of the Gram Sabha of the area, based on full and prior information of the project and a public hearing endorsing that the***



***project is in the interest of the people living on the forest land, use of which is proposed to be diverted for non-forest purposes may not be required for the projects like construction of roads, canals, laying of pipelines/optical fibres and transmission lines etc. where linear diversion of use of forest land in several villages are involved, unless recognized rights of Primitive Tribal Groups (PTG) AND Pre-Agricultural Community (PAC) are being affected.***

***The Hon'ble Minister for Tribal Affairs in his D.O. letter dated 21.01.2013 addressed to the Hon'ble Minister of State (Independent Charge) for Power has informed that the Ministry of Tribal Affairs agrees with the recommendation of said Committee that resolution of the Gram Sabha may not be required in cases of projects like transmission lines where linear diversion of forest land in several villages are involved, unless recognised rights of PTG/PAC are being affected.***

***Accordingly, I am directed to say that proposals seeking prior approval of Central Government under the Forest (Conservation) Act, 1980 for projects like construction of roads, canals, laying of pipelines/optical fibres and transmission lines etc. where linear diversion of use of forest land in several villages are involved, unless recognized rights of PTG/ PAC are being affected, are exempted from the requirement of obtaining consent of the concerned Gram Sabha(s) as stipulated in clause (c) read with clause (b), (e) and (f) in second para of this Ministry's said letter dated 03.08.2009.***

7. It is, therefore, clear from above that in terms of letter dated 30.07.2009 and 03.08.2009 there had been a requirement of a letter from the State Governments certifying that the process for identification and settlement of rights under FRA had been completed and also to enclose all evidences for having initiated and completed the above process especially among other Sections, Section 3(1)(i), 3(1)(e) and 4(5) along with the proposal for diversion of forest land for non-forest purposes sent to the Central Government.

8. However, MoEF has vide its subsequent letter of 05.02.2013 for the projects like construction of roads, canals, laying of pipelines/ optical fibres and transmission lines etc. where linear diversion of use of forest land is involved has exempted from requirement of obtaining consent of the concerned Gram Sabha(s) as stipulated in clause (c) read with clause (b), (e) and (f) in second para of the MoEF's letter dated 03.08.2009. Therefore, from 05.02.2013 onwards there was no need to enclose consent of Gram Sabha(s) with the proposals for diversion of forest lands for non-forest purposes to be sent to MoEF unless rights of Primitive Tribal Groups and Pre-Agriculture Communities are affected.

9. We are of the considered opinion that the project in the present Appeal Dalli-Rajhara-Rawghat Railway Line involves linear diversion of use of forest land and the appellant has nowhere contended that the tribals or the forest dwellers in the forest land involved fall in the category of Primitive Tribal Groups or Pre- Agriculture Communities, therefore, the current proposal of diversion of 83.12 ha, of forest land for construction of this railway line is exempt from the requirements of consent of Gram Sabha(s).

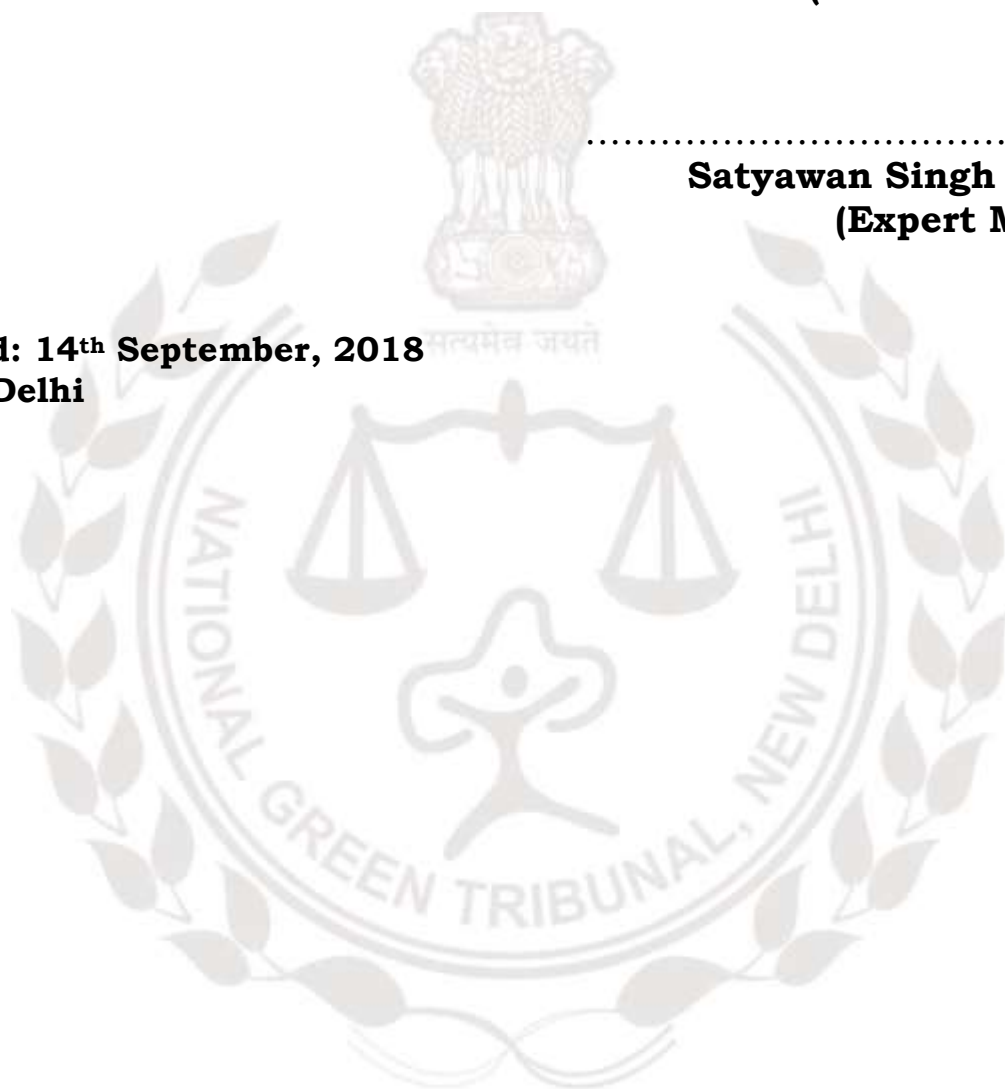
10. Moreover there is no requirement of pre- settlement of the rights of the Scheduled Tribes or the Forest Dwellers of the area involved in the project in the Forest (Conservation) Act, 1980. Besides, Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act, 2006 is not in the Schedule of Acts in the National Green Tribunal Act, 2010. Therefore, this appeal has no merits.

Consequently Appeal 83 of 2014 dismissed with no order as to cost.

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**Justice Raghuvendra S. Rathore**  
**(Judicial Member)**

.....  
**Satyawan Singh Garbyal**  
**(Expert Member)**

**Dated: 14<sup>th</sup> September, 2018**  
**New Delhi**



**NGT**