



सत्यमेव जयते

भारत सरकार  
पर्यावरण एवं वन मंत्रालय  
GOVERNMENT OF INDIA  
MINISTRY OF ENVIRONMENT & FORESTS

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No.2-3/2004-FC (Pt-II)

21<sup>st</sup> December 2004

To

The Chief Secretary,  
All States/UTs.

**Sub: Traditional rights of tribals on forest lands - discontinuance of eviction of tribals thereof.**

Sir,

All over the world, forestry, as a land-use, has survived on the concept of sustained yield which was ensured by creating compatible legal systems. In India, consolidation of forest laws started during the British period with the inception of Indian Forest Department in 1864 and scientific management of forests was introduced for planned and systematic management of the forests. The British Government enacted the first law on forests in 1865. To consolidate the law relating to forests, the transit of forest produce and other related matters, the Indian Forest Act was enacted in 1927. According to the Indian Forest Act, 1927, the Government can constitute any forest land or waste land which is the property of Government or over which the Government has proprietary rights, a reserved forest, by issuing a notification to this effect. Commercial interests of the then British Government motivated it to declare more and more lands as reserved forests, without ascertaining the rights of the tribals and other forest dwellers.

Even after independence in 1947, during the process of amalgamation of princely states, the activity of consolidation of government forests continued. The State Governments/UT Administrations proclaimed the lands of ex-princely states and the zamindari-lands as Reserved Forests. However, no effective steps were taken to simultaneously settle the rights of tribals and other forest dwellers. Absence of records

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पर्यावरण भवन, सी. जी. ओ. कॉम्प्लेक्स, लोदी रोड, नई दिल्ली-110003  
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of rights which never existed for these people, became the main constraint in resolving this issue. As a result, the rural people, especially tribals and forest dwellers who have been living in the forests since time immemorial, have come to be erroneously looked upon as encroachers of forest lands.

The burning human problem of non-recognition of tribal rights over land with its origin in faulty implementation of legal provisions in pre-independent India, and the same remaining unresolved even after independence, has continued to attract public attention. Having acknowledged the gravity of the problem, the Government has been contemplating ways and means to address it. Consequently, for the first time, the guidelines under the Forest (Conservation) Act, 1980 showed the way for legal solutions to the long pending unresolved problem of settlement of rights of the tribals and other forest dwellers living on the forest lands since time immemorial. Side by side, recognition of the concept of sustainable forest management through participatory approach, in the National Forest Policy, 1988, brought to the fore mutual interdependence of forests and people. Unlike the 1952 Forest Policy which centred around production and commercial forestry, the Policy of 1988 gives due regard to the traditional rights of the tribal people on forest land. While recognizing the symbiotic relationship between the tribal people and forests, it also safeguards the customary rights and interests of the tribal people and forest dwellers on forest lands.

To fulfill the commitments as enshrined in the National Forest Policy, 1988, in respect of settlement of people's rights, especially rights of tribals and forest dwellers, over forest lands in a regulated manner, the Central Government on 18<sup>th</sup> September 1990 issued guidelines for settlement of disputed claims of tribals, which were reiterated on 30-10-2002, requesting State/UT Governments to consider the settlement of disputed claims of tribals over forest lands and to set up Commission/Committees at the district levels involving Revenue, Forest and Tribal Welfare Departments for the settlement of disputed claims of tribals and forest dwellers. The State Governments/UT Administrations were also requested to submit proposals in this regard to enable the Central Government to take a final decision in the matter in a time bound manner. However, the State/UT Governments could not implement the guidelines effectively and the issue remained unresolved.

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The situation of the tribals became more vulnerable when, in pursuance of the Hon'ble Supreme Court order dated 23-11-2001 in IA No.703 in IA No.502 in Writ Petition (C) No. 202 of 1995, the Central Government instructed all the State/UT Governments on 3<sup>rd</sup> May 2002 to evict the ineligible encroachers and all post-1980 encroachers from forest lands in a time bound manner. Consequent follow up action by the State/UT Governments for evicting the ineligible encroachers, brought more intensely to the forefront, the issue of the disputed claims and rights of the genuine tribals and forest dwellers. They could not be distinguished from encroachers, and were proceeded against. This generated much consternation. Various organizations took up the case of such tribals and forest dwellers whose disputed claims had not been enquired into, and who were being proceeded against and evicted. This prompted the Central Government to issue a clarification on 30-10-2002 to the effect that there is no change, in the policy of the Ministry with regard to regularisation of pre-1980 eligible encroachments, and the commitment with reference to forest-tribal interface on the disputed settlement claims remained valid.

The Central Government in its continuous bid to settle the disputed claims of the tribals and the forest dwellers, and to legitimize their traditional rights over forest lands, of subsistence agriculture, and trade in MFP issued supplementary Guidelines on 5-2-2004 to encourage the State Governments/UT Administrations to take up the matter of settlement of rights of tribals and forest dwellers in the right earnest and perspective. However, before action could start on these guidelines, their operation was stayed by the Apex Court ex-parte on 23-2-2004. Central Government has moved an application before the Apex Court for vacation of the order.

After a critical examination of the issue of settlement of claims over forest lands and eviction of in-eligible encroachers of forest lands, what emerges is that the State /UT Governments were not able to distinguish between the encroachers, and the original tribals and other forest dwellers living on forest lands since time immemorial. The Central Government is convinced that the difficulty in distinguishing between genuine tribals/forest dwellers and in-eligible encroachers by the State Governments/UT Administrations is the main cause of the problems of tribals. Therefore, some kind of interim measures are necessary to safeguard the interests of the tribals and forest dwellers who have been living in forests since long, and whose disputed claims are yet to be settled.

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In view of the above, and without prejudice to Supreme Court's order dated 23-11-2001 and 23-2-2004, it has been found appropriate to request the State / UT Governments, that as an interim measure, they should not resort to the eviction of tribal people and forest dwellers other than in-eligible encroachers, till the complete survey is done for the recognition of such people and their rights, after setting up of District level Committees involving a Deputy Collector, a Sub-Divisional Forest Officer, and a representative of Tribal Welfare Department, by the State/UT Governments as reiterated in guidelines dated 18-09-1990 and 30-10-2002 of the Central Government. The State/UT Governments are advised to exclude such tribals/forest dwellers, other than ineligible encroachers, from the eviction drives. Simultaneously, it is also clarified here that this interim measure does not stop the State / UT Governments from evicting the ineligible encroachers from forest lands.

Suitable instructions may be issued to forest functionaries at all levels to keep the aforesaid in view while dealing with eviction of in-eligible encroachments from forest lands.

Yours faithfully,

  
(N.K. Joshi)

Copy to:

1. The PMO (Attn. Shri K.V. Pratap, Deputy Secretary).
2. Officer on Special Duty (Attn. Shri Dhiraj Srivastava), National Advisory Council, 2, Motilal Nehru Place, New Delhi.
3. Secretary, Ministry of Tribal Affairs, Government of India.
4. All PCCFs/Nodal Officers (All States/UTs).
5. All Regional Offices, Ministry of Environment and Forests.
6. Director (FC)
7. AIGs (FC)
8. Guard file.



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This is regarding para 4.17 of our guidelines issued under Forest (Conservation) Act 1980, for grant of temporary working permission (TWP) over already broken up areas in cases of renewal of mining leases,

Para 4.17 reads as follows:

*"If an application for renewal of mining lease, complete in all respects, has been submitted by the user agency to the State Government one year before the expiry of the existing lease period; but the State Government has not been able to process and forward the proposal for approval of the Central Government, till the date of the expiry of existing lease period; in such cases, the Central Government on an application from the user agency, may grant the user agency, temporary working permission in the already broken up area till a final decision is taken on the proposal".*

During the course of implementation of this guideline in the past one and half year, it has been experienced that the guideline suffers from following inherent shortcomings:

1. Since, the TWP is granted on the simple application of user agency only, it keeps both the Central Government and the State Government in dark on account of many vital information which are relevant from the point of view of forest and environmental conservation. In such a situation, both Central and State Government are found standing on the weak ground.
2. "Land" is a State subject, concerned State/UT Government are required to indicate their comments but this guideline does not give them such an opportunity.
3. Supreme Court has banned the mining in National Parks/Sanctuary since 14-2-2000. Therefore, the Ministry is bound to comply with the orders of the Apex Court. But, this guideline does not ensure the authentic information about the legal status of the forest land as also whether it forms part of a National Park/Sanctuary, because all the information are provided by the user agency only. Such shortcoming leaves ample scope for the contempt of the order of the Apex Court.
4. In some cases, it has also been experienced that after the grant of TWP by the Central Government, the State Government informs that the project has already been rejected by them. Hence, the guideline leaves plenty of scope for communication gap between the Central Government and the State Government.
5. The guideline also does not prescribe the maximum time limit up to which the TWP may be considered. It is very much against the spirit of the Forest (Conservation) Act, 1980 to allow mining on the strength of TWP for unlimited period.
6. It has also been observed that since the TWP is being granted to the user agencies, in a routine manner, they do not take much interest in pursuing their

cases with the State/UT Governments for getting the Governments' endorsement/recommendation on the proposal for renewal, to the Ministry. The State Governments too do not take an early decision on renewal applications, which is submitted by the User Agency about one year before the expiry of the lease period.

In view of the above-mentioned facts, it becomes essential to revisit the existing para 4.17 in the guidelines and a revised guideline may be formulated. Revised para-4.17 to be issued as guideline under Forest (Conservation) Act, 1980 may read as follows:

*(i) If an application for renewal of mining lease, complete in all respects, has been submitted by the user agency to the State/UT Government one year before the expiry of the existing lease period, but the State Government has not been able to process and forward the proposal for approval of the Central Government, till the date of the expiry of existing lease period; in such cases, the Central Government on a simple application of the user agency in the prescribed format, may grant temporary working permission (TWP) over already broken up area for a maximum period of one year, provided that the mining lease area does not form a part of a National Park/Sanctuary/Protected area and no violation of Forest (Conservation) Act, 1980 has been committed by the User Agency during the previous mining lease. Within this period, the State/UT Government shall take a decision on the proposal and forward it to the Central Government. If the proposal is not received from the State/UT Government on expiry of the period of TWP, it will be deemed as rejected by the State/UT Government.*

*(ii) Further, in cases where TWP for one year has already been granted but the State/UT Government has not yet taken a decision on renewal application and while issuing the Temporary Working Permission it was not very specifically mentioned therein that no further extension of TWP would be granted, an extension of three months may be given as a last opportunity for the State/UT Government to take a decision and forward the renewal application to Government of India with its endorsement/recommendation provided that the mining lease area does not form a part of a National Park/Sanctuary/Protected area. No further extension thereafter shall be granted.*

*(iii) In cases where TWP has already been granted for 15 months or more and the State/UT Government has still not forwarded the renewal application, no further extension of Temporary Working Permission shall be considered.*

Submitted for consideration of FAC please.

(Anurag Bajpai)  
AIG/FC  
20-9-2004