

F. No. 2-3/2004-FC
Government of India
Ministry of Environment and Forests
(F.C. Division)

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110 003.

Dated: 03rd November 2005.

To

**The Chief Secretary / Administrator,
(All State / Union Territory Governments).**

Sub: Guidelines for diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 - verification/recognition of rights of tribals and forest dwellers on forest land.

Sir,

State/Union Territory (UT) Governments are aware that this Ministry has issued detailed guidelines on 18th September 1990 to address contentious issues related to forest-tribal interface namely (i) settlement of disputed claims arising out of defective forest settlement; (ii) cases of pattas, leases, grants involving forest land; (iii) conversion of forest villages into revenue villages and settlement of other old habitations; and (iv) regularization of encroachment on forest land. These guidelines had provided for a three-member committee consisting of an official each from Revenue, Tribal welfare and Forest Departments to verify the rights/claims of tribals and other forest dwellers covered under the above guidelines.

2. The guidelines of 18th September 1990 mentioned above sought to address the problems of the forest dwellers, including tribals, which originated from faulty forest consolidation both during the British and the post independence periods. However, no further progress could be made due to various reasons and no proposal was received by the Central Government for consideration under the provisions of Forest (Conservation) Act, 1980. The Central Government also issued a clarification vide letter No. IGF/FC/2002 dated 30.10.2002 regarding settlement of disputed claims, simplified the procedure for stepping up of process of conversion of forest villages into revenue villages vide letter No.11-70/2002-FC (Pt) dated 03.02.2004 and issued supplementary guidelines for regularization of the rights of the tribals and other forest dwellers on forest land vide circular No. 2-1/2003-FC (Pt) dated 05.02.2004.

3. State/UT Governments are also aware that the Hon'ble Supreme Court of India has issued certain directions which are also related to a few issues of forest-tribal interface. These are (i) order dated 13.11.2000 restraining de-reservation of forests till further orders; (ii) order dated 23.11.2001 restraining regularization of encroachment on forest land till further orders; and (iii) order dated 23.2.2004 staying the operation of Ministry's guidelines dated 5.2.2004 cited above. The Central Government has already filed affidavits and requested the Apex Court to modify/withdraw the above restraints.

4. However, in pursuance of the Supreme Court order dated 23.11.2001, the Central Government had instructed all the State/UT Governments on 3rd May 2002 to evict all ineligible encroachers from forest land in a time bound manner. Consequent follow up action by the State/UT Governments for evicting the in-eligible encroachers brought the issue of the disputed claims and rights of the genuine tribals and forest dwellers on the forest land, to the forefront. Upon critical examination of the issue, it emerged that State / UT Governments could not maintain a distinction between traditional tribals/forest dwellers and in-eligible encroachers, while dealing with the eviction of in-eligible encroachers.

5. The Ministry of Environment and Forests observed that, though the orders dated 13.11.2000, 23.11.2001 and 23.2.2004 of the Supreme Court are still in force, there is no bar on verification of claims related to the period prior to 25.10.1980 which can be undertaken to avoid further delay in resolving the matter once the Apex Court accepts the request of the Government to withdraw/modify the restrictions imposed by it. Simultaneously, taking the genuineness of claims of tribals/forest dwellers into consideration and without prejudice to Supreme Court orders, the Ministry of Environment and Forests found it appropriate to request the State / UT Governments that, as an interim measure, they should not resort to eviction of tribals and forest dwellers other than in-eligible encroachers till complete survey is done for recognition of such people and their rights. Orders have already been issued in this regard by the Ministry of Environment and Forests vide letter dated 21.12.2004.

6. Therefore, without prejudice to the orders of the Hon'ble Supreme Court of India, keeping in view the facts mentioned above and with an objective of making best use of interregnum to verify the claims of tribals/forest dwellers, the state/UT Governments are requested to adopt following procedures:

(1) FORMATION OF COMMITTEES

(i) Set up a Village Level or Local Committee to verify the claims of disputed settlement of tribals and forest dwellers (other than in-eligible encroachers) on forest land. This committee shall consist of the following members: -

a. Sarpanch of the village (Chairperson);

- b. Two knowledgeable village elders or senior citizens (at least one being woman) selected in Gram Sabha meeting specifically called for this purpose;
- c. Talathi or Patwari;
- d. Chairman of the Joint Forest Management Committee (if existing) and;
- e. Forest/Beat Guard (to be Secretary of the Committee).

In case of Group Gram Panchayat and for villages other than the main village, a member of Gram Panchayat will be the chairperson. In case of forest settlements not coming under any Gram Panchayat, the traditionally accepted Mukhiya shall be the chairperson.

(ii) Set up Block or Taluka Level Review Committee to review such cases where the claimant is aggrieved by the decision of the Village Level or Local Committee. This Committee shall consist of the following members:

- a. Member of Zilla Parishad as Chairperson (nominated by Chairperson of Zilla Parishad);
- b. Member of Panchayat Samiti (nominated by the Block Pramukh);
- c. Naib Tehsildar;
- d. Asstt. Tribal Welfare Officer or Asstt. Project Officer (ITDP); and
- e. Concerned Range Forest Officer nominated by the territorial Divisional Forest Officer concerned (to be Secretary of the Committee).

(iii) Set up District level Committees (DLCs) involving Deputy Collector, Sub-Divisional Forest Officer and the representative of Tribal Welfare Department for final ratification. Sub Divisional Forest Officer (Asstt. Conservator of Forests) shall be the Convener of the Committee.

(2) PROCEDURE TO BE FOLLOWED BY THE COMMITTEES

a. It is necessary to examine all claims pertaining to disputed claims arising out of defective forest settlements and pattas and leases granted on forest land. This will be done within the purview of the guidelines of Government of India dated 18.09.1990. The claims should cover not only claims over individual plots of land but also collective/communitarian ownership claims and should include claims over forest products from surrounding forests based on customary use and/or use permitted by earlier princely state/zamindari regimes. The claims of shifting cultivators and pre-agricultural communities should also be addressed within such a framework.

b. With a view to ensuring that -

- (i) all concerned claimants are informed,
- (ii) all claimants have an opportunity to make their claims in their language,
- (iii) the weaker sections of the community are spared the time and expense of travel,
- (iv) all claimants are covered and no person is not given an opportunity to be heard,

Calling for and verification of claims shall be done in the gram sabha meeting of the village specifically called by the Local Committee for the purpose.

- c). A timetable giving the dates and time of the meetings of the gram sabha should be prepared and publicized in advance within a fixed time period -
 - (i) to select two village elders or senior citizens to act as members of the committee,
 - (ii) for the local committee to invite claims supported by evidence,
 - (iii) for the local committee to verify the claims and present their findings,
- d). A team comprising one officer each from Revenue, Tribal Welfare and Forest Departments should be appointed at Block Level to ensure that the process is conducted in a disciplined and regulated manner to enhance local women and men's participation.
- e). Traditional methods of publicity in the local language must be used to inform the people about the programme of deciding the eligibility of claims. Field staff of State Forest Department, Joint Forest Management Committees (if existing), Rural Development, Social Welfare and ICDS etc. should be involved in disseminating information about the progress, particularly to village women through the organizations such as SHGs and Mahila Mandals.
- f). Information regarding the task of the committee, its aims, objectives and procedure should be made available in the village square, Gram Panchayat office of all villages, Panchayat Samiti, Forest Range Office and Tehsil office as well as ICDS, RD, State Forest Department, Health and Education Departments. State Forest Department shall pay special attention in communicating information to remote settlements and un-surveyed villages.
- g). After publicizing the programme of the Gram Sabha at least three weeks in advance, a Gram Sabha meeting calling for claims should be conducted by the village committee.
- h). On receipt of complete application (in Gram Sabha) from the claimants, all claims should be verified in the presence of the assembly in the subsequent Gram Sabha meeting specifically called for the purpose not later than two weeks of such receipt.
- i). As far as possible, all meetings of the Gram Sabha should necessarily be held in the late afternoon or late evenings so as to ensure large attendance of villagers.
- j). All claims verified and accepted by the Village Level or Local Committee shall be forwarded to the Block Level Review Committee.
- k). The Local Committee will also give a copy of its findings to the claimants in the Gram Sabha meeting.

1). The Block Level Review Committee will submit its recommendations to the District Level Committee (DLC) for final ratification. DLC, while ratifying, will take following into consideration:

- (i) The DLC must satisfy itself that the name(s) of the tribals/forest dwellers exist in the census data of 1981, 1991 and 2001 including the electoral rolls of the area to confirm their existence and continued possession of forest land.
- (ii) The tribals and other forest dwellers should be living on the forest land prior to 1980 and also should be in continued possession of forest land till date.
- (iii) In no case, the Committee shall entertain any claim in which the claimant has not been in possession of the disputed land throughout.
- (iv) The Committee shall examine traditional and customary rights of the particular tribe and other forest dwellers on particular forest land and forest produce.
- (v) The Committee shall examine the land use pattern of the forest land under occupation of such people.
- m). All appeals will be heard by the Block Level Review Committee or District Level Committee, as the case may be, after three weeks' notice to the appellant.

(3) NATURE OF EVIDENCE TO BE ADDUCED BEFORE THE LOCAL/BLOCK LEVEL COMMITTEES

a). It is necessary to clarify the type of evidence(s) that may be used to decide the period of land occupation. As a POR is not necessarily a proof of claim or otherwise, an assessment of the ground realities, as they existed in the relevant time, is necessary and is possible by verification of natural and situational evidence(s) of the subsisting claims. Hence, a responsible local committee conversant with ground realities has the opportunity to verify the same and can record the evidence of the claimant and opinion of other knowledgeable villagers about the point of time since when the land has been under continuous occupation of the claimant. Benefit of doubt should be given to the claimant.

b). A variety of evidences, both oral and/or documentary, establishing the claim period can be regarded as proof of the claim; hence, the Committee can accept the following as evidence:

- i) Documentary evidence from any Government/Semi-Government source;
- ii) Documentary evidence from any prior research or documentation of a reputed institution, including survey maps;
- iii) Relevant evidence gathered from spot verification to be done by more than three members of the committee including Patwari;

c). It is important that the Village Level or Local Committee definitively decides about the period of the claim. While giving the findings about eligible cases, the following two points should be kept in mind:

i) The claimant should also fulfil all other conditions laid down in the respective Government's decisions in that regard. In case, the eligibility criteria specified by the respective State/UT Government are not in consonance with those contained in the guidelines issued in 1990 by the Ministry of Environment and Forests, the latter, i.e. provisions of 1990 tribal-forest guidelines shall prevail.

ii) If the respective State/UT Government has not issued any specific orders prescribing any other eligibility criteria for claims arising out of defective forest settlements, pattas and leases granted and subsisting encroachments prior to 1980, the criteria laid down in the 1990 guidelines issued by the Ministry of Environment and Forests shall be adopted.

(4) CRITERIA FOR ACCEPTING CLAIMS

While deciding upon the claim, the village level committee should pay attention to the following criteria within the limits of the guidelines issued by the Ministry of Environment and Forests in 1990 -

(i) All claims where the claimant has government/semi-government/other relevant documentary evidence in support, and the claimant has been living on the forest land prior to 1980 and also is in continuous possession of forest land till date, should be accepted.

(ii) If a claimant does not have documentary evidence in support of her/his claim but the gram Sabha, on the basis of other relevant evidence, is of the opinion that the claim is legitimate, such claims should be carefully examined by the local committee and the benefit of doubt should be given to the claimant. Decision of the local committee shall be taken by simple majority.

(iii) If the claimant does not have relevant documentary evidence and the gram sabha has also rejected her/his claim, the veracity of such claims should be carefully examined by the local committee and such claims should be specifically referred to the review committee.

(iv) Claims should cover not only claims regarding individual plots of land but also collective/communitarian ownership claims. Claims should also include claims over forest products based on customary use. Claims of shifting cultivators and pre-agricultural communities should also be addressed within this framework.

(v) All claims that are upheld within the purview of the 1990 guidelines of the Ministry of Environment and Forests shall be forwarded by DLC to the Nodal Officer

(Forest Conservation) of the State/UT Government who, in turn, shall forward the proposal duly recommended by the PCCF, to the State/UT Government.

(vi) In cases, where claims are rejected, necessary action should be taken for ex-situ rehabilitation, on non-forest government lands.

(vii) In case of National Parks/Sanctuaries, State/UT Governments shall consider ex-situ rehabilitation on non-forest Government lands outside the limits of the National Parks/ Sanctuaries.

(viii) The proposals to be sent to Central Government should be submitted according to the procedure and conditions prescribed under the Forest Conservation Act, 1980 and shall, in addition, include a proposal for permanent demarcation of the land for which claims are proposed to be settled and a proposal for Compensatory Afforestation in lieu of forest land diverted for settlement.

(5) TRAINING AND PUBLICITY WORKSHOP AT TALUKA LEVEL

(i) The following process may be adopted with a view to expedite the process and keep it simple:

Pre planned publicity should be done. After the publicity is done, and before the process of verification is initiated, training workshops be organized by the district committee with the assistance of knowledgeable NGOs at the taluka level for Sarpanchas, Dy. Sarpanchas, Panchayat Samiti and Zila Parishad members, Forest Officers and functionaries, Tribal Welfare Officers and functionaries, traditional Leaders, Senior Citizens, Journalists, Revenue Officials and functionaries, Talathis and members of the Taluk/Village level Committees,

(ii) All officials should be invited to these workshops and should be given the information of the procedures and processes of village level enquiry.

(iii) A separate session should be held for NGOs, CBOs, Activists and Journalists.

(iv) Gram sabha meetings should be held after the programme is planned and announced.

(6) OTHER MATTERS

(i) To supervise the progress of verification of claims of forest dwellers, including tribals, on forest land, prescribed under these guidelines mentioned above, a State Level Task Force may be constituted under the chairmanship of Chief Secretary with Principal Chief Conservator of Forests being the co-chair. Task Force shall meet after every three months.

(ii) Entire process may be completed within a period of one year.

(iii) Last but not least, the purpose of this communication is to complete the process of survey and documentation of claims for future implementation (subject to the final orders to be passed by the Hon'ble Supreme Court of India) of the guidelines dated 18.09.1990 of the Ministry of Environment and Forests, as relevant to pre-1980 situation, in respect of which no follow up action could be taken presumably for want of supporting procedural guidelines. These procedures have been prescribed now, without prejudice to the orders of the Apex Court.


Yours faithfully,

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(Sandeep Kumar)
Assistant Inspector General of Forests

Copy to:

1. Principal Secretary/Secretary (Forests), All State/Union Territory Governments.
2. PCCFs/Nodal Officers, All States/UTs.
3. All Regional Offices, Ministry of Environment and Forests, Government of India.
4. The PMO (Attn. Shri R. Gopalakrishnan, JS), South Block, New Delhi.
5. Officer on Special Duty (Attn. Shri Dhiraj Srivastava), National Advisory Council, 2, Motilal Nehru Place, New Delhi.
6. Secretary, Ministry of Tribal Affairs, Government of India.
7. Director (FC), MoEF, New Delhi.
8. All AIGs (FC), MoEF, New Delhi.
9. Guard file.


(Sandeep Kumar)
Assistant Inspector General of Forests