

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**WRIT PETITION (PIL) NO. 100 of 2011  
With  
CIVIL APPLICATION NO. 5630 of 2012  
In  
WRIT PETITION (PIL) NO. 100 of 2011  
With  
WRIT PETITION (PIL) NO. 168 of 2012**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA  
and  
HONOURABLE MR.JUSTICE J.B.PARDIWALA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes
- 2 To be referred to the Reporter or not ? Yes
- 3 Whether their Lordships wish to see the fair copy of the judgment ? No
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? No
- 5 Whether it is to be circulated to the civil judge ? No

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**ACTION RESEARCH IN COMMUNITY HEALTH & DEVELOPMENT (ARCH)  
& 2....Applicant(s)  
Versus  
STATE OF GUJARAT THRO' CHIEF SECRETARY / CHAIPERSON, STATE &  
17....Opponent(s)**

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**Appearance:  
MS. KRUTI M SHAH, ADVOCATE for the Applicant(s) No. 1 - 3  
DELETED for the Opponent(s) No. 5 - 16  
MR PK JANI, GOVERNMENT PLEADER with MS VACHA DESAI, AGP for the Opponent(s) No. 1 - 4  
MR BHUSHAN B OZA, ADVOCATE for the Opponent(s) No. 18**

MR MK VAKHARIA, ADVOCATE for the Opponent(s) No. 17  
 MR VD PARGHI, ADVOCATE for the Opponent(s) No. 17

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR.  
 BHASKAR BHATTACHARYA**  
 and  
**HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**Date : 03/05/2013**

**CAV JUDGEMNT  
 (PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1. As common questions of fact and law have been raised in both the above captioned petitions, the same were heard analogously and are being disposed of by this common judgment and order. The Writ Petition (PIL) No. 100 of 2011, in the nature of Public Interest Litigation, has been preferred by Action Research in Community Health & Development (ARCHD), a registered public trust and a society working for the welfare of the tribals of Gujarat for the past thirty years jointly with two other petitioners who are also engaged in the welfare of the tribals and have prayed for the following reliefs :

*“(I) Quash and set aside all the orders of rejection of claims of tribals and other forest dwellers who have preferred the claims under the [Forest Rights Act] and the Rules, by Sub-Divisional Level Committees and District Level Committees in 12 districts, namely: Narmada, Dangs, Vadodara, Sabarkantha, Banaskantha, Valsad, Navsari, Tapi, Surat, Bharuch, Panchmahal, Dahod; and to direct them to consider and decide all these claims afresh.*

(II) *Quash and set aside the instructions given by the respondents and the Resolution dated 20-1-2010, Circulars dated 6-3-2010, 12-3-2010 and 23-3-2010 and letters dated 27-5-2010, 3-6-2010 and 12-7-2010 referred to and annexed as annexures K, L, M, N, P, S and T in so far as they are contrary to the provisions of the Forest Rights Act and the Forest Rights Rules, as mentioned in this petition or are contrary otherwise, and the respondents may be directed not to issue any directions/ instructions that are against the provisions of this Act and the Rules; and to direct the respondents to decide the aforesaid claims keeping in mind the Forest Rights Act and the Rules.*

(III) *Direct the respondents to consider not only record-based evidence only, but all the evidences that are envisaged under the Rule 13, including physical evidences and approve forthwith all claims that have minimum two of these evidences.*

(IV) *Declare that the way Satellite Imageries have been used is highly unscientific, defective, unsatisfactory and illegal; and to quash the rejection of claims based on the use of these imageries and to direct that if they are to be used in future the same may be used in a scientific manner in the way suggested by the petitioners and to direct that in that case too, it may be used in a transparent manner with active involvement of the claimants and the Gramsabhas and also that it may be used only as one of the evidences, and the claims may not be rejected solely on the basis of the same.*

(V) *Direct the respondents to consider the cut-off date of 13-12-2005 for deciding the claims and not 1980;*

(VI) *Issue directions to the respondents that in case of the*

*claims of Other Traditional Forest Dwellers, Genealogy may be considered as sufficient evidence to establish residence for 3 generations and to provide additional evidences like voters' lists, settlement records, etc. to the claimants/Forest Right Committees;*

*(VII) Issue directions to the respondents not to outright reject claims over lands where the claimants have been evicted by the FD before or after 2005 but to treat their claims as claim for in situ rehabilitation as per Section 3(1)(m) and then take appropriate decisions.*

*(VIII) Issue appropriate instructions to the State Government and Sub-Divisional Level Committees and District Level Committees to provide reasonable opportunities to the affected claimants to present their case before any order is passed against their claims;*

*(IX) Initiate prosecution against the responsible officers and others, who have passed resolutions, sent circulars and/or gave instructions, etc., contrary to the Forest Rights Act and the Rules as mentioned in the petition and thereby knowingly violated the provisions of this Act and the Rules and committed the offence under Section 7 of the Act;*

*(X) To monitor and supervise the implementation of the Forest Rights Act, more particularly decisions of claim applications of the tribals and other forest dwellers and evolve mechanism for proper implementation of the said Act; as the same concerns the very life and livelihood of more than one lakh tribals and other forest dwellers.*

*(XI) Direct the respondents to expedite the process of recognition of Community Rights over forest resources*

*including right to protect, conserve, regenerate forests for sustainable use and cover all villages in the same and also to expedite the process of conversion of forest settlement villages into revenue villages.*

*(XII) During pendency of this petition direct the respondents, particularly the Forest department, not to evict any person from the forest lands under their occupation or harass any persons who have filed the claims for individual rights under this Act and whose claims may have been rejected, partially approved or pending.*

*(XIII) Any other relief or direction."*

2. The Writ Petition (PIL) No. 168 of 2012, in the nature of a Public Interest Litigation, has been preferred by Van Kanun Bachau Samiti, a committee constituted by local tribals of four talukas, namely, Songarh, Uchhal of Tapi District, Umarpada of Surat District and Sagbara of Narmada District, and have prayed for the following reliefs:

*"(I) Quash and set aside all the orders of rejection of claims of tribals and other forest dwellers who have preferred the claims under the Forest Rights Act and the Rules, by Sub-Divisional Level Committees and District Level Committees in 3 districts, namely, Narmada, Tapi, Surat; and to direct them to consider and decide all these claims afresh.*

*(II) Quash and set aside the instructions given by the respondents and the Resolution dated 20-1-2010, Circulars dated 6-3-2010, 12-3-2010 and 23-3-2010 and letters dated*

27.5.2010, 3-6-2010 and 12-7-2010 in so far as they are contrary to the provisions of the Forest Rights Act and the Forest Rights Rules, as mentioned in this petition or are contrary otherwise, and the respondents may be directed not to issue any directions/instructions that are against the provisions of this Act and the Rules; and to direct the respondents to decide the aforesaid claims keeping in mind the Forest Rights Act and the Rules.

(III) Direct the respondents to consider not only record-based evidence only, but all the evidences that are envisaged under the Rule 13, including physical evidences and approve forthwith all claims that have minimum two of these evidences.

(IV) Declare that the way Satellite Imageries have been used is highly unscientific, defective, unsatisfactory and illegal; and to quash the rejection of claims based on the use of these imageries and to direct that if they are to be used in future the same may be used in a scientific manner in the way suggested by the petitioner and to direct that in that case too, it may be used in a transparent manner with active involvement of the claimants and the Gramsabhas and also that it may be used only as one of the evidences, and the claims may not be rejected solely on the basis of the same.

(V) Direct the respondents to consider the cut-off date of 13-12-2005 for deciding the claims and not 1980;

(VI) Issue directions to the respondents that in case of the claims of Other Traditional Forest Dwellers, Genealogy may be considered as sufficient evidence to establish residence for 3 generations and to provide additional evidences like voters' lists, settlement records, etc. to the claimants/Forest Right Committees;

*(VII) Issue directions to the respondents not to outright reject claims over lands where the claimants have been evicted by the FD before or after 2005 but to treat their claims as claim for in situ rehabilitation as per Section 3(1)(m) and then take appropriate decisions.*

*(VIII) Issue appropriate instructions to the State Government and Sub-Divisional Level Committees and District Level Committees to provide reasonable opportunities to the affected claimants to present their case before any order is passed against their claims;*

*(IX) Initiate prosecution against the responsible officers and others, who have passed resolutions, sent circulars and/or gave instructions, etc., contrary to the Forest Rights Act and the Rules as mentioned in the petition and thereby knowingly violated the provisions of this Act and the Rules and committed the offence under Section 7 of the Act;*

*(X) To monitor and supervise the implementation of the Forest Rights Act, more particularly decisions of claim applications of the tribals and other forest dwellers and evolve mechanism for proper implementation of the said Act; as the same concerns the very life and livelihood of more than one lakh tribals and other forest dwellers.*

*(XI) Direct the respondents to expedite the process of recognition of Community Rights over forest resources including right to protect, conserve, regenerate forests for sustainable use and cover all villages in the same and also to expedite the process of conversion of forest settlement villages into revenue villages.*

*(XII) During pendency of this petition direct the respondents, particularly the Forest department, not to evict any person from the forest lands under their occupation or harass any persons who have filed the claims for individual rights under this Act and whose claims may have been rejected, partially approved or pending.*

*(XIII) Any other relief or direction.”*

### **Factual Background**

3. The petition is substantially for the enforcement of the Forest Rights of more than one lakh families of forest dwelling scheduled tribes and other traditional forest dwellers. According to the petitioners, such rights have been recognized under the benevolent piece of legislation passed by the Parliament in the year 2006, namely, Scheduled Caste and Other Traditional Forest Dwellers (recognition of) Forest Rights Act, 2006. Under Section 14 of the Act, Rules have also been framed known as Scheduled Tribes and Other Traditional Forest Dwellers (recognition of) Forest Rights Rules, 2007. The object of such legislation is to recognize and confer the forest rights and occupation of forest land to the Forest Dwelling Scheduled Tribes (FDSTs) and Other Traditional Forest Dwellers (OTFDs), who have been residing in the forests for generations but whose rights could not be recognized and to provide a framework for recognition of such forest rights so vested and the nature of evidence required for



such recognition and vesting.

4. The Act also includes community rights over forest resources, including right to own, access, use and dispose of minor forest produce, including bamboo, and also, most importantly, the right to protect, regenerate, conserve or manage forest resources of their area as community forest resources for sustainable use. These community rights are most important as they ensure protection and conservation of forests and bio-diversity while ensuring livelihood and food security of the scheduled tribes and other traditional forest dwellers. Another important right recognized by the Act is the right of the communities living in the forest settlement villages to get their villages converted to revenue villages and lands held by them to revenue lands.

5. The Act has also established a three tier quasi-judicial system of authorities and procedures for determining the nature and extent of the rights. It recognizes *Gram Sabha* as an authority to initiate the process for determining the nature and extent of individual and community rights by receiving the claims, verifying them, passing a resolution recommending approval or rejection of the same and forwarding them to the Sub-Divisional Level Committee (SDLC) for further action, which, after examining, shall forward them to the District Level Committee (DLC) for final decision. Any person (including state agencies like the Forest Department) aggrieved by

the resolution of the *Gram Sabha* can prefer a petition before the SDLC within sixty days. Similarly, any person aggrieved by the decision of the SDLC can also prefer a petition against it before the DLC. The SDLCs and DLCs are to dispose of such petitions, however, no such petition shall be disposed of against the aggrieved person, without first giving him/her a reasonable opportunity to present his/her case.

6. If any authority or committee or officer or member of such authority or committee contravenes any provision of this Act or any Rule concerning recognition of rights, it or they are deemed to be guilty of an offence under the Act and are liable to be proceeded against and punished with fine under Section 7 of the Act.

7. On 13<sup>th</sup> February 2008, a very unfortunate incident of police firing occurred at Antarsumba of Vijaynagar taluka of Sabarkantha district in which two tribals lost their lives and other three tribals received serious injuries. Following this incident, the State Government appointed a high level Committee under the Chairmanship of retired Chief Secretary of Gujarat, Shri P.K. Laheri, to inquire into its causes and to make recommendations. The Committee stated in its report that the conflict between the tribals and the forest department is because of the department's negative attitude towards forest rights of the tribals which was causing serious problems and to prevent such incidents in future, the State

Government must implement the Act in a more meaningful and proper manner and that the forest department must change its attitude and co-operate fully in its implementation.

8. Thereafter, from March 2008, the respondent State Government took immediate steps for the implementation of this Act. It convened special meetings of *Gram Sabhas* in all 12 eastern tribal districts of the State for constitution of village Forest Rights Committees (FRCs), constituted District and Sub-Divisional Level Committees (DLCs and SDLCs), printed and distributed application forms for both Individual as well as Community Rights (Form-A and Form-B) in all respective villages, got the Act and the Rules translated into Gujarati and distributed the copies of the same along with awareness raising material amongst the villagers, organized training camps for FRC members, etc. The Tribal Development Department played a pivotal role in all such activities. This created a widespread hope amongst the forest dwellers and others that the Act would be properly implemented by the respondents in its true letter and spirit.

9. From April 2008, the *Gram Sabhas* and the village Forest Rights Committees (FRC) started the process of receiving and verifying the claims for forest rights, as provided under the Act and the Rules. Many people, including high level government officials, had expressed doubts whether they would be able to perform such tasks or not as they had never undertaken such type of work before.

However, this was for the first time that they were given such an important role and therefore were found to be highly motivated and took up their responsibilities under the Act very seriously. The petitioners also printed booklets and organized series of workshops across all 12 districts to provide help and guidance to them in that regard. As a result, the *Gram Sabhas* and the FRCs have, by and large, carried out their tasks in a fair and responsible manner.

10. They obtained the claim forms from the government, distributed them to the claimants, helped them in filling the forms, explained them the types of evidences that could be adduced in support of the claims, received the claims from the claimants, carried out the field verification of each and every plot of the claimed land and prepared rojkam, panchnama etc., took or verified statements given by village elders and other witnesses and examined other evidences and for each claim arrived at the finding as to whether the same was worth approving or not. They then presented such findings to the *Gram Sabhas*, who after considering them passed appropriate resolutions and forwarded the same together with original claim files to the Sub Divisional Level Committees (SDLCs) for further action. Most importantly, almost all the FRCs gave opportunity to the Forest Department to present its case/ objections with respect to the claims received by the FRCs. They gave prior notice/intimation to the forest department before field verification, giving them details of the claims received and dates on which field verification would be

done and requesting them to remain present and present their case/objections during the same. At many places, the forest department officers also remained present during the process of field verification and raised their objections, if any, but in some districts, they simply ignored the notices and did not remain present during the field verification of the claims nor did they make any representation before the FRCs.

11. During this period, the FRCs in about 3500 villages with forest lands across 12 eastern districts of Gujarat received about 1,80,000/- individual claims for recognition of their rights over forest lands. After completing the verification process and passing appropriate resolutions, the *Gram Sabhas* started sending the files to the SDLCs from the beginning of 2009. By the end of 2009, most of the *Gram Sabhas* had more or less completed their tasks.

12. In the meantime, the respondent Tribal Development Department had apparently instructed the district authorities to take up and approve only pre-1980 claims and from those also only the claims that were: (i) already given in-principle approval under the previous State Government Resolution of 1992, but could not be given final formal orders; or (ii) were approved by the Forest Settlement Officers at the time of forest settlement and were recommended to be deleted from the forest area. The petitioners and the tribals came to know about this from the actions of the

officers attached with the SDLCs, who started going to the villages asking the FRCs to deposit such files.

13. When the petitioners and others raised objections saying that it was contrary to the cut-off date, which was 13<sup>th</sup> December 2005, they were told that the same was done only to speed up the process and the remaining cases would be taken up in the next round. But far from doing so, this actually created a lot of confusion and gave a wrong signal to the district and sub-divisional level officers that only such pre-1980 claims were to be approved under the Act.

14. In the first week of May 2009, the State Government also declared at the highest level that only about 10% of the claims filed by the claimants were genuine claims. This was reportedly discussed during the meeting of State Level Monitoring Committee held on 7<sup>th</sup> May 2009, as reported by the Times of India on 10<sup>th</sup> May 2009.

15. Approximately 1,82,000 individual claims were preferred across the 13 districts of the State, out of which 1,13,000 claims which were approved by *Gram Sabha* were rejected by SDLCS and DLCS. According to petitioners, this summary rejection was the outcome of instructions given by the respondents *vide* annexures K, L, M, N, P, S and T. Such instructions are in violation of Rule-13 of the Rules. The petitioner's main grievance regarding rejection of individual forest rights revolves around the alleged violation of Rule 13.

16. According to the petitioners, in all 1,13,000 claims were rejected though they deserved to be approved. Out of such rejected claims, 45,000 claims were rejected on the ground that no minimum two evidences were produced by the claimants and that their claims were not supported by the BISAG map. In terms of Rule 13 (2) more than one evidence has to be produced, but according to the petitioners, apart from the statements of the elders which the respondents considered, they had produced other evidence too, but the SDLC and DLCs did not consider the same to evidences. This was in violation of rule 13 which permits such evidences to be produced and considered. As far as support from BISAG map is concerned, according to the petitioners because of the unscientific and defective user of BISAG maps, wrong conclusions have been reached as regards the claimants' claims. The other 29,000 rejected claims were also rejected assigning the same reason that the minimum two evidences could not be adduced by the claimants. In such cases, the satellite imageries were not at all used. According to the petitioners, although the respondents own instructions required them to resort to user of satellite imageries, they did not consider the same and rejected such claims without verifying as to whether the satellite imageries of 2005 and 2007 showed the cultivations in the claimed lands or not.

17. According to the petitioners, the other 8,500 claims were

rejected assigning the reason that there was no proof of such claimants being other traditional forest dwellers as claimed by them. As per Section 2(o), "Other traditional forest dwellers" means any member or community who has for at least three generations prior to 13<sup>th</sup> December 2005 primarily resided in and who depend on the forest land for *bona fide* livelihood needs. In explanation of Section 2 (o), it is stated that 'generation' means a period comprising of 25 years. It is the case of the petitioners that such claims were rejected insisting that proofs should be adduced of residents in the forest or forest land for three generations i.e. 75 years. However such is not the requirement under section 2 (o) of the Act. The other 9000 claims of scheduled tribes were rejected because the scheduled tribe certificates were not attached. However, the plight of the scheduled tribe claimants in these cases was that the authorities did not provide such certificates. The other 7000 claims were rejected by assigning the reason that the claimants were not in possession of the claimed lands. However, according to the petitioners, section 3 (1) (m) gives the forest rights of in situ rehabilitation including alternative land in cases where the scheduled tribe and other traditional forest dwellers were illegally evicted or displaced from forest land without receiving their legal entitlement prior to 13<sup>th</sup> December 2005. The preamble also emphasizes to address the cases of those who were forced to relocate their dwelling due to state development interventions. Section 4 (8) of the Act lays down that the forest rights recognized and vested under the Act shall include the right of land to forest



dwelling for scheduled tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without compensation due to state development interventions and where the land was not used for the purpose for which it was acquired within five years of the said acquisitions. According to the petitioners, the claim of the claimants who were not in possession ought not to have been summarily rejected but their cases should have been considered for in situ rehabilitation, wherever such evidences was available on the record of the claim.

18. The petitioners have placed reliance on Rule 13 of the Scheduled Caste and Other Traditional Forest Dwellers (recognition of) Forest Rights Rules, 2007. Rule 13 is with regard to the evidence which the claimants are expected to adduce for determination of the forest rights. Rule 13 reads as under:

**“13. Evidence for determination of forest rights.- (1)**  
*The evidence for recognition and vesting of forest rights shall, inter alia, include-*

- (a) *public documents, Government records such as Gazettes, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, pattas or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;*

- (b) *Government authorised documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;*
  - (c) *physical attributes such as house, huts and permanent improvements made to land including levelling, bunds, check dams and the like;*
  - (d) *quasi-judicial and judicial records including court orders and judgments;*
  - (e) *research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India;*
  - (f) *any record including maps, record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;*
  - (g) *traditional structures establishing antiquity such as wells, burial grounds, sacred places;*
  - (h) *genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time;*
  - (i) *statement of elders other than claimants, reduced in writing.*
- (2) *An evidence for Community Forest Rights shall, inter alia,*

*include-*

- (a) *community rights such as nistar by whatever name called;*
- (b) *traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners;*
- (c) *remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;*

3. *The Gram Sabha, the Sub-Divisional Level Committee and the District Level Committee shall consider more than one of the above-mentioned evidences in determining the forest rights."*

19. According to the petitioners, the nature of evidences enumerated under Rule 13 are merely illustrative and not exhaustive. The main grievance redressed by the petitioners is that a satellite imagery has been shown as a piece of evidence under Rule 13, Clause (1), Sub-clause (a), but the authorities have been insisting for a satellite imagery provided only by Bhaskaracharya Institute of Space Applications and Geo Informatics, Gandhinagar. According to the petitioners, the said institute has been authorized by the respondents to use satellite imagery and have been entrusted with the duty of acquiring the imageries and preparing maps indicating the areas of cultivation as common plots. According to the

petitioners, the respondents should also consider evidence of satellite imagery other than those provided by BISAG. It is also the case of the petitioners that under Rule 13, Clause (1), Sub-clause (c) the physical attributes such as house, huts and permanent improvements made to land including leveling, *bands*, check dams and the like are also pieces of evidences which the respondents are duty bound to consider while deciding the claims but the respondents have refused to consider the same despite the fact that the forest rights committee constituted under the Rules vested the lands in question and prepared panchnamas indicating such physical attributes.

20. According to the petitioners, under Section 4, Clause (3) of the Act, the claimants have to show that they had occupied the claimed forest land before 13<sup>th</sup> December 2005 and under Section 4, Clause (6) such claimed land should be under their occupation on the date of commencement of the Act i.e. 31<sup>st</sup> December 2007. The grievance of the petitioners is that although such physical attributes are noted subsequent to the above referred dates, the age of such physical attributes could be easily ascertained by the committee but such evidence has been refused to be considered by the SDLCs and DLCs.

21. It is also the complaint of the petitioners that Rule 13, Clause (1), sub-clause (d) permits quasi judicial and judicial records including the Court orders and judgments to be produced and considered and many of the claimants have produced such evidences but the

respondents have ignored the same.

22. According to the petitioners, the SDLCs and DLCs are insisting upon only the record based evidence and that too of the authorized departments. The respondents have thought fit to consider only the following two kind of forest department records.

*“(i) the list prepared by the forest department of those pre 1980 claims which were in principle approved under GR of 1992; but could not be given final formal orders;*

*(ii) the list of forest settlement officers' reports recommending deletion of the lands from the proposed forest areas;”*

23. According to the petitioners, the SDLCs and DLCs, in cases where there is no forest department's record based evidence, were instructed to use satellite imageries. The petitioners have clarified that they do not have any objection to the use of such satellite imageries. However, their objection is that satellite imageries should not be the only piece of evidence to be considered for the purpose of deciding the claim. According to the petitioners, the following aspects are necessary to be kept in mind.

*“(A) The user of satellite imageries is highly unscientific. The BISAG, which has been given the task of preparing maps from the satellite imageries, overlays the village map over the concerned satellite imageries of 2005 and 2007 and in the forest number, they earmark as common plots the areas where*

*they find cultivation in year 2005 and 2007 and then prepare maps, the print-out of which are sent for the use of them by the SDLCs and DLCs. According to petitioners, this procedure is highly unscientific as it is very difficult to earmark the common plots thus prepared actually on the ground and more often than not SDLCs and DLCs do not resort to this, resultantly by assumption they decide the claims.*

*(B) Such method is also highly defective as could be seen from the maps prepared by BISAG. In almost every village 40-50% cultivated lands claimed by the petitioners are left out, as a result of which the deserving claims are rejected.*

*(C) The claimants themselves in many cases purchased the satellite imageries from NRSC Hyderabad, from where even BISAG gets the imageries. They, then, carry out GPS-PDA Survey of their claimed lands, this way they obtain the co-ordinates of the corners of the lands which they superimpose over the imageries and earmark their claimed lands over the satellite imagery. This will easily show whether in such an earmarked land, there is cultivation or not. According to the petitioners, the BISAG should also adopt this method, however they do not resort to such a simple method.*

*(D) The petitioners desire that such a prepared map on NRSC imagery or such other imagery such as google earth etc should also be allowed to be produced and considered, as the same is to be considered under Rule 13, however, the respondents do not consider the same.*

*(E) The satellite imageries should not be treated as final and it should have been considered as only one of the evidence. However, the respondent consider the same to be final and if*

*the imagery does not support the claim of the claimant, the same is being rejected by SDLCs and DLCs.”*

24. According to the petitioners, the instructions of the respondents issued on the SDLCs and DLCs which are annexed to the petition and marked as Annexures K, L, M, N, P, S and T deserve to be recalled and reconsidered.

25. In such circumstances, referred to above, the petitioners have prayed for appropriate reliefs as contained in paragraph 12 of both the petitions are concerned.

#### **STANCE OF THE RESPONDENTS**

26. On behalf of the respondent no.2, the Additional Chief Secretary, Tribal Development Department, one Mr.T.L.Patel, Joint Director (FRA) Commissionerate of Tribal Department has affirmed an affidavit.

27. According to the respondent, many grievances of the petitioners would not survive as the same have been taken care of by the resolution of the State Government dated 12<sup>th</sup> October 2011. *Vide* resolution dated 12<sup>th</sup> October 2011, a decision has been taken to review all such cases wherein the claims of the persons have been rejected under the Act and the Rules.

28. According to the respondents, the provisions of the Act and the Rules are being implemented in letter and spirit. According to the respondents, the panchnama, forest offence receipt, etc. are just secondary evidence and the primary evidence should be obtained from other records to establish that the land was in possession of the claimant on the stipulated time and the date. The panchnamas drawn after 31<sup>st</sup> December 2007 fail to establish that the claimants were in possession on the stipulated date i.e. before 13<sup>th</sup> December 2005 and on 31<sup>st</sup> December 2007.

29. According to the respondent, the resolution passed by the State Level Monitoring Committee empowers the authorities to use satellite imageries of stipulated period to confirm the possession of the claimant. The satellite imageries are otherwise an acceptable piece of evidence as held by the Supreme Court in the case of **Borivali National Park**. According to the respondent, the satellite imageries are used in a absolutely scientific manner so as to confirm the claim of the claimant and the villagers are permitted to participate in use of such imageries. The respondent has taken a stance that any suggestions from any corner will be taken into consideration so as to simplify the process, making it more transparent and thereby giving true effect to the object of enacting the Act.

30. We have heard Mr.Kirit Panwala, the learned counsel appearing for the petitioners of Writ Petition (PIL) No.100 of 2011 with Ms.Kruti



M. Shah, Mr.Bhushan B. Oza, the learned counsel appearing for the petitioners of Writ Petition (PIL) No.168 of 2012 and Mr.Prakash K. Jani, the learned Government Pleader appearing for the State respondent.

31. Having heard the learned counsel for the respective parties and having gone through the materials on record, the only question that falls for our consideration in these petitions is whether the respondents are giving true effect to the provisions of the Scheduled Caste and Other Traditional Forest Dwellers (recognition of) Forest Rights Act, 2006 and the Rules framed thereunder in the interest of the persons for whom the legislature thought fit to enact such a piece of legislation.

32. At this stage, it would not be out of context to look into the objects and reasons of the Act, 2006. The preamble reads as under:

*“An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.*

*Whereas the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include*

*the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;*

*AND WHEREAS the forest rights on ancestral lands their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;*

*AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.”*

33. Chapter III provides for recognition, restoration and vesting of forest rights and related matters. Section 4 reads as under:

*“4.(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in-*

*(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;*

*(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.*

*2. The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:-*

*(a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;*

*(b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;*

*(c) the State Government has concluded that other reasonable options, such as, co-existence are not available;*

*(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfills the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;*

(e) *the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;*

(f) *no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package;*

*Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.*

(3) *The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13<sup>th</sup> day of December, 2005.*

(4) *A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.*

(5) *Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.*

(6) *Where the forest rights recognised and vested by sub-section(1) are in respect of land mentioned in clause(a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.*

(7) *The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.*

(8) *The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.*

5. *The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to-*

(a) *protect the wild life, forest and biodiversity;*

(b) *ensure that adjoining catchments are, water sources and other ecological sensitive areas are adequately*

*protected;*

*(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;*

*(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with."*

34. Chapter 4 provides for the authorities and the procedure for vesting of forest rights, which reads as under:

*"CHAPTER IV  
AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST  
RIGHTS*

*6. (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidation and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.*

*(2) Any person aggrieved by the resolution of the Gram*

*Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section(3) and the Sub-Divisional Level Committee shall consider and dispose of such petition;*

*Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha;*

*Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.*

*(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.*

*(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:*

*Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:*

*Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.*

(5) *The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.*

(6) *The decision of the District Level Committee on the record of forest rights shall be final and binding.*

(7) *the State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.*

(8) *The sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.*

(9) *The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed."*

35. Thus, it is evident from the above that the Act of 2006 is a benevolent piece of legislation for the members of the Scheduled Tribes and Other Forest Dwellers. Such members are a class of



citizens of this country, who are under-privileged and hail from a poor strata of the society. It appears that the Ministry of Tribal Affairs in exercise of the powers conferred by Sub-section (1) and (2) of Section 14 of the Scheduled Caste and Other Traditional Forest Dwellers (recognition of) Forest Rights Act, 2006 amended the Rules of 2008 to be called the Scheduled Caste and Other Traditional Forest Dwellers (recognition of) Forest Rights Amendment Rules, 2012. For the purpose of deciding this petition, it is necessary to consider the amended Rule 12. Rule 12-A which provides for the process of recognition of rights is as under:

**“12A. Process of recognition of rights.-** (1) *On receipt of intimation from the Forest Rights Committee, the officials of the Forest and Revenue departments shall remain present during the verification of the claims and the verification of evidences on the site and shall sign the proceedings with their designation, date and comments, if any.*

(2) *If any objections are made by the Forest or Revenue departments at a later date to a claim approved by the Gram Sabha, for the reason that their representatives were absent during filed verification, the claim shall be remanded to the Gram Sabha for re-verification by the committee where objection has been raised and if the representatives again fail to attend the verification process the Gram Sabha's decision on the filed verification shall be final.*

(3) *In the event of modification or rejection of a claim by the Gram Sabha or a recommendation for modification or rejection*

*of a claim forwarded by the Sub-Divisional Level Committee to the District Level Committee, such decision or recommendation on the claim shall be communicated in person to the claimant to enable him to prefer a petition to the Sub-Divisional Level Committee or District Level Committee as the case may be, within a period of sixty days which shall be extendable to a period of thirty days at the discretion of the above said committees.*

*(4) If any other state agency desires to object to a decision of the Gram Sabha or the Sub-Divisional Level Committee, it shall file an appeal before the Sub-Divisional Level Committee or the District Level Committee, as the case may be, which shall be decided by the Committee (in the absence of the representative of the concerned agency, if any) after hearing the claimant.*

*(5) No petition of the aggrieved person shall be disposed of, unless he has been given a reasonable opportunity to present anything in support of his claim.*

*(6) The Sub-Divisional Level Committee or the District Level Committee shall remand the claim to the Gram Sabha for re-consideration instead of modifying or rejecting the same, in case the resolution or the recommendation of the Gram Sabha is found to be incomplete or prima-facie requires additional examination.*

*(7) In cases where the resolution passed by the Gram Sabha, recommending a claim, with supporting documents and evidence, is upheld by the Sub-Divisional Level Committee with or without modifications, but the same is not approved by the District Level Committee, the District Level Committee shall*

*record detailed reasons for not accepting the recommendations of the Gram Sabha or the Sub-Divisional Level Committee as the case may be, in writing, and a copy of the order of the District Level Committee along with the reasons shall be made available to the claimant or the Gram Sabha or the Community as the case may be.*

*(8) The land rights for self-cultivation recognised under clause(a) of sub-section (1) of section 3 shall be, within the specified limit, including the forest lands used for allied activities ancillary to cultivation, such as, for keeping cattle, for winnowing and other post-harvest activities, rotational fallows, tree crops and storage of produce.*

*(9) On completion of the process of settlement of rights and issue of titles as specified in Annexure II, III and IV of these rules, the Revenue and the Forest departments shall prepare a final map of the forest land so vested and the concerned authorities shall incorporate the forest rights so vested in the revenue and forest records, as the case may be, within the specified period of record updation under the relevant State laws or within a period of three months, whichever is earlier.*

*(10) All decisions of the Sub-Divisional Level Committee and District Level Committee that involve modification or rejection of a Gram Sabha resolution or recommendation of the Sub Divisional Level Committee shall give detailed reasons for such modification or rejection, as the case may be:*

*Provided that no recommendation or rejection of claims shall be merely on any technical or procedural grounds:*

*Provided further that no committee (except the Gram Sabha or*

*the Forest Rights Committee) at the Block or Panchayat or forest beat or range level, or any individual officer of any rank shall be empowered to receive claims or reject, modify, or decide any claim on forest rights.*

*(11) The Sub-Divisional Level Committee or the District Level Committee shall consider the evidence specified in rule 13 while deciding the claims and shall not insist upon any particular form of documentary evidence for consideration of a claim.*

*Explanation: 1. Fine receipts, encroacher lists, primary offence reports, forest settlement reports, and similar documentation by whatever name called, arisen during prior official exercise, or the lack thereof, shall not be the sole basis for rejection of any claim.*

*2. The satellite imagery and other uses of technology may supplement other form of evidence and shall not be treated as a replacement.”*

36. It also appears that the State Government *vide* resolution dated 12<sup>th</sup> October 2011 decided to review all the cases wherein the claims were rejected by the committees under the Act of 2006 and the Rules framed thereunder.

37. During the pendency of this writ petition, the Government of India in its department of Tribal Affairs which is a nodal agency under Section 11 has framed guidelines dated 12<sup>th</sup> July 2012. The guidelines as issued by the Government of India as regards notified forest rights are as under:

“(A) The officials of the Forest and Revenue department shall remain present during the verification of claims and evidence on the site.(i(a))

(B) The decision on the claim should be communicated to the claimant to enable him to prefer a petition.(i(b))

(C) The claim should be remanded for reconsideration in case the resolution or the recommendation of the Gram Sabha is found to be incomplete or prima-facie requires additional examination.(i(d))

(D) The SDLCs and DLCs should record reasons for not accepting the recommendation of Gram Sabha or SDLCs.(i(e))

(E) All decisions of the SDLCs and DLCs that involve modification or rejection of a Gram Sabha, resolution/recommendation should be in the form of speaking orders.(i(f))

(F) **The SDLCs or DLCs should not reject any claim accompanied by any two forms of evidences specified in Rule13, and recommended by the Gram Sabha without giving reasons in writing and should not insist upon any particular form of evidence for consideration of a claim. Fine receipts, encroacher lists, primary offence report, forest settlement reports and similar documentation rooted in prior official exercises or lack there of would not be the sole basis for rejection of any claim.(i(g))**

(G) **Use of any technology, such as satellite imagery should be used to supplement evidences tendered by a**

**claimant for consideration of the claim and not to replace other evidences submitted by him in support of his claim as the only form of evidence.(i(h))”**

38. After declaring the aforesaid guidelines dated 12<sup>th</sup> July 2012, the Parliament thought fit to amend the Rules of 2007 and that is how Rule 12-A, as referred to above, came to be inserted.

39. Taking into consideration the aforesaid developments, we directed the respondent to file a supplementary affidavit disclosing the status of the pending claim applications and the review applications. The respondents were also directed to disclose in the affidavit whether Rule 12-A had been complied with while deciding the claim applications or the review applications. We also directed that if any fresh claim application or review application was to be disposed of then the amended Rule should be adhered to.

40. Pursuant to our order dated 24<sup>th</sup> January 2013, the respondent no.4 affirmed an affidavit stating that they had complied with the provisions of the Act, the amended Rules and guidelines in its true letter and spirit and if the procedure under the amended Rule 12-A was not followed then the respondent would ensure that all necessary steps would be taken for the same.

41. According to the petitioners, the amended Rules are not

complied with while deciding the pending claims as well as review applications. It has been submitted by Mr.Panwala as well as Mr.Oza that the instructions contained in Annexures K, L, M, N, P, S and T are still followed by the SDLCs and DLCs.

42. We are of the opinion, having regard to the object of the Act and the purpose for which the same has been enacted, that to demand from such a class of citizens strict proof as regards their rights would frustrate the very object with which the Act has been enacted. Needless to say that the Act 2006 is a social piece of legislation and the legislative intent is to protect the rights of the Scheduled Tribes dwelling in the forests. The objective of such social welfare measures, no doubt is to provide better, efficient and meaningful life to such forest dwellers. The primary duty of the Court, while interpreting the provisions of such Act, is to adopt a constructive approach to achieve the purpose of the Act. Any other interpretation that would defeat the very purpose of the Act is not permissible in law. One should not overlook or ignore the hard fact that the claim petitions are filed by the persons who are absolutely illiterate and would hardly possess any such cogent and convincing evidence to the satisfaction of the authorities. We do not propose to say that the authorities should consider the claims in a slipshod manner but at the same time to decide the entire claim based only on satellite imageries would also not subserve the object of the Act, ignoring other pieces of evidences.

43. In a very recent pronouncement of the Supreme Court dated 8<sup>th</sup> April 2013 in the case of **Orissa Mining Corporation v. Ministry of Environment and Forest and Others** in Writ Petition (Civil) No.180 of 2011, the Supreme Court in detail explained the true scope and object of the Act, 2006. We would like to reproduce some of the paragraphs of the said judgment as they are very much relevant so far as the subject matter of the present petition is concerned.

**“STs and TFDs:**

31. *Scheduled Tribe, as such, is not defined in the Forest Rights Act, but the word “Traditional Forest Dweller” has been defined under Section 2(o) as any member or community who has at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs. Article 366(25) of the Constitution states that STs means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are defined under Article 342 to be the Scheduled Tribes. The President of India, in exercise of the powers conferred by Clause (1) of Article 342 of the Constitution, has made the Constitution (Schedule Tribes) Order, 1950. Part XII of the Order refers to the State of Orissa. Serial No. 31 refers to Dongaria Kondh, Kutia Kandha etc.*

32. *Before we examine the scope of the Forest Rights Act, let us examine, how the rights of indigenous people are generally viewed under our Constitution and the various International Conventions.*

**Constitutional Rights and Conventions:**

33. *Article 244 (1) of the Constitution of India which appears*



*in Part X provides that the administration of the Scheduled Areas and Scheduled Tribes in States (other than Assam, Meghalaya and Tripura) shall be according to the provisions of the Fifth Schedule and Clause (2) states that Sixth Schedule applies to the tribal areas in Assam, Meghalaya, Tripura and Mizoram. Evidently, the object of the Fifth Schedule and the Regulations made thereunder is to preserve tribal autonomy, their cultures and economic empowerment to ensure social, economic and political justice for the preservation of peace and good Governance in the Scheduled Area. This Court in **Samatha v. Arunachal Pradesh** (1997) 8 SCC 191 ruled that all relevant clauses in the Schedule and the Regulations should be harmoniously and widely be read as to elongate the Constitutional objectives and dignity of person to the Scheduled Tribes and ensuring distributive justice as an integral scheme thereof. The Court noticed that agriculture is the only source of livelihood for the Scheduled Tribes apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribal derive their sustenance, social status, economic and social equality, permanent place of abode, work and living. Consequently, tribes have great emotional attachments to their lands.*

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34. *Part B of the Fifth Schedule [Article 244(1)] speaks of the administration and control of Schedules Areas and Scheduled Tribes. Para 4 thereof speaks of Tribes Advisory Council. Tribes Advisory Council used to exercise the powers for those Scheduled Areas where Panchayat Raj system had not been extended. By way of the Constitution (73rd Amendment) Act, 1992, Part IX was inserted in the Constitution of India. Article 243-B of Part IX of the Constitution mandated that there shall*

*be panchayats at village, intermediate and district levels in accordance with the provisions of that Part. Article 243-C of Chapter IX refers to the composition of Panchayats. Article 243-M (4)(b) states that Parliament may, by law, extend the provisions of Part IX to the Scheduled Areas and the Tribal areas and to work out the modalities for the same. The Central Government appointed Bhuria Committee to undertake a detailed study and make recommendations as to whether the Panchayat Raj system could be extended to Scheduled Areas. The Committee submitted its report on 17.01.1995 and favoured democratic, decentralization in Scheduled Areas. Based on the recommendations, the Panchayat (Extension to Scheduled Areas) Act, 1996 (for short 'PESA Act') was enacted by the Parliament in the year 1996, extending the provisions of Part IX of the Constitution relating to Panchayats to the Scheduled Areas. The Statement of Objects and Reasons of the Act reads as follows:*

*“There have been persistent demands from prominent leaders of the Scheduled Areas for extending the provisions of Part IX of the Constitution to these Areas so that Panchayati Raj Institutions may be established there. Accordingly, it is proposed to introduce a Bill to provide for the extension of the provisions of Part IX of the Constitution to the Scheduled Areas with certain modifications providing that, among other things, the State legislations that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;..... The offices of the Chairpersons in the panchayats at all levels shall be reserved for the Scheduled Tribes; the reservations of seats at every panchayat for the Scheduled Tribes shall not be less than*

*one-third of the total number of seats.”*

35. *This court had occasion to consider the scope of PESA Act when the constitutional validity of the proviso to section 4(g) of the PESA Act and few sections of the Jharkhand Panchayat Raj Act, 2001 were challenged in **Union of India v. Rakesh Kumar**, (2010) 4 SCC 50 and this Court upheld the Constitutional validity.*

36. *Section 4 of the PESA Act stipulates that the State legislation on Panchayats shall be made in consonance with the customary law, social and religious practices and traditional management practices of community resources. Clause (d) of Section states that every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution. Further it also states in clause (i) of Section 4 that the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas and that the actual planning and implementation of the projects in the Scheduled Areas, shall be coordinated at the State level. Sub-clause (k) of Section 4 states that the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospective licence or mining lease for minor minerals in the Scheduled Areas. Panchayat has also endowed with the powers and authority necessary to function as institutions of Self-Government.*

37. *The customary and cultural rights of indigenous people have also been the subject matter of various international*

conventions. *International Labour Organization (ILO) Convention on Indigenous and Tribal Populations Convention, 1957 (No.107) was the first comprehensive international instrument setting forth the rights of indigenous and tribal populations which emphasized the necessity for the protection of social, political and cultural rights of indigenous people. Following that there were two other conventions ILO Convention (No.169) and Indigenous and Tribal Peoples Convention, 1989 and United Nations Declaration on the rights of Indigenous Peoples (UNDRIP), 2007, India is a signatory only to the ILO Convention (No. 107).*

38. *Apart from giving legitimacy to the cultural rights by 1957 Convention, the Convention on the Biological Diversity (CBA) adopted at the Earth Summit (1992) highlighted necessity to preserve and maintain knowledge , innovation and practices of the local communities relevant for conservation and sustainable use of bio-diversity, India is a signatory to CBA. Rio Declaration on Environment and Development Agenda 21 and Forestry principle also encourage the promotion of customary practices conducive to conservation. The necessity to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources have also been recognized by United Nations in the United Nations Declaration on Rights of Indigenous Peoples. STs and other TFDs residing in the Scheduled Areas have a right to maintain their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands.*

39. *Many of the STs and other TFDs are totally unaware of*

*their rights. They also experience lot of difficulties in obtaining effective access to justice because of their distinct culture and limited contact with mainstream society. Many a times, they do not have the financial resources to engage in any legal actions against development projects undertaken in their abode or the forest in which they stay. They have a vital role to play in the environmental management and development because of their knowledge and traditional practices. State has got a duty to recognize and duly support their identity, culture and interest so that they can effectively participate in achieving sustainable development.*

40. *We notice, bearing in mind the above objects, the Forest Rights Act has been enacted conferring powers on the Gram Sabha constituted under the Act to protect the community resources, individual rights, cultural and religious rights.*

**The Forest Rights Act**

41. *The Forest Rights Act was enacted by the Parliament to recognize and vest the forest rights and occupation in forest land in forest dwelling STs and other TFDs who have been residing in such forests for generations but whose rights could not be recorded and to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. The Act also states that the recognized rights of the forest dwelling STs and other TFDs include the responsibilities and authority for sustainable use, conservation of bio-diversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling STs and other TFDs. The Act also noticed that the forest rights on ancestral lands and their habitat were not adequately recognized in the*

*consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to them, who are integral to the very survival and sustainability of the forest ecosystem.*

42. *The Statement of Objects and Reasons of the Act states that forest dwelling tribal people and forests are inseparable and that the simplicity of tribals and their general ignorance of modern regulatory framework precluded them from asserting their genuine claims to resources in areas where they belong and depended upon and that only recently that forest management regimes have initiated action to recognize the occupation and other right of the forest dwellers. Of late, we have realized that forests have the best chance to survive if communities participate in their conservation and regeneration measures. The Legislature also has addressed the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to the STs dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.*

43. *We, have to bear in mind the above objects and reasons, while interpreting various provisions of the Forest Rights Act, which is a social welfare or remedial statute. The Act protects a wide range of rights of forest dwellers and STs including the customary rights to use forest land as a community forest resource and not restricted merely to property rights or to areas of habitation.*

47. *The definition clauses read with the above mentioned provisions give emphasis to customary rights, rights to collect,*

*use and dispose of minor forest produce, community rights like grazing cattle, community tenure of habitat and habitation for primitive tribal groups, traditional rights customarily enjoyed etc. Legislative intention is, therefore, clear that the Act intends to protect custom, usage, forms, practices and ceremonies which are appropriate to the traditional practices of forest dwellers.*

48. Chapter IV of the Act deals with the authorities and procedure for vesting of forest rights. That chapter has only one section i.e. Section 6, which has to be read along with The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2007 and the Amendment Rules 2012.

49. Ministry of Tribal Affairs has noticed several problems which are impeding the implementation of the Act in its letter and spirit. For proper and effective implementation of the Act, the Ministry has issued certain guidelines and communicated to all the States and UTs vide their letter dated 12.7.2012. The operative portion of the same reads as follows:

**“GUIDELINES:**

***i) Process of Recognition of Rights:***

(a) The State Governments should ensure that on receipt of intimation from the Forest Rights Committee, the officials of the Forest and Revenue Departments remain present during the verification of the claims and the evidence on the site.

b) In the event of modification or rejection of a claim by the Gram Sabha or by the Sub-Divisional Level Committee or the District Level Committee, the decision

*on the claim should be communicated to the claimant to enable the aggrieved person to prefer a petition to the Sub Divisional Level Committee or the District Level Committee, as the case may be, within the sixty days period prescribed under the Act and no such petition should be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.*

*c) The Sub-Divisional Level Committee or the District Level Committee should, if deemed necessary, remand the claim to the Gram Sabha for reconsideration instead of rejecting or modifying the same, in case the resolution or the recommendation of the Gram Sabha is found to be incomplete or prima-facie requires additional examination.*

*d) In cases where the resolution passed by the Gram Sabha, recommending a claim, is upheld by Sub-Divisional Level committee, but the same is not approved by the District Level Committee, the District Level Committee should record the reasons for not accepting the recommendations of the Gram Sabha and the Sub-Divisional Level Committee, in writing, and a copy of the order should be supplied to the claimant.*

*e) On completion of the process of settlement of rights and issue of titles as specified in Annexures II, III & IV of the Rules, the Revenue / Forest Departments shall prepare a final map of the forest land so vested and the concerned authorities shall incorporate the forest rights so vested in the revenue and forest records, as the case may be, within the prescribed cycle of record updation.*



f) *All decisions of the Sub-Divisional Level Committee and District Level Committee that involve modification or rejection of a Gram Sabha resolution/ recommendation should be in the form of speaking orders.*

g) *The Sub-Divisional Level Committee or the District Level committee should not reject any claim accompanied by any two forms of evidences, specified in Rule 13, and recommended by the Gram Sabha, without giving reasons in writing and should not insist upon any particular form of evidence for consideration of a claim. Fine receipts, encroacher lists, primary offence reports, forest settlement reports, and similar documentation rooted in prior official exercises, or the lack -thereof, would not be the sole basis for rejection of any claim.*

h) *Use of any technology, such as, satellite imagery, should be used to supplement evidences tendered by a claimant for consideration of the claim and not to replace other evidences submitted by him in support of his claim as the only form of evidence.*

i) *The status of all the claims, namely, the total number of claims filed, the number of claims approved by the District Level Committee for title, the number of titles actually distributed, the number of claims rejected, etc. should be made available at the village and panchayat levels through appropriate forms of communications, including conventional methods, such as, display of notices, beat of drum etc.*

j) *A question has been raised whether the four*

hectare limit specified in Section 4(6) of the Act, which provides for recognition of forest rights in respect of the land mentioned in clause (a) of sub-section (1) of section 3 of the Act, applies to other forest rights mentioned in Section 3(1) of the Act. It is clarified that the four hectare limit specified in Section 4(6) applies to rights under section 3(1)(a) of the Act only and not to any other right under section 3(1), such as conversion of pattas or leases, conversion of forest villages into revenue villages etc.

**ii) Minor Forest Produce:**

(a) The State Government should ensure that the forest rights relating to MFPs under Section 3(1)(c) of the Act are recognized in respect of all MFPs, as defined under Section 2(i) of the Act, in all forest areas, and state policies are brought in alignment with the provisions of the Act. Section 2(i) of the Act defines the term "minor forest produce" to include "all non-timber produce of plant origin, including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers, and the like".

(b) The monopoly of the Forest Corporations in the trade of MFP in many States, especially in case of high value MFP, such as, tendu patta, is against the spirit of the Act and should henceforth be done away with.

c) The forest right holders or their cooperatives/federations should be allowed full freedom to sell such MFPs to anyone or to undertake individual or collective processing, value addition, marketing, for

*livelihood within and outside forest area by using locally appropriate means of transport.*

*d) The State Governments should exempt movement of all MFPs from the purview of the transit rules of the State Government and, for this purpose, the transit rules be amended suitably. Even a transit permit from Gram Sabha should not be required. Imposition of any fee/charges/royalties on the processing, value addition, marketing of MFP collected individually or collectively by the cooperatives/ federations of the rights holders would also be ultra vires of the Act.*

*(e) The State Governments need to play the facilitating role in not only transferring unhindered absolute rights over MFP to forest dwelling Scheduled Tribes and other traditional forest dwellers but also in getting them remunerative prices for the MFP, collected and processed by them.*

**iii) Community Rights :**

*(a) The District Level Committee should ensure that the records of prior recorded nistari or other traditional community rights (such as Khatian part II in Jharkhand, and traditional forest produce rights in Himachal and Uttarakhand) are provided to Gram Sabhas, and if claims are filed for recognition of such age-old usufructory rights, such claims are not rejected except for valid reasons, to be recorded in writing, for denial of such recorded rights;*

*(b) The District Level Committee should also facilitate*

*the filing of claims by pastoralists before the concerned Gram Sabha (s) since they would be a floating population for the Gram Sabha(s) of the area used traditionally.*

*(c) In view of the differential vulnerability of Particularly Vulnerable Tribal Groups (PTGs) amongst the forest dwellers, District Level Committee should play a pro-active role in ensuring that all PTGs receive habitat rights in consultation with the concerned PTGs' traditional institutions and their claims for habitat rights are filed before the concerned Gram Sabhas.*

*(d) The forest villages are very old entities, at times of pre-independent era, duly existing in the forest records. The establishment of these villages was in fact encouraged by the forest authorities in the pre-independent era for availability of labour within the forest areas. The well defined record of each forest village, including the area, number of inhabitants, etc. exists with the State Forest Departments. There are also unrecorded settlements and old habitations that are not in any Government record. Section 3(1)(h) of the Act recognizes the right of forest dwelling Scheduled Tribes and other traditional forest dwellers relating to settlement and conversion on forest villages, old habitation, un-surveyed villages and other villages and forests, whether recorded, notified or not into revenue villages. The conversion of all forest villages into revenue villages and recognition of the forest rights of the inhabitants thereof should actually have been completed immediately on enactment of the Act. The State Governments may, therefore, convert all such erstwhile forest villages, unrecorded settlements and old habitations into revenue villages*

*with a sense of urgency in a time bound manner. The conversion would include the actual land-use of the village in its entirety, including lands required for current or future community uses, like, schools, health facilities, public spaces etc. Records of the forest villages maintained by the Forest Department may thereafter be suitably updated on recognition of this right.*

***iv) Community Forest Resource Rights:***

*(a) The State Government should ensure that the forest rights under Section 3(1)(i) of the Act relating to protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages and the titles are issued as soon as the prescribed Forms for claiming Rights to Community Forest Resource and the Form of Title for Community Forest Resources are incorporated in the Rules. Any restriction, such as, time limit, on use of community forest resources other than what is traditionally imposed would be against the spirit of the Act.*

*b) In case no community forest resource rights are recognized in a village, the reasons for the same should be recorded. Reference can be made to existing records of community and joint forest management, van panchayats, etc. for this purpose.*

*c) The Gram Sabha would initially demarcate the boundaries of the community forest resource as defined in Section 2(a) of the Act for the purposes of filing claims*

for recognition of forest right under Section 3(1)(i) of the Act.

d) The Committees constituted under Rule 4(e) of the Forest Rights Rules, 2008 would work under the control of Gram Sabha. The State Agencies should facilitate this process.

e) Consequent upon the recognition of forest right in Section 3(i) of the Act to protect, regenerate or conserve or manage any community forest resource, the powers of the Gram Sabha would be in consonance with the duties as defined in Section 5(d), wherein the Gram Sabha is empowered to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the bio-diversity. Any activity that prejudicially affects the wild-life, forest and bio-diversity in forest area would be dealt with under the provisions of the relevant Acts.

**v) Protection Against Eviction, Diversion of Forest Lands and Forced Relocation :**

(a) Section 4(5) of the Act is very specific and provides that no member of a forest dwelling Scheduled Tribe or other traditional forest dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete. This clause is of an absolute nature and excludes all possibilities of eviction of forest dwelling Scheduled Tribes or other traditional forest dwellers without settlement of their forest rights as this Section opens with the words "Save as otherwise provided". The

*rationale behind this protective clause against eviction is to ensure that in no case a forest dweller should be evicted without recognition of his rights as the same entitles him to a due compensation in case of eventuality of displacement in cases, where even after recognition of rights, a forest area is to be declared as inviolate for wildlife conservation or diverted for any other purpose. In any case, Section 4(1) has the effect of recognizing and vesting forest rights in eligible forest dwellers. Therefore, no eviction should take place till the process of recognition and vesting of forest rights under the Act is complete.*

*(b) The Ministry of Environment & Forests, vide their letter No.11-9/1998-FC(pt.) dated 30.07.2009, as modified by their subsequent letter of the same number dated 03.08.2009, has issued directions, requiring the State/ UT Governments to enclose certain evidences relating to completion of the process of settlement of rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, while formulating unconditional proposals for diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980. The State Government should ensure that all diversions of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 take place in compliance with the instructions contained in the Ministry of Environment & Forest's letter dated 30.07.2009, as modified on 03.08.2009.*

*(c) There may be some cases of major diversions of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 after the enactment of the Scheduled Tribes and other Traditional Forest Dwellers*

*(Recognition of Forest Rights) Act, 2006 but before the issue*

*of Ministry of Environment & Forests' letter dated 30.07.2009, referred to above. In case, any evictions of forest dwelling Scheduled Tribes and other traditional forest dwellers have taken place without settlement of their rights due to such major diversions of forest land under the Forest (Conservation) Act, 1980, the District Level Committees may be advised to bring such cases of evictions, if any, to the notice of the State Level Monitoring Committee for appropriate action against violation of the provisions contained in Section 4(5) of the Act.*

*(d) The Act envisages the recognition and vesting of forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers over all forest lands, including National Parks and Sanctuaries. Under Section 2(b) of the Act, the Ministry of Environment & Forests is responsible for determination and notification of critical wildlife habitats in the National Parks and Sanctuaries for the purpose of creating inviolate areas for wildlife conservation, as per the procedure laid down. In fact, the rights of the forest dwellers residing in the National Parks and Sanctuaries are required to be recognized without waiting of notification of critical wildlife habitats in these areas. Further, Section 4(2) of the Act provides for certain safeguards for protection of the forest rights of the forest rights holders recognized under the Act in the critical wildlife habitats of National Parks and Sanctuaries, when their rights are either to be modified or resettled for the purposes of creating inviolate areas for wildlife conservation. No exercise for modification of*



*the rights of the forest dwellers or their resettlement from the National Parks and Sanctuaries can be undertaken, unless their rights have been recognized and vested under the Act. In view of the provisions of Section 4(5) of the Act, no eviction and resettlement is permissible from the National Parks and sanctuaries till all the formalities relating to recognition and verification of their claims are completed. The State/ UT Governments may, therefore, ensure that the rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers, residing in National Parks and Sanctuaries are recognized first before any exercise for modification of their rights or their resettlement, if necessary, is undertaken and no member of the forest dwelling Scheduled Tribe or other traditional forest dweller is evicted from such areas without the settlement of their rights and completion of all other actions required under section 4 (2) of the Act.*

*(e) The State Level Monitoring Committee should monitor compliance of the provisions of Section 3(1)(m) of the Act, which recognizes the right to in situ rehabilitation including alternative land in cases where the forest dwelling Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation, and also of the provisions of Section 4(8) of the Act, which recognizes their right to land when they are displaced from their dwelling and cultivation without land compensation due to State development interventions.*

**vi) Awareness-Raising, Monitoring and Grievance**

**Redressal:**

a) *Each State should prepare suitable communication and training material in local language for effective implementation of the Act.*

b) *The State Nodal Agency should ensure that the Sub Divisional Level Committee and the District Level Committee make district-wise plans for trainings of revenue, forest and tribal welfare departments' field staff, officials, Forest Rights Committees and Panchayat representatives. Public meetings for awareness generation in those villages where process of recognition is not complete need to be held.*

c) *In order to generate awareness about the various provisions of the Act and the Rules, especially the process of filing petitions, the State Government should organize public hearings on local bazaar days or at other appropriate locations on a quarterly basis till the process of recognition is complete. It will be helpful if some members of Sub Divisional Level Committee are present in the public hearings. The Gram Sabhas also need to be actively involved in the task of awareness raising.*

d) *If any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or Gram Sabha through a resolution against any higher authority or Committee or officer or member of such authority or Committee gives a notice as per Section 8 of the Act regarding contravention of any provision of the Act or any rule made thereunder concerning recognition of*

*forest rights to the State Level Monitoring Committees, the State Level Monitoring Committee should hold an inquiry on the basis of the said notice within sixty days from the receipt of the notice and take action, if any, that is required. The complainant and the Gram Sabha should be informed about the outcome of the inquiry.”*

**Gram Sabha and other Authorities:**

51. Under Section 6 of the Act, Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both and that may be given to the forest dwelling STs and other TFDs within the local limits of the jurisdiction. For the said purpose it receive claims, and after consolidating and verifying them it has to prepare a plan delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights. The Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee. Any aggrieved person may move a petition before the Sub-Divisional Level Committee against the resolution of the Gram Sabha. Sub-section (4) of Section 6 confers a right on the aggrieved person to prefer a petition to the District Level Committee against the decision of the Sub-Divisional Level Committee. Sub-section (7) of Section 6 enables the State Government to constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency. Such returns and reports shall be called for by that agency.

52. Functions of the Gram Sabha, Sub-Divisional Level Committee, District Level Committee, State Level Monitoring

*Committee and procedure to be followed and the process of verification of claims etc. have been elaborately dealt with in 2007 Rules read with 2012 Amendment Rules. Elaborate procedures have therefore been laid down by Forest Rights Act read with 2007 and 2012 Amendment Rules with regard to the manner in which the nature and extent of individual or customary forest rights or both have to be decided. Reference has already been made to the details of forest rights which have been conferred on the forest dwelling STs as well as TFDs in the earlier part of the Judgment.*

### **Individual/Community Rights**

*53. Forest Rights Act prescribed various rights to tribals/forest dwellers as per Section 3 of the Act. As per Section 6 of the Act, power is conferred on the Gram Sabha to process for determining the nature and the extent of individual or community forests read with or both that may be given to forest dwelling STs and other TFDs, by receiving claims, consolidate it, and verifying them and preparing a map, delineating area of each recommended claim in such a manner as may be prescribed. The Gram Sabha has received a large number of individual claims and community claims from the Rayagada District as well as the Kalahandi District. From Rayagada District Gram Sabha received 185 individual claims, of -which 145 claims have been considered and settled by granting alternate rights over 263.5 acres of land. 40 Individual claims pending before the Gram Sabha pertain to areas which falls outside the mining lease area. In respect of Kalahandi District 31 individual claims have been considered and settled by granting alternate rights over an area of 61 acres.*

*54. Gram Sabha has not received any community claim from the District of Rayagada. However, in respect of Kalahandi*

*District 6 community claims had been received by the Gram Sabha of which 3 had been considered and settled by granting an alternate area of 160.55 acres. The balance 3 claims are pending consideration.*

### **Customary and Religious Rights (Sacred Rights)**

*55. Religious freedom guaranteed to STs and the TFDs under Articles 25 and 26 of the Constitution is intended to be a guide to a community of life and social demands. The above mentioned Articles guarantee them the right to practice and propagate not only matters of faith or belief, but all those rituals and observations which are regarded as integral part of their religion. Their right to worship the deity Niyam-Raja has, therefore, to be protected and preserved.*

*56. Gram Sabha has a role to play in safeguarding the customary and religious rights of the STs and other TFDs under the Forest Rights Act. Section 6 of the Act confers powers on the Gram Sabha to determine the nature and extent of "individual" or "community rights". In this connection, reference may also be made to Section 13 of the Act coupled with the provisions of PESA Act, which deal with the powers of Gram Sabha. Section 13 of the Forest Rights Act reads as under:*

*"13. Act not in derogation of any other law. –*

*Save as otherwise provided in this Act and the provisions of the Panchayats (Extension of the Scheduled Areas) Act, 1996 (40 of 1996), the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."*

57. *PESA Act has been enacted, as already stated, to provide for the extension of the provisions of Part IX of the Constitution relating to Panchayats to the Scheduled Areas. Section 4(d) of the Act says that every Gram Sabha shall be competent to safeguard and preserve the traditions, customs of the people, their cultural identity, community resources and community mode of dispute resolution. Therefore, Grama Sabha functioning under the Forest Rights Act read with Section 4(d) of PESA Act has an obligation to safeguard and preserve the traditions and customs of the STs and other forest dwellers, their cultural identity, community resources etc., which they have to discharge following the guidelines issued by the Ministry of Tribal Affairs vide its letter dated 12.7.2012.”*

44. In the aforesaid context, we would like to quote with profit the observations of the Supreme Court in the case of **Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others** reported in **AIR 2011 SC (Supp) 828**. In paragraph 15 of the decision, the Supreme Court made the following observations.

*“15. In last 63 years, Parliament and State Legislatures have enacted several laws for achieving the goals set out in the preamble but their implementation has been extremely inadequate and tardy and benefit of welfare measures enshrined in those legislations has not reached millions of poor, downtrodden and disadvantaged sections of the society and the efforts to bridge the gap between the haves and have-nots have not yield the desired result. The most unfortunate part of the scenario is that whenever one of the three constituents of the State i.e., judiciary, has issued directions for ensuring that*

*the right to equality, life and liberty no longer remains illusory for those who suffer from the handicaps of poverty, illiteracy and ignorance and directions are given for implementation of the laws enacted by the legislature for the benefit of the have-nots, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach and the orders issued for benefit of the weaker sections of the society are invariably subjected to challenge in the higher Courts. In large number of cases, the sole object of this litigative exercise is to tire out those who genuinely espouse the cause of the weak and poor.”*

45. In such circumstances, we would like to dispose of both the petitions by issuing following directions which will protect the interest of the claimants as well as the State.

(I) The respondents are directed to strictly comply with Rule 13 and the amended Rule 12-A while disposing of a fresh claim application or a review application, which is already disposed of. In other words, even if a review application has been disposed of then in such circumstances the respondents shall reconsider the claim after complying with Rule 13 and Rule-12A of the Rules.

(II) According to the respondents there are 1,28,866 pending claims as on 7<sup>th</sup> February 2013. We direct that all such claims be decided by strictly complying with Rule 13 and the amended Rule 12-A.

(III) The respondents are directed to take into consideration the following evidences while deciding the pending 1,28,866 claims.

- (a) Field verification panchnamas along with photographs describing the physical attributes of the land indicating occupation prior to 2005 and 2007.
- (b) Records of Civil and Criminal Court cases.
- (c) Receipts or purchase agreement from erstwhile Princely States.
- (d) Government records like above receipts issued by the Forest Department.
- (e) Revenue Department receipts.
- (f) Satellite imageries and/or maps prepared from imageries other than BISAG and/or maps prepared from other authorized imageries.
- (g) The applications made in the past i.e. before 2005 for regularization of the claimed lands.

(IV) We direct the State Government to recall or withdraw the instructions as contained in Annexures K, L, M, N, P, S and T, in light of the amended Rule 12-A.

(V) The respondents shall assign cogent reasons for rejection or modification of the claim, according to the Government



guidelines dated 12<sup>th</sup> July 2012 and the amended Rule 12-A. The copy of such decision should be made available to the claimant at the earliest.

- (VI) The respondents are directed to communicate the decision of rejection or modification of the claim, according to Government guidelines dated 12<sup>th</sup> July 2012 and the amended Rule 12-A, so as to enable the claimants to approach the higher forum in accordance with law.
- (VII) The respondents are directed to expedite the process of deciding the pending 1,28,866 claims as well as the process of recognition of community rights over forest resources and also expedite the process of conversion of forest settlement villages into revenue villages.
- (VIII) The order of *status quo* passed by us in Civil Application No.5630 of 2012 shall continue till the disposal of 1,28,866 claims which will be in tune with the provisions of Section 4, Clause (5) of the Act.

46. We are of the view that the directions which we have issued should take care of the grievances voiced by the petitioners. The petitions along with Civil Application are accordingly disposed of with the above directions with no order as to costs.

**(BHASKAR BHATTACHARYA, CJ.)**

**(J.B.PARDIWALA, J.)**

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