

GOVERNMENT OF ODISHA
ST & SC DEVELOPMENT DEPARTMENT

BY FAX/E-mail

No. 36823 /SSD., Bhubaneswar Dt. 16-11-2013
TD-II(FRA)-02/2013

From,

Prof.(Dr.) A.B.Ota, IAS
Director (ST)-cum-Addl. Secretary to Govt.

To,


The Additional Chief Secretary, R & DM Deptt.
Principal Secretary, F & E Deptt.
Commissioner-cum-Secretary, P.R.Deptt.
Principal Chief Conservator Forests, Odisha
Principal Chief Conservator Forests (KL) Odisha
Managing Director, OFDC, Bhubaneswar
All Revenue Divisional Commissioners
All Collectors

Sub.: Conversion of all forest villages, old habitations, unsurveyed villages etc. into revenue villages under Section 3(1)(h) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Madam/ Sir,


I am directed to enclose herewith L.No.23011/33/2010-FRA dt.8.11.2013 of Govt. of India, Ministry of Tribal Affairs regarding conversion of all forest villages, old habitations, unsurveyed villages etc. into revenue village under section 3(1)(h) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 for your kind information & necessary action.

Yours faithfully,


Director (ST)-cum-Addl.
Secretary to Govt.


Memo No. 36824 Dt. 16-11-2013

Copy with copy of the enclosure forwarded to all PA.ITDAs/ DWOs for information and necessary action.


Director (ST)-cum-Addl.
Secretary to Govt.

Memo No. 36825 Dt. 16-11-2013

Copy with copy of the enclosure forwarded to the Director, SCSTRTI, CRP Qquare, Bhubaneswar for information.


Director (ST)-cum-Addl.
Secretary to Govt.

No.23011/33/2010-FRA
Government of India
Ministry of Tribal Affairs

Shastri Bhawan, New Delhi,
Dated: 8.11.2013

To,

1. The Chief Secretaries of all State Governments
(except Jammu & Kashmir, Punjab, Haryana and Delhi)
2. The Administrators of all Union Territory Administrations
(except Lakshadweep and Puducherry)

Sub: Conversion of all forest villages, old habitations, unsurveyed villages etc. into revenue villages under Section 3(1)(h) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Sir,

As you are aware, the rights of settlement and conversion of all forest villages, old habitations, unsurveyed villages etc. into revenue villages has been recognized as one of the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands under Section 3(1)(h) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short, Forest Rights Act, 2006). The Ministry has last year issued comprehensive guidelines to all the State/ UT Governments on various aspects of implementation of the Act, which also emphasized the need to implement the provisions of the FRA with regard to conversion of forest villages and other such villages into revenue villages, without any exceptions or exemptions being provided to such villages in any category of forest lands. The State Governments were advised to convert all erstwhile forest villages, unrecorded settlements and old habitations into revenue villages with a sense of urgency in a time bound manner. It was also clarified that 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. The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 notified on 6.9.2012 also contains a similar provision.

2. Though the Forest Rights Act, 2006 has been in operation for more than five years now, the State/ UT Governments have reported very slow progress towards conversion of forest villages and other such villages into revenue villages so far. It has come to the notice of the Ministry that the State Governments are not taking any action for conversion of forest villages and other such villages into revenue villages as the State Forest Department officials still consider that the provisions of the Forest Rights Act, 2006 do not supersede the provisions of Forest (Conservation) Act, 1980 and the Hon'ble

Supreme Court judgment dated 13.11.2000 in I.A.No.2 in WP No.337/1995 regarding diversion/ denotification of forest land and that the de-reservation/ de-notification of forest villages and other such villages is stayed. There are several other issues also connected with the conversion of forest villages and other such villages into revenue villages on which there is no clarity to the State Government officials responsible for implementation of the Act, namely, whether approval of the Ministry of Environment & Forests is required under Section 2 of the Forest (Conservation) Act, 1980 for conversion of forest villages and other such villages into revenue villages; whether such conversion would require denotification of the forest land; whether on conversion of forest villages and other such villages into revenue villages, the legal status of the land would be altered from "forest" to "revenue"; how the habitations, unrecorded or unsurveyed settlements and other villages on the forest land which are not in the records of the Forest Department are to be converted, etc. There is also no clarity on the procedure to be followed for conversion of such forest villages and other such villages into revenue villages amongst the State Government officials.

3. In order to bring about clarity on the above issues and to expedite the conversion of the forest villages and other such villages into revenue villages under Section 3(1)(h) of the Act, the following clarifications are issued to all the State Governments/ UT Administrations:

Sl.No.	Issue	Clarification
1.	Whether the provisions of the Forest Rights Act, 2006 supersede the provisions of Forest (Conservation) Act, 1980 and the Hon'ble Supreme Court judgment dated 13.11.2000 in I.A.No.2 in WP No.337/1995	<p>➤ It is a well settled principle of statutory interpretation that a subsequent statute supersedes all preceding court judgments or orders of prior date.</p> <p>➤ Section 4(1) of the Forest Rights Act, 2006, which recognizes and vests forest rights in the forest dwelling Scheduled Tribes in the States or areas in States where they are declared as Scheduled Tribes and the other traditional forest dwellers, lays down that the forest rights under Section 3(1) of the Act, including the right under Section 3(1)(h), are recognized and vested in the forest dwelling Scheduled Tribes and other traditional forest dwellers "notwithstanding anything contained in any other law for the time being in force". This non-obstante clause, therefore, recognizes and vests the</p>

		<p>forest rights under Section 3(1) in accordance with the provisions of the FRA, regardless of whether such forest rights might be contrary to other laws, which includes statutory law as well as judicial precedent, if any.</p> <p>➤ Further, Section 4(7) of the Act provides that the forest rights under the said Act 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 the said Act. The plain meaning of this provision is that recognition and vesting of all forest rights, including the settlement and conversion of forest villages and other such villages into revenue villages under Section 3(1)(h), has been exempted from the requirements of Section 2 of the Forest (Conservation) Act, 1980, as well as the requirement of compensatory afforestation as well as payment of net present value.</p> <p>➤ After operationalization of the Forest Rights Act, 2006 with effect from 31.12.2007, the interim order dated 13.11.2000 of the Apex Court in I.A.No.2 in WP No.337/1995, which was passed in the context of the widespread violation of the provisions of the Forest (Conservation) Act, 1980 would, therefore, be guided by the provisions of Section 3(1)(h) of the FRA, 2006 and that the forest right relating to conversion of forest villages and other such villages into revenue villages under this Section has also to be vested and recognised as per the laid down</p>
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		procedure, like any other forest right specified in Section 3 (1) of the Act.
2.	Whether approval of the Ministry of Environment & Forests under Section 2 of the Forest (Conservation) Act, 1980 is required for conversion of forest villages and other such villages into revenue villages.	<p>➤ In view of the position indicated against issue No. 1 above, approval under Section 2 of the Forest Conservation Act, 1980 of the Ministry of Environment & Forests is not required for conversion of forest villages and other such villages into revenue villages.</p> <p>➤ As per the provisions of the Forest Rights Act, 2006, the District Level Committee is the final authority for approving the record of forest rights specified in Section 3(1) of the Act, including the right relating to conversion of forest villages and other such villages into revenue villages under Section 3(1)(h) of the Act.</p>
3.	Whether conversion of forest villages and other such villages is required in lands which are not classified as forest lands.	<ul style="list-style-type: none"> • The Supreme Court in a landmark judgment dated 12.12.1997 in the Godavarman case, held as under: <i>"The term "forest land" occurring in Section 2 (of the Forest Conservation Act, 1980) will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership."</i> • Since then the term 'forest land' is to be widely understood in its wider definition, that is, including not only forest land classified as such, but also all other forests, which would include revenue forests, private forests, community forests, and any other kind of forest lands. • Since the rights conferred under the Forest Rights Act apply to all forest lands, if there are forest villages or any other such villages on forest lands which are not necessarily classified as forest land, these villages are also required to be converted into revenue villages.
4.	Whether the conversion of forest villages and other such villages into revenue villages would require de-	➤ The FRA, 2006 envisages recognition and vesting of all forest rights, including the right relating to

	notification/ de-reservation of the forest land, or alteration of status of land.	<p>conversion of forest villages and other such villages into revenue villages, over all forest lands within the larger definition of forests (see above).</p> <ul style="list-style-type: none"> ➤ Some forest villages may be on lands which are revenue forests or private forests or community forests or any other kind of forests. ➤ The FRA, 2006 does not require de-notification/ de-reservation of the forest land for recognition of the forest right relating to conversion of forest villages and other such villages into revenue villages. ➤ However, it is necessary that every village thus converted are recorded in the revenue records as "village" to ensure that its legal status as such is secure: The specific method will depend upon State level Land Revenue laws, which are varied.
5.	Whether the forest villages and other such villages located inside the Wildlife Sanctuaries and National Parks are also required to be converted into revenue villages under Section 3(1)(h) of the Act.	<ul style="list-style-type: none"> ➤ The FRA, 2006 envisages recognition and vesting of the forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, including the Sanctuaries and National Parks. ➤ The forest villages and other such villages located inside the Wildlife Sanctuaries and National Parks are also, therefore, required to be converted into revenue villages under Section 3(1)(h) of the Act.
6.	Whether the process of recognition and vesting of forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers can be taken up/ continued, pending conversion of forest villages and other such village s	<ul style="list-style-type: none"> ➤ As per the provisions of the FRA, 2006, conversion of forest villages and other such villages into revenue villages under Section 3(1)(h) of the Act is not a pre-condition for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes and other

	into revenue villages.	<p>traditional forest dwellers.</p> <p>➤ The process of recognition and vesting of forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers can, therefore, be taken up/ continued without waiting for conversion of forest villages and other such villages into revenue villages.</p>
7.	How the old habitations, unrecorded or unsurveyed settlements and other villages on the forest land which are not part of any Revenue or Forest village record are to be converted into revenue villages.	<p>➤ As provided under Rule 2-A, in order to ensure that the Act is implemented in letter and spirit, it is necessary that the district administration under the leadership of the Collector, and the panchayati raj institutions, take pro-active steps to ensure that all forest villages and other such villages are identified, as a preliminary to conversion.</p> <p>➤ The process for identification of hamlets or habitations, unrecorded or unsurveyed settlements or forest villages or taungya villages, and their inclusion as villages for the purposes of the FRA, 2006 is laid down in Rule 2A of the Forest Rights Rules, 2008, as amended vide the Forest Rights Amendment Rules, 2012 notified on 6.9.2012. This Rule also provides that on recognition of such hamlets and habitations as a village, the process of recognition and vesting of rights in these hamlets and habitations is to be undertaken without disturbing any rights, already recognized.</p>
8.	In the case of forest villages and other such villages which are primarily inhabited by other traditional forest dwellers, whether it is necessary for the other traditional forest dwellers to establish that they had been	<p>➤ Section 4(1)(b) read with Section 2(o) of the FRA, 2006 requires that, for purposes of recognition of forest rights under the Act, a "member or community" of other traditional forest dwellers must establish that it has for at least three generations (being 75 years)</p>

<p>primarily residing in the said village for 75 years at one place prior to the 13th day of December, 2005, before such forest villages and other such villages could be converted into revenue villages.</p>	<p>prior to the 13th day of December, 2005 "primarily resided in or depended on the forest or forest land for bona fide livelihood needs".</p> <p>➤ There is no requirement in the Act that, for purposes of recognition and vesting of forest rights, a person or community of other traditional forest dwellers must have been specifically located in a particular and identifiable location in the forest for 75 years. As long as they are able to establish that they have been primarily residing in and dependent on forests or forest land for bonafide livelihood needs for 75 years prior to 13th day of December, 2005, they are to be considered eligible for recognition and vesting of forest rights under the Act. The same approach has to be adopted while taking up the conversion of forest villages and other such villages primarily inhabited by other traditional forest dwellers into revenue villages.</p>
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4. As regards the procedure is to be followed for settlement and conversion of forest villages, old habitations and other settlements on forest land etc. into revenue villages, certain guidelines as indicated in the Annexure to this letter are accordingly being issued for compliance by all the State Governments/UT Administrations.

5. It is requested that the above clarifications/ procedure may be brought to the notice of all the implementing agencies in your State/ Union Territory for guidance and necessary action. This Ministry may be apprised of the action taken for conversion of forest villages into revenue villages at an early date.

6. This issues with the approval of competent authority.

Yours faithfully,

(Dr. Sadhana Roy)
Joint Secretary to the Government of India
Tel: 23383622

Copy to:
All Principal Secretaries/ Secretaries/ Commissioners of State Tribal/ Welfare Departments for
information and necessary action.

(Uttam Kumar Kar)
Under Secretary to the Government of India

No.23011/33/2010-FRA
 Government of India
 Ministry of Tribal Affairs

Guidelines for conversion of forest villages into revenue villages under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

This is in supersession of this Ministry's D.O.NO. 17014/2/2007 PC&V (Vol VI) dated February 25, 2008, and further supersession of this Ministry's letter No. 23011/28/2008-SG-II dated 3.12.2008.

Section 3(1)(h) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter 'the Act') which defines 'forest rights' includes therein:

"3.(1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers in all forest lands, namely:-

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(h) rights of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forest, whether recorded, notified, or not, into revenue villages;"

Section 2 (d) defines "forest land" as under:

"forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing of deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;"

Section 2(p)(iii) of the Act, while defining 'village' includes:

"(iii) forest villages, old habitation or settlements and un-surveyed villages, whether notified as village or not;"

Section 2(f) of the Act defines 'forest villages' as follows:

"forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses, permitted by the Government;"

Rule 2A of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 (hereafter 'the Rules') as amended up-to-date, states as follows:

"2A. Identification of hamlets or settlements and process of their consolidation - The State Government shall ensure that, -

- (a) every panchayat, within its boundaries, prepares a list of group of hamlets or habitations, unrecorded or un-surveyed settlements or forest villages or taungya villages, formally not part of any Revenue or Forest village record and have this list passed by convening Gram Sabha of each such habitation, hamlets or habitations included as villages for the purpose of the Act through a resolution in the Panchayat and submit such list to Sub Division Level Committee.
- (b) the Sub-Divisional Officers of the Sub Division Level Committee consolidate the lists of hamlets and habitations which at present are not part of any village but have been included as villages within the Panchayat through a resolution, and are formalised as a village either by adding to the existing village or otherwise after following the process as provided in the relevant State laws and that the lists are finalised by the District Level Committee after considering public comments, if any.
- (c) on finalisation of the lists of hamlets and habitations, the process of recognition and vesting of rights in these hamlets and habitations is undertaken without disturbing any rights, already recognized.¹

Further, Rule 12B (5) of the Rules states as follows:

"12 B. Process of Recognition of Community Rights:-

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- (5) The conversion of forest villages, unrecorded settlement under clause (h) of section 3 shall include the actual land-use of the village in its entirety, including lands required for current or future community uses, like, schools, health facilities and public spaces."²

In July 2012, Guidelines also issued by this Ministry which emphasized the need to implement the provisions of the FRA with regard to conversion of forest villages into revenue villages, without any exceptions or exemptions being provided to such villages in any category of forest lands, such as protected areas. Clause (iii)(d) states:

"(iii) Community Rights:

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- (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 settlement and old habitations that are not in any Government record. Section 3(1)(h) of the Act recognises the right of forest dwelling Scheduled Tribes and other traditional forest dwellers relating to settlement and conversion of 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,

¹ Inserted by Rule 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E) dated 6th September, 2012)

² Inserted by Rule 11 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E) dated 6th September, 2012)

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."

Pursuant to the above, this Ministry is issuing the present Guidelines to provide for the procedure for settlement and conversion into revenue villages.

Suggested Procedure for Settlement and Conversion into revenue villages:

The following procedure may be followed for the settlement and conversion of forest villages, old habitations and other settlements on forest land into revenue villages:

1. All villages/settlements on forest land should be identified with the help of District Statistical Handbooks and Census Village Directories. All settlements with zero revenue land should be presumed to be forest villages in order to be converted into revenue villages under the Act. In addition, public suggestions and inputs should be invited through a public notice in all panchayat offices, forest offices and market places informing the public of this right and requesting villages on forest land to submit claims or to contact the concerned officials for assistance. The Collector of each district shall be responsible for getting lists of such villages prepared.
2. The Sub-Divisional Officers of the Sub Divisional Level Committee shall consolidate the lists of hamlets and habitations which at present are not part of any village but which fall within the definition of 'forest villages' under Section 3(1)(h) of the Act, and shall forward the same to the Collector.
3. Collector shall be responsible for ensuring that residents of such villages/old habitations are enabled to claim their conversion/settlement.
4. In each such village / habitation a notice should be posted stating that such a claim can be filed, giving the procedure for doing so (as per this order), and inviting the filing of a claim.
5. The list as prepared in each district, with updates of new additions where applicable, shall be communicated to the State Level Monitoring Committee, which should maintain a consolidated state-wide list of forest villages and old habitations and the status of their conversion. A progress report, with the district-wise list of forest villages and the status of their conversion, should be communicated to the Ministry every three months.
6. For the purposes of the Act, the assembly of all adult residents of each such village/habitation is recognized as the Gram Sabha, as per Section 2(p)(iii) of the Act, and shall elect its own Forest Rights Committee (FRC).
7. In cases where the number of adult residents of an old habitation or an unsurveyed village are less than the number specified for a forest rights committee, they may form a smaller FRC. If such small habitations are in the vicinity of a revenue village, they may pass a unanimous resolution if they so desire, that they will be included in the larger village after conversion.
8. A claim for the conversion of forest villages, old habitations, unsurveyed villages

and other villages on forest land, whether recorded, notified, or not, into revenue villages under section 3(1)(h) of the Act, shall be made collectively by the Gram Sabha of the settlement (see below). If any settlement fails to submit such a claim within a period of three months after posting of a notice as referred to above, the Collector should direct a revenue official not below the rank of Tehsildar to visit the settlement and inform the residents of their right to file a claim.

9. Any village/habitation on forest land which is not a revenue village shall be considered eligible for conversion, including:

- All Forest Villages including Taungya Villages of all types which the Forest Department established, and recorded/recognized as forest villages from time to time.
- All forest Villages including Taungya Villages which the Forest Department established for forestry and other works on forest land, but which have not been recorded/recognized as forest villages.
- All forest villages including Fixed Demand Holdings which have come up as a result of the Forest Department granting various types of leases on forest land from time to time to various individuals.
- All villages/habitations on forest land established by any Government Department /Agency for persons displaced by development projects or for labour/workers for any type of work, but which have not been recognized, surveyed and recorded as revenue villages.
- All old habitations or unsurveyed villages on forest land which have escaped proper survey and settlement due to the land over which they are located getting classified as forest land.

10. The Gram Sabha/Forest Rights Committee of the concerned forest village/habitation shall first define the boundaries of the village/habitation and then prepare, with help as required and requested by the community from the local land revenue officials, and/or representatives from the Sub-divisional Committee, a detailed map showing the present land use of the village. The Map would contain:

- Extent and location of cultivable area, homestead lands/buildings, forests, water bodies and common lands such as grazing/pasture lands, burial grounds, etc.
- Extent and location of other land uses (such as school building, religious places, playgrounds, health facilities and other community buildings/facilities)
- Extent and location of their community forest resource over which various community forest rights are exercised.

11. The Gram Sabha shall approve the map thus prepared and submit the same to the Sub-Divisional Level Committee, along with its resolution claiming the right to conversion to a revenue village. The claim shall include a list of all adult residents of the village. Incomplete claims shall not be rejected but remanded to

the Gram Sabha with specific instructions on the additional required information.

12. After examining the claim, map and the List, the Sub-Divisional Level Committee shall pass it on to the District Level Committee which shall take the necessary steps to recognize the right of conversion for the concerned village. Within two weeks of the decision of the District level Committee, the Collector will initiate necessary proceedings to convert the village into a revenue village and settle the land rights of the residents under revenue laws;

Provided that such conversion would in no way curtail or restrict the forest rights of the residents of the converted village;

13. In the case of villages/habitations consisting entirely of Scheduled Tribe inhabitants, or mixed villages with majority of Scheduled Tribe inhabitants, conversion of the village/ habitation should follow if the settlement existed prior to December 13, 2005.

14. On finalisation of the lists of hamlets and habitations as provided above, the process of recognition and vesting of rights in these hamlets and habitations shall be undertaken without disturbing any forest rights already recognised.
