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**GOVERNMENT OF ORISSA
ST & SC DEVELOPMENT DEPARTMENT**

No 40373 / SSD Dated, Bhubaneswar the, 21.11.08
TD - II - 51/08

From,
Sri Pradipta Kumar Das
Under Secretary to Government

- To,
1. All Collectors & Chairman, District Level (Forest Rights) Committee
 2. All Sub-Collectors & Chairman, Sub-Divisional Level (Forest Rights) Committee
 3. All Project Administrators, ITDAs
 4. All PD, DRDAs (Non-Scheduled area districts)
 5. All DWOs

Sub: Frequently asked questions on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and their replies.

Sir/ Madam,

I am directed to send herewith a set of Frequently asked questions on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and their replies for favour of your information and guidance. The set of questions and replies may please be used for clarifying the beneficiaries/ claimants, Officials & Non-Officials concerned with the implementation of the Act.

Yours faithfully,

Recd
21.11.08
Under Secretary to Government

FREQUENTLY ASKED QUESTIONS

1. *Does the Act not have the danger of destroying our forests and environment?*

----> Definitely not. We need to see that even in the earlier framework of Forest Conservation Act, there were provisions and procedures for regularising old habitations. The earlier framework did not have express scope for participation of the people. The present Act mandates that Gram Sabha (i.e. Palli Sabha in Orissa context) is the authority to initiate and decide the claims. The cut-off date was earlier fixed as 25/10/1980. It is now 13/12/2005 for members of the Scheduled Tribes and 13/12/1930 for other traditional forest dwellers. The Act only recognises existing occupations; it does not envisage fresh destruction of forest. It seeks basically to recognise *de jure* the already existing *de facto* position on the ground. Therefore there is no danger really to the forests. Deforestation is mostly due to commercial interests and not due to bona fide livelihood requirements of the poor people. We must see that by having the ordinary people living legitimately in the forest areas on our side, the forest machinery can do a better enforcement work. They can get better intelligence about the movement and activities of the timber mafia. Therefore, sincere implementation of the Act will protect the forests and our environment.

2. *In some cases, the palli sabha could not meet on 16/3/2008 or on 23/3/2008. Can they meet now, decide FRC and start the process?*

----> Yes, certainly. The Act does not prescribe any dates for holding the Palli Sabha meetings. Whenever required, it can be done. It must be noted that the initial time permitted as per Rule 11 (1) (a) for the claims to be made before the palli sabha is three months. But the same rule has a proviso to the effect that the palli sabha can extend this period for reasons to be recorded in writing.

3. *How will the Palli Sabha get the information on progress of their recommendations made to Sub-Divisional Committee?*

---->An authenticated copy of the proceedings of SDLC meeting should be given to the Palli Sabha/Gram Sabha so that they can know about the recommendations of the SDLC. As the Palli Sabha has no Secretariat of its own, the concerned Extension Officer or the Secretary of the Gram Panchayat should be the custodian of the documents, who is required to take steps for holding the meetings of the Palli Sabha to apprise them about the documents received from the SDLC.

4. *Is the caste certificate mandatory to accompany every claim under the Act?*

---> Form A in the Annexure I stipulates for individual claims in respect of members of Scheduled Tribes that the authenticated copy of the certificate should be attached. This matter

was discussed in the SLMC meeting on 24/10/2008 and the decision communicated in Revenue Department letter No. 47923 dated 12/11/2008. The Palli Sabha, with two-third or more presence, can pass a resolution affirming the names of members of ST and that can be accepted by the SDLC and DLC. However, if SDLC or DLC has reasons to re-verify, they can get it done through the concerned Tehsildar in doubtful cases.

5. *Is there a stay order by Hon'ble High Court on the implementation of the Act?*

---> It is true that there is an interim order of Hon'ble High Court barring issue of final patta (title as per the Act) and barring felling of trees, particularly in Reserve Forest/Protected Forest/Wildlife sanctuary areas. The State Government is taking steps to make appropriate prayer to get the interim order vacated. However, for all other steps in the Act, there is no bar and each one of them must go on. The steps include holding the first meeting of the Palli Sabha for electing members of the FRC, the FRC receiving the individual as well as community claims, FRC verifying the claims and recommending to the Palli Sabha, holding second meeting of the Palli Sabha to make recommendations to SDLC, holding SDLC meetings and finally holding DLC meetings. On all these steps, there is no stay order. The District Level Committee should finalise and dispose of the claims within the stipulated period so that the documents conveying the rights of the claimant duly approved by the DLC could be handed over as soon as the litigation pending in the High Court is decided or leave of the Court is received.

6. *Can any Government Officer take a stand that because of the stay order, the work cannot progress further?*

---> Any delay or negligent action on part of any Government officer of any Department will mean offence under the Act. The State Government will not hesitate to invoke provisions of Section 7 of this Act, which involves fine of Rs 1000 as well as disciplinary proceedings.

7. *It has just been ordered to procure GPS equipments. How can maps be prepared without GPS instruments?*

---> The use of GPS equipments is a welcome step, which will help in long term objectives of preparing error-free digitised maps in both revenue lands as well forest lands. Definitely the degree of accuracy can be better if GPS equipment is used, which will give the latitude, longitude and the altitude of any given point using simultaneous reading of four geosynchronous satellites. This is especially true if Total Station Method is used for survey. However, we need to see that we do not require 100 % precision, which may be essential for launching a missile or for other space applications. For implementation of this Act, usage of GPS devices is not mandatory. The title for individual land as well as for community forest rights, as per Annexure II and III of the rules, requires the extent of the area and 'description of boundaries by prominent land marks including Khata No/Plot No.'. Thus preparation of an error-free pucca map is not required under this Act. However, for practical reasons and to see the need to enhance the capability of the law enforcement machinery to deal with land disputes, if any, in future, it is necessary to prepare the maps to the best of our ability using traditional methods. The SDLC can adopt the basic checks to see that (a) the individual land parcels do not overlap or that same portion of any land is not shown to two or more individual claimants and (b) the sum of individual or community lands in a village, for which title is being

recommended, will not exceed the total geographical area of the village. Therefore, any delay with the excuse of procurement of GPS for implementation of this Act will not be accepted.

8. *The maps at the field level are not available. What can be done?*

---> If revenue land is involved, the maps can be obtained by placing indent with Joint Director, Survey and Map Publications, Jobra, Cuttak under intimation to DLRS, Board of Revenue. However, even for such lands, the trace map of the existing working copy available at the Tehsil office should suffice the work at the SDLC level for this Act. In respect of forest land, the scale of their maps is very small i.e. 1: 50,000 because traditionally large areas of forest blocks were envisaged and small habitations were not considered. In such cases also, it should not be difficult to prepare the rough maps by indicating the landmarks and other essential data, to fulfil the requirements of this Act. It needs to be seen that for booking forest encroachment cases, the forest machinery has been using rough maps in the past. The same maps can be used even now for examining the claims under this Act. For reducing the valid claims into the form of a rough map, the services of retired RIs and Amins can be utilised, apart from the existing RIs and Amins. The Collectors may also review the available manpower in terms of JC staff from the Settlement and Consolidation organisations, who have been placed with the Collectors by the DLRS.

9. *What about forest habitations not coming within any revenue village?*

--->Revenue Department has made available to each of the Collectors the data of forest villages as per 2001 Census. Each of these habitations, even without enabling notification by Panchayati Raj Department, can serve the purpose of the Act, as per Section 2 (g) read with 2(p) (iii) of the Act. Therefore, village assembly meetings of such habitations will also have the same legal validity as Palli Sabha for all practical purposes. However, Panchayati Raj Department is going to issue a detailed notification in this regard very soon.

10. *Should the work for second stage clearance of identified Pre-1980 habitations under Forest Conservation Act continue?*

----> Government have made the necessary budget provision and deposited the required amount in pursuance of the Supreme Court clearance obtained for Orissa in the TN Godavarman case. Therefore, the work is in pipeline and hence it should be continued to its logical end without any further delay. The lease documents and other formalities under the Forest Conservation Act are distinct from those under this Act. This Act provides heritable, but non-transferrable rights. The dispensation under the Forest Rights Act is different.

11. *Can the SDLC entertain the claims solely based on the oral evidence?*

----> Rule 11 (1) read with Rule 13 requires at least two of the evidences out of the list of nine different categories provided. Rule 13 (i) makes provides for statement of elders, other than claimants, reduced in writing. We need to understand that the words “other than claimant” must be with reference to the particular plot in question. SDLC does not entertain individual or community claims. The job of the SDLC as per Rule 14 (5) is to consider the resolution of the Gram Sabha and pass appropriate orders, either accepting or rejecting it. As per Rule 13, oral evidence will be one of the permissible kinds of evidence. The Gram Sabha is required to see that at least one of the other evidences like physical attributes of a house, permanent improvements made to land including levelling, bunds etc., encroachment case records, traditional structures establishing antiquity like burial grounds, wells, sacred places, genealogy tracing ancestry to individuals mentioned in earlier land records or recognised as having been legitimate resident of the village at an earlier point of time etc.

12. *Can the cut off date of 1930 be insisted on tribals who have migrated from another State?*

---> The law does not differentiate between a member of a Scheduled Tribe of one State from a person of another State. Therefore cut-off date of 13/12/2005 will be applicable for all ST persons, irrespective of their State of origin. However, it must be noted that 66 2/3 % quorum is mandatory for a gram sabha meeting to take place as per the Act.

13. *What will be role of Vana Sanrakshana Samitis and other organisations or individuals who have been protecting the forests all along?*

---> The JFM policy guidelines are executive instructions whereas the present provisions are part of an Act. Therefore, the members of the VSS should be encouraged to participate in the meetings of the Gram Sabha/Palli Sabha so that the correct resolutions are passed by it.

14. *A forest officer or a revenue officer has not received intimation to attend Gram Sabha/ Palli Sabha meeting. Can he sign the minutes of the SDLC?*

----> It is the duty of all grass root functionaries of all Departments to attend the Palli Sabha meetings. It must be noted that for the first round of the meetings of the Palli Sabha, wide publicity was given through TV, Radio and print media. No field officer of any department can plead ignorance of the palli sabha meetings. However, if the SDLC resolves that a matter requires field verification by a particular officer, the same must be attended to with utmost priority. Weekly meetings of SDLC will help in close monitoring of the field verification if it is decided to be necessary by SDLC.

15. *It has been seen in the SDLC meetings that the resolution of the Palli Sabha is not accompanied by 66 2/3% of the signatures of the adult members of the village. Can it be entertained?*

----> It must be noted that the Secretary of the Palli Sabha is the executive officer or extension officer or Secretary of the Gram Panchayat. If the functionary has signed and affirmed a document as the resolution of the Palli Sabha, it is his duty to keep the original document with the signatures of the members present in his record. When a copy is forwarded by him with his signature to the SDLC, the SDLC should accept it as authentic. This is by adopting the same analogy as that of an Act of a Legislative Assembly. Every Act or a Resolution of the Assembly will not bear the signature of every member present. The signature of the authorised officer is adequate. By the same logic, the SDLC has to presume the proceedings to be correct, unless any allegation is received to the contrary. Same logic applies to the point regarding whether one-third ST members are present in the FRC and whether one-third women have been elected to the FRC or not. Wherever the SDLC finds the specific need to get this verified, they can do so. The District Panchayat Officer and the Sub-Divisional Panchayat Officer, with the help of the extension officers, are also required to conduct periodic inspections and guide the palli sabhas to keep the documentation properly.

16. *Has the State Govt. taken any Programme for creating awareness and training?*

---->Sub-Divisional Level Committees and District Level Committees have made arrangements for creating awareness and imparting training to the members of the Committees and concerned Officials/ Functionaries. Oriya and English version of the Act & Rules have been printed and distributed among DLCs and SDLCs for circulation among Gram Sabhas/ FRCs and others concerned with implementation with the Act.

17. *Who will supply the claim form A & B to the Beneficiaries and if any fees to be paid for obtaining forms?*

---->All PA, ITDAs in scheduled areas and all DWOs in non-scheduled area districts will print and distribute the requisite number of form A & B among the beneficiaries free of cost.

18. *From which sources FRCs will get funds to purchase registers, files and papers etc. ?*

---->Necessary funds under Article 275(1) of the Constitution has already been sanctioned / provided to all PA, ITDAs and all PD, DRDAs of non-scheduled area districts of the State for incurring expenditure towards implementation of this Act.

19. *Who will decide recognition and vesting of community right versus individual right?*

---->Gram Sabha shall decide this. In case of dispute appeal to higher committees, SDLC and DLC is possible.

20. *What are the Special provisions for displaced Tribals who have not been rehabilitated?*

---->Section 3 (m) of the Act provides that right to in situ rehabilitation including alternative land in cases where the STs and Other Traditional Forest Dwellers have been illegally evicted

or displaced from forestland of any description without receiving their legal entitlement to rehabilitation prior to the 13th December 2005.

Section 4(8) of the Act provides that the Forest rights recognized 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 5 years of the said acquisition.

21. *Who are the traditional forest dwellers?*

---->Section 2(o) of the Act defines the traditional forest dwellers as "Other Traditional Forest Dwellers" means any member or community who has for at least three generations (75 years) prior to the 13th day of December 2005 primarily resided in and who depend on the forest or forests land for bonafide livelihood needs.

22. *Does definition of forestland in the Act applies only to the land under Forest Department, or is it that the forestland under the Revenue Department (jungle kizam) also comes within the purview of the Act.*

----> "Forestland" 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. Therefore, the definition of forestland specified under the Act applies to all types of forests including that of the jungle kizam land found in the Revenue records.
