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CIRCULAR

Instances have been noticed that Forest Rights Claims under the Forest Rights Act, 2006 are either deffered or rejected on the ground of various reasons such as evidence, unavailability of government records or the applicant being a government servant, insisting on a particular form of evidence, etc. The intention of the Forest Rights Act, 2006, is to vest in the forest dwellers STs and OTFDs the responsibility and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance. It further recognises that failure to recognise the forest rights of such forest dwelling communities resulted in a historical injustice (which the FRA seeks to correct) because such forest dwellers are integral to the very survival and sustainability of the forest ecosystems.

During the workshop conducted by the Goa Commission for Scheduled Caste and Scheduled Tribes on 10/07/2019 at Ravindra Bhavan, Margao issues pertaining to the Forest Rights Claims were discussed with the participants and officers involved in the implementation of the Forest Rights Act, 2006.

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In this connection, the Government has decided to issue guidelines to all the implementing authorities to settle the Forest Rights Claims in the efficient and prompt manner. The guidelines and instructions are given below:

1. All Dy. Collectors and Block Development Officers shall provide necessary assistance to convene Gram Sabhas in respect of Forest Rights Act, 2006.
2. Dy. Collectors and Block Development Officers of the concerned jurisdiction shall give requisite instructions to the Village Panchayat Secretaries as under:-
 - I) The Village Panchayats along with Village Panchayat Secretaries:-
 - a. Shall convene Gram Sabha in order to reconstitute the Forest Rights Committees which are not functional.
 - b. Shall keep the Forest Rights Claim files of the claimants in safe custody of the respective Village Panchayat Secretary in the respective Village Panchayat Office.
 - c. Shall assist the claimants by making available the requisite evidences in support of the claims.
 - d. Shall maintain the list of claimants in the form of a register in which the details of each claimant and the claim filed shall be maintained.
 - e. Shall prepare resolution for each claim that is being placed before the Gram Sabha. The claims whether approved or rejected shall be forwarded / recommended to the Sub Divisional Committee for

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further process as the claims attain finality only at the District Level Committee.

3. The Special Committee headed by the Joint Mamlatdar as the Chairman and Circle Inspector, Field Surveyor, Talathi of respective village, V.P Secretary of the respective village and the Range Forest Officer having territorial jurisdiction as members constituted by the Government vide Notification No. 1/15/2013-14/ADMN/DTW/4670 shall undertake following functions:
 - a. Shall study the Forest Rights Claims which are placed by the Village Panchayat Secretaries.
 - b. Shall take necessary steps such as issue notices, record statements, conduct site inspection, to prepare sketch, to demarcate site, etc in order to prepare the background study of each forest claim.
 - c. Shall assist the Gram Sabha, Forest Rights Committee, Sub Divisional Level Committee and the District Level Committee to carry out their Functions.
4. If while deciding the claims under Forest Rights Act, 2006, any difficulty arises, the deciding authorities shall take a assistance of the extract of the Frequently Asked Questions (FAQ) mentioned below:-
 - a) The decisions of the Gram Sabha and the Sub-Divisional Level Committee are subject to appeal and therefore can be re-considered at



that stage. Where the SDLC or the DLC finds that the decision of the Gram Sabha is improper, or prima facie requires additional examination, it should remand the claim back to the Gram Sabha for reconsideration instead of modifying or rejecting it (see Rule 12A(6)). Where the SDLC or DLC reject or modify the decision of the Gram Sabha, they must provide detailed reasons for doing so (see Rule 12A(10)). Additionally, the FR Rules provide that claim should not be rejected merely on technical or procedural grounds (see proviso to Rule 12A(10)). **(May be seen at page No. 2 of FAQ).**

- b) Claims of OTFDs are being rejected by the States on the ground of lack of evidence of occupation of land for three generations, which is not in accordance with the law. It is incorrect to say that the FRA requires the occupation of forest land for three generations (seventy five years) prior to December 13, 2005 for qualifying as OTFD under the Act.

The requirement under section 2(o) of the Forest Rights Act, 2006, is that the “member or community” should have “primarily resided in “forest land for at least three generations prior to December 13, 2005, and depend on the forest for their bonafide livelihood needs. However, it is important to state that it is not necessary that exercise of forest rights for 75 years without interruption be proved. This would be an extremely onerous burden of proof on a claimant, and it is not the intention of the law. For the purpose of establishing their eligibility, OTFDs can rely upon and produce two or more of any of evidences listed in Rule 13 (including oral testimony and physical evidence), and are not restricted only to census of India data. It is also

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important to clarify that it is a particular forest dwelling community which has to establish this fact, and it is not necessary that every individual claimant has to prove it. **(May be seen at page No. 7 & 8 of FAQ).**

- c) There is no provision in the law that forest dwellers should be solely or even primarily dependent on the forest for their livelihood, or for disqualifying persons whose family income is derived from a basket of sources. There is every likelihood that a family may be depending for its livelihood needs both on the forest rights, as well as supplement their family income through a Government job or salaried income. In fact, there are many families where one or more adult member has a salaried job requiring him to live in an urban area, while the other family members reside in the village and are sustained through intricate and sustainable relationships with the forests and forest produce. . **(May be seen at page No. 9 of FAQ)**

Many situations may arise where one spouse work as a Government Servant or in a salaries job, while the other spouse along with other members of the family resides in the village. It would be contrary to the letter and spirit of FRA to deny forest rights o such families, merely because one of the spouses has seized such opportunity. It is for this reason that the FRA contains no statutory bar on recognition of forest rights of such claimants, if they are able to satisfy the other eligibility criteria. Nor does the FRA restrict the recognition of forest rights to 'family'. A claimant can be an individual, a family, a community, or a Gram Sabha. Just because one member of the family

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is disqualified as a forest dwellers, does not mean other members who meet the eligibility criteria cannot claim their rights. **(May be seen at page No. 9 FAQ).**

- d) Merely residing in revenue lands is not a disqualification from eligibility under the FRA, as long as the lands on which grazing rights are sought are forest lands. Forest Land has been widely defined under Section 2(d) of the FRA. **(May be seen at page No. 9 of FAQ).**
- e) As provided under Rule 2-A of the FR Rules (as amended on 6.9.2012), in order to ensure that the FRA is implemented in letter and spirit, it is necessary that the District administration under the leadership of the Collector, and in collaboration with the Panchayat Raj institutions, take pro-active steps to ensure that all forest villages and other such villages are identified, as a preliminary to conversion to revenue village. **(May be seen at page No. 15 of FAQ).**
- f) Since then the term “forest land” is to be understood in its wider definition, that is, including not only forest land classified as such, but also all other forests, which would include revenue forest, private forest, community forest, and any other kind of forest lands. **(May be seen at page No. 16 of FAQ).**
- g) The FRA envisages recognition and vesting of the forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest land, including Wildlife Sanctuaries and National Parks. **(May be seen at page No. 18 of FAQ).**



- h) Under the FRA, conversion of forest villages and other such villages into revenue villages under Section 3(1)(h) of the Act is not a precondition for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers who comprise such villages. Therefore, the process of recognition and vesting of forest rights in the FDSTs and OTFDs can be taken up/continued without waiting for conversion of forest villages and other such villages into revenue villages. **(May be seen at page No. 18 of FAQ).**
- i) The title holders have right over trees on the forest land for which forest rights have been recognised under FRA under Section 3(1)(a)). Section 3(1)(a) of the FRA recognises the right of the FDSTs and OTFDs to hold and live in the forest land for habitation or self-cultivation for livelihood. In view of the above, the titleholders have the right over the trees standing on the said forest land. However, felling and disposal of the trees shall be treated in the same manner as trees on private land under the relevant State laws. As such, the felling and disposal of such trees shall be subject to conditions, requirements for permission from the competent authority, etc. as specified in those laws, if any. **(May be seen at page No. 21 of FAQ).**
- j) The forest rights recognised and vested under the FRA override previous legislations, rule, guidelines, and even judicial orders to the contrary, and will have effect in supersession of these other laws. **(May be seen at page No. 27 of FAQ).**

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- k) The right to ownership of MFP is a substantive right vested under Section 4(1) of FRA, the provisions of the central as well as state laws which make extraction of MFP from reserve forests a criminal offence are overridden and rendered meaningless with respect to forest dwelling STs and OTFDs. **(May be seen at page No. 27 of FAQ).**
- l) The State cannot evict any forest dwellers if a claim on the concerned forest land under FRA is under process. If the claim gets rejected by the DLC, and assuming that the claimants has not exercised any other remedies available under the law. The FRA does not contain any provision or procedure for removal of encroachment, either automatically on rejection of a claim or otherwise, since this is not the subject matter of the FRA. **(May be seen at page No. 28 & 29 of FAQ).**

Apart from the above mentioned points, if there is any ambiguity while settling the claims the Act, Rules and FAQs shall be referred.

5. The Gram Sabha, Sub Divisional Level Committee and the District Level Committee shall strictly adhere to the Forest Rights Act, 2006, Amendment Rules 2012 and Frequently Asked Questions issued by the Ministry of Tribal Affairs, New Delhi, in settling the claims which is also duly approved by the State Government of Goa.

Further, the Deputy Collector / Chairman of the Sub Divisional Level Committees, Block Development Officer / Member Secretary Sub Divisional Level Committees, Joint Mamladar / Chairman of the Special Committees,



Village Panchayat Secretaries, and officials of the Forest Department are hereby directed to adhere to these instructions.

The circular is issued with the approval of the Government.



(Sandhya Kamat)

Director & Ex- officio Jt. Secretary
Directorate of Tribal Welfare
Panaji-Goa.

To,

- 1) The Collector / Chairman of the District Level Committee, North Goa District, Panaji-Goa.
- 2) The Collector / Chairman of the District Level Committee, South Goa District, Margao-Goa.
- 3) The Principal Chief Conservator of Forest, Forest Department Panaji- Goa.
- 4) The Director, Directorate of Panchayats, Panaji-Goa.
- 5) The Deputy Collector / Chairman of the Sub Divisional Level Committees, Sattari, Ponda, Dharbandora, Sanguem, Quepem & Canacona.
- 6) The Block Development Officer / Member Secretary Sub Divisional Level Committees, Sattari, Ponda, Dharbandora, Sanguem, Quepem & Canacon
- 7) The Joint Mamladtar / Chairman of the Special Committees, Sattari, Ponda, Dharbandora, Sanguem, Quepem & Canacona

Copy to:-

1. P.S to Hon'ble Chief Minister, Secretariat, Porvorim –Goa.
2. P.S to Hon'ble Minister for Tribal Welfare, Secretariat, Porvorim –Goa
3. P.A. to the Secretary (Revenue), Secretariat, Porvorim-Goa.
4. P.A. to the Secretary (Forest), Secretariat, Porvorim-Goa.
5. P.A. to the Secretary (Panchayat), Secretariat, Porvorim-Goa.
6. P.A. to the Secretary (Tribal Welfare), Secretariat, Porvorim-Goa.