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F.No.23011/11/2013-FRA
Government of India
Ministry of Tribal Affairs

August Kranti Bhawan,
Bhikaji Cama Place, New Delhi
Dated: 8th October, 2015

OFFICE MEMORANDUM

Subject: Clarification in regard to according approval to Gorkhaland Territorial Administration or the District Magistrate, Darjeeling as competent authority in regard to Forest Rights Act, 2006 – Regarding.

The undersigned is directed to refer to this Ministry's O.M. No.23011/10/2015-FRA dated 26th February, 2015 whereby certain clarification was given with regard to whether NOCs issued by the District Magistrate, Darjeeling in respect of different pieces of forest land can be taken as compliance of the Forest Rights Act, 2006 and in continuation thereof now to state as under:-

1. The State Government of West Bengal and Sikkim had sought clarification as to the competent authorities for implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter 'Forest Rights Act, 2006') and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 (hereafter 'FR Rules') in the Gorkhaland Territorial Administration (GTA) area. In the correspondence, certain suggestions have also been made, which have been further examined by this Ministry. This Ministry has also examined the provisions of the Gorkhaland Territorial Administration Act 2011 (hereafter '2011 Act') and the West Bengal Panchayat Act, 1973 (hereafter '1973 Act') and the relevant Constitutional provisions.

2. The Forest Rights Act, 2006 has clearly defined the "Gram Sabha" under Section 2 (g) of the Act, wherein it is stated that Gram Sabha means a village assembly which shall consist of all adult members of a villages and in case of States having no Panchayats, Padas, tolas or other traditional village institutions and elected village committees, with full and unrestricted participation of women. This definition closely mirrors the definition of 'mouza' under Section 2(13) of the 1973 Act, where the same is described as "an area defined, surveyed and recorded as such in the revenue record of a district.....as the lowest unit of area for purpose of the public notification for specifying a village". The same definition can be adopted in the case of Darjeeling District to constitute Gram Sabha which in turn will initiate the process of recognition and vesting of forest rights under Section 6 of the Forest Rights Act, 2006 and constitute the Forest Rights Committee from amongst its members for this purpose. The Gram Sabha shall also be the body to consider and take decision regarding use of forest land within its ambit for various developmental projects.

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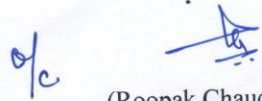
3. On the question of setting up the Sub-Divisional Level Committee (SDLC) and the District Level Committee (DLC) for further implementation of the Forest Rights Act, 2006 at the Sub Division and District level, it has been brought to the attention of the Ministry that there are no elected Panchayat bodies in the Darjeeling District except in Siliguri Sub-Division. Examining the relevant statutory provisions in this regard, this Ministry finds that as per Section 34 (2) of the 2011 Act, it is stated that until such time as the Zilla Parishad is constituted, the Gorkhaland Territorial Administration shall exercise all the powers of the Zilla Parishad under various provisions of the 1973 Act. Therefore, the 2011 Act itself contemplates and provides for a transitional situation where the panchayati raj institutions are not in place for a variety of reasons.

4. In light of the said provision, for the purpose of constitution of SDLCs and DLCs under Rule 5(c) and Rule 7(c) of the FR Rules, the three members of Block/Tehsil level Panchayat and three members of District Panchayat may be substituted by the elected representatives of the Gorkhaland Territorial Administration (GTA) nominated by the GTA. As and when the Block and District level Panchayati Raj institutions, namely the Panchayat Samiti and the Zilla Parishad respectively, are constituted, the SDLC and the DLC may be constituted in accordance with the plain meaning of Rules 5(c) and 7(c) of the FR Rules.

5. It would also be appropriate, taking into account the various statutes applicable, that the GTA be empowered to call the first meeting of the Gram Sabha for the constitution of Forest Rights Committee (FRC) under Rule 3(1) of the FR Rules.

6. Thereafter, the process as laid down under Forest Rights Act, 2006, the FR Rules and the various Guidelines issued by this Ministry from time to time may be followed for the recognition and vesting of forest rights.

7. This issues with the approval of the competent authority.



(Roopak Chaudhuri)
Deputy Secretary to the Government of India
Tel. No.26182428

To,

1. Shri Alok K. Srivastava
Chief Secretary,
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2. Shri Sanjay Mitra,
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3. Shri Sanjay K. Thade
Principal Secretary to the Govt. of West Bengal,
Backward Classes Welfare Department,
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4. Chairman Railway Board,
(Attn.: Shri Mohit Leela, Director)
Railway Board,
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5. Dr. S.S. Negi,
Director General of Forests & Special Secretary,
Indira Paryavaran Bhawan,
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6. Shri Santosh Vaidya,
Director,
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