



7th December, 2012

Dear Jayanthiji,

Sub: Circulars of Ministry of Environment and Forests to State governments on diversion of forest land – implications thereof and request

Ref: 1. Order dated 03.08.2009 (F.No. 11-9/1998-FC (pt)) from Ministry of Environment and Forests to State governments

2. Prior letter dated 19.11.2012 from Minister of Tribal Affairs and Panchayati Raj to Minister of State (I/C) for Environment and Forests

I am writing in connection with the above-mentioned circular of the Ministry of Environment and Forests, which was issued on August 3, 2009 in order to ensure that diversion of forest land under the Forest (Conservation) Act, 1980 does not result in violation of the rights and powers of forest dwellers under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (the Forest Rights Act). As noted in my earlier letter I am deeply concerned to note that this order appears to be being honoured in the breach. **This order is extremely significant and I write to request you to ensure that it is upheld as it is an absolute requirement in order to ensure that takeover of forest land in this country is done in accordance with law.** In particular the following may be noted.

2. As clearly laid down in its Preamble and the Statement of Objects and Reasons, the purpose of the Forest Rights Act is twofold: firstly, to recognize and record the rights of forest dwellers; secondly, to empower them and their community institutions as statutory authorities with the power to protect and manage forests. The Preamble of the Act stipulates that both of these measures are required to 1) ensure conservation of forests and 2) address the historical injustice done to forest dwellers, "including those forced to relocate due to State development interventions." In the Act, section 3(1) lists the rights to be recognized, while section 5 (and section 3(1)(i)) empowers forest dwellers with the statutory power to manage the forest. The Act recognizes that forest dwellers' existence and heritage is tied with the forest and hence empowering them to protect it is as essential as recognizing their rights.

3. In light of the above, any takeover or diversion of forest land – under any other law - has to respect both parts of the Forest Rights Act. In particular, it cannot take place until the recognition of rights is complete in the area (to ensure that rights are respected); and the forest dwellers have expressed their collective prior informed consent to the destruction and/or takeover of the forest and to the rehabilitation / compensation plan that is being provided to them.

4. In both cases, as the 2009 order correctly states, the institution that the Act empowers is the gram sabha or village assembly of the actual village. **Under section 6(1) and Rule 11, this is the institution that initiates rights recognition and may extend it as long as required.** Hence it must certify that the process is done. Under section 5, it is the institution with the power to protect forests and to protect the cultural and natural heritage of forest dwellers. **In light of this, the consent of the gram sabha, with at least a 50% quorum (as stated in the Rules and in the 2009 order), is the bare minimum that is required to comply with the Act before any forest area can be diverted or destroyed.** A clear procedure is required for the taking of consent **(including provision of all information and videography of gram sabha meetings)** to ensure that this is not manipulated or coerced.

5. I trust that strict compliance with these measures may be ensured when diverting forest land. Some may argue that this will delay development projects. This logic does not appear correct. In fact it is ignoring and violating the rights of forest dwellers that will lead to delays, litigation and conflict, aside from injustice. As the Joint Parliamentary Committee (of which I was chair) said in regard to the Forest Rights Bill, forest dwellers should be part of the planning and decision making process and there is no reason to believe they will arbitrarily oppose initiatives in the public interest. We have only to witness the large number of projects in this country that are today stalled by protests and court cases to understand that “short cuts” benefit no one, in addition to being illegal. The Forest Rights Act is not “anti-development” – it is merely a measure to ensure that initiatives are taken in a democratic and transparent manner that actually benefits the people.

6. *I note that at present as well there are proceedings pending in the Supreme Court in regard to the proposed mine by Sterlite / Vedanta in Niyamgiri, Kalahandi District, Odisha, where various parties are seeking to argue that they can bypass, ignore or undermine the Forest Rights Act in the name of advancing a project.* In this **context it is important that our government take a clear stand that upholds the law, the democratic process, and the rights of people, and states that our vision**

of development includes all of these. Strict implementation of the 2009 order and ensuring of recognition of rights along with consent of the gram sabha prior to diversion of land will help ensure this outcome.

with best wishes & warm regards.

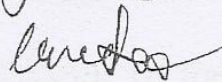
Yours sincerely,



7.12.12

(V. Kishore Chandra Deo)

P.S. Any dilution of the above mentioned Circular of 2009, will have an adverse impact on the "Vedanta Case" which is sub-judice.



Smt. Jayanthi Natarajan,
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