

IN THE HIGH COURT OF ORISSA, CUTTACK  
(ORIGINAL JURISDICTION CASE)

W.P. (C) NO. 4933 OF 2008

210400

CODE NO. ~~990000~~

IN THE MATTER OF:

An application Under Articles 226 and 227 of the  
Constitution of India;

AND

IN THE MATTER OF :

An application challenging the virus of the  
Scheduled Tribes and other Traditional Forest  
Dwellers (Recognition of Forest Rights) Act, 2006,  
Act 2 of 2007

AND

IN THE MATTER OF :

An application under Articles 51A, under Part IV-A  
of the Constitution of India (Forty Second  
Amendment) Act 1976;

AND

IN THE MATTER OF:

THE SOCIETY OF RETIRED FOREST OFFICERS,  
ORISSA, (Registered No. 6571/344 of 1989-90)  
represented by it's Secretary, Shri Bishnu Charan Pal,  
aged about 65 years, Son of late Hata Kishore Pal,  
resident of A/93, Sahidnagar, Bhubaneswar,  
Dist. Khurda.

..... PETITIONER..

- Versus -

1. Government of India, Ministry of Tribal Affairs,  
represented by it's Secretary, Shastri Bhavan,  
NEW DELHI - 110 001.
2. Government of India, Ministry of Environment  
and Forests, represented by it's Secretary,  
Paryavaran Bhavan, C.G.O. Complex, Lodhi Road,  
NEW DELHI - 110 001.

Presented in Court

31.3.08 B.C.

*[Handwritten Signature]*  
Relax



31-3-08  
SHRA  
NOTARY  
(ORISSA)  
No. 21705



= 2 =

3. Director General of Forest, Ministry of Environment and Forests, Paryavaran Bhavan, C.G.O. Complex, Lodhi Road, New Delhi - 110 001.
4. The Principal Chief Secretary, Government of Orissa. Secretariate Building, Bhubaneswar, Dist. Khurda.
5. The Government of Orissa, Department of Forests, Environment and Ecology, represented by It's Principal Secretary, Secretariate Building, Bhubaneswar, Dist. Khurda.
6. The principal Chief Conservator of Forests, Aranya Bhavan, Bhubaneswar, Dist. Khurda.

..... OPP.PARTIES.

The matter out of which this Writ Application arises was never before this Hon'ble Court in any form whatsoever.

To

The Hon'ble Chief Justice

\* 25 nos of 11  
 dated on priority date  
 0010 - 5 16 an  
 7. K. K. Mahapatra, Jaisi  
 4. Debaraj Mahapatra  
 3. Pradyumn Mahapatra  
 0. K. K. Mahapatra, Secy  
 10/11/11  
 11. Badal Nayak



[O. H. C.-98]

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
24.	12 .8.2009	<p data-bbox="989 529 1670 735"> <u>Misc. Case No. 10825 of 2008</u>  <u>Misc. Case No. 1902 of 2009</u>            And  <u>Misc. Case No. 5192 of 2009</u> </p> <p data-bbox="989 764 1776 837">Heard learned counsel for the parties.</p> <p data-bbox="776 837 2032 2646"> <b>2.</b> In order to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded and to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land, the Government of India enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The said Act conferred on the members or community of the Scheduled Tribe who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and include the pastoralist communities, certain forest rights as mentioned in Section 3 thereof. The forest rights granted by the said Act, inter alia, included right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers, right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries; rights including community tenures of habitat and habitation for primitive         </p>	




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		<p>tribal groups and pre-agricultural communities; rights for conversion of pattas or leases or grants issued by any local authority or any state Government on forest lands to titles; rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages; right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use; right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) of Chapter II but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal. Chapter III of the Act contains provisions relating to recognition, restoration and vesting of forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers. Section 5 of Chapter III deals with the duties of holders of forest rights. It empowers the Gram Sabha and village level institutions in areas where there are holders of any forest right under the Act to (a) protect the wild life, forest and biodiversity; (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected; (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional</p>	




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		<p>forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; and also (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with. Chapter IV provides for the authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and the procedure for such vesting. It has provided a three-tier system. The Gram Sabha has been conferred with the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction by receiving claims and after undertaking such exercise pass a resolution and forward a copy of the same to the Sub-Divisional Level Committee. Person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee and thereafter to the District Level Committee if aggrieved by the resolution of the Sub-Divisional Level Committee. Chapter V deals with the offences and penalties and Chapter VI contains miscellaneous provisions.</p> <p>3. The present writ petition was filed by the Society of Retired Forest Officers, Orissa, in the shape of public interest litigation, praying to declare the aforesaid Act, i.e. the Scheduled Tribe and other Tribal Forest Dwellers (Recognition of Forest Right) Act, 2006 (Act 2 of</p>	



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		<p>2007), more particularly Chapters II, III and IV thereof, as ultra vires the Constitution of India. The ground urged in the writ petition is that having regard to the National Forest Policy which contemplates maintenance of forestry to the extent of 1/3<sup>rd</sup> of the total land area in the country, the provisions of the Act and the conferment or recognition of the certificates for those alleged to be in possession of forest defeats the very policy. Further the provisions also run counter to various other enactments like Wild Life Protection Act, 1972, Forest Conservation Act, 1980.</p> <p>4. On 1.7.2008 while directing for service of extra copies of the writ petition on the Assistant Solicitor General and the learned Additional Government Advocate, this Court dismissed the stay application as it was not inclined to pass any interim order. Again the matter was listed on 23.7.2008 when the Court directed for issue of notice to the Advocate General as well as the learned Solicitor General and adjourned the matter to the week commencing 1<sup>st</sup> of September, 2008 for final disposal requiring the opposite parties to file counter within three weeks. The applications filed by one Kui Samaj Seba Samaiti and some tribal forest dwellers to be impleaded as parties to the writ petition were allowed and they were impleaded as opposite parties 7 to 11. On that day Misc. Case No. 10825 of 2008 praying to direct the opposite parties not to undertake any felling of trees and not to alienate any forest land by issuing patta or by any other manner pursuant to the provisions of the Act from out of</p>	

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		<p>the sanctuaries, National Parks and Biospheres (Reserve area) on the ground that unless the same is stayed, the writ petition will become infructuous and irreparable loss and injury would be caused to the public at large, was filed on behalf of the petitioner in Court. The said application was taken up that day and this Court after hearing, passed the following order :</p> <p style="padding-left: 40px;">" In the meantime, the opposite parties are directed not to undertake any felling of trees and not to alienate any land by issuing patta or by any other manner pursuant to the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act 2 of 2007) particularly from out of the sanctuaries, National Parks and Biospheres (Reserve Areas) until further orders."</p> <p>On 2.9.2008, the matter again came up when this Court clarified that above order does not include the process of identity and recognition of the persons etc. which are not covered in the interim order. Accordingly, the Court directed that the process regarding identity and recognition may go on but the final decision shall not be taken without leave of this Court. Thereafter the matter underwent adjournments either for the purpose of filing counter or on the request of the learned counsel and ultimately came to be listed on 18.3.2009 when it was ordered that since counter and rejoinder have been exchanged the matter should be listed in the first week of May,2009 for final disposal. In the meantime Transfer Petition (Civil) Nos.179-180 of 2009 were filed by the Union of India before the Hon'ble Supreme Court for</p>	



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		<p>transfer of this writ petition to the Supreme Court to decide on merit with T.P.(C) No.414-417 of 2008 already pending before the Supreme Court. In view of the aforesaid, this Court on 1.7.2009 directed this writ petition to be listed in the week commencing 17.8.2009. The present misc. case was filed on 1.5.2009 with a prayer to vacate the interim order passed on 23.7.2008 in Misc. Case No.10825 of 2008 as the said order tends to cause unnecessary delay affecting the interest of a large number of marginalized forest dwellers like the petitioner who are waiting to get the benefit under the Act with high expectation. It is the further case of the petitioner that as per the statement released by the Ministry of Tribal Affairs many of the States like Andhra Pradesh, Chhatisgarh, Madhya Pradesh and West Bengal <del>and</del> have already issued titles to the forest communities, whereas the Government of Orissa has expressed its inability to extend similar benefits because of the stay order although the District Level Committees have approved 29,816 number of claims. It is contended by the applicant that the apprehension of the writ petitioner that the implementation of the Act would lead to felling of trees or destruction of forests is baseless and imaginary. In support of such contention, the applicant has taken aid of the letter dated 21.11.2008 of ST&amp;SC Development Department of Govt. of Orissa in which while answering the frequently asked question: Does the Act not have the danger of destroying our forests and environment ?, the State answered as under :</p>	

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			<p>" Definitely not. We need to see that even in the earlier framework of Forest Conservation Act, there were provisions and procedures for regularizing 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 13.12.1920 for other traditional forest dwellers. The Act only recognizes existing occupations; it does not envisage fresh destruction of forest. It seeks basically to recognize 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."</p> <p>5. The applicant of Misc. Case No.5192 of 2009 has also brought to the notice of this Court the fact that the validity of the impugned Act has been challenged before the Hon'ble Supreme Court in W.P.(C) No.50 of 2008 (Bombay Natural History sty. &amp; others v. Union of India and others) and in W.P.(C) No.109 of 2008 and although stay of implementation of the impugned Act has been sought in the aforesaid writ petitions, the Hon'ble apex Court has not passed any interim order so far. By way of an additional affidavit the applicant has sought to bring</p>



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		<p>certain facts to the notice of the Court which has bearing on the prayer of the applicant. Enclosing some newspaper clippings to the additional affidavit, the applicant has brought to the notice of the Court that the recent unrest in the areas of Narayanpatna and Bandhugaon in Koraput has been attributed to the callousness of the Govt. towards settlement of the rights of the forest dwellers. Such unrest, according to the newspaper reports, occurred due to the tardy progress in giving land rights to forest-dwellers, mostly tribals, under Forest Rights Act is fuelling disturbance in tribal dominated districts, which are subsequently turning into fertile ground for left-wing extremists. The applicant has further stated that the Ministry of Tribal Affairs, Government of India, in its notification dated 18.5.2009 has laid out a detail procedure for seeking prior approval for diversion of forest land under sub-section (2) of Section 3 of the Act thereby imposing reasonable restrictions before diversion of Forest land. Therefore, the apprehension of the petitioner that the implementation of the provisions of the Act will result in felling of trees and destruction of large forest has no leg to stand on. The applicant has also brought to our notice that the validity of the impugned Act was challenged before the Andhra Pradesh High Court in W.P.No.21479 of 2007 (J.B.Sharma and others v.Government of India and others) in which an interim order had been passed on 19.8.2008 directing that if claims are made for community rights or rights to forest land and applications are submitted as per sections 3 and 4 of the Act read with Rules 11 and 12 of</p>	



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		the Rules, then the process of verification of the claim after intimation to the concerned claimant shall go on but before the certificate of title is actually issued, orders shall be obtained from that Court. The A.P.High Court further directed that during the pendency of the litigation no member of a forest dwelling scheduled tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed. The aforesaid order was modified by order dated 1.5.2009. The Court inter alia permitted the authorities to issue certificate of title to the eligible forest dwelling Scheduled Tribes and other traditional forest dwellers under the Act with the condition that the same will be subject to the result in main writ proceedings challenging the legislation.	6. While modifying/vacating the interim order, the High Court took note of the following:  "...Even the provisions of the Act do specifically provide for such exercise with the assistance and participation by all the authorities like Revenue, Forest etc. However, even through entire such exercise was done at several district places, there appears to be no attempt on the part of the writ petitioner to put their claims/objections of whatsoever nature in the entire process, be that as it may, since the petitioners themselves are not claiming any such rights or certificates of title under the provisions or much less denial thereof, we are of the view that in the entire process as stated on oath by the authorities, there is no reason, at this stage to doubt the same. Further it is found there have been several claims running into thousands at different parts of



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		<p>22 districts and particulars of those claims have been verified and processed through and ultimately restricted to those who are found to be eligible".</p> <p>".....We also take note of the fact that entire exercise as per the provisions of the Act is a basis, i.e., a three tier system primarily at Grama Sabha, secondly at Sub-divisional Level Committee and ultimately at District Level Committee consisting of various authorities and it is always open for the writ petitioners to seek for information and particulars, if any ineligible person or individual is sought to be given any such certificate, it can raise all objections, which, we are sure the concerned authorities before whom such objections are filed, be it Grama Sabha, Sub-Divisional Level Committee or District Level Committee, would certainly enquire into and would pass appropriate orders in accordance with law.</p> <p>However, having regard to the very laudable object to protect the possession of such individuals which law tries to take care of, any denial thereof, would only prejudice them, therefore we are of the opinion that there is no basis, as such for any apprehension on the part of the writ petitioner to assail that the entire exercise is farce one or certificate of identity by the authorities are false or in any way tainted, unless and until such thing has been specifically pointed out."</p> <p>The Court further observed:</p> <p>"Further we reiterate that in view of the safeguards provided under the very provisions and also interim orders granted earlier protecting those who are in possession, it is needless to make any further apprehension for causing any inconvenience or loss, as such."</p>	



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		<p>7. It may be mentioned here that the S.T.&amp; S.C.Development Department of the Government of Orissa has filed a petition numbered as Misc. Case No.1902 of 2009 stating that the District Level Committees have finalized and identified 9337 number of persons to be awarded for issue of title and the State Government may be permitted to issue the certificate of title.</p> <p>8. After hearing learned counsel for the parties, we are of prima facie opinion that fool-proof safeguards have been made in the Act to check any kind of illegal vesting. The procedure prescribed for vesting involves consideration of the claim at various levels as mentioned in Section 6 (Chapter IV). There is provision to constitute Sub-divisional Level, District Level and State Level Monitoring Committees. Various penalties have been prescribed for contravention of the provisions of the Act. If any deviation is noticed, the petitioner can very well raise objection. Be that as it may, it has been brought to our notice that matters challenging the validity of the Act is pending before the Hon'ble apex Court. Judicial discipline requires that the High Court should not entertain a writ petition in respect of the subject matter that is pending before the Supreme Court. Application for transfer of the instant writ petition is pending before the Hon'ble Supreme Court which stood posted to 4.8.2009. Therefore, we refrain from going into the merits of the writ petition at this stage. But since according to the petition filed by the S.C.&amp; S.T.Development Department 9337 number of cases have become ready for issue of certificate</p>	



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		<p>of title, there is no necessity that the interim order should remain in operation. We, therefore, following the order passed by the Andhra Pradesh High Court vacate the interim order dated 23.7.2008 and permit the authorities to issue certificate of title to the eligible forest dwelling scheduled tribes and other traditional forest dwellers under the Act which shall be subject to the result of the main writ petition.</p> <p>All the aforesaid three misc. cases are accordingly disposed of.</p> <p>Issue urgent certified copy.</p> <p>Copy of the order be handed over to Mr.C.A.Rao, learned counsel appearing for the Forest Department of the State Government.</p>	

Sd - G. M. Quddus, ACS

Sd. Sanju Panda, J.



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21.8.09

Date of Application 2/1/8  
 Date of Notification 2/2  
 Date of Supply 2/1/8  
 Date of Ready 2/1/8  
 Date of Delivery 2/1/8

**CERTIFIED TO BE A TRUE COPY**  
 Assistant Registrar (Exec)  
**ORISSA HIGH COURT**  
 Authorized Under Section 76 Act. I of 1977

C.A. No. 42757/09

**MEMO OF COSTS**

	Rs	P.
Local Fee	5	50
Ex. Fee for Urgency	12	00
Stamp	35	00
Stamp if out	9	00
<b>Total</b>	<b>61</b>	<b>50</b>

MANINER  
 C.M.  
 SUPERINTENDENT  
 CAPTION DEPARTMENT



(Rupees Sixtyone  
 & paise Sixtyone)