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No.2-1/2003-FC (Pt)

Dated: 5.2.2004

To

1. The Chief Secretary,
All the States/UTs

2. The Principal Secretary
All the States/UTs

3. The Principal Chief Conservator of Forests
All the States/UTs

Subject: Regularisation of the rights of the tribals on the forest lands.

Sir,

The Government of India have been receiving a number of representations for regularisation of rights of tribal forest dwellers on forest lands in different parts of the country. The question has also been raised in various public discussions including meetings of various Standing and Consultative committees of Parliament attached to different Ministries, as also various State Governments, that the tribals have been living in harmony with the forests since time immemorial, and their rights on such lands should be recognised. However, while these areas were being brought under the purview of relevant Forest Acts their traditional rights could not be settled due to number of reasons, making them encroachers in the eyes of the law. The Central Government in September, 1990 vide No. 13-1/90-F.P. (2) & (3) had requested the State Governments/UTs to settle the disputed claims, issue patta lease, etc of the tribal population on the forest land, but so far no such proposals have been received. Proposals have been received only under the category of regularisation of eligible encroachments only from a couple of states. This has deprived the tribals of natural justice as guidelines for regularisation of encroachment are different from the guidelines for settling disputed settlement claims.

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The issue has been examined in its entirety in considerable depth by the Central Government and after careful consideration, the Central Government hereby takes the following decisions with a request to the State Governments/UT Administrations to take necessary follow up action as under.

1. The State Government/UT Administration should recognise the traditional rights of the tribal population on forest lands, and these rights should be incorporated into the relevant acts, rules and regulations prevalent in the concerned States/UTs by following the prescribed procedure.
2. (i) In respect of these recognised rights of the tribal forest dwellers on the forest lands, the Central Government upon receipt of complete proposals from the State Governments/UT Administration concerned, shall consider these proposals for diversion of continuously occupied forest land under the Forest (Conservation) Act, 1980 so that these tribals can get unfettered legal rights over such lands. The tribals shall have heritable but inalienable rights over such lands. This decision shall apply for those tribal dwellers who are in continuous occupation of such forest land at least since 31.12.93.
(ii) The diversion proposals shall, however, be considered only if an integrated tribal rehabilitation scheme forms part of the proposal to be submitted by the State/UT, along with the financial commitments, so that the tribal population are retained at that particular land, and the problem is solved once and for all. In order to ensure in situ biodiversity conservation with the rehabilitation package, the programme should be implemented by the tribal rehabilitation wing of the forest department. Where such wings do not exist these may be created. The model adopted by the Kerala Government for rehabilitation of the tribals is a case in point and the State Governments may follow this pattern.
(iii) As the Hon'ble Supreme Court vide their Order dated 23.11.2001 in W.P. 202/95 had restrained the Central Government from regularisation of encroachments, the Central Government shall approach the Court for modification of their order so that the instant decision taken in this regard by the Central Government is implemented.
3. In respect of any fresh occupation of forest land by tribals and non-tribals in forest areas henceforth, the State Government/UT Administration shall hold the concerned District Magistrate and Collector, Superintendent of Police, and the Divisional Forest Officer personally responsible for such encroachment and they will be liable for disciplinary action in respect of any such encroachment.
4. Attention of the State Government/UT Administration is invited to this office letter No.7/16/2002-FC dated 3rd May, 2002 in which the constitution of State level and Circle level encroachment monitoring committees had been suggested. Apart from this, a district level committee consisting of District Magistrate & Collector, Superintendent

of Police and the Divisional Forest Officer should also be constituted immediately for eviction of encroachment, and monitoring of the same should be done at the State level, the Circle level and the District level Committees at quarterly intervals. The notification constituting these committees and action taken by them shall also be part of the diversion proposal.

5. The State Government and UTs should make sincere efforts for making available an equivalent area of non-forest land wherever feasible for inclusion of such lands as reserved forests or protected forests.

6. It is also clarified that in respect of pre-1980 eligible encroachers, the Central Government has already approached the Supreme Court in October 2002 to permit it to regularise such eligible encroachments as per the guidelines and policy of the Government.

7. The consideration of the proposals from the State Governments/UTs shall depend on the progress achieved by the concerned State/UT Administration in eviction of all pre-1980 and post 1980 ineligible non-tribal encroachers and all encroachers post 31.12.1993.

8. It may please be noted that this issue of tribal rights must be settled in a fixed time period of one year from the date of issue of this letter and no proposals shall be entertained thereafter.

9. The State level committee, headed by the Chief Secretary mentioned under Para 3 above, shall monitor the implementation of the above decisions.

Yours faithfully,

(Dr.V.K. Bahuguna)
Inspector General of Forests

Copy for information and necessary action to:

- 1. The Prime Minister's Office, New Delhi (Attention: Shri K.V. Pratap, Deputy Secretary).*
- 2. All Chief Conservator of Forests/ Conservator of Forests (Central), Ministry of Environment and Forests, Government of India.*
- 3. The Secretary, Ministry of Tribal Welfare, Government of India, New Delhi.*
- 4. Member/Adviser (Environment), Planning Commission, New Delhi.*

(Dr.V.K. Bahuguna)
Inspector General of Forests