

IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

I.A. No. OF 2019

IN

WRIT PETITION (CIVIL) NO. 109 OF 2008

IN THE MATTER OF:

WILDLIFE FIRST

...Petitioner

VERSUS

MINISTRY OF FOREST AND ENVIRONMENT

...Respondents

AND IN THE MATTER OF:

SOKALO GOND& ORS.

...Applicant/Intervener

APPLICATION FOR INTERVENTION

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MINISTRY OF FOREST AND ENVIRONMENT

...Respondents

AND IN THE MATTER OF:

1. SOKALO GOND

...Applicant/Intervener No. 1

2. NIVADA RANA

...Applicant/Intervener No. 2

3. All India Union of Forest Working Peoples

...Applicant/Intervener No. 3

4. Citizens for Justice & Peace

.....Applicant/Intervener No. 4

APPLICATION FOR INTERVENTION

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

SUPREME COURT OF INDIA

THE HUMBLE APPLICATION

OF THE ABOVE NAMED

APPLICANTS

MOST RESPECTFULLY SHOWETH:

1. That the present Writ Petition is pending before this Hon'ble Court.

2. That the Applicants herein seek to intervene in the present proceedings since the Writ Petition concerns the constitutionality of a legislation i.e. the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as "FRA 2006") that protects the rights of these Applicants and a large majority of the population who are similarly placed.

3. **Background of Applicants**

- a. The applicant no.1, Sokalo Gond, is an Adivasi woman leader and organiser of the All India Union of Forest Working People (AIUFWP) and has been actively demanding the implementation of the forest rights envisaged under FRA 2006 since 2006. She is also a national executive member of the 3rd Intervener/Applicant, the All India Union of Forest Working Peoples (AIUFWP) and also president of Village Level forest rights Committee, Birsa Nagar Tola, Village Majhauri, Tehsil Dudhi, Sonbhadra, UP. She has been at the forefront of the movement for reclaiming "forest" lands since 2004, even before the historic legislation became a reality. She has pursued these initiatives despite great adversities including being put in a prison a couple of times. She along with her community members are protecting thousands of acres of their ancestral land as a community resource; this land is in the collective possession of women of the community. Over 20 thousand hectares of land in the Sonbhadra Kaimur region alone has been thus re-claimed under the leadership of such dynamic women.
- b. NivadaRana, the second Applicant is a Tharu Adivasi woman leader residing at Village Soda, Tehsil Palia Kalan, District Lakhimpur Kheri, Uttar Pradesh. She is a resident of Suda village, located in Dudhwa National Park, which is situated exactly on the Nepal border. A Tharu Adivasi, Nivada has been associated with the third intervener, the All India Union of Forest Working People (AIUFWP) since its foundation in 2005 and has been at the forefront of the struggle to claim land and forest rights. NivadaRana is now the Vice-

president of the local organization "Tharu Adivasi Mahila Majdur Kisan Manch" and is the National Executive member of applicant no. 3.

- c. The applicant nos. 3 and 4, All India Union of Forest Working People (AIUFWP) and Citizens for Justice and Peace (CJP) have been actively supporting India's Adivasis and Other Traditional Forest Dwellers (OTFD) in staking their claim to forest land, which was finally recognised as their right under the FRA of 2006. While formally formed as the AIUFWP in 2013, with a membership of 25,000 forest dwellers. the organisation was earlier known as the " National Forum of Forest People and Forest Workers". (NFFPFW). This Forum (NFFPFW) was a joint forum of many organisations working in around 17 states on the forest rights and governance issues and NFFPFW was essentially and seminaly involved in ensuring that the FRA 2006 was passed as an Act of Parliament in 2006. Organising OTFDs and Adivasis in 13 states of the country, with a vision to reclaim land from the forest department and other dominant feudal overlords. This is essentially a forest and land rights struggle and AIUFWP has, so far, collectively reclaimed more than One Lakh hectares of land that is now being cultivated collectively under the leadership of women. The AIUFWP works throughout Uttar Pradesh in districts such as Sonbhadra, Mirzapur, Chanduali, Chitrakoot, Lakhimpur Kheeri, Lalitpur, Bhariach, Pilibhit (areas of the Terai, Kaimur), in the Shivalik area of Uttrakhand, Bihar, Jharkand, Bundelkhand in Madhya Pradesh and the Sundarbans area of West Bengal.
4. That, the Applicants state that, furthering the statutory Constitutional rights outlined in Schedules V and VI of the Constitution, FRA 2006 for the first time vested Women Adivasis and Traditional Forest Dwellers equal and independent rights over forests and forest land. Revenue laws and all other land laws vest this right on women only after marriage and not as an independent right.
5. The Applicants seek to place before this Hon'ble Court aspects of the reality on the ground that we humbly believe are being concealed from this Hon'ble Court.

6. That in 2008, one year after FRA 2006 was formerly notified as law, the Petitioners had filed the present batch of Writ Petitions challenging the constitutional validity of the Act as well as the legislative competence of Parliament to enact the Act. It is towards this end that the Petitioners have sought for steps to be taken at the instance of this Hon'ble Court to evict persons whose claims to forest land have been rejected since those persons are encroachers according to the Petitioners. It is submitted that while the Petitioners' concern may be the preservation of forest and wildlife, such preservation cannot come at the cost of the rights of traditional forest dwellers who have lived on these lands for generations and are dependent upon the forests for their livelihood. It is in recognition of their rights that FRA 2006 was enacted to recognise and vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.
7. In this context, it is crucial to note that, fifty six years after the enactment of the Constitution, it was in 2006 that the FRA 2006 was enacted recognising this historical injustice of traditional forest dwellers and Adivasis being excluded from their rights over lands, despite the existence of Schedules V and VI of the Constitution. That, in this context, the only issue in question before this Hon'ble Court is whether the original prayers of the petitioners should be intervened at all; that whether FRA 2006 is violative and ultra vires of the Constitution.
8. That at the outset, the Applicants state that FRA 2006 and the concerned 2008 Rules (and thereafter) are a historic milestone that ensure the rights and livelihood of forest dwelling communities. The enactment of this crucial legislation, through an Act of Parliament, was the result of a decades long struggle and articulation of India's indigenous, Adivasi, other traditional forest dwelling communities and, in fact, marks a much needed shift in jurisprudence by empowering local communities and their Gram Sabhas not only with governance but also protection of their livelihoods, forests and lands. The FRA 2006 recognises the rights and occupation of forest dwelling Schedule Tribes and Other Traditional Forest Dwellers, on forest land, who have been residing in such

forest for generations. At this juncture, the Applicants place reliance on the Preamble of FRA 2006 as quoted hereunder:

“An Act 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; 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.”

9. That the Applicants submit that Section 4(5) of FRA 2006 provides absolute status to forest dwellers by laying down that the displacement of people from forests shall not be done until the recognition and verification procedure is complete. Under the well-defined scheme of the Act, there is no scope for “inadequacy”, delay, or incomplete submission of claims to lead to evictions. Regardless of the number of pending appeals and the claims which are still to be appealed, *prima facie*, it is not within the purview of the Act to allow for eviction of people by terming them as encroachers. Section 4(5) of FRA 2006 is quoted here under:

“Save as otherwise provided, 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 complete.”

10. That FRA 2006 under Section 6(1) vests the power to initiate the process of recognising individuals' claim to forest rights in Scheduled Areas with the Gram Sabha. There could be no more powerful or legitimate recognition of local self-government than this. It must be noted that under the Act, these claims are examined by the Gram Sabha and the Gram Sabha is then empowered to pass a resolution based on evidence adduced regarding individual or community claims.

If any person is aggrieved by the resolution of the Gram Sabha, he may appeal to the Sub-Divisional Level Committee under Section 6(2). If any person is aggrieved by the decision of the Sub-Divisional Level Committee, he may appeal to the District Level Committee under Section 6(4). Under Section 6(6), the decision of the District Level Committee is final and binding. However, it is pertinent to note that at no point does the Act refer to eviction of people from the forests once their claims are rejected. The Act lays down that a mandated period of 3 generations of living in forests is required for a person to get his/her rights recognised under the Act.

11. That all India official figures show that, of 20 crores of our population directly dependent on the forest there is another 10 crores indirectly dependent on them. It is only after this statutory enactment that these vast populations who, for decades have tended tilled and protected our forests and lands were vested with a recognition of these rights that they held until 150 years ago when British colonial administrative practice and law had snatched them away. That, at stake is the livelihood, right to life and cultural existence of as many as 30 crores of the Indian population, its traditional forest dwellers and Adivasis.
12. That, the applicants/interveners would like to point out that the prime objective of the National Forest policy 1988 is to provide ecological security to the nation and aims to have a minimum of 1/3 of the total land of the area of the country under Forestry cover.
13. The applicants would like to draw attention especially to consistent steps taken by the Central Government through its Ministry of Tribal Affairs (MoTA), since the enactment of the statute under discussion, to raise awareness of the law, and ensure that power balances shift towards the empowerment and recognition of rights of traditional, forest dwellers and Adivasis. In the affidavits filed in the

present petition that are part of the pleadings these form part of the record and need to be assessed by this Hon'ble Court.

14. The interveners/applicants state that this Act under challenge by the Petitioners, actually recognises and emphasises the rights of forest dwellers and scheduled tribes in due acceptance of the fact that these communities have always been at the receiving end of exclusion. In fact, the act was enacted so that the rights of these marginalised communities could be formally recorded. Under British colonial rule, at least around 150 indigenous tribes were brutally criminalised by a foreign and hostile administration, that also gave permission to the police and administration to constantly monitor them. The demand for timber made the British exploit the habitat of these communities for commercial ends.
15. That, in a sense, after Independence this exploitation did not wholly stop despite the enactments of Schedules V and VI of the Constitution. Not only was the 1927 colonial Indian Forests Act not repealed to bring law in tune with Schedules V and VI of the Constitution that protected the rights of traditional forest dwellers, scheduled tribes and Adivasis but with the establishment and emphasis on industry for boosting economic growth, this exploitation continued.
16. As a detailed study of the history behind this law coming into force will show, thousands of villages before 1927 were simply not shown as Forest Villages but Cadestal Maps and Gazetteers contain detailed evidences of the traditional forest dwellers and Adivasis living here before they "vanished" from 'official British records.' It is this historical wiping out of India's traditional forest dwelling people from its map and participation in governance that has been sought to be set right in 2006.
17. That, it is pertinent in this context to note that, in exercise of its powers under Article 243M (4) (b) of the Constitution, Parliament enacted the Panchayats (Extension to Scheduled Areas) Act, 1996 (hereinafter "PESA") which extended the provisions of Part IX of the Constitution to the Scheduled Areas (under Article 244 read with the Fifth Schedule) with certain exceptions and modifications. The

said statute, in recognition of the continued importance of community self-governance among tribal communities, inter alia required that State statutes on panchayats must empower the Gram Sabha: a. “[to be] competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution” (Section 4(d)); b. “[to] be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes (Section 4(e)(ii)); c. “(with) the ownership of minor forest produce” (Section 4(m)(ii); d. “to exercise control over institutions and functionaries in all social sectors” (Section 4(m) (vi)).

18. That, in this particular context, attention may be drawn to Section 4 (i) of PESA which states that: “the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas”. The Applicants crave leave to rely on the relevant sections of the Panchayats (Extension to Scheduled Areas) Act, 1996. It is pertinent to note that the Eleventh Schedule to the Constitution of India enumerates the subjects upon which Panchayats may have powers and responsibilities, as per Article 243 G of the Constitution.

19. The applicants would like to FRA, 2006 is applicable to forest regions across India. Despite the Act being in force for the last 11 years, individual and community claims of the Adivasi and other forest dwellers are yet to be recognized. Over a period of time, decades prior to this enactment even, a powerful nexus between the local mafia, police and Forest department officials has emerged, and they have, regularly and systematically, exploited and oppressed the forest dwelling communities. Despite the enactment of a law that aims to set this right, the prevalence of this entrenched nexus and the existent state of affairs has allowed a “historical injustice” to be perpetuated, despite the laudable and emancipatory objectives behind the law (FRA 2006). The applicants

would like to state that this state of affairs is in clear contravention of the Preamble to the FRA 2006 which requires the State to act to mitigate the 'historical injustice' on the forest people.

20. The Ministry of Tribals Affairs (MoTA) of the government of India, itself newly created in recognition of this articulation in 1999, has, since the enactment of the law taken several steps to ensure that state government of issues and local governance institutions are equipped with knowledge of the act including on how to translate its provisions at the grass roots with forest communities that are often at the margins of society. In the years since the law came into force the MoTA has taken several measures to enable communities to also understand the process involved in filing claims and securing the rights that they are entitled to.

21. The Applicants submit, that as repeatedly explained in the publications produced by MOTA, the schedule tribes live in contiguous areas unlike other communities. In order to protect the interest of schedule tribes article 244 of the Constitution has made provision for 'Administration of schedule areas and tribal areas'. Within the scope of the Indian constitution, according to the provisions enshrining in the Vth (Fifth) schedule and the VIth (sixth) schedule, on the issue of land and other social issues. The Vth schedule and the article 244 (1) of the Constitution defines "Schedule Areas" as those areas as the President may by order declare to be Schedule areas. These areas can be altered by the President of India, after consultation with the Governor of that state under article 244 (2).

22. The Applicants would like to elaborate on how complex and arduous this process has been, given the objectives of the law which is and were to shift the balance of power away from vested interest towards India's traditional forest dwelling communities. To simply lay out, in the initial years after the enactment of FRA 2006, the Standing Committee on Social Justice and Empowerment of the fifteenth Lok Sabha (2010-2011 report) made a scathing indictment of the Ministry of Tribal Affairs for not implementing the law with rigour. This report criticised the Ministry for failing to provide a leadership role in the

implementation of laws and schemes for Schedule Tribes in Schedule Areas. In this report, the Committee, especially observed and commented upon the slow implementation of the Forest rights Act 2006. However, five years after this first report (2010-2011), largely because of the widespread people's mobilisation and advocacy around FRA 2006, the implementation of the law has seen remarkable advances. The petitioners would like to submit that despite the fact that the implementation of FRA 2006, remains uneven across states, there have been remarkable success stories both in the area of community and community forest resource rights and individual forest rights.

23. That, it is inter-relationship between the Panchayats Extension to Scheduled Areas Act, 1996 and the Forest Rights Act has been elucidated by this Hon'ble Court in Orissa Mining Corporation vs. Ministry of Environment and Forests & Ors (2013) 6 SCC 476 (@ paras 57-59) re-affirming the importance of Gram Sabhas in examining the claims of individuals and communities. The relevant portion of the judgment is reproduced hereunder:

"59. Under Section 6 of the Act, the Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both and that may be given to the forest dwelling STs and other TFDs within the local limits of the jurisdiction. For the said purpose it receives claims, and after consolidating and verifying them it has to prepare a plan delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights. The Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee. Any aggrieved person may move a petition before the Sub-Divisional Level Committee against the resolution of the Gram Sabha. Sub-section (4) of Section 6 confers a right on the aggrieved person to prefer a petition to the District-Level Committee against the decision of the Sub-Divisional Level Committee. Sub-section (7) of Section 6 enables the State Government to constitute a State-Level Monitoring Committee to monitor

the process of recognition and vesting of forest rights and to submit to the nodal agency. Such returns and reports shall be called for by that agency."

24. That, even before this verdict of this Hon'ble Court, in another landmark judgment, *Samatha vs. State of Andhra Pradesh & Ors.* [(1997) 8 SCC 191] this Hon'ble Court has noted that agriculture is the only source of livelihood for the Scheduled Tribes apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the Adivasis and Traditional Forest Dwellers derive their sustenance, social status, economic and social equality, permanent place of abode, work and living. Consequently, Scheduled Tribes have great emotional attachments to their lands. It is a recognition of this reality that the FRA 2006 was enacted into a law.

25. That, to the knowledge of the applicants, across the country, various claims have been filed under the Act. However, these claims get unilaterally rejected with no hearing. Corrective action in this regard was initiated at the ministry level with instructions given to all the State regularly. The applicants are aware of regular instructions given in this regard since 2010.

26. That in June 2018, vide letter no. 23011/3/2016-FRA dated 27.06.2018, the Ministry of Tribal Affairs (FRA Division) wrote to the Chief Secretaries of all concerned States with regard to resolving pendency and rejection under FRA 2006. The letter notes that in many cases either the claimants are not informed about the rejection of their claims or they are merely given a speaking order without reasons. Furthermore, the letter notes that such non-communication of rejection deprives the aggrieved persons from taking appropriate legal recourse. The letter also raises concerns about the manner in which tribals are evicted by forest officers once their claims are rejected. The relevant portions of the aforesaid letter are reproduced hereunder:

"Further, non-communication of rejection and when conveying rejection not assigning reasons for rejection at each level results in preventing the

claimants from exercising their right to appeal/review. In this regard, MoTA vide its letter No. 23011/24/2009-FRA dated 15.7.2010 has requested the States to provide the reasons for rejection of claims to claimants and also directed States to cite the same in Quarterly Progress Report sent by the State Governments to MOTA. Hence, while rejecting the claims, reasons must be cited by concerned authorities and communicated to the claimants as a speaking order."

"Such an action while depriving aggrieved persons the opportunity to prefer appeal before SDLC or DLC, as the case may be, violates the spirit of FRA 2006 besides creating grounds for unrest and agitation and also fuels extremism. In such cases, aggrieved person must be given due opportunity and time to file appeal before authority. Moreover, as discussed during Review cum Consultation meeting, States are to undertake suo motto review of rejected claims. Hence, it may be ensured that no eviction of FRA claimants takes place during pendency of review or appeal/review."

"It has recently come to notice of MOTA that state forest authorities move immediately to evict people whose claims under FRA are rejected without waiting for decision on review or appeal or allowing time for filing appeal/review ostensibly under the garb of the Order of March 2018 from Hon'ble Apex Court in CWP No. 50/2008 with other bunched CWPS."

A true and correct copy of the letter no. 23011/3/2016-FRA dated 27.06.2018 (29.06.2018) sent by the Ministry of Tribal Affairs (FRA Division) to the Chief Secretaries of all concerned States with regard to resolving pendency and rejection under FRA 2006 is marked and annexed herewith as **ANNEXURE** .

27. That, even before this communication, in 2014, vide letter no. 23011/14-2008-FRA (Vol. II) dated 12.09.2014, the Ministry of Tribal Affairs (FRA Division) previously wrote to the Chief Secretaries of all concerned States with regard to resolving the problematic methodology being employed by the bureaucracy in various states regarding claims, their pendency and so called rejections under

FRA 2006. This letter of 2014 (23011/14-2008-FRA (Vol. II) dated 12.09.2014) also raises concerns about the manner in which the claims filed by Adivasis and Other Traditional Forest Dwellers (OTFDs) are handled.

28. That, both these communications clearly show how, even after 13 years of the existence of this law, FRA 2006, its fair implementation remains obstructed by an ill-trained bureaucracy and state machinery. That, in this overall context that a fictitious set of arguments claiming "degradation caused by encroachers" and "depletion of natural resources" that have been advanced by the Petitioners herein periodically and with vehemence need to be assessed, and in the applicants view, discarded, by this Hon'ble Court.

29. That the Applicants have been working at the grass roots level to ensure that the Act is implemented. To this end they have been peacefully and democratically organising the Adivasis and Other Traditional Forest Dwelling Communities (OTFDs) to legitimately make claims over their community lands. It is submitted that while they were trying to get the provisions of the act implemented and the rights enshrined therein realised, they have faced significant resistance from those with vested interests who intend to take over the forest land for commercial purposes.

30. For example, to give the most recent example, the first Applicant, Sokalo Gond, along with 15 other Gram Sabha members (as provided for under FRA 2006) filed community resource claims through Form "C" on March 23, 2018 at the district head quarters of Sonbhadra, Robertsganj. The significance of this action is far reaching as the first claimants of these vast resources are women and the second claimants are their husbands or the kin within the family. Through this process, they have claimed their rights as women and asserted that the forest belongs to women and that they have the first rights over the forest produce and forest land. Over 20 thousand hectares of land in the Sonbhadra Kaimur region alone has been thus re-claimed under the leadership of such dynamic women. Women today have collective ownership of the land and are undertaking

collective cultivation and preservation of the natural resources collectively, here. The second applicant, Nivada Rana has also participated in filing the community resource claim Form C along with 23 Gram Sabha in the area of the Dudhwa National Park on July 22, 2013. These claims have been submitted to the authorities, supported by substantive documentation on the grounds that women should be the first owners of the vast natural resources. But to date no community rights have yet been conferred to women in Dudhwa.

31. Last year, in June 2018, while in several parts of the Sonbhadra region, Adivasis and villagers, led by women like Sokalo Gond, were ensuring that legitimate claims under the FRA 2006 were filed, the state police decided to launch a vendetta campaign against strong leaders of the movement such as Sokalo. She, and another leader KismatiyaGond were illegally picked up by the police just after they were returning from a meeting with state Forest Minister Dara Singh Chouhan and the Forest Secretary in Lucknow. This prompted the organisations, AIUFWP and Citizens for Justice and Peace (CJP) to file a Habeas Corpus Petition in the Allahabad High Court. The court not only directed explanation from the authorities for the detention, but also ordered that the women be produced before it. The women were not produced and while the police claimed they released the women, they remained untraceable for a long while. Finally, after persistent efforts she was released from the Mirzapur Jail, in November 2018.

32. That the applicants state that the history of this litigation is curious. From the time it was filed, for eleven long years, the premise and scope was simply and only for testing the constitutional vires of the FRA 2006 as prayed for. The applicants would like to submit that by 2016 when this Hon'ble Court began final hearing the petitions and there was a burden on the original petitioners to prove the constitutional vires (validity) of the law (FRA 2006), the attempts to deflect attention from the original prayers began in right earnest, through applications made and arguments advanced. This was also pointed out before this Hon'ble Court at the relevant time and has been countered in detailed by counter affidavits of MoTA and the even the States.

33. That vide order dated 07.03.2018 passed by this Hon'ble Court in Writ Petition (Civil) No. 50 of 2008 (tagged with Writ Petition (Civil) No. 109 of 2008), all State Governments were directed to file tabular statements in the form of an affidavit indicating the following information as quoted from the aforesaid order:

“(i) The number of claims for the grant of land under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;

(ii) The claims should be divided into claims made by the Scheduled Tribes and separately by other traditional forest dwellers;

(iii) The number of claims rejected by the State Government in respect of each category;

(iv) The extent of land over which such claims were made and rejected in respect of each of the two categories;

(v) Action taken against those claimants whose claims have been rejected;

(vi) The status of eviction of those claimants whose claims have been rejected and the total extent of area from which they have been evicted;

(vii) The extent of the area in respect of which eviction has not yet taken place in respect of rejected claims.”

A true and correct copy of the order dated 07.03.2018 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 50 of 2008 is marked and annexed herewith as **ANNEXURE** .

34. That pursuant to order dated 07.03.2018 passed by this Hon'ble Court, affidavits in compliance were filed by the respective State Governments. Pursuant to order dated 13.02.2019, this Hon'ble Court was approached by the Centre to bring forth issues with the data placed by the respective State Governments of claims under the Act. Vide order dated 28.02.2019, this Hon'ble Court directed the State Governments to file detailed affidavits with regard to the details of the procedure followed for settlement of claims, the main grounds on which claims have been rejected, whether the Tribals were given opportunity to adduce evidence and to what extent and whether reasoned orders have been passed regarding rejection of the claims. Through order dated 28.02.2019, evictions pursuant to order dated 13.02.2019 were also stayed by this Hon'ble Court and the said stay is currently in operation. A true and correct copy of the order dated 28.02.2019 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 109 of 2008 is marked and annexed herewith as **ANNEXURE**

35. In the specific context of the arguments, in the view of the applicants fallacious regarding "evictions" and "false claims" advanced by the petitioners, the applicants would like, among other parts of the extensive pleadings in this litigation, point to the 175-page Affidavit with Annexures of the Ministry of Tribal Affairs (MOTA) filed dated July 9, 2014 which convincingly makes a case for the dismissal of these petitions, points to the motives of the petitioners who have in many ways digressed from the original prayers apart from deliberately and consciously concealing vast jurisprudence that has evolved on the subject matter of this litigation. The applicants crave leave to extensively rely on the submissions made in the affidavit of MoTA herein.

36. This counter affidavit of MOTA (July 9, 2014) contains invaluable details of the long history and rationale for getting the FRA 2006 enacted, the necessary shift in jurisprudence therein. Moreover it goes into the most vital details like explaining the democratic power vested in the Gram Sabha, the actual process of 'claims' and more especially the complete absence of coercive terms like

'evictions' etc. Most significantly, the affidavit gives extensive data of the *increase in forest cover after the enactment of the legislation from the Forest Report of 2013*(referred to in detail below). In fact this affidavit of MoTA dated July 9, 2014 elaborates how, the "rejection of claims' under this law, in no way means, either, that those living there are doing so "illegally", nor that communities living here are "encroachers." In fact, this verbiage is against the spirit of the legislation in question. For the first time, FRA 2006, recognised the individual and community rights of traditional, forest dwelling communities, Adivasis over land that they had protected and tilled for generations; vested power in the Gram Sabha to adjudicate on the claims; gave a special place to Women over production and ownership and provided for a meticulous appeal procedure.

37. That, the applicants would like to rely up the excerpts from the aforesaid affidavit dated July 9, 2014 that *refers to 'The Panchayats (Extension to Scheduled Areas Act), 1996* and moreover asserts the legality of Gram Sabha and the constitutional mandate on the same as follows:

"36. The Petitioner/ Applicant, in its eagerness to advert to half-truths and assumptions, conjectures and surmises, has completely failed to place before this Hon'ble Court the constitutional mandate relating to the tribal and forest dwelling communities in the country, by which the Answering Respondent in particular, and the Government of India in general, is bound.

37. Article 40 of the Constitution of India contemplates the village panchayats shall be organised as units of local self-governance, which principle is further effectuated through the village level Gram Sabhas and Panchayats under Part IX of the Constitution of India. These principles of decentralized governance find further strength in Article 243-G and Article 244. Scheduled Areas under Paragraph 6(2) of the Fifth Schedule of the Constitution of India have been declared by Presidential Orders dating back to 1950, in a total of 9

States in India, namely, Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Odisha, Rajasthan, Madhya Pradesh, Jharkhand and Chhattisgarh.

It is to be noted that with respect to Forest Cover, there is no data to show depletion of forest cover or degradation to the environment caused by the recognition of rights of traditional forest dwelling communities and Adivasis. To the contrary, the most recent "India's State of Forest Report 2013" reveals that in 189 tribal districts in the country, there has been a net increase in forest cover of 2,396 square kilometres during the relevant assessment period. A true and typed copy of the relevant extract from "India's State of Forest Report 2013" dated July 2014 is marked and annexed herewith as **ANNEXURE** . **It is submitted that the Petitioners have selectively relied upon portions of the report as refuted by the affidavit filed on behalf of the MoTA.**

38. That the Applicants submit that the the affidavit of the Ministry of Tribal Affairs (July 9, 2014) also strongly counters the petitioners claims about the damage forest dwelling communities allegedly do to forests. In this connection the MoTA affidavit states that:

"Para 50. In the aforesaid context, the basic premise of the Application under reply, namely, that forest dwelling communities are a threat to the conservation and preservation of wildlife, biodiversity, forests and forest resources, runs contrary to international best practice, constitutional mandate, as well as the statutory provisions. Indeed, the notion that tribal and forest dwelling communities are a threat to environmental conservation has been discarded as out-dated especially in the context of a culturally diverse and civilizationally evolved country such as India where the symbiotic relationship between tribals and forests goes back many centuries.

"Para 51. The importance of the symbiotic relationship between forests and forest dwelling communities finds recognition in the National Forest Policy, 1988, which states: "Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest

management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest." (@ para 4.6)

"Para 52. In this context it is also pertinent to note that the participation and active involvement of local forest dwelling and forest dependent communities in decision-making processes relating to development is in keeping with the current understanding of good environment and wildlife conservation practice at the international level as well. The close relationship between forest dwelling communities and the protection of the environment is recognised by a host of international conventions, including the Universal Declaration on Human Rights, the UN Declaration on Rights of Indigenous People (Article 26), the Convention on Biological Diversity (Article 8 (j)), the Rio Declaration on Environment and Development (Principle 22) and the Convention on Right to Development.

"Para 53. International conservation organisations in recent years have strongly advocated respect for the relationship between communities and forest conservation. For instance, in 1999 the IUCN World Conservation Union – the world's largest conservationist organisation – and the World Wide Fund for Nature issued a joint document titled "Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas" which under Principle 2 Guideline 2.2 states: "the following indigenous and other traditional communities' rights should be respected in relation to the lands, territories, waters, coastal seas and other resources which they traditionally own or otherwise occupy or use, and which fall within protected areas: a) rights with regard to sustainable, traditional use of their lands, territories, waters, coastal seas and other resources that fall within protected areas, xxx e) rights to use their own traditional institutions and authorities to co-manage their terrestrial, coastal/marine and freshwater areas, as well as to defend them from external threats, subject to agreements with the agencies in charge of national protected area systems, f) rights to require that States obtain the free and informed consent of the respective communities, prior

to the approval of any project affecting their lands, territories, waters, coastal seas or other resources, xxx i) rights not to be removed from the zones they have traditionally occupied within protected areas. Where their relocation is considered as an exceptional measure, it should take place only with the free and prior, informed consent of the indigenous and other traditional peoples affected, and with appropriate compensation.”

39. That the Applicants submit that the affidavit of the Ministry of Tribal Affairs (July 9, 2014) also strongly counters the petitioners claims that FRA 2006 doesnot contain enough safe guards for protection of environment. The Forest Rights Act attempts to undo a historical wrong which persisted for more than 150 years. The State governments and implementing authorities have required and continue to require considerable hand-holding, monitoring, and course correction, which the answering respondent Ministry has made efforts to provide.

40. The interveners/applicants would like to adopt these contentions of the Ministry of Tribal Affairs (MOTA) affidavit dated July 9, 2014 more particularly to refute allegations to the effect that the act is bestowing unentitled rights to people. The relevant part is extracted as under:

“The contents of para 1 of the Application under reply, insofar as they are not a matter of record, are denied as wrong, baseless and designed to prejudice the mind of this Hon’ble Court. It is denied that the implementation of the Forest Rights Act has resulted in any threat to the forest and wildlife conservation in this country. It is further denied that the Forest Rights Act has resulted in indiscriminate, or any, distribution of forest lands or created commercial rights thereunder. It is denied that there is any “scientifically accepted” proposition that forest dwelling communities are a threat to the nation’s invaluable biodiversity. The Answering Respondent takes strong objection to the averment of the Petitioner/ Applicant that the Forest Rights Act is giving “freebies” to ineligible and bogus claimants or is driven by “political expediency” of any kind as alleged or at all. The use of such terminology to describe the rights of a vast section of

marginalized citizens of this country demonstrates the negative prejudice of the Petitioner/ Applicant to the poor and marginalized tribal peoples this country of.”

41. The Applicants state at the outset that they are intervening with the sole purpose of arguing for the peremptory dismissal of the petition and moreover seek legal and jurisprudential understanding of this Hon'ble Court over the questions that this litigation raises and calls into question. The Applicants would like to state and argue that it is the Applicants, as Adivasis, indigenous populations and other traditional forest dwellers who have the greatest rights and responsibilities over the land, forests and resources and it is the constitutional duty of this Hon'ble Court to give first priority to these voices to be heard.
42. The Applicants would like to point to the consistent and persistent repression and violence that Adivasis and Other Traditional Forest Dwelling Communities are facing over ensuring their rights are realised under FRA 2006. For example, even in the area where Applicant No 1 Sokalo Gond lives, after her release from unfair incarceration last year in November 2018, repression against the forest dwelling communities continued. False cases have been filed against hundreds of forest dwellers in a bid to prevent them from filing claims under the FRA 2006.
43. The Applicants would like to point to the consistent and persistent repression and violence that Adivasis and Other Traditional Forest Dwelling Communities are facing over ensuring their rights are realised under FRA 2006. Recent violent incidents across many states including Telangana, Madhya Pradesh and Uttar Pradesh, following the passage of the Order of 13.2.2019 and despite the subsequent direction to withhold implementation are examples that bear this out.
44. That this Hon'ble Court may allow the Applicants herein to make submissions for proper adjudication of the above mentioned Writ Petition (Civil) No. 109 of 2008 since their livelihood and other rights are likely to be gravely affected.
45. That the present application for intervention is bona fide and made in the interests of justice.

PRAYER

In the facts and circumstances stated hereinabove, it is Most Respectfully submitted that this Hon'ble Court may be pleased to:

- a. Allow the present application and permit the Applicants herein to intervene in the aforesaid Writ Petition (Civil) No. 109 of 2008; and
- b. Pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.

Dated: 22/07/2019

MS APARNA BHAT

ADVOCATE FOR THE APPLICANT