

Circular No. 13-1/90-FP of Government of India, Ministry of Environment & Forests, Department of Environment, Forests & Wildlife dated 18.9.90 addressed to the Secretaries of Forest Departments of all States/UTs.

II.1

FP (2) Review of disputed claims over forest land, arising out of forest settlement

It has been brought to the notice of this Ministry that local inhabitants, living in and around forest areas, have preferred claims on certain notified forest lands contending that they were in occupation of such areas prior to the initiation of forest settlements and/ or their rights were not enquired and/ or commuted before notifying these lands as forests under respective laws. The claimants are requesting that title of such lands should be conferred on them. It is being felt that even bonafide claims are persistently overlooked causing widespread discontentment among the aggrieved persons. Such instances ultimately erode the credibility of the Forest Administration and sanctity of the forest laws, especially in the tracts inhabited by tribals.

2. Seized of its complexities, the issue regarding disputed claims over forest land was got critically examined by this Ministry through an inter-Ministerial Committee. The Committee, after prolonged deliberations and due consultations with representatives of some of the states, stressed the need to resolve such disputes with utmost urgency and suggested the feasible course of action to redress genuine grievances without jeopardising protection of forests and forest land. Keeping in view the recommendations of the said committee and with due approval of the competent authority, the following course of action is suggested for amicably resolving disputed claims on forest land:

2.1 The States/ UTs Administration should review the cases of disputed claims over forest land and identify the following three- categories of claims;

(a)

Claims in respect of forest areas notified as 'deemed Reserved Forest' without observing the due process of settlement as provided in Forests Acts provided that these pertain to

(i)

tribal areas or affect a whole cross section of rural poor in non-tribal areas;

and

(ii)

the claimants are in possession of the "disputed land".

(b)

Claims in tribal areas wherever there is *prima facie* evidence that the process of forest settlement has been vitiated by incomplete or incorrect records/maps or lack of information to the affected persons, as prescribed by law, provided that:

(i)

Such forest settlement pertains to a period after 1947; and (ii) the claimants are in possession of the "disputed land".

(ii)

Claims in tribal areas wherever the process of settlement is over but notification under Section 20 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) is yet to be issued, particularly where considerable delay has occurred in the issue of final notification under Section 20, provided that the claimants are still in possession of 'disputed land'.

2.2

After identifying the above three categories of the claims, the State Government/UT Administration should get these enquired through a Committee which

should consist of at least the concerned Divisional Forest Officer, Sub-divisional Officer (Revenue Department) and a representative of the Tribal Welfare Department. The Committee should determine genuineness of the claims after examining all available evidence to establish that:

(i)

in case of category 2.1 (a) the claimant was in possession of the disputed land when the notification declaring 'deemed reserved forests' was issued; and

(ii) in case of categories 2.1(b) and 2.1(c) the claimant was in possession of the disputed land when the notification showing Government intention to declare reserved forest was issued under Section 4 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) and his rights were not commuted or extinguished in accordance with due process of law.

2.3

In no case either the Government or the above Committee shall entertain any claim in which the claimant has not been in possession of the disputed land throughout.

2.4

Once the bonafides of the claims are established through proper enquiry, the State/UT Government may consider restoration of titles to the claimants. While deciding to restore titles to the claimants the following aspects should be duly considered:

(i)

As far as possible, restoration of claims should not result in honey-combing of forest land. In such cases possibility of exchange of land near periphery or else where (e.g. non-forest Government land) should be exhausted.

(ii)

The land to be restored to the claimants should be properly demarcated on the ground with permanent boundary marks.

2.5

After the State Government/ UT Administration has decided in principle to restore titles to the claimants proposals may be formulated suitably and submitted for seeking prior approval of this Ministry under the provision of the Forest (Conservation) Act, 1980, alongwith proposals for compensatory afforestation

3. Progress of the action taken/proposed to be taken under the above guidelines may kindly be conveyed to the Ministry.

II. 2. FF(3) Disputes regarding pattas/ leases/ grants involving forest land.

An inter-Ministerial Committee, which was set up by this Ministry to look into various aspects of *tribal* -forest-interface has pointed out that a number of cases of pattas/ leases/ grants involving forest land in one way or the other, have become *contentious* issues between different departments of the State/UT Govts. Such pattas/leases/grants are said to have been issued under the proper authority and orders of the respective State/UT Govts. and the land in question continues in the possession of the allottees or under their authorised use but its status under dispute between different departments. Some of such cases are listed below for illustration:

1.1

Protected forests in Madhya Pradesh, termed as "Orange Areas" which according to the State Government's decision were to be transferred to Revenue Department after demarcation for issuing pattas to the beneficiaries. It is observed that pattas were issued to the individuals but transfer of the land from Forest to Revenue Deptt, which should have preceded allotment of pattas, was not effected.

1.2 'Dali' lands in Maharashtra which are said to have been leased to the entire village community in the past by the State Government. The assignees continue to make use of

these lands for various purposes as per original terms and conditions and, sometimes, in accordance with the decision of the village community wherever such leases are for collective use of the community as a whole. But the formal status of these 'Dali' lands is not clear.

1.3

Cases in which land was assigned by the Revenue Department supposedly from revenue lands. But eventually these were found to be notified forest land even though the assignees were not dispossessed of their holdings.

1.4 Leases granted by the State Govts. for cultivation, agro-forestry or tree plantation; the lessees continue to possess the land though these have not been renewed since enactment of the Forest (Conservation) Act, 1980.

2. An ambiguity about the status of the land involved in the type of cases cited above, particularly when the forest land continues under the possession of the assignees, is likely to adversely affect forest protection in these and the neighbouring areas, apart from forcing the lawful assignees to live a state of uncertainty. Keeping these and similar other aspects in view and after careful consideration of the recommendations of the inter Ministerial Committee, it has been decided that inter departmental issues related to pattas/ leases/ grants involving forest land should be settled at the earliest. The following steps are suggested in this regard:-

2.1

All the cases of pattas, leases, grants involving forest land whether by intent, omission, oversight or accident, should be reviewed by the State/ UT Govt. Such review should enable the State/ UT Govt. to identify those cases in which the pattas/ leases/ grants were awarded under proper authority. The assignees continue to be in possession of the land and the term of the pattas/ leases/grant is yet to expire-

2.2

In all those cases, where pattas/ leases/ grants were given by the State Government Departments to Scheduled Tribes or rural poor either individually or collectively, such pattas/ leases/ grants should be honoured and inter-departmental disputes should not affect the rights of the lessees provided they are in physical possession of the land, and term of the patta/ lease/ grant has not yet expired. These cases should be examined by district level committees consisting of D.F.O, S.D.O., Revenue Department, a representative of Tribal Welfare Department. The disputes should be resolved at the district level wherever it is possible, or after obtaining suitable orders of the States/UT Govt. or the Government of India (if the provisions of the Forest (Conservation) Act, 1980 are attracted), as the case maybe.

2.3

Leases of a period prior to 25.10.1980 which were granted to the Scheduled Tribes or to other rural poor for agro-forestry, tree plantation or alike but could not be renewed, despite the State/ UT government's intention to do so, on account of enactment of the Forest (Conservation) Act, 1980 should be examined expeditiously. Wherever the State/UT Government's desire to continue the leases proposals should be submitted to this Ministry, in the prescribed manner, for seeking prior approval under the Forest (Conservation) Act, 1980. Pending final decision, that lessees should not be dispossessed of the land.

2a. In cases where Forest (Conservation) Act is attracted proposals for denotification of forest land should be accompanied by proposals for compensatory afforestation. This Ministry may be kept informed of the action taken/ proposed to be taken in this connection.

IL3. FP (1) Review encroachments on forest lands.

Encroachment of forest land for cultivation and other purposes continues to be most pernicious practice endangering forest resources throughout the country. Statistical information compiled by the then Ministry of Agriculture during early 1980s revealed that nearly 7 lakh hectares of forest land was under encroachment in the country about a decade back. This is despite the fact that prior to 1980, a number of States had regularised such encroachments periodically and approximately 43 lakh hectares of forest land was diverted for various purposes between 1951 and 1980, more than half of it for agriculture. The decisions of the State Govts. to regularise encroachments from time to time seem to have acted as strong inducement for further encroachments in forest areas and the problem remained as elusive as ever for want of effective and concerted drive against this evil practice.

The National Forest Policy 1988 has also observed the increasing trend in encroachments on forest land and stated that these should not be regularised. Implementation of this pronouncement has been examined by this Ministry keeping in view the constraints of various State Governments, some of whom have expressed that they stand committed to regularise encroachments of a period prior to 1980. The issue figured prominently in the Conference of the Forest Ministers held in May, 1989 and was later examined by an inter-Ministerial Committee, set up by this Ministry in consultation with the representatives of some of the States. Keeping in view the recommendations of the Forest Ministers' Conference and the Committee referred to above, and with due approval of the competent authority, the following measures are suggested for review of the old encroachments and effective implementation of the pronouncement made in this regard in the National Forest Policy, 1988.

2.1

All the cases of subsisting encroachments where the State Governments stand committed to regularise on account of past commitments may be submitted to this Ministry for seeking prior approval under the Forest (Conservation) Act, 1980. Such proposals should invariably conform to the criteria given below:-

I.

Pre-1980 ENCROACHMENTS WHERE THE STATE GOVERNMENT HAD TAKEN A DECISION BEFORE ENACTMENT OF THE FOREST (CONSERVATION) ACT, 1980, TO REGULATE 'ELIGIBLE' CATEGORY OF ENCROACHMENTS.

1.1

Such cases are those where the State Governments had evolved certain eligibility criteria in accordance with local needs and conditions and had taken a decision to regularise such encroachments but could not implement their decision either wholly or partially before the enactment of the Forest (Conservation) Act on 25.10.80.

1.2

All such cases should be individually reviewed. For this purpose the State Govt. may appoint a joint team of the Revenue, Forest and Tribal Welfare Departments for this work and complete it as a time bound programme.

1.3

In cases where proposals are yet to be formulated, the final picture after taking into considerations all the stipulations specified here may be placed before the concerned Gaon Sabha with a view to avoid disputes in future.

1.4

All encroached lands proposed for regularisation should be properly surveyed.

1.5

Encroachments proposed to be regularised must have taken place before 25.10.80. This must be ascertained from the First Offence Report issued under the relevant Forest Act at that point of time.

1.6

Encroachments must subsist on the field and the encroached land must be under continuous possession of the encroachers.

1.7

The encroacher must be eligible to avail the benefits of regularisation as per the eligibility criteria already fixed by the State.

1.8

As far as possible scattered encroachments proposed to be regularised should be consolidated/ relocated near the outer boundaries of the forests.

1.9

The outer boundaries of the areas to be denotified for regularisation of encroachments should be demarcated on the ground with permanent boundary marks.

1.10 All the cases proposed to be regularised under this category should be covered in one proposal and it should give districtwise details.

1.11 All cases of proposed regularisation of encroachment should be accompanied by a proposal for compensatory afforestation as per existing guidelines.

1.12 No agricultural practices should be allowed on certain specified slopes.

2.

INELIGIBLE CATEGORY OF PRE-1980 ENCROACHMENTS WHERE THE STATE GOVERNMENTS HAD TAKEN A DECISION PRIOR TO THE ENACTMENT OF THE FOREST (CONSERVATION) ACT, 1980.

2.1

Such cases should be treated at par with post 1980 encroachments and should not be regularised.

3.

ENCROACHMENTS THAT TOOK PLACE AFTER 24.10.80.

3.1

In no case encroachments which have taken place after 24.10.1980 should be regularised. Immediate action should be taken to evict the encroachers. The State/UTs Government may, however, provide alternate economic base to such persons by associating them collectively in afforestation activities in the manner suggested in this Ministry's letter No. 6-21/69-FI' dated 1.6.90, but such benefits should not extend to fresh encroachers.

This Ministry may kindly be apprised of the action taken/ proposed to be taken in this regard.

11.4.

FP (4) Elimination of intermediaries and payment of fair wages to the labourers on forestry works

Forestry works are one of the important sources of livelihood to the tribals and other rural poor living in and around forests. On a number of occasions in the past, especially in the deliberations of the Central Board of Forestry, the need to eliminate contractors and other intermediaries in forestry operations has been emphasised with a view to ensure fair wages to the labourers. The National Forest Policy, 1988 has again reiterated that contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives Government cooperatives etc as early as possible. A number of States/UTs have taken steps to excite these works through Government agencies viz.. State Forest Departments, Forest Corporations. Nevertheless, at operational level certain aberrations

still persist resulting in under payment of wages to the labourers. In order to protect tribals and other rural poor from and fair wages to them, the following guidelines may kindly be complied with

- a. no outside labour should be engaged in forestry operations where local tribal labour is adequately available;
- b. no contract should be entered into for imported labour;
- c. tribal cooperatives should be involved wherever labour is in short supply,
- d. representatives of Tribal Welfare Departments should sit in the Wage Board appointed by Forest Department for fixation of daily wages rates;
- e. norms for payment of wages for piece works should be worked out by carrying out detailed work studies; and
- f. uniform wage rates should be prescribed for similar piece of works throughout the area by the State Government for all agencies; and
- g. for payment of wages for forestry operations the State Forest Department and Forest Corporations should comply with the provisions of the Minimum Wages Act

Action taken/ proposed to be taken in this respect may kindly be intimated to this Ministry.

Joint Secretary,

Government of India

II.4. FP (5) Conversion of forest villages into revenue villages and Settlement of other old habitations

Forest villages were set up in remote and inaccessible forest areas with a view to provide uninterrupted man-power for forestry operations. Of late, they have lost much of their significance owing to improved accessibility of such areas, expansion of human habitations and similar other reasons. Accordingly, some of the States converted forest villages into revenue villages well before 1980. Nevertheless, there still exist between 2500 to 3000 forest villages in the country. Besides, some cases of other types of habitations e.g. unauthorised houses/ homesteads, dwellings of tribals who have been living in them in virtually pre-agrarian life styles, are suspected to exist in forest lands even though these may not have been recognised either as revenue villages or forest villages.

2.

In March, 1984, the then Ministry of Agriculture suggested to the state/UT Govts that they may confer heritable and inalienable rights on forest villagers if they were in occupation of land for more than 20 years. But this suggestion does not seem to have been fully implemented. Development of forest villages has also been endorsed in the National Forest Policy, 1986 which states that these should be developed on par with revenue villages. This issue was again examined by an inter - Ministerial Committee, set up by this Ministry to look into various aspects of tribal-forest-interface, in consultation with representatives of some of the States.

3.

Although the forest villages have lived in harmony with their surrounding forests and the concept of forest villages proved an effective arrangement for sustained supply of manpower, yet it would not be appropriate to deny them legitimate rights over such land which were allotted to them decades ago for settlement and have been continuously under their occupation since then. Keeping this aspect and the recommendations of the inter - Ministerial Committee the following measures are suggested to resolve the outstanding issues of forest villages and other types of habitations existing in forest lands.

3.1 *Forest villages*

Forest villages may be converted into revenue villages after denotifying requisite land as forest. Proposals seeking prior approval of Government of India for this purpose under the Forest (Conservation) Act, 1980 may be submitted "expeditiously". While converting these villages into Revenue Villages, the following principles may be adhered to:

- (i) the villages are conferred heritable but inalienable rights;
- (ii) administration of these and other Revenue Villages enclaved in forest areas should preferably be entrusted to the State Forest Departments.

3.2

Other Habitations

(a)

Habitations other than Forest Villages may be grouped into the following categories:

- (i) Cases where dwellings belong to persons who have encroached on forest land for cultivation.
- (ii) dwelling of other persons who have been living therein since past without encroaching on forest land for cultivation but their habitations are neither recognised as Revenue Villages nor Forest Villages.
- (b) Each case may be examined on its merits. Suggestions for resolving the cases are given below:

(i) In case of category (a) (i) above, wherever encroachments for agricultural cultivation are regularised, the house sites and homesteads, too, maybe regularised either in situ or as near to agricultural field as possible subject to certain safeguards in the interest of forest protection and "eligibility" criteria as may be evolved by the State Government.

(ii) In case of category (a)(ii) above, certain specific habitations, more than 25 years old, involving sizeable group of families, may be examined, case by case, on merits for their amicable settlement.

(iii) Scheduled Tribes and rural poor not covered under (i) and (ii) above should be resettled in non-forest Government land.

(iv) All other unauthorised habitations must be evicted.

(v) Wherever provisions of the Forest (Conservation) Act, 1980 are attracted, comprehensive proposals may please be submitted for seeking prior approval of this Ministry. It may kindly be noted that such proposals will be considered only when the State/ UT Govt ensure that all the measures are taken simultaneously and effectively and are accompanied with proposals for compensatory afforestation.

4. This Ministry may kindly be kept informed of the action taken/proposed to be taken in this regard.

II.5. FP (6) Payment of compensation for loss of life and property due to predation/depredation by wild animals.

It has been observed that loss of life and property by wild animals is not compensated adequately by the State Governments. Different States have different norms for compensating such losses. The maximum compensation for loss of human life varies from Rs. 2000 (Orissa) to Rs. 20,000 (Bihar). In the interest of inhabitants in and around forests as well as wild fauna it is essential that loss of human life is compensated in such a way that it is fully commensurate with the amount required to settle the dependents of a deceased earning member of the family. The loss of property including livestock also needs to be compensated fully.

2.

This issue was discussed in detail by an inter-ministerial committee set up by this Ministry for this purpose. The recommendations of the Committee were considered and after obtaining approval of the competent authority it is suggested that the following norms may be accepted for the same being. ,

(a) Death or permanent incapacitation - Minimum of Rs 20,000/- Part amount of the compensation should be paid through long term deposit;).

(b) Grievous injury - one third of (a).

(c) Minor injury - cost of treatment.

(d) Loss of cattle - Market value (category-wise).

(e) Damage to house or crop or any other property - As per assessment of damage. Compensation should be revised subsequently to bring it on par with the amount admissible to riot victims. The quantum of compensation may be reviewed periodically with a view to bring it on par with any better norm.

2.1

The compensation shall be governed under the regulations made under Wildlife (Protection) Act.

This Ministry may kindly be apprised of the action taken/proposed to be taken in this regard.