

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERNZONAL BENCH AT CHENNAI
ORIGINAL APPLICATION NO. 155 OF 2021 (WZ)**

IN THE MATTER OF:

KONDRU MARIDIYYA

...APPLICANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

INDEX

S.NO	PARITCULARS	PAGE NO.
1	Response to Report by PCCF dated 17.12.2021	1-9
2	<u>ANNEXURE A-1</u> Record of discussions of meeting of Principal Chief Conservator of Forests held under the Chairmanship of the Director General of Forests and Special Secretary on 25.08.2014 to formulate parameters for classification of an area as 'Forest'.	10-24

FILED BY

RITWICK DUTTA

RAHUL CHOUDHARY

ADVOCATES FOR THE APPLICANT

N-71, Lower Ground Floor, Greater Kailash-I,

New Delhi – 110048

Mobile No. 9312407881

Email:- Litigation.life@gmail.com

Place:- New Delhi/ Chennai

Date: 26.05.2022

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI
ORIGINAL APPLICATION NO. 155 OF 2021 (WZ)**

IN THE MATTER OF:

KONDRU MARIDIYYA

...APPLICANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

RESPONSE TO REPORT BY PCCF DATED 17.12.2021

MOST RESPECTFULLY SHOWETH:-

1. That the abovementioned Application has been filed highlighting the non-forest use of forest land without obtaining Forest Clearance by Respondent No. 5, Mr. J. Lakshmana Rao, for mining of laterite mineral over an extent of 121 hectares in forest lands situated in Un-Surveyed Hill Poramboke ('USHP') in Vishakapatnam District, Andhra Pradesh. The Applicant raised the issue of non-compliance with Forest (Conservation) Rules, 2003 which requires completion of settlement of rights in accordance with the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
2. That the Hon'ble Tribunal vide its Order dated 26.07.2021 had directed the following:-

"10. In the mean time the Principal Conservator of Forests (PCCF) & Head of the Forest Force (HoFF) State of Andhra Pradesh is also directed to file an independent report regarding the nature of land and also whether any permission under the Forest (Conservation) Act, 1980 is required for carrying out such activity and whether any violation has been committed in respect of the Forest Laws

as well as the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act, 2006 and if so, what is the nature of action taken from the side of the Forest Department in this regard."

(Emphasis supplied)

3. That thereafter, Principal Chief Conservator of Forest (hereinafter referred to as '**PCCF**') filed a report on 07.11.2021. This Hon'ble Tribunal passed an Order dated 30.11.2021 and directed that the PCCF files a further report clarifying whether the land in question falls under the definition of "*deemed forest*" or not. It directed:

"9. The Principal Chief Conservator of Forests & Head of Forest Force has filed their statement wherein, they have stated that this is revenue land under the control of Revenue Department and it is neither a "Reserve Forest" nor a "Declared Forest". They have not mentioned as to whether this will come under the definition of "Deemed Forest", as has been observed by the Hon'ble Apex Court in T.N. Godhavarman Thirumalpad case. They are directed to clarify this aspect and file a further report in this regard. If there is any possibility of conflict between the State SN TRIBUS Government and Forest Department in this regard, then the State Government is directed to make arrangements to appoint separate counsel to represent the Forest Department in its propriety to avoid conflict between two independent departments and also to express their independent view regarding the issue in this matter, applying the principles laid down in T.N. Godhavarman Thirumalpad case."

4. That in compliance with the Order dated 30.11.2021, the PCCF filed a further report on 17.12.2021. The PPCF puts across the following points in its two reports dated 07.11.2021 and 17.12.2021:

- (i) The land is not notified as "deemed forest" by Government of Andhra Pradesh;
 - (ii) Parameters to identify "forests" by dictionary meaning have not been finalized by the State of Andhra Pradesh;
 - (iii) The vegetation in the mining area varies from bushy growth with scattered trees and rocky outcrops to more trees in the lower reaches of hill;
 - (iv) The legal status of the mining area is Un-Surveyed Hill Portion and not notified as forest. The area is under the administrative control of Revenue Department and as per G.O. Ms. No. 532, F&RD (For III) dated 21.07.1975 all Revenue Divisional Officers, Tehsildar and Deputy Tehsildars were appointed to perform the functions of Forest Officers, in connection with un-reserved lands, waste and poramboke lands at the disposal of Revenue Department;
 - (v) Since the mining area is neither located in notified Forest Block nor recorded as "forest" in Government Records, the approval under Forest (Conservation) Act, 1980 is not required.
5. That the Applicant is raising the following objections to the findings of the PCCF noted in the reports dated 07.11.2021 and 17.12.2021:

A. The land area is a not notified as "deemed forest" is misleading statement:

The finding in Para 4 of the report dated 17.12.2021 that the area "*is not notified as 'deemed forest' by Government of Andhra Pradesh*" and therefore cannot be classified as a 'forest' is incorrect. It is submitted that no notifications are issued for any area to be recognised as "deemed forest". Any piece of land which fulfils the requirements of the dictionary meaning of 'forest' is considered as a "deemed forest" by virtue of the observation made by the Hon'ble Supreme Court in ***T. N. Godavarman***

Thirumulkpad v. Union of India & Ors. reported in **(1997) 2 SCC**

267 which held that:

*"The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and fore matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. **The word "forest: must be understood according to its dictionary meaning. This description cover all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act.** The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof."*

(Emphasis supplied)

Therefore, any area that is a forest as per the dictionary meaning is considered as "deemed forest" and all provision of Forest (Conservation) Act, 1980 is applicable. The land area, in the present matter fulfills the requirements of dictionary meaning of 'forest' since it is a forest spread over an area of 121 hectares and has a crown density of 0.7.

B. Statement that parameters to identify “forest” have not been finalized by the State of Andhra Pradesh is incorrect:

The finding in Para 7 of the report dated 17.12.2021 that parameters to identify forests by dictionary meaning have not yet been finalised is incorrect and misleading. It is submitted that, as per the information available with the Appellant the State of Andhra Pradesh has submitted its classification of forests on the basis of dictionary meaning. This classification was recorded in the meeting of Principal Chief Conservator of Forests held under the Chairmanship of the Director General of Forests and Special Secretary on 25.08.2014.

Copy of the record of discussions of meeting of Principal Chief Conservator of Forests held under the Chairmanship of the Director General of Forests and Special Secretary on 25.08.2014 to formulate parameters for classification of an area as ‘Forest’ is annexed herewith as

ANNEXURE A-1.

In pursuance of the directions given by the Hon’ble Supreme Court, an Expert Committee was constituted for the State of Andhra Pradesh and Telangana to classify land areas as ‘forest’. The Expert Committee for Andhra Pradesh decided to classify the following land as ‘forest’:

“All private lands bearing natural tree growth of more than 0.40 density and having an extent of 10 hectares, shall be treated as ‘forest’ subject to a conditions that it should not adversely affect customary rights of Tribal Land owners”.

This definition includes any private land with a density of more than 0.40 and having an extent of 10 hectares to be declared as ‘forest’. It is submitted that the land in the present case has a density of more than 0.4 i.e. 0.7 (70% crown density) and extends over 121 hectares of land.

The definition as given by the Expert Committee for a land to be declared as 'forest' includes only private land. It is submitted that if private land with a density of over 0.4 and area of more than 20 hectares is included in the definition of 'forest', government land with a density of 0.7 and area of more than 20 hectares ought to be declared as 'forest land' for the purposes of applicability of the Forest (Conservation) Act, 1980.

It is pertinent to mention that the Hon'ble Supreme Court in **T. N. Godavarman (supra)** in its Order dated 12.12.1996 directed the State Governments to constitute a Committee to identify areas that may be classified as 'forest'. It stated:

"Each State Government should constitute within one month an expert committee to (i) identify areas which are "forests" irrespective of whether they are notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest, (ii) identify area which were earlier forests but stand degraded, denuded and cleared; and (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons".

The State of Andhra Pradesh has submitted the status in compliance of Hon'ble Supreme Court's direction.

C. The statement that the vegetation in the mining area varies from bushy growth with scattered trees and rocky outcrops to more trees in the lower reaches of hill is incorrect

The finding in Para 1 of the report dated 07.11.2021 that the land area in question has vegetation that varies from bushy growth with scattered trees and rocky outcrops to more trees in the lower reaches of hill is incorrect. It is submitted that the entire mining area has similar natural

tree growth of forestry tree species along with herbs, shrubs and climbers. There has also been local sightings of wild animals like sloth bear, bison and sambhar etc. in the mining area. The finding of the PCCF is also incorrect in view of **ANNEXURE A-1** (Page No. 41 of the OA) annexed with the Original Application that shows photographs showing presence of rich flora.

D. The statement that legal status of the mining area is Un-Surveyed Hill Portion and is under the administrative control of Revenue Department and all Revenue Divisional Officers, Tehsildar and Deputy Tehsildars were appointed to perform the functions of Forest Officers, in connection with un-reserved lands, waste and poramboke lands at the disposal of Revenue Department itself prove that area is considered as forest

In Para 8 of the Report dated 17.12.2021 it is stated that the area is un-surveyed forest land and not notified as forest. It is further mentioned that the mining area is under the administrative control of Revenue Department. In the same paragraph, reference is made to a G.O. Ms. No. 532, F&RD (For III) dated 21.07.1975 by which all Revenue Divisional Officers, Tehsildar and Deputy Tehsildars were appointed to perform the functions of Forest Officers, in connection with un-reserved lands, waste and poramboke lands at the disposal of Revenue Department. The G.O. reads as follows:

*“In exercise of powers conferred by sub-clause (ii) of Clause (f) of Section 2 of the Andhra Pradesh Forest Act, 1967 (Act 1 of 1967) the Governor of Andhra Pradesh **hereby appoints all Revenue Divisional Officers within their respective jurisdictions to perform the functions of forest officers and invest them with***

the powers under Section 62 (1) (a) (iii) to accept compensation for forest offences under Sec. 59 of the said Act, arising in connection with unreserved lands, waste, and poramboke lands at the disposal of the Revenue Department and also appoints all Tehsildars and Deputy Tehsildars under sub-clause (ii) of Clause (f) of Section 2 of the said Act to perform the functions of forest officers and invest them with the powers under Section 62 (1) (a) (iii) to accept compensation for forest offences under Sec. 59 of the said Act arising in connection with unreserved lands, waste, and poramboke lands at the disposal of the Revenue Department, the value of property involved does not exceed Rs. Two hundred."

(Emphasis supplied)

It is submitted that a bare reading of the G.O. will show that it vests powers and functions of forest officers on revenue divisional officers, tahsildars and deputy tahsildars. It empowers them to perform the functions of forest officers and invest them with powers under Section 62 (1) (a) (iii) of Andhra Pradesh Forest Act, 1967 to "accept compensation for forest offences" under Section 59 of the Act. It is pertinent to note that the G.O. mentions "forest offences" for which revenue divisional officers, tahsildars and deputy tahsildars are required to accept compensation. It is submitted that if the revenue divisional officers, tahsildars and deputy tahsildars have been appointed to "perform the functions of forest officers" and "accept compensation for forest offences", the land may be considered as forest land for all purposes. This is because the role of forest officers would not be necessary and no forest offences would take place on a land that is not a 'forest'.

6. That the report of PCCF is flawed in not considering the land in question as "deemed forest", in stating that the vegetation in the mining area is limited to bushy growth with scattered trees, which is contrary to ground situation. Further not considering the area as forest because the mining area is under the administrative control of Revenue Department is incorrect assertion in the light of Godaverman Judgment of Hon'ble Supreme Court. Further the report is incorrect in concluding that for undertaking non-forest activities in the land in question, approval under Forest (Conservation) Act, 1980 is not required.
7. That therefore, in the interest of justice, necessary order be passed in favour of the Applicant. Any other of further order may be passed which the Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case.

APPLICANT

THROUGH



RITWICK DUTTA

RAHUL CHOUDHARY

ADVOCATES FOR THE APPLICANT

N-71, Lower Ground Floor, Greater Kailash-I,

New Delhi – 110048

Mobile No. 9312407881

Email:- Litigation.life@gmail.com

Place:- New Delhi/Chennai

Dated:- 26.05.2022

Record of discussions in a meeting of Principal Chief Conservator of Forests held under the Chairmanship of the Director General of Forests and Special Secretary (DGF&SS) on 25th August 2014 to formulate parameters for classification of an area as "Forest" by dictionary meaning

A. Officers present in the meeting

As per list given in the Annexure.

B. Summary of deliberations and decisions taken

1. After detailed deliberations, following observations were made:

- (i) Hon'ble Supreme Court in their Judgment dated 12th December 1996 in the Writ Petition (Civil) No. 202/1995 in the matter of T.N. Godavarman Thirumulpad versus Union of India and Others inter-alia directed that "The Forests Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2 (i) of the Forest Conservation Act. The term "Forest land", occurring in section 2, will not only include "forest" as understood in dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership."
- (ii) Supreme Court in their said judgment dated 12th December 1996 further directed that "Each State Government should constitute within one month an expert committee to (i) identify areas which are "forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest (ii) identify areas which were earlier forests but stand degraded, denuded and cleared; and (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons".
- (iii) From a reading of the Supreme Court's said judgment dated 12th December 1996 it is clear that, irrespective of the ownership, areas which are recorded as 'forest' in the Government records irrespective of the nature of vegetation available therein, and the areas containing such vegetation which may be defined as 'forest' by dictionary meaning, irrespective of the fact whether such areas are recorded as 'forest' in the government record, or not, are to be treated as 'forest' for the purpose of the Forest (Conservation) Act, 1980 (FC Act).
- (iv) In pursuance to Supreme Court's said judgment, each State and Union Territory constituted Expert Committee to identify areas which are 'forest' for the purpose

Provided under RTI
Act 2005

of the FC Act ('Expert Committees' for short). Most of the States filed a copy of these reports before the Supreme Court. Supreme Court till date has neither considered majority of these reports, nor passed any specific order to accept or reject these reports.

- (v) Though, Supreme Court in their said Judgment dated 12th December 1996 directed that the word 'forest' must be understood according to its dictionary meaning, in their said judgement the Supreme Court did not specify dictionary meaning of the 'forest'. Parameters to classify an area as 'forest' by dictionary meaning were also not specified by the Supreme Court in their said judgement. Supreme Court in their said Judgment also did not specify whether directions issued by them will be applicable prospectively, with effect from the date of the said Judgment (i.e. 12th December 1996) or retrospectively, with effect from the date the FC Act came into force (i.e. 25th October 1980). Department of Legal Affairs, Ministry of Law and Justice has however, in reply to a specific reference made by the Ministry of Environment, Forests and Climate Change (MoEFCC) informed that after examination of the said Judgment they are of the view that the directions issued by the Hon'ble Supreme Court in their said Judgment dated 12th December 1996 shall be applicable with effect from the date the FC Act came into force i.e. the 25th October 1980.

- (vi) Expert Committees constituted by various States and Union Territories therefore, did not follow uniform procedure to identify the areas which are "forest" for the purpose of the FC Act. Summary of parameters, if any, formulated to define an area as "forest" by dictionary meaning by Expert Committees constituted by various States and Union Territories is as below:

Andhra Pradesh and Telangana

All private lands bearing natural tree growth of more than 0.40 density and having an extent of 10 hectares, shall be treated as "forest" subject to a condition that it should not adversely affect customary rights of "Tribal Land owners"

Arunachal Pradesh

Areas recorded as forest in the government records were only treated as forest for the purpose of the FC Act. Expert Committee did not formulate any parameter to classify an area as "forest" by dictionary meaning.

Assam

Minimum forest area of ten hectares and more under private ownership were treated as "forest" by dictionary meaning.

WJAY KUMAR
DTP (NCRI)
Provided under RTI
Act 2005

Bihar

No parameters were formulated to define an area as "forest" by dictionary meaning. It was also informed by representative of the Government of Bihar present in the meeting that report of the Expert Committee has not been filed before the Hon'ble Supreme Court.

Chhattisgarh and Madhya Pradesh

A patch of land irrespective of their ownership will be deemed as "forest" if (a) its area is not less than 10 hectares; (b) it is covered with naturally growing timber, fuelwood and yielding trees; and (c) average number of trees standing on it is 200 or more trees per hectare.

Goa

A patch of land irrespective of their ownership will be deemed as "forest" if (a) 75% of the crop composition of such lands should be of forest species; and (b) area should either be contiguous to Government forest land or if in isolation the minimum area so identified should be 5 hectares. In case of mangroves, area less than 5 hectares is also considered as forest, whether or not in contiguity to Government forest land.

Gujarat

No parameters were formulated to classify an area as "forest" by dictionary meaning. However, Expert Committee identified 192.24 km² area as "forest" by dictionary meaning. These areas are mostly those that were planted up by the Forest Department in the past and are mostly "wastelands" as per the land records. These areas are not under the charge of or belong to the Forest Department. Committee felt that the total areas would be much more but they have, so far, not been reported by the respective departments.

Haryana

No parameters were formulated to classify an area as "forest" by dictionary meaning.

Areas Notified as Reserved Forests, Protected Forests and areas notified under section 4 & 5 of the PLPA, 1900 and section 38 of the Indian Forest Act, 1927 were only considered as "forest". Government of Haryana in their affidavit filed before the Hon'ble Supreme Court in 1997 sought one month's time to obtain all the information from the revenue records and identify corresponding forests. Representative of the Government of Haryana present in the meeting informed

By 45

2.1.15
 Provided under RTI
 Act 2005

that list of areas recorded as "forest" in the revenue records has however, not been prepared by the Government of Haryana, so far.

Himachal Pradesh

Compact blocks of wooded land above 5 ha in extent were to be treated as "forest" by dictionary meaning.

Jharkhand

Expert Committee did not formulate any parameter to classify an area as "forest" by dictionary meaning. It was also informed by representatives of the Government of Jharkhand present in the meeting that report of the Expert Committee has not been filed before the Hon'ble Supreme Court.

Karnataka

Representatives of the Government of Karnataka present in the meeting informed that the Expert Committee did not formulate any parameter to classify an area as "forest" by dictionary meaning. Expert Committee however, prepared a list of areas which may be classified as forest as per dictionary meaning.

The Government of Karnataka vide G.O. No. FEB 185 FAF 2011 dated 15th May 2014 constituted a Committees in each district to identify from the areas which have been treated as "forest" by dictionary meaning by the Expert Committee, the areas which meets the following conditions:

(a) Government land parcels with area of 2 hectares and above, minimum density 50 naturally grown trees per hectare of girth at breast height 30 cm and above; (b) Block Plantations on Government lands with area of 2 hectares and above having minimum density of 100 planted trees per hectares of 30 centimeters and above girth at breast height; and (c) private lands with area of 5 hectares & above, minimum density of 50 naturally grown trees per hectares of 30 centimeters and above girth at breast height.

Kerala

All sacred groves and mangrove forests areas shall be treated as "forest" by dictionary meaning.

Maharashtra

No parameters for classification of an area as "forest" by dictionary meaning were formulated by the Expert Committee. However, Expert Committee decided that (a) any area which falls under the definition of the word "forest"; and (ii) all

Printed under RTI
Act 2005

5

the mangroves shall be treated as "forest". The committee further decided that the area brought under the Horticulture crops should not be included in "forests". The area brought under the tree plantation other than horticulture may be listed separately.

Expert committee initially identified 1,92,831 hectares which included Mangroves- 3,533 hectares, Govt. land - 1,27,344 hectares and Private land- 61,954 hectares. The same was re-assessed by an another committee in 2006. The areas as per re-assessment is 69,365 hectares, which includes 7,563.18 hectares mangroves, 56,703 hectares Government land and 5,099.03 hectares private land.

Manipur

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning.

Meghalaya

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning.

However, the Meghalaya Legislative Assembly enacted the Meghalaya Forest Regulation Amendment Act, 2013 to provide that in section 3 of the Meghalaya Forest Regulation (Assam Regulation 7 of 1891 as adapted and amended by Meghalaya), after clause (9), the following new clause (10) shall be inserted, namely,-

(10) An area would be "forest" if it is a compact or continuous tract of minimum 4 hectares land, irrespective of ownership, and where-

(a) more than 250 naturally growing trees per hectare of 15 cm and higher diameter at breast height (DBH) over bark are present; or (b) more than 100 naturally growing bamboo clumps per hectare are present in case of the tracts containing predominantly sympodial bamboo;

Provided that in case of tract containing mixed crop of non-bamboo vegetation and bamboo, the qualifying number of trees including bamboo clumps would be proportionately modified from the above specified numbers for determining the land as "forest"

Provided further that a tract of land used for traditional way of agriculture by the tribal population or for bonafide community livelihood needs shall not be "Forest" irrespective of the density of vegetation growing on it

[Handwritten signature]

[Handwritten signature]
E.T.I.

VIJAY KUMAR
DTP (NCR)

Provided under RTI
Act 2005

6

Provided further that any area recorded as "Forest" in any of the Government records including the records of the Autonomous District Councils of the State shall ipso facto be "Forest" irrespective of the size and number of trees including bamboo clumps:

Provided further also that "Forest" shall also include all the areas irrespective of size, ownership and type of vegetation growing on such areas which have been identified by a competent authority and notified as protected areas or critical wildlife habitat or corridors for wildlife or habitat of endangered species or eco-sensitive/eco-fragile areas or critical catchment areas of rivers and other water sources or biodiversity heritage sites or sacred groves in the State. Explanation: If 60% of the tract is covered with trees and 40% with bamboos, then the qualifying numbers shall be more than 150 trees of 15 cm and higher DBH over bark and more than 40 bamboo clumps per hectare for identifying such areas as "forest".

Mizoram

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning. However, the Expert Committee identified non-notified forest areas/ tree cover areas at 50 different locations covering a total area of 833.00 km².

Nagaland

Neither a representative from the Nagaland attended any of the meetings convened under Chairmanship of the Director General of forests and special Secretary on the matter nor provided a copy of the report prepared by the Expert Committee.

Odisha

In case of private land covered with plantations and/or natural growth, smaller units are too difficult to enumerate and it would be practical to account for only those areas which are 5 hectares or more in extent in one continuous patch (to treat them as "forest" by dictionary meaning).

Punjab

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning.

Rajasthan

Areas not less than 5 hectares and having not less than 200 plants per hectare were treated as "forest" by dictionary meaning.

[Handwritten signature]

[Handwritten signature]
2.7.10

[Handwritten signature]
2.7.10

Provided under RTI
Act 2005

Sikkim

Contiguous patch of minimum 10 hectare area having more than 40 % crown density were treated as "forest" by dictionary meaning.

Tamil Nadu

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning.

Tripura

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning.

Uttarakhand

Neither a representative from the Uttarakhand attended any of meeting convened under Chairmanship of the Director General of forests and special Secretary on the matter nor provided a copy of the report prepared by the Expert Committee.

Uttar Pradesh

Minimum 3 hectare area with minimum 100 trees per hectare in Vindhya & Bundelkhand Region and minimum 2 hectares area with minimum 50 trees per hectare in Terai and Plain areas were treated as "Forest" by dictionary meaning, subject to following conditions:

(a) Trees means naturally grown perennial trees, (b) Shrubs will not be counted among trees. (c) Minimum area of land will be based on gata-wise. (d) In case of private land, in case a gata is registered in name of several persons in the form of mirjumulá, then area of each mirjumulá will be considered for area limit. (e) Plantations raised on government and private land will not be considered as forest.

West Bengal

Compact patches of minimum 1 hectare area having minimum crown density of 0.40 were treated as "forest" by dictionary meaning by the Expert Committee.

Andaman and Nicobar Islands

No parameters were formulated to classify an area as "forest" by dictionary meaning. However, the Expert Committee assessed 25,562.48 hectares area as "forest" by dictionary meaning. Later on, the revenue department re-assessed the

W. Jay Kumar

W. Jay Kumar
2.1.15
WJAY KUMAR
DTP (NCR)

*Provided under RTI
Act 2005*

area of forest by dictionary meaning as 16,275.50 ha. A revised affidavit has been filed before the Hon'ble Supreme Court.

Chandigarh

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning.

Dadra and Nagar Haveli

Private/government areas with a minimum of 5 hectares or more having tree vegetation with species variations and required stocking are to be treated as "forest" by dictionary meaning.

Delhi

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning.

Lakshadweep

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning.

Puducherry

No parameters were formulated by the Expert Committee to classify an area as "forest" by dictionary meaning.

- (vi) Representatives of some States were of the opinion that privately owned areas should not be treated as forest as per dictionary meaning.
- (vii) The MoEFCC had also assigned a study to Ashoka Trust for Research in Ecology and Environment (ATREE) in 2007 to formulate definition of forest. The ATREE inter-alia recommended the term forest will also apply to any site with a minimum area of 0.05 to 1.0 hectare with an existing or potential shrub or tree crown cover equal to or more than 10 % and a potential to reach a minimum height of 2 to 5 meters.
- (b) The Hon'ble Supreme Court in their judgment dated 7th July 2011 in LA. No. 1808 etc. in the Writ Petition (Civil) No. 202 of 1995 in the matter of J.N. Gadhavani vs. Union of India and Others noted that even though they in their judgment dated 12th December 1996 directed the States and Union Territories to identify the areas which are "forest" for the purpose of the FC Act, identification of these areas has not been completed conclusively. The Hon'ble Supreme Court further observed that whether an area is "forest" for the

2011 7 SCC 344

Printed under RTI
Act 2005

purpose of the FC Act or not is the key question in the said LA. and several other matters before the Hon'ble Supreme Court. Hon'ble Supreme Court in their said judgment therefore, issued guidelines to be followed by the Central Government, State Government and various authorities under the FC Act and the Environment (Protection) Act, 1986. These guidelines include the following:

- (a) Completion of the exercise undertaken by each State/UT Govt. in compliance of this Hon'ble Court's order dated 12.12.1996 wherein *inter-alia* each State/UT Government was directed to constitute an Expert Committee to identify the areas which are "forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such "forest" and the areas which were earlier "forests" but stand degraded, denuded and cleared, culminating in preparation of Geo-referenced district forest-maps containing the details of the location and boundary of each plot of land that may be defined as "forest" for the purpose of the FC Act;
- (b) If the project proponent makes a claim regarding the status of the land being non-forest, if there is any doubt, the site shall be inspected by the State Forest Department along with the Regional Office of the Ministry to ascertain the status of forests, based on which the certificate in this regard as mentioned above be issued. In all such cases, it would be desirable for representative of the State Forest Department to assist the Expert Appraisal Committee; and
- (c) The MoEF will prepare a comprehensive policy for inspection, verification and monitoring and the overall procedure relating to the grant of forest clearance and identification of forests in consultation with the States (given that forests fall under entry 17A of the Concurrent List).
- (x) In compliance with Supreme Court's said judgment, the MoEFCC advised States and UTs to prepare geo-referenced forest maps of each of their districts. Even after continuous pursuance by the MoEF, progress of preparation of these maps in many States/UTs is far from satisfactory.
- (xi) The MoEFCC also formulated a draft policy for inspection, verification and monitoring and the overall procedure relating to the grant of forest clearance and identification of forests. MoEFCC while formulating the said draft policy recognised presence of areas which may be defined as "forest" by dictionary meaning only in North Eastern States. It was therefore, stipulated in the said draft Policy that in these States all compact patches of minimum one hectare area having crown density more than 30 % on any day after 12th December 1996, as per the successive State of Forest Reports, shall be treated as "forest" as per

2/10/2013

Lyfa

(1497)B SCC 267

2011 7 SCC 279

2013

WJAY KUMAR

DTP (M.C.R)

Provided under RTI

Act 2005

dictionary meaning even if these areas are not recorded as forest in the Government records, unless it is proved with credible evidence that the vegetation available in such patch is other than the forestry species of natural origin. Parameters for classification of an area as "forest" by dictionary meaning in other States and Union Territories were not specified in the said draft Policy. The MoEFCC placed a copy of the said draft policy on its website and sought comments from States, Union Territories, concerned Ministries in the Central Government and other stakeholders. The MoEFCC did not receive comments from most of the States.

- (xii) It has now been learnt that apart from North Eastern States, in many other States and Union Territories also areas which have fairly dense vegetation of forestry species of natural origin have not been recorded as "forest" in government records. It has also been learnt that Expert Committees constituted by these States and Union Territories in compliance with the Hon'ble Supreme Court's said judgment dated 12th December 1996 did not consider such areas as "forest". Even in the States and Union Territories where Expert Committees treated whole or a part of such areas as "forest", parameters formulated by the Expert Committees to treat these areas as 'forest' lack rational basis and uniformity. The MoEFCC therefore, needs to formulate parameters for identification of areas which may be classified as "forest" by dictionary meaning in these States and Union Territories also.
- (xiii) After examination of reports of Expert Committees constituted by various States/ Union Territories it has been observed that many States/ Union Territories did not formulate any parameters to classify an area as "forest" as per dictionary meaning. Even among the States and Union Territories which formulated parameters to classify an area as "forest" by dictionary meaning there is a wide variation in the parameters formulated by these States. Parameters formulated by the these States and Union Territories varies from "minimum compact patch of 2 hectares having minimum 50 trees per hectare" to "minimum compact patch of 10 hectares with minimum 200 naturally grown trees per hectare". These parameters are also substantially different from the criteria adopted by the Forest Survey of India (FSI) Dehradun to treat area having more than 10 % crown density as forest to prepare State of Forest Reports at an interval of every two year to assess forest cover of the country. These parameters are also substantially different from the relevant provisions of the Kyoto Protocol to which India is a signatory. As per the Kyoto Protocol a forest must have a minimum area of 0.05 hectare of land having not less than 15 % tree crown cover and tree height of not less than 2 m.

Handwritten signature

Handwritten text

Forwarded under RTI Act 2005

- (xiv) Parameters for classification of an area as "forest" by dictionary meaning need to be rational, objective, unbiased and easy to implement. Availability of credible records is also a one of the basic requirement for selection of these parameters. Besides, parameters should be such that it does not become disincentives for raising trees and protecting tree crops in private lands.
- (xv) Parameters which may be considered for classification of an area as "forest" by dictionary meaning are- stand density (no. of trees per hectare), crown density (percentage foliage cover), minimum extent of contiguous forested area, nature of vegetation (forestry/ non-forestry), origin (naturally grown or man-made) and appropriate combination of these parameters.
- (xvi) Some of the Expert Committees formulated parameters based on stand density (e.g. number of trees per hectare) and minimum size of unfragmented patch to classify an area as forest by dictionary meaning. Such parameters however, have following shortcomings:
- Delineation of the boundary of an area to be considered as compact patch is subjective. Such parameters are thus suitable only for isolated compact patches having clearly delineated boundary;
 - Counting of trees is time and cost intensive;
 - No credible records of number of trees are available. Number of trees can be reduced by felling requisite number of trees to prevent classification of an area as forest;
 - Not possible to identify areas which were forest on or after the cut off date but now stand degraded/ denuded/ clear felled; and
 - Needs field survey/ mapping for preparation of geo-referenced map of each patch which has been classified as forest by dictionary meaning.
- (xvii) The State like Meghalaya admitted that as the entire methodology (of identification of areas which are "forest" for the purpose of the FC Act) is based on ground survey and enumeration on a need based approach, it is not possible for them to prepare geo-referenced maps of areas which are forest for the purpose of the FC Act by using stand density (i.e. number of trees per hectare) and minimum size of unfragmented patch based parameters stipulated in clause (10) in section 3 of the Meghalaya Forest Regulation, 1973 (Assam Regulation 7 of 1991 as adapted and amended by Meghalaya) inserted by enacting the Meghalaya Forest Regulation Amendment Act, 2013. Government of Meghalaya is of the view that these parameters will be applied on case to case basis to ascertain whether an area would qualify to be called a "forest" by the adopted definition or not. Stand density based parameters are therefore, impractical to implement.

~~1991/2013~~

WJAY K...
DTP (NCR)

Provided under RTI
Act 2005

(xviii) Parameter, based on a suitable combination of crown density (as per the successive State of Forest Reports prepared by the Forest Survey of India), minimum patch size, nature of the species (forestry or non-forestry) and origin (natural or man-made) of vegetation, appears to be the only feasible option to classify an area as "forest" by dictionary meaning and prepare geo-referenced district forest maps in an objective, transparent and unbiased manner within a reasonable period of time so as to ensure compliance with the directions issued by the Hon'ble Supreme Court and also to ensure complete clarity at the ground level in implementation of the FC Act.

(xix) Forest cover in various State/ Union Territories varies from as low as 3.52 % and 3.59 % of the geographical area in Punjab and Haryana respectively, to as high as 84.56 % and 90.38 % of the geographical area in Lakshadweep and Mizoram respectively. Forest cover in 21 States and Union Territories is less than national targets to have at-least one-third of the total geographical areas of the country under the forest and tree cover. It will therefore, be not desirable to stipulate uniform parameters to classify an area as "forest" by dictionary meaning applicable to all States and Union Territories. For the States and Union Territories having forest cover less than the National Target, more rigid parameters need to be stipulated so as to ensure that whatever little natural forests are available in these States and Union Territories, are fully protected. For the States and Union Territories having forest cover more than the National target, parameters to classify an area as "forest" by dictionary meanings need to be comparatively less stringent so as to ensure easy availability of land for genuine livelihood and developmental needs of these States and Union Territories. Keeping in view the ecological vulnerability, parameters for classification of an area as "forest" in dictionary meaning in hill districts need to be more rigid than the same for plain districts.

2. After detailed deliberations the following was agreed during the meeting:

(i) Subject to approval of the Hon'ble Supreme Court, the following shall mandatorily be treated as "forest" for the purpose of the FC Act:

A. Recorded Forest Areas:

- (a) Areas notified as Reserved Forest (including the proposed Reserved Forests covered under Section-4 of the Indian Forest Act, 1927 or similar section of the State Forest Acts/Regulations), Village Forests, Protected Forests and areas covered under Section-35 to Section 38 of the Indian Forest Act, 1927 or similar Sections of the local Forest Acts or Regulations, as applicable in the concerned State or Union Territory;

Amrinder

10/3

11/3

Pranab
Ac

- (b) Areas notified or considered as "Forest" in accordance with the provisions of any other Act enacted or Notification or Resolution issued by the State Government or Union Territory Administration concerned;
- (c) Areas covered under Notifications issued under Section 4 & 5 of the Punjab Land Preservation Act, 1900 (PLPA) or similar Act which is in force in any other State or Union Territory. In case of the Punjab, treatment of areas covered under Notifications issued under Section 4 & 5 of the PLPA as "forest" will be subject to final outcome of the matter pending before the Hon'ble High Court of Punjab and Haryana;
- (d) Areas notified or considered as "forest" in accordance with the provisions of the Acts, Rules and Regulations enacted/formulated by the Autonomous District Councils constituted in accordance with the provisions of Sixth Schedule to the Constitution of India or any other Act or Regulation enacted by any other Local Authority;.
- (e) Unclassed State Forests;
- (f) Areas recorded as "forest", including words meaning "forest" in vernacular language in government records. These words include, forest, jungle, jungle jhadi, chote jhad ke jungle, bade jhad ke jungle, zuapi jungle, ban, bani, aranya, oran, jungle Jogye jamin, ciol soyam lands etc.

B. Forests by Dictionary Meaning

B.1: States and Union Territories having forest cover less than the National Target (i.e. one third of the geographical area) and hill districts having forest cover less than 60% of their geographical area

- a) Areas having more than 10% crown density and scrub forests as per the successive State of Forest Reports (SFRs) published by the Forest Survey of India (FSI) after 25th October 1980, which are contiguous to recorded forest areas, unless it is proved with credible evidence that more than 30% of vegetation available in such area is other than the forestry species of natural origin;
- b) All isolated patches of minimum 5 hectare area having more than 10% crown density as per the successive SFRs published by the FSI after 25th October 1980, unless it is proved with credible evidence that more than 30% of vegetation available in such patch is other than the forestry species of natural origin. (Explanation: In case two adjoining patches having more than 10% crown density are separated by not more than 200 meter wide strip of scrub forest, such patches having more than 10% crown density and strip of

19/11/2017

Signature
S. I. V.

VINAY KUMAR
DTP (NCR)

Provided under RTI
Act 2005

scrub forest located between them (upto a maximum width of 200 meters) shall be amalgamated and such amalgamated patch shall be considered for the purpose of this paragraph; and

- (c) Mangroves, sacred groves and habitats of rare and endangered species irrespective of the patch size.

B.2: States having forest cover more than National Target (i.e. one third of the geographical area) excluding the hill districts having forest cover less than 60 % of their geographical area

- (a) Areas having more than 40% crown density as per the successive SFRs prepared by the FSI after 25th October 1980, which are contiguous to recorded forest areas, unless it is proved with credible evidence that more than 30% of vegetation available in such areas is other than the forestry species of natural origin;

- (b) All compact patches of minimum 10 hectare area having more than 40% crown density as per the successive SFRs published by the FSI after 25th October 1980, unless it is proved with credible evidence that more than 30% of vegetation available in such patch is other than the forestry species of natural origin (Explanation: In case two adjoining patches having more than 40 % crown density are separated by not more than 200 meter wide strip of open forests having 10% to 40 % crown density, such patches having more than 40 % crown density and strip of open forests located between them (upto a maximum width of 200 meters) shall be amalgamated and such amalgamated patch shall be considered for the purpose of this paragraph; and

- ✓ (c) Mangroves, sacred groves and habitats of rare and endangered species irrespective of patch size

(ii) Apart from the areas which shall mandatorily be treated as "forest" for the purpose of the FC Act as per the parameters given in paragraph (i) above, all those areas which have been treated as "forest" by the Expert Committees constituted by the States and Union Territories in compliance with the directions issued by the Hon'ble Supreme Court in their said judgment dated 12th December 1996 shall continue to be treated as "forest" for the purpose of the FC Act.

(iii) Apart from the areas which shall mandatorily be treated as "forest" by dictionary meaning based on the parameters given in paragraph (i) B above, all those areas which may be classified as "forest" based on definition of forest given in any Act or Rule or Regulation enacted by the State Government or Autonomous District Council having jurisdiction over such areas, shall also be treated as "forest" for the purpose of the FC Act.

WJAY KUMAR
DTP (NCR)
Provided under RTI
Act 2005

15

- (iv) State Governments and Union Territory Administrations shall be at liberty to formulate their own parameters which are more rigid than the parameters given in paragraph (i) above to classify an area as "forest" for the purpose of the FC Act. (Explanation: Notwithstanding parameters formulated by a State or Union Territory, all those areas which may be classified as "forest" as per parameters given in paragraph (i) above, shall mandatorily be treated as "forest" for the purpose of the FC Act.
- (v) In case of hill and tribal districts, classification of community or privately owned areas as "forest" for the purpose of FC Act based on parameters given in paragraph (i) B above, shall not affect right of the local tribal and Other Traditional Forest Dwellers to ~~use~~ such forest land for traditional way of agriculture such as ~~ploughing~~ or to enjoy any other rights which are to be vested on these tribal and Other Traditional Forest Dwellers in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Use of such forest land for any other non-forest purpose will attract provisions of the FC Act.
- (vi) To facilitate long term sustainability and management of community and privately owned areas which are to be treated as "forest" by dictionary meaning, the concerned State Government or the Union Territory Administration may consider to acquire on priority such areas for creation of compensatory afforestation in lieu of forest land diverted for non-forest purpose and notify them as Reserved Forest. Cost of acquisition of such land shall be borne by the concerned user agency in whose favour forest land is required to be diverted for non-forest purpose.
- (vii) Tea gardens, coffee plantations, cardamom plantations, arecanut groves, coconut groves, plantations of any other horticulture species and block plantations of any tree species which are outside the recorded forest areas will not be treated as "forest" irrespective of patch size and crown density.
- (viii) To ensure long term survival and scientific management, State Governments may consider to notify plantations raised on Government land as Reserved Forests (RF) or Protected Forests (PF). Till notification of such areas as RF/PF, these plantations shall not be treated as "forest" for the purpose of the FC Act.

The meeting ended with thanks to the Chair.

t.c.

At Union
3.1.15

VJAY KUMAR
DTP (NGRI)

Provided under RTI
Act 2005

Chandrasekar



LIFE Office <litigation.life@gmail.com>

Response on behalf of Applicant OA No. 155 of 2021/SZ Kondru Maridayya Vs. UOI & Ors.

1 message

LIFE Office <litigation.life@gmail.com>

Thu, May 26, 2022 at 4:02 PM

To: advrks023@gmail.com, sumathi010672@gmail.com, reddymadhuri09@gmail.com, madhureddy@yahoo.com

Cc: stanly hebzon <stanly.lawyer@gmail.com>

Dear Sir/Madam,

Please find attached response on behalf of Applicant OA No. 155 of 2021/SZ Kondru Maridayya Vs. UOI & Ors.

Counsel for the Applicant

LIFE Office



Response on behalf of Applicant.pdf

1048K