

*

**BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH,
AT KOLKATA
O.A. No. 120/2024/EZ**

IN THE MATTER OF :

Sushil Murmu

Applicant(s)

Versus

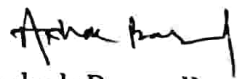
Union of India & Ors.

Respondent(s)

INDEX

<u>Sl. No</u>	<u>Particulars</u>	<u>Page(s)</u>
1.	Counter Affidavit / Reply for and on behalf of the Respondent No. 3	1 to 6
2.	Annexure. R-1	7
3.	Vakalatnama	8

Through :


(Ashok Prasad)
Advocate,
Counsel for U.O.I.

Place : KOLKATA

Dated : 24/09/24



**BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH,
AT KOLKATA
O.A. No. 120/2024/EZ**

IN THE MATTER OF :

Sushil Murmu

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

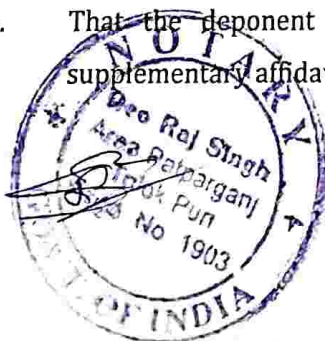
**COUNTER AFFIDAVIT / REPLY FOR AND ON BEHALF OF THE
RESPONDENT NO. 3**

MOST RESPECTFULLY SHEWETH:

I, Arvind Mudgal Son of Radhey Shyam Mudgal aged about 54 Years, employed / appointed as the Under Secretary to the Government of India, Ministry of Tribal Affairs, Ground Floor, Gate No.2, Jeevan Tara Building, Parliament Street, Patel chowk, New Delhi- 110 001 , do hereby solemnly affirm and declare as under: -

1. That I am Respondent No. 3 and well conversant with the facts and circumstances of the case, and as such, I am duly authorized and competent to swear this affidavit on behalf of Ministry of Tribal affairs, in the above matter.
2. That I have read and understood the original appeal and have been advised to traverse by way of this Counter Affidavit as reply thereto.
3. That have and except those which are matter of record and those which are specifically admitted hereto the contents of the OA that have not been specifically admitted hereunder or are a matter of record be deemed denied.
4. That the deponent craves liberty to raise additional submission or file supplementary affidavits in case need arises during the course of arguments.

(1)



(अरविंद मुदगल)
(ARVIND MUDGAL)
अवर सचिव / Under Secretary
जनजातीय कार्य मंत्रालय
Ministry of Tribal Affairs
भारत सरकार / Government of India
नई दिल्ली / New Delhi

✘

village or not; or (iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

9. That, in response to a representation dated 28.06.2023 by Shri. Mangal Murmu, Barujara Bandhghutu Dulgubera, Ranga Barelaha, Tarpaniya Gram Sabha, West Bengal regarding violation of consent mechanism as per FRA, 2006 in the diversion of forest land for Turga Pumped Storage Project in Purulia district of West Bengal, the present respondent though a letter dated 11.10.2023 addressed to the Principal Secretary, Backward Classes Welfare Department, Govt. of West Bengal directed the state authorities to examine the representation, ensuring proper implementation of various provisions of Forest Rights Act, 2006. An action report regarding the action taken was also asked to be provided.

The letter sent to the Principal Secretary, Backward Classes Welfare Department, Govt. of West Bengal has is annexed herewith and Marked as Annexure R-1.

10. It is respectfully submitted that SECTION 4 (5) of the FRA, 2006 provides that "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." The Guidelines on the implementation of the FRA,2006 issued in 2012 by the answering Respondent clearly stipulates that:

v. Protection against Eviction, Diversion of Forest Lands and Forced Relocation:

Section 4(5) of the Act is very specific and provides that no member of a forest dwelling Scheduled Tribe or other traditional forest dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete. This clause is of an absolute nature and excludes all possibilities of eviction of forest dwelling Scheduled Tribes or other traditional forest dwellers without settlement of their forest rights as this Section opens with the words "Save as otherwise provided". The rationale behind this protective clause against eviction is to ensure that in no case a forest dweller should be evicted without recognition of his rights as the same entitles him to a due compensation in case of eventuality of displacement in cases, where even after recognition of rights, a forest area is to be declared as inviolate for wildlife conservation or diverted for any other purpose. In any case, Section 4(1) has the effect of recognizing and vesting forest rights in eligible forest



(3)

(अरविंद मुद्गल)
(ARVIND MUDGAL)
अवर सचिव / Under Secretary
जनजातीय कार्य मंत्रालय
Ministry of Tribal Affairs
भारत सरकार / Government of India
नई दिल्ली / New Delhi

11/10/23



dwellers. Therefore, no eviction should take place till the process of recognition and vesting of forest rights under the Act is complete.

9. Section 11 of the FRA provides that Ministry of Central Government dealing with the Tribal Affairs or any officer or authority authorised by the Central Government shall be a Nodal Agency for the implementation of the provisions of this Act. From the contents of section 11, it is clear that this Ministry is a nodal agency and not the implementing agency under the act.

PARA WISE REPLY:

1. That the averments made under Paras 1 to 24 are relating to matter of record and hence, do not warrant any reply from this answering respondent in the present OA. Hence, need no comments from this answering Respondent No.3.

In view of the above facts indicated in earlier paras, it is respectfully prayed that this Respondent shall abide by any order or direction, passed by the Hon'ble Tribunal.


 (ARVIND MUDGAL)
 अवर सचिव / Under Secretary
 जनजातीय कार्य मंत्रालय
 Ministry of Tribal Affairs
 भारत सरकार / Government of India
 नई दिल्ली / New Delhi





VERIFICATION:

Verified at Delhi, on this the 17 day of September, 2024 that the contents of the above Affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed there from.

(अरविन्द मुद्गल)
(ARVIND MUDGAL)
अवर सचिव / Under Secretary
जनजातीय कार्य मन्त्रालय
Ministry of Tribal Affairs
भारत सरकार / Government of India
नई दिल्ली / New Delhi




DEPONENT

Identified by me


Advocate

Adv. Swapnil Shukla

ATTESTED


NOTARY PUBLIC
GOVT. OF INDIA
17 SEP 2024



ANNEXURE R1

F. No. 23011/11/2022-FRA
(Comp. No. 22478)
Government of India
Ministry of Tribal Affairs
FRA Division

✕

Gate No. 2, Ground Floor,
Jeevan Tara Building, Parliament Street,
Patel Chowk, New Delhi-110001
Dated: 11.10.2023

To

The Principal Secretary/ Secretary,
Government of West Bengal,
Backward Classes Welfare Department,
Adivasi Bhawan, Premises No. 2221,
Action Area-III A, Rajarhat- New Town
Kolkata-700156

Subject: Forwarding of a representation of Shri Mangal Murmu, Barajara Bandhghutu Dulgubera, Ranga Barelahar, Tarpaniya Gramsabha, Ajodhya Pahar, West Bengal.

Sir/Madam,

I am directed to forward herewith a representation dated 28.06.2023 received from Shri Mangal Murmu, Barajara Bandhghutu Dulgubera, Ranga Barelahar, Tarpaniya Gramsabha, Ajodhya Pahar, Purulia district, West Bengal on the violation of the Consent Mechanism as per FRA (2006) regarding the diversion of forest land for Turga Pumped Storage Project (TPSP).

2. As per the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and the rules made thereunder, the implementation of Forest Rights Act (FRA), 2006 is the responsibility of the concerned State Government.

3. You are, therefore, requested to examine the representation and take necessary action in the matter, ensuring proper implementation of various provisions of Forest Rights Act, 2006 regarding the diversion of forest land for Turga Pumped Storage Project (TPSP). An action taken report may please be sent to this Ministry.

Enclosure: As above

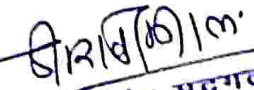
Yours faithfully,



(Nadeem Ahmad)

Under Secretary to Government of India
Tel. 011-23343708

Copy to: Shri Mangal Murmu, Barajara Bandhghutu Dulgubera, Ranga Barelahar, Tarpaniya Gramsabha, Ajodhya Pahar, West Bengal.


(अरविंद मुद्गल)
(ARVIND MUDGAL)
अवर सचिव/ Under Secretary
जनजातीय कार्य मंत्रालय
Ministry of Tribal Affairs
भारत सरकार / Government of India
नई दिल्ली / New Delhi

1

V A K A L A T N A M A

BEFORE THE NATIONAL GREEN TRIBUNAL, KOLKATA/EZ

O.A. No. 120/2024/EZ

IN THE MATTER OF:

Sushil Murmu

..... Applicant(s)

Versus

Union of India & Ors.

.....Respondent(s)

On behalf of Ministry of Tribal Affairs (R-3)

Know all men by these presents that by Vakalatnama I/We appoint the Advocates noted below or any of them my/our lawful Advocate or Advocates for filing the Memorandum of appeal or petition in the
for entering Appearance

above matter for appearing in conducting and arguing the same, for depositing or withdrawing any money in connection therewith for moving the Court in any matter connected therewith, for preparing the paper book in the case and for putting in papers petitions etc. on my/our behalf for filing taking back any documents for withdrawing suits or appeals or petitions with permission to institute fresh suits etc. For signing and filing petitions of compromise in connections with said matter and for taking copies of paper form the Record and I/We further say that any act, done by my/one said Advocate or Advocates or by any of them after accepting this Vakalatnama, shall be considered as my/our true and lawful act.

And I/we further hereby agree and undertake to pay the said Advocates his or their fees are settled and all others sums that may be necessary to carry out the requisition of the Court and otherwise to enable the said Advocates to conduct property. Failing which the said Advocates after notice to me/us will be liberty to withdraw form the further conduct to the case.

IN WITNESS WHERE OF I/We sign and execute this Vakalatnama on this the.....17.....day on...September...2024

Vakalatnama
Recd and accepted
Ashok Prasad
Advocate
9881062404

NAME OF ADVOCATES
ASHOK PRASAD, ADVOCATE

(अरविंद मुद्गल)
(ARVIND MUDGAL)
अवर सचिव / Under Secretary
जनजातीय कार्य मंत्रालय
Ministry of Tribal Affairs
भारत सरकार / Government of India
नई दिल्ली / New Delhi

श्री अरविंद मुद्गल
Under secretary
MOTA .