

How states illegally rejected land claims

Applications were summarily rejected by forest guards instead of forest rights committees and the decisions were not communicated to the claimants

NIHAR GOKHALE

Breaking the law isn't something one is usually proud of. But for Devi Lal, a resident of a forest village in southern Rajasthan, a court summons for encroaching on forest land in 2002 is a prized possession.

A quiet, tall man dressed in a dhoti, kurta and a colourful turban, the 64-year-old from an indigenous community called Bhils, proudly showed off the terse order—neatly laminated and stored in a bag—that demanded his presence before a forest official's court, where he would stand trial. Since the Forest Rights Act (FRA) was introduced in 2006, these summons became evidence that Lal had lived on the land in question before that, and became vital evidence to support his claim under the Act.

Nearly three years after he and 60 others in the villages of Rawathbata block applied for land titles, the applications were rejected in 2015. They do not know why; they were never informed of the rejection, a violation of the FRA, which says that decisions to reject or modify claims have to be communicated to the claimant in person, so that they have the opportunity to appeal the rejection within 60 days.

Such government violations of the law are common not just in Rajasthan but nationwide, as 1.9 million families of indigenous people—roughly 9.5 million people at five persons per family—are at risk of being evicted from their homes in forests. Such violations include, as this story will detail, allowing forest guards to illegally decide claims and demands made by governments, and asking tribals to furnish satellite imagery and non-existent 75-year-old records.

On February 13, the Supreme Court ordered that all households whose rights claims under FRA have been rejected should be evicted from forests by July 2019. After widespread criticism and protests, and a petition by the central government, the Supreme Court temporarily stayed its own order on February 28, 2019.

The 21 states involved must now explain to the Supreme Court how the FRA claims were accepted or rejected.

The petitioners before the Supreme Court, namely Wildlife First, Nature Conservation Society and Tiger Research and Conservation Trust, have argued that rejection of an FRA claim implies that the claimant is an encroacher and not a *bonafide* forest dweller. But growing evidence from the ground indicates that a large number of rejections were illegal and arbitrary.

The Forest Rights Act recognises individual rights of tribals over forest areas, if they can prove occupation before

December 13, 2005. The claims over forest lands are processed through a three-tier system: the *gram sabha*, where the claims are first submitted; a sub-divisional-level committee (SDLC) headed by a government officer; and a district-level committee (DLC) headed by the district collector.

Every forest claim must be accompanied by two documents as evidence, which could be: documents issued by the government; research studies; statement by elders; and even physical evidence of possession or use of land, such as wells.

Here is how the claims are processed: Accompanied by officials from the revenue and forest departments, the *gram sabha's* forest rights committee verifies claims by a field visit, collecting additional evidence, if needed, from claimants and witnesses. The committee then submits its opinion to the *gram sabha*, which approves or rejects the claim. Approved claims are forwarded to the SDLC for review. If approved, the claim is forwarded to the DLC, which is the final legal authority to approve or reject claims.

Appeals against rejection follow the same order. If the *gram sabha* or SDLC rejects a claim, the claimant can appeal to the SDLC or DLC.

The law says that claimants must be granted a personal hearing before claims are rejected, and they must be given—in writing—the reasons for rejection. But the process does not work as it should.

As of November 2018, nearly half (46 per cent) of all FRA claims had been rejected nationwide, according to the latest monthly progress report prepared by the Ministry of Tribal Affairs. *Adivasis* (forest dwellers), experts—and, increasingly, the courts and the government—have not been convinced that every other forest dweller in India is actually a post-2005 encroacher. In Jharkhand, decisions on forest rights claims are often influenced by the local forest department, said Father George Monipally, a priest based in Latehar in central Jharkhand, who has worked on forest rights in the state. "Only the village-level bodies are empowered to verify claims but the committees often take decisions based on statements by forest officials," he said.

In Chhattisgarh—where forests cover 41 per cent of the area and a third of the 25 million population belongs to a scheduled tribe—the government illegally included *patwaris* (village-level revenue officials) and forest guards in the forests rights committees, said Tushar Dash, an



independent forest rights researcher in Odisha. "More than half the rejections in Chhattisgarh were found to be at the *gram sabha* level," said Dash. "But many of these rejections were decided by forest guards or *patwaris*."

One case documented by Land Conflict Watch, an independent network of researchers and journalists documenting land conflicts across India, revealed how a forest-rights claim was rejected by a range forest officer on the grounds that the claimant did not live on the land before 2005. Range officers are not authorised to reject FRA claims; they can only provide recommendations to claims committees. Although the FRA rules list numerous kinds of admissible evidence, including statements from village elders, permanent improvements to land such as bunds, and genealogy tracing ancestry to persons mentioned in old land records, states often make additional demands that are not a part of the Act.

In Gujarat, for instance, a third of the 118,000 claims filed until 2008 were rejected by SDLCs due to "insufficient evidence", according to a Gujarat High Court judgment delivered in 2013. The government insisted on records of the forest department as documentary evidence, and demanded satellite imagery to be sourced only from a Gandhinagar institute, according to the petitioners in the High Court case, the Gujarat-based non-

profit, Action Research in Community Health and Development.

The Gujarat government also decided to process only those claims that could prove possession before 1980, contrary to the law. In its 2013 verdict, the Gujarat High Court struck down these requirements, observing that "to demand from such a class of citizens strict proof as regards their rights would frustrate the very object with which the Act has been enacted."

The problem of evidence is worse for "other traditional forest dwellers"—those who do not belong to a scheduled tribe—who need to prove "continuous existence" in the forest for 75 years. "Karnataka put in a rule that said even the documents submitted as proof have to be 75 years old," said a former consultant to India's ministry of tribal affairs, speaking on condition of anonymity. "How is that even possible? Would that document not turn into dust?"

As of November 2018, the latest month for which data are available, Chhattisgarh had rejected most individual claims (455,000), followed by Madhya Pradesh (350,000) and Maharashtra (120,000).

The missing files

Lal and others of the Rawathbata block were never informed that their claims were rejected or why. The tribals filed the claims between 2010 and

2012 to their homes and agricultural fields, no more than a hectare each—size of two football fields. That was the last they saw of their claim papers. They did not get a receipt or any acknowledgement that the file was received, and had not kept a copy for themselves. Not having heard about their claims, the farmers prepared fresh applications in 2017, but when they tried to submit these

to the *gram panchayat*, they were told that their earlier claims were rejected by the SDLC, so they could not file a new claim.

That is when the farmers began filing applications under the Right To Information (RTI) Act to track their claims. The documents they sourced through RTI showed that the *gram panchayat* had in 2012 sought records from the forest department for each of the claims, and a letter from the department had acknowledged that the request was under process. There is also an undated document from the SDLC listing 61 rejected claims, including all applicants from two hamlets, Amba and Bevda ki Khal.

The SDLC's actions violate several of FRA provisions, such as Section 12 (A) (3) that says a rejection should be conveyed "in person" so that the claimant can file an appeal within 60 days; and Section 12 (A) (10) that says the reasons for rejection must be recorded in writing.

Instead, the RTI responses suggest that even a forest rights

committee was not formed in the village when the claims were rejected. "We went to the houses of the FRC [forest rights committee] members," said Lal. "None of them had any idea that they were on any such committee. Some of them work in the *panchayat* and were simply made members."

Amit Kumar Verma, the sub-divisional magistrate and head of the SDLC, said he was not aware of the case of Lal or the others, as he had taken charge only in late 2018. But, Verma said, his office was willing to rectify any errors, if "brought to my notice" by the applicants.

According to the files that Verma examined before this reporter, the SDLC had dispatched the orders rejecting the 61 claims on June 4, 2015. However, copies of the orders or the reasons for rejecting them were not available in Verma's office. Verma said all the orders and files had been dispatched to the office of the *panchayat samiti*, an intermediate office between the sub-divisional magistrate and the *panchayats*. At the *samiti* office, the block development officer, ML Sharma, said he, too, had taken charge only recently, but according to his office records, the forest rights rejection orders had been forwarded to the Bhainsrorgarh village *panchayat*—which governs the hamlets where Lal and other claimants live—to be distributed to the claimants. At the *panchayat*, an official who did not wish to be identified

went through all forest-rights records, but found no record of FRA rejections.

In the *panchayat samiti* and *gram panchayat* offices, officials gave reasons for rejecting the claims but on condition of anonymity. The reasons varied: Some said the land was unsurveyed, others said the claims were rejected because the hamlets Amba and Bevda ki Khal fall within the nearby Jawahar Sagar Wildlife Sanctuary.

None of these are valid reasons under the law. The claimants have indeed received encroachment notices from the forest department, but if a wildlife sanctuary is involved, the FRA states that the relocation of forest dwellers is only the last resort; rights must first be settled.

In a plea filed before the Supreme Court on February 27, the tribal affairs ministry argued that the court's order should be modified to stall evictions until all states had reviewed the rejections. The affidavit said the ministry was aware of concerns around rejections, including a high rate of rejections and "non-communication of rejection order (sic)".

Back in Chittorgarh, such a modification might provide not just relief from eviction but perhaps also help locate the documents the Bhils filed seven years ago to claim their land rights.

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There goes a strange, helpless animal

More predators have come together to cause havoc in perpetually troubled Gurugram

ANJULI BHARGAVA

Urban life in Gurugram has very little to offer its citizens. Young children are routinely on inhalers, water and electricity is at a premium especially in colonies under the Haryana Urban Development Authority administration, outbreak of viral diseases act as a natural check on its growing numbers by claiming lives every season, many internal roads are re-laid after every monsoon and no matter how wide the arterial roads become (there have been visible improvements in this regard), they appear inadequate and unreasonably clogged with traffic.

In fact, every time I head from the airport towards soul-less Gurugram with its ever increasing steel, chrome and glass facades and its dust-ridden, smoggy air that colours everything in hues of grey and brown, I can't shake off the feeling that the world is truly coming to a conclusive end.

That's why I was horrified to learn that the Haryana administration took a collective step to make things worse. A bill (amendment to the Punjab Land Preservation Act) appears to have been passed without much ado by the upper house of the state Assembly to allow real estate developers to encroach and destroy whatever little forest cover the state can lay claim to.

The Aravalli hills — already encroached upon and reduced to their knees — are to give way to more hazardous, ugly buildings filled with more disgruntled people. The move is likely to worsen the region's ground water situation and add to its urban chaos.



Only 3.59 per cent of Haryana is under forest cover

Politicians and real estate developers will profit and watch in glee.

As I delved deeper, I learnt that Haryana is a state that has one of the lowest forest covers as it is. Only 3.59 per cent of Haryana is under forest cover, which partially explains why it looks so depressing (take a long drive on any of its highways and you'll know what I mean). All its neighbours — Punjab, Delhi, Uttar Pradesh and even Rajasthan — score better on green cover. Punjab in fact recently expanded the area that falls under the purview of the Act. The sceptic in me makes me feel it must have its reasons that are less than ethical, but hey, I will let it go. Cannot be cynical about everyone all the time!

This is of course not the first time

shoulder and the bill was passed expeditiously and rather surreptitiously.

At the citizen's meet with the state's forest minister Rao Narbir Singh predictably claimed to be "helpless" at his colleague's intransigence over the matter (I have always found it charming how helpless our ministers are as a cohesive group). The gentleman offered no cogent explanations as to why the Act had to be amended in line with the interests of the real estate industry and much against the protests of the residents, barring the fact that it was rather outdated. He actually said that amendment was desirable since the Act dated as far back as 1900!

For some reason, Haryana's politicians in general appear to dislike greenery and forests. A few months ago, I remember they were hell bent on building a road through Gurugram's bio-diversity park — one of the few havens offering respite to the citizenry from its grotesque malls and a place where some culture is inserted in a floating and lost population with dance and musical performances at its amphitheater. It's also one of the few places for the residents to go on a morning walk or run without being run over by SUVs and *Mad Max* inspired bus drivers. The proposal was eventually dropped but I'd be surprised if we have heard the last of it.

In a lighter vein, let me end here by saying that the Haryana politician is a pretty strange animal who doesn't fully comprehend the value of forest cover since he already roams free. He's a gold-guzzling predator and we the hapless prey.

IMO



INDIA-PAKISTAN TENSIONS
Minhaz Merchant@MinhazMerchant
Italian journalist in #Balakot reports that local eyewitnesses confirm dozens of #Jaishemohammad terrorists were killed in pre-dawn #IAF air strike on Feb 26. Debunks laughable Pak media reports (supported by Indian proxies) that only trees were destroyed

Nitin A. Gokhale@nitingokhale
Okay, so all those who despair that India is on the backfoot for not presenting 'proof' about the impact or casualties in the air strike at Balakot, patience is the key. It will come sooner than later. Hold the horses.

Sadanand Dhume@dhome
This clarification by "top government sources" in India may inadvertently deepen doubts about the efficacy of the Balakot strike. We're now supposed to believe that no JeM buildings were destroyed because Indian smart bombs are too smart to blow up things

Saikat Datta@saikatd
*BJP President invoking air strikes in election rally
*Yeddyurappa says air strikes will help BJP win in elections
*International media questioning casualty claims #Balakot strike.
*Gol is busy with launching apps.

Terrible optics for India's legitimate case against terror
Arun Jaitley@arunjaitley
The Cross Border terror attack in Pulwama was a reality. The Balakot Operation was India's Anti-Terror preemptive strike to defend its Sovereignty.

TRUMP'S FAILED NORTH KOREA TALKS
Kyle Griffin@kylegriffin1
Russian Foreign Minister Sergey Lavrov is in Vietnam at the same time that Trump and Kim Jong Un are in Vietnam for their summit. Coincidentally, Lavrov says the U.S. asked for Moscow's advice in dealing with North Korea before the summit.

Aaron Rupal@atrupal
Trump talks about his summit with Kim like it was a date: "There's a warmth that we have & I hope that stays. I think it will... the relationship was very warm & when we walked away, it was a very friendly walk... we like each other. Good relationship."

Will Ripley@willripleyCNN
Not only did Trump walk out of talks, he also snubbed the final meal he was supposed to share w/ Kim. The table was set for what should've been a friendly working lunch. Instead, the snow fish & pie turned cold & the table sat empty — a symbol of the wasted opportunity in Hanoi.

IMRAN KHAN RECOMMENDED FOR NOBEL PEACE PRIZE
Vasudha Venugopal@vasudha_ET
Pak I&B minister Chaudhry Fawad Hussain submits a resolution in Pak assembly demanding Imran Khan be given Nobel Peace Prize for his "contribution towards peace in the region."

Jeremy McLellan@JeremyMcLellan
Can we take Obama's Nobel Peace Prize away and give it to Imran Khan?