

WITHOUT LAND OR RECOURSE

Relevant for: Developmental Issues | Topic: Rights & Welfare of STs, SCs, and OBCs - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

The [order of the Supreme Court issued on February 13 with respect to the claims of forest-dwelling peoples](#) in India — the Scheduled Tribes and Other Traditional Forest Dwellers — is a case of the Supreme Court speaking against itself. In effect, the court has ordered the eviction of lakhs of people whose claims as forest dwellers have been rejected under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or FRA. That this order negates the claims of citizens under special protection of the Constitution, viz. the Scheduled Tribes and other vulnerable communities already pushed by gross governmental neglect precariously to the edge, is another matter altogether. The question before us today centres on the responsibility of the Supreme Court in upholding constitutional claims and equal citizenship.

The order in question was issued in the case of *Wildlife First & Ors v. Ministry of Forest and Environment & Ors*. The question before the court as stated in the order of 2016 when the matter was last heard related to “the constitutional validity of the [FRA] and also the questions pertaining to the preservation of forests in the context of the above-mentioned Act.” The details regarding claims made under the FRA that were placed before the court by the petitioner in 2016 showed that of the 44 lakh claims filed before appropriate authorities in the different States, 20.5 lakh claims (46.5%) were rejected. The order of 2016 went on to observe: “Obviously, a claim in the context of the above-mentioned Act is based on an assertion that a claimant has been in possession of a certain parcel of land located in the forest areas.” True. A claim is made either for individual or community rights by the people/communities covered by the FRA. This is a plain reading of the Act, which is unambiguous on this score.

From here, however, that order did a jurisprudential somersault to observe, “If the claim is found to be not tenable by the competent authority, the result would be that the claimant is not entitled for the grant of any Patta or any other right under the Act *but such a claimant is also either required to be evicted from that parcel of land or some other action is to be taken in accordance with law*” (emphasis added). This was the material part of the order. In other words, the claimant cannot contest the decision of the authority, said the court. With respect to action to be taken against those “unauthorisedly in possession of forest land”, the States were then asked by the Supreme Court to report on concrete measures taken to evict the Scheduled Tribes and Other Traditional Forest Dwellers from the forest. In the very next paragraph, which pertained to the State of Tamil Nadu, the order referred to action against those people whose claims had been rejected as “eviction of encroachers”.

In the present order of February 2019, the Supreme Court specifically directs governments in 21 States by name to carry out evictions of rejected claimants without further delay and report on or before July 12. There are several questions that must be foregrounded for immediate attention.

The most obvious one has to do with the meanings attached to the rejection of claims. According to the 2014 report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities in India, constituted by the Government of India (Xaxa Committee), 60% of the forest area in the country is in tribal areas — protected by Article 19(5) and Schedules V and VI of the Constitution. With specific reference to claims under the FRA, reiterating the finding of several other studies that have documented the deep procedural flaws in processing claims, the Xaxa Committee observed that “claims are being rejected without assigning reasons, or based on wrong interpretation of the ‘OTFD’ definition and the

'dependence' clause, or simply for lack of evidence or 'absence of GPS survey' (lacunae which only require the claim to be referred back to the lower-level body), or because the land is wrongly considered as 'not forest land', or because only forest offence receipts are considered as adequate evidence. The rejections are not being communicated to the claimants, and their right to appeal is not being explained to them nor its exercise facilitated." The mere rejection of claims by the state therefore does not add up to a finding of the crime of "encroachment" — the sheer volume of rejections should instead set alarm bells ringing in the court of procedural improprieties.

Interestingly, in this case it appears as if a private party — Wildlife First — is pitted against the state. A closer examination reveals that it is, in fact, Wildlife First and the state together which have joined forces against the most vulnerable communities in the country living in areas constitutionally protected from encroachment even by the state — can we forget the stellar *Samata* judgment of the Supreme Court in 1997?

Why must we worry about this order of the Supreme Court in 2019? As has been widely reported, the immediate result will be the forced eviction of over one million people belonging to the Scheduled Tribes and other forest communities. Importantly, the area marked for eviction falls under areas designated under Schedule V and Schedule VI of the Constitution — there is no reference to the implications for governance in the Scheduled Areas and whether the Supreme Court, in fact, has the authority to order evictions of Scheduled Tribes from Scheduled Areas. In a democratic country with citizens (not subjects) and a written Constitution which is affirmed by the people who are sovereign, how can we countenance the dismantling of an entire constitutional apparatus that prescribes the non-derogable boundaries to Adivasi homelands and institutional mechanisms that promote autonomy and restrain interference in self-governance?

At an even more fundamental level, we are speaking of special protections under the Constitution — even more today than ever before. The presence of Article 19(5) in the Fundamental Rights chapter of the Constitution, which specifically enjoins the state to make laws "for the protection of the interests of any Scheduled Tribe", is vital. How has the Supreme Court ordered the eviction in complete disregard of this core and express fundamental right protection to Adivasis (as distinct from legal/statutory protection), which protects them from a range of state and non-state intrusions in Scheduled Areas as well as from the perennial threat of eviction from their homelands? Is it not the supreme obligation of the Supreme Court to protect the Scheduled Tribes and other vulnerable communities from the grave harms of violent dispossession?

Finally, in the recent judgments of the apex court on the right to privacy and Section 377, the court has sung paeans to autonomy, liberty, dignity, fraternity and constitutional morality — the pillars of transformative constitutionalism. It is the same court in the same era that has now ordered the dispossession of entire communities protected under the Constitution. We, as citizens, have every reason to worry.

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