

# EXPLAINED

Relevant for: Environment | Topic: Environmental Conservation, Sustainable Development, and EIA

To enjoy additional benefits

CONNECT WITH US

March 05, 2023 04:00 am | Updated 04:00 am IST

COMMENTS

SHARE

READ LATER

The Ministry of Environment, Forests and Climate Change in June 2022, notified the Forest (Conservation) Rules, 2022, which prescribed the mechanism for the diversion of forest land for non-forest purposes. File | Photo Credit: The Hindu

**The story so far:** After the National Commission for Scheduled Tribes (NCST) [invoked its constitutional power](#) to requisition detailed Forest Rights Act implementation reports from the Supreme Court, the Registrar has ordered the release of documents to the NCST. The ST Commission is caught in a row with the Union Environment Ministry over the latest [Forest Conservation Rules \(FCR\), 2022](#). The row is over the potential violation of provisions enshrined in the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 dubbed the [Forest Rights Act \(FRA\)](#).

The Ministry of Environment, Forests and Climate Change in June 2022, notified the Forest (Conservation) Rules, 2022, which prescribed the mechanism for the diversion of forest land for non-forest purposes. These amended rules have omitted a clause (present in 2014 and 2017 Rules) that explicitly required any proposal to mandatorily have the consent of local tribespeople and other traditional forest dwellers (OTFDs) of the area, before proceeding for Stage 1 clearance. The FCR, 2022 has allowed applying entities to go for the consent of locals, represented by the Gram Sabha, after Stage 1 or even after Stage 2 clearance.

Within two months of the FCR, 2022 coming into force, the NCST constituted a “Working Group on the Forest Rights Act 2006 & other issues related to the Forest and Scheduled Tribes” to monitor the implementation of the FRA and “make recommendations to the Union government and State governments”. The NCST concluded that the new FCR infringed on the rights of STs and other traditional forest dwellers (OTFDs) by violating the FRA.

According to the FRA, 2006, in case of a dispute over forest land, precedence has to be given to the rights of STs and OTFDs, who live in and off the forest and its resources, over any other party.

In September, 2022, NCST Chairperson Harsh Chouhan shot off a letter to Environment Minister Bhupendra Yadav, highlighting the potential consequences of FCR, 2022, recommending that they be put on hold and the previous Rules, which provided for the consent clause, be strengthened. The ST panel argued that the previous versions of the Rules provided a legal space for “ensuring completion of the processes for recognition and vesting of rights under the FRA in areas where forests are being diverted.”

The ST Commission noted that it made little sense to take the consent of tribals and forest dwellers after an applicant had got Stage 1 clearance. By then, the applicant would be invested in the project and would then have the incentive to “pursue the State Governments or Union Territories” to divert the land at the earliest, it said. The NCST added that the FCR, 2022 provided for Compensatory Afforestation, but nowhere did it prescribe safeguards or a mechanism for compliance with FRA.

Further, the NCST’s Working Group found that even under the old rules, FRA compliance was in trouble. It said currently, nearly 25,000- 30,000 hectares of forest land was being diverted every year. It cited a study by the Centre for Environment and Development, ATREE to note: “Out of 128 applications for forest diversion for mining, over 100 had been processed between 2009 and 2018.” It added that 74 proposals had Stage 2 approval, 46 had Stage 1 approval (in-principle), with just five rejected and four closed for other reasons. None of the rejections was for non-compliance of FRA. The study also found that 14 of these cases (all-post 2014) had been cleared with an FRA compliance report, despite this being far from the “ground reality”.

Also read | [Forest rights are still far off for tribal communities](#)

Mr. Yadav wrote back to the NCST chief insisting that FCR, 2022 does not violate any provisions granting land rights to STs and OTFDs. He said that the FCR has been issued in accordance with the Forest (Conservation) Act, 1980, which was for a procedure which will run “parallel” to the provisions of the FRA, 2006, and that there was “no legal basis” for the ST Commission’s concerns about the FCR’s impact on the FRA.

After this, the NCST’s letter to the Supreme Court requisitioning detailed reports related to FRA implementation by all States and UTs, is its the ST panel’s latest move. The Court is yet to notify the next date for hearing the FRA case.

In order to access “authentic FRA reports”, the NCST approached the Supreme Court with a letter, invoking powers under Clause 8(d) of Article 338A of the Constitution, seeking all documents filed in Writ Petition (Civil) 109/2008.

The petition was filed initially by a Trustee of Wildlife First, a Bengaluru-based advocacy organisation that believes in the “ideology of strictly protected wildlife reserves” and “voluntary resettlement solutions” for local tribespeople and OTFDs living in forest reserves. The plea essentially challenged the constitutionality of the FRA, with which eventually, a batch of related petitions got tagged, and was placed for hearing before a three-judge Constitution Bench.

In the course of the hearings, the Supreme Court requisitioned data of all claims under the FRA, which showed that nearly 50% of claims had been rejected. Subsequently, the top Court remarked that despite such a rate of rejections, evictions were seemingly not at the same scale. The Court in 2019 went on to order that all encroachments be cleared from forest land and anyone found occupying land despite having their FRA claim rejected, be evicted.

However, the Court was alerted that the order would adversely affect thousands of tribespeople and OTFDs, whose claims process under the FRA could be questionable. The Court noted that in many FRA rejections, rejection notices might not have been served to the locals and there was no clarity on whether they were given a chance to provide evidence. It added, the question of “mighty people, industrialists” sitting on forest land by occupying it in the guise of OTFDs was of significance and cannot be ignored.

Comment | [The tragedy of conservation](#)

The eviction order was stayed and the court called for more detailed reports on number of rejections, reasons for rejection, procedure followed for processing a claim, whether each claimant had the opportunity to provide evidence. The States filed their reports. These are the reports that the Supreme Court released to the NCST on February 20.

COMMENTS

SHARE

[The Hindu Explains / environmental issues](#)

BACK TO TOP

Comments have to be in English, and in full sentences. They cannot be abusive or personal. Please abide by our [community guidelines](#) for posting your comments.

We have migrated to a new commenting platform. If you are already a registered user of The Hindu and logged in, you may continue to engage with our articles. If you do not have an account please register and login to post comments. Users can access their older comments by logging into their accounts on Vuukle.

**END**

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

CrackIAS