

GOVERNMENT OF INDIA
(MINISTRY OF TRIBAL AFFAIRS)
LOK SABHA
UNSTARED QUESTION NO.4676
TO BE ANSWERED ON 22.07.2019

LAND RIGHTS OF STs

4676. DR. HEENA GAVIT:
DR. SUBHASH RAMARO BHAMRE:
DR. AMOLRAMSING KOLHE:
SHRIKULDEEP RAI SHARMA:
SHRI SUNIL. DATTATRAY TATAKARE :
SHRIMATI SUPRIYA SULE:

Will the Minister of TRIBAL AFFAIRS be pleased to state:

- (a) whether the Government is aware that most of the tribal land is being encroached upon by various interest groups all over the country and if so, the details thereof;
- (b) whether the Government protects and safeguards the land rights of Scheduled Tribes to address the issue of Land Acquisition and displacement of tribals and if so, the details thereof;
- (c) whether directions have been issued to the State Governments/UTs for strict and speedy implementation of Forest Rights Act, 2006 and if so, the details thereof;
- (d) The minimum extent of land that is entitled for tribals and other traditional Forest Dwellers as per the above Act, and
- (e) the other remedial steps being taken by the Government in this regard?

ANSWER

MINISTER OF STATE FOR TRIBAL AFFAIRS
(SMT. RENUKA SINGH SARUTA)

(a) to (b) In so far as land related issues are concerned, the Ministry of Rural Development, Department of Land Resources (DoLR), is the nodal Ministry at the Centre, which plays a monitoring role in the field of land reforms, Land and its management fall under the exclusive legislative and administrative jurisdiction of States as provided under the Constitution of India (Seventh Schedule)-List-II (State List)-Entry No. (18).

The Scheduled Tribes (STs) have been the most marginalised, isolated and deprived population. To protect and safeguarding the land rights of STs and to address the issue of Land Acquisition and displacement of tribals, following Constitutional and legal provisions have been put in place: -

- i) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA in short), in section 4(5) states that save as other wise provided, no member of a forest dwelling Scheduled Tribes or Other Traditional Forest Dweller shall be evicted or removed from the Forest

Land under his occupation till the recognition and verification procedure is complete.

- ii) Under Section 5 of FRA, Gram Sabha is, inter-alia, empowered to ensure the decision taken in Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.
- iii) Government has enacted the 'Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, 2013 in short). The purpose of the said Act is to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired.
- iv) Under Section 48 of RFCTLARR Act, 2013, a National Level Monitoring Committee for Rehabilitation and Resettlement has been constituted in the DoLR vide DoLR's Order No. 26011/04/2017-LRD dated 2nd March, 2015 for the purpose of reviewing and monitoring the implementation of rehabilitation and resettlement schemes and plans related to land acquisition under the RFCTLARR, 2013 and National Rehabilitation and Resettlement Policy, 2007.
- v) By way of safeguards against displacement special provisions have been made for Scheduled Caste and Scheduled Tribes under Section 41 and 42 of the RFCTLARR Act, 2013 which protect their interests. As per Section 41 (1), as far as possible, no acquisition of land shall be made in the Scheduled Areas. As per Section 41(2), where such acquisition does take place, it shall be done only as a demonstrable last resort. As per Section 41(3), in case of acquisition or alternation of any land in Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force. The RFCTLARR Act, 2013 also lays down procedure and manner of rehabilitation and resettlement.
- vi) The Panchayats (Extension to Scheduled Area) Act, 1996, also provides that the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas or development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas, the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State Level.
- vii) Constitutional provision under Schedule-V also provide for safeguards against displacement of tribal population because of land acquisition etc. The Governor of the State which has scheduled Areas is empowered to prohibit or restrict transfer of land from tribals and regulate the allotment of land to members of the Scheduled Tribes in such cases. Land being a State subject, various provisions of rehabilitation and resettlement as per

the RFCTLARR Act, 2013 are implemented by the concerned State Governments.

- viii) The Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989" has been introduced to prevent the commission of offences of atrocities against members of the Scheduled Castes and the Scheduled Tribes, to provide for the trial of such offences and for the relief of rehabilitation of the victims of such offences for matters connected therewith or incidental thereto. Wrongfully dispossessing members of Scheduled Castes or Scheduled Tribes from their land or premises or interfering with the enjoyment of their rights, including forest rights, over any land or premises or water or irrigation facilities or destroying the crops or taking away the produce there from amount to offence of atrocities and are subject to punishment under the said Act.

Apart from the above, a 3 judges' bench of Supreme Court in Orissa Mining Corporation Vs. Ministry of Environment and Forest & Ors. vide W.P.(c) 180 of 2011, held that forest approval cannot be granted for a development project without the informed consent of the Gram Sabhas, given after proper consideration in a duly convened Gram Sabha and passed by resolution. The Court stated that the Gram Sabha is also free to consider all the community, individual as well as cultural and religious claim.

The Ministry of Mines, vide their letter dated 5th January, 2017 sent a letter to all State Governments regarding imposing of conditions in the lease deed in regard to FRA compliance in the cases covered under Section 10(A)(2) (c) of the Mines & Minerals (Development & Regulation) Act, 1957. In the said letter, it has been, inter-alia, mentioned that execution of lease deed shall not be construed to dilute any provision of FRA.

Further, the Ministry of Environment and Forests vide their letter dated 03.08.2009 has informed all State Governments regarding diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980. This letter includes that a letter from the State Government certifying that proposals for such diversion (with full details of project and its implication, in vernacular/local languages) have been placed before each concerned Gram Sabha of forest-dwellers, who are eligible under the FRA.

FRA is an Act to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generation but whose right could not be recorded.

The recognition and vesting of such forest rights under FRA is subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2015.

(c) The State Governments/UTs have been issued advisories by this Ministry from time to time to carry out the strict and speedy implementation of provisions of the Forest Right Act, 2006 and Rules there under and to ensure that while processing the claims of Forest dwellers under the Act, no eligible claim is rejected. In addition, recently a letter dated 26.03.2019 was also issued to all

Sates/UTs indicating various directions issued by Ministry of Tribal Affairs regarding the implementation of FRA, 2006 circulated, to facilitate necessary action by the States/UT Governments.

- (d)(i) FRA is an Act to recognize and vest the forest rights and occupation in Forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but who right could not be recorded.
 - (ii) The recognition and vesting of such forest rights under FRA is subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.
 - (iii) As per Section 4(6) of FRA "where the forest rights re-cognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (I) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.
- (e) As already given in reply to part (c) of the question above.
