

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....

ORIGINAL APPLICATION No. 112/2020/EZ

IN THE MATTER OF:

**Dhanishwar Debnath,
S/o Rashbihari Debnath,
Village-Santipur, Post Office &
Police Station-Kanchanpur,
District North Tripura-799270,
State: Tripura being the Secretary
Of Jai Hind Club, Registered under
The Societies Registration Act, 1860
Bearing registration No.2099 of 1992**

....Applicant(s)

Versus

1. Union of India

**Service through the Secretary,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhawan, Jor Bargh Road,
New Delhi-110003**

2. The Central Pollution Control Board

**Service through the Member Secretary,
Parivesh Bhawan, East Arjun Nagar,
Delhi-110032**

3. The Chief Secretary, Govt. of Tripura

**Having its office at New Secretariat Complex,
Post Office-Secretariat, Agartala-799010**

4. The Principal Secretary,

**Forest Department of Tripura,
Having its office at New Secretariat Complex,
Post Office-Secretariat,
Agartala-799010, District West Tripura**

**5. The State Environmental Impact Assessment Authority
(SEIAA)**

**Tripura through its Member Secretary,
Having office at Paribesh Bhawan, P.N. Complex,
Gorkhabasti, Agartala-799006**

**6. The District Magistrate & Collector,
Office-Tilla, Dharmanagar,
North Tripura District-799250**

**7. The Tripura State Pollution Control Board,
Service through the Member Secretary,
Parivesh Bhawan, Gorakhabasti, P.O. Khunjaban,
Agartala-799006, Tripura (W)**

**8. Principal Chief Conservator of Forests, Tripura
Aranya Bhawan, Nehru Complex,
Agartala, Tripura-799010**

....Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Prasenjit Debnath, Advocate

COUNSEL FOR RESPONDENTS:

**Mr. Gora Chand Roy Choudhury, Advocate for R-1,
Mr. Surendra Kumar, Advocate for R-2,
Mr. Suvodeep Roy, Advocate for R-3, 4, 6 & 8**

JUDGMENT

PRESENT:

**HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)**

**Reserved On: - 4th February, 2022
Pronounce On: - 24th February, 2022**

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1. Whether the Judgment is allowed to be published on the net? **Yes**
 2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**

JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the Applicant as well as the learned Counsel for the Respondents and perused the documents on record.

2. The grievance of the Applicant in the present Original Application is that under a Quadripartite Agreement dated, 16.01.2020 entered into between the Central Government, the State Government of Tripura, the State Government of Mizoram and the representative of the 'Bru' Community, residing at refugee camp at Tripura, it was decided to resettle the 'Bru' community within the State of Tripura. It is stated that the 'Bru' community originally belong to Mizoram and have been displaced from there due to internecine conflicts with the local Mizos.

3. The contention of the Applicant is that for resettlement of about 40,000 'Bru' community members who have fled into Tripura, the Government has invited e-tenders dated, 04.11.2020 (Annexure-I) for making certain constructions within a forested area.

4. The further grievance of the Applicant is that this area wherein the Applicant and others reside is under green cover and is a good forest area comprising of more than 250 Ha and it is this forest area over which the construction is sought to be made to resettle the 'Bru' community in violation of Section 2 of the Forest Conservation Act, 1980.

5. Notices were issued to the Respondents and various affidavits have been filed by the contesting respondents.

6. The stand of the Forest Department, Tripura, Respondent No.4 is that towards implementation of the Quadripartite Agreement which was executed between Government of India, Government of Tripura, Government of Mizoram and the Bru Representative Organizations, in all six land diversion proposals under the provisions of Forest (Conservation) Act, 1980, covering 120 Ha of land, has been proposed under Kanchanpur Sub-Division for re-settlement and rehabilitation of the Bru refugees, in the following locations:-

- i) Bikramjoy Para;
- ii) Nandiram Para;
- iii) Bhandarima-Pusparampara;
- iv) Gachirampara;
- v) Anandbazaar CCRF and
- vi) Manu Chalingta

These locations have also been communicated to the MoEF&CC. It is emphasized that none of the above identified areas is part of any Wildlife Sanctuary or National Park.

7. It is stated that the proposals were discussed in the Regional Empowered Committee (in short 'REC') of MoEF&CC, Govt. of India, in its 36th Meeting held on 11.01.2021 and the REC recommended In-principal/Stage-I approval under the Forest (Conservation) Act, 1980. It is also stated that In-principal/Stage-I approvals have been

received from Regional Office of MoEF&CC, Govt. of India Shillong but final approval of the proposals has not yet been received. The proposals are as follows:-

Proposal Name	Mouja	Area in ha	Reference of In-principal/Stage-I approval conveyed by Regional Office of MoEF&CC, Govt. of India
<i>Gachirampara</i>	<i>Gachirampara</i>	<i>25.00</i>	<i>No.3-TR C 093/2020-SHI/3294-95 dated 25/01/2021</i>
<i>Manu-Chailengta</i>	<i>Manu Chailengta RF</i>	<i>25.00</i>	<i>No.3-TR C 089/2020-SHI/3315-16 dated 25/01/2021</i>
<i>Anandabazar</i>	<i>CCRF</i>	<i>25.00</i>	<i>No.3-TR C 087/2020-SHI/3311-12 dated 25/01/2021</i>
<i>Bikramjoy Para</i>	<i>Ujjan Machmara RF</i>	<i>10.00</i>	<i>No.3-TR C 091/2020-SHI/3296-97 dated 25/01/2021</i>
<i>Nandiram Para</i>	<i>Ujjan Machmara RF</i>	<i>10.00</i>	<i>No.3-TR C 090/2020-SHI/3298-99 dated 25/01/2021</i>
<i>CCRF (Bhandarima)</i>	<i>CCRF</i>	<i>25.00</i>	<i>No.3-TR C 094/2020-SHI/3313-14 dated 25/01/2021</i>

8. It is further stated that the members of the Bru community (Reangs) were displaced from Mizoram and they have been proposed for rehabilitation/re-settlement in Tripura. It is also stated that the matter relating to resettlement of Bru community is also pending consideration before the Hon'ble Supreme Court in *Civil Original Jurisdiction I.A. No. 174063 of 2019 Writ Petitioner (Civil) No. 867 of 2016, Mizoram Bru Displaced People's Forum & Ors. vs. Union of India & Ors.*, and the counter-affidavit filed before the Hon'ble Supreme Court has been filed in the present proceedings also as Annexure-R/4. In this affidavit, it is stated that due to attacks on minority Reang Tribals by Mizo villagers, a number of Bru (Reang)

families from Western Mizoram migrated to Northern Tripura from October, 1997 onwards. Such Bru migrants were sheltered in six relief camps set up in Kanchanpur District of Tripura and there were about 32,876 persons of the Bru community (5407 families) as per identification exercise carried out by the Government of Mizoram in 2016. It is also stated that the Ministry of Home Affairs has been extending grants-in-aid to Government of Tripura since 1997-98 for maintenance of Brus and the Government of Mizoram for rehabilitation and repatriation of Brus since 2004-05. It is further stated that the identification process of Bru migrants for repatriation of 7th Batch of Bru (Reang) refugees started from 02.06.2015 but none of the Bru migrants insisted that their new demands be met by the Government. The Quadripartite Agreement entered into between the Government of India, Government of Tripura, Government of Mizoram and Bru Representative Organizations has been filed at page no. 128 of the paper book and is reproduced herein under:-

“AGREEMENT BETWEEN GOVERNMENT OF INDIA, GOVERNMENT OF TRIPURA, GOVERNMENT OF MIZORAM AND BRU REPRESENTATIVE ORGANIZATIONS

- 1. Government of India has been making efforts in consultation with Governments of Tripura and Mizoram and Bru Organizations for settlement of Bru displaced persons from Mizoram and presently living in camps in Tripura. An agreement was signed on 3rd July, 2018 for their repatriation to Mizoram. 328 families with 1,369 persons repatriated to Mizoram after the agreement- A large number of the remaining families have shown unwillingness to repatriate to Mizoram and want to settle down in Tripura.*
- 2. The Government of Tripura has shown willingness to settle the willing Brus in Tripura. Their settlement in Tripura has also been agreed to by the Bru Organizations and the Government of Mizoram. The option to Bru families to*

repatriate to Mizoram as per agreement of 3rd July, 2018 will continue.

3. Broad Framework of Resettlement Plan

3.1 All Bru families presently residing in temporary relief camps in Tripura after November 30, 2019 and willing to settle in Tripura will be resettled in Tripura.

3.2 These willing families will be entitled for rehabilitation package as described in Para 4 below.

3.3 The Bru families which repatriated to Mizoram in earlier phases of repatriation shall not be allowed to resettle in Tripura under this Agreement.

3.4 Govt. of Tripura will carry out a fresh survey through physical verification of Bru families currently residing in relief camps in Tripura in order to ascertain the number of families/persons to be resettled in Tripura.

3.5 The process of resettlement of displaced Bru families in Tripura will be carried out as per the schedule of resettlement at Annexure-1.

3.6 All temporary relief camps for Brus in Tripura will be completely closed down thereafter.

3.7 Govt. of India will favourably consider any request from Govt. of Tripura regarding financial or other assistance to meet the requirements related to the resettlement plan.

3.8 Govt. of India will consider implementing a Special Development Project for the resettled Brus in Tripura.

4. Rehabilitation Package

4.1 Each family will be given one time financial assistance of Rs.4 lakh (Rupees Four Lakh only), which will be kept in Fixed Deposit in the name of the head of the family, within one month of its resettlement in Tripura. The money will remain in Fixed Deposit for two years and will be released thereafter in the event of the family continuing in Tripura.

4.2 Each resettled family will be given a piece of land in clusters measuring 30'x40' for the construction of a house, Govt. of India will provide funds to Govt. of Tripura for diversion of forest land and acquisition of private land required for the resettlement. The demands of Bru families for agriculture land will be addressed through the Joint Monitoring Committee.

4.3 Each family will be provided Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) towards House Building Assistance in Tripura. This will be disbursed in three equal instalments: at the time of beginning of construction of the house, on completion of 50% of construction of the house and on completion of the house.

4.4 Each family will be given Rs.5,000/- (Rupees Five Thousand only) per month as cash assistance for a period of two years from the date of shifting to new location in Tripura. Till the date of shifting, level of present scale of assistance will continue.

4.5 Each family will be given free ration for two years from the date of resettlement in Tripura at the present rates applicable.

4.6 Each family will get free transportation to move from the present temporary camps to the location of resettlement in Tripura.

4.7 All cash assistance will be provided through Direct Beneficiary Transfer/DBT scheme.

4.8 Govt. of Tripura will expedite opening of Bank accounts, issue of biometric Aadhar Cards and updation of ration cards to the resettled Brus.

4.9 Govt. of Tripura will take necessary steps to issue PRC and ST Certificates to the resettled Brus and include their names in electoral rolls in a time bound manner.

4.10 Resettled Bru families will be entitled to the benefits of Centrally Sponsored Schemes at par with other villagers. Accordingly, quota under various social welfare schemes for Govt. of Tripura will be enhanced.

4.11 Eklavya Tribal Residential Schools will be established in villages of resettlement as per the existing norms.

5. Joint Monitoring Committee

Govt. of India will constitute a Joint Monitoring Committee to oversee implementation of this Agreement. This Committee will consists of:-

- | | |
|---|-----------|
| (i) Special Secretary (Internal Security), MHA | :Chairman |
| (ii) Joint Secretary (North East), MHA | :Member |
| (iii) Addl. Chief Secretary (Forest),
Govt. of Tripura | :Member |

- (iv) Principal Secretary (Revenue), Govt. of Tripura :Member
(v) One representative of each of the Bru Organizations party to the Agreement :Member
(vi) One representative of the Indigenous Progressive Regional Alliance/ TIPRA :Member

The above Agreement is signed in presence of Hon'ble Union Home Minister of India, Shri Amit Shah, Chief Minister of Mizoram Sh. Zoramthanga and Chief Minister of Tripura Shri Biplab Kumar Deb.

(A.Sawibunga)
President, MBDPF

(Bruno Msha)
General Secy, MBDPF

(Philip Apeto)
General Secy, MBIDM

(Vipin Kumar Reang)
President, BTDS

A. Laldngliana
President, MBDPCC

(C. Thankima)
President, BDWO

(Pradyut Kishore Debbarma)
Chairman, TIPRA

(L. Chuaungo)
Chief Secretary, Mizoram

(Manoj Kumar)
Chief Secretary, Tripura

(Satyendra Garg)
Joint Secretary (NE), MHA

9. The Schedule of re-settlement to the Quadripartite Agreement filed as Annexure-I to the affidavit filed in the Hon'ble Supreme Court which is as under:-

Sl. No.	Activity	Target Date	Action to be taken by
1	Survey/Physical verification to identify Brus for resettlement in Tripura	Within 15 days of signing of the Agreement	Government of Tripura
2	Continuation of financial assistance, free ration for six months from date of agreement	--	Govt. of India and Government of Tripura
3	Identification of land for resettlement	Within 60 days of signing of the Agreement	Government of Tripura
4	Allotment of land to the beneficiaries	Within 150 days of signing of the Agreement	Government of Tripura
5	Payment of 1 st Installment of House Building Assistance	At the beginning of construction of the house	Govt. of India and Government of Tripura
6	Movement to resettlement locations and closure of	Within 180 days of signing of the	Government of Tripura

	<i>temporary camps</i>	<i>Agreement</i>	
7	<i>Completion of construction of dwelling houses and payment of all installments of House Building Assistance</i>	<i>Within 270 days of signing of the Agreement</i>	<i>Govt. of India, Government of Tripura and the beneficiaries</i>

10. A reply affidavit has been filed by Respondent No.6, District Magistrate, Dharmanagar, North Tripura, wherein it is stated that there is no suitable khas land of required quantum available in the District for re-settlement of Bru Migrants and in some cases there were local objections in respect of the land so identified in the locality for the re-settlement purpose. It is also stated that since 1997, the Bru Migrants are residing in temporary relief camps located in Kanchanpur & Panisagar Sub-Division and their re-settlement programme has been taken-up with a view to bring an end to their uncertainty in terms of the Quadripartite Agreement dated 16.01.2020. It is further stated that six proposals have been initiated for diversion of forest land by the SDM, Kanchanpur as per the Forest (Conservation) Act, 1980.

11. The stand of the Respondent No.1, Ministry of Environment, Forests and Climate Change, in its affidavit is that the State Government had submitted proposals under Section 2 of the Forest (Conservation) Act, 1980 for diversion of forest lands for re-settlement of Bru migrants in Kanchanpur, North Tripura. The proposals which have been mentioned in paragraph 9 of the affidavit read as under:-

“9. That in response to the averments made in Para (4) 4 of the Application, the same is denied and disputed. In response, this

answering respondent humbly submits that the State Government had submitted proposals under Section 2 of the Forest (Conservation) Act, 1980 for diversion of forest lands for resettlement of Bru migrants in Kanchanpur, North Tripura. With respect to all six (6) forest lands in question raised in the present Application, this replying respondent had received proposals from the State respondent which are as under:-

Sl. No.	Proposal Name	Area in ha	Category	User Agency Name	Proposal received on
1.	Proposal for diversion of 10 ha forest land for resettlement of Bru migrants of location Bikramjoy para of mouja-Ujanmachmar a RF in favour of SDM Kanchanpur under North District	10	Rehabilitation	Sub-Divisional Magistrate, Kanchanpur	19.11.2020
2.	Proposal for diversion of 10 ha of forest land for resettlement of Bru Migrant in Nandirampar a under Ujanmacham ara Mouja of Kanchanpur Sub-Division, North Tripura District	10	Rehabilitation	Sub-Divisional Magistrate, Kanchanpur	19.11.2020
3.	Proposal for diversion of 25.00 ha of forest land for resettlement of Bru Migrants at Bhandarima of Mouja CCRF in favour of SDM, Kanchanpur	25	Rehabilitation	Sub-Divisional Magistrate, Kanchanpur	19.11.2020

	<i>under North Tripura District</i>				
4.	<i>Proposal for diversion of 25.00 ha of forest land for resettlement of Bru Migrants at Mouja-Gachirampar a under Tehsil-Anandbazar, Subdivision-Kanchanpur, Dist.-North Tripura in favour of SDM, Kanchanpur</i>	25	<i>Rehabilitation</i>	<i>Sub-Divisional Magistrate, Kanchanpur</i>	19.11.2020
5.	<i>Proposal for diversion of 25.00 ha forest land for resettlement of Bru Migrants at Mouja-CCRF in favour of SDM, Kanchanpur under North Tripura District</i>	25	<i>Rehabilitation</i>	<i>Sub-Divisional Magistrate, Kanchanpur</i>	19.11.2020
6.	<i>Proposal for diversion of 25.00 ha of forest land for resettlement of Bru Migrant of Mouja-Manu-Chailengta RF in favour of SDM, Kanchanpur under North Tripura District</i>	25	<i>Rehabilitation</i>	<i>Sub-Divisional Magistrate, Kanchanpur</i>	19.11.2020

12. It is stated that the Regional Empowered Committee (in short 'REC') in its 36th meeting enquired from the State Government as to

why re-settlement had not been done in the revenue land as the proposal submitted by the Government is not site specific. The State Government clarified that no large chunk of revenue land is available in the State for resettlement and rehabilitation of Bru members as most of the available revenue lands are in small pockets. It was also clarified that there is no proposal for rehabilitation of displaced Bru in the revenue land. According to the MoEF&CC the present proposal is one that has no precedence that may have been dealt with by the MoEF&CC in the past and it is a standalone case. The REC also noted that the Secretary, Revenue, Government of Tripura had informed that the Bru people were originally from the forest hills of Mizoram, many of which have been notified as National Parks, Sanctuaries or Reserve e.g. Dampa Tiger Reserve. The REC in recognizing the humanitarian crises over the issue decided as under:-

- i. State Government to furnish further justification on the effort that was put into finding revenue land by the State Government so as to make strong justification case for diversion as required.
- ii. State Government to provide a note on the admissibility of the proposal based on para 1.15 of the comprehensive guidelines of Forest (Conservation) Act, 1980.

13. It is further stated by the State Government of Tripura that the Bru (Reang) migrants are forest dwellers from Mizoram and the same has been corroborated by Government of Mizoram and they will be given permission to construct dwelling units without

conferring any ownership of land. In the circumstances denotification of forest land may not be required. Paragraph 12 of the affidavit is reproduced herein for proper appreciation of this case which reads as under:-

“12. That the REC members took up the proposals in their 36th meeting on 11.01.2021. The REC members took up 9 proposals for resettlement of Bru migrants (6) of these proposals are the areas in question raised in the present Application. The REC reiterated what was discussed in its previous REC meeting about the importance of these proposals. The REC observed that the justification on the effort put by the State Govt. into finding revenue land and steps to be taken by State Govt. to upset imminent pressure on surrounding forests immediately after rehabilitation has been provided satisfactorily by the State Govt. in all 9 numbers of the cases and accepted the same. The REC members observed that this being a special case and that such case may come up in the future the instant settlement should be such that it can be a model of sustainability with minimum pressure on surrounding forest now or in the future and one which can be model for any future settlement in forest area. The REC also observed that land proposed will suffice for the present resettlement only but that there is a perceived threat of encroachment and pressure on the surrounding forest with an increase in their population, the need for future expansion of village and for other land and forest based livelihood activities which needs to be avoided at all cost. Therefore the REC requested the State Government to organize a workshop for getting all the Departments of the State dealing with different aspects of Development like Fisheries, Horticulture, Agriculture, Sericulture etc. for a common platform to take up concerted effort to ensure that the settlement of the Brus will be success story and not adversely affect the surrounding areas by ensuring maximum opportunities of alternate employment and sustainable land use.

That thereafter the proposals were discussed as:-

- i. **AGENDA (8)** for **Nandirampara** under Ujanmachmara Mouja of Kanchanpur Sub-Division, North Tripura District.*
- ii. **AGENDA (9)** for **Bikramjoy Para** of Mouja-Ujanmachmara RF in favour of SDM Kanchanpur under North District.*
- iii. **AGENDA (10)** for **Mouja-CCRF** in favour of SDM Kanchanpur under North District.*

- iv. **AGENDA (11)** for **Bhandarimamouja CCRF** in favour of SDM Kanchanpur under North District.
- v. **AGENDA (12)** for **Gachirampara** in favour of SDM Kanchanpur under North District.
- vi. **AGENDA (13)** for **Chailengta RF** in favour of SDM Kanchanpur under North District.

The REC members deliberated on the proposals regarding the legal status of the proposed land, the density of the proposed land, the cost of the project, the number of trees to be affected, the aerial distance of the proposed area from nearest Wild Life Sanctuary/National Parks etc. in which the same were discussed and accepted.

That the REC member also discussed and agreed on the justifications submitted by the State Government:-

- i. Effort put by the State Government into finding revenue land and
- ii. Steps to be taken by the State Government to upset imminent pressure on surrounding forests immediately after rehabilitation which are reproduced as under:-
 - a. "Settlement location will be fenced to reduce strain on neighbouring areas.
 - b. MGNREGA cards will be provided to discourage jhuming and collection of forest produce.
 - c. Skill development training in traditional crafts, food processing and small scale industries are in the pipeline. Tailoring and beauty parlour has been preferred by the women for livelihood. Keeping this in mind, Government has also decided to produce the same to IDP women.
 - d. With high quality education and scholarship assured to the younger generation dependence on forest would eventually be minimal.
 - e. SHG formation under TRLM is contemplated.
 - f. Ujjwala scheme for free LPG connection will be implemented or reducing dependence on firewood."

That after the discussions and deliberations on all 6 (six) proposals, based on the above measures committed by the State Government and additional suggestions from the REC which include chain-link fencing, ex-situ conservation, creation of Biodiversity Park etc., the REC recommended the

same for diversion of forest land for resettlement of BRU migrant in favour of SDM Kanchanpur under North District with usual conditions for resettlement purposes.”

14. It is stated that after careful deliberation by the REC members in the 36th meeting in which the REC had recommended the same as a very special case and therefore, the Deputy Inspector General of Forests (Central), MoEF&CC conveyed In-principal/Stage-I approval of the Central Government for diversion of the six proposals under Kanchanpur sub-division, totaling 120 Ha of forest land for resettlement of Bru in favour of Sub-Divisional Magistrate, Kanchanpur under North District subject to the conditions for compliance prior to handing over of forest land by the State Forest Department to the user agency, apart from conditions like Net Present Value (NPV), Compensatory Afforestation which involves ex-situ conservation, conservation of biodiversity, fencing around proposed diverted land amounting to Rs.3.38 crores approximately to ameliorate the impact of diversion. It was also stipulated that after receipt of the compliance report received from the State Government with regard to In-principal/Stage-I approval, final approval will be issued in this regard.

15. We have heard the learned Counsel for the parties and perused the documents on record.

16. The learned Counsel for the Applicant referred to Annexure ‘C’ (at page no. 34 of the original application) and submitted that large tracks of forest land were being diverted for re-settlement and rehabilitation of members of the Bru community and such diversion

of forest land would lead to destruction and degradation of prime forest.

17. Reference has also been made to the letter of Sub-Divisional Magistrate, Kanchanpur, North Tripura dated 18.09.2020 to show that 25 Ha of land for settlement of Bru migrants at Anandabazar Central Catchment Reserve Forest (RF) Plot No.4928 recorded under Sheet No.15 under Anandabazar T.K. within Anandabazar Revenue Circle under Kanchanpur Sub-Division of North Tripura District has been proposed with layout plan without consideration of any additional land requirement at this location for Bru Settlement.

18. The learned Counsel has also referred to the affidavit of the MoEF&CC in support of his argument to show that forest land has been diverted for settlement of members of the Bru community. Reference has also been made to Annexure R/1 (D) page 228 of the paper book, wherein a decision was taken vide letter dated 21.12.2020 by the Assistant Inspector General of Forests, MoEF&CC for diversion of forest land for re-settlement/rehabilitation of the Bru to be processed by the MoEF&CC, Government of India (as a special case in relaxation of the existing guidelines, if required) urgently as the agreement has to be implemented in a time bound manner. The learned Counsel submitted that under the Precautionary Principle the State Government and the Central Government, MoEF&CC ought to have

anticipated the rehabilitation of the Bru community and made adequate arrangements instead of diversion of prime forest land.

19. This case has thrown up peculiar facts which even the respondents have admitted to be a standalone case. There is no dispute that the members of the Bru (Reang) community are forest dwellers originally residing in Mizoram but due to local opposition and acts of violence against them they started migrating in large numbers to the neighboring State of Tripura particularly the adjoining Kanchanpur Sub-Division. A massive crisis therefore arose regarding rehabilitation of the members of the Bru (Reang) displaced community numbering 5407 families (32,876 persons in 2016). After several rounds of negotiation between the members of the Bru (Reang) community, State Government of Tripura, Ministry of Environment, Forests and Climate Change and the State Government of Mizoram a Quadripartite Agreement was arrived at between the parties providing for rehabilitation of the displaced members of the Bru (Reang) community in the State of Tripura for which six areas were identified which have already been noted herein above. There were wide range discussions on the question as to why revenue land has not been utilized for rehabilitation and re-settlement of the members of the Bru community but the Government of Tripura expressed its inability to provide revenue land stating that the same was not available at all and therefore, the MoEF&CC after considering the matter in its entirety and considering the extent of the human crises, granted/sanctioned diversion of 120 Ha of forest land under the Section 2 of the Forest

(Conservation) Act, 1980 for rehabilitation of the displaced members of the Bru (Reang) community for which In-principal/Stage-I approval has been granted. The MoEF&CC has also ensured that unless the In-principal/Stage-I conditions are fully complied with, final approval would not be granted.

20. The learned Counsel for the Applicant referring to his affidavit in reply dated 23.09.2021 and submitted that the MoEF&CC has imposed restrictions upon the diversion of forest land for rehabilitation vide notification/guidelines dated 28.03.2019 w.e.f. 08.03.2019. The learned Counsel submitted that under this notification such diversion may be considered as a special case belonging to Scheduled Tribes, Schedules Castes and other people who may have been shifted from the core zone of a National Park, Sanctuary or Reserve. It was submitted that in the present case the Bru migrants are residing with other local habitants in civil society since 1997 and therefore, they do not come under the domain of 'Special Case' as contemplated in clause 1.16 of Chapter 1 Part II of the notification/guidelines dated 28.03.2019.

21. In our opinion the submission of the learned Counsel for the Applicant is wholly misconceived, since the Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 itself permits diversion of forest land for purposes mentioned in sub-Section (2) for the members of other traditional forest dwellers and therefore, the provisions of the Act, 2006 would override any notification of the

MoEF&CC to the extent of such inconsistency with the provisions of the Act.

22. The learned Counsel for the Applicant has raised serious concerns that for settlement of the Bru community, 120 Ha of forest land is being diverted which would lead to destruction of the forest which is a huge area of almost 1.2 square kms. The learned Counsel submitted that the members of the Bru community as admitted by the Government of Mizoram in their parleys with the other members of the Quadripartite Agreement had admitted that the Bru (Reang) community are actually forest dwellers in the State of Mizoram and therefore, they should be rehabilitated as forest dwellers and in any case no construction of permanent nature should be allowed for their use by diverting forest land.

23. The learned Counsel further submitted that the Act, 2006, recognizes the rights of forest dwelling tribal communities and other traditional forest dwellers to forest resources on which these communities were dependent for a variety of needs including livelihood, habitations and other socio-cultural needs and therefore, the settlement of Bru community is not governed under the Act of 2006.

24. We may refer to the Section 2 (c) of the Act, 2006 which defines “forest dwelling Scheduled Tribes” to mean members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for *bona-fide* livelihood

needs and includes the Scheduled Tribe pastoralist communities.

Section 2(c) reads as under:-

“2(c) “Forest dwelling Scheduled Tribes” means the members or community of the Scheduled Tribes who primarily reside in an who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities.”

25. Section 2(o) defines “other traditional forest dweller” to mean any member or community who has for at least three generations prior to be 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

26. However, we may also refer Section 3 of the Act, 2006 which also defines forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers. Section 3 reads as under:-

“3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.- (1) *For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-*

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputes lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribal under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes or other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-

(a) schools;

(b) dispensary or hospital;

(c) anganwadis;

- (d) fair price shops;*
- (e) electric and telecommunication lines;*
- (f) tanks and other minor water bodies;*
- (g) drinking water supply and water pipelines;*
- (h) water or rain water harvesting structures;*
- (i) minor irrigation canals;*
- (j) non-conventional source of energy;*
- (k) skill up-gradation or vocational training centers;*
- (l) roads; and*
- (m) community centers:*

Provided that such diversion of forest land shall be allowed only if, -

- (i) the forest land to be diverted for the purposes mentioned in this subsection is less than one hectare in each case; and*
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.”*

27. Section 4 of the Act, 2006 provides for recognition of and vesting of forest rights in forest dwelling Scheduled Tribes and “other traditional forest dwellers”. Section 4 reads as under:-

“4. Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.-

(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in –

(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;

(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:-

(a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;

(b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;

(c) the State Government has concluded that other reasonable options, such as, co-existence are not available;

(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;

(e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;

(f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package; Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be 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.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household

headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.

(5) 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.

(6) Where the forest rights recognised and vested by subsection (1) are in respect of land mentioned in clause (a) of sub-section (1) 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.

(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

(8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.”

28. While sub-Section (1) of Section 3 of the Act, 2006 lays down the rights of members of the Forest dwelling Scheduled Tribes and other traditional forest dwellers, sub-Section (2) of Section 3 is in the nature of a non-obstante clause and empowers the Central Government to provide diversion of forest land for providing facilities managed by the Government as mentioned in sub-Section (2).

29. A conjoint reading of Section 3, sub-Section (1) & (2) and Section 4 would show that forest dwelling Schedules Tribes and “other traditional forest dwellers” rights shall be protected and all

amenities of schools, dispensary or hospital etc. as provided in sub-Section (2) shall also made available to such dwellers.

30. We also find from a reading of Section (3) and Section (4) of the Act, 2006 that the rights have been recognized not only for forest dwelling Scheduled Tribes but also of “other traditional forest dwellers” which would naturally include traditional forest dwellers who are not forest dwelling Scheduled Tribes but are otherwise dependent on the forest for their survival. Likewise the amenities as provided under sub-Section (2) of Section 3 shall be made available to such other forest dwellers also who are not forest dwelling Scheduled Tribes and for providing such facilities and amenities the Central Government shall provide diversion of forest land which would also involve felling of trees not exceeding seventy five trees per hectare.

31. In the present case, we find that the clear stand of State of Tripura is that there is no revenue land available on which the members of the Bru (Reang) community may be accommodated, re-settled and rehabilitated. It is for this reason that a request was made to the MoEF&CC with six proposed sites giving the forest area therein on which the members of the Bru (Reang) community may be re-settled and the MoEF&CC after full and due consideration has earmarked 120 Ha of forest land for rehabilitation and re-settlement of the members of the Bru (Reang) community and for which In-principal/Stage-I approval has also been granted. The MoEF&CC has also made it absolutely clear that final approval will only be

granted and be subject to compliance of the conditions mentioned In-principal/Stage-I approval. The REC has also recommended for diversion of the six proposals under the Kanchanpur sub-Division totaling 120 Ha of forest land for re-settlement of the Bru (Reang) community subject to conditions for compliance prior to handing over of forest land by the State Forest Department to the user agency apart from conditions like Net Present Value (NPV), Compensatory Afforestation which involves ex-situ conservation, conservation of biodiversity, fencing around proposed diverted land etc.

32. We are therefore satisfied that adequate safeguards and conditions have been laid down by the REC and the MoEF&CC for the diversion of 120 Ha of forest land for rehabilitation and re-settlement of the members of the Bru (Reang) community.

33. Under the Forest (Conservation) Act, 1980, the power to de-reserve any forest and for use of forest land for non-forest purposes is conferred on the Central Government under Section 2 of the Forest (Conservation) Act, 1980. Section 2 reads as under:-

“2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose: *Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-*

(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purposes;

[(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other Organisation not owned, managed or controlled by Government. (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for afforestation.

[Explanation:- For the purpose of this section “non-forest purpose” means the breaking or clearing of any forest land or portion thereof for- (a) the cultivation of tea, coffee, species, rubber, palms, oil-bearing plants, horticultural crops of medicinal plants;

(b) any purpose other than reforestation,

but does not include any work relating or ancillary to conservation, Development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and Construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]”

34. In the present case, we find that the sanction for diversion and use of 120 Ha of forest land for non-forest purposes has been exercised by the MoEF&CC under Section 2 of the Forest (Conservation) Act, 1980 and In-principal/Stage-I clearance has been granted subject to certain conditions. Therefore, we find that grant of In-principal/Stage-I approval by the MoEF&CC is in consonance with the powers conferred on the Central Government under Section 2 of the Forest (Conservation) Act, 1980.

35. Therefore, on a conspectus of the facts and law, we do not find any illegality or infirmity in the diversion of 120 Ha of forest land by the Central Government for the rehabilitation and re-settlement of the members of the Bru (Reang) community numbering more than 32,000 members in the Kanchanpur sub-Division of the State of Tripura.

36. We, therefore, find no merit in the original application and the same is accordingly dismissed.

37. There shall be no order as costs.

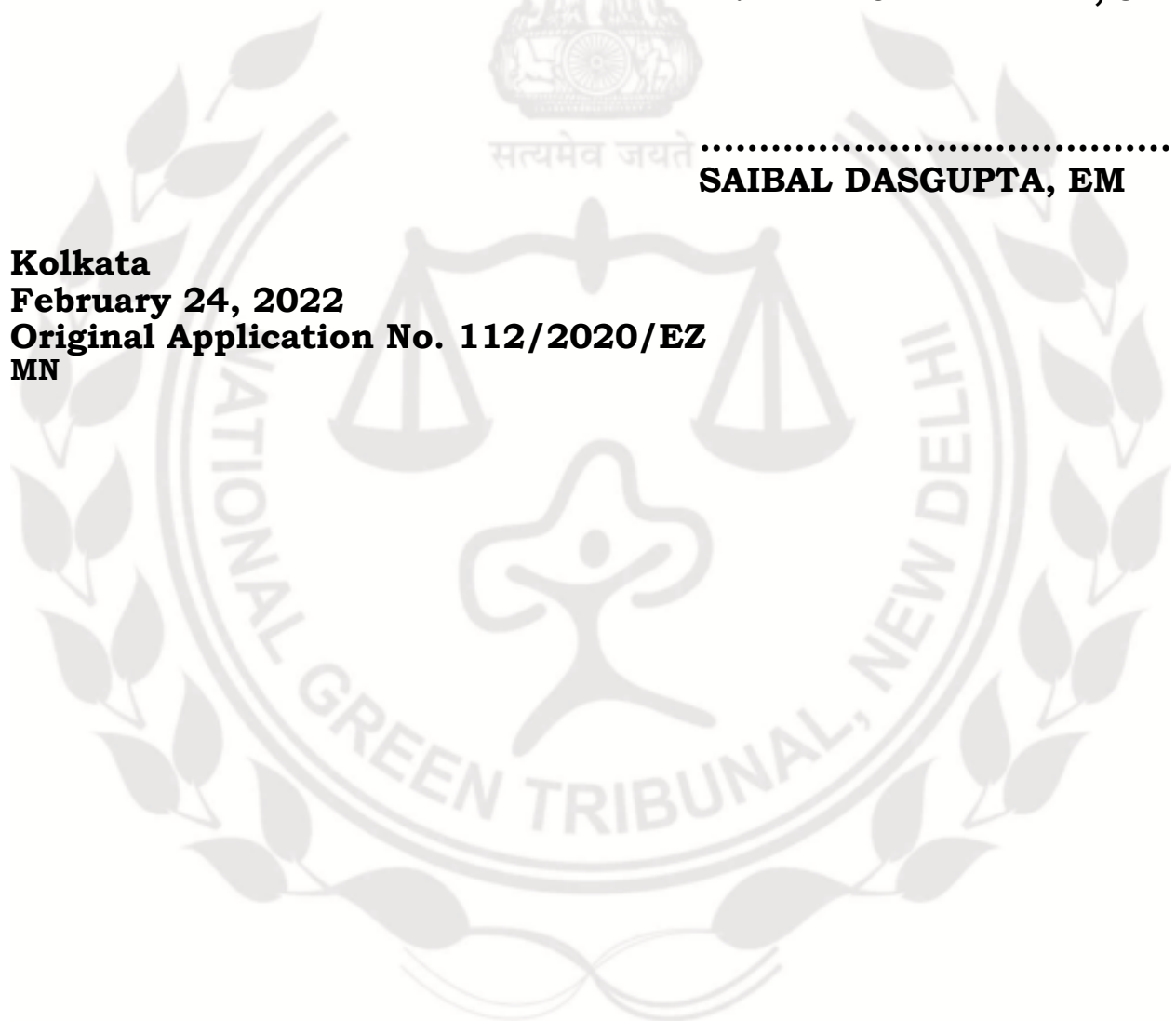


सत्यमेव जयते

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B. AMIT STHALEKAR, JM

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SAIBAL DASGUPTA, EM

Kolkata
February 24, 2022
Original Application No. 112/2020/EZ
MN



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