BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(CAMP AT PRINCIPAL BENCH, NEW DELHI)
.....
REVIEW APPLICATION No. 46/2016/EZ
&
M.A. NO. 822/2016/EZ
in
APPEAL NO. 04/2014/EZ

THEMREI TUITHUNG & ORS.
VS

1. **Union of India**

   Through the Secretary,
   Ministry of Environment and Forests,
   Paryavaran Bhawan, CGO Complex,
   Lodhi Road, New Delhi 110003.

2. **State of Manipur**
   Through its Chief Secretary,
   Government of Manipur,
   Impha

3. **Irrigation and Flood Control Department,**
   Government of Manipur,
   Through its Chief Engineer,
   Imphal

4. **Ministry of Tribal Affairs**
   Through the Secretary,
   Ministry of Tribal Affairs,
   Government of India,
   New Delhi

.....Respondents

COUNSEL FOR APPLICANTS:

Mr. Ritwick Dutta, Advocate, Ms. Sayanti Sengupta, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Gora Chand Roy Chowdhury, Advocate & Mrs. S. Roy, Advocate, for Respondent No. 1

Mr. Sapam Biswajit Meitei, Advocate, Ms. Poushali Banerjee, Advocate, Mr. Zangpo Sherpa, advocate and Mr. Dipankar Saha, Advocate for the Respondents No. 2 & 3.

Mr. Kushagra Shah, Advocate for Respondent No.4

PRESENT:
Hon'ble Mr. Justice S.P.Wangdi, Judicial Member
Hon'ble Mr. B.S.Sajwan, Expert Member

Reserved On: 30.11.2017
Pronounced On: 06.12.2017

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

JUDGMENT

JUSTICE S.P.Wangdi (JUDICIAL MEMBER)

This is a Review Application under Section 19 (4) (f) of the National Green Tribunal Act, 2010 read with Rule 22 of the NGT (Practices and Procedure) Rule, 2011, filed by the Review Applicants for review of the judgment dated 26.02.2016 passed by the Tribunal in Appeal No. 04/2014/EZ dismissing the Appeal.

2. Review of the judgment has been sought for on as many as six grounds. Appeal No. 04/2014/EZ had been filed by the review Applicants challenging the Forest Clearance (FC) under Section 2 of the Forest (Conservation) Act, 1980 granted by the State of Manipur vide letter dated 15.01.2014 to the Thoubal Multipurpose Project proposed at the tri-

junction of Ukhrul, Senapati and Thoboul Districts of Manipur for diversion of 595.00 ha of forest land on the grounds as under:-

(a) The Forest Clearance was granted in violation of the National Forest Policy, 1988.

(b) The Forest Clearance was bad for non application of mind to the relevant facts.

(c) The FAC in 2009 had bypassed the important aspects of forest clearance process prescribed by the earlier FAC in 1993.

(d) The grant of such forest clearance amounted to condoning the violation of the Forest (Conservation) Act,1980 committed by the project proponent which would not be in the interest of ecological justice and future of forests in the country.

(e) The acquisition of forest land prior to the grant of forest clearance defeated the purpose of scrutiny of the FAC and was contrary to law laid down by the Hon'ble Supreme Court in the case of ***Karnataka Industrial Area Development Board –vs- Kenchappa : (2006) 6 SCC 371.***

(f) FAC while dealing with the matter had taken a casual and lackadaisical approach in dealing with the crucial issue of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short FR Act).

(g) Grant of forest clearance was in violation of the judgements of the Hon'ble Supreme Court in ***Orissa Mining Corporation –vs- Ministry of Environment and Forest : (2013) 6 SCC 476 and also in***

Lattarng Urinium Mining Private Ltd. –vs- UoI & Ors: 2011(7) SCC 338.

3. After the affidavits were filed in opposition to the Appeal, several issues were framed of which issue No. (D) was " whether the Forest Rights Act, 2006 is applicable in the instant case ?

4. We have referred specifically to this issue being the sole issue which would be relevant for disposal of this Review Application.

5. As already observed as many as six grounds were raised to assail the impugned judgement dated 26.2.2016 (hereinafter referred to as the impugned judgement). However, during the course of hearing Mr. Ritwick Dutta, Ld. Advocate for the Review Applicants, in fairness submitted that he would not press all of those except the inter-related grounds No. (B) &(D) which are summed up as follows :-

> **"(B) The Hon'ble tribunal erred in concluding that the issue of Forest Rights Act were a "dead issue".**
>
> "(D**) The Hon'ble Tribunal erred in its conclusion regarding the applicability of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 inasmuch as it has been observed in the impugned judgement the Forest Rights Act was not applicable in the present case since the project had commenced since 1980 when the FR Act was not even born and that this should be treated as an exception since 80% of the construction is over**.

6. It was submitted that the aforesaid conclusion was an error apparent on face of record for the following reasons:

> D1. The compliance of the FRA flows from the condition contained in the Forest Clearance dated 15th January, 2015, which is the subject matter of this Appeal. Condition No. (xii) clearly states "**all other conditions under different rules, regulations and guidelines including environmental clearance shall be complied with before transfer of**

forest land" (emphasis supplied). In fact, the Stage I Forest Clearance dated 11th January, 2010 clearly states that the approval is granted "subject to the fulfillment of ..... conditions", which include "All other conditions under different rules, regulations and guidelines including environmental clearance and the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 shall be complied before transfer of forest land."

Since the Forest Clearance was granted in 2015, all the laws which are applicable on the date on which the Clearance are applicable. Therefore, the Forest Rights Act is very much applicable in this context.

D2. In addition, the finding is directly contradictory to the letter and spirit of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act"). The preamble to the Forest Right Act states: "Whereas it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who are forced to relocate their dwelling due to State development interventions" (emphasis supplied). From this, there is a clear statutory recognition that past practices have been unfair on forest dependent tribals and communities. To justify past activity – which have admittedly been conducted illegally without any mandatory clearance – to exempt the application of the Forest Rights Act which seeks to correct historical injustice will lead to miscarriage of justice.

D3. Furtherance, this goes against the requirement of the judgment of the NGT in O.A. 167/2013 in this case, which required the MoEF and MoTA to examine the FRA issues in the Mapithel project, which states:

"having heard all the respective Counsel, and taking note of the facts that the project proposal has been made in the year 1988, clearance of the first stage having been granted in 2010 and is pending for more than 25 years and without expressing any opinion on the merits, we are of the view that certain directions must be given to the MoEF as well as the Ministry of Tribunal Affairs to expedite the matter in public interest. Accordingly, we direct the Ministry of Tribal Affairs with whom the proposal sent by the MoEF is pending, to forward their comments forthwith to the MoEF within a period of one week from the date of receipt of the copy of the order.

> On receipt of the comments from the Ministry of Tribal Affairs, the Ministry of Environment and Forests shall pass appropriate orders on the proposal given by the State of Manipur in respect of the second stage clearance by following the procedure in accordance with law, including all the memoranda issued by the Government of India from time to time in this regard."
>
> Therefore, clearly, the order accepted the fact that the issue of forest rights should have been considered in the process of Forest Clearance.

7. On the first ground, essentially it was the contention of Mr. Ritwick Dutta, Ld. Advocate for the applicants that while in the first instance, it was held that in the impugned judgement that the Appeal would not be barred by *res judicata* on the finding that in the earlier OA being OA No. 167/2015/EZ, the challenge was against the illegal construction of the project before grant of Final (Stage II) Clearance which was a violation of the Forest (Conservation) Act, 1980 and, in the latter i.e., the Appeal No. 4 of 2014, it was for quashing the order granting Stage II (Final Forest Clearance) to the project under the Forest (Conservation) Act, 1980 on various grounds including non-compliance of the Forest Rights Act against which there was no categorical finding that had been arrived at on the grievance expressed relating to breach thereof and that of the Forest (Conservation) Act, 1980. This, as per the applicants, was an error apparent on the face of the record having regard to the fact that compliance of the Forest Rights Act was one of the conditions of Stage I clearance.

8. On ground (D), it was contended that the findings in paragraph 22 of the impugned judgement to the effect that "it is our considered view that the project has commenced since 1980 when

FR Act was not born and Agreed Terms and conditions have already been signed and rehabilitation and Settlement packages have been provided to the affected people, the FR Act should not come as a hindrance at this stage and as observed by the MOTA, this should be exception as 80% of the construction is over" according to the applicant is an error apparent on the fact of the record. The primary reason as to why the finding is an error on the face of the record has been set out in the Review Application in ground D1 of the Review Application which we have reproduced earlier.

The finding that the cause was a dead issue as they had not preferred an appeal against the order of the Tribunal dated 20/11/2013 in O.A No. 167/2013 giving a green signal to the project despite the submissions made on the non-compliance of the FRA 2006 and the Forest (Conservation) Act compliance, was patently erroneous highlighting that the order required the project proponent to obtain forest clearance " following the procedure in accordance with law and all memoranda which could bring within its ambit compliance of the MOEF memorandum dated 3/8/09 referred to earlier.

9. In their reply affidavit, the Respondents No. 1 and 3 at the threshold, raised objection to the maintainability of the Review Application on various grounds. We need not deal with all of those except the one relating to delay in filing the Appeal and the other being the want of jurisdiction of the Tribunal to entertain the review application on account of non-implementation of the

Forest Rights Act, as it is not one of the statutes included in the Schedule I of the NGT Act, 2010 over which the Tribunal can adjudicate.

10. The reason for delay in filing the Review Application is that although the judgement was pronounced on 26.2.2016, it was only the operative part that was read out and the full text of it came to the knowledge of the applicants only on 2.3.2016 when they checked the website of the NGT on that date. Thus, the application having been filed on 2.4.2016, it is within 30 days as prescribed under Rule 22 of the NGT (Practices and Procedure) Rules, 2011. This has also been categorically stated in the MA 822/2016/EZ seeking for condonation of delay in filing the Appeal.

11. The respondents, however, contended that the grounds set out for condonation of delay was not tenable. It was argued that the fact that the Ld. Counsel for the Appellants was present in Court when the judgement was pronounced would belie the fact that the applicants were not aware of the full text of the judgement and that the period of limitation commenced from that very date which according to them would constitute “specific constructive knowledge of the applicants”. It is further contended that as a matter of standard procedure, once a judgement is uploaded by the NGT, it is deemed to have been published and presumed to be available in the public domain and further, but rather vaguely and with unmistakable uncertainty, that the judgement was uploaded in all probability on 29.2.2016.

12. Upon consideration of the pleadings and the submissions of the learned counsel for the parties, we do not find any reason as to why we should disbelieve the grounds set out by the Applicant as the reason that prevented them from filing the Review Application within the period prescribed therefor.

13. It is of relevance to note that even in the Review Application, specific pleading has been made on the point of limitation taking the very ground set out in the application for condonation of delay. This averment amongst others has been affirmed as true and to the best of knowledge of the Applicants. The Respondents on their part have failed to substantiate the assertion that the impugned judgement was uploaded on the website of the NGT on the very date of the judgement or any other date thereafter.

14. Accordingly, the delay in filing the RA stands condoned.

15. The next objection is on the jurisdiction of the Tribunal to hear the matter pertaining to Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (referred to as FRA for short).

16. Appeal No. 04 of 2014 was not filed against the non-compliance of the Forest Rights Act per se, but was against the Stage II Forest Clearance (FC) granted for the project one of the conditions of which was compliance of this law. The scope of the Appeal, therefore, would bring within its ambit the question on the non-

compliance FRA thereby negating the objection raised on behalf of the Respondents which thus stands rejected.

17. After having held so on the preliminary objections, we may proceed to consider the Review Application in its merits confined to the limited question which the Applicants have restricted themselves to.

18. Section 19(4) (f) empowers the Tribunal to review its own decision the procedure for which is laid down under Rule 22 of the NGT (Practices and Procedure) Rules, 2011. The enabling provisions under Section 19(4)(f) of the NGT Act, 2010 and the NGT (Practices & Procedures) Rules, 2011 do not prescribe the parameters of exercise of such power. Undeniably, therefore, it would be necessary for the Tribunal to invoke the provisions of Sec. 114 and Order 47, Rule 1 of Code of Civil Procedure as a guiding principle.

19. The relevant portion of Order 47, rule 1 of CPC reads as follows :-

> "Application for review of judgement. (1) Any person considering himself aggrieved –
>
> a) By decree or order from which an appeal is allowed, but from which no appeal has been preferred,
>
> b) By a decree or order from which no appeal is allowed, or
>
> c) By a decision on a reference from a Court of Small Causes.
>
> and who, from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for *any other sufficient reason*, desires to obtain a review of the decree passed or order made against him, may apply for a

review of judgement to the Court which passed the decree or made the order."

20. The submission of Mr. Ritwick Dutta, Ld. Counsel for the Review Applicants was that, apart from the findings in the impugned judgement suffering from an error apparent on the face of the record, it would also fall within the mischief of "*any other sufficient reason"* contained in Order 47, Rule 1. It was argued that if the finding of the Tribunal is held not to be an "error apparent on the face", it would certainly constitute " any other sufficient reason" requiring the Tribunal to review its decision.

21. There are a catena of decisions of the Hon'ble Supreme Court as well as the High Courts which have set at rest the question as to what would constitute "an error apparent on the fact of the record" and "*any other sufficient reason"*. The twin phrases appearing in the Order 47, Rule 1 CPC found to have been succinctly explained and the principle laid down in ***Chajju Ram –vs- Neki***, by the Bombay High Court in its judgement dated 27.2.1922: Manu/MH/0121/1922 where it has been held as follows :-

"Their Lordships have examined numerous authorities, and they have found much conflict of judicial opinion on the point referred to. There is plainly no such preponderance of view in either direction as to render it clear that there is any settled course of decision which they are under obligation to follow. Some of the decisions in the earlier cases may have been influenced by the wider form of expression then in force, and these decisions may have had weight with the learned Judges, who, in cases turning on the subsequent. But their Lordships are unable to assume that the language used in the Codes of 1877 and 1908 is intended to leave open the questions which were raised on the language used in the earlier legislation. *They think that Rule 1 of Order XLVII must be read as in itself definitive of the limits within which review is today*

permitted, and that reference to practice under former and different statutes is misleading. So construing it they interpret the words "any other sufficient reason" as meaning a reason sufficient on grounds at least analogous to those specified immediately previously." **(Underlining Supplied)**

22. This decision was followed in ***Bisheshwar Pratap Sahi –vs- Parath Nath reported in AIR 1937 (36)Bomb LR II79: MANU/PR/0163/1934*** and by the Federal Court in ***Sir Hari Sankar Pal & Anr –vs- Anath Nath Mitter and Ors: AIR 1949FC106 : MANU/FE/0004/1949.***

23. The proposition of law thus enunciated having not been set aside or superseded by any later judgement of either the High Courts or the Hon'ble Supreme Court, still holds good. It, therefore, remains no more *res integra* that the words "any other sufficient reason" must be taken as meaning a reason sufficient on grounds at least analogous to those specified immediately previously, i.e., inter alia "error apparent on the face of the record" and "for any other sufficient reason". In this regard, we may also refer to the judgement of a larger Bench of the NGT, Principal Bench, New Delhi, dated 1st September. 2015 in R.A. No. 20 of 2015 and R.A. No. 21 of 2015 and R.A. No. 21 of 2015, in the matter of ***S.P.Muthuram –vs- UOI & Ors***.

24. It is also settled principle of law that an error which is not evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of the record justifying the court to exercise the power of review. It is further trite that the first and foremost requirement of entertaining a review petition is that the order of which review being sought for, suffers from an error apparent on the

face of the order and permitting the order to stand will lead to failure of justice.

25. On the anvil of the law discussed above, we may examine as to whether the grounds B and D set out in the Review Application would fall within the ambit of review jurisdiction of the Tribunal.

26. It must be borne in mind that Stage-I clearance for the project was granted by the MOEF vide order dated 11.01.2010. OA No. 167/2013 was filed by the Review Applicants primarily on the ground that the project was commenced with without obtaining the requisite permission under the Forest (Conservation) Act, 1980. During pendency of this O.A final approval for diversion of 595 Ha of forest land under section 2 of the Forest (Conservation) Act, 1980, was granted which led the Tribunal to dispose of the OA leaving it open to the aggrieved parties to work out their remedy in the manner known to law with the direction that the conditions contemplated by the Government of Manipur in their letter dated 15th January 2014 shall be strictly followed by the project proponent.

27. This was followed by Appeal No. 4/2014/PB/8/EZ being filed on various grounds including non-compliance of the requirements of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short FRA 2006). Appeal 4/2014/PB/8/EZ was dismissed by the Tribunal vide judgement dated 26.2.2016 and it is this judgement that is being sought to be reviewed in this Review Application.

28. It would be relevant to note that the Stage-I clearance had been granted on 11.01.2010 of which condition No. 18 reads as follows:

> *" 18. All other conditions under different Rules, Regulations and Guidelines including Environmental clearance and Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, shall be complied before transfer of forest land*." (italics for emphasis)

29. Preceding the forest clearance MOEF letter dated 3.9.2009 was circulated to the Chief Secretaries, Administrators of all the States and Union Territories except J & K which being of significance is reproduced below :-

"F. No. 11-9/1998-FC (pt)
Government of India
Ministry of Environment and Forests
(FC Division)

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110510.
Dated: 03.08.2009

To
The Chief Secretary/Administrator
(All State/UT Governments except J&K)

Subject: Diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 – ensuring compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

Sir,

In continuation to this Ministry's letter of even number dated 30.07.2009, I am directed to invite the attention of the State Government to the operationalization of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which has become effective from 01.01.2008. It is observed that the proposals under the Forest (Conservation) Act, 1980 are being received from different States/UT Governments with the submission that the settlement of rights under Forest Rights Act, 2006 (FRA) will be completed later on.

Accordingly, to formulate unconditional proposals under the Forest (Conservation) Act, 1980, the State/UT Governments are, wherever the process of settlement of Rights under the FRA has been completed or currently under process, required to enclose evidences **for having initiated and completed the**

above process, especially among other sections, Section 3(1)(i), 3(1)(e) and 4(5). These enclosures of evidence shall be in the form of following:

a. A letter from the State Government certifying that the complete process for identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion, with a record of all consultations and meetings held;
b. A letter from the State Government certifying that proposals for such diversion (with full details of the project and its implications, in vernacular/local languages) have been placed before each concerned Gram Sabha of forest-dwellers, who are eligible under the FRA;
c. A letter from each of the concerned Gram Sabhas, indicating that all formalities/processes under the FRA have been carried out, and that **they have given their consent to the proposed diversion and the compensatory and ameliorative measures if any**, having understood the purposes and details of proposed diversion.
d. A letter from the State Government certifying that the diversion of forest land for facilities managed by the Government as required under Section 3(2) of the FRA have been completed and that the Gram Sabhas have consented to it.
e. A letter from the State Government certifying that discussions and decisions on such proposals had taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present;
f. Obtaining the written consent or rejection of the Gram Sabha to the proposal.
g. **A letter from the State Government certifying that the rights of Primitive Tribal Groups and Pre-Agricultural Committees, where applicable, have been specifically safeguarded as per Section 3 (1)(e) of the FRA.**
h. Any other aspect having bearing on operationalisation of the FRA.

The State/UT Governments, where process of settlement of Rights under the FRA is yet to begin, are required to enclose evidences supporting that settlement of rights under FRA 2006 will be initiated and completed before the final approval for proposals.

This is issued with the approval of the Minister of Environment and Forests.

(C.D. Singh)

Sr. Assistant Inspector General of Forests"

30. It would, therefore, unambiguously appear from the above letter that compliance of statutory requirements provided under the FRA 2006 is unavoidable while considering grant of FC under the Forest (Conservation) Act, 1980 after FRA 2006 had come into force on 01.01.2008.

31. The requirement of this circular appears to have been complied with by the MOEF while granting State-I clearance by imposition of condition No. 18 making it incumbent upon the State Govt. to comply with the Act. This was also the specific direction of the Tribunal while disposing off the OA

No. 167 of 2013 as would appear from the portion of the order dated 16.01.2014 :-

> " Accordingly, the application stands closed. Needless to state that it will be open to the parties aggrieved, to work out their remedy, in the manner known to law. It is made clear that the conditions contemplated by the Government of Manipur in the approval order dated 15th January, 2014 shall be strictly followed by the project proponent."

32. The case of the Review Applicants is that the finding arrived at by the Tribunal in its judgement dated 20.6.2016 in Appeal No. 4/2014/PB/8/EZ on this aspect was an error apparent on the face of the record as it was held that the issue on the transfer of Forest (Conservation) Act had practically become a dead issue after the finality of the final approval order of clearance granted by the State of Manipur because the project had commenced since the year 1980 when FRA was not born and agreed terms and conditions had already been signed and rehabilitation and re-settlement packages had been provided to the affected people and, as observed by the MOTA, non-compliance of the FRA should be made an exception as 80% of the construction was over. The gross error apparent on the face of the record in arriving at such conclusion, according to the Ld. Counsel for the Applicants, would also be evident from the condition (xxii) of the final approval of the State Govt. for diversion of 595 Ha of forest land to the project on 15.1.2014 which provides that *"all other conditions under different rules, regulations and guidelines including Environmental Clearance shall be complied with before transfer of the forest land."* (***italics added)***.

33. The Respondents on the other hand would strongly argue that the question of compliance of the FRA had been referred to the Ministry of

Tribal Affairs (MoTA) and in their response, the Ministry had expressed that since the land in question, as informed by the State Govt., had been purchased from the affected villagers through their duly elected village authorities (equivalent of Gram Sabha), the spirit of the Act had been followed in the case. It was further submitted that the MOEF had cleared the acquisition as a unique isolated case notwithstanding the provisions of the FRA 2006 and the circumstance leading to the acquisition on the condition that it should not be treated as a precedent. It was contended that the land for the project had been acquired in the year 1993 onwards after payment of due compensation and rehabilitative measures provided to the displaced villagers.

34. The Tribunal having considered all these aspects had finally dismissed the Appeal rejecting the contention made on behalf of the applicants that FRA 2006 had not been complied with.

35. We have given our thoughtful consideration to the entire facts and circumstances of the case, submissions of the Ld. Counsel of the parties and have perused the records. In our view, there appears to be substance in the submission made on behalf of the Applicants as we find that the eminent and unavoidable requirement of compliance of the FRA 2006 mandated under Stage–I Clearance and in the letter of the MOEF dated 03.08.2009 appears to have been overlooked by the Tribunal in arriving at the impugned finding of the judgement even when order dated 16.1.2014 disposing off OA 167/2013 made it clear that the conditions contemplated by the Government of Manipur in the approval order dated 15th January, 2014 shall be strictly followed by the project proponent clause (xxii) of

which inter alia required compliance of the conditions in the Stage-I Forest Clearance. The rights prescribed under the FRA 2006 are obviously statutory which requires compliance both in its letter and spirit and not merely in the latter.

36. In the present case, it has no doubt been observed that acquisition of land in question had been made in the year 1993 onwards under agreed terms and conditions of a contract. While we do not find any reason as to why we should not accept the stand of the State respondents that all rehabilitative measures had been provided and compensation duly paid to the persons whose lands were acquired, the question that arises is as to whether this would be sufficient to fulfil the statutory requirements prescribed under the FRA 2006 when admittedly the Act had come into force with effect from 1.1.2008 and condition No.18 of the Stage-I Clearance granted on 11.01.2010 had specifically stipulated the necessity to comply with the Act. That apart, compliance of the Environment Clearance was also a mandate prescribed under Clause (xxii) in the final Forest Clearance granted 15.1.2014. The answer to these questions, in our view, would certainly be in the negative for the reason that FRA deals with wider aspects as would appear from Section 3 thereof. The stated case on behalf of the state no doubt is that due clearance had been obtained for the transfer of forest land from the village authorities of the affected villages but, we are not certain as to whether it was a willing clearance and as to whether the compensation and the rehabilitative measures provided were to the satisfaction of the displaced persons.

37. It would be pertinent to observe that one of the objects of enacting the FRA was that it " *had become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Schedule Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development intervention*". **Italics added.**

The profound nature of the Act and its statutory object have been articulated most succinctly ***in Orissa Mining Corporation Ltd.-vs- Ministry of environment and Forests : (2013) 6 SCC 476***. Without going into the details of the judgement, relevant portions of which begins from paragraph 38 to 57, we may just observe that compliance of the law on the part of the State has been made obligatory and even brought to the fore the problems faced by the Ministry of Tribal Affairs (MOTA) which were impeding the implementation of the Act in its letter and spirit and the fact that for proper and effective implementation of the Act, it had issued certain guidelines which were communicated to all the States and Union Territories vide their letter dated 12.7.2012 the operative part of which has been reproduced in paragraph 57 of the judgement.

38. The purpose of the above discussions is only to emphasise the compelling nature of the FRA 2006 which clearly appears to have been overlooked and not to deal with the findings in the impugned judgement in its merit.

39. For the aforesaid reasons, we are inclined to agree that an error apparent on record has arisen in arriving at the impugned findings in the judgement pertaining to compliance of FRA 2006.

40. In the result, the Review Application is allowed subject to the following directions :-

1. While desisting ourselves from prohibiting continuance of the ongoing works of the project, which is also not the case of the Applicant, we direct the State respondents No. 1 & 3 i.e., the State of Manipur and the Irrigation and Flood Control Department, Government of Manipur, to ensure that the FRA, 2006 is duly complied with in the light of the averments contained in paragraph 9 of the Memorandum of Appeal (i.e., Appeal No.04 of 2014) and sub paragraphs thereunder, so far as it may be practicable.
2. All efforts shall be made to bring the actions taken thus far while carrying out the project by the project proponent, in accord with the provisions of FRA 2006.
3. The State respondents shall ensure that the Gram Sabha of the area or its equivalent is consulted as required under the Act.
4. The entire exercise in respect of the directions in 1, 2 & 3 above shall be completed within a period of three months.

No order as to cost.

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Justice S.P. Wangdi, JM

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Mr. B.S. Sajwan, EM

Dated: 06th December, 2017