

(2025) 03 OHC CK 1351

In the Orissa High Court

Case No : Writ Petition (C) No. 3729 Of 2025

Gobinda Majhi And Others

APPELLANT

Vs

Union Of India And Others Vs

RESPONDENT

Date of Decision : 05-03-2025

Acts Referred:

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 — Section 3, 3(2)
Forest (Conservation) Rules, 2003 — Rule 6(3)(e)

Citation : (2025) 03 OHC CK 1351

Hon'ble Judges : Arindam Sinha, ACJ; M.S. Sahoo, J

Bench : Division Bench

Advocate : Ishwar Mohanty, P. K. Parhi, S. K. Swain, Dhruv Mehta, P. K. Nayak, U. Verma, S. S. Mohant

Final Decision : Dismissed

Judgement

Arindam Sinha, ACJ.

1. The writ petition was moved on 12th February, 2025. Mr. Mohanty, learned advocate appearing on behalf of petitioners had moved it. Paragraphs 1 and 2 from our order made that day are reproduced below.

"1. Mr. Mohanty, learned advocate appears on behalf of petitioners and submits, his clients are land holders and inhabitants of villages, which fall under Sunger Gram Panchayat in Rayagada district and Talaampadar Gram Panchayat in Kalahandi district. They seek, inter alia, issuance of certiorari for quashing Gram Sabha resolutions dated 8th December, 2023 and subsequent certificate issued by the Collector as they are fraudulent and against provisions in Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006. Drawing attention to translation of impugned resolution (page 56) he demonstrates, permission granted was for setting up mining activities on conversion of forest land to non-forest land.

2. He refers to sub-section(2) in section 3 and submits, clauses thereunder do not include mining activities for purpose of diversion of forest land under the Act. In the circumstances, the resolutions, for being treated as recommendation for purposes of the Act, is misconceived.”

(emphasis supplied)

2. Today, Mr. Parhi, learned advocate, Deputy Solicitor General appears on behalf of Union of India, Mr. Swain learned advocate, Additional Government Advocate for State and Mr. Mehta, learned senior advocate virtually appears for opposite party no.8.

3. With reference to reproduced above paragraphs 1 and 2 from our earlier order dated 12th February 2025, Mr. Mehta submits, it is incorrect to say mining operation cannot be on forest land. He draws attention to clause (e) under sub-rule (3) in rule 6 of Forest (Conservation) Rules, 2003. He submits, when a user agency wants to use any forest land for non-forest purposes, it is to make a proposal in the relevant form. Procedure for obtaining the clearance is given under the rule. Clauses in the rule require, inter alia, obtaining consent of the Gram Sabhas having jurisdiction over the whole or a part of the forest land indicated in the proposal. This requirement does not mean that alienation for purpose of mining is not possible, as barred under the Act of 2006.

4. Mr. Mehta submits, the Supreme Court in Orissa Mining Corporation Limited v. Ministry of Environment and Forests reported in (2013) 6 SCC 476 had declared the law regarding ownership of minerals and conservation of forests. He relies on, inter alia, paragraphs 1, 3, 11 and 58 in the report. He submits, while State has ownership over minerals beneath surface of the land, including over which forest stands, the Central Government is empowered to look into conservation of forests. His client being a user agency has submitted proposal to the Central Government for diversion of the forest land. In the circumstances, there is a procedure in place for considering interest of the forest dwellers, as provided by the Act of 2006, enacted subsequent to Forest (Conservation) Act, 1980. As such there should not be interference.

5. Reproduced below are sub-clauses (i) to (iii) under clause-(e) in sub-rule (3) of rule-6 in the 2003 Rules.

“(e) the District Collector shall:-

(i) complete the process of recognition and vesting of forest rights in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) for the entire forest land indicated in the proposal;

(ii) obtain consent of each Gram Sabha having jurisdiction over the whole or a part of the forest land indicated in the proposal for the diversion of such forest land and compensatory and ameliorative measures, if any, having understood the purposes and details of diversion, wherever required; and

(iii) forward his findings in this regard to the Conservator of Forests;”

(emphasis supplied)

6. Petitioners have challenged Gram Sabha resolutions dated 8th December, 2023 and subsequent certificate issued by the Collector. We presuppose recognition and vesting of forest rights on inhabitants within limits of the Gram Sabhas. In the circumstances, we accept submissions made on behalf of opposite party no.8, regarding rights of the forest dwellers provided for in the procedure, as to be dealt with in case of alienation for purposes other than those mentioned under section 3 in the Act of 2006. Union of India must take note of interest of the inhabitants in the villages under the Gram Sabhas, which have resolved to concede to the alienation for mining purposes.

7. Mr. Mohanty submits, his clients have not conceded but on the contrary maintained that impugned Gram Sabha resolutions were fraudulently got made. He submits, subsequent to impugned resolutions, the Gram Sabhas convened between 30th August, 2024 and 4th September, 2024. They resolved that no consent for diversion was duly obtained. Mr. Mohanty points out, there has not been process duly undertaken to grant recognition to his clients, who are forest dwellers in the area. Mr. Swain disputes on submission that the Gram Sabha proceedings were video recorded and petitioners were present in those Gram Sabhas, which resulted in impugned resolutions. We would not want to be drawn into this dispute on facts. The submission is recorded for being noted by Union of India in dealing with the proposal made by the user agency (opposite party no.8), upon taking into confidence inhabitants of concerned villages, through the Gram Sabhas and otherwise. Petitioners have pointed out their rights under the Act of 2006 as provided under section 3. We reiterate, Union of India must take note.

8. With above directions, the writ petition is disposed of..

.....