

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN  
AND  
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

**WRIT PETITION (PIL) No. 140 of 2019**

**17<sup>TH</sup> MARCH, 2021**

Counsel for the petitioner. : Mr. Arjun Kasana, petitioner, party-in-person.

Counsel for respondent nos. 1 to 3. : Mr. M.C. Pande, learned Additional Advocate General assisted by Mr. B.S. Parihar, learned Standing Counsel.

**The Court made the following :**

**ORDER** : (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

1. The petitioner, "*the Think Act Rise Foundation*", had filed the present Public Interest Litigation in the year 2019 for highlighting the plight of the Van Gujjars, who continue to occupy certain areas of the forest in the State. The petitioner has sought the following reliefs from this Court :-

*"a) To issue a writ, order or direction to respondent No 1 to declare Van Gujjars beneficiary under Forest Right Act and convert forest land occupied by Van Gujjars as Revenue Villages under the Forest Right Act before next Gram Sabha elections in the State.*

*b) To issue writ, order or direction to provide land rights under Forest Right Act to Van Gujjars who have been rehabilitated in Gandhi Khata and Pathri from forestland*

c) *To issue a writ, order or direction to respondent No 2 to quash petty cases Van Gujjars.*

d) *Issue a Writ, order or direction to provide monetary compensation to Van Gujjar families which were removed from forest area without following the due process and give them opportunity to file their claims under Forest Right Act from the place they were displaced.*

e) *Issue a Writ, order or direction to file FIR for criminal trespassing and abuse of official powers against respondent No 4,5,6,7,8 and 9 and other officials involved with them in the respective vandalization drive.*

f) *Issue a order to constitute a Special Investigation Team monitored by this Hon'ble court in the FIR to be filed against forest officials.*

g) *To take appropriate action against Respondent No 4 for using name of this Hon'ble court again and again for unlawful actions and vandalizing Deras of Van Gujjar*

h) *To take appropriate actions against Respondent No 5 for stopping fodder of animals and evicting more than 400 families from forestland.*

i) *To issue an order to quash the FIR and trial of FIR 137/18, 138/18 filed at Shyampur Police Station, Haridwar, 183/15, 349/16 filed at Ram Nagar Police Station, District Nanital. Quash trial of all other FIR filed for intruding into Government work in which no due process was followed by the department.*

j) *To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

k) *Award cost of the petition."*

2. By order dated 03.09.2019, a learned Coordinate Bench of this Court elaborately discussed the

scope and ambit of Section 61-A of the Indian Forest Act. The learned Coordinate Bench had clearly directed that *"the Van Gujjars, living within the Shyampur Range of Haridwar Division of Rajaji National Park, shall not be evicted except in strict compliance of the provisions of Section 61-A of the Indian Forest Act, 1927"*.

3. Since the petitioner was claiming that certain acts of commission and omission were being committed by the State against the Van Gujjars, this Court had, by its order dated 17.08.2020, directed the State to constitute a Committee which would consider the problems of the Van Gujjars, would consider the necessary steps that are required to be taken for their rehabilitation and upliftment, and which would consider the rights, which can be given to the Van Gujjars under the Indian Forest Act.

4. Subsequently, in compliance of the order of this Court dated 17.08.2020 by the Office Memorandum dated 01.10.2020, the State did constitute the said Committee consisting of (i) the Chief Forest Conservator, Wildlife to be the Chairman of the Committee, (ii) Chief Wildlife Conservator to be a Member of the Committee, (iii)

Director, Rajaji Tiger Reserve to be the Member Secretary, (iv) a representative nominated by the Director, Wildlife Institute of India to be a member, and (v) a representative nominated by the WWF, World Wide Fund for Nature to be a member.

5. The said Committee was directed to examine six points, which are as under :-

*Firstly, whether the legal proceedings being initiated against the Van Gujjars, such as removal of encroachment etc, can be stopped?*

*Secondly, whether the FIRs, which have been registered against the Van Gujjars, can be withdrawn/recalled, if the same have not been registered following the due process of law?*

*Thirdly, to initiate proceedings to provide them legal rights under the Forest Rights Act, 2006.*

*Fourthly, to give them compensation, by following the legal procedure, for the rehabilitation done in the past.*

*Fifthly, the conversion of that part of the forest land into a revenue village where this population of Van Gujjars is residing.*

*Lastly, to inquire into the steps taken by the officers against the Van Gujjars.*

6. The petitioner, party-in-person, Mr. Arjun Kasana, submits that, in fact, the constitution of the Committee is merely an eyewash. For, the said Committee has failed to delve into the areas which were supposed to be examined, and to submit its recommendations. Moreover, by letter dated 15.02.2021, the petitioner has been informed that, "*with regard to the rights under the Forest Rights Act, 2006, it should raise its grievances before the District Magistrate, and before the Social Welfare Department*". According to the petitioner, party-in-person, when this Court directed for the constitution of a Committee, it did not expect the Committee to merely pass a buck, or to force the petitioner to run from pillar to post in order to highlight the plight of the Van Gujjars. Therefore, the petitioner has even questioned the validity of the order dated 15.02.2021.

7. Admittedly, the State of Uttarakhand has a large tribal population, and Van Gujjars, being one of the segment of the said population, are trying to eke out their living from the forests. Even other segments of population, who have been declared to be tribal in nature, continue to stay in forest areas, and continue to survive

in the harshest of the conditions. Undoubtedly, it is a constitutional duty of the State to look after the tribal population. The State cannot be permitted to turn a Nelson's eye towards the tribal population. Needless to say, the tribal population has as much Fundamental Rights, under Part-III of the Constitution of India, as the urban and rural population has. Therefore, the tribal population cannot be denied the Fundamental Rights, under Part-III of the Constitution of India, by the State's apathy and callous attitude. The State is duty bound to (a) take steps for the benefit of the tribal population (b) to ensure that Fundamental Rights are concretised for the benefit of the tribal population (c) to ensure that basic fundamental facilities are provided to the tribal population (d) in light of the Directive Principles of the Constitution of India to improve the lifestyle and the condition of the tribal population, and (e) to ensure that the tribal population improves its living standard to the extent it merges with the mainstream of the society, and becomes a part of the productive population of the State.

8. Naturally, the anxiety of this Court, as reflected in its order dated 17.08.2020, was to direct the State to constitute a Committee which would look into, and would

examine the difficulties being faced by the Van Gujjars in particular, and to at least resolve their difficulties by making concrete recommendations to the State Government. It was certainly not expected by this Court that the Committee, so constituted, would not even have the competent persons, and competent authorities within its constitution. Moreover, it was certainly not expected that the Committee would pass the buck, and would force the petitioner to run from pillar to post in order to highlight the problems of the Van Gujjars. Therefore, the constitution of the Committee is certainly not up to the mark. The State should have been well aware of the fact that, since the Committee has to deal with the rights of the Van Gujjars' community within the Forest Rights Act, 2006, it was imperative for the State to include the concerned District Magistrate(s) and the Principal Secretary, Social Welfare Department, Uttarakhand as members of the said Committee. But, instead of doing so, it has left both these vital members out of the constitution of the Committee. Meanwhile the Committee has taken an easy route out, and by letter dated 15.02.2021 is trying to compel the petitioner to raise its

grievances before the District Magistrate and the Social Welfare Department.

9. The lacunae left by the State Government, while constituting the Committee, cannot be appreciated by this Court. Moreover, the attitude of the Committee to force the petitioner to go before another competent authority, namely the District Magistrate and the Social Welfare Department, and to raise its grievances there, is an act which cannot be appreciated by this Court.

10. Therefore, this Court directs the State to re-constitute the said Committee, and certainly to ensure that the competent persons/authorities are included as members of the said Committee. Until and unless a holistic approach is taken by including the competent persons/authorities within the Committee, the constitution of the Committee would merely be a mirage and merely an eyewash. But the intention of this Court was never creation of a mirage or an eyewash. The intention of this Court, by its order dated 17.08.2020, was to ensure that the problems of a segment of our society is resolved peacefully and expeditiously. The State Government seems to have misunderstood the



intention of this Court while passing the order dated 17.08.2020.

11. Therefore, this Court directs the State Government to re-constitute the Committee, and to include the District Magistrate of the concerned districts, the Principal Secretary, Social Welfare Department, and the Secretary, DLSA of the concerned districts, as members of the Committee to be re-constituted.

12. The Committee shall also call the petitioner organization and shall seek their views on the six points that the Committee has to examine. The Committee is further directed to meet once every month to deliberate on the six points explicitly mentioned in the order dated 01.10.2020, and to give its report to the State Government with regard to these six points within a period of three months. A copy of the recommendations, and the report of the Committee shall also be filed before this Court for its perusal. In order to ensure that the Committee is functioning as per the present order, the Registry is directed to list this case once every month i.e. list this case on 28.04.2021, 19.05.2021 and 09.06.2021.

12. The Registry is also directed to tag the file of Writ Petition (PIL) No. 203 of 2020 along with the present writ petition.

13. List this case on 28.04.2021.

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**RAGHVENDRA SINGH CHAUHAN, C.J.**

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**ALOK KUMAR VERMA, J.**

Dt: 17<sup>th</sup> MARCH, 2021  
Rahul