
REJOINDER AFFIDAVIT

To The Counter Affidavit filed by Respondents.

On behalf of the Petitioners.

IN

HABEAS CORPUS WRIT PETITION NO. 3332 OF 2018

(Under Article 226 of the Constitution of India)

DISTRICT – SONBHADRA.

1. Smt. Sokalo Gond wife of Nanak Gond
Resident of Village Majhauri, P.S. Duddhi, District Sonbhadra
2. Smt. Kismatiya Gond wife of Sri. Pankh Lal Gond
Resident of- Lilasi, P.S. Muirpur,
District-Sonbhadra
3. Anshuman Singh son of Sarvadaman Singh
22 New Quarters, Mohan Meakin Road, Dollyganj
Nirala Nagar, Lucknow.
(Executive Member of All India Union of Forest Working People)
222 Vidhyak Nivas, Aish Bagh Road, Rajendra Nagar, Lucknow.
4. Teesta Setalvad daughter of Atul Motilal Setalvad
Resident of- Juhu Tara Road, Nirant, Juhu, Mumbai
Vice President of All India Union of Forest Working People
(AIUWFP) and Secretary, Citizens for Justice and Peace, Mumbai

----- Petitioners.

VERSUS

1. State of U.P. through Principal Secretary, Home,
Govt. of U.P. Lucknow
2. District Magistrate, Sonbhadra
3. Superintendent of Police, Sonbhadra
4. Station House Officer, P.S. Muirpur, District Sonbhadra

----- Respondents.

Affidavit of Anshuman Singh, aged about 41 years, son of Sarvadaman Singh, Resident of- 22 New Quarters Mohan Meakin Road, Daliganj, Nirala Nagar, Lucknow.

Caste-Hindu

Occupation-Private Work.

(Deponent)

I, the deponent above named do hereby solemnly affirm and state on oath as under :

1. That deponent is petitioner No.3 in the present case and partner of other petitioners and he has been authorized to file aforesaid writ petition and as such he is well acquainted with the facts of the case as deposed below.

2. That the deponent has been read over and explained the contents of the counter affidavit sworn by Rupesh Kumar Singh, claiming himself to be posted as Inspector at P.S. Muirpur, District-Sonbhadra, in Hindi. He understood the contents thereof and is giving parawise reply to the same
3. That in reply to the contents of paragraphs No.1 and 2 of the counter affidavit, it would be apt to mention here that deponent of the counter affidavit had claimed himself to be Rupesh Kumar Singh, presently posted as Inspector at P.S. Muirpur, District-Sonbhadra, but, identity card filed in support of proof of his identity issued by U.P. Police department, shows designation of Rupesh Kumar Singh as Constable. From the above fact, it is to be noted down that Rupesh Kumar Singh had claimed himself to be Inspector at one place, but, his identity card states that he is a Constable. The said Rupesh Kumar Singh cannot hold two designations at the same time. This itself is a reason to reject the counter affidavit because the same is not filed apparently by a genuine person. Moreover, in the counter affidavit, it is not mentioned that out of 4 respondents, on whose behalf, he has filed counter affidavit.
4. That the contents of paragraphs No.3 and 4 of the counter affidavit need no reply, being matters of record.
5. That in reply to the contents of paragraphs No.5 to 11 of the counter affidavit it is submitted that facts narrated therein are

totally false, baseless and against the records. The illegal detention of the petitioners No.1 and 2 cannot be justified by making false averments and fake documents had been mentioned in the counter affidavit under reply. It is apparent that respondents are concealing correct facts from the Hon'ble Court and trying to justify the illegal detention of the petitioner No.1 and 2 by making wrong averments. Rest of the contents of paragraphs under reply are not admitted and denied and the contents of paragraphs of the writ petition are reiterated and reaffirmed.

6. There it is further stated that it is an admission in the counter affidavit by the state to the effect that, at the time of arrest on June 8, 2018 the petitioner 1 and 2 were not named in FIR (Case Crime Nos 30/ 2018 filed on May 20, 2018. That despite the fact, that on this date, there was no information about the Petitioners 1 and 2, and they were not named in the said FIR, they were unlawfully and illegally arrested by the police on June 8, 2018.
7. That (as stated in Para 6 of the counter-affidavit) it is only after the arrest of Sukhdev Gond that the Petitioners No 1 and 2 were arrested, on the bases of an alleged confession of Sukhdev Gond were he is alleged to have named both in the commission of the crime. This confession was admittedly made in custody and this by no means can be treated as reliable or

tested information. Confession in police custody is not admissible and can be done by pressurizing the accused. The statement made u/s 161 needs to be verified.

8. That the disclosure made through counter affidavit about the alleged arrest of petitioner no. 1 & 2 on 8 the June 2018 is an ante dated document and fake as this document was never in existence at any prior stage because the respondents had not disclosed this fact on 9th July 2018 when the case was listed. Instead on that date learned AGA had orally submitted that the petitioners were released after taken into custody under section 151 Cr. P. C.
9. That the counter affidavit is also full of contradictions as, on the date of hearing of the Habeas Corpus petition on July 9, the counsel for the state had orally stated that both petitioner no 1 and 2 have been challaned u/s 151 and had been released! In Para 9 of the counter affidavit, on affidavit the Inspector now says that at no point of time petitioner no 1 and 2 were challaned u/s 151. If they were not challaned why did the state counsel give false information to the Court? This itself is a matter of grave concern as it raises questions about the motive behind the contradictions. Why was such a loose and irresponsible statement made before the Hon'ble court without any legal verification of the whereabouts of the two women Petitioners 1 and 2.

10. That it is also pertinent to mention the fact as laid down in Para No 7 says of the counter affidavit of the state that states, that (as documented in the arrest memo), Sukhdev was arrested and Petitioners no 1 and 2 accompanied him at the time of arrest. The arrest memo also mentions that the arrest was made at the Chopan railway station. The Petitioners along with Sukhdev had gone to meet the State Forest Minister Mr. Dara Singh Chauhan in Lucknow on June 6 regarding the very repressive and violent behaviour of the officials of the police and forest departments, including physical torture, unleashed on them after they had filed their community rights resource claims on the forest land on March 23, 2018; that is the source of the conflict, not any other. The rightful process of claims being made by forest dwellers and Adivasis on lands being wrongly held by vested interests. Firstly, this village forest land is under a dispute with the Forest department. Besides, another tract of land which is the forest land of village Lilasi which Adivasis have been cultivating until about eight years ago has suddenly and unlawfully been unlawfully captured by the dominant sections of the Baniya and other communities of the village. The traditional forest dwellers, the Adivasi had an ongoing conflict over this issue, facing repression with the powerful sections in the village.

11. That it is this vested interest feudal hold over tillers land that the Forest Rights Act, 2006 has attempted to address, giving long overdue statutory rights of forest dwellers and Adivasis over land they have tilled and protected for generations. In the letter addressed to the Forest Minister (annexed to the Habeas Corpus petition), the President of the Forest Rights Committee, Nandu Gond and Secretary Kismatiya Gond this issue and conflict has been referred to and the names of these illegal encroachers has also been mentioned. The aggrieved Adivasis also met with Forest Secretary Sanjay Singh in Bapubhavan on June 5 who told the villagers that they should petition the State Forest minister and give the names of illegal encroachers to him, for appropriate action to be taken. This letter to the Forest Minister has been annexed to the habeas corpus petition at annexure No.1 and 2.

12. That aforesaid petition for Habeas Corpus itself says that there was a forest land dispute in the Village Lilasi and that this conflict was over the implementation of Forest Rights Act where Adivasis have claimed their land under this Act. This claim has become point of dispute between tribal and the forest authorities. Adivasis have the right to raise their voice against such atrocities. In pursuance of the conflict, and being aggrieved of their rights due to this conflict where on the one hand you had the powerful (being backed by local sections of the police and on the other traditional, forest dwellers and

Adivasis). Petitioners no 1 and 2 had gone to Lucknow to register their legitimate demands and grievances with the concerned authorities. At the time of arrest, the Petitioners were carrying all these documents with them that were forcibly taken away by the police.

13. The FIR was filed on May 22 and the FIR does not mention the name of petitioner 1 and 2 neither it mentions the name of Sukhdev Gond. That they have been arrested on June 8, after their meetings with grievances with Forest Secretary and the Forest Minister, itself is suspicious. The counter affidavit states that since Petitioners 1 and 2 were accompanying Sukhdev, this automatically means that that they were with him during the commission of crime too, is not borne out by logic or evidence. How has this inference been reached?
14. That without giving any details, there is a blithe and casual reference to CDR records being the only basis of the arrest of Petitioners Nos 1 and 2. The fact that someone was in telephonic conversation with someone, the fact that Petitioners No 1 and 2 are prominent leaders of the Adivasi community, the fact that they may have been offering reassurance and support to persons facing violent repression by the police; all these factors could be the reason for the phone calls. On what basis can the state in a counter in a Habeas Corpus case, use confessional statements and the mere mention of CDR records

for incarcerating women leaders for over two months like this? It is a long and abused practice of the police, that persons are brought in post facto in the Charge sheet simply to prove the Act of arrest which in this case as in many others has been unlawful and illegal. The fact is that the Habeas Corpus petition was filed on June 29, 2018, the state and its officers prevaricated for weeks, delaying the hearing and worse, affecting the Fundamental Right to Life, Freedom and Equality Before the law as granted by the Constitution.

15. That in Para no 5 of the counter affidavit, the Inspector mentions that it was on the basis of information given by Vijendra Kumar Van daroga, that a case crime no 30 of 2018 was registered. The FIR says that a case prior to this 28 of 2018 was filed by same Vijendra Kumar under 5/26 of Indian Forest Act and other sections of IPC on the allegation that villagers are clearing forest land. This claim again has loopholes: Should not the District Magistrate or SDM at this point have intervened to ascertain the facts as they are the Authorities empowered to do so, and responsible for the implementation of the FRA according to the Act of 2007? Instead of any such responsible intervention (and investigation) of the authorities required under the Act, the matter was left to police and forest department who are the vested interests identified by the 2007 law for their anti adivasi stances. The

reason for the enactment of the law by Indian Parliament in 2006-2007 was in recognition of decades long struggle of the Adivasis who had been exploited by dominant sections in society and the forest departments, that is the dominant sections of the caste elites, usurping traditional Adivasi land.

16. That this is not a frivolous claim but is borne out by the admission of the Inspector in the counter affidavit: this clearly shows that this case involved a dispute over forest land as sections 5/26 of the colonial Indian Forest Act 1927 was invoked against Adivasis along with several sections of the IPC. The villagers, who have claims over the land, have filed community resource claim rights on March 23, 2018 with the District Magistrate. The law is clear here. Without the process of claims being completed the rights of forest people needs to be protected according to FRA. The Forest Rights Act sec 4(5) says that “ Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller can be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete”
17. That the FRA also says that until and unless the process of claims are completed the use of IFA (the colonial Indian Forest Act) cannot be imposed.

18. That section 13, in fact, says “Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”
19. That it is humbly submitted, therefore, that the action by the Van daroga (forest department officials) and the local police flies against the spirit and intent of the Forest Rights Act, 2006 and perpetuates the historical injustice against the forest dwelling people, especially the Adivasis of Sonbhadra that this law seeks to protect. After the enactment of the FRA has been rendered completely illegal to invoke the colonial, out-dated and repressive 1927 Act especially after the Community Resources Claims were filed (in this case) on March 23, 2018.
20. That the preamble to the Act clearly outlines that, “*AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in **historical injustice** to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.*” The police and forest department in this case has committed yet another injustice to Adivasi by invoking these sections of the Act. The petitioners crave leave to file an

additional rejoinder after full and complete access to the documents has been gained. These following comments are after reading the Charge sheet prepared by Vinod Pathak to see at what point the name of petitioner 1 and 2 has appeared.

21. That after the arrest the three main witness Vijendra Kumar, the Van Daroga Jayprakash and Ramdeni did not name Petitioner Sokalo anywhere in their statements made under Section 161. The other two witness M Ganishah said that “ *agar roma aur ashok chowdhary sokalo ko phone dwara bhadkaye nahi hote to yeh ghatna ghatit hi nahihoti,*” Sarvesh Pratap Singh other witness Van Daroga said “ क्षेत्रीय नेता सोकालो देवी ने रोमा दीदी ओर अशोक चौधरी के साथ मिटिंग लखनउ में कराया था वही से पहचान पत्र रा0 वन जन श्रमजीवीका मिला है। सुखदेव के फोन पर बारबार फौन आर हाथा – वह अलग होकर बात कर रहा था बाद में पता चला कि सोकालो देवी का फोन आर हा था वो ही भडका रही होगी।सोकालो देवी और रोमा भडकाने में बहुत तेज है।“
22. That all the statements under section 161 of both M Ganishah and Sarvesh Pratapsingh made 'witnesses' by the local police, post facto, are based on evidence of telephonic conversations. There is no direct or convincing evidence of Sokalo's involvement in any so-called crime.
23. That name of Petitioner, Kismatiya, too does not appear in any of their statements under 161 by Vijendra Kumar who is the

person who lodged the case (FIR) and the other witnesses either.

24. That it is humbly submitted that Petitioner Nos 1, Sokalo's name has appeared in the charge sheet only after they were arrested. Confession in police custody cannot be considered as evidence under the Evidence Act.
25. That it is also humbly submitted that the District of Sonbhadra has registered the largest number land disputes in the county after Independence in. This has been analyzed and placed before the country in the crucial, Central SC/ST Commissioner's Report authored by B D Sharma (29th Report). **The Petitioners crave leave to profer this document as and when the need arises.** More than 533 villages had disputes with forest department as all the Gram Sabha lands were transferred without even completing the process of settlement under Indian Forest Act in 1927. There have been several commissions set up to address the disputes of revenue and forest land in District Sonbhadra (earlier it was Mirzapur District).
26. That besides, the Mangal Dev Visharad Committee report, commissioned in 1972, under the Bahuguna government also discusses in detail the how Gram Sabha lands were illegally transferred to Forest Department. **The Petitioners crave leave to profer this document as and when the need arises.**

27. That again, in 1983 the Maheshwar Prasad Committee was formed by the Revenue Board to look into the matter of discrepancies over land ownership and control. These disputes and discrepancies emerged after the formation the Kaimur Survey Settlement Agency, itself created to solve the disputes. Even further complications had arisen after the Settlement Agency the Gram Sabha and other revenue lands were notified as Reserve Forest u/s 20 of IFA. **The Petitioners crave leave to profer this document as and when the need arises.**
28. That it is humbly submitted that a writ petition was filed by the Vanvasi Sewa Ashram, Govindpur in the Supreme Court to look into the matter of disputed forest land u/s 20 of the IFA. It was in response to this that the SC commissioned the Maheshwar Prasad Committee to look into this matter and it found that the Gram Sabha and revenue lands were (wrongfully and erroneously) notified u/s 20 as reserved forest. This Committee had also given many recommendations. Unfortunately, none of the recommendations were taken seriously by the subsequent Governments.
29. That it is further submitted, that, the Adivasis had a direct conflict with the state right from the colonial period, to date. This has been well documented by various scholars and commissions too. The situation of this dispute has been elaboratively written by Amir Hasan former IAS Officer, UP in

his book “ Tribal Administration in India”. In this publication, the author discusses, in detail how the lands belonging to Adivasis, especially the Kol, Gond and Agaria Adivasis were illegally encroached upon by the Forest Department in both the Kaimur and Bundelkhand regions of Uttar Pradesh.

30. That in light of this background, it needs to be understood and contextualized, that *both* Petitioners 1 and 2, both Adivasi women are carrying the legacy of this struggle launched by their fore fathers and organizing themselves into a Union to collectively fight the exploitation and violence faced by their community since independence.
31. That Right to Freedom of Expression and Association is an inalienable right guaranteed under Article 19 (1)(c) of the Constitution. The reason for organizing themselves into a collective is so that they can with rigour and vigour --and from a position of strength -- so that the Act enacted (after decades of struggle by Adivasis) for the protection of their rights can be effectively implemented.
32. That it is humbly submitted that kind of illegal detention incarceration is motivated and unlawful and being executed using the repressive force of the state, against Adivasis and is aimed at, unlawfully stopping them to realise their fundamental rights as enshrined in our Constitution and denying them their “ right to association” under Article 19 (c).

33. That the version presented by the forest department and the local police in the counter-affidavit is full of contradictions, and motivated by a move to intimidate the Adivasi population.
34. That it is also humbly submitted that, by denying Constitutional means of protest, organization and justice, sections of vested interests abetted by the local police could end up pushing the local Adivasis, in desperation to violent paths, shrinking legitimate democratic spaces, where again, in a bitter cycle they again face the violence of the state.
35. That it is submitted that there have been innumerable false cases against Forest Peoples, both Adivasis and other Forest Dwellers --especially after Act of 2007 came into force. That this case of illegal detention and arrest needs to be understood and seen in this context where in all these cases --regardless of the ideology of the government in power-- a falsified 'criminal history' of the entire section of agitating and organizing forest peoples and women enmasse is being is being constructed by the authorities, especially the Sonbhadra district police. That this is motivated by vested interests trying to deny them their rights, finally recognized under the FRA, 2007.
36. That the emancipatory FRA of 2007 includes special provisions to prevent this post facto harassment of forest dwellers and Adivasis. For example, there is a specific provision in the FRA of 2007 that the cases filed by FD on the related forest land will

be treated as evidence to recognize their ownership rights. It is submitted that it is *because* the process of implementation of FRA is still incomplete that such incidents of targeted harassment and violence and intimidation are not getting addressed effectively. It is submitted that the Adivasis, Forest people and the organization working with them are for this reason alone facing a slew of false cases and intimidation.

37. That the arrest of petitioner 1 and 2 is completely arbitrary and illegal: the police has concocted a whole story to implicate or fabricate them in (one more) false case so that they are intimidated against organization so that they do not organize themselves and raise their voice against the exploitation and violence.
38. That it is humbly stated that under the Constitutional Scheme, guaranteed to preserve the Constitutional Rights and Access to Justice of *all Indians*, especially the marginalized and oppressed, the Court and Judiciary have for decades been the final port of call when injustices have occurred. Though sometimes late, justice has been the norm, re-vitalizing the faith of every Indian, in the democratic way.
39. That it is humbly urged that this Habeas Corpus Petition be seen in that light, that the Sonbhadra Police be held accountable for the illegal detention and arrests of Petitioners 1 and 2, that they be released forthwith; that the DM and SDM of

Sonbhadra be made accountable for their responsibilities as statutorily obliged under the FRA Act of 2007; that the State Forest secretary and State Forest Minister be called upon to make their stand clear on this brazenly unfair arrest. This is a matter of the dignity and livelihoods of the forest dwellers, forest workers and Adivasis and cannot be left to the discretion of the local police thana alone.

40. That it is humbly submitted that the Petitioners 1 and 2 going to Petition the State Forest Minister is constructed as part of a conspiracy! Can a democratic right of expressing a grievance be seen as part of a criminal conspiracy ? यह दोनो महिलाए व सुखदेव वन मंत्री से मिलने लखनउ गए थे जिस के साक्ष्य मौजूद है वन मंत्री से मिलना व उत्पीड़न के खिलाफ शिकायत दर्ज करना क्या साजिष कि याजाना होता है।
41. That quite apart from the material facts as listed above, the fact of the health and well being of Petitioners Nos 1 and 2 are also a matter of concern and we urge that this Hon'ble Court address this issue.
42. That there is another point that is crucial and deserving of consideration. The Indian Parliament Amended the *Scheduled Castes and Scheduled Tribes- Prevention of Atrocities Act in 2015* (Amended Act 1 of 2016) wherey : January 2016 to the

2015 Bill. Point 4 deals with amendments to Section 3.
Amendment is as follows:

Section 3 (1) Whoever not being a member of a Scheduled Caste or Scheduled Tribe

(f) wrongfully occupies or cultivates any land owned by, or in possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or Scheduled Tribe, or gets such land transferred,

(g) wrongfully dispossesses a member of a Scheduled Caste or Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights including forest rights over any land or premises or water or irrigation facilities or destroys the crops, or takes away the produce therefrom,

[Explanation, for clause (f) and (g) "wrongfully is defined as

A) against a person's will

B) without a person's consent

C) with a person's consent where such consent has been obtained by putting the person, or any person in whom the person is interested in fear of death or of hurt

D) fabricating records of such land]

shall be punishable with imprisonment for a term that shall not be less than six months but which may be extended to five years with a fine.

43. That Indian lawmakers have realized that our Adivasis and Forest Working Tribes need special protection against vested interests especially where land tilling and ownership is concerned. However the lower bureaucracy, lower police and vested interests in the forest department as also dominant communities are still oppressing Adivasis in contravention to these emancipator sections of the law.

44. That this case of the incarceration of Petitioners 1 and 2 fall squarely within this ambit. There immediate release and compensation is due and in order.

I, the deponent above named do hereby verify that the contents of paras Nos.
.....
..... of the affidavit are true to my personal knowledge; those of para Nos. of the affidavit are on record of the case, & those paragraph Nos. are based on information received from deponent and those para Nos. of the affidavit are on legal advice, which all I believe to be true and correct. Nothing has been concealed and no part of it is false and incorrect.

So help me God.

(Deponent)

I, S.F.A. Naqvi, Advocate, (Enrollment No.2748 of 1980), Chamber No.7, High court Allahabad do hereby declare that the person making this affidavit and alleging himself to be the deponent is the same person and is known to me from perusal of I.D. Card issued by the authority concerned.

Advocate.

Solemnly affirmed before me on this day of, 2018 at about ... a.m./p.m. by the deponent who has been identified by the aforesaid Advocate.

I have satisfied myself by examining the deponent that he has understood the contents of this affidavit very well which have been read over and explained to him.

OATH COMMISSIONER.