



Initiative for Climate Action

2ND WILDLIFE PROTECTION GOVERNMENT LAW COLLEGE
NATIONAL ONLINE MOOT COURT COMPETITION, 2020

27TH - 29TH NOVEMBER 2020

MOOT PROPOSITION

In the High Court of Greedor
Public Interest Litigation No. 115 of 2020

Nonita Chandran
(on behalf of Mohaiya Community)

Versus

Government of Primrose & Anr.

1. The Republic of Primrose - a developing nation in its 73rd year of Independence from colonial powers- is the 2nd most populous country in the world. It is home to diverse ecosystems such as forests, deserts, rainforests, wetlands, grasslands, etc. About 7 to 8% of all recorded species on the planet are found in the Republic of Primrose. It boasts of four of the thirty-four globally identified biodiversity hotspots.
2. In 1972, the Primrose Wildlife Protection Act (“PWPA”) was enacted for the protection of wild animals, birds and plants to ensure and safeguard Primrose’s ecological and environmental security. Among other things, the PWPA conferred powers on State and Central authorities to designate areas as National Parks, Sanctuaries, Protected Areas for the conservation and protection of Forests and Wildlife. Prior to the PWPA,

Primrose had only five designated National Parks. Now, Primrose has 101 National Parks and 553 Wildlife Sanctuaries divided amongst its States.

3. Largely an agrarian and rural country, a large part of the population of Primrose still resides in its forests and villages. Forest dwellers, since colonial times, have been victims of displacement from forestlands for mining, industrial projects, monocultures and sometimes even in the name of conservation. To correct the historical injustice meted upon traditional forest dwellers and tribes, the Primrose Parliament in 2006, enacted *The Primrose Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), 2006* (“FRA Act”) to recognize and vest the forest rights and occupations in forest lands in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations.
4. The FRA Act, however, was met with opposition by some conservationists who feared that the Act will result in a land-grab in the name of other forest dwellers, encroachment and increased deforestation. The Act fuelled the debate between two schools of environment protection and conservation that forests should be devoid of any human interference and that indigenous people with their traditional knowledge are protectors and guardians of the forests.
5. On one hand there are alarming reports of deforestation, human-wildlife conflicts, and habitat destruction. Despite the many National Parks, Wildlife Sanctuaries and Protected Areas, multiple species of fauna have gone extinct or are close to extinction in Primrose. On the other hand, success stories of co-existence have been coming to light where indigenous groups are actively protecting the forests. The number of tigers in one Tiger Reserve where community rights have been granted have even gone up. International Organisations and reports have also acknowledged and made the case for the role of indigenous people in co-managing forests. They also recognize the co-existence as a long-term solution for conservation due to their traditional knowledge and local practices.
6. To maintain a harmonious balance between people and forests, the FRA Act included a provision for the creation of Critical Wildlife Habitats (“CWH”), defined as “*areas of National Parks and Sanctuaries where it has been specifically and clearly*

established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4". Since the inception of the FRA Act, none of the States of Primrose had began the process of identifying Critical Wildlife Habitats.

7. In 2018, in a State called Greedor in Primrose, the environmental movement was growing stronger with citizens, particularly the youth, demanding effective protection of the forests, biodiversity and the environment at large. The movement reached the streets where people in Greedor's capital city were participating in peaceful protests against questionable development projects in Greedor. Waking up from its slumber, the Government of Greedor announced that it will be initiating the process to identify and demarcate Critical Wildlife Habitats in the State to prevent fragmentation of forests and for protection of crucial habitats and species that are endemic to Greedor. Greedor was the first state in Primrose to begin the process as per the *Guidelines for Determination and Notification of Critical Wildlife Habitats within National Parks and Sanctuaries* ("The Guidelines"). The step was lauded by some conservation organisations. Others called it a tokenistic step. The Government of Greedor formed expert committees for every National Park and Sanctuary in accordance with the criteria laid out in the Guidelines.

8. Greedor houses a large part of one of the global biodiversity hotspots present in Primrose - the Saving Grace Hills. The Saving Grace Hills in Greedor houses 17 National Parks and Sanctuaries. In one such wildlife sanctuary, called the Moha Wildlife Sanctuary ("MWS"), two critically endangered species are found – the Little Mary Lark and the Oliver Antelope. In addition to that, the MWS also has various other flora and fauna native to Greedor. The area of the MWS is 40 sq km. Through the MWS, passes the Lazy River on which the livelihood of the traditional forest dwellers of the villages in and surrounding MWS depend. These traditional forest dwellers fall under the "other traditional forest dwellers" category and are known as the Mohaiya

Community. Originally, there were 21 villages present in the area. During the settlement of rights process, 13 villages were resettled out of the Wildlife Sanctuary. 8 villages continue to live in and on the fringes of the Sanctuary. The Mohaiya Community was granted community rights in the MWS as laid down in Section 3 (a), (c) and (d) of the FRA Act.

9. The Expert Committee found that the population of both the endangered species had reduced over the last decade. The Expert Committee also found through the help of satellite imagery that the number of Shingle trees, the natural nesting place of the Little Mary Lark, had reduced in number. The Mohaiya Community is known to collect the Shingle tree leaves among other leaves. The reasons for the Oliver Antelope reducing in number were not clearly known but believed to be due to activities of the Mohaiya Community near the river. Primarily due to the decline in the number of the endangered species and for their habitat regeneration, the Expert Committee identified a 15 sq km stretch in the MWS including the area of the Lazy River for the proposed Moha Critical Wildlife Habitat.
10. As per the proposed Moha Critical Wildlife Habitat, the community rights of the Mohaiya Community would be modified, and they would have to seek for other livelihood opportunities to leave the area inviolate. At the Open Consultation Process held by the Expert Committee, the members of the Mohaiya Community raised their objections to the proposed Moha Critical Wildlife Habitat. They stated that they have been living in peaceful coexistence with the forest since generations. Their livelihoods depend on fish from the Lazy River and collecting minor forest produce. The forest also has cultural significance since some families from the traditional forest dwellers also worship a 100 year-old Banyan Tree in the proposed Critical Wildlife Habitat. Moreover, the Expert Committee has arbitrarily discarded other factors that may have led to the decline in the number of the endangered species namely that 5 years ago, a road was built that cut through the MWS leading to deforestation and that the MWS is open to tourism. The Mohaiya Community urged for continuation of their rights.
11. The Expert Committee merely stressed on the harm caused by the presence of the Mohaiya Community in its response to the objections at the Open Consultation. On the

basis of the Precautionary Principle, after receiving the consent of the Gram Sabha, the committee submitted the proposal for the Moha Critical Wildlife Habitat without any changes. After consideration by the designated Greedor and Primrose authorities, the Moha Critical Wildlife Habitat was declared, the first in Primrose.

12. Aggrieved by the declaration of the Moha Critical Wildlife Habitat curtailing their rights, the Mohaiya Community, through its leader Nonita Chandran, filed a petition against the Government of Primrose and Greedor in the High Court of Greedor, challenging the validity of the declaration of the Moha Critical Wildlife Habitat since it affects the right to livelihood and cultural rights of the Mohaiya Community and co-existence as an alternative was not considered.

13. The Government of Primrose and Greedor jointly responded that in the interest of the environment, forests and on the basis of the Precautionary Principle, it is a reasonable restriction on the rights of the Mohaiya Community. They urged against co-existence and for the need to keep the forests inviolate for habitat protection and regeneration.

14. The High Court placed the matter for hearing and requested assistance on the following questions:

- i) Whether the declaration of the Moha Critical Wildlife Habitat modifying the rights of the Mohaiya Community is valid and reasonable?
- ii) If not, what are the recommendations for integration of the Mohaiya Community with the Moha Critical Wildlife Habitat?
- iii) What directions can the High Court issue in this case and to who?

Note: The laws of Primrose and the laws of India are in *pari materia*. The PWPA and the FRA Acts correspond to their Indian versions. However, the constitutional validity of the FRA Act has not been challenged in Primrose and cannot be raised as an issue.