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## Legal opinion in, Gramvan on track

Written by **Vivek Deshpande** | Nagpur | March 8, 2015



Maharashtra's forest department had launched the Gramvan programme in May 2014 under Section 28 of the Forest Conservation Act (FCA) of 1927 to bestow certain privileges over villages taking advantage of the scheme.

After months of dispute that had pitted the Union environment and forest and rural development ministries against the tribal affairs ministry, the Maharashtra government has gone ahead with its Gramvan programme for "forest villages" after Additional Solicitor General Pinky Anand ruled against the tribal ministry's objections to it. The state had also sought opinion of Advocate General Sunil Manohar who said Gramvan did not in any manner violate the Forest Rights Act (FRA) provisions. Maharashtra's forest department had launched the Gramvan programme in May 2014 under Section 28 of the Forest Conservation Act (FCA) of 1927 to bestow certain privileges over villages taking advantage of the scheme. The privileges, the department claimed,

were over and above those provided by the FRA. It mainly included ownership of timber, something which the FRA did not provide for, the Maharashtra Regulation of Assignment, Management and Cancellation of Village Forests Rules, 2014 claimed.

Activists, however, had alleged that Gramvan was projected to be pro-villages but actually ran counter to the spirit of the FRA. They said it provided for taking away the rights it claimed to bestow upon the villagers in case the villages did not correctly implement the programme. Taking cognisance of the objections, the Union Ministry for Tribal Affairs had issued a letter on August 13, 2014, saying the Gramvan rules were prima facie in violation of the FRA and hence be kept in

abeyance till further examined. Rural Development Minister Nitin Gadkari and Environment Minister Prakash Javadekar had objected to this saying it was not in the purview of the tribal affairs ministry to rule on the validity of the rules.

The ministry, however, put its foot down and consulted its own experts instead of referring the matter to the law ministry and issued another letter to Maharashtra on December 5, saying it had “examined the legality of the Gramvan rules and found that the rules encroach upon and are irreconcilable with the provisions of FRA and Panchayat Raj (Extension to Scheduled Areas) Act, 1996”. The letter added: “They encroach upon the field of law already occupied by FRA, which is a Central legislation. The said rules have not obtained the consent of the President in this regard and as such are contrary to the mandate of Article 254 of the Constitution of India which provides that where a central legislation already occupies the field covered by a particular subject in the concurrent list, no legislation can be passed regarding the said subject by a State legislation which is repugnant to the provisions of Central legislation with the only exception when such state legislation has received the consideration and assent of President of India.”

The letter signed by Roopak Chaudhuri, Deputy Secretary, Tribal Affairs, further asked the government to withdraw the Gramvan rules. The government then sought Pinky Anand’s opinion on the matter. After studying the various

provisions of FCA, FRA, PESA and Gramvan rules, Anand opined: “Gramvan rules in no manner abrogate FRA. They categorically exclude such forest areas as are covered under FRA and PESA. It is very clear that scope and applicability of FRA and Gramvan are mutually exclusive and cannot be confused.” Advocate General Sunil Manohar observed: “The scope of FRA and Gramvan rules are completely different and there does not appear to be any conflict between the scope and content of the 2006 Act and Gramvan Rules. Section 13 (of FRA) provides that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. The Gramvan Rules only deal with assignment of rights of the state government over lands constituted as reserved or protected forest. Further, Gramvan Rules say they shall not be applicable to areas covered under Community Forest Rights (CFR) provisions of FRA and to PESA areas. The proviso clearly states that the rules shall in no way abridge any rights granted under FRA.” Following receipt of these letters, the state government issued a letter on February 23 saying Rs 6 crore were to be spent on different programmes like cement plugs, forest barrages, reservoirs and godowns etc as well as preparation of micro-plans and training under the scheme.

**Source:**<http://indianexpress.com/article/cities/mumbai/legal-opinion-in-gramvan-on-track/2/>