

Brazil's Highest Court Sides With Indians Against Rice Farmers

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Brazil's Supreme Federal Court (STF) has denied writs of mandamus which challenged presidential decrees that officially confirmed the bounds of the Jacaré de São Domingos and Raposa Serra do Sol indigenous lands in the states of Paraíba and Roraima, respectively. Therefore, the official confirmation of the bounds of these lands remains valid.

In the case of the Raposa Serra do Sol land, the decision means that rice farmers who have not left the land, whose bounds were officially confirmed in April 2005, will have to leave it now. Funai had already issued notifications for them to leave the land peacefully. If they refuse to leave it, it might be necessary to use police force.

Valter de Oliveira Makuxi, a leader of the Indigenous Council of Roraima who followed all the details of the judgment, believes that this decision is important. "The presence of rice farmers in the land still generates violence, threats. We will only be able to recover all our territory, replant our crops and rebuild our homes without suffering pressures after they leave," he said.

Writ of Mandamus (MS) 25,483 was unanimously denied. Filed by the company Itikawa Indústria e Comércio LTDA. and others, it was based on the argument that the indigenous area whose bounds were confirmed comprised lands, which were occupied by farmers since the beginning of the last century and that, in those days, they were not occupied by indigenous people.

The writ of mandamus also defended the competency of the National Congress to make decisions on the demarcation of indigenous lands and the need to submit any proposal to demarcate lands located on the border to the National Defense Council.

Grace Maria Mendonça, from the Federal Attorney's Office, made the oral defense of arguments against the writ of mandamus. She questioned the argument that the rice farmers had the right to own the land. "They occupied the land in the 1990s." In her arguments, she mentioned the congenital right of indigenous peoples to the land.

The arguments of the rice farmers were also rejected by justice Carlos Ayres Britto, the rapporteur of the proceedings, in his vote. He agreed with the opinion of the Federal Prosecutor's Office and decided not to accept the writ of mandamus, arguing that the Federal Government is responsible for demarcating lands in compliance with constitutional determinations. This means that decisions on the demarcation of indigenous lands are not to be made by Congress or by the National Defense Council.

Jacaré de São Domingos Land

While writ of mandamus 25,483 challenged the official confirmation of the bounds of the Raposa Serra do Sol land, writ of mandamus 21,896 challenged the official confirmation of the administrative demarcation of the Jacaré de São Domingos indigenous land, which has been traditionally occupied by the Potiguara indigenous people in the state of Paraíba.

In denying the writ of mandamus, the associate justices agreed with the vote of rapporteur, Carlos Velloso, and rejected the thesis that the decree which officially confirms the demarcation of the indigenous land jeopardizes a lawsuit related to the domain of the land which is being judged in the first instance by a federal court in João Pessoa. The writ of mandamus was filed by the Rio Vermelho Agropastoril company.

The associate justices who voted against the writ of mandamus agreed that the administrative proceeding for demarcating indigenous lands being carried out by the Executive Branch is not dependent on legal proceedings and does not jeopardize them.

The decision reaffirms the understanding of the Supreme Federal Court in relation to this issue. This understanding should also be applied to cases that are still being judged, among which the one related to the Nhande Ru Marangatu land in the state of Mato Grosso do Sul.

Cimi - Indianist Mission