



## ORDINANCE NO. 16 OF 2001

### THE KERALA FOREST (VESTING AND MANAGEMENT OF ECOLOGICALLY FRAGILE LANDS) ORDINANCE, 2001

Promulgated by the Governor of Kerala in the Fifty-second year of the Republic of India.

#### AN ORDINANCE

*to provide for the vesting in the Government of ecologically fragile lands in the State of Kerala and for the management of such lands with a view to maintaining ecological balance and conserving the biodiversity.*

*Preamble.-* WHEREAS, the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2000 (6 of 2000) promulgated by the Governor of Kerala on the 1<sup>st</sup> day of June 2000, will cease to operate on the 1<sup>st</sup> day of June, 2000;

AND WHEREAS a Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala, during its session which commenced on the 19<sup>th</sup> day of June, 2000 and ended on 17<sup>th</sup> day of July, 2000;

AND WHEREAS, in order to keep alive the provisions of the said Ordinance, the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2000 (8 of 2000) was promulgated by the Governor of Kerala on the 27<sup>th</sup> day of July 2000;

AND WHEREAS, a Bill to replace Ordinance 8 of 2000 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala, during its session which commenced on the 18<sup>th</sup> day of December, 2000 and ended on the 21<sup>st</sup> day of December, 2000;

AND WHEREAS, in order to keep alive the provisions of the said Ordinance, the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2001 (3 of 2001) was promulgated by the Governor of Kerala on the 26<sup>th</sup> day of January, 2001;

AND WHEREAS, a Bill to replace Ordinance 3 of 2001 by an Act of the Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala, during its session which commenced on the 15<sup>th</sup> day of February, 2001 and ended on the 8<sup>th</sup> day of March, 2001;

AND WHEREAS, under sub-clause (a) of clause (2) of Article 213 of the Constitution of India, Ordinance 3 of 2001 will cease to operate on the 29<sup>th</sup> day of March, 2001;



AND WHEREAS difficulties will arise if the provisions of the said Ordinance are not kept alive;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which under it necessary for him to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:-

1. *Short title and commencement.*- (1) This Ordinance may be called the Kerala Forest (Vesting and Management of Ecologically Fragile lands) Ordinance, 2001.

(2) It shall be deemed to have come into force on the 2<sup>nd</sup> day of June 2000.

2. *Definitions.*- In this Ordinance, unless the context otherwise requires,-

(a) "custodian" means the Principal Chief Conservator of Forests of the State or any other officer appointed by the Government, by notification in the official Gazette, to exercise the powers and perform the functions of the custodian under this Ordinance;

(b) "ecologically fragile lands" means,-

(i) any portion of forest land held by any person and lying contiguous to or encircled by a reserved forest or a vested forest of any other forest land owned by the Government and predominantly supporting natural vegetation; and

(ii) any land declared to be an ecologically fragile land by the Government by notification in the official Gazette under Section 4;

(c) "forest" means any land covered with trees and undergrowth and includes all statutorily recognised forests, whether designated a reserved, protected or otherwise and any land recorded as forests in the Government records irrespective of the ownership;

(d) "land" includes rivers, streams and other water bodies;

(e) "natural vegetation" means a growing stock predominantly or a plant species or of a number of plant species occurring naturally on the land;

(f) "owner" in relation to an ecologically fragile land includes a mortgagee, lessee or other person having right to possession and enjoyment of the ecologically fragile land;

(g) "prescribed" means prescribed by rules made under this Ordinance;

(h) "reserved forests" means the forests reserved under Section 19 of the Kerala Forest Act, 1961 (4 of 1962) and includes forests notified under section 4 of the said Act;

(i) "tribunal" means a tribunal constituted under Section 9 of this Ordinance;



(j) “Vested forests” means any forests means any forest vested in Government under Section 3 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971).

3. *Ecologically fragile lands to vest in Government.*- (1) Notwithstanding anything contained in any other law for the time being in force, or in any judgement, decree or order of any Court or in any custom, contract or other document, with effect from the date of commencement of this Act, the ownership and possession of all ecologically fragile lands held by any person or any other form of right over them, shall stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date.

(2) Nothing contained in sub-section (1) shall apply in respect of any land cultivated with coffee or cardamom held by an owner under valid registration for the plantation raised after obtaining due permission from legally competent authorities.

(3) The lands vested in Government under sub-section (1) shall be notified in the official Gazette by the Custodian and the notification shall be placed before the Advisory Committee constituted under section 15 of the Ordinance for its perusal.

4. *Power to declare ecologically fragile land.*- (1) The Government shall have power to declare, by notification in the official Gazette, any land to be ecologically fragile land on the recommendation of the Advisory Committee appointed for the purpose under Section 15 of this Ordinance.

(2) No declaration under sub-section (1) shall be made without giving the owner a reasonable opportunity of being heard.

(3) No person shall change the legal or physical status or ownership of the land proposed to be declared an ecologically fragile land after the notice issued under sub-Section (2).

(4) With effect from the date of declaration of any land as ecologically fragile land under sub-section (1), the ownership and possession of the land or any other form of right over it, shall subject to the provisions of this Act, stand transferred to an vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date.

5. *Ecologically fragile lands to be deemed to be reserved forests.*- All ecologically fragile lands vested in the Government under Section 3 and Section 4 shall be deemed to be reserved forests constituted under the Kerala Forest Act, 1961 (4 of 1962), and the provisions of that Act shall, so far as may be, apply to such lands.

6. *Demarcation of boundaries.*- (1) As soon as may be after the coming into force of this Act or the notification under sub-section (1) of Section 4 as the case may be,



the custodian shall cause the boundaries of the ecologically fragile lands vested in the Government under Section 3 or Section 4 to be demarcated.

(2) Notwithstanding the pendency of an application under Section 10 before the Tribunal, the custodian may, if he is satisfied that any land is vested in the Government under Section 3 or Section 4 cause the boundaries thereof to be demarcated.

*7. Eviction of persons in unauthorised occupation.-* (1) The custodian or an officer not below the rank of Divisional Forest Officer authorised by him in this behalf may evict any person in occupation of any ecologically fragile land vested in the Government after giving such person thirty days notice thereof.

(2) Notwithstanding anything contained in any other law for the time being in force, the custodian or the officer authorised by him in this behalf may use such force as he deems necessary to evict any person who refuses to vacate the land in accordance with the notice issued under sub-section (1)

*8. Compensation on vesting.-* (1) In respect of the land vested under sub-section (4) of section 4, the owner thereof shall be eligible for compensation for the said land including the permanent improvements thereon.

(2) No compensation shall be payable for the vesting in the Government of any ecologically fragile land or for the extinguishment of the right, title and interest of the owner or any person thereon under sub-section (1) of section 3.

(3) The compensation payable under sub-section (1) and the mode of payment shall be determined in such manner as may be prescribed.

*9. Constitution of Tribunals.-* (1) The Government may, by notification in the Gazette, constitute one or more than one Tribunal for the purpose of this Ordinance.

(2) The Tribunal shall consist of the following members, namely:-

- (i) a judicial officer not below the rank of a District Judge as Chairman,
- (ii) an officer not below the rank of a Conservator of Forests as member,
- (iii) a scientist with not less than 20 years service in the field of forestry or conservation of nature as member.

(3) Where more than one Tribunal is constituted under sub-section (1), the Government shall define the areas within which each Tribunal shall exercise jurisdiction.

(4) The Tribunal shall decide all matters within its competence and may review any of its decisions in the event of there being an error on the face of the record or correct any arithmetical or clerical error therein.

(5) The Tribunal shall, in exercising its powers, follow such procedure as may be prescribed.



10. *Settlement of disputes by the Tribunal.*- (1) Where any dispute arises as to whether,-

- (a) any land is an ecologically fragile land or not; or
- (b) any ecologically fragile land or portion thereof has vested in the Government or not; or
- (c) the compensation determined for the permanent improvement Section 8 is sufficient or not,

the person who claims that the land is not an ecologically fragile land or that the ecologically fragile land has not vested in the Government, or that the compensation is not sufficient, may, within two years from the date of commencement of this Act or within six months from the date of the notification under sub-section (1) of Section 4 declaring the land to be an ecologically fragile land, or the date of communication of compensation under Section 8, as the case may be, apply to the Tribunal for decision of the dispute.

(2) An application under sub-section (1) shall be in such form and contain such particulars as may be prescribed.

(3) If the Tribunal decides that any land is not an ecologically fragile land or that an ecologically fragile land or portion thereof has not vested in the Government and,-

- (a) no appeal under Section 11 has been preferred against the decision of the Tribunal with in the period specified there for; or
- (b) such appeal having been preferred under Section 11 has been dismissed by the High Court,

the custodian shall, as soon as may be, after the expiry of the period referred to in clause (a) or, as the case may be, after the date of the order of the High Court dismissing the appeal, restore possession of such land or portion, as the case may be, to the owner of such land.

(4) If the Tribunal decides that the compensation determined under Section 8 is not adequate and revises the amount of compensation and,-

- (a) no appeal under section 11 has been preferred against the decision of the Tribunal within the period specified therefor; or
- (b) such appeal having been preferred under Section 11 has been dismissed by the High Court,

the custodian shall, as soon as may be , after the expiry of the period referred to in clause (a) or, as the case may be, after the date of the order of the High Court dismissing the appeal, pay such compensation, to the owner of such land.



11. *Appeal to the High Court.*- (1) The Government or any person objecting to any decision of the Tribunal may, within a period of sixty days from the date of that decision, appeal against such decision to the High Court:

Provided that the High Court may admit an appeal preferred after the expiry of the period of sixty days aforesaid if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the said period.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of five hundred rupees.

(3) On receipt of an appeal under sub-section (1), the High Court may, after giving the parties a reasonable opportunity of being heard, either in person or by a representative,-

- (a) confirm or cancel the decision of the Tribunal appealed against; or
- (b) set aside such decision and remand the case to the Tribunal for decision after such further inquiry as may be directed; or
- (c) pass such orders as it may think fit.

(4) If the High Court decides that any land is not an ecologically fragile land or that an ecologically fragile land or portion thereof has not vested in the Government, the custodian shall, as soon as may be restore possession of such land or portion, as the case may be, to the owner of such land.

(5) If the High Court decides that the compensation determined under Section 8 or by the Tribunal under Section 10 is not adequate and determines a higher compensation, the custodian shall, as soon as may be, pay such compensation as determined by the High Court to the owner of such land.

12. *Power of Tribunal.*- The Tribunal shall, for the purpose of exercising any power conferred by or under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavit;
- (d) issuing commission for the examination of witnesses or for local investigation;
- (e) inspecting any property or thing concerning which any decision has to be taken;
- (f) requisitioning of any public record or copy thereof from any Court or office; and
- (g) and other matter which may be prescribed.

13. *Bar of jurisdiction of Civil Court.*- Except as otherwise provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question or to determine any matter which is, by or under this Act, required to be decided or dealt with or to be determined by the Tribunal, the custodian or any other officer.

14. *Indemnity.*- No suit, prosecution or legal proceedings shall lie against the Government or the Tribunal or the custodian or any other officer for anything in good faith done or intended to be done under this Act or any rule or order made there under.

15. *Constitution and functions of the Advisory Committee.*- (1) The Government may, by notification in Gazette, constitute an Advisory Committee to identify lands which are to be declared ecologically fragile under Section 4 and recommend to Government the said lands for declaration as ecologically fragile lands.

(2) The Advisory Committee shall consist of the following members, namely:-

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|--------|--|----------|
| (i)    | The Principal Chief Conservator of Forests   | Chairman |
| (ii)   | The Commissioner, Land Revenue or is nominee   | Member   |
| (iii)  | The Law Secretary or his nominee not below the rank of joint Secretary to Government                                     | Member   |
| (iv)   | The Revenue Secretary of his nominee not below the rank of Joint Secretary to Government                                 | Member   |
| (v)    | The Director, Scheduled Tribes Development Department  | Member   |
| (vi)   | The Director, Kerala Forest Research Institute, Peechi   | Member   |
| (vii)  | The Director, Tropical Botanic Garden and Research Institute, Pacha, Palode  | Member   |
| (viii) | The Director, Centre for Earth Science studies, Thiruvananthapuram   | Member   |
| (ix)   | The Director, centre for Water Resource Development and Management, Kozhikode  | Member   |
| (x)    | Two representatives of leading non-Governmental Organisations working in the field of forestry or conservation of nature | Members  |

(3) The Committee shall identify lands which are ecologically fragile and recommend to the Government for the declaration of such lands under Section 4 as ecologically fragile.

(4) The committee shall take into consideration,-



- (i) the abundance of flora and fauna;
- (ii) the rare and endemic flora and fauna;
- (iii) the role in conserving the water sources;
- (iv) function as corridors connecting two or more wildlife habitats;
- (v) functions as breeding grounds for wildlife; and
- (vi) such other ecological parameters as may be prescribed and make specific findings on the ecological sensitivity and significance of such land before making its recommendation to the Government under sub-section (3).

16. *Ecologically fragile lands to be managed by Forest Department as per Management Plans.*- (1) All ecologically fragile lands vested in the Government shall be managed by the Forest Department in accordance with the provisions of the management plans approved by the Government from time to time.

(2) The management plans shall be prepared in accordance with the guidelines issued from time to time by the State Government and Government of India for the preparation of Working Plans and Management Plans for the reserved forest areas and the protected areas respectively with a view to,-

- (i) conserving the natural resources;
- (ii) arresting depletion and degradation of flora and fauna;
- (iii) improving productivity and sustainability;
- (iv) maintaining ecological balance in the ecologically fragile land; and
- (v) retaining the rights relating to the means of livelihood of the local Scheduled tribe Communities.

17. *Power to remove difficulties.*- If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order do anything not inconsistent with such provisions, which appear to them necessary for the purpose of removing the difficulty:

Provided that, no order shall be made under this section after the expiry of two years from the commencement of this Ordinance.

18. *Power to make rules.*- (1) The Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid for the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any





such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. *Repeal and Saving.*- (1) The Kerala Forest Vesting and Management of Ecologically Fragile Lands) Ordinance, 2001 (3 of 2001), is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Ordinance.

**SUKHDEV SINGH KANG,  
GOVERNOR.**