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KERALA GAZETTE

കേരള ഗസറ്റ്

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GOVERNMENT OF KERALA
Law (Legislation – B) Department
NOTIFICATION

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Date 8th June 2005

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18th Jyaishta 1927

In pursuance of clause (3) of Article 348 of the Constitution of India, the Governor's is pleased to authorize the publication in the Gazette of the following translation in English Language of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (21 of 2005)

By order of the Governor

P. P. GEETHA
Special Secretary (Law)

Act 21 of 2005.

THE KERALA FORESTS (VESTING AND MANAGEMENT OF ECOLOGICALLY FRAGILE LANDS) ACT, 2003.

An Act to provide for the vesting in the Government of Ecologically fragile land in the State of Kerala and for the management of such lands with a view to maintaining ecological balance and conserving the bio-diversity.

Preamble- Whereas the earth's biological resources with their intrinsic ecological, genetic, economic, social, cultural, scientific, educational, recreational and aesthetic value are global assets and public trust vital to the sustained economic and social development, maintenance of ecological balance and the very existence of humanity.

And whereas the fundamental requirement for the conservation of biological diversity is the insitu conservation of ecosystems and natural habitat and the maintenance and recovery of viable populations of species in their natural surroundings.

AND WHEREAS the tropical forests in the western ghats which has been declared a bio-diversity hot-spot by the International Union for Conservation of Nature and Natural Resources are very rich repositories of bio-diversity extremely susceptible to rapid irreversible degradation.

AND WHEREAS it has become inevitable to conserve effectively the Ecologically Fragile Lands, minimizing the reduction or degradation of these ecosystems and biological diversity therein, which evolved through millions of years.

AND WHEREAS it is considered necessary to manage such lands in an integrated and uniform manner within their ecological boundaries in accordance with the management plans based on sound scientific principles.

Be it enacted in the fifty fourth year of the Republic of India as follows:

1. Short title and commencement: - (1) This Act may be called as the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Act, 2003.

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

2. Definitions: In this Act, unless the context otherwise requires: -

(a) "custodian" means the Principal Chief Conservator of Forests of the State or any other officer not below the rank of a Conservator of Forests appointed by the Government, by notification in the Gazette to exercise the powers and perform the functions of the custodian under this Act.

(b) "ecologically fragile lands" means: -

(i) any forestland or any portion thereof held by any person and lying contiguous to or encircled by a reserved forest or a vested forest or any other forestland 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 Gazette under section 4.

(c) "forest" means any land principally covered with naturally grown trees and undergrowth and includes any forest statutorily recognized and declared as reserved forest, protected forest or otherwise, but does not include any land which is used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other site of residential buildings and surroundings essential for the convenient use of such buildings;

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

(e) "natural vegetation" means a growing stock predominantly of 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 any other person having the right of possession and enjoyment of the Ecologically Fragile Lands.

(g) "prescribed" means prescribed by rules made under this Act.

(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 Act.

(j) "vested forest" means any forest vested in Government under section 3 of the Kerala Forests (Vesting and Assignment) Act, 1971 (26 of 1971).

3. Ecologically fragile land to vest in Government: - (1) Notwithstanding anything contained in any other law for the time being in force, or in any judgment, decree or order of any court or tribunal or in any custom, contract or other documents, with effect from the date of commencement of this Act, the ownership and possession of all Ecologically fragile land 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) The lands vested in the Government under sub-section (1) shall be notified in the Gazette and the owner shall be informed in writing by the custodian and the notification shall be placed before the advisory committee constituted under section 15 for perusal.

4. Power to declare Ecologically Fragile Lands: - (1) The Government shall have power to declare by notification in the Gazette, any land to be Ecologically fragile land on the recommendation of the Advisory Committee appointed for the purpose under section 15 of this Act.

(2) No declaration under sub-section (1) shall be made without giving the owner a notice of thirty days for being heard.

(3) No person shall change the legal or physical status or ownership of the land proposed to be declared as 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 the Act, stand transferred to and vested in the Government free from all encumbrance and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date.

5. Ecologically fragile land to be deemed to be reserved forests: - Subject to the provisions of section 16 all Ecologically fragile land vested in Government under section 3 and section 4 shall be deemed to be reserved forests constituted under 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) Within such time as may be prescribed 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 to demarcate the boundaries of Ecologically fragile land vested in the Government under section 3 and section 4.

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, demarcate or cause to demarcate the boundaries thereof.

7. Eviction of persons in unauthorized occupation: - (1) The custodian or an officer not below the rank of Divisional Forest Officer authorized by him in the behalf may evict any person in occupation of any Ecologically fragile land vested in the Government under section 3 or section 4 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 authorized by him in this behalf may take such steps as may be necessary to evict any person who refuses to vacate the land in accordance with the notice issued under sub-section (1).

8. Compensation of vesting: - (1) In respect of land vested under sub-section (4) of section 4, the owner thereof shall be eligible for compensation for the said land including the permanent improvement 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 a manner as may be prescribed.

9. Constitution of tribunals: - (1) The Government may by notification in the Gazette, constitute one or more Tribunal for the purpose of this Act.

(2) The tribunal shall be a Judicial Officer not below the rank of a District Judge.

(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 under section 8 is insufficient 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 five 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, or within such time as the Government may notify in this behalf apply to the Tribunal for settlement 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 within the period specified therein.

(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 therein, 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 if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the aforesaid 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 the 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 decisions of the Tribunal appealed against; or

(b) set aside decision and remand the case to the Tribunal for decision after such further inquiry as may be directed by the High Court 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 that owner.

(5) If the High Court decides that the compensation determines under section 8 or 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:- Tribunal shall, for the purpose of exercising any powers conferred by or under this Act, have all the powers of a civil court while trying to 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 this concerning which any decision has to be taken,
- (f) requisitioning of any public record or copy thereof from any court or Office; and
- (g) any 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 procedure shall be 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 thereunder.

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

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

- (i) The Principal Chief Conservator of Forests Chairman.
- (ii) Two members of the Legislative Assembly nominated by the Government Members.
- (iii) The Secretary, Forest Department or his nominee not below the rank of Joint Secretary to Government Member.
- (iv) The Law Secretary or his nominee not below the rank of Joint Secretary to Government Member.
- (v) The Revenue Secretary or his nominee not below the rank of Joint Secretary to Government Member.
- (vi) The Director, Scheduled Tribes Development Department Member
- (vii) The Director, Kerala Forest Research Institute, Peechi. Member.
- (viii) The Director, Tropical Botanical Garden and Research Institute, Pacha, Palode. Member.
- (ix) The Director, Centre for Earth Science Studies, Thiruvananthapuram. Member.
- (x) The Director, Centre for Water Resource Development and Management, Kozhikode. Member.
- (xi) One representative of leading Non-Governmental Organizations working in the field of conservation of nature or forest nominated by the Government. Member.

(3) The Committee shall identify lands which are ecologically fragile land 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 resource;
- (iv) functions 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 the Forest Department as per Management plans: - 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 the Government of India for the preparation of working plans and Management plans for the reserved forest areas and protected areas with a view to, -

- (i) conserving natural resources;
- (ii) arresting depletion and degradation of flora and fauna;
- (iii) improving productivity and sustainability; and
- (iv) maintaining ecological balance in the ecologically fragile lands.

Provided that the management plans prepared under this sub-section shall be such as to retaining the rights of the local Scheduled Tribe Communities regarding their means of livelihood.

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 five years from the commencement of this Act.

18. Power to make rules: - (1) The Government may, by notification in the Official Gazette, make rules, either prospectively or retrospectively to carry out the purposes of this Act.

(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 or 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. Validation and Transitory Provisions: - (1) Notwithstanding the expiry of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2001 (16 of 2001) (hereinafter referred to as the said Ordinance),-

(a) all ecologically fragile lands vested in the Government under the said ordinance shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been vested under this Act;

(b) anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall, in so far it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under this Act;

(2) The expiry of the said Ordinance shall not,-

(a) affect any right, privilege, obligation or liability acquired, accrued or incurred thereunder; or

(b) affect any legal proceedings or remedy in respect of any such right, privilege, obligation or liability and any such legal proceedings or remedy may be instituted, continued or enforced under the provisions of this Act in so far as it is inconsistent with the provisions of this Act.

(3) Notwithstanding anything contained in the said Ordinance or in any judgment, decree or order of any court,-

(a) no land other than the ecologically fragile land as defined in this Act, whether notified under sub-section (3) of section 3 of the said ordinance or not, shall be deemed to have vested or ever to have been vested in Government; and

(b) every notification issued in respect of any land under sub-section (3) of section 3 of the said Ordinance shall be scrutinized by the custodian suo motu or an application made by the owner or any person having the right of possession or enjoyment of such land and if necessary, such notification shall be revised and issued in accordance with the provisions of this Act.