

The Forest Act, 1927

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The Forest Act, 1927

[Act 16 of 1927¹]

[21st September, 1927]

An Act to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce

Whereas it is expedient to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce; It is hereby enacted as follows:

Statement of Objects and Reasons.—"The general law relating to forests in British India is contained in the Indian Forest Act, 1878 and its amending Acts. The present Bill brings the law together within the scope of one enactment. The Bill is a straightforward consolidating Bill but the original Act having been passed before the General Clauses Act, 1897 (X of 1897) it has been possible to shorten the language of the Bill by taking advantage of that Act. The ambiguous language of the second paragraph of Section 42 of Act VII of 1878 has been altered in Clause 42(2) so as to bring it into conformity with what appears to have been the original intention of the law. The only other point which calls for further notice is the extant clause. The original Act extended to the Province of Assam, but by Regulation VII of 1891 the Indian Forest Act, 1878 was repealed as far as it relates to Assam. The Bill accordingly omits Assam from the Extant clause."

Statement of Objects and Reasons of Amendment Act 5 of 2018.—The Indian Forest Act, 1927 (the said Act) has been enacted to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce.

2. The said Act, inter alia, in clause (7) of Section 2 defines "tree", which includes palms, bamboos, stumps, brush wood and canes. The bamboo, though taxonomically a grass is treated as tree for the purpose of the said Act, and therefore, attracts the requirement of permit for transit under the said Act. Although, many States have exempted felling and transit of various species of bamboos within the States, the inter-State movement of bamboos require permit when being in transit through other States. The farmers are facing hardships in getting the permits for felling and transit of bamboos within the State and also for outside the State, which has been identified as major impediment of the cultivation of bamboos by farmers on their land.

1 **Ed.:** Act 4 of 2005 *repealed* by Act 17 of 2015, S. 2 & Sch. I. *See also* S. 4 of the Repealing and Amending Act, 2015:

"4. **Savings.**—The repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment provide or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force."

3. Hence, it was decided to amend clause (7) of Section 2 of the said Act so as to omit the word "bamboos" from the definition of tree, in order to exempt bamboos grown on non-forest area from the requirement of permit for felling or transit under the said Act, and would encourage bamboo plantation by farmers resulting in the enhancement of their income from agricultural fields.

4. Since, Parliament was not in session and immediate action was required to be taken, the Indian Forest (Amendment) Ordinance, 2017 was promulgated by the President on the 23rd day of November, 2017.

5. Accordingly, the Indian Forest (Amendment) Bill, 2017 seeks to replace the Indian Forest (Amendment) Ordinance, 2017.

6. The Bill seeks to achieve the above objectives.

CASE LAW ▶ Applicability.—Although the forest Act specifically deals with (i) reserved forests, (ii) village forests and (iii) protected forests, the preamble and other provisions of the Act are wide enough to cover all categories of forests, *Mulamchand Ratilal v. State of M.P.*, AIR 1960 MP 152 : 1960 MPLJ 195 : 1960 Jab LJ 321.

▶ **Repugnancy between Central and State Legislation.**—Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 is not repugnant to Forest Act, 1927. There was, therefore, no requirement of President's assent under Article 254(2) (although it was obtained). For applicability of Article 254 there must be direct conflict and both laws must be completely inconsistent or absolutely irreconcilable. For this superior legislation must be exhaustive, unqualified and cover the entire field. For this subject matter of both legislations must be the same. This is not the case here, *Rajiv Sarin v. State of Uttarakhand*, (2011) 8 SCC 708 : (2011) 4 SCC (Civ) 354.

CHAPTER I

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Indian Forest Act, 1927.

²(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States.

(3) It applies to the territories which, immediately before the 1st November, 1956, were comprised in the States of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal; but the Government of any State may by notification in the Official Gazette bring this Act into force³ in

2. *Subs.* by the Adaptation of Laws (No. 3) Order, 1956, for sub-sections (2) and (3).

3. This Act has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), Section 3 and Schedule; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), Section 3 and Schedule. This Act has been extended to:—

(1) Berar (partially) by the Berar Laws Act, 1941 (4 of 1941).

(2) The Province of Coorg, see Coorg Gazette, 1930, Part I, p. 94.

(3) The Delhi Province, see Gazette of India, 1933, Part II-A, p. 293.

(4) The whole of Madhya Pradesh, by M.P. Act 23 of 1958.

(5) Dadra and Nagar Haveli, by Reg. 6 of 1963, S. 2 and Schedule I (w.e.f. 1-7-1965).

(6) Pondicherry by Reg. 7 of 1963, S. 3 and Schedule (w.e.f. 1-10-1963).

(7) Goa, Daman and Diu by Reg. 11 of 1963, S. 3 and Schedule; and

(8) Laccadive, Minicoy and Amindivi Islands, by the Reg. 8 of 1965, S. 3 and Schedule (w.e.f. 1-10-1967).

(9) In the Union Territory of Jammu and Kashmir and Union Territory of Ladakh by Act 34 of 2019, Ss. 96 & 95 and Sch. V (w.e.f. 31-10-2019).

the whole or any specified part of that State to which this Act extends and where it is not in force.]

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, in Section 1,—

(i) to sub-section (2), the following proviso shall be *added*, namely:—

“Provided that on the commencement of the Indian Forest (Gujarat Unification and Amendment) Act, 1960 (Guj. XV of 1960), this Act shall also extend to the Saurashtra area of the State of Gujarat.”;

(ii) to sub-section (2), the following proviso shall be *added*, namely:—

“Provided that on the commencement of the Indian Forest (Gujarat Unification and Amendment) Act, 1960 (Guj. XV of 1960), this Act shall come into force in the Saurashtra area of the State of Gujarat.” [*Vide* Guj. Act 15 of 1960, S. 6(a)].

HIMACHAL PRADESH.—In Section 1, in its application to the State of Himachal Pradesh, after sub-section (2), the following sub-section shall be *inserted*, namely:—

“(2-A) Notwithstanding anything contained in sub-section (2), it also extends to such territories which, immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union, and have since merged with Himachal Pradesh under Section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966).” [*Vide* H.P. Act 25 of 1968, S. 2].

MAHARASHTRA.—In Section 1, in its application to the whole of the State of Maharashtra as provided by Section 2,—

(i) to sub-section (2), after the words and letter “Part B States”, the words “other than the Hyderabad area of the State of Maharashtra” shall be *added*;

(ii) to sub-section (3), the following proviso shall be *added*, namely:—

“Provided that, on the commencement of the Indian Forest (Maharashtra Unification and Amendment) Act, 1960 (Mah. VI of 1961), this Act shall be in force in the Hyderabad area of the State of Maharashtra.” [*Vide* Mah. Act 6 of 1961, S. 3].

PUNJAB.—In Section 1, in its application to the State of Punjab—

(1) After sub-section (2), the following sub-section, shall be *inserted*, namely:

“(2-A) Notwithstanding anything contained in sub-section (2), it also extends to the territories which, immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union”; and

(2) in sub-section (3), after the word “Orissa”, the words “Patiala and East Punjab States Union”, shall be *inserted*. [*Vide* Punjab Act 13 of 1962, S. 2].

2. Interpretation clause.—In this Act, unless there is anything repugnant in the subject or context,—

(1) “cattle” includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;

(2) “Forest-officer” means any person whom ⁴[* * *] the State Government or any office empowered by ⁵[* * *] the State Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer;

4. The words “the G.G. in C., or” omitted by the A.O. 1937.

5. The words “the G.G. in C., or” omitted by the A.O. 1937.

CASE LAW ▶ Forest Officer.—Ex-ruler of erstwhile Princely State appointed by State Government as Forest Superintendent, by virtue of this appointment he accepted the State Government as the dominant owner of the forest property. His entitlements therefore would be those of a Forest Officer, *State of H.P. v. Raja Mahendra Pal*, (1999) 4 SCC 43.

Forest Guard whether permanent or temporary appointed to do all acts and exercise all powers that are provided by the Acts to be done by Forest Officer. A Forest Officer can seize a vehicle, *Atibai v. State of M.P.*, (2008) 63 AIC 448 (MP).

- (3) “forest-offence” means an offence punishable under this Act or under any rule made thereunder;
- (4) “forest-produce” includes—
- (a) the following whether found in, or brought from, a forest or not, that is to say:—
 - timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark lac, mahua flowers, mahua seeds, ⁶[kuth] and myrabolams, and
 - (b) the following when found in, or brought from a forest, that is to say:—
 - (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,
 - (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
 - (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
 - (iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries).

CASE LAW ▶ Forest produce.—Kattha and cutch come within the sweep of “catechu” which is enumerated in the definition of forest produce. Hence, kattha and cutch are forest produce, *State of M.P. v. S.P. Sales Agencies*, (2004) 4 SCC 448 : 2004 SCC (Cri) 1313.

‘Forest-produce’ does not include bamboo mat. A forest-produce which is changed into a commercially new and distinct article ceases to be a forest produce. ‘Trees’ in Section 2(4)(b)(i) refers to natural growth or products of trees and not articles produced with the aid of human labour. Definition of ‘timber’ in Section 2(6) is in two parts jointed by the word ‘and’. Word ‘trees’ in the first part of the definition does not relate to ‘fashioned’ bamboos in the second part, *Suresh Lohiya v. State of Maharashtra*, (1996) 10 SCC 397.

Processed Kaju-badam is not ‘Forest-produce’ within meaning of Section 2(4)(b), *Cashewnut Processing Enterprise v. State of W.B.*, (1986) 1 CHN 133.

Fish not being “forest produce” as defined in Section 2(4), Forest Act but comes under “wild life” as defined in Section 2(37) of Wild Life (Protection) Act, Section 52 has no applicability in the matter of seizure

6. *Ins.* by Act 26 of 1930, S. 2.

in respect of jeep used to transport fish from the reservoir of Pench National Park, *Sheikh Tausif v. State of M.P.*, (2002) 1 MP LJ 263.

Salai gum is a "forest produce", *Hargovind Nagaich v. State of M.P.*, (2010) 2 MPLJ 418.

Dung droppings (gobar) from cattle grazing in forest area under licence is not forest produce nor does it vest as such in the Forest Department, *Barkat Jalam Adivasi v. State of M.P.*, 1986 MPLJ 704.

If essential character of forest produce does not change after manufacturing process/chemical treatment, it will continue to remain within definition of forest produce, *State of Uttarakhand v. Kumaon Stone Crusher*, (2018) 14 SCC 537.

► **Interpretation/Construction.**—Words "brought from" as occurring in Section 2(4)(b) mean brought from forest from where forest produce concerned has originated. Words "brought from forest" cannot be read as "brought through forest", *State of Uttarakhand v. Kumaon Stone Crusher*, (2018) 14 SCC 537.

► **Surface soil.**—Surface soil removed from private malki land is not 'forest produce', *Yeshwant Monu Dadamani, In re*, (1962) 1 Cri LJ 832 : 1961 MLJ (Cri) 699.

Boulders lying in forest area a part of surface soil and fragmented portion of rock are "forest produce" in terms of Section 2(4)(b)(iv) thereof, *Jiban Aich v. State of W.B.*, (2003) 4 CHN 624.

► **"Found".**—The expression, "found in" refers to things growing in a forest. It does not mean "come across" or "discovered" in a forest irrespective of the fact whether the article or goods so discovered were originally sourced or deposited or grown in a forest or some other place which is not a forest, *Yeshwant Monu Dadamani, In re*, (1962) 1 Cri LJ 832 : 1961 MLJ (Cri) 699.

⁷[(4-A) "owner" includes a Court of Wards in respect of property under the superintendence or charge of such Court;]

(5) "river" includes any stream, canal, creek or other channels, natural or artificial;

(6) "timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and

(7) "tree" includes palms, ⁸[* * *], skumps, brush-wood and canes.

STATE AMENDMENTS

BOMBAY.—In its application to the State of Bombay, in Section 2, in sub-clause (a) of clause (4), after the word "kuth" the words " , apta and temburni leaves" shall be *inserted*. [*Vide* Bombay Act 24 of 1955, S. 2].

GUJARAT.—(1) In its application to the State of Gujarat, in Section 2, after clause (4-A), the following clauses shall be *inserted*, namely:—

"(4-B) 'Police Officer' means a Police Officer as defined in the Bombay Police Act, 1951 (Bom. XXII of 1951);

(4-C) 'Revenue Officer' means a Revenue Officer as defined in the Bombay Land Revenue Code, 1879 (Bom. V of 1879), or, where that Code is not in force, as defined in a law corresponding to that Code;" [*Vide* Guj. Act 15 of 1960, S. 6(b)].

(2) After Section 2, the following section shall be *inserted*, namely:—

7. *Ins.* by Act 3 of 1933, S. 2.

8. The words "bamboos" *omitted* by Act 5 of 2018 (w.r.e.f. 23-11-2017).

"2-A. *Construction of certain references to Central or Bombay Acts.*—In the Application of this Act to any area of the State of Gujarat other than Bombay are any reference to a provision of a Central or Bombay Act shall, where no such Act is in force in that area, be construed as a reference to the provision of the corresponding law, if any, in force in that area." [Vide Guj. Act 15 of 1960, S. 6(c)].

(3) In Section 2, in sub-clause (a) of clause (4), for the words "rauwolfia serpentina" the words "rauwolfia serpentina kadaya gum" shall be *substituted*. [Vide Guj. Act 11 of 1976, S. 2].

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, in Section 2,—

- (a) in clause (6), the word "and" occurring at the end shall be *omitted*;
- (b) in clause (7), for the sign ".", the sign and word "; and" shall be *substituted*; and
- (c) after clause (7) so amended, the following clause (8) shall be *added*, namely:—

"(8) "Vehicle" means a wheeled conveyance of any description which is capable of being used for movement on land and includes a cart, trolley vehicle and a trailer but does not include bicycle and cattle. [Vide H.P. Act 15 of 1991, S. 2].

MADHYA PRADESH.—(1) In its application to the State of Madhya Pradesh, in clause (4) of Section 2,—

- (i) in sub-clause (a), after the words "lac", the words "shellac, gum", shall be *inserted*; and
- (ii) after item (iv) of sub-clause (b), the following item shall be *inserted*, namely:—
" (v) Standing agricultural crops;" [Vide M.P. Act 9 of 1965, S. 2].

(2) In sub-clause (a) of clause (4) of Section 2, after the words "mahua seeds", the words "tendu leaves", shall be *inserted*. [Vide M.P. Act 1 of 1990, S. 3].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 2, after clause (4-A), the following clauses shall be *inserted*, namely:—

"(4-B) 'Police Officer' means a Police Officer as defined in the Bombay Police Act, 1951 (Bom. XXII of 1951);

(4-C) 'Revenue Officer' means a Revenue Officer as defined in the Bombay Land Revenue Code, 1879 (Bom. V of 1879), or, where that Code is not in force, as defined in a law corresponding to that Code;" [Vide Mah. Act 6 of 1961, S. 4].

(2) After Section 2, the following section shall be *inserted*, namely:—

"2-A. *Construction of certain references to Central or Bombay Acts.*— In the application of this Act to any area of the State of Maharashtra other than the Bombay area thereof, any reference to a provision of a Central or Bombay Act shall, where no such Act is in force in that area, be construed as a reference to the provision of the corresponding law, if any, in force in that area." [Vide Mah. Act 6 of 1961, S. 5].

(3) In Section 2, in its application to the State of Maharashtra in sub-clause (a) of clause (4), for the words, "rosha grass, rauwolfia serpentina" the words "rosha grass including oil derived therefrom, rauwolfia serpentina" shall be *substituted*. [Vide Mah. Act 27 of 1968, S. 2].

(4) In Section 2, in its application to the State of Maharashtra in clause (4-C), for the words and figures "the Bombay Land Revenue Code, 1879 (Bom. Act 5 of 1879), or, where that Code is not in force, as defined in a law corresponding to that Code; the words and figures "the Maharashtra Land Revenue Code, 1966 (Mah. Act 41 of 1966)", shall be *substituted*. [Vide Mah. Act 7 of 1985, S. 2].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, in Section 2—

- (i) for clause (1), the following clauses shall be *substituted*, namely:—

"(1) "authorised officer" means an officer authorized under sub-section (2) of Section 52;

(1-A) "cattle" include elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, ram, ewes, sheep, lambs, goats and kids;

(1-B) "forest based industry" means an industry or unit in which any forest produce is used as raw material or as a source of energy";

(ii) for clause (4), the following clause shall be *substituted*, namely:—

"(4) "forest-produce" includes—

(a) timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, kuth, myrobalans, dioscorea, firewood, humus, rasaunt, morels (*Morchella* spp), *Aconitum* spp, *Podophyllum* spp, *Picrorhizaspp*, *Trillium* spp, *Nardostachys* spp, *Taxus* spp, *Valerianassp*, *Rheum* spp, wild animals, skins, tusks, horns, bones and all other parts or produce of wild animals whether found in, or brought from, a forest or not; and

(b) the following when found in, or brought from, a forest, namely:—

(i) trees and leaves, flowers and fruits, roots and all other parts or produce of trees not specified in clause (a);

(ii) plants not being trees (including grass, bamboos, creepers, reeds and moss and lichen), and all parts or produce of such plants;

(iii) silk, cocoons, honey and wax; and

(iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);".

(iii) after clause (5), *insert* the following clause, namely:—

(5-A) "saw mill" means any plant and machinery with which and the premises (including the precincts thereof) in which or in any part of which sawing is carried on with the aid of electrical or mechanical power;".

(iv) after clause (6), *insert* the following clause, namely:—

'(6-A) "transporter" includes a person, a private agency, a Government Department, Corporation or any other agency engaged in transport of forest produce whether on his own or on behalf of any other person';

(v) after clause (7), *insert* the following clause;

'(8) "wild animal" shall have the same meaning as assigned to it in the Wild Life (Protection) Act, 1972.' [*Vide* S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)]

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [*Vide* S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Section 2, for clause (1) the following clauses shall be *substituted*, namely:—

'(1) "authorised officer" means an officer authorised under sub-section (1) of Section 52-A;

(1-A) "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;'. [*Vide* U.P. Act 1 of 2001, S. 2 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 2, the following clause shall be *inserted*, namely—

'2-A. "authorised officer" means an officer authorised under sub-section (1) of Section 52-A.'. [*Vide* Uttarakhand Act 10 of 2002, S. 2, dt. 17-7-2002].

CHAPTER II OF RESERVED FORESTS

3. Power to reserve forests.—The State Government may constitute any forest-land or waste-land which is the property of Government or over which the

Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

STATE AMENDMENTS

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, for Section 3, the following shall be substituted, namely:—

“3. *Power to reserve forests.*—The State Government may constitute any forest land or waste land or any other land (not being land for the time being comprised in any holding or grove or in any village *abadi*) which is the property of Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a reserve forest in the manner hereinafter provided.

Explanation.—The expression ‘holding’ shall have the meaning assigned to it in the U.P. Tenancy Act, 1939 (U.P. Act XVII of 1939), and the expression ‘village *abadi*’ shall have the meaning assigned to it in the U.P. Village Abadi Act, 1947 (U.P. Act III of 1948).” [Vide U.P. Act 23 of 1965, S. 2].

CASE LAW ▶ Scope and applicability.—Section 3 covers forest land or waste land irrespective of whether the same is comprised in a holding or not and other lands only if the same are not comprised in a holding, *Om Singh v. State*, 1980 All LJ 77 (NOC).

Where the trees which may be described as the forest produce never belonged to the State, it cannot claim to be entitled to the whole or part of that produce to attract the provisions of Section 3 and such land cannot be declared reserved forest, *Raghunath Singh v. State*, (1961) 2 ALJ 686 : 1961 All WR 532 (HC) : ILR (1962) All 11.

The restriction “not being land comprised in any holding or in any village *abadi*” is not applicable to forest land and waste land, *Om Singh v. State*, 1980 All LJ 77 (NOC).

▶ **Power to constitute any land or reserved forest.**—The State Government cannot comprise a waste land or forest land to be a reserved forest (i) where the land is property of Government or (ii) the Government has proprietary right over it or (iii) where it is entitled to the whole or any part of the forest produce of any land, *Raghunath Singh v. State of U.P.*, (1961) 2 ALJ 686 : 1961 All WR 532 (HC) : ILR (1962) 1 All 11.

▶ **Nature of proceedings.**—Proceedings for declaration of land as reserved forest and judicial in nature, *Raghunath Singh v. State of U.P.*, 1961 All LJ 686 : 1961 All WR 532 (HC) : ILR (1962) 1 All 11.

▶ **Grove land.**—Grove land cannot be included within the term ‘forest land’ or ‘waste land’ or ‘waste land’, *State v. Mahant Avaidh Nath*, AIR 1977 All 192.

▶ **Sirdar.**—Person holding land as Sirdar is not a proprietor but merely a tenure-holder. Proprietary rights in such land vested with the State. Hence, the State was justified in declaring and notifying the said land as reserved forest. Nature of the land can be determined on the date of notification under Section 4, *State of U.P. v. Dy. Director of Consolidation*, (1996) 5 SCC 194.

▶ **Bhumidar.**—Bhumidar is not a proprietor but is a mere tenure holder under the State. Chapter II and V-A will apply to waste land held by him, *Mahendra Lal Jaini v. State*, 1963 Supp 1 SCR 912 : (1963) 2 SCA 163 : AIR 1963 SC 1019.

4. Notification by State Government.—(1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette—

- (a) declaring that it has been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer (hereinafter called “the Forest Settlement-officer”) to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation.—For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer.

(3) Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act.

STATE AMENDMENTS

BOMBAY.—In its application to the State of Bombay, in Section 4, in sub-section (1), after the words “the State Government” the words “or subject to the general or special orders of the State Government, the Commissioner” shall be *inserted*. [*Vide* Bombay Act 8 of 1958, S. 3(4) and Sch. read with Noti. No. FLD. 1080/1564-F-3, dt. 24-7-1980].

CASE LAW ▶ Scope.—A notification under this section cannot restrict or extinguish right of Jagirdar to compensation for teak trees growing on land if such trees were not declared to form part of the forest, *State v. Ranjit Singhji*, (1971) 3 SCC 891.

▶ **Validity of Notification.**—Notification declaring Government decision to constitute land a reserved forest without revesting the said land in Government under Section 117(6), Uttar Pradesh Zamindari Abolition and Land Reforms Act is valid, *Om Singh v. State of U.P.*, 1980 All LJ 77 (NOC).

▶ **Modification of notification.**—Modification of a notification will not be effective unless published in Gazette, *Mahendra Lal Jaini v. State of U.P.*, (1963) Supp 1 SCR 912 : 1963 2 SCA 163 : AIR 1963 SC 1019.

▶ **Civil Suit.**—A notification in respect of a land not falling in any of the categories of land mentioned in Section 3 is without authority and jurisdiction. A civil suit challenging such notification is not barred by Section 18(4), *Jang Bahadur v. State*, 1971 AWR 599.

▶ **‘Any land’.**—The words ‘any land’ do not mean any land other than the land mentioned in Section 3. They are to be read with Section 3, *Jang Bahadur v. State*, 1971 AWR 599 (HC).



► **Sirdari and Bhumidari land.**—Persons recognized and treated as Sirdars and Bhumidars under Uttar Pradesh Zamindari Abolition and Land Reforms Act have legal rights under Forest Act, 1927, as well. Such land can not be deemed to belong to the State, *Subedar Dalip Singh v. State of U.P.*, 1974 RD 227 : (1973) All WR 221.

Person holding land as Sirdar is not a proprietor but merely a tenure-holder. Proprietary rights in such land vested with the State. Hence, the State can declare and notify the said land as reserved forest. Nature of the land can be determined on the date of notification under Section 4, *State of U.P. v. Dy. Director of Consolidation*, (1996) 5 SCC 194.

► **Appeal.**—Act does not provide for an appeal against the notification published under Section 4 of the Act. Appeal is only provided against the decision of Forest Settlement Officer in respect of claim of a particular person, *State of U.P. v. Tengari*, (2007) 52 AIC 785 (All).

5. Bar of accrual of forest rights.—After the issue of a notification under Section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.

STATE AMENDMENTS

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, for Section 5, the following shall be *substituted*, namely—

“5. *Bar of accrual of forest rights.*—After the issue of a notification under Section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land, nor any tree therein felled, girdled, lopped, tapped, or burnt, or its bark or leaves stripped off, or the same otherwise damaged, nor any forest-produce removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf.” [Vide U.P. Act 23 of 1965, S. 3].

CASE LAW ► Clearing : Meaning of.—Clearing means act of cutting away and removing of trees from a piece of forest land purpose of such clearing is immaterial, *Matroo Khan v. State*, 1960 All LJ 590 : 1960 All WR 462 (HC) : (1960) All Cr R 293 : (1961) 1 Cri LJ 593.

6. Proclamation by Forest Settlement-officer.—When a notification has been issued under Section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which, as hereinafter provided, will ensure on the reservation of such forest; and
- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period either to present to the Forest

Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

CASE LAW ▶ Limitation for preferring claim.—The period for making a claim fixed in a proclamation issued under Section 6 cannot be equated with the period of limitation fixed under the Limitation Act, *Hardayal v. District Judge*, 1972 AWR 530 : 1972 All LJ 649 : 1972 All 471.

7. Inquiry by Forest Settlement-officer.—The Forest Settlement-officer shall take down in writing all settlements made under Section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in Section 4 or Section 5 and not claimed under Section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. Powers of Forest Settlement-officers.—For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:—

- (a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and
- (b) the powers of a Civil Court in the trial of suits.

9. Extinction of rights.—Rights in respect of which no claim has been preferred under Section 6, and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished, unless before the notification under Section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6.

CASE LAW ▶ Land not falling under Section 3.—No question of extinguishment of any right can arise in respect of land which does not fall under Section 3, *State of U.P. v. Mahant Avaidh Nath*, AIR 1977 All 192.

▶ Omission to file objection.—An objection to jurisdiction cannot be waived. Hence omission to file objections regarding land not falling under Section 3 is not fatal, *State of U.P. v. Mahant Avaidh Nath*, AIR 1977 All 192.

10. Treatment of claims relating to practice of shifting cultivation.—(1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the State Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the State Government may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise—

- (a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or
- (b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe.

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction to the State Government.

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the State Government.

11. Power to acquire land over which right is claimed.—(1) In the case of a claim to a right in or over any land, other than a right-of way or right of pasture, or a right to forest-produce or a water-course, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement-officer shall either—

- (i) exclude such land from the limits of the proposed forest; or
- (ii) come to an agreement with the owner thereof for the surrender of his rights; or
- (iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(3) For the purpose of so acquiring such land—

- (a) the Forest Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894 (1 of 1894).
- (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under Section 9 of that Act;
- (c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
- (d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

STATE AMENDMENTS

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Section 11, after sub-section (3), the following new sub-section shall be added, namely—

“(4) The provisions of sub-section (3) shall apply also when the Forest Settlement Officer proceeds to acquire any land in consequence of any order passed on appeal or revision under this Act.” [Vide U.P. Act 23 of 1965, S. 4].

12. Order on claims to rights of pasture to or forest-produce.—In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, Section 12 shall be *renumbered* as sub-section (1) of that section and after the sub-section so *renumbered*, the following sub-section shall be *inserted*, namely:—

“(2) A copy of the order passed under sub-section (1) shall be furnished to the claimant by the Forest Settlement Officer and another copy of that order shall be forwarded to the Forest Officer who attended the inquiry or, if no such Officer attended, to the Divisional Forest Officer.” [Vide Guj. Act 15 of 1960, S. 6(d)].

MAHARASHTRA.—In its application to the State of Maharashtra, Section 12 shall be *re-numbered* as sub-section (1), of that section, and after the sub-section so renumbered, the following sub-section shall be *inserted*, namely:—

“(2) A copy of the order passed under sub-section (1) shall be furnished to the claimant by the Forest Settlement Officer, and another copy of that order shall be forwarded to the Forest Officer who attended the inquiry or, if no such Officer attended, to the Divisional Forest Officer.”. [Vide Mah. Act 6 of 1961, S. 6].

13. Record to be made by Forest Settlement-officer.—The Forest Settlement-officer, when passing any order under Section 12, shall record, so far as may be practicable,—

- (a) the name, father’s name, caste, residence and occupation of the person claiming the right; and
- (b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

14. Record where he admits claim.—If the Forest Settlement-officer admits in whole or in part any claim under Section 12, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorised to take or receive, and such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

15. Exercise of rights admitted.—(1) After making such record the Forest Settlement-officer shall, to the best of his ability, having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For this purpose the Forest Settlement-officer may—

- (a) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or
- (b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient for the purposes of the claimants; or

- (c) record an order, continuing to such claimants a right of pasture or to forest-produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the State Government.

16. Commutation of rights.—In case the Forest Settlement-officer finds it impossible having due regard to the maintenance of the reserved forest, to make such settlement under Section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the State Government may make in this behalf, commute such rights, by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

CASE LAW ▶ Absence of declaration.—When admittedly no declaration has been issued under Section 16 of Forest Act, it is not possible to treat petitioner's land as Reserved Forest, if there is attempt on the part of the Government to interfere with the right of petitioner to enjoy the property in a peaceful manner in the absence of declaration under Section 16 it cannot be appreciated, *Bombay Burmah Trading Corporation Ltd. v. Deputy Director, Project Tiger, Mundanthurai Kazhakadu Sanctuary, Ambasamudram*, (2003) 1 LW 276 (Mad).

17. Appeal from order passed under Section 11, Section 12, Section 15 or Section 16.—Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under Section 11, Section 12, Section 15 or Section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the State Government may, by notification in the Official Gazette, appoint to hear appeals from such orders:

Provided that the State Government may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the State Government, and when the Forest Court has been so established, all such appeals shall be presented to it.

STATE AMENDMENTS

BOMBAY.—In its application to the State of Bombay, in Section 17, after the words "the State Government", wherever they occur, the words "or subject to the general or special orders of the State Government, the Commissioner" shall be *inserted*. [Vide Bom. Act 8 of 1958, S. 3(4) and Sch. read with Noti. No. ELD 1081-F-6., dt. 19-11-1981].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, for Section 17, the following shall be *substituted*, namely—

"17. *Appeal from order passed under Section 11, Section 12, Section 15 or Section 16.*—Any person who has made a claim under this Act, or any Forest Officer or other person generally or specially empowered by the State Government in this behalf may, within three months from the date of the order passed on such claim by the Forest Settlement Officer under Section 11, Section 12, Section 15 or Section 16, present an appeal from such order to the District Judge.

Explanation.—In this section and in the succeeding sections of this Chapter, 'District Judge' means the District Judge of the district in which the land is situate, and includes an Additional

District Judge to whom an appeal is transferred by the District Judge.”. [*Vide* U.P. Act 23 of 1965, S. 5].

CASE LAW ▶ Additional Collector.—Collector appointed by the State Government to hear appeals under Section 17 is persona designate. An Additional Collector appointed under Section 14-A of U.P. Land Revenue Act and authorized by State Government to exercise all powers and to perform all duties of Collector in all classes of cases has no jurisdiction to entertain appeal under Section 17, *Swami Nath Singh v. State of U.P.*, AIR 1967 All 472 : 1967 All J 41.

▶ **Forest Officer.**—A Divisional Forest Officer is a Forest Officer within the meaning of Section 17, *State of U.P. v. District Judge*, AIR 1971 All 229.

▶ **Opportunity of hearing.**—It is a fundamental principal of justice that a party whose rights are affected must have notice of it. This principal is embodied in Order 20, Rule 1 of C.P.C; though the Forest Settlement Officer adjudicating on the claims under the Act is not a court, yet the principal which is really a principal of fair play and is applicable to all tribunals performing judicial or quasi-judicial functions must also apply to him, *Madan Lal v. State*, (1975) 2 SCC 779.

▶ **Limitation.**—Statutory period of limitation runs from the date of notice, actual or constructive, of the making of the order, *Madan Lal v. State of U.P.*, (1975) 2 SCC 779.

▶ **Revision.**—Where a claim is rejected under Section 11 or Section 12 by the Forest Settlement Officer and an appeal under Section 17 against the rejection is dismissed, no revision lay to the State Government as there was no arrangement under Section 15 or under Section 18, *State of U.P. v. District Judge*, 1971 All J 1240.

▶ **Pleading.**—Where a party has submitted to jurisdiction, it cannot be allowed to plead want of jurisdiction in petition under Article 226 of the Constitution, *State of U.P. v. District Judge*, 1971 All J 1240.

▶ **Signing of memo of appeal.**—Section empowers the Forest Officer to file and sign the memo of appeal. It is not essential that the Conservator should sign the memo, *State of U.P. v. District Judge*, AIR 1971 All 229.

Para 276 of the Forest Manual which provides that under C.P.C. the suits, applications etc. filed on behalf of forest department shall be signed by Conservator does not relate to an appeal under Section 17 of the Act, *State of U.P. v. District Judge*, AIR 1971 All 229.

An appeal filed by a Forest Officer cannot be dismissed merely because it is described as ‘an appeal filed on behalf of the State Government through forest department, *State of U.P. v. District Judge*, AIR 1971 All 229.

18. Appeal under Section 17.—(1) Every appeal under Section 17 shall be made by petition in writing, and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be to an officer appointed under Section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the State Government, be final.

STATE AMENDMENTS

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, for Section 18, the following shall be *substituted*, namely—

“18. *Appeal under Section 17.*—(1) Every appeal under Section 17 shall be made by petition in writing and may be delivered to the Forest Settlement Officer, who shall forward it without delay to the District Judge.

(2) The District Judge, may, after giving to the parties an opportunity of being heard, confirm, set aside or modify the order under appeal or remand the case to the Forest Settlement Officer with such directions as he thinks fit.

(3) During the pendency of the appeal the District Judge may, for sufficient cause, stay, on such terms, if any, as he thinks fit, the operation of the order appealed from and pass any incidental or consequential order.

(4) The order passed on the appeal shall, subject to the provisions of Section 22, be final.”
[*Vide* U.P. Act 23 of 1965, S. 6].

CASE LAW ▶ Civil suit.—Where the notification under Section 4 issued by the State Government is without authority and jurisdiction, the Civil Court’s jurisdiction to try a suit challenging declaration of State Government declaring land as forest land by such notification is not barred by sub-section (4) of Section 18, *Jang Bahadur v. State*, 1971 AWR 599 (HC).

▶ **Appeal presented by subordinate of Forest Officer.**—Delivery of memo of appeal to a Forest Settlement Officer by a subordinate of the appellant Forest Officer is sufficient compliance with this section, *State of U.P. v. District Judge*, AIR 1971 All 229.

▶ **Additional evidence.**—The District Judge is entitled to take additional evidence. But when additional evidence is accepted the opposite party must be given an opportunity to rebut the evidence, *Asharfilal v. State*, 1978 All LJ 290.

▶ **Finality to order passed in appeal.**—Finality to orders passed in appeal does not attach to appellate order concerning land not covered by notification under Section 4 and hence a suit under Section 229-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act would be maintainable in respect of such land, *Madan Gopal Singh v. State*, AIR 1971 All 350.

Where appeal against dismissal of claim under clause (c) of Section 6 in respect of certain waste land is dismissed and no revision is filed the Civil Court cannot restore that land or grant compensation. *Mahaluxmi Bank v. Province of Bengal*, 1942 Cal 371 : ILR (1942) 2 Cal 35.

▶ **Enhancement of sentence.**—Awarding compensation in addition to fine imposed by the trial court amounts to enhancement of sentence and is without jurisdiction, *Matroo Khan v. State*, 1960 All LJ 590 : 1960 All WR 462 (HC) : 1960 All CR 293 : (1961) 1 Cri LJ 593.

19. Pleadings.—The State Government, or any person who has made a claim under this Act may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

STATE AMENDMENTS

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, for Section 19, the following shall be *substituted*, namely—

“19. *Pleaders.*—The State Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement Officer or the District Judge in the course of any inquiry or appeal under this Act.”. [Vide U.P. Act 23 of 1965, S. 7].

20. Notification declaring forest reserved.—(1) When the following events have occurred, namely:—

- (a) the period fixed under Section 6 for preferring claims have elapsed and all claims if any made under that section or Section 9 have been disposed of by the Forest Settlement-officer;
- (b) if any such claims have been made, the period limited by Section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or; Court and
- (c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under Section 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under Section 16 of that Act,

the State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

STATE AMENDMENTS

BOMBAY.—In its application to the State of Bombay, in Section 20, in sub-section (1), after the words “the State Government”, the words “or subject to the general or special orders of the State Government, the Commissioner” shall be *inserted*. [Vide Bom. Act 8 of 1958, S. 3(4) and Sch. read with Noti. No. ELD 1081-F-6., dt. 19-11-1981].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, after Section 20, the following section shall be *inserted*, namely:—

“20-A. *Forest land or waste land deemed to be reserved forests.*—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any forest land or waste land in the territories comprised within an Indian State, immediately before the date of its merger in any of the integrating States now forming part of this State (hereinafter in this section referred to as the “merged territories”),—

- (i) which had been recognised by the Ruler of any such State immediately before the date of merger as a reserved forest in pursuance of any law, custom, rule, regulation, order or notification for the time being in force; or
- (ii) which had been dealt with as such in any administration report or in accordance with any working plan, or register maintained or acted upon immediately, before the said date and has been continued to be so dealt with thereafter;

shall be deemed to be reserved forests for the purposes of this Act.

(2) In the absence of any rule, order or notification under this Act, applicable to the area in question, any law, custom rule, regulation, order or notification mentioned in sub-section (i) shall, anything in any law to the contrary notwithstanding, be deemed to be validly in force, as if the same had the force and effect of rules, orders and notifications made under the provisions of this Act and shall continue to so remain in force until superseded, altered or modified in accordance therewith.

(3) No report, working plan, or register as aforesaid or any entry therein shall be questioned in any court of law: provided that the State Government have duly certified that such report, working plan, or register had been prepared under the authority of the said Ruler before the date of the merger and has been under the authority of the State Government continued to be recognised, maintained or acted upon thereafter.

(4) Forest recognised in the merged territories as village forests or protected forests, or forests other than reserved forests, by whatever name designated or locality known, shall be deemed to be protected forests within the meaning of this Act and provisions of sub-sections (2) and (3) shall mutatis mutandis apply.

Explanation I.—“Working Plan” includes any plan, scheme, project, maps, drawings and lay-outs prepared for the purpose of carrying out the operations in course of the working and management of forests.

Explanation II.—“Ruler” includes the Darbar Administration prior to the date of the merger and “State Government” includes the Successor Governments after the said date.

Explanation III.—The expression “Indian State” shall have the meaning assigned to that expression in clause (15) of Article 366 of the Constitution of India.

Explanation IV.—“Integrating States” means the States of Madhya Pradesh, Madhya Bharat, Rajasthan, Vindhya Pradesh and Bhopal as existing before the 1st day of November, 1956”. [Vide M.P. Act 9 of 1965, S. 3].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, after Section 20, insert the following section—

“20-A. *Demarcated forests deemed to be reserved forests.*—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any forest which has been notified as a demarcated forest under the erstwhile Jammu and Kashmir Forest Act, 1987 (1930 A.D.), prior to the appointed day notified under the Jammu and Kashmir Reorganization Act, 2019, shall be deemed to be a reserved forest under this Act.

(2) All questions decided, orders issued and records prepared in connection with the constitution of such forest as demarcated forests shall be deemed to have been decided, issued and prepared under this Act, and the provisions of this Act relating to reserved forests shall apply to forest to which the provision of sub-section (1) are applicable.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, for clause (b) of sub-section (1) of Section 20, the following, shall be substituted, namely—

“(b) if any such claims have been made, the period limited by Section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the District Judge; and”. [Vide U.P. Act 23 of 1965, S. 8].

(2) After Section 20, the following new section shall be added, namely—

“20-A. *Certain forest land or waste land when deemed to be reserved forest.*—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, including the Merged States (Laws) Act, 1949 (Act LIX of 1949), or the U.P. Merged States

(Application of Laws) Act, 1950 (U.P. Act VIII of 1950), or any order issued there-under, any forest land or waste land in a merged State which immediately before the date of merger (hereinafter in this section referred to as the said date),—

- (a) was deemed to be a reserved forest under any enactment in force in that State, or
- (b) was recognised or declared by the Ruler of such State as a reserved forest under any law (including any enactment, rule, regulation, order, notification, custom or usage having the force of law) for the time being in force, or
- (c) was dealt with as a reserved forest in any administrative report or in accordance with any working plan or register maintained and acted upon under the authority of the Ruler,

shall be deemed to be and since the said date to have continued to be a reserved forest subject to the same rights or concession, if any, in favour of any person as were in force immediately before the said date.

Explanation I.—A certificate of the State Government or of any officer authorised in this behalf to the effect that a report, working plan or register was maintained and acted upon under the authority of the Ruler shall be conclusive evidence of the fact that it was so maintained and acted upon.

Explanation II.—Any question as to the existence or extent of any right or concession referred to in this sub-section shall be determined by the State Government, whose decision, given after such enquiry, if any, as it thinks fit, shall be final.

Explanation III.—‘Working plan’ includes any plan, scheme, project, map, drawings and lay-outs prepared for the purpose of carrying out the operations in the course of the working and management of forests.

(2) No right shall be deemed to have been acquired on or after the said date in or over any land mentioned in sub-section (1) except by succession or under a grant or contract in writing made or entered into by or on behalf of the State Government or some person in whom such right was vested immediately before the said date and no fresh clearings since made for cultivation or for any other purpose (except clearings made in accordance with any concessions granted by the Ruler and in force immediately before the said date or in accordance with the rules made by the State Government in this behalf since the said date) shall be recognised as or deemed to be lawful, anything contained in this Act or any other law for the time being in force notwithstanding.

(3) The State Government may within five years from the commencement of the Indian Forest (Uttar Pradesh Amendment) Act, 1965, revise any arrangement of the nature specified in Section 22, and pass any incidental or consequential order, including any direction to the effect that any of the proceedings specified in the foregoing provisions of this Chapter be taken.

(4) In relation to any land mentioned in sub-section (1), the references in Sections 24 and 26—

- (a) to Section 23 shall be construed as references to sub-section (2); and
- (b) to rights admitted, recorded or continued under Section 14 or Section 15 shall be construed as references to rights of pasture or to forest produce admitted, recorded or continued in or under the corresponding enactment, law or document referred to in sub-section (1).

(5) Without prejudice to any action that may be or may have been taken for ejection, vacation of encroachment or recovery of damages in respect of any unauthorised occupation of or trespass over any land mentioned in sub-section (1), or for seizure, confiscation, disposal or release (on payment of value or otherwise) of any forest produce in respect of which any forest offence has been committed in relation to such land or of any tools, boats, carts or cattle used in committing such offence, nothing in this section shall be deemed to authorise the conviction of any person for any act done before the commencement of the Indian Forest (Uttar Pradesh

Amendment) Act, 1965, which was not an offence before such commencement.”. [Vide U.P. Act 23 of 1965, S. 9].

CASE LAW ▶ Proprietary rights.—Person holding land as Sirdar is not a proprietor but merely a tenure-holder. Proprietary rights in such land are vested with the State, *State of U.P. v. Dy. Director of Consolidation*, (1996) 5 SCC 194.

▶ **Power of Forest Settlement Officer.**—The Forest Settlement Officer has the powers of a civil court and his order is subject to appeal and finally revision before the State Government. The Act is a complete code in itself and contains elaborate procedure for declaring and notifying a reserve forest. Once a notification under Section 20 of the Act declaring a land as reserve forest is published, then all the rights in the said land claimed by any person come to an end and are no longer available. The notification is binding on the consolidation authorities in the same way as a decree of a civil court, *State of U.P. v. Dy. Director of Consolidation*, (1996) 5 SCC 194.

Power to decide dispute as to whether damage caused by contractor in breach of the terms of the contract vests in Chief Conservator of Forests and not Divisional Forest Officer, *Chief Conservator of Forests v. Ratan Singh Hans*, AIR 1967 SC 166.

▶ **Right on reserved forest land.**—Lease executed by Gaon Sabha of Forest land and issue in dispute is whether claimant has bhumidhari right so as to exclude the land from the proposed reserved forest said lease is neither registered nor attested by competent revenue authorities and no entry in the record of rights for the last 40 years hence, was not given effect in the revenue records, then possession of alleged leases is of trespasser. Where land is a reserved forest land does not belong to Gaon Sabha therefore benefit of Section 122-B (4-F) U.P. Zamindari Abolition and Land Reforms Act, 1951 is not available to the claimant, *Shivnath v. Addl. Distt. Judge*, (2005) 58 ALR 620 (All).

Without notification under Section 20 of the Act, a chunk of land as forest reserve cannot legally be claimed, *Subhash Stone Products v. State of U.P.*, (2007) 54 AIC 281 (All).

Even in cases where no notification under Section 20 has been issued land may be considered to be a forest land and in such a case it cannot be used for non-forest purposes except with the permission of the Central Government, *Bhairao Ram v. Additional District Judge*, (2002) 49 ALR 530.

Consolidation courts cannot entertain a claim with regard to land which is covered by notification under Section 20 of the Forest Act, *Jogendar Singh v. Deputy Director of Consolidation, Bareilly*, (2002) 46 ALR 657.

▶ **Proof of Notification.**—Where the fact of the forest in question being reserved forest is not denied by the accused filing of notification is not mandatory, *Abdul Wahab v. State*, 1963 MPLJ (Notes) 37.

A forest does not become reserved forest until notification under Section 20 is issued, *Bhagwan Sahai v. DFO*, 1947 Cri LJ 992 : 1947 Pat 264.

▶ **Effect of non-issuance of Section 20 notification after issuance of Section 4 notification.**—Section 5 as substituted by U.P. Act 23 of 1965 w.e.f. 25-11-1965, clearly provides that after issuance of notification under Section 4 no forest produce can be removed from forest area, except in accordance with rules concerned. Regulation of removal of forest produce thus operates after Section 4 notification even if no final notification under Section 20 is issued. After striking down of Fourth Amendment Rules and Fifth Amendment Rules, State, held, fully competent to recover transit fee as per rate prevalent under Third Amendment Rules, *State of Uttarakhand v. Kumaon Stone Crusher*, (2018) 14 SCC 537.

► **Tenancy Land.**—Notification in respect of tenancy land not covered by Section 3 can be challenged in Civil Court or any regular court such as authorities under Consolidation of Holdings Act, *Ratan Singh v. State of U.P.*, 1979 All LJ 1216.

► **Extinguishment of Rights.**—On publication of notification under Section 20 rights in respect of which no claim is preferred become extinguished by virtue of Section 9 of the Act, *Mahaluxmi Bank v. Province of Bengal*, AIR 1942 Cal 371.

21. Publication of translation of such notification in neighbourhood of forest.—The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

22. Power to revise arrangement made under Section 15 or Section 18.—The State Government may, within five years from the publication of any notification under Section 20, revise any arrangement made under Section 15 or Section 18, and may for this purpose rescind or modify any order made under Section 15 or Section 18, and direct that any one of the proceedings specified in Section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under Section 12 be commuted under Section 16.

STATE AMENDMENTS

UTTAR PRADESH.—(1) In its application to the State of Uttar Pradesh, for Section 22, the following shall be *substituted*, namely—

“22. *Powers to revise arrangements made under Section 15 or Section 18.*—The State Government may, within five years from the publication of any notification under Section 20, revise any arrangement made under Section 15 or on appeal under Section 18, and may for this purpose rescind or modify any order made under Section 15 or Section 18, and direct that anyone of the proceedings specified in Section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under Section 12 be commuted under Section 16.” [Vide U.P. Act 23 of 1965, S. 10].

(2) In its application to the State of Uttar Pradesh, after Section 22, the following section shall be *inserted*, namely:—

“22-A. *Power of revision in other cases.*—(1) Without prejudice to the provisions of Section 22, the State Government may, either of its own motion or on a petition being made in that behalf, call for the record of any appeal decided under Section 18, and may confirm the order passed on such appeal, or set it aside, or modify it, or remand the case to the Forest Settlement Officer with such directions as it may think fit.

(2) No petition under this section may be made, after November 22, 1965, and the State Government may not exercise any power under this section, after the said date.” [Vide U.P. Act 11 of 1973 and shall be deemed to have been inserted (w.r.e.f. 23-11-1960).]

23. No right acquired over reserved forest, except as here provided.—No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under Section 20 was issued.

CASE LAW ▶ Auction sale.—Confining the auction sale of Borang trees in reserved forest only to pencil and slate manufacturers, instead of keeping the auction open to all and sundry which could have fetched a higher price is illegal, *Rajendra Singh v. State of U.P.*, AIR 1973 All 37.

24. Rights not to be alienated without sanction.—(1) Notwithstanding anything contained in Section 23, no right continued under clause (c) of sub-section (2) of Section 15 shall be alienated by way of grant, sale, lease mortgage or otherwise, without the sanction of the State Government:

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under Section 14.

CASE LAW ▶ Requirement of sanction.—Land acquired for housing scheme and houses were constructed by Development Authority which were in highly dilapidated state if it is no longer forest land no specific sanction is required for construction of new houses, *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 12 SCC 68.

25. Power to stop ways and water courses in reserved forests.—The Forest-officer may, with the previous sanction of the State Government or of any officer duly authorised by it in this behalf, stop any public or private way or water-course in reserved forest, provided that a substitute for the way or water-course so stopped, which the State Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

CASE LAW ▶ Forest road : Levy of fee.—Imposition of a reasonable fee for use of forest road is neither illegal nor in contravention of Article 265 of Constitution, *Anand Transport Co. v. Divisional Forest Officer*, AIR 1959 MP 224 : 1959 MP LJ 366 : 1959 Jab LJ 195.

If there is charge against forest contractor of having in his depot excess quantity of khairwood than what was permitted under different permits it amounts to violation of the provision under this section, *Birjoo Prasad v. State of U.P.*, (2000) 9 SCC 51 : 2000 SCC (Cri) 1155.

26. Acts prohibited in such forests.—(1) Any person who—

- (a) makes any fresh clearing prohibited by Section 5, or
 - (b) sets fire to a reserved forest, or, in contravention of any rules made by the State Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest;
- or who, in a reserved forest—
- (c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf;
 - (d) trespasses or pastures cattle, or permits cattle to trespass;
 - (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
 - (f) fells, girdles, lops, or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;

- (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;
- (h) clears or breaks up any land cultivation or any other purpose;
- (i) in contravention of any rules made in this behalf by the State Government hunts, shoots fishes, poisons water or sets traps or snares; or
- (j) in any area in which the Elephant's Preservation Act, 1879 (6 of 1879) is not in force, kills or catches elephants in contravention of any rules so made,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit—

- (a) any act done by permission in writing of the Forest-officer, or under any rule made by the State Government; or
- (b) the exercise of any right continued under clause (c) of sub-section (2) of Section 15, or created by grant or contract in writing made by or on behalf of the Government, and

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the State Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

STATE AMENDMENTS

BIHAR AND ORISSA.—In its application to the state of Bihar and Orissa, for sub-section (3) of Section 26, the following sub-section shall be *substituted*, namely:—

“(3) Whenever in a reserved forest—

- (a) fire is caused wilfully or by gross negligence, or
- (b) theft of forest produce occurs and such theft is, in the opinion of the Provincial Government, on such a scale as to be likely to imperil the future yield of such forest,

the Provincial Government may, notwithstanding that any penalty has been inflicted under this section or under any other law for any act referred to in clause (a) or clause (b), direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended,

- (i) in the circumstances mentioned in clause (a), for such period as it thinks fit,
- (ii) in the circumstances mentioned in clause (b), for a period not exceeding four years.” [Vide Bihar and Orissa Act 9 of 1935, S. 2].

BIHAR.—In its application to the State of Bihar, in sub-section (1) of Section 26, for the words “shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid” the following words shall be *substituted*, namely:—

“Shall be punishable with imprisonment for a minimum term of six months which may extend to two years or with minimum fine of one thousand rupees which may extend to five thousand rupees or with both in addition to such compensation as the Convicting Court may direct

to be paid. The offence under this section shall be cognizable and non-bailable." [Vide Bihar Act 9 of 1990, S. 2 (w.e.f. 10-9-1990)].

GUJARAT.—In its application to the State of Gujarat, in Section 26,—

- (i) in sub-section (1), for the words beginning with the letter and brackets "(b)" and ending with the words "or who in a reserved forest" the following shall be *substituted*, namely:—

"(b) sets fire to a reserved forest or to a forest in a land in respect of which a notification declaring the decision of the State Government to constitute it a reserved forest has been issued under Section 4, or in contravention of any rules made by the State Government in this behalf, kindles in such forest any fire or leaves any fire burning, in such manner as to endanger such a forest;

or who, in a reserved forest or a forest in a land notified as aforesaid under Section 4—";

- (ii) after sub-section (3), the following sub-section shall be *inserted*, namely:—

"(4) When a person is convicted under clause (d) or (h) of sub-section (1)—

(a) a Forest Officer not below the rank of a Ranger,

(b) a Police Officer not below the rank of a sub-Inspector, or

(c) a Revenue Officer not below the rank of a Mahalkari,

may evict him from the forest or land in relation to which he has committed the offence." [Vide Guj. Act 15 of 1960, S. 6(e)].

HARYANA.—In its application to the State of Haryana, in sub-section (1) of Section 26, for the words "which may extend to six months, or with fine which may extend to five hundred rupees", the words "which may extend to one year, or with fine which may extend to one thousand rupees" shall be *substituted*. [Vide Haryana Act 31 of 1973, S. 2].

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, in Sections 26, 33 and 42, for the words "six months" and "five hundred", the words "two years" and "five thousand" shall be *substituted* respectively. [Vide H.P. Act 15 of 1991, S. 3].

MADHYA PRADESH.—(1) In its application to the State of Madhya Pradesh, in sub-section (1) of Section 26,—

- (i) for clause (b), the following clause shall be *substituted*, namely:—

"(b) sets fire to a reserved forest or to a forest land, in respect of which a notification declaring the decision of the State Government to constitute it as reserved forest has been issued under Section 4 or in contravention of any rule made by the State Government in this behalf, kindles, in any such forests a fire or leaves a fire burning in such manner as to endanger such a forest";

- (ii) in clause (e), for the word "dragging" the word "removing" shall be *substituted*;

- (iii) in clause (f), for the words "the same", the words "the same or any forest produce" shall be *substituted*;

- (iv) for clause (h) the following clause shall be *substituted*, namely:—

"(h) clears or breaks up any land for cultivation or for any other purpose, or cultivates or attempts to cultivate any land in any other manner"; and

- (v) for the words "extend to six months, or with fine which may extend to five hundred rupees", the words "extend to one year, or with fine which may extend to one thousand rupees" shall be *substituted*. [Vide M.P. Act 9 of 1965, S. 4].

(2) In its application to the State of Madhya Pradesh, in sub-section (1) of Section 26, for the words "one thousand rupees", the words "fifteen thousand rupees" shall be *substituted*. [Vide M.P. Act 7 of 2010, S. 3]

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 26,—

- (i) in sub-section (1), for the words beginning with the brackets and letter “(b)” and ending with the words “or who, in a reserved forest—” the following shall be *substituted*, namely:—

“(b) sets fire to a reserved forest or to a proposed forest in land in respect of which a notification declaring the decision of the State Government to constitute it a reserved forest has been issued under section 4, or in contravention of any rules made by the State Government in this behalf, kindles in such forest any fire or leaves any fire burning, in such manner as to endanger such a forest;

or who, in a reserved forest or a proposed forest in land notified as aforesaid under section (4)—”;

- (ii) after sub-section (3), the following, sub-section shall be *inserted*, namely:—

“(4) Where a person is convicted under clause (d) or (h) of sub-section (1),—

(a) a Forest Officer not below the rank of a Ranger, or

(b) a Police Officer not below the rank of a Sub-Inspector, or

(c) a Revenue Officer not below the rank of a Mahalkari or Tehsildar,

may evict him from the forest or land in relation to which he has committed the offence.” [Vide Mah. Act 6 of 1961, S. 7].

(2) In Section 26, in sub-section (1) for the words “six months or with fine which may extend to five hundred rupees”, the words “one year or with fine which may extend to two thousand rupees”, shall be *substituted*. [Vide Mah. Act 7 of 1985, S. 3].

(3) In its application to the State of Maharashtra, in Section 26,—

- (a) in sub-section (1),—

(i) for the words “two thousand rupees” the words “five thousand rupees” shall be *substituted*;

- (ii) the following proviso shall be added, namely—

“Provided that, in cases where the forest-offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted for any forest-offence the punishment may extend to double the punishment mentioned in this sub-section.”;

- (b) after sub-section (1), the following sub-section shall be *inserted*, namely—

“(1-A) (a) The Forest-officer may evict from a reserved forest or from any land in a reserved forest any person who, in such forest, trespasses or pastures cattle, or permits cattle to trespass, or clears or breaks up such land for cultivation or for any other purpose, and may demolish any building erected or construction made by such person on such land.

(b) Any agricultural or other crops grown, or any building erected or any construction made, by any person on any land in a reserved forest shall be liable to confiscation by an order of the Divisional Forest-officer.

(c) The provisions of this sub-section shall have effect notwithstanding any punishment inflicted under sub-section (1):

Provided that, nothing in the above sub-section shall adversely affect the forest rights conferred on the forest dwelling Scheduled Tribes and other traditional forest dwellers under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act No. 2 of 2007) and the ownership rights of Gram Sabha over the minor forest-produce under the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Act No. 40 of 1996).”;

- (c) for sub-section (4), the following sub-sections shall be *substituted*, namely—

“(4) Any person who causes resistance or hurt to deter public servants or employees engaged on their behalf from discharging their duties under sub-section (1-A) shall, on conviction, be punished with imprisonment for a term which shall not be less than one

year but may extend to six years and also with fine which shall not be less than one thousand rupees.

(5) No civil court shall have any jurisdiction in any matter provided for by sub-section (1-A). [Vide Maharashtra Act 21 of 2015, S. 2 (w.e.f. the date to be notified)]

PUNJAB.—In its application to the State of Punjab, in Section 26, in sub-section (1),—

- (i) in clause (e), for the word “dragging”, the words “dragging or removing” shall be substituted;
- (ii) in clause (f), for the words “the same”, the words “the same or any forest produce” shall be substituted; and
- (iii) for the words “six months, or with fine which may extend to five hundred rupees”, the words “two years, or with fine which may extend to five thousand rupees” shall be substituted. [Vide Punjab Act 21 of 2004, S. 2].

UTTAR PRADESH.—(1) In its application to the State of Uttar Pradesh, in sub-section (1) of Section 26, for clause (a), the following shall be substituted, namely—

“(a) makes any fresh clearing or does any other act prohibited by Section 5, or”. [Vide U.P. Act 23 of 1965, S. 11].

(2) In Section 26, in sub-section (1),—

- (i) in clause (b) after the words “reserved forest” the words “or to a forest in the land in respect of which a notification under Section 4 has been issued” shall be inserted;
- (ii) in clause (e) for the word “dragging” the word “removing” shall be substituted;
- (iii) in clause (f) after the words “the same” the words “or any forest produce” shall be inserted;
- (iv) for the words “shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both,” the words “shall, for an act under clause (b) or clause (f) or clause (g) or clause (h), be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and on the second and every subsequent conviction for the same offence, with imprisonment for a term which may extend to two years, or with fine which may extend to twenty thousand rupees but which shall not be less than five thousand rupees, or with both, and for an act under any of the other clauses, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both, and on the second and every subsequent conviction for the same offence, with imprisonment which may extend to six months, or with fine which may extend to two thousand rupees, or with both,” shall be substituted. [Vide U.P. Act 1 of 2001, S. 3 (w.e.f. 16-4-2001)].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, in sub-section (1)—

- (i) in clause (e), substitute the word “dragging” with the words “dragging or removing”;
- (ii) in clause (f), substitute the words “the same” with the words “the same or any forest produce”;
- (iii) for clause (h), substitute the following clause, namely:—
“(h) clears or breaks up any land or erects a fence, enclosure or any structure for cultivation or cultivates or attempts to cultivate any land in any other manner in any reserved forest, or for any other purpose”;
- (iv) in the long line, for the words “six months, or with fine which may extend to five hundred rupees,” substitute the words “two years, or with fine which may extend to twenty five thousand rupees,”; [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 26, in sub-section (1)—

- (i) in clause (b) after the words “reserved forest” the words or “to a forest in the land in respect of which a notification under Section 4 has been issued” shall be *inserted*;
- (ii) in clause (e) for the word “dragging” the word “removing” shall be *substituted*;
- (iii) in clause (f) after the words “the same” the words “or any forest produce” shall be *inserted*;
- (iv) for the words “shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both,” the words “shall, for an Act described under clause (b) or clause (f) or clause (g) or clause (h), be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both and on the second and every subsequent conviction for the same offence, with imprisonment for a term which may extend to two years, or with fine which may extend to twenty thousand rupees but which shall not be less than five thousand rupees, or with both, and for an Act described under any of the other clauses, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both, and on the second and every subsequent conviction for the same offence, with imprisonment which may extend to six months, or with fine which may extend to two thousand rupees, or with both,” shall be *substituted*. [*Vide* Uttarakhand Act 10 of 2002, S. 3, dt. 17-7-2002].

WEST BENGAL.—In its application to the State of West Bengal, in Section 26—

- (a) in sub-section (1), for the words “six months, or with fine which may extend to five hundred rupees,” the words “one year, or with fine which may extend to one thousand rupees,” shall be *substituted*;
- (b) after sub-section (1), the following sub-section shall be *inserted*:—
 - (1-A)(a) The Forest Officer may evict from a reserved forest or from any land in a reserved forest any person who, in such forest, trespass or pastures cattle, or permit cattle to trespass, or clears or breaks up such land of cultivation or for any other purpose, and may demolish any building erected or construction made by such person on such land.
 - (b) Any agricultural or other crop grown, or any building erected or any construction made, by any person on any land in a reserved forest shall be liable to confiscation by an order of the Divisional Forest Officer.
- (c) The provisions of this sub-section shall have effect notwithstanding any penalty inflicted under sub-section (1).” [*Vide* W.B. Act 22 of 1988, S. 3].

CASE LAW ▶ Offence under the Section.—To constitute an offence under Section 26(1) the acts specified in the clauses of the section should be committed in an area which is a “reserved forest” under the Act.

The Tripura Forest Act “corresponded” to the Indian Forest Act, 1927 and the former therefore stood repealed on the extension to Tripura of the latter enactment.

The fact that under the Tripura law there were no preliminaries prescribed before a forest could be notified as a reserved forest does not detract from such a notification being a notification under the Indian Forest Act, 1927, *Union of India v. Abdul Jalil*, AIR 1965 SC 147.

Offence under Section 26(1)(d) is also a forest offence defined in Section 2(3) and cattle used in committing forest offence liable for forfeiture. Magistrate has jurisdiction under Section 55 to forfeit cattle used in committing offence under Section 26(1)(d). Forfeiture is not a must in every case, *State of Maharashtra v. Arjun Tabadu Mahajan*, 1988 Mah LJ 191.

► **License.**—When the license permits any person to do something on immovable property and also includes permission to take away movable property the license may operate not only as a license but also as a grant for movable property. But if there was merely a license by the forest authorities in favour of the petitioners. There could be no grant of the trees by these authorities, for they had no power to make such a grant. The licence, therefore, that was granted by the forest authorities, could not, in the circumstances of this case, pass property in the trees to the petitioners.

Nor can Sections 26(2)(a) and 34 of the Forest Act help the petitioners to claim property in the trees. Section 26(2) appears in the chapter of "Reserved Forests", which are declared as such by notification under Section 4. There is nothing to show that the forests in question were so declared. But apart from that, Section 26(2) merely saves a person from certain penalties if permission has been granted to him. It cannot, therefore, help the petitioners. Section 34 applies to "protected forests", *Rameshwar Proshad Khandelwal v. Commr. Land Reforms & Jagirs*, AIR 1959 SC 498.

► **Recovery of payment.**—Forest Officer if obtaining written undertaking to pay but not paying then he cannot be prosecuted and only remedy is recovery under Section 82, *State of Maharashtra v. Kisan Ghatal*, 1978 Mah LJ 618.

► **Right of a licensee.**—It cannot be presumed that as licensee has possession of licence he has a right to cut away the forest produce, *Tajendra Pal Singh v. District Forest Officer*, (2000) 38 ALR 39.

► **Entitlement of withdrawal of amount.**—Seizure of forest wood sold by auction and sale proceeds deposited in proper head but no ownership of wood claimed by accused persons then they are not entitled to withdraw its amount of sale proceeds, *State of U.P. v. Mahendra Singh*, (2003) 4 AIC 459 (Utt).

► **Preliminary Offence Report (POR).**—POR is the first document prepared by the complainant. Such a document is vital and valuable. Delay in preparing such document often results in embellishment which is a creature of after thought. On account of delay in preparing the POR it not only gets bereft of the advantage of spontaneity but also danger creeps in of the introduction of coloured versions, exaggerated account or concocted story as a result of deliberation and consultation. Because POR was prepared next day, therefore, in the facts and circumstances, it is unsafe to base conviction upon the evidence. In this background, the testimony of Forest Guard that he could recognize the respondents when they were felling the trees cannot be accepted, *State of M.P. v. Jamadar*, (2003) 9 AIC 536 (MP).

► **Restrictions on grazing of cattle.**—Imposition of restrictions on grazing of cattle belonging to other States and transit routes for such cattle under M.P. Grazing Rules, 1979, is not permissible. Rationale for distinguishing cattle belonging to M.P. and other States is absent. Accidents of birth and geography cannot furnish credentials for such discrimination and authorise prejudicial treatment. Subject to reasonable restrictions, citizens have right to move freely throughout territory of India, to reside and settle in any part of territory of India and to practise any profession, or to carry out any occupation, trade or business. Graziers of M.P. or adjoining States have right to pass and repass through State of M.P. with their cattle. Forest wealth of a State has to be protected. For movement of cattle from one place to other place, route can be provided without allowing destruction of any kind of reserved forests, *Rajasthan Rabari Bhed Evam Unt Pashupalak Sangh v. State of M.P.*, (2018) 12 SCC 615

27. Power to declare forest no longer reserved.—(1) The State Government may, [* * *] by notification in the Official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under the Act shall cease to be a reserved forest.

(2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

STATE AMENDMENTS

BOMBAY.—In its application to the State of Bombay, in Section 27, in sub-section (1), after the words "The State Government" the words "or subject to the general or special orders of the State Government, the Commissioner" shall be *inserted*. [Vide Bombay Act 8 of 1958, S. 3(4) and Sch. read with Noti. No. FLD. 1080/1564-F-3, dt. 24-7-1980].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Chapter II, after Section 27, the following new section shall be *added*, namely—

"27-A. *Finality of orders, etc.*—No act done, order made or certificate issued in exercise of any power conferred by or under this Chapter shall, except as hereinbefore provided, be called in question in any Court." [Vide U.P. Act 23 of 1965, S. 12].

CHAPTER III OF VILLAGE-FORESTS

28. Formation of village-forests.—(1) The State Government may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forests, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The State Government may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests.

STATE AMENDMENTS

BOMBAY.—(1) In its application to the State of Bombay, in Section 28:

(i) in sub-section (1), after the words "reserved forest" the words "or called a protected forest" shall be *inserted*; and

(ii) in sub-section (3),—

(a) after the word "reserved" the words "or protected" shall be *inserted*; and

(b) after the words "village forests" the words "according as the forests assigned are reserved or protected forests" shall be *inserted*. [Vide Bombay Act 62 of 1948, S. 2].

(2) In Section 28,—

(1) In sub-section (1), after the word "village-community" the words and figures ", village panchayats established under the Bombay Village Panchayats Act, 1933 (Bom. VI of

9. The words "subject to the control of the G.G. in C" *omitted* by A.O. 1937.

1933), or co-operative society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925),” shall be *inserted*;

- (2) in sub-section (2), after the word “community” the words “, panchayats or society” shall be *inserted*. [Vide Bombay Act 24 of 1955, S. 3].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 28:

- (a) for the words and figures “the Bombay Village Panchayats Act, 1933 (Bom. Act 6 of 1933)”, the words and figures “the Bombay Village Panchayats Act, 1958 (Bom. Act 3 of 1959)”, shall be *substituted*;
- (b) for the words and figures “the Maharashtra Co-operative Societies Act, 1925” (Bom. Act 7 of 1925), the words and figures “the Maharashtra Co-operative Societies Act, 1960” (Mah. Act 24 of 1961), shall be *substituted*. [Mah. Act 7 of 1985, S. 4].

(2) In its application to the State of Maharashtra, after Chapter III, the following shall be *inserted*, namely:—

“CHAPTER III-A

OF MINOR FOREST PRODUCE IN SCHEDULED AREAS

28-A. PROVISIONS FOR MINOR FOREST PRODUCE IN SCHEDULED AREAS.—(1) Notwithstanding anything contained in this Act, the transit permits, in relation to transportation of minor forest produce in the Scheduled Areas referred to in clause (1) of Article 244 of the Constitution of India shall be modified and given by the Panchayats at the appropriate level and the Gram Sabha or a committee thereof.

(2) All decisions for the collection and sale of minor forest produce in the Scheduled Areas, and the sharing of all sale proceeds shall be taken by the Panchayats at the appropriate level and the concerned Gram Sabha.

Explanations.—For the purposes of Chapter III-A,—

- (i) “minor forest produce” in Scheduled Areas shall have the same meaning as assigned to it in the Maharashtra Transfer of Ownership of Minor Forest Produce in the Scheduled Areas and the Maharashtra Minor Forest Produce (Regulation of Trade) (Amendment) Act, 1997.
- (ii) “Gram Sabha” shall have the same meaning as assigned to in Chapter III-A of the Maharashtra Village Panchayats Act.” [Vide: Maha. Gaz. Extra, Part 8, Noti. No. RB/TC/e-11019(89)(2013)/Notification-4/1120/2014, dt. 30-10-2014.]

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, in Section 28—

- (i) in sub-section (1), for the word “reserved forest”, *substitute* the words “reserved forest or declared a protected forest or is a land which has been entered in settlement records as khalsa land”;
- (ii) in sub-section (3) after the words “reserved forests”, *insert* the words “or protected forests, as the case may be”. [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In Section 28 as amended in its application to Uttar Pradesh:

(1) in sub-section (1)—

- (i) between the word “Forest” and the comma, the following shall be *inserted*:
“or declared a protected forest or is-a forest belonging to the Government”
- (ii) for the full-stop occurring at the end, a comma shall be *substituted* and thereafter the following words and full-stop shall be *added*:

“and, subject to the rules made under sub-section (2), all the provisions of this Act relating to reserved forests, protected forests, or forests belonging to the Government, shall, as the case may be, apply to them.”

(2) sub-section (3) shall be *deleted*. [Vide U.P. Act 21 of 1960, S. 2].

CHAPTER IV OF PROTECTED FORESTS

29. Protected forests.—(1) The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a “protected forest”.

(3) No such notification shall be made unless the nature and extend of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government think sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

STATE AMENDMENTS

BOMBAY.—(1) In its application to the State of Bombay, in Section 29, in sub-section (1), after the words “The State Government” the words “or subject to the general or special orders of the State Government, the Commissioner” shall be *inserted*. [Vide Bombay Act 8 of 1958, S. 3(4) and Sch. read with Noti. No. FLD. 1080/1564-F-3, dt. 24-7-1980].

(2) In Section 29,—

- (i) in sub-section (1), after the words “the State Government”, the words “or subject to the general or special orders of the State Government, the Commissioner” shall be *inserted*.
- (ii) in the proviso, after the words “the State Government”, where it occurs for the second time, the words “or subject to the general or special orders of the State Government, the Commissioner” shall be *inserted*. [Vide Bom. Act 8 of 1958, S. 3(4) and Sch. read with Noti. No. ELD 1081-F-6., dt. 19-11-1981].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, after Section 29, *insert* the following section—

“29-A. *Undemarcated forests deemed to be protected forests.*—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any undemarcated forest (which means and includes all forest land other than demarcated forest which is the property of the Government of Union territory of Jammu and Kashmir and is not appropriated for any specific purpose and includes all the undemarcated and berun line forest vested in the Forest Department under the provisions of Section 48 of the Jammu and Kashmir Village Panchayat Act, 1958 or any other law for the time being in force), prior to the appointed day notified under

the Jammu and Kashmir Reorganization Act, 2019, shall be deemed to be a protected forest under this Act.

(2) All questions decided, orders issued and records prepared in connection with the constitution of such forest as undemarcated forests shall be deemed to have been decided, issued and prepared under this Act, and the provisions of this Act relating to protected forests shall apply to forest to which the provision of sub-section (1) are applicable." [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

CASE LAW ▶ Applicability.—If a land is not wasteland, notification issued under this section is inapplicable to it, *Union of India v. Jitendrasinh M. Parmar*, (2005) 4 SCC 444.

▶ **Requirement under this section.**—Before the State Government can invoke Section 29(1), it must be shown that the requirements of that provision are satisfied. Where the land in question forms part of a permanently settled grant, it is ordinarily the private property of the grantee.

The word 'entitled' in the context must take colour from the preceding words and must be understood to mean that the government must have an independent claim or right to the forest produce and not merely a right to collect and deal with the same subject to an obligation to account for the same to the owner. The word 'entitled' is used in the sense of the government having a right or claim to the usufruct in its own right and not as the agent of another, *Raj Kumar Rajinder Singh v. State of H.P.*, (1990) 4 SCC 320.

▶ **Inquiry.**—An inquiry of the type contemplated by sub-section (3) of Section 29 need not precede the notification. The possibility of the application of the urgency clause cannot be ruled out. The inquiry is contemplated to determine the nature and extent to the rights of the government and of private persons in or over the forest land. Based on the findings of the inquiry the records is to be prepared. Under sub-section (3) such a record shall be presumed to be correct until the contrary is proved, *Raj Kumar Rajinder Singh v. State of H.P.*, (1990) 4 SCC 320.

30. Power to issue notification reserving trees, etc.—The State Government may, by notification in the Official Gazette,—

- (a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;
- (b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such terms, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the right suspended in the portion so closed; or
- (c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.

CASE LAW ▶ Proof of notification.—Production of Gazette is not sufficient publication under Section 31 has also to be proved, *State v. Munshi Kahar*, (1963) 1 Cri LJ 605 : AIR 1963 Pat 195.

▶ **Breaking up or clearing for cultivation.**—The expression “breaking up or clearing up cultivation” in clause (c) does not extend to cultivation of land broken up or cleared before the issue of notification under Section 30, *State v. Munshi Kahar*, (1963) 1 Cri LJ 605 : AIR 1963 Pat 195.

▶ **Notification without finding date.**—Where notification under clause (a) does not fix any date, it is bad, *Moslem v. Emp.*, 28 Cri LJ 562.

▶ **No arrest without warrant.**—A Forest Officer cannot arrest without warrant a person for the breach of Section 30(a), *Moslem v. Emp.*, 28 Cri LJ 562.

31. Publication of translation of such notification in neighbourhood.—The Collector shall cause a translation into the local vernacular of every notification issued under Section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

CASE LAW ▶ Publication of notification.—Where the notification was not affixed as required under Section 31 conviction under Section 33(1)(c) could not be sustained, *Chandrama Prasad v. State*, 1963 1 Cri LJ 134.

32. Power to make rules for protected forests.—The State Government may make rules to regulate the following matters, namely:—

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests;
- (b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licences by such persons;
- (c) the granting of licences to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licences by such persons;
- (d) the payments, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;
- (f) the examination of forest-produce passing out of such forests;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests;
- (h) the protection from fire of timber lying in such forests and of trees reserved under Section 30;
- (i) the cutting of grass and pasturing of cattle in such forests;
- (j) hunting, shooting, fishing, poisoning water and setting traps or snares in such forests and the killing or catching of elephants in such forests

in areas in which the Elephants' Preservation Act, 1879 (6 of 1879), is not in force;

- (k) the protection and management of any portion of a forest closed under Section 30; and
- (l) the exercise of rights referred to in Section 29.

CASE LAW ▶ Discrimination.—Where the Government granted monopoly cum royalty least to fell bamboo for umbrella sticks to one person fundamental right under Article 19(1)(g) of other persons was infringed. Granting of monopoly amounts also to discrimination, *S.C. Das v. Union Territory*, AIR 1963 Tri 14.

33. Penalties for acts in contravention of notification under Section 30 or of rules under Section 32.—(1) Any person who commits any of the following offences, namely:—

- (a) fells, girdles, lops, taps or burns any tree reserved under Section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;
- (b) contrary to any prohibition under Section 30, quarries any stone, or burns any lime or charcoal or collects, subjects to any manufacturing process, or removes any forest-produce;
- (c) contrary to any prohibition under Section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;
- (d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under Section 30, whether standing fallen or foiled, or to say closed portion of such forest;
- (e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;
- (f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;
- (g) permits cattle to damage any such tree;
- (h) infringes any rule made under Section 32,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Whenever fire is caused wilfully or by gross negligence in a protected forest, the State Government may, notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.

STATE AMENDMENTS

BIHAR AND ORISSA.—In its application to the State of Bihar and Orissa, for sub-section (2) of Section 33, the following sub-section shall be *substituted*, namely:—

“(2) Whenever in a protected forest—

- (a) fire is caused wilfully or by gross negligence, or
- (b) theft of forest produce occurs and such theft is, in the opinion of the Provincial Government on such a scale as to be likely to imperil the future yield of such forest,

the Provincial Government may, notwithstanding that any penalty has been inflicted under this section or under any other law for any act referred to in clause (a) or clause (b), direct that in such forest or any right of pasture or to forest produce shall be suspended,

- (i) in the circumstances mentioned in clause (a), for such period as it thinks fit,
- (ii) in the circumstances mentioned in clause (b), for a period not exceeding four years." [Vide Bihar and Orissa Act 9 of 1935, S. 3].

BIHAR.—In its application to the State of Bihar, in sub-section (1) of Section 33, for the words "shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both" the following words shall be *substituted*, namely:—

"Shall be punishable with imprisonment for a minimum term of six months which may extend to two years or with minimum fine of one thousand rupees which may extend to five thousand rupees or with both. The offence under this section shall be cognizable and non-bailable. [Vide Bihar Act 9 of 1990, S. 3 (w.e.f. 10-9-1990)].

GUJARAT.—In its application to the State of Gujarat, in Section 33, after sub-section (2), the following sub-section shall be *inserted*, namely:—

"(3) When a person is convicted of an offence under sub-section (1),—

- (a) a Forest Officer not below the rank of a Ranger,
- (b) a Police Officer not below the rank of a sub-Inspector, or
- (c) a Revenue Officer not below the rank of a Mahalkari

may evict him from the protected forest in relation to which he has committed the offence." [Vide Guj. Act 15 of 1960, S. 6(f)].

HARYANA.—In its application to the State of Haryana, in sub-section (1) of Section 33, for the words "which may extend to six months, or with fine which may extend to five hundred rupees", the words "which may extend to one year, or with fine which may extend to one thousand rupees" shall be *substituted*. [Vide Haryana Act 31 of 1973, S. 3].

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, in Sections 26, 33 and 42, for the words "six months" and "five hundred", the words "two years" and "five thousand" shall be *substituted* respectively. [Vide H.P. Act 15 of 1991, S. 3].

MADHYA PRADESH.—(1) In its application to the State of Madhya Pradesh, in sub-section (1) of Section 33,—

- (i) in clause (a) for the words "any such tree", the words "any such tree or forest produce" shall be *substituted*;
- (ii) for clause (c), the following clause shall be *substituted*, namely:—
"(c) contrary to any prohibition under Section 30, clears or breaks up any land for cultivation or for any other purpose, or cultivates or attempts to cultivate any land in any other manner in any protected forests";
- (iii) in clause (f), for the words "drags" the word "removes" shall be *substituted*; and
- (iv) for the words "extend to six months, or with fine which may extend to five hundred rupees", the words "extend to one year or with fine which may extend to one thousand rupees" shall be *substituted*. [Vide M.P. Act 9 of 1965, S. 5].

(2) In its application to the State of Madhya Pradesh, in sub-section (1) of Section 33, for the words "one thousand rupees", the words "fifteen thousand rupees" shall be *substituted*. [Vide M.P. Act 7 of 2010, S. 4]

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 33, after sub-section (2), the following sub-section shall be *inserted*, namely:—

"(3) Where a person is convicted of an offence under sub-section (1),—

- (a) a Forest Officer not below the rank of Ranger, or

- (b) a Police Officer not below the rank of Sub-Inspector, or
- (c) a Revenue Officer not below the rank of Mahalkari or Tehsildar, may evict him from the protected forest in relation to which he has committed the offence". [Vide Mah. Act 6 of 1961, S. 8].

(2) In Section 33, in sub-section (1), for the words "six months or with fine which may extend to five hundred rupees", the words "one year or with fine which may extend to two thousand rupees", shall be *substituted*. [Vide Mah. Act 7 of 1985, S. 5].

(3) In its application to the State of Maharashtra, in Section 33, in sub-section (1), for the words "two thousand rupees" the words "five thousand rupees" shall be *substituted*. [Vide Maharashtra Act 21 of 2015, S. 3 (w.e.f. the date to be notified)]

PUNJAB.—In its application to the State of Punjab, in Section 33, in sub-section (1),—

- (i) in clause (f), for the words "drags", the words "drags or removes" shall be *substituted*; and
- (ii) for the words "six months, or with fine which may extend to five hundred rupees, or with both", the words "two years, or with fine which may extend to five thousand rupees, or with both." shall be *substituted*. [Vide Punjab Act 21 of 2004, S. 3].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, in sub section (1).—

- (i) in clause (c), after the words "or clears", *insert* the words "or attempts to break-up or clear";
- (ii) in clause (f), after the word "drags", *insert* the words "or removes";
- (iii) in the long line for the words "six months, or with fine which may extend to five hundred rupees", *substitute* the words "two years, or with fine which may extend to twenty-five thousand rupees". [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)]

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Section 33, in sub-section (1),—

- (i) in clause (c) after the words "or clears" the words "or, attempts to break up or clear" shall be *inserted*;
- (ii) in clause (f) for the word "drags" the word "removes" shall be *substituted*;
- (iii) for the words "six months or with fine which may extend to five hundred rupees, or with both" the words "two years, or with fine which may extend to five thousand rupees, or with both and on the second and every subsequent conviction for the same offence, with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees" shall be *substituted*. [Vide U.P. Act 1 of 2001, S. 4 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 33, in sub-section (1)—

- (i) in clause (c) after the words "or clears" the words "or, attempts to break-up or clear" shall be *inserted*;
- (ii) in clause (f) for the word "drags" the word "removes" shall be *substituted*;
- (iii) for the words "six months, or with fine which may extend to five hundred rupees, or with both" the words "two years, or with fine which may extend to five thousand rupees, or with both and on the second and every subsequent conviction for the same offence, with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees" shall be *substituted*. [Vide Uttarakhand Act 10 of 2002, S. 4, dt. 17-7-2002].

WEST BENGAL.—In its application to the State of West Bengal, in Section 33,—

(a) in sub-section (1), for the words "six months, or with fine which may extend to five hundred rupees," the words "one year, or with fine which may extend to one thousand rupees," shall be *substituted*;

(b) after sub-section (1), the following sub-section shall be *inserted*:—

"(1-A) The Forest Officer may, notwithstanding any penalty inflicted under this section, evict from any land in any protected forest any person who, contrary to any prohibition under Section 30, clears or breaks up such land for cultivation or for any other purposes." [Vide W.B. Act 22 of 1988, S. 4].

CASE LAW ▶ Notification under Sections 29 and 30.—Publication of notification required by Sections 29 and 30 in Official Gazette is a pre-requisite to the application of Section 33(1), *Santokhi Rana v. State*, 1977 BLJR 79.

In the absence of notifications under Sections 29 and 30 conviction under Section 33(1)(a) and (b) is not maintainable, *Janu Khan v. State*, 1960 Cri LJ 634 : 1960 BLJR 12 : AIR 1960 Pat 213.

When there is ample material on record that the origin of offence was in a protected forest. Filing of notification is not imperative to make loading of boulders which originated in forest a forest offence, *Hadiya Begum v. State of M.P.*, (2008) 69 AIC 469 (MP).

▶ **Proof of guilt under Section 33(1)(c).**—In order to prove the guilt of the accused under Section 33(1)(c) the prosecution must prove that the Collector got the notification under Section 30 affixed in the manner provided in Section 31, *Chandrama Prasad Misra v. State of Bihar*, 1963 1 Cri LJ 134.

Where the accused was alleged to have attempted to seize stolen wood from the custody of forest guard at the time when an offence under Section 33 was alleged to have been in the process of being committed by others, but it was found that it was not proved that the offence under Section 33 had at all been committed, conviction under Section 353 I.P.C. could not stand, *Janu Khan v. State*, 1960 Cri LJ 634 : 1960 BLJR 12 : AIR 1960 Pat 213.

▶ **Breaking up or clearing for cultivation.**—The expression "breaking up or clearing for cultivation" in clause (c) of sub-section (1) does not extend to cultivation of land broken up or cleared before the issue of notification under Section 30, *State v. Munshi Kohar*, (1963) 1 Cri LJ 605 : AIR 1963 Pat 195.

Where "breaking" of ground only is forbidden by a notification no offence is committed when there has been only clearing, *Labh Singh v. Emp.*, 28 Cri LJ 591.

▶ **Vicarious liability.**—Section 33 does not apply vicariously to members of firm, *Jia Lal v. State*, AIR 1955 NUC (Punj) 1381.

34. Nothing in this Chapter to prohibit acts done in certain cases.—Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under Section 32, or, except as regards any portion of a forest closed under Section 30, or as regards any rights the exercise of which has been suspended under Section 33, in the exercise of any right recorded under Section 29.

STATE AMENDMENTS

SECTION 34-A

BOMBAY.—In its application to the State of Bombay, after Section 34, the following section shall be *inserted*, namely:—

“34-A. *Interpretation.*—For the purposes of this Chapter ‘forest’ includes any land containing trees and shrubs, pasture lands and any other land whatsoever which the Provincial Government may, by notification in the Official Gazette, declare to be a forest.” [Vide Bombay Act 62 of 1948, S. 3].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, after Section 34, the following section shall be *inserted*, namely:—

“34-A. *Power to declare forests no longer protected.*—(1) The State Government may, by notification, direct that from a date fixed in that behalf by such notification, any forest or portion thereof protected under this Act, shall cease to be a protected, forest.

(2) From the date so fixed, such forest or portion thereof shall cease to be protected but the rights, if any, which have been extinguished therein shall not revive in consequences of such cessation.” [Vide M.P. Act 9 of 1965, S. 6].

CASE LAW ▶ Licence.—When the licence permits any person to do something on immovable property and also includes permission to take away movable property the licence may operate not only as a licence but also as a grant for movable property. But if there was merely a licence by the forest authorities in favour of the petitioners. There could be no grant of the trees by these authorities, for they had no power to make such a grant. The licence, therefore, that was granted by the forest authorities, cannot, pass property in the trees to the petitioners, *Rameshwar Proshad Khandelwal v. Commr. Land Reforms & Jagirs*, AIR 1959 SC 498.

CHAPTER V

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT

35. Protection of forests for special purposes.—(1) The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land—

- (a) the breaking up or clearing of land for cultivation;
- (b) the pasturing of cattle; or
- (c) the firing or clearing of the vegetation,

when such regulation or prohibition appears necessary for any of the following purposes:—

- (i) for protection against storms, winds, rolling stones, floods and avalanches;
- (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines, and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- (iii) for the maintenance of a water-supply in springs, rivers and tanks;
- (iv) for the protection of roads, bridges, railways and other lines of communication;
- (v) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of

such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.

STATE AMENDMENTS

BOMBAY.—(1) In its application to the State of Bombay, for sub-section (1) of Section 35, the following shall be *substituted*, namely:—

“35. (1) The Provincial Government may, by notification in the Official Gazette,—

(i) regulate or prohibit in any forest—

- (a) the breaking up or clearing of the land for cultivation;
- (b) the pasturing of cattle;
- (c) the firing or clearing of the vegetation;
- (d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any tree;
- (e) the lopping and pollarding of trees;
- (f) the cutting, sawing, conversion and removal of trees and timber; or
- (g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process;

(ii) regulate in any forest the regeneration of forests and their protection from fire;

when such regulation or prohibition appears necessary for any of the following purposes:—

- (a) for the conservation of trees and forests;
- (b) for the preservation and improvement of soil or the reclamation of saline or water-logged land, the prevention of land-slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- (c) for the improvement of grazing;
- (d) for the maintenance of a water supply in springs, rivers and tanks;
- (e) for the maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel;
- (f) for the maintenance of reservoirs or irrigation works and hydro-electric works;
- (g) for protection against storms, winds, rolling stones, floods and drought;
- (h) for the protection of roads, bridges, railways and other lines of communication; and
- (i) for the preservation of the public health.”

(2) In sub-section (2) of Section 35 of the said Act for the words “in or upon any forest or wasteland” the words “in any forest” shall be *substituted*.

(3) In sub-section (3) of Section 35 of the said Act the words “or land” shall be *deleted*.
[Vide Bombay Act 62 of 1948, S. 3]

(2) In Section 35 of the said Act,—

(1) in sub-section (3), after the word “until after the issue” the words “by an officer authorised by the State Government in that behalf” shall be *inserted*;

(2) after sub-section (3), the following sub-sections shall be *added*, namely:—

“(4) A notice to show cause why a notification under sub-section (1) should not be made, may require that for any period not exceeding six months, or till the date of the making of a notification, whichever is earlier, the owner or such forest and all persons who are entitled or permitted to do therein any or all of the things, specified in clause (i) of sub-section (1), whether by reasons of any right, title or interest or under any licence

or contract or otherwise, shall not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in clause (i) of sub-section (1), to the extent specified in the notice.

(5) A notice issued under sub-section (3) shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 (V of 1908), for the service of summons and shall also be published in the manner prescribed by rules.

(6) Any person contravening any requisition made under sub-section (4) in a notice to show cause why a notification under sub-section (1) should not be made shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both." [Vide Bombay Act 24 of 1955, S. 4].

GUJARAT.—In its application to the State of Gujarat, in Section 35,—

- (i) in sub-section (4), for the words "six months" the words "one year" shall be *substituted*;
- (ii) after sub-section (5), the following sub-section shall be *inserted*, namely:—

"(5-A) When a notice has been served and published in accordance with sub-section (5) any person acquiring thereafter the right of ownership of the forest shall be bound by the notice as if it had been served on him as an owner and he shall accordingly comply with the notice, requisition and notification, if any, issued under sub-section (1)."

- (iii) after sub-section (6), the following sub-section shall be *inserted*, namely:—

"(7) Any person contravening any of the provisions of a notification issued under sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both." [Guj. Act 15 of 1960, S. 6(g)].

MAHARASHTRA.—In its application to the State of Maharashtra, in Section 35,—

- (i) in sub-section (4), for the words "six months" the words "one year" shall be *substituted*;
- (ii) after sub-section (5), the following sub-section shall be *inserted*, namely:—

"(5-A) Where a notice issued under sub-section (3) has been served on the owner of a forest in accordance with sub-section (5), any person acquiring thereafter the right of ownership of that forest shall be bound by the notice as if it had been served on him as an owner and he shall accordingly comply with the notice, requisition and notification, if any, issued under this section.";

- (iii) after sub-section (6), the following sub-section shall be *inserted*, namely:—

"(7) Any person contravening any of the provisions of a notification issued under sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine, or with both." [Vide Mah. Act 6 of 1961, S. 9].

SECTION 35-A

PUNJAB.—In its application to the State of Punjab, after Section 35, the following section shall be *inserted*, namely:—

"35-A. *Power to regulate preservation etc. of trees in private lands.*—The State Government may, by rules made under Section 76, regulate the preservation and disposal of trees, standing on lands belonging to or in the occupation of private persons, in respect of which permission to remove is required under the record of rights prepared under any law relating to land revenue." [Vide Punjab Act 13 of 1962, S. 3].

CASE LAW ▶ Imposition of conditions.—Condition directing the respondents to keep 30 m margin from edge of the kotar could only be imposed by the Collector and not by Mamlatdar. Collector while granting conversion of land use from agricultural or non-agricultural purpose, having not imposed such condition, Mamlatdar who was subordinate to Collector was incompetent to do so, *Union of India v. Jitendrasinh M. Parmar*, (2005) 4 SCC 444.

36. Power to assume management of forests.—(1) In case of neglect of, or wilful disobedience to any regulation or prohibition under Section 35, or if the purposes of any work to be constructed under that section so require, the State Government may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

STATE AMENDMENTS

BOMBAY.—(1) In its application to the State of Bombay, in Section 36 of the said Act,—

- (i) the words “or land” wherever they occur shall be *deleted*;
- (ii) in sub-section (1), after the word, “reserved” the words “or protected” shall be *inserted*.
[Vide Bombay Act 62 of 1948, S. 4].

SECTIONS 36-A, 36-B and 36-C

(2) After Section 36, the following new sections shall be *inserted*, namely:—

“36-A. *Manner of serving notice and order under Section 36.*—The notice referred to in sub-section (1) of Section 36 and the order, if any, made placing a forest under the control of a Forest-officer shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the service of summons.

36-B. *Period of control.*—(1) The period of such control of any forest shall be for ten years from the date of the order aforesaid; but such period may thereafter be extended for successive periods of not more than ten years each:

Provided that the period of such control shall not in the aggregate exceed 30 years from the date of the order.

(2) The Forest-officer, under whose control the forest is placed, shall, not later than six months before the expiry of any period referred to in sub-section (1) make a report regarding such control and shall state therein whether in his opinion, any period of control should be extended.

(3) After considering any such report and subject to sub-section (1), the State Government shall decide whether to extend any period of control or whether to terminate it in the manner provided in the next succeeding section.

(4) No period of control shall be extended unless the owner has been given reasonable opportunity of showing cause against such extension.

36-C. *Termination of control.*—(1) If the State Government decides to terminate any period of control of any forest, it shall, by order published in the Official Gazette and in such other manner as may be prescribed by rules, so declare; and thereupon possession of the forest shall be given to the owner, or if the owner be dead, to any person entitled to such possession, together with any sum of money which may be standing to the credit of such owner.

(2) All acts done or purported to be done by the Forest-officer in respect of any forest placed under this control, during the period of such control or of any extension thereof, shall be binding on the owner of such forest or any person to whom possession of the forest has been delivered under this section.” [Vide Bombay Act 24 of 1955, S. 5].

CASE LAW ▶ Deprivation of property by authority of law.—There must be strict compliance with procedure prescribed by law for deprivation of property. When notice requirements/proper opportunity to object to deprivation of property has not been complied with as prescribed by law under Section 36(3) of the

Act, deprivation was ineffective and property did not stand transferred to/did not vest in State and remained with the owner, *Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra*, (2014) 3 SCC 430.

► **Necessity of notice.**—Necessity of ensuring service of notice upon the noticee owner, is to protect the interests of the owner of the forest so as to afford such owner an opportunity to object to deprivation of its property, as such owner may have valid reasons not only to object to the issuance of regulatory or prohibitory directions, but also to enable him/her to raise a jurisdictional issue that the land in question is actually not a forest. It is also to prevent damage to or destruction of a forest, *Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra*, (2014) 3 SCC 430.

► **Compliance with other requirements.**—Mere issuance of a notice under the provisions of Section 35(3) of Forest Act, 1927 without compliance with the remaining requirements of Section 35(3), is not sufficient for any land being declared a “private forest” as defined in Section 2(f)(iii) of the Private Forest Act, 1975, *Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra*, (2014) 3 SCC 430.

37. Expropriation of forests in certain cases.—(1) In any case under this Chapter in which the State Government considers that, in lieu of placing the forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the State Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(2) The owner of any forest or land comprised in any notification under Section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the State Government shall acquire such forest or land accordingly.

STATE AMENDMENTS

BOMBAY.—In its application to the State of Bombay, in Section 37 of the Act,—

- (i) in sub-section (1) the words “or land” shall be *deleted*;
- (ii) sub-section (2) shall be *deleted*. [Vide Bombay Act 62 of 1948, S. 5].

38. Protection of forests at request of owners.—(1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire—

- (a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or
- (b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the State Government may, by notification in the Official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

STATE AMENDMENTS

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, in sub-section (1) of Section 38, for the words ‘the owners of shares therein amounting in the aggregate to at least two thirds thereof’, the words ‘the owners of the majority of shares therein’ shall be *substituted*. [Vide H.P. Act 25 of 1968, S. 3].

PUNJAB.—In its application to the State of Punjab, in sub-section (1) of Section 38, for the words “the owners of shares therein amounting in the aggregate to at least two thirds thereof”, the words “the owners of the majority of shares therein” shall be *substituted*. [Vide Punjab Act 13 of 1962, S. 4].

UTTAR PRADESH.—(1) In its application to the State of Uttar Pradesh, after Chapter V the following shall be *added* as a new Chapter V-A:

CHAPTER V-A

OF THE CONTROL OVER FORESTS OF CLAIMANTS

38-A. *Definition.*—In this Chapter unless there is anything repugnant in the subject or context:

- (a) “Claimant” as respects any land or any interest therein acquired, owned, means a person claiming to be entitled to the settled or possessed or purported to have been acquired, owned, settled or possessed whether under, through or by any lease or licence executed prior to the commencement of the U.P. Zamindari Abolition and Land Reforms Act, 1950, or under and in accordance with any provision of any enactment, including the said Act;
- ¹⁰(b) ‘Forest’ means a tract of land covered with trees, shrubs, bushes or woody vegetation whether of natural growth or planted by human agency, and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, steam-flow, protection of land from erosion, or other such matters, and shall include—
- (i) land covered with stumps of trees of a forest;
- (ii) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the first day of July, 1952;
- (iii) such pasture land, waterlogged or cultivable or non-cultivable land, lying within, or adjacent to, a forest, as may be declared to be a forest by the State Government.]
- ¹¹(c) ‘Forest land’ means a land covered by a forest or intended to be utilized as a forest; and
- (d) ‘Prescribed’ means prescribed by rules made under this Act.]

38-B. *Power to regulate or prohibit breaking or clearing, etc.*—(1) The State Government may by notification in the official Gazette regulate or prohibit in any forest (situate in or upon any land of a claimant)—

- (a) the breaking up or clearing of the land for cultivation or any other purpose;
- (b) the firing or clearing of the vegetation;
- (c) the girdling or tapping or burning of any tree or the stripping off of the bark from any tree;
- (d) the lopping and pollarding of trees;
- (e) the cutting, sawing, conversion or the removal of trees—
where such regulation or prohibition appears necessary—
- (i) for the conservation of trees and forests; or
- (ii) for the improvement of grazing; or
- (iii) for the maintenance, increase and distribution of supply of fodder, timber or fuel; or
- (iv) for the protection of land against erosion; or
- (v) for subserving the interests of the general public.

10. *Subs.* by U.P. Act 21 of 1960, S. 3.

11. *Ins.* by U.P. Act 21 of 1960, S. 3.

(2) No notification shall be made under sub-section (1) until after the issue of a notice to the claimant of the land calling on him to show cause within a reasonable period, not less than fourteen days and not exceeding thirty days, to be specified in such notice, why such notification should not be made, and until objections, if any, and any evidence he may produce in support of the same, have been heard by an officer not below the rank of an Assistant Collector of the first class appointed in that behalf and considered by the State Government.

(3) It shall be lawful for the State Government to make the notification under sub-section (1) either in respect of any particular forest or generally in respect of all forests situate in an area.

38-C. *Prohibition or regulation in emergent cases.*—Where it is proposed to issue a notification in respect of any forest or generally all the forests in any area under Section 38-B and the State Government is satisfied that immediate action is necessary to prevent the doing of all or any of the acts mentioned in clauses (a) to (e) of sub-section (1) of the said section, it may by notification in the Official Gazette prohibit the doing except as and in the manner specified, of such act in respect of that forest or, as the case may be, generally all forests situate in any area as may be specified and, thereupon, no person shall, notwithstanding any claim, right, agreement, custom, usage or law to the contrary, do any of the said acts in such forest or forests until expiry of six months from the date of the notification, and until the objection, if any, filed in pursuance of the notice under sub-section (2) of Section 38-B, has been heard and considered by the State Government.

38-D. *Service of notice.*—The notice under sub-section (2) of Section 38-D shall—

(a) in the case of a notification affecting an individual person (not being a corporation, firm or body of persons) be served on that person—

(i) personally by delivering or tendering to him the notice, or

(ii) by registered post, or

(iii) where the person cannot be found, by leaving an authentic copy of the notice with some adult male member of his family or by affixing such copy in some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

¹²[(aa) In the case of a notification affecting a corporation, firm or body of persons, be served on the manager, principal officer or agent thereof in the manner provided in clause (a); and]

(b) in the case of a notification of a general nature in relation to all forests in an area, be served by publication in the official Gazette and it shall not be necessary, unless the State Government so directs, to serve the notice individually on the claimants.

38-E. The provisions of Section 36 shall mutatis mutandis apply to any regulation or prohibition notified under Section 38-B or 38-C.

38-F. *Penalties.*—Any person who—

¹³[(i) breaks up or clears any land for cultivation or any other purpose, fires or clears any vegetation, girdles, taps, burns, lops, pollards, fells, cuts, raws, converts or removes any tree, or strips off the bark from any tree, in any forest in respect of which a notification under Section 38-B or 38-C or 38-H has been issued, or does any of the aforesaid acts in contravention of the provisions contained in sub-section (4) of Section 38-H, or]

(ii) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading, or

12. *Ins.* by U.P. Act 11 of 1964, S. 2.

13. *Subs.* by U.P. Act 11 of 1964, S. 3.

- (iii) permits cattle to damage any such tree, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

38-G. *Saving*.—The powers conferred by Sections 38-B, 38-C, ¹⁴[* * *] 38-D and ¹⁵[38-H] shall be in addition to and not in derogation of any other powers conferred on any authority by or under any other provision of this Act. [*Vide* U.P. Act 5 of 1956, S. 2 (w.r.e.f. 3-12-1955)].

(2) After Section 38-G, the following shall be *added as new Sections 33-H to 38-M*:

“38-H. *Power to take over management*.—(1) Whenever it appears to the State Government that the taking over of the management of any particular forest, order to secure the proper management thereof, particularly with a view to ensure its planned development as a forest, it may by notification in the official Gazette do so for all or any of the said purposes for such period, not exceeding fifteen years, as may be specified in the notification.

(2) No notification under sub-section (1) shall be issued until—

- (a) after the issue of a notice by the Forest Officer to the claimant or the owner or tenure-holder of the forest or forest land, as the case may be, affording him reasonable opportunity to show cause, within a period of not less than fourteen days from the date of service of the notice on him to be specified in such notice, why management of the forest or forest land specified therein be not taken over; and
- (b) objections, if any, have been heard and disposed of by the Forest Officer-in the manner prescribed.

(3) The notice referred to in sub-section (2) shall be served upon the person concerned in accordance with the provisions of Section 38-D.

¹⁶(4) No person shall, after the service of the notice referred to in sub-section (2), do or permit or cause to be done, save with the permission of the Forest Officer, any of the following acts on or in respect of such forest or forest land, namely—

- (a) the breaking up or clearing of the land for cultivation or any other purpose;
- (b) the firing or clearing of the vegetation;
- (c) the girdling or tapping or burning of any tree or the stripping off of the bark from any tree;
- (d) the lopping or pollarding of trees;
- (e) the felling, cutting, sawing, conversion or removal of trees;

until—

- (i) where objections under clause (a) of sub-section (2) have been filed, the disposal thereof under clause (b) of that sub-section and thereafter, unless the objections have been allowed, for a further period of six months or the publication of the notification under sub-section (1), whichever is earlier;
- (ii) where no objections under clause (a) of sub-section (2) have been filed, the publication of the notification under sub-section (1) or the expiry of six months from the date of service of the notice, whichever is earlier.”

38-I. *Consequences of notification under Section 38-H*.—The State Government shall, in respect of a forest, or forest land, for which a notification under Section 38-H has been issued—

- (i) place the forest, or forest land, as the case may be, with effect from the date of the notification, in the charge of a Forest Officer, for carrying out the purposes mentioned in the notification, and thereupon the provisions of Section 5 shall *mutatis mutandis* apply to such a forest or forest land, as the case may be; and

14. The word “and” omitted by U.P. Act 21 of 1960, S. 5.

15. *Ins.* by U.P. Act 21 of 1960, S. 5.

16. *Added* by U.P. Act 11 of 1964, S. 4.

- (ii) be liable and pay to the claimant or the owner or the tenure-holder of the forest, or forest land, as the case may be, the balance of the income, if any, accruing to it therefrom, for the period commencing from the date of notification till the date it is released under Section 38-L after deducting therefrom such percentage of it, not exceeding twenty, as may be prescribed, for cost of management and the amount, if any, spent by the State Government on its development.

38-J. *Payment in respect of forests already in possession of the State Government.*—In the case of a forest, possession whereof was taken over by the State Government prior to the commencement of the Indian Forest (U.P. Amendment) Act, 1960, and the management whereof is taken over in accordance with provisions of Section 38-H, the State Government shall, in the absence of a contract between the State Government and the person concerned to the contrary, be liable to pay, for the period commencing from the date of possession till the issue of the notification under the said section, the balance of income accruing therefrom in accordance with the provisions of Section 38-I(ii) as if the provisions of the aforesaid Act has been in force at all material dates and the management of such forest had been assumed on the date of taking over possession thereof; anything contained in any other law, custom, usage for the time being in force or contract to the contrary notwithstanding.

38-K. *Permission to cultivate areas lying with a forest or land taken over under this Act.*—(1) The State Government may, where it is satisfied that it is necessary so to do in the public interest on the application of the person whose forest or forest land, as the case may be, has been taken over under Section 38-H, allow him to cultivate such part of it, not being in excess of one-fifth of the total area of such forest or forest land, as the case may be, and for such period, not being beyond the period of its management, as may be specified in the order granting the permission.

(2) An application under sub-section (1) shall be submitted to the Forest Officer in charge of the forest or the forest land, as the case may be, who shall forward the same, with his recommendations thereon, to the State Government.

(3) The decision of the State Government on the application under sub-section (2) shall be final and be not questioned in any court of law.

38-L. *Release of a forest or forest land from management.*—The State Government may, at any time, by notification in the official Gazette, release from its management any forest or forest land, as the case may be, taken over under Section 38-H and thereupon the forest or the forest land, as the case may be, shall cease to be under the management of the State Government, and the liability of the State Government in respect of the forest or the forest land, as the case may be, shall cease with effect from the date of release specified in the notification.

38-M. *Powers to make rules.*—(1) The State Government may, after previous publication in the official Gazette, make rules to carry out the purposes of this Act;

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) provide for the items for which and the manner in which, the cost of management shall be calculated;
- (b) prescribe the procedure for the hearing and disposal of objections under this Act;
- (c) prescribe the mode of management or development of the forest or the forest land taken over under this Act;
- (d) prescribe the form of application under Section 38-K and the particulars that must be given therein; and
- (e) prescribe any other matters which are to be, and may be, prescribed under this Act.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the Legislature while it is in session, for a total period of fourteen days

extending in its one session or more than one successive sessions and shall, unless some later date is appointed, take effect, from the date of their publication in the official Gazette, subject to such modifications or annulments as the two Houses of the Legislature may agree to make; so, however, that any such modification or annulment shall be, without prejudice to the validity of anything previously done thereunder." [Vide U.P. Act 21 of 1960, S. 6].

CASE LAW ▶ Notice.—Notice under Section 38-H(2) (as introduced by U.P. Amendment Act 20 of 1960), to persons having interest only on the timber standing on the forest land instead of to claimants, owners or tenure holders of the forest or forest land is bad and liable to be quashed, *State of U.P. v. Abdul Quddus (Dr)*, (1985) 1 SCC 310.

▶ **Bhumidar.**—Bhumidar is not a proprietor but is a mere holder under the State. Chapter II and V-A will apply to waste land held by him, *Mahendra Lal Jaini v. State*, 1963 Supp 1 SCR 912 : (1963) 2 SCA 163 : AIR 1963 SC 1019.

▶ **Development of Park.**—There is no irregularity or illegality committed by Haryana Forest Department in undertaking development of Herbal Park on a non-government land. Management of said area given to Haryana Forest Department and area notified under Section 38 of Forest Act. Apparently, no mala fides or violation of any Act, Rules or orders of Supreme Court involved in the matter, *T.N. Godavarman Thirumulpad v. Union of India*, (2012) 12 SCC 367.

▶ **Meaning of "forest" in Section 38-A(b) (as inserted by U.P. amendment).**—Meaning of "forest", to be as broad as interpreted in context of Section 2 of the Forest (Conservation) Act, 1980, *State of Uttarakhand v. Kumaon Stone Crusher*, (2018) 14 SCC 537.

CHAPTER VI

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE

39. Power to impose duty on timber and other forest-produce.—(1) The ¹⁷[Central Government] may levy a duty in such manner, at such places and at such rates as it may declare by notification in the Official Gazette on all timber or other forest-produce—

- (a) which is produced in ¹⁸[the territories to which this Act extends], and in respect of which the Government has any right;
- (b) which is brought from any place outside ¹⁹[the territories to which this Act extends].

²⁰[* * *]

(2) In every case in which such duty is directed to be levied ad valorem the ²¹[Central Government] may fix by like notification the value on which such duty shall be assessed.

(3) All duties on timber or other forest-produce which, at the time when this Act comes into force in any territory, are levied therein under the authority of the

17. Subs. by the A.O. 1937, for "L.G."

18. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for "Part A States and Part C States".

19. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for "Part A States and Part C States".

20. The proviso omitted by the A.O. 1937.

21. Subs. by the A.O. 1937, for "L.G."

State Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

²²[(4) Notwithstanding anything in this section, the State Government may, until provision to the contrary is made by ²³[Parliament], continue to levy any duty which it was lawfully levying before the commencements²⁴ of ²⁵[the Constitution], under this section as then in force:

Provided that nothing in this sub-section authorises the levy of any duty which as between timber or other forest-produce of the State and similar produce of the locality outside the State, discriminates in favour of the former, or which, in the case of timber or other forest-produce of localities outside the State, discriminates between timber or other forest-produce of one locality and similar timber or other forest-produce of another locality.]

CASE LAW ► Power to levy duty.—The power to levy duty is conferred only upon the Central Government by Section 39 and that power is neither delegated to the State Government nor is the State Government empowered to make rules with respect to the said levy. Neither the powers conferred upon the State Government by Section 41 nor the power conferred by Section 76 comprehend the levy of export duty. The power to levy duty is conferred only upon one named authority, viz., the Central Government, *State of Tripura v. Sudhir Ranjan Nath*, (1997) 3 SCC 665.

40. Limit not to apply to purchase-money or royalty.—Nothing in this Chapter shall be deemed to limit the amount, if any, chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

CHAPTER VII OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT STATE AMENDMENTS

WEST BENGAL.—In its application to the State of West Bengal, in Chapter VII, for the heading, the following heading shall be *substituted*:—

“OF THE CONTROL OF TRADE, POSSESSION AND TRANSIT OF TIMBER AND OTHER FOREST-PRODUCE”. [*Vide* W.B. Act 22 of 1988, S. 5].

41. Power to make rules to regulate transit of forest produce.—(1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

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22. *Ins.* by the A.O. 1937 as amended by para 2 and Schedule to the Government of India (Adaptation of Indian Law Supplementary Order, 1937).
 23. *Subs.* by A.O. 1950, for “the Central Legislature”.
 24. i.e. 26-1-1950.
 25. *Subs.* by the A.O. 1950, for “Part III of the Government of India Act, 1935”.

- (a) prescribe the routes by which alone timber or other forest-produce may be imported exported or moved into, from or within ²⁶[the State];
- (b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;
- (c) provide for the issue, production and return of such passes and for the payment of fees therefor;
- (d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty or charge Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark;
- (e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;
- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;
- (g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;
- (h) prohibit absolutely or subject to conditions, within specified local limits, the establishment or sawpits, the converting, cutting, burning, concealing or making of timber the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;
- (i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

(3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, in Section 41—

26. Subs. by the A.O. 1937, for "British India".

(a) in sub-section (2)—

- (i) in clause (c), the words "and for the payment of fees therefor" shall be *deleted*;
- (ii) in clause (h), for the words "or subject to conditions" the words "or regulate by grant of licences," shall be *substituted*; and
- (iii) in clause (i), the words "and provide for the levy of fees for such registration" shall be *deleted*;

(b) after sub-section (2), the following shall be *inserted*, namely:—

"(2-A) Any rules made under this section may provide for the levy of fees for the issue of passes, grant of licences and registration of property marks referred to in clauses (c), (h) and (i) of sub-section (2)." [Vide Guj. Act 48 of 1963, S. 2].

MAHARASHTRA.—In Section 41, in its application to the State of Maharashtra,—

(a) after sub-section (1), the following sub-section shall be *inserted*, and shall be deemed to have been inserted, with effect from the 12th day of September, 1960, namely:—

"(1-A) Notwithstanding anything contained in any law for the time being in force, the State Government may make rules to regulate by grant of licences within the forest limits or such distances therefrom not exceeding eighty kilometres as may be determined, the converting or cutting of timber in a saw mill, and prescribe fees and conditions, subject to which such licence may be granted, and the manner in which, and the authority to whom, an appeal against the order of refusal, suspension or revocation of a licence may be filed. [Vide Mah. Act 23 of 1984, S. 2(a)].

(b) in sub-section (2), clause (hh) shall be deleted, and shall be deemed to have been deleted, with effect from the 10th day of February, 1965. [Vide Mah. Act 23 of 1984, S. 2(b)].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Section 41, after sub-section (2) the following new sub-sections shall be *added*, namely—

"(2-A) The State Government may by notification in the Gazette delegate, either unconditionally or subject to such conditions as may be specified in the notification, to any Forest Officer, not below the rank of Conservator, the power to prescribe fees under clause (c) of sub-section (2).

(2-B) Notwithstanding any judgment, decree or order of any Court, any rule purporting to have been made by a Conservator before the commencement of the Indian Forest (Uttar Pradesh Amendment) Act, 1965, prescribing fees to be paid in respect of passes specified in clause (b) of sub-section (2) shall be deemed to have been made under a power delegated under sub-section (2-A) as if the provisions of sub-section (2-A) were always in force and the Conservator were duly authorised thereunder, and shall be deemed to be and always to have been valid, and shall continue in force until altered, repealed or amended by the State Government or a duly authorised Conservator, as the case may be:

Provided that nothing in this sub-section shall be deemed to authorise the prosecution or punishment of any person under Section 42 for any act done before the commencement of the said Act." [Vide U.P. Act 23 of 1965, S. 13].

WEST BENGAL.—In its application to the State of West Bengal, in Section 41,—

(a) for sub-section (1), the following sub-section shall be *substituted*:—

"(a) The control of all rivers and their banks as regards the floating of timber and other forest-produce, as well as the control of transit of all timber and other forest-produce by land or water and the control of trade and possession of timber and other forest-produce, is vested in the State Government, and it may make rules to regulate the transmit of all timber and other forest-produce as well as the trade and possession of timber and other forest-produce."

(b) in sub-section (2), after clause (i), the following clause shall be *inserted*:—

“(j) provided the regulation by licence or permit of trade and possession of timber and other forest-produce, and the levy of fees for such licence or permit.” [Vide W.B. Act 22 of 1988, S. 6].

CASE LAW ▶ Power to regulate transit of timber and other forest produce.—The State Government is possessed of ample powers to make rules relating to the transit of all timber and other forest produce whether found in or brought from reserved forests or private lands, *Nripendra Chandra Dutta v. Tripura Administration*, AIR 1969 Tri 62.

There is an implied power in the Government to regulate the transit of timber even if it may not be the property of Government, *State v. Sashimohan*, 1977 Cri LJ 1663.

Rule 3(8) of Tripura Transit Rules providing that the quantity of timber and firewood to be exported from the State shall be determined on the basis of availability of forest produce after catering to the needs of the local people of the State and the requirements of the people of the State falls within the power of State Govt. under Section 41 “to regulate the transit of the timber and other forest produce”. Power “to regulate” includes power to prohibit in the context of sub-rule (8). Moreover, sub-rule (8) is not only relatable to Section 41 but also to Section 76(d) inasmuch as it is intended to carry out the object and purpose of the Act. Hence, Rule 3(8) intra vires the Act, *State of Tripura v. Sudhir Ranjan Nath*, (1997) 3 SCC 665.

Rules for establishment of saw-pits and establishment and regulation of depots framed in 1983 by State of Bihar are not ultra vires the rule-making power conferred by the Act. Hence public notice issued by Chief Conservator of Forests under the rules requiring the owners of saw-pits and depots to obtain licences and providing that those found unlicensed would be liable to penalty under the rules valid, *State of Bihar v. Ranchi Timber Traders' Assn.*, (1996) 5 SCC 276.

There is no doubt whatsoever that raw cashewnuts are collected in the forest or found in the vicinity of the forest having a direct proximate relation to the forest itself. They are brought from the forest or found in the forest itself. They are forest produce calling for a transit pass. But when the said fruits are brought in the factory and processed through various stages and become fit for human consumption as a snack, their origin as fruits having been brought from forest lose significance.

It is the ultimate stage of its being used as a snack that distinguished it from that stage of raw seed or fruit when it is immediately brought from the forest.

Transformation or transshipment of dry processed cashewnut or Kaju badam which is needed as snack would not call for a transit pass within the meaning of the W.B. Forest Produce Transit Rules, 1959. But transit pass would be necessary in respect of shelled unprocessed or semi-processed Cashewnut fruits, *Cashewnut Processing Enterprise v. State of W.B.*, (1986) 1 CHN 133.

▶ Words “timber” and “forest-produce” in clause (b) of sub-section (1) : Meaning of.—The expressions “timber” and “forest-produce” having been defined in the Act, question of applying *ejusdem generis* rule of construction with a view to further restricted scope of these expressions cannot arise, *Kasi Prasad v. State*, AIR 1963 Ori 24 : ILR 1963 Cut 59.

The words “timber” and “forest-produce” in this section are used in the widest sense as defined in section 2 and not in the narrow sense especially introduced to defined and limit the powers described in Chapter 6, *Lal Badshah v. Emp.*, 29 Cri LJ 198.

▶ Expression “specified local limits”, meaning of.—The expression “specified local limits” used in Section 41(2)(h) of the Forest Act is not used with reference to area of any local authority or local body

and in the context of regulating transit of forest produce. The expression merely refers to the specified limits, whatever it be, *Itarsi Timber Merchants' Assn. v. State of M.P.*, 1986 MPLJ 307.

²⁷[41-A. Powers of Central Government as to movements of timber across customs frontiers.—Notwithstanding anything in Section 41, the Central Government may make rules to prescribe the route by which alone timber or other forest-produce may be imported, exported or moved into or from ²⁸[the territories to which this Act extends] across any customs frontier as defined by the Central Government, and any rules made under Section 41 shall have effect subject to the rules made under this section.]

42. Penalty for breach of rules made under Section 41.—(1) The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

STATE AMENDMENTS

BIHAR.—In its application to the State of Bihar, for Section 42, the following shall be *substituted*, namely:—

“42. *Penalty for breach of rules made under Section 41.*—The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a minimum term of six months which may extend to two years or with minimum fine of one thousand rupees which may extend to five thousand rupees or with both. The offence under this section shall be cognizable and non-bailable.” [Vide Bihar Act 9 of 1990, S. 4 (w.e.f. 10-9-1990)].

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, in Sections 26, 33 and 42, for the words “six months” and “five hundred”, the words “two years” and “five thousand” shall be *substituted* respectively. [Vide H.P. Act 15 of 1991, S. 3].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, in sub-section (1) of Section 42, for the words “extend to six months or fine which may extend to five hundred rupees”, the words “extend to one year or fine which may extend to one thousand rupees” shall be *substituted*. [Vide M.P. Act 9 of 1965, S. 7].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 42, in sub-section (1), for the words “six months or with fine which may extend to five hundred rupees”, the words “one year or with fine which may extend to two thousand rupees”, shall be *substituted*. [Vide Mah. Act 7 of 1985, S. 6].

(2) In its application to the State of Maharashtra, in Section 42, in sub-section (1), for the words “two thousand rupees” the words “five thousand rupees” shall be *substituted*. [Vide Maharashtra Act 21 of 2015, S. 4 (w.e.f. the date to be notified)]

PUNJAB.—In its application to the State of Punjab, in Section 42, in sub-section (1), for the words and signs “six months, or fine which may extend to five hundred rupees, or both.”, the words and signs “two years, or fine which may extend to five thousand rupees, or with both.” shall be *substituted*. [Vide Punjab Act 21 of 2004, S. 4].

27. *Ins.* by the A.O. 1937.

28. *Subs.* by the Adaptation of Laws (No. 3) Order, 1956, for “Part A States and Part C States”.

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, in sub-section (1), for the words “six months” and “five hundred rupees”, *substitute* the words “two years” and “twenty-five thousand rupees” respectively. [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Section 42, for sub-section (1), the following sub-section shall be *substituted*, namely:—

“(1) The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to two years, or fine which may extend to five thousand rupees or both.” [Vide U.P. Act 1 of 2001, S. 5 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 42, in sub-section (1), for the words “six month, or fine which may extend to five hundred rupees” the words “two years, or fine which may extend to five thousand rupees” shall be *substituted*. [Vide Uttarakhand Act 10 of 2002, S. 5, dt. 17-7-2002].

WEST BENGAL.—In its application to the State of West Bengal, in sub-section (1) of Section 42, for the words “six months, or fine which may extend to five hundred rupees” the words “one year, or fine which may extend to one thousand rupees,” shall be *substituted*. [Vide W.B. Act 22 of 1988, S. 7].

43. Government and Forest-officers not liable for damage to forest-produce at depot.—The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under Section 41, or while detained elsewhere, for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

44. All persons bound to aid in case of accidents at depot.—In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger or securing such property from damage or loss.

CHAPTER VIII

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

45. Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.—(1) All timber found adrift, beached, stranded or sunk—

all wood or timber bearing marks which have not been registered in accordance with the rule made under Section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and

in such areas as the State Government directs, all unmarked wood and timber, shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this Chapter.

(2) Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under Section 51 and may be brought

to any depot which the Forest-officer may notify as a depot for the reception of drift timber. [S. 46]

(3) The State Government may, by notification in the Official Gazette, exempt any class of timber from the provisions of this section.

CASE LAW ▶ Applicability.—Provisions of Section 45 will apply to Drifted timber floated with the current of river, *Man Singh (Deceased) Through L.Rs. v. State of U.P.*, (2006) 62 ALR 829 (All).

46. Notice to claimants of drift timber.—Public notice shall from time to time be given by the Forest-officer, of timber collected under Section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

47. Procedure on claim preferred to such timber.—(1) When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after according his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons who he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

(3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any Forest-officer on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48. Disposal of unclaimed timber.—If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under Section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period fixed by Section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under Section 47, in such other person free from all encumbrances not created by him.

49. Government and its officers not liable for damage to such timber.—The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under Section 45, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

50. Payments to be made by claimant before timber is delivered to him.—No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under Section 51.

51. Power to make rules and prescribe penalties.—(1) The State Government may²⁹[, by notification in the Official Gazette,] make rules to regulate the following matters, namely:—

- (a) the salving, collection and disposal of all timber mentioned in Section 45;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid or salving, collecting, moving, storing or disposing of such timber; and
- (d) the use and registration of hammers and other instruments to be used for marking such timber.

³⁰[(1-A) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

(2) The State Government may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

STATE AMENDMENTS

MADHYA PRADESH.—(1) In its application to the State of Madhya Pradesh, in sub-section (2) of Section 51, for the words “extend to six months, or fine which may extend to five hundred rupees”, the words “extend to one year, or fine which may extend to one thousand rupees” shall be *substituted*. [Vide M.P. Act 9 of 1965, S. 8].

(2) In its application to the State of Madhya Pradesh, in sub-section (2) of Section 51, for the words “one thousand rupees”, the words “fifteen thousand rupees” shall be *substituted*. [Vide M.P. Act 7 of 2010, S. 5]

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, in sub-section (2), for the words “six months, or with fine which may extend to five hundred rupees”, *substitute* the words “two years, or with fine which may extend to twenty-five thousand rupees”. [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

WEST BENGAL.—In its application to the State of West Bengal, in sub-section (2) of Section 51, for the words “six months, or fine which may extend to five hundred rupees”, the words “one year, or fine which may extend to one thousand rupees,” shall be *substituted*. [Vide W.B. Act 22 of 1988, S. 8].

SECTION 51-A

TRIPURA.—In its application to the State of Tripura, after Section 51 *insert* following section, namely:—

“51-A. *Power to regulate manufacture and preparation of articles based on forest produce.*—(1) The State Government may make rules,—

29. *Ins.* by Act 4 of 2005, S. 2 and Schedule.

30. *Ins.* by Act 4 of 2005, S. 2 and Schedule.

- (a) to provide for the establishment, and regulation by licence, permit or otherwise (and the payment of fees therefor), of saw mills and other units including factories engaged in the manufacture or preparation of the following articles:—
- (i) Katha (Catechu) or Kuth out of Khair wood;
 - (ii) plywood, veneer and wood-panel products;
 - (iii) preparation of matchboxes and match splints;
 - (iv) boxes including packing cases made out of wood;
 - (v) such other articles based on forest produce as the State Government may, by notification in the Official Gazette, from time to time, specify;
- (b) to provide for the regulation by licence, permit or otherwise, of procurement of raw materials for the preparation of the article mentioned in clause (a), the payment and deposit of fees therefor and for due compliance of the conditions thereof the forfeiture of the fee so deposited or any part thereof for contravention of any such condition, and the adjudication of such forfeiture by such authority as the State Government may, by notification in the Official Gazette, specify.

(2) The State Government may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees or both," [Vide Tripura Act 10 of 1984, S. 4 (w.e.f. 16-3-1985).]

UTTAR PRADESH.—After Chapter VIII as amended in its application to Uttar Pradesh, the following Chapter shall be *inserted*, namely:—

“CHAPTER VIII-A

REGULATION OF MANUFACTURE AND PREPARATION
OF ARTICLES BASED ON FOREST PRODUCE

51-A. *Power to regulate manufacture, etc. of articles based on forest produce.*—The State Government may make rules—

- (a) to provide for the establishment and regulation by licences, permits or otherwise (and the payment of fees therefor) of saw mills and units including factories engaged in the manufacture or preparation of—
- (i) Katha out of Khair tree;
 - (ii) rosin, turpentine and other products out of resin;
 - (iii) plywood and match out of timber;
 - (iv) such other preparations based on forest produce as the State Government may, by notification in the Official Gazette, from time to time, specify;
- (b) to provide for the regulation by licences, permits or otherwise of the supply of raw materials relating to the preparations mentioned in clause (a), the payment of fees therefor, the deposit of such sum for due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be notified in the Official Gazette be specified by the State Government." [Vide U.P. Act 13 of 1976, S. 21].

CASE LAW ▶ Nature of transitory fee.—It is clear from Section 41 of the Forest Act and Rules 3, 5 and 14 of the U.P. Transit of Timber and Other Forest Produce Rules, 1978, that the transitory fee is regulatory in nature. The question of quid pro quo is necessary when a fee is compensatory. It is well established that for every fee quid pro quo is not necessary. The transit fee being regulatory, it is not necessary to establish the factum of rendering of service. Thus, there is no question of a levy of transit fee being invalidated on the ground that quid pro quo has not been established, *State of U.P. v. Sitapur Packing Wood Suppliers*, (2002) 4 SCC 566.

CHAPTER IX
PENALTIES AND PROCEDURE

52. Seizure of property liable to confiscation.—(1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

STATE AMENDMENTS

BIHAR.—(1) In its application to the State of Bihar, for Section 52, the following shall be substituted, namely:—

“52. *Seizure and its procedure for the property liable for confiscation.*—(1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing any such offence, may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be either produce the property seized before an officer not below the rank of the Divisional Forest Officer authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the Officer makes, as soon as may be, a report of the circumstances to him immediately superior.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. The Magistrate having jurisdiction to try the offence concerned may, on the basis of the report of the authorised confiscating officer, cancel the registration of a vehicle used in committing the offence, the licence of the vehicle-driver and the licence of the arms. A copy of order on confiscation shall be forwarded without undue delay to the Conservators of Forests of the forest-circle in which the forest produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer—

- (a) sends an intimation about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;
- (b) issues a notice in writing to the person from whom the property is seized and to any other person who may appear to the authorised officer to have some interest in such property;
- (c) affords an opportunity to the persons referred to clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and
- (d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purposes.

(5) No order of confiscation under sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than the forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, ropes, chains or other articles were used without his knowledge or convenience or, as the case may be, without the knowledge or convenience of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence." [Vide Bihar Act 9 of 1990, S. 5 (w.e.f. 10-9-1990)].

(2) After Section 52, the following new sections shall be *inserted*, namely:—

"52-A. *Appeal against the order of confiscation.*—A person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact of such order has not been communicated to him within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee payable in such form as may be prescribed, along with the certified copy of order of confiscation to the District Magistrate (hereinafter referred to as Appellate Authority) of the District in which the forest produce has been seized.

Explanation (1).—The time required for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub-section.

(2) The Appellate Authority referred to in Section 52-A, may, where no appeal has been preferred before him, "suo-motu" within thirty days of date of receipt of copy of order of confiscation by him and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "suo-motu" action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order on confiscation, and may send for the record of the case:

Provided that no formal notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about "suo-motu" action, to the authorised officer.

(4) The Appellate Authority may pass such order of "interim" nature for custody, preservation or disposal (if necessary) of the subject matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioner.

(6) On the date fixed for hearing of the appeal or "suo-motu" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "suo-motu" action, make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order or an order of consequential nature, shall be sent to the authorised officer for compliance or for passing any appropriate order of Appellate Authority.

52-B. *Petition for revision before Secretary, Forest and Environment Department, Government of Bihar against the order of the Appellate Authority.*—(1) Any party to the appeal, aggrieved by final order or order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Secretary, Forest and Environment Department, Government of Bihar.

Explanation.—In computing the period of thirty days under this sub-section, the time requisite for obtaining certified copy of Appellate Authority shall be excluded.

(2) The Secretary, Forest and Environment Department, Government of Bihar may confirm, reverse or modify and final order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and the Authorised Officer for compliance or for passing such further order or for taking such further action as may be directed by such Court.

(4) For entertainment, hearing and deciding a revision under this section, the Secretary, Forest and Environment Department, Government of Bihar shall as far as may be, exercise the same powers and follow the same procedure as exercised and followed while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) the order passed under this section shall be final and shall not be called in question before any Court.

52-C. *Bar of jurisdiction of Court etc. in certain circumstances.*—(1) On receipt of intimation under sub-section (4) of Section 52 about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Revision Authority referred to in Sections 52, 52-A and 52-B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated in this Act, or any other law for the time being in force.

Explanation.—Where under any law for the time being in force, two or more courts have jurisdiction to try forest offence, then on receipt of intimation under sub-section (4) of Section 52 by one of the Courts of Magistrates having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-section (1) shall affect the power save under Section 61.

52-D. *Power of entry, inspection, search and seizure.*—Notwithstanding anything contained in any other law for the time being in force any Forest Officer not below the rank of a Range Officer of Forests or any Police Officer not below the rank of a Sub-Inspector may, if he has reasonable grounds to believe that any forest offence has been committed in contravention of this Act enter upon, inspect and search any place, premises, appurtenances thereto, land, vehicle

or boat and seize any illegal forest produce and all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence." [Vide Bihar Act 9 of 1990, S. 6 (w.e.f. 10-9-1990)].

BOMBAY.—In its application to the State of Bombay, in Sections 52, 53 and 55, for the word "carts", wherever it occurs, the word "vehicles" shall be *substituted*. [Vide Bombay Act 25 of 1953, S. 2].

GUJARAT.—In its application to the State of Gujarat, in Section 52:—

(1) after sub-section (1), the following sub-section shall be *inserted*, namely:—

"(1-A) Any Forest Officer or Police Officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest produce in respect of which there is reason to believe that a forest offence has been or is being committed, require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary for examination of the contents in the vehicle and inspection of all records relating to the forest produce and in possession of such driver or other person in charge of the vehicle or any other person in the vehicle.";

(2) in sub-section (2), for the words "make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made" the following shall be *substituted*, namely:—

"make a report of such seizure;—

(a) where the offence on account of which the seizure has been made is in respect of the forest produce which is the property of the State Government or in respect of which the State Government has any interest, to the concerned authorised officer under Section 61-A; and

(b) in other cases, to the magistrate having jurisdiction to try the offence on account of which the seizure has been made." [Vide Guj. Act 19 of 1983, S. 2 (w.e.f. 24-5-1983)].

HIMACHAL PRADESH.—(1) In its application to the State of Himachal Pradesh, in Sections 52, 53 and 55, for the words 'carts' wherever it occurs, the word 'vehicles' shall be *substituted*. [Vide H.P. Act 25 of 1968, S. 4].

(2) For sub-section (2) of Section 52, the following sub-sections (2) and (3) shall be *substituted*, namely:—

"(2) Any Forest Officer or Police Officer may, if he has reasons to believe that a vehicle has been or is being used for the transport of timber (excluding fuelwood) resin, khair wood and katha in respect of which a forest offence has been or is being committed, require the driver or other person-in-charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person-in-charge of the vehicle.

(3) Every Officer seizing any property under this section shall place on such property a mark indicating that the same has been seized, and shall, as soon as may be, make a report of such seizure—

(a) where the offence, on account of which the seizure has been made, is in respect of timber (excluding fuelwood), resin, khair wood and katha which is the property of the State Government, to the concerned authorised officer under sub-section (1) of Section 52-A; and

(b) in other cases, to the magistrate having jurisdiction to try the offence on account of which the seizure is made. [Vide H.P. Act 15 of 1991, S. 4].

(3) After Section 52, the following Sections 52-A and 52-B shall be *inserted*, namely:—

“52-A. *Confiscation by Forest Officers in certain cases.*—(1) Notwithstanding anything contained in this Chapter, where a forest offence is believed to have been committed in respect of timber (excluding fuelwood), resin, khair wood and katha, which is the property of the State Government, the Officer seizing the property under sub-section (1) of Section 52 shall without any unreasonable delay produce it, together with all tools, ropes, chains, boats or vehicles used in committing such offence before an Officer, authorised by the State Government in this behalf, by notification published in the Official Gazette, not below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes under sub-section (1) of Section 52 and timber (excluding fuelwood) resin, khair wood and katha, which is the property of the State Government, or where any such property is produced before an authorised officer under sub-section (1), once he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property so seized together with all tools, ropes, chains, boats or vehicles used in committing such offence.

(3)(a) Where the authorised officer, after passing an order of confiscation under sub-section (2), is of the opinion that it is expedient in the public interest so to do, he may order confiscated property or any part thereof to be sold by public auction.

(b) Where any confiscated property is sold as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses relating thereto, shall where the order of confiscation made under Section 52-A is set aside or annulled by an order under Section 59 or Section 59-A, be paid to the owner thereof or the person from whom it was seized as may be specified in such order.

52-B. *Issue of show cause notice before confiscation under Section 52-A.*—(1) No order confiscating any timber (excluding fuelwood), resin, khair wood and katha, ropes, chains, boats or vehicles shall be made under Section 52-A except after notice in writing to the person from whom it is seized and considering his objections, if any:

Provided that no order confiscating a motor vehicle shall be made except, after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat or vehicle shall be made under Section 52-A if the owner of the tool, rope, chain, boat or vehicle proves to the satisfaction of the authorised officer that it was used in carrying the timber (excluding fuelwood), resin, khair wood and katha without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the tool, rope, chain, boat or vehicle and that each of them had taken all reasonable and necessary precaution against such use.” [Vide H.P. Act 15 of 1991, S. 5].

MADHYA PRADESH.—(1) In its application to the State of Madhya Pradesh, in sub-section (1) of Section 52, for the words “carts” the word “vehicles” shall be *substituted*. [Vide M.P. Act 9 of 1965, S. 9].

(2) For Section 52, the following section shall be *substituted*, namely:—

“52. *Seizure of property liable to confiscation and procedure therefor.*—³¹[(1) When there is reason to believe that a forest offence has been committed in respect of any reserved forest and protected forest or forest produce, the produce, and all tools, boats, vehicles, ropes, chains or any other article used in committing such offence may be seized by any forest officer or police officer.]

31. Subs. by M.P. Act 7 of 2010, S. 6.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Extra Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity or bulk or other genuine difficulty, not practicable to produce property seized before the authorised officer, make a report about the seizure to the authorised officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the Conservator of Forests of the forest circle in which the timber or forest produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer—

- (a) sends an intimation in form prescribed about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;
- (b) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property;
- (c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and
- (d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

(5) No order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than timber or forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of forest offence." [Vide M.P. Act 25 of 1983, S. 3].

³²[(6) The seized property shall continue to be under custody until confirmation of the order of the authorised officer by the Appellate Authority or until the expiry of the period for initiating 'suo motu' action by him whichever is earlier, as prescribed under Section 52-A.

(7) Where the authorised officer having jurisdiction over the case is himself involved in the seizure or investigation, the next higher authority may transfer the case of any other officer of the same rank for conducting proceedings under this section.]

(3) The following sections shall be *inserted* immediately after Section 52, namely:—

52-A. Appeal against order of confiscation.—(1) Any person aggrieved by an order of confiscation may, within thirty days of the order, or if fact of such order has not been communicated to him, within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee and payable in such form as may be prescribed, and by certified copy of order of confiscation to the Conservator of Forests (hereinafter referred to as the Appellate Authority) of the forest circle in which the forest produce, has been seized.

Explanation—(1) The time requisite for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub-section.

(2) The Appellate Authority referred to in sub-section (1), may, where no appeal has been preferred before him, “suo motu” within thirty days of date of receipt of copy of ³³[order of the authorised officer] by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of “suo motu” action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and may send for the record of the case:

Provided that no formal notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about “suo motu” action, to the authorised officer.

(4) The Appellate Authority may pass such orders of “interim” nature for custody, preservation or disposal (if necessary) of the subject matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioners.

(6) On the date fixed for hearing of the appeal or “suo motu” action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification of ³⁴[order of the authorised officer]:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of “suo motu” action, make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order or of order of consequential nature, shall be sent to the authorised officer for compliance or for passing any other appropriate order in conformity with the order of Appellate Authority.

52-B. Revision before Court of Sessions against order of Appellate Authority.—(1) Any party to appeal, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition

33. Subs. for “order of confiscation” by M.P. Act 7 of 2010, S. 7.

34. Subs. for “order of confiscation” by M.P. Act 7 of 2010, S. 7.

for revision to the Court of Sessions within the Sessions division whereof the headquarters of the Appellate Authority are situate.

Explanation.—In computing the period of thirty days under this sub-section, the time requisite for obtaining certified copy of order of Appellate Authority shall be excluded.

(2) The Court of Sessions may confirm, reserve or modify any final order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised officer for compliance or for passing such further orders or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Court of Sessions shall, as far as may be, exercise the same powers and follow the same procedure as it exercises and follow while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973 (No. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (No. 2 of 1974), the order of the Court of Sessions passed under this section shall be final and shall not be called in question before any Court.

52-C. Bar to jurisdiction of court etc. under certain circumstances.—(1) On receipt of intimation under sub-section (4) of Section 52 about initiation of proceedings for confiscation of property by the magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Court of Session referred to in Sections 52, 52-A and 52-B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under Section 52, notwithstanding anything to the contrary contained in this Act, or any other law for the time being in force.

Explanation.—Where under any law for the time being in force, two or more courts have jurisdiction to try forest offence, then receipt of intimation under sub-section (4) of Section 52 by one of the Courts of Magistrates having such jurisdiction shall be construed to be in receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-section (1) shall affect the power saved under Section 61'. [Vide M.P. Act 25 of 1983, S. 4].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 52:

(a) after sub-section (1), the following sub-section shall be *inserted*, namely:

“(1-A) Any Forest-officer or Police Officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest-produce in respect of which there is reason to believe a forest offence has been or is being committed, require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person in charge of the vehicle”;

(b) in sub-section (2):

(i) after the words “on such property”, the words and brackets “or the receptacle or vehicle (if any) in which it is contained”, shall be *inserted*;

(ii) after the proviso, the following shall be added, namely: “Provided further that, where the offence on account of which the seizure has been made is in respect of timber, sandalwood, firewood, charcoal or such other forest-produce as may be notified by the State Government from time to time (hereinafter referred to as the

"notified forest-produce") and which is the property of the State Government, such officer shall make a report of such seizure also to the concerned authorised officer under Section 61 A.

Explanation.—For the purposes of this Chapter, the expressions "property of Government" and "property of the State Government" include the property belonging to the Forest Development Corporation of Maharashtra, Limited.":

- (c) in the marginal note, for the word "confiscation", the words "confiscation and forfeiture" shall be *substituted*. [Mah. Act 7 of 1985, S. 7].
- (2) In its application to the State of Maharashtra, in Section 52 of the principal Act,—
- (a) sub-section (1-A) shall be *deleted*;
- (b) in the marginal note, the words "and forfeiture" shall be *deleted*. [Vide Maharashtra Act 21 of 2015, S. 5 (w.e.f. the date to be notified)]

EAST PUNJAB.—In its application to East Punjab, be amended as follows:—

In Sections 52, 53 and 55 of the said Act, for the word "carts", wherever it occurs, the word "vehicles" shall be *substituted*. [Vide East Punjab Act 7 of 1948, S. 2].

PUNJAB.—(1) In its application to the State of Punjab, in Section 52, for sub-section (2), the following sub-sections shall be *substituted*, namely:—

"(2) If a forest officer or police officer, has reason to believe that a vehicle has been, or is being used for the transport of forest-produce in respect of which there is reason to believe that a forest offence has been committed or is being committed, require the driver or any other person in-charge of such vehicle to stop the vehicle or cause such vehicle to remain stationary as long as may, reasonably be necessary, for examination of the contents in the vehicle and inspection of the records relating to the forest-produce, in possession of such driver or other person in-charge of the vehicle or any other person in the vehicle.

(3) Every officer seizing any property under this section, shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either,—

- (a) produce such property before an officer, not below the rank of the Divisional Forest Officer concerned, authorized by the State Government in this behalf by notification in the Official Gazette (hereinafter referred to as the Authorized Officer); or
- (b) where due to quantity or bulk of such property or any other genuine difficulty, it is not practicable to produce it before the Authorized Officer, shall make a report of such seizure to the Authorized Officer; or
- (c) where it is intended to launch criminal proceeding against the offender immediately, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which, the seizure has been made:

Provided that it shall not be necessary to make a report of such seizure to the Magistrate in the following cases, namely:—

- (i) when the forest produce with respect to which, such offence is believed to have been committed, is the property of the State Government and the offender is unknown. In such a situation, it shall be sufficient to make a report of the circumstances to the Authorised Officer;
- (ii) when the offender agrees in writing to get the offence compounded as provided in Section 68 of this Act; and
- (iii) when the offence falls under the purview of Section 52-A. [Punjab Act 21 of 2004, S. 5].

(2) After Section 52, the following sections shall be *inserted*, namely:—

"52-A. *Procedure for confiscation.*—(1) Where the Authorised Officer upon production before him of the property seized or upon receipt of report about seizure of such property, or

where the Authorised Officer himself seized the property under sub-section (1), of Section 52, is satisfied that a forest offence has been committed in respect thereof, may, by order in writing for reason to be recorded in writing, confiscate the forest produce so seized together with any tool, vehicle, boat, rope, chain or any other article used in committing such offence. [S. 52]

(2) A copy of the order of confiscation, shall be forwarded without any delay to the Conservator of Forests of the forest circle in which the forest produce has been seized.

(3) No order of confiscating any property, shall be made under sub-section (1), unless the Authorised Officer —

- (a) issues a notice in writing to the person from whom the property is seized and to any other person, who shall claim before the Authorised Officer any interest in such property;
- (b) affords an opportunity to the person, referred to in clause (a) of making a representation within such time, as may be specified in the notice referred to in that clause; and
- (c) gives the officer effecting the seizure and the person to whom notice has been issued under clause (a), a hearing on such date, as may be fixed in this regard.

(4) No order of confiscation under sub-section (1) with regard to any tool, vehicle, boat, rope, chain or any other article (other than timber or forest-produce seized), shall be made, if the person referred to the clause (a) of sub-section (3), proves to the satisfaction of the Authorised Officer that any such tool, article, boat, rope, chain or other article was used without his knowledge or connivance or his servant or agent and that all reasonable and necessary precautions had been taken against the use of aforesaid objects for the commission of the forest offence.

(5) No order of confiscating a vehicle shall be made except after giving a notice in writing to the registered owner of the vehicle and his financier, if any, if in the opinion of the Authorised Officer, it is practicable to do so and considering his objections, if any.

52-B. Appeal against the order of confiscation.—(1) Any person aggrieved by an order of confiscation made under sub-section (1) of Section 52-A, may within a period of thirty days from the date of receipt of such order, prefer an appeal on payment, of such fee, as may be prescribed along with the certified copy of order of confiscation to the Conservator of Forests (hereinafter referred to as the Appellate Authority) having jurisdiction.

(2) The Appellate Authority may pass such order of interim nature for custody, preservation or disposal (if necessary) about the subject-matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(3) Notwithstanding anything contained in sub-section (1), if no appeal has been preferred before the Appellate Authority, but the Appellate Authority deem it appropriate in public interest to proceed against the order passed under sub-section (1) of Section 52-A, it may suo motu take cognizance even after the expiry of the stipulated period of thirty days, but before the expiry of a period of sixty days from the date of receipt of the said order and pass such order, as it may deem appropriate:

Provided that before passing any order, the Appellate Authority shall give an opportunity of being heard to the concerned parties.

(4) The Appellate Authority, having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by legal practitioners.

52-C. Revision.—Any party aggrieved by an order of the Appellate Authority, may within a period of thirty days from the date of receipt of order of the Appellate Authority, file revision petition to the Court of Session.

S. 52]

(2) The order passed by the Court of Session shall be final and shall not be further called in question before any other Court.

52-D. *Disposal of confiscated property.*—When the order of confiscation of property passed under sub-section (1) of Section 52-A, attains finality and the Authorised Officer is of the opinion that it is expedient in public interest so to do, he may order such property or any part thereof to be sold by public auction.

52-E. *Penalty for forcibly opposing seizure.*—Whoever forcibly opposes the seizure of any forest produce, tool, rope, chain, boat, vehicle or cattle, 'liable to be seized under this Act, or receives the same after seizure, shall be punishable with imprisonment for a term, which may extend to one year or with fine which may extend to one thousand rupees, or with both.

52-F. *Order of confiscation not to prevent any other punishment.*—No order of confiscation passed under Section 52-A, 52-B, or 52-C shall prevent the infliction of any punishment to which the person affected thereby, may be liable under this Act.

52-G. *Bar of jurisdiction.*—Save as otherwise expressly provided in this Act, no officer, authority, civil court or tribunal shall have any jurisdiction to entertain any suit or proceeding or any other matter which is governed under the provisions of this Act." [Vide Punjab Act 21 of 2004, S. 6].

UNION TERRITORY OF JAMMU AND KASHMIR.—(1) In its application to the Union Territory of Jammu and Kashmir, *substitute* Section 52 with the following section, namely:—

"52. *Seizure of property liable to confiscation and procedure thereof.*—(1) When there is reason to believe that a forest offence has been committed in respect of any reserved forest, protected forest, village forest or forest produce, the forest produce, together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing any such offence, may be seized by a Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure before an officer not below the rank of the Divisional Forest Officer (hereinafter referred to as the 'authorised officer'):

Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of the Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorised officer upon receipt of report about seizure, is satisfied that a forest offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded, confiscate forest produce so seized together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing such offence and a copy of the order of confiscation shall be forwarded without any undue delay to the person from whom the property is seized and to the Conservator of Forest Circle in which the forest produce, tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer,—

- (a) sends an intimation in writing about initiation of proceedings for confiscation of the property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;
- (b) issues a notice in writing to the person from whom the property is seized and to any other person who may, in the opinion of the authorised officer to have some interest in such property;

- (c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and
- (d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

(5) No order of confiscation under sub-section (3) of any tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article (other than timber or forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against the use of objects aforesaid for commission of forest offence.

(6) Where the cattle are involved in the commission of a forest offence, the same after seizure by any officer, shall be entrusted to any responsible person under a proper receipt on an undertaking to produce the same when required in case there is no cattle pound within a radius of five kilometres from the place of such offence:

Provided that notwithstanding anything contained in Section 57, in case of unclaimed cattle a Forest Officer not below the rank of Range Officer, after giving sufficient publicity in the vicinity of the place of offence for the owner to come forward to claim the cattle within seven days from the date when such publicity has been given, may dispose them of by public auction.

(7) The provisions of the Cattle Trespass Act, 1871 (1 of 1871), shall apply in respect of the charges to be levied for the upkeep and fee of the cattle.”

(2) In its application to the Union Territory of Jammu and Kashmir, after Section 52, insert the following sections, namely:—

“52-A. *Revision before Court of Sessions against order of confiscation.*—(1) Any party aggrieved by an order of confiscation under Section 52 may within thirty days of the order or if facts of the confiscation have not been communicated to him, within thirty days of knowledge of such order submit a petition for revision to the Court of Sessions Division whereof the headquarters of Authorised Officer are situated.

Explanation I.—In computing the period of thirty days under this sub-section, the time required for obtaining certified copy of the order of Authorised Officer shall be excluded.

Explanation II.—For the purposes of this sub-section a party shall be deemed to have knowledge of the order of confiscation under Section 52 on publication of such order in two daily newspapers having circulation in the State.

(2) The Court of Sessions may confirm, reverse or modify any final order of confiscation passed by the Authorised Officer.

(3) Copies of the order passed in revision shall be sent to the Authorised Officer for compliance or passing such further order or for taking such further orders or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Court of Sessions shall, as far as may be, exercise the same powers and follow the same procedure as it exercises and follows while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, 1973.

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974) the order of Court of Sessions passed under this section shall be final and shall not be called in question before any Court.

S. 52]

52-B. *Bar to jurisdiction of Courts etc. under certain circumstances.*—(1) On receipt of report under sub-section (4) of Section 52 about intimation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority other than Authorised Officer and Court of Sessions referred to in Sections 52 and 52-A shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under Section 52, notwithstanding anything to the contrary contained in this Act, or any other law for the time being in force.

Explanation.— Where under any law for the time being in force, two or more Courts have jurisdiction to try the forest offences, then receipt of intimation under sub-section (4) of Section 52 by one of the Courts shall operate as bar to exercise jurisdiction on all such other Courts.

(2) Nothing in sub-section (1) shall affect the power saved under Section 61 of the Act.

52-C. *Power of search and seizure.*—(1) Any Forest Officer or Police Officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest produce in respect of which there is reason to believe that a forest offence has been or is being committed, require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person in charge of the vehicle.

(2) Any forest officer not below the rank of Range officer, having reasonable grounds to believe that forest produce is, in contravention of the provisions of this Act, in the possession of a person in any place, may enter such place with the object of carrying out a search for the forest produce and its confiscation:

Provided that such search shall not be conducted otherwise than in accordance with the provisions of the Code of Criminal Procedure, 1973.

52-D. *Penalty for forcibly opposing seizure.*—Whosoever opposes the seizure of any forest-produce, tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article liable to be seized under this Act, or forcibly receives the same after seizure, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twenty five thousand rupees, or with both." [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—(1) In its application to the State of Uttar Pradesh, in sub-section (1) of Section 52 and Sections 53 and 55, for the word "Carts" wherever occurring the word "Vehicles" shall be substituted. [Vide U.P. Act 21 of 1960, S. 7].

(2) In Section 52,—

(i) in sub-section (1), for the words "vehicles or cattle" the words "vehicles, cattle, ropes, chains or other articles" shall be substituted.

(ii) for sub-section (2), the following sub-sections shall be substituted, namely:—
 "(2) Any Forest Officer or Police Officer may, if he has reason to believe that a boat or vehicle has been, or is being, used for the transport of any forest produce in respect of which a forest offence has been, or is being, committed, require the driver or other person in charge of such boat or vehicle to stop it, and he may detain such boat or vehicle for such reasonable time as is necessary to examine the contents in such boat or vehicle and to inspect the records relating to the goods transported so as to ascertain the claims, if any,

of the driver or other person in charge of such boat or vehicle regarding the ownership and legal origin of the forest produce in question. [S. 52]

(3) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made, and if the seizure is in respect of forest produce which is the property of the State Government, shall also make a report to the authorised officer." [Vide U.P. Act I of 2001, S. 6 (w.e.f. 16-4-2001)].

(3) After Section 52, the following sections shall be *inserted*, namely:—

52-A. Procedure on seizure.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force where a forest offence is believed to have been committed in respect of any forest produce, which is the property of the State Government, the officer seizing the property under sub-section (1) of Section 52 shall, without unreasonable delay, produce it together with all the tools, boats, vehicles, cattle, ropes, chains and other articles used in committing the offence, before an officer, not below the rank of a Divisional Forest Officer, authorised by the State Government in this behalf, who may, for reasons to be recorded, make an order in writing with regard to custody, possession, delivery, disposal or distribution of such property, and in case of tools, boats, vehicles, cattle, ropes, chains and other articles, may also confiscate them.

(2) The authorised officer shall, without any undue delay, forward a copy of the order made under sub-section (1) to his official superior.

(3) Where the authorised officer passing an order under sub-section (1) is of the opinion that the property is subject to speedy and natural decay he may order the property or any part thereof to be sold by public auction and may deal with the proceeds as he would have dealt with such property if it had not been sold and shall report about every such sale to his official superior.

(4) No order under sub-section (1) shall be made without giving notice, in writing, to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property:

Provided that in an order confiscating a vehicle, when the offender is not traceable, a notice in writing to the registered owner thereof and considering his objections if any will suffice.

(5) No order of confiscation of any tool, boat, vehicle, cattle, rope, chain or other article shall be made if any person referred to in sub-section (4) proves to the satisfaction of the authorised officer that any such tool, boat, vehicle, cattle, rope, chain or other article was used without his knowledge or connivance or without the knowledge or connivance of his servant or agent, as the case may be, and that all reasonable precautions had been taken against use of the objects aforesaid for the commission of the forest offence.

52-B. Appeal.—Any person aggrieved by an order of confiscation may, within thirty days of the date of communication to him of such order, prefer an appeal to the State Government and the State Government shall, after giving an opportunity of being heard to the appellant and the authorised officer pass such order as it may think fit confirming, modifying or annulling the order appealed against and the order of the State Government shall be final.

52-C. Order of confiscation not to prevent any other punishment.—No order of confiscation under Section 52-A or 52-B shall prevent the indication of any punishment to which the person affected thereby may be liable under this Act.

52-D. Bar of jurisdiction in certain cases.—Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, whenever any forest produce belonging to the State Government together with any tool, boat, vehicle, cattle, rope, chain or other article is seized under sub-section (1) of Section 52, the authorised officer under Section 52-A or the State Government under Section 52-B shall have

jurisdiction, to the exclusion of every other officer, court, Tribunal or authority, to make orders with regard to the custody, possession, delivery, disposal or distribution of the property.” [Vide U.P. Act 1 of 2001, S. 7 (w.e.f. 16-4-2001)].

UTTARAKHAND.—(1) In its application to the State of Uttarakhand, in Section 52—

- (i) in sub-section (1), for the words “carts or cattle” the words “vehicles, cattle, ropes, chains or other articles” shall be *substituted*;
- (ii) for sub-section (2), the following sub-sections shall be *substituted*, namely—

“(2) Any Forest Officer or Police Officer may, if he has reason to believe that a boat or vehicle has been, or is being, used for the transport of any forest produce in respect of which a forest offence has been, or is being, committed, require the driver or other person in charge of such boat or vehicle to stop it, and he may detain such boat or vehicle for such reasonable time as is necessary to examine the contents in such boat or vehicle and to inspect the records relating to the goods transported so as to ascertain the claims, if any, of the driver or other person in charge of such boat or vehicle regarding the ownership and legal origin of the forest produce in question.

(3) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made, and if the seizure is in respect of forest produce which is the property of the State Government, shall also make a report to the authorised officer.” [Vide Uttarakhand Act 10 of 2002, S. 6, dt. 17-7-2002].

(2) In its application to the State of Uttarakhand, after Section 52, the following sections shall be *inserted*, namely:—

“52-A. *Procedure on seizure.*—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where a forest offence is believed to have been committed in respect of any forest produce, which is the property of the State Government, the officer seizing the property under sub-section (1) of Section 52 shall, without unreasonable delay, produce it together with all the tools, boats, vehicles, cattle, ropes, chains and other articles used in committing the offence before an officer, not below the rank of a Divisional Forest Officer, authorised by the State Government in this behalf, who may, for reasons to be recorded, make an order in writing with regard to custody, possession, delivery, disposal or distribution of such property, and in case of tools, boats, vehicles, cattle, ropes, chains and other articles, may also confiscate them.

(2) The authorised officer shall, without any undue delay, forward a copy of the order made under sub-section (1) to his official superior.

(3) Where the authorised officer passing an order under sub-section (1) is of the opinion that the property is subject to speedy and natural decay he may order the property or any part thereof to be sold by public auction and may deal with the proceeds as he would have dealt with such property if it had not been sold and shall report about every sale to his official superior.

(4) No order under sub-section (1) shall be made without giving notice, in writing, to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property:

Provided that in an order confiscating a vehicle, when the offender is not traceable, a notice in writing to the registered owner thereof and considering his objections if any will suffice.

(5) No order of confiscation of any tool, boat, vehicle, cattle, ropes, chain or other article shall be made if any person referred to in sub-section (4) proves to the satisfaction of the authorised officer that any such tool, boat, vehicle, cattle, rope, chain or other article was used without his knowledge or connivance or without the knowledge or connivance of his servant or

agent, as the case may be, and that all reasonable precautions had been taken against use of the objects aforesaid for the commission of the forest offence.

52-B. Appeal.—Any person aggrieved by an order of confiscation may, within thirty days of the date of communication to him of such order, prefer an appeal to the Conservator of Forests of the circle who shall, after giving an opportunity of being heard to the appellant and the authorised officer, pass such order as it may think fit confirming, modifying or annulling the order appealed against and the order of the Conservator of Forests of the circle shall be final.

52-C. Order of confiscation not to prevent any other punishment.—No order of confiscation under Section 52-A or 52-B shall prevent the infliction of any punishment to which the person affected thereby may be liable under this Act.

52-D. Bar of Jurisdiction in certain cases.—Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, whenever any forest produce belonging to the State Government together with any tool, boat, vehicle, cattle, rope, chain or other article is seized under sub-section (1) of Section 52, the authorised officer under Section 52-A or the State Government under Section 52-B shall have jurisdiction, to the exclusion of every other officer, court, Tribunal or authority, to make orders with regard to the custody, possession, delivery, disposal or distribution of the property.” [Vide Uttarakhand Act 10 of 2002, S. 7, dt. 17-7-2002].

WEST BENGAL.—(1) In its application to the State of West Bengal, in Section 52,—

(a) in sub-section (1), for the words “boats, carts”, the words “ropes, claims boats, vehicles” shall be *substituted*;

(b) in sub-section (2),

(i) after the words “on such property”, the words “or the receptacle, if any, containing such property” shall be *inserted*, and

(ii) for the proviso, the following proviso shall be *substituted*:—

“Provided that it will not be necessary to make a report of such seizure to the Magistrate in the following cases, namely:—

(i) when the forest produce with respect to which each offence is believed to have been committed is the property to the State Government and the offender is unknown, it shall be sufficient to make a report of the circumstances to the official superior;

(ii) when the offence falls under the purview of Section 59-A:

(iii) when the offender agrees in writing to get the offence compounded.”;

(c) after sub-section (2), the following sub-section shall be *inserted*:—

“(3) Any Forest-officer or Police officer may, if he has reason to believe that a vehicle has been or is being used for the transport of any forest-produce in respect of which a forest offence has been committed, require the driver or other or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the content in the vehicle and inspect all records relating to goods carried, which are in possession of such driver or other person in charge of the vehicle.” [W.B. Act 22 of 1988, S. 10].

(2) After Section 52, the following section shall be *inserted*,—

“52-A. *Penalty for forcibly opposing seizure.*—Whoever forcibly opposes the seizure of tools, ropes, chains, boats, vehicles or cattle liable to be seized under this Act or receives the same after seizure, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.” [W.B. Act 22 of 1988, S. 11].

SECTIONS 52-A TO 52-G.—See in State Amendments under S. 52, above.

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CASE LAW ▶ Validity.—Section 52 does not violate Article 14 of the Constitution, *Abdul Samad v. State*, AIR 1969 J&K 52.

▶ **Conviction in the absence of accused.**—Conviction and sentence imposed in the absence of the accused are illegal, *Tehsildar v. Jodh Singh*, 1963 All LJ 578 : ILR (1963) 2 All 283.

▶ **Power of confiscation.**—Power of confiscation is independent of criminal prosecution. Only condition precedent for initiating confiscation proceedings is commission of forest offence, *State of M.P. v. S.P. Sales Agencies*, (2004) 4 SCC 448 : 2004 SCC (Cri) 1313.

Where the evidence on record showed that the authorities had failed to establish that the owner of the truck had any knowledge of likelihood of the truck being used for carrying forest produce in contravention of the provisions of the Act, order of confiscation of the truck under this act is wrong. Constitution of India, Article 227, *Asstt. Forest Conservator v. Sharad Ramchandra Kale*, (1998) 1 SCC 48 : 1998 SCC (Cri) 260.

▶ **Right to auction.**—Gaon Panchayat had no right to auction, timber seized by the forest authorities, *Man Singh v. State of U.P.*, (2006) 41 AIC 308 (All).

▶ **Power to dispose property.**—State Government has exclusive jurisdiction under Section 52-D for release, disposal or distribution of the property, *Ram Bihari Chandra Yadav v. State of U.P.*, (2007) 53 AIC 631 (All).

▶ **Sending of Report.**—Report must be sent with all promptitude, curtailing the time gap between the seizure and the report to the minimum. Requirement of sending report as soon as may be cannot be so construed as to cover weeks or months, *Kamleshkumar Harbanslal Chhabra v. State of M.P.*, 1985 MPLJ 72.

▶ **Confiscation proceedings.**—When Magistrate informed by Forest Officer under Section 52(4) that confiscation proceedings were initiated under Section 52(3) of Forest Act in respect of the vehicle. Magistrate ceases to have any jurisdiction to pass an order on application for supurdagi under Section 457, Criminal Procedure Code, *Vishambhar Yadav v. State of M.P.*, (2002) 3 MP LJ 245.

Range Officer who initiated proceedings for confiscation of the vehicle under Section 52 may be a person aggrieved but was not entitled to file an appeal under Section 52-A of the Act, *Umashankar Usrete v. State of M.P.*, (2009) 2 MPLJ 11.

The authorized officer, considering confiscation of a vehicle, is conducting a quasi-judicial enquiry and does not require evidence in the strict sense to be tendered before him, *Sardarkhan v. Range Forest Officer, Yavatmal*, (2006) 1 Mah LJ 606.

▶ **Confiscation order.**—Order for confiscation of vehicle can be passed after considering the objection of the owner, *Rajendra Kumar Gupta v. State of U.P.*, (2008) 70 ALR 519.

Order of confiscation under — when not to be made, *Bhagwan Deen v. State of U.P., Van Anubhag-2*, (2006) 62 ALR 716 (All).

▶ **Bar under this section.**—In view of the bar under Section 52-C of the Forest Act, the Trolley vehicle of the petitioner seized by forest official under the provisions of Forest Act, 1927 could not be released by the Magistrate after getting intimation under Section 52 of the Act. Section 52-C of the Forest Act had overriding effect on other laws including general provisions of Criminal Procedure Code, *Ramniwas v. Game Range Chambal Sanctuary*, (2012) 2 MP LJ 661 (MP).

► **Appeal.**—No appeal under Section 52-A lies against an order releasing the property from seizure. *Umashankar Usrete v. State of M.P.*, (2009) 2 MPLJ 11.

► **Confiscation and seizure.**—Confiscation and seizure proceedings, and criminal prosecution proceedings, under substituted provisions by M.P. Act 25 of 1983 in State of M.P., distinguished. Steps contemplated for each kind of proceeding contemplated under said substituted provisions in State of M.P., explained in detail. Provisions surveyed in detail and law clarified regarding sole and exclusive jurisdiction of authorities/courts and applicability of procedure specified in said substituted provisions, to the exclusion of CrPC and jurisdiction of regular courts thereunder. Therefore, jurisdiction of court to release such property under Section 451 CrPC as per the ordinary procedure, held, is barred by operation of Section 52-C(1) of the Forest Act, 1927 as applicable in, *State of M.P. v. Uday Singh*, (2020) 12 SCC 733.

53. Power to release property seized under Section 52.—Any Forest-officer of a rank not inferior to that of a Ranger who; or whose subordinate, has seized any tools, boats, carts or cattle under Section 52, may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

STATE AMENDMENTS

BOMBAY.—In its application to the State of Bombay, in Sections 52, 53 and 55, for the word “carts”, wherever it occurs, the word “vehicles” shall be *substituted*. [*Vide* Bombay Act 25 of 1953, S. 2].

GUJARAT.—In its application to the State of Gujarat, in Section 53, for the words and figures “under Section 52, may release” the words, figures and letter “under Section 52, may, subject to Section 61-G release” shall be *substituted*. [*Vide* Guj. Act 19 of 1983, S. 3 (w.e.f. 24-5-1983)].

HIMACHAL PRADESH.—(1) In its application to the State of Himachal Pradesh, in Sections 52, 53 and 55, for the words ‘carts’ wherever it occurs, the word ‘vehicles’ shall be *substituted*. [*Vide* H.P. Act 25 of 1968, S. 4].

(2) At the end of Section 53, but before the sign “.”, the words, brackets, figures, sign and alphabet “or before the authorised officer under sub-section (1) of Section 52-A” shall be *inserted*. [*Vide* H.P. Act 15 of 1991, S. 6].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, for Section 53, the following section shall be *substituted*, namely—

“53. *Power to release property seized under Section 52.*—Any Forest-officer of a rank not inferior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles or any other article under Section 52, may release the same on the execution by the owner thereof, of a security in a form as may be prescribed, of an amount equal to the value of such property, as estimated by such officer, for the production of the property so released, when so required, before the authorised officer under Section 52 or the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.” [*Vide* M.P. Act 7 of 2010, S. 8]

MAHARASHTRA.—In its application to the State of Maharashtra, in Section 53, for the words and figures “under Section 52, may release” the words, figures and letter “under Section 52 may, subject to Section 61-G, release” shall be *substituted*. [*Vide* Mah. Act 7 of 1985, S. 8].

EAST PUNJAB.—In its application to East Punjab, be amended as follows:—

In Sections 52, 53 and 55 of the said Act, for the word “carts”, wherever it occurs, the word “vehicles” shall be *substituted*. [*Vide* East Punjab Act 7 of 1948, S. 2].

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UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for Section 53, *substitute* the following section, namely:—

“53. *Power to release property seized under Section 52.*—Any forest officer of a rank not inferior to that of a Range Officer, who, or whose subordinate, has seized any tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing any forest offence, including the forest produce, under Section 52, may release the same on the execution by the owner thereof, of a security in a form of a bank guarantee, of an amount not less than the value of such property, as estimated by such officer, for the production of the property so released when so required by the Magistrate having jurisdiction to try the offence or by the authorised officer empowered under sub-section (2) of Section 52, on account of which the seizure has been made:

Provided that when any forest produce is seized at a remote location from where it is not practicable to transport it immediately, the officer who, or whose subordinate has effected such seizure under Section 52, may entrust the same (Supardnama) to any responsible person on the execution of a bond thereof, by such person, for the production of the property so entrusted if and when required by the Magistrate having jurisdiction to try the offence or before the authorised officer empowered under sub-section (2) of Section 52, on account of which the seizure has been made.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—(1) In its application to the State of Uttar Pradesh, in sub-section (1) of Section 52 and Sections 53 and 55, for the word “Carts” wherever occurring the word “Vehicles” shall be *substituted*. [Vide U.P. Act 21 of 1960, S. 7].

(2) In Section 53,—

- (i) for the words “vehicles or cattle” the words “vehicles, cattle, ropes, chains or other articles” shall be *substituted*.
- (ii) after the words “the seizure has been made” the words “except in respect of cases falling under Section 52-A for which the procedure laid down in that section shall be followed” shall be *inserted*. [Vide U.P. Act 1 of 2001, S. 8 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 53,—

- (i) for the words “carts or cattle” the words “vehicle, cattle, ropes, chains or other articles” shall be *substituted*;
- (ii) after the words “the seizure has been made” the words “except in respect of cases falling under Section 52-A for which the procedure laid down in that section shall be followed” shall be *inserted*. [Vide Uttarakhand Act 10 of 2002, S. 8, dt. 17-7-2002].

WEST BENGAL.—In its application to the State of West Bengal, in Section 53,—

- (a) for the words “boats, carts”, the words “ropes, chains, boats, vehicles” shall be *substituted*, and
- (b) after the words “the seizure has been made”, the words, figures and letter “except in respect of offences falling under Section 59-A for which the procedure laid down in that section shall be followed” shall be *inserted*. [Vide W.B. Act 22 of 1988, S. 12].

CASE LAW ▶ Release of property.—Though power of the High Court to direct interim release under this section is undisputed but it is to be exercised for good reasons and in exceptional cases only. Delay in disposal of proceedings, is not a sufficient ground, *Section Forester v. Mansur Ali Khan*, (2004) 1 SCC 293 : 2004 SCC (Cri) 333.

Prompt action should be taken by the authority concerned while disposing of the application for release of vehicle, *Harish Chandra Joshi v. State of Uttaranchal*, (2005) 25 AIC 436 (Utt).

► **Confiscation proceedings.**—Section 53 is *Pari materia* with Section 15(3-A) of the Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969, *State of M.P. v. Kallo Bai*, (2017) 14 SCC 502 [S. 54]

54. Procedure thereupon.—Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, Section 54 shall be *deleted*. [Vide Guj. Act 19 of 1983, S. 4 (w.e.f. 24-5-1983)].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, in Section 54, for full stop, a colon shall be *substituted* and thereafter, following proviso shall be *added*, namely:—

“Provided that before passing any order for disposal of property, the Magistrate shall satisfy himself that no intimation under sub-section (4) of Section 52 has been received by his Court or by any other Court having jurisdiction to try the offence on account of which the seizure of property has been made.” [Vide M.P. Act 25 of 1983, S. 5].

MAHARASHTRA.—In its application to the State of Maharashtra, for Section 54, the following section shall be *substituted* namely:

“54. *Procedure on receipt by Magistrate of report of seizure.*—Upon the receipt of any report under sub-section (2) of Section 52, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and, subject to Sections 58 and 61-G, for the disposal of the property according to law.” [Vide Mah. Act 7 of 1985, S. 9].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for Section 54, *substitute* the following section, namely:—

“54. *Receipt of report of seizure by Magistrate and procedure thereupon.*—Upon the receipt of any report under sub-section (4) of Section 52, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law:

Provided that before passing any order for disposal of property the Magistrate shall satisfy himself that no intimation under sub-section (4) of Section 52 has been received by his court or by any other court having jurisdiction to try the offence on account of which the seizure of property has been made.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

WEST BENGAL.—In its application to the State of West Bengal, in Section 54, for the words “any such report”, the words, figures and brackets “any report under sub-section (2) of Section 52” shall be *substituted*. [Vide W.B. Act 22 of 1988, S. 13].

CASE LAW ► Nature and scope.—Section 52 incorporated in the Forest Act, 1927, by Madhya Pradesh amendment is a special provision dealing with the seizure of the property, if there is reason to believe for the forest officer that forest offences has been committed, which have been used in the alleged forest offence. The seizure/confiscation proceedings are governed by section which is a complete code in itself. Section 52 does not contain any provision and procedure for recording evidence for the purpose of confiscation of the vehicle or property, etc. by the authorised officer. In absence of any such provision to record evidence in Sections 52 and 72 of 1927 Act which is a general provision and Section 3 of 1961 Act cannot be pressed into service. Section 30(ii) of 1961 Act has no application and appearance of advocates is rightly prohibited by the authorised officer. Since the authorised Officer is not legally authorised to take evidence in Section 52

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proceedings under 1927 Act, the question of appearance of advocates by claiming right from Section 30(ii) of 1961 Act does not arise, *Kuldeep Sharma v. State of M.P.*, (2012) 2 MP LJ 453 (MP).

55. Forest produce tools, etc., when liable to confiscation.—(1) All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

STATE AMENDMENTS

BOMBAY.—In its application to the State of Bombay, in Sections 52, 53 and 55, for the word “carts”, wherever it occurs, the word “vehicles” shall be *substituted*. [Vide Bombay Act 25 of 1953, S. 2].

EAST PUNJAB.—In its application to East Punjab, be amended as follows:—

In Sections 52, 53 and 55 of the said Act, for the word “carts”, wherever it occurs, the word “vehicles” shall be *substituted*. [Vide East Punjab Act 7 of 1948, S. 2].

GUJARAT.—In its application to the State of Gujarat, in Section 55, in sub-section (1), for the words “shall be liable” the words, figures and letter “shall, subject to Section 61-G, be liable” shall be *substituted*. [Vide Guj. Act 19 of 1983, S. 5 (w.e.f. 24-5-1983)].

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, in Sections 52, 53 and 55, for the words ‘carts’ wherever it occurs, the word ‘vehicles’ shall be *substituted*. [Vide H.P. Act 25 of 1968, S. 4].

MADHYA PRADESH.—(1) In its application to the State of Madhya Pradesh, in sub-section (1) of Section 55 of the principal Act, for the word “carts”, the word “vehicle” shall be *substituted*. [Vide M.P. Act 9 of 1965, S. 11].

(2) In Section 55, for sub-section (1), the following sub-section shall be *substituted*, namely:—

“(1) All timber or forest produce which in either case is not the property of the Government and in respect of which a forest offence has been committed, and all tools, boats, vehicles, ropes, chains or any other article, in each case used in committing any forest offence, shall subject to provisions of Sections 52, 52-A, 52-B and 52-C, be liable to confiscation upon conviction of the offender for such forest offence.”. [Vide M.P. Act 25 of 1983, S. 6].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 55:

- (a) in sub-section (1), for the words “shall be liable to confiscation.” the words, figures and letter “shall, subject to Section 61-G, be liable by order of the convicting court to forfeiture.” shall be *substituted*;
- (b) in sub-section (2), for the word “confiscation” the word “forfeiture” shall be *substituted*;
- (c) in the marginal note, for the word “confiscation” the word “forfeiture” shall be *substituted*. [Vide Mah. Act 7 of 1985, S. 10].

(2) In its application to the State of Maharashtra, in Section 55 of the principal Act,—

- (a) in sub-section (1), for the words “shall be liable by order of the convicting court to forfeiture” the words “shall be liable to confiscation” shall be *substituted*;
- (b) in sub-section (2), for the word “forfeiture” the word “confiscation” shall be *substituted*;
- (c) in the marginal note, for the word “forfeiture” the word “confiscation” shall be *substituted*. [Vide Maharashtra Act 21 of 2015, S. 6 (w.e.f. the date to be notified)]

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for sub-section (1), *substitute* the following sub-section:—

"(1) All timber or forest produce which in either case is not the property of the Government and in respect of which a forest offence has been committed, and all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article, in each case used in committing any forest offence shall, subject to the provisions of Section 52, 52-A and 52-B, be liable to confiscation upon conviction of the offender for such offence." [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in sub-section (1) of Section 52 and Sections 53 and 55, for the word "Carts" wherever occurring the word "Vehicles" shall be substituted. [Vide U.P. Act 21 of 1960, S. 7].

(2) In Section 55, in sub-section (1) for the words "vehicles and cattle used in committing any forest offence" the words "vehicles, cattle, ropes, chains and other articles used in committing such forest offence" shall be substituted. [Vide U.P. Act 1 of 2001, S. 9 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 55, in sub-section (1), for the words "Carts and cattle used in committing any forest offence" the words "vehicles, cattle, ropes, chains and other articles used in committing such forest offence" shall be substituted. [Vide Uttarakhand Act 10 of 2002, S. 9, dt. 17-7-2002].

WEST BENGAL.—In its application to the State of West Bengal, in sub-section (1) of Section 55, for the words "boats, carts and cattle", the words "ropes, chains, boats, vehicles or cattle" shall be substituted. [Vide W.B. Act 22 of 1988, S. 14].

CASE LAW ▶ Natural Justice.—The phrase "shall be liable to confiscation" does not mean that the property stands automatically confiscated. An opportunity should be afforded to the person whose property is intended to be confiscated, *Mehta Bros. v. State*, 1980 Cri LJ 289.

▶ **Confiscation.**—Under this section property may be confiscated from the possession of any one whether he is the owner thereof or not, *Emp. v. Mohd. Khan*, 39 Cri LJ 700.

56. Disposal on conclusion of trial for forest offence, of produce in respect of which it was committed.—When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest-officer, in any other case, may be disposed of in such manner as the Court may direct.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, in Section 56, for the words "in any other case may be disposed" the words, figures and letter "in any other case may, subject to Section 61-G, be disposed" shall be substituted. [Vide Guj. Act 19 of 1983, S. 6 (w.e.f. 24-5-1983)].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 56:

- (a) for the word "confiscated" the word "forfeited" shall be substituted;
- (b) for the words "in any other case, may be disposed of" the words, figures and letter "in any other case may, subject to Section 61-G, be disposed of" shall be substituted. [Vide Mah. Act 7 of 1985, S. 11].

(2) In its application to the State of Maharashtra, in Section 56 of the principal Act, for the word "forfeited" the word "confiscated" shall be substituted. [Vide Maharashtra Act 21 of 2015, S. 7 (w.e.f. the date to be notified)]

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for the words “When the trial of”, *substitute* the words, figures and letter, “Without prejudice to the provisions of Section 52-C, when the trial of”. [*Vide* S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [*Vide* S.O. 3774(E), dated 23-10-2020].

WEST BENGAL.—In its application to the State of West Bengal, in Section 56, for the words “When the trial of”, the words, figures and letter “Without prejudice to the provisions of Section 59-A, when the trial of” shall be *substituted*. [*Vide* W.B. Act 22 of 1988, S. 15].

CASE LAW ▶ Applicability.—Section 56 applied only if forest-produce is seized under Section 52, *Ibrahim v. State*, (1963) 1 Cri LJ 664 : (1963) 4 Guj LR 493.

57. Procedure when offender not known or cannot be found.—When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest-officer, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, in Section 57, for the words “that an offence has been committed” the words, figures and letter “that an offence has been committed, subject to Section 61-G”, shall be *substituted*. [*Vide* Guj. Act 19 of 1983, S. 7 (w.e.f. 24-5-1983)].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 57, for the portion beginning with the words “the Magistrate may” and ending with the words “to be confiscated” the following shall be *substituted*, namely:

“The Magistrate may, if he finds that an offence has been committed, but subject to Section 61-G, order the property in respect of which the offence has been committed, to be forfeited together with tools, boats, vehicles or cattle and other articles used in committing the offence”. [*Vide* Mah. Act 7 of 1985, S. 12].

(2) In its application to the State of Maharashtra, in Section 57 of the-principal Act, for the word “forfeited” the word “confiscated” shall be *substituted*. [*Vide* Maharashtra Act 21 of 2015, S. 8 (w.e.f. the date to be notified)]

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for Section 57, *substitute* the following section, namely:—

“57. *Procedure when the offender is not known or cannot be found.*—When the offender is not known or cannot be found the Magistrate may, if he finds that an offence has been committed, but subject to Section 52-B, order the property in respect of which offence has been committed, to be confiscated or forfeited together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing the offence, and taken charge of by the Forest officer, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that, no such order shall be made until the expiration of one month from the date of seizing such property or without hearing the person, if any, claiming any right thereto, and

the evidence, if any, which he may produce in support of his claim." [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Section 57, for the words "The Magistrate may," the words "the Magistrate, subject to Section 52-D may," shall be *substituted*. [Vide U.P. Act 1 of 2001, S. 10 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In Section 57 of the principal Act, for the words "The Magistrate may" the words "The Magistrate, subject to Section 52-D, may", shall be *substituted*. [Vide Uttarakhand Act 10 of 2002, S. 10, dt. 17-7-2002].

58. Procedure as to perishable property seized under Section 52.—The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under Section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, in Section 58,—

- (1) for the words "The Magistrate may, notwithstanding anything here in before contained, direct the sale of" the words and figures "The Forest Officer who made the seizure under Section 52 may, notwithstanding anything contained in this Act or any other law, sell" shall be *substituted*;
- (2) the following shall be *added* at the end, namely:—
"and shall report about every such sale to his official superior". [Vide Guj. Act 19 of 1983, S. 8 (w.e.f. 24-5-1983)].

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, after the words "The Magistrate" occurring in the beginning of Section 58, the words, brackets, figures and alphabet "or subject to such rules as may be prescribed, the authorised officer under sub-section (1) of Section 52-A" shall be *inserted*. [Vide H.P. Act 15 of 1991, S. 7].

MAHARASHTRA.—In its application to the State of Maharashtra, for Section 58, the following section shall be *substituted*, namely:

"58. *Procedure as to perishable property seized under Section 52.*—The Forest-officer who made the seizure under Section 52 may, notwithstanding anything contained in this Act or any other law, sell any property seized under Section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold and shall report about every such sale to his official superior." [Vide Mah. Act 7 of 1985, S. 13].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for Section 58, *substitute* the following section, namely:—

"58. *Procedure as to perishable property seized under Section 52.*—The Authorised Officer under sub-section (2) of Section 52, or the Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under Section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt had it not been sold." [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Section 58, for the words "the Magistrate may, notwithstanding anything hereinbefore contained," the words "Notwithstanding

anything hereinbefore contained, but subject to sub-section (3) of Section 52-A, the Magistrate may," shall be *substituted*. [Vide U.P. Act 1 of 2001, S. 11 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 58, for the words "The Magistrate may, notwithstanding anything hereinbefore contained," the words "Notwithstanding anything hereinbefore contained, but subject to sub-section (3) of Section 52-A, the Magistrate may," shall be *substituted*. [Vide Uttarakhand Act 10 of 2002, S. 11, dt. 17-7-2002].

WEST BENGAL.—In its application to the State of West Bengal, Section 58 shall be *renumbered* as sub-section (1) of that section and,—

- (1) in sub-section (1) as so renumbered,—
 - (a) the words "and may deal with the proceeds as he would have dealt with such property if it had not been sold" shall be *omitted*;
 - (b) the following proviso shall be *added* at the end:—

"Provided that if in the opinion of the officer seizing such property it is not possible to obtain the orders of the Magistrate in time, such officer may sell the property himself, remit the proceeds of sale into the Government treasury and may make a report of such seizure, sale and remittance to the Magistrate.";

- (2) after sub-section (1), the following sub-section shall be *inserted*:—
 - (2) The Magistrate may deal with the proceeds of the sale of any property sold under sub-section (1) as he would have dealt with such property if it had not been sold." [Vide W.B. Act 22 of 1988, S. 16].

59. Appeal from orders under Section 55, Section 56 or Section 57.—The officer who made the seizure under Section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under Section 55, Section 56 or Section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

STATE AMENDMENTS

HIMACHAL PRADESH.—(1) In its application to the State of Himachal Pradesh, in Section 59,—

- (a) in the heading, after the words "orders under section" but before the figure "55", the figure, alphabet and sign "52-A", shall be *inserted*;
- (b) the existing section shall be *renumbered* as sub-section (1); and
- (c) after sub-section (1) so renumbered, the following sub-section (2) and sub-section (3) shall be *added*, namely:—

"(2) Any person aggrieved by any order passed under Section 52-A or Section 59-A may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates been seized and the Sessions Judge shall, after giving an opportunity to the appellant and the authorised officer of the officer specially empowered under Section 59-A, as the case may be, to be heard, pass such order as he may think fit confirming, modifying or annulling the order appealed against.

(3) The order of the Sessions Judge under sub-section (2) shall be final and shall not be questioned in any Court of law." [Vide H.P. Act 15 of 1991, S. 8].

- (2) After Section 59, the following Sections 59-A and 59-B shall be *inserted*, namely:—

"59-A. *Revision.*—Any forest officer not below the rank of Conservator of Forests, specially empowered by the State Government in this behalf by notification published in the Official Gazette, may, before the expiry of thirty days from the date of order of the authorised officer under Section 52-A, suo-motu call for and examine the records of that order and may make such enquiry or cause such enquiry to be made and may pass such orders as he deems fit.

Provided that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard. [S. 59]

59-B. *Bar of jurisdiction in certain cases.*—Whenever any timber (excluding fuelwood), resin, khair wood and katha together with any tool, rope, chain, boat or vehicle used in committing any forest offence is seized under Section 52, the authorised officer under sub-section (1) of Section 29-A or the officer specially empowered under Section 59-A or Sessions Judge hearing an appeal under sub-section (2) of Section 59 shall have, and notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or in any other law for the time being in force, any other officer, Court, Tribunal or authority shall not have, jurisdiction to make order with regard to custody, possession, delivery, disposal or distribution of such property." [Vide H.P. Act 15 of 1991, S. 9].

WEST BENGAL.—In its application to the State of West Bengal, after Section 59, the following sections shall be inserted:—

"59-A. *Confiscation by Forest officer of forest-produce in the case of forest offence believed to have been committed.*—(1) Notwithstanding anything contained in the foregoing provisions of this chapter or in any other law for the time being in force, where a forest-offence is believed to have been committed in respect of the timber or other forest-produce which is the property of the State Government, the Forest Officer or the Police-officer seizing the timber or other forest-produce under sub-section (1) of Section 52 shall, without any unreasonable delay, produce the same, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence before an officer of a rank not inferior to that of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification in the Official Gazette (hereinafter referred to as the authorised officer).

(2) The State Government may, for any local area, authorise one or more officers under sub-section (1).

(3) Where any timber or other forest-produce which is the property of the State Government is produced before an authorised officer under sub-section (1) and the authorised officer is satisfied that a forest-offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the amendment of such offence, order confiscation of the property with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.

(4)(a) Where the authorised officer, after passing the order of confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle as aforesaid under sub-section (3), is of opinion that it is expedient in the public interest so to do, he may order such property or any part thereof and such tools, ropes, chains, boats, vehicles and cattle to be sold by public auction.

(b) Where the order of confiscation of any property or tools, ropes, chains, boats, vehicles or cattle under sub-section (3) is set aside or annulled under Section 59-C or Section 59-D, the proceeds of sale by auction shall, after deduction of the expenses of auction and all other incidental expenses relating thereto, if any, be paid to the owner of such property or tools, ropes, chains, boats, vehicles or cattle or to the person from where the same was seized as may be specified in the order under Section 59-C or Section 59-D.

59-B. *Issue of notice before confiscation.*—(1) No order confiscating any property or tools, ropes, chains, boats, vehicles or cattle shall be made under Section 59-A except after giving a notice in writing to the owner of, or the person from whom, such property or tools, ropes, chains, boats, vehicles or cattle have been seized, for showing cause as to why the same should not be confiscated and considering his objections, if any:

Provided that no order confiscating any motor vehicle shall be made except after giving a notice in writing to the registered owner thereof if, in the opinion of the authorised officer, it is practicable to do so and considering his objections, if any.

Explanation.—“Motor Vehicle” shall have the same meaning as in the Motor Vehicles Act, 1939 (4 of 1939).

(2) Without prejudice to the provisions of sub-section (1), no order considering any tool, rope, chain, boat, vehicle or cattle shall be made under Section 59-A if the owner thereof proves to the satisfaction of the authorised officer that such tool, rope, chain, boat, vehicle or cattle was used in carrying the timber or other forest-produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use.

59-C. *Revisions.*—Any Forest-officer of a rank not inferior to that of the Conservator of forests specially empowered by the State Government in this behalf by notification in the Official Gazette may suo motu, or on application by the aggrieved person call for and examine and record of any order under Section 59-A and may make such inquiry or cause such inquiry to be made and may pass such order as he deems fit:

Provided that no such record shall be called for after the expiry of thirty days from the date of the order under Section 59-A, and no order under this section shall be passed if, in the meantime, an appeal has been preferred under 59-D against any order under Section 59-A:

Provided further that no order prejudicial to any person shall be passed under this section without giving him an opportunity of being heard.

59-D. *Appeal.*—(1) Any person aggrieved by an order under Section 59-A or Section 59-C may, within thirty days from the date of communication to him of such order, prefer an appeal to the District Judge having jurisdiction over the area in which the property and the tools, ropes, chains, boats, vehicles, or cattle have been seized and the District judge shall, after giving the appellant and the Officer who passed the order an opportunity of being heard pass an order confirming, modifying or annulling the order appealed against.

(2) The order of the District Judge under sub-section (1) shall be final and shall not be called in question by any Court.

59-E. *Award of punishment under other provisions of the Act.*—Notwithstanding any order under Section 59-A or Section 59-C or Section 59-D, nothing in any of the said sections shall be deemed to prevent the award to any person affected by such order of any punishment to which such person is liable under this Act or any other law for the time being in force.

59-F. *Confiscated property and proceeds of sale to vest in Government.*—When an order for the confiscation or sale by auction of any property or any tools, ropes, chains, boats, vehicles or cattle is passed under Section 59-A and is confirmed in whole or in part on revision under Section 59-C or on appeal under Section 59-D, such property or tools, ropes, chains, boats, vehicles or cattle or the proceeds of sale, as the case may be, shall vest in the State Government free from all incumbrances.

59-G. *Bar of Jurisdiction in certain cases.*—Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the officer authorised under Section 59-A or the Forest-officer specially empowered under Section 59-C or the District Judge to whom an appeal may be preferred under Section 59-D shall have and any other officer or Forest-officer or Court, tribunal or authority shall not have jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of any property or tools, ropes, chains, boats, vehicles or cattle seized under Section 52.” [Vide W.B. Act 22 of 1988, S. 17].

SECTIONS 59-A TO 59-G.—See in State Amendments under S. 59, above.

CASE LAW ▶ Appeal.—A person who was not a party before the trial court has right to prefer an appeal against the order of forfeiture passed by a Magistrate, *Mehta Bros. v. State*, 1980 Cri LJ 289. See also 31 Cri LJ 1117 : 1930 Cal 557 : 58 Cal 407.

60. Property when to vest in Government.—When an order for the confiscation of any property has been passed under Section 55 or Section 57, as the case may be, and the period limited by Section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

STATE AMENDMENTS

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, for Section 60, the following shall be *substituted*, namely:—

“60. When an order for the confiscation of any property has been passed under Section 52-A or Section 55 or Section 57, as the case may be, or where on revision application made under Section 59-A such order for confiscation has not been set aside, and the period limited by Section 59 for an appeal from such order has elapsed, and no such appeal has been preferred or when, on such an appeal being preferred, the Appellate Court confirms such orders in respect of the property or a portion of such property, such property or such portion thereof, or if it has been sold under sub-section (3) of Section 52-A, the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances.” [Vide H.P. Act 15 of 1991, S. 10].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, Section 60 of the Principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) so renumbered, the following sub-section shall be *inserted*, namely:—

“(1) Property ordered to be confiscated by an authorised officer under Section 52, subject to result of proceedings before Appellate Authority on presentation of appeal or upon ‘suo motu’ action, under Section 52-A, later of revision before Court of Sessions under Section 52-B, shall upon conclusion of proceedings in revision vest in the Government free from all encumbrances:

Provided that such vesting shall take effect—

- | | | |
|-----|---|--|
| (a) | where no appeal is preferred or no ‘suo-motu’ action is taken, before or Appellate Authority— | on expiry of period specified for preferring appeal or for taking ‘suo-motu’ action under Section 52-A whichever is later; |
| (b) | where final orders are passed by Appellate Authority under Section 52-A, but no revision is preferred under Section 52-B— | on expiry of period specified for submitting petition for revision under Section 52-B.” [Vide M.P. Act 25 of 1983, S. 7]. |

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 60, for the word “confiscation” the word “forfeiture” shall be *substituted*. [Vide Mah. Act 7 of 1985, S. 14].

(2) In its application to the State of Maharashtra, in Section 60 of the principal Act, for the word “forfeiture” the word “confiscation” shall be *substituted*. [Vide Maharashtra Act 21 of 2015, S. 9 (w.e.f. the date to be notified)]

PUNJAB.—In its application to the State of Punjab, for Section 60, the following section shall be *substituted*, namely:—

“60. *Property when to vest in Government.*—When an order for confiscation for any property has been passed under Section 52-A or Section 52-B or Section 52-C, as the case may be, and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, if it has been sold under Section 52-D, the sale proceeds thereof shall vest in the State Government free from all encumbrances.” [Vide Punjab Act 21 of 2004, S. 7].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, *renumbered* as sub-section (2) thereof, and, before sub-section (2) as so renumbered, *insert* the following sub-section, namely:—

“(1) Property ordered to be confiscated by an authorised officer under Section 52, subject to the result of revision before Court of Sessions under Section 52-A shall upon conclusion of proceedings in revision, vest in the Government free from all encumbrances:

Provided that if no revision is preferred under Section 52-A, such vesting shall take effect on expiry of period specified for the submitting petition for revision under Section 52-A.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, Section 60 shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered the following sub-section shall be *inserted*, namely:—

“(2) When an order for confiscation has been passed under Section 52-A and the period of limitation for an appeal or revision has elapsed and no appeal or revision has been preferred or when in appeal or revision the order for confiscation for whole or a portion of the property has been confirmed, the property or such portion, as the case may be, shall vest in the State Government free from all encumbrances.”. [Vide U.P. Act 1 of 2001, S. 12 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, Section 60 shall be *renumbered* as sub-section (1) thereof and after sub-section (1) as so renumbered the following sub-section shall be *inserted*, namely:—

“(2) When an order for confiscation has been passed under Section 52-A and the period of limitation for an appeal or revision has elapsed and no appeal or revision has been preferred or when an appeal or revision the order for confiscation for whole or a portion of the property has been confirmed, the property or such portion, as the case may be, shall vest in the State Government free from all encumbrances.”. [Vide Uttarakhand Act 10 of 2002, S. 12, dt. 17-7-2002].

61. Saving of power to release property seized.—Nothing herein before contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate cease of any property seized under Section 52.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, after Section 61 the following sections shall be *inserted*, namely:—

“61-A. *Confiscation by forest officers in certain cases.*—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any law for the time being in force, where a forest offence is believed to have been committed in respect of any forest produce which is the property of the State Government, the officer seizing the property under sub-section (1) of Section 52 shall without any unreasonable delay produce it, together with all tools, rope, chains, boats, vehicle and cattle used in committing such offence, before an officer authorised by the

State Government in this behalf by notification in the Official Gazette, not being below the rank of an Assistant Conservator of Forest (hereinafter referred to as "the authorised officer").

(2) Where the authorised officer seizes under sub-section (1) of Section 52 any forest produce which is the property of the State Government or where any such property is produced before the authorized officer under sub-section (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may whether or not a prosecution is instituted for the commission of such forest offence order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

(3)(a) Where the authorised officer, after passing an order of confiscation under sub-section (2), is of the opinion that it is expedient in the public interest so to do, he may, order the confiscated property or any part thereof to be sold by public auction.

(b) Where any confiscated property is sold as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses, relating thereto, shall, where the order of confiscation made under Section 61-A is set aside or annulled by an order under Section 61-C or 61-D, be paid to the owner thereof or to the person from whom it was seized as may be specified in such order.

61-B. *Issue of show cause notice before confiscation under Section 61-A.*—(1) No order confiscating any forest produce or tools, ropes, chains, boats, vehicles or cattle shall be made under Section 61-A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it and considering his objections, if any:

Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope chain, boat, vehicle or cattle shall be made under Section 61-A if the owner of the tool, rope, chain; boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying forest produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chain, boat vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

61-C. *Revision.*—Any Forest Officer not below the rank of Conservator of Forests specially empowered by the State Government in this behalf by notification in the Official Gazette may, before the expiry of thirty days from the date of the order of the authorised officer under Section 61-A. Suo-motu call for and examine the records of that order and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit:

Provided that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

61-D. *Appeal.*—(1) Any person aggrieved by any order passed under Section 61-A or Section 61-C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity of being heard to the appellant and the authorised officer or the officer specially empowered under Section 61-C, as the case may be, pass such order as he may think fit confirming, modifying or annulling the order appealed against.

(2) An order of the Session Judge under sub-section (1) shall be final and shall not be questioned in any court of law.

S. 61]

61-E. *Award of confiscation not to interfere with other punishment.*—The award of any confiscation under Section 61-A, or 61-C or 61-D shall not prevent the infliction of any punishment which the person affected thereby is liable under this Act.

61-F. *Property confiscated when to vest in Government.*—When an order for confiscation of any property has been passed under Section 61-A or 61-C, 61-D and such order has become final in respect of the whole or any portion of such property, such property or portion thereof if it has been sold under sub-section (3) of Section 61-A the sale proceeds thereof as the case may be, shall vest in the State Government free from all encumbrances.

61-G. *Bar of jurisdiction in certain cases.*—Whenever any forest produce belonging to the State Government or any tool, rope, chain, boat, vehicle or cattle used in committing any offence is seized under, sub-section (1) of Section 52, the authorised officer under Section 61-A or the officer specially empowered under Section 61-C or the Sessions Judge hearing appeal under Section 61-D shall have and, notwithstanding anything to the contrary, contained in this Act, or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, any other officer, court, tribunal or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property.” [Vide Guj. Act 19 of 1983, S. 9 (w.e.f. 24-5-1983)].

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, after the figure “52” but before the sign “.” occurring at the end of Section 61, the signs and words “, which is not the property of the Government, and the withdrawal of any charge made in respect of such property” shall be *inserted*. [Vide H.P. Act 15 of 1991, S. 11].

MAHARASHTRA.—In its application to the State of Maharashtra, in Section 61 of the principal Act, for the words and figures “seized under Section 52” the following shall be *substituted*, namely:

“Seized under Section 52 which is not the property of Government, and the withdrawal of any charge made in respect of such property.” [Vide Mah. Act 7 of 1985, S. 15].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, after Section 61, the following sections shall be *inserted*, namely:

“61-A. *Confiscation by Forest-officers of forest-produce where forest-offence is believed to have been committed.*—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or any other law, where a forest-offence is believed to have been committed in respect of timber, sandalwood, firewood, charcoal or any other notified forest-produce which is the property of the State Government, the officer seizing the property under sub-section (1) of Section 52 shall, without any unreasonable delay produce it, together with all tools, boats, vehicles and cattle used in committing such offence, before an officer authorised by the State Government in this behalf by notification in the Official Gazette, not being an officer below the rank of an Assistant Conservator of Forests (hereinafter referred to as “the authorised officer”).

(2) The State Government may authorise one or more officers for any local area under sub-section (1).

(3) Where an authorised officer seizes under sub-section (1) of Section 52 any timber, sandalwood, firewood, charcoal or any other notified forest-produce which is the property of the State Government or any such property is produced before an authorised officer under sub-section (1) and he is satisfied that “a forest-offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest-offence, order confiscation of the property so seized together with all tools, boats, vehicles and cattle used in committing such offence.

(4)(a) Where the authorised officer, after passing an order of confiscation under sub-section (3), is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof and the tools, boats, vehicles and cattle to be sold by public auction.

(b) Where any confiscated property or the tools, boats, vehicles and cattle are sold, as incidental expenses relating thereto shall, where the order of confiscation made under this section is set aside or annulled by an order under Section 61-C or 61-D, be paid to the owner thereof or to the person from whom it was seized as may be specified in such order. [S. 61]

61-B. *Issue of show cause notice before confiscation under Section 61A.*—(1) No order confiscating any timber, sandalwood, firewood, charcoal or any other notified forest-produce, tools, boats, vehicles or cattle shall be made under Section 61-A except after notice in writing to the person from whom it is seized and considering his objections, if any:

Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, boat, vehicle or cattle shall be made under Section 61-A if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, firewood, charcoal or any other notified forest-produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

61-C. *Revision.*—Any Forest-officer not below the rank of Conservator of Forests specially empowered by the State Government in this behalf by notification in the Official Gazette may, suo motu call for and examine the record of the order of the authorised officer under Section 61-A; and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit:

Provided that no such record shall be called for after the expiry of 30 days from the date of such order, and no order under this section shall be passed if, in the meanwhile, an appeal has been filed under Section 61-D against the order of the authorised officer:

Provided further that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

61-D. *Appeal.*—(1) Any person aggrieved by any order passed under Section 61-A or Section 61-C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property and the tools, boats, vehicles and cattle to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity to the appellant and the authorised officer or the officer specially empowered under Section 61-C, as the case may be, to be heard, pass such order as he may think fit confirming, modifying or annulling the order appealed against.

(2) An order of the Session Judge under sub-section (1) shall be final and shall not be questioned in any court.

61-E. *Award of confiscation not to interfere with other punishments.*—The award of any confiscation under Section 61-A or Section 61-C or Section 61-D shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act or any other law for the time being in force.

61-F. *Property etc. confiscated when to vest in Government.*—When an order for confiscation of any property or any tools, boats, vehicles or cattle is passed under Section 61-A or Section 61-C or Section 61-D and such order has become final in respect of the whole or any portion of such property, or tool, boat, vehicle or cattle, such property or portion thereof or tool, boat, vehicle or cattle or if it has been sold under clause (a) of sub-section (4) of Section 61-A, the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances.

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61-G. *Bar of jurisdiction in certain cases.*—Whenever any timber, sandalwood, firewood, charcoal or any other notified forest-produce which is the property of the State Government, together with any tool, boat, vehicle or cattle used in committing any offence is seized under sub-section (1) of Section 52, the authorised officer under Section 61-A or the officer specially empowered under Section 61-C or the Sessions Judge hearing an appeal under Section 61-D shall have, and notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, any other officer, court, tribunal or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property and any tool, boat, vehicle or cattle.” [Vide Mah. Act 7 of 1985, S. 16].

(2) In its application to the State of Maharashtra, in Section 61-A of the principal Act,—

(a) for sub-section (3), the following sub-section shall be *substituted*—

“(3) Where any timber, sandalwood, firewood, charcoal or any other notified forest-produce, which is the property of the State Government, is seized under sub-section (1) of Section 52, or any such forest-produce is produced before any authorised officer under sub-section (1) and he is satisfied that a forest-offence has been committed in respect of such forest-produce, notwithstanding whether or not a prosecution is instituted for the commission of such offence, such authorised officer shall order the forest-produce so seized to be taken charge of by a Forest-officer, and may order confiscation of all tools, boats, vehicles and cattles used in committing such offence.”;

(b) in sub-section (4),—

(i) for clause (a), the following clause shall be *substituted*, namely—

“(a) where the authorised officer, after passing an order of confiscation under sub-section (3), is of the opinion that it is expedient in the public interest so to do, he may order sale of all confiscated tools, boats, vehicles and cattles.”;

(ii) in clause (b),—

(1) the words “property or the” shall be *deleted*;

(2) for the word “auction” the word “sale” shall be *substituted*. [Vide Maharashtra Act 21 of 2015, S. 10 (w.e.f. the date to be notified)]

(3) In its application to the State of Maharashtra, in Section 61-B of the principal Act,—

(a) in sub-section (1), the words “any timber, sandalwood, firewood, charcoal or any other notified forest-produce,” shall be *deleted*;

(b) after sub-section (2), the following sub-section shall be added, namely—

“(3) When the offender or the owner of any tool, boat, vehicle or cattle seized under sub-section (1) of Section 52 is not known or cannot be found, and the authorised officer is satisfied that the same has been used in committing a forest-offence in respect of timber, fire-wood, sandalwood, charcoal or any other notified forest-produce which is the property of the State Government, notwithstanding anything contained in the foregoing provisions, the authorised officer may pass order in accordance with the provisions contained in Section 61-A:

Provided that, no such order shall be made until the expiration of a period of thirty days from the date of seizing such property or without hearing the person claiming any right thereto.”. [Vide Maharashtra Act 21 of 2015, S. 11 (w.e.f. the date to be notified)]

(3) In its application to the State of Maharashtra, for Section 61-F of the principal Act, the following section shall be *substituted*, namely—

“61-F. *Property etc. confiscated when to vest in Government*—When an order for confiscation of any property has been passed under Section 61-A or Section 61-C, and the period of limitation provided by Section 61-D for filing an appeal against such order has elapsed, and no such appeal has been preferred or when on such an appeal being preferred, the Appellate Court

confirms such order in respect, of the whole or a portion of such property, such property or such portion thereof, or if it has been sold under Section 58 or under clause (a) of sub-section (4) of Section 61-A, the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances.”. [Vide Maharashtra Act 21 of 2015, S. 12 (w.e.f. the date to be notified)]

(4) In its application to the State of Maharashtra, in Section 61-G of the principal Act, for the word “offence” the words “forest-offence in respect of such property” shall be *substituted*. [Vide Maharashtra Act 21 of 2015, S. 13 (w.e.f. the date to be notified)]

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, after Section 61, the following new section shall be *added*, namely—

“61-A. *Summary eviction of persons convicted of certain offences.*—(1) Where a Court convicts any person of an offence under clause (a), clause (d) or clause (h) of sub-section (1) of Section 26 or clause (c) or clause (h) of sub-section (1) of Section 33, it may, when passing judgment, direct the eviction of such person from any land in respect of which the offence has been committed.

(2) Any Court of appeal or revision may direct any order under sub-section (1) passed by a Court subordinate thereto to be stayed pending consideration by the former Court, and may modify, alter or annul such order.”. [Vide U.P. Act 23 of 1965, S. 14].

(2) After Section 61-A, the following sections shall be *inserted*, namely:—

“61-B. *Summary eviction of unauthorised occupants.*—(1) If a Forest Officer, not below the rank of a Divisional Forest Officer, is of the opinion that any person is in unauthorised occupation of any land in areas constituted as a reserved or protected forest under Section 20 or Section 29 as the case may be, and that he should be evicted, the Forest Officer shall issue a notice in writing calling upon the person concerned to show cause, on or before such date as is specified in the notice, why an order of eviction should not be made.

(2) If after considering the cause, if any, shown in pursuance of a notice under this section, the Forest Officer is satisfied that the said land is in unauthorised occupation, he may make an order of eviction for reasons to be recorded therein, directing that the said land shall be vacated by such date, as may be specified in the order, by the person concerned, which shall not be less than ten days from the date of the order.

(3) If any person refuses or fails to comply with the order of eviction by the date specified in the order, the Forest Officer who made the order under sub-section (2) or any other Forest Officer, duly authorised by him in this behalf, may evict that person from and take possession of the said land and may, for this purpose, use such force as may be necessary.

(4) Any person aggrieved by an order of the Forest Officer under sub-section (2) may, within such period and in such manner as may be prescribed, appeal against such order to the Conservator of Forests of the circle or to such officer as may be authorised by the State Government in this behalf and the order of the Forest Officer shall, subject to the decision in such appeal, be final.

61-C. *Disposal of Property left on land by unauthorised occupant.*—(1) Where any person has been evicted from any land under Section 61-B, the Forest Officer may, after giving not less than ten days notice to the person from whom possession of the land has been taken, remove or cause to be removed or dispose of, by public auction, any property remaining on such land including any material of a demolished building or standing crop.

(2) Where any property is sold under sub-section (1) the sale proceeds thereof shall, after deducting the expenses of the sale and the expenses necessary to restore the land to its original condition, be paid to the person concerned.”. [Vide U.P. Act 1 of 2001, S. 13 (w.e.f. 16-4-2001)].

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UTTARAKHAND.—In its application to the State of Uttarakhand, after Section 61, the following sections shall be *inserted*, namely:—

“61-A. *Summary eviction of unauthorised occupants.*—(1) If a Forest Officer, not below the rank of a Divisional Forest Officer, is of the opinion that any person is in unauthorised occupation of any land in areas constituted as a reserved or protected forest under Section 20 or Section 29, as the case may be, and that he should be evicted, the Forest Officer shall issue a notice in writing calling upon the person concerned to show cause, on or before such date as is specified in the notice, why an order of eviction should not be made.

(2) If after considering the cause, if any, shown in pursuance of a notice under this section, the Forest Officer is satisfied that the said land is in unauthorised occupation, he may make an order of eviction for reasons to be recorded therein, directing that the said land shall be vacated by such date, as may be specified in the order, by the person concerned, which shall not be less than ten days from the date of the order.

(3) If any person refuses or fails to comply with the order of eviction by the date specified in the order, the Forest Officer who made the order under sub-section (2) or any other Forest Officer, duly authorised by him in this behalf, may evict that person from and take possession of the said land and may, for this purpose, use such force as may be necessary.

(4) Any person aggrieved by an order of the Forest Officer under sub-section (2) may, within such period and in such manner as may be prescribed, appeal against such order to the Conservator of Forests of the circle or to such officer as may be authorised by the State Government in this behalf and the order of the Forest Officer shall, subject to the decision in such appeal, be final.

61-B. *Disposal of property left on land by unauthorised occupant.*—(1) Where any person has been evicted from any land under Section 61-B, the Forest Officer may, after giving not less than ten days notice to the person from whom possession of the land has been taken remove or cause to be removed or dispose of, by public auction, any property remaining on such land including any material of a demolished building or standing crop.

(2) Where any property is sold under sub-section (1) the sale proceeds thereof shall, after deducting the expenses of the sale and the expenses necessary to restore the land to its original condition, be paid to the person concerned.”. [Vide Uttarakhand Act 10 of 2002, S. 13, dt. 17-7-2002].

SECTIONS 61-A TO 61-G.—See in State Amendments under S. 61, above.

62. Punishment for wrongful seizure.—Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

STATE AMENDMENTS

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, in Section 62, for the words “extend to six months or with fine which may extend to five hundred rupees”, the words “extend to one year or with fine which may extend to one thousand rupees” shall be *substituted*. [Vide M.P. Act 9 of 1965, S. 12].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, Section 62, shall be *renumbered* as sub-section (1) thereof and,—

- (a) in sub-section (1) as so renumbered, for the word “confiscation” the words “confiscation or forfeiture” shall be *substituted*;
- (b) after sub-section (1) as so renumbered, the following sub-section shall be *added*, namely:

“(2) Any fine so imposed, or any portion thereof, shall, if the convicting court so directs, be given as compensation to the person aggrieved by such seizure.” [S. 63] [Vide Maharashtra Act 7 of 1985, S. 17].

(2) In its application to the State of Maharashtra, in Section 62 of the principal Act, in sub-section (1), the words “or forfeiture” shall be *deleted*. [Vide Maharashtra Act 21 of 2015, S. 14 (w.e.f. the date to be notified)]

PUNJAB.—In its application to the State of Punjab, in Section 62, for the words “six months or with fine which may extend to five hundred rupees or with both.”, the words “two years, or with fine which may extend to five thousand rupees, or with both.” shall be *substituted*. [Vide Punjab Act 21 of 2004, S. 8].

63. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary-marks.—Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

- (a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government of or some person, or that it may lawfully be cut or removed by some person; or
- (b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer; or
- (c) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

STATE AMENDMENTS

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, for the words “shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both”, the words “shall be punishable with imprisonment for a term which shall not be less than six months and may extend to two years, or with fine not less than five thousand rupees, or with both”, shall be *substituted*. [Vide M.P. Act 7 of 2010, S. 9].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for the words, “or with fine”, *substitute* the words “or with fine which may extend to twenty-five thousand rupees”. [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

WEST BENGAL.—In its application to the State of West Bengal, in Section 63, for the words “which may extend to two years or with fine, or with both”, the words “which shall not be less than three months but which may extend to three years and also with fine which shall not be less than five hundred rupees but which may extend to five thousand rupees” shall be *substituted*. [Vide W.B. Act 22 of 1988, S. 18].

64. Power to arrest without warrant.—(1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

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(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release or bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of Section 30.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, in Section 64, in sub-section (1), for the words, “Any Forest Officer or Police Officer,” the words, “Any Forest Officer, Police Officer or Revenue Officer” shall be *substituted*. [Vide Guj. Act 15 of 1960, S. 6(h)].

MAHARASHTRA.—In its application to the State of Maharashtra, in Section 64, in sub-section (1), for the words “Any Forest Officer or Police Officer”, the words “Any Forest Officer, Police Officer or Revenue Officer” shall be *substituted*. [Vide Mah. Act 6 of 1961, S. 10].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, after Section 64, *insert* the following section, namely:—

“64-A. *Offences non-bailable.*—Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act other than those compoundable under Section 68 shall be non-bailable.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

CASE LAW ▶ Offence under Section 33(1)(a).—Offence under Section 33(1)(a) is cognizable. Private persons also can arrest person committing offence under this section. Offence is bailable. Person arrested has no right of private defence, *Abdul Aziz v. Union Territory*, (1963) 1 Cri LJ 558 (Tri).

▶ **Forest Officer apprehending accused without having powers.**—Where the Forest Officer apprehended the accused without having necessary power and if there was any scuffle during the course of which the officer sustained injuries, the accused cannot be said to have committed offence under Section 353, IPC, *State v. Sashimohan*, 1977 Cri LJ 1663.

65. Power to release on a bond a person arrested.—Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of Section 64, may release such person on his executing bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police station.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, in Section 65, for the words “a Ranger”, the words “a Ranger, any Police Officer of a rank not inferior to that of a sub-Inspector or any Revenue Officer of a rank not inferior to that of a Mahalkari” shall be *substituted*. [Vide Guj. Act 15 of 1960, S. 6(i)].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 65, for the words “a Ranger”, the words “a Ranger, any Police Officer of a rank not inferior to that of Sub-Inspector or any Revenue Officer of a rank not inferior to that of Mahalkari or Tehsildar” shall be *substituted*. [Vide Mah. Act 6 of 1961, S. 11].

(2) In Section 65, for the words “may release such person” the words, figures and letter “may, subject to and without prejudice to the provisions of Section 65-A, release such person” shall be substituted. [Vide Mah. Act 7 of 1985, S. 18 (w.e.f. 1-6-1985)].

(3) After Section 65, the following section shall be inserted namely:

“65-A. *Certain offences to be non-bailable.*—Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973,—

(a) The offences under sections or clauses of sections mentioned in clause (b) shall be non-bailable.

(b) The sections and clauses of sections of this Act referred to in clause (a) are the following, namely:

Section 26, clauses (a), (b), (f), (g), (h) and (i) of sub-section (1).

Section 33, clauses (a), (b), (c), (d), (f) and (h) of sub-section (1).

Section 42.

Section 63.

(c) No person accused of any offence referred to in clause (b), shall, if in custody, be released on bail or on his own bond unless,—

(i) the prosecution has been given an opportunity to oppose the application for such release, and

(ii) where the prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.” [Vide Mah. Act 7 of 1985, S. 19].

(4) In its application to the State of Maharashtra, in Section 65-A of the principal Act, in clause (b), for the words, figures, brackets and letters “Section 26, clauses (a), (b), (f), (g), (h) and (i) of sub-section (1)”, the words, figures, brackets and letters “Section 26, clauses (a), (b), (d), (f), (g), (h) and (i) of sub-section (1) and sub-section (4)” shall be substituted. [Vide Maharashtra Act 21 of 2015, S. 15 (w.e.f. the date to be notified)]

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, after Section 65, insert the following sections, namely:—

“65-A. *Requisition for police assistance.*—Any forest officer may requisition the services of any police officer to assist him for all or any of the purposes specified in Sections 52, 63 and 64 and it shall be the duty of every such officer to comply with such requisition.

65-B. *Police officers bound to seek technical clearance from Authorized Officer.*—Any police officer seizing any property under the provisions of this Act or rules framed there under shall be bound to seek technical clearance of the authorized officer to lodge a complaint to the magistrate under Section 52 of this Act.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, after Section 65 the following section shall be inserted, namely:—

“65-A. *Certain offences to be non-bailable.*—(1) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 any offence punishable under Section 26, or Section 33 or Section 42 or Section 63 shall be non-bailable.

(2) No person accused of any offence as aforesaid shall, if in custody, be released on application for being released on bail or on his own bond unless—

(a) the prosecution has been given an opportunity to oppose the application for such release, and

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- (b) where the prosecution opposes the application as aforesaid the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.”
[Vide U.P. Act 1 of 2001, S. 14 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, after Section 65, the following section shall be inserted, namely:—

“65-A. *Certain offences to be non-bailable.*—(1) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973, any offence punishable under Section 26 or Section 33 or Section 42 or Section 63 shall be non-bailable.

(2) No person accused of any offence as aforesaid shall, if in custody, be released on bail or on his own bond unless—

- (a) the prosecution has been given an opportunity to oppose the application for such release, and
(b) where the prosecution opposes the application as aforesaid, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences.”
[Vide Uttarakhand Act 10 of 2002, S. 14, dt. 17-7-2002].

WEST BENGAL.—After Section 65, the following section shall be inserted:—

“65-A. *Certain offences to be non-bailable.*—(1) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973, any offence punishable under—

- (a) clause (a) or clause (b) or clause (f) or clause (g) or clause (h) or clause (i) of Section 26, or
(b) clause (a) or clause (b) or clause (c) or clause (d) or clause (f) or clause (h) of sub-section (1) Section 33, or
(c) Section 42, or
(d) Section 63,

shall be non-bailable.

(2) No person accused of any offence as aforesaid shall, if in custody, be released on application for release on bail or on his own bond unless—

- (a) the prosecution has been given an opportunity to oppose the application for such release, and
(b) where the prosecution opposes the application as aforesaid, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence”.
[Vide W.B. Act 22 of 1988, S. 19].

SECTION 65-A.—See in State Amendments under S. 65, above.

66. Power to prevent commission of offence.—Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

STATE AMENDMENTS

BIHAR.—In its application to the State of Bihar, after Section 66, the following new section shall be inserted, namely:—

“66-A. *Eviction of encroachment from Government Forest Land.*—(1) Encroachment of Government Forest Land shall be cognizable and non-bailable offence.

(2) Any Forest Officer not below the rank of Divisional Forest Officer, if he has reason to believe that the encroachment of Government Forest Land has been done, may evict the encroachment and may use all the powers conferred on Magistrate under the Bihar Public Land Encroachment Act, 1956 (Bihar Act XV of 1956).” [Vide Bihar Act 9 of 1990, S. 7 (w.e.f. 10-9-1990)].

GUJARAT.—In its application to the State of Gujarat, in Section 66, for the words “Every Forest Officer and Police Officer” the words “Every Forest Officer, Police Officer and Revenue Officer” shall be substituted; [Vide Guj. Act 15 of 1960, S. 6(j)].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, the following new section shall be inserted, namely:—

“66-A. *Attempt or abetment of an offence.*—Any person who attempts to contravene or abets the contravention of any provisions of this Act or the rules made thereunder shall be deemed to have contravened such provisions or rules.” [Vide M.P. Act 7 of 2010, S. 10]

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 66, for the words “Every Forest Officer and Police Officer” the words “Every Forest Officer, Police Officer and Revenue Officer” shall be substituted. [Vide Mah. Act 6 of 1961, S. 12].

(2) In its application to the State of Maharashtra, after Section 66 of the principal Act, the following section shall be inserted, namely—

“66-A. *Punishment for abetment.*—Whoever abets any forest-offence shall, if the offence abetted is committed in consequence of abetment, be punished with the same punishment as is provided for such offence.” [Vide Maharashtra Act 21 of 2015, S. 16 (w.e.f. the date to be notified)]

PUNJAB.—In its application to the State of Punjab, after Section 66 the following sections shall be inserted, namely:—

“66-A. *Eviction of encroachment from State Government forest lands.*—Any Forest Officer, not below the rank of the Divisional Forest Officer, if he has reason to believe that encroachment of the State Government forest land has been made, may evict the encroachment and may use all powers conferred on an Executive Magistrate under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 [Vide Punjab Act No. 31 of 1973].

66-B. *Punishment for abetment.*—(1) Whoever abets any offence punishable under this Act, shall, if the offence abetted is committed in consequence of such abetment, be punished with the same punishment as is provided under this Act for the commission of such offence.

(2) Whoever abets any offence punishable under this Act, shall, if the offence abetted is not committed in consequence of such abetment, be punished with half of the punishment provided for the commission of such offence under this Act.” [Vide Punjab Act 21 of 2004, S. 9].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, after Section 66, the following section shall be inserted, namely:—

“66-A. *Penalty for not preventing commission of forest offence.*—Whoever, being a Forest Officer or Police Officer, bound under Section 66 to prevent commission of any forest offence, intentionally or knowingly, neglects or omits to prevent or abets, the commission of such offence, shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.” [Vide U.P. Act 1 of 2001, S. 15 (w.e.f. 16-4-2001)].

WEST BENGAL.—In its application to the State of West Bengal, after Section 66, the following section shall be inserted:—

“66-A. *Punishment of abetment.*—(1) Whoever abets any offence punishable under this Act shall, if the offence abetted is committed in consequence of abetment, be punished with the same punishment as is provided for such offence.

(2) Whoever abets any offence under this Act shall, if the offence abetted is not committed in consequences of abetment, be punished with the same punishment as is provided for such offence, but such punishment shall extend up to the one-fourth of maximum punishment provided for such offence.” [Vide W.B. Act 22 of 1988, S. 20].

SECTIONS 66-A AND 66-B.—See in State Amendments under S. 66, above.

CASE LAW ▶ Nature and scope.—Section 66 of the Forest Act does not empower the officers or servants of the Forest Department to seal either the sawmill or the saw machine. Sealing which is covered by Section 52 of the Act, by necessary implication excludes the applicability or invoking the aid of Section 66 for justifying sealing. It is only such property which is liable to confiscation and in respect of which there is reason to believe that a forest offence has been committed, that such forest produce can be seized along with all the tools, articles or vehicles employed in committing the forest offence, *Kamleshkumar Harbanslal Chhabra v. State of M.P.*, 1985 MPLJ 72.

67. Power to try offences summarily.—The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government may try summarily, under the Code of Criminal Procedure, 1898, any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

STATE AMENDMENTS

BIHAR.—In its application to the State of Bihar, for Section 67, the following shall be *substituted*, namely:—

“67. Notwithstanding anything to the contrary contained either in the Criminal Procedure Code, 1973 or any other law for the time being in force the State Government may, by notification in the Official Gazette, constitute a special court with powers of first class Magistrate for the trial of all forest offences punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both, as the case may be, in accordance with the procedure prescribed for summary trials under Chapter XXI of the Criminal Procedure Code, 1973.” [*Vide Bihar Act 9 of 1990, S. 8 (w.e.f. 10-9-1990)*].

BOMBAY.—In its application to the State of Bombay, in Section 67, for the words “The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government” the words “any Magistrate of the first class specially empowered in this behalf by the State Government in consultation with the High Court,” shall be *substituted*. [*Vide Bombay Act 23 of 1951, S. 2 and Sch. (w.e.f. 3-2-1961)*].

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, for the words, brackets and figures “the Code of Criminal Procedure, 1898 (5 of 1898)” occurring in Section 67, the words, brackets and figures “the Code of Criminal Procedure, 1973 (2 of 1974)” may be *substituted*. [*Vide H.P. Act 15 of 1991, S. 12*].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, in Section 67 of the principal Act, for the words “not exceeding six months or fine not exceeding five hundred rupees”, the words “not exceeding one year or with fine not exceeding one thousand rupees” shall be *substituted*. [*Vide M.P. Act 9 of 1965, S. 13*].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 67,—

- (a) for the words and figures “the Code of Criminal Procedure, 1898” (5 of 1898) the words and figures “the Code of Criminal Procedure, 1973” (2 of 1974) shall be *substituted*;
- (b) for the words “not exceeding six months, or fine not exceeding five hundred rupees or both” the words “not exceeding one year, or fine not exceeding two thousand rupees, or both, and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial; but, notwithstanding anything contained in the said Code, in the case of conviction for any offence in a summary trial under this section, it shall be lawful for the Magistrate to pass sentence of imprisonment for any term for which such offence is punishable under this Act” shall be *substituted*. [*Vide Mah. Act 7 of 1985, S. 20*].

(2) In its application to the State of Maharashtra, in Section 67 of the principal Act, for the words “two thousand rupees” the words “five thousand rupees” shall be *substituted*. [Vide Maharashtra Act 21 of 2015, S. 17 (w.e.f. the date to be notified)]

PUNJAB.—In its application to the State of Punjab, for Section 67, the following section shall be *substituted* namely:—

“67. *Power to try offences summarily.*—The Chief Judicial Magistrate or any other Judicial Magistrate of the First Class, specially empowered in this behalf by the High Court, may try summarily, under the Code of Criminal Procedure, 1973, any forest offence punishable with imprisonment for a term, not exceeding two years or with fine, not exceeding five thousand rupees or with both and the provisions of Sections 262 to 265 of the said Code shall apply to such trial; but notwithstanding anything contained in the said Code, in the case of conviction for any offence in summary trial under this section, the Magistrate may pass sentence of imprisonment for any term for which such offence is punishable under this Act.”. [Vide Punjab Act 21 of 2004, S. 10].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for the words “not exceeding six months, or fine not exceeding five hundred rupees”, *substitute* the words “not exceeding two years or with fine not exceeding twenty-five thousand rupees”. [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

68. Power to compound offences.—(1) The State Government may, by notification in the Official Gazette, empower a Forest officer—

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and
- (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property if, any seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.

STATE AMENDMENTS

BIHAR.—In its application to the State of Bihar, for Section 68, the following shall be *substituted*, namely:—

“68. (1) The State Government may, by notification in the Official Gazette, empower a forest officer:—

- (a) To accept from any person against whom a reasonable suspicion exists that he has committed any forest offence other than a offence specified in clauses (c) and (d) to Section 26, clauses (c) and (d) to Section 33 or Section 62 or Section 63, sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) When any property has been seized as liable for confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both as the case may be, to such officer, the suspended person, in custody, shall be discharged the property, if any, seized shall be released, and no further proceeding shall be taken against such person or property.

(3) Forest Officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of an Assistant Conservator of Forest." [Vide Bihar Act 9 of 1990, S. 9 (w.e.f. 10-9-1990)].

GUJARAT.—(1) In its application to the State of Gujarat, for Section 68, the following section shall be substituted, namely:—

“68. *Power to compound offences.*—(1) The State Government may, by notification in the Official Gazette, empower a Forest Officer—

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, payment of a sum of money or, at his direction, an undertaking in writing to pay a sum of money, by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on the payment of, or at his discretion, on acceptance of an undertaking in writing to pay, the value thereof as named by such officer.

(2) On the payment of, or on acceptance of an undertaking, in writing to pay, such sum of money, or such named value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings, other than those under Section 82 where necessary, shall be taken against such person or property.

(3) A Forest Officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted or agreed to be accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of five hundred rupees.” [Vide Guj. Act 15 of 1990, S. 6(k)].

(2) In Section 68, in sub-section (3),—

(1) the words “and is in receipt of a monthly salary amounting to at least one hundred rupees”, shall be *deleted*:

(2) for the words “five hundred rupees” the words “two thousand rupees” shall be *substituted*. [Vide Guj. Act 11 of 1976, S. 3].

(3) In Section 68, in sub-section (1), in clause (b), after the words “as liable to confiscation” the words, figure and letter “subject to Section 61-G” shall be *inserted*. [Vide Guj. Act 19 of 1983, S. 10 (w.e.f. 24-5-1983)].

MADHYA PRADESH.—(1) In its application to the State of Madhya Pradesh, for Section 68, the following section shall be substituted, namely—

“68. *Power to compound offences.*—(1) The State Government may, by notification in the Official Gazette, empower a Forest-Officer,—

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same at any time before an order of confiscation is passed by the appropriate authority, on payment of the value thereof as estimated by such officer. [S. 68]

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case be less than two times the value of the forest produce.

Provided that in case the forest produce in respect of which an offence has been committed is not the property of the Government or in case the value of the forest produce is less than one thousand rupees and, if the offender has committed the offence for the first time, the suspected person may be discharged and the property (other than the forest produce), if any, seized may be released on payment of the sum of ten thousand rupees or the value of the seized property, whichever is less; the seized forest produce may be released only if it is not the property of the Government or on the payment of the value thereof, as the case may be." [Vide M.P. Act 7 of 2010, S. 11]

MAHARASHTRA.—(1) In its application to the State of Maharashtra, for Section 68, the following section shall be *substituted*, namely:—

“68. *Power to compound offences.*—(1) Subject to the provisions of sub-section (3), the State Government may, by notification in the Official Gazette, empower a Forest Officer—

(a) to accept from any person about whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, payment of a sum of money or, at his discretion, an undertaking in writing to pay a sum of money, by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on the payment of, or at his discretion, on acceptance of an undertaking in writing to pay, the value thereof as named by such officer,

(2) On the payment of, or on acceptance of an undertaking in writing to pay, such sum of money, or such named value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings, other than those under Section 82 where necessary, shall be taken against such person or property,

(3) A Forest Officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted or agreed to be accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of five hundred rupees." [Vide Mah. Act 6 of 1961, S. 13]

(2) In its application to the State of Maharashtra, in Section 68 of the principal Act,—

(a) in sub-section (1),—

(1) in clause (a),—

(i) after the words “other than an offence specified in” the words, brackets and figures “sub-section (4) of Section 26 or” shall be *inserted*;

(ii) for the words “payment of a sum of money or, at his discretion, an undertaking in writing to pay a sum of money,” the words “payment of a sum of money” shall be *substituted*.

- (2) in clause (b), for the words "on payment of, or at his discretion, on acceptance of an undertaking in writing to pay," the words "on payment of" shall be *substituted*.
- (b) in sub-section (2), for the words "payment of, or on acceptance of an undertaking in writing to pay," the words "payment of," shall be *substituted*.
- (c) in sub-section (3), for the words "five hundred rupees" the words "five thousand rupees" shall be *substituted*. [Vide Maharashtra Act 21 of 2015, S. 18 (w.e.f. the date to be notified)]

PUNJAB.—(1) In its application to the State of Punjab, in sub-section (3) of Section 68, for the word "fifty", the words "five hundred" shall be *substituted*. [Vide Punjab Act 13 of 1962, S. 5]

(2) In Section 68, for sub-section (3), the following sub-section shall be *substituted*, namely:—

"(3) A Forest Officer, not below the rank of the Divisional Forest Officer, shall be empowered under this section. The sum of money accepted as compensation under clause (a) of sub-section (1) shall, in no case, exceed the sum of five thousand rupees.

Explanation.—For the purpose of compounding an offence under this section, it is clarified that illicitly felling of every tree shall be treated as a separate offence." [Vide Punjab Act 21 of 2004, S. 11].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for Section 68, *substitute* the following section, namely:—

"68. *Power to compound offences.*—(1) The Government may, by notification in the Official Gazette, empower any forest officer not below the rank of Assistant Conservator of Forests—

- (a) to accept from any person against whom a reasonable suspicion exists, that he has committed any forest offence involving damage not exceeding fifty thousand rupees, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence, which such person is suspected to have committed:

Provided that the sum of money accepted by way of compensation shall in no case be less than double the amount involved in the loss caused by such offence; and

- (b) when any property has been seized as liable to confiscation, release the same on payment of the value thereof, in addition to the compensation referred to in clause (a) of this sub section, as estimated by such officer.

(2) On the payment of such compensation and such value, to such officer, the suspected person if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property." [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—(1) In its application to the State of Uttar Pradesh, in sub-section (3) of Section 68, for the word "fifty" the "five hundred" shall be *substituted*. [Vide U.P. Act 21 of 1960, S. 8].

(2) In Section 68, in sub-section (3),—

- (i) the word "and is in receipt of a monthly salary amounting to at least one hundred rupees" shall be *omitted*;
- (ii) for the words "five hundred rupees" the words "five thousand rupees for the first offence and for second and subsequent offence of the same nature shall not be less than five thousand rupees or more than ten thousand rupees," shall be *substituted*. [Vide U.P. Act 1 of 2001, S. 16 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 68, in sub-section (3)—

- (i) the words "and is in receipt of a monthly salary amounting to at least one hundred rupees" shall be *omitted*;

- (ii) for the words "fifty rupees" the words "five thousand rupees for the first offence and for second subsequent offence of the same nature shall not be less than five thousand rupees or more than ten thousand rupees" shall be *substituted*. [Vide Uttarakhand Act 10 of 2002, S. 15, dt. 17-7-2002].

WEST BENGAL.—(1) In its application to the State of West Bengal, in Section 68,—

- (a) in sub-section (1), in clause (b), for the words "the value thereof", the words "an amount equivalent to double the market value thereof" shall be *substituted*;
- (b) in sub-section (2), for the words "or such value", the words "or such amount" shall be *substituted*;
- (c) for sub-section (3), the following sub-section shall be *substituted*, namely:—

"(3) A Forest-officer shall not be empowered under this section unless he is Forest-officer of a rank not inferior to that of a Forester, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of one thousand and one hundred and fifty rupees." [Vide W.B. Act 14 of 1975, S. 3].

(2) In Section 68, after sub-section (3), the following sub-section shall be *inserted*:—

"(4) Notwithstanding anything contained in the foregoing provisions of this section, no forest-offence, other than a forest-offence under Section 62 or Section 63, shall be compounded by a Forest-Officer if the value of the forest produce seized exceeds five thousand rupees or if a cart or other vehicle has been used in committing the offence. [W.B. Act 22 of 1988, S. 21].

CASE LAW ▶ Undertaking dishonoured: Remedy.—If an undertaking is taken in exercise of powers under Section 68(1)(a) but is not honoured, no proceeding either civil or criminal in respect of the said offence. However the amount can be recovered under Section 82, *State v. Kisan Rupaji*, 1978 Cri LJ 1487 : 1978 Mah LJ 618.

▶ **VALUE.**—The word "value" in Section 68 is comprehensive enough to include the market value. Assessment of value made by a Forest Officer would not be invalid merely because it was not in consonance with the executive instructions, *Birsingh v. State*, 1957 Cri LJ 1147.

▶ **Permission by Range Officer.**—The Range Officer has neither authority nor is he competent under the law to permit any settlement in or upon any part of the reserved forest because under the Act, it is only the State Government which can grant any right in or over any part of the reserved forest, *U. Khasia v. Range Officer*, AIR 1958 Mani 31.

69. Presumption that forest-produce belongs to Government.—When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

UNION TERRITORY OF JAMMU AND KASHMIR.—(1) In its application to the Union Territory of Jammu and Kashmir, for the words, "contrary is proved", *substitute* the words "contrary is proved by the accused".

(2) After Section 69, *insert* the following section, namely:—

"69-A. *Double penalties for offences.*—The penalties which are double of those mentioned under the provisions of this Act or rules framed thereunder shall be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority or where the offender has been previously convicted of a like offence." [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

CASE LAW ▶ Claim petition.—When article seized, the person who accompanied the goods and was travelling in the truck was required to produce permit to show legitimacy of his possession, but he failed to do so the very action of the Department was on the hypothesis of the property belonging to the Government, in view of the statutory presumption. Hence, there was no need for making any separate claim or claims petition separately, *State of H.P. v. Dhanwant Singh*, (2004) 13 SCC 331 : 2005 SCC (Cri) 248 : AIR 2004 SC 1636 : 2004 Cri LJ 1431.

CHAPTER X

CATTLE-TRESPASS

70. Cattle-trespass Act, 1871, to apply.—Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damages to a public plantation within the meaning of Section 11 of the Cattle-trespass Act, 1871 (1 of 1871) and may be seized and impounded as such by any Forest officer or Police-officer.

CASE LAW ▶ Seizure.—Seizure of buffaloes in land not forming part of either protected forest or reserved forest is illegal, *Janardan Sahu v. Arakhit Sahu*, 1967 Cri LJ 1354.

71. Power to alter fines fixed under that Act.—The State Government may, by notification in the Official Gazette, direct that, in lieu of the fines fixed under Section 12 of the Cattle-trespass Act, 1871 (1 of 1871), there shall be levied for each head of cattle impounded under Section 70 of this Act such fines as it thinks fit, but not exceeding the following, that is to say:—

| | |
|---|------------------|
| For each elephant | ... ten rupees. |
| For each buffalo or camel | ... two rupees. |
| For each horse, mare-gelding, pony, colt, filly, mule bull, bullock, cow, or heifer | ... one rupee. |
| For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid | ... eight annas. |

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, in Section 71, for the words “eight annas” the words “fifty naye paise” shall be substituted; [Vide Guj. Act 15 of 1990, S. 6(1)].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, for Section 71, the following section shall be substituted, namely—

“71. *Power to alter fines fixed under that Act.*—The State Government may, by notification in the official Gazette, direct that, in lieu of the fines under Section 12 of the Cattle-trespass Act, 1871 (1 of 1871), there shall be levied for each head of cattle impounded under Section 70 of this Act, such fines as it thinks fit, but not exceeding the following, that is to say—

For each elephant

one thousand rupees

For each camel

two hundred and fifty rupees

| | |
|--|--------------------|
| For each buffalo | one hundred rupees |
| For each calf, ass, pig, ram, ewe, sheep, lamb, goat, kid or any other cattle. | fifty rupees: |

Provided that the cost of maintenance of such cattle during the period of impoundment shall be recoverable at the prevailing rates as fixed by the Divisional Forest Officer, in addition to the fine." [Vide M.P. Act 7 of 2010, S. 12]

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 71, for the words "eight annas", the words "fifty naya paise" shall be *substituted*. [Vide Mah. Act 6 of 1961, S. 14].

(2) In its application to the State of Maharashtra, in Section 71 of the principal Act,—

- (a) for the words "ten rupees" the words "Two hundred rupees" shall be *substituted*;
- (b) for the words "two rupees" the words "Two hundred rupees" shall be *substituted*;
- (c) for the words "one rupee" the words "Two hundred rupees" shall be *substituted*;
- (d) for the words "fifty naye paise" the words "One hundred rupees" shall be *substituted*. [Vide Maharashtra Act 21 of 2015, S. 19 (w.e.f. the date to be notified)]

PUNJAB.—In its application to the State of Punjab, in Section 71, for the words "ten rupees", "two rupees", "one rupee" and "eight annas", the words "two hundred and fifty rupees", "twenty five rupees", "ten rupees" and "five rupees" shall, respectively, be *substituted*. [Vide Punjab Act 21 of 2004, S. 12].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for the words "ten rupees", "two rupees", "one rupee" and "eight annas", *substitute* the words "one thousand rupees", "two hundred and fifty rupees", "one hundred rupees" and "fifty rupees" respectively. [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

WEST BENGAL.—In its application to the State of West Bengal, in Section 71,—

- (a) for the word "ten rupees", the words "fifty rupees" shall be *substituted*;
- (b) for the words "two rupees", the words "five rupees" shall be *substituted*;
- (c) for the words "one rupee", the words "three rupees" shall be *substituted*;
- (d) for the words "eight annas", the words "one rupee" shall be *substituted*. [Vide W.B. Act 14 of 1975, S. 4].

CHAPTER XI OF FOREST-OFFICERS

72. State Government may invest Forest-officers with certain powers.—(1) The State Government may invest any Forest-officer with all or of the following powers, that is to say:—

- (a) power to enter upon any land and to survey, demarcate and mark a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
- (c) power to issue a search-warrant under the Code of Criminal Procedure, 1898 (5 of 1898); and
- (d) power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.

S. 74]

(2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

STATE AMENDMENTS

MAHARASHTRA.—In its application to the State of Maharashtra, in Section 72, sub-section (1), in clause (c), for the words and figures “the Code of Criminal Procedure, 1898” (5 of 1898) the words and figures “the Code of Criminal Procedure, 1973” (2 of 1974) shall be *substituted*. [Vide Mah. Act 7 of 1985, S. 21].

PUNJAB.—In its application to the State of Punjab, in Section 72, in sub-section (1), for clause (a), the following clause shall be *substituted*, namely:—

“(a) Power to enter upon, along with the persons assisting such forest officer in the performance of his duties, any land and to survey, demarcate and make a map of such land.”. [Vide Punjab Act 21 of 2004, S. 13].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for Section 72, *substitute* the following section, namely:

“72. *Government of Union territory of Jammu and Kashmir may invest Forest officers with certain powers.*—(1) The forest officers shall have the following powers, namely:—

- (a) power to enter upon any land and to survey, demarcate and make a map of the same.
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
- (c) power to hold an inquiry into forest offences and in the course of such inquiry, to receive and record evidence; and
- (d) power to issue search warrants under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that powers under clause (b) and (c) shall not be exercised by a forest officer below the rank of a Range Officer:

Provided further that the powers under clause (d) shall not be exercised by a forest officer below the rank of a Divisional Forest Officer.

(2) Any evidence recorded under clause (c) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, if that it has been taken in the presence of the accused person.

(3) Any forest officer not below the rank of a Range Officer may delegate his powers of inquiry to an officer of the rank of Forester if the offence is compoundable under Section 68 of this Act.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

73. Forest officers deemed public servants.—All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

74. Indemnity for acts done in good faith.—No suit shall lie against any public servant for anything done by him in good faith under this Act.

STATE AMENDMENTS

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, for Section 74, the following section shall be *substituted*, namely:—

“74. *Indemnity for acts done in good faith.*—No suit, prosecution or other legal proceeding shall lie against any public servant for anything done in good faith or omitted to be done likewise, under this Act or the rules or orders made thereunder.”. [Vide M.P. Act 25 of 1983, S. 8].

PUNJAB.—In its application to the State of Punjab, for Section 74 the following section shall be substituted, namely:—

“74. *Indemnity for acts done in good faith.*—(1) No suit or prosecution or any other legal proceedings, shall lie against any public servant for anything done by him in good faith under this Act.

(2) No court shall take cognizance of any offence alleged to have been committed by a forest officer while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the State Government.” [Vide Punjab Act 21 of 2004, S. 14].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for Section 74, substitute the following section, namely:—

“74. *Indemnity for acts done in good faith.*—(1) No suit, prosecution or other legal proceedings shall lie against any public servant for anything done in good faith or omitted to be done likewise, under this Act or the rules or orders made thereunder.

(2) No Court shall take cognizance of any offence alleged to have been committed by a forest officer while acting or purporting to act in the discharge of his official duty except with the previous sanction of the Government of Union territory of Jammu and Kashmir.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, for Section 74, the following section shall be substituted, namely:—

“74. *Indemnity for acts done in good faith.*—No suit, prosecution or other legal proceeding shall lie against the State Government or any public servant for anything which is in good faith done or intended to be done in pursuance of this Act or rules or orders made thereunder.” [Vide U.P. Act 1 of 2001, S. 17 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, for Section 74, the following section shall be substituted, namely:—

“74. *Indemnity for acts done in good faith.*—No suit, prosecution or other legal proceeding shall lie against the State Government or any public servant for anything done by him under this Act or rules or orders made thereunder.” [Vide Uttarakhand Act 10 of 2002, S. 16, dt. 17-7-2002].

WEST BENGAL.—In its application to the State of West Bengal, for Section 74, the following section shall be substituted:—

“74. *Indemnity for acts done in good faith.*—(1) No suit or criminal prosecution or other legal proceeding shall lie against any public servant for anything done by him in good faith under this Act.

(2) No Court shall take cognizance of any offence alleged to have been committed by a Forest-officer while acting or purporting to act in the discharge of his official duty except with previous sanction of the State Government.” [Vide W.B. Act 22 of 1988, S. 22].

CASE LAW ▶ Applicability.—Provisions of Section 74 (as applicable to State of M.P.) are applicable when the cognizance is to be taken by the court. It has no application in case where the cognizance is to be taken by the police, *Yogesh v. State of M.P.*, (2013) 1 MP LJ 498 (MP).

75. Forest-officers not to trade.—Except with the permission in writing of the State Government, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or

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in any contract for working any forest, whether in or outside ³⁵[the territories to which this Act extends].

CHAPTER XII SUBSIDIARY RULES

76. Additional powers to make rules.—The State Government may make rules.—

- (a) to prescribe and limit the powers and duties of any Forest-officer under this Act;
- (b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;
- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and
- (d) generally, to carry out the provisions of this Act.

STATE AMENDMENTS

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, in Section 76, after clause (c), the following clauses shall be *inserted*, namely—

“(ca) to prescribe the form of a security to be furnished for release of the seized property under Section 53 of this Act;

(cb) to prescribe the period and manner of appeal against an order of the Forest Officer, to the State Government or to such officer as may be authorised by the State Government in this behalf under sub-section (3) of Section 80-A of this Act.” [Vide M.P. Act 7 of 2010, S. 13]

PUNJAB.—In its application to the State of Punjab, in clause (c) of Section 76, between the word “timber” and the word “belonging” the words “or other forest produce” shall be *inserted*, and the words “but grown on lands belonging to or in the occupation of private persons” shall be *omitted*. [Vide Punjab Act 22 of 1954, S. 2].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, after Section 76, *insert* the following section, namely:—

“76-A. *Power to regulate manufacture and preparation of articles based on forest produce.*
—(1) The Government of Union territory of Jammu and Kashmir may make rules,—

(a) to provide for the establishment, and regulation by licence, permit or otherwise (and the payment of fees thereof), of saw mills, timber depots, firewood depots and other units including the factories or industries engaged in the consumption of forest produce or manufacture or preparation of the following articles:—

- (i) katha (catechu) or kutch out of khairwood;
- (ii) rosin, turpentine, other products out of resin, and wood oil;
- (iii) plywood, veneer and wood-based products;
- (iv) match boxes and match splints;
- (v) boxes including packing cases made out of wood;
- (vi) joinery and furniture items made out of wood;
- (vii) charcoal, lime stone and gypsum;
- (viii) such other articles based on forest produce as the Government of Union territory of Jammu and Kashmir may, by notification in the Official Gazette, from time to time, specify;

35. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for “Part A States and Part C States”.

- (b) to provide for the regulation by licence, permit or otherwise, of procurement of raw material for the preparation of articles mentioned in clause (a), the payment and deposit of fees therefor and for due compliance of the condition thereof, the forfeiture of the fees so deposited or any part thereof for contravention of any such condition and adjudication of such forfeiture by such authority as the Government of Union territory of Jammu and Kashmir may, by notification, specify. [S. 77]

(2) The Government of Union territory of Jammu and Kashmir may provide that, as the contravention of any rules made under this section shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twenty five thousand rupees, or both." [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

CASE LAW ▶ Applicability of Rules made under the section.—Once the Act has been extended to an excluded area, or partiality excluded area, it necessarily follows that any rule or order made in the exercise of power conferred by the Act also come into operation in such area, *Tintus Kharia v. State*, 1952 Cri LJ 1349 : AIR 1952 Ori 258.

77. Penalties for breach of rules.—Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

STATE AMENDMENTS

MADHYA PRADESH.—(1) In its application to the State of Madhya Pradesh, in Section 77, for the words "extend to one month, or fine which may extend to five hundred rupees", the words "extend to six months, or with fine which may extend to one thousand rupees" shall be *substituted*. [Vide M.P. Act 9 of 1965, S. 15].

(2) In its application to the State of Madhya Pradesh, in Section 77, for the words "one thousand rupees", the words "fifteen thousand rupees" shall be *substituted*. [Vide M.P. Act 7 of 2010, S. 14]

PUNJAB.—In its application to the State of Punjab, in Section 77, for the words "one month, or fine which may extend to five hundred rupees, or both", the words "six months, or fine which may extend to two thousand rupees, or with both" shall be *substituted*. [Vide Punjab Act 21 of 2004, S. 15].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, for the words "extend to one month, or fine which may extend to five hundred rupees", *substitute* the words "extend to two years or with fine which may extend to twenty-five thousand rupees". [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Section 77, for the words "one month, or fine which may extend to five hundred rupees" the words "one year, or with fine which may extend to two thousand rupees" shall be *substituted*. [Vide U.P. Act 1 of 2001, S. 18 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 77, for the words "one month, or fine which may extend to five hundred rupees" the words "one year, or with fine which may extend to two thousand rupees" shall be *substituted*. [Vide Uttarakhand Act 10 of 2002, S. 17, dt. 17-7-2002].

78. Rules when to have force of law.—All rules made by the State Government under this Act shall be published in the Official Gazette, and shall

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thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, Section 78 shall be *renumbered* as sub-section (1) of that section and after the sub-section so renumbered, the following sub-section shall be *inserted*, namely:—

“(2) All rules made by the State Government under this Act shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to such modifications as the Legislature may make during the session in which they are so laid, or the session immediately following.” [Vide Guj. Act 15 of 1990, S. 6(m)].

MAHARASHTRA.—In its application to the State of Maharashtra, Section 78 shall be *renumbered* as sub-section (1) of that section and after the sub-section so renumbered, the following sub-section shall be *inserted*, namely:—

“(2) All rules made by the State Government under this Act shall be laid for not less than thirty days before each House of the State Legislature as soon as possible after they are made and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid, or the session immediately following and publish in the Official Gazette.” [Vide Mah. Act 6 of 1961, S. 15].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, for Section 78, the following shall be *substituted*, namely—

“78. *Further provisions regarding rules.*—(1) All rules under this Act shall be made by notification in the *Gazette*.

(2) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the State Legislature, while it is in session, for a total period of fourteen days which may be comprised in its one session or in two or more successive sessions and shall, unless some later date is appointed take effect from the date of their publication in the Gazette subject to such modifications or annulments as the two Houses of the Legislature may agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.” [Vide U.P. Act 23 of 1965, S. 15].

CHAPTER XIII

MISCELLANEOUS

79. Persons bound to assist Forest-officers and Police-officers.—(1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and every person who is employed by any such person in such forest, and

Every person in any village contiguous to such forest who is employed by the Government or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall forthwith take steps, whether so required by any Forest-officer or Police-officer or not,—

(a) to extinguish any forest fire in such forest of which he has knowledge or information;

(b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest,

and shall assist any Forest-officer or Police-officer demanding his aid—

(c) in preventing the commission in such forest of any forest-offence; and
(d) when there is reason to believe that any such offence has been committed in such forest in discovering and arresting the offender.

(2) Any person who, being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person) fails—

(a) to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information required by sub-section (1);
(b) to take steps as required by sub-section (1), to extinguish any forest fire in a reserved or protected forest;
(c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest; or
(d) to assist any Forest-officer or Police-officer demanding his aid in preventing the commission in such forest of any forest-offence, or, when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender,

shall be punishable with imprisonment for a term which extend to one month, or with fine which may extend to two hundred rupees, or with both.

STATE AMENDMENTS

BIHAR.—In its application to the State of Bihar, in sub-section (2) of Section 79 for the words “shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees or with both” the following words shall be *substituted*, namely:—

“shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.” [*Vide* Bihar Act 9 of 1990, S. 10 (w.e.f. 10-9-1990)].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, in sub-section (2) of Section 79 of the principal Act, for the words “two hundred rupees”, the words “five hundred extend to two hundred rupees”, the words “extend to six months, or with fine which may extend to one thousand rupees” shall be *substituted*. [*Vide* M.P. Act 9 of 1965, S. 16].

PUNJAB.—In its application to the State of Punjab, in Section 79, in sub-section (2), for the words “one month, or with fine which may extend to two hundred rupees, or with both”, the words “six months, or with fine which may extend to two thousand rupees, or with both” shall be *substituted*. [*Vide* Punjab Act 21 of 2004, S. 16].

UNION TERRITORY OF JAMMU AND KASHMIR.—(1) In its application to the Union Territory of Jammu and Kashmir, in sub-section (2), in the long line, for the words “shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees” *substitute* the words, “shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees”.

(2) After Section 79, *insert* the following sections, namely:—

”79-A. *Penalty for unauthorisedly taking possession of land constituted as reserved or protected forest.*—(1) Any person who unauthorisedly takes or remains in possession of any land in areas constituted as reserved forest or protected forest under Section 20 or Section 29 as the

case may be, may, without prejudice to any other action that may be taken against him under any other provision of this Act, be summarily ejected by order of a forest officer not below the rank of a Divisional Forest Officer and any crop which may be standing on such land or any building or other work which he may have constructed thereon, if not removed by him within such time as such forest officer may fix, shall be liable to forfeiture:

Provided that no order of ejection under this sub-section shall be passed unless the person proposed to be ejected is given a reasonable opportunity of showing cause why such an order should not be passed.

(2) Any property so forfeited shall be disposed of in such manner as the forest officer may direct and the cost of removal of any crop, building or other work and, of all works necessary to restore the land to its original condition shall be recoverable from such person in the manner provided in Section 82.

(3) Any person aggrieved by an order of the forest officer under sub-section (1) may, within sixty days from the date of such order prefer an appeal by petition in writing to the concerned Chief Conservator of Forests in person or through a duly authorized agent and such petition shall be accompanied by a certified copy of the order appealed against.

(4) On receipt of the appeal and after summoning the parties and perusing the record of the proceedings, the Chief Conservator of Forests shall fix a date and convenient place for hearing the appeal and shall give notice thereof to the parties, and shall hear the appeal accordingly.

(5) The order passed on the appeal by the Chief Conservator of Forests shall be final.

79-B. Summary action by Deputy Commissioner in fire cases.— If in any case under clauses (a) and (b) of sub-section (1) of Section 79, it appears to the Deputy Commissioner of the district within which the forest concerned is situated after local enquiry made in a summary and administrative manner, either by himself, or through a Tehsildar deputed by him for the purpose, that any such person or village or other community has neglected to give such information or to render such assistance as is required thereby, he may impose a fine not exceeding one thousand rupees on, as well as direct payment of compensation for damage to Government's property by, such person, village or other community or such individual member of such village or other community as may be determined in consultation with the Divisional Forest Officer and all fines imposed under this section shall be recoverable as arrears of land revenue.

79-C. Appeal against order of Deputy Commissioner.— An appeal against every order passed under Section 79-B may be made to the concerned Divisional Commissioner whose decision thereon shall be final." [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, in Section 79, in sub-section (2) for the words "one month, or with fine which may extend to two hundred rupees", the words "one year, or with fine which may extend to one thousand rupees," shall be *substituted*. [Vide U.P. Act 1 of 2001, S. 19 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, in Section 79, in sub-section (2) for the words "one month, or with fine which may extend to two hundred rupees", the words "one year, or with fine which may extend to one thousand rupees", shall be *substituted*. [Vide Uttarakhand Act 10 of 2002, S. 18, dt. 17-7-2002].

80. Management of forests the joint property of Government and other persons.—(1) If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the State Government may either—

- (a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same; or
- (b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

(2) When the State Government undertakes under clause (a) of sub-section (1) the management of any forest, waste-land or produce, it may, by notification in the Official Gazette, declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

CASE LAW ▶ Jointly interested.—A notification under this section can be validly issued only if the Government and any other person have joint proprietary or pecuniary interest in forest. The interest which the Government may have to convert a forest in its capacity as a sovereign is not an "interest" as contemplated in the section, *Maheswari Prasad Deo v. State*, AIR 1957 Ori. 219; *Biswambhar Singh v. Secy. to Government*, AIR 1952 Ori 28 : 18 Cut LT 336.

STATE AMENDMENTS

SECTION 80-A

BOMBAY.—In its application to the State of Bombay, after Section 80, the following section shall be inserted, namely:—

"80-A. Power of Government to apply provisions of this Act to certain lands of Government or local authority.—The State Government may, by notification in the Official Gazette, declare that any of the provisions of this Act shall apply to all or any lands on the banks of canals or the sides of roads which are the property of the State Government or a local authority and thereupon such provisions shall apply to such lands accordingly." [*Vide* Bombay Act 24 of 1955, S. 6].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, after Section 80, the following section shall be inserted, namely:—

"80-A. Penalty for unauthorisedly taking possession of land constituted as reserved or protected forest.—(1) Any person who unauthorisedly takes or remain in possession of any land in areas constituted as reserved or protected forest under Section 20 or Section 29, as the case may be, may, without prejudice to any other action that may be taken against him under any other provision of this Act, be summarily ejected by order of a Forest Officer not below the rank of a Divisional Forest Officer and any crop which may be standing on such land or any building or other work which he may have constructed thereon, if not removed by him within such time as such Forest Officer may fix shall be liable to forfeiture:

Provided that no order of ejection under this sub-section shall be passed unless the person proposed to be ejected is given a reasonable opportunity of showing cause why such an order should not be passed.

(2) Any property so forfeited shall be disposed of in such manner as the Forest Officer may direct and the cost of removal of any crop, building or other work and of all works necessary to restore the land to its original conditions shall be recoverable from such person in the manner provided in Section 82.

(3) Any person aggrieved by an order of the Forest Officer under sub-section (1) may, within such period and in such manner as may be prescribed, appeal against such order to the State Government or to such Officer as may be authorised by the State Government in this behalf and the order of the Forest Officer shall, subject to the decision in such appeal be final.

(4) The provisions of this section shall apply to such areas and on such dates as the State Government may, by notification, specify and different dates may be specified for different areas". [Vide M.P. Act 9 of 1965, S. 17].

81. Failure to perform service for which a share in produce of Government forest is enjoyed.—If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any part of the forest-produce of which the Government is entitled upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the State Government that such service is no longer so performed:

Provided that no such share be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the State Government.

82. Recovery of money due to Government.—All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

STATE AMENDMENTS

GUJARAT.—In its application to the State of Gujarat, in Section 82, after the words, "such produce," the words and figures "or on account of compensation or value of property, undertaken to be paid under Section 68" shall be *inserted*. [Vide Guj. Act 15 of 1990, S. 6(n)].

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, for Section 82, the following section shall be *substituted*, namely:—

"82. *Recovery of money due to Government.*—(1) All money payable to the State Government under this Act or under any rule made under this Act or on account of the price of timber, or other forest produce, or of expenses incurred in execution of this Act in respect of timber and other forest produce, or under any contract relating to timber or other forest produce including any sum recoverable thereunder for the breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest produce by auction or by invitation of tenders, issued by or under the authority of a Forest Officer and all compensation awarded to the State Government under this Act may, if not paid when due, be recovered under the law for the time being in force, as if it were an arrear of land revenue.

(2) For the removal of doubts, it is hereby declared that the provisions of sub-section (1) shall also apply to all cases to recovery which are either pending at the commencement of the Indian Forest (Himachal Pradesh Amendment) Act, 1968 or are initiated thereafter in respect of contracts entered into prior to such commencement, any judgement, decree or order of any court to the contrary notwithstanding." [Vide H.P. Act 25 of 1968, S. 5].

MADHYA PRADESH.—In its application to the State of Madhya Pradesh, for Section 82, the following section shall be *substituted*, namely:—

"82. *Recovery of money due to Government.*—All money other than fines, payable to the State Government under this Act, or under, any rules made thereunder or, on account of timber or other forests produce, or under any contract relating to timber and other forest produce including any sum recoverable thereunder for the breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest produce by auction or by

invitation of tenders, issued by or under the authority of a Forest Officer and all compensation awarded to the State Government under this Act may, if not paid when due, be recovered, under the law for the time being in force, as if it were an arrear of land revenue". [Vide M.P. Act 9 of 1965, S. 18].

MAHARASHTRA.—(1) In its application to the State of Maharashtra, in Section 82, after the words "such produce", the words and figures "or on account of compensation or value of property agreed to be paid under Section 68" shall be *inserted*. [Vide Mah. Act 6 of 1961, S. 16].

(2) In its application to the State of Maharashtra, in Section 82 of the principal Act, the words and figures "or on account of compensation or value of property agreed to be paid under Section 68" shall be *deleted*. [Vide Maharashtra Act 21 of 2015, S. 20 (w.e.f. the date to be notified)]

ORISSA.—In its application to the State of Orissa, for Section 82, the following section shall be *substituted*, namely:—

"82. All money, other than fines, payable to the State Government under this Act, or any rules made thereunder, or on account of timber or other forest produce, or of expenses incurred in the execution of this Act in respect of timber or other forest produce, or under any contract relating to timber and other forest produce including any sum recoverable thereunder for the breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest produce by auction or by invitation of tenders, issued by or under the authority of a Forest Officer and all compensation awarded to the State Government under this Act, may, if not paid when due, be recovered, under the law for the time being in force, as if it were an arrear of land-revenue." [Vide Orissa Act 25 of 1952, S. 2]

UNION TERRITORY OF JAMMU AND KASHMIR.—(1) In its application to the Union Territory of Jammu and Kashmir, for Section 82, *substitute* the following section, namely:—

"82. *Recovery of money due to Government.*— All money payable to the Government under this Act or under any rule made under this Act, or on account of the price of timber, or other forest produce, or of expenses incurred in execution of this Act in respect of timber and other forest produce, or under any contract relating to timber and other forest produce including any sum recoverable there under for breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest produce by auction or by invitation of tenders, issued by or under authority of a forest officer and all compensation awarded to the Government under this Act shall, if not paid when due, be recovered, under the law for the time being in force, as if it were an arrear of land revenue."

(2) After Section 82, *insert* the following sections, namely:—

"82-A. *Recovery of penalties due under a bond.*—When in respect of any forest lease any person binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servant and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof shall notwithstanding anything in Section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land revenue.

82-B. *Restoration of advantage or benefit or payment of compensation.*—Notwithstanding anything contained in this Act or in the Indian Contract Act, 1872, or in any other law for the time being in force,—

- (a) where any transaction or lease relating to sale of forest produce or extraction of timber from any forest is or is discovered to be void only on the ground that the transaction or lease is not in conformity with the provisions of Article 299 of the Constitution of India or any order or direction issued thereunder, any person who has received any advantage or has enjoyed any benefit by virtue of such transaction or lease shall be bound to restore it or to make compensation for it, to the person or party from whom he received it;

- (b) the extent of any advantage or benefit or the amount of compensation payable in lieu thereof, referred to in clause (a), shall be determined in accordance with the provisions of this Act and the value of the advantage or benefit or the amount of compensation so determined shall be recoverable as arrears of land revenue.

82-C. *Constitution of Authority.*—For the purposes of determining the extent of advantage or benefit or the value thereof or the amount of compensation under Section 82-B, the Government of Union territory of Jammu and Kashmir shall, by notification in the Official Gazette, constitute, as and when necessary, an Authority consisting of one or more members having such qualification and experience and on such terms and conditions as may be prescribed and where the Authority consists of more than one member, one of them may be appointed as Chairperson thereof.

82-D. *Powers of the Authority.*—(1) The Authority shall, for purposes of holding inquiry for determining the extent of advantage or benefit or value thereof or the amount of compensation, as the case may be, under Section 82-B, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person or witness and examining him on oath or solemn affirmation;
- (b) requiring the discovery or production of any document relating to the subject matter of inquiry;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof relating to the subject matter of inquiry from any court or office; and
- (e) issuing commissions for examination of witnesses, documents or other books of accounts relating to the subject matter of inquiry.

(2) The Authority shall also have power to issue a commission to such person as it considers fit for local investigation which may be requisite or proper for the purpose of elucidating any matter which is the subject matter of inquiry or of ascertaining the market value of any property.

(3) The person directed to execute a commission for any purpose under this section shall have all the powers of a commissioner appointed by a Civil Court in pursuance of the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(4) The Authority shall have the power to pass such orders as it thinks fit for the seizure, attachment, management, preservation, interim custody or sale of any forest produce or timber (wherever it may be in the State) which may be the subject matter of proceedings before it including the appointment of a receiver for any of the aforesaid purposes.

82-E. *Restriction on alienation.*—(1) Notwithstanding anything contained in any law for the time being in force,—

- (a) where at any stage of the inquiry, the Authority is satisfied by affidavit or otherwise that a person liable to restore any advantage or benefit or to pay compensation in lieu thereof under any transaction or lease referred to in Section 82-B, is likely to alienate his movable or immovable property with intent to evade payment or to defeat the recovery, of the advantage or benefit or the value thereof or the amount of compensation, that may be determined by him, it may by order in writing direct that such person shall not alienate his movable and immovable property or such portion thereof, as it may specify in the order, during the pendency of the inquiry;
- (b) any alienation of property made in contravention of any order or direction issued under clause (a) shall be void, and no transferee of such property shall be deemed to have acquired any right, title or interest therein.

Explanation.—For the purposes of this section “alienation” includes mortgage, sale, gift, bequest, benami transaction, family settlement or any other mode of transfer of any right, title or interest in the property.

(2) For removal of doubts it is hereby declared that restrictions imposed under this section on the rights conferred by clause (1) of Article 19 of the Constitution of India shall be deemed to be reasonable restrictions.

82-F. *Procedure to be followed by the Authority.*—(1) The Authority shall, subject to any rules made by the Government of Union territory of Jammu and Kashmir in this behalf, have power to regulate its own procedure in all matters arising out of or connected with the discharge of its functions, in consonance with the principles of natural justice.

(2) The parties shall have a right of being represented by counsel.

82-G. *Appeal.*—(1) Any person aggrieved by a final order of the Authority, determining the extent of advantage or benefit or value thereof or the amount of compensation under Section 82-B, may, within thirty days of the date of the order, file an appeal against such order before the High Court and every such appeal shall be heard by a Division Bench of the High Court.

(2) No other order of the Authority shall be appealable.

(3) The order of the Authority shall, subject to the decision of the High Court under sub-section (1) in appeal, be final and shall be deemed to be a certificate within the meaning of Section 90 of the Jammu and Kashmir Land Revenue Act, 1996.

(4) No further appeal shall lie against the decision of the High Court.

82-H. *Exclusion of jurisdiction of Civil Court.*—No Civil Court shall have jurisdiction to entertain any suit or other proceeding in respect of any matter which the Authority has taken cognizance of under Section 82-B.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, for Section 82, the following section shall be *substituted*, namely:—

“82. *Recovery of money due to State Government.*—All money, other than fines, payable to the State Government under this Act or under any rule made thereunder or on account of the price of any forest produce or any agricultural crop grown on land owned by the State Government in a reserved or protected forest or under any contract relating to forest produce or said agricultural crop, including any scum recoverable thereunder for breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of such agricultural crop or other forest produce by auction or by invitation of tenders issued by or under the authority of a Forest Officer and all compensation awarded to the State Government under this Act, may, if not paid when due, be recovered, under the law for the time being in force, as if it were an arrear of land revenue.” [Vide U.P. Act 1 of 2001, S. 20 (w.e.f. 16-4-2001)].

UTTARAKHAND.—In its application to the State of Uttarakhand, for Section 82, the following section shall be *substituted*, namely:—

“82. *Recovery of money due to State Government.*—All money, other than fines, payable to the State Government under this Act or under any rule made thereunder or on account of the price of any forest produce or any agricultural crop grown on land owned by the State Government in a reserved or protected forest or under any contract relating to forest produce or said agricultural crop, including any sum recoverable thereunder for breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of such agricultural crop or other forest produce by auction or by invitation of tenders issued by or under the authority of a Forest Officer and all compensation awarded to the State Government under this Act, may, if not paid

when due, be recovered, under the law for the time being in force, as if it were an arrear of land revenue." [Vide Uttarakhand Act 10 of 2002, S. 19, dt. 17-7-2002].

CASE LAW ▶ Sections 82 and 83 not mutually exclusive.—Sections 82 and 83 are not mutually exclusive. Two modes of recovery of forest dues are supplementary to each other and can be adopted simultaneously, *Virendra Kumar v. State*, AIR 1980 All 100.

The fact that the Government has taken possession of the goods under Section 83 cannot prevent it from recovering the amount as arrears of land revenue, *Mohd. Yakub v. State*, AIR 1980 All 213.

▶ **Deficit arising on resale.**—Where the sale in petitioner's favour is cancelled, the deficit on resale cannot be recovered under Section 82, *Virendra Kumar v. State*, AIR 1980 All 100; *State of U.P. v. Deewan Chand*, 1973 All LJ 309 : 1973 AWR 331.

What was claimed by the state was merely damages for the loss occasioned by breach of contract therefore not recoverable as arrear of land revenue, *Dalmet v. State*, AIR 1965 Mvs 109; *State v. Nagarmal*, AIR 1963 MP 205 : ILR 1962 MP 555; *K.P. Chowdhry v. State*, AIR 1962 MP 102.

The word 'price' will not cover damages, *Bala Dat v. Union of India*, AIR 1960 HP 30.

The deficit arising on resale can be recovered only as damages for breach of conditions of auction-sale, *Hukumchand v. State*, 1959 MPLJ (Notes) 110.

Where the amount of forest-produce was payable in three instalments but the bidder paid only one instalment the remaining two instalments can be recovered as arrears of land revenue, *Saha v. State*, AIR 1973 Pat 98 : 1973 BLJR 313 : ILR (1973) 52 Pat 297.

▶ **Price.**—What can be recovered as an arrear of land revenue is the price. The remedy provided by Section 82 cannot be availed for recovery of damages. The word 'price' would not include damages, *Virendra Kumar v. State*, AIR 1980 All 100.

But where the seller without reselling the property, claims recovery of unpaid money the recovery cannot be categorized as damages, *Virendra Kumar v. State*, AIR 1980 All 100.

Where the indentures that had been executed were headed "Deed of contract for the sale and purchase of forest-produce" and thereafter the entire tenor of the documents evidenced clearly that the disposals were by way of sale it was held that the amount that fell due were on account of price of forest-produce, *Mulamchand Ratilal v. State of M.P.*, AIR 1960 MP 152 : 1960 MPLJ 195 : 1960 Jab LJ 321.

Recovery of amount as forest dues over and above bid amount as land revenue is illegal, *N.K. Doonganji v. Collector*, AIR 1962 MP 139.

▶ **Lease granted for cultivation.**—Section does not apply to dues arising out of lease granted for cultivation of land and not for taking any forest-produce from the forest. Condition in the agreement cannot enlarge the scope of 82 nor can any jurisdiction be conferred on Collector to recover the dues as arrears of land revenue, *Deewan Chand v. State of U.P.*, AIR 1971 All 200 : 1970 All LJ 528 : 1970 All WR 580 (HC).

▶ **Sales tax.**—Sales tax is recoverable by the Forest Officer under Section 63-A of Sale of Goods Act as part of the price of forest-produce sold by them and Section 82 entitles them to recover this sale price as an arrear of land revenue, *Orient Paper Mills Ltd. v. State*, 1971 Tax LR 1249 : 28 STC 532.

▶ **Fine under Section 26.**—The realisation of fines imposed under Section 26 of the Act is not an amount due to the Government, *Tehsildar v. Jodh Singh*, 1963 All LJ 578 : ILR (1963) 2 All 283.

If Forest Officer obtaining written undertaking to pay but is not paying then he cannot be prosecuted and only remedy is recovery under Section 82, *State of Maharashtra v. Kisan Ghatal*, 1978 Mah LJ 618.

83. Lien on forest-produce for such money.—(1) When any such money is payable for or in respect of any forest-produce, the amount thereof shall deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government.

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, after Section 83, insert the following section, namely:—

“83-A. *Restriction on alienation.*—(1) Notwithstanding anything contained in the Transfer of Property Act 1882, or in any other law for the time being in force, no property offered by a forest lessee or by any other person on behalf of a forest lessee, as security for payment of royalty, interest, compensation, penalty or any other amount chargeable from the forest lessee, under any lease deed, bond or instrument shall be alienated without the previous permission of the Government of Union Territory of Jammu and Kashmir, till such time as the Chief Conservator of Forests certifies that such forest lessee has duly performed all the obligations devolving upon him under such lease deed, bond or instrument.

(2) Any alienation of property made in contravention of sub-section (1) shall be void, and no transferee of such property shall be deemed to have acquired any right, title or interest therein.

(3) Any amount of royalty, interest, compensation or penalty or any other sum falling due from a forest lessee under any lease deed, bond or instrument shall be recoverable as arrears of land revenue in accordance with the law for the time being in force, from the property offered by him or on his behalf as security and from any other movable or immovable property owned by the forest lessee.

Explanation.— For the purposes of this section,

- (a) “alienation” includes sale, gift, exchange, bequest, mortgage, benami transaction, family settlement or any other mode of transfer of any right, title or interest therein or creation of any encumbrance thereon;
- (b) the expression “forest lessee” shall be construed to mean a person in whose favour a right to convert and remove forest produce from any forest has been granted under any lease deed, bond or instrument.

(4) For removal of doubts it is hereby declared that restriction imposed under this section on the rights conferred by clause (1) of Article 19 of the Constitution of India shall be deemed to be reasonable restrictions.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

CASE LAW ▶ Scope.—Where payment of instalment was the essence of the contract and the person concerned defaulted in paying an instalment the Forest Department and its servants could stop the working of the contract, *Jugal Kishore v. State*, AIR 1979 MP 89.

But the department was not bound to re-sell the contract, *State of M.P. v. Bootasingh*, AIR 1972 MP 116.

Security of the State under Section 83, to prevent removal of trees and right to sell them for non payment of price coupled with charge on goods was lost when the state permitted the purchaser to remove the trees even when he had not paid full instalments of consideration. Therefore, the surety stood discharged of his liability to the extent of the security lost, *State of M.P. v. Kaluram*, AIR 1967 SC 1105.

Where money due was in respect of past transactions and could have been realized only under Section 82 read with Revenue Recovery Act, 1890, the Forest Officer had no power to sell the stock of wood under Section 83, *State v. Raghubir Sahai*, (1972) AWR 584 : AIR 1972 All 555.

► **'Such'.**—The word "such" in Section 83 is a word of relation used to refer to the antecedent noun i.e., the price dealt with in Section 82, *Virendra Kumar v. State*, AIR 1980 All 100.

► **Section not supplementary to Section 82.**—Section 83 is supplementary to Section 82. They do not overlap, *Mohd. Yakub v. State of U.P.*, AIR 1980 All 213.

Section 82 is not subject to Section 83, *Virendra Kumar v. State*, AIR 1980 All 100.

► **Forest Control Rules, Rule 8.**—Right of Government under Rule 8 of Forest Contract Rules to stop removal of forest-produce sold is created by Section 83 and not in pursuance of any terms contract between the purchaser and the Government, *Badri Pd. v. State of M.P.*, AIR 1966 SC 58.

► **Special statute.**—When Parliament provides a special statute to cover a given situation, there is an obligation on the State while entering into contracts with citizens in regard to matters so covered, to follow the special procedure and obtain the protection which the law intends to confer in regard to such transactions instead of allowing its activities to run in a different direction, *Jogendra Lal Saha v. State of Bihar*, 1991 Supp (2) SCC 654.

84. Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.—Whenever it appears to the State Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of Section 4 of the Land Acquisition Act, 1894 (1 of 1894).

STATE AMENDMENTS

SECTION 84-A

HIMACHAL PRADESH.—In its application to the State of Himachal Pradesh, after Section 84, the following section shall be inserted, namely:—

"84-A. *Validity of settlements etc. of covenanting States.*—For the removal of doubts, it is hereby declared that every settlement or arrangement made before the 20th August, 1948, under the authority of the Government of any covenanting State forming part of the territories referred to in sub-section (2-A) of Section 1, with respect to any claims or rights of any persons admitted by the Government of that State to be in existence in any of the forests or waste lands which were the property of that Government or over which that Government had proprietary rights or to the whole or part of the forest produce of which that Government was entitled, shall be deemed to be a settlement of claims and rights made under this Act and all such claims and rights shall be deemed to be claims and rights duly inquired into and admitted for the purposes of this Act and shall be deemed always to have been so inquired and admitted for the purposes of the Patiala Forest Act, 1999 B.K., and it shall not be, and shall be deemed never to have been, necessary to determine the rights of persons in accordance with Chapters II and IV, as the case may be, for declaring any forest or waste land to be a reserved or protected forest or a first or a second class forest." [Vide H.P. Act 25 of 1968, S. 6].

PUNJAB.—In its application to the State of Punjab, after Section 84, the following section shall be *inserted*, namely:—

“84-A. *Validity of settlements etc. of covenanting States.*—For the removal of doubts it is hereby declared that every settlement or arrangement made before the 20th August, 1948 under the authority of the Government of any Covenanting State forming part of the territories referred to in sub-section (2-A) of Section 1, with respect to any claims or rights of any persons admitted by the Government of that State to be in existence in any of the forest or waste lands which were the property of that Government or over which that Government has proprietary rights or to the whole or part of the forest produce of which that Government was entitled, shall be deemed to be as a settlement of claims and rights made under this Act and all such claims and rights shall be deemed to be claims and rights duly inquired into and admitted for the purposes of this Act and shall be deemed always to have been so inquired and admitted for the purposes of the Patiala Forest Act, 1999 Bk. and it shall not be, and shall be deemed never to have been, necessary to determine the rights of persons in accordance with Chapters II and IV, as the case may be, for declaring any forest or waste lands to be a reserved or protected forest or a first or second class forest.” [Vide Punjab Act 13 of 1962, S. 6].

UNION TERRITORY OF JAMMU AND KASHMIR.—In its application to the Union Territory of Jammu and Kashmir, after Section 84, *insert* the following section, namely:—

“84-A. *Application of the Act to land.*—The Government may, by notification in the Official Gazette, declare that any of the provisions of this Act shall apply to any land which is the property of the Government of the Union territory of Jammu and Kashmir or the Central Government, and thereupon such provisions shall apply to such land accordingly.” [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

UNION TERRITORY OF LADAKH.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

WEST BENGAL.—In its application to the State of West Bengal, after Section 84, the following section shall be *inserted*:—

“84-A. *Application of the Act to land.*—The State Government may, by notification in the Official Gazette, declare that any of the provisions of this Act shall apply to any land which is the property of the State Government or the Central Government, and thereupon such provisions shall apply to such land accordingly.” [Vide W.B. Act 22 of 1988, S. 23].

85. Recovery of penalties due under bond.—When any person, in accordance with any provision of this Act, or in compliance with any rule made thereunder, binds himself by any bond or instrument to perform any duty or act or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the condition thereof may, notwithstanding anything in Section 74 of the Indian Contract Act, 1872 (9 of 1872), be recovered from him in case of such breach as if it were an arrear of land revenue.

STATE AMENDMENTS

BOMBAY.—(1) In its application to the State of Bombay, Section 85 shall be *renumbered* as sub-section (1) of that section, and after sub-section (1) so renumbered the following sub-section shall be *added*, namely:—

“(2) If any question arises—

- (a) whether there has been a breach of any of the conditions of such bond or instrument,
- (b) as to the sum to be paid for such breach,

(c) as to the person or persons liable to pay such sum,

the question shall be referred to and, after giving notice to the person concerned and after considering his objections (if any), be decided by an officer, not below the rank of a Divisional Forest Officer, authorized by the State Government in this behalf. The person aggrieved by the decision of such officer may, within a period of sixty days from the date of such decision, appeal to the State Government or such other appellate authority as the State Government may appoint in this behalf. The decision of such officer, subject to an appeal to the appellate authority, and the decision of the appellate authority on such appeal, shall be final." [Vide Bombay Act 10 of 1956, S. 2].

(2) In sub-section (2) of Section 85, for the words "Divisional Forest Officer" the words "Sub-Divisional Forest Officer" shall be substituted. [Vide Bombay Act 26 of 1957, S. 2].

³⁶[85-A. Saving for rights of Central Government.—Nothing in this Act shall authorise a Government of any State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned.]

86. Repeals.—[Repealed by Repealing and Amending Act, 1947 (2 of 1948), Section 2 and Schedule.]

SCHEDULE

Enactments Repealed

[Repealed by Repealing and Amending Act, 1947 (2 of 1948), Section 2 and Schedule.]

36. Subs. by the A.O. 1950, for the former Section 85-A which had been inserted by the A.O. 1937.