

**1. Short title and commencement.**—(1) This Act may be called the Kerala Contingency Fund (Amendment) Act, 1972.

(2) It shall be deemed to have come into force on the 28th day of August, 1972.

**2. Amendment of section 2.**—In sub-section (1) of section 2 of the Kerala Contingency Fund Act, 1957 (6 of 1957) (hereinafter referred to as the principal Act), for the words "one hundred and fifty lakhs of rupees", the words "three hundred lakhs of rupees" shall be substituted.

**3. Repeal and saving.**—(1) The Kerala Contingency Fund (Amendment) Ordinance, 1972 (8 of 1972), is hereby repealed.

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

## THE KERALA PRESERVATION OF PRIVATE FORESTS ACT, 1972

(Act 16 of 1972)

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## THE KERALA PRESERVATION OF PRIVATE FORESTS ACT, 1972 \*

(Act 16 of 1972)

**An Act to prevent the indiscriminate destruction of private forests and to regulate the customary and prescriptive rights therein**

**Preamble.**—WHEREAS the Kerala High Court has struck down the Kerala Private Forests (Vesting and Assignment) Act, 1971, as unconstitutional and void ;

AND WHEREAS appeals have been filed before the Supreme Court against the above decision of the Kerala High Court ;

AND WHEREAS some Original Petitions challenging the validity of the said Act are pending in the Supreme Court ;

AND WHEREAS pending decision of the Supreme Court in the appeals and Original Petitions referred

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to above, it is considered necessary to prevent the indiscriminate destruction of private forests and to regulate the customary and prescriptive rights therein ;

BE it enacted in the Twenty-third Year of the Republic of India as follows:—

**1. Short title, extent, commencement and duration.**—(1) This Act may be called the Kerala Preservation of Private Forests Act, 1972.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once and shall cease to have effect on the 31st day of December, 1973.

(4) Upon the expiry of this Act, the provisions of section 4 of the Interpretation and General Clauses Act, 1125 (VII of 1125), shall apply as if this Act had then been repealed by an Act of the Kerala State Legislature.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) "forest offence" means an offence punishable under this Act ;

(b) "owner", in relation to a private forest, includes a mortgagee, lessee or other person having right to possession and enjoyment of the private forest ;

(c) "person" includes a company, a religious or charitable institution of a public nature, a trust, a Hindu undivided family, a Marumakkathayam tarwad or tavazhi, an Aliyasanthana family or branch and a family governed by the Kerala Nambudiri Act, 1958 (27 of 1958) ;



(d) "prescribed" means prescribed by rules made under this Act ;

(e) "private forest" means,—

(1) in relation to the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956),—

(1) any land to which the Madras Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949), applied immediately before the 10th day of May, 1971, excluding—

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964) ;

(B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.

**Explanation.**—Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops ;

(C) lands which are principally cultivated with cashew or other fruit-bearing trees or are principally cultivated with any other agricultural crop ; and

(D) sites of buildings and lands appurtenant to, and necessary for the



convenient enjoyment or use of, such buildings ;

- (ii) any forest not owned by the Government, to which the Madras Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949), did not apply, including waste lands which are enclaves within wooded areas ;

(2) in relation to the remaining areas in the State of Kerala, any forest not owned by the Government, including waste lands which are enclaves within wooded areas.

**Explanation.**—For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs ;

(f) the expressions 'Forest Officer', 'tree', 'timber', 'forest produce', 'cattle' and 'Magistrate' shall have the meanings respectively assigned to them in section 2 of the Kerala Forest Act, 1961 (4 of 1962).

**3. Preservation of private forests.**—(1) No owner of any private forest shall, without the previous sanction of the District Collector, sell, mortgage, lease or otherwise alienate the whole or any portion of the private forest.

**Explanation.**—Nothing in this sub-section shall be construed as preventing the owner from selling or otherwise dealing with the right to gather and remove forest produce other than trees, timber, reeds, charcoal, wild animals and skins, tusks, horns, bones, and other parts or produce of such animals, in the usual or customary manner, for a period not exceeding two years.

(2) Any alienation in contravention of sub-section (1) shall be null and void.



(3) No owner of any private forest and no person claiming under him, whether by virtue of a contract, licence or any other transaction entered into before or after the commencement of this Act or any other person shall, without the previous permission of the District Collector, cut trees from, or cultivate, the private forest or do any act likely to denude the private forest or alter the nature of the forest or diminish its utility as a forest.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3), the Government may exempt any private forest or class of private forests or class of trees therein from all or any of the provisions of this section.

4. **Appeals.**—Any person aggrieved by an order under sub-section (1) of section 3 or under sub-section (3) of that section in regard to the sanction or permission referred to in that sub-section may, within two months of the receipt of that order, prefer an appeal in writing to the Government, and the Government shall pass such orders on the appeal as they may think fit.

5. **Power to prohibit or regulate certain acts.**—If, in the opinion of the Government, it is necessary for the preservation of a private forest or private forests, they may, by notification in the Gazette,—

(a) prohibit or regulate the doing of any act likely to be detrimental to the preservation of such private forest or private forests ;

(b) regulate the exercise of customary or prescriptive rights in such private forest or private forests.

6. **Applicability of Chapter VIII of Act 4 of 1962.**—The provisions of Chapter VIII of the Kerala



Forest Act, 1961 (4 of 1962), shall apply to offences punishable under this Act, subject to the following modifications, namely :—

(a) in section 52, the proviso to sub-section (2) shall be omitted;

(b) in section 54, after the words "the Magistrate shall", the words and figures "subject to the provisions of section 10 of the Kerala Preservation of Private Forests Act, 1972" shall be inserted;

(c) in section 56, the words "shall, if it is the property of the Central or State Government or has been confiscated, be taken possession of by or under the authority of the Divisional Forest Officer; and in any other case it" shall be omitted;

(d) in section 57, for the words "the Divisional Forest Officer" the words "the District Collector" shall be substituted;

(e) in section 61, for the words "a Forest Officer not below the rank of an Assistant Conservator of Forests holding charge of a Forest Division", the words "the District Collector" shall be substituted;

(f) in section 62,—

(i) clause (a) shall be omitted;

(ii) in clause (c), the word "or" occurring at the end shall be omitted; and

(iii) clause (d) shall be omitted;

(g) section 69 shall be omitted.

**7. Penalties.**—Whoever contravenes the provisions of sub-section (1) or sub-section (3) of section 3 or any of the terms and conditions subject to which a permission has been granted under sub-section (3) of section 3 or any of the terms of a notification under



section 5 shall 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.

8. **Offences by companies.**—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of its business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this subsection shall render any person liable to punishment, if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation.**—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm, society or other association of individuals ; and

(b) “director”,—

(i) in relation to a firm, means a partner in the firm,



(ii) in relation to a society or other association of individuals, means the person who is entrusted, under the rules of the society or other association, with the management of the affairs of the society or other association, as the case may be.

9. **Jurisdiction of Magistrates.**—Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), it shall be lawful for any Magistrate of the First Class specially empowered by the Government in this behalf, to impose a sentence of fine exceeding two thousand rupees.

10. **Institution of prosecutions.**—No prosecution shall be instituted against any person without the sanction of the District Collector.

11. **Bar of suits.**—No order of the Government or the District Collector under this Act and no notification issued by the Government under section 5 shall be liable to be questioned in any court of law.

12. **Indemnity.**—No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or purported to have been done under this Act or any rule made thereunder.

13. **Certain alienations of private forests to be null and void.**—Notwithstanding anything contained in any law for the time being in force, or in any contract or other document, or in any judgment, decree or order of any court, any sale, mortgage, lease or other alienation of a private forest or any portion of a private forest after the 10th day of May, 1971 and before the commencement of this Act shall be null and void.



14. **Power to make rules.**—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

◇ (2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the classes or kinds of trees which may be permitted to be cut and the girth of such trees ;

(b) the terms and conditions subject to which permissions may be granted ;

(c) the procedure to be followed by the District Collector before granting permissions ;

(d) the levy and collection of fees on every application for permission under sub-section (3) of section 3 ;

▷ (e) any other matter which has to be, or may be, prescribed under this Act ;

▷ (3) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

15. **Power to remove difficulties.**—If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may



require, by order do anything not inconsistent with such provisions which appears to them necessary for the purpose of removing the difficulty.

16. **Repeal and savings.**—(1) the Kerala Preservation of Private Forests Ordinance, 1972 (7 of 1972), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provision of this Act as if this Act had come into force on the 29th day of June, 1972.

(3) Notwithstanding the provisions of subsection (4) of section 1 of the Madras Preservation of Private Forests Act, 1949, the provisions of section 8 of the Madras General Clauses Act, 1891, shall not apply or shall not be deemed ever to have applied on the expiry of the first-mentioned Act:

Provided that any prosecution for the contravention of any of the provisions of the Madras Preservation of Private Forests Act, 1949, pending on the date of expiry of that Act may be continued and disposed of as if that Act had not expired.

## THE KERALA LAND REFORMS (AMENDMENT) ACT, 1972

(Act 17 of 1972)

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