

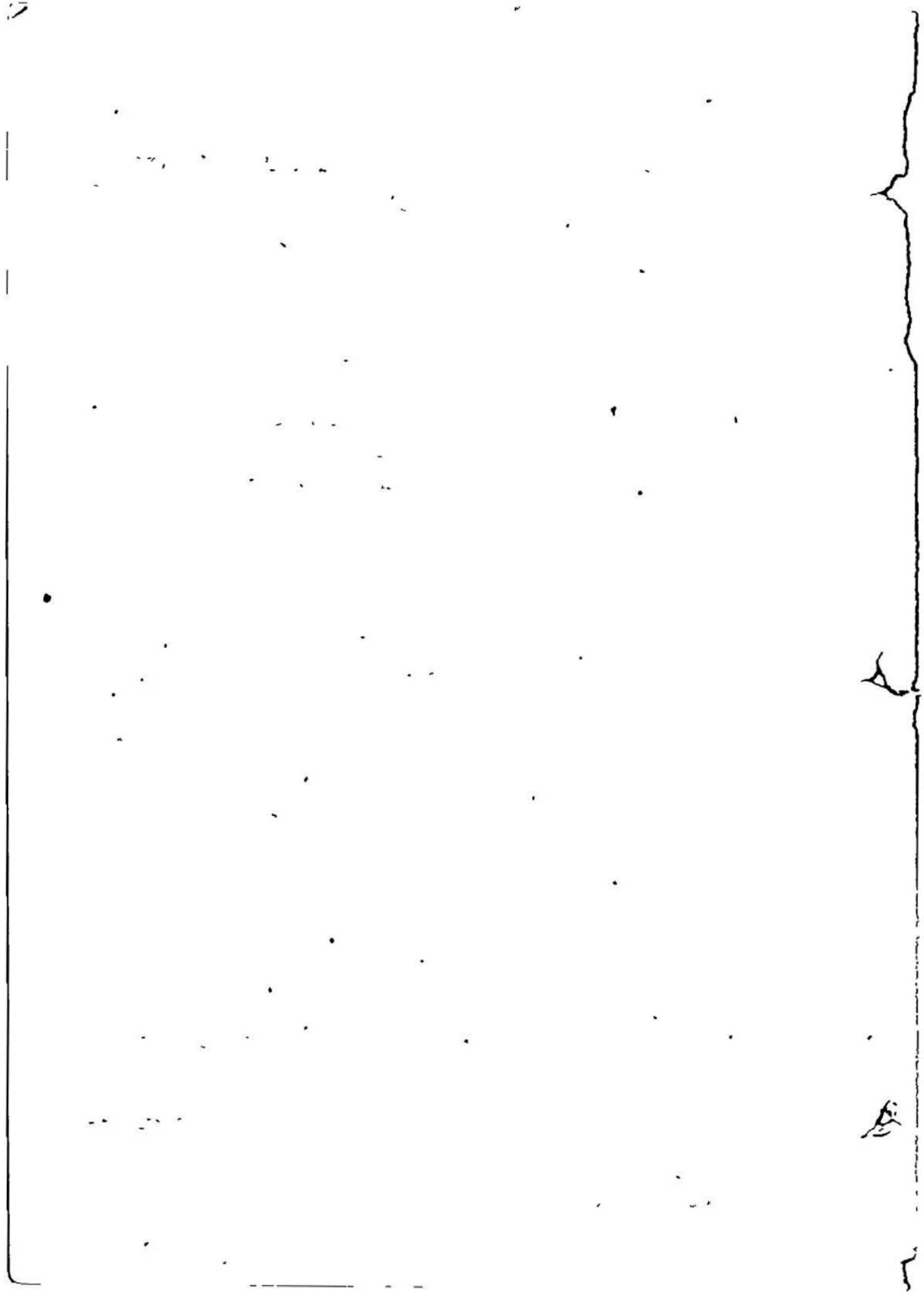
THE KERALA PRESERVATION OF TREES ACT, 1986
(Act 35 of 1986)

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THE KERALA PRESERVATION OF TREES ACT, 1986 *

(Act 35 of 1986)

An Act to provide for the preservation of trees in the State of Kerala.

Preamble.—WHEREAS there has been indiscriminate felling and destruction of trees, in the State of Kerala resulting in considerable soil erosion and destruction and loss of the timber wealth of the State;

AND WHEREAS with a view to prevent soil erosion and destruction and loss of the timber wealth in the State, it is necessary to regulate the felling and destruction of trees in the State;

BE it enacted in the Thirty-seventh Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—This Act may be called the Kerala Preservation of Trees Act, 1986.

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

(3) It shall be deemed to have come into force on the 18th day of June, 1983.

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

(a) "appellate authority" means an appellate authority appointed under sub-section (2) of section 3;

(b) "authorised officer" means an officer appointed under sub-section (1) of section 3;

(c) "owner" in relation to any land, includes a mortgagee, lessee or other person having right to possession and enjoyment of that land;

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

(e) "tree" means any of the following species of trees, namely:—

Sandalwood (*Santalum album*), Teak (*Tectona grandis*), Rosewood (*Dalbergia latifolia*), Irul (*Xylia Xylocarpa*), Thempavu (*Terminalia tomentosa*), Kampakam (*Hopsea parviflora*), Chempakam (*Mecheia chempaca*), Chadachi (*Grewia tiliaefolia*), Chandana vempu (*Cedrela toona*), Cheeni (*Tetrameles nudiflora*).

*Received the assent of the President on the 1st day of December, 1986 and published in the Kerala Gazette, Extraordinary No. 1091 dated 1st December, 1986.

3. *Authorised officers and appellate Authorities.*—(1) The Government may, by notification in the Gazette, appoint such officers not below the rank of a Ranger as they think fit to be authorised officers for the purposes of this Act and may assign to them such local limits as the Government think fit.

(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Act and may assign to them such local limits as the Government think fit.

4. *Restriction regarding cutting, etc., of trees.*—(1) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree.

(2) The permission under sub-section (1) shall not be refused if—

- (a) the tree constitutes a danger to life or property; or
- (b) the tree is dead, diseased or windfallen:

Provided that where permission to cut a tree is granted on the ground specified in clause (a) or clause (b), the authorised officer shall impose as a condition for the grant of such permission the effective regeneration of an equal number of the same or other suitable species of trees; or

(c) such cutting is to enable the owner of the land in which the tree stands to use the area cleared or the timber cut for the construction of a building for his own use.

(3) No person shall cut or otherwise damage, or cause to be cut or otherwise damaged, the branch of any tree:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(4) No person shall, without the previous permission in writing of the authorised officer, destroy any plant of any tree or do any act which diminishes the value of any such plant.

(5) Nothing contained in sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in the compound of any residential building:

Provided that where such compound exceeds one hectare in extent, the provisions of this sub-section shall apply only in respect of an extent of one hectare immediately surrounding the residential building.

5. *Prohibition of cutting of tree in notified areas.*—(1) Notwithstanding anything contained in any law for the time being in force, or in any judgement, decree or order of any court, tribunal or other authority, or in any agreement or other arrangement, the Government may, with a view to preserving the tree growth in private forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom, by notification in the Gazette, direct that no tree standing in any such area specified in the notification shall be cut, uprooted, burnt or otherwise destroyed except on the ground that—

- (a) the tree constitutes a danger to life or property; or
- (b) the tree is dead, diseased or windfallen.

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(2) No person shall, without the previous permission in writing of the authorised officer, cut, uproot, burn or otherwise destroy or cause to be cut, uprooted, burnt or otherwise destroyed any tree in any area specified in the notification under sub-section (1) on any of the grounds specified therein.

Explanation I.—For the purposes of this section, the term “tree” shall include any species of tree.

Explanation II.—For the purposes of sub-section (1), the expression “private forest” means any land which immediately before the 10th day of May, 1971, was a private forest as defined in the Kerala Private Forests (Vesting and Assignment) Act, 1971.

6. *Application for permission.*—(1) Every application for permission under section 4 or section 5 shall be in such form and shall contain such particulars as may be prescribed and shall be made to the authorised officer.

(2) The procedure to be followed by the authorised officer in granting or refusing permission under section 4 or section 5 shall be such as may be prescribed.

7. *Appeal.*—(1) Any person aggrieved by an order refusing to grant permission under section 4 or section 5 may, within ninety days of the receipt of such order, prefer an appeal to the appellate authority:

Provided that the appellate authority may admit an appeal preferred after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

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

(3) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such order thereon as it thinks fit.

8. *Revision*.—(1) The Government may, either *suo motu* or on application by any person aggrieved by an order of the appellate authority under section 7, call for and examine the record of any order passed by the appellate authority for the purpose of satisfying themselves as to the legality, propriety or regularity of such order and pass such order thereon as they think fit.

(2) The Government shall not of their own motion revise any order under sub-section (1) if that order has been passed more than three months previously.

(3) An application under sub-section (1) by an aggrieved person shall be made within a period of sixty days from the date on which the order of the appellate authority was communicated to him:

Provided that the Government may admit an application made after the expiry of the said period of sixty days, if they are satisfied that the applicant had sufficient cause for not making the application within that period.

(4) An order prejudicial to a person shall not be passed under sub-section (1) unless that person has been given a reasonable opportunity of showing cause against such order.

Explanation.—An order declining to interfere shall, for the purposes of this sub-section, be deemed to be an order prejudicial to a person.

9. *Penalties*.—Whoever contravenes any of the provisions of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5 or any of the terms and conditions subject to which a permission has been granted under this Act shall be punishable,—

(a) in the case of first offence, with imprisonment for a term which shall not be less than six months but which may extend to two years, and with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees; and

(b) in the case of a second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years, and with fine which shall not be less than one thousand rupees but which may extend to five thousand rupees.

10. *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 in this sub-section 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 sub-section (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.

11. *Powers of authorised officers and appellate authorities.*— Every authorised officer and appellate authority shall, for the purpose of performing his or its functions under this Act, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit; and

(d) such other matters as may be prescribed,

12. *Powers of entry and inspection.*—The authorised officer or any other officer generally or specially authorised by the Government in this behalf may, with such assistants, if any, being persons in the service of the Government, as he thinks fit, at all reasonable times enter upon any land for the purpose of ascertaining whether any of the provisions of this Act or any of the terms and conditions subject to which any permission has been granted under this Act has been contravened.

13. *Power to seize timber and other articles involved in commission of offence.*—(1) Where any officer of the Forest Department not below the rank of Forester or any Police Officer not below the rank of Sub Inspector has reason to believe that any tree has been cut in contravention of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, he may seize the timber of such tree together with all tools, ropes, chains and other articles used in the commission of such offence and all boats, vehicles and animals used for carrying such timber.

Explanation.—The terms "boat" and "vehicle" in this section, section 14 and section 15 shall include all the articles and machinery kept in the boat or vehicle, as the case may be whether fixed to the same or not.

(2) Every officer seizing any timber under sub-section (1) shall place on such timber 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 authorised officer.

(3) On receipt of a report under sub-section (2), the authorised officer shall,—

(a) if he is satisfied that the timber mentioned in such report is of any tree cut in contravention of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, make a report of such seizure to the Judicial Magistrate of the First Class having jurisdiction over the area in which such seizure has been made;

(b) if he is not so satisfied, make a report of such seizure to such authority as may be prescribed.

(4) The authority to which a report is made under clause (b) of sub-section (3) shall,—

(a) if it is satisfied that the timber mentioned in such report is of any tree cut in contravention of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, make a report of the seizure of such timber to the Judicial Magistrate of the First Class having jurisdiction over the area in which such seizure has been made;

(b) if it is not so satisfied, order that such timber and any tool, rope, chain or other article or any boat, vehicle or animal seized along with it shall be returned to the person from whom they were seized.

14. *Power to release property seized under section 13.*—The authorised officer may release any tool, rope, chain or other article or any boat, vehicle or animal seized under section 13 and in respect of which a report has been made to the Judicial Magistrate of the First Class under clause (a) of sub-section (3) or clause (a) of sub-section (4) of that section, on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before such Magistrate.

15. *Procedure by Magistrate.*—Upon the receipt of a report under clause (a) of sub-section (3) or clause (a) of sub-section (4) of section 13, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the timber and any tool, rope, chain or other article or any boat, vehicle or animal seized along with it, according to law.

16. *Procedure as to perishable property seized under section 13.*—(1) Notwithstanding anything hereinbefore contained,—

(a) the Magistrate to whom a report is made under section 13 may direct the sale of any property seized under that section, which is subject to speedy and natural decay; and

(b) if, in the opinion of the authorised officer, it is necessary to dispose of the property, which is subject to speedy and natural decay, such officer shall immediately after, and in any case not later than one month from, the date of Report under section 13 make an application to the magistrate referred to in clause (a) for permission to sell the property by such officer himself and on getting such permission may sell the property himself, remit the sale proceeds into the nearest Government Treasury and make a report of such sale and remittance to that Magistrate and thereupon such Magistrate shall take such measures as may be necessary for the trial of the accused.

(2) The Magistrate may deal with the proceeds of the sale of any property sold under clause (a) or clause (b) of sub-section (1) in the same manner as he might have dealt with the property if it had not been sold.

17. *Saving of power to release property seized.*—Nothing hereinbefore contained shall be deemed to prevent the authorised officer from directing at any time the immediate release of any property seized under section 13 and the withdrawal of any charge made in respect of such property:

Provided that the powers under this section shall be exercised by the authorised officer only for good and sufficient reasons to be recorded in writing and with the previous approval in writing of the Divisional Forest Officer concerned.

18. *Institution of prosecution.*—No prosecution shall be instituted against any person without the sanction of the authorised officer.

19. *Cognizance of offences.*—No court inferior to that of a Judicial Magistrate of the First Class shall try any offence under this Act.

20. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by any officer or authority or the Government.

21. *Indemnity.*—No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority or any other person for anything which is in good faith done or purporting to have been done under this Act or any rule or order made thereunder.

22. *Restriction regarding cutting, etc., of trees in future assignments.*—Notwithstanding anything contained in any law for the time being in force, any assignment after the commencement of this Act, of land belonging to the Government, under any law for the time being in force shall be subject to the condition that the assignee shall not, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree standing on such land at the time of such assignment, and the provisions of this Act shall apply in relation to such permission as if they apply in relation to a permission under section 4.

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

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

- (a) the girth of trees which may be permitted to be cut;
- (b) the terms and conditions subject to which permission may be granted;
- (c) the procedure to be followed by the authorised officer before granting or refusing permission;
- (d) the procedure to be followed by the appellate authority in the disposal of an appeal under section 7;
- (e) any other matter which has to be, or may be, prescribed.

24. *Laying of notifications and rules before Legislative Assembly.*—Every notification issued under sub-section (1) of section 5 and every rule made under section 23 shall be laid, as soon as may be after it is issued or 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 notification or rule or decides that the notification or rule should not be issued or made, the notification or 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 notification or rule.

25. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act the Government may, by order published in the Gazette make such provisions not inconsistent with the provisions of this Act, which appear to them necessary for the purpose of removing the difficulty:

(2) Every such order made under this section shall, as soon as may be after it is made, be laid before the legislative Assembly.

26. *Repeal and saving.*—(1) The Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 (7 of 1974), and the Kerala Preservation of Trees Ordinance, 1986 (65 of 1986) are hereby repealed.

(2) Notwithstanding the repeal of the Kerala Preservation of Trees Ordinance, 1986 (65 of 1986), anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act:

Provided that no person convicted of an offence with respect to anything so deemed to have been done under this Act, shall be subjected to a penalty greater than that which might have been inflicted under the law applicable to such offence, in force at the time of the commission of such offence:

Provided further that nothing contained in this section shall render any person liable to be convicted of an offence in respect of anything done or omitted to be done by him after the 1st day of August, 1983 and before the 30th day August, 1983 and after the 6th day of January, 1984 and before the 15th day of February, 1984.