

# The Odisha Gazette

EXTRAORDINARY

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No. 1014-D

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## ODISHA ACT 14 OF 1972

*(Assented to by the President on the 29th June, 1972)*

**An Act to consolidate and amend the laws relating to the protection and management of forests in the State.**

**Be it enacted by the legislature of the State of Odisha in the Twenty-third year of the republic of India as follows :**

**<sup>1</sup>Statement of Objects and Reasons :** There are now two Forest Acts in application in the State of Odisha, i.e. the Indian Forest Act, 1927 and the Madras Forest Act, 1882. Except for the Districts of Koraput, Ganjam and part of Phulbani districts (Baliguda and G. Udayagiri Taluks) where the Madras Forest Act, 1882 is in force, the rest of the area is covered by the Indian Forest Act, 1927. The existence of two Acts quite often creates confusion and also administrative difficulty. The existence of the two Acts imposed an extra strain on the Government machinery with no commensurate advantage and this could be avoided by one unified Act. The necessity for a unified Forest Act was felt quite early and in pursuance of that, a Bill was introduced in the State Legislative Assembly in the year 1942. But for reasons unknown this was dropped. The necessity for such an Act has been commanded by the Forest Enquiry Committee of Odisha in its report in 1959.

2. Further, a Sub-Committee of the Central Board of Forestry had recommended amendment of certain clauses giving the development of forests and the interest of forest produce a paramount consideration. There are a number of other States like Kerala, Gujarat, Andhra Pradesh, etc., which have already enacted independent Forest Acts and we have had the advantage of taking the best part of those Acts while unifying the management of forests in this State has been taken into consideration to bring the law up-to-date. Generally the sequence followed is of the Indian Forest Act through this Bills has freely drawn from the Madras Forest Act and other existing State Forest Acts for convenience.

3. This Bill seeks to fulfill the above object.

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\* Odisha Gazette, Extraordinary No. 1014-D/14.7.1972- Notification No. 7481-Legis-D/11.7.1972

1. For Statement of Objects and Reasons, See Odisha Gazette Extraordinary No. 908, dated 23.7.1971 and for Report of the State Committee see ibid No. 5-A dated 3.1.1972.

## CHAPTER - I

### PRELIMINARY

**1. Short title, extend and commencement :-** (1) This Act may be called the Odisha Forest Act, 1972.

(2) It extends to the whole of the State of Odisha

(3) It shall come into force at once.

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

(a) **“Cattle”** means cows, oxen, bulls and calves and includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pies, rams, ewes, sheep, lambs, goats, kids and such other kinds of animals as the State Government may, by notification, specify;

(b)-(d)<sup>1</sup>[\*\*\*]

(e) **“Forest Offence”** means an offence punishable under this Act or under the rules and includes the abetment of a forest offence;

<sup>2</sup>(f) **“Forest Officer”**

(i) any person whom the State Government or any officer empowered by 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, and who may be designated as Principal Chief Conservator of Forests, Additional Principal Chief Conservator of Forests, Chief Conservator of Forests, Conservator of Forests, Deputy Conservator of Forests or Divisional Forest Officer, Working Plan Officer, Silviculturist, Assistant Conservator of Forests, Forest Range Officer, Deputy Ranger or Forester; and

(ii) Such other persons who are notified by the State Government to perform all or any of the functions of a forest officer under this Act or any rule or order made thereunder, but does not include Forest Settlement Officer.]

(g) **“Forest produce”** includes :—

(i) the following whether found in, or brought from a forest or not, that is to say :-

(a) timber, charcoal, caoutchouc catechu, wood-oil, resign, natural varnish, bark, Tussay Cocoon, lac, gums, roots of Patal Guruda, Mahua flowers, mahua seeds, myrabolans, Kendu leaves, sandal wood, tamarind, hill broom, Siali leaves, Siali fibres, Sal seeds;

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1. Clauses (b), (c) and (d) omitted vide O.A. No. 12 of 2003 Notfn. No. 6282/ Legis. dt.5.5.2003 O.G.E. No. 660, dt. 5.5.2003.

2. Substituted ibid.

- (b) wild animals and wild birds, skins, tusks, horns, bones and all other parts or produce of wild life; and
- (c) such other produce as may be notified by the State Government; and
- (ii) the following when found in or brought from a forest that is to say :
  - (a) trees and leaves, flowers and fruits and all other parts or produce of trees not herein before mentioned;
  - (b) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants;
  - (c) honey, wax and arrowroot;
  - (d) peat, surface oil, rock, sand and minerals (including limestone, laterite; mineral oils and all products of mines or quarries);
- (h) **“Owner”** in relation to a forest, includes a mortgage in possession, lessee or other person having right to the possession of or enjoyment of the forest;
- (i) **“Prescribed”** means as prescribed by Rules made under this Act;
- (j) <sup>1</sup>[\* \* \*]
- (k) **“River”** includes streams, canals, back waters, creeks and other channels, natural or artificial;
- (l) **“Rule”** means any rule made under this Act;
- (m) **“Sandal wood”** means the wood derived out of any part of Chandan tree and includes chips, dust or powder of such wood;
- (n) **“Timber”** includes trees fallen or felled and all wood cut up or sawn; and
- (o) **“Tree”** includes palms, bamboos stumps, brushwood and canes.

#### NOTES

**(1) Sec. 2(g)(c)** – *When bamboo becomes a Forest Produce - discussed.*

*Held, on an analysis or interpretation of Clause (II) of Sub-Sec. (g), read with Sub-Sec. (c) of Sec. 2 of this Act, it is evident that it only when bamboo is found and brought from the forest it becomes a forest produce, and it is not a forest produce, if found and brought from any private land, which does not come within the ambit of the definition of Forest – 1997(II) OLR-354, AIR 1998, Odisha - 54.*

**(2) Sec. 2(c), 2(g), 2(o) and 56** – *Seizure due to forest offence – Forest Officer’s findings based on surmises and conjectures - Bamboo obtained from any private land is not a forest produce - 1997(II) OLR-354.*

**(3) Sec. 2(9)** – *Siali leaves - whether a forest produce or not - whether Siali plant planted and leaves of such plant obtained, requires*

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1. Omitted vide O.A. No. 12 of 2002 Notfn. No. 6282/Legis. O.G.E. No. 660 dt.5.5.2003.

*transit permit or not - Since the same does not come within the ambit of forest produce, transit permit is not necessary - 32 (1990) OJD-565 (Civil).*

**(4) Section 2(g)** - Odisha Forest Produce and other Timber Transit Rules, 1980 — Rules 4 and 5 — Siali leaves come within the ambit of Forest produce under Section 2(g) of the Act — under certain specified conditions, for transport of the said Forest Produce, transit permit is a pre-condition — **32 (1990)-565 OJD (Civil).**

**(5) Section 2(g)** - Odisha Timber and other Forest Produce Transit Rules, 1980 — Rules 2(1)(h), 5 and 7 - whether firewood obtained from forest is a Forest Produce or not ? Held - yes - **32(1990) OJD-502 (Crimes).**

**(6) Sec. 2(g)** - Odisha Timber and other Forest Produce Transit Rules-1980, Rules 2(1)(h), 5 and 7 - Firewood of the forest, is a Forest Produce- **1990 (II) OLR-400.**

**(7) Section 2(g) (1) (a), 27(2) (6) and Section 27(3)(b)** – Accused was found removing sal log from the forest area. It is not an offence under Sec. 27(2) (b) but comes under the purview of Sec.27(3)(b) - Before amendment in 1983, the punishment for such offence was two (2) years and the period of limitation is three (3) years - The case was disposed of not on its merit but on the point of limitation by the trial court - The finding with regard to limitation was also wrong - Hence acquittal set-aside and case remanded for fresh trial - **1989(II) OLR-441.**

## **CHAPTER - II**

### **OF RESERVED FORESTS**

**3. Power to reserve forests :-** The State Government may constitute any land which is the property of Government or over which the Government have proprietary rights of a reserved forest in the manner hereinafter provided.

**4. Notification by State Government :-** (1) Whenever it is proposed to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette:

- (a) declaring that it is proposed to constitute such land, a reserve forest;
- (b) specifying, as nearly as possible, the situation and limits of such lands; and
- (c) appointing an officer (hereinafter called "The Forest Settlement Officer") to inquire into and determine the existence', nature and extend of any rights or privileges 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, bridges or other well known or readily intelligible boundaries.

- (2) The Officer appointed under Clause (c) of Sub-Sec. (1) shall ordinarily be a person not holding any forest office except that of a Forest Settlement Officer.
- (3) The Divisional Forest Officer not below the rank of a Range Officer authorised by him in that behalf, may represent the Forest Department at the enquiry conducted under this Chapter.

**5. Bar to accrual of forest rights and bar of suits :-** (1) 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 State Government or some person in whom such right was vested when the notification was issued; and no fresh clearing or breaking of land for cultivation or for any other purpose or construction of shed or other structures shall be made in such land except in accordance with such rules as may be made by the State Government in that behalf.

(2) Save as otherwise provided in this Act, no Civil Court shall, between the date of publication of the notification under Section 4 and of the notification to be issued under Section 21, entertain any suit to establish any right in or over any land included in the notification published under Section 4.

**6. Proclamation by Forest Settlement Officer :-** When a notification has been issued under Section 4 the Forest Settlement Officer, in the prescribed manner, publish in Oriya 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 ensue 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.

**7. Inquiry by the Forest Settlement Officer :-** (1) The Forest Settlement Officer shall take down in writing all statements made under Section 6 and shall at some convenient place in the locality, inquire into all claims duly preferred under that Section, and existence of any rights mentioned in Section 4 or 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 person likely to be acquainted with the same.

(2) The Forest Settlement Officer shall also record any representation which the Forest Officer, if any, representing the Forest Department under

Sub-Section (3) of Section 4 or the Divisional Forest Officer may in respect of any such objection or claim.

**8. Power of Forest Settlement Officer** :- For the purpose of such enquiry, the Forest Settlement Officer may exercise the following powers, that is to say—

- (a) power to enter or authorise any person to enter 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 publication of the notification under Section 21, the person claiming the same satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6.

### NOTES

*Land does not come within the ambit of Sec. 3 - AIR 1977 Allahabad-192 may be seen with regard to scope and extinguishment of right.*

**10. Claims relating to practice of shifting cultivation** :- (1) Claims relating to the practice of shifting cultivation in any land notified under Section 4 shall not be admitted but if the Forest Settlement Officer considers that some portion of the land under settlement needs to be excluded to provide sufficient land for cultivation, he may, after considering the objections of the Forest Officer, if any, representing the Forest Department, under Sub-Section (3) of Section 4 or the Divisional Forest Officer, make a report to the State Government containing his recommendations for alteration of the limits of the land.

(2) The State Government may, after considering the recommendations so made, sanction the alteration proposed by the Forest Settlement Officer either in whole or with such modifications as they deem fit and thereupon the Forest Settlement Officer shall pass an order altering the limits of the land as sanctioned by the State Government.

(3) 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 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 or to use of water the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part after considering the particulars of such claims and the objection of the Forest Officer, if any, representing the Forest Department under Sub-Section (3) of Section 4 or the, Divisional Forest Officer.

(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;
- (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 such acquisition —

(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 Sec. 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, with the consent of both the parties, may award compensation in the form of land, or partly in the form of land and partly in money.

(4) The Forest Settlement Officer shall serve a copy of every order passed under this Section on the claimant and also on the Forest Officer who attended the enquiry under Sub-Section (3) of Section 4 and if no such officer attended, on the Divisional Forest Officer.

**12. Claims to right of way, right to water-course or to use of water, etc. :-** (1) In the case of a claim to right of way, right to water course or to use of water, the Forest Settlement Officer shall, after considering the objections of the Forest Officer, if any, representing the Forest Department under Sub-Sec. (3) of Section 4 or the Divisional Forest Officer, either come to an agreement with the claimant for the surrender of the right or pass an order for continuance of the exercise of such right subject to such conditions as may be agreed upon between the Forest Department and the claimant or where no such agreement is reached, as the Forest Settlement Officer may impose.

(2) In the case of claims 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 after considering the objections of the Forest Officer representing the Forest Department under Sub-Sec. (3) of Section 4 or of the Divisional Forest Officer.

(3) A copy of every order passed under this Section, shall be served on the claimant by the Forest Settlement Officer and another copy shall be forwarded to the Forest Officer who attended the enquiry or if no such officer attended, to the Divisional Forest Officer.

**13. Record to be made by the Forest Settlement Officer :-** The Forest Settlement Officer, when passing any order under Section 12, shall record in as precise terms as possible and so far as may be practicable —

(a) the name, father's name, 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 right is claimed.

**14. Record where he admits claims :-** If the Forest Settlement Officer admits in whole or in part any claim under Sub-Sec. (2) of 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 admitted, 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 further record whether the timber or other forest produce obtained on such authorisation may be sold or bartered.

**15. Exercise of rights admitted :-** (1) After making such records, the Forest Settlement Officer shall, to the best of his ability, and 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 the said purpose, the Forest Settlement Officer may -

- (a) set out some other forest tract of sufficient extent, and in a locality reasonably convenient for the purpose of such claimants, and make 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) make an order continuing in favour of such claimants a right of pasture or to forest produce, as the case may be, to the extent so admitted, during such seasons and within such portions of the proposed forests, as he may fix and subject to such Rules as may be made in this behalf.

(3) A copy of every order passed under this Section shall be served on the claimants by the Forest Settlement Officer and another copy shall be forwarded to the Forest Officer who attended the enquiry or if no such officer attended, to the Divisional Forest Officer.

**16. Commutation of rights :-** If on the representation of the Divisional Forest Officer, the Forest Settlement Officer is satisfied that the exercise of any private right is inconsistent with the maintenance, preservation or development of a reserve forest, he shall proceed to acquire such right and 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.

**17. Appeal from orders passed under Section 11, 12, 15 or 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 to such claim by the Forest Settlement Officer under Sections 11, 12, 15



or 16, present an appeal from such order to the Collector of the district who may dispose of the appeal himself or may transfer the same to the Additional District Magistrate for disposal.

### NOTES

*Whether the Forest Settlement Officer is a Court or not? - AIR 1975 SC - 2085.*

**18. Appeal under Section 17 :-** (1) Every appeal under Sec. 17 shall be made by a memorandum in writing and may be delivered to the Forest Settlement Officer, who shall forward it forthwith to the authority competent to hear the same.

(2) The procedure for filing and disposal of appeals shall be the same as is provided under Order XLI of the Code of Civil Procedure, 1908 (5 of 1908).

**19. Power of revision :-** (1) The Board of Revenue may, on an application made in that behalf by any person aggrieved by an appellate order under Section 18 within the months from the date of the order, confirm, modify or set aside such order :

Provided that no orders under this Sub-Section shall be made without giving the parties concerned a reasonable opportunity of being heard.

(2) The Board of Revenue may, by order in writing and subject to, such conditions, as may be specified therein, delegate its powers under this Section to any officer not below in rank to the Revenue Divisional Commissioner and may in like manner withdraw the powers so delegated.

**20. 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 their or his behalf before the Forest Settlement Officer or the appellate or revisional authority in the course of any inquiry, appeal or revision under this Act.

**21. Notifications declaring forest reserved :-** (1) When the following events have occurred, namely :

- (a) the period fixed under Section 6 for preferring claims has 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 preferring appeals 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 authority;
- (c) if any such appeals have been presented, the period limited by Section 19 for making an application for revision of the appellate order has elapsed, and all applications, if any, made within such period have been disposed of by the revisional authority; and
- (d) 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 State Government under Section 16 of that Act.

the State Government may publish a notification specifying accordance to boundary marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved with effect from a date to be specified in the notification.

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

<sup>1</sup>[(3) Production of an authenticated copy of notification published under Sub-Sec. (1) shall be conclusive proof that the forest, the limits whereof have been specified therein, is a reserved forest.]

**22. Publication of translation of such Notification in neighbourhood of forests :-** The Divisional Forest Officer shall before the date specified in the notification issued under Section 21, cause a translation thereof into Oriya to be published at a conspicuous place in every town and village in the neighbourhood of the forest and also in such other manner as may be prescribed.

**23. Powers to revise arrangement made under Section 15 or Section 18 :-** The State Government may, at any time after the publication of any notification under Section 21, revise any arrangement made under Section 15, Section 18 or Section 19 and may for this purpose rescind or modify any order made under Section 15, Section 18, or Section 19 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 :

Provided that no order under this Section shall be made without giving parties concerned a reasonable opportunity of being heard.

**24. No right to be acquired over reserved forest except as herein 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 State Government or some person in whom such right was vested when the notification under Section 21 was issued.

**25. Rights not to alienate without sanction :-** (1) Notwithstanding anything contained in Section 24, 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 along 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.

**26. Power of stop ways and water courses in reserved forests :-** The Divisional Forest Officer may, in the interests of the general public and without the previous sanction of the State Government or of any

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1. Added by Odisha Act 9 of 1983-See Odisha Gazette. Ext. No. 444-D/18.4.1983.

officer duly authorised by them in this behalf, close any public or private way or water course or stop the use of water in a reserved forest :

Provided that a substitute for the way or water course so closed or, as the case may be, an alternative arrangement for the use of water so stopped, which the State Government deems to be reasonable, convenient and already exists, or has been provided for or constructed by the Divisional Forest Officer in lieu thereof.

**27. Offences :-** (1) The person who —

(a) makes any fresh clearing or causes breaking of land which is prohibited under Section 5;

<sup>1</sup>[(b) sets fire to a forest land in respect of which a notification under Section 4 has been issued, or kindles any fire or leaves any fire burning in such forest land in such manner as to endanger the forest land, or fells, girdles, lops any tree or strips off the bark or leaves from any tree in such land, or otherwise damages the same or causes damage to any forest produce in such land, or quarries stone, burns lime or charcoal or subjects to manufacturing process any forest produce in such land, or collects or removes any forest produce from such land, in contravention of any rule.]

shall be punishable with imprisonment for a term which may extend to <sup>1</sup>[one year and with fine which may extend to one thousand rupees]  
<sup>2</sup>[\*\*\*]

(2) Any person who in a reserved forest —

(a) trespasses or pastures cattle or permits cattle to trespass; or

(b) causes any damage by negligence in felling any tree or cutting or dragging any timber or removing any forest produce.

<sup>1</sup>[shall be punishable with fine which may extend to -

(i) one thousand rupees for an offence under Clause (a);  
and

(ii) two thousand rupees for an offence under Clause (b),  
in addition to such compensation for the damage done to the forest, which in no case shall be less than the value of the property damaged, as the convicting Court may direct to be paid.]

(3) Any person who <sup>3</sup>[sets fire to a reserved forest or] who in a reserved forest —

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1. Substituted vide O.A. No. 12 of 2003 Notfn. No. 6282/Legis. O.G.E. No. 660, dt. 5.5.2003.

2. Deleted vide Odisha Act 9 of 1983, O.G.E. No. 444, D/18.4.1983.

3. Inserted vide O.A. No. 12 of 2003 Notfn. No. 6282/Legis. O.G.E. No. 660 dt. 5.5.2003.

- (a) <sup>1</sup>[kindles, keeps or carries any fire or fells], gridles, lops or burns any tree or plant or strips off the bark or leaves from or otherwise damages the same or causes damage to any forest produce;
- (b) quarries stone, burns lime or charcoal or collects, subjects to manufacturing process or removes any forest produce;
- (c) clears or breaks up any land for cultivation or for any other purpose, or cultivates or attempts to cultivate any land in any manner or puts up any sheds or other structure; or
- (d) in contravention of any Rule made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares.

shall be punishable with imprisonment for a term <sup>1</sup>[which shall not be less than three years but may extend to seven years and with fine which may extend to ten thousand rupees]. <sup>2</sup>[\* \* \*]

<sup>1</sup>[(4) When a person is convicted for an offence under Clause (a) of Sub-Section (1), the Court shall order eviction of the offender from the land in relation to which the offence has been committed and, on such order being made, all sheds or structures on such land shall be demolished and if the Court so orders, the crop, if any standing on the land shall be seized and confiscated to the State Government.]

(5) Orders passed and actions to be taken under Sub-Section (4) may be executed by a Police Officer not below the rank of Sub-Inspector or a Forest Officer not below the rank of Range Officer as the Court may direct.

(6) Nothing in this section shall be deemed to prohibit.

- (a) any act done by permission in writing of the Divisional Forest Officer or an officer authorised by him in that behalf or under any rule made by State Government; or
- (b) the exercise of any right continued under Clause (c) of Sub-Section (2) of Section 15, of created by grant or contract in writing made by or on behalf of the State Government as is referred to in Section 24.

#### NOTES

***(1) Charge under Section 27 - Authorised Officer's finding was that bamboo was not proved to have been from the reserved forest - Held, Charge was, not proved under Sec. 27 - 1997 (II) OLR-354; AIR-1998 Odisha-54.***

***(2) Section 27(2) (6) and 27(3) (B) - A sal log, which is a timber was found to be removed from a reserve forest by a person which is an offence***

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1. Substituted *ibid.*

2. Deleted vide Odisha Act 9 of 1983 O.G.E. No. 444, dt. 18.4.1983.

*under Section 27(3) (B) and punishable with two years imprisonment - 1989 (II) OLR-441.*

*(3) Sections 27(2) (b) and 3(B) - (Prior to amendment by Act 9 of 1983) - Period of limitation Timber was found to be removed by the accused- There was no felling of trees and therefore no - damage to the reserve forest - Held offence is covered not by Section 27(2) (B) but by Sec. 27(3)(B) and punishment is two years imprisonment and limitation period is three years 1990 Cri.L.J. 1585 (Odisha), 1989 (II) OLR 441.*

*(4) Section 27 read with Section 46 - Without permission cutting and removing of trees - offence committed and prosecuted S.D.J.M. Dharmagarh acquitted the accused - Appeal No dispute of evidence of cutting trees - Accused guilty of offence Appropriate conviction and sentence ordered. 2005 (II) O.L.R. 352.*

*(5) Section 27 read with Section 46 - Illegal cutting and removing of trees - Magistrate acquitting the accused - Appeal - Accused not disputing the evidence of felling of trees - Non-production of document showing permission to cut and remove the trees - Accused guilty of offence - Direction on conviction and sentence issued : 2005 (II) OLR 352 : 100 (2005) CLT 255.*

*(6) Section 27(1)(a) - Odisha Timber and Other Forest Produce Transit Rules - Rule 21 - Cognizance under - Occurrence took place in 1988 - Cognizance of offence taken on 20.1.1990 - Meantime more than 15 years have been elapsed - Quashing of proceeding - Offences are punishable with imprisonment less than one year - Cognizance ought not have been taken of the said offences because of the limitation under Sec. 468(i)(b), Cr.P.C.- A petition under Sec. 482, Cr.P.C. should not be entertained when there is much delay in filing it - To secure the ends of justice and undo the wrong there is no fetter to exercise the power under Sec. 482, Cr.P.C.- Petition under Sec. 482, Cr.P.C. is allowed and the entire proceeding is quashed : 2007 (II) OLR 111 : (2007) 36 OCR 887 : CLT (2007) Suppl. CrI. 503.*

**28. Suspension of rights in reserved forest :—** Whenever in a reserved forest -

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

The State Government may, on the recommendation of the Collector of the district, 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 they may think fit :

Provided that before making any recommendation to the State Government, the Collector shall give the persons concerned a reasonable opportunity of being heard.

**29. Power to declare Forest no longer reserved :-** (1) The State Government may, by notification, direct that with effect from such date as may be specified therein, any forest declared to be a reserved forest under this Act or any portion thereof shall cease to be a reserved forest.

(2) With effect from the aforesaid date such forest or portion of the forest shall cease to be a reserved forest but the rights therein, if any which have been extinguished shall not revive in consequence of such cessation.

(3) Whenever any reserved forest or any portion thereof ceases to be a reserved forest by virtue of a notification issued under Sub-Section (1), the State Government shall, as far as practicable, constitute other lands equal in area to the reserved forest so notified, to be a reserved forest in accordance with the provision of this Chapter.

### **CHAPTER - III OF VILLAGE FORESTS**

**30. Constitution of village forest :-** (1) The State Government may, by notification constitute any land at their disposal to be a village forest for the benefit of any village community or group of village communities and may in like manner vary or cancel any such notification.

(2) Every such notification shall specify the limits of such village forest.

**Explanation :-** "Land at the disposal of Government" includes all unoccupied land, all temporarily occupied land or occupied without permission whether assessed or unassessed, and all communal forests but does not include and recorded in the name of any private person or institution in the record-of-rights in force which is prepared and maintained or is deemed to be prepared and maintained under the Odisha Survey and Settlement Act, 1958 (Odisha Act 3 of 1959).

**31. Power to make rules for village forests :-** (1) The State Government may make rules for regulating the management of village forests and for prescribing the conditions under which the community or group of communities for the benefit of which any such village forest is constituted may be provided with forest produce or with pasture, and their duties in respect of the protection and improvement of such forest.

(2) The State Government may by such Rules, declare all or any of the provisions of Chapter II to be applicable to village forests.

**32. Inquiry into and settlement of rights :-** All claims to any right other than the rights of the village community or group of village communities for the benefit of which such village forest is constituted, shall be inquired into; recorded and provided for in such manner as may be prescribed.

## CHAPTER - IV OF PROTECTED FORESTS

**33. Protected forest** :- (1) The State Government may, by notification declare the provisions of this Chapter applicable to any land which is not included in a reserved forest, but which is the property of Government or, over which the Government have proprietary rights.

(2) The lands comprised in any such notification shall be called a "protected forest".

(3) No such notification shall be issued unless the nature and extent of the rights of Government and of private persons and village communities in or over the land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as may be prescribed any every such record shall be presumed to be correct until the contrary is proved :

Provided that if in the case of any land, the State Government are of the opinion that the enquiry and recording as aforesaid are likely to occupy such length of time as in the meantime to endanger the rights of Government, they may, pending such inquiry and recording declare such land to be protected forest, but so as not to abridge or affect any existing rights of individuals of communities.

(4) Lands at the disposal of Government to which the provisions contained in Chapter III of the Madras Forest Act, 1882 (Madras Act 5 of 1882) were applicable immediately prior of the coming into force of this Act shall be deemed to be "protected forest" under this Act.

### NOTES

**Section 33** - *Meaning of protected forest - law, not included in a reserve forest, is a protected forest - Notification under Section 34 is to be issued in case of un-reserved forest whereby declaration be made for the applicability of Chapter IV of the Act - 1992 (II) OLR-185.*

**34. Power to issue notification reserving trees, etc.** :- The State Government may by notification :

- (a) declare any trees or class of tree in a protected forest to be reserved from a date to be specified in the notification;
- (b) prohibit, from a date to be specified 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 braking up or clearing for cultivation, for building, for rearing cattle or for any other purposes, of any land in any such forest ;
- (c) declare that any portion of such forest as may be specified in the notification shall be closed to grazing and removal of any forest produce for such time as the State Government thinks fit for the plantation and natural growth of the forest.

Provided that in making a declaration under Clause (c) the State Government shall have due regard to the grazing facility of cattle.

**35. Publication or translation of such notification in neighbourhood :-** The Divisional Forest Officer shall cause translation into Oriya of every notification issued under Section 34 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

**36. Powers to make rules for protected forests :-** The State Government may make rules to control and 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 forest;
- (b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forest 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 for 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 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 payment, if any to be made by them in respect of such trees, timber and other forest produce, and the places where such payment shall be made;
- (f) the examination of forest produce passing out of such forests;
- (g) the alienation, clearing and breaking up 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 34;
- (i) the cutting of grass and pasturing of cattle in such forests;
- (j) hunting, shooting, poisoning water, setting traps or snares and collection of wild life in such forests;
- (k) the protection and management of any portion of a forest notified under Section 34; and
- (l) the exercise of rights referred to in Section 33.

**37. Penalties for acts in contravention of notification under Section 34 or of Rules under Section 36 :-** (1) Any person who —

- (a) fells, girdles, lops, traps or burns any trees reserved under Section 34, or strips off the bark or leaves from, or otherwise damages any such tree;



- (b) contrary to any prohibition under Section 34, quarries any stone, or burns any lime or charcoal, or collects, subject to any manufacturing process, or removes any forest produce;
- (c) contrary to any prohibition under Section 34, breaks up or clears for cultivation or any other purposes any land in any protected forest or cultivates or attempts to cultivate any such land in any manner.
- (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 34, whether standing, fallen or felled, or to any portion of such forest notified under the said section;
- (e) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;
- (f) permits cattle to damage any such tree; or
- (g) infringes any Rule made under Section 36;

shall be punishable with imprisonment for a term which may extend to one year <sup>1</sup>[and with fine] which may extend to two thousand rupees and shall also be liable to pay such compensation not being less than the value of the damage caused to the forest as the convicting Court may direct to be paid.

(2) When a person is convicted of an offence under Clause (c) of Sub-Section (1) the Court shall order eviction of the offender from the forest land or entire land in relation to which the offence has been committed and on such order being made, all sheds or structures on such land shall be demolished and if the Court so orders, the crop, if any, standing on the land shall be seized and confiscated to the State Government.

(3) The order of eviction may be executed by a Police Officer not below the rank of Sub-Inspector or a Forest Officer not below the rank of a Range Officer or a Revenue Officer not below the rank of a Revenue Inspector, as the Court may direct.

(4) Whenever in a protected forest :

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

the State Government may, on the recommendation of the Collector of the district and 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 any right of pasture or to forest produce shall be suspended for such period as they think fit :

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1. Substituted by Odisha Act 9 of 1983.

Provided that before making any recommendation to the State Government, the Collector give the persons concerned a reasonable opportunity of being heard.

### NOTES

**(1) Applicability of Section 37(I)(c) - Prohibition under Sec. 34 relates only to protected Forest and it is only to have the operation of Sec. 37(I)(c) - Sec. 34 deals with the power to issue notification, reserving trees, etc. Section 37(I)(c) also is related to protected forest. The prohibition under this section embrace, breaking up or clearing for cultivation any land is protected forest or any attempt to cultivate any such land in any manner; Chandra Sen. Bag Vrs. State - 79 (1992) CLT 616, 1992(III) OLR -185.**

**(2) Section 37(1)(c) it was found that the accused persons were cutting logs in the Khuntabadi unreserved forest by the help of saw, for which they did not have the permit. In the presence of witnesses the wood and saw were seized and the accused had to face trial under Sec. 37(1)(c) of the Forest Act - It was held by the court that a notification under Sec. 34, has to be issued for un-reserved forest. It was admitted that in order to show any declaration that the land of the Commission of alleged act was a protected forest, no notification was brought on record. In such view of the matter the conviction thus made and the sentence thus awarded is not maintainable - 1992(II) OLR - 185; 34(1992) OJD-352 (Crimes); 1992(III) Crimes (Odisha)-587.**

**(3) Oral evidence cannot take the place of notification - The burden of proving all the ingredients of the offence lies on the prosecution - (1996) 32 CLF.**

**(4) Conviction under Sec. 37 of Odisha Forest Act cannot be sustained when there is no evidence regarding issuance of necessary notification of Sec. 37, declaring the forest in Question to be a reserved one, - Raghu Dalei Vrs. State - XL III (1977) CLT-706.**

**(5) Burden lies on the prosecution to prove notification - 43(1977) CLT-365 and 706; 45(1978), CLT-611.**

**(6) When a charge is made under Sec. 37(1)(b), notification under Sec. 30 and 31 becomes necessary AIR 1960 Pat.-213.**

**(7) Secs 37, 46, 55-A - Odisha Timber and Other Forest Produce Transit Rules - Rule 21 - Appeal against order of acquittal - In order to prove the offence under Sections 37, 46 and 55-A of the Act, onus lies on the prosecution to prove that the accused-respondents were removing fire wood which is a forest produce from the reserved forest and the same alongwith other articles was seized inside the reserved forest area - In the present case none of the witnesses has stated that the firewood and other articles were seized inside the reserved forest area when the firewood was being removed from the reserved forest - Contradiction with regard to the place of seizure - No independent corroboration to the seizure - Pros-**

*ecution has not examined any independent witness to support the version of the department officials - Prosecution has failed to prove the case against the accused respondents beyond reasonable doubt - No interference : 2006 (Supp.- II) OLR 156 : CLT (2006) (Supp.) (Cri.) 999.*

**38. 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 who is authorised by the Chief Conservator of Forests to accord such permission or done in accordance with Rules made under Section 36 or, except as regards any portion of a forest notified under Section 34, or as regards any right the exercise of which has been suspended under Section 37 or done in the exercise of any right recorded under Section 33.

## **CHAPTER - V**

### **OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT OR OVER WHICH GOVERNMENT HAVE JOINT INTEREST**

**39. Protection of forests for special purpose :-** (1) The State Government may, by notification, 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) setting fire to or clearing of the vegetation, when such regulation or prohibition appears necessary for any of the following purposes, namely :
  - (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 or hilly tracts, the prevention of land slides or of the formation of ravings and torrents or the protection of land against erosion or the deposit thereon of sand, stones or gravels;
  - (iii) for the maintenance of water supply in springs, rivers, tanks, reservoirs and irrigation projects;
  - (iv) for the protection of roads, bridges, railways and other lines of communication;
  - (v) for the preservation of public health and of places of worship.

(2) The State Government may for any such purpose, construct at its own expenses, in or upon any forest or waste land such work as they think 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 land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification shall 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 by the State Government and have been considered by the State Government.

**40. Power to assume management of forests :-** (1) In case of neglect of or wilful disobedience to any regulation made or prohibition imposed under Section 39; or if the purposes of any work to be constructed under that section so requires the State Government may, after notice in writing to the owner of such forest or land and after considering his objection, 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 land shall be paid to the said owner.

**41. Acquisition 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 on land under the control of a Forest Officer the same should be taken on lease or acquired for public purposes, the State Government may proceed to take on lease on agreed terms or to acquire it in the manner provided under the Land Acquisition Act, 1894 (1 of 1894)

(2) The owner of any forest on land comprised in any notification under Section 59 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.

**42. Prohibition of cutting fruits - bearing trees :-** The State Government may by notification, from time to time prohibit the cutting of fruit-bearing trees specified in the notification which are standing on any land (other than land which is the property of Government or over which the Government have proprietary rights) and the cutting of which is likely to lead to fall in agricultural or industrial production.

**43. 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 of conservation of forests thereon, represent in writing to the State Government 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 apply to such land such provisions of this Act as they think suitable to the circumstances thereof and as may be desired by the applicants.

**44. Management of forests, the joint-property of Government and other person :-** (1) If the State Government and any person be jointly interested in any forest or waste land on 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 regulation for the management of the forests, waste land or produce by the person so jointly interested as they deem necessary for the management thereof and the interest of all parties therein.

(2) When the State Government undertake under Clause (a) of Sub-Section (1) the management of any forest, waste land or produce, they may, by notification, 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.

#### NOTES

*Interested jointly meaning of - 18(1952) CLT-336, AIR 1957 Odisha - 219.*

### CHAPTER - VI

#### OF THE CONTROL TO TIMBER AND OTHER FOREST PRODUCE IN TRANSIT OR POSSESSION

**45. 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 shall be vested in the State Government, and they may make rules to regulate the transit and possession of all timber and other forest produce.

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

- (a) prescribe the routes by which alone timber or other produce may be imported, exported or moved into, from or within the State;
- (b) prohibit the import or export or moving of such timber or other forest produce without a pass from an officer duly authorised to issue the same and 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 thereof;
- (d) provide for the stoppage, reporting, examination and making of timber or other produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof or on account of any fee, royalty or charge due thereon, or to which it is desirable for the purpose of this Act to affix a mark;
- (e) provide for the establishment and regulation of deposits to which such timber or other forest produce shall be taken by the person 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, the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or be 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 of saw mills, or saw pits, 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 person, and provide for the levy of fees for such registration.
- (j) provide for maintenance of accounts for timber received at or despatched from the saw mills;
- (k) regulate the possession and transit of valuable produce like sandal wood, tusks and wild life trophies.

(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.

#### **NOTES**

*(1) Rule 7 of Odisha Forest Contract Rules, 1966 - Forest produce removal contract - The same was not completed within the stipulated time - Period of extension granted - During the extension period, the contract was not completed - Further extension sought by contractor- Initially,*

*extension was granted but cancelled ultimately - Contractor sustaining loss on ground of not felling trees during the extended period, does not wise - Hence, suit for recovery of loss sustained is not maintainable- AIR 2002 (Odisha)-1.*

*(2) Section 45 - Lease for collection of forest produce, granted in favour of Co-operative Society with a condition for renewal on due date - Lease continuing - Govt.'s policy to grant more leases in one are to avoid monopoly - This is not applicable to leases in favour of Co-operative Societies - Hence, it is illegal to grant lease for collection of minor forest produce, in favour of another party in the same area - AIR 1998 Odisha-180.*

*(3) Section 45, 46 and 83 - The accused could neither give any explanation nor produce the licence for the hand-sawn logs found in the accused's house - Reasons for this not being an offence under the above sections been explained - may be an offence under the Odisha Timber Transit Rules or Odisha Forest Saw Pits and Saw Mills (Control) Rules, but does not come under the ambit of those sections and hence cognizance not taken under the Act - 1994(1) OLR-255.*

*In view of the above decision, cognizance cannot be taken under the above sections, section 83 of the Act provides that any person provided shall be violating any provision of the Act or the Rules, for the violation of which no penalty is punishment for a maximum period of two months imprisonment or fine of Rs. 1,000/- or with both - 1994(1) OLR-255.*

*Section - 45 - On the strength of a warrant the petitioner's premises was searched by the Forest Range Officer Anandpur on 15.9.94 at 9 A.M. and he seized 666 pieces of sal and piasal variety of timber - The petitioner could not produce any authority for such possession - It was held by the court that Sections 45 and 46 are not penal sections, but Section 46 is only an enabling section authorising the State Govt. to frame rules for regulating possession of forest produce with a punishment of one year's imprisonment and fine - It is neither proper nor legal to take cognizance under Sec. 46 of the Act - 1991(III) OLR-307,; 1991 Cri.L.J.-2642.*

**46. Penalty for breach of rules made under Section 45 :-** (1) In making any rule under Section 45, the State Government may provide that a breach thereof shall be punishable with imprisonment which may extend to <sup>1</sup>[five years and with fine which may extend to five thousand rupees.]

<sup>1</sup>[(2) Such rules may provide that 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, the offender shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten thousand rupees].

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1. Substituted vide O.A. No. 12 of 2003 Notfn. No. 6282/Legis. O.G.E. No. 660, dt. 5.5.2003.

## NOTE

*Section 46 is neither a defining section, nor a penal section - Therefore, taking cognizance under the said section amounts to gross irregularity and the entire proceeding is vitiated - 73(1992) CLT-52.*

**47. Government and forest officers not liable for damage to forest produce at Depot :-** The State 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 45, 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.

## NOTE

*State is not liable for the seizure and detention of this goods where the seizure is legal - 27(1961) CLT - 340.*

**48. All persons bound to aid in case of accident 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 State Government or by any private person, shall render assistance to a Forest Officer or Police Officer demanding aid in averting such danger or securing such property from damages or loss.

## CHAPTER - VII

### OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

**49. Certain kinds of timber to be deemed property of Government until title thereto is proved and may be collected accordingly :-** (1) The following 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, namely :

- (a) all timber found adrift, breached, stranded or sunk;
- (b) all wood or timber bearing marks which have not been registered in accordance with the Rules made under Section 45, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and
- (c) in such areas as the State Government may direct, all unmarked wood and timber.

(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 55, and may be brought to any depot which the Divisional Forest Officer may specify as a depot for the reception of drift timber and the Officer or person so collecting shall forthwith make a report to the Divisional Forest Officer.

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



**50. Notice to claimants of drift timber :-** Public notice shall, from time to time, be given by the Divisional Forest Officer of timber collected under Section 49 and every 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.

**51. Procedure on claim preferred to such timber :-** (1) When any such statement is presented as aforesaid, the Divisional Forest Officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Divisional Forest Officer may either make an order declaring the person entitled to the timber and deliver the same to him or may refer the claimant to the Civil Court having jurisdiction and retain the timber pending the receipt of an order from any such Court for its disposal :

Provided that no such delivery of timber shall be made under this Sub-Section until the expiry of a period of three months from the date of the order made by the Divisional Forest Officer.

(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 be entitled to any compensation or costs against the State Government, or against any Forest Officer on account of such rejection, or the retention or removal of any timber, or the delivery thereof to any other person under this section.

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

**52. 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 50, 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 period fixed by Section 51, the ownership of such timber shall vest in the State Government, or when such timber has been delivered to another person under Section 51, in such other person free from all encumbrances not created by him.

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

**54. 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 Divisional Forest Officer or other person entitled to receive it, such sum on account thereof as may be due under any Rule made under Section 55.

**55. Power to make rules and prescribe penalties :-** (1) The State Government may make rules to regulate the following matters, namely :

- (a) the salving, collection and disposal of all timber mentioned in Section 49;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid for salving, collecting, moving, storing or disposing of such timber; and
- (d) the use and registration of hammers and other instruments to be used for making such timber.

(2) In making any rule under this Section, the State Government may provide that a breach thereof shall be punishable with imprisonment which may extend to one year <sup>1</sup>[and with fine] which may extend to one thousand rupees <sup>2</sup>[\*\*\*]

### <sup>3</sup>[CHAPTER - VII-A]

#### PROVISIONS RELATING TO SANDAL WOOD

**55-A. Sandal-trees to be exclusive property of State Government :-**

(1) Notwithstanding anything to the contrary contained in any law, contract, grant or other instruments but save as provided in Section 55-B.

- (i) all sandal trees which may grow in any land on or after the date of commencement of the Odisha Forest (Amendment) Act, 1990; and
- (ii) all sandal trees existing on any land prior to the commencement of the Odisha Forest (Amendment) Act, 1990

shall be the exclusive property of the State Government.

(2) Where, in any proceedings taken under this Act, a question arises as to whether any sandal wood is the property of the State Government, it shall, until the contrary is proved, be presumed to be the part of a sandal tree which was the exclusive property of State Government under Sub-Section (1), and in the case of any prosecution, the burden of proving the contrary shall lie on the accused.

**55-B. Disposal of sandal-wood belonging to private persons :-** (1)

Any person who by terms of his title to the land, grants or by judicial decision or otherwise, was prior to the commencement of the Odisha Forest (Amendment) Act, 1990, legally entitled to the sandal trees in his

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1. Substituted by Odisha Act 9 of 1983-See O.G.E. No. 444, dt. 18.4.1983.

2. Deleted by *ibid*.

3. Inserted vide Odisha Ext. Gazette No. 2037/Legis., Dt. 14.12.1990.

lands, shall not fell or sell any such sandal trees.

(2) The Divisional Forest Officer concerned may cause any such sandal tree or trees occurring in such lands to be cut or uprooted and sold and in the event of such sale, proceeds thereof shall be paid to the person referred to in Sub-Section (1) after deducting the expenses incurred for felling and selling the tree and such payment shall be deemed to have been made towards the full satisfaction of compensation for that tree.

**55-C. Regulation, sale and manufacture of sandal-wood and sandal-wood oil :-** (1) No person shall possess, store or sell or attempt to store or sell sandal wood or disintegrate or attempt to disintegrate sandal wood in mills or by other contrivance, manufacture or distil or attempt to manufacture or distil oil from sandal woods except under a licence obtained from a Forest Officer empowered in this behalf on payment of such fees and subject to such restrictions and conditions, as may be prescribed;

Provided that no such licence shall be necessary for possession of sandal wood up to two kilogram for *bona fide* domestic use.

<sup>1</sup>[(2) Whoever contravenes the provisions of Sub-Section (1) shall, on conviction, be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and with fine which may extend to ten thousand rupees.]

**55-D. Responsibility of occupants and holders of land for preservation of sandal-trees :-** (1) Every occupant or holder of land shall be responsible for the due preservation of all sandal trees growing thereon which are the exclusive property of the State Government, and shall, in the event of any damage to any such tree from whatever cause or its theft, report such fact to the nearest Forest Officer or Police Officer as soon as possible.

(2) Any occupant or holder who fails to report any such case of damage or theft as aforesaid to such officer and unless adjudged by a Forest Officer not lower in rank than the Divisional Forest Officer that such damage or theft was not caused either by his own act or by any neglect or default on his part or by any other person at his instigation or with his connivance shall, notwithstanding any other penalty to which he may be liable, to pay the State Government such compensation on account of such damage or theft, as the Divisional Forest Officer, may deem reasonable.

**Explanation :-** The word damage used in this section includes the lopping of branches of the tree.

**55-E. Penalty for offence in regard to sandal-wood :-** In any case of a forest offence having reference to the cutting uprooting or removal or damage to a sandal tree or any part of a sandal tree belonging to Government, the offender shall on conviction be punishable with imprisonment for a term <sup>1</sup>[which shall not be less than three years but may

1. Substituted vide O.A. No. 12 of 2003 Notfn. No. 6282/Legis. O.G.E. No. 660, dt.5.5.2003.

extend to seven years] and with fine which may extend to ten thousand rupees.]

## **CHAPTER - VIII**

### **PENALTIES AND PROCEDURE**

<sup>1</sup>[**55-AA. Minimum punishment to be imposed** :- Unless for sufficient reasons to be recorded in writing, the Court passing an order of conviction for an offence under this Act or the Rules made thereunder [other than an offence under Sub-Section (2) <sup>2</sup>(or Sub-Section (3) of Section 27 or Sub-Section (2) of Section 46 or Section 55-C or Section 55-E or Section 67) or under Section 83] imposes a lesser punishment, the minimum punishment to be imposed on such conviction shall be imprisonment for a period of two months together with a fine of an amount equal to fifty per cent of the maximum fine provided for the offence.]

**56. 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, ropes, chains, boats, vehicles 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, except where the offender agrees in writing to get the offence compounded <sup>3</sup>[under Section 72] <sup>4</sup>[either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or 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 and the Divisional Forest Officer.

<sup>2</sup>[(2-a) When an authorised officer seizes an forest produce under Sub-Section (1) or where any such forest produce is produced before him under Sub-Section (2) and he is satisfied that a forest offence has been

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1. Re-numbered vide Odisha Ext. Gazette No. 2037/Legis.-dt.15.12.1990.
  2. Substituted vide O.A. No. 12 of 2003 Notfn. No. 6282/Legis. O.G.E. No. 660, dt. 5.5.2003.
  3. Inserted *ibid*.
  4. Inserted vide Odisha Act 9 of 1983-See O.G.E. No. 444-D/18.4.1983.
  5. Substituted *ibid*.

committed in respect thereof, <sup>5</sup>[he shall] order confiscation of the forest produce so seized or produced together with all tools, ropes, chains, boats, vehicles or cattle used in committing such offence.

(2-b) No order confiscating any property shall be made under Sub-Section (2-a) unless the person from whom the property is seized is given—

- (a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;
- (b) an opportunity of making a representation in writing within such reasonable times as may be specified in the notice against the grounds for confiscation; and
- (c) a reasonable opportunity of being heard in the matter.

(2-c) Without prejudice to the provisions of Sub-Section (2-b) no order of confiscation under Sub-Section (2-a) of any tool, rope, chain, boat, vehicle or cattle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(2-d) Any Forest Officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may, within thirty days from the date of the order of confiscation by the authorised officer under Sub-Section (2-a), either *suo motu* or on application, call for and examine the records of the case and may make such inquiry or cause such inquiry to be made and pass such order as he may think fit :

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(2-e) Any person aggrieved by an order passed under Sub-Section (2-a) or Sub-Section (2-d) may, within thirty days from the date of communication to him of such order, appeal to the District Judge having jurisdiction over the area in which the property has been seized, and the District Judge shall, after giving an opportunity to the parties to be heard, pass such order as he may think fit and the order of the District Judge so passed shall be final.]

(3) The property seized under this section shall be kept in the custody of a Forest Officer or with any third party, until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received.

<sup>1</sup>[Provided that the seized property shall not be released during pendency of the confiscation proceeding or trial even on the application of

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1. Added vide O.A. No. 12 of 2003 Notfn. No. 6282/Legis. O.G.E. No. 660, dt.5.5.2003.

the owner of the property for such release.]

**Explanation** :— For the purposes of this Section and Section 59, cattle shall not include buffaloes, bulls, cows, calves and oxen.

#### NOTES

**(1) Section 56** - Seizure of vehicle, seizes and planks belonging to the petitioner by Forest Officials—Initiation of confiscation proceeding—Authorised Officer closed the proceeding and directed release of seized vehicle and articles on the ground that produce seized do not attract the provisions of Forest Act—Petitioner filed writ petition claiming compensation for the illegal seizure and detention of the vehicle—No malafide shown on behalf of the Forest Officials and initiation of confiscation proceeding was in accordance with law—Held, claim of compensation not tenable : **(2012) 51 OCR - 352.**

**(2) Section 56** - Seizure of vehicle for transportation of Sal and Kurum planks without T.T. Permit-confiscated by authorised officer—Appeal was dismissed by District Judge—Vehicle was seized by Police and handed over to forest department—Enquiry was conducted by the Forester—Rule 4(2) of Odisha Forest (Detection, Enquiry and Disposal of Forest Offences) Rules, 1980 not complied with—Confiscation order set-aside—Vehicle released in favour of petitioner : **(2012) 51 OCR - 258.**

**(3) Section 56** - Odisha Timber and Other Forest Produce Transit Rules, 1980 - Rule 4 - Transportation of teak logs - No document produced in support of such transportation - Confiscation proceedings - Appeal against order of confiscation passed by Authorised Officer allowed - Writ - Findings of fact arrived at by the appellate authority on examination of the oral and documentary evidence - High Court in a writ petition has hardly any jurisdiction to disturb the said finding of fact unless it is proved that such finding is perverse and without any evidence to support the same - Rule 4(2) of the 1980 Rules has also not been followed in the manner prescribed under the Rule : **2012 (I) OLR 933, (2012) 52 OCR - 511.**

**(4) Section 56** - Confiscation proceeding - Petitioner claim that no forest produce was seized - Doors, which are finished products, belonging to them, were found in the seized vehicle - Authorised Officer found that sizes and planks shown to have been seized in the seizure list were in fact dismantled parts of the doors - Held, seized articles are finished products for which the seizure itself has been held to be unjustified - Reassembling dismantled sizes and planks to doors would involve availing of services of carpenter - Petitioners have to incur expenses for the same - Cost to reassemble 8 nos. of doors is assessed at Rs. 2400/- Direction issued : **2012 (I) OLR 433, (2012) 51 OCR - 349.**

**(5) Section 56** - Confiscation proceedings - Appellate authority set aside the confiscation proceeding holding that the forest department failed to adduce evidence regarding commission of forest offence - Writ - Appellate authority has jurisdiction to consider an appeal by re-appreciation of evidence on record - Both questions of law as well as fact may be dealt with in appeal - Little scope for re-appraisal of evidence in a writ proceeding -

*Discussing the facts, findings and evidences held Authorised Officer does not appear to have considered such evidence which squarely supports the owner's plea that seized wood were dismantled parts of old wooden furniture - State has failed to make out any cogent ground for interference - Direction issued - Cost assessed at Rs. 5,000/- payable to the owner : 2012 (Supp. I) OLR - 539, (2012) 51 OCR - 267.*

*(6) Section 56 - Vehicle seized for committing offence under the Act, 1972 - Order of confiscation of the vehicle - Writ with prayer to deliver the vehicle on depositing cost as assessed - Held, O.P. No. 3 may assess the value of the aforesaid vehicle and send the same to O.P. No. 2 - It will be open for the O.P. No. 2 to release the vehicle in favour of the petitioner on his depositing the value of the vehicle, as assessed by the O.P. No. 2 : 2010 (I) OLR 16 : 109 (2010) CLT 599.*

*(7) Sections 56, 64 - Odisha State Financial Corporation Act, 1951 - Confiscation proceeding - Vehicle financed by O.S.F.C. and under hire purchase agreement - Release of the sale proceeds - Discussing the facts, contention and provisions of law held, by virtue of the provision in Section 56 read with Section 64(2) of the Act, 1972, the action taken for confiscation of the vehicle cannot be extended to grant protection of the loan advanced by the O.S.F.C. : 2008 (I) OLR (FB) 796 : AIR 2008 Ori. 119 : (2008) 40 OCR 52.*

*(8) Section 56 - Vehicle seized for illegal transportation of Arguna Kanda - Confiscation proceeding - Release of vehicle - Relying in the case reported in 2003 (II) OLR 530, direction for release of vehicle on conditions stated : 2007 (II) OLR 605 : (2007) 38 OCR 276 : CLT (2007) Supp. CrI. 1258.*

*(9) Section 56 - Odisha Saw Mill and Saw Pits (Control) Act - Sec. 13 - Odisha Timber other Forest Produce Transit Rule Rules - 21 - Cognizance of offence under - Submission that Sec. 56 of the Odisha Forest Act and Sec. 13 of Odisha Saw Mill and Saw Pits (Control) Act not being penal section, the Court below ought not have taken cognizance against the petitioner under those sections - Held, those two sections are not penal sections - Cognizance taken thereunder is quashed - Order taking cognizance under Rule 21 of the O.T.T. Rules passed by the Trial Court is confirmed : 2007 (III) OLR 97 : (2007) 37 OCR 349 : CLT (2007) Supp. CrI. 558.*

*(10) Section 56 - Confiscation - No notice given to owner before confiscation - Matter raised before Authorised Officer and appellate authority - Said question not considered in its proper perspective - Writ - Held, no proper notice was given to the petitioner before the vehicle was directed to be confiscated - Confiscation proceeding set aside - Direction issued : 2006 (III) OLR 78 : (2006) 34 OCR 712.*

*(11) Section 56 - Confiscation of vehicle - Vehicle in question was involved in commission of a forest offence - Requirement of section casts a burden on the owner to prove to the contrary and the findings arrived at by the lower courts clearly indicate that neither the Authorised Officer nor the appellate authority were satisfied by the evidence led by the owner - Held, a forest offence has been committed - No further consideration - Order passed by the Authorised Officer and the appellate authority*

*confirmed : 2006 (Supp.- II) OLR 346 : (2006) 35 OCR 558.*

*(12) Section 56 - Odisha Timber and Other Forest Produce Transit Rules, 1980 - Rules 4, 12 and 14 - Vehicle seized for carrying sal leaves - Confiscation proceedings - Writ - Any person who collects sal leaves which are found outside the forest and does not bring leaves from the forest does not commit any offence - Vehicle was intercepted on the main road and there is no allegation by the prosecution that the vehicle was carrying leaves which were collected from the forest - Held, sal leaves seized from the petitioner's vehicle cannot be treated as forest produce - Confiscation proceeding in the present case cannot be upheld : 2006 (II) OLR 109 : (2006) 34 OCR 641 : 102 (2006) CLT 65 : 2006 Cri.L.J. 3718 (Ori.).*

*(13) Section 56 - Transportation of mango planks - No valid document or Timber Transit Permit for transporting such planks - Order of confiscation - District Judge on appeal by O.P. No. 1 imposed fine instead of confiscation of the seized truck - Writ - When subject of confiscation is found liable for confiscation, then in absence of specific provision in the statute, a Court cannot allow release of such articles on payment of fine - Provision of law in the section does not provide for imposition of fine in lieu of confiscation - Order of District Judge being illegal and contrary to the Statutory provision, the same is set aside and order of confiscation of the Authorised Officer is maintained : 2006 (Supp.-I) OLR 920 : (2006) 34 OCR 714.*

*(14) Section 56 - Odisha Timber and Other Forest Produce Transit Rules (1980), Rule 4 - Forest Offence - Alleged transportation of kendu leaves without T.T. Permit - Claim of dept. of alleged transportation supported by statement of driver and other documents on record and never refuted by owner of vehicle - Case for violation of Rule 4 of T.T. Rules thus established - Mere non-examination of Police Officer, who initially seized truck or non-mentioning details of allegations in notice to petitioner - Would be of no consequence : 2006 Cri.L.J. 1337 (Ori.) : 2005 (Supp.) OLR 921.*

*(15) Section 56(2) - Truck found carrying processed kendu leaves without valid documents and T.T. permit - Confiscation proceedings - Confiscation order passed - Appeal before District Judge dismissed - Writ - In a proceeding under the Sec., the Department has to simply show prima facie materials indicating involvement of the concerned vehicle in a forest offence - If such onus is discharged by the Department, then the burden shifts on the owner of the vehicle to establish that he had no knowledge or connivance in commission of the forest offence and that he had taken all reasonable and necessary precaution against misuse of the vehicle by the driver or his agent - In the present case facts / statement shows that driver had been authorised to transact the business of the truck during the absence of the owner - Once this was established and once the petitioner offered no evidence to show that he had taken reasonable and necessary precaution against use of vehicle in any illegal work, the protection provided under Sec. 56 Sub-Sec (2-c) was not available - Sec. 56(2) of the Act nowhere contemplates that fine can be imposed in lieu of confiscation of the offending vehicle : 2005 (Supp.) OLR 921 : (2005) 32 OCR 372.*



**(16) Section 56** - Odisha Forest Produce Transit Rules, 1980 - Rule - 4 - Vehicle seized by the Forest Officials alongwith timbers for violation of the provisions - Order of confiscation of vehicle as also the timbers to the State - Plea of petitioner that the driver due to threat at the point of Bhujali loaded the timbers - Held, no material with regard to threat - No report lodged before the Police - No plausible explanation is forthcoming as to why the driver did not do so - Petitioner to substantiate his stand has examined no independent witness - No cogent reason to interfere : **2005 (Supp.) OLR 507 : CLT (2005) (Supp.) (Cri.) 226.**

**(17) Sections 56, 64** - Procedure for confiscation against a vehicle - Confiscation not to be subject to satisfaction of any encumbrances - Claim of petitioner of hypothecation of the confiscated vehicle - Scope of - Case issue to be referred to Larger Bench : **99 (2005) CLT 38 : 2004 (II) OLR 627.**

**(18) Sections 56, 64** - Confiscated vehicle - Release of sale proceeds in discharge of loan liability - When a proceeding for confiscation is undertaken, under Sec. 56 of the Act against a vehicle, at that stage, there is no debaring provision in that section or any other provision in that Act to make the order of confiscation subject to satisfaction of any encumbrances - Property confiscated under Sec. 56 shall vest in the State Government free from all encumbrances - Hypothecated vehicle remained as a charge for discharge of loan amount - If sale proceeds is to be released for repayment of loan, then that negatives the purpose of Section 56 inasmuch as the loanee-cum-the registered owner of the hypothecated vehicle gets the reward of repayment of his loan which otherwise would have been an additional burden on him - Order referring the issue to a Larger Bench : **2004 (II) OLR 627 : (2004) 29 (OCR) 875.**

**(19) Vehicle confiscated under Sections 56 and 64** - sale proceeds released in discharge of loan liability - There is no debaring of provision in that section to make ten order to confiscation subject to the satisfaction of any encumbrance when proceedings for confiscation of a vehicle is undertaken under Sec. 56 of the Act - property confiscated under the said section vests with the State Government free from all encumbrance whereas hypothecated vehicle remains as a charge for discharge of the loan amount - It is an admitted benefit to the owner of the vehicle - Order referred to a larger Bench for decision - **2004(II) OLR-627.**

**(20) Section 56** - Truck found carrying 92 pieces of teak planks - owner of the truck taking plea before authorised officer in confiscation proceeding that the illegal transportation was without her knowledge or connivance - plea not sustainable unless cogent evidence is produced - Owner of the truck would be liable for any act of commission or omission of the driver - Hon'ble Court confirmed the order of confiscation of the truck passed by the authorised officer - **(2003) 23 OLR-458.**

**(21) Confiscation of vehicle under Sec. 56** - It should be proved by the owner that the vehicle was, so used without his knowledge or connivance or the knowledge or connivance of his agent - Moreover, he should also prove that he and his agent had taken all reasonable precaution against commission of forest offence - In the instant case owner admitted

that the driver had committed the offence - **2002(II) OLR-216.**

**(22) Section 56** - Confiscation of vehicle - Owner to prove that the same has been used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the article in question - To escape the order of confiscation it must be further proved that each of the concerned persons had taken all reasonable and necessary precautions against use of the vehicle in question in respect of forest offence - In the present case owner admitting that the vehicle was managed by driver - Owner liable for any act or omission committed by driver : **2002 (II) OLR 216 : (2002) 23 OCR 458 : 94 (2002) CLT 290 : 2002 Cri.L.J. 3913 (Ori).**

**(as amended in 1983)** - Sec. 56 (before and after amendment) and sec. 57 - Distinction between prior and after amendment of Sec. 56 explained - After amendment two courses are open, one before Magistrate and another before the authorised officer - All these matter relate seizure and confiscation - Interim order as to custody for release can be made by the officer who made the order of confiscation - In the instant case the Conservator of Forests has no power to pass interim order of custody - The authorised officer can pass such order - Direction given : **2001 (I) OLR 613 : (2001) 21 OCR 111.**

**(23) Section 56** – Though prima facie such submission may appear to be attractive, on deeper scrutiny, this cannot be accepted, Section 57 itself provides that the officer may release the property on the execution by the owner of the property, a bond for production of the property released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which science has been made. However the expression which has been inserted by Odisha Act 9 of 1983 to the effect, and where a report of such seizure has been made to the Magistrate under Sub-Section (2) of that section, makes it clear that the power of release can be exercised only when such seizure has been made to Magistrate under Sub-Sec. (2) of Sec. 56 and not otherwise. This becomes more clear in view of the latter portion of Sec. 57 to the effect that the property is to be released on execution by the owner of a land for production of property so released if and when so required before the Magistrate having jurisdiction to try the offence. In other words, where the seizure has not been reported to the Magistrate, Sec. 57, by virtue of its plain languages is not applicable. It has to be noticed that under Sec. 56(2) as it stood before amendment effected by Odisha Act of 1983, seizure was required to be reported to the Magistrate having jurisdiction to try the offence, except where the offence was to be compounded. In other words, all seizures except where the offence was being compounded by the department, itself, were required to be reported to the Magistrate and the offences were required to be tried by him. The insertion of the expression and where a report of such seizure has been made to Magistrate under Sub-Sec. (2) of that section in Sec. 57 was found necessary in view of the amendment effected in Sec. 56(2) by Odisha Act a of 1983, where, for the first time the following was inserted in Section 56(2).

*(either produce the property seized before an officer not below the*

*rank of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification (herein after referred to as the authorised officer), or,*

*In fact, by Odisha Act 9 of 1983, procedures relating to confiscation by the authorised officer and other provisions relating to appeal, etc. were inserted in the shape of Sec. 56 (2-a) to (2e). In other words in addition to or in lieu of question or trial by Magistrate the Act has not contemplated a separate confiscation proceeding before the Authorised Officer. After the amendment in 1983, if a seizure is made, the officer seizing such property may produce the property seized before the authorised officer and/or make a report of such seizure to the Magistrate having jurisdiction to try the offence. Sec. 56 (2a) envisages that where such forest produce is seized by the authorised officer under Sub-Sec. (1) or is produced before him under Sub-Sec. (2) he may order confiscation of such forest produce so seized or produced together with all tools, ropes, chains, boats, vehicles, or cattle used in committing such offence, subject to other conditions as envisaged in Sub-Sections (2-b) and 2-c) being fulfilled, if Section 57 would have continued to remain as such without any amendment, the general power of release of property could have been exercised by the concerned officer as indicated in Sec. 57. However, the insertion of that section of the expression and where a report of such seizure has been made to Magistrate under Sub-Sec. (2) of that section, makes it clear that such power of release can be exercised only where the seizure is reported to the Magistrate and the property is to be released with a direction to produce the same before the Magistrate as and when required by the Magistrate, where seizure is not reported to the Magistrate and the property is produced before the Authorised Officer, such a contingency would not arise.*

*The question would arise as to whether the property seized by the authorised officer or produced before the authorised officer can at all be released before conclusion of a confiscation proceeding before the authorised officer. It is, of course, true that in view of the interpretation already given to Section 57, the question of interim release of the property by the authorised officer before whom confiscation proceeding is pending would not be governed by Sec. 57. However, that would not prevent the authorised officer to consider giving interim release of the property or the vehicle, since it is the authorised officer who can direct confiscation other conclusion of the proceeding it can be concluded that he has got ancillary or implied power to deal with the matter relating to custody of property during pendency of the proceeding. However, where the authorised officer is already in seisin of the property, any other statutory authority envisaged under Sec. 57 cannot direct release of the property or vehicle.*

*It was also contended that since the Conservator of Forests can exercise suo motto power of revision being moved by any person under Section 56(2d) after the order of confiscation, as a revisional authority, it must be taken that he has got power to pass any order even during the pendency of confiscation proceeding. The revisional order envisaged in Sec. 56(2a) is only confined to final order of confiscation and there is no such revisional power in respect of any other order. There cannot be any*

*dispute that the authorised officer, while acting under Sec. 56(2a) or the Conservator of Forests, while acting under Sec. 56(2-d) acts as a quasi judicial authority and the orders of such authority are subject to the appellate jurisdiction of the District Judge having jurisdiction. However, this revisional jurisdiction and the appellate jurisdiction of the District Judge are relatable to final confiscation order. It is of course true that when matter comes to them either in revision or in appeal as contemplated in Sec. 56(2-d) and 56(2-e), they can pass any interim order relating to custody of the property/ vehicle or otherwise. However, it cannot be said that they have an authority while the matter is still pending before the authorised officer.*

*In such view of the matter, it would not be proper to give a direction to give effect to the order passed by the Conservator of forests. However, the authorised officer is now directed to consider the question of interim release of the vehicle of the petitioner. It is further directed that whether interim release of the vehicle is given or not, the confiscation proceeding itself should be finalised as soon as possible.*

*Subject to the aforesaid observations, the writ application is disposed of- There will be no order as to costs - (2001) 21 OCR-111.*

**(24) Section 56 (before and after amendment) and after amendment of Sec. 56 explained** — *After amendment, two courses are open, one before Magistrate and another before the authorised officer - All these matters relate to seizure and confiscation - Interim order as to custody for release can be made by the officer who made the order of confiscation - In the instant case, the Conservator of Forests has no power to pass interim order of custody - The authorised officer can pass such order.*

*If Sec. 57 would have continued to remain as such without any amendment, the general power of release of property could have been exercised by the concerned officer as indicated in Sec. 57. However, the insertion in that section of the expression (and where a report of such seizure has been made to Magistrate under Sub-Sec. (2) of that section makes it clear that such power of release can be exercised only where the seizure is reported to the Magistrate and the property is to be released with a direction to produce the same before the Magistrate as and when required by the Magistrate, where seizure is not reported to the Magistrate and the property is produced before the authorised officer, such a contingency would not arise.*

*The question would arise as to whether the property seized by the authorised officer or produced before the authorised officer can at all be released before the authorised officer. It is of course, true that in view of the interpretation already given to Sec. 57 the question of interim release of the property by the authorised officer before whom confiscation proceeding is pending would not be governed by Sec. 57. However, that would not prevent the authorised officer to consider giving interim release of the property or vehicle since it is the authorised officer who can direct confiscation after conclusion of the proceeding, it can be concluded that he has got ancillary or implied power to deal with the matter relating to custody of the property during pendency of the proceeding. However,*

*where the authorised officer is already in seisin of the property, any other statutory authority envisaged under Sec. 57 cannot direct the release of the property or vehicle.*

*It was also contended that since the conservator of forests can exercise suo motu power of revision, being moved by any person under Sec. 56(2-a) after the order of confiscation as a revisional authority, it must be taken that he has got power to pass any order even during the pendency of confiscation proceeding. The revisional order envisaged in Sec. 56(2-a) is only confined to final order of confiscation and there is no such revisional power in respect of any other order.*

*There cannot be any dispute that the authorised officer, while acting under Section 56(2a) or the Conservator of Forests, while acting under Sec. 56(2-d) acts as a quasi-judicial authority and the orders of such authorities are subject to the appellate jurisdiction of the District Judge, having jurisdiction. However, this revisional Jurisdiction and the appellate Jurisdiction of the District Judge are relatable to final confiscation orders. It is of course true that when matter comes to them either in revision or in appeal as contemplated in Sec. 56(2d) and 56(2-e), they can pass any interim order relating to custody of the property/vehicle or otherwise. However, it cannot be said that they have any authority while the matter is still pending before the authorised officer.*

*In such view of the matter, it would be proper to give direction to give effect to the order passed by the Conservator of Forests. However the authorised officer is now directed to consider the question of interim release of the vehicle of the petitioner. It is further directed that whether interim release of the vehicle is given or not, the confiscation proceeding itself should be finalised as soon as possible - Subhranta Vrs. State - 2001(I) OLR-613.*

*(25) Section 56 - Confiscation proceedings with regard to transportation of contraband forest produce - Challenged by the petitioner (owner of vehicle) on the ground that he had no knowledge of his vehicle being so used for commission of forest offence — In view of the statement under Section 161 Cr.P.C. that he had authorised the driver to carry woods on hire, the above plea is not tenable - More so, whether the owner or the driver had necessary knowledge or not or whether they had connived or not are all questions of disputed facts, which cannot be entertained under writ jurisdiction - The order of the authorised officer directing interim release of vehicle was not interfered with - 1999 Cri.L.J.-2612 (Odisha).*

*(26) Section 56 - Authorised Officer, the DFO made confiscation of vehicle - Necessary provision excludes mensrea as an essential condition - It must be proved by the owner of the vehicle that forest produce were carried in his vehicle with his knowledge and he had taken precaution - It is not necessary that no order of confiscation be passed on the factum of seizure of forest produce, is established - Position of law explained- the vehicle can be confiscated, even of the owner be acquitted - The scope and purpose of Rule 21 and Sec. 56 are entirely different - Principles enunciated - 1998 (15) OCR-49.*

**(27) Section 56-143** pieces of sal wood was seized from a vehicle having no transit permit - Under Section 161 Cr.P.C. statement, the owner of the vehicle should that he had authorised the driver to carry the same on hire - In this context, the plea of the owner that he had no knowledge of the same cannot be accepted - It rests on the appreciation of evidence, whether the same is sufficient to establish the case against the petitioner by the authorised officer - **1998(15) OCR-366.**

**(28) Sections 56** - Confiscation proceedings - Power of appellate authority - Can be exercised only against "confiscation order" of authorised officer - Order of authorised officer releasing goods is a "non-confiscation order" - Appeal against - Cannot be entertained by conservator of forests : **1998 (II) OLR 646 : AIR 1999 Ori. 37.**

**(29) Confiscation proceeding under Section 56** - On the finding that the person was found to be in illegal possession of seized forest produce authorised officer passed order of confiscation - The same was supported by other materials on record- Confiscation order upheld - **1994(7) OLR-36.**

**(30) Section 56** - Seizure of forest produce without any hammer mark and the person possessing the same failed to produce any document for such lawful possession - Confiscation proceedings started and the Magistrate having jurisdiction to try such offence was informed - Authorised officer is competent to place order of confiscation and not the Magistrate - Thus such confiscation order was upheld - **1994(7) OLR-36.**

**(31) Section 56** - Police Officer seized the vehicle and not the Forest Officer Application seized the made for the release of the vehicle - It was held that the Magistrate has the Jurisdiction and power to dispose of the matter - **1988(1) OLR-116.**

**(32) Section 56** - The petitioner was the owner of the truck, involved in a forest offence and was seized by a Police Officer - The petitioner made an application for release of the truck to the Magistrate but the Magistrate came to the conclusion that he has no jurisdiction in view of the amendment of Sec. 56 of the said Act — The Court held that when a vehicle is seized by a Police Officer and not by the authorised Forest Officer and produced before the Magistrate, the Magistrate has got the competence to pass necessary orders for the same - **1988(II) OLR-195.**

**(33) Confiscation of vehicle under Sub-Sec. (1) and (2a) of Sec. 56**— It is necessary that the authorised officer should record his satisfaction that a forest offence has been committed while confiscating the vehicle, used in such commission - **1987 (II) OLR-169.**

Before making any confiscation order for any forest produce seized the authorised officer should be satisfied about such commission - Any non compliance makes the order bad in law.

**(34) Sections 56 and 57** — Forest Officer seized the vehicle and proceedings under Sec. 56(2a) pending authorised officer rejected the petition under Sec. 57 for interim release of the vehicle - Remedy under Secs. 397, 401 and 482 of Cr.P.C., not maintainable - **1987(III) OLR - 33.**

**(35) Amended Section 56** — The vehicle carrying forest material was confiscated by the D.F.O. - In appeal, such confiscation order vacated-

*Direction for prohibiting other transport contractors from carrying forest materials, alleged to be involved in offence, issued such other in without jurisdiction.*

*The Divisional Forest Officer excluded his jurisdiction by issuing a direction that because some persons for their alleged involvement in forest offence, should not be engaged as transport contractors. Such a direction seems to be arbitrary. It has also been brought to our notice that such confiscation order has been vacated in appeal and the proceeding has not been adjudicated finally. It should be borne in mind by the forest Officers that they should act within the ambit of their jurisdiction as vested by Law 1985(1) OLR-130.*

**(36) Seizure of vehicle along with forest produce** – *Under the Criminal Procedure Code, the Magistrate cannot exercise power to release the same— 1984 CLR-147; 1985 Cr.L.J.-984.*

**(37) Sections 56(2-a) - 'Produce'** - *The term 'produce' means the seized articles being made available to the Authorised Officer for the purpose of consideration of the matter relating to confiscation or release of the seized article in favour of bona fide claimant : 2006 (Supp.- I) OLR 490 : (2006) 34 OCR 719 : 102 (2006) CLT 344 : 2006 Cri.L.J. 3596 (Ori.)*

**(38) Section 56(2-a) - Timber and Other Forest Produce Transit Rules, 1980 - Rule 4, 12 and 21** - *Jeep seized for illegal transportation of hand sawn sal - Order of confiscation - Discussing the facts and provisions of law held, factum of seizure is an admitted fact - Case for committing a forest offence by carrying such hand sawn sal seized without valid transit permit makes out the case of the Department in support of the order of confiscation - Petitioner utterly failed to prove that his vehicle was used without his knowledge or connivance or the knowledge or connivance of the driver - Order of confiscation does not suffer from any illegality, perversity or jurisdictional error : 2005 (I) OLR 132 : 2005 Cri.L.J. 1928 (Ori.).*

**(39) Section 56(2-a) Forest Office Violation of Rules 4, 5, 12 of Odisha Timber Transit Rules, 1980** - *Illegal transportation of forest products - Confiscation of vehicle involved - price of seized articles calculated at Rs.10,000/-. For release of vehicle fine of Rs.20,000/- imposed - (Mrs.) Sailabala Bock and others Vrs. The Authorised Officer-cum-Assistant Conservator of Forest, Keonjhar Division, Keonjhar and others - 95(2003) CLT-261.*

**(40) Vehicle to be produced as and when required by the Authorised officer or by the Magistrate trying the offence in the confiscation proceeding or the trial of the offence** - *Vehicle to be released on furnishing of cash and property security and a bond in terms of the section - 2003(I) OLR-530.*

**(41) Sections 56 and 64** - *Read with Odisha State Financial Corporation Act, 1951 - Section 29 - Truck hypothecated by O.S.F.C. seized by forest officials confiscation under the Forest Act, Held when a proceeding for confiscation is undertaken under Section 56 of the Act against a vehicle for committing any forest offence at that stage, there is no debarring provision in that section or any other provision in that Act to*

*make of confiscation subject to satisfaction of any encumbrances.*

*Property confiscated under Section 56 shall vest in the State Government free from all encumbrances. Therefore, in the context of claim of the petitioner of hypothecation of the confiscated vehicle the provision in Section 56 has to be read together with provision in Sub-Section (2) of Section 64 of the Act - (2004) 29 OCR-875; 2004(II) CLR-627.*

*(42) Section 56(2-a) - Confiscation proceeding under - Confiscation order confirmed in appeal - Writ petition challenging the proceeding and the appellate order - Appreciation of evidence on record by the writ court - Held, no illegality done by the authorised officer - 93 (2002) CLT-498.*

*(43) Section 56(2-a) - Order of confiscation - Not free from encumbrances Loan advanced by O.S.F.C. keeping the vehicle confiscated on a charge - O.S.F.C. has a right to recover the same, treating the loan as public demand - 93 (2002) CLT - 499.*

*(44) Section 56 (2-a) - Truck purchased on availing loan from Odisha State Financial Corporation - Truck used for the purpose of illegally transporting forest produce - Truck under proceedings of the Act, directed to be confiscated - O.S.F.C. dues remained unpaid - Whether O.S.F.C. would be deprived of getting their money ? - State Financial Corporation an instrumentality of the State - Facts stated on recovery of dues when co-lateral security available and when loan amount treated as a charge - Loan advanced can be treated as a public demand as per O.P.D.R. Act and being treated as a charge, any confiscation of the vehicle shall be subject to the charge of O.S.F.C. : 2002 (I) OLR 331 : 93 (2002) CLT 498 : AIR 2002 Ori. 130.*

*(45) Provisions under Section 56, Sub-Sections 2(a), 2(d), 2(e) and 2(4) explained - Order in case of confiscation or non-confiscation is appealable to the District Judge - The conservator of forest has got no appellate power against an order of non-confiscation under Sub-Section 2(a) - He can call for record of the case for examination, in case of confiscation made by the authorised officer - That power can be exercised suo motu or on an application - The impugned order, in the instant case quashed and the order of authorised officer confirmed 1998 (15) OCR-310.*

*(46) Section 56 (2a) - District Judge having jurisdiction in the area has to decide the appeal and not the Sessions Judge - He may be holding both the posts, but in order to avoid future complications he has to dispose of the appeal as a District Judge,*

*As per the interpretation of Sub-Sec. (2-e) of Sec. 56, the District Judge alone is competent to deal in the appeal - Therefore a case (appeal) disposed of by another Judge is illegal - 1992(II) OLR-300.*

*(47) Section 56(2) - Bags of Kendu leaves was detected at Sambalpur booked for Bombay - This, amounting to inter - district movement, provisions of Sec. 56(2) attracted.*

*It was held in a recent decision (i.e. State of Odisha Vrs. Kiran Sankar Panda - 71 (1991) CLT-187) it was held that if a forest offence is committed with the knowledge or connivance of the driver or the owner of*



*the vehicle, such vehicle is liable for confiscation, even if the owner might have no knowledge or connivance - It was further pointed out in order to avoid confiscation it must further be proved that each of the concerned persons had taken all reasonable and necessary pre-caution against the same - 1992(1) OLR-305.*

*(48) Section 56(2) - The petitioner's truck was found Kendu leaf bags at Noohi bahal check gate in the district of Sambalpur - The vehicle was driven by the petitioner himself - The documents produced by the petitioner was suspected by the Forest Official, who contacted the Range Officer and by the time the Range Officer arrived, the petitioner had left the truck and disappeared. Later on, the document was found to be forged and it was confirmed that the petitioner was involved in illegal transportation of Kendu Leaves. This led to confiscation proceeding ending against the petitioner and his appeal was also rejected.*

*It was directed to release the vehicle on payment of a fine of Rs.60,000.00 in cash - 1992(1) OLR-305, AIR 1992 Odisha-287.*

*(49) Section 56(2-a) - One Biswanath Behera was found to be carrying timber valued at Rs.5000.00 which was concealed under sand in a tractor - tractor, being driven by petitioner No. 2, which revealed illicit transport of timber with the knowledge of the petitioner - In such a situation, the tractor-trailer is liable for confiscation - The Court held that on perusal of records, it is seen that the said vehicle was involved in an earlier case regarding commission of forest offence, for which no opportunity was provided to the petitioner to explain his position with regard to the same - On this point the matter was remitted to the authorised officer for giving an opportunity to the petitioner to explain his conduct with regard to the said charge - 1990 (II) OLR-318.*

*(50) Sec. 56(2-a) - Ms empowers the District Judge alone to deal with appeal - Appeal disposed of by the Sessions Judge without Jurisdiction- such order was set aside and District Judge was directed to hear and dispose of the same - (1991)4 OCR-585.*

*(51) Sec. 56(2-a) - Vehicle confiscated on a finding by the authorised officer that forest offence was committed - In his presence and in presence of the enquiry officer, statement was recorded - There was no violation of the rule of Natural Justice in view of clear provisions - (1990) 3 OCR-518; AIR 1984 SC-1356; AIR 1973 SC-2701; AIR 1985 SC-85.*

*(52) It is well-settled that when an authority passes an order within his competence, it cannot fail only because it purports to have been made under a wrong provision, if it can be within its power under any other rule and that the worth of an order should be Judged on a due consideration of its substance and not the form - AIR 1950 SC -232; AIR 1954 SC -1929; (1994) 7 OCR-765 (FB).*

*(53) Section 56(2-c), 56(2-e) - Vehicle carrying 93 bundles of kendu leaves unauthorisedly seized - Order of confiscation passed - Appeal before District Judge was dismissed - Writ - Liberal approach in the matter with respect to the property seized which is liable to confiscation is uncalled for as the same is likely to frustrate the provisions of the Act - In the instant*

case, the petitioner had given the vehicle to his driver, who admittedly himself knowingly used the vehicle for commission of forest offence - Petitioner cannot escape the liability of confiscation as his driver, who was the agent-in-charge of the vehicle, knowingly used the same for commission of forest offence : **2010 (I) OLR 716 : (2010) 45 OCR 603 : 109 (2010) CLT 388.**

**(54) Sec. 56, 56 (2-d)** empowers the Conservator of Forests to call for and examine the records of a case in which confiscation order was made by the authorised officer within thirty days from the date of such order and may make or cause to be made such enquiry and there after pass necessary orders. The Conservator is not vested with any appellate power, but it is in the nature of supervisory or revisional power, under which the Conservator may call for and examine records within twenty (20) days from the order made by the authorised officer, it can be done suo motu or on an application - Therefore when the authorised officer has ordered release of seized goods/vehicles on payment of fine, it becomes an order of 'non-confiscation' and appeal in such a case shall lie to the District Judge and Conservator of Forest's appellate power is without jurisdiction - **AIR 1999 Odisha - 37.**

**(55) Jeep seized for illegal transportation of hand-sawn sal wood** in violation of Rules 4, 12 and 21 of the Timber and other Forest Produce Transit Rules, 1980 - Confiscation Order - Fact of seizure was admitted - Order of confiscation, makes out a case of without any valid transit permit - The fact that it was neither within his knowledge, nor within the knowledge of the driver, could not be proved by the petitioner - Such order of confiscation does not suffer from any illegality, perversity or Jurisdictional error - **2005(1) OLR-132.**

**(56) Section 56 and Section 2(g)** - Transit Permit Rules 2(1) (a) and 5(1)(i) and Rule 21 - Kendu leaves, being a forest produce, cannot be taken out of the district limit - Without a transit permit - Kendu leaves in the instant case, was transported without permit - Confiscation of vehicle upheld, after appreciation of evidence - **1998(15) OCR-58.**

**(57)** Even if the owner might not have any knowledge or connivance in the matter, if the offence is committed with the knowledge or connivance of the driver of the vehicle, the same would be liable for confiscation - The view that connivance of the driver would be a separate matter to be decided in a separate proceeding is erroneous - **71(1991) CLT-157.**

**(58)** When, in exercise of the powers under Sec. 56 of the Odisha Forest Act any forest produce along with the vehicle for committing any forest offence is seized the power to release such property lies with the prescribed authority and not with the Magistrate, in exercise of his powers under the provisions of Cr.P.C. - **57(1984) CLT-381; AIR 1986 SC-328; 1984 Cr.L.J.-984.**

**(59)** Confiscation of truck involved in the commission of forest officer - Authorities failed to establish the mensrea of the owner of the truck involved in the commission of such offence - High Court set-aside the order of confiscation on the basis of evidence on record - Not interfered by the Apex Court **(1998) 14 OCR (SC)-185.**

**(60)** Prosecution report filed before S.D.J.M. after timber was seized by Forest Department Officer - For interim custody of the seized timber petitioner filed application - General provisions with regard to Sec. 451 and 457 are applicable and Sec. 57 of O.F.A. is no bar - **(1992) 5 OCR-332.**

**(61)** About 90 quintals of mohua flower seized from a truck and the authorities directed confiscation for violation of Rules of the scheduled of Rates for the Forest Procedure Rules, 1977 - There being no clear finding under Rule 7 that such transport was for trade such confiscation order is liable to be quashed - **(1993) 6 OCR-131.**

**(62)** Fine can be imposed in lieu of confiscation when the authorities are satisfied about the undesirability of such confiscation - **(1992) 5 OCR-169.**

**(63) Section 56, 2(g) (ii)** - Confiscation proceedings - Whether sal leaves are forest produce when they are not found in or brought from the forest ? - As per Sec. 2(g)(ii) of the Act, only when sal leaves are found in or brought from the forest, they are forest produce - In the instant case the vehicle in question was intercepted on N.H.5 - Nowhere in the seizure list and the statement attached to the P.R. there is any mention that these sal leaf plates were found in or brought from any forest - Applying the ratio (2006 (II) OLR 109) held, seized sal leaf plates do not come within the purview of Sec. 2(g) of the Act and the seizure made by the forest officials was illegal and arbitrary - Confiscation proceeding quashed : **2010 (II) OLR 911 : (2010) 47 OCR 976.**

**(64) Section 56, Sub-Sec. 2(a), 2(d), 2(e)** - Petitioner being a licence holder under the Act, a truck carrying finished goods was seized and confiscated by the authorised officer - The articles and truck was released after enquiry - On an appeal, the Conservator directed a fresh enquiry - On a direction by the Conservator, the DFO confiscated the articles - The Conservator can exercise supervisory or revisional power by calling for records and examining the same if the authorised officer has ordered confiscation - This power can be exercised within thirty days of such confiscation, but no power of appeal is vested in him - Confiscation or non-confiscation order is appellable only to the District Judge - Hence such order of confiscation is without Jurisdiction - **1998(II) OLR-646.**

**(65)** A truck was confiscated - District Judge heard the appeal who is also the Sessions Judge - But when the appeal was disposed of, he signed it as the sessions Judge - It was held that this is not a case of lack of jurisdiction, as he was empowered to have as the District Judge and decided the same in the said capacity - The said order does not become illegal merely because he signed the same as a Sessions Judge.

It has been the settled law that an order passed by a competent authority cannot be negatived simply because it purports to have been made under a wrong provision and the validity of an order is to be judged on a consideration of its substance - In *P. Rajakothaith Vrs. Union of India-AIR 1950 SC-232* and *Hukumchand and Mills Ltd. Vrs. State of M.P.- AIR 1954 SC-1929*, the Supreme Court has made this point clear as follows :-

*On an interpretation of the relevant provisions, the Court held that it is permissible to pass an order for payment of fine in lieu of or instead of confiscation - It was found that the truck involved is of 1961 model and is the only source of income of the petitioner and his family. The illegally carried forest products value was about Rs.6,000.00. It was felt that a fine of Rs.15,000.00 in line of confiscation would serve ends of justice - 1994(1) OLR-276.*

**(66) Section 56(1) and (2-a), and Section 85** - A vehicle can only be confiscated if there is satisfaction of the vehicle being used for commission of forest offence - It means that there must be a direct connection in between the vehicle and the forest produce - Only because of the fact that a car was moving ahead of the truck carrying forest produce, it cannot be said to be involved in forest offence and cannot be confiscated and can also not be said to have abated such offence under Sec. 85 of the Act - 1993(II) OLR - 295.

57. <sup>1</sup>[\*\*\*]

#### NOTE

**Section 57** - To attract the prohibition under the section, two essential conditions must be fulfilled, firstly the offence alleged must relate to an offence under the Forest Act and the seizure must be under Sec. 56 of the Act; secondly the property seized should have been produced before the Divisional Forest Officer for initiation of the proceeding of confiscation : 2010 (I) OLR 756 : CLT (2010) Supp. Cri. 458 : 2010 Cri LJ 3991 (Ori.)

**58. Action after seizure** :- Upon the receipt to any such report, the Magistrate shall, except where the offence has been compounded, 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.

**59. Forest produce, tools, etc. 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 ropes, chains, boats, vehicles and cattle used in committing the forest offence, shall be liable to confiscation <sup>2</sup>[unless an order of confiscation has already been passed in respect thereof under Section 56.]

(2) Such confiscation may be in addition to any other punishment provided for such offence.

**60. Disposal on conclusion of trial for forest offence of produce in respect of which it was committed** :- When a 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 or under the authority of the Divisional Forest Officer,

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1. Omitted vide O.A. No. 12 of 2003 Notfn. No. 6282/Legis. O.G.E. No. 660, dt. 5.5.2003.

2. Inserted by Act 9 of 1983 See O.G.E. No. 444-D/18.4.1983.

and in any other case, may be disposed of in such manner as the Court may direct.

**61. Procedure when offender not known, or cannot be found :-** Where a Magistrate is of opinion that a forest offence was committed, but the offender is not known or cannot be found, he may on an application made in this behalf, order the property in respect of which the offence was committed and which was seized to be confiscated and taken possession of by or under the authority of the Divisional Forest Officer or to be made over to any person whom the Magistrate considers to be entitled to the same :

Provided that before making any such order, the Magistrate shall cause a notice of any application made under this section to be served upon any person who, he has reason to believe is interested in the property seized, or shall publish such notice in such manner as he thinks fit:

Provided further 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 vehicle, if any which he may produce in support of his claim.

**62. Procedure as to perishable property seized under Section 56 :-** The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under Section 56 which is subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it has not been sold :

Provided that if in the opinion of the officer seizing such property it is not possible to obtain in the orders of the Magistrate in time, such officer may sell the property, remit the sale proceeds to the nearest Government Treasury and make a report to the Magistrate and thereupon the Magistrate shall take such measures as may be necessary for the trial of the accused :

Provided further that no officer below the rank of Range Officer shall have power to dispose of property under the preceding proviso.

**63. Appeal from order under Section 59, 60 or 61 :-** The officer who made the seizure under Section 56 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 59, Section 60 or Section 61 prefer an appeal of the Court to which orders made by such Magistrate are ordinarily appellable, and the order passed on such appeal shall be final.

**64. Property when to vest in Government :-** <sup>1</sup>[(1)] When an order for the confiscation of any property has been passed under Section 59 or Section 61, as the case may be, and the period limited by Section 63 for filing an appeal from such order has elapsed, and no such appeal has been preferred or when, such an appeal being preferred, the appellate Court

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1. Re-numbered by Odisha Act 9 of 1983-See O.G.E. No. 444, dt. 18.4.1983.

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 State Government free from all encumbrances.

<sup>1</sup>[(2) When an order of confiscation of any property passed under Section 56 has become final under that Section in respect of the whole or any portion of the property, such property or the portion thereof, as the case may be, shall vest in the State Government free from, all encumbrances.]

<sup>2</sup>**[64-A. Confiscation to be no bar to imposition of other penalty :-** An order of confiscation made under Section 56 shall not act as a bar to the imposition of any other penalty to which the offender is liable under this Act or the Rules made thereunder.]

**65. Saving of power to release property seized :-** Nothing in this Act shall be deemed to prevent Divisional Forest Officer from directing at any time the immediate release of any property seized under Section 56 and the withdrawal of any charge made in respect of such property in accordance with the provisions of <sup>3</sup>[Section 321 of the Code of Criminal Procedure, 1973 <sup>3</sup>(2 of 1974)]:

Provided that where a report has been made to the Magistrate of the property seized under Section 56, the Divisional Forest Officer shall not release the property without the consent in writing of such Magistrate where a case is pending before him, and in other cases, without previous intimation to him.

**66. Punishment for wrongful seizure :-** Any Forest Officer or Police Officer who vexatiously or frivolously seizes any property on pretence of seizing property liable to confiscation under this Act or vexatiously or frivolously arrests any person under Section 68 <sup>4</sup>[for kindling, keeping or carrying any fire in the reserved forest, or for kindling any fire or leaving any fire burning in any forest land notified under Section 4, or for any other forest offence] shall be punishable with imprisonment for a term which may extend to one year <sup>5</sup>[and with fine] which may extend to one thousand rupees <sup>6</sup>[\* \* \* \*]

**67. 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 or unlawfully affixes upon any timber of standing trees a mark used by Forest Officer to indicate

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1. Added by Odisha Act 9 of 1983-See O.G.E. No. 444, dt. 18.4.1983.
  2. Inserted by Odisha Act 9 of 1983-See O.G.E. No. 444, dt. 18.4.1983.
  3. Substituted vide O.A. No. 12 of 2003 NOtfn. No. 6282/Legis. O.G.E. No. 660, dt. 5.5.2003.
  4. Inserted *ibid*.
  5. Substituted by Odisha Act 9 of 1983-See O.G.E. No. 444, dt. 18.4.1983.
  6. Deleted by *ibid*.

that such timber or tree is the property of Government or of 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 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 <sup>1</sup>[which shall not be less than three years but may extend to seven years and with fine which may extend to ten thousand rupees.]

**68. Powers to arrest without warrant :-** (1) Any Forest Officer or Police Officer may, without order from a Magistrate and without a warrant, arrest and detain in custody any person if the officer knows or has reason to believe that such person is committing or has committed any forest offence or if such person refuses to give his name and residence, or gives a name or residence which there is reason to believe to be false or if there is reason to believe that he will abscond.

(2) Every person arrested and detained in custody under this Section shall be informed, as soon as may be, of the grounds for such arrest and detention and shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate; and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

**69. Power to release on a bond a person arrested :-** Any Forest Officer of a rank not inferior to that of a Range Officer who or whose subordinate has arrested any person under the provision of Section 68, may release such person on his executing a bond to appear, except when the offence is non-bailable, if and when so required, before the Magistrate having jurisdiction in the case, or before the Officer-in-Charge of the concerned Police-Station.

**70. Power to prevent commission of offence :-** Every Forest Officer and Police Officer shall prevent, or may interpose for the purpose of preventing the commission of any forest offence.

**71. Power to try offence summarily :-** Any Magistrate of the First Class specially empowered in this behalf by the State Government, may try summarily under the Code of Criminal Procedure, <sup>1</sup>[1973] <sup>1</sup>(2 of 1974), any forest offence punishable with imprisonment for a term not exceeding one year, or with fine not exceeding one thousand rupees or with both.

**72. Power to compound of offences :-** (1) Any Forest Officer specially

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1. Substituted vide O.A. No. 12 of 2003 Notfn. No.6282/Legis. O.G.E. No. 660, dt.5.5.2003.

empowered in this behalf by the State Government may accept as compensation from any person who committed or in respect of whom it can be reasonably inferred that he has committed <sup>1</sup>[any forest offence (other than an offence under Section 66 or Section 67 or an offence in the committing of which a vehicle has been used.)]

- (i) a sum of money not exceeding fifty rupees where such offence is of a trivial nature and involves forest produce the market value of which does not exceed twenty-five rupees.
- (ii) a sum of money which shall not in any case be less than the market value of the forest produce, or more than four times of such value as estimated by such Forest Officer, in addition to the market value of the forest produce, where such offence involves any forest produce which in the opinion of the Forest Officer may be released.
- (iii) a sum of money which shall not in any case be less than the market value of the forest produce, or more than four times such value as estimated by such Forest Officer, where such offence involves forest produce which in the opinion of the Forest Officer should be retained by the Government :

<sup>1</sup>[Provided that no such offence as is referred to in Clause (ii) or Clause (iii) shall be compounded if the market value of the forest produce involved exceeds <sup>2</sup>[five thousand rupees.]

(2) On receipt of the sum of money referred to in Sub-Section (1) by such officer—

- (i) the accused person, if in custody, shall be discharged.
- (ii) the property seized shall, if it is not to be so retained, be released; and
- (iii) no further proceedings shall be taken against such person or property.

#### NOTES

*(1) Sections 72 and 72(I) (III) - In order to levy demand, the concerned officer has to fix market value. There is no material to indicate how the forest authorities were defrauded or misrepresented by the petitioner - It was said that material taken for consideration, for which the petitioner was not given any opportunity to explain the same, resulting in the demand to be quashed - 1994(II) OLR-573.*

*The word 'value' used in this Section is extensive to include the 'market value' - AIR 1957 MP-169.*

*(2) Section 72 - Odisha Timber and other Forest Produce Transit Rules, 1980 - Rule 11 - For compounding of offence, the accused has to*

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1. Substituted by Odisha Act 9 of 1983-See O.G.E. No. 444, dt. 18.4.1983.

2. Substituted by Odisha Act No. 9 of 2011 Notfn. No. 4974-34/2011/Legis OGE No. 1211 Dt. 23.05.2011.



*pray at the time of seizure of forest produce as provided under Section 72 of the Act. In case of failure to do the same at that stage, the forest officer will refuse to accept the same at a later stage and forward the case to the Magistrate - Divisional Forest Officer includes any Deputy Divisional Forest Officer according to the definition given in the said Act - 1994(7) OLR-347.*

**73. 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 Government, such produce shall be presumed to be the property of Government until the contrary is proved.

**NOTE**

*Under Section 73, the burden lies on the prosecution to prove that the forest produce in possession of the accused corresponds to the forest produce felled and removed from the Government Forest which shows illegal removal by the accused - AIR 1954 Odisha-16.*

**<sup>1</sup>[73-A. Presumptions as to removal and transportation of forest produce :-** Any person found in possession of any forest produce within the limits of any reserved forest, shall, until the contrary is proved, be presumed to be guilty of removing, or as the case may be, transporting such forest produce from the reserved forests without authority.]

**NOTE**

Odisha Timber and other Forest Produce Transit Rules, 1980 - Rules 14 and 21 - Excess pieces of Sal logs and some quantity of Sisu and Sandal wood were found in possession of the accused, for which he could not account for offence proved and position explained - (1998) 14 OCR-262.

**74. Operation of other laws not barred :-** Nothing in this Act shall be deemed to bar the prosecution of any person under any other law for any act or omission which constitutes a forest offence or from being liable under such other law to any highest punishment or penalty that is provided under this Act or the rules thereunder :

Provided that no person shall be prosecuted and punished for the same offence more than once.

## **CHAPTER - IX**

### **CATTLE TRESPASS**

**75. 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 damage 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.

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1. Added by Odisha Act 9 of 1983 - See O.G.E. No. 444, dt. 18.4.1983.

**76. Power to alter fines fixed under the Cattle Trespass Act, 1871 :-**

The State Government may, by notification, 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 75 such fines as they think fit, but not exceeding the following, that is to say —

For each elephant	Fifty rupees
For each buffalo or camel	Ten rupees
For each horse, mare, gelding, pony, colt, filly mule, bull, bullock, cow or heifer	Five rupees
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid	Two rupees

**CHAPTER - X  
OF FOREST OFFICERS**

**77. State Government may invest forest officers with certain powers:-** (1) The State Government may invest any Forest Officer with all or any of the following powers, that is to say —

- (a) power to enter upon any land and to survey, demarcate and prepare a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and materials objects;
- (c) powers to issue a search warrant under the Code of Criminal Procedure <sup>1</sup>[1973] <sup>1</sup>(2 of 1974); and
- (d) powers to hold an inquiry into forest offences, and in the course of such inquiry to receive and record evidence.

(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.

**78. Forest Officers deemed to be public servants :-** All Forest Officers shall be deemed to be :-

- (a) Public servants within the meaning of the Indian Penal Code, 1860 (45 of 1860);
- (b) Police Officers for execution of search warrants issued in exercise of powers conferred under Clause (c), Sub-Section (1) of Section 77.

**<sup>1</sup>[79. Protection of action taken in good faith and cognizance of offence :-** (1) No suit, prosecution or other legal proceeding shall lie against any Forest Officer for anything done or omitted to be done by him in good faith under this Act or the rules or orders made thereunder.

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1. Substituted vide O.A. No. 12 of 2003 Notfn. No. 6282/Legis. O.G.E. No. 660, dt.5.5.2003.

(2) No Court shall take cognizance of any offence alleged to have been committed by any Forest Officer while acting or purporting to act in the discharge of his duties under or in pursuance of the provisions of this Act or the rules or orders made thereunder, except with the previous sanction of State Government :

Provided that if the sanction or otherwise under this Sub-Section is not communicated within six months from the date the application for that purpose is made, it shall be deemed that the State Government has accorded the required sanction.]

**80. Forest Officers not to trade :-** Except with the permission in writing of the State Government no Forest Officer shall, as a principle or agent, trade in timber or other forest produce or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside the State.

## **CHAPTER - XI MISCELLANEOUS**

**81. Special provision for reserved forests in the merged territories :-**

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, any forest land or waste land in the merged territories, which has been recognised by the Ruler or any merged 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 which has been dealt with as such in any administration report or in accordance with any working plan, or register maintained and acted upon immediately before the said date and has been continued to do so, dealt with thereafter, shall be deemed to be a reserved forest for the purpose of this Act.

(2) In the absence of any rule, order of notification under this Act, applicable to the area in question, any law, custom, rule, regulation, order or notification mentioned in Sub-Section (1) shall notwithstanding anything in any law to the contrary, 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 remain so 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 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 Khesra forests, village forests or protected forests other than reserved forests by whatever name designated or locally known, shall be deemed to be protected forests within the meaning of this Act and provisions of Sub-Sections (2) and (3) shall apply.

**Explanation I** :- “Working plan” includes any plan, scheme, project, maps, drawing and lay-outs prepared for the purpose of carrying out the operation 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 Government after the said date.

**82. Additional powers to make rules** :- (1) 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 reward to be paid to officers and informant out of the proceeds of fines and confiscations 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.

(2) All rules made under this Act shall, as soon as may be after, they are made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if during the said period, the State Legislature makes modifications, if any, therein, the rules shall thereafter have effect only in such modified form, or, however, that such modifications shall be without prejudice to the validity of anything previously done under the rules.

**83. Penalties for offences not otherwise provided for** :- Any person contravening any provision of this Act or the Rules made thereunder for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to two months or with fine which may extend to one thousand rupees, or with both.

#### NOTES

*(1) Section 83. - Conviction under - Liability for punishment under the section would arise only when a person contravenes any provisions of the Act or the Rules made thereunder for the contravention of which no special penalty is provided - In the present case prosecution never indicated as to which provision under the Act or any Rule made thereunder was violated by the petitioner so as to make him liable for punishment under the section - Impugned judgement set aside : 2010 (II) OLR 441 : (2010) 47 OCR 93 : CLT (2010) Supp. Cri. 1660.*

*(2) Section 83 - Odisha Forest Saw Mills and Saw Pits (Control) Rules, 1980 - Rules 3 and 13. Penalty for contravention of the provisions of the Act and rules has been provided under Sec. 83, Rule 13 provides penalty for contravention of any rule or condition, granting licence - In the present case, it was not the case of the prosecution that the saw mill was established without a licence under rule 13 - No provision contravened - Acquittal upheld - (1991) 4 OCR - 15.*

**84. Persons bound to assist Forest Officers and Police Officers and duties of such officers :-** (1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest produce or to cut and remove timber from 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 with due despatch to the nearest Forest Officer or Police Officer any information he may possess respecting the commission of, or the intention to commit any forest offence and shall forthwith take steps, whether so required by any Forest Officer or the Police Officer or not —

- (a) to extinguish any forest fire in such forest of which he has knowledge or information; and
- (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—
  - (i) in preventing commission in such forest any forest offence; and
  - (ii) 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, fails —

- (a) to furnish without necessary delay to the nearest Forest Officer or Police Officer any information as 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 any forest offence, or when there is reason to be believe that any such offence has been committed in such forest, in discovering and arresting the offender;

shall be punishable with fine which may extend to two hundred rupees.

(3) On receipt of any such information as is referred to in Sub-Section (1) the Forest Officer or Police Officer, as the case may be, shall forthwith take such action as may be appropriate in the circumstances.

**85. Punishment for abetment of forest offences :-** Whoever abets the commission of a forest offence shall be punished with the punishment provided for the offence.

**86. 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 right 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 State Government being satisfied that such service is not being duly performed :

Provided that no share shall 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 any officer duly appointed in that behalf by the State Government.

**87. Recovery of money due to Government :-** All money, other than fines, payable to the State Government under this Act, or the 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 as if it were an arrear of public demand.

**88. Lien on forest produce for such money :-** (1) When any such money is payable for or in respect of such forest produce, the amount thereof shall be 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 money is not paid when due, the Forest Officer may order such produce to be confiscated and thereupon he may sell such produce by public auction or by calling tenders.

(3) The proceeds of the sale as aforesaid shall be applied first in discharging the aforesaid dues and the balance of the dues, if any, shall be recovered, as if it were an arrear of public demand.

**89. Recovery of penalties due under bond :-** When any person in accordance with any provision of this Act, or in compliance with any rule, binds himself by any bond or instrument to perform any duty, or covenants by any bond or instrument that he or his employees 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 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 public demand.

**90. Power of Government to apply the provisions of the Act to certain lands of Government or Local Authority :-** The State Government may, by notification, declare that any of the provision of this Act shall

apply to any land 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.

**91. Repeal and savings :-** The Indian Forest Act, 1972 (6 of 1972) and the Madras Forest Act, 1882 (Madras Act 5 of 1882) hereinafter referred to as the ('said Acts') in their application to the State of Odisha are hereby repealed : Provide that -

- (a) any forest or land declared or deemed to be a reserved forest or protected forest or village forest under any of the said Acts shall be deemed to be a reserved forest, protected forest or as the case may be, village forest under this Act; and
- (b) all rules and orders made, notifications and notices issued, licences, passes and permits granted, fees levied, imposed or assessed, proceeding instituted and all actions taken and things done under any of the said Acts shall be deemed to have been respectively made, issued, granted, levied, imposed or assessed, instituted, taken or done under this Act and shall continue in force until new provisions are made under this Act.

## **The Odisha Forest Act, 1972 - Section 56(2)(d)**

**Notification under  
7th June, 1983**

**S.R.O. No. 297/83** — In exercise of the powers conferred by Clause (d) of Sub-Section (2) of Section 56 of the Odisha Forest Act, 14 of 1972, the State Government do hereby empower the Officers specified under Column (2) of the Schedule below to call for and examine the records of the case and make such enquiry or cause such enquiry to be made and pass such orders as they may think fit, either *suo motu* or on application in accordance with the provisions of the said Sub-Section in respect of areas within their respective jurisdiction as specified under Column (3) of the said Schedule.

### **SCHEDULE**

Serial No. (1)	Designation of Officer (2)	Jurisdiction (3)
1.	Chief Conservator of Forests	Whole State,
2.	Additional Chief Conservator of Forests	Whole State
3.	Conservator of Forest-in-Charge of Territorial Circle	All Forest Divisions of his Circle
4.	Chief Wild Life Warden	Wild Life Conservation Division, Chandbali

## **The Odisha Forest Act, 1972-Section 72(1)**

**Notification under**

**27th May, 1983**

**No. 11783-9F. Legal-173/80- F.F.A.H.-** In exercise of the powers conferred by Sub-Section(1) of Section 72 of the Odisha Forest Act, 14 of 1972, the State Government do hereby empower all Divisional Forest Officers, all Assistant Conservators of Forests attached to the Territorial Forest Divisions and all Range Officer-in-Charge of the Territorial ranges of the State to accept compensation from any person who committed or in respect of whom it can be reasonably inferred that he has committed any forest offence other than an offence under Section 66 or Section 67 of the said Act, in accordance with the provisions laid down in Clauses (i), (ii) and (iii) of the said Sub-Section, read with the Odisha Forest (Detection, Enquiry and Disposal of Forest Offence) Rules, 1980.

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