

THE TAMIL NADU PRESEVATION OF PRIVATE FOREST ACT, 1949.
TAMIL NADU ACT XXVII OF 1949.

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An Act to prevent the indiscriminate destruction of private forests and interference with customary and prescriptive rights therein and for certain other purposes

WHEREAS it is necessary, to prevent the indiscriminate destruction of private forests and interference with customary and prescriptive rights therein: It is hereby enacted as follows:-

1. (1) This Act may be called the Tamil Nadu Preservation of Private Forests Act, 1949.
2. It applies

(i) * * * *

(ii) to forests situated in estates as defined in the Tamil Nadu Estates Land Act, 1908, in the State of Tamil Nadu ;

(iii) to private forests situated in other areas in the State of Tamil Nadu and having a contiguous area exceeding forests for the purposes of this Act, by notification, in the District Gazette, but does not apply to reserved forests constituted under the Tamil Nadu Forest Act, 1882, and lands at the disposal of the Government as defined in that Act.

Explanation - A private forest exceeding 2 hectares in extent shall not cease to be such by reason only of the fact that, in a portion thereof trees, shrubs or reeds are felled or cut with or without the permission of the Committee or lands are cultivated, or rocks, roads, tanks, rivers or the like exist nor shall the area of such forest cease to be contiguous by reason only of the existence of all or any of the aforesaid circumstance.

(3) It shall come into force at once

2. In this Act unless there is anything repugnant in the subject or context-

(a) 'Committee' means any Committee constituted under Section 2A and having jurisdiction

(aa) 'Forest' includes waste or communal land containing trees, shrubs and reeds; pasture land and any other class of land declared by the State Government, to be a forest by notification in the Tamil Nadu Government Gazette;

Explanation - For the purpose of the clause, 'communal land' means any land of the description mentioned in sub clause (a) or sub-clause (b) of clause (16) of section 3 of the Tamil Nadu Estates Land Act, 1908;

(b) 'owner' in relation to a forest includes a mortgage lessee or other person having right to possession and enjoyment of the forest;

(c) 'person' includes a Hindu undivided family, a Marumakkattayam tarwad or tavazhi and an Aliyasanthana family or branch;

(d) 'forest offence' means an offence punishable under the Act;

(e) the expressions 'Forest Officer', 'tree', 'timber' 'Forest produce', 'cattle', 'Magistrate' and 'imprisonment' shall have the meanings respectively assigned to them in section 2 of the Tamil Nadu Forest Act, 1882.

2-A. **Constitution of Committees** - (1) The State Government may, by notification with effect from such date as may be specified therein, constitute for each district a Committee for the purpose of this Act, consisting of the following members, namely;-

- (a) the District Collector as Chairman of the Committee;
- (b) the District Forest Officer having jurisdiction over the district;
- (c) the Tahsildar having jurisdiction over the area;
- (d) the Executive Engineer of the Agriculture Department in charge of soil conservation;
- (e) the Personal Assistant (General) to the Collector of the district, who shall be the Secretary of the Committee.

2-B. Meetings of Committee :- (1) The Committee may meet as often as may be necessary and shall, subject to the provisions of sub-sections (2) and (3), observe such rules of procedure in regard to transaction of business at its meetings (including the quorum at meetings) as may be prescribed by the State Government under this Act, provided that not more than two months shall elapse between one meeting of the Committee and another.

(2) The Chairman of the Committee or in his absence any member nominated by him in that behalf shall preside at a meeting of the Committee.

(3) All questions t a meeting of the Committee shall be decided by a majority of the votes of the members shall be decided by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairman of the Committee or in his absence the person presiding, shall have a second or casting vote.

2-C Vacancy in Committee, etc., not to invalidate acts or proceedings - No act or proceeding of the Committee shall be deemed to be invalid by reason only of the existence of any vacancy in the Committee or any defect in the nomination of a member thereto or on the ground only that more than two months have elapsed between one meeting of the committee and another.

3. (1)(a) No owner of any forest shall, without the previous sanction of the committee, sell, mortgage, lease or otherwise alienate the whole or any portion of the forest.

Explanation - Nothing in this sub-section shall be construed as preventing the owner from selling or otherwise dealing with the right to gather and remove forest produce other than trees, timber and reeds in the usual or customary manner, for a period not exceeding two years.

- (b) Any alienation in contravention of clause (a) shall be null and void-
 - (i) if the alienation is of any forest declared by the District Collector to be a forest under clause (iii) of section 1(2) or of any portion of such a forest, and is made on or after the date on which the declaration takes effect.
 - (ii) * * * * *
 - (iii) if the alienation is of any other forest or of any portion of such a forest, and is made on or after the 16th August 1946.

(2) No owner of any forest, and no person claiming under him, whether by virtue of a contract, license or any other transaction entered into before or after the commencement, of the Tamil Nadu Preservation of Private Forest Act, 1946, or any other person shall, without the previous permission of the Committee cut trees or reds or do any act likely to denude the forest or diminish its utility as a forest:

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the State Government may exempt any forest or class of forests or class of trees therein from all or any of the provisions of this section.

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

5. (x x x x)

6. If, in the opinion of the State Government, it is necessary for the preservation of a forest, or forests, they may, by notification in the Tamil Nadu Government Gazette:-

(i) Prohibit or regulate, the doing of any act likely to be detrimental to the preservation of such forest or forests;

(ii) Regulate the exercise of customary or prescriptive rights in such forest or forests.

6-A The provisions of Chapter VII of the Tamil Nadu Forest Act, 1882, shall apply to offences punishable under this Act subject to the following modifications, namely:-

(i) in section 41, the provision shall be omitted

(ii) in section 42, after the words 'the Magistrate shall, the expression "subject to the provisions of section 8 of the Tamil Nadu Preservation of Private Forests Act, 1949" shall be inserted;

(iii) in section 14 the words "shall, if it is the property of the Central or State Government or has been confiscated, be taken possession of by or under the authority of the District Forest Officer; and in any other case" shall be omitted;

(iv) in sections 45 and 49, for the words "the District Forest Officer" the words "Committee" shall be substituted;

(v) in section 50-

(a) clause (a) shall be omitted;

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

(c) clause (d) shall be omitted;

(vi) section 56 shall be omitted

7 (1) Whoever contravenes the provisions of sub-section (1) or sub-section (2) of section 3 or any of the terms of a notification under section 6 shall be punishable with imprisonment which may extend to two years or with fine which may extend to five thousand rupees or with both.

(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the first class, specially empowered by the State Government in this behalf, to impose a sentence of fine exceeding one thousand rupees.

8. No prosecution shall be instituted against any person without the sanction of the Committee.

9. No order of the State Government or the Committee under this Act and no notification issued by the State Government under section 6 shall be liable to be questioned in any Court of law.

10. (1) The State Government may make rules for carrying out the purposes of this Act.

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

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

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

(c) the procedure to be followed by the committee before granting permissions.

11. x x x x

12. If any difficulty arises in giving effect to the provisions of this Act, the State Government, may, as occasion may arise by order do anything which appears to them necessary for the purpose of removing the difficulty.

12-A Rules and orders to be placed before the Legislature -

(1) (a) All rules made under this Act, and all orders made under section 12 shall be published in the Tamil Nadu Government Gazette, and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are published.

(2) Every rule under this Act, and every order made under section 12 shall, as soon as possible, after it is made be placed on the Table of both Houses of the Legislature and if before the expiry of the session in which it is so placed or the next session, both Houses agree in making any modification in any such rule or order or both Houses agree that the rule or order should not be made, the rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be, and however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or order.

13 (1) Any rule or order made or purporting to have been made, any notification issued or purporting to have been issued, any decision or direction given or purporting to have been given, any action or proceeding taken or purporting to have been taken or anything done or purporting to have been done-

(a) under any provision of the Tamil Nadu Preservation of Private Forests Act, 1946 (hereinafter in this section and in section 13 referred to as the said Act) and in force immediately before the 3rd December 1948, or

(b) on or after the 3rd December 1948, under any provision of the said Act on the footing that the said Act was in force at the relevant time, or

(c) under any provision of the Tamil Nadu Preservation of Private Forests Ordinance, 1940 (hereinafter in this section referred to as the said Ordinance), shall subject to any subsequent modification or cancellation thereof purporting to have been made on or after that date under the said Act on the footing that the said Act was in force at the relevant time or under the said Ordinance be deemed to be a rule or order made, notification issued, decision or direction given, action or proceeding taken or thing done under the corresponding provision of this Act.

(2) Any liability or penalty incurred or purporting to have been incurred, any punishment awarded or purporting to have been awarded and any prosecution commenced or purporting to have been commenced-

(a) under any provision of the said Act before the 3rd December 1948, or

(b) on or after the 3rd December 1948 under any provision of the said Act on the footing that the said Act was in force at the relevant time, or

(c) under any provision of the said Ordinance, shall be deemed to have been incurred or commenced under the corresponding provision of this Act.

14. (1) No suit, prosecution or other legal proceeding shall lie in any court against any officer or servant of the State Government or any person acting under his direction or aiding or assisting him

(a) for, or on account of, or in respect of, any sentence passed or any act ordered or done by him in exercise of any jurisdiction or power purporting to have been conferred on him by the said Act, or

(b) for carrying out any sentence passed by any court in exercise of any such jurisdiction or power as aforesaid.

(2) No suit or other any sentence passed by any court in exercise of any such jurisdiction or power as aforesaid.

(3) Sub-sections (1) and (2) shall have, effect although the said Act was not or might not have been in force at the relevant time.

15. The Tamil Nadu Preservation of Private Forests Act, 1946, and the Tamil Nadu Preservation of Private Forest Ordinance, 1949, are hereby repealed.

ANNEXURE

CHAPTER VII OF THE TAMIL NADU FOREST ACT, 1882

Penalties and Procedure

41. When there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber or produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer.

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

42. Upon the receipt of any such report the Magistrate shall subject to the provisions of section 8 of the Tamil Nadu Preservation of Private Forests Act, 1939, take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

43. When any person is convicted of a forest offence, all timber, or forest produce in respect of which such offence has been committed, and all tools, ropes, chains, boats, vehicles and cattle used in committing such offence shall be confiscated to the Government.

44. When the trial of any forest offence is concluded, any timber, or forest produce in respect of which such offence has been committed may be disposed of in such manner as the Court may order.

45. When the offender is not known or cannot be found, the Magistrate if he is of opinion that an offence has been committed, may, on application in this behalf, order the property in respect of which the offence has been committed to be confiscated and taken possession of by or under the authority of the Committee or to be made over to any person whom the Magistrate considers to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

The Magistrate shall cause a notice of any application under this section to be served upon any person whom he has reason to believe is interested in the property seized, or shall publish such notice in any way which he thinks fit/

46 (1) Notwithstanding anything herein before contained-

(a) the Magistrate may direct the sale of any property seized under section 41 which is subject to speedy and natural decay; and

(b) if, in the opinion of the officer seizing such property it is not possible to obtain the orders of the Magistrate under clause (a) in time, such officer may sell the property himself remit the sale-proceeds into the nearest Government treasury and make a report of such seizure, sale and remittance to the Magistrate and thereupon the Magistrate shall take such measures as may be necessary for the trial of the accused.

(2) The Magistrate may deal with the proceeds of the sale of any property held under clause (a) or clause (b) of sub0section (1) in the same manner, as he might have dealt with the property if it had not been sold.

47. Any person claiming to be interested in property seized under section 41 may, within one month from the date of any order passed under sections 43,44 or 45, present an appeal there from which may be disposed of in the manner provided by section 419, Code of Criminal Procedure.

48. When an order for the confiscation of any property has been passed under section 43 or 45, and the period limited by section 47 for presenting an appeal from such order has elapsed and no such appeal has been presented, or when on such an appeal has been resented, or when on such an appeal being presented the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or portion, as the case may be, shall vest in the State free from all encumbrances.

49. Nothing hereinbefore contained shall be deemed to prevent the Committee from directing at any time the immediate release of any property seized under section 41 and the withdrawal of any charge made in respect of such property.

50. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gains as defined in the Indian Penal Code-

(a) * * *

(b) unlawfully affixes to any timber or standing tree a mark used by Forest Officers; or

(c) alters, declares or obliterates any such mark placed on any timber or standing tree by or under the authority of a Forest Officer;

(d) (* *)

shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

51. Any Forest Officer or Police Officer, may, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of having been concerned in any forest offence punishable with imprisonment for one month or upwards 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 he will abscond.

Any person arrested under this section shall be informed, as soon as may be, of the grounds, for such arrest 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.

52. Any Forest Officer or Police Officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act, or who vexatiously and unnecessarily arrests any person, shall be punished with imprisonment for a term which may extend to six months, or will fine which may extend to five hundred rupees, or with both.

53. Every Forest Officer and Police Officer shall present, and may interfere, for the purpose of preventing, the commission of any forest offence.

54. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes a forest offence, or from being liable under such other law to any higher punishment or penalty than that provided by this Act or the rules made there-under; Provided that no person shall be punished twice for the same offence.

55. Any Forest Officer specially empowered in this behalf may accept, from any person reasonably suspected of having committed any forest offence other than an offence under section 50 or section 52, a sum of money by way of compensation for the property has been seized as liable to confiscation, may release the same on payment of the value thereof as estimated by such officer.

On the payment of such sum of money, or such value, or both as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

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