

# **ASSAM FOREST REGULATION, 1891**

## **(Regulation 7 of 1891)**

### **A regulation to amend the law relating to Forest, Forest produce and the duty leviable on timber in Assam**

Whereas it is expedient to amend the law relating to Forests, Forest produce and the duty leviable on timber in Assam;

It is hereby enacted as follows:

## **CHAPTER I**

### **Preliminary**

#### **1. Title, extent and commencement.**

- (1) This Regulation may be called the Assam Forest Regulation, 1891.
- (2) It extends to the whole of the territories administered by the Government to Assam:

Provided that the state Government may, by notification in the official Gazette, exempt any place from the operation of the whole or any part thereof, and withdraw such exemption; and

- (3) It shall come in to force on such dates, as the State Government by notification in the official Gazette, directs.
- (4) A notification under the proviso to sub-S. (2), exempting a place from the operation of the whole or any part of the Regulation, shall not affect anything done, or any offence committed, or any fine or penalty imposed, in such place before such exemption.

## **COMMENTS**

The Indian Forest Act, 1878 was extended in its application to the Province of Assam, but this Act was repealed so far as it related to Assam and the Indian Forest Act, 1927 (Act XVI of 1927) was re-enacted with the object to consolidate the law relating to Forests, the transit of Forest produce and the duty leviable on timber and other Forest produce.

**2. [Repealed by Act I of 1938].**

**3. Definitions.**

In this regulation and in all rules made there under, unless there is something repugnant in the subject or context

- (1) "Forest Officer" means any person appointed by name as holding and office by or under the orders of the State Government to be Conservator, Deputy Conservator, Assistant Conservator, Forest Ranger, Deputy Ranger, Forester, Forest Guard or to discharge any function of a Forest Officer under this regulation or any rules there under;
- (2) "Tree" includes palms, bamboos, stumps, brushwood and canes;
- (3) "Timber" means trees when they have fallen or have been felled or all wood, whether cut out or fashioned or hollowed out for any purpose or not and include trees when cut into prices or sizes or peeled out or sliced out (veneer) for manufacturing of plyboard, block board or any other purposed or not.
- (4) "Forest produce" includes -
  - (a) the following, whether found in or brought from, Forest or not, that is to say -

timber, charcoal, caoutchoue, catechu, wood - oil, resin natural varnish, bark , lac, myrabolams, and rhinoceros horns, and rhinoceros horns and
  - (b) the following when found in, or brought from, a Forest that is to say-

- (i) trees and leaves and fruits and all other parts or produce , not hereinbefore mentioned , of trees,
  - (ii) plants not being trees, including grass creepers, reeds and moss, and all parts of produce of such plants.
  - (iii) Wild animals and skin (tusk and horns, other than rhinoceros horns), bones, silk, cocoons, honey and wax and all other parts or produce of animals, and
  - (iv) Peat, surface-oil, rock and minerals (including lime stone, laterite, mineral oils and all products of mines or quarries);
- (5) “Forest offence” means an offence punishable under this regulation or any rule thereunder;
- (6) “cattle” includes also elephants, buffaloes, horses, mares, gliding, ponies, colt , fillies, mutes, asses, pigs, rams, eves, sheep, lambs, goats and kids ;
- (7) “river” includes also streams, canals, creeks, and other channels natural or artificial;
- (8) “ land at the disposal of the Government” means land in respect of which a person has acquired -

- (a) a permanent, heritable and transferable right of use/occupancy under any law for the time being in force , or
  - (b) any right aerated by grant or lease made or continued by, or on behalf of, the Government, not being land vested in the; Government for the purpose of the Central Government:
- (9) “Magistrate” means a Magistrate of the first or second class, and includes a Magistrate of the third class, when he is specially empowered by the State Government to try Forest offences Forest offences.

## **COMMENTS**

In sub-S. (1) the word “ Forest Ranger, Deputy Ranger, Forester, Assistant Forester” were substituted for the words “ Sub-Assistant Conservator , Forest Ranger, Forest” by ;Assam act IX of 1952.

Sub- section (3) was substituted by Assam Act No.XIV of 1952.

In sub S. (4) (a) The word “rhinoceros horns” were inserted by Assam Act III of 1933, and the same Amendment Act in sub – S. 4 (b) (III) the words “ (tusks and horns other than rhinoceros horns)” were substituted for the words “ tusks/horns”.

The definition of “forest offence and “ forest produce” are similar to S. 2 (3) and 2 (4) respectively of the Indian Forest Act, 1927.

“Elephant” was held to be not “forest produce “ within the meaning of S 3, in *Hira Bordoloi v. The Deputy Commissioner* [AIR1976Gau 36].

The expression Forest produce has been defined; in the Regulation. The question as to whether stone is a Forest produce came up for consideration before the Supreme Court in *Divisional Forest Officer v. Mool Chand Saraugi Jain* [AIR 1971 SC 694], where it was held that it is doubtful whether stone is a forest produce. This was followed in *Prameswar Das v. State of Assam* [AIR 1971 Gau 51]. Similarly it was held in *Bejiram Ingty v. state of Assam* [(1981) 1 GLR 222] that “ stone “ is not a forest produce. It was also held that when stone is not a forest produce it cannot come within the fold of the fold of the term ‘mahal’.

*Amendment of 1995 including “Veneer” in the definition of Timber.* “Veneer” is not a natural state like timber. It was held in *Tumda Saw and veneer Mills v. State of Assam* [(1996) 3 GLR 170] that the State Legislature is not competent to make law to include “Veneer” in the definition of “timber” by amendment Act of 1995. Also held that transit passes cannot be insisted for transportation of “Veneer”. It cannot be said to be a Forest produce like “Timber” and there for cannot be included in the definition of “Timber”. It was held *North Cachar Timber Products v. State of Assam* [(1993) 2 GLR 86], that after treatment, labour; and manipulation of log/timber in the Veneer Mill. Veneer emerges and a finished product having distinct name, character and use and cannot be termed as of forest produce.

## **CHAPTER II**

### **Reserved Forest**

#### **4. Power to constitute reserved forest.**

The state Government may constitute any land at the disposal of the Government a reserved forest in the manner hereinafter provided.

### **COMMENTS**

This section is similar to S. 3 of the Indian Forest Act, 1927.

#### **5. Notification by State Government of proposal to constitute a reserved forest,**

(1) Wherever it is proposed to constitute any land a reserved Forest, the state Government shall publish a notification in the official gazette-

(a) specifying, as nearly as possible, the situation and limits of such land;

(b) declaring that it is; proposed to constitute such land a reserved forest; and

(c) appointing an Officer (hereinafter called the Forest Settlement Officer), to enquire in to and determine the existence, nature and extent of any rights claimed by,

or alleged to exist in favour of any person in or over any person in or over any land comprised within such limits, and any claims relating to the practice within such limits, of jhum cultivation, and to deal with the same as provided in this Chapter.

- (2) The Forest Settlement Officer shall ordinarily be a person other than a Forest Officers, but a Forest Officer may be appointed by the state Government to assist the Forest Settlement Officer in the inquiry prescribed in the chapter.

## **COMMENTS**

This section is similar to S. 4 of the Indian Forest Act, 1927. Where any notification is published under this section, further modification will also be required to be published in the official Gazette [AIR1963 SC1019].

### **6. Proclamation by Forest Settlement Officer.**

When a notification has been published under S. 5, the Forest Settlement Officer shall publishing the language of the country, at the headquarters of each district and sub-division in which any portion of the land comprised in such notification is situated, and in every town and village in the neighbourhood of such land, proclamation -

- (a) specifying, as nearly as possible, the situation and limits of the proposed Forest



- (b) setting forth the substance of the provision of the next following section;
- (c) explaining the consequence which , as hereinafter provide, will ensue on the reservation of such Forest ; and
- (d) fixing a period of not less than three months from the date of the publication of such proclamation and requiring every person claiming any right or making any claim referred to or mentioned in S. 5 either to present to such officer within such period a written notice specifying or the appear before him within such period and state the nature of such right or claim.

## **COMMENTS**

This section is similar to S. 6 of the Indian Forest Act, 1927.

### **7. Bar of accrual of forest rights after proclamation.**

- (1) During the interval between the publication of such proclamation and the date fixed by the notification declaring the Forest to be reserved as hereinafter provided, 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 in to, by or on behalf of, the Government or some person in whom such right or power to create such right was vested when the proclamation was published; and on such land no new house shall be built or plantation formed, no fresh clearing for cultivation or

for any other purpose of trade or manufacture except as hereinafter provided .

- (2) Nothing in this section shall be deemed prohibit any act done with the permission in writing of the Forest Settlement Officer, or any clearing lawfully made for jhum cultivation by persons; in the habit of practicing; such cultivation on such land.

#### **8. Inquiry by Forest Settlement Officer.**

- (1) The Forest Settlement Officer shall take down in writing all statement made under S. 6, and shall inquire in to all claim made under the section and the existence of any right or practice mentioned in S. 5. in respect of which no claim is made.
- (2) The Forest Settlement Officer; shall at the time consider and record any objection which the Forest Officer, if any appointed under S. 5 to assist him, may make to any such claim or with respect to the existence of any such right or practice.

### **COMMENTS**

This section is similar to S. 7 of the Indian Forest Act, 1927.

#### **9. Powers of Forest Settlement Officer.**

For the purposes of such inquiry the Settlement Officer may exercise—

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

### **COMMENTS**

This section is similar to S. 7 of the Indian Forest Act, 1927.

#### **10. Treatment of claims relating to practice of jhum cultivation.**

- (1) In the case of a claim relating to the practice of jhum-cultivation, the Forest Settlement Officer shall record a statement setting for the particulars of the claim and of any local rule or order under which the state Government together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.
- (2) On receipt of the statement and; opinion, the state Government may make an order permitting or prohibiting the practice wholly or; in part.
- (3) If such practice is permitted wholly or in part, the Forest Settlement Officer may arrange; for its exercise –
  - (a) by altering the limits of the land under settlement so as to exclude land of sufficient of sufficient extent, of

suitable kind, and in a locality reasonably convenient for the purpose of the claimants, or

- (b) by causing certain portions; of the land under settlement to be separately demarcated and giving permission to the claimants to practice jhum-cultivation therein under such condition there in under as he may prescribe .

All arrangements made under this sub-section shall be subject to the previous sanction of the state Government.

- (4) This practice of jhum cultivation shall in all cases be deemed to be a privilege subject to control, restriction and abolition by the state Government and not to be a right.

## **COMMENTS**

This section is similar to S. 10 of the Indian Forest Act, 1927.

### **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 the following right, namely :
  - (a) a right -of way ,
  - (b) a right to water-course or to use of water,
  - (c) a right of pasture of pasture or to forest-produce,

the Forest Settlement Officer shall pass an order specifying the particulars of such claim and admitting and admitting or rejection the same wholly or in part

(2) If such claim is admitted wholly or in par, the Forest Settlement Officer may –

(x) come to an agreement with the claimant for the surrender of the right , or

(y) exclude the land from the limits of the proposed forest, or

(z) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

(3) For the purpose of acquiring such land

(i) the Forest Settlement Officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1872;

(ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of notice given under S.9 of that Act ;

(iii) the provisions of preceding section of that act shall be deemed to have been complied with; and

- (iv) the collector, with the consent of the claimant, may award compensation in land, or in money, or partly in land and partly in money.

## **COMMENTS**

In this section the Land Acquisition Act, 1870 referred to in various places has been repealed and re-enacted by the Land Acquisition Act, 1894 (of 1894).

This section is similar to S. II of the Indian Forest Act, 1927.

### **12. Order on claim to right-of way, water-course or pasture, or to forest procedure.**

- (1) In the case of claim to right of way specified in Cl. (a), (b) or Cl (c) of S.11, sub-S. (1) the Forest Settlement Officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part .
- (2) when a claim to any such right is admitted, if the right is for the beneficial enjoyment of any land or building the Forest Settlement Officer shall record the designation, position and area of such land or the designation and position of such building.
- (3) Where the right is a right to forest-produce, the Forest Settlement Officer shall record whether the Forest produce obtained by the exercise of such right may be leased, sold or bartered, and such other particulars as may be necessary in

order to define the existence, nature, incidents and extent of the right.

## **COMMENTS**

Sub-section (1) is similar to S. 12 of the Indian Forest Act, 1927.

### **13. Provision for right of pasture or to Forest produce admitted.**

(1) When the Forest Settlement Officer has admitted wholly or in part and recorded under the last foregoing section a claim to a right of pasture or to forest produce, he shall as far as possible, provide for the exercise of such right –

(a) by altering the limits of the proposed reserved forest so as to exclude land of sufficient extent of a suitable kind and in a locality reasonable convenient for the purpose of the claimant or

(b) by recoding an order containing of the claimant a right of pasture or to forest produce, as the case may be, subject to such rules and may be prescribed by the State Government .

(2) An order passed under Cl. (b) of sub-S. shall record, as far as practicable

(i) where the right is a right of pasture, the number and description of the cattle which the claimant is, from time to time, entitled to graze, and the local limits

within which, and the seasons during which such pasture is permitted; and

- (ii) where the right is a right to forest produce, the quantity of such produce which the claimant is authorised to take or receive, and the local limits within which, the seasons during which, and the mode in which, the taking or receiving of such produce is permitted; and
- (iii) whether the right is a right of pasture or a to forest produce such other particulars as may be required in order to define the extent of the right which is continued, the mode in which it may be exercised and the extent to which the benefit there of may be leased, sold or bartered.

#### **14. Commutation of such rights.**

Whenever any right of pasture or to Forest produce admitted under S. 12 is not provide for in one of the ways prescribed in S.13, the Forest Settlement Office shall, subject to such rules as the State Government may prescribe in the behalf, commute such right by paying a sum of money in lieu thereof, or with the consent of the claimant, by the grant of land or in such manner as such Officer thinks fit.

### **COMMENTS**

This section is similar to S. 16 of the Indian Forest Act, 1927.



**15. Appeal from order passed under foregoing sections.**

Any person who has made a claim under this Chapter (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 any order passed on such claim by the Forest Settlement Officer under S 11, 12, 13, or 14, present an appeal from such order to such Officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner as the State Government may by notification in the official Gazette appoint by name, or as holding an office, to hear appeals Form such orders.

**COMMENTS**

The words “or any Forest Officer .....in this behalf”, were inserted by Assam Act V of 1931.

This section is similar to S. 17 of the Indian Forest Act 1927.

**16. Appeals under the last foregoing section.**

(1) Every appeal under the last foregoing section shall be made by petition in writing and may be delivered to the Forest Settlement Officer, who shall forward it with out delay to the Officer competent to hear the same.

(2) Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in the matters relating to revenue, and except as hereinafter provided, the order passed on the appeal shall be final.

## COMMENTS

This section is similar to S. 18 of Indian Forest Act, 1927.

### **17. Notification; declaring Forest reserve.**

- (1) When the following events have occurred, namely :
  - (a) the period fixed under S. 6 for preferring claims has elapsed and all claims, if any made within such period has been disposed of by the Forest Settlement Officer; and
  - (b) if such claims have been made, the period fixed by S. 15 for appealing from the order passed on such claims has elapsed, and all appeals, if any, presented within such period have been disposed of by the appellate Officer; and
  - (c) all lands, if any, to be included in the proposed reserved forest which the Forest Settlement Officer has under S. 11, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under Land Acquisition act, 1870, have become vested in the Government under Land Acquisition Act, 1870 (X of 1870);

the State Government may publish a notification in the official Gazette, specifying the limits of the forest which it is

intended to reserve, and declaring the same to be reserved from a date fixed by such notification .

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

## **COMMENTS**

The Land Acquisition Act, 1870 as referred to in this section has been repealed and re-enacted by the Land Acquisition Act, 1894 (Act 1 of 1894).

This section; is similar to S. 20 of the Indian Forest Act, 1927.

Where the person concerned has the knowledge that the area under his occupation constituted in to a reserved forest, he cannot acquire any right over such land

### **18. Extinction of right not claimed.**

Right in respect of which no claim has been preferred under S. 6 and of the existence of which no knowledge has been acquired by inquiry under S. 8 shall thereupon extinguish, unless before the publication of such notification, the person claiming them has satisfied the Forest Settlement Officer that he has had sufficient cause for not preferring such claim within the period fixed under S. 6.

**19. Publication translation of such notification on neighbourhood of forest.**

The Deputy Commissioner of the district in which the forest is situate, shall before the date fixed by such notification cause a translation thereof in the language of the country to be published in the manner prescribed for the proclamation under S. 6.

**COMMENTS**

This section is similar to S. 21 of the Indian Forest Act, 1927.

**20. Power to revise arrangement made under S. 13 or 16.**

The State Government may within five years from the publication of any notification under S. 17 revise any arrangement made under S. 13 or 16 and may rescind or modify; any order made under this Chapter and direct that any one of the proceedings specified in S. 13 be taken in lieu of the other of such proceeding, or that a right admitted under S. 12 be commuted in the manner mentioned in S. 14.

**COMMENTS**

This section is similar to S. 22 of the Indian Forest Act, 1927.

**21 Acquisition of right over reserved Forests.**

No right of any description shall be acquired in or over a reserved forest, except by succession or under grant or contract in writing

made by, or with the previous sanction of the State Government or some person on whom such right, or the power to create such right, vested when the notification under S.17 was published.

## **COMMENTS**

This section is similar to S. 23 of the Indian Forest Act, 1927.

Rule 21 clearly shows that no one has any right in or over a reserved forest except as laid down under the provision of that rule. This rule authorised the Government to grant right over reserved forest under a contract in writing. This is one of the methods open to the Government to grant various rights to persons in reserved forest. This rule enables the Government to follow particular method, to grant certain rights under a contract in writing. The contract entered in pursuance of this rule does not cease to be contract under the law as in ordinarily understood. The contract is a legal and valid contract but is not a statutory contract. The agreement has the force of contract whatever it is and not that of la statue as held in *Woodcrafts Assam v. the Chief of Conservator of Forests, Assam* [AIR 1971 A & N 92].

### **22. Alienation of right in reserved forests.**

- (1) Notwithstanding anything herein contained no right contained under s.13 shall be alienated by way of grant, sale, lease, and mortgage or otherwise without the previous sanction of the State Government:

Provided that, when any such right is continued for the beneficial enjoyment of any land or building, it may be sold or other wise alienated with such sanction.

- (2) The benefit of any right continued under S. 13 shall not be leased, sold or bartered, except to the extent by the order record under that sanction.

### **COMMENTS**

This section is similar to S. 24 of the Indian Forest Act, 1927.

### **23. Power to stop ways and water courses in reserved Forests.**

Any Forest Officer may, from time to time, with the previous sanction of the State Government or of a Forest Officer or other Officer authorised by the State Government in this behalf, stop any public or private way or water course in reserved forest:

Provided that for the way or water course so stopped another way or water course, which, in the opinion of the State Government equally convenient already exists or has been provided by the Forest Officer stopping the way or water-course.

### **COMMENTS**

This section is similar to S. 25 of the Indian Forest Act, 1927.

**24. Penalties for trespass or damage in reserved forests.**

Any person who in a reserved forests –

- (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,
- (c) [*Deleted*].

Shall be punished with fine which may extend to five thousand rupees or with imprisonment which may extend to one year or with both, or when the damage resulting for his offence amounts to more the one thousands rupees, with fine which is not less the five thousand rupees or with imprisonment which is not less than one year but may extend to three years or with both

**COMMENTS**

In this section, Cl. (c) was omitted by Assam Act III of 1933, which read as follows:

“Poisonous water or, in contravention of any rules made by the local Government, hunts, shoots, fishes, or sets traps; or snares”.

The words “and in cases where a rhinoceros has been killed, with imprisonment for a term which may extend to one thousand

rupees, or with both”, were inserted by Assam Act 1 of 1931 at the end of the section and subsequently omitted by Assam Act III of 1933.

When a statute defines trespass, the ingredients thereof must be satisfied. Section 441 of the Indian Penal Code deals with criminal trespass, as whoever enters; in to or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent there by to intimidate, annoy or to commit any offence, is said to commit criminal trespass. Trespass to property is a civil wrong but when it is committed with a criminal intent it is treated as criminal offence. Criminal trespass is known in English law as ‘forcible entry’.

The paragraph after Cl.(c) was substituted by Assam Act XIV of 1995.

**25. Acts prohibited in such forest.**

Any person who –

- (a) makes any fresh clearing prohibited by S.7, or
- (b) sets fire to reserved forest , or in contravention of any rules by the State Government kindles any fire, or leaves fire burning, in such manner as to endanger such a forest,

or who in any such forest -



- (c) kindles, keeps or carries any fire except at such seasons and in such manner as Forest Officer specially empowered in this behalf any from time to time notify ,or
- (d) fells, cuts, girdles, marks, lops taps or injures by the fire or otherwise any tree, or
- (e) quarries stone, burns lime or charcoal or collects, subject to any manufacturing process or removes any forest produces, or
- (f) clears or breaks up and land for cultivation or any other purpose, or
- (g) poisons water or, in contravention of any rules made by the State Government hunts, fishes or sets traps or snares,

Shall be punished with imprisonment for a term which is not less than one year but may extend to three years or with fine which may extend to five thousand rupees or with both.

### **COMMENTS**

Clause (g) was inserted by Assam Act III of 1933.

In the last paragraph after Cl. (g) the word “or with fine ..... with both”, were substituted for the words “or with fine which may extend to five hundred rupees, or with both”, by Assam Act III of 1933; and further substituted by Assam Act XIV of 1995.

This section is similar to S. 26 of the Indian Forest Act, 1927.

The allegation in the offence report in *Dharnidhar Goswami V. Range Forest Officer* [(1985) 1 GLR 42], was about felling of 86 trees illegally, but the offence report showed that no case was made out.

**26. Acts excepted from Ss. 24 and 25.**

Nothing in S. 24 or 25 shall be deemed to prohibit –

- (a) any practices of jhum cultivation permitted under S.10, or
- (b) the exercise in accordance with the rules, if any made by the State Government under S. 13 of any right; continued under that section, or
- (c) the exercise of any right created by grant or contract in manner described in S. 21 , or
- (d) any act done with the permission in writing of Forest official specially empowered to grant such permission .

**27. Penalty for offences committed by persons having rights in reserved forest.**

Whenever fire is caused willfully or by gross negligence in a reserved forest by any person having right in such forest or permission to practice jhum cultivation therein, or by any person in his employment or whenever any person having right in such Forest contravenes the provision of S. 22, the State Government

may, notwithstanding the infliction of any punishment under this Regulation, direct that in such forest, or any specified portion thereof, the exercise of all or any of the right of pasture or the forest produce shall be extinguished, or for such period as it think fit be suspended, and with respect to practice of jhum cultivation, may take such action under S. 10, sub-S . (4), as may seem to it to be proper .

**28 Power to declare forests no longer reserved.**

- (1) the state Government may, by notification in the official Gazette, direct that from a date to be fixed by such notification, any forest, or any portion therefore, reserved under this regulation shall cased to be received.
- (2) From the date so fixed such forest or portion shall cease to be reserved, but the right, if any, which have been extinguished therein shall not revive in consequence of such cassation.

**COMMENTS**

This section is similar to S. 27 of the Indian Forest Act, 1927

## **CHAPTER III**

### **Village Forests**

#### **29. Constitution of village forests.**

- (1) The State Government may, by notification in the official gazette, constitute any land at the disposal of the Government a village forest for the benefit of any village community or group of 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

### **COMMENTS**

This section is similar to S. 28 of the Indian Forest Act, 1927.

#### **30. Power to make rules for village forests.**

- (1) The state Government may make rules for regulating the management of village forest prescribing the condition under which the community or group of communities for the benefit of which any such 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 any or the provisions of Chapter II of this Regulation to be applicable to village forests.

## **COMMENTS**

This section is similar to S. 28 of the Indian Forest Act, 1927.

### **31. Inquiry in to and settlement of rights.**

All claims to any rights other than the rights of village community or group of village communities for the benefit of which such village Forest is constituted shall be inquired in to recorded and provided for in the manner prescribed by Chapter II of this Regulation.

## **CHAPTER IV**

### **General protection of forest and Forest produce.**

#### **32. Reserved trees in unsettled tracts.**

The state Government may by; notification in the official Gazette –

- (a) declare that any trees or any specified class of trees standing on any land at the disposal of the Government shall, from a date to be fixed by such notification, be reserved trees;
- (b) vary or cancel any such notification.

### **COMMENTS**

This Chapter was inserted by Assam Act; V of 1931.

This sections similar to S. 30 of the Indian Forest Act, 1927

#### **33. Protection of settled forest belonging to the Government.**

No person shall fell, cut, girdle, mark, lop, tap, or injure by fire or otherwise any reserved trees, except in accordance with rules made by the State Government in the behalf or as provided by the last section of this Chapter.

## COMMENTS

This Law; is now well settled that; if for the exercise of a particular executive power of the State Government some law, regulation or rule is enacted, made or framed, such executive power must be exercised by the State Government; or any of its Officers having jurisdiction to do so in accordance with such law, regulation or rule, as the case may be. The settlement of coupes and mahals covered by the Settlement Rules of 1976 has to be made in accordance with these rules only and not in any other manner. [*Bipin Chandra Paukan V. The State of Assam* AIR 1972 Gauhati 19].

### **34. Protection of unsettled forest belonging to Government.**

- (1) No person shall make use of any forest produce of any land at the disposal of the Government and not included in reserved forest or village forest, except in accordance with rules to be made by the State Government in this behalf, or as provided by the last section of this Chapter.
- (2) Such rules may, with respect to such land –
  - (a) regulate or prohibit the cutting of jhums or the issue of grants or leases on behalf of the Government;
  - (b) regulate or prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires;

- (c) regulate or prohibit the filling, cutting, girdling, making, lopping tapping or injuring by fire or otherwise of any trees, the sawing, conversion and removals of timber, and the collection and removal of other forest produce;
  - (d) regulate or prohibit the quarrying of stone, the boiling of catechu or the burning of lime or charcoal;
  - (e) regulate or prohibit the cutting of grass and pasturing of cattle and regulate the payment, if any, to be made for such cutting or pasturing;
  - (f) prohibit the poisoning of water, and regulate or prohibit hunting, shooting and the setting of traps or snares;
  - (g) regulate the sale or free grant of forest produce; and
  - (h) prescribe, or authorise any Forest Officer to prescribe, subject to the control of the State Government the fees, royalties or other payments for Forest produce, and the manner in which such fees, royalties or other payments are to be levied, in transit, or partly in transit or otherwise.
- (3) The State Government may exempt any person or class or persons or any local area, from the operation of any such rule and may cancel such exemption.



**35. Penalties.**

- (1) If any person infringes the provision of S. 33 he shall be punished with imprisonment for a term which is not less than one year but may extend to three years or with fine which may extend to five thousand rupees, or with both.
- (2) The State Government may, by a rule made under S. 34, attach to the beach of any rule under that section; any punishment not exceeding that mentioned in sub-S. (1).

**COMMENTS**

Sub-section (1) of S. 35 was substituted *vide* Assam Act No. XIV of 1995, published in Assam Gazette, Extraordinary No. 25, dated 2-5-1995 at pages 555-563.

**36. Nothing in this Chapter to prohibit acts done in certain cases.**

Nothing in this chapter, or in any rule under this chapter, shall be deemed to prohibit any act done in the exercise of any right or with the permission in writing of a Forest Officer specially empowered to grant such permission.

## **CHAPTER IV-A**

### **Of the control over forests and waste land not being the property of Government**

#### **36-A. Protection of forests for special purposes.**

- (1) The State Government may by notification in the official Gazette, regulate or prohibit; in any forest or waste land –
  - (a) the breaking up or clearing of land;
  - (b) the pasturing of cattle; or
  - (c) the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary in the public interest for any of the following purposes :

- (i) for protection against storms, winds, rolling stones, floods and avalanches;
- (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tract, the prevention of landslips or of the formation of ravines and torrents, deposit; thereon of sand, stones or gravel;

- (iii) for the maintenance of a water-supply in spring, rivers and tanks;
  - (iv) for the protection of public roads, public bridges, railways and other line of communication;
  - (v) For the preservation of the public health.
- (2) The State Government may; for any such purpose construct at its own expense, in or upon any Forest or waste land, such work as it thinks fit.
- (3) No notification shall be made under sub-S. (1) nor shall any work be begun under sub-S. (2) until after the issue of a notice to the owner of such forest or land calling on such notice, why such notification should not be made or work constructed, as the case may be and until his objections if any and any evidence he may produce in support of the same have been heard by an Officer not below the rank of a Deputy Commissioner duly appointed in that; behalf.
- (4) All objections filed under the preceding sub-section, together with the proceeding of the special Officer reading there to shall be referred to the state Government for orders. On receipt of such reference, and after hearing such further cause as the objector may have to show, the State Government shall pass such orders as it thinks fit.

In any case in which an order under sub-S (1) or action under sub-S. (2) is, in the option of the State Government, likely to disturb to disturb substantially the owner's right in

the land to which such order to action relates, the State Government may award; to such owner such compensation as it may deem equitable:

Provided that any compensation so paid shall be deducted from the amount payable to the owner under the provisions of the Land Acquisition Act, 1894, in the event of action being take under the provision of S. 36-C.

### **COMMENTS**

This section is similar to S. 35 of the Indian Forest Act, 1927.

#### **36.B. Power to assume management of forest.**

- (1) In case of neglect of, or willful disobedience to, any regulation or prohibition under S. 36-A, or if the purposes of any work to be constructed under that section; so required, the State Government may, after notice in writing to the owner of such forest or land after considering his objection, if any, place the same under the control and management of a Forest Officer and may declare that al or any of the provision of this Regulation shall apply to such forest or land.
- (2) The net profits, if any, arising from the management of such forest or land shall be paid to the same owner.

## **COMMENTS**

This section is similar to S. 36 of the Indian Forest Act, 1927.

### **36-C. Expropriation of forest in certain cases.**

- (1) In any case under this Chapter in which the State Government considers that in lieu of placing the forest or land under the control and management of a Forest Officer the same should be acquired for public purposes, the state Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894.
- (2) The owner of any Forest or land comprised in any notification under S. 36-A, or if there be more than one owners thereof, the owners of shares therein amounting in the aggregate to at last two-thirds thereof may, at any time not less than three or more than twelve years for 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.

### **36-D. Protection of forests at the request of owners.**

- (1) The owner of any land or if there be more than there of, the owners there of shares therein amounting in the aggregate to at last two thirds thereof may, with a view; to the formation or conservation of forest thereon, represent in writing to the Deputy Commissioner their desire -

- (a) that such land be managed on their behalf by the Forest Officer on such terms as may be mutually agreed upon ; or
  - (b) that all or any of the provision this Regulation be of this regulation applied to such land.
- (2) In either case, the state Government may, by notification in the official Gazette, apply to such land such provision of this Regulation as it thinks suitable to the circumstances there of and as may be desired by the applicants.

## CHAPTER V

### Duty on imported forest produce.

#### 37. Power to impose duty on forest produce.

- (1) The central Government may levy a duty in such manner, at such places and at such rates as it may prescribe by notification in the official Gazette, on all forest produce which is brought in to the territories to which this Regulation extends for any place beyond those territories.
- (2) In every case; in which such duty directed to be levied *ad valorem*, the Central Government may, by like notification, determine the manner in which the value is to be ascertained.
- (3) Until provision to the contrary is made by the Parliament the State Government may continue to levy on forest produce brought into the territories to; which this Regulation extend from any place in the State beyond those territories any duty which it was levying immediately before the commencement of the Constitution :

Provided that nothing in this sub-section authorise the levy of any duty which as between Forest produce of the State and similar produce of a locality outside the State discriminates in favour of the farmer, or which, in the case of Forest produce of localities outside the State discriminates

between forest produce of one locality and similar forest produce of another locality.

**38. Power to exempt forest from duty.**

The Central, or the case may be, the State Government may exempt any Forest produce from the duty to which it is liable under the last foregoing section, and revoke such exemption.

**COMMENTS**

Tea garden is not liable to pay royalty on trees grown by it on the land taken on lease for special cultivation when these trees are felled to be utilised for development of the garden [*Boghmari Tea co. Ltd v. D.F.O.*, 1988 (2) GLJ 439].

**39. Provisions of chapter not to limit purchase money or royalty.**

Nothing in this chapter shall be deemed to limit the amount, if any, chargeable as purchase; money or royalty in respect of any forest produce.



## **CHAPTER VI**

### **Control or forest produce in transit**

#### **40. 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 forest produce in transit by land or water, is vested in the State Government, and the Government may make rules to regulate the transit of any forest produce.
  
- (2) Such rules may, among other matters -
  - (a) prescribe the routes by which alone forest produce may be imported into exported from or moved within the territories to which this Regulation extends;
  
  - (b) prohibit the import, export, collection or moving of forest produce without a pass from an accordance with the conditions of such pass;
  
  - (c) provide for the issue, production and return of such passes;
  
  - (d) fix, or authorise any Forest Officer, subject to control of the State Government, to fix the fees payable for such passes;

- (e) in the case of timber formed in to a raft or fasted to the shore, prohibit the loosening of the setting a drift of such timber by any person not the owner thereof or not action on behalf of such owner or of the Government;
- (f) provide for the stoppage, reporting examination and making of forest produce in transit in respect of which there is reason to believe that any money is payable to the Government or which is desirable for the purposes of this Regulation, to affix a mark;
- (g) establish revenue-stations to; which forest produce is to be taken by the person in charge of it for examination, or for the realisation of such money, or in order that such mark may be affixed to it, and prescribe, or authorised, a Forest Officer, subject to such control as aforesaid, to prescribe the condition under which forest produce is to be brought to, stored at and removed from such revenue-station;
- (h) provide for the management and control of such revenue station, and for regulation the appointment and duties of persons employed thereat ;
- (i) authorise the transport of timber across any land, and provide for the award and payment of compensation for any damage done by the transport of such timber;
- (j) prohibit the closing up or obstruction of the channel or banks or any river used for the transit of forest

produce and the throwing of grass, brushwood branches of leaves in to any such river, or any other act which tends to cause the obstruction of such channel;

- (k) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river and for recovering the cost of such prevention or removal from the person causing such obstruction;
- (l) prohibit absolutely or subject to condition and rule, within specified local limits, the establishment of saw mills, saw pits veneer mills, plywood factories and any kind of forest based industries for the purpose of conversion, manufacturing, peeling, slicing, cutting, burning, concealing, marking or super making the timber, altering or effecting any of the marks on the same and possession or carrying of marking hammers or other implements used for making timber; and
- (m) regulate the use of property-marks for timber and the registration of such marks authorise the refusal of cancellation of the registration of any property marks, prescribe the time for which the registration of property-marks hold good, limit the number of such marks which may be registered by any one person and provide for the levy of fees for such registration

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

## COMMENTS

In this section in Cl. (1) the words “and saw; mills” were inserted by Assam Act IX of 1995 date 11<sup>th</sup> May, 1964, and substituted by; Assam Act No. XIV of 1995.

This section is similar to S. 41 of the Indian Forest Act, 1927.

It was held in *Ramesh Choudhary v. Narayan Bhuyan* [(1985) 1 GLR 39], that no previous sanction or consent of the Government or any other authority is required under the law, for prosecution under Ss .34 and 35 of the Regulation .

*Refusal to renew saw mill licence because of pendency of ejectment suit by the landlord*, In *Guru; Nanak Saw Mills v State of Assam* [(1987) 2 GLR 303], the forest authorities refused to renew the licence on the ground of pendency of ejectment suit by the landlord against the tenant and unless the tenant shifts to some other site. It was held that whether the lease was terminated would be decided by the court; and that the prayer for renewal of lease should be considered de hors.

*Suspension of licence of saw mill*. It was held in *Kishi Nath Pandey v. State of Assam* [(1987) 2 GLR 368] that; there was no statutory; provision for suspension of licence of a sawmill. Hence the order or suspension was held to be arbitrary and illegal. A licence to run a

saw mill must be held to be a property, inasmuch as; by virtue of it one is able to earn his livelihood by running the saw mill which he otherwise could not have done.

Transit pass in respect of an elephant cannot be held to represent a document of title in respect an animal [*Anowaruddin Choudhury v State of Assam*, (1984) 2 GLR 142].

Purpose of introduction of transit pass [*North Cachar; Timber Products v. State of Assam*, (1003) 2 GLR 86].

For movement/transportation of Veneer, obtaining transit pass and production thereof at the check gate is not necessary [*ibid*]. The respondents were directed not to insist on obtaining transit pass and production there of at the check gate for transporting of veneer.

As held in *Md. Jinnat Goni v. The Chief Conservator of Forest* [(1995) 2 GLR 23], the transit pass is not transferable to the transferee to whom forest produce is sold. It is to be issued by the authority concerned.

#### **40-A. Powers of Central Government as to movement of timber across customs frontiers.**

Notwithstanding any thing in S. 40, the Central Government may make rules to prescribe the route by which alone timber or other forest produce may be imported, exported, or moved into or from (Assam) across any rule made under S. 40 shall have effect subject to the rules made under this section.

## **COMMENTS**

This section is similar to S. 41-A of the Indian Forest Act, 1927.

### **41. Penalties for breach of rules under last foregoing section.**

- (1) The state Government may, by a rule under the last foregoing section attach to the breach of any rule under that section any punishment not exceeding imprisonment for term which may extend to three years or fine which may extend to five thousand rupees or both.
- (2) In cases where the offence is committed after sunset and before sunrise or after preparation for resistance to execution of any law or any legal process or where the offender has been previously convicted of a like offence, the convicting court may inflict double the penalty prescribed for such offences.

## **COMMENTS**

This Section is similar to S .42 Of the Indian Forest Act 1927.

Sub-section (1) of this section was substituted by Assam Act No. XIV of 1995.

### **42. All Persons bound to aid in case of accident at revenue station.**

In case of any accident of emergency involving danger to any property at a revenue-station established under a rule made under

Ss. 40, every person employed at such revenue station, whether by the Government or by any private person, shall revenue station, whether by the Government or by any private person, shall render assistance to any Forest Officer or Police Officer demanding his aid in averting such danger and securing such property from damage or loss.

### **COMMENTS**

This section is similar to S. 44 of the Indian Forest 1927.

## **CHAPTER VII**

### **Collection of drift stranded and other timber**

**43. Certain kinds of timber to be deemed to be the property of the State Government until title thereto proved.**

- (1) Timber falling under any of the following description namely:
  - (a) timber found adrift, breached, stranded or sunk,
  - (b) timber bearing marks which have not been registered under rules made under S. 40;
  - (c) timber which has been super marked, or on which marks have been obliterated, altered or defaced by fire of otherwise, and
  - (d) in such area as the State Government directs, all unmarked timber,

shall be deemed to be the property of the state Government unless and until any person established his right thereto as provided in their chapter.

- (2) Such timber may be collected by a forest office of other person entitled to collect the same, and may be brought to such stations as Forest Officer specially empowered in their behalf may, from time to time, notify as stations for the reception of drift timber.



- (3) The state Government may, by notification in the official Gazette, exempt any class to timber from the provision of the section and withdraw such exemption.

### **COMMENTS**

For Similar Provision see S. 45 of The Indian Forest Act 1927.

#### **44. Notice to claimants of timber of those kinds.**

- (1) Public notice shall, from time to time occasion may require, be given by Forest Officer specially empowered in this behalf of timber collected under the last foregoing section.
- (2) 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 of not less than one month from the date on which such notice is given a written statement of such claim.

### **COMMENTS**

For similar provisions, see s 46 of Indian Forest Act , 1927.

#### **45. Procedure on claim preferred to such timber.**

- (1) When any such statement is presented as aforesaid, the Forest Officer may, after making such inquiry as he thinks fit, either reject the claim after 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 Forest Officer may either deliver the same to any of such person whom he deems entitled thereto or may refer the claimants to the Civil Court and retain the timber pending the receipt of an order from such Court for its disposal.
- (3) Any person whose claim has been rejected under this section may. Within three month from the date of such rejection, institute suit to recover possession of the timber claimed by him, but no person shall recover any compensation against the Government or against any Forest Officer on account of such rejection, or the detention or removal of any timer or the delivery thereof to any other person under this section.
- (4) No such timber shall be subject to process of any Civil Court until it has been delivered or a suit brought under this section has been decided.

## **COMMENTS**

For similar provision see S. 47 of the Indian Forest Act 1927.

### **46. Disposal of unclaimed timber.**

When no statement is presented in the manner and within the period prescribed by notice issue under S. 44 or where such statement having been so presented and the claim rejected, the claimant omits to institute a suit to recover possession of such timber it shall vest in the State Government free from all in

cumbrances, or when such timber has been delivered to another person under S. 45, in such other person free from all in cumbrances not created by him.

### **COMMENTS**

For Similar Provision see S. 48 OF Indian Forest Act 1927.

**47. Payment to 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 such sum as may be due for salving, collecting, moving storing and disposing of the timber has been paid by him to the Forest Officer or other person entitled to receive the sum.

### **COMMENTS**

This section is similar to s 50 of the Indian Forest Act 1927.

**48. 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 S. 43;

- (b) the use and registration of boats used in salving and collecting timber
  - (c) the amount to be paid for salving, collecting, moving, storing and disposing of such timber; and
  - (d) the use and registration of hammers and other implements to be used for work on such timber.
- (2) The State Government may by a rule made under this section, attach to the breach of any rule under this section a punishment not exceeding imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees or both.

### **COMMENTS**

This section is similar to S. 51 of Indian Forest Act, 1927.

## **CHAPTER VIII**

### **Penalties and procedure**

#### **49. Seizure of property liable to confiscation.**

- (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce together with all tools, boats, motorised boats, vessels, cattle, carts, rafts, machineries, vehicles, trucks, ropes, chains or any other implements, articles or material used in the commission of such offence may be seized by any Forest Officer not below the rank of Forester or any Police Officer not below the rank of Sub Inspector of Police.
  
- (2) Every Officer, seizing any property under Sub-S (1) 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 either produce the property seized before an Officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf by the notification in the official Gazette (hereinafter referred to as the “ Authorised Officer”) or where it is having regard to the quantity or the bulk or nay other genuine difficulty, not practicable to produce the property seized before the Authorised Officers, or where it is intended to launch prosecution against the offender, immediately make a report of such seizure to the Magistrate having jurisdiction to try the offence o account of which the seizure has been made:

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

- (3) Any Forest Officer or Police Officer may, if he has reason to believe that vehicle has been or is being used for the transport of any forest produce in respect of which any Forest offence he been committed, require the driver or any other person or person in- charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reason ably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried, which are in possession of such driver or other person in charge of vehicle.
- (4) Subject to the provision of sub Ss. (5) and (6) where the authorised Officer upon production before him of the property seized or upon receipt of report about seizure as the case may be and after such personal inspection or verification as he may deem fit and necessary, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded therein, confiscate the forest produce so sized together with all tools, vehicles, cattle, trucks, motorised boats, carts, machineries, rafts, vessels, ropes, chains or any other implements or articles used in committing such offence .A copy of the order of confiscation shall, without any undue delay, be forwarded to the Circle Conservator of Forests of

the Circle in which the forest produce has been seized and the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

- (5) No order of confiscation of any property shall be made under the preceding provisions unless the authorised Officer -
  - (a) sends an intimation in the prescribed form about the initiation of the proceeding for confiscation of property to the Magistrate having jurisdiction to try the offence of account of which the seizure has been made;
  - (b) issue a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised Officers to have some interest in such property and in cases of motorised boats, vessels, vehicles, trucks etc having a registered number to the registered owner thereof;
  - (c) affords to the persons referred to in Cl. (b) above reasonable opportunity of making a representation within such reasonable time as may specified in the notice against the proposed confiscation; and
  - (d) gives to the Officer effecting the seizure and the person or person referred to in Cl. (b) or (c) above, a reasonable opportunity of being heard on a date or dates to be fixed for the purpose.
- (6) Notwithstanding anything contained in the foregoing provisions, no order of confiscation under sub-S. (4) of any

tools, boats, motorised, boats, vessels, cattle, carts, rafts, machineries, vehicles, trucks, ropes chins or any other implements, articles other than timber or forest produce; shall be made if any person referred to Cl. (b) of Sub S. (5) proves to the satisfaction of the authorised Officer that such tools, vehicles, machineries, trucks, vessels, boats, motorized boat, rafts, carts, cattle, ropes, chain or any other implements or articles were used with out ;his knowledge or connivance or abetment or as the case may be, with out the knowledge or connivance or abetment of his servant or against and that all reasonable and due precautions had been taken against of the object aforesaid for the commission of forest offence.

**49-A. Power to release property seized under S. 49.**

Any Forest Officer not below the rank of a Forest Ranger, whose subordinate has seized any tools, vehicles, trucks vessels, rafts; machineries, boats, motorised boats cattle ropes, chains or any other implements, articles etc under S. 49, may release the same on the execution by the owner or the person in charge thereof of a bond for the production of the property so released if and when so required if and when so required before the Magistrate having jurisdiction to try the offence or before any authorised Officer whenever required for the purpose mentioned under S. 49 to proceed ahead with the offence on account of which the seizure has been made :

Provided that when ever such release is made the Officer releasing the property shall immediately make a report to the authorised



Officer describing the circumstances and the reasons for the release of the property to the claimant or the owner or the owner or the person in charge of the property.

#### **49-B. Review.**

Any Forest Officer not below the rank of a Conservator of forest, specially empowered by the state Government in this behalf by notification in the official Gazette may, *suo motu* or on application by the aggrieved person, call for and examine any record or any order under S. 49 (4) and may make such enquiry or cause such enquiry to be made and may pass such order as he deems fit :

Provided that no order under this section shall be made if in the meantime an appeal has been preferred under S. 49- C;

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

#### **49-C. Appeals.**

Any person aggrieved by an order under S. 49; (4) or S; 49 -B; may within thirty days from the date of communication to him of such order, prefer an appeal to District Judge having jurisdiction over the area in which the property has been seized and the District Judge shall, after giving a reasonable opportunity of being hard to the parties, pass such order either varying confirming modifying, annulling or setting aside the order appealed against and the order of the court so passed shall be final

***Explanation.***

The time required for obtaining the certified copy of the order of confiscation or the order passed under S. 49-B shall be excluded while computing the period of thirty days referred to in this section.

**COMMENTS**

As held in *Atul Chandra Bora v. Under Secretary to the Government of Assam* [1977 ALR 276], seizure under this rule related to forest offence and in the instant case it was nobody's case the any forest offence is being investigated and thereafter the investigated and there after the seizure is made and hence their Lord ships held that the seizure of elephant in the case was not warranted under the provision of this Regulation.

This section was inserted by Assam Act of 1931 and is similar to S 53 of the Indian Forest Act, 1927. Section 49 and 49-A were substituted and Ss. 49-B and 49-C were inserted by Assam Act XIV of 1995.

**50. Procedure on receipt by magistrate of report of seizure.**

Upon the receipt of any such report, the Magistrate shall takes such measures as may be necessary for the trial of the accused and the disposal of the property according to law: Provided that before passing any order for disposal of property, the Magistrate

shall satisfy himself that no intimation under sub-S (5) of S. 49 has been received by his Court or by any other court having jurisdiction to try the offence on account of which the seizure of the property has been made.

### **COMMENTS**

In S. 50 the full stop (.) occurring at the end of this section was substituted by colon (:); and thereafter the proviso was inserted *vide* Assam Act No XIV of 1995 : published in the Assam Gazette, Extraordinary No 95 dated 2-5-1995, at pages 555-563.

This section is similar to S. 54 of the Indian Forest Act, 1927

#### **51. Forest produce, tools, etc when liable to confiscation.**

- (1) When any person is convicted of a forest produce which is not the property of the Government and in respect of which such offence has been committed, and all tools, boats carts; and cattle used in the commission of such offence, shall be liable, by order of the convicting court to confiscation.
- (2) Such confiscation may be in addition to any other punishment prescribed for such offence.

### **COMMENTS**

This section is similar to S. 55 of the Indian Forest Act, 1927.

**52. Disposal on conclusion of trial for forest offence of produce in respect of which it was committed.**

When the trial of any Forest offence is concluded, any forest produce in respect of which such offence has been committed, shall, if it is the property of Government or has been confiscated be taken possession of by a Forest Officer specially empowered; in this behalf, and in any other case, shall be disposed of in such manner as the Court may order.

**COMMENTS**

This section is similar to S .55 of the Indian Forest Act, 1927.

**53. Procedure when offender is not known or cannot be found.**

(1) When the offender is not know or cannot be found the Magistrate inquiring in to the offence, if he finds 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 a Forest Officer specially empowered in this behalf, or to be made over to such Forest Officer or other person as the Magistrate may consider entitled to the same:

Provided that no such order shall be made till the expiration of one month from the date of the seizure or such property, or with out hearing the person, if any claiming any right thereto an the evidence, if any, which may produce in support of his claim

- (2) The Magistrate shall either cause a notice of any application under sub-S (1) to be served upon any person whom he has reason to believe to be interested in the property seized, or publish such notice in any way which he may think fit.

### **COMMENTS**

This section is similar to S. 57 of the Indian Forest Act 1927.

#### **54. Procedure as to perishable property seized under S. 49.**

The Magistrate may, notwithstanding anything here in before contained, direct the sale of any property seized under S.49 and subject to speed an natural decay and may, deal with the proceed as he might have dealt with such property if it had not been sold

### **COMMENTS**

This section is similar to S. 58 of the Indian Forest Act 1927.

#### **55. Appeal from orders under Ss. 51, 52 and 5**

Any person claiming to be interested in property sized under S. 49 may, within one month Form the date of any order passed by a Magistrate under S. 51 S 52 or S. 53, present an appeal there from to the court to which order made by such Magistrate are ordinarily appeasable, and the order passed on such appeal shall be final.

### **COMMENTS**

This section is similar to S. 59 of the Indian Forest Act, 1927.

**56. Vesting of confiscated property in State Government.**

When an order or the confiscation of any property has been passed under S. 51 or S. 53 and the period limited by S. 55 presenting an appeal from such order has elapsed, and no such appeal has been presented, or when on such an appeal being presented, the Appellate Court confirms such order in respect of the whole or portion of such property, as the case may be, shall vest in the state Government free from all in cumbrances.

**COMMENTS**

This section is similar to S 60 of the Indian Forest Act, 1927.

**57. Saving of power to release properties seized.**

Nothing herein before contained shall be deemed to prevent any Forest Officer or other Officer empowered in this behalf by the State Government from directing, at any time, the immediate release of any property seized under S. 49, which is not the property of the Government and the withdrawal of any charge made in respect of such property.

**COMMENTS**

For similar section see S. 61 of the Indian Forest Act 1927.

**58. Punishment for wrongful seizure.**

(1) Any Forest Officer or Police Officer who vexatiously and unnecessarily seizes any property on pretence of seizing

property liable to confiscation under this Regulation, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with fine which may extend to five hundred rupees, or with both.

- (2) Any fine so imposed, or any portion there of, shall, if the convicting court so directs, be given as compensation to person aggrieved by such seizure.

### **COMMENTS**

For similar section *see* S. 62 the Indian Forest Act, 1927.

#### **59. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.**

Whoever with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code –

- (a) knowingly counterfeits; upon any tree or timber a mark used by Forest Officers to indicated that such tree or timber is the property of the Government or of some person, or that it may lawfully be felled or removed by some person, or
- (b) unlawfully affixes to any tree or timber; a mark used by Forest Officers, or

- (c) alters, defaces or obliterates any such mark placed on any tree or timber, by under the authority of a Forest Officer, or
- (d) Alters, moves, destroys or defaces any boundary marks of any Forest or wasteland to which any provision of this Regulation apply,

shall be punished with imprisonment for a term, which is not less than three years, and may extend to seven years or with fine which is not less the five thousand rupees or with both.

### **COMMENTS**

For similar section *see* S. 63 of the India Forest Act, 1927

In S. 59, the words “It may extend to two years or with fine or with both” were substituted by the words “which is not less than three years, and may extend to seven years or with fine which is not less than five thousand rupees or with both”, by Assam Act No XIV of 1995.

#### **60. Power to arrest with out warrant.**

- (1) Any Forest Officer or Police Officer, may, with out orders from a Magistrate and without a warrant arrest any person reasonable 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 given name or residence of which there is reason to believe to be false or if there is reason to believe that he will abscond.



- (2) Every Officer making and arrest under this section shall, without unnecessary delay take or send the person arrested before a magistrate having jurisdiction in the case
- (3) Any Forest Officer or Police Officer who vexatiously or maliciously arrests any person on the pretence that he is suspected of having been concerned in any forest offence or other wise as provided by S. 60 (1) of this Regulation shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, with both.
- (4) No Forest Officer or police Officer shall detain in custody a person arrested under Sub-S. (1) of this section for a longer period than under all the circumstances of the case is reasonable; and such period shall not exceed twenty-four hours exclusively of the time necessary of the journey from the place of arrest to the Magistrates Court having jurisdiction in the case.

### **COMMENTS**

Sub-sections (3) and (4) of this section were inserted by Assam Act II of 1943 for similar provision see S .64 of the Indian Forest Act 1927.

#### **61. Power to prevent commission of offence.**

It shall be the duty of every Forest Offices and Police Officer to prevent, and any such Officer may interfere for the purpose of preventing, the commission of any forest offence.

## COMMENTS

For similar provision *see* S. 66 of Indian Forest Act, 1927.

### **62. Power to compound offences.**

- (1) The State Government may, by notification in the Official Gazette, empower a Forest Officer by name, or as holding an office -
  - (a) to accept from any person against whom a reasonable suspicion exists that he was committed any forest offence, other than an offence specified in S. 58 or S. 59 a sum of money by way of compensation for the offence which such person is suspected to have committed and
  - (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.
- (2) On payment of such sum of money, or such value or both, as the case may be, to such offices, the suspected person, if in custody shall be discharged, the property, if any seized shall be released and no further proceeding shall be taken against such person or property.
- (3) No Forest Officer shall be empowered under this section unless he is of the rank of an Assistant Conservator of Forests or above and the sum of money accepted, as

compensation under Sub S. (1) of Cl. (a) shall in no case exceed five thousand rupees.

## **COMMENTS**

This provision only empowers a Forrest Officers to accept compensation for a forest offence from a person suspected of having committed it. The person so suspected can avoid being proceeded with for the offence by rendering compensation. He may think that he was being unjustly suspected en of an offence and he ought to defend himself or he may consider it prudent on he part to pay such compensation in order to avoid the harassment of prosecution even when he is of the view that he had not committed the offence. By adopting the latter course he does not remove the suspicion of having committed the offence unless he is to have such benefit conferred on him by some provision of law. In effect the payment of compensation amounts to his acceptance of the truth of the charge against him. Sub-section (2) of this section only protect him with regard to further; proceeding, but has not the effect of clearing his character or vindication his conduct [*Biswabahan Das v. Gopen Chandra Hazarika*, AIR 1967 SC 895]. Their Lordships in this case also held that the Board of Revenue had not gone wrong in law in taking; in to consideration the conduct of rendering compensation for a forest offence.

Sub-section (3) was substituted *vide* Assam Act No XIV of 1995.

### **63. Presumption that forest produce belongs to Government.**

When in any proceeding taken under this Regulation or in consequences of any thing done under this Regulation question

arises as to whether any forest produce is the property of the Government, such produce shall be presumed to be the property of Government until the contrary is proved.

## **COMMENTS**

This section was omitted by Assam Act II of 1943 and again inserted by Assam Act XXXVII of 1950.

For similar provision see S. 69 of the Indian Forest Act, 1927.

### **64. Compensation for damage caused cause by commission of offence.**

- (1) When any person is convicted of felling, cutting, girdling, marking, lopping or tapping trees or of injuring them by fire or otherwise in contravention of this Regulation or of any rules thereunder, the convicting Court may, in addition to the other punishment which it may award, order that person to pay to the state Government such compensation, not less than one thousand rupees for each tree with respect to which the offence was committed, as it may deem just.
- (2) If the person convicted of the offence committed is the agent or servant of another person, the convicting Court may, unless after hearing that other person, it is satisfied that the commission of the offence was not a consequence of his instigation, or of any neglect or default on his part the compensation referred to in Sub-S. (1)

- (3) An appeal from any order under sub s (1) or sub-S. (2) shall lie to the Court to which orders made by the convicting Court as ordinarily appealable, and the order passed on such appeal shall be final.

**65. Forfeiture of leases of leases.**

When the holder of any lease, licence or contract whatsoever granted or continue by or on behalf of the Government for any of the purposes of this Regulation commits an offence commits an offence against his Regulation or any rule thereunder, or when any such offence is committed by any agent or servant of the holder of lease, licence or contract, and the State Government is satisfied that the commission of the offence was a consequence of the instigation of such holder, of any neglect or default on his part, the State Government may, by order; in part with effect on and from a date to be specified in the order not being prior to the date of the commission of the offence .

## **CHAPTER IX**

### **Cattle trespass**

#### **66. Cattle Trespass Act, 1871 to apply.**

Cattle trespassing in a served Forest or in a village forest shall be deemed to be cattle doing damage to a public plantation within the meaning of S. 11 of the Cattle Trespass Act, 1871 and may be seized and impounded as such by any Forest Officer or Police Officer.

#### **COMMENTS**

This section is similar to S. 70 of the Indian Forest Act, 1927.

#### **67. Power to alter fixed by the Act.**

The State Government may by notification in the official gazette, direct that, in lieu of the fines fixed by S. 12 of the Act last aforesaid, there shall be levied for each head of cattle impounded under S. 66 of this Regulation such fines as it thinks fit but not exceeding the following, namely :

		<b>Rs.</b>	<b>a.</b>	<b>p.</b>
For each elephant	--	10	0	0
For each buffalo	--	2	0	0

For each horse, mare, gelding, pony, colt, filly mule, bull bullock, cow or heifer,	--	1	0	0
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For each calf, ass, pig, rams, ewe-shep, lamb, goat or kid	--	0	8	0
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### **COMMENTS**

This section is similar to S. 71 of Indian Forest Act 1927.

# **CHAPTER X**

## **Forest Officers**

### **68. Investiture of Forest Officers with certain powers.**

- (1) The State Government may invest any Forest Officer by name, or as holding an office, with al or any of the following powers, namely :
  - (a) power to enter upon any land and to survey, demarcate, and make a map; of the same;
  - (b) the power of a Civil Court to compel the attendance of witnesses and the production of documents :
  - (c) power to issue search-warrants under the code of Criminal Procedure, 1882;
  - (d) power to hold inquires in to forest offences and in the course of such inquires to receive and record evidence;
  - (e) power to notify the reason and manner in which fire may be kindled, kept or carried in a reserved forest;
  - (f) power to grant any permission referred to in Ss. 26 and 36;
  - (g) power to notify stations for the receptions of drift timber;



- (h) power to give public notice of timber collected under S. 43;
  - (i) power to take possession of property under this Regulation;
  - (j) power to direct the release of property or withdraw of charges; and may withdraw any power so conferred.
- (2) Any evidence recorded under Cl. (d) of sub S. (1) shall be admissible in any subsequent trial before a Magistrate of the alleged offender;

Provided that it has been taken in the presence of the accused person and recorded in the manner provided by S. 355, S. 356 or 357 of the Code of Criminal procedure, 1882.

### **COMMENTS**

The Code of Criminal procedure, 1898 has been repealed and re-enacted as code of criminal procedure, 1898 and again that 1898 Code has been repealed and re-enacted as code of Criminal Procedure 1973. Now the provisions of the sections given in S. 68 of the Assam Forest Regulation have been provided for in Ss. 274, 275, 276 and 277 of the 1973 code

This section is similar to S. 72 of the Indian FOREST Act, 1927.

**69. Forest Officers deemed to be public servant.**

All Forest Officers shall be deemed to be public servants within the meaning of the Indian penal code.

**COMMENTS**

This section is similar to S. 73 of Indian Forest Act, 1927.

**70. Indemnity for acts done in good faith.**

No suit or criminal prosecution or other legal proceeding shall lie against any public servant or anything done in good faith or omitted to be done likewise under these Regulations or the rules or orders made thereunder.

**COMMENTS**

This section is similar to S. 74 of the Indian Forest Act, 1927. It was substituted by Assam Act XIX of 1995.

**71. Forest Officers not to trade.**

No Forest Officer shall, as principal or agent, trade in forest produce, or be or become interested in any lease or mortgage of any forest, or in any contract for working any forest, whether in India or in any foreign territory.

**COMMENTS**

This section is similar to S. 75 of the Indian Forest Act, 1927.

# **CHAPTER XI**

## **Supplemental provisions**

### **72. Additional powers to make rules.**

The State Government may make rules consistent with this Regulation:

- (a) to declare by with Forest Officer or Class of Forest Officers the powers or duties conferred or imposed by or under this Regulation on a Forest Officer are to be exercised or performed;
- (b) to regulate procedure of Forest Settlement Officers;
- (c) to provide for ejection of any person who has entered into unauthorised occupation in a forest reserve and for the disposal of any crops raised, or any building or other construction erected without authority in forest reserves;

No Civil Court shall exercise jurisdiction in any matter provided for by the rules made under this clause;

- (d) to regulate the rewards to be paid to officers and informers;  
and
- (e) generally, to carry out the provisions of this Regulation.

## COMMENTS

Clause (c) was substituted *vide* Assam Act XXIV of 1971, Published in the Assam Gazette, dated the 12<sup>th</sup> December, 1971 to come in to force at once and the substituted clause read as follows :

“to provide for the ejectment of any person who has encroached upon forest reserves”.

The Assam Amendment Act repealed the Assam Forest Regulation (Amendment) Ordinance, 1971, but notwithstanding such repeal anything done or any action taken under the ordinance, as repealed shall be deemed to have done or taken under this Act which had commenced on the twenty fourth day of August, 1971 (date of promulgation of the Ordinance).

Clause (c) was added by Assam Act IX of 1946 and the then Cls. (c) and (d) re-numbered as Cls. (d) and (e).

This section is similar to S. 76 of Indian Forest Act, 1927.

As held in *Dinesh Sangma v. Divisional Forest Officer, West Division Karbi Anlong District, Diphu* [(1983) 1 GLR 505] that in the interest or justice to which the ignorant petitioners in the case are entitled to, it would be the prime obligation or rather the constitutional obligation of the Government to trace out all the connected records and then to decide who are the real ‘allottees’ and who are not. The Government should proceed to take action against those who have encroached upon land beyond the areas allotted to them. The

authorities should be extremely vigilant to protect and safeguard the forest and wild life.

**73. Rules when to have force of law.**

All rules made by the State Government under this Regulation shall be published in the official Gazette and shall thereupon have the force of law.

**COMMENTS**

This section is similar to S. 78 of the Indian Forest Act, 1927.

**74. Person bound to assist Forest Officer and Police Officer.**

Every person who exercises any right in a reserved forest or village forest, or who is permitted to remove any forest produce from or to pasture cattle or practice jhum cultivation in such forest; and

every person who is employed by such person in such forest and every person in any village contiguous to such forest, who is employed by the Government for services to be performed to the community;

shall be bound to furnish, without unnecessary delay, to the nearest Forest Officer or Police Officer any information which he may possess respecting the occurrence of a fire in or near such forest, or the commission of, or intention to commit, any forest offence and shall assist any Forest Officer or Police Officer demanding his aid -

- (a) in extinguishing any fire occurring in such forest;
- (b) in preventing any fire which may occur in vicinity of such forest from spreading to such forest.;
- (c) in preventing the commission such forest of any forest offence; and
- (d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

### **COMMENTS**

This section is similar to S. 79 of the Indian Forest Act, 1927.

#### **75. Recovery of money due to the Government.**

All money, other fines, payable to the Government under this Regulation, or under any rule made thereunder, or on account of the price of any forest produce or of expenses incurred in the execution of the Regulation in respect of any forest produce; may if not paid when due, be recovered under the law for the time being in force as if it were and arrear of land revenue.

### **COMMENTS**

This section is similar to S. 82 of the Indian Forest Act, 1927.

**76. Lien on Forest produce for such money.**

(1) When any such money is payable for, or in respect of, any forest produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest Officer specially empowered in this behalf and may be retained by him until such amount has been paid.

(2) If such amount is not paid when due, such Forest Officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount:

Provided that when no price is offered or the price offered in such auction is considered inadequate, the sale by such auction shall be stopped and such Forest Officer shall sell the produce in such other manner as the State Government may direct in this behalf.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to the Government.

**COMMENTS**

The proviso to sub-S (2) was inserted by Assam Act XI of 1953 and is similar to S. 83 to the Indian Forest Act 1927.

**77. Government and its officers not liable for loss or damage in respect of certain forest produce.**

The Government shall not be responsible for any loss or damage which may occur in respect of any forest produce while at a revenue station established under a rule made under S. 40, or while detained elsewhere for the purposes of the Regulation, or in respect of any timber collected under S. 43 and no Forest Officers shall be responsible for any such loss or damages unless he shall have caused the same negligently maliciously or fraudulently

**78. Land required under this regulation to be deemed to needed for public purpose.**

Whenever it appears to the State Government that any land is required for any of the purposes of this Regulation such land shall be deemed to be needed for a public purpose, within the meaning of S. 4 of the Land Acquisition Act, 1870.

### **COMMENTS**

This section is similar to S. 84 of the Indian Forest Act, 1927.

**79. Recovery of penalties due under bond.**

When any person, in compliance with any rule under this Regulation, binds himself by any instrument to perform any duty or act or conveys any instrument that he and his servants and agents will abstain from any act the whole sum mentioned in such instruments as the amount to be paid in case of a breach of the



conditions there of may, notwithstanding any thing in S. 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land revenue.

### **COMMENTS**

This section is similar to S. 85 of the Indian Forest Act, 1927.

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