

Himachal Pradesh Kutlehar Forest (Acquisition Of Management) Act, 1992

19 of 1992

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SCHEDULE 1 :- SCHEDULE I

Himachal Pradesh Kutlehar Forest (Acquisition Of Management) Act, 1992

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(Received the assent of the President of India on the 6th September, 1992 and was published in Hindi and English in R.H.P. Extra., dated the 23rd September, 1992 at pages 2995 to 3002 and 3003 to 3010). An Act to provide for the acquisition of management, supervision and control of the Kutlehar Forest and ancillary matters thereto . Preamble.- WHEREAS, the Ex-chief or the ruler of the erstwhile princely estate of Kutlehar has been allowed to manage the Kutlehar Forest and to appropriate portion of the income derived therefrom as managerial charges; AND WHEREAS, such management, if allowed to continue, will result in

heavy loss to the Government and huge un-earned profits to the individuals; AND WHEREAS, for the purpose of securing the principles laid down in clauses (b) and (c) of Article 39 of the Constitution of India, it is necessary in the public interest that such undue profits to a few persons are utilised for the common benefit of the general public. BE it enacted by the Legislative Assembly of Himachal Pradesh in the Forty-third Year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "appointed day" means the date on which this Act comes into force;

(b) "grant" means the management of Kutlehar Forest permitted by the Government ;

(c) "grantee" means the person in whose favour a grant has been made and includes his heirs, successors and assignees;

(d) "Kutlehar Forest " means the forests and waste lands which, on the appointed day are under the management and control of the Superintendent, Kutlehar Forest and are more specifically described in the Schedule to this Act.

Explanation.-For the purposes of this clause the Superintendent, Kutlehar Forest means the Ex-chief or ruler of a princely estate of Kutlehar appointed by the Government as the Superintendent, Kutlehar Forest and includes his heirs, successors and assignees ;

(e) "prescribed" means prescribed by rules made under this Act.

3. Grant To Which Act Applies :-

This Act shall apply to all grants of management, supervision or control over forest and waste lands made or granted by or on behalf of the Government in favour of the Ex-chief or Exruler of a princely estate of Kutlehar which contain all or any of the following terms and conditions, namely:-

(a) the grantee may manage the forests and appropriate part of the income derived therefrom as managerial charges ;

- (b) the grantee may appropriate for his own use trees standing, or other forest produce derived therefrom subject to the payment of royalty at the rates, specified in the deed or revenue or forest settlement records evidencing such grant, in respect of the timber or forest produce, as the case may be, taken out of the land;
- (c) tree value at a nominal rate has to be paid when the land is cleared; and
- (d) the grantee is not liable to pay any assessment or rent or he is liable to pay only nominal assessment or rent for the grant.

4. Vesting Of Rights Of Grantee In Government And Extinction Of Rights In Grant :-

Notwithstanding anything contained in any law for the time being in force, or in any contract or in any judgement, decree or order of any Court, with effect from the appointed day,-

- (i) The grant shall stand extinguished and any service or obligation attached to such land shall stand abolished; and the grantee shall have no liability to perform any condition or obligation to render any service attached to such grant ;
- (ii) all rights, title and interest of the grantee in the forests or waste lands held by him, shall vest in the Government free from all encumbrances.

5. Amount To Be Paid By The Government :-

(1) In consideration of the vesting in the Government the right, title and interest of any person under section 4, the Government shall, subject to the provisions of this Act, pay to such person an amount equivalent to the net income, after deduction of all lawful expenses incurred by him in the management, accrued to him during the financial years preceding immediately the Publication of this Act in the Official Gazette, in five equal instalments.

(2) The amount payable under sub-section (1) shall be paid on the 1st day of June, every year for a period of five years from the appointed day and shall bear interest at the rate of 10 per cent per annum from the date such amount becomes payable till the date of payment.

6. Manner Of Payment Of Net Amount :-

(1) The Government shall appoint, by order in writing, a person, having adequate knowledge and experience in matters relating to accounts, as Special Officer to assess the net amount payable

under this Act by the Government to the grantee, after making deductions mentioned in section 7.

(2) The Special Officer may call for the assistance of such Officers and staff of the Government as he may deem fit in assessing the net amount payable.

(3) Where the gross amount payable to the grantee is equal to or less than the total amount to be deducted under section 7, no payment shall be made to such person by the Government.

(4) If there is any difference or dispute regarding assessment of the amount the same shall be determined by the arbitrator under section 13.

7. Deductions From Gross Amount :-

The Government shall be entitled to deduct the following sums from the gross amount payable under this Act to the grantee, namely :-

(a) the amount, if any, already paid in advance;

(b) the amount, if any, which the Government is entitled to deduct under section 12 ;

(c) the amount due, if any, including interest thereon, from such person, to the Government before the appointed day ;

(d) the amount, if any, relating to debts ; mortgages or obligations as mentioned in sub-section (2) of section 11 :

Provided that before making any deduction under this section, the grantee, shall be given a notice to show cause against such deductions, within a period of thirty days from the date of receipt of such notice.

8. Transfer Of Services Of Existing Employees :-

(1) Every wholetime employee who was on or before the 16th day of March, 1992, appointed or employed in connection with the management of the Kutlehar Forest Estate and has been continued to be so appointed or employed on the appointed day in connection with the said management, the right of management of which has been acquired under this Act, shall, on the appointed day, become an employee of the Government and shall hold his office by the same tenure, at the same remuneration and upon same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the management of the Kutlehar Forest has not been transferred to and vested in the Government and shall continue to do so unless and until his employment under the Government is duly terminated

or until his remuneration or terms and conditions of service are duly altered by the Government :

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in this sub-section shall not be varied to his disadvantage.

(2) If any question arises as to whether any person was a whole-time employee in or in connection with the management of the Kutlehar Forest immediately before the appointed day, the question shall be referred, within a period of one year from the appointed day, to an officer of the Government, who shall not be lower in rank of the Divisional Commissioner and that officer shall, after giving a reasonable opportunity of being heard to the person concerned in the matter, decide it in such manner as he thinks fit and such decision shall be final.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or, in any other law for the time being in force, the transfer of the services of an employee employed in or in connection with the management of the Kutlehar Forest to the Government shall not entitle such employee to any compensation under that Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

9. Power Of Entry :-

An employee of the Government, authorised in this behalf by general or special order by the Government, or the Special Officer appointed under section 6 may, at any time after giving the grantee or any other person in possession of such forests and waste lands a reasonable notice, enter upon any land or premises in his possession and make any survey, examination or investigation, preliminary or incidental to the purposes of this Act.

10. Duty To Deliver Possession Of Properties :-

(1) Where any property in relation to management of Kutlehar Forest has been transferred to and vested in the Government under this Act,-

(a) every person in whose possession, custody or control any such property may be, shall, on demand by the Government or an officer authorised in this behalf, deliver to the Government or to such officer, as the case may be, forthwith;

(b) any person who, immediately before such vesting, has, in his possession, custody or control, any books, documents or other

papers, relating to the management of the Kutlehar Forest or grant shall be liable to account for the said books, documents and papers to the Government and shall deliver them up to the Government or to such person as the Government may authorise in this behalf.

(2) Without prejudice to other provisions contained in this section it shall be lawful for the Government to take all necessary steps for taking possession of all properties, which have been transferred to and vested in it under this Act.

11. General Effect Of Vesting :-

(1) The property vested in the Government under section 4 shall be deemed to include the properties, rights, liabilities and obligations specified below, namely:-

(i) all the fixed assets of the grantee in relation to the management of the Kutlehar Forest and all documents relating thereto ;

(ii) all rights, liabilities and obligations of the grantee in relation to the grant or management under any contract entered into bonafide before the appointed day, not being contract relating to the borrowing or lending money, or to the employment of staff.

(2) All the assets specified in clause (i) of sub-section (1) shall vest in the Government free from any debts, mortgages or similar obligations of the grantee or attaching to the management of the Kutlehar forest :

Provided that such debts, mortgages or obligations shall attach to the amount payable under this Act to the grantee.

(3) It shall be lawful for the Government or any officer authorised by it, to take possession of the entire management or property or, as the case may be, the fixed assets and of all documents relating to such management, or property, which the Government may require for its management, after removing any obstruction, if any, that may be offered.

12. Effect Of Transactions Not Bonafide :-

Where the Government is of opinion that the grantee or any other person has on or after the appointed day disposed of any fixed asset, whether by way of sale, exchange, gift, lease or otherwise, or incurred any expenditure, liability or obligation otherwise than in the normal course of events, with a view to benefit unduly such person and thereby caused loss to the Government as succeeding owners of the property, the Government shall be entitled to deduct from the amount payable to the grantee under this Act, an amount which they consider to be the loss sustained by them:

Provided that before making such deduction, the grantee shall be given a notice to show cause against such deductions, within a period of thirty days from the date of receipt of such notice.

13. Arbitration :-

(1) Where any dispute arises in respect of any of the matters specified below, it shall be determined by an arbitrator appointed by the Government, who shall be a sitting or retired District or High Court Judge,-

(a) whether the amount determined by the Special Officer and payable in consideration of extinguishment of rights in the Kutlehar Forest is in conformity with the provisions of section 6 of Act;

(b) whether property belonging, or any right, liability or obligation attaching, to the grantee vests in the Government;

(c) whether any agreement or other contract referred to in section 12 has been entered into bonafide or not.

(2) Subject to the provisions of this section, the provisions of the Arbitration Act, 1940 (10 of 1940) shall apply to all arbitrations under this Act.

14. Penalties :-

Any person who,-

(a) having in his possession, custody or control any property forming part of the grant wrongfully withholds such property from the Government ; or

(b) wilfully withholds or fails to furnish to the Government, or any person authorised in this behalf by the Government, any books, documents, papers relating to the grant which may be in his possession, custody or control ; or

(c) fails to deliver to the Government any assets, books of accounts, registers or other documents in his possession, custody or control relating to the grant ; or

(d) wrongfully obtains possession of, or retains any property forming part of the grant ; or

(e) wrongfully removes or destroys any property forming part of the grant ; or

(f) wrongfully uses any property forming part of the grant, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees, or with both.

15. Cognizance Of Offences :-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no court shall take cognizance of any offence under this Act except on a complaint in writing made by the Government, or any officer authorised in that behalf by the Government.

(2) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Magistrate of the First Class, specially empowered by the Government in this behalf, to impose a sentence of fine exceeding five thousand rupees when awarding punishment under section 14.

16. Protection Of Action Taken In Goods Faith :-

No suit, prosecution or other legal proceeding shall lie against the Government or any employee of the Government, or the Special Officer appointed under section 6, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

17. Power To Make Rules :-

(1) The Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) The rules under this section shall be made subject to the condition of previous publication.

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

SCHEDULE 1

SCHEDULE I

[See section 2(d)]

DESCRIPTION OF THE FORESTS INCLUDED IN THE KUTLEHAR FORESTS

Name of Forests DEMARCATED PROTECTED FORESTS :

District : HAMIRPUR

(1) THETHU

(2) CHATRAH

- (3) BAN MASLANA
- (4) CHELLI-SAT RUKHA
- (5) SASAL
- District: UNA
- (6) PANIALA
- (7) THAPAL
- (8) BORU
- (9) RAMGARH-WARLA
- (10) RAMGARH-PARLA
- (11) TANDA
- (12) KANURA
- (13) SOLA SINGHI AND BHIAMBI
- (14) CHARARA
- (15) BAN DHANET
- (16) KARIARA
- (17) CHAROLI
- (18) SARKARU AND GHOR PLANI
- (19) OEL-DA-BAN
- (20) BEALA
- (21) DHIUNSAR
- (22) AKOI-DI-DHAR
- (23) CHANGRERI
- (24) THANA DULEHRI
- (25) TANDA BAGWAIN
- (26) TIRA AGHLAUR
- (27) BUSAL
- (28) GHUGAN KAKRANA
- (29) KAWARI
- (30) MAU
- (31) KATOH
- (32) AMROH
- (33) ATIA
- (34) CHAUKI MANIAR
- (35) JOL
- (36) KHARIAN
- (37) CHAOLI
- (38) CHAPLAH GARLAN
- (39) SOHARI BADUHA
- (40) SARI
- (41) CHAPLAH-KUTLEHRIAN
- (42) BHARMAUT
- (43) CHHATEHR
- (44) BHIAMBI
- (45) SUKRIAL
- (46) MATOH
- (47) KOT
- (48) CHAMIARI
- (49) BASATAR

UNDEMARCATED PROTECTED FORESTS :

District : UNA

- (1) MACHHAHLI
- (2) DHAR CHAMUKHA

- (3) KOTLA
- (4) ARLOO
- (5) SOLASINGI
- (6) MOMANIAR
- (7) CHAUKIMANIAR
- (8) BEH
- (9) KHARIALTA
- (10) DHANET
- (11) HEROO
- (12) DHIUNGLY
- (13) THARRA
- (14) TIRA

District : HAMIRPUR

- (15) GIARAN-GRAN
- (16) PANJ-GRAN