

Indian Forest (Bihar Amendment) Act, 1989

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Indian Forest (Bihar Amendment) Act, 1989

PREAMBLE

An Act to amend the Indian forest Act, 1927 in its Application to the State of Bihar.

Be it enacted by the Legislature of the State of Bihar in the Fortieth Year of the Republic of India as follows:-

1. Published in Bihar Gazette (Ex.-ord.) dated 30.3.1990.

1. Short title and commencement :-

(1) This Act may be called the Indian Forest (Bihar Amendment) Act, 1989.

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

2. Amendment of sub-section (1) of Section 26 of Act XVI, 1927 :-

In sub-section of section 26 of the Indian Forest Act, 1927) (XVI of 1927) (hereinafter referred to as the said Act) for the words

"shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damaged done to the forest as the convicting Court may direct to be paid" the following words, shall be substituted; namely:-

"Shall be punishable with imprisonment for a minimum-term of six months which may extend to two years or with minimum fine of one thousand rupees which may extend to five thousand rupees or with both in addition to such compensation as the Convicting Court may direct to be paid. The offence under this section shall be cognizable and non-bailable."

3. Amendment of sub-section (1) of section 33 of Act XVI, 1927 :-

In sub-section (1) of section 33 of the said Act for the words "shall be punishable with imprisonment for a term which, may extend to six months or with fine which may extend to five hundred rupees or with both" the following words shall be substituted, namely:-

"Shall be punishable with imprisonment for a minimum term of six months which may extend to two years or with minimum fine of one thousand rupees which may extend to five thousand rupees with both. The offence under this section shall be cognizable and non-bailable."

4. Substitution of section 42 of Act XVI, 1927 :-

For section 42 of the said Act, the following shall be substituted; namely:-

"42 Penalty for breach, of rules made under section 41.- The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a minimum term of six months which may extend to two years or with minimum fine of one thousand rupees which may extend to five thousand rupees or

with both. The offence under this section shall be cognizable and non-bailable."

5. Substitution of section 52 of Act XVI, 1927 :-

For section 52 of the said Act, the following shall be substituted; namely:-

"52. Seizure and its procedure for the property liable for confiscation.-

(1) When there is leaser to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing any such offence, may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce, the property seized before an officer not below the rank of the Divisional Forest Officer authorised by "the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorised-officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate-having jurisdiction to try the offence on account of which the seizure has been made:

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

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. The Magistrate having jurisdiction to try the offence concerned may, on the basis of the report of the authorised confiscating officer, cancel the registration of a vehicle used in committing the offence, the licence of the Vehicle-driver and the licence of the arms. A copy of order on confiscation shall be forwarded without undue delay to the Conservators of Forests of the forest-circle in which the forest produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorised officer-

(a) sends an intimation about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in Such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and

(d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purposes.

(5) No order of confiscation under sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than the forest produce seized) shall be made if any person referred to

in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, ropes, chains or other articles were used without his knowledge or convenience or as the case may be, without the knowledge or convenience of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence."

6. Insertion of new Sections 52A, 52B, 52C and 52D in Act XVI & 1927 :-

After Section 52 of the said Act the following new sections, shall be inserted, namely:-

"53A. Appeal against the order of confiscation.-Any person aggrieved by an order of Confiscation may, within thirty days of the order, or if the fact of such order has not been communicated to him within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such re payable in such form as may be prescribed, along with the certified copy of order of confiscation to the District Magistrate (hereinafter referred to as Appellate Authority) of toe District in which the forest produce hag been seized.

Explanation-

(1) The time required for obtaining certified copy of order of confiscation shall he excluded while computing period of thirty days referred to in this sub-section.

(2) The Appellate Authority referred to in section 52-A, may, where no appeal has been preferred before him, "suo motu" within thirty days of date of receipt of copy of order of confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "suo motu" action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is

likely to be adversely affected by the order of confiscation, and may send for the record of the case:

Provided that no formal notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in Writing of lodging of appeal or about "suo motu" action, to the authorised officer.

(4) The Appellate Authority may pass such order of "Interim" nature for custody, preservation or disposal (if necessary) of the subject matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case or the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioner.

(6) On the date-fixed for hearing of the appeal or "suo motu" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorised in writing or through a legal practitioner, and shall thereafter proceed to Pass an order of confirmation, reversal or modification order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "suo motu" action, make further inquiry itself or cause it to be made by the authorised officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order or an order of consequential nature, shall be sent to the authorised officer for compliance or for passing any order appropriate order in conformity with the order of Appellate Authority.

52-B. Petition for revision before Secretary, Forest and Environment Department, Government of Bihar against the order of the Appellate Authority:-

(1) Any party to the appeal,, aggrieved by final order or by order of consequential nature passed by the Appellate Authority, may within thirty days of the order sought to be impugned, submit a petition for revision to the Secretary, Forest and Environment Department, Government of Bihar.

Explanation.-In computing the period of thirty days under this sub-section, the time requisite for obtaining certified copy of Appellate Authority shall be excluded.

(2) The secretary Forest and Environment Department, Government of Bihar may confirm, reverse or modify am rail order or an order of consequential nature passed by the Appellate Authority.

(3) Copies of the order passed in revision shall be sent to the Appellate Authority and to the Authorised Officer for compliance or for passing such further order or for taking such further action as may be directed by such Court.

(4) For entertaining, hearing and deciding a revision under this section, the Secretary, Forest and Environment, Department, Government of Bihar recall as far as may be, exercise the same powers and follow the same procedure as exercised and followed

while entertaining, hearing and deciding a revisit under the Code of Criminal Procedure, 1973 (Act no. 2 of 1974).

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Act no. 2 of 1974) the order passed under this section shall be final and shall not be called in question before any Court.

52-C. Bar of Jurisdiction, of Courts etc. in certain circumstance.-

(1) On receipt of intimation under sub-section (4) of section 52 about initiation of proceedings for confiscation of property by the magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no court, Tribunal or Authority (other than, the authorised officer, Appellate Authority and Revision Authority referred to in sections, 52, 52A and 52B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated in this Act, or any other law for the time being in force.

Explanation.-

Where under any law for the time being in force, two or more courts have jurisdiction to try forest offence, then on receipt of intimation under sub-section (4) of section 52 by one of the Courts of Magistrates having jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-section (1) shall affect the power saved under section 61. 52-D. Power of entry, inspection, search and seizure.- Notwithstanding anything contained in any other law for the time being in force any Forest Officer not below the rank of a Range Officer of Forests or any Police Officer not below the rank of a Sub-Inspector, may, if he has reasonable grounds to believe that any

forest offence has been committed in contravention of this Act enter upon, inspect and search any place, premises, appurtenances thereto, land, vehicle or boat and seize any illegal forest produce and all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence."

7. Insertion of new section 66-A in Act XVI, 1927 :-

After section 66 of the said Act the following new section shall be instated, namely:-

"66-A. Eviction of encroachment from Government Forest Land.-

(1) Encroachment of Government Forest Land shall be cognizable and non-bailable offence.

(2) Any Forest Officer not below the rank of Divisional Forest Officer, if he has reasons to believe that the encroachment of Government Forest Land has been done, may evict the encroachment and may use all the powers conferred on Magistrate under The Bihar Public Land Encroachment Act, 1956 (Bihar Act XV of 1956)."

8. Substitution of section 67 of Act XVI, 1927 :-

For section 67 of the said Act the following shall be substituted; namely:

"67 Notwithstanding anything to the contrary contained either in the Criminal Procedure Code, 1973 or any other law for the time being in force, the State Government may, by notification in the official Gazette constitute a special court with powers of first class Magistrate for the trial of all forest offences punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees, or with both as the case may be in accordance with the procedure prescribed for

summary trials under Chapter XXI of the Criminal Procedure Code, 1973."

9. Substitution of section 68 of Act XVI, 1927 :-

For section 68 of the said Act the following shall be substituted-
namely:

"68. (1) The State Government may, by notification in the official Gazette, empower a forest officer.-

(a) To accept from any person against whom a reasonable suspicion exists that he has committed any forest offence other than an offence specified in clauses (c) and (W to section 26, clauses (c) and (d) to section 33 or section 62 or section 63, 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 for confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both as the cat, iay be, to such officer, the suspected person, in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) Forest Officer shall not be empowered under this section unites he is a Forest Officer of a rank not, inferior to that of an Assistant Conservator of Forest."

10. Amendment of sub-section (2) of Section 79 of Act XVI, 1927 :-

In sub-section (2) of Section 79 of the said Act for the words "shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees or with both" the following words shall be substituted; namely:-

"Shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both."