

## **Indian Forest (Bombay Amendment) Act, 1948**

**52 of 1948**

**[04 December 1948]**

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### PREAMBLE

### INTRODUCTION

(1) "Forest".-(1) A forest is a large tract covered with trees and undergrowth; unenclosed woodland district kept for hunting.- (Manwood's Forest Law).

(2) A forest is a great or vast wood; "A forest is a certain territory or circuit of woody ground and pastures known in its bounds and privilege, for the peaceable abiding of wild beats and fowls of forest chase and warren, to be under the King's protection for his princely delight; replenished with beasts of venary or chase and great converts of vert for succour of the said beasts; for preservation whereof there are particular laws, privileges and officers belonging there unto" - (Manwood's Forest Law).

The word forest is derived from the Latin word 'foris' means outside, the reference being to village boundary or fence and must have included all uncultivated and uninhabited land.

(2) Brief history of Forest Department in India.-(1) During pre-British colonial period, by and large, the rural communities and the tribals enjoyed unbridled of forests and wasteland in their vicinity.

"In Northern India there are to this day tribes among whom specific forest tracts with clearly defined boundaries are claimed as clan or

village property, where only members of the clan or village in question are allowed to hunt or cut firewood. Ownership over forests is there clearly defined and generally recognised ..... communities living near forests depended on them for building material, fuel, fodder and often also food in the shape of wild fruits and tubers. Preservation of the resources on which they relied for so many of their needs was in the tribemen's own interests, and as there was no interference by advanced populations the ecological balance was usually well maintained.-Tribes of India, The Struggle for Survival, by Christoph Von Furer Haimendorf, Oxford University Press, Delhi, 1982, p. 79. The author of this book was in charge of Tribal Department of erstwhile Nizam State till 1946, for forty years and written four books on Tribes in India.

(3) Forests during pre-British period.-The East India Company appointed a Forestry Commission in 1800 to suggest and recommend the regulations prohibiting felling of young teak in Kerala State (then known as Malabar forests). This was the first Commission on Forests in India.

In 1854, Superintendent of Forests in Pegu (British Burma) submitted a report to the Governor General recommending restrictions on the unchecked exploitation of forests by private contractors supplying precious timber for railway constructions in India. The railway companies were privately owned.

In 1855, Dalhousie, the then Governor General, laid down the policy for forest conservancy. (At the same time he was pursuing policy of Abolition of Princely States in India, which resulted in India's First War of Independence in 1857.)

(4) "In the first quarter of 19th century, the British were keen on consolidating their gains and strengthening their hegemony. Their navy received considerable attention and the choicest teak went out from Bombay Naval Dock-yard. After the Indian Mutiny of 1857, the British established nearly 11,700 km. railway communication in twenty years for maintaining efficient movement of troops and supply. This has caused extensive forest clearance and strained forests for regular supply of large quantities of railway sleepers and firewood as locomotive fuel". Social Forestry in India by S. Kondas (Chief Conservator of Forest, Madras) in the Indian Forester, Vol. III, No. 11, Nov. 1985, Dehra Dun, p. 887.

(5) Government take over of Forest and Formation of Forest Department.-The Government took a stand that the individuals cannot be relied upon for proper care of forest management. And in the name of "public interest" Government began to take over the

forests in India. The main reason was by 1850, demands of modern industries, which were outside the tribal belt, led to commercial exploitation of forests. As they became vital source of revenue, the State established its monopoly proprietary rights over the forest. Large tracts of forest were declared as 'Reserved' and put under the control of the Government Department. The tribal communities in forest areas were either evicted from enclaves or denied access to the forest produce.

(6) Communal ownership among tribals.-Most of hitherto the communal traditions or rights were granted as concession or forest privileges to the hill aboriginal tribes by the Forest Department. "The traditional de facto ownership of the State, which ultimately led to the exploitation of forest resources with total disregard for the needs of the tribal economy. Tribes of India, Furer Haimendorf, p. 80.

(7) Imperial Forest Department was established in 1864 with Dr. Dietrich Brandis, (1824-1907) as its Inspector General of Forests. He was Botanists of Bonn University.

(8) History of Forest Legislations.-The State began to assert its monopoly rights over forest through Indian Forest Act, 1865. After enactment of 1878 Forest Act, the State got powers to reserve valuable tracts of forests, mainly for commercial purpose and retain flexible control over wasteland forest and pastures-grazing land by declaring as 'protected forests'. Beden Powel, (reknowned author of 'Land Systems in India' and Head of the Department of Land Revenue in British India) was the Chief Architect of 1878 Act.

(9) Condition prior to establishment of Forest Department.-(11) Land Revenue or Civil Officials were put in charge of forest settlements at his insistance. They had to ascertain the requirement of Forest Department from the forest to be reserved and then decide how for the requirements can be fulfilled. The Civil Officials also had to be in charge of primitive sanctions of the Forest Act.

As the social and political consequences of the movement of the peasantry and tribes were tremendous, the Britishers were cautious to the problem of forest. For them, law and order problem was paramount. At each stage of implementing Forest Act, Government received tough resistance from the tribals.

Famine and droughts coupled with shortage of fuel, fodder and small timber forced the Government to appoint Agricultural Commission, headed by Dr. John Voelcker. In that report, sufficient emphasis was given to importance of forest. Thus first National

Forest Policy Report was published in 1894.

(10) Forest Policy, 1894.-The Government owned forests were classified with reference to their primary functions : Forests, the preservation of which was essential on climatic or physical grounds, forests that afforded a supply of valuable timbers for commercial purpose : Minor forests and pasture lands. Main guideline of the Policy was that the forests should preserve for climatic and physical conditions of the country and to fulfil the needs of the people. In this, permanent agricultural cultivation received priority over forestry.

There were inherent contradictions in the Forest Policy. Contradiction between tribal people, having no concept of private property, adopting old method of shifting cultivating and the State; also, on the one hand contradiction between Civil and Revenue Officials and on the other Forest Department, developed.

(11) National Forest Policy, 1952.-It proposed the classification of forests on a functional basis, protected forests, national forests, village forests and tree lands. The emphasis was on need for evolving a system of balanced and complementary land use, under which each type of land was to be allotted to that form of use, under which it would produce most and deteriorate least.

On the basis of these recommendations, various State Government extended Indian Forest Act, 1927 to their States and few States adopted new and separate legislation.

(12) Central Boards of Forestry (C.B.F.).-(13) In 1962 and in 1973, C.B.F. recommended various changes in Forest Act. Some of them were, nationalisation of trade in minor forest products, acquisition of private forests etc.

(13) Private Forests.-Previous legislation excluded control over Private Forests by the State. They were mainly owned by Princely States, heirs of Rajas, Landlords and few Private Companies.

While enacting abolition of Zamindari Act in 1952, saving clause in the Act gave opportunity to the landlords to cut down millions of trees from their private forests. Influence of Policy and Law on the Forest Resources Management in India - by K.M. Tiwari (Ex-President, Forest Research Institute and College, Dehara Dun), Indian Forester, Vol. III, Nov. 1985, Dehara Dun. Thus valuable forest tracks were destroyed by the landlords.

Now most of the States, Private Forests have been acquired by the Government.

(14) Importance of Forest.-There are four major groups of forests in India having 16 types of forests based on climate. Now, total

forest area is 75.1 million ha. and 3.5 million persons are engaged in forestry activities, generating Rs. 1,395 million revenue to India. In India major forest produce is fuel-wood (12 million cubic metres), industrial wood (8.2 million cubic metres), wood for charcoal, teak, deodar, sal, sissoo, chir and kali, firewood, timber. Minor forest produce is bamboo and pulp, cane, gum, resin, dyes, tans, lac, fibres, floss, medicinal plants, fodder and grass.

In Maharashtra, with these major and minor products, matchwood, tendu and apta leaves assume importance in the forest trade.

(15) Forest Laws and effect on the Adivasis.-As the forests were taken over by the Government since British period, Adivasis have become 'criminals' and 'forest offences' gradually turned into criminal offences. The powers of the Forest Officers and the Police were made wide to implement the stringent provisions of Forest Laws, particularly since 1980. Forest movements of the Adivasis indicate that they continue to resist suppression of their rights since British period.

Adivasis were losing battle since the enactment of Forest Legislations. From losing proprietary rights, hunting, fishing, tilling the land, common ownership rights, now they are evicted from forest, trampling the fundamental right to live in the name of 'national interest'. Justice Chandra Shekhar Dharmadhikari has aptly described the struggle of adivasis and how they are getting treatment of 'Secondary Citizen' in his article. "Criminal Justice System and Tribes in India", AIR May, 1988, 74, Journal Section.

(16) Fundamental rights of Adivasis and National Interest.-Adivasis claimed that they were living within Dudhi and Robertsgunj Tehsils in District Mirzapur (U. P.) and that they have land and related rights. The State Government declared a part of these jungle lands in the two Tehsils as reserved forest as provided in section 20 of the Act and in regard to other areas, notification under section 4 of the Act was made and proceedings for final declaration of those areas also as reserved forests were undertaken. As a part of the jungle became reserved forest and in regard to other proceedings under the Act were taken, the forest officers started interfering with their operations in those areas and instituting criminal cases for encroachments as also other forest offences were registered and systematic attempt was made to obstruct them from free movement. As the lands were cultivated by the Adivasis, they filed a writ petition. Supreme Court issued direction that there should be no dispossession of occupants. In the meanwhile, Government decided that a Super Thermal Plant of "NTPC" was to be initiated in

the same area known as Rihand Super Thermal Power Project. Supreme Court held that the scheme for generating electricity being in national importance, Supreme Court allowed acquisition of land despite its earlier order preventing dispossession of occupants. Also Supreme Court gave directions to safeguard the interest of Adivasis and backward people occupying the land given. *Banwasi Seva Ashram v. State of Uttar Pradesh*, AIR 1987 SC 374.

The word 'forest' in clauses (ii), (iii) and (iv) of sub-section (4) of the Act has been used in widest significance. AIR 1953 Nag. 51 : I. L. R. (1952) Nag. 808 (D.B.).

(17) Object.-The Forest Act is one curtailing rights of individuals and so the Act and notifications under it must be construed strictly where rights of individuals are trenching upon. *Chatar Singh*, (1901) 2 Punj. L.R. 178.

An Act to amend the Indian Forest Act, 1927, in its application to the Province of Bombay.

WHEREAS it is expedient to amend the Indian Forest Act, 1927, in its application, to the Province of Bombay, for the purpose hereinafter appearing; It is hereby enacted as follows :-

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1. For Statement of Objects and Reasons, see Bombay Government Gazette, 1948, Part V, p. 385.

### **1. Short Title :-**

1. This Act may be called the Indian Forest (Bombay Amendment) Act, 1948.

### **2. Amendment Of Section 28 Of Act Xvi Of 1927 :-**

In section 28 of the Indian Forest Act, 1927 (hereinafter called the said Act,-

(i) in sub-section (1), after the words "reserved forest" the words "or called a protected forest" shall be inserted; and

(ii) in sub-section (3),-

(a) after the word "reserved" the words "or protected" shall be inserted; and

(b) after the words "village forests" the words "according as the forests assigned are reserved or protected forests" shall be inserted.

### **NOTES**

Reserved Forest and Protected Forest.-For definition see section 3 and section 29 of the Indian Forest Act, 1927.

Section 3 empowers the Government to constitute and as a reserved forest is precisely the same as the land which under section 29 may be constituted a protected forest, viz., "forest land or waste land which is the property of Government, or over which the Government has proprietary rights or to the whole or any part of the forest produce of which the Government is entitled.

No longer remained as Reserved Forest.-Section 27 empowers the State Government to declare a forest as no longer Reserved Forest. However, section 2 of the Forest (Conservation) Act, 1980 made the prior approval of the Central Government necessary for preservation of Reserved Forests and for use of forest land for non-forest purposes.

Powers of State Government to declare area as a Reserved Forest.-Section 3 does not make the exercise of the power conferred dependant on the opinion or decision of the State Government but upon the question of fact.

Jurisdiction of Court.-The provisions of the Indian Forest Act, do not bear the Court to decide whether the land in suit is or is not forest or waste land and whether, if it be not such land, the plaintiffs are entitled to the occupation thereof. *Balwant Ramachandra v. Secretary of State*, (1905) I.L.R. 29 Bom. 80.

Power restricted to forest and waste land only.-The power in section 4 to appoint an Officer to inquire and determine as to rights is limited to land which is proposed to constitute reserved forest. The land to which a proposal under section 4 relate must be forest or waste land and it is only in respect of such land that the Officer appointed has power to inquire and determine. *Balwant Ramchandra v. Secretary of State*, (1905) I.L.R. 29 Bom. 80.

Procedure to declare a land as Reserved Forest.-See sections 3, 4, 5, 6, 7 and 8 of Indian Forest Act, 1927.

Effect of such declaration.-After following all the provisions of the above sections, the forest rights of the people come to an end. The effect of a notification under section 4 of the Act is that new rights ceased to accrue and the Government acquires certain rights over the forest. But it does not become "Reserved Forest" because of the notification under section 4, unless and until a notification under section 20 has been issued. *Baghwan Sahai v. Div. Forest Officer, Hazaribag*, AIR 1947 Pat. 264 : 47 Cr. L. J. 992.

Forest rights.-1. Right of Pasture; 2. Right to forest produce; 3. Right of way; 4. Right to water-course; 5. All other rights in or over land.

"Village Forest".-Government may assign to village communities

under section 28 of the Indian Forest Act, 1927, the right of Government to a reserved forest. Such a forest so assigned is called a village forest.

Distinction between Reserved Forest and Protected Forest.-The procedure under Chapter IV of the Indian Forest Act, whereby forests are declared to be protected, has been in certain cases regarded by the Government of India as a provisional and immediate procedure, designed to afford time for consideration and decision, with the object of ultimately constituting so much of the area as it is intended to retain as reserved forest under Chapter II and of relinquishing the remainder altogether. Govt. of India - Resolution No. 22-F, Oct. 19, 1894.

### **3. Insertion Of New Section 34A In, And Amendment Of Section 35 Of Act Xvi Of 1927 :-**

(1) For sub-section (1) of section 35 of the said Act, the following shall be substituted, namely :-

"34A. Interpretation.-For the purposes of this Chapter forest includes any land containing trees and shrubs, pasture lands and any other land whatsoever which the Provincial Government may, by notification in the Official Gazette, declare to be a forest.

35. (1) The Provincial Government may, by notification in the Official Gazette,-

(i) regulate or prohibit in any forest -

(a) the breaking up or clearing of the land for cultivation;

(b) the pasturing of cattle;

(c) the firing or clearing of the vegetation;

(d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any tree;

(e) the lopping and pollarding of trees;

(f) the cutting, sawing, conversion and removal of trees and timber; or

(g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process;

(ii) regulate in any forest the regeneration of forests and their protection from fire;

when such regulation or prohibition appears necessary for any of the following purposes :-

(a) for the conservation of trees and forests;

(b) for the preservation and improvement of soil or the reclamation



of saline or water-logged land, the prevention of land-slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(c) for the improvement of grazing;

(d) for the maintenance of a water supply in springs, rivers and tanks;

(e) for the maintenance increase and distribution of the supply of fodder, leaf manure, timber or fuel;

(f) for the maintenance of reservoirs or irrigation works and hydro-electric works;

(g) for protection against storms, winds, rolling stones, floods and drought;

(h) for the protection of roads, bridges, railways and other lines of communication; and

(i) for the preservation of the public health."

(2) In sub-section (2) of section 35 of the said Act for the words "in or upon any forest or waste land" the words "in any forest" shall be substituted.

(3) In sub-section (3) of section 35 of the said Act the words "or land" shall be deleted.

#### NOTES

"Any land".-Forest land or waste land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.

However, it must be noted that there is no proper definition of the term "forest land" in the Act.

#### **4. Amendment Of Section 36 Of Act Xvi Of 1927 :-**

In section 36 of the said Act-

(i) the words "or land" wherever they occur shall be deleted;

(ii) in sub-section (1), after the word "reserved" the words "or protected" shall be inserted.

#### **5. Amendment Of Section 37 Of Act Xvi Of 1927 :-**

In section 37 of the said Act-

(i) in sub-section (1) the words "or land" shall be deleted; (ii) sub-section (2) shall be deleted.