

Orissa Protection Of Scheduled Castes And Scheduled Tribes (Interest In Trees) Act, 1981

18 of 1983

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Orissa Protection Of Scheduled Castes And Scheduled Tribes (Interest In Trees) Act, 1981

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An Act to provide for the protection of the members of the Scheduled Castes and Scheduled Tribes from exploitation in the matter of transfer of their interest in specified trees, I Be it enacted by the Legislature of the State of Orissa in the Thirty-second Year of to Republic of India, as follows:-

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Orissa Protection of Scheduled Castes and Scheduled Tribes (Interest in Trees) Act. 1981
- (2) It extends to the whole of the State of Orissa.
- (3) It shall come into force on such date as the State Government may, by notification, appoint in that behalf.

2. Definitions :-

In this Act, unless the context otherwise requires-

- (a) "Chief Conservator of Forests" means the Chief Conservator of Forests, Orissa
- (b) "Conservator of Forests" means the Conservator of Forests of the concerned forest circle;
- (c) "Contractor" means the person in whose favour the owner of any specified tree has effected a sale or has entered into a contract for sale of the timber of such tree and includes the representative in interest and assignees of such person;
- (d) "Divisional Forest Officer" means the Divisional Forest Officer of the concerned forest division;
- (e) "Grama Panchayat" means a Grama Panchayat constituted under the Orissa Grama Panchayat Act, 1964;
- (f) "holding" means a parcel or parcels of land forming the subject of a separate tenancy;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "Range Officer" means the Forest Officer in charge of a forest range;
- (i) "Scheduled Castes" shall mean the Scheduled Castes specified in respect of the State of Orissa in the Constitution (Scheduled Castes) Order, 1950, as modified from time to time;
- (j) "Scheduled Tribes" shall mean the Scheduled Tribes specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950 as modified from time to time;
- (k) "specified tree" means a tree specified in the schedule and such other specified trees as may be notified by Government from time to time.

3. Protection Of Interest In Specified Trees Belonging To The Scheduled Castes And Scheduled Tribes :-

(1) No contract entered into after the commencement of this Act by an owner of any specified tree for the sale of the timber thereof shall be valid if such owner is a member of the Scheduled Castes or the Scheduled Tribes and the contract has been entered into without the previous permission in writing granted by the Range Officer on an application made in that behalf giving adequate description of the timber proposed to be sold.

(2) On receipt of the application, the Range Officer concerned shall enquire into the case on the spot or cause such an enquiry to be made by any other Forest Officer and the Grama Panchayat or the Urban local body concerned, as the case may be, shall be requested to send one or more of the Ward Members to the spot on the date

of enquiry :

Provided that in any case where the Range Officer considers that the consideration for the contract is inadequate, he may require the owner to sell the trees to the Orissa Forest Corporation Limited or to any other State owned Corporation for such consideration amount as the Range Officer deems fit to fix.

(3) The report of enquiry shall be signed by the officer conducting the enquiry, the Ward Member or members present and the applicant.

(4) The report of enquiry shall, amongst other things, mention the number of trees species-wise, the girth of each tree and the reasonable consideration for the timber.

(5) On being satisfied about the right, title and interest of the applicant in the tree and the adequacy of the consideration for the contract, the Range Officer shall permit the timber to be lifted by the purchaser on payment of the consideration money in his presence.

(6) If no orders are passed by the Range Officer on the application within fifteen days from the date of receipt thereof, it shall be open to the owner of the tree to sell the tree to any person of the choice.

4. Application For Cancellation Of Existing Contracts In Some Cases :-

An owner of any specified tree who is a member of the Scheduled Castes or the Scheduled Tribes and who has entered into a contract which has been subsisting on the date of commencement of this Act, for the sale of the timber of such tree, may apply to the Divisional Forest Officer for cancellation of such contract on the ground that the consideration therefor was substantially inadequate.

5. Suo Motu Detection And Reference :-

(1) If it comes to the notice of the Divisional Forest Officer that any such contract as is referred to in sub-section (1) of Sec. 3 or Sec. 4 has been entered into in contravention of the provisions of that sub section or that the consideration therefor is substantially inadequate, he may on his own motion, institute a case and dispose it of as provided by or under this Act.

(2) If it comes to the notice of any Revenue Officer not below the rank of a Tahsildar or of any Block Development Officer or any Forest Officer not below the rank of a Range Officer having

jurisdiction over the area or of any other officer specially authorised by the State Government in this behalf that any such contract as is referred to in sub section (1) of Sec. 3 or Sec. 4 has been entered into in contravention of that sub-section or that the consideration therefor is substantially inadequate, he may refer the matter to the Divisional Forest Officer having jurisdiction for instituting a case and disposing of as provided by or under this Act:

Provided that the Divisional Forest Officer instituting a case under sub-section (1) or the officer making a reference under sub-section (2), may seize the timber involved in the transaction and keep the same in the custody of the owner if he is of the opinion that such seizure is necessary and thereupon he shall prepare a list of the timber seized and obtain the signature of the owner on such list and where the seizure is made by the later officer, the said list shall be forwarded to the Divisional Forest Officer having jurisdiction alongwith the aforesaid reference.

6. Procedure In Cases Of Subsisting Contracts :-

(1) On receipt of an application relating to a subsisting contract under Sec. 4, or on detection or reference of a case under Sec. 5, as the case may be, the Divisional Forest Officer, may, if he considers it necessary, pass a preliminary order directing the contractor concerned in writing to refrain from felling or removing any timber under or in pursuance of the contract till the decision of the case:

Provided that where any timber has been removed in pursuance of any contract which forms the subject-matter of the case, the Divisional Forest Officer, may if he deems fit, also order seizure of such timber pending disposal of the case.

(2) After hearing the parties concerned and making such enquiry as he may deem fit, the Divisional Forest Officer may, for reasons to be recorded in writing, either reject the application or contract or pass an order allowing it.

(3) The Divisional Forest Officer while passing any preliminary order in case of subsisting contract, shall record his findings on the following matters, besides others

(i) the amount of consideration actually received by the owner of the specified tree;

(ii) the expenses incurred by the contractor in felling and cutting all such specified trees which he has been prevented from removing by reason of the proceedings under this Act;

(iii) the value of the timber removed by the contractor under the contract.

(4) On passing of a preliminary order to that effect, the contractor shall be entitled to receive from the owner of the specified tree the amount by which the aggregate of the amounts under items (i) and (ii) exceeds the amount under item (iii) of sub-section (3).

(5) Any amount which the contractor is entitled to receive from the owner under sub-section (4) shall be deposited by the said owner within such time as the Divisional Forest Officer may, from time to time, allow for the purpose.

(6) The Divisional Forest Officer shall pass a final order in case of the subsisting contracts-

(a) cancelling the contract if the owner of the specified trees deposits the amount as provided in sub-section (5), or

(b) rejecting the application or reference, as the case may be, if the said owner fails to make such deposit.

(7) Upon cancellation of the contract, the timber of the specified trees felled under or in pursuance of such contract and lying in the holding of the owner of the tree shall belong to him.

Explanation.-A contract shall be deemed to be subsisting for the purpose of this section if the whole or any part of the timber of the specified trees sold or agreed to sold in pursuance of such contract had not been removed by the contractor from the holding in which such specified tree stands.

7. Provisions Of The Act To Prevail :-

The provisions of this Act shall have effect notwithstanding anything to the contrary in any other enactment or in any contract for the time being in force.

8. Procedure :-

The procedure to be followed in the proceedings under this Act other than those under Sec. 10 shall be as may be prescribed.

9. Appeal :-

(1) Any person aggrieved by any decision or order made under Sec. 3 may prefer an appeal before the Divisional Forest Officer within a period of thirty days from the date on which the decision or order is communicated to such person.

(2) Any person aggrieved by any decision or order made under Sec.

6 may prefer an appeal before the Conservator of Forests within a period of thirty days from the date on which the decision or order is communicated to such person :

Provided that an appeal against the final order made under sub-section (6) of Sec. 6 shall be confined only to, matters determined under sub-section (3) of that section.

(3) The decision or order made by the Range Officer or the Divisional Forest Officer shall, subject to the orders passed in appeal, if any, be final and binding on the parties.

10. Offence :-

(1) Any contractor who fells or causes the felling of any specified tree or removes or causes the removal of the timber of any specified tree, in pursuance of a contract which is invalid under Sec. 3, or in contravention of any order passed by the Divisional Forest Officer under Sec. 6, shall, on conviction, be punishable with rigorous imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both.

(2) The Magistrate may order that the whole of the fine so imposed or any part thereof, not being less than fifty per cent may be paid as compensation to the owner of the specified tree in relation to which the offence has been committed, if he is of the opinion that the consideration money paid to the owner is substantially inadequate.

11. Offence To Be Cognizable :-

Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), all offences punishable under Sec. 10 shall be cognizable.

12. Power To Make Rules :-

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

(2) In particular and without prejudice to the foregoing powers, they may make rules in respect of all matters expressly required or allowed by this Act to be prescribed.