

*** The Orissa Forest Act, 1972**

ORISSA ACT 14 OF 1972

(Assented to by the President on the 29th June, 1972)

An Act to consolidate and amend the laws relating to the protection and management of forests in the State

Be it enacted by the Legislature of the State of Orissa in the Twenty third year of the Republic of India as follows:

1. Statement of Objects and Reasons- There are now two Forest Acts in application in the State of Orissa i.e. the Indian Forest Act, 1927 and the Madras Forest Act, 1882. Except for the District of Koraput, Ganjam and part of Phulbani districts (Baliguda and G.Udayagiri Taluks) where the Madras Forest Act, 1882 is in force, the rest of the area is covered by the Indian Forest Act, 1927. The existence of two Acts quite often creates confusion and also administrative difficulty. The existence of two Acts imposed an extra strain on the Government machinery with no commensurate advantage and this could be avoided by one unified Act. The necessity for a unified Forest Act was felt quite early and in pursuance of that, a Bill was introduced in the State Legislative Assembly in the year 1942. But for reasons unknown this was dropped. The necessity for such an Act has been commended by the Forest Enquiry Committee of Orissa in its report in 1959.

2. Further, a Sub- Committee of the Central Board of Forestry had recommended amendment of certain clauses giving the development of forests and the interest of forest production a paramount consideration. There are a number of other States like Kerala, Gujarat, Andhra Pradesh, etc. which have already enacted independent Forest Acts and we have had the advantage of talking the best part of those Acts while unifying our law. The experience in other States as well as the experience in the management of forests in this State has been taken into consideration to bring the law up-to-date. Generally the sequence followed is of the Indian Forest Act though this Bill has freely drawn from the Madras Forest Act and other existing State Forest Acts for convenience.

3. This Bill seeks to fulfill the above object.

CHAPTER-I

PRELIMINARY

1. Short title, extent and commencement – (1) This Act may be called the Orissa Forest Act, 1972

(2) It extends to the whole of the State of Orissa.

(3) It shall come into force at once.

2. Definitions – In this Act, unless the context otherwise requires-

(a) “**Cattle**” means cows, oxen, bulls and calves and includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, kids and such other kinds of animals as the State Government may, by notification, specify:

(b)-(d) 1[* * *]

(e) “**Forest Offence**” means an offence punishable under this Act or under the rules and includes the abetment of a forest offence;

2[(f) “**Forest Officer**” –

(i) any person whom the State Government or any officer empowered by the State Government in this behalf may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made there under to be done by a forest officer, and who may be designated by Principal Chief Conservator of Forests, Chief Conservator of Forests, Conservator of Forests, Deputy Conservator of Forests or Divisional Forest Officer, Working Plan Officer, Silviculturist Assistant Conservator of Forests, Forest Range Officer, Deputy Ranger of Forester; and

(ii) such other person who are notified by the State Government to perform all or any of the functions of a forest officer under this Act or any rule or order made there under, but does not include Forest Settlement Officer.]

(g) “**forest**” produce includes-

(i) the following whether found in, or brought from a forest or not, that is to say-

(a) timber, charcoal, caoutchouc catechu, wood- oil, resign, natural varnish, bark, Tussay Cocoon, lac, gums, roots of Patala Garuda, mohua flowers, mohua seeds, myrabolans, Kendu Leaves, sandalwood, tamarind, hill- broom, Siali leaves, Siali fibres, Sal seeds;

(b) wild animals and wild birds, skins, tusks, horns, bones, and all other parts or produce of wild life; and

- (c) such other produce as may be notified by the State Government; and
- (ii) the following when found in or brought from a forest that is to say
 - (a) trees and leaves, flowers and fruits and all other parts or produce of trees not hereinbefore mentioned;
 - (b) plants not being trees (including grass, creepers, reeds, and moss) and all parts or produce of such plants;
 - (c) honey, wax and arrowroot;
 - (d) peat, surface oil, rock, sand and minerals (including limestone, late rite, mineral oils and all products of mines or quarries):
- (h) **Owner** in relation to a forest includes a mortgagee in possession, lessee or other person having right to the possession of an enjoyment of the forest :
- (i) **“Prescribed”** means a prescribed by Rules made under this Act;
- (j) 1[* * *]
- (k) **“River”** includes a streams, canals, back waters, creeks and other channels, natural or artificial;
- (l) **“Rule”** means any rule made under this act;
- (m) **“Sandalwood”** means the wood derived out of any part of Chandan tree and includes chips, dust or power of such wood;
- (n) **“Timber”** includes trees fallen or felled and all wood cut-up or swan; and
- (o) **“tree”** includes palms, bamboos stumps, brush wood and canes.

CASE LAW: section 2 (g);(c) – Bamboo when becomes forest produce, discussed.

Held, from Clause (ii) of Sub- sec. (g), read with Sub- sec. (c) of Section 2 of this Act, it is clear that bamboo is a forest produce only if it is found in or brought from the forest- In other words bamboo is not a forest produce if it is brought from a private land: **1997 (II) OLR 354: AIR 1998 Ori. 54**

Section 2 (c), 2(g), 2(o) and 56- Forest offence and seizure Findings of authorized officer based on mere conjectures and surmises Bamboo is not a forest produce if it is brought from a private land: **1997 (II) OLR 354.**

Section 2(g) – Forest produce- Siali leaves- Whether Siali leaves cease to be forest produce when planted and made out of the same Held, no Transit permit is necessary: **32 (1990) OJD 565 (Civil).**

Section 2(g) – Orissa Timber and other Forest Produce Transit Rules 1980- Rules 4 and 5 – Siali leaves are forest produce within the meaning of Section 2(g)of the Act- Transit permit is a precondition under the rules for transport under certain specified conditions: **32 (1990) 565 OJD (Civil)**

Section 2(g) - Orissa Timber and other Forest Produce Transit Rules 1980- Rules 2 (1) (h), 5 and 7 – Whether firewood is a forest produce Held, yes: **32 (1990) OJD 502 (Cri).**

Section 2(g) - Orissa Timber and other Forest Produce Transit Rules 1980- Rules 2 (1) (h), 5 and 7 – “Firewood” it is a forest produce: **1990 (II) OLR 400.**

Section 2(g) (i) (a), 27 (2) (b) and Section 27 (3) (b) – Accused found removing Sal log from the forest area- Offence is not under Section 27 (2) (b) but is under Section 27 (3) (b)- punishment for such offence before amendment of 1983 is 2 years and the period of limitation under Section 468 (2) (c) is three years- Trial Court disposed of the cases only on point of limitation and not on merits- Finding as to limitation was also wrong- Acquittal set aside and case remanded: **1989 (II) OLR 441**

CHAPTER- II

OF RESERVED FORESTS

3. Power to reserve forests- The State Government may constitute any land which is the property of Government have proprietary rights of a reserved forest in the manner hereinafter provided.

4. Notification by State Government- (1) Whenever it is proposed to constitute any land reserved forest, the State government shall issue a notification in the Official Gazette-

- (a) declaring that it is proposed to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such lands; and
- (c) appointing an officer (hereinafter called “The Forest Settlement Officer”) to inquire into and determine the existence’ nature and extent of any rights or privileges alleged to exist in favor of any person in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation – or the purpose of Clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, bridges or other well known or readily intelligible boundaries.

(2) The officer appointed under Clause (c) of Sub- sec. (1) shall ordinarily be a person not holding any forest office except that of a Forest Settlement Officer.

(3) The Divisional Forest Officer not below the rank of a Range Officer authorized by him in that behalf may represent the Forest Department at the enquiry conducted under this Chapter.

5. Bar to accrual of forest rights and bar of suits – (1) After the issue of a notification under Section 4, 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 into by or on behalf of the State Government or some person in whom such right was vested when the notification was issued; and no fresh clearing or breaking of land for cultivation or for any other purpose or construction of shed or other structure shall be made in such land except in accordance with such rules as may be made by the State Government in that behalf.

(2) Save as otherwise provided in this Act no Civil Court shall, between the dates of publication of the notification under Section 4 and of the notification to be issued under Section 21, entertain any suit to establish any right in or over any land included in the notification published under Section 4.

6. Proclamation by Forest Settlement Officer- When a notification has been issued under Section 4 the Forest Settlement Officer, in the prescribed manner, published in Oriya in every town and village in the neighborhood of the land comprised therein, a proclamation-

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which, as hereinafter provided will ensue on the reservation of such forest; and
- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period either to present to the Forest Settlement Officer a written notice specifying or to appear before him and state the nature, of such right and the amount and particulars of the compensation, if any, claimed in respect thereof.

7. Inquiry by the Forest Settlement Officer – (1) The Forest Settlement Officer shall take down in writing all statements made under Section 6 and shall at some convenient place in the locality inquire into all claims duly preferred under that section, and the existence of any rights mentioned in Section 4 or 5 and not claimed under Section 6 so far as the same may be ascertainable from the records of Government and the evidence of any person likely to be acquainted with the same.

(2) The Forest Settlement Officer shall also record any representation which the Forest Officer, if any, representing the Forest Department under Sub-section (3) of Section 4 or the Divisional Forest Officer may in respect of any such objection of claim.

8. Powers of Forest Settlement Officer- For the purpose of such enquiry, the Forest Settlement Officer may exercise the following powers, that is to say-

- (a) power to enter or authorize any person to enter 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.

9. Extinction of rights- Rights in respect of which no claim has been preferred under Section 6 and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished, unless before the publication of the notification under Section 21, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6.

CASE LAWS: Land does not fall under Section 3- Extinguishment of right-
Scope of: **AIR 1977 ALL. 192.**

Failure to make claim within time- Objection to jurisdiction cannot be waived:
AIR 1977 ALL. 192.

10. Claims relating to practice of shifting cultivation- (1) Claims relating to practice of shifting cultivation in any land notified under Section 4 shall not be admitted but if the Forest Settlement Officer considers that some portion of the land under settlement needs to be excluded to provide sufficient land for cultivation, he may, after considering the objections of the Forest Officer, in any representing the Forest Department under Sub- sec. (3) of Section 4 or the Divisional Forest Officer, make a report to the State Government containing his recommendations for alteration of the limits of the land.

(2) The State Government may, after considering the recommendations so made, sanction the alteration proposed by the Forest Settlement Officer either in whole or with such modification as they deem fit and thereupon the Forest Settlement Officer shall pass an order altering the limits of the land as sanctioned by the State Government.

(3) The practice of shifting cultivation shall, in all cases, be deemed a privilege subject to control, restriction and abolition by the State Government.

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 a right of way of right of pasture, or a right to forest produce or a water course or to use of water the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part after considering the particulars of such claims and the objection of the Forest Officer, if any, representing the Forest Department under Sub- section (3) of Section 4 or the , Divisional Forest Officer.

(2) If such claim is admitted in whole or in part, the Forest Officer shall either-

- (i) exclude such land from the limits of the proposed forest;
- (ii) come to an agreement with the owner thereof for the surrender of his rights; or
- (iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(3) For the purpose of such acquisition-

- (a) the Forest Settlement Officer shall be deemed to be a collector proceeding under the Land Acquisition Act,, 1894 (1 of 1894)
- (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under Sec-9 of that Act;
- (c) the provisions of the preceding sections of the Act shall be deemed to have been complied with; and
- (d) the Collector, with the consent of the claimant or with the consent of both the parties, may award compensation in the form of land, or partly in the form of land and partly in money.

(4) The Forest Settlement Officer shall serve a copy of every order passed under this section on the claimant and also on the Forest Officer who attended the enquiry under Sub- Section (3) of Section 4 if no such officer attended, on the Divisional Forest Officer.

12. Claims to right of way, right to water course or to use of water etc. – (1) In the case of a Claims to right of way, right to water course or to use of water the Forest Settlement Officer shall after considering the objections of the Forest Officer, if any, representing the Forest Department under Sub-sec. (3) of Section 4 or the Divisional Forest Officer either come to an agreement with the claimant for the surrender of the right or pass an order for continuance of the exercise of such right subject to such

conditions as may be agreed upon between the Forest Department and the claimant or where no such agreement is reached, as the Forest Settlement Officer may impose.

(2) In the case of claims to rights of pasture or to forest produce the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part after considering the objections of the Forest Officer representing the Forest Department under Sub-sec. (3) of Section 4 or of the Divisional Forest Officer.

(3) A copy of every order passed under this section shall be served on the claimant by the Forest Settlement Officer and another copy shall be forwarded to the Forest Officer who attended the enquiry or if no such officer attended, to the Divisional Forest Officer.

13. Record to be made by the Forest Settlement Officer- The Forest Settlement Officer, when passing any order under Section 12, shall record in as precise terms as possible and so far as may be practicable-

- (a) the names, father's name, residence and occupation of the person claiming the right; and
- (b) the designation, position and area of all fields or groups of fields, if any, and the designation and position of all buildings, if any, in respect of which the exercise of such right is claimed.

14. Record where he admits claims- If the Forest Settlement Officer admits in whole or in part any claim under Sub-sec. (2) of Section 12 he shall also record the extent to which the claim is so admitted specifying the number and description of the cattle which the claimant is from time to time, entitled to graze in the forest, the season during which such pasture is admitted, the quantity of timber and other forest produce which he is from time to time, authorized to take or receive, and such other particulars, as the case may require. He shall further record whether the timber or other forest produce obtained on such authorization may be sold or bartered.

15. Exercise of rights admitted- (1) After making such records the Forest Settlement Officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For the said purpose the Forest Settlement Officer may-

- (a) set out some other tract of sufficient extent, and in a locality reasonably convenient for the purpose of such claimants, and make an order conferring upon them a right of pasture or to forest produce, as the case may be, to the extent so admitted; or

- (b) so alter the limits of the proposed forest as to exclude forest land of sufficient extent, and in a locality reasonably convenient for the purpose of the claimants;
- (c) make an order continuing in favor such claimants a right of pasture or to forest produce, as the case may be, to the extent so admitted, during such seasons and within such portions of the proposed forests, as he may fix and subject to such Rules as may be made in this behalf.

(3) A copy of every order passed under this section shall be served on the claimants by the Forest Settlement Officer and another copy shall be forwarded to the Forest Officer who attended the enquiry or if no such officer attended, to the Divisional Forest Officer.

16. Commutation of rights- If on the representation of the Divisional Forest Officer the Forest Settlement Officer is satisfied that the exercise of any private right is inconsistent with the maintenance, preservation or development of a reserve forest, he shall proceed to acquire such right and shall, subject to such Rules as the State Government may make in this behalf, commute such rights by the payment to such persons of a sum of money in lieu thereof or by the grant of land, or in such other manner as he thinks fit.

17. Appeal from orders passed under Sections 11,12,15 or 16 – Any person who has made a claim under this Act, 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 the order passed to such claim by the Forest Settlement Officer under Sections 11,12,15 or 16, present an appeal from such order to the Collector of the district who may dispose of the appeal himself or may transfer the same to the Additional District Magistrate for disposal.

CASE LAW: Forest Settlement Officer whether ‘Court’: **AIR 1975 SC 2085.**

18. Appeal under Section 17- (1) Every appeal under Section 17 shall be made by a memorandum in writing and may be delivered to the Forest Settlement Officer, who shall forward it forth with to the authority competent to hear the same.

(2) The procedure for filing and disposal of appeals shall be the same as is provided under Order XLI of the Code of Civil Procedure, 1908 (5 of 1908).

19. Power of revision- (1) The Board of Revenue may, on an application made in that behalf by any person aggrieved by an appellate order under Section 18 within three months from the date of the order, confirm, modify or set aside such order:

Provide that no orders under this Sub-section shall be made without giving the parties concerned a reasonable opportunity of being heard.

(2) The Board of Revenue may, by order in writing and subject to, such condition as may be specified therein, delegate its powers under this section to any officer not below in rank to the Revenue Divisional Commissioner and may in like manner withdraw the powers so delegated.

20 Pleaders- the State Government or any person who has made a claim under this Act, may appoint any person to appear, plead and act on their or his behalf before the Forest Settlement Officer or the appellate or revision authority in the course of any inquiry, appeal or revision under this Act.

21. Notifications declaring forest reserved- (1) When the following events have occurred, namely:

- (a) the period fixed under Section 6 for preferring claims has elapsed and all claims, if any, made under that section or Section 9 have been disposed of by the Forest Settlement Officer;
- (b) If any such claims have been made the period limited by Section 17 for preferring appeals from the orders passed on such claims has elapsed, and all appeals, if any, presented within such period have been disposed of by the appellate authority;
- (c) If any such appeals have been presented, the period limited by Section 19 for making an application for revision of the appellate order has elapsed, and all applications, if any, made within such period have been disposed of by the revisional authority; and
- (d) Lands, if any, to be included in the proposed forest, which the Forest Settlement Officer has under Section 11 elected to the acquire under the Land Acquisition Act, 1894 (1 of 1894) have become vested in the State Government under Section 16 of that Act.

The State Government may publish a notification specifying according to boundary marks erected or otherwise, the limits of the forest which is to be reserved with effect from a date to be specified in the notification.

(2) From the date so specified such forest shall be deemed to be a reserved forest.

¹[(3) Production of an authenticated copy of a notification published under Sub-sec. (1) shall be conclusive proof that the forest, the limits whereof have been specified therein is a reserved forest.]

22. Publication of translation of such Notification in neighborhood of forests- The Divisional Forest Officer shall, before the date specified in the notification issued under Section 21, cause a translation thereof into Oriya to be published at a conspicuous

place in every town and village in the neighborhood of the forest and also in such other manner as may be prescribed.

23. Powers to revise arrangement made under Section 15 or Section 18- the State Government may, at any time after the publication of any notification under Section 21, revise any arrangement made under Section 15, Section 18 or Section 19 and may for this purpose rescind or modify any order made under Section 15, Section 18 or Section 19 and direct that any one of the proceedings specified in Section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under Section 12 be commuted under Section 16:

Provided that no order under this section shall be made without giving parties concerned a reasonable opportunity of being heard.

24. No right to be acquired over reserved forest except as herein provided- No right of any description shall be acquired in or over a reserved forest except by succession or under a grant of contract in writing made by or on behalf of the State Government or some person in whom such right was vested when the notification under Section 21 was issued.

25. Rights not to alienated without sanction – (1) Notwithstanding anything contained in Section 24, no right continued under Clause (c) of Sub-section (2) of Section 15, shall be alienated by way of grant, sale, lease, mortgage or otherwise without the sanction of the State Government.

Provided that, when any such right is appended to any land or house, it may be sold or otherwise alienated along with such land or house.

(2) No timber or other forest produce obtained in the exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under Section 14.

26. Power of stop ways and water courses in reserved forests- The Divisional Forest Officer may, in the interests of the general public and with the previous sanction of the State Government or of any officer duly authorized by them in this behalf, close any public or private way or water course or stop the use of water in reserved forest: provided that a substitute for the way or water course so closed or, as the case may be, an alternative arrangement for the use of water so stopped, which the State Government deems to be reasonably convenient, already exists, or has been provided for or constructed by the Divisional Forest Officer in lieu thereof.

27. Offences- (1) The person who

- (a) makes any fresh clearing or causes breaking of land which is prohibited under Section 5;

¹[(b) sets fire to a forest land in respect of which a notification under Section 4 has been issued, or kindles any fire or leaves any fire burning in such forest land in such manner as to endanger the forest land, or fells, girdles, lops any tree or strips off the bark or leaves from any tree in such land, or otherwise damages the same or causes damage to any forest produce any such land, or quarries stone, burns lime or charcoal or subjects to manufacturing process any forest produce from such land, in contravention of any rule.]

Shall be punishable with imprisonment for a term which may extend to ¹[one year and with fine which may extend to one thousand rupees]

²[* * *].

(2) Any person who in a reserved forest-

- (a) trespasses or pasture cattle or permits cattle to trespass; or
- (b) causes any damage by negligence in felling any tree or cutting or deagging any timber or removing any forest produce.

¹[shall be punishable with fine which may extend to-

- (i) one thousand rupees for an offence under Clause (a); and
- (ii) two thousand rupees for an offence under Clause (b), in addition to such compensation for the damage done to the forest, which in no case shall be less than the value of the property damaged, as the convicting Court may direct to be paid.]

(3) Any person ¹[sets fire to a reserved or] who in a reserved forest-

- (a) ²[kindles, keeps or carries any fire or fells], girdles, lops or burns any tree or plant or strips off the bark or leaves from or otherwise damages the same or causes damage to any forest produce;
- (b) Quarries stone, burns lime or charcoal or collects, subjects to manufacturing process or removes any forest produce;
- (c) Clears or breaks up any land for cultivation or for any other purpose, or cultivates or attempts to cultivate any land in any manner or puts up any sheds or other structure; or
- (d) In contravention of any Rule made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares,

Shall be punishable with imprisonment for a term ²[which shall not be less than three years but may extent to seven years and with fine which may extend to ten thousand rupees]. ³[* * *]

²[(4) When a person is convicted for an offence under Clause (a) of Sub- section (1), the Court shall order eviction of the offender from the land in relation to which the offence has been committed and, and such order being made, all sheds or structures an such land shall be demolished and if the Court so orders, the crop, if any, standing on the land shall be seized and confiscated to the State Government.]

(5) Orders passed and actions to be taken under Sub- section (4) may be executed by a Police Officer not below the rank of a Sub- Inspector or a Forest Officer not below the rank of a Range Officer as the Court may direct.

(6) Nothing in this section shall be deemed to prohibit-

- (a) any act done by permission in writing of the Divisional Forest Officer or any officer authorized by him in that behalf or under any rule made by State Government; or
- (b) the exercise of any right continued under clause (c) of Sub-section (2) of Section 15, of created by grant or contract in writing made by or on behalf of the State Government as is referred to in Section 24.

CASE LAWS: Sec. 27 read with Sec. 46- Illegal cutting and removing of trees- Magistrate acquitting the accused – Appeal – Accused not disputing the evidence of felling of trees- Non- production of document showing permission on conviction and sentence issued: **2005 (II) OLR 352.**

Section 27- Charge under – Finding of Authorized Officer that bamboos not proved to be brought from reserved forest- Held, charge under Sec. 27 not proved: **1997 (II) OLR 354: AIR 1998 Ori. 54.**

Sections 27 (2) (b) and 3(b) (Prior to its amendment by Act 9 of 1983- Limitation – Accused found removing timber – No case of causing any damage to reserved forest by felling tree- Held, offence was covered by Section 27 (3)(b) and not by Section 27 (2)(b) and punishment for offence being imprisonment extending to two years’ period of limitation was three years under Section 468 (2)(c), Cr. P.C.: **1990 Cri. L.J. 1585 (Ori): 1989 (II) OLR 441.**

28. Suspension of rights in reserved forest- Whenever in a reserved forest-

- (a) fire is caused willfully or by gross negligence; or

- (b) theft to forest produce occurs and such theft is, in the opinion of the State Government on such a scale as to be likely to imperil the future yield of such forest.

The State Government may, on the recommendation of the Collector of the district, direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended for such period as they may think fit:

Provide that before making any recommendation to the State Government, the Collector shall give the persons concerned a reasonable opportunity- of being heard.

29. Power to declare Forest no longer reserved- (1) The State Government may, by notification, direct that with effect from such date as may be specified therein, any forest declared to be a reserved forest under this Act or any portion thereof shall cease to be a reserved forest.

(2) With effect from the aforesaid date such forest or portion of the forest shall cease to be reserved, but the rights therein, if any, which have been extinguished, shall not revive in consequence of such cessation.

(3) Whenever any reserved forest or any portion thereof ceases to be reserved forest by virtue of a notification issued under Sub-section (1) the State Government shall, as far as practicable, constitute other lands equal in area to the reserved forest so notified, to be a reserved forest in accordance with provision of this Chapter.

CHAPTER-III

OF VILLAGE FORESTS

30. Constitution of village forests- (1) The State Government may, by notification, constitute any land at their disposal to be a 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.

Explanation- “Land at the disposal of Government” includes all unoccupied land, all temporarily occupied land or occupied without permission whether assessed or unassessed, and all communal forests but does not include land recorded in the name of any private person or institution in the record-of-rights in force which is prepared and maintained or is deemed to be prepared and maintained under the Orissa Survey and Settlement Act, 1958 (Orissa Act 3 of 1959).

31. Power to make rules for village forests- (1) The State Government may make rules for regulating the management of village forests and for prescribing the conditions under which the community or group of communities for the benefit of which

any such village 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 all or any of the provisions of Chapter II to be applicable to village forests.

32. Inquiry into and Settlement of rights- All claims to any right other than the rights of the village community or group of village communities for the benefit of which such village forest is constituted, shall be inquired into, recorded and provided for in such manner as may be prescribed.

CHAPTER- IV OF PROTECTED FORESTS

33. Protected forests- (1) The State Government may, by notification declare the provisions of this Chapter applicable to any land which is not included in a reserved forest, but which is the property of Government or has proprietary rights.

(2) The lands comprised in any such notification shall be called a “protected forest”.

(3) No such notification shall be issued unless the nature and extent of the rights of Government and of private persons and village communities in or over the land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as may be prescribed and every such record shall be presumed to be correct unless the contrary is proved:

Provided that if in the case of any land, the State Government are of the opinion that the inquiry and recordings as aforesaid are likely to occupy such length of time as in the mean time to endanger the rights of Government, they may, pending such inquiry and recording, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

(4) Lands at the disposal of Government to which the provisions contained in Chapter III of the Madras Forest, Act, 1882 (Madras Act 5 of 1882) were applicable immediately prior to the coming into force of this Act shall be deemed to be “protected forest” under this Act.

CASE LAWS : Sec. 33- Protected forest- meaning of – Land has to be one which is not included in a reserved forest- In case of unreserved forest, a notification in terms of Sec. 34 has to be issued, declaring the applicability of Chapter IV of the Act: 1992 (II) OLR 185

34. Power to issue notification reserving trees, etc- The State Government may, by notification-

- (a) declare any trees in protected forest to be reserved from a date to be specified in the notification;
- (b) prohibit, from a date to be specified as aforesaid the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process or removal of any forest produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest;
- (c) declare that any portion of such forest as may be specified in the notification shall be closed to grazing and removal of any forest produce for such term as the State Government think fit for the plantation and natural growth of the forest ;

Provided that in making a declaration under Clause (c) the State Government shall have due regard to the grazing facility of cattle.

35. Publication and translation of such notification in neighborhood- The Divisional Forest Officer shall cause translation into Oriya of every notification issued under section 34 to be affixed in a conspicuous place in every town and village in the neighborhood of the forest comprised in the notification.

36. Powers to make rules for protected forests- The State Government may make rules to control and regulate the following matters, namely:

- (a) the cutting, sawing, conversion and removal of trees and timber and the collection, manufacture and removal of forest produce, from protected forests;
- (b) the granting of licences to the inhabitants of towns and village in the vicinity of protected forests to take trees, timber or other forest produce for their own use, and the production and turn of such licences by such persons;
- (c) the granting of licences to persons for felling or removing trees or timber or other forest produce from such forests for the purposes of trade, and the production and return of such licences by such persons
- (d) the payments, if any to be made by the persons mentioned in Clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest produce;
- (d) the other payments, if any, to be made by them in respect of such trees, timber and other forest produce, and the places where such payment shall be made;
- (e) the examination of forest produce passing out of such forests;

- (f) the alienation, clearing and breaking up of land for cultivation on other purposes in such forests;
- (g) the protection from fire of timber lying in such forests and of trees reserved under Section 34;
- (h) the cutting of grass and pasturing of cattle in such forests;
- (i) hunting, shooting, poisoning water, setting traps or snares and collection of wild life in such forests;
- (j) the protection and management of any portion of a forest notified under Section 34; and
- (k) the exercise of rights referred to in Section 33.

37. Penalties for acts in contravention of notification under Section 34 or of Rules under Section 36- (1) Any person who-

- (a) Fells, girdles, lops, traps or burns any tree reserved under Section 34, or strips off the bark or leaves from, or otherwise damages any such tree;
- (b) contrary to any prohibition under Section 34, quarries any stone, or burns any lime or charcoal, or collects, subject to any manufacturing process, or removes any forest produce;
- (c) contrary to any prohibition under Section 34 breaks up or clears for cultivation or any other purpose any land in any protected forests or cultivates or attempts to cultivate any such land in any manner;
- (d) sets fire to such forest or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under Section 34, whether standing, fallen or felled, or to any portion of such forest notified under the said section;
- (e) feels any tree or drags any timber so as to damage any tree reserved as aforesaid;
- (f) permits cattle to damage any such tree; or
- (g) infringes any Rule made under Section 36;

Shall be punishable with imprisonment for a term which may extend to one year¹[and with fine] which may extend to two thousand rupees and shall also be liable to pay such compensation not being less than the value of the damage caused to the forest as the convicting Court may direct to be paid.

(2) When a person is convicted of an offence Clause (c) of Sub-section (1) the court shall order eviction of the offender from the forest land or tire land in relation to which the offence has been committed and on such order being made all sheds or structures on any, standing on the land shall be seized and confiscated to the State Government.

(3) The order of eviction may be executed by a police officer not below the rank of Sub-Inspector or a Forest Officer not below the rank of a Range Officer or a Revenue Officer not below the rank of a Revenue Inspector, as the Court may direct.

(4) Whenever in a protected forest-

(a) fire is caused willfully or by gross negligence; or

(b) theft of forest produce occurs and such theft is in the opinion of the State Government on such a scale as to be likely to imperil the future yield of such forest;

The State Government may, on the recommendation of the Collector of the district and notwithstanding that any penalty has been inflicted under this section or under any other law for any act referred to in Clause (a) or Clause (b), direct that in such forest or any portion thereof the exercise of any right of pasture or to forest produce shall be suspended for such period as they think fit:

Provided that before making any recommendation to the State Government, the Collector shall give the persons concerned a reasonable opportunity of being heard.

CASE LAWS: Section 37 (1)(c) – Applicability- Prohibition under Sec. 34 must exist – It relates only to protected forest- Apparently in order to have operation of Sec. 34- the said section deals with powers to issue notification reserving trees, etc. – It is also apparent that Sec. 37 (1)(c) relates only to protected forest- What is prohibited that Sec. 37 (1)(c) is breaking up or clearing for cultivation or any other purpose any land in any protected forest cultivating or attempting to cultivate any such land in any manner: **1992 (II) OLR 185.**

Section 37(1)(c) – The accused were found felling the trees at Khuntabadi unreserved forest by means of saw and cutting the logs- They did not have any permit for doing so- The saw and wood were seized in presence of the witness- The accused faced faced trail under Section 37 (1)(c) of the Forest Act- The Court held that in case of unreserved forest, a notification in terms of Section 34 has to be issued- It is accepted that no, notification was brought on record to show any declaration that the land where the alleged act was committed was a protected forest- in that view of the matter the conviction as made and the sentence as awarded cannot be maintained : **1992 (II) OLR 185 : 34 (1992) OJD 352 (Cri.) : 1992 (III) Crimes (Ori.) 567.**

38. Nothing in this chapter to prohibit acts done in certain cases- Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest Officer who is authorized done in accordance with rules made under Section

36 or, except as regards any portion of a forest notified under Section 34, or as regards any right the exercise of which has been suspended under Section 37, or done in the exercise of any right recorded under Section 33.

CHAPTER-V

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT OR OVER WHICH GOVERNMENT HAVE JOINT INTEREST

39. Portion of forests for special purposes-(1) The State Government may, by notification, regulate or prohibit in any forest or waste land-

- (a) the breaking up or clearing of land for cultivation;
- (b) the pasturing of cattle; or
- (c) setting fire to or clearing of the vegetation, when such regulation or prohibition appears necessary for any of the following purposes, namely:
 - (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 or hilly tracts, the prevention of landslips or of the formation of ravines and torrents or the protection of land against erosion or the deposit thereon of sand, stones or gravel;
 - (iii) for the maintenance of water supply in springs, rivers, tanks, reservoirs and irrigation projects;
 - (iv) for the protection of roads, bridges, railways and other lines of communication;
 - (v) for the preservation of public health and of places of worship.

(2) The State Government may, for any such purpose, construct at its own expenses, in or upon any forest or waste land such work as they think fit.

(3) No notification shall be made under Sub- section (1) nor shall any work be begun under Sub- section (2), until after issue of a notice to the owner of such forest or land calling on him to show cause, within a responsible period to be specified in such notice, why such notification shall 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 duly appointed in that behalf by the State Government and have been considered by the State Government.

40. Power to assume management of forests- (1) In case of neglect of or willful disobedience to any regulation made or prohibition imposed under Section 39; or if the purposes of any work to be constructed under that section so require, the State Government may, after notice in writing to the owner of such forest or land and after considering his objection, if any, place the same under the control of a Forest Officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest land.

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

41. Acquisition of forests in certain cases- (1) In any case under this Chapter in which the State Government consider that in lieu of placing the forest or land under the control of a Forest Officer the same should be taken on lease or acquired for public purposes, the State Government may proceed to take on lease on agreed terms or to acquire it in the manner provided under the Land Acquisition Act, 1894 (10 of 1894).

(2) The owner of any forest or land comprised in any notification under Section 59 may, at any time not less than three or more than twelve years from 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.

42. Prohibition of cutting fruits-bearing trees- The State Government may, by notification, from time to time, prohibit the cutting of fruit-bearing trees specified in the notification which are standing on any land (other than land which is the property of Government or over which the Government have proprietary rights) and the cutting of which is likely to lead to fall in agricultural or industrial production.

43. Protection of forests at request of owners- (1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation of conservation of forests thereon, represent in writing to the State Government their desire-

- (a) that such land be managed on their behalf by the Forest Officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or
- (b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the State Government may, by notification apply to such land such provisions of this Act as they think suitable to the circumstances thereof and as may be desired by the applicants.

44. Management of forests, the joint property of Government and other persons- (1) If the State Government and any person be jointly interested in any forest or waste land or in the whole or any part of the produce thereof, the State Government may either-

- (a) undertake the management of such forests, waste land or produce accounting to such person for his interest in the same; or
- (b) issue such regulations for the management of the forests, waste land or produce by the person so jointly interested as they deem necessary for the management thereof and the interest of all parties therein.

(2) When the State Government undertake under Clause (a) of Sub-section (1) the management of any forest, waste land or produce, they may, by notification, declare that any of the provisions contained in the Chapters II and IV shall apply to such forest, waste land or produce, and thereupon such provisions shall apply accordingly.

CHAPTER-VI

OF THE CONTROL OF TIMBER AND OTHER FOREST PRODUCE IN TRANSIT OR POSSESSION

45. 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 timber and other forest produce in transit by land or water shall be vested in the State Government, and they may make rules to regulate the transit and possession of all timber and other forest produce.

(2) In particular and without prejudice to the generality of the foregoing power such Rules may-

- (a) prescribe the routes by which alone timber or other produce may be imported, exported or moved into, from or within the State;
- (b) prohibit the import or export or moving of such timber or other forest produce without a pass from an Officer duly authorized to issue the same and otherwise than in accordance with the conditions of such pass;
- (c) provide for the issue, production and return of such passes and for the payment of fees therefore;
- (d) provide for the stoppage, reporting, examination and making of timber or other forest produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof or on account of any fee royalty or charge due thereon, or to which is it desirable for the purpose of this Act to affix a mark;
- (e) provide for the establishment and regulation of deposits to which such timber or other forest produce shall be taken by the person in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it and the conditions under which such timber or

other produce shall be brought to, stored at and removed from such deposits;

- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest produce, the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed.
- (g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;
- (h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw mills, or saw pits, the converting cutting, burning, concealing or making of timber the altering or effacing of any marks on the same or the possession or carrying of marking hammers or other implements used for marking timber;
- (i) regulate the use of property marks for timber, and the registration of such marks, prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any person, and provide for the levy of fees for such registration.
- (j) provide for maintenance of accounts of timber received at or dispatched from the saw mills;
- (k) regulate the possession and transit of valuable produce like sandalwood, tusks and wild life trophies.

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

CASE LAWS: Section 45- Orissa Forest Contract Rules, 1966- Rule 7- Contract for removal of forest produce- Contract not completed within stipulated period- Extension of period granted – Contract could not be completed during extended period also- Contractor sought further extension- Extension through granted initially but latter on same was stayed and ultimately cancelled- No question of contractor sustaining loss on account of fact that he was no allowed to fell trees during extended period Suit for recovery of loss allegedly sustained, not maintainable: **AIR 2002 Ori. 1.**

Section 45- Forest produce-Lease for collection- Granted in favor of co-operative society and renewal from time- to-time –Lease subsisting Policy of Govt. to grant more leases in one area to wipe out monopoly- Not applicable to lessee, a co-operative society- Therefore, grant of lease for collection of one of the listed minor forest produce to another party in same area- Illegal: **AIR 1998 Ori. 180.**

Section 45 and 85- Offence under- Findings of Authorized Officer based on conjectures and surmises- Held, order of Authorized Officer quash: **1997 (II) OLR 354: AIR 1998 Ori. 54.**

Section 45, 46, and 83- Prosecution report under these sections as hand-sawn logs were found in the house of accused, but she could not give any explanation no could show any licence- This may be offence under Orissa Timber transit Rules or Orissa Forest Saw Pits and Saw Mills (Control) Rules but not offence under the Sections of the Act as stated in the report- Cognizance not taken for offence under the Act is corrected: **1994(I) OLR 255.**

In view of the decision, there cannot be any controversy so far as the present case is concerned – Cognizance cannot be taken either under Sec. 45 or Sec. 46- So far as Sec.83 of the Act is concerned, it only says that any person contravening any provision of the act or the rules made there under for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to two months or with fine which may extend to one thousand rupees or with both xxxx: 1994 (I) OLR 255.

Section 45- Prosecution case is on 15.09.1994 at about 9 a.m. on the basis of a search warrant, the Forest Range Officer, Anandapur along with the vigilance squad of the Forest Department carried on a raid in the premises of the petitioner and seized the forest timber numbering 666 pieces of different varieties of sal, piasal etc. – The petitioner failed to produce any authority for such possession So- Court held that neither Section 46 nor Section 45 can be termed as penal provisions for any offence under Section 46 of the Act itself- section 46is only can enabling provision authorizing the State Government to frame Rules under section 45 for regulating possession or transit of forest produce with maximum punishment of one year and fine- Cognizance is taken only under Section 46 of the Forest Act nor proper or legal: **1991 (II) OLR 307 : 1991 Cri.L.J.2642.**

Not by itself a penal provision- If a party commits an offence under the Transit Rules, 1980 he can not be punished under Section 45 of the Act: **1989 (II) OLR 124.**

46. Penalty for breach of rules made under Section 45- (1) in making any rule under section 45 the State Government may provide that a breach thereof shall be punishable with imprisonment which may extend to ¹[five years and with fine which may extend to five thousand rupees].

¹[(2) Such rules may provide that where offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority or where the offender has been previously convicted of a like offence, the offender shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten thousand rupees.]

47. Government and forest officer not liable for damage to forest produce at Depot- The State Government shall not be responsible for any loss or damage which may

occur in respect of any timber or other forest produce while at a depot established under a Rule made under Section 45, or while detained elsewhere, for the purposes of this act; and no Forest Officer shall be responsible for any such loss or damage unless the causes such loss or damage negligently, maliciously or fraudulently.

48. All persons bound to aid in case of accident at Depot- In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the State Government or by any private person, shall render assistance to an Forest Officer or Police Officer demanding aid in averting such danger or securing such property from damages or loss.

CHAPTER-VII

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

49. Certain kinds of timber to be deemed property of Government until title thereto is proved and may be collected accordingly- (1) The following shall be deemed to be the property of Government unless and until any person establishes his right and title thereto as provided in this Chapter, namely:

- (a) all timber found adrift, breached, stranded or sunk;
- (b) all wood or timber bearing marks which has not been registered in accordance with the rules made under Section 45, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and
- (c) in such areas as the State Government may direct, all unmarked wood and timber.

(2) Such timber may be collected by any Forest officer or other person entitled to collect the same by virtue of any rule made under Section 55, and may be brought to any depot for the reception of drift timber and the Officer or person so collection shall forthwith make a report to the Divisional Forest Officer.

(3) The State Government may, by notification, exempt any class of timber from, the provisions of this section.

50. Notice to claimants of drift timber- Public notice shall, from time to time, be given by the Divisional Forest Officer of timber collected under Section 49 and every 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 not less than two months from the date of such notice, a written statement of such claim.

51. Procedure on claim preferred to such timber- (1) when such statement is presented as aforesaid, the Divisional 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 Divisional Forest Officer may either make an order declaring the person entitled to the timber and deliver the same to him or may refer the claimant to the Civil Court having jurisdiction and retain the timber pending the receipt of an order from any such Court for its disposal:

Provided that no such delivery of timber shall be made under this Sub-section until the expiry of a period of three months from the date of the order made by the Divisional Forest Officer.

(3) Any person whose claim has been rejected under this Section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him, but no person shall be entitled to any compensation or costs against the State Government, or against any Forest Officer on account of such rejection, or the retention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to any process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought as provided in this section.

52. Disposal of unclaimed timber- If no such statement is presented as aforesaid or if the claimant omits to prefer his claim in the manner and within the period of fixed by the notice issued under Section 50, or on such claim having been so preferred by him and having been, rejected, omits to institute a suit to recover possession of such timber within the period fixed by Section 51, the ownership of such timber shall vest in the State Government, or when such timber has been delivered to another person under Section 51, in such other person free from all encumbrances not created by him.

53. Government and its officers not liable for damages to such timber-The State Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under Section 49, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss damage negligently, maliciously or fraudulently.

54. Payments to be 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 he has paid to the Divisional Forest Officer or other persons entitled to receive it, such sum on account thereof as may be due under any Rule made under Section 55.

55. 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 Section 49;

- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid for salving, collecting, moving, storing or disposing of such timber; and
- (d) the use and registration of hammers and other instruments to be used for making such timber.

(2) In making any rule under this Section the State Government may provide that a breach thereof shall be punishable with imprisonment which may extend to one year¹[and with fine] which may extend to one thousand rupees²[* * *].

³[CHAPTER-VII-A

PROVISIONS RELATING TO SANDAL WOOD

55-A. sandal-trees to be exclusive property of State Government- (1) Notwithstanding to the contrary contained in any law, contract, grant or other instruments but save as provided in Section, 55-B.

- (i) all sandal trees which may grow in any land on or after the date of commencement of the Orissa Forest (Amendment) Act, 1990; and
- (ii) all sandal trees existing on any land prior to the commencement of the Orissa Forest (Amendment) Act, 1990.

Shall be the exclusive property of the State Government.

(2) Where, in any proceedings taken under this Act, a question arises as to whether any sandal wood is the property of the State Government, it shall, until the contrary is proved, be presumed to be the part of a sandal tree which was the exclusive property of the State Government under Sub-section(1), and in the case of any prosecution the burden of providing the contrary shall lie on the accused.

55-B. Disposal of sandal-wood belonging to provide persons- (1) Any person who by terms of his title to the land, grants or by judicial decision or otherwise, was prior to the commencement of the Orissa Forest (Amendment) Act, 1990, legally entitled to the sandal trees in his lands, shall not fell or sell any such sandal trees.

(2) The Divisional Forest officer concerned may cause any such sandal tree or trees occurring in such lands to be cut or uprooted and sold and in the event of such sale proceeds thereof shall be paid to the person referred to in Sub-section (1) after deducting the expenses incurred for felling and selling the tree and such payment shall be deemed to have been made towards the full satisfaction of compensation for that tree.

55-C. Regulation, sale and manufacture of sandal - wood and sandal-wood-oil- (1) No person shall possess, store or sell or attempt to store or sell sandal wood or disintegrate or attempt to disintegrate sandal wood in mills or by other contrivance, manufacture or distil or attempt to manufacture or distil oil from sandal wood in mills or by other contrivance, manufacture or distil oil from sandal wood, or redistill, refine or sell oil extracted from a Forest Officer empowered in this behalf on payment of such fees and subject to such restrictions and conditions as may be prescribed:

Provided that no such licence shall be necessary for possession of sandal wood up to two kilogram for bona fide domestic use.

¹[(2) whoever contravenes the provisions of Sub-section(1) shall, on conviction, be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and with fine which may extend to ten thousand rupees.]

55-D. responsibility of occupants and holders of land for preservation of sandal-trees- (1) every occupant or holder of land shall be responsible for the due preservation of all sandal trees growing thereon which are the exclusive property of the State Government and shall in the event of any damage to any such tree from what ever cause or its theft, report such fact to the nearest forest Officer or Police Officer as soon as possible.

(2) Any occupant or holder who fails to report any such case of damage of the theft as foresaid to such officer and unless adjudged by a Forest Officer not lower in rank than the divisional Forest Officer that such damage or theft was not caused either by his own act or by any neglect or default on his part or by any other person at his instigation or with his connivance shall, notwithstanding any other penalty to which he may be liable, to pay the State Government such compensation on account of such damage or theft as the Divisional Forest Officer may deem reasonable.

Explanation- The word damage used in this section includes the looping of branches of the tree.

55-E. Penalty for offence in regard to sandal-wood- In any case of a forest offence having reference to the cutting, uprooting or removal or damage to a sandal tree or any part of a sandal tree belonging to Government, the offender shall, on conviction, be punishable with imprisonment for a term ¹[which shall not be less than three years but may extend to seven years] and with fine which may extend to ten thousand rupees.

CHAPTER-VIII

PENALTIES AND PROCEDURE

¹[**55-AA. Minimum punishment to be imposed-** Unless for sufficient reasons to be recorded in writing, the Court passing an order of conviction for an offence under this Act or the Rules made there under (other than an offence under Sub-section (2) ²[or

sub0section (3) of section27 or sub-section (2) of Section 46 or section 55-C or section 55-E or Section 67] or under Section 83) imposes a lesser punishment, the minimum punishment to be imposed on such conviction shall be imprisonment for a period of two months together with a fine of an amount equal to fifty per cent of the maximum fine provided for the offence.]

56. 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, ropes, chains, boats, vehicles or cattle 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, except where the offender agrees in writing to get the offence compounded ³[under Section 72] ⁴[either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorized by the State Government in this behalf by notification (hereinafter referred to as the authorized officer') or] 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 make, as soon as may be, a report of the circumstances to his official superior and the Divisional forest Officer.

⁵[(2-a) When an authorized officer seizes any forest produce under Sub- section (1) or where any such forest produce is produced before him under Sub-section (2) and he is satisfied that a forest offence has been committed in respect there of , ⁶[he shall] order confiscation of the forest produce so seized or produced together with all tools, ropes, chains, boats, vehicles or cattle used in committing such offence.]

(2-b) No order confiscating any property shall be made under Sub-section (2-a) unless the person from whom the property is seized is given-

- (a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;
- (b) an opportunity of making a representation in writing within such reasonable times as may be specified in the notice against the grounds for confiscation; and
- (c) a reasonable opportunity of being heard in the manner.

(2-c) Without prejudice to the provisions of Sub-section (2-b) no order of confiscation under Sub-section (2-a) of any tool, rope, chain, boat, vehicle or cattle shall be made if the owner thereof proves to the satisfaction of the authorized officer that it was used without knowledge or connivance of his agent, if any, or the person in charge of

the tool rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all responsible and necessary precautions against such use.

(2-d) Any Forest Officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may, within thirty days from the date of the order of confiscation by the authorized officer under Sub-section (2-a) either *suo motu* or on application, call for and examine the records of the case and may make such inquiry or cause such inquiry to be made and pass such order as he may think fit:

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

(2-e) Any person aggrieved by an order passed under Sub-section (2-a) or Sub-section (2-d) may, within thirty days from the date of communication to him of such order, appeal to the District judge having Jurisdiction over the area in which the property has been seized, and the District Judge shall, after giving an opportunity to the parties to be heard, pass such order as he may think fit and the order of the District Judge so passed shall be final.

(3) The property seized under this section shall be kept in the custody of a Forest Officer or with any third party, until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received.

¹[Provided that the seized property shall not be released during pendency of the confiscation proceeding or trial even on the application of the owner of the property for such release.]

Explanation:- For the purposes of this section and Section 59, cattle shall not include buffaloes, bulls, cows, calves and oxen.

CASE LAWS: Loading and attempt for illegal transport of timber and fire wood without having valid timber transit permit- Order of confiscation of Tractor by Authorized Officer- Factual finding challenged in appeal before District Judge- Order of confiscation confirmed- Writ- Evidence adduced by the petitioner before Authorized Officer was neither discussed nor rejected for any good reason save and except making cryptic reference to such evidence and sweeping remark on non-acceptability of that plea- District Judge has failed to properly appreciate the evidence for its acceptance or rejection- Order not suitable in eye of law Direction issued:**2005(II) OLR 759.**

Section 56 (2-a)- Timber and Other Forest Produce Transit rules, 1980-Rule 4,12 and 21- jeep seized for illegal transportation of hand sawn sal- Order of confiscation – Discussing the facts and provisions of law held, factum of seizure is an admitted fact- Case for committing a forest offence by carrying such hand sawn sal seized without valid transit permit makes out the case of the Department in support of the order of confiscation- Petitioner utterly failed to prove that his vehicle was used without his knowledge or connivance or the knowledge or connivance of the driver- Order of

confiscation does not suffer from any illegality, perversity or jurisdictional error: **2005 (I) OLR 132.**

Sec. 56- Orissa Forest produce Transit Rules, 1980- rule 4 – Vehicle seized by the Forest Officials along with timbers for violation of the provisions- Order of confiscation of vehicle as also the timbers to the State- Plea of petitioner that the driver due to the threat at the point of Bhujali loaded the timber- Held, no material with regard to threat- No report lodged before the Police – No plausible explanation is forthcoming as to why the driver did not do so- Petitioner to substantiate his stand has examined no independent witness- No cogent reason to interfere: **2005 (Supp.) OLR 507.**

Sec. 56 (2) – Truck found carrying processed Kendu leaves without valid documents and T.T. permit- Confiscation proceedings – Confiscation order passed – appeal before District Judge dismissed- Writ- In a proceeding under the Sec., the Department has to simply show prima facie materials indicating involvement of the concerned vehicle in a forest offence- if such onus is discharged by the Department, then the burden shifts on the owner of the forest offence and that he had taken all reasonable and necessary precaution against misuse of the vehicle by the driver or his agent- In the present case facts/statement shows that driver had been authorized to transact the business of the truck during the absence of the owner – Once this was established and once the necessary precaution against use of vehicle in any illegal work, the protection provided under Sec. 56 Sub- Sec. (2-c) was not available – Sec. 56 (2) of the Act nowhere contemplates that fine can be imposed in lieu of confiscation of the offending vehicle : **2005 (Supp.) OLR 921.**

Sec. 56,64- Confiscated vehicle- Release of sale proceeds of discharge of loan liability – When a proceeding for confiscation is undertaken, under Sec. 56 of the Act against a vehicle, at that stage, there is no debarring provision in that section or any other provision in that Act to make the order of confiscation subject to satisfaction of any encumbrances – Property confiscated under Sec. 56 shall vest in the State Government free from all encumbrances- Hypothecated vehicle remained as charge for discharge of loan amount- If sale proceeds is to be released for repayment of loan, then that negatives the purpose of Section 56 inasmuch as the loanee – cum- the registered owner of the hypothecated vehicle gets the reward of repayment of his loan which otherwise would have been an additional burden on him- Order referring the issue to a Larger Bench: **2004 (II) OLR 627.**

Section 56- Confiscation of vehicle- Owner to prove that the same has been used without his knowledge or connivance, or the knowledge or connivance of his agent, if any or the person in charge of the article in question- To escape the order of confiscation it must be further proved that each of the concerned persons had taken all reasonable and necessary precautions against use of the vehicle in question in respect of forest offence- In the present case owner admitting that committed by driver : **2002 (II) OLR 216.**

Sec. 56(2-a) – Truck purchased on availing loan from Orissa State Financial corporation – Truck used for the purpose of illegally transporting forest produce- truck under proceedings of the act, directed to be confiscated- O.S.F.C. dues remained unpaid-

whether O.S.F.C. would be deprived of getting their money? – State Financial Corporation an instrumentality of the State- Facts stated on recovery of dues when collateral security available and when loan amount treated as a charge- Loan advanced can be treated as a public demand as per O.P.D.R. Act and being treated the charge of O.S.F.C. : **2002 (I) OLR 331: AIR 2002 Ori. 130.**

(as amended in 1983)- Section 56- (before and after amendment) and Section 57- Distinction between prior and after amendment of Section 56 explained- After amendment two courses are open, one before Magistrate and another before the authorized officer – All these matter relate to seizure and confiscation- Interim order of confiscation – In the instant case the Conservator of Forests has no power to pass interim order of custody- The authorized officer can pass such order – Direction given : **2001 (I) OLR 613.**

Section 56- Confiscation proceedings- Power of appellate authority – Can be exercised only against confiscation order of authorized officer – Order of authorized officer releasing goods is a “non-confiscation order” – Appeal against- Cannot be entertained by conservator of forests :**1998 (II) OLR 646: AIR 1999 Ori. 37.**

Section 56- Orissa Timber and Other Forest Produce Transit Rules, 1980 – Rules 21- Seizure and confiscation of vehicles, goods etc. – The owner acquitted – it was no bearing on confiscation- Position of forest law and common Criminal Law, distinction started – Position of onus and mens rea stated- Provision of Sec 56. (2-b)(a) explained- The Position of law regarding section 56 of the Act and Rules 21 of the Rules stated in detail: **1998 (I) OLR 482.**

Section 56, Sub-section 2(a), 2(d), 2(e)- Petitioner was licence holder under the Act- A truck containing the finished goods were seized and vehicle confiscated by the authorized officer- After conclusion of enquiry he released the article and truck – An appeal was field before conservator who directed for fresh enquiry – Thereafter the D.F.O. in pursuance of direction of conservator ordered confiscation of article- Different provision of Sub Section-2 of Sec. 56 explained- If the authorized officer has ordered for confiscation the Conservator can call for records and examine – It is like supervisory or revisional power – This power can be invoked only when confiscation is made and that till be done within thirty days – He has no power of entertaining ant appeal – Either the order is for confiscation or non-confiscation it is appealable to Dist. Judge- Therefore, the confiscation order is without jurisdiction: **1998 (II) OLR 646.**

Section 56- Confiscation of vehicle – Transportation of forest produce out of district without transit permit- Use of forged number plate for the vehicle – Recovery of number of take number plates from the vehicle – Order directing confiscation of said vehicle – Not improper : **AIR 1998 Ori. 177.**

Section 56- Orissa Timber and Other Forest Produce Transit Rules, 1980 – Rules 21- Seizure and confiscation of vehicles, goods etc. – The owner acquitted – it was no bearing on confiscation- Position of forest law and common Criminal Law, distinction started – Position of onus and mens rea stated- Provision of Sec 56. (2-b)(a) explained-

The Position of law regarding section 56 of the Act and Rules 21 of the Rules stated in detail: **1998 (I) OLR 482.**

Section 56 (2) – Power of confiscation – Nature and scope of Bamboos alleged to have been seized carried by the truck not proved – Bamboos not marked – Effect of: **1997 (II) OLR 354: AIR 1998 Ori. 54.**

Section 56- Truck carrying green salia and pananli bamboos from forest, checked and the truck along with forest produce seized- Held, ‘bamboos’ came under “Forest Produce” according top Sec. 2 (g) – Vehicle presence of owner and driver- Confiscation proper.

Authorized Officer has power to order payment of fine in lieu of confiscation in appropriate cases: **1994 (I) OLR 276.**

Confiscation of the Truck- Appeal heard by District Judge who is also Sessions Judge- When the appeal was disposed of, the Judge signed as Sessions Judge- Held, this is not a case of total lack of jurisdiction- He was empowered to here as District Judge and heard it and disposed of as such- Simply signing as Sessions Judge does not make it illegal.

It is well- settled that when an authority passes an order which is within its competence, it can not fail merely because it purports to be made under a wrong provision if it can be within its from- The decisions of the Supreme Court in P. Rajakothaith v. Union of India, AIR 1950 SC 1929 make this position clear: **1994 (II) OLR 379.**

Interpreting the relevant provision, this Court has held that it is permissible to pass an order for payment of fine in lieu of confiscation – The Court found that the truck involved in the present case is of 1961 model- It is the only source of income of the petitioner and his family- The value of the forest produce illegally carried in the truck was about Rs. 6,000/- only- For these reasons, they are of the view that if then petitioner is ordered to pay a fine of Rs. 15,000/- in lieu of confiscation of his truck, it will serve the ends of justice: **1994 (I) OLR 276.**

Section 56 (1) and (2-a) and 85- Confiscation of a vehicle can be ordered only there is satisfaction that a forest offence has been committed in respect of any forest produce and the vehicle was used for committing offence- There must be some direct connection between forest produce and the vehicle- Merely because a car was going ahead of a truck carrying forest produce without permit, and nothing recorded of seized from the car connecting the carrying of forest produce the car can not be said to have been used for forest offence – It can not be confiscated nor it can be said to be abetment under Sec. 85 of the Act- Instance explained : **1993 (II) OLR 295.**

Section 56 (2-a) – District Judge having jurisdiction in the area has to decide the appeal but not the Sessions Judge- One person may hold both posts- But he has to dispose of the appeal as Dist. Judge to avoid future complication.

In view of the language of Sub- sec. (2-e) of Sec. 56 of the Act, the Dist. Judge alone was competent to deal with the appeal – it was held that there was a remote possibility of prejudice to the appellant and disposal was by a Judge who has no jurisdiction to deal with the same: **1992 (II) OLR 300.**

Section 56 (2)- Confiscation – Bags of Kendu Leaves booked from Dhenkanal, destination Bombay, was detected at Sambalpur- This amounts to entire – district movement- So provisions of Sec. 56 (2) are attracted.

In view of the recent decision of in State of Orissa v. Kiran Shankar Panda, 71 (1991) CLT 187, in which it was held that if a forest offence is committed even with the knowledge or connivance of the driver of the vehicle, the vehicle would be liable for confiscation even though the owner might not have any knowledge or connivance- in that decision it was further pointed out that to escape the order of confiscation, it must be further proved that each of concerned persons named in Sub- sec. (2-c) of Sec. 56 of the Forest Act had taken all reasonable and necessary precaution against the case of the vehicle in respect of the commission of the forest offence : **1992 (I) OLR 305.**

Section 56 (2) – Fine can be imposed instead of confiscation – When authorities are satisfied about undesirability of confiscation of vehicle they can impose fine- Principle to be followed, indicated: **1992 (I) OLR 305.**

Section 56, 57, and 58- Authorized Forest Officer can seize the Forest produce , for which the offence is alleged to have been committed and to report the case to Magistrate- Apart from that the authorized officer has also power to confiscated – Scope of the sections, explained.

The Court in Sarat Kumar Malu v. State of Orissa , 57 ()1984 CLT 381, has held that when any forest produce together with the vehicle used in committing any forest offence is seized by any forest officer in exercise of his powers to release the property seized lies with the authorities prescribed in the four corners of the provisions of the Act and not with a Magistrate in exercise of his powers under the provisions of the Code of Criminal Producer: **1994 (I) OLR 296.**

Section 56(2) – The truck of the petitioner was found at Noohibahal Check- gate which is in the district of Sambalpur to have been carrying dry and processed Kendu leaf bags- The petitioner is said to, have been himself driving the vehicle – At the check gate the petitioner produced some documents showing authority to transport the Kendu leaves from Purjang to Bombay- The Forest Official who was in-charge of the check gate suspected the genuineness of the documents and after having done some checking, he contacted the Range Officer, who also smelt something wrong and rushed to the spot to find that tile petitioner has disappeared leaving the truck- Further enquires were made there after and it was found that the permit in question authorizing transportation as aforesaid as aforesaid was forged which assured the minds of the officers that the petitioner was involved in illegal transportation of the Kendu Leaves – This led to the initiation of the confiscation proceedings which ultimately terminated against the petitioner, whose appeal did not yield fruit.

After hearing the learned counsel for the petitioner, the Court held that on the facts of the case confiscation of the truck is not merited and so suggested that in lieu of confiscation we impose fine of Rs. 60,000/- The vehicle which is in the custody of the forest authorities shall be released forthwith in favour of the petitioner on his paying in cash the aforesaid amount: **1992 (I) OLR 305: AIR 1992 Ori. 287.**

Section 56 (2-a) – A writ application is filed in challenging the legality of the order passed by the learned Sessions Judge, Puri- The Hon'ble Court held that the District Judge having jurisdiction over the area as to decide the appeal and the Sessions Judge having jurisdiction over the area as to decide the appeal and the Sessions Judge was not authorized to deal with the same: **1992(I)(OLR) 300: 34(1992) OJD 12 (Ori.).**

Section 56 (2-a) – According to the Forest Department one Biswanath Behera was found illegally carrying timber worth Rs. 5000/- concealed in a heap of sand in the tractor and trolley which was being driven by petitioner No. 2 and as such illicit transport of timber was done with the knowledge of the petitioners- The tractor and the trolley in question were liable for confiscation under Sub-section (2-a) of Section 56 of the Act- The Hon'ble Court held that on perusal of the record it is seen that the vehicles were previously involved in the commission of a forest offence weighed with Courts below while passing the impugned orders – As the authorized officer relied on the material regarding the commission of a previous forest offence by the use of the very same vehicles an opportunity should have been given to the petitioner to adduce evidence either to rebut the charge or to explain their position in relating to the said charge leveled against them – So on this score also the matter deserves to be remitted to the authorized officer for providing the petitioners an opportunity to explain their conduct in relation to the said charge : **1990 (II) OLR 318.**

Section 56- The petitioner is owner of a truck and the truck being involved in a forest offence was seized by the Police Officer- After seizure of the truck by the police the petitioner made an application for release of the truck and the truck and the Magistrate came to the conclusion that in view of the amendment of section 56 of the Orissa Forest Act, he loses the jurisdiction – The Hon'ble Court held that when a vehicle is seized by the police officer and not by the Forest Officer and the same is produced before the Magistrate , it would be by the Magistrate who would be competent to pass appropriate orders with regard to the disposal of the same: **1998 (II) OLR 195.**

57. ¹[* * *]

58. Action after seizure- Upon the receipt of any such report the Magistrate shall, except where the offence has been compounded, with all convenient dispatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

59. Forest produce, tools etc., liable to confiscation- (1) All timber of forest produce which is not the property of Government and in respect of which a forest offence has been committed, and all tools, ropes, chains, boats, vehicles and cattle used in

committing any forest offence, shall be liable to confiscation ²[unless an order of confiscation has already been passed in respect thereof under Section 56].

(2) Such confiscation may be in addition to any other punishment provided for such offence.

60. Disposal on conclusion of trial for forest offence of produce in respect of which it was committed- When a 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 charge of by or under the authority of the Divisional Forest Officer, and in any other case, may be disposed of in such manner as the Court may direct.

61. Producer when offender not known, or can not be found- Where a Magistrate is of opinion that a forest offence was committed, but the offender is not known or can not be found, he may on an application made in this behalf order the property in respect of which the offence was committed and which was seized to be confiscated and taken possession of by or under the authority of the Divisional Forest Officer or to be made over to any person whom the magistrate considers to be entitled to the same:

Provided that before making any such order, the Magistrate shall cause a notice of any application made under this section to be served upon any person who, he has reason to believe in interest in the property seized, or shall publish such notice in such manner as he thinks fit:

Provided further that no such order shall be made until the expiration of one month from the date of seizing such property or without hearing the person if any, claiming any right there to, and the vehicle, if any which he may produce in support of his claim.

62. Procedure as to perishable property seized under Section 56- The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under Section 56 which is subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold:

Provided that if in the opinion of the officer seizing such property it is not possible to obtain in the orders of the magistrate in time, such officer may sell the property, remit the sale proceeds to the nearest government treasury and make a report to the Magistrate and thereupon the Magistrate shall take such measures as may be necessary for the trial of the accused:

Provided further that no officer below the rank of Range Officer shall have power to dispose of property under the preceding proviso.

63. Appeal from order under Section 56, 60 or 61- The officer who made the seizure under Section 56 or any of his official superiors, or any person claiming to be interested in the property so seized may, within one month from the date of any order

passed under section 59, Sec. 60 or Sec. 61 prefer an appeal to the Court to which orders made by such Magistrate are ordinarily applicable, and the order passed on such appeal shall be final.

64. Property when to vest in Government- ¹[(1)] When an order for the confiscation of any property has been passed under Section 59 or Section 61, as the case may be, and the period limited by Section 63 for filing in appeal from such order has elapsed, and no such appeal has been preferred or when, on such an appeal being preferred the appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the State Government free from all encumbrances.

²[(2) When an order of confiscation of any property passed under Section 56 has become final under that section in respect of the whole or any portion of the property, such property or the portion thereof as the case may be, shall vest in the State Government free from, all encumbrances.]

³[**64-A. Confiscation to be no bar to imposition of other penalty-** An order of confiscation made under Section 56 shall not act as a bar to the imposition of any other penalty to which the offender is liable under this Act or the Rules made there under.]

65. Saving of power to release property seized- Nothing in this Act shall deemed to prevent the Divisional Forest Officer from directing at any time the immediate release of any property seized under Section 56 and the withdrawal of any charge made in respect of such property in accordance with the provisions of ⁴[Section 321 of the Code of Criminal Procedure, 1973 ⁴(2 of 1974)]:

Provided that where a report has been made to the Magistrate of the property seized under Section 56, the Divisional Forest Officer shall not release the property without the consent in writing of such Magistrate if a case is pending before him, and in order cases, without previous intimation to him.

66. Punishment for wrongful seizure- Any Forest Officer or Police Officer who vexatiously or frivolously seizes any property on pretence of seizing property liable to confiscation under this Act or vexatiously or frivolously arrests any person under Section 68, ⁵[for kindling, keeping or carrying any fire in the reserved forest, or for kindling any fire or leaving any fire burning in any forest land notified under Section 4 , or for any other forest offence] shall be punishable with imprisonment for a term which may extend to one year ⁶[and with fine] which may extend to one thousand rupees ⁷[* * *].

67. Penalty for counterfeiting or defacing marks on trees and timber and/or 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 or unlawfully affixes upon any timber of standing trees a mark used by Forest Officer to indicate that such timber or tree is the property of Government or of some person; or

- (b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of Forest Officer; or
- (c) alters, moves, destroys or defaces any boundary mark of any forest or waste land to which the provisions of this Act are applied.

Shall be punishable with imprisonment for a term ¹[which shall not be less than three years but may extend to seven years and with fine which may extend to ten thousand rupees].

68. Powers to arrest without warrant- (1) Any Forest Officer or Police Officer may, without orders from a Magistrate and without, arrest and detain in custody any person if the officer knows or has reason to believe that such person is committing or has committed any forest offence or if such person refuses to give his name and residence, or gives a name or residence which there is reason to believe to be false or if there is reason to believe that he will abscond.

(2) Every person arrested and detained in custody under this section shall be informed, as soon as may be of the grounds for such arrest and detention and shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate; and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

69. Power to release on a bond a person arrested- Any Forest Officer of a rank not inferior to that of a Range Officer who or whose subordinate has arrested any person under the provisions of Section 68, may release such person on his executing a bond to appear, except when the offence is non-bailable, if and when so required, before the Magistrate having jurisdiction in the case, or before the Officer-in-charge of the concerned police station.

70. Power to prevent commission of offence- Every Forest Officer and Police Officer shall prevent, and may interpose for the purpose of preventing the commission of any forest offence.

71. power to try offence summarily- Any Management of the First Class specially empowered in this behalf by the State Government may try summarily under the Code of Criminal Procedure, ¹[1973] ¹(2 of 1974), any forest offence punishable with imprisonment for a term not exceeding one year, or with fine not exceeding one year, or with fine not exceeding one thousand rupees or with both.

72. Power to compound of offence- (1) Any Forest Officer specially empowered in this behalf by the State Government may accept as compensation from any person who committed or in respect of whom it can be reasonably inferred that he has committed ²[any forest offence (other than an offence under Section 66 or Section 67 or an offence in committing which a vehicle has been used).]

- (i) a sum of money not exceeding fifty rupees where such offence is of a trivial nature and involves forest produce the market value of which does not exceed twenty –five rupees.
- (ii) a sum of money which not in any case be less than the market value of the forest produce, or more than four times such value as estimated by such Forest Officer, in addition to the market value of the forest produce where such offence involves any forest produce which in the opinion of the Forest Officer may be released.
- (iii) a sum of money which not in any case be less than the market value of the forest produce, or more than four times such value as estimated by such Forest Officer, where such offence involves any forest produce which in the opinion of the Forest Officer should be retained by the Government:

²[Provided that no such offence as is referred to in Clause (ii) or Clause (iii) shall be compounded if the market value of the forest produce involved exceeds one hundred rupees.]

(2) On receipt of the sum of money referred to in Sub-section (1) by such officer-

- (i) the accused person, if in custody, shall be discharged.
- (ii) the property seized shall, if it is not to be so retained, be released; and
- (iii) no further proceedings shall be taken against such person or property;

CASE LAWS: section 72 and 72 (i) (iii) – Concerned officer has to fix the market value so as to levy demand – no material to show how the petitioner has defrauded or misrepresented the forest authorities Materials said to have been taken into consideration behind the back of petitioner and no opportunity was given to him to explain – Demand quashed: **1994 (II) OLR 573.**

73. Presumption that forest produce belongs to Government- When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of Government, such produce shall be presumed to be the property of Government until the contrary is proved.

¹[**73-A. Presumption as to removal and transportation of forest produce-** Any person found in possession of any forest produce within the limits of any reserved forest, shall until the contrary is proved, be presumed to be guilty of removing, or as the case may be, transporting such forest produce from the reserved forests without authority.]

74. Operation of the other laws not barred- Nothing in this Act shall be deemed to bar the prosecution of any person under any other law for any act or omission which constitutes a forest offence or from being liable under such other law to any higher punishment or penalty that provided under this Act or the Rules there under:

Provided that no person shall be prosecuted and punished for the same offence more than once.

CHAPTER- IX

CATTLE TRESPASS

75. Cattle Trespass Act, 1871 to apply- Cattle Trespassing in the reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of Section 11 of the Cattle Trespass Act, 1871 (1 of 1871) and may be seized and impounded as such by any Forest Officer or Police Officer.

76. Power to alter fines fixed under the Cattle Trespass Act, 1871- The State Government may, by notification, direct that, in lieu of the fines fixed under Section 12 of the Cattle- trespass Act, 1871 (1 of 1871), there shall be levied for each head of cattle impounded under Section 75 such fines as they think fit, but not exceeding the following, that is to say-

For each elephant	Fifty rupees
For each buffalo or camel	Ten rupees
For each horse, mare, gelding, pony, colt filly mule, bull, bullock, cow or heifer	Five rupees
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid	Two rupees

CHAPTER-X

OF FOREST OFFICERS

77. State Government may invest forest officers with certain powers- (1) The State Government may invest any Forest Officer with all or any of the following powers, that is to say-

- (a) power to enter upon any land and to survey, demarcate and prepare a map of the same;
- (b) The powers a Civil Court to compel the attendance of witness and the production of documents and materials objects;
- (c) powers to issue a search warrant under the Code of Criminal Procedure ¹[1973] ¹(2 of 1974); and

- (d) powers to hold an inquiry into forest offences, and in the course of such inquiry to receive and record evidence.

(2) Any evidence recorded under Clause (d) of Sub-section (1) shall be admissible in any subsequent trial before a Magistrate; provided that it has been taken in the presence of the accused person.

78. Forest officers deemed to be public servants- All Forest Officers shall be deemed to be-

- (a) public servants within the meaning of the Indian Penal Code, 1860 (45 of 1860);
- (b) Police Officers for execution of search warrants issued in exercise of powers conferred under Clause (c), Sub-section (1) of Section 77.

¹[79. Protection of action taken in good faith and cognizance of offence – (1) No suit, prosecution or other legal proceeding shall lie against any forest officer for anything done or omitted to be done by him in good faith under this Act or the rules or orders made there under.

(2) No Court shall take cognizance of any offence alleged to have been committed by any forest officer while acting or purporting to act in the discharge of his duties under or in pursuance of the provisions of this Act or the rules or orders made there under, except with the previous sanction of State Government:

Provided that if the sanction or otherwise under this sub-section is not communicated within six months from the date the application for that purpose is made, it shall be deemed that the State Government has accorded the required sanction.]

80. Forest Officers not to trade- Except with the permission in writing of the State Government no Forest Officer shall, as principal or agent, trade in timber or other forest produce or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside the State.

CHAPTER-XI

MISCELLANEOUS

81. Special provision for reserved forests in the merged territories- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, any forest land or wasteland in the merged territories, which has been recognized by the Ruler of any merged State immediately before the date of merger as a reserved forest in pursuance of any law, custom, rule, regulation, order or notification for time being in force or which has been dealt with such in any administration report or in accordance with any working plan, or register maintained and acted upon immediately

before the said date and has been continued to do so dealt with thereafter, shall be deemed to be reserved forests for the purposes of this Act.

(2) In the absence of any rule, order or notification under this Act, applicable to the area in question, any law, custom, rule, regulation order and notification mentioned in Sub section-(1) shall, anything in any law to the contrary notwithstanding, be deemed to be validly in force as if the same had the force and effect of rules, orders and notifications made under the provisions of the Act and shall continue to so remain in force until superseded, altered or modified in accordance therewith.

(3) No report, working plan or register as aforesaid or any entry there in shall be questioned in any Court of law; provided that the State Government have duly certified that such report, working plan or register had been prepared under the authority of the said Ruler before the date of merger and has been under the authority of the State Government continued to be recognized, maintained or acted upon thereafter.

(4) Forest recognized in the merged territories, as Khesra forests, village forests, protected forest or forests other than reserved forests by whatever name designated or locally known, shall be deemed to be protected forests within the meaning of this Act and provisions of Sub-sections (2) and (3) shall mutatis mutandis apply.

Explanation I – “Working plan” includes any plan, scheme, project, maps, drawing and lay-outs prepared for the purpose of carrying out the operation in course of the working and management of forests.

Explanation II – “Ruler” includes the Darbar administration prior to the date of the merger and “State Government” includes the successor Government after the said date.

82. Additional powers to make rules- (1) The State Government may make rules-

- (a) to prescribe and limit the powers and duties of any Forest Officer under this Act:-
- (b) to regulate the reward to be paid to officers and informant out of the proceeds of fines and confiscations under this act.
- (c) for the preservation and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and
- (d) generally to carry out the provisions of this Act.

(2) All rules made under this Act shall, as soon as may be after, they are made, be laid before the State legislature for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if during the said period, the State legislature makes modifications, if any therein, the rules shall thereafter

have effect only in such modified form, or, however, that such modifications shall be without prejudice to the validity of anything previously done under the rules.

83. Penalties for offences not otherwise provided for- Any person contravening any provision of this Act or the Rules made there under for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to two, months or with fine which may extend to one thousand rupees, or with both.

84. Persons bound to assist forest officers and police officers and duties of such officers- (1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest produce or to cut and remove timber from or to pasture cattle in such forest and every person who is employed by any such person in such forest and every person in any village contiguous to such forest who is employed by the Government or who receives emoluments from the Government for services to be performed to the community, shall be bound to furnish with due dispatch to the nearest Forest Officer or Police Officer any information he may possess respecting the commission of, or the intention to commit any forest offence and shall forthwith take steps, whether so required by any Forest Officer or the Police Officer or not-

- (a) to extinguish any forest fire in such forest of which he has knowledge or information; and
- (b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest;

And shall assist any Forest Officer or the Police Officer demanding his aid-

- (i) in preventing commission in such forest or any forest offence; and
- (ii) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

(2) Any person who, being bound so to do, without lawful excuse, fails-

- (a) to furnish without necessary delay to the nearest Forest Officer or the Police Officer any information as required by Sub-section (1)
- (b) to take steps as required by Sub-section (1) to extinguish any forest fire in a reserved or protected forest;
- (c) to prevent as required by Sub-section (1) any fire in the vicinity of such forest from spreading to such forest; or
- (d) to assist any Forest Officer or the Police Officer demanding his aid in preventing the commission in such forest or any forest offence, or when

there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender;

Shall be punishable with fine which may extend to two hundred rupees.

(3) On receipt of any such information as is referred to in sub-section (1) the Forest Officer or the Police Officer, as the case may be shall forthwith take such action as may be appropriate in the circumstances.

85. Punishment to abetment of forest offences- Whoever abets the commission of a forest offence shall be punished with the punishment provided for the offence.

86. Failure to perform service for which a share in produce of Government forest is enjoyed- if any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary right or to any part of the forest produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the State Government being satisfied that such service is not being duly performed:

Provided that no share shall be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service have been heard by any officer duly appointed in that behalf by the State Government.

87. Recovery of money due to Government- All money, other than fines, payable to the State Government this Act, or the expenses incurred in the execution of this Act in respect of timber and other forest produce, or under any contract relating to timber and other forest produce including any sum recoverable there under for the breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber of other forest produce by auction or by invitation or tenders, issued by or under the authority of a Forest Officer and shall compensation awarded to the State Government under this, Act may if not paid when due, be recovered as if it were an arrear of public demand.

88. Lien on forest produce for such money- (1) When any such money is payable for or it respect of such forest produce, the amount thereof shall be deemed to be first charge on such produce, and such produce may be taken possession of by a Forest Officer until such amount has been paid.

(2) If such money is not paid when due, the Forest Officer may order such produce to be confiscated and thereupon he may sell such produce by public auction or by calling tenders.

(3) The proceeds of the sale as aforesaid shall be applied first in discharging the aforesaid dues and the balance of the dues, if any, shall be recovered, as if it were an arrear of Public demand.

89. Recovery of penalties due under bond- When any person in accordance with any provision of this Act, or in compliance with any rule, binds himself by any bond or instrument to perform any duty or Act, or covenants by any bond or instrument that he or that he and his employees and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in Section 74 of the Indian Contract Act, 1872 (9 of 1872) be recovered from him in case of such breach as if it were an arrear of public demand.

90. Power of Government to apply the provisions of the Act to certain lands of Government or Local Authority- The State Government may, by notification, declare that any of the provision of this Act shall apply to any land on the banks of canals or the sides of roads which are the property of the State Government or a local authority and there upon such provisions shall apply to such lands accordingly.

91. Repeal and savings- The Indian Forest Act, 1927 (6 of 1927) and the Madras Forest Act, 1882 (Madras Act 5 of 1882) hereinafter referred to as the ('said Act') in their application to the State of Orissa are hereby repealed:

Provided that -

- (a) any forest or land declared or demand to be a reserved forest or protected forest or village forest under any of the said Acts shall be deemed to be reserved forest, protected forest or as the case may be, village forest under this Act; and
- (b) all rules and orders made, notifications and notices issued, licences, passes and permits granted fees levied, imposed or assessed, proceeding instituted and all actions taken and things done under any of the said acts shall be deemed to have been respectively made, issued granted, levied, imposed or assessed, instituted, taken or done under this Act and shall continue in force until new provisions are made under this Act.

The Orissa Forest Act, 1972- Section 56 (2) (d)

Notification under

(7th June, 1983)

S.R.O. No. 297/83- In exercise of the powers conferred by Clause (d) of Sub-section (2) of Section 56 of the Orissa Forest Act, 14 of 1972, the State Government do here by empower the Officers specified under Column (2) of the Schedule below to call for and examine the records of the case and make such enquiry or cause such enquiry to be made and pass such orders as they may think fit, either *suo motu* or on application in accordance with the provisions of the said Sub-section in respect of areas within their respective jurisdiction as specified under Column (3) of the said Schedule.

SCHEDULE

Serial No. (1)	Designation of Officer (2)	Jurisdiction (3)
1	Chief Conservator of Forests	Whole State
2	Additional Chief Conservator of Forests	Whole State
3	Conservator of Forests- in- charge of territorial Circle	All Forest Divisions of his Circle
4	Chief Wild Life Warden	Wild Life Conservation Division, Chandbali

The Orissa Forest Act, 1972- Section 72 (1)

Notification under

(27th May, 1983)

No. 11783-9 F. Legal-173/80 F.F.A.H- In exercise of the powers conferred by Sub-section (1) of section 72 of the Orissa Forest act, 14 of 1972 , the State Government do hereby empower all Divisional forest Officers, all Assistant Conservator of Forests attached to the Territorial Forest Divisions and all Range Officer-in-Charge of the Territorial ranges of the State to accept compensation from any person who committed or any forest offence other than an offence under Section 66 or Section 67 of the Said Act, in accordance with the provisions laid down in Clauses (i), (ii)and (iii) of the said Sub-section read with the Orissa forest (Detection , Enquiry and Disposal of Forest Offence) Rules, 1980.