

## PART -C

### CHAPTER 1

#### Application of Forest (Conservation) Act, 1980

##### 1.1. Definition

- (i) The term 'Forest land' mentioned in Section 2 of the Act refers to reserved forest, protected forest or any area recorded as forest in the government records. Lands which are notified under Section 4 of the Indian Forest Act would also come within the purview of the Act. (Supreme Court's Judgment in NTPC's case). It would also include "Forest" as understood in the dictionary sense (Supreme Court order dated 12.12.1996 in WP No. 202/1995-Annexure-I). All proposals for diversions of such areas to any non-forest purpose, even if the area is privately owned, would require the prior approval of the Central Government.

**Clarification:** The term "Forest" shall not be applicable to the plantations raised on private lands, except notified private forests. However, felling of trees in these private plantations shall be governed by various State acts and Rules. Felling of trees in notified private forests will be as per the working plan /management plan duly approved by Government of India.

- (ii) The term "tree" for the purpose of this Act will have the same meaning as defined in Section 2 of the Indian Forest Act, 1927 or any other Forest Act which may be in force in the forest area under question.

##### 1.2 Clarifications

- (i) The cases in which specific orders for de-reservation or diversion of forest areas in connection with any project were issued by the State Government prior to 25.10.1980 need not be referred to the Central Government. However, in cases where only administrative approval for the project was issued without specific orders regarding de-reservation and/or diversion of forest lands, a prior approval of the Central Government would be necessary.
- (ii) Harvesting of fodder grasses, legumes etc. which grow naturally in forest areas, without removal of the tree growth, will not require prior approval of the Central Government. However, lease of such areas to any organisation or individual would necessarily require approval under the Act.
- (iii) The forest policy, as well as provisions of the Forest (Conservation) Act, 1980, do not interfere in any manner or restrict the Nistar, recorded rights, concessions and privileges of the local people for bonafide domestic use as granted by the State Government under Indian Forest Act, 1927 or State Forest Acts/Regulations. However, it has to be ensured that while allowing such rights, concessions and privileges. However, it has to be ensured that while allowing such rights, concessions and privileges to be exercised, the right holders do not resort to felling of trees or break up the forest floor so as to procure stones, minerals, or take up constructions, etc. The forest produce so obtained shall not be utilised for any commercial purposes.

The collection of such produce be manual and should be transported through local modes or transport like bullock carts, camel carts, etc. and no mechanised vehicles shall be allowed to be used in transporting such forest produce any only in exceptional cases with the approval of concerned Divisional Forest Officers, tractors mounted with trolley may be used.

**Clarification:-** The Supreme Court has passed an order on 14.02.2000 restraining removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any National Park or

Game Sanctuary....." Annexure-II a may be referred to. In view of this, rights and concessions cannot be enjoyed in the Protected Areas ( PAs).

### 1.3 Investigation and Survey

- (i) Investigations and surveys carried out in connection with development projects such as transmission lines, hydro-electric projects, seismic surveys, exploration for oil drilling etc. will not attract the provisions of the Act as long as these surveys do not involve any clearing of forest or cutting of trees, and operations are restricted to clearing of bushes and lopping of tree branches for purpose of sighting.
- (ii) If, however, investigations and surveys involve clearing of forest area or felling of trees, prior permission of the Central Government is mandatory.
- (iii) Notwithstanding the above, survey, investigation and exploration shall not be carried out in wildlife sanctuaries, national parks and sample plots demarcated by the Forest Department without obtaining the prior approval of the Central Government, whether or not felling of trees is involved.

**Clarification:** - The Supreme Court has passed several orders regarding taking up non-forestry activities in the National Parks/sanctuaries. Annexure-II A may be referred to. In view of this, the State Governments should not submit any proposal for diversion of forest land in National Parks and Sanctuaries without seeking prior permission of the Indian Board for Wildlife ( Now National Board of wildlife) and Supreme Court.

- (iv) The work of actual construction would however, fully attract the provisions of the Act and prior clearance of the Central Government must be obtained even if such work does not require felling of trees.
- (v) Prospecting of any mineral, done under prospecting license granted under MMDR Act, which requires collection/removal of samples from the forest land, would be a stage between survey & investigation and grant of mining lease and as such permission under Forest ( Conservation) Act 1980 would be required. However, test drilling upto 10 bore holes of maximum 4" diameter per 100 sq. km. for prospecting, exploration or reconnaissance operations, without felling of trees, shall not attract the provisions of the Act. In all other cases involving more number of drilling of bore holes, prior permission of the Central Government under the Act would be required.
- (vi) It is clarified that the permission to survey, exploration or prospecting would not ipso facto imply any commitment on the part of the Central Government for diversion of forest land.

**Clarification:** - For reconnaissance operations, carried out in forest land in connection with development projects the collection of samples from land surface in addition to drilled out material from 10 holes of 4 inch diameters per 100 Sq. Kms. Will not attract Forest ( Conservation) Act, 1980 provided that there is no felling of trees involved ( MoEF's letter No. 11-33/2004-FC dated-7.06.2004)

### 1.4 Explanation Regarding Non-Forest Purpose

- (i) Cultivation of tea, coffee, spices, rubber and palm is a non-forestry activity, attracting the provisions of the Act.
- (ii) Cultivation of fruit-bearing trees or oil-bearing plants or medicinal plants would also require prior approval of the Central Government except when:

- (a) The species to be planted are indigenous to the area in question; and
- (b) Such planting activity is part of an overall afforestation programme for the forest area in question.

### **1.5 Tusser Cultivation**

- (i) \*Tusser cultivation in forest areas by the tribals as a means of their livelihood without undertaking monocultural Asan or Arjun plantations shall be treated as a forestry activity. Therefore, no prior approval of the Central Government under the Act is necessary.
- (ii) \*Tusser cultivation in forest areas for which specific plantation of Asan or Arjun trees are undertaken for providing host trees to the silk cocoons shall be treated as forestry activity not requiring prior approval of the Central Government provided such plantation activity does not involve any felling of existing trees; provided further that while undertaken such plantations, at least three species are planted, of which no single species shall cover more than 50% of the planted area.
- (iii) Plantation of mulberry for silkworm rearing is a non-forestry activity attracting the provisions of the Act.

### **1.6 Mining**

- (i) Mining including underground mining is a non-forestry activity. Therefore, prior approval of the Central Government is essential before a mining lease is granted in respect of any forest area. The Act would apply not only to the surface area which is used in the mining but also to the entire underground mining area beneath the forest. A renewal of an existing mining lease in a forest area also requires the prior approval of the Central Government. Continuation or resumption of mining operation on the expiry of a mining lease without prior approval would amount to contravention of the Act.
- (ii) The advice of the Ministry of Law, Government of India in regard to the Supreme Court Order in Civil Appeal No.2349 of 1984 dated 7.5.1985 is at Annexure-III.
- (iii) Boulders, bajri, stone, etc., in the riverbeds located within forest areas would constitute a part of the forest land and their removal would require prior approval of the Central Government.

### **1.7 Clarification on Sub-clause 2(iii) of the Act**

- (i) The Sub-clause shall not be attracted when any forest land or any portion thereof is assigned to any authority, corporation, agency or any other organisation wholly owned, managed or controlled by the concerned State/Union Territory Government and/or the Central Government. Such Government owned, managed or controlled authority/corporation/agency, which has been assigned such forest land shall not reassign it or any part thereof to any other organisation or individual.
- (ii) Any scheme or project which involves assignment of any forest land by way of lease or similar arrangement, for any purpose whatsoever, including afforestation, to any private person or to any authority/agency/organisation not wholly owned, managed or controlled by the Government (such as private or joint sector ventures) shall attract the provisions of this sub-clause.

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\* Replaced by new guidelines issued vide MoEF letter No. 2-1/2003-FC (Pt-III) dated 07.06.2004 - See appendix- 19)

### 1.8 Clarification on Sub-clause 2(iv) of the Act

- (i) Sub-clause 2(iv) of the Act prohibits clearing of naturally grown trees in forest land for the purpose of using it for reforestation. The provisions of this sub-clause will be attracted if the forest area in question bears naturally grown trees and are required to be clear-felled, irrespective of their size, for harnessing existing crop and/or raising plantation through artificial regeneration techniques, which may include coppicing, pollarding or any other mode of vegetative propagation.
- (ii) All proposals involving clearing of naturally grown trees in any forest area, including for the purpose of reforestation, shall be sent by the concerned State/UT Government in the form of Management Plans/Working Plans to the Regional Chief Conservator of Forests of the concerned Regional Office of the Ministry of Environment and Forests.
- (iii) **All proposals in respect of sanction of Working Plans/Management Plans shall be finally disposed of by the Regional Office, under Section 2 of the Act.** While examining the proposal, the Regional Office would ensure that the final decision is in conformity with the National Forest Policy, Working Plan guidelines and other relevant rules and guidelines issued by the Central Government from time to time. The Regional Office will however, invariably seek prior clearance of the Ministry whenever the proposal involves clear-felling of forest area having density above 0.4 irrespective of the area involved. Also, prior clearance would be required when the proposal is for clear felling of an area of size more than 20 ha. in the plains and 10 ha. in the hilly region, irrespective of density.
- (iv) In national parks and sanctuaries where fellings are carried for important of wildlife and its habitat only, forests would be managed according to scientifically prepared management plan approved by the Chief Wildlife Warden, provided that the removed forest produce shall be used for meeting bona fide needs of the people living in an around the National Park/Sanctuary and shall not be used for any commercial purposes. But in cases where large scale felling/removal of timber and non timer products is required a national parrk/Sanctuary, which need disposal through sales, approval of the Central Government would be necessary. However, this shall be subject to the orders of the Supreme Court, which may be referred to at Annexure-II A.

### 1.9 Clarification of Section 3 B of the Act

- (i) Each case of the violation of the Act shall be reported by the concerned State/Union Territory Government to the Central Government.
- (ii) The report of violation shall be described in a self-contained note and supported by requisite documents, including particularly the names and designations of the officials/persons who are prima-facie responsible for the contravention of the Act.
- (iii) In case it is not possible to fix the responsibility for commission/omission of any action leading to the violation of the Act, a full explanation with relevant supporting documents shall be appended to the report.
- (iv) Any person and/or authority nominated by the Central Government may be required to discharge any of the duties, including prosecution under the Act in any Court as may be deemed appropriate for this purpose. In such an eventuality, the Government of the concerned State/Union Territory shall make available all such records or documents as may be called upon by the investigation officer.

**Clarification:** - The provisions of this Section are applicable to the cases where the State Government or any authority passes any order for permitting activities covered by Section 2 of the Forest ( Conservation) Act, 1980 without prior approval of the Central Government. Cases of illicit felling/encroachment/illegal mining, etc. have to be dealt under the provisions of the Indian Forest Act, 1927, State Forest Acts, Environment ( Protection) Act, 1986, etc.

### **1.10 Diversion of Forest Land for Regularisation of Encroachments**

- (i) Detailed guidelines issued in this regard vide this Ministry's No.13.1/90-F.P.(1) dated 18.9.90 shall be strictly followed. These are included in Annexure IV.
- (ii) The State Government/UT Administrations may sent the proposals as follows:-
  - (a) A consolidated proposal for the whole State in the prescribed application from.
  - (b) Detailed information as per the enclosed Table/format-Annexure-IV-A. Division wise proposals, maps, names of encroachers, etc. should be kept ready at Division level, which may be made available whensoever required for inspection and need not be appended with the consolidated proposal.
  - (c) Detailed compensatory afforestation scheme with areas proposed fro raising compensatory afforestation Division-wise, phased planning, fund requirement, proposed areas for compensatory afforestation should be kept already at Division level, which may be made available whensoever required for inspection.
  - (d) A time plan fro eviction of ineligible encroachers.

### **1.11 Review of Disputed Claims over forest Land, arising out forest Settlement**

Detailed guidelines issued in this regard vide this Ministry's No. 13-1/90-F.P. (2) dated 18.09.90 shall be strictly followed. These are included in Annexure IV-B

### **1-12 Disputes Regarding Pattas/Leases/Grants involving Forest Land-Settlement thereof**

Detailed guidelines issued in this regard vide this Ministry's No. 13-1/90-F.P. (3) dated 18.9.90 shall be strictly followed. These are included in Annexure IV-C

### **1.13 Conversion of Forest Villages into Revenue Villages**

Detailed guidelines issued in this regard vide this Ministry's No.13-1/90-F.P (5) dated 18.09.90 shall be strictly followed. These are included in Anexure IV-D