

Meghalaya Forest Regulation (Application & Amendment) Act, 1973

(Meghalaya Act 9 of 1973)

(As passed by the Assembly)

**A regulation to amend the law relating to forest, forest produce and duty
leviable on timber in Meghalaya**

Whereas it is expedient to amend the law relating to forest, forest produce and the duty leviable on timber in Meghalaya;

It is therefore enacted as follows:

CHAPTER I

Preliminary

1. Short Title, extent and commencement. (1) This regulation may be called the Meghalaya Forest Regulation.

(2) It extends to whole of Meghalaya:

Provided that the Government of Meghalaya may, by notification, exempt any place from the operation of the whole or any part thereof, and withdraw such exemption; and

(3) It shall come into force in areas where it is not in force immediately before the 21st day of January'1972.

(4) A notification under the proviso to sub S (2), exempting a place from the operation of the whole or any part of Regulation, shall not affect anything done, or any offence committed, or any fine or penalty imposed, in such place before such exemption.

3. Definition. In this regulation and in all rules made there under unless there is something repugnant in the subject or context-

(1) "Forest Officer" means any person appointed by name or as holding an office by or under the orders of State Government to be Conservator, Deputy Conservator, Assistant Conservator, Forest Ranger, Deputy Ranger, Forester, Assistant Forester, Forest Guard or to discharge any function of a Forest Officer under this Regulation or any rules there under;

(2) "tree" includes palms, bamboos, stumps, brushwood and canes;

(3) "timber" includes trees when they have fallen or have been felled and all wood, whether cut up or fashioned or hollowed out for any purpose or not;

(4) "forest produce" includes-

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

Timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, myrabolams, and rhinoceros horns, and

(b) the following when found in, or brought from , a forest that is to say-

(i) trees and leaves, and fruits and all other parts or produce, not herein before mentioned, of trees,

(ii) plants not being trees, (including grass, creepers, reeds, and moss), and all parts or produce of such plants,

(iii) Wild animals and skins(tusks and horns, other than rhinoceros horns), bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(iv) Peat, surface-oil, rock and minerals (including limestone, laterite, mineral oil and all products of mines or quarries);

(5) "forest offence" means an offence punishable under this regulation or any rule there under;

- (6) “cattle” includes also elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;
- (7) “river” includes also streams, canals, creeks and other channels natural or artificial;
- (8) ‘land at the disposal of the Government’ means land in respect of which no person has acquired
- (a) a permanent, heritable and transferable right of use/ occupancy under any law for the time being in force, or
- (b) any right created by grant or lease made or continued by, or on behalf of, the Government, not being land vested in the Government for the purpose of the Central Government.
- (9) “Magistrate” means a magistrate of the first or second class, and includes a Magistrate of third class, when he is specially empowered by the State Government to try forest offences.

NOTES

Forest Produce [clause (4)].

The definition of “forest produce” in clause (4) is not exhaustive. It is an inclusive definition. It specifies certain products which shall be included in the definition. There may be other products which, though not specified, fall within the expression “forest produce”.

The expression “shall include” used in the definition is a phrase of extension and not of restrictive definition, it is not equivalent to “shall mean”, (Stroud’s Judicial Dictionary). As such, the words “forest produce” must be construed to comprehend, not only the products specified in the definition but also such things which in common parlance is known as “forest produce”. According to Black’s Law Dictionary, the term “includes” may, according to context, express an enlargement and have the meaning of and or in addition to, or merely specify a particular thing already included within general words theretofore used. “Including” within statute

is interpreted as a word of enlargement or of illustrative application as well as a word of limitation. The definition says that the term "forest produce" includes what is specified therein. In such a case, the definition itself is not complete. It is not meant to be exhaustive. There may be forest produce of kind other than those specified in it.

*Timber is a forest produce as defined in clause (4) (a). "Stone" is not "forest produce" within the meaning of the definition (**Divisional Forest Officer v. Moolchand Sarawgi (1971) 1 SCC 273: AIR 1971 SC 694 ; Praneswar Das v. State Assam Gau 51) and hence section 75 of the Regulation has no application in respect of settlement of stone quarry. (Bejiram Inghy v. State of Assam (1981) 1 GLR 222 : AIR 1982 Guahati 888).***

In Mahendra Nath Pathakl v. State of Assam, AIR 1970 A & N 32, also this clause came up for interpretation before the High Court. It was observed that the definition is not exhaustive. What is usually found in a forest is forest produce. It was, therefore, held that "sand" in the land at the disposal of the Government will be "forest produce" within the definition of Clause (4) of Section 3.

CHAPTER II

Reserved Forest

- 4. Power to constitute a reserved forest.** The State Government may constitute any land at the disposal of Government a reserved forest in the manner hereinafter provided.
- 5. Notification by State Government of proposal to constitute a reserved forest.** (1) Whenever it is proposed to constitute any land a reserved forest, the State Government shall publish a notification in the official Gazette-
 - (a) Specifying , as nearly as possible , the situation and limit of such land;
 - (b) Describe that it is proposed to constitute such land a reserved forest; and
 - (c) Appointing an officer (hereinafter called the Forest Settlement Officer), to enquire into and determine existence, nature and extent of any right claimed by, or alleged to exist in favour of, any person in or over any land comprised within such limit, and any claims relating to the practice within

such limits, of jhum cultivation, and to deal with the same as provided in this chapter

(2) The Forest Settlement Officer shall ordinarily be a person other than a Forest Officer, but a Forest Officer may be appointed by the State Government to assist the Forest Settlement officer in the enquiry prescribed in this Chapter.

6. Proclamation by Forest Settlement Officer. When a notification has been published under S. 5, the Forest Settlement Officer shall publish in the language of the country, at the headquarters of each district and sub-division, in which any portion of the land comprised in such notification is situated, and in every town and village in the neighborhood of such land, a proclamation-

- (a) Specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) Setting forth the substance of provisions of the next following section,
- (c) Explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and
- (d) Fixing a period of not less than three months from the date of the publication of such proclamation and requiring every person claiming any right or making any claim referred to or mentioned in S 5 either to present to such officer within such period a written notice specifying or to appear before him within such period and state the nature of such right or claim.

7. Bar of accrual of forest rights after proclamation. (1) During the interval between the publication of such proclamation and the date fixed by the notification declaring the forest to be reserved as hereinafter provided, no right shall be acquired in or over the land comprised in such notification, except by succession, or under grant or contract in writing made or entered into, by or on behalf of , the Government or some person in whom such right or power to create such right was vested when the proclamation was published; and on such land no new house shall be built or plantation formed,

no fresh clearings for cultivation or for any other purpose of trade or manufacture except as hereinafter provided.

(2) Nothing in this section shall be deemed to prohibit any act done with the permission in writing of Forest Settlement Officer, or any clearings lawfully made for jhum cultivation by persons in the habit of practicing such cultivation on such land.

8. Inquiry by Forest Settlement Officer. (1) The Forest Settlement Officer shall take down in writing all statements made under S.6 and shall inquire into all claim made under the section and existence of any right or practice mentioned in S.5 in respect of which no claim is made.

(2) The Forest Settlement Officer shall at the time consider and record any objection which the Forest Officer, if any, appointed under S. 5 to assist him, may make to any such claim or with respect to existence of any such right or practice.

9. Power of Forest Settlement Officer. For the purpose of such inquiry the Settlement Officer may exercise-

(a) Power to enter, by himself or any officer authorised by him for the purpose, 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.

10. Treatment of claims relating to practice of jhum cultivation. (1) In the case of a claim relating to the practice of jhum -cultivation, the Forest Settlement Officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the State Government together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the State Government may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest Settlement Officer may arrange for its exercise-

- (a) By altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or
- (b) By causing certain portion of the land under settlement to be separately demarcated and giving permission to the claimant to practice jhum-cultivation therein under such conditions as he may prescribe.

All arrangements made under this sub -section shall be subject to the previous sanction of the State Government.

(4) The practice of jhum cultivation shall in all cases to be a privilege subject to control, restriction and abolition by the State Government and not to be a right.

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 the following rights, namely:

- (a) a right of way,
- (b) a right to water-course or to use of water,
- (c) a right of pasture or to forest-produce

The Forest Settlement Officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

(2) If such claim is admitted wholly or in part, the Forest Settlement Officer may-

- (a) come to an agreement with the claimant for the surrender of the right,
or
- (b) exclude the land from the limits of the proposed forest, or
- (c) proceed to acquire such land in the manner provided by the land Acquisition Act, 1870.

(3) For the purpose of so acquiring such land-

- (i) the Forest Settlement Officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1872;
- (ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under S. 9 of that Act;
- (iii) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
- (iv) the Collector, with the consent of the claimant, may award compensation in land, or in money, or partly in land and partly in money.

12. Order on claim to right of way, water-course or pasture, or to forest

produce (1) In the case of a claim to a right of a kind specified in Cl. (a), Cl. (b) or Cl. (c) of S.11, sub-S (1) the Forest Settlement Officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

(2) When a claim to any such right is admitted, if the right is for the beneficial enjoyment of any land or building the Forest Settlement Officer shall record the designation, position and area of such land or the designation and position of such building.

(3) Where the right is a right to forest-produce, the Forest Settlement Officer shall record whether the forest produce obtained by the exercise of such right may be leased, sold or bartered, and such other particulars as may be necessary in order to define the existence, nature, incidents and extent of the right.

13. Provisions for right of pasture or to forest produce admitted. (1) When

the Forest Settlement Officer has admitted wholly or in part and recorded under the last foregoing section a claim to a right of pasture or to forest produce, he shall, as far as possible, provide for the exercise of such right-

- (a) by altering the limits of the proposed reserved- forest so as to exclude land of sufficient extent, of a suitable kind and in a locality reasonably convenient for the purpose of claimant; or
 - (b) by recording an order containing of the claimant a right of pasture, or to forest produce, as the case may be, subject to such rules as may be prescribed by the State Government.
- (2) An order passed under Cl. (b) of sub-S. (1) shall record as far as practicable-
- (i) where the right of pasture, the number and description of the cattle which the claimant is, from time to time, entitled to graze, and the local limits within which, and the seasons during which such pasture is permitted; and
 - (ii) where the right is a right to forest-produce, the quantity of such produce³ which the claimant is authorised to take or receive and the local limits within which, the seasons during which, and the mode in which, the taking or receiving of such produce is permitted; and
 - (iii) whether the right is a right of pasture or to forest produce, such other particulars as may be required in order to define the extent of the right which is continued, the mode in which it may be exercised and the extent to which the benefit thereof may be leased sold or bartered.

14. Commutation of such rights. Whenever any right of pasture or to forest produce admitted under S. 12 is not provided for in one of the ways prescribed in S. 13, the Forest Settlement Officer shall, subject to such rules as the State Government may prescribe in this behalf, commute such right by paying a sum of money in lieu thereof, or with the consent of the claimant, by the grant of land or in such manner as such officer thinks fit.

15. Appeal from order passed under foregoing sections. Any person who has made a claim under this Chapter (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 any order passed on such claim by the Forest Settlement Officer under S. 11, 12, 13 or 14 present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner as the State Government may by notification in the official Gazette appoint by name, or as holding an office, to hear appeals from such orders.

16. Appeals under the last foregoing section (1) every appeal under the last foregoing section shall be made by petition in writing and may be delivered to the Forest Settlement Officer, who shall forward it without delay to the officer competent to hear the same.

(2) Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in the matter relating to revenue, and except as hereinafter provided, the order passed on appeal shall be final.

17. Notification declaring forest reserve (1) When the following events have occurred, namely:

(a) the period fixed under S. 6 for preferring claim has elapsed, and all claims, if any, made within such period has been disposed of by the Forest Settlement Officer; and

(b) if such claims have been made, the period fixed by S. 15 for appealing 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 officer; and

(c) all lands, if any, to be included in the proposed reserved forest which the Forest Settlement Officer has under S. 11 elected to acquire under the land Acquisition Act, 1870 have become vested in the Government under Land Acquisition Act, 1870 (X of 1870).

The State Government may publish a notification in official Gazette, specifying the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

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

18. Extinction of rights not claimed. Rights in respect of which no claim has been preferred under S. 6 and of the existence of which no knowledge has been acquired by inquiry under S. 8 shall thereupon extinguish, unless, before the publication of such notification, the person claiming them has satisfied the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under S. 6.

19. Publication of translation of such notification on neighborhood of forest. The deputy Commissioner of the district in which the forest is situate, shall before the date fixed by such notification cause a translation thereof in the language of the country to be published in the manner prescribed for the proclamation under S. 6.

NOTES

This section requires publication of translation of a notification declaring forest reserve under Section 17. Compliance of this requirement is not a condition precedent for issue of notification under Section 17. The efficacy of the notification would not be affected by the failure to prove such compliance. See State of Assam vs Dilbahadur Chetri (1983) 1 GLR (NOC)

19

20. Power to revise arrangement made under S. 13 or 16. The State Government may within five years from the publication of any notification under S. 17 revise any arrangement made under S. 13 or 16 and may rescind or modify any order made under this Chapter and direct that any one of the proceedings specified in S. 13 be taken in lieu of the order of such proceedings, or that a right admitted under S. 12 be commuted in the manner mentioned in S. 14.

21. Acquisition of right over reserved forest. No right of any description shall be acquired in or over a reserved forest, except by succession or under grant or contract in writing made by, or with the previous sanction of the State Government or some person on whom such right, or the power to create

such right, vested when the notification under S. 17 was published.

NOTES

Section 21 is a barring section. It bars any person from acquiring any right in or over any reserved forest except by succession under grant or contract in writing made by or the previous sanction of the Government or some person specified therein. In the absent os such legal right no mandamus can be issued. ILR 1962 Assam 416.

*A contract entered into by the Government with a contractor under Section 21 for felling of trees by the contractor is not a statutory contract. Government being a party to the contract does not raise an agreement to any higher status. When, therefore the Government raised the rate of royalty causing hardship to the contractor, his remedy lies with the Government under the terms of the agreement and not under the Article 226 of the Constitution. **Woodcrafts, Assam vs the Chief Conservator of Forests, wood crafts Assam Vs Chief Conservator of Forests AIR 1971 A & N 92.***

22. Alienation of right in reserved forests. (1) Notwithstanding anything herein contained no right contained under S. 13 shall be alienated by way of grant, sale, lease, mortgage or otherwise without the previous sanction of the State Government:

Provided that, when any such right is continued for the beneficial enjoyment of any land or building, it may be sold or otherwise alienated with such land or building without such sanction.

(2) The benefit of any right continued under S. 13 shall not be leased, sold or bartered, except to the extent defined by the order recorded under that sanction.

23. Power to stop ways and water course in reserved forests. Any Forest Officer may, from time to time, with the previous sanction of the State Government or of a Forest Officer or other officer authorised by the State Government in this behalf; stop any public or private way or water course in a reserved forest:

Provided that for the way or water course so stopped another way or water course, which, in the opinion of the State Government equally convenient already exists or has been provided or constructed by the Forest Officer stopping the way or water-course.

24. Penalties for trespass or damage in reserved forests. Any person, who in a reserved forest-

- (a) trespass, or pasture cattle, or permits cattle to trespass, or
- (b) Cause any damage by negligence in felling any tree or cutting or dragging ant timber.
- (c) [Deleted]

Shall be punished with fine which may extend to fifty rupees or, when the damage resulting from this offence amounts to more than twenty-five rupees, to double the amount of such damage.

NOTES

In this section, Cl. (c) was omitted by Assam Act III of 1933 which read as Follows:” poisons water or in contravention of any rules made by the local Government hunts, shoots, fishes or sets traps or snares”.

The words “ and in cases where a rhinoceros has been killed, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both”, were inserted by Assam Act 1 of 1931 at the end of the section subsequently omitted by Assam Act III of 1933.

When a statute defines trespass, the ingredients thereof must be satisfied. Section 441 of the Indian Penal Code deals with criminal trespass, as, whoever enters into or upon property in the possession of another with interest to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, annoy or to commit an offence, is said to commit criminal trespass. Trespass to property is a civil wrong but when it is committed with a criminal intent is treated as criminal offence. Criminal trespass is known in English law as ‘forcible entry’.

25. Acts prohibited in such forests. Any person who -

- (a) makes any fresh clearing prohibited by S.&, or
 - (b) sets fire to a reserved forest, or in contravention of any rules by the State Government kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest,
- Or who in any such forest-
- (c) kindles, keeps or carries any fire except at such seasons and in such manner as Forest Officer specially empowered in this behalf may from time to time notify, or
 - (d) fells, cuts, girdles, marks, lops, taps, or injures by the fire or otherwise any trees, or,

- (e) quarries stones, burns lime or charcoal or collects, subjects to any manufacturing process or removes any forest products, or
- (f) clears or breaks up any land for cultivation or any other purpose, or
- (g) poisons on water or, in contravention of any rules made by the State Government hunts, shoots, fishes or sets traps or shares,

Shall be punished with imprisonment for a term which may extend to six months (or with fine which, in cases where a rhinoceros has been killed, may extend to one thousand rupees and in other cases to five hundred rupees, or with both).

NOTES

Section 24 makes any act of trespass or damage in reserved forests punishable with penalty.

The Gauhati High Court in State of Assam Vs Dilbahadur Chetri, (1983) 1 GLR (NOC) 19 rejected the contention that a person cannot be liable for trespass unless it is shown that he had notice that he was trespassing, and held that a trespasser is liable under this section whether he knows or does not know that he has no right to be there. When the statute defines trespass, the ingredients thereof will have to be satisfied, any notice may be included. In the absence of such a statutory definition no notice would be necessary.

Section 25 specifies acts prohibited in such forests, meaning thereby, "reserve forest" and provides for punishment for commission of such offences.

These two sections came up for consideration before the Gauhati High Court in Abdul Kadir Choudhury vs State of Assam (1989) 2 GLR 52 where a person was prosecuted for alleged discrepancies in hammer mark on certain timber found with him. It was held : "the allegations relate to some discrepancies of visibility of certain hammer mark on the logs found with the petitioner which were dressed in his saw mill. The other allegation relates to non-endorsement of the T. P by the T. P holder in favour of the petitioner. None of these allegations contain any ingredient of an offence under the aforesaid two sections 24 and 25. No offence, therefore, can be said to have been committed on the allegations contained in the offence report under section 24 and 25 of the Regulation.

26. Acts excepted from Ss. 24 and 25. Nothing in S.24 or S.25 shall be deemed to prohibit-

- (a) any practice of jhum cultivation permitted under S.10, or
- (b) the exercise in accordance with the rules, if any, made by the State Government under S.13 of any right continued under that section, or

(c) the exercise of any right created by grant or contract in the manner described in S.21, or

(d) any act done with the permission in writing of a Forest Official specially empowered to grant such permission.

27. Penalty for offences committed by persons having rights in reserved forests. Whenever fire is caused willfully or by gross negligence in a reserved forest by any person having rights in such forest or permission to practice

jhum cultivation therein, or by any person in his employment or whenever any person having rights in such forest contravenes the provisions of S.22, the State Government may, notwithstanding the inflictions of any punishment under this Regulation, direct that in such forest, or any specified portion thereof, the exercise of all or any of the rights of pasture or to forest produce shall be extinguished, or for such period as it thinks fit be suspended, and, with respect to the practice of jhum cultivation, may take such action under S.10, sub-S. (4), as may seem to it to be proper.

28. Power to declare forests no longer reserved. (1) The State Government may, by notification in the official Gazette, direct that, from a date to be fixed by such notification, any forest, or any portion thereof, reserved under this regulation shall cease to be reserved.

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

NOTES

This section is similar to S.27 of the Indian Forest Act, 1927.

CHAPTER III

Village Forests

29. Constitution of village forests. (1) The State Government may, by notification in the official Gazette, constitute any land at the disposal of the Government 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 forests.

NOTES

This section is similar to S.28 of the Indian Forest Act, 1927.

30. **Power to make rules for village forests.** (1) The State Government may make rules for regulating the management of village Forests prescribing the conditions under which the community or group of communities for the benefit of which any such 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 any of the provisions of Chapter II of this Regulation to be applicable to village forests.

NOTES

This section is similar to S.28 of the Indian Forest Act, 1927.

31. **Inquiry into and settlement of rights.** All claims to any rights 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 the manner prescribed by Chapter II of this Regulation.

CHAPTER IV

General protection of forest and forest produce

32. **Reserved trees in unsettled tracts.** The State Government may by notification in the official Gazette-
- (a) declare that any trees or any specified class of trees standing on any land at the disposal of the Government shall, from a date to be fixed by such notification, be reserved trees;
- (b) vary or cancel any such notification.

NOTES

This chapter was inserted by Assam Act V of 1931.

This section is similar to S.30 of the Indian Forest Act, 1927.

33. **Protection of settled forests belonging to the Government.** No person shall fell, cut, girdle, mark, lop, tap or injure by fire or otherwise any reserved

tree, except in accordance with rules made by the State Government in this behalf or as provided by the last section of this Chapter.

NOTES

Section 33 prohibits illegal removal or felling of trees from the Government forest. Its Violation is punishable under section 35. However, it is for the prosecution to prove the essential ingredients of the offence under this section. The fact of possession alone cannot be construed to be an offence by itself amounting to an infringement of section 33.

This section came up for interpretation before the Assam High Court in Arman Ali v. State reported in 2 Unreported Cases (Assam) 508. It was held:

“It is truth at section 33 does not speak of possession, but the fact of possession if recent and not otherwise explained can be ascribed to the illegal removal or felling of the trees from Government forest if no permit is produced and the commission of an offence under section 33 may be inferred from the circumstances.” In this case the fact that the Timber was from reserved class of trees was however, not denied.”

Applying the law as interpreted above to the facts of the case, it was held:

“In the present case, the prosecution evidence, however, falls far short to prove that this timber was recently removed or was removed by the accused himself from the forest. There is no evidence either to show or even to suggest when the tree or the trunk from which these timbers came was felled. The accused claimed these timbers to be seven or eight years old and the prosecution evidence itself goes to the extent of admitting that they might be two years old. In these circumstances, it is very difficult to infer that the accused removed or cut the tree and converted the same into scantlings and planks. That fact of possession itself, cannot be construed to be offence by itself, amounting to an infringement of section 33 of the Regulation.”

34. **Protection of unsettled forests belonging to the Government.** (1) No person shall make use of any forest produce of any land at the disposal of the

Government and not included in a reserved forest or village forest, except in accordance with rules to be made by the State Government in this behalf, or as provided by the last section of this chapter.

(2) Such rules may, with respect to such land-

- (a) regulate or prohibit the cutting of *jhums* or the issue of grants or leases on behalf of the Government;
- (b) regulate or prohibit the kindling of fires, and prescribed the precautions to be taken to prevent the spreading of fires;
- (c) regulate or prohibit the felling, cutting girdling, marking, lopping, tapping or injuring by fire or otherwise of any trees, the sawing, conversion and removal of timber, and the collection and removal of other forest produce ;
- (d) regulate or prohibit the quarrying of stones, the boiling of catechu or the burning of lime or charcoal;

- (e) regulate or prohibit the cutting of grass and pasturing of cattle, and regulate the payments, if any, to be made for such cutting or pasturing;
 - (f) prohibit the poisoning of water, and regulate or prohibit hunting, shooting and fishing, and the setting of traps or shares;
 - (g) regulate the sale or free grant of forest produce; and
 - (h) prescribe, or authorise any Forest Officer to prescribe, subject to the control of the State Government the fees, royalties or other payments for forest produce, and the manner in which such fees, royalties or other payments are to be levied, in transit, or partly in transit or otherwise.
- (3) The State Government may exempt any person or class of persons or any local area, from the operation of any such rule, and may cancel such exemption.
- 35. Penalties** (1) If any person infringes the provisions of S.33, he shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both.
- (2) The State Government may, by a rule made under S.34, attach to the breach of any rule under that section any punishment not exceeding that mentioned in sub-S.(1).
- 36. Nothing in this Chapter to prohibit acts done in certain cases.** Nothing in this Chapter, or in any rule under this Chapter, shall be deemed to prohibit any act done in the exercise of any right or with the permission in writing of a Forest Officer specially empowered to grant such permission.

CHAPTER IV-A

Of the control over forests and waste lands not being the property of Government.

36-A. Protection of forests for special purposes. (1) The State Government may, by notification in the official Gazette, regulate or prohibit in any forest or waste land -

- (a) the breaking up or clearing of land;
- (b) the pasturing of cattle; or
- (c) the firing or clearing of the vegetation;

When such regulation or prohibition appears necessary in the public interest for any of the following purposes:

- (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 of hilly tracts, the prevention of landslips or of the formation of ravines and torrents, deposit thereon of sand, stones or gravel;
- (iii) for the maintenance of a watery-supply in springs, rivers and tanks;
- (iv) for the protection of public roads, public bridges, railways and other lines of communication;
- (v) for the preservation of the public health.

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

(3) No notification shall be made under sub-S.(1) nor shall any work be begun under sub -S.(2), until after the issue of a notice to the owner of such forest or land calling on such notice, why such notification should 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 not below the rank of a Deputy Commissioner duly appointed in that behalf.

- (4) All objections filed under proceeding sub -section, together with the proceedings of the Special Officer relating thereto, shall be referred to the State Government for orders. On receipt of such reference, and after hearing such further cause as the objector may have to show, the State Government shall pass such orders as it thinks fit.

In any cause in which an order under sub-S.(1) or action under sub -S.(2) is, in the opinion of the State Government, likely to disturb substantially the owner's right in the land to which such order to action relates, the State Government may award to such owner such compensation as it may deem equitable:

Provided that any compensation so paid shall be deducted from the amount payable to the owner under the provisions of the Land Acquisition Act, 1894, in the event of action being taken under the provisions of S.36-C.

NOTES

This section is similar to S.35 of the Indian Forest Act, 1927.

36-B. Power to assume management of forest.(1) In case of neglect of, or willful disobedience to, any regulation or prohibition under S.36-A, or if the purposes of any work to be constructed under that section so required, the State Government may, after notice in writing to the owner of such forest or land after considering his objections, if any, place the same under the control and management of a Forest Officer and may declare that all or any of the provisions of this Regulation shall apply to such forest or land.

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

NOTES

This section is similar to S.36 of the Indian Forest Act, 1927.

36-C. Expropriation of forests in certain cases. (1) In any case under this chapter in which the State Government considers that, in lieu of placing the forest or land under the control and management of a Forest Officer, the same should be acquired for public purposes, the State Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894.

(2) The owner of any forest or land comprised in any notification under S.36-A, or if there be more than one owners thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof, 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.

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

(a) that such land be managed on their behalf by the Forest Officer on such terms as may be mutually agreed upon; or

(b) that all or any of the provisions of this Regulation be applied to such land.

(2) In either case, the State Government may, by notification in the official Gazette, apply to such land such provisions of this Regulation as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

CHAPTER V

Duty on imported forest produce

37. Power to impose duty on forest produce. (1) The Central Government may levy a duty in such manner, at such places and at such rates as it may prescribe by notification in the official Gazette, on all forest produce which is brought into the territories to which this Regulation extends from any place beyond those territories.

(2) In every case in which such duty directed to be levied *ad valorem*, the Central Government may, by like notification, determine the manner in which the value is to be ascertained.

(3) Until provision to the contrary is made by the Parliament the State Government may continue to levy on forest produce brought into the territories to which this Regulation extends from any place in the State beyond those territories any duty which it was levying immediately before the commencement of the Constitution:

Provided that nothing in this sub-section authorises the levy of any duty which as between forest-produce of the State and similar produce of a locality outside the State discriminates in favour of the former, or which, in the case of forest produce of localities outside the State discriminates between forest produce of one locality and similar forest produce of another locality.

38. Power to exempt forest produce from duty. The Central, or as the case may be, the State Government may exempt any forest produce from the duty to which it is liable under the last foregoing section, and revoke such exemption.

39. Provision of chapter not to limit purchase money or royalty. Nothing in this chapter shall be deemed to limit the amount, if any, chargeable as purchase money or royalty in respect of any forest produce.

CHAPTER VI

Control of forest produce in transit

40. 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 forest produce in transit by land or water, is vested in the State Government, and the Government, and the Government may make rules to regulate the transit of any forest produce.

(2) Such rules may, among other matters-

- (a) prescribe the routes by which alone forest produce may be imported into, exported from or moved within the territories to which this Regulation extends;
- (b) prohibit the import, export, collection or moving of forest produce without a pass from an officer authorised to issue the same, or otherwise than in accordance with the conditions of such pass;
- (c) provide for the issue, production and return of such passes;
- (d) fix, or authorise any Forest Officer, subject to control of the State Government to fix the fees payable for such passes;
- (e) in the case of timber formed into a raft or fastend to the shore, prohibit the loosening of the setting a drift of such timber by any person not the owner thereof or not acting on behalf of such owner or of the Government;
- (f) provide for the stoppage, reporting examination and marking of forest produce in transit in respect of which there is reason to believe that any money is payable to the Government or which is desirable for the purposes of this Regulation, to affix a mark;
- (g) establish revenue-stations to which forest produce is to be taken by the persons in charge of it for examination, or for the realisation of such money, or in order that such mark may be affixed to it, and prescribe, or authorise, a Forest Officer, subject to such control as aforesaid, to prescribe the conditions under which forest produce is to brought to, stored at and removed from such revenue -station;

- (h) provide for the management and control of such revenue stations, and for regulating the appointment and duties of persons employed thereat;
 - (i) authorise the transport of timber across any land, and provide for the award and payment of compensation for any damage done by the transport of such timber;
 - (j) prohibit the closing up or obstruction of the channel or banks or any river used for the transit of forest produce and the throwing of grass, brushwood branches or leaves into any such river, or any other act which tends to cause the obstruction of such channel;
 - (k) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river and for recovering the cost of such prevention or removal from the person causing such obstruction;
 - (l) prohibit absolutely, or subject to conditions, with specified local limits the establishment of saw-mills the converting, cutting, burning, concealing, marking or supermaking the timber, the altering or effecting of any marks on the same, and possession or carrying of marking-hammers or other implements used for marking timber; and
 - (m) regulate the use of property-marks for timber and the registration of such marks, authorise the refusal of cancellation of the registration of any property-marks, prescribe the time for which the registration of property-marks hold good, limit the number of such marks which may be registered by any one person, and provide for the levy of fees for such registration.
- (3) The State Government may direct that any rule made under this section not apply to any specified class of timber or other forest produce or to any specified local area.

NOTES

A question arose as to the true import of a transit pass issued in respect of an elephant under Rule 2(a) of the Rules. Whether it can be held to be a document of title in respect of the elephant? It was examined by the Guahati High Court in Anowaruddin Choudary v. State of Assam (1984) 2 GLR 142. It was held:

“It is difficult to accept the contention that whenever a transit pass in respect of an elephant is produced it must be held to represent a document of title in respect of the said animal. Clause (15) of the licence (Appendix XXIX) merely fulfils the requirement of Rule (2) a as manifested in the provision thereof that without payment a transit pass cannot be obtained and without transit pass an elephant caught during the hunting operation cannot be taken out. Indeed, the entry as respect “the date of expiry” indicates that a transit pass not only loses its utility but also validity on the date so specified as its purpose is to ensure merely “transit” or removal through and from the forest of the named forest produce to the named destination within the period allowed. Indeed the transit route is also therefore indicated in the transit pass. Rule 2 (b) and 8 and even clause (15) of the licence do not contemplate that a transit pass in respect of an elephant must be issued in the name of the person who has paid the royalty therefor. Although these rules and also clause (15) do manifest the legal position that the person who had paid the royalty for the forest produce in question would acquire title thereto, in the instant case, in support of his title the petitioner has merely produced a transit pass which, aliunde does not also establish the identity of the concerned forest produce, namely, the elephant and payment of royalty therefor”.

40-A. Powers of Central Government as to movement of timber across customs frontiers. Notwithstanding anything in S.40, the Central Government may make rules to prescribe the route by which alone timber or other forest produce may be imported, exported, or moved into or from (Assam) across any customs frontier as defined by the Central Government, and any rules made under S.40 shall have effect subject to the rules made

under this section.

41. Penalties for breach of rules under the last foregoing section. (1) The State Government may, by a rule under the last foregoing section, attach to the breach of any rule under that section any punishment not exceeding imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(2) In cases where the offence is committed after sunset and before sunrise or after preparation for resistance to the execution of any law or any legal process or where the offender has been previously convicted of a like offence, the convicting court may inflict double the penalty prescribed for such offences.

42. All persons bound to aid in case of accident at revenue station. In case of any accident or emergency involving danger to any property at a revenue-station established under a rule made under S.40, every person employed at such revenue station, whether by the Government or by any private person, shall render assistance to any Forest Officer or Police Officer demanding his aid in averting such danger and securing such property from damage or loss.

CHAPTER VII

Collection of drift stranded and other timber

43. Certain kinds of timber to be deemed the property of the State Government until title thereto proved. (1) Timber falling under any of the following descriptions, namely:

- (a) timber found adrift, breached, stranded or sunk.
- (b) timber bearing marks which have not been registered under rules made under S.40.
- (c) timber which has been super-marked, or on which marks have been obliterated, altered or defaced by fire or otherwise, and
- (d) in such area as the State Government directs, all unmarked timber,

Shall be deemed to be the property of the State Government unless and until any person establishes his right thereto as provided in this Chapter.

(2) Such timber may be collected by a Forest Officer or other person entitled to collect the same, and may be brought to such stations as Forest Officer specially empowered in this behalf may, from time to time, notify as stations for the reception of drift timber.

(3) The State Government may, by notification in the Official Gazette, exempt any class of timber from the provisions of this section and withdraw such exemption.

44. Notice to claimants of timber of those kinds. (1) Public notice shall, from time to time as occasion may require, be given by a Forest Officer specially empowered in this behalf of timber collected under the last foregoing section.

(2) 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 of not less than one month from the date on which such notice is given, a written statement of such claim.

NOTES

For similar provisions, see S.46 of the Indian Forest Act, 1927.

45. Procedure on claim preferred to such timber. (1) When any such statement is presented as aforesaid, the 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 Forest Officer may either deliver the same to any of such person whom he deems entitled thereto, or may refer the claimants to the Civil Court and retain the timber pending the receipt of an order from such Court for its disposal.

(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 any compensation against the Government or against any Forest Officer on accounts of such rejection, or the detention or removal of any timber or the delivery thereof to any other person under this section.

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

NOTES

For similar provisions see S.47 of the Indian Forest Act, 1927.

46. Disposal of unclaimed timber. Where no statement is presented in the manner and within the period prescribed by notice issued under S.44 or, where such statement having been so presented and the claim rejected, the claimant omits to institute a suit to recover possession of such timber, it shall vest in the State Government free from all encumbrances, or when such timber has been delivered to another person under S.45, in such other person free from all incumbrance not created by him.

NOTES

For similar provisions see S.48 of the Indian Forest Act, 1927.

47. Payment 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 such sum as may be due for salving, collecting, moving, storing and disposing of the timber has been paid by him to the Forest Officer or other person entitled to receive the sum.

NOTES

This section is similar to S.50 of the Indian Forest Act, 1927.

48. Power to make rules and prescribe penalties. (1) The State Government may make rules to regulate the following matter, namely:

- (a) the salving, collection and disposal of all timber mentioned in S.43;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amount to be paid for salving, collecting, moving, storing and disposing of such timber; and
- (d) the use and registration of hammers and other implements to be used for making such timber.

(2) The State Government may, by a rule made under this section, attach to the breach of any rule under this section any punishment not exceeding imprisonment for a term which may extend to six months, or a fine which may extend to five hundred rupees or both.

NOTES

This section is similar to S.51 of the Indian Forest Act, 1927.

CHAPTER VIII

Penalties and procedure

49. **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, boats, carts and cattle used in the commission of such alleged 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, or the receptacle, if any, in which it is contained a mark indicating that the same has been so seized, and shall as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the person accused of the offence on account of which the seizure has been made:

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

NOTES

Section 49 provides for seizure of any property which is liable to confiscation. Before seizure of any property which effected, there must be reason to believe that a forest offence has been committed in respect of a forest produce. In the absence of such reason, seizure can be effected.

In Atul Chandra Barua v. Under Secretary to the Govt. of Assam, 1977 Assam L.R. 276 Gau., a Makna Elephant was captured in dobar partnership under licence issued by the Deputy Commissioner. All dues in respect of royalty were paid. Necessary transit pass was obtained. However on transfer of share of one of the partner the licence was cancelled and

elephant was confiscated by the Government under section 49. The legality of confiscation was challenged. It was held:

“The seizure in the instant case is under section 49 of the Assam Forest regulation and that also relates to forest produce. It is nobody’s case that any forest offence is being investigated and there after the seizure is made. That being so, the impunged order of seizure and confiscation was not warranted by the provisions of the Assam Forest Regulation.”

Once a transit pass is issued in favour of licensee and the captured elephant taken out of forest, it becomes the property of such licensee Atul Chandra Barua, Supra.

49-A. Power to release property seized under S.49. Any Forest Officer of a rank not inferior to that of a Forester who or whose subordinate has seized any tools, boats, carts, or cattle under S.49, may release the same on the execution by the owner or the person in charge thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

NOTES

This section was inserted by Assam Act V of 1931 and is similar to S.53 of the Indian Forest Act, 1927.

50. Procedure on receipt by Magistrate of report seizure. Upon the receipt of any such report, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

NOTES

This section is similar to S.54 of the Indian Forest Act. 1927.

51. Forest produce, tools, etc., when liable to confiscation. (1) When any person is convicted of a forest offence all forest produce which is not the property of the Government and in respect of which such offence has been committed, and all tools, boats, carts and cattle used in the commission of such offence, shall be liable, by order of the convicting court, to confiscation.

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

NOTES

This section is similar to S.55 of the Indian Forest Act, 1927.

52. Disposal on conclusion of trial for forest-offence of produce in respect of which it was committed. When the 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 possession of by a Forest Officer specially empowered in this behalf, and, in any other case shall be disposed of in a such manner as the Court may order.

NOTES

This section provides for disposal of forest produce in respect of which offence had been committed. When the trial of any forest offence is concluded, the forest produce in respect of which such offence had been committed is taken possession of by a forest officer specially empowered in this behalf. Two things are necessary for taking such possession. Firstly, the trial of the Government or it has been confiscated. After taking possession, such property may be disposed of by the forest Officer in such manner as may be directed by the court.

From a reading of the section itself it is clear that it does not contemplate any order directing delivery of the property seized in connection with the forest offence to the accused person. Such an order would be completely contrary to the provisions of law (State of Assam v. Kirpal Singh Upadhyya (1967) ILR 19 Assam and Nagaland 444).

53. Produce when offender is not known or cannot be found. (1) When the offender is not known or cannot be found, the Magistrate inquiring into the offence, if he finds that an offence has been committed, may, on application in this behalf order the property in respect of which the offence has been committed to be confiscated and taken possession of by a Forest Officer specially empowered in this behalf, or to be made over to such Forest Officer or other person as the Magistrate may consider entitled to the same;

Provided that no such order shall be made till the expiration of one month from the date of the seizure of such property, or without hearing the person, if any, claiming any right thereto and the evidence, if any, which may produce in support of his claim.

(2) The Magistrate shall either cause a notice of any application under sub. S.(1) to be served upon any person whom he has reason to believe to

interested in the property seized, or publish such notice in any way which he may think fit.

NOTES

This section is similar to S.57 of the Indian Forest Act, 1927.

54. Procedure as to perishable property seized under S.49. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under S.49 and subject to speedy and natural decay, and may, deal with the proceeds as he might have dealt with such property if it had not been sold.

NOTES

This section is similar to S.58 of the Indian Forest Act, 1927.

- 55. Appeal from orders under Ss.51, 52, and 53.** Any person claiming to be interested in property seized under S.49 may, within one month from the date of any order passed by a Magistrate under S. 51, S.52 or S.53, present an appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

NOTES

This section is similar to S.59 of the Indian Forest Act, 1927.

- 56. Vesting of confiscated property in State Government.** When an order for the confiscation of any property has been passed under S.51 or S.53, and the period limited by S.55 for presenting an appeal from such order has elapsed, and no such appeal has been presented, or when, on such an appeal being presented, the Appellate Court confirms such order in respect of the whole or portion of such property, as the case may be, shall vest in the State Government free from all incumbrances.

NOTES

This section is similar to S.60 of the Indian Forest Act, 1927.

- 57. Savings of power to release properties seized.** Nothing hereinbefore contained shall be deemed to prevent any Forest Officer or other officer empowered in this behalf by the State Government from directing, at any time, the immediate release of any property seized under S.49, which is not the property of the Government and the withdrawal of any charge made in respect of such property.

NOTES

For similar section see S.61 of the Indian Forest Act, 1927.

- 58. Punishment for wrongful seizure.** (1) Any Forest Officer or Police Officer who vexatiously and unnecessarily seizes any property on pretence of seizing

property liable to confiscation under this Regulation shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Any fine so imposed, or any portion thereof, shall, if the convicting Court so directs, be given as **compensation to the person aggrieved by such seizure.**

NOTES

For similar section see S.62 of the Indian Forest Act, 1927.

59. Penalty for counterfeiting or defacing marks on trees and timber and altering boundary marks. Whoever, with the 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- knowingly counterfeits upon any tree or timber a mark used by Forest Officers to indicate that such tree or timber is the property of the Government or of some person, or that it may lawfully be felled or removed by some person, or

- (a) unlawful affixes to any tree or timber a mark used by Forest Officers, or
- (b) alters, defaces or obliterates any such mark placed on any tree or timber, by or under
- (c) the authority of a Forest Officer, or
- (d) alters , moves, destroys or defaces **to** any boundary-marks of any forest or waste land to
- (e) which any provisions of this Regulation apply,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

NOTES

For similar section see S.63 of the Indian Forest Act, 1927.

60. Power arrest without warrant. (1) Any Forest Officer or police Officer, may, without orders from a magistrate and without a warrant, arrest any person reasonably suspected of, having been concerned in any forest offence punishable with imprisonment for one month or upwards, 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 officer making an arrest under this section shall, without unnecessary delay take or send the person arrested before a Magistrate having jurisdiction in the case.
- (3) Any Forest Officer or Police Officer or Police Officer who vexatiously arrests any person on the pretence that he is suspected of having been concerned in any forest offence or otherwise as provided by S.60 (1) of this Regulation shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.
- (4) No Forest Officer or Police Officer shall detain in custody a person arrested under sub-S. (1) of this section for a longer period than under all the circumstances of the case is reasonable ; and such period shall not exceed twenty-four hours exclusively of the time necessary for the journey from the place of arrest to the Magistrate's Court having jurisdiction in the case.

NOTES

Sub-sections (3) and (4) of this section were inserted by Assam Act II of 1943. For similar provision see.S.64 of the Indian Forest Act, 1927.

61. **Power to prevent commission of offence.** It shall be the duty of every Forest Officer and Police Officer to prevent , and any such officer may interfere for the purpose of preventing, the Commission of any forest offence.

NOTES

For similar provision see S.66 of the Indian Forest Act,1927

62. **Power to compound offences** (1) The State Government may, by notification in the official Gazette, empower a Forest Officer by name, or as holding an office-

- (a) to accept from any person against whom a reasonable suspicion exist that he has committed any forest offence, other than an offence specific in S.58 or S.59 a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation to release the same on payment of the value thereof as estimated by such officer.

62. Power to prevent commission of offence. (1) The state Government may, by notification in the official Gazette, empower a forest Officer by name, as holding an office-

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in S. 58 or S59 a sum of money by way of compensation which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

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

(3) No Forest officer shall be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Forest Ranger, and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under Sub-S (1), cl.

(a), shall in no case exceed the sum of fifty Rupees

NOTES

Although the marginal note to section 62 is "Power to compound offences", the word "compound" is not used in sub-section (1) clause (a), which only empowers the Forest Officer to accept compensation for a forest offence from a person suspected of having committed it. The person so suspected can avoid being proceeded for the offence by rendering compensation. He may think that he was being unjustly suspected of an offence and he ought to defend himself or he may consider it prudent on his part to pay such compensation in order to avoid the harassment of a prosecution even when he is of the view that he had not committed the

offence.

*By adopting the latter course he does not remove the suspicion of having committed the offence unless he is to have such benefit conferred on him by some provisions of law. In effect the payment of compensation amount to his acceptance of the truth of the charge against him. Sub-section (2) only protects him with regard to further proceedings, but has not the effect of clearing his character or vindicating his conduct. **Biswabahan vs. Gopen Chandra Hazarika, AIR 1967 Sc 895 ; 1967 Cri.L.J. 828.,831.***

*If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal. If composition of an offence was permissible under the law, the effect of such composition would depend on what the law provided for. If the effect of composition is to amount to an acquittal then it may be said that no stigma should attach to the character of the person, but unless that is expressly provided for, the mere rendering of compensation would not amount to the vindication of the character of the person charged with the offence. (**Biswabahan (supra)**).*

*In **Biswabahan (supra)**, while considering the settlement of an excise shop, the Board of revenue took into consideration compounding of forest offence by the applicant as affecting his suitability in getting settlement. It was held by the Supreme Court that the board was quite competent to take the view and that the applicant was not vigilant in observing the law even if it had found – which it did not – that the applicant's explanation was not unconvincing.*

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

NOTES

This section was omitted by Assam Act II of 1943 and again inserted by Assam Act XXXVII of 1950.

For similar provisions see S.69 of the Indian Forest Act, 1927.

64. Compensation for damage caused by commission of offences. (1)

When any person is convicted of felling , cutting , girding, making , lopping of tapping trees, or of injuring them by fire or otherwise in contravention of this Regulation or of any rule thereunder, the convicting Court may, in addition to any other punishment which it any other punishment which it may award, order that person to pay to the State Government such compensation , not exceeding ten rupees for each tree, with respect to which the offence was committed, as it may deem just.

(2) If the person convicted of the offence committed is the agent or servant of another person, the convicting Court may, unless after hearing that other person, it is satisfied that the commission of the offence was not a consequence of his instigation, or of any neglect or default on his part, order him instead of the person who committed the offence, to pay the compensation referred to in sub-S (1).

(3) An appeal from any order under sub -S.(1) or sub -S(2) shall lie to the Court to which orders made by the convicting Court as ordinarily appealable , and the order passed on such appeal shall be final.

65. Forfeiture of lease. When the holder of any lease, licence or contract whatsoever granted or continued by or on behalf of the Government for any of the purposes of this Regulation commits an offence is committed by any agent or servant of the holder of lease, licence or contract , and the State Government is satisfied that the commission of the offence was a consequence of the instigation of such holder of any neglect or default on his part, the State Government may, by order in writing declare the lease, licence or contract to be forfeited in whole or in part with effect on and from a date to be specified in the order not being prior to the date of the commission of the offence

CHAPTER IX

Cattle trespass

66. Cattle Trespass Act, 1871 to apply. Cattle trespassing in a reserved forest or in a village forest shall be deemed to be cattle doing damage to a public plantation within the meaning of S.11 of the Cattle Trespass Act, 1871, and may be seized and impounded as such by any Forest Officer or Police Office.

NOTES

This section is similar to S. 70 of the Indian Forest Act, 1927.

67. Power to alter fines fixed by that Act. The State Government may, by notification in the official Gazette, direct that, in the fines fixed by S.12 of the Act last aforesaid, there shall be lived for each head of cattle impounded under S.66 of this Regulation such fines as it thinks fit, but not exceeding the following namely.

	Rs.	A.	p.
For each elephant.....	10	0	0
For each buffalo	2	0	0
For each horse, mare, gelding, poney,			

Colt, filly,mule,bull,bullock, cow or			
Heifer	1	0	0
For each calf,ass,pig,rams,			
Ewe-sheep,lambs, goat or kid	0	8	0

NOTES

This section is similar to S.71 of the Indian Forest Act, 1927.

CHAPTER X

Forest Officer

- 68. Investiture of Forest Officers with certain powers.**(1) The State Government may invest any Forest Officer by name, or as holding an office with all or any of the following powers, namely,
- (a) power to enter upon any land and to survey, demarcate, and make a map of the same;
 - (b) the power of a Civil Court to compel the attendance of witness and the production of documents;
 - (c) power to issue search-warrants under the Code of Criminal Procedure, 1882;
 - (d) power to hold inquiries into forest-offences, and in the course of such inquiries to receive and record evidence;
 - (e) power to notify the reasons and manner in which fire may be kindled, kept or carried in a reserved forest;
 - (f) power to grant any permission referred to in Ss. 26 and 36;
 - (g) power to notify stations for the reception of drift timber;
 - (h) power to give public notice of timber collected under S.43;
 - (i) power to take possession of property under this Regulation;
 - (j) power to direct the release of property or withdrawal of charges ; and may withdraw any power so conferred
- (2) Any evidence recorded under Cl.(d) of sub-(1) shall be admissible in any subsequent trial before a Magistrate of the alleged offender.

Provided that it has been taken in the presence of the accused person and recorded in the manner provided by S.355, S.356, or S.357 of the Code of Criminal Procedure, **NOTES**

The Code of Criminal Procedure, 1898 has repealed and re-enacted as Code of Criminal Procedure, 1973. Now the provisions of forest Regulation have been provided for in Ss. 274,275,376,277 of the 1973 code. This section is similar to S.72 of the Indian Forest Act.927

69. Forest Officers deemed to be public servants. All Forest Officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

NOTES

This section is similar to S.73 of the Indian Forest Act, 1927.

70. Indemnity for acts done in good faith. No suit or criminal prosecution shall lie against any public servant for anything done or omitted to be done by him in good faith under this Regulation.

NOTES

This section is similar to S.74 of the Indian Forest Act, 1927.

71. Forest Officers not to trade. No Forest Officers shall, as principal or agent, trade in forest produce , or be or become interested in any lease or mortgage or any forest, or in any contract for working any forest, whether in India or in any foreign territory.

NOTES

This section is similar to S.75 of the Indian Forest Act, 1927

CHAPTER XI

Supplemental provisions

72. Additional powers to make rules. The State Government may make rules, consistent with this Regulation;

- (a) to declare by what Forest Officer or class of Forest Officers the powers or duties conferred or imposed by or under this Regulation on a Forest Officer are to be exercised or performed.

- (b) to regulate procedure of Forest Settlement Officers ;
- (c) to provide for ejectment of any person who has entered into unauthorized occupation in a forest reserve and for the disposal of any crops raised, or any building or other construction erected without authority in forest reserves ;

No Civil Court shall exercise jurisdiction in any matter provided for by the rules made under this clause.

- (d) to regulate the rewards to be paid to officers and informers; and
- (e) generally, to carry out the provisions of this Regulation.

NOTES

*Clause (c) of section 72 empowers the State Government to make rules to provide for ejectment of any person who has entered into unauthorized occupation in a reserved forest etc. In exercise of the said powers Rules known as “Rules for Establishment and control of Forest Villages” were framed. The said Rules came up for interpretation before the Guahati High Court in **Enesh Sangma Vs. D.F.O., Karbi Anglong, (1983) 1 GLR 505.***

The facts, in brief, were as follows. The petitioners belonging to “Garo Scheduled Tribes” became refugees on partition and came to Assam. They were allotted land in Rongkhong Reserve Forest which they occupied. The authorities latter attempted to evict such occupants alleging them to be unauthorized occupants. The action of the authorities was challenged before the High Court. The authorities did not produce before the High Court the relevant records regarding allotments made to the petitioners. The High Court on perusal of the facts held that the action taken by the authorities was destructive of the basic principles of “the rule of law”. The High Court discussed the effect of allotment made in the reserved forest and laid down the relevant guidelines for deciding the questions raised in the following words:

“In the interest of justice to which the ignorant petitioners are entitled it would be the prime obligation or rather the constitutional obligation of the respondents to trace out all the connected records and then to decide who

are the real allottees and who are not. Thereafter, the respondent should proceed to take action against those who have encroached upon land beyond the areas allotted to them. While remitting the case to the D.F.O. we would observe that the petitioners should not allowed to destroy or damage the forest products. The authorities should be extremely vigilant to protect and safeguard the Forest and wild life. With these observations we quash the impunged notices as respondents could not establish that the petitioners were trespassers and/ or unauthorized occupier of any land- The respondents have failed to produce any document to that effect. We make it very clear that neither the State nor its executive officer can interfere with the rights of others unless they could point out some specific rule or law to justify their acts. In the instant cases there is no material to bear up the cases of the respondents nor could they point out provision of law to order eviction of the petitioners. In our opinion the actions taken in these cases by the respondents were destruction of the basic principles of 'the rule of law'."

73. Rules when to have force of law. All rules made by the State Government under this Regulation shall be published in the official Gazette, and shall thereupon have the force of law.

NOTE

This section is similar to S.78 of the Indian Forest Act, 1927.

74. Persons bound to assist Forest Officer and Police Officer. Every person who exercise any right in a reserved forest or village forest, or who is permitted to remove any forest produce from or to pasture cattle or practice jhum cultivation in such forest ; and every person who employed by such person in such forest, and every person in any village contiguous to such forest, who is employed by the Government for services to be performed to the community; shall be bound to furnish , without unnecessary delay, to the nearest Forest Officer or Police Officer any information which he nay posses respecting the occurrence of a fire in or near forest, or the commission of, or intention to commit, any forest offence and shall assist any Forest Officer or Public Officer demanding his aid ;

- (a) in extinguishing any fire occurring in such forest ;
- (b) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest.
- (c) In preventing the commission in such forest of any forest offences; and
- (d) When there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

NOTE

This section is similar to S.79 of the Indian Forest Act. 1927

75.Recovery of money due to the Government. All money , other fines payable to the Government under this Regulation, or under any rule made thereunder, or on account of the price of any forest produce or of

expenses incurred in the execution of this Regulation in respect of any forest produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue

NOTES

This section provides for recovery of all money other than fines, payable to the Government (i) under the Regulation, or (ii) under any rule made thereunder, or (iii) on account of the price of any forest produce, or (iv) expenses incurred in the execution of the Regulation in respect of any forest produce, if not paid when due, as arrear of land revenue.

*Therefore, for application of this section, the liability to the Government must arise under any one of the various heads mentioned above. It is only then the summary procedure laid down in this section will be available. Amount due for breach of contract does not come within the expression "any amount due under these rules". The matter would have been different if the rules, but also for breach of terms of the agreement or otherwise whatever. (**Praneswar Das vs. State of Assam AIR 1973 Gau 51**).*

Amount claimed as auction money is not recoverable under the provisions of the Assam Forest Regulation. It is not due on account of price of any forest produce or of expenses incurred in execution for recovery of any forest produce. The amount is also not due in the execution of the Regulation.

76. Lien on forest produce for such money. (1) when any such money is payable for, or in respect of, any forest produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest Officer specially empowered in this behalf, and may be retained by him until such amount has been paid.

(2) If such amount is not paid when due, such Forest Officer may sell such produce by Public auction, and the proceeds of the sale shall be applied first in discharging such amount:

Provided that when no price is offered or the price offered in such auction

is considered inadequate the sale by such auction shall be stopped and such Forest Officer shall sell the produce in such other manner as the State Government may direct in this behalf.

- (4) The surplus, if any if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to the Government.

NOTES

The proviso to sub -S.(2) was inserted by Assam Act XI of 1953 and is similar to

S. 83 of the Indian Forest Act, 1927.

77. Government and its officers not liable for loss or damage in respect of certain forest produce. The Government shall not be responsible for any loss or damage which may occur in respect of any forest produce while at a revenue station established under a rule made under S.40, or while detained elsewhere for the purposes of the Regulation or, in respect of any timber collected under S.43 and no Forest Officers shall be responsible for any such loss or damage unless he shall have caused the same negligently, maliciously or fraudulently.

- 78. Land required under the regulation to be deemed to be needed for public purpose.** Whenever it appears to the State Government that any land is required for any of the purposes of this Regulation, such land shall be deemed to be needed for a public purpose, within the meaning of S.4 of the Land Acquisition Act, 1870.

NOTES

This section is similar to S.84 of the Indian Forest Act, 1927.

- 79.Recovery of penalties due under bound.** When any person, in compliance with any rule under this Regulation, binds himself by any instrument to perform any duty or act or covenants by any instrument that he and his servants and agents will abstain from any act, the whole sum mentioned in such instruments as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in S.74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land revenue.

NOTES

This section is similar to S.85 of the Indian Forest Act, 1927