

ACT 46 OF 2005

THE KERALA PROMOTION OF TREE GROWTH IN NON-FOREST AREAS ACT, 2005

*An Act to promote cultivation of trees in non-forest areas of the State, in order to increase green cover, preserve bio-diversity and arrest soil erosion and to increase availability of timber and bamboo for industry.*

*Preamble.*-WHEREAS, it is necessary to maintain environmental stability by the cultivation of trees in non-forest areas;

AND WHEREAS, cultivation of new trees are necessary for checking soil erosion and denudation in the catchment areas of rivers, lakes, tanks and canals and for mitigating floods and droughts;

AND WHEREAS, in order to increase the green cover in the country, it is necessary to cultivate trees in all non-forest lands also;

AND WHEREAS, in order to meet the requirements of fuel, wood, fodder and small timber to the rural populations, it is necessary to promote cultivation of trees in all non-forest areas in the State;

AND WHEREAS, it is necessary to establish tree lands, wherever possible, for the amelioration of the people and for preserving climatic conditions and promoting the general well being of the people;

AND WHEREAS, for the constant supply of wood for industrial growth and realization of maximum annual revenue in perpetuity, it is necessary to promote cultivation of trees in all non-forest areas;

AND WHEREAS, the Law-Reforms Committee appointed by the Government of Kerala have recommended to bring in a legislation to promote cultivation of trees in non-forest areas, in order to fulfill the needs enumerated above;

BE it enacted in the Fifty-sixth Year of the Republic of India as follows:--

1. *Short title, commencement, extent and application.*-(1) This Act may be called the Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005.

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

(3). It shall come into force at once.

(4) It shall apply to all non-forest lands in the State.

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

(a) "Government" means the Government of Kerala;

(b) "Local Self Government Institution" means a Panchayat at any level constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994) or a Municipality constituted under the Kerala Municipality Act, 1994 (20 of 1994);

(c) "Non-forest land" includes all private lands, lands vested in or transferred to or purchased by the Local Self Government Institutions, but does not include Cardamom Hill Reserve lands, lands declared or deemed to have been declared as reserve forest or any other forest land or land assigned to Scheduled Tribes under any law, for the time being in force and paddy fields;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "specified tree" means, Teak (*Tectona grandis*), Rosewood (*Dalbergia latifolia*), Irul (*Xylia Xylocarpa*), Thempavu (*Terminalia Tomatosa*), Kampakom (*Hopea Parviflora*), Vellakil (*Dysoxylum Malabaricum*) or Ebony (*Diospyrus sp.*);

(f) "State" means the State of Kerala;

(g) "tree" means any woody plant, whether fruit bearing or not, and includes bamboos.

3. *Rights of owner of non-forest lands.*-(1) Every owner of non-forest land shall be free to plant trees in his land, as may be appropriate and generally contribute to the increase of tree cover in his land, in addition to any crop he may have grown over such land.

(2) Every department of the Government, every public sector undertaking and every non-

governmental organization shall be free to plant trees in the non-forest lands owned, transferred or vested in them.

4. *Duties of Local Self Government Institutions.*--Notwithstanding anything contained in any other law for the time being in force, the Local Self Government Institutions shall promote tree growth in non-forest areas and be responsible for,--

- (a) the cultivation of saplings in the lands owned or transferred or vested in them;
- (b) carrying out census of the existing trees;
- (c) development and maintenance of nurseries, supply of seeds, saplings and trees at reasonable prices to persons, who are required to plant new trees or to replace trees which have been felled;
- (d) getting the trees planted or transplanted which are necessitated by the construction of buildings, new roads or widening of existing roads or for safeguarding danger to life and property;
- (e) organizing demonstrations and extension services for the purposes of this Act and assisting private and public institutions in connection with the planting and preservation of trees;
- (f) undertaking or executing such schemes or measures, as may be directed, from time to time, by the Government for achieving the objects of this Act.

5. *Duties of Forest Department.*--Notwithstanding anything contained in any other law for the time being in force, the Forest Department shall have the following duties, namely:--

- (a) to develop, maintain or approve private nurseries, to supply seeds, saplings to all persons who are required to plant new trees or to replace felled trees at reasonable price;
- (b) to execute the Social Forestry Schemes for tree cultivation through Local Self Government Institutions;
- (c) to give all technical and other assistance in planting trees;
- (d) to exercise such other powers and perform such other duties as are laid down in this Act or the rules made thereunder.

6. *Right of the owners to cut and remove trees.*-(1) Notwithstanding anything contained in any other law for the time being in force, every owner of non-forest land shall have the right to cut and transport any tree, other than sandalwood tree, standing on his land:

Provided that the provision under this sub-section shall not apply to trees, if any, reserved by the Government at the time of assignment of such land or trees standing on any land notified under section 5 of the Kerala Preservation of Trees Act, 1986 (36 of 1986):

Provided further that where any timber of a specified tree is transported from the land to any other place, the owner of such tree shall, before transporting the timber, file before the Forest Range Officer, having jurisdiction over the area, a declaration containing details such as the survey number of the land from which the tree is cut, number of trees, species of trees, quantity of timber and the place to which such timber is being transported, either directly or send it by registered post with acknowledgment due.

(2) Every declaration filed under sub-section (1) shall be acknowledged by the Forest Range Officer forthwith and a copy of the declaration so acknowledged shall accompany the timber during its transport:

Provided, that if the timber of a specified tree is transported from a non-forest land within five kilometres from the reserve forest boundary, necessary inspection shall be conducted by the Forest Range Officer within 15 days:

Provided further, that if acknowledgment from the Forest Range Officer is not received within 20 days on receipt of the declaration, the same shall be deemed to have been received.

(3) The cutting and removal of trees standing on non-forest areas, owned, controlled or vested in a Local Self Government Institution, and its disposal shall be governed by such rules, as may be prescribed.

7. *Penalties.*-(1) Whoever transports any timber contravening the provisions of section 6 or files a false declaration shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees.

(2) All offences under this Act shall be cognizable.

8. *Offences by companies.*-(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was

responsible to the company for the conduct of its business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.--*For the purposes of this section,-

(a) "company" means any body corporate and includes a firm, society or other association of individuals; and

(b) "director",--

(i) in relation to a firm, means a partner in the firm;

(ii) in relation to a society or other association of individuals means the person who is entrusted, under the rules of the society or other association, with the management of the affairs of the society or other association, as the case may be.

9. *Power to seize timber and other articles involved in the commission of the offence.--*(1) Where any officer of the Forest Department, not below the rank of a Forester, has reason to believe that any timber has been transported in contravention of section 6, he may seize the timber together with all tools, ropes, chains and other articles used in the commission of such offence and all vehicles, boats or animals used for carrying such timber.

*Explanation.--*The terms "vehicle" and "boat" in this section, sections 10 and 11 shall include all the articles and machinery kept in the vehicle or boat, as the case may be, whether fixed to the same or not.

(2) Every officer seizing any timber under sub-section (1) shall, place on such timber 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 Forest Range Officer having jurisdiction over the area.

(3) The Divisional Forest Officer to whom a report is made under sub-section (2) shall, -

(a) if he is satisfied that the timber mentioned in such report is of any tree transported in contravention of section 6, make a report of the seizure of such timber to the Judicial Magistrate of the First Class, having jurisdiction over the area in which such seizure has been made;

(b) if he is not so satisfied, order that such timber and any tool, rope, chain or other article or any boat, vehicle or animal, seized along with it, shall be returned to the person from whom they were seized.

10. *Power to release property seized under section 9.--*The Divisional Forest Officer, may release any tool, rope, chain or other article or any boat, vehicle or animal seized under section 9 and in respect of which a report has been made to the Judicial Magistrate of the First Class under sub-section (3) of that section, on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before such Magistrate.

11. *Procedure by Magistrate.--*Upon the receipt of a report under clause (a) of sub-section (3) of section 9, the Magistrate shall take such measures as may be necessary, for the trial of the accused and the disposal of the timber and any tool, rope, chain or other article or any boat, vehicle or animal seized along with it, according to law.

12. *Institution of prosecution.--*No prosecution shall be instituted against any person without the sanction of the Divisional Forest Officer.

13. *Cognizance of offences.--*An offence punishable under this Act shall be tried before a Court of the Judicial Magistrate of the First Class having jurisdiction.

14. *Indemnity.--*No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority or any other person for anything which is, in good faith done, or purporting to have been done under this Act or any rule or order made thereunder.

15. *Power to make rules.--*The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is issued or made, before the Legislative Assembly, while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be issued, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

16. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may, by order published in the Gazette make such provisions, not inconsistent with the provisions of this Act, which appear to them necessary for the purpose of removing the difficulty.

(2) Every such order made under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly.

17. *Repeal and savings.*—(1) Section 4 of the Kerala Preservation of Trees Act, 1986 (35 of 1986) is hereby repealed.

(2) Notwithstanding the repeal of section 4 of the Kerala Preservation of Trees, Act, 1986 (35 of 1986), the provisions of section 4 to 23 of the Interpretation and General Clauses Act, 1125 (7 of 1125) shall apply upon the repeal of the said section.

GOVERNOR