

West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2006

WEST BENGAL

India

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Act 10 of 2006

- Published on 12 April 2006
- Commenced on 12 April 2006
- [This is the version of this document from 12 April 2006.]
- [Note: The original publication document is not available and this content could not be verified.]

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016.

Passed by the West Bengal Legislature with effect from 12.04.2006, received the Assent of the Governor and was first published in the Kolkata Gazette, Extraordinary, of the 12th April, 2006An Act to encourage and promote plantation of trees, and to protect and conserve trees, particularly those looked upon as sacred groves, or identified as belonging to an endangered species or given the status of heritage, bearing in mind that trees have great environmental value and are a renewable resource. Whereas it is expedient, in the public interest, to prevent the felling of trees in Non-Forest Areas and to encourage and promote plantation of trees, and to protect and conserve trees, particularly those looked upon as sacred groves, or identified as belonging to an endangered species or given the status of heritage, bearing in mind that trees have great environmental value and are a renewable resource; And Whereas it is considered expedient to make provisions for protection and improvement of environment as envisaged under Article 48A of the Constitution of India; It is hereby enacted in the Fifty-seventh Year of the Republic of India, by the Legislature of West Bengal, as follows

1. Short title, extent and commencement.

(1) This Act may be called the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2006. (2) It extends to the whole of West Bengal. (3) It shall come into force at once.

2. Application.

This Act shall apply to trees in Non-Forest Areas viz, the Areas other than forest and the Areas declared as community reserve under the Wild Life (Protection) Act, 1972 (53 of 1972). Explanation.- For the purpose of this section. the word "forest" has the same meaning as is assigned in the West Bengal Private Forests Act, 1948 (West Bengal Act No. 14 of 1948).

3. Definitions.

-In this Act, unless the context otherwise requires,-(1)"appellate authority" means an appellate authority appointed under sub-section (1) of section 7;(2)"competent authority" means an authority appointed by the State Government, by notification, to perform the duties and exercise the powers conferred upon a competent authority under this Act;(3)"felling of tree' means cutting, girdling, pollarding, uprooting or damaging a tree in any manner but shall not include lopping off of a limb of tree for such purposes as may be prescribed;(4)"notification" means a notification published in the Official Gazette;(5)"person" shall include any company or association or body of individuals, whether incorporated or not;(6)"raiya" shall have the same meaning as in the West Bengal Land Reforms Act, 1955 (West Bengal Act No. 10 of 1956);(7)"Schedule" means a Schedule to this Act;(8)"State Government" means the State Government of West Bengal;(9)"tree" has the same meaning as in the Indian Forest Act, 1927 (16 of 1927), and includes any woody plant whose branches spring from an area supported upon a trunk or body and whose trunk or body is not less than ten centimetres in diameter at breast height from the ground level. Explanation. For the purpose of this clause "breast height" means the standard height for measuring girth, diameter and basal area of standing trees which is taken as 4 feet 6 inches (1.37 metre) above ground level and on slopes breast height is taken on the uphill side;(10)"prescribed' means prescribed by rules made under this Act;(11)other expressions used in this Act, but not defined, shall have the same meanings as defined in the Indian Forest Act, 1927.

4. Restriction on felling of trees.

-Except as provided in this Act or the rules made thereunder, no person shall(a)fell any tree in the Non-Forest Area and(b)cut, remove or otherwise dispose of any tree other than a tree which has felled without the aid of human agency.

5. Permission to fell trees.

(1) A competent authority may, on receipt of an application from a person to fell a tree or otherwise dispose of any tree, for such purposes as may be prescribed, and on being satisfied with regard to the legality of documents towards the proof of ownership or lease of the land on which such tree stands and after making an inquiry, in such manner as may be prescribed, grant permission, in writing, to fell tree :Provided that no such permission shall be granted, if it is found on inquiry that the nature or character of the land may change or the mode of use of the land may alter, unless the person concerned produces the conversion certificate obtained from the Collector

concerned under the provisions of section 4C of the West Bengal Land Reforms Act, 1955 Provided further that in the Sadar sub-division, Kalimpong sub-division and Kurseong sub-division of the district of Darjeeling, no such permission shall be required, if a raiyat obtains permission under provisions of section 4A of the West Bengal Land Reforms Act, 1955, read with rule 474 of the West Bengal Land and Land Reforms Manual, 1991 : Provided also that the competent authority shall, within three days from the date of receipt of application, give permission of felling of trees, if it constitute such immediate danger, as may be prescribed to any person or property. (2) Notwithstanding anything contained in sub-section (1). no permission shall be required if felling of trees is undertaken for not more than three trees at a time in rural areas : Provided that felling of trees shall not be undertaken in a particular plot of land more than once in a year. Explanation 1. For the purposes of this section, "rural area" shall include all areas under Gram Panchayat and exclude the areas under Municipality, Notified Area Authority or Municipal Corporation. Explanation II. For the purposes of this section "Municipality" and "Notified Area Authority" shall have the same meaning as defined in the West Bengal Municipal Act, 1993 (West Bengal Act 22 of 1993).

6. Procedure for obtaining permission to fell trees.

(1) Every application under section 5 shall be in writing giving particulars of the tree, the details of the plot of land on which the tree is located and the reasons for felling the tree and shall be accompanied with such fee, as may be prescribed. (2) The competent authority shall, on receipt of an application in respect of any tree, issue an acknowledgement to the applicant, and after making inquiry, shall dispose of the application, within forty-five days of the receipt of such application, either giving permission to fell such tree or rejecting the application giving reasons therefor. (3) Every permission to fell tree shall, granted under this Act, be in such form and subject to such conditions, including taking of security for undertaking plantation for trees, as may be prescribed : Provided that in the case of tea garden such permission shall be subject to the condition that the sale proceeds be utilized strictly for the purpose of welfare of the labourers of tea garden on the basis of a specific scheme framed under the provisions of the Plantations Labour Act 1951 (69 of 1951).

7. Appeal.

(1) Subject to the provisions of sub-section (2), an appeal shall lie from every order of the competent authority under this Act to the appellate authority, to be appointed by the State Government. (2) Every such appeal shall be preferred within thirty days from the date of communication of the order : Provided that the appellate authority may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing it in time. (3) On receipt of any such appeal, the appellate authority shall, after giving the appellant a reasonable opportunity of being heard and after making such inquiry as it deems proper, dispose of the appeal for reasons to be recorded in writing. (4) The proceedings before the appellate authority shall be completed within a period of one month from the date of preferring appeal under sub-section (2).

8. Obligation to plant trees.

-Every person, who fells any tree, shall undertake plantation of such number of trees as may be prescribed, in place of every tree felled, in the same plot of and and tend such plantation for trees in accordance with the directions of the competent authority :Provided that the competent authority may, for such reasons, as may be prescribed, to be recorded in writing, permit a lesser number of plantation for trees to be undertaken in a different plot or plots, or exempt any person from the obligation of such plantation :Provided further that any person, unable to undertake plantations of trees, may deposit such amount of money, as may be prescribed considering the importance of trees, to the competent authority, facilitating the designated agency of the State Government to undertake plantation of trees for the trees felled.

9. Compulsory plantation for trees in certain cases.

(1) Every person or development agency or the benevolent activist or the entrepreneur or the promoter (hereinafter in this section called "developer") shall, as the case may be, intending to carry out development in the form of erection of high rise multiunit building or otherwise construction for the purposes of residential or commercial or industrial or institutional uses, as the case may be, on any plot or plots of land, undertake plantation for trees, in the prescribed manner and to the prescribed extent having regard to the total area of such plot or plots of land, in the same plot or plots of land as subject to such development.Explanation I.- For the purposes of this sub-section, "development agency" includes any of the Government Department or any other body created under any Statute for the purpose of carrying out development works.Explanation II.- For the purposes of this sub-section, -promoter" means a person who constructs or erects or causes to be constructed or erected a building or otherwise construction on a plot or plots of land for the purpose of transfer of such building by sale or gift or otherwise to any other person or to a company, cooperative society or association of persons and includes his assignee.(2)The development, under sub-section (1), shall subject to sub-section (5), be carried out after obtaining the certificate of clearance, on an application in the prescribed form and the prescribed manner accompanied by such fee, as may be prescribed, from the competent authority :Provided that the plantation shall be implemented within such period as may be specified in the certificate of clearance, before the development project is initiated.(3)The application, under sub-section (2), shall be accompanied by such plan (in quadruplicate) (hereinafter called the "plantation plan") drawn on the prescribed scale as showing the proposed plantation in the prescribed manner and to the prescribed extent as well as the location of the proposed plantation within the area of the proposed building or otherwise construction on the same plot or plots of land.(4)The competent authority may, after being satisfied on proper scrutiny of the plantation plan and completing the field inquiry, if necessary, that the proposed plantation of trees as shown in the plantation plan is in accordance with the provisions of this Act and the rules made thereunder, approve the plantation plan (in quadruplicate) under his signature with proper stamp and seal and shall issue the certificate of clearance in the prescribed Form :Provided that the competent authority shall, before issuing the certificate of clearance under this sub-section, obtain the concurrence of the West Bengal Pollution Control Board.(5)The authority, sanctioning the building or otherwise construction plan under the relevant Act, shall, before approving such plan, require the developer to produce before him both the certificate of

clearance as issued and the plantation plan as approved under this Act and verify whether the proposed plantation as shown in the plantation plan is properly incorporated in the building or otherwise construction plan as submitted before him for approval. After being satisfied on verification, the sanctioning authority shall certify under his signature with stamp and seal on each copy of the building or otherwise construction plan as approved by him under the relevant Act, stating that this plan is compatible with the plantation plan so far as the proposed plantation is concerned.(6)No building or otherwise construction plan, even if sanctioned under the relevant Act, shall be treated as valid if the same is not found compatible with the said plantation plan.

10. Implementation of directions.

- Every person who is to undertake plantation for trees under section 8, shall start preparatory work for plantation within sixty days from the date of permission or the date of receipt of direction, as the case may be, and shall undertake plantation for trees, in accordance with directions.

11. Penalty for felling of trees.

(1)Whoever fells or causes to be felled any tree or cuts, uproots or otherwise disposes of any fallen tree, in contravention of the provisions of section 4, or contravenes any condition of any permission granted under this Act, shall be punished with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both and until the plantation of requisite number of trees are undertaken, shall be fined for each day of default of fifty rupees.(2)If any person, or development agency or the benevolent activists, or the entrepreneur of the promoter, as the case may be, fails to implement the plantation plan as approved under sub-section (4) of section 9, shall be punished with imprisonment which may extend to two years or with fine which may extend to ten thousand rupees or with both.

12. Previous sanction of the State Government necessary.

- No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the State Government or such officer or authority as may be authorized by the State Government by order in writing in this behalf.

13. Offence by firm, company, institution etc.

If the person committing an offence under this Act is a firm, a company, an institution or an association or body of individuals, the firm, the company, the institution or the association or the body of individuals as well as every person in charge of, and responsible to the firm, the company, the institution or the association or the body of individuals for the conduct of its business at the time of the commission of such offence shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly :Provided that nothing contained in this section shall render such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the

commission of such offence.

14. Forfeiture of timber etc.

(1) Where any person has been convicted of committing an offence of felling a tree, the timber of tree, and implements used for felling such tree, may be ordered by the Court to be forfeited to the State Government :Provided that if the timber is found to have been disposed of, the Court may order an additional penalty of not exceeding five thousand rupees.(2)Unless the Court otherwise directs, any timber or implements forfeited under sub-section (1), shall be disposed of by the competent authority in such manner as may be prescribed.(3)Such forfeiture may be in addition to any other punishment specified in this Act for such offence.

15. Power of seizure.

(1) When there is reason to believe that any tree has been felled, cut or removed in contravention of the provisions of this Act, the wood of such trees, together with the boat, vehicle, carrier or cattle, if any, used for felling, cutting or removing of such tree, may be seized by any Forest Officer not below the rank of a Forest Ranger or any Police Officer not below the rank of a Sub-Inspector or any other officer empowered in this behalf by the State Government.(2)Every seizure made under sub-section (1) shall be reported to the Magistrate having jurisdiction to try the offence on account of which such seizure has been made and the wood of such trees, together with boat, vehicle, carrier or cattle shall, subject to the order of such Magistrate, be disposed of in such manner as may be prescribed.

16. Compounding of offence.

(1) Any offence, which has been committed and is punishable under this Act, may either before or after institution of the prosecution, be compounded by such officer, and for such amount not exceeding ten thousand rupees, as the State Government may by notification in the Official Gazette, specify :Provided that such net present value of timber, as may be prescribed by rules considering the importance of timber, may also be recovered from the offender.(2)Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceeding shall be taken against him in respect of such offence and the property seized under this Act shall be released.(3)The compounding of an offence under sub-section (1) shall be allowed only in respect of the first offence committed by any person and no such compounding shall be made for any subsequent offence committed by the same person.

17. Power to prevent commission of offence.

(1)It shall be the duty of every Forest Officer, Gram Panchayat Secretary, Gram Panchayat Karma Sahayak, Krishi Praiukti Sahayak, Gram Sevak, Revenue Inspector, officer dealing with environmental protection or Police personnel to make efforts to prevent any contravention of section 4 and section 9 and to report to his superior officer, in such manner as may be prescribed, of such contravention or preparation to commit such contravention.(2)The superior officer so

informed shall inform the competent authority of such commission or probable commission of offence.(3)The competent authority shall take all reasonable measures in his power to prevent such contravention which he has reason to believe that it is likely to be committed.

18. Officers to be public servant.

The officers, exercising any powers, or discharging any duties or functions, under this Act shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

19. Execution of order for payment.

The amount of composition of an offence, the payment of which has been directed to be made by any person under this Act shall, without prejudice to any other mode of recovery under any law for the time being in force, be recoverable from him as an arrear of land revenue.

20. Bar on proceedings.

No suit, prosecution or other legal proceedings shall lie against the State Government or against any officer or against any designated agency of the State Government empowered to exercise power or to perform duties or to discharge functions under this Act, for anything which is in good faith done or intended to be done under this Act.

21. Exemption.

(1) Subject to such conditions, if any, as may be imposed, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, exempt any area or any species of tree or a specified number or trees of any species from all or any of the provisions of this Act.(2)Notwithstanding anything contained in sub-section (1), permission of competent authority shall be obtained for felling of trees specified in the Schedule.

22. Provision of this Act to be in addition to other Law.

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force prohibiting or regulating the felling of trees.

23. Power of State Government for preservation of trees.

(1)The State Government may, in the interest of public, declare by notification, that any class or classes of tree shall not be felled for such period as is specified in that notification.(2)The management of such trees shall be regulated in such manner as may be prescribed.

24. Power to make rules.

(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters :-(a)the Form in which and the authority to whom an application for felling tree shall be made;(b)the Form in which the permission, if any, shall be granted to the applicant;(c)any other matter necessary for proper implementation and enforcement of this Act.(3)Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

25. Overriding effect

-The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

26. Power to amend Schedule.

(1) The State Government may, by notification, amend the Schedule.(2)Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before the State Legislature.

Schedule

Permission mandatory for felling(See section 21)

1. Acacia catechu (Khair)

2. Bombax ceiba (Simul)

3. Dalbergia sissoo (Shishu)

4. Diospyros melanoxylon (Kend/Kendu/Tendu)

5. Gmelina arborea (Gamar)

6. Madhuka indica (Mahua)

7. Michelia champaka (Champ)

8. Shorea robusta (Sal)

9. *Swietenia mahogony* (Mahogany)

10. *Tectona grandis* (Teak/Segun)

11. Mangrove trees.