PRESERVATION OF SPECIFIED TREES ACT, 1969

(Act No. V of 1969)

THE JAMMU AND KASHMIR PRESERVATION OF SPECIFIED TREES ACT, 1969

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[Received the assent of the Governor on 9th April 1969 and published in Government Gazette dated 11th April 1969 (Ext.).]

An Act to make provision for the preservation of certain species of trees and for regulation of felling and export thereof.

Whereas certain species of trees growing in the [1][Union territory of Jammu and Kashmir] are the main sources of raw material for the specialized industry of Kashmir Art, or are otherwise of vital importance for the economy, prosperity and welfare of a large section of citizens of the [1][Union territory of Jammu and Kashmir] ; and

Whereas it is necessary in the public interest to make special provision for the growth, preservation and protection of such species of trees and for other matters connected therewith ;

It is hereby enacted by the Jammu and Kashmir State Legislature in the Twentieth Year of the Republic of India as follows :—

1. *Short title, extent and commencement*. —(1) This Act may be called the Jammu and Kashmir Preservation of Specified Trees Act, 1969.

(2) It shall extend to Kashmir].

2[the whole of the Union territory of Jammu and

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

(a) "fell" or "felling" includes topping, lopping, girdling or otherwise damaging a specified tree ;

(b) "goods of Kashmir Art" means articles of wood carving, papier mache, wood work and such other articles as may be declared by

1. Substituted by S.O. 1229(E) dated 31.03.2020 for "State".

notification by the Government as goods of Kashmir Art for pur-poses of this Act ;

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

(d) "prescribed authority" means the authority notified as such by the Government and different authorities may be notified for different provisions of this Act ;

(e) "specified tree" means walnut and includes such other species of tree whether standing on the State land or private land as may be notified by the Government in the 1[Government Gazette], but does not include such trees growing in a demarcated forest as defined in *Jammu and Kashmir Forest Act, 1987 ;

(f) "timber" means wood of any specified tree whether in logs or cut up in pieces or in any other form but does not include finished goods of Kashmir Art made of such wood.

3. *Restriction on felling*.— Notwithstanding anything contained in any other law for the time being in force, no person shall fell any specified tree except under and in accordance with the terms and conditions of a permit granted by the prescribed authority under this Act :

Provided that a permit granted under this section shall not authorise the felling of a specified tree by any person other than the owner thereof.

4. *Application for permit*.— Every person desiring to obtain a permit under section 3 shall make an application in writing to the prescribed authority, in such form and containing such information, as may be prescribed.

(2) On receipt of such application, the prescribed authority shall, subject to the provisions of sections 5 and 6 by order in writing either—

(a) grant the permit subject to such conditions, if any, as may be speci- fied in the permit ; or

(b) refuse to grant such permit.

5. *Obligation to grant permit*.— Subject to the provisions of section 6, the prescribed authority shall grant permit, if, on inquiry, it is established that—

* Now Indian Forest Act, 1927.

(a) the timber of a specified tree desired to be felled is required to be used for the manufacture of finished goods of Kashmir Art ; or (b) the timber is required to be exported by a person registered as an exporter for the purposes of this Act in the prescribed manner ; or (c) the felling of a specified tree is necessary for the prevention of danger or abatement of nuisance to life or property or for preven- tion of plant disease ; or

(d) the specified tree desired to be felled is completely dried up.

6. *Obligation to refuse to grant permit*.— The prescribed authority shall refuse to grant permit, if, on inquiry, it is satisfied that—

(a) the application for permit relates to a specified tree which is green, healthy or if it belongs to fruit bearing species, is fruit-bearing ; or (b) the felling of specified tree is likely to extinguish the species of the trees in the local area in which it grows ; or

(c) there is any other sufficient reason which he may record in writing to warrant refusal of permit.

7. *Consultation*.— In considering whether to grant or to refuse a permit the prescribed authority may in its discretion and, if so required by a general or special order of the Government, shall obtain the advice of any department of the Government or any officer thereof regarding any question of technical nature involved therein.

8. *Export*. —(1) No person shall export from the territories of the *[State of Jammu and Kashmir] timber of any specified tree except under and in accordance with a permit granted by the prescribed authority under this Act.

(2) Every person desiring to obtain a permit for the export of timber shall make an application in writing to the prescribed authority in such form and containing such information as may be prescribed.

(3) On receipt of application the prescribed authority shall, after making such inquiry as it may consider necessary, by order in writing, either— * Now Union territory of Jammu and Kashmir.

(a) grant the permit subject to such conditions, if any, as may be specified in the permit ; or

(b) refuse to grant such permit.

9. *Conditions to be reasonable*.— Where the prescribed authority grants a permit for felling a specified tree or for exporting timber of a specified tree subject to any condition under the provisions of this Act, the conditions so imposed shall be such as may be reasonable having regard to the circum-stances of each case and the interest of the general public.

10. *No compensation payable for loss or injury*.— No person shall be entitle to claim compensation for any injury, damage or loss caused or alleged to have been caused by the refusal to grant permit or by any conditions sub-ject to which permit is granted under this Act.

11. *Appeal*.— Any person aggrieved or affected by an order of the pre-scribed authority under this Act may, within sixty days from the date of the order, prefer an appeal to the Financial Commissioner.

12. *Power to revise orders*.— The Government may at any time either on its own motion or on any application made to it in this behalf, call for the record of any case pending before or disposed of by the prescribed authority or the Financial Commissioner, and if in any such case the Government is of the opinion, that any order passed or proceeding taken should be modified, annuled or reversed, it may pass such order thereto as it thinks fit :

Provided that the Government shall not pass any order under this sec-tion prejudicial to any person applying for permit without giving him a reason-able opportunity of being heard.

[1][13. *Penalty*. —(1) Any person who contravenes any of the provisions of this Act or the rules made thereunder or any term or condition of any permit granted under this Act, shall be punishable by the prescribed authority with a fine [2][of not less than one thousand rupees but which may not extend to ten thousand rupees] in addition to such compensation for any loss or damage caused to the owner of the specified tree as the prescribed authority may determine ; and where the contravention relates to felling of a specified tree, the timber of such tree shall also be liable to be confiscated by the prescribed authority.

1. Substituted by the Act XIII of 1970.
2. Substituted by Act XII of 1989.

(2) Any amount of fine or compensation payable under sub-section (1) shall be recoverable as arrears of land revenue.

13-A. *Disposal of timber fallen due to natural calamities*.— The timber of any specified tree proved to have fallen due to any natural calamity or disease shall, in the case of private lands, be allowed to be taken by the owner thereof and, in the case of State lands, be disposed of by the prescribed authority in such manner as may be prescribed.]

14. *Protection of actions taken in good faith*.— No suit or prosecution or other legal proceedings shall lie against any officer or person empowered to exercise powers or to perform duties under this Act for anything done in good faith or intended to be done under this Act or the rules made thereunder.

15. *Effect of Act and Rules etc. inconsistent with other enactments*.—The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any en-actment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

16. *Power to make rules*. —(1) The Government may make rules for pur-poses of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) form of application for grant of permit authorising felling of specified tree or export of timber ;

(b) form of permit to be granted by the prescribed authority authorising felling of specified tree or export of timber ;

(c) information to be supplied by the applicant under sections 4(1) and 8(2) ;

(d) fees chargeable in respect of a permit ;

(e) manner and procedure for holding inquiry under sections 6 and 8 (3) and the matters to be considered therein ;

(f) conditions in which permits may be granted for the export of timber from the [1][Union territory of Jammu and Kashmir] ;

1. Substituted by S.O. 1229(E) dated 31.03.2020 for “State”.

(g) period of validity of permits ;

[1][(gg)disposal of timber confiscated under section 13, or fallen due to natural calamities or disease ;]

(h) form and manner in which accounts and registers relating to felling of specified trees or export of timber shall be maintained by the prescribed authorities ;

(i) form and procedure in which information relating to felling of speci-fied trees and export of timber permitted by the prescribed authority shall be submitted to the Government from time to time ;

(j) form and manner in which appeals may be preferred against the orders of prescribed authority and the procedure for hearing appeals ;

(k) the number of specified trees which a permit may authorise to fell at a time ;

(l) procedure and manner in which and the conditions subject to which exporters of timber are registered under this Act and the fees for registration ;

(m) any other matter which has to be or may be prescribed.

[2][16-A. *State Trading*.— If the Government is of the opinion that with a view to securing optimum utilization of timber of any specified trees or any specie thereof for its adequate and properly co-ordinated sale outside the [3][Union territory of Jammu and Kashmir], it is necessary, in the public interest, that the [3][Union territory of Jammu and Kashmir] should itself carry on the trade or business of exporting from the territories of the [3][Union territory of Jammu and Kashmir] such timber, to the complete exclusion of other persons, the Government shall, by notification in the [4][Government Gazette], make a declaration to that effect and thereupon the provisions of this Act shall have effect in relation to such specified trees or the specie or timber thereof, subject to the following modifications, namely :—

(a) In section 5, clause (b) shall be omitted.

1. Clause (gg) added by Act XIII of 1970.
2. Section 16-A inserted by Act XXI of 1973.

(b) For section 8, the following shall be substituted, namely :—

"8. No person shall export or carry on the trade or business of exporting from the territories of the [1][Union territory of Jammu and Kashmir] timber of any specified tree or any species thereof in res-pect of which declaration under section 16-A has been made by the Government."

(c) In section 9, the words, "or for exporting timber of a specified tree" shall be omitted.

(d) In sub-section (2) of section 16—

(i) in clauses (a), (b) and (h) the words "or export of timber" wherever occurring, shall be omitted ;

(ii) in clause (c) words, brackets and figures "sections 4(1) and 8(2)" shall be substituted by the word, brackets and figures "section 4(1)" ;

(iii) in clause (e) words, figures and brackets "under sections 5, 6 and 8(3)" the words and figures "under sections 5 and 6" shall be substituted ;

(iv) in clause (i), the words "and export of timber" shall be omitted ;

(v) for clause (1), the following shall be substituted, namely :—

"(1) the procedure and the manner regarding the export from the [1][Union territory of Jammu and Kashmir] and the sale outside the [1][Union territory of Jammu and Kashmir] of the timber of specified trees or any spe-cies thereof in respect of which declaration has been made under section 16-A."].

[2][16-B. *Application of the provisions of the Act to willow trees*.— Not-withstanding anything in this Act, as from the date which may be notified by the Government in the [3][Government Gazette], the provisions of this Act and the rules made thereunder, so far as they relate to regulation of export of

1. Substituted by S.O. 1229(E) dated 31.03.2020 for "State".
2. 16-B inserted by Act VI of 1979, s. 2.
3. Now Official Gazette.

timber, shall apply to timber of willow tree in the same manner as they apply to any timber of a specified tree.]

17. *Repeal and savings*. —(1) The Jammu and Kashmir Preservation of specified Trees Ordinance, 1968 is hereby repealed.

(2) Notwithstanding such repeal, anything done, any action or proceed-ing taken, notification issued, permit granted, fees charged, order, inquiry or rule made or form or register prescribed under the said Ordinance shall be deemed to have been respectively done, taken, issued, granted, charged, made or prescribed under this Act as if this Act had come into force on the 10th December, 1968.