

C I R C U L A R N O.8/86

Sub:- Kerala Forest (Amendment) Act 1975 (Act 28/1975) – Procedure to be adopted in the application of Sections 52, 61 A to 61 F by the authorized Officers – reg.

Ref:- 1) The Kerala Forest (Amendment) Act 1975.
2) Circular No.25/1975 of this office.

I invite your attention to the reference first cited i.e.. The Kerala Forest (Amendment) Act 1975 (Act No.28 of 1975) Published in Gazette extraordinary dated 8th September 1975 and the Circular No. 25 of 1975 issued from this office which contains the instruction to be followed in the application of Sections 52, 61 A to 61 F by the authorized officers. The Circular No.25/1975 was issued immediately after the ordinance No.5/1975 came into effect. Now the ordinance became an Act it is imperative to issue a new Circular as per the Act No.28 of 1975 (amendment) and hence the Circular No.25/- 1975 is revised and revalidated and orders issued a fresh as follows:-

The Act empowers such Officers of the Forest Department, they are authorized on that behalf, to confiscate timber, charcoal, firewood or Ivory which is the property of the Government and in respect of which any forest offence is found to have been committed together with the vehicles tools, ropes, chair, boats or cattle used for committing the offence in respect of some property. Action has been taken for notification in the official Gazette naming the authorized officers and the officers empowered to revise the orders of confiscation passed by the authorized officers. The Divisional Forest officers/the Deputy Conservators of Forests/Assistant Conservators of Forests in charge of the territorial division/Special Divisions/Flying Squad Divisions/Wild Life Warden have been notified as the authorized officers for the purpose of the Act and the Conservators of Forests of territorial Circles/special circles/Field Director, Kottayam have been notified as the officers empowered to exercise the powers of revision under section 61 C of the Act.

It may be pointed out that the provisions of the Act are intended to deal with Government properties such as timber, charcoal, firewood and Ivory in respect of which any forest offence has been committed and the vehicles used for the commission of such offences by the authorized officers themselves instead of referring such cases to the ordinary Criminal Courts as was the former practice. According to the Act, the authorized officers can deal with the dispose of such properties in accordance with the provisions of the Act without producing such properties or vehicles before any criminal court of competent jurisdiction.

The provisions of the Act become applicable to such properties and vehicles immediately after a seizure of such properties and vehicles has been made under section 52 of the Kerala Forest Act. It is to be reiterated that the statutory powers for seizure of such properties is derived by the Forest Officers under Section 52 of Kerala Forest Act and not under Section 61 A. Immediately a seizure is made of any timber, charcoal, fire-wood or Ivory, in respect of which any forest offence is

believed to have been committed and where the properties appear to be Government properties, the officers seizing such properties should immediately produce such properties along with the vehicles used for the commission of such offences before the authorized officer. The officer seizing property and producing before the authorized officer should submit the Form I Report and the mahazar for seizure before such officer. It may be pointed out that the seizure mahazar should be attested by two respectable witnesses ordinarily. While producing such properties and or the vehicles, the officer who has seized them should, submit a report containing the circumstances or material on which the seizing officer was satisfied that the properties seized belonged to the Government, that an offence has been committed in respect of that property and they vehicle, if any seized has been used for the commission of such offences.

The Divisional Forest Officer before whom such properties/vehicles are produced may direct the seizing officer or any other officer not below the rank of a Range Officer to keep the properties seized under safe custody subject to further orders to be issued by the Divisional Forest Officer himself, and up on such direction being issued, the officer to whom such direction is issued, should keep the properties so directed to be kept under safe custody, and he shall be responsible for the safe up keep of such properties. Due care and attention should be bestowed for keeping the properties/vehicles in such a safe manner so as not to cause any damage or deterioration to the properties by exposure to sun rain or otherwise.

In cases where the Divisional Forest Officers before whom such properties/vehicles have been produced feel that a further investigation in to the matter is necessary before action is pursued under section 61 A (2) of the ordinance, they may direct the Range Offices or any other Range officer to conduct an enquiry into the case and submit a report to him ordinarily within one week, and upon receipt of such direction, the Range Officer so directed should positively submit the final report to the Divisional Forest Officer concerned within the prescribed time limit. The Range Officer who has been asked to enquire into the matter further by the Divisional Forest Officer, or in other cases the Divisional Forest Officer, himself should obtain from the Regional Transport Officers with whom the vehicles seized have been registered, the name, address and other details of the owner of the vehicle. Upon receipt of the final report from the Range Officer in cases where such report has been asked for and in other cases immediately upon production of the properties before him, the authorized officer, viz. the Divisional Forest Officer, should issue a notice to the person or persons found responsible for the commission of the offences and to the owner of the vehicle for showing causing as to why the seized properties and or the vehicles as the case may be, should not be confiscated. Such notices should contain the circumstances under which the seizure of the goods and the vehicles has been made, the person or persons, if any, who were in custody of the goods or vehicles at the time of seizure the materials or other circumstances which disclosed that the materials seized belonged to the Government and a forest offence has been committed in respect of such materials and in case of vehicles seized that the vehicles have been used for the commission of the offence and that it was proposed to confiscate the vehicles as provided for under section 61 A (2) of the Act. The notice should also specify a date and time at which the person or persons to whom notices are issued should appear before the authorized officers for a hearing, and they should also be informed that any explanation they wish to offer to the show cause notice

should reach the authorized officers before such time and date and that, if no such representations are received before such time and date and no appearance is made at the stipulated time, final orders in the matter will be passed as if the persons concerned have no explanation to offer and they did not wish to be heard by the authorized officers.

If an appearance is made by the persons concerned at the stipulated time and date, the authorized officers may allow him/them either to make a representation personally or through any lawyer, if one is engaged.

Normally, the date of hearing should not be later than 14 days from the date on which the notices are issued. If the parties concerned or their Advocate ask for an adjournment of the hearing, such adjournment should be granted only for sufficient reasons and in no case the adjournment should be granted for more than 3 days at a time.

As soon as the hearing is completed, the authorized officer shall consider the objections raised on the written representations, if any, and also at the time of oral hearing, if there was one and pass an order dealing with each of the objections raised. If the Divisional Forest Officer finds after consideration of the explanation etc. that the party concerned has proved to his satisfaction that the property belonged to him and that no offence has been committed, the officer may pass an order directing that the seized properties along with the vehicles be released to the person from who the seizure was made, forthwith.

If the authorized officer finds that the party has proved to his satisfaction that the property seized belonged to him, but there were circumstances to believe that some forest offences have been committed in respect of that property, he may direct the Range Officer who seized the property/vehicle to produce the same before the Criminal Court of competent jurisdiction and pursue further action for the prosecution of the offender under the provisions of the Kerala Forest Act.

In all cases, copies of the orders passed by the authorized officer should be sent with a covering letter to the Conservators of Forests concerned, the Chief Conservator of Forests (Vigilance and Evaluation Wing) the Chief Conservator of Forests and the Secretary to Government, Agriculture (Forests) Department, Secretariat, and Trivandrum.

M. Sivarajan,
Chief Conservator of Forests.

To

All Conservator of Forests/ Divisional Forest Officers (with sufficient No. of copies)

Copy to CA to All Chief Conservator of Forests.

Copy to Chief Conservator of Forests (Vig.) of (Wild Life)

Copy to all Branch Officers.

Copy to Stock file.