

*Annexure VIII A (2), (Vide Article - 8.01)*

Disforestation Notification of Forest  
Lands not Reserved.

GOVERNMENT OF MAHARASHTRA,  
Revenue and Forests Department,  
Circular No. FLD 1071/53273-7,  
Sachivalaya, Bombay-32, Dated : 18th September 1973.

READ :- Letter No. AND/IG/137/66-67/7229/70-71 dated 10th March 1971.

CIRCULAR :-

It has been brought to the notice of Government by the Chief Conservator of Forests, that according to Note 53 below Section 27 of the Indian Forest Act, 1927 in Bombay Forest Manual (Volume II), it is not necessary for Government to publish a formal notification under section 27, when lands which were merely notified under section 4, are to be excluded from Forest. Section 5 of the Indian Forest Act, 1927 is specifically applicable to the lands notified under section 4 irrespective of further settlement proceedings. According to section 5, after the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose, shall be made in such land except in accordance with such rules as may be made by the provincial Government in this behalf. Breaches of section 5 are made punishable under section 23(1) (a).

In view of this, though lands are to be excluded from Forest they will continue to remain as lands notified under section 4 and hence provisions of section 5 will also be applicable to such lands. A point has, therefore, arisen whether it is necessary to denotify the areas proposed to be excluded from section 4 and whether the Note 53 below section 27 needs any modification.

2. After detailed examination of this point, Government is advised as under :-

Note 53 under section 27 in the Forest Manual by Shri. Shri Koppiker states that it is not necessary for Government

to publish a formal notification under section 27 when lands were merely notified under section 4 are to be excluded from forest". This note appears to have as its basis Government Resolution, Revenue Department No.602B, dated the 25th July 1985. In para 2 of ~~2x~~ that Government Resolution it has been stated that "as lands were merely notified under section 4 of the Indian Forest Act, 1878, as proposed to be constituted as reserved forests the sanction of the Government of India is neither required for their exclusion from forest, nor is it necessary for Government to publish any formal notification ~~directing~~ directing their disforestation."

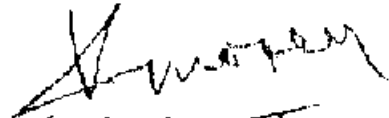
In *Mahendrabai Vs. State of Uttar Pradesh* (A.I.R. 1963 S.C. 1019), after notification under section 4 was issued, the Governor of Uttar Pradesh by an executive order issued to all ~~Xa~~ Conservator of Forests, Divisional Forest Officers, District Forests Officers, stated that a number of representations had been made to the Government by claimants of lands situated in the areas of private forests, and that ~~and th~~ the Governor after careful consideration had decided that all such lands was included in any of the notifications under section 4 it should be deemed to have been excluded from these notification. The Supreme Court held that since a notification under section 4 is required to be published in the Gazette and unless it is so published it is of no effect, and since the order in question was never published and it was a mere departmental instructions of Government to its officers, it could not amount to excluding anything from the notification issued under section 4. It, therefore, follows that if any lands ~~are to be excluded from the notification~~ ~~under section 4~~, it will have to be done by a like notification ~~canceling or superseding~~ the earlier notification and by publishing that notification in the Official Gazette. Section 27 applies only to cases where forests have been declared as reserved forests under section 20.

In view of the aforesaid Supreme Court's decision, the said

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Note 53 no longer correctly expresses the law and necessary action for deletion of the same should, therefore be taken. Whenever areas notified under section 4 are to be excluded from Forest, it is necessary to ~~be~~ notify such exclusion.

By order and in the name of the Governor of Maharashtra



(V. L. Karky)

Under Secretary to the Government of  
Maharashtra, Revenue and Forests Department

To

All Commissioners of Divisions,

The Chief Conservator of Forests, Maharashtra State, Poona.

The Conservators of Forests Thana/Masik/Poona/Aurangabad/N  
Aravati/Chanda Circle.

The Collectors of Districts (except the Collector of Bombay

All Divisional Forest Officers.

All Sub-Divisional Forest Officers.

'W', 'X', 'Y' and 'Z' Branches of Revenue and Forests  
Department.