

Annexure XIC (1), (Vide Article - 11.06)

GOVERNMENT OF MAHARASHTRA
REVENUE AND FOREST DEPARTMENT
CIRCULAR No. TRS/1068/107575-B
Sachivalaya Bombay 32
Dated 18th December 1963.

CIRCULAR

The Revenue Officers and Forest Officer were seeking clarifications in respect of right to in Malki Lands and restrictions by cutting and felling of trees. The clarifications to certain points are as given below. The Collectors are requested to issue instructions to their subordinates for their guidance. The Chief Conservator of Forest, Maharashtra Sta, Poona is also requested to issue similar instructions to the subordinate officers under him for their guidance.

Point,

Clarification,

1. The Collector of Thane has issued a circular directing the Tahsildars to correct entries in the "other rights" column of the record of rights in accordance with the provisions of Section 25 of Maha. Land Revenue Code, 1966, so far as ~~these~~^{trees} standing in the occupied lands are concerned. According to these instructions, the entries, stating that the right to trees belongs to Govt. in respect of land granted on new tenure, are to be deleted there by conceding the right to trees to the occupant. Whether it would be correct to concede the rights to trees standing on new tenure lands to the occupants thereof.
- 1) Under Sec. 25 (1) of the Maha, Land Revenue code, right to all trees standing or growing on any occupied lands vests in the holder thereof. This Provision does not make any distinction between the new tenure land and the old tenure land. The provision thus applied to the land of both these tenures. The right to trees on new tenure land therefore, vests in the occupant thereof with effect from 15th August 1967. i.e. the date of coming into force of the Maha. Land Revenue code. In fact the orders have been issued by Govt. under Govt. circular No. Revenue & Forest Department No. UNF 1567/197965-R dated 29th November 1967, directing the

1) the collectors to issue instructions to the talathis for effecting necessary instructions to mutations under section 150 of Maha. Land Revenue code and see that the entries in the record of rights are got corrected in accordance with the existing rules regarding record of rights. The orders issued by the Collector of Thana are therefore in accordance with the Government instructions and the provisions of the Maha. Land Revenue code as regards record of rights in respect of lands occupied by tenants or Govt. leasees attention is invited to the clarification given at point No. 2 below.

2) According to section 25(1) of the Maha. Land Revenue code the right to all trees standing or growing on any occupied land vests in the holder thereof. The term 'holder' in this section is wide enough to include there in even tenants and Government leasees in addition to occupants. Whether the right to trees under section 25(1) would also vest in tenants and Govt. leasees?

2) The definition of the term "holder" should be given meaning as the context requires. Since the Land Revenue Code, concerns mainly with the relation of the Government and the occupant and since standing trees are part of the immovable property, the trees can not go to a limited holder like a tenant. The trees must go with the land to the occupant who has the largest interest in the land. In view of this legal position right to trees in the Bilki land shall not vest in the tenant but shall vest in the occupant only. So far as Government leasees are concerned, they are governed by the terms and conditions of the lease. They are also limited holders and in such would not be entitled to the trees standing in the land leased to them. Therefore, the record of rights in respect of lands granted on occupancy tenure only should be corrected and not the land occupied by Government leasees.

3) Restriction on felling or cutting of trees and issue of transit passes by the Forest Officers.

- 3) The restrictions are of two kinds
- a) These are under the rules made under section 25 of Maha., Land Revenue Code, 1966.
 - b) These under the Maha. Felling of Trees (Regulation) Act, 1964.

As regards (a) the restrictions apply to all species of trees, but only under circumstances mentioned in rules. If the circumstance mentioned in the rules, ~~in such circumstances mentioned in rules~~ to not prevail, no permission for cutting or felling a tree is required. If the permission is required but cutting is done with out permission after 15th August 1967 when the Maharashtra Land Revenue Code 1966 come into force penalty con

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be imposed, but there is no provision to forfeit the trees. Since the trees cannot be forfeited, there is no point in refusing transit passes. Action to levy penalty may be taken if a breach of the rules is noticed. Originally the rules did not provide for the penalty, but subsequently the rules have been amended so that penalty can be imposed vide the Maha. Land Revenue (Regulation of Right to Trees etc.) (Amendment) Rules, 1969, published under Government Notification, Revenue and Forests Department No. MSF/1567(b) dated 4th July 1968. The rules now prohibit felling of any tree standing within 30 meters of the extreme edge of the bank of any water course. No trees in any holding containing unculturable land or land in which economic cultivation of field crop is now possible shall be cut without the previous permission of the Collector, if the trees growth in that holding or part of the holding is less than 2% trees per acre. A person committing breach of the above condition shall in addition to any other consequences that would ensue from such breach, be punishable with such fine not exceeding one Thousand Rupees as the Collector may impose. In order to avoid any confusion and inconvenience, to the persons desiring to fell a tree and to have proper co-ordination among the Revenue & Forest Department staff, the Revenue Officer should forward copies of the orders about grant of permission to fell trees to the concerned Forest Officers.

b) The Maharashtra Felling of trees (Regulation) Act, 1964 extends to the whole of the state but excluding the Urban area (and the local area) The Urban area has been defined in section 2(g) of the said Act. The local area has been specified under the Government Notification Revenue and Forest Department, No. TRS/1060/44404-B dated 11th May 1966. The Felling of Trees Act applied only to 'Hirda' trees upto 19th January 1969 From 19th January 1968 " Teak Trees " (in addition to 'Hirda' trees) have also been brought under the purview of the felling of trees Act. These trees cannot be cut without the permission of Revenue Officer (Under Government Notification Revenue and Forest Department No. TRS-1068/105263-B dated 23rd July 1968, Govt. ~~राज्य सरकार~~ has empowered the Sub Divisional Officers, to grant or refuse permission to fell trees under the Felling of Trees Act.)

The trees cut without permission can be forfeited to Government. Action to be taken will depend upon kind of trees cut and when

1 they were cut and whether with or without permission. Transit passes may be withheld until the question of forfeiture is decided upon. In this connection it should also be noted that according to the existing provisions of the Felling of trees Act, if the Revenue Officer fails to inform the applicant of his decision within forty days from the date of acknowledgement of the application or from the date of receipt of the application, if the application is not acknowledged, the permission applied for shall be deemed to have been granted. It should be also noted that according to the provision to sub section (1B) of Section 2 of Felling of trees Act, permission to fell a tree is not to be refused, if the tree is dead, diseased, or wind fallen, or if it have ~~cut~~ silviculturally matured or if it constitutes an obstruction to efficient cultivation. According to sub rules (2) of rule 4 of the Maharashtra Felling of Trees (Regulation) Rules, 1967 the Revenue Officers may for ascertaining whether any tree is dead or diseased or windfallen or is silviculturally mature, consult any Forest Officer, not below the rank of a Range Forest Officer. The Revenue Officer should therefore consult the Forest Officer in order to prevent in discriminate felling of trees. In order to avoid any confusion and inconvenience to the persons desiring to fell a tree and to ~~has~~ have proper coordination among the local Revenue and Forest Department Staff, the Revenue Officer should forward copies of the orders about grant of permission to fell trees to the concerned Forest Officers. The Revenue Officer should also forward copies of the order about refusal of permission to fell trees also to the concerned Forest Officer.

By order in the name of Governor of Maharashtra.

(N.R.Desai.)
Under Secretary to Government.