

महाराष्ट्र शासन

क्रमांक :- संकिर्ण-६१५/म.व व.वि.१५८/२२/फ-१

महसूल व वन विभाग,
मंत्रालय, मुंबई-४०००३२.
ई-मेलosdf1wl@gmail.com
दिनांक :- १७.०६.२०१५.

प्रति,

प्रधान मुख्य वनसंरक्षक (वन्यजीव),
महाराष्ट्र राज्य, नागपूर.

विषय :- वनविभागातील / वनविकास मंडळातील विविध कार्यालय विश्रामगृह
निर्वचन केंद्र वनविद्यालय / महाविद्यालय इथे असलेल्या मृगचिन्हाबाबत ...

संदर्भ :- आपले क्रमांक : कक्ष-२३(४)/प्र.क्र.१९/३४५०/१४-१५, दि.२०.१२.२०१४
रोजीचे पत्र.

उपरोक्त विषयावरील आपल्या संदर्भीय पत्रान्वये आपण व्यक्त केलेल्या धारणेबाबत विधी व न्याय विभागाचे मत घेतले असता आपली धारणा योग्य असल्याचे त्यांनी अभिमत दिले आहे. सोबत अभिमताची छायांकित प्रत जोडली आहे. सबब, यापुढे शासन संपत्ती म्हणून वन विभागाच्या ताब्यात असलेल्या मृगयाचिन्हांचे वनविभाग कार्यकारी प्राधिकारी आणि नैसर्गिक देखरेख करणारे असल्याने, वनविभागाला त्यांच्या ताब्यातील मृगयाचिन्हांबाबत वन्यजीव (संरक्षण) अधिनियम १९७२ चे कम ४० अन्वये घोषित करून कलम ४२ अन्वये मालकी प्रमाणपत्र जारी करण्याची आवश्यकता नाही. सदर बाब ही आपल्यास्तरावरून सर्वसंबंधितांना कळवावी. तसेच केलेल्या कार्यवाहीबाबत शासनास अवगत करावे.

सहपत्र:- वरील प्रमाणे.

अरविंद आपटे
(अरविंद आपटे)
विशेष कार्य अधिकारी
महसूल व वन विभाग

INSURAN
a
17/06/15
Scan & mail

Law and Judiciary Department

The Revenue and Forest Department vide its U.O.R. dated 22.4.2015 has sought opinion of the Law and Judiciary Department on the point 'whether it is necessary to issue Certificate of Ownership under section 42 of the Wild Life Protection Act, 1972, for custody or possession of trophy or uncured trophy of any captive animal specified in Schedule I or Part II of the Schedule II of the said Act, by the rest house, transitive centres, school, colleges and other offices under the control of the Forest Department and Forest Development Board.

2. On perusal of the papers, it reveals that the Revenue and Forest Department has sought above opinion on the issue raised by the Head of Forest Force, Maharashtra State, Nagpur in his letter dated 20.12.2014. As per the said letter, the office of the Head of Forest Force is in process of setting up of protection program in respect of the trophy or uncured trophy of any captive animal specified in Schedule I or Part II of the Schedule II of the Wild Life Protection Act, 1972, under custody of the rest houses, transitive centres, school, colleges and other offices under the control of the Forest Department and Forest Development Board and therefore the said office is in process of preparing the inventory of such trophies. It is also mentioned in the said letter that such trophies are the Government property and therefore the forest offices are the custodian of such trophies. Taking custody of such trophies is the regular process duly followed by the forest offices. After taking possession/custody of such trophies, such trophies are either stored at storerooms or displayed in the rest house, transitive centres, school, colleges and other offices under the control of the Forest Department and Forest Development Board as a part of tradition.

As per view expressed by the Head of Forest Force the Forest Department is an executive authority as well as a natural custodian of such trophies or uncured trophies and acquiring possession of such trophies is a part of their regular working process, therefore, it is not necessary to issue certificate of ownership

under Section 42 of the Wild Life Protection Act, 1972, for custody or possession of such trophies by the rest houses, transitive centres, schools, colleges and other offices under the control of the Forest Department and Forest Development Board and hence, requested Revenue and Forest Department to confirm their view. Accordingly, the Revenue and Forest Department has sought opinion of this Department on said issue raised by the office of the Head of Forest Force, Nagpur.

3. In view of above it is submitted that Chapter V of the said Act, 1972 deals with 'Trade or Commerce in Wild Animals, Animal Articles and Trophies'. The relevant provisions under Sections 39, 40 and 42 are reproduced below ;

" Section 39 -: Wild animals, etc., to be Government property

(1) Every-

(a)

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(c)

(d)

shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal, or any vehicle, vessel, weapon, trap or tool used in such hunting shall be the property of the Central Government.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorized officer-

(a) acquire or keep in his possession, custody or control, or

- (b) transfer to any person, whether by way of gift, sale or otherwise, or
- (c) destroy or damage, such Government property.

Section 40 - : Declarations

(1) Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II, or any uncured trophy derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorized officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept.

(2) No person shall, after the commencement of this Act, acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in Schedule I or Part II of Schedule II or any uncured trophy or meat derived from such animal, or the salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, except with the previous permission in writing of the Chief Wild Life Warden or the authorized officer.

Section 42 -: Certificate of ownership

The Chief Wild Life Warden may, for the purposes of section 40, issue a certificate of ownership in such form, as may be prescribed, to any person who, in his opinion, is in lawful

possession of any wild animal or any animal article, trophy, uncured trophy and may, where possible, mark, in the prescribed manner, such animal article, trophy or uncured trophy for purposes of identification.

Provided that before issuing the certificate of ownership in respect of any captive animal, the Chief Wild Life Warden shall ensure that the applicant has adequate facilities for housing, maintenance and upkeep of the animal.”

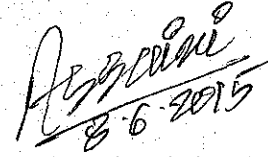
In view of above provisions, it is submitted that as per Section 39 of the said Act, every animal article, trophies or uncured trophies are the property of the Government. Under Section 40 of the said Act, 1972, every person having the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II, or any uncured trophy derived from such animal shall make declaration to the Chief Wild Life Warden or any authorized officer to that effect. The Chief Wild Life Warden in exercise of powers given to him under Section 42 of the said Act, may issue a certificate of ownership to any person who, in his opinion is in lawful possession of any wild animal or any animal article, trophy, uncured trophy.

The aforementioned provisions signifies that the declaration under Section 40 to be made by a Person and certificate of ownership to be issued to a person. The term “Person” as defined under section 2(24) of the said Act, which specifically includes ‘Firm’. This shows that the term ‘Person’ includes Human Being and Firm; it vividly appears that the Government has impliedly excluded from the definition of 'a person'. Also, there is no specific provision under the said Act or Maharashtra Wild Life Protection Rules, 2014, regarding declaration made by the forest offices for custody of such trophies or for issuing certificate of ownership in the name of the forest offices having such custody. Moreover, acquiring custody of such trophies and keeping them at rest house, colleges and other subordinate offices of Forest Department and Forest Development Board is

a part of regular process followed by these forest offices. Thus, it is clear that the Forest Department and Forest Development Board are executive authorities as well as a natural custodian of such trophies or uncured trophies.

Perusal of section 40 r/w. section 42 connotes that there is no need to issue ownership certificate to the rest house, transitive centers etc. under the Control of Forest Department. As such the view expressed by the Head of Forest force, M.S.Nagpur at 'A' appears to be correct.

P.S. and R.L.A. (Shri. Sayeed) has seen the papers and approved the above view.



(Ashwini Saini)
Under Secretary (Law)

U.O.R. to Revenue and Forest Department/ फ-१

No. 225/ /Civil/ Confl./ 2015/A' Br. , dated 3rd June, 2015