

Government of Himachal Pradesh
Department of Forests.

No. FFE-B-A(3)-3/2022

Dated Shimla-2, the

18-04-2022

NOTIFICATION

A meeting was held on 24th March, 2022 at 11:30 AM in CS Committee Room under the Chairmanship of Worthy Chief Secretary, H.P. in which it was decided that "The Revenue Department will prepare a detailed proposal as to the applicability of the Chapter IV of Indian Forest Act, 1927 to the UPF/wasteland vis-à-vis 1952 Notification of the Forest Department. Thereafter same will be submitted to the Forest Department for its comments and taking the proposal/case to the Hon'ble CMM, if needed. Finally if approved in the Hon'ble CMM, matter may be taken up with the MoEF&CC for its assent.

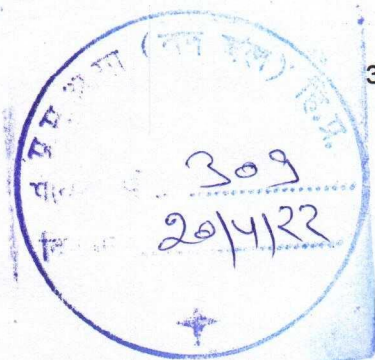
AND WHEREAS, Principal Secretary-cum-FC(Revenue) to the Government of Himachal Pradesh vide his letter No.Rev-D(G)8-9/2015 dated 31-03-2022 (Copy enclosed) has requested for clarification from MoEF&CC, Govt. of India on following points:-

1. Whether notification of 25th Feb, 1952 is still applicable in areas where survey/settlement has been completed and a fresh notification specifying "Protected Forests" has been issued?
 2. If above is an affirmative, then given the circumstances mentioned in the preceding paras, MoEF&CC may be requested to accord permission so that Government of Himachal Pradesh may issue a notification (addendum) declaring that notification of 25th Feb, 1952 will not be applicable in those areas where Forest survey/settlement has been completed, Protected Forests have been identified/demarcated and a fresh notification under section 29(1) of Indian Forest Act, 1927 has been issued.
 3. Further, the MoEF&CC may be requested that Government of Himachal Pradesh may also be allowed to issue notification (addendum) in all such areas as mentioned in point 2 above that_
- "All the other Government lands (other than lands declared as protected forests) in surveyed (settled) areas will be considered out of purview of Chapter IV of Indian Forest Act, 1927".

Therefore, to examine the proposal of Revenue Department thoroughly, the following Committee of Forest Department is constituted:-

1. Sh. Rajeev Kumar IFS Pr. Chief Conservator of Forest (WL) - Chairman
2. Sh. Sushil Kapta IFS Add. Chief Conservator of Forest (Mgt.) - Member
3. Sh. Anil Joshi IFS Chief Conservator of Forest Kullu - Member
4. Sh. Umesh Sharma District Attorney- Member Secretary
5. Sh. P.K. Taak Joint Secretary(Forests)- Member

Mr. Hemant
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The above committee will submit its report/comments as early as possible.

By Order

Addl. Chief Secretary (Forests) to the
Government of Himachal Pradesh.

Dated Shimla-2, the

18-04-2022

Endst. No. As above

Copy forwarded for information and necessary action to the following:-

1. The Principal Chief Conservator of Forests (HoFF), H.P. Shimla 171001.
2. The Pr. Chief Conservator of Forests (Wildlife), H.P. Shimla 171001.
3. The CCF (IT), O/o Pr. CCF (HoFF), H.P. with a request to upload the above Notification on the departmental website.
4. Add. Chief Conservator of Forest (Mgt.), Himachal Pradesh Shimla 171001.
5. Chief Conservator of Forest Kullu Himachal Pradesh
6. District Attorney office of Pr. Chief Conservator of Forest (HoFF) H.P Shimla-171001
7. Joint Secretary (Forest) to the Government of Himachal Pradesh.
8. The Private Secretary to the Forest Minister, Himachal Pradesh
9. Guard file.

(Jeewan S. Negi)

Dy. Secretary (Forests) to the
Government of Himachal Pradesh

Rev-D(G)8-9/2015
Government of Himachal Pradesh
Revenue Department

From

5555.5030
05-4-2022
The Principal Secretary-cum-FC (Revenue) to the
Government of Himachal Pradesh.

To

~~The Additional Chief Secretary (Forest) to the
Government of Himachal Pradesh.~~

Dated: Shimla-2, the 31st March, 2022

Subject: - Regarding proposal to Government of India for clarification
on 1952 notification.

Madam,

24/04/22
DS(FH)
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In reference to the meeting held under the chairmanship of
worthy Chief Secretary, H.P. regarding wasteland issue, I am directed to convey
that matter regarding notification of 25th Feb., 1952 and its applicability till date
in whole Himachal Pradesh was examined in this Department. After detailed
examination/consideration of the matter, it is observed that the notification
issued by Forest Department on 25th February, 1952 appears to be an
interim/provisional notification under section 29(3) of Indian Forest Act, 1927.
This is because the process of rights settlement, as required under section 29(3),
was not completed before this notification. Further, after the year 1952, forest
settlement process has been completed in many parts of the state (atleast once)
and on many places, fresh notifications under section 29(1) declaring "Protected
Forests" have been issued.

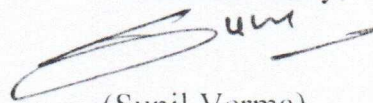
However, even after settlement process and issuance of fresh
notification under section 29(1), the land falling outside identified/notified
"Protected Forests" is still considered forest land due to applicability of 1952

notification. The Revenue Department opines that once fresh notification declaring "Protected Forests" is issued for any area, then the 1952 notification becomes infructuous/redundant for that area and cannot be applied on other Government lands situated in that area.

Further, as it is a Forest related issue and it would be difficult to take any final view without taking concurrence/permission of Government of India; thus, the matter is required to be raised with Government of India, for which a detailed proposal has been prepared and which is being enclosed for your kind consideration please.

In view of given proposal, it is requested that matter may be considered in your Department and further may be raised with MoEF&CC, Govt. regarding permission/clarification on the points as mentioned therein.

Yours faithfully,



(Sunil Verma)

Joint Secretary (Revenue) to the
Government of Himachal Pradesh
Phone No. 0177-2626450

Endst. No. As above

Dated: Shimla-2, the / March, 2022

44 Copy is forwarded to Special Private Secretary to Chief Secretary, HP Shimla for information of worthy Chief Secretary.

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Joint Secretary (Revenue) to the
Govt. of Himachal Pradesh.

1952 Notification: A Background

The Government of Himachal Pradesh has been facing a peculiar situation since long as almost all Government lands of Himachal Pradesh are considered as Forest lands (Protected forests) by virtue of a notification issued by the Himachal Pradesh Government on 25th February, 1952 (**Annexure-A**). This notification has been issued under the provisions of Indian Forest Act, 1927 (Chapter-IV). On the face of it, this notification appears vague as no boundaries or specific land details, khasra numbers etc have been mentioned in this notification. Rather, this blanket notification covers all forest land and wasteland which is the property of the Government or which is in proprietorship of the Government and declares such lands as "Protected Forest". It must further be added that neither Forest nor wasteland is defined in Indian Forest Act, 1927.

The relevant section 29 (under chapter IV) of Indian Forest Act is being reproduced as below: -

CHAPTER IV OF PROTECTED FORESTS

29. Protected forests. – (1) *The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which, is not included in a reserved forest but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.*

(2) *The forest-land and waste-lands comprised in any such notification shall be called a "protected forest".*

(3) *No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or*

waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

As per abovementioned section 29 of Indian Forest Act, 1927, the Government is empowered to declare any forest land or waste land which is the property of the Government or over which Government has proprietorship rights as Protected Forests. However, as per section 29(3), the nature and rights of the Government and of Private persons in or over the forest-land or waste land are required to be recorded through a survey or settlement.

Thus, it clearly appears that 1952 notification was an interim/provisional notification as process of rights settlement was not completed before issuing this notification and moreover specific land details, boundaries etc are not given in this notification.

Forest Settlement Rules, 1965

In this context, it would be pertinent to mention that H.P. Government has framed H.P. Forest Settlement rules, 1965 which deals with settlement of Forests (**Annexure B**). These rules have force of Law as they have been issued under section 76 of Indian Forest Act, 1927. Rule 20 of these rules deals with protected forests. It specifically prescribes that area near Abadie will not be kept

as protected forests and sufficient area, are to be left out for legitimate use of right holders (i.e. local people).

The relevant rule 20 is being reproduced as under: -

[20] (i) Usually all Government Forest lands and waste lands, the protection of which is necessary, will be continued as Protected Forests.

(ii) The Conservator of Forests will send a proposal with sketches to the Collector Forests with regard to areas which are required declared as Protected Forests. The areas under near cultivated lands and ABADIS may not be proposed to be declared as Protected Forests sufficient areas are to be left out for legitimate use of the right holders. As soon as the proposals are received, the Collector Forest shall depute Forest Settlement Staff under him to measure and demarcate the proposed area and the responsible Forest Officer by fixing boundary pegs or stone cairns.

As indicated in above rule, whenever forest settlement is carried out in an area, the Conservator of Forests sends maps of the area (which is required to be declared as Protected Forests) to Forest Settlement Officer. The Forest settlement officer (with the assistance of settlement staff) then surveys the area, conducts process of settlement of rights and demarcates the Protected Forests.

A Forest Settlement case file

In this regard, a case file of Forest Settlement of revenue village **Machhivra** (under Range & Division Kotgarh & Tehsil Theog, District Shimla) is enclosed for perusal (**Annexure-C**). This file contains documents which depicts the following:-

1. Sketch map of area required to be surveyed/demarcated as Protected Forests (as received from the Forests officials).

2. Notice by Forest settlement staff, statements of Panchayat Representatives, Local people etc. & statements/report of Forest and Revenue officials.
3. Preliminary & Final Order of Forests Settlement Officer/Collector (Forest Settlement).
4. Documents depicting the process of Forest Settlement which includes order sheets, proclamation, statements etc.
5. Intimation by Forest Settlement Officer to the Additional Chief Conservator of Forest regarding completion of Settlement process. This communication also contains the draft notification under section 29(1) of Indian Forest Act required to be published in Official gazette.
6. Final notification published in the gazette which depicts the villages and details of land (along with boundaries) to be declared as "Protected Forests". **(Annexure-D)**
7. The file also contains the details of all khasra numbers of Government ownership situated in village Machhivra. The Protected Forests has been proposed out of these khasra numbers (highlighted khasra numbers). The rest of the Khasra numbers of Government ownership have been kept out of "Protected Forests".

The perusal of the above case file clearly depicts that a detailed settlement process is followed by Forest Settlement Officer and his staff wherein proclamations are issued, physical demarcation is carried out, objections of the local Public are invited/heard & views of officials are also considered. After this whole process, a detailed speaking order is passed by Forest Settlement Officer regarding declaration of Protected Forests. Then, this order along with the specifications of area to be declared as Protected Forests is sent to Secretary (Forests) through Forest officials for notification in the official gazette.

In this regard, the final notification dated 29th January, 2021 of Forest department may also be perused (**Annexure D at Page 34 of above case file**). This notification has been issued under the provisions of section 29(1) of Indian Forest Act, that too after the detailed settlement process as mentioned hereinabove and it specifically contains the land measurements, khasra numbers, boundaries details etc of "Protected Forests". When compared with the 1952 notification given at **Annexure-A**, this notification appears quite specific and clearly depicts the "Protected Forests". **It is re-emphasized that this notification is issued after Forest Settlement officer follows the due procedure i.e. conducts survey on the field, settles rights of the people and demarcates the "Protected Forests"**.

Non-Applicability of 1952 Notification

Revenue Department opines that once the revised notification depicting the "Protected Forests" is issued, the notification issued on 25th Feb., 1952 becomes infructuous/inoperative in that area. **This is because two notifications issued under same provision of Law [section 29(1)] & addressing a common issue (protected forests) cannot remain in operation parallelly.**

However, the main concern is that even after survey/settlement by Forest Settlement Officer and fresh notification of Protected Forests by Secretary (Forests), the Government land situated outside notified "Protected Forests" is still considered as Forest Land due to applicability of 1952 Notification. **This is clearly an anomaly as after issuance of fresh notification under same provision of law [section 29(1)], that too after following due procedure, the old notification (which clearly was a provisional notification) cannot be considered to be in operation.**

Important Aspects

Due to this interpretation, huge difficulty is being felt in carrying out development projects by the state. Works like construction of schools, hospitals, roads etc which are vital for the people and development of state are suffering delays, cost escalations and procedural problems due to application of Forest Conservation Act on all Government lands.

Further, attention is also invited towards the aspect that although Forest Settlement has been conducted in many areas and fresh notifications under section 29(1) have been issued, but for whole of Himachal Pradesh, forest settlement process may take many more years or even decades to complete. Thus, it would not be appropriate that the State Government waits for settlement process to be completed in whole State. Rather, it is suggested that the State Government should bring the above into the attention of Central Government and should request to clarify the position in this regard.

Points for clarification

Once forest settlement process as given in preceding paras is completed in any village (& surrounding area) and "Protected Forests" are duly identified and notified, there remains some other Government lands in & around the village (government lands other than notified protected forests – these have also been separately depicted in the forest settlement case file of village Machhivra as mentioned above). As indicated in rule 20 of Forest Settlement rules, 1965, this land seems to be the land which is required to be left for legitimate use of right holders (local people). However, such government lands are also considered protected forests as it is assumed that 1952 notification is still applicable and all Government lands are within its purview.

Thus, in view of above, following needs to be clarified from MoEF&CC, Govt of India: -

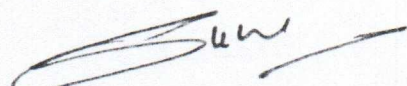
1. Whether notification of 25th Feb, 1952 is still applicable in areas where survey/settlement has been completed and a fresh notification specifying "Protected Forests" has been issued?
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3. Further, the MoEF&CC may be requested that Government of Himachal Pradesh may also be allowed to issue a notification(addendum) in all such areas as mentioned in point 2 above that -

"All the other Government lands (other than lands declared as protected forests) in surveyed (settled) areas will be considered out of purview of Chapter IV of Indian Forest Act, 1927".

(For the above, Government of Himachal Pradesh needs to emphasize that the forestlands and wastelands which are required to be kept as "Protected Forests" are duly identified/notified during settlement process and the rest of the Government lands are required for the legitimate use of people. Thus, the same is required to be brought out of the purview of Chapter IV of Indian Forest Act.)

Accordingly, proposal is submitted for consideration and further necessary action please.

Encl.:- As Above


Joint Secretary (Revenue) to the
Govt. of Himachal Pradesh.