



The Nagaland Jhumland Act, 1970

Act 3 of 1974

Keyword(s):

Cattle, Community, Forest, Forest Offence, Forest Produce, Jhumland, River, Timber, Tree, Village

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THE NAGALAND JHUMLAND ACT, 1970

(NAGALAND ACT. NO. 3 OF 1974)

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An

Act.

TO AMEND THE LAW RELATING TO JHUMLAND AND MATTERS CONNECTED THERETO (OR INCIDENTAL THERETO)

Whereas it is expedient to amend the law relating to jhumland in order to safeguard and regulate the rights to jhumland in Nagaland and matters connected thereto or incidental thereto, it is hereby enacted in the Twentyfirst year of the Republic of India as follows :

Chapter I

PRELIMINARY

1. Title, extent and commencement

- (1) This Act may be called the Nagaland jhumland Act, 1970.
- (2) It extends to the whole of Nagaland, provided that the State government may, by notification in the official Gazette, exempt any place from the operation of the whole or part of this Act.
- (3) It shall come into force on such day as the State Government may, by notification in the official Gazette appoint and different dates may be appointed for different areas of the State and for different provisions of this Act.

2. Definitions

In this Act unless there is anything repugnant in the subject or context :

- (1) "cattle" includes elephant, buffalo, horse, mare gelding pony, colt, filly, mule, ass, pig, mithun, sheep, lamb, goats and kid.

- (2) "community" includes the resident of the particular village as a whole, the clan, sub-clan and family.
- (3) "forest" means any land except the land which has been put to terrace for the purpose of permanent or semi-permanent cultivation or any land attached or appurtenant to a dwelling house and used for the purpose of permanent cultivation.
- (4) "forest offence" means any offense relating to forest produce punishable under this Act, or any rule made thereunder.
- (5) "Forest officer" means any person appointed by name or holding an office by or under the orders of the State Government as Chief Conservator or conservator or Deputy Conservator or Assistant Conservator of Forests, Forest Ranger, Deputy Ranger,, Forester, Forest Guard, or to discharge any function of Forest officer under this Act or any rules there under.
- (6) "forest produce" includes the following whether found in or brought from a Forest or not, that is to say :—
- (i) timber, natural varnish, bark, lac, myrabolams, horns of rhinoceros and elephant tusks, and
 - (ii) trees and leaves, and fruits and all other parts or produce not hereinbefore mentioned of trees.
 - (iii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants.
 - (iv) rock, sand and minerals, stones, boulders, limestone, laterite, mineral oils and all produce of mines and quarries.
- (7) "Jhumland" means such land which any member or members of a village or a community have a customary right to cultivate by means of shifting cultivation or to utilise by clearing jungle or for grazing livestock and includes any beds of rivers provided that such village or community is in a permanent location, but it does not include :—
- (i) any land which has been terraced or may be terraced for the purpose of permanent or semi-permanent cultivation whether by means of irrigation or not, or
 - (ii) any land attached to or appurtenant to a dwelling house and used for the purpose of permanent cultivation, or
 - (iii) any land which is under permanent cultivation.

- (8) "Magistrate" means a Magistrate of the first or second class and includes a Magistrate of the third class when he is specially empowered by the State Government to try offences under this Act.
- (9) "River" includes stream, canal, creek and other channel natural or artificial.
- (10) "Timber" includes trees when they have fallen, or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not.
- (11) "Tree" includes palm, bamboo, stump, brush-wood and cane-ment location and recognised or approved by the Government.
- (12) "Village" means a group of houses established as a permanent provides that it always remains within a specific area although part or the whole of such village may, subject to the approval of the Government, migrate from time to time to different localities with the area.

Chapter II

JHUMLAND

3. Accrual of customary rights

- (1) A customary right to Jhumland shall be deemed to be established in favour of a village, or community when such village or community has enjoyed the right according to the existing local custom to cultivate or utilise such Jhumland for not less than thirty years.
- (2) As regards any land to which the customary rights have not been established according to sub-section (1) the Deputy Commissioner or the Additional Deputy Commissioner will reserve the right either to admit the customary right on the land or in consultation with the Area Council concerned suggest formation of reserve forests according to rules in this regard, framed under the Nagaland Forest Act :

Provided the Deputy Commissioner or the Additional Deputy Commissioner shall not exercise his discretion unless a public notice is issued in the Nagaland Gazette giving two months time to the village concerned.

Note : A customary right to Jhumland shall be deemed to be established in favour of an individual cultivator :

- (a) if he has inherited the Jhumland in accordance with local custom; or
- (b) if he has purchased the land at any date before the commencement of this Act, and such purchase was not contrary to local custom; or
- (c) if being a resident of a permanent village established with the prior approval of the government, he has brought the land under cultivation and the land had not been cultivated at any time within thirty years preceeding his bringing the same into cultivation.

4. Transfer of Jhumland

- (1) No Jhumland to which a community has a customary right shall be transferred by sale or mortgage to any community or to any individual except on the authority of the Deputy Commissioner given on the recommendation of the Village and Area Council concerned.
- (2) No Jhumland to which an individual belonging to a village or community has a customary right shall be transferred by sale or mortgage to any other village or community or to a member of another village or community except on the authority of the Deputy Commissioner given on the recommendation of the Village and Area Council concerned. Notwithstanding anything herein contained nothing shall restrict the right of an individual to transfer a Jhumland to another member of the same village or community of that village or a community as a whole.

5. Leases

- (1) No Jhumland be leased by any one having a customary right thereto unless :
 - (i) The Deputy Commissioner/Additional Deputy Commissioner has approved on the recommendation of the Village and Area Council concerned of such lease on the ground that such lease benefits the Village or the Community; or
 - (ii) the lessor is by reasons of age or infirmity, unable to cultivate or utilise it and the lessee is a member of the same village or community as the lessor.
- (2) A lease under clause (ii) above shall be determined on the death of the lessor on the termination of the infirmity;

Provided the lessee shall be entitled to tend and reap any crop standing on the leased land on the date of termination of lease.

6. Improper transfer and leases

Jhumland which is transferred by sale or lease otherwise than in accordance with the provisions of this Act shall be deemed to have been forfeited and subject to any customary right of inheritance shall vest in the Village Council to which any member or members of the Village or community to which the transferer or lessor belongs.

7. Any member of the village or the community to which the person or persons having a customary right to any Jhumland belong, may establish terraced cultivation within such Jhumland.
8. (1) All customary rights in Jhumland as are now in existence shall continue subject to the provisions of this Act.
(2) Such rights shall not in any way debar the Government from levying such rents, taxes or any other dues as may be notified in the official Gazette.

9. Acquisition for public purpose

The government may acquire any Jhumland required for public purpose. Under the Provisions of this Act, an opportunity shall be given to those having rights in the land to show cause against, such acquisition and reasonable compensation shall be paid for all land acquired under this section.

10. Ejectment

The Deputy Commissioner may at any time eject any person who has squatted without authority on any Jhumland.

11. Prevention of erosion and protection of forests

- (1) The Government may acquire, on payment of compensation, under section 9 of this Act any or part of jhumland, as it thinks, fit should be declared as protected forests, where it is required for preservation of water supply, or it appears that undue erosion or diminution of the supply of water required or likely to be required for irrigation is resulting or is likely to result from the excessive cutting of trees from the Jhumland.
- (2) Where it appears that undue erosion or diminution of the supply of water required or likely to be required for irrigation

is resulting or is likely to result from the cultivation of any jhumland the Deputy Commissioner may direct by general or special order that the jhumland shall not be cultivated by any person for a period not exceeding ten years.

- (3) For the purpose of protecting a road or bridle path the Deputy Commissioner may direct that any land lying within fifty metres of the road shall not be cultivated and may further direct that trees upon such land shall not be felled or cut.
 - (4) No order shall be made under sub-section (2) or sub-section (3) unless a reasonable opportunity has been given to those having customary rights to the Jhumland to prefer objections against such order and unless all objections so preferred have been considered and rejected as unreasonable or untenable.
12. The State Government may make such general or special orders, it thinks fit to prevent risk of damage by fire to Jhumland.

Chapter III

PENALTIES AND PROCEDURE

13. Penalty for disobedience or violation of orders or direction

Any person who intentionally disobeys or violates any of order or direction passed by competent authority under any of the provisions of this Act shall on conviction for such offence, be punished by simple imprisonment not exceeding one month or with a fine not exceeding Rs. 500/- (Rupees Five Hundred) or with both.

14. Seizure of property liable to confiscation

- (1) When there is reason to believe that a forest offence has been committed in respect of any forest any produce, such produce may be seized by any Forest Officer or Police Officer.
- (2) Every Officer seizing any property under this section shall place on such property a mark indicating that the same has been seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence for which the seizure has been made.

15. Procedure on receipt by Magistrate of report for seizure

Upon receipt of any such information about the Commission of a forest offence, the Magistrate shall take such measure as may

be necessary for the trial of the accused and the disposal of the property according to law.

16. Forest Product when liable to confiscation

When any person is convicted of a forest offence, produce in respect of which such offence has been committed shall be liable, by order of the convicting Court to confiscation. Such confiscation may be in addition to any other punishment prescribed for such offence.

17. Disposal of seized articles on conclusion of trial

When the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed, shall, if it has been confiscated be taken possession of by a Forest Officer specially empowered in this behalf and shall be disposed of in such manner as the Court may order.

18. Procedure when offender is not known or cannot be found

When the offender is not known or cannot be found the Magistrate enquiring into the offence, if he finds that an offence has been committed may on application in this behalf, order the property in respect of which the offence has been committed may on application in this behalf, order the property in respect of which the offence has been committed to be confiscated and taken possession of by a Forest Officer, specially empowered in this behalf or to be made over to such Forest Officer or other person as the Magistrate may consider entitled to the same.

- (1) Provided that no such order shall be till the expiration of one month from the date of the seizure of such property, or without hearing the person claiming right thereto.
- (2) The Magistrate shall, on application, either cause a notice under sub-section (1) to be served upon any person whom he has reason to believe to be interested in the property seized, or publish such notice in any way which he may deem fit.

19. Procedure as to perishable property

The Magistrate may notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 14 and subject to speedy and natural decay, and may deal with the proceeds as he might have dealt with such property if it had not been sold.

20. Any person claiming to be interested in property seized under section 14 may within one month from the date of any order passed by a Magistrate under section 16, 17 or section 18 present any appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appellable and the order passed on such appeal shall be final.

21. Vesting to confiscated property

When an order for the confiscation of any property being passed under section 16 or section 18 and the period limited by section 20 for presenting an appeal from such order has elapsed, and no such appeal being present or when no such an appeal being presented, the Appellate Court confirmed such order in respect of the whole or a portion of such property or portion, as the case may be shall vest in the State Government free from all encumbrances.

22. Power to release seized property

Nothing hereinbefore contained, shall be deemed to prevent any Forest Officer from directing at any time, the immediate release of any property seized under section 14 which is not property of the Government and the withdrawal of any charge made in respect of such property.

23. Punishment for wrongful seizure

(1) Any Forest Officer or Police Officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act, shall be punished with imprisonment for a term which may extend to six months, or with a fine which may extend to five hundred rupees, or with both.

(2) Any fine so imposed, or any portion thereof shall, if the convicting Court so directs be given as compensation to the person aggrieved by such seizure.

24. Penalty for counterfeiting or defacing marks on trees

Whoever, with intent to cause damage or injury to the Public or to any person or to cause wrongful as defined in the Indian Penal Code.

(1) Knowingly counterfeits upon any tree or timber a mark used by Forest Officers to indicate that such tree or timber is the property of the Government or of some person or that it may be lawfully felled or removed by some person or

- (2) Unlawfully affixes to any tree or timber a mark used by Forest Officers, or
- (3) Alters, defaces or obliterates any such mark placed on any tree or timber by or under the authority of a Forest Officer, or
- (4) Alters, moves, destroys or defaces any boundary marks of any forest or waste land to which any provisions of this Act apply, shall be punished with imprisonment for a term which may extend to two years, or with fine or with both.

25. Power to arrest without warrant

- (1) Any Forest Officer or Police Officer may, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of having been concerned in any forest offence punishable with imprisonment for one month or upwards, if such person refuses to give his name and residence or gives a name or residence believed to be false or if there is reason to believe that he will abscond.
- (2) Every Officer making an arrest under this section shall without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the Officer incharge of the nearest Police Station.
- (3) Any Forest Officer or Police Officer who vexatiously or maliciously arrests any person on the pretence that he is suspected of having been concerned in any forest offence or otherwise as provided by sub-section (1) of this section shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500/- (Rupees five hundred) or with both.
- (4) No Forest Officer or Police Officer shall detain in custody a person arrested under sub-section (1) or this Section for a longer period than under the circumstances of the case is reasonable and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court having jurisdiction in the case.

26. Power to compound offences

- (1) The State Government may, by notification in the Official Gazette, empower a Forest Officer by name or as holding an office :—

- (i) to accept from any person who had committed any forest offence other than an offence specified in section 23 or section 24 a sum of money by way of compensation for the offences which such person had committed and
 - (ii) when any property has been seized as liable to confiscation to release the same on payment of the value thereof as estimated by such Officer.
- (2) On payment of such sum of money or such value or both as the case may be, to such Officer the property if any, seized shall be released and no further proceedings shall be taken against such person or property.
 - (3) No Forest Officer shall be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Forest Ranger and the sum of money accepted as compensation under sub-section (1), clause (i), shall not exceed the sum of rupees one hundred in case the compounding is done by a Forest Ranger.

27. Compensation for damage caused by Commission of offence

- (1) When any person is convicted of felling, cutting, girding, marking, looping or tapping trees or of injuring them by fire or otherwise, in contravention of this Act or of any rule there-under, the convicting Court may, in addition to any other punishment which it may award, order the person to pay to the State Government such compensation not exceeding one hundred rupees for each tree with respect of which the offence was committed as it may deem just.
- (2) If the person convicted of the offence committed is the agent or servant of another person, the Convicting Court may, if, after hearing that other person, it is satisfied that the Commission of the offence was a consequence of his instigation, or of any neglect or default on his part, order him instead of the person who committed the offence to pay the compensation referred to in sub-section (1).
- (3) Appeal from any order under sub-section (1) or sub-section (2) shall lie to the Court to which orders made by the convicting Court are ordinarily appealable, and the order passed on such appeal shall be final.

28. Forfeiture of lease etc.

When the holder of any lease, license or contract whatsoever granted or continued by or on behalf of the Government for any of the purposes of this Act commits an offence against this Act or any rule thereunder or when any such is committed by any agent or servant of the holder of any such lease, license or contract, and the State Government is satisfied that the Commission of the offence was a sequence of the instigation of such holder or of any neglect or default on his part, the State Government may order in writing, declare the lease, license or contract to be forfeited in whole or in part with effect from a date to be specified in the order not being prior to the date of the commission of the offence.

Chapter IV

MISCELLANEOUS

29. Power to make-Rules

- (1) The State Government by notification in the official Gazette may make rules consistent with this Act, to carry out the purpose of this Act.
- (2) In particular and without prejudice to general legislation and foregoing powers such rules may provide for the following matters, namely :—
 - (i) to regulate collection and removal of forest produce from Jhumland,
 - (ii) to regulate or prohibit sawing and conversion of timbers,
 - (iii) to regulate or prohibit quarrying of stones,
 - (iv) to regulate the transport of forest produce,
 - (v) to regulate hunting, shooting and fishing,
 - (vi) to regulate the rewards to be paid to Officers and informers,
 - (vii) to declare the powers or duties conferred or imposed by or under this Act on Forest Officers and the manner in which they are to be exercised or performed,
 - (viii) to regulate or prohibit collection of sand,
 - (ix) to empower Forest Officer to hold inquiry into Forest offence and course of such inquiry to receive and record

evidence and to direct the release of property or withdrawal of charges,

- (x) prescribe and authorise Forest Officers to realise fees, royalty and other payment for Forest produce and the manner in which such fees, royalty and other payment should be levied and realised.
- (3) Every Rule made under this section shall be laid, as soon as may be after it is made, before the Nagaland Legislative Assembly while it is in session for a total period of seven days, which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately after following, the Nagaland Legislative Assembly agree in making any modification in the Rules or the Nagaland Legislative Assembly agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, however, any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule.

30. Recovery of money due to Government

All money, other than fines, payable to the Government under this Act, or under any rule made thereunder or on account of the price of any forest produce, or of expenses incurred in the execution of this Act in respect of any forest produce, may, if not paid when due, be recovered under the Bengal Public Demands Recovery Act, 1913 (Bengal Act 3 of 1913) or under any other law for the time being in force.

31. Lien on Forest Produce for such money

- (1) When any such money is payable for, or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such produce and such produce, may be taken possession of by a Forest Officer specially empowered in this behalf and may be retained by him until such amount has been paid.
- (2) If such amount is not paid when due, such Forest Officer may sell such produce by public auction, and the proceeds of the same shall be applied first in discharging such amount.
- (3)

The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to the Government.

32. Protection of Action taken in good faith

- (1) The Government shall not be responsible for any loss or damage which may occur in respect of any forest produce while at a Revenue Station established under a rule made section 29, or while detained elsewhere for the purposes of this Act. and no Forest Officer shall be responsible for any such loss or damage unless he shall have caused the same negligently, maliciously or fraudulently.
- (2) No suit or other legal proceedings shall lie against Government or any Officer in respect of anything which is done in good faith or intended to be done under this Act.

33. Recovery of Penalties due under Bond

When any person, in compliance with any rule under this Act binds himself by any instrument to perform any duty or Act., or covenants by any instrument that he or that he and his servant and agents, will abstain from any act, the whole sum mentioned in such instruments as the amount to be paid in case of a breach of conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act. 1872 be recovered from him in case of such breach under the Bengal Demands Recovery Act. 1913 (Bengal Act. 3 of 1913) or any other law for the time being in force.

34. Power to remove difficulties

- (1) If difficulty or doubt arises in giving effect to the provisions of this Act the State Government may by order published in the Gazette, make such provision, not inconsistent with the purpose of this Act as appears to it to be necessary or expedient for the removal of the difficulty or doubt; and the Order of the State Government in such cases shall be final.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before the Nagaland Legislative Assembly while it is in session for a total period of seven days, which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following the Nagaland Legislative Assembly agree in making any modifica-

tion in the order or the Nagaland legislative Assembly agree that the Order should not be made, the order shall thereafter have effect only in such modified form or be of not effect as the case may be; however any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

35. Repeal and saving

The Naga Hills Jhumland Regulation 1946 (Regulation III of 1946) and Balipara/Tirap/Sadia, Frontier Tract. Regulation, 1946 Regulation III, IV and V of 1947 in so far as they are applicable to Nagaland shall stand repealed provided that such repeal shall not effect :—

- (1) the previous operation of the said Regulation or anything duly done or suffered thereunder, or
- (2) any rights, privilege, obligation or liability acquired, accrued or incurred under the said Regulation, or
- (3) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Regulation, or
- (4) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture of punishment as aforesaid;

Provided further that anything done of any action taken including any appointment or delegation made, rule, notification, instruction, or direction made, certificate or permission granted under the Regulation hereby repealed shall be deemed to have been done or taken under the corresponding provision of this Act and shall continue to be in force accordingly unless and until superseded by anything done or by action taken under this Act.