

CHAPTER - III

FOREST DEPARTMENT

Performance Audit on Implementation of Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Act, 2003

3.1 Introduction

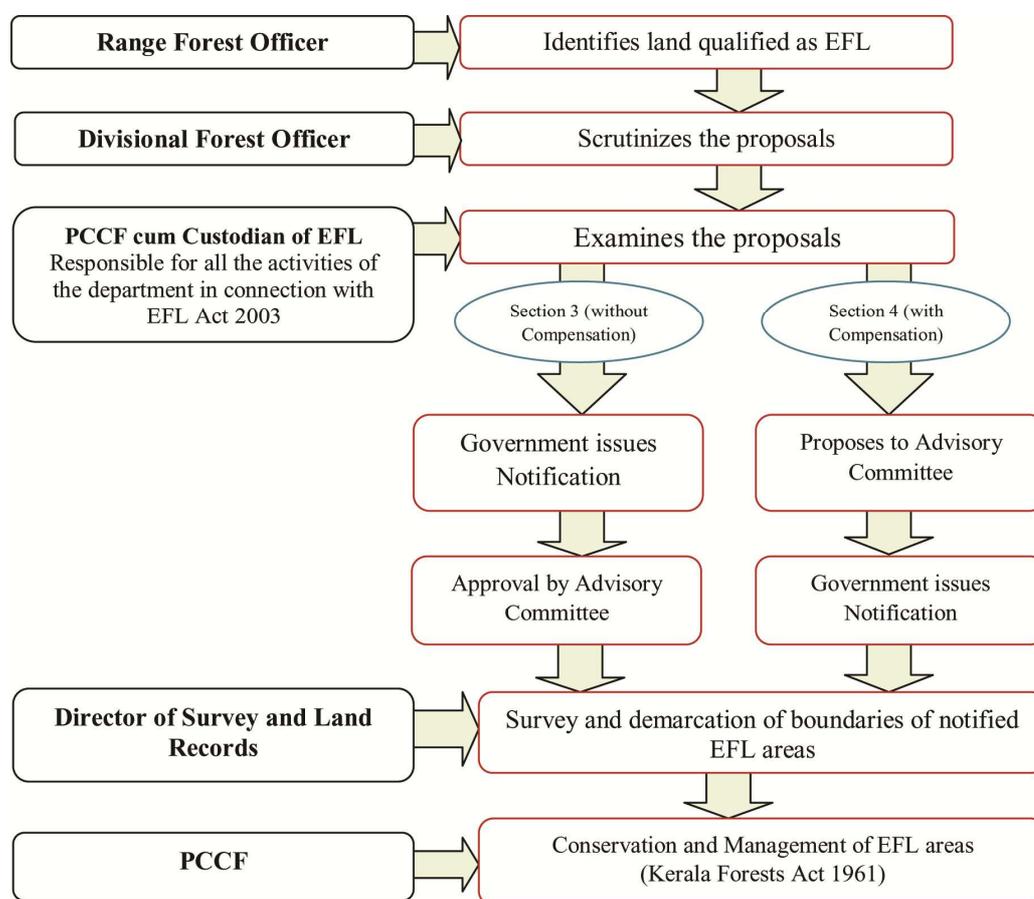
Government of Kerala (GOK) passed the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2000 to vest in the Government, the identified ecologically fragile lands in the State of Kerala and for the management of such lands with a view to maintaining ecological balance and conserving the biodiversity. Subsequently, the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (hereinafter referred to as the EFL Act) was enacted with effect from June 2000. As per the EFL Act, any forest land held by any persons and lying contiguous to or encircled by a Reserved Forest or a vested forest which is predominantly supporting natural vegetation is termed as Ecologically Fragile Land. The notified lands shall be deemed to be Reserved Forest under Kerala Forest Act 1961. Land to the extent of 14,905.17 Ha (**Appendix 3.1**) was notified under Section 3 of EFL Act and 5.23 Ha land was notified under Section 4 till July 2015.

Ecologically fragile lands are vested under Sections 3 or 4¹ of the EFL Act. Under Section 3, the ownership and possession of all ecologically fragile land held by any person or any other form of right over them shall stand transferred to and vested in the Government by way of notification. Under Section 4, the Government shall have the authority to notify any land satisfying to be ecologically fragile land, based on the recommendations of the Advisory Committee². In respect of land vested under Section 4, the owner thereof shall be eligible for compensation for the said land including the permanent improvements thereon.

¹ Vesting of EFL is either by paying compensation (Section 4) or without paying compensation (Section 3)

² A committee notified by Government under Section 15 of the EFL Act having State wide jurisdiction which identifies and recommends whether the land qualifies for EFL under Section 3 or 4.

3.1.1 Organisational chart showing the administration of EFL



3.2 Audit Objectives

Audit was carried out with the objectives to analyse:-

- whether the Department was able to identify and vest in Government, land qualified as EFL, under Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Act, 2003 in a planned manner; and
- whether the land vested in the Government under the EFL Act 2003 has been conserved by the Department to ensure ecological balance and bio-diversity.

3.3 Audit Criteria

The Audit criteria were adopted from the following sources:

- 1) Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Ordinance 2000,
- 2) Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Act, 2003 and its Amendment Act, 2009,

- 3) Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Rules, 2007,
- 4) Kerala Forest Act, 1961

3.4 Audit Scope and Methodology

The PA on Implementation of EFL Act covering the period 2000 to 2015 was conducted from May 2015 to October 2015 to evaluate the implementation of various activities such as notification and conservation of ecologically fragile land in the State. The records relating to implementation of the EFL Act available with the Government and in the EFL wing of Forest Department, its field offices and Directorate of Survey and Land Records were scrutinized.

The Department has 25 Territorial Divisions and 11 Wildlife Divisions. The areas notified under EFL are in 18 Territorial Divisions and three Wildlife Divisions. Based on the extent of land notified as EFL, the PA covered six³ Territorial / Wildlife Divisions for field audit which were selected by sampling using Probability Proportional to Size and Without Replacement (PPSWOR) technique. In addition to examination of records of selected divisions, Audit team conducted joint physical verification at KP Estate- Silent Valley, Pachakkanam Estate at Thekkady, Sankarangode private agricultural land at Nilambur South and mangrove sites at Kannur which are proposed / notified under Sections 3 and 4 of the EFL Act.

3.5 Audit findings

3.5.1 Non-identification of EFL

The EFL Act was enacted with the main objective of vesting in the Government, EFL identified in the State for the management of such lands with a view to maintaining ecological balance and conserving the bio-diversity. The Act, however, did not specify any time frame for completing this task. The department had also not prepared any action plan for executing this task in a concerted manner. Consequently the Department had failed to identify all the ecologically fragile lands in the State so far (as of January 2016). EFL lands were being identified in a piece-meal manner and notified only when some cases were reported by Range Forest Officer to the DFO. Audit observed that 14,910.40 Ha (**Appendix 3.1**) land has been notified in 133 notifications with effect from the year 2000 onwards based on proposals received by the Custodian from the field offices across the State.

During the exit conference, the ACS agreed with the audit findings and stated that the non-survey of forest land was a major issue due to shortage of manpower being faced by Revenue Department, which was to conduct such surveys. ACS also stated that directions have been issued to the field officers of Forest

³ Mannarkkad, Nenmara, Nilambur South, Palakkad, Silent Valley National Park and Wayanad South.

Department to keep travelling, exploring and conducting physical verification to identify lands qualified as EFL in their respective ranges.

3.5.2 Delay in notification of identified land

Audit noticed that out of the proposals for EFL notification received from the field offices, 163.1901 Ha involved in 18 cases (**Appendix 3.2**) were pending decision in Custodian's office since 2008 due to non-furnishing of complete details from the field offices (Range Offices/Divisional Forest Offices). Nine⁴ field officers had submitted proposals to the Custodian without ascertaining the factual position. As a result, the processing and issue of EFL notification was inordinately delayed which ultimately affected the management of such land.

ACS replied that the Custodian of EFL had initiated action for collecting the required details for processing the notification. The reply was not acceptable since the Department had initiated action to assess the actual extent of the land only after 15 years.

Recommendation No. 1: Government may initiate action to obtain details of the total EFL in the State by preparing an action plan and notify the same at the earliest, to maintain the ecological balance and to conserve bio-diversity.

3.5.3 Non-acquisition of private forest under Section 4 of the EFL Act

Audit noticed that 30 proposals involving 393.6377 Ha of private land to be notified as EFL under section 4 of the Act were pending with the Custodian since 2008. The proposals were referred to the Advisory Committee only in October 2015 after a delay of seven years. The Department had not acquired even a single private forest by paying compensation despite lapse of 15 years since the introduction of the EFL Act. It was further noticed that the Advisory Committee had not been re-constituted between 2010 and 2014 after the expiry of the term of the first Committee in 2010 which was constituted in 2007. All this delayed the process of notification of 393.6377 Ha of EFL thereby affecting the achievement of the intended purpose of the Act.

Audit further noticed that in respect of two cases included in the selected samples and another one instance noticed from the media, 399.64 Ha of land were pending notification as discussed below:

(a) KP Estate - lying inside Silent Valley National Park

The Silent Valley National Park, a Wildlife Division at Palakkad, formed in 1984, is a unique preserve of natural rainforests comprising an area of 23,752 Ha. The KP Estate is a private property having 141.64 Ha land lying inside Silent Valley National Park. Audit observed that the planters were cultivating various crops without paying attention to the surrounding bio-diversity. Five Diesel pumps (16 HP), chemical fertilizers and vehicles were being used inside the forest which adversely affected the evergreen ecology. The River Kunthi runs through the

⁴ DFOs of Kozhikode, Mannarkad, Marayur, Nenmara, Nilambur North, Nilambur South, Palakkad, Thrissur and Wayanad South.

private estate and the use of chemical fertilizers, pesticides and fungicides inside the estate had caused widespread water and soil pollution. These private operations within the National Park were detrimental to the conservation of bio-diversity of the surrounding forest.



Canopy cleared and buildings constructed for cultivation activities



Canopy cleared for roads

On the request of the Wildlife Warden, Silent Valley National Park, Mannarkkad, valuation of the KP Estate was done by Revenue Department which fixed (December 2010) the value at the rate of ₹2.02 lakh per acre for land with roads and ₹1.21 lakh per acre for land without roads. However, due to the absence of Advisory Committee since 2010 followed by inaction after its re-constitution (2014), the estate was yet to be acquired by Forest Department. The Government had not furnished specific reply in this regard.

(b) Down Ton Estate, Pachakkanam lying inside Periyar Tiger Reserve

Down Ton Estate, Pachakkanam having 208 Ha of land with a private cardamom estate is enclosed in the Periyar Tiger Reserve (PTR), Thekkady in Idukki District. In order to avoid the possible clear felling of trees, fragmentation and selling of the estate property by the owners and to protect the bio-diversity of the PTR, a proposal for the acquisition of the estate was submitted to the Field Director (PTR) by the Wildlife Preservation Officer (Thekkady) but it could not materialise for want of funds as compensation was required to be paid. Subsequently, the Custodian had also not taken follow-up action for vesting the land under the control of the Government of Kerala till date (January 2016).

Audit noticed that the entire cultivation in the estate was solely dependent on the use of chemical fertilizers, fungicides, pesticides etc. which contaminated Kullarthodu – a stream flowing through the estate. It was also posing threat to the wildlife and human beings. Further, the present owners were running a commercial resort in the name of Down Ton Heritage Homestay inviting tourists for trekking. The roads leading to the estate were passing through the PTR and were being used for commercial purposes by the estate owners. Such use of Reserved Forest was a clear violation of Section 2 of Forest (Conservation) Act 1980 which imposes restriction on use of forest land for non-forest purpose.



Canopy cleared for cardamom cultivation

Cardamom cultivation inside the Estate with power fencing

Audit observed that the Range Forest Officer (Vallakadavu) had forwarded (February 2014) a proposal to Deputy Director (PT), Periyar East Division, Thekkady for notifying the entire 208 Ha of estate land under EFL Act. However, the Custodian had failed to take steps to notify the land which resulted in continued depletion of forest ecology.

(c) Sankarangode private agricultural land under DFO, Nilambur South

An area of 50 Ha of land (New Block No.118 - Survey No.01 to 23) lies within the New Amarambalam Reserve under the Padukka Forest Station, Karulayi Range Forest Office of Nilambur South Division. The land which was surrounded on all sides by Reserved Forest was an elephant corridor. The only way to reach the land was by crossing through the surrounding Reserved Forest. The land was being used by its owners for cultivation and had constructed buildings in the said land for their stay and used the surrounding Reserved Forest to graze their cattle. As the grazing of cattle inside Reserved Forest adversely affected the forest and wildlife ecology, the Range Forest Officer had forwarded proposals (January 2008) to DFO for notification of the land under the EFL Act.

Audit noticed that though the proposal for notification under the EFL Act was forwarded by the Range Forest Officer during January 2008, the same was forwarded by the DFO, Nilambur South to the CCF, Eastern Circle, Palakkad only in November 2014, i.e. after a delay of six years. The proposal was still pending as it was wrongly sent to the CCF, Palakkad instead of to the Custodian under the EFL Act. Audit noticed that though an amount of ₹100 lakh was available (August 2008) with the Custodian as Reserve Fund for acquisition of EFL, due to its non-utilisation, the funds had lapsed in the same year. In spite of the initiative (August 2008) taken by the Range Forest Officer for acquiring the land, the inordinate delay on the part of the DFO (Nilambur South) in forwarding the proposal to the Custodian had resulted in non-acquisition of land thereby causing further damages to the forest ecology and lapse of fund of ₹100 lakh. Justification for delay in forwarding the proposal by the DFO to the Custodian had not been furnished till December 2015.



Private estate encircled by Reserved Forest



Deer from surrounding forest grazing inside the estate

ACS accepted the Audit findings during the exit conference and stated that the said land would be acquired only after ensuring availability of sufficient funds for the purpose as at present, the Department was facing shortage of funds for acquisition of private forests. ACS further stated that the Department would keep exploring new avenues for raising funds. The reply was not acceptable since the proposals had been pending since 2008 and during all these years, the ownership of this land remained vested with individual owners instead of with Forest Department right from the promulgation of Ordinance in 2000.

Recommendation No. 2: Government may initiate action to provide sufficient funds for acquisition of land under EFL Act without any further delay.

3.5.4 Non-Acquisition of private mangrove forests under EFL Act 2003

Mangroves are salt tolerant plant community found in tropical and sub-tropical inter tidal regions and are unique eco-systems which provide habitat for various migratory birds and breeding and feeding ground for many aquatic species. Mangrove forests are proved to be capable of acting as a protective belt against the tsunami waves and as such require effective conservation and scientific management intervention. Under Section 4(1) of Kerala Forests Act, 1961, Government is empowered to declare any land as a Reserved Forest. Therefore, the Department also needs to conserve the mangrove eco-system as per the EFL Act.

Audit noticed that the Department had neither a comprehensive data about the extent of mangrove forests in the State nor an action plan to conserve the same. Though the Forest Department had been submitting proposals for the acquisition of private mangrove forest under Section 4(1) of the EFL Act comprising 140.80 Ha in Kannur district to the Government since 2007, it did not fructify so far. The absence of an Advisory Committee during 2010-14 to identify the mangrove forest as per Section 15 of the EFL Act resulted in delay in identifying the mangrove forest and notifying it as EFL. Even after the re-constitution of the Advisory Committee in June 2014, the above extent of mangrove forest was not identified by the Department for which no justification has been given despite being requested by Audit (June 2015).



Mangroves destroyed at Kannur District

Destruction of Mangrove area

Thus, due to lack of adequate data about mangrove forest in the State and its acquisition, the fragile eco-system of mangrove forest was further prone to destruction and degradation while the Department was not able to conserve them.

ACS accepted the Audit observation that private mangrove forest in the State had not been identified and vested in GOK. He further stated that the acquisition and conservation of mangrove forest was a new concept. Recently, the Department had taken over 238.92 Ha of mangrove forest (Government land) in Kannur district under the Kerala Forest Act 1961. He also added that the details of private mangrove forest in the State were being collected for acquisition under EFL Acts.

Recommendation No. 3: Government needs to take urgent necessary action to identify all the mangrove forests and prepare a management plan for their conservation.

3.5.5 Non-restoration of 17.48 Ha of EFL at Nenmara

An extent of 17.48 Ha of land under Nenmara Forest Division, was notified as EFL in October 2000 based on the EFL Ordinance, 2000. Meanwhile, the occupant of the land had approached (January 2004) the Hon'ble High Court and obtained an order to revoke the notification within four weeks. As per the legal opinion (August 2004), even if the property had been de-notified, the Government had an higher option of notifying the property as per the provisions of the EFL Act 2003.

Audit noticed that the Custodian, complying partially with the legal opinion, had de-notified (April 2004) the land but failed to re-notify the land till date for no specific reasons after the EFL Act had come into force. Hence, the land was still remaining with the owners with the effect that the land, which was once notified as ecologically fragile, was devoid of any protection and scientific conservation as intended by the EFL Act due to failure of the Department in re-notifying the land as EFL.

ACS accepted the Audit observation and stated that the de-notification was ordered by the Hon'ble High Court during 2004 when the ordinance had lapsed and hence the entire extent of EFL was de-notified. ACS assured that action would be taken to remedy the situation. However, the legal opinion that the land

could be vested again after the enactment of the Act was not complied by the Department so far.

Recommendation No. 4: Government may initiate steps to re-notify the de-notified land without any delays.

3.5.6 Issue of NOC for registration of sale deed of lands proposed for EFL notification at Mannarkkad

In the Mannarkkad Forest Division, Audit noticed an instance of issuance of No Objection Certificates (NOC) by the DFO, for obtaining possession certificates for lands which were proposed to be notified as ecologically fragile lands.

It was observed that the following plots of land falling under Attapadi Range of Mannarkkad Division were proposed by DFO (May 2007 and June 2014) to be notified as ecologically fragile land under Section 3 of EFL Act 2003.

Table 3.1: Details of land proposed by DFO for notification as EFL

Sl. No	Survey No.	Extent of Land (in Acre)	Location
1	1130/13 pt	9	Puthur Village
2	1130/13 pt	15	
3	1130/13 pt	8	
4	1130/13 pt	15	
5	1130/13 pt	12	
Total		59	

Audit observed that the above lands were not notified till date. As the proposal was pending, the DFO, Mannarkkad, relying on reports of Range Officer (RO), issued (2012) NOCs to the owners to register the ownership deed of the plots in the office of the Sub-Registrar as requested (July and December 2012) by the owners. The NOC also stated that the plots did not qualify as 'forest'.

Audit observed:

- The NOCs issued by the DFO based on the report of the RO was not in order. Since NOCs were issued, the owners had sought (March 2009) exemptions from notifying the land and had obtained possession certificates and started clear felling the trees.
- Subsequently in May 2015, the DFO in-charge of the Division had cancelled the NOCs issued by the then DFO during 2012 and the matter was reported to the revenue authorities. But the lands were yet to be notified as EFL and taken over by Government.
- No action was taken by the Custodian against the DFO who had granted NOCs for land proposed for EFL in an unauthorized manner.

ACS accepted the audit observation and stated that all the NOCs issued were subsequently cancelled and that action would be taken against the person concerned.

3.5.7 Delay in survey of notified EFL area and non-inclusion of EFL in Management Plan

Section 6 of the EFL Act, 2003, envisaged that, within such time as may be prescribed, the Custodian shall cause to demarcate the boundaries of ecologically fragile land vested in Government under Sections 3 and 4. Further, as per Rule 8(3) of the EFL Rules 2007, all lands notified shall be demarcated by the Custodian showing the survey and sub-division number, boundary particulars etc. by erecting permanent cairns along the boundaries within a period of two years from the date of publication (February 2007) of Rules. As per Section 16 of the EFL Act 2003, EFL is required to be managed by the Forest Department as per Management Plans⁵. The survey of forest land in each Division was required to be conducted by the Assistant Director, Forest Mini-Survey Cell, Kozhikode upon the requests made by the DFOs concerned. The failures noticed in this regard are brought in the following paras:

- ***Lack of Coordination between Forest and Revenue Departments***

Audit observed that even after fifteen years from the implementation of the Act, the Department had not included the activities on management of EFL in the Management Plan or Annual Plan of Operation (APO) and also had not completed demarcation process except 306.74 Ha (June 2015). However, the DFOs had not made specific requests to the Assistant Director, Survey Cell to get the notified EFL area surveyed. Similarly, the Custodian had also not taken up the matter with the Director of Surveys and Land Records, Revenue Department to work out a plan to conduct the survey of EFL area (comprising of 14,910.40 Ha spread over Kerala) within the time frame. The lapse in conducting survey of the remaining land primarily rest with DFOs as the Surveyors are attached to the DFOs.

On this being pointed out, ACS stated that due to the shortage of adequate staff for survey work, Government had approved (October 2015) a proposal from Forest Department to impart training to its field staff at Survey Training School in Survey Wing of Revenue Department who in turn could conduct the survey of forest areas under the supervision of Survey Department. The reply was not acceptable, as the steps taken by the Department to train the forest personnel would not be fruitful as Kerala Survey Act was not amended making the forest personnel competent to conduct survey operation.

- ***No penal provisions for delay in demarcation of EFL***

As per Rule 8(2) of EFL Rules 2007, the Custodian could extend the time of two years for demarcation of EFL from the commencement of the EFL Act for justifiable reasons. But the EFL Act was silent about the penal provisions in the Rules for fixing liability for non-conduct of survey within the fixed time frame. As a result, the survey activities and demarcation of EFL were delayed indefinitely and hence EFL already notified could not be effectively managed to maintain ecological balance conserving the biodiversity.

⁵ Management Plan is part of a working Plan which is written scheme of management aiming at a continuity of policy and action and controlling the treatment of forest in a scientific manner.

ACS replied that EFL are managed in the same manner giving thrust to arresting the degradation factors and protection of the forest as of the adjoining natural forest area of the Division. In addition, directions were issued to Field Officers to get the EFL area surveyed through the Forest Mini Survey Unit and in order to avoid the delay in doing survey, steps were being taken to train the forest personnel through the Survey Wing of the Revenue Department. The reply was not tenable since the management of EFL said to be undertaken related to only general protection works such as fire protection works, booking of offences etc. under various Forest Acts and not the special protection works so as to maintain the forest in a scientific manner. In case, the EFL are protected in the same manner as of the adjoining forest, the Department should have included the protection works of EFL in the Working Plan.

Recommendation No. 5: Government may take steps to notify the said lands and include it in its Working Plan for further protection and conservation.

3.5.8 Monitoring and Evaluation

According to EFL Act 2003, the lands to be vested as EFL under GOK's control were to be managed in an integrated and uniform manner within their ecological boundaries in accordance with the management plans based on sound scientific principles. The scrutiny of records revealed that the lands vested had not been included in the Annual Plan of Operations (APO) of the Divisions for maintenance in a scientific manner. On this being pointed out in Audit, the Custodian stated that EFL was automatically taken as part of the protection working circle of the approved Working Plan of the division and as and when Working Plan was revised, EFL area would be taken in area account of the divisions.

3.6 Conclusion

Despite a lapse of 15 years from the commencement of the EFL Act, the Department did not have a database of lands which could be notified as EFL, thereby hampering the protection of these areas and their consequent conservation and development. The survey and demarcation of boundaries which were to be completed within the stipulated time was delayed due to lack of co-ordination between Forest Department and Revenue Departments. The Department was not able to prevent the private plantations which were encircled by Reserved Forest and delay in acquiring such land caused threat to the ecology. Mangroves which were fragile and highly productive ecosystem found along the coasts were exposed to the risk of degradation due to absence of comprehensive data and an action plan to conserve them.