

Twelfth Kerala Legislative Assembly
Bill No. 122

THE KERALA REVENUE RECOVERY (AMENDMENT)
BILL, 2007

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further to amend the Kerala Revenue Recovery Act, 1968.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Revenue Recovery Act, 1968 for the purposes hereinafter appearing ;

BE it enacted in the Fifty-eighth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Revenue Recovery (Amendment) Act, 2007.

(2) Section 3 of this Act shall be deemed to have come into force on the 27th day of February, 1980 and the remaining provisions shall be deemed to have come into force on the 12th day of December, 2005.

2. *Amendment of section 69.*—In section 69 of the Kerala Revenue Recovery Act, 1968 (15 of 1968) (hereinafter referred to as the principal Act),—

(1) in sub-section (2), for the words “the demand arose”, the words “the defaulter or his surety resides or holds property” shall be substituted;

(2) in sub-section (5),—

(a) for the words, figures and brackets “when a certificate is received under sub-section (1) or sub-section (4)”, the words, figures and brackets “when a certificate under sub-section (1) or a requisition under sub-section (2), as the case may be, is received” shall be substituted;

(b) the words, figure and brackets “or sub-section (4)” in the second sentence shall be omitted.

3. *Amendment of section 71.*—To section 71 of the principal Act the following proviso shall be added, namely:—

“Provided that such specified institution or class or classes of institutions or autonomous bodies, as the case may be, shall be liable to pay collection charges for the recovery of the amounts, at such rate and in such manner, as may be prescribed by the Government.”.

4. *Amendment of section 72.*—In section 72 of the principal Act,—

(1) in the marginal heading, the words “save where fraud alleged” shall be omitted;

(2) the existing section 72 shall be renumbered as sub-section (1) of that section and,—

(a) in sub-section (1) as so renumbered,—

(i) in clause (i), for the words “Board of Revenue”. the words “Commissioner of Land Revenue” shall be substituted;

(ii) the proviso shall be omitted;

(b) after sub-section (1) as so renumbered, the following sub section shall be inserted, namely:—

“(2) No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled decided or dealt with or to be determined by the Government, or the Commissioner of Land Revenue or the Collector or any officer or authority under this Act.”.

5. *Amendment of section 81.*—In section 81 of the principal Act,—

(1) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Subject to the provisions contained in section 72, any person aggrieved by any decision or order passed or proceedings taken under this Act for arrears due or alleged to be due from him, may file a suit against the Government in a civil court of competent jurisdiction:

Provided that, the person aggrieved has availed himself of the remedies, for redressing his grievances provided in this Act.”;

(2) in the proviso to sub-section (2), for the words “Board of Revenue” occurring in two places, the words “Commissioner of Land Revenue” shall be substituted.

6. *Amendment of section 83.*—In section 83 of the principal Act,—

(1) in the marginal heading, for the words “Board of Revenue” the words “Commissioner of Land Revenue” shall be substituted;

(2) in sub-sections (1), (2) and (3), for the words “Board of Revenue” wherever they occur, the words “Commissioner of Land Revenue” shall be substituted.

7. *Repeal and Saving.*—(1) The Kerala Revenue Recovery (Amendment) Ordinance, 2007 (51 of 2007) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

At present revenue recovery requisition is sent to the Collector of the District in which the demand arose. Many of the Public Sector Corporations have their head offices at Thiruvananthapuram and they send their requisitions to the Collector, Thiruvananthapuram, as the “demand arose” at the head offices of the Corporations at Thiruvananthapuram. This causes much difficulties to the Collector, Thiruvananthapuram and to the authorities of the Public Sector Undertakings. Therefore, the Government decided to amend the Kerala Revenue Recovery Act, 1968 so as to enable the requisitioning authorities to send the requisition to the Collector of the District where the defaulter or his surety resides or holds property.

2. As per section 72 of the Kerala Revenue Recovery Act, 1968 every question relating to Revenue Recovery shall be determined not by suit but by the order of the Commissioner of Land Revenue, where the Collector is a party, and by the Collector in other cases, provided a suit may be brought in a civil court on the ground of fraud. But section 81 of the Act provides that nothing in the said Act shall be held to prevent parties aggrieved by any decision or order passed or proceedings taken under the Act for arrears due, from suing the Government in the civil court. There is an anomaly between sections 72 and 81 of the Act regarding civil court’s jurisdiction. The civil courts, inspite of the general bar under section 72 are entertaining suits against every question relating to revenue recovery and granting stay orders which has caused major set back in the collection of huge arrears. It has been decided to amend the Act so that only after availing of the remedies provided under the statute, the aggrieved can move a civil court in case, where revenue recovery action has been initiated.

3. The Government have also decided to incorporate provisions in the Kerala Revenue Recovery Act, 1968 for the realization of collection charges, from all the institutions and autonomous bodies on whose behalf recoveries are being made by the Government with effect from 27th day of February 1980.

4. A Bill to amend the Kerala Revenue Recovery Act, 1968 for the above purpose was published as Bill No. 134 of the Eleventh Kerala Legislative Assembly, but the same could not be introduced in the Assembly.

5. Therefore the Revenue Recovery (Amendment) Ordinance, 2005 (20 of 2005) was promulgated by the Governor on the 12th day of December, 2005 and was published in the Kerala Gazette Extraordinary No. 2661 dated the 12th December, 2005.

6. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its sessions which commenced on the 3rd day of February, 2006 and ended on the 21st day of February, 2006 and which commenced on the 14th day of March, 2006 and ended on the 15th day of March, 2006. Therefore the Kerala Revenue Recovery (Amendment) Ordinance, 2006 (10 of 2006) was promulgated by the Governor on the 17th day of March, 2006 and the same was published in the Kerala Gazette Extraordinary No. 586 dated 17th March, 2006.

7. A Bill to replace Ordinance No. 10 of 2006 published as Bill No. 1 of Twelfth Kerala Legislative Assembly, but the same could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 24th May, 2006 and ended on the 30th June, 2006. Therefore the Revenue Recovery (Amendment) Ordinance 2006 (38 of 2006) was promulgated by the Governor on the 5th day of July, 2006 and was published in the Kerala Gazette Extraordinary No. 1132 dated 5th July, 2006.

8. A Bill to replace Ordinance No. 38 of 2006 published as Bill No. 20 of the Twelfth Kerala Legislative Assembly, but the same could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 18th of September, 2006 and ended on the 26th of October, 2006. Therefore the Revenue Recovery (Amendment) Ordinance, 2006 (51 of 2006) was promulgated by the Governor on the 30th day of October, 2006 and has been published in the Kerala Gazette Extraordinary No. 1715 dated the 30th October, 2006.

9. A Bill to replace Ordinance No. 51 of 2006 could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 27th December, 2006 and ended on the 29th December, 2006. Therefore, the Revenue Recovery (Amendment) Ordinance, 2007 (10 of 2007) was promulgated by the Governor on the 4th day of February, 2007 and has been published in the Kerala Gazette Extraordinary No. 210 dated 5th February, 2007.

10. A Bill to replace the Ordinance No. 10 of 2007 could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 2nd day of March, 2007 and ended on the 29th day of March, 2007. Therefore, the Kerala Revenue Recovery

(Amendment) Ordinance, 2007 (38 of 2007) was promulgated by the Governor on the 30th day of March, 2007 and the same was published in the Kerala Gazette Extraordinary No. 643 dated 2nd April, 2007.

11. A Bill to replace Ordinance No. 38 of 2007 was published as Bill No. 95 of the Twelfth Kerala Legislative Assembly. But the same could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 19th day of June, 2007 and ended on the 26th July 2007. Therefore, the Kerala Revenue Recovery (Amendment) Ordinance 2007 (51 of 2007) was promulgated by the Governor on the 30th day of July, 2007 and the same was published in the Kerala Gazette Extraordinary No. 1411 dated 30th July, 2007.

12. The Bill seeks to replace Ordinance No. 51 of 2007 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The proviso to section 71 proposed to be inserted by clause 3 of the Bill seeks to empower the Government to prescribe the rate of collection charges and the manner in which such charges shall be realized. The above matter is routine or administrative in nature. The delegation of Legislative power is, thus, of a normal character.

K. P. RAJENDRAN

EXTRACT FROM THE KERALA REVENUE RECOVERY ACT, 1968
(ACT 15 OF 1968)

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69. *Procedure for recovery of public revenue due on land when defaulter or surety resides outside the district and for the recovery of dues other than public revenue due on land.*—(1) When public revenue due on land is in arrear and the defaulter or his surety resides or holds property outside the district wherein default has been made, the Collector of the District in which the arrear arose shall sign a certificate in the prescribed form specifying therein the amount of the demand, the name of the defaulter and such other particulars as may be necessary for the identification of the defaulter or his surety or both and forward the certificate to the Collector of the District in which the defaulter or his surety resides or hold property.

(2) When any amount, other than public revenue due on land, which is recoverable under this Act, is due, the officer charged with its realisation may send to the Collector of the District in which the demand arose a written requisition in the prescribed form duly verified, and certified by him.

(3) On receipt of the requisition under sub-section (2), the District Collector if he is satisfied that the demand is recoverable under this Act, may sign a certificate to that effect in the prescribed form specifying therein the amount of the demand the account on which it is due, the name of the defaulter, and such other particulars as may be necessary for his identification and shall cause the certificate to be filed in his office.

(4) If the defaulter resides or own property in any other district, the District Collector shall forward a copy of the certificate referred to in sub-section (3) to the Collector of such other district.

(5) When a certificate is received under sub-section (1) or sub-section (4) the Collector of the district shall proceed against the defaulter and his surety and his or their property in the same manner as if the default had been made in his own district. Every certificate filed under sub-section (3) or received under sub-section (1) or sub-section (4) shall be conclusive proof as to the amount due and the party in arrear in all proceedings taken by the Collector acting under such certificate or by any person acting under his authority and no proof of the seal or signature or official character of the District Collector issuing the certificate shall be required, unless the officer dealing with such certificate has

reason to doubt its genuineness, provided always that nothing herein contained shall affect the right of any party to sue in his own district the District Collector who issued the certificate.

(6) The certificate issued under sub-section (1) and the requisition issued under sub-section (2) may be modified from time to time by the issuing officer and the certificate or requisition so modified shall be the authority of the Collector or the authorised officer to modify the demand.

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71. *Power of Government to declare the Act applicable to any institution.*—The Government may by notification in the Gazette declare, if they are satisfied that it is necessary to do so in public interest that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions and thereupon all the provisions of this Act shall be applicable to such recovery.

72. *General bar to jurisdiction of civil courts save where fraud alleged.*—Except as otherwise expressly provided in this Act, every question arising between the Collector or the authorised officer and the defaulter or his representative or any other person claiming any right through the defaulter, relating to the execution, discharge or satisfaction of a written demand issued under this Act or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such demand shall be determined not by suit, but by order of—

- (i) the board of revenue, where the Collector is a party to the question;
- (ii) the Collector in other cases:

Provided that a suit may be brought in a civil court in respect of any such question on the ground of fraud.

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81. *Saving of right to sue.*—(1) Nothing in this Act shall be held to prevent parties deeming themselves aggrieved by any decision or order passed or proceedings taken (or purporting to be passed or taken) under this Act for arrears due or alleged to be due from such parties, from suing the Government in the civil court.

(2) Civil Courts shall not take cognizance of any suit instituted as provided for in this Act, unless such suit has been instituted within ninety days from the time at which the cause of action arose:

Provided that the whole time occupied by the Board of Revenue in revising the orders passed or proceedings taken by the Collector or the authorised officer or by the Government in revising the orders passed or proceedings taken by the Board of Revenue shall be excluded in computing the said period of ninety days.

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83. *Power of revision of Board of Revenue and Government.*—(1) The Board of Revenue may, either of its own motion or on an application by any person interested call for any proceeding which has been taken by the Collector or the authorised officer under this Act and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders as it thinks fit:

Provided that no order shall be passed under this sub-section without previous notice to the party who may be affected by such order.

(2) The Government may, either *suo motu* or an application by any person interested, call for the record of any proceeding taken by the Board of Revenue under sub-section (1) and may make such inquiry or cause such inquiry to be made and subjected to the provisions of this Act may pass such orders as they think fit:

Provided that no order shall be passed under this sub-section without previous notice to the party who may be affected by such order.

(3) An application for revision under sub-section (1) or sub-section (2) shall be made within ninety days from the date on which the order in question was communicated to the applicant:

Provided that the Board of Revenue or the Government, as the case may be may, if it or they is or are satisfied that the applicant was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.
