

Twelfth Kerala Legislative Assembly

Bill No. 239

THE KERALA LAND CONSERVANCY (AMENDMENT) BILL, 2008

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BILL

further to amend the Kerala Land Conservancy Act, 1957.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Land Conservancy Act, 1957 for the purposes hereinafter appearing;

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

1. *Short title and commencement.*—(1) This Act may be called the Kerala Land Conservancy (Amendment) Act, 2008.

(2) It shall be deemed to have come into force on the 8th day of November, 2008.

2. *Amendment of long title.*—In the long title of the Kerala Land Conservancy Act, 1957 (8 of 1958) (hereinafter referred to as the principal Act), the words “and for matters connected therewith or incidental thereto” shall be added at the end.

3. *Amendment of the Preamble.*—In the preamble of the principal Act, the words “and to provide for matters connected therewith or incidental thereto.” shall be added at the end.

4. *Substitution of section 7.*—For section 7 of the principal Act, the following section shall be substituted, namely:—

“7. *Punishment for unauthorisedly occupying land which is the property of Government.*— Notwithstanding anything contained in this Act,—

(a) whoever with the intention of using or holding any land which is the property of Government, whether poramboke or not, for any non-Governmental purpose, unlawfully enters or occupies such land shall be punishable with imprisonment for a period of three years and shall also be liable to pay a fine of fifty thousand rupees:

Provided that a person who is occupying any Government land as on the date of commencement of this Act and is having any of the following documents

in order to prove that he was residing therein, namely, record of rights or a ration card or an electoral identity card issued in the address of such Government land which he is so occupying or a proceeding assigning house number to a building in such property or an electric connection or a water connection, issued by the competent authorities of the Government or the Local Self Government Institutions or the respective statutory bodies, as the case may be, shall not be considered as an unlawful occupant for the purpose of imposing punishment.

(b) whoever, for the purpose of effecting transfer of any land which is the property of Government for consideration or otherwise—

(i) commits the offence of cheating by fraudulently or dishonestly creating documents; or

(ii) makes any forged document in support of any claim or title to such land

shall be punishable with imprisonment for a period of five years and shall also be liable to pay a fine of fifty thousand rupees;

(c) Whoever, being an officer entrusted with the responsibility of reporting unlawful occupation of land which is the property of Government or of initiating action to remove such unauthorised occupation fails to report or to initiate action to remove such unlawful occupation, shall be punishable with imprisonment for a period of three years and shall also be liable to pay a fine of fifty thousand rupees;

(d) Whoever erects or causes to erect any wall, fence or building or puts up or causes to put up any overhanging structure or projection, whether on a temporary or permanent basis in contravention of sub-section (2) of section 5, shall be punishable with imprisonment for a period of one year and shall also be liable to pay a fine of ten thousand rupees and in the case of a continuing contravention, such additional fine which may extend to five hundred rupees for each day during which the contravention continues after conviction for the first such contravention.”

5. *Substitution of new sections for sections 8 and 9.*—For sections 8 and 9 of the principal Act, the following sections shall, respectively, be substituted, namely:—

“8. *Abetment of offences.*—Whoever abets any offence punishable by or under this Act, if the act abetted is committed in consequence of the abetment or attempts to commit any such offence shall be punishable with the same punishment provided by or under this Act, for committing such offence.

9. *Cognizance of offences.*—The offences specified under section 7 shall be cognizable.”.

6. *Amendment of section 13.*—In sub-section (1) of section 13 of the principal Act, clauses (a) and (b) shall be omitted.

7. *Amendment of section 14.*—In section 14 of the principal Act,—

(i) in the marginal heading, the word “assessment” shall be omitted;

(ii) the words “assessments and prohibitory assessments” shall be omitted.

8. *Amendment of section 16.*—In sub-sections (3) and (4) of section 16 of the principal Act, for the words “the Board of Revenue”, the words “the Commissioner of Land Revenue” shall be substituted.

9. *Amendment of section 17.*—In sub-section (4) of section 17 of the principal Act, for the words “the Board of Revenue”, the words “the Commissioner of Land Revenue” shall be substituted.

10. *Amendment of section 19.*—In section 19 of the principal Act, for the existing proviso, the following proviso shall be substituted, namely:—

“Provided that, if any punishment has been imposed under section 7, no further punishment shall be imposed under any other law for the same offence.”.

11. *Amendment of section 20A.*—In section 20 A of the principal Act,—

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

“(1) No civil court shall have jurisdiction to entertain any suit or other legal proceedings against the Government in respect of any action taken by it for the eviction of any person, who is in unauthorized occupation of any land which is the property of Government, whether poramboke or not, or for the recovery of any fine or any other sum due to the Government under this Act.”.

(ii) in sub-section (2), for the words “Board of Revenue”, the words “the Commissioner of Land Revenue” shall be substituted.

12. *Repeal and Saving.*—(1) The Kerala Land Conservancy (Amendment) Ordinance, 2008 (41 of 2008) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action 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

There is tremendous increase in the value of lands in the State and hence the tendency to encroach Revenue lands has become frequent. Lands are also encroached on the strength of forged documents. In the circumstances Conservation of Revenue land is found very essential.

In addition to Revenue land, Government have under their custody, land obtained through attachment through surrender of excess land under the Kerala Land Reforms Act, 1963 and also through eviction from unauthorised occupation in land, etc. These lands are to be protected from encroachment so that they can be utilised for the developmental activities of Government, for distribution among landless and also for increasing the state revenue.

Kerala Land Conservancy Act, 1957 is the existing Act for the protection of Revenue land. The provisions in this Act are insufficient. As per section 7 of the Kerala Land Conservancy Act, 1957 a penalty of a maximum of Rupees two hundred only is imposed on the encroachers. If the encroacher is eligible for assignment of land under the Kerala Land Assignment Act, even this penalty cannot be imposed.

Government have examined the matter in detail and decided to make amendments in section 7 of the Kerala Land Conservancy Act, 1957 for providing provision for imprisonment and penalty on those who encroach the revenue Land and consequential amendment in the related sections of the above Act.

As the Legislative Assembly of the State of Kerala was not in session and the above proposal had to be given effect to immediately, the Kerala Land Conservancy (Amendment) Ordinance, 2008 (41 of 2008), was promulgated by the Governor on the 8th day of November, 2008 and was published in the Kerala Gazette Extraordinary No. 2414 dated 8th November, 2008 for the above said purpose.

The Bill seeks to replace the Ordinance No. 41 of 2008 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

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

K. P. RAJENDRAN.

EXTRACT FROM THE RELEVANT PORTIONS OF THE
KERALA LAND CONSERVANCY ACT, 1957

(ACT 8 OF 1958)

An Act to check the unauthorised occupation of Government lands
Preamble.—WHEREAS, it is necessary to enact a uniform law for checking the unauthorised occupation of Government lands;

BE it enacted in the Eighth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Land Conservancy Act, 1957.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

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7. *Punishment for unauthorisedly occupying land which is the property of Government.*—(1) Whoever occupies a land which is the property of Government, whether a poramboke or not, contrary to Section 5 shall be liable to pay—

(a) such fine not exceeding two hundred rupees; and

(b) in the case of a continuing contravention such additional fine not exceeding two hundred rupees for every day during which such contravention continues after fine has been imposed for the first such contravention as may be imposed by the Collector:

Provided that a person unauthorisedly occupying a land which is available for assignment under the Kerala Government Land Assignment Act, 1960, shall not be liable to pay any fine under sub-section (1) if—

(i) he is eligible under the rules made under that Act for assignment of such land without auction; and

(ii) he applies under those rules for the assignment of such land in his favour, either on registry or on lease.

(2) Without prejudice to any liability under sub-section (1), any person who erects or causes to erect any wall, fence or building or puts up or causes to put up any overhanging structure or projection (whether on a temporary or permanent basis) in contravention of sub-section (2) of Section 5 shall be liable, on conviction by a Magistrate, to be punished with fine which may extend to

two hundred rupees and, in the case of a continuing contravention, with an additional fine which may extent to two hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Explanation.—A tenant unauthorisedly holding over after the expiry of his term of lease is liable to a fine under this section.

8. *Levy of assessment on lands which are the property of Government unauthorisedly occupied.*—(1) any person unauthorisedly occupying a land which is the property of Government other than a poramboke and liable to pay a fine under Section 7 shall, in addition, be liable to pay by way of assessment for the whole period of his occupation such amount as may be fixed by the Collector in accordance with the rate that may be prescribed by the Government from time to time in this behalf.

(2) *Levy of prohibitory assessment on poramboke unauthorisedly occupied.*—Any person unauthorisedly occupying a poramboke and liable to pay a fine under Section 7 shall, in addition, be liable to pay such prohibitory assessment for the whole period of occupation as may be imposed by the Collector.

Payment of assessment under sub-section (1) or prohibitory assessment under this sub-section shall not confer any right of occupancy.

Explanation.—For the purpose of this section, occupation for any period during a financial year shall be deemed to be occupation for the whole of the financial year.

9. *Liability for unauthorised occupation.*—Any person unauthorisedly occupying any land which is the property of Government, whether a poramboke or not, and liable to a fine under Section 7 shall, in addition to the assessment or prohibitory assessment to which he may be liable under Section 8, be liable for the value, as adjudged by the Collector, of any useful tree destroyed or appropriated by him.

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13. *Power to make rules.*—(1) The Government may make rules or orders either generally or in any particular instance,—

- (a) regulating the rates of assessment under Section 8(1);
- (b) regulating the imposition of prohibitory assessment under Section 8(2);
- (c) declaring that any particular land or class of lands shall not be open to occupation;

- (d) regulating the service of notices under this Act;
- (e) regulating the manner in which the powers of the Collector under this Act may be exercised; and
- (f) generally to carry out the provisions of this Act.

Such general rules or orders shall be made only after previous publication in the Gazette.

(2) All rules and orders framed under sub-section (1) shall be placed on the table of the Assembly for a period of fourteen days when it is in session and shall be subject to such modification by way of amendment or repeal made by the Assembly during the period when they are so laid.

14. *Recovery of fines, assessment etc., as arrears of land revenue.*—All fines, assessments and prohibitory assessments, value of trees destroyed or appropriated, compensation or damages payable under Section 6 and all costs of eviction and removal of encroachments shall be recovered as arrears of land revenue under the provisions of the Revenue Recovery Act for the time being in force.

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16. *Appeal and revision.*—(1) Any person aggrieved by any decision or order under this Act of any officer authorised under Section 15 may appeal,—

- (a) where such officer is the Revenue Divisional Officer, to the Collector:

Provided that no such appeal shall lie in any case where the order is passed by the Revenue Divisional Officer on appeal under clause (b); and

- (b) in all other cases, to the Revenue Divisional Officer, and the Collector or the Revenue Divisional Officer, as the case may be may pass such order on the appeal as he thinks fit.

(2) The Collector may either suo motu or on application revise any decision made or order passed under this Act by any officer authorised under Section 15:

Provided that where such officer is the Revenue Divisional Officer, the Collector shall not on application revise any decision made or order passed otherwise than on appeal:

Provided further that the Collector shall not revise any decision or order if an appeal against such decision or order is pending or if the time for preferring appeal, if any, against such decision or order has not expired.

(3) Any person aggrieved by any decision or order of the Collector under this Act (otherwise than on appeal or revision) may appeal to the Board of Revenue, and the Board of Revenue may pass such order on the appeal as it thinks fit.

(4) The Board of Revenue may either *Suo motu* or on application revise any order passed by the Collector on appeal.

(5) The Government may either *Suo motu* or on application revise any order passed by the Board of Revenue on appeal.

(6) No order shall be passed under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) without giving the party who may be affected thereby an opportunity of being heard.

(7) Pending disposal of any appeal or revision under this Act, the appellate authority or revising authority, as the case may be, may suspend the execution of the decision or order appealed against or sought to be revised.

17. *Limitation for appeal and revision.*—(1) No appeal or revision shall be preferred under Section 16 after the expiration of thirty days from the date on which the decision or order appealed against or sought to be revised was received by the appellant or applicant, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), the appellate authority or the revising authority may admit an appeal or application for revision preferred after the period specified in that sub-section, if such authority is satisfied that the appellant or applicant had sufficient cause for not preferring the appeal or application within that period.

(3) The Collector shall not *suo motu* initiate proceedings to revise any decision or order after the expiry of one year from the date on which such decision has been made or order has been passed.

(4) The Government or the Board of Revenue shall not *suo motu* initiate proceedings revise any order after the expiry of one year from the date on which such order has been passed.

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19. *Saving of operation of other laws in force.*—Nothing contained in this Act shall be construed as exempting any person unauthorisedly occupying land from liability to be proceeded against under any other law for the time being in force:

Provided that, if any penalty has been levied under Section 7 or Section 8 of this Act, no similar penalty shall be levied from him under any other law in respect of such occupation.

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20A. *Bar of jurisdiction of Civil Courts.*—(1) No Civil Court shall have jurisdiction to entertain any suit or proceeding for the eviction of any person who is in unauthorised occupation of any land which is the property of Government, whether a poramboke or not, or the recovery of any fine, assessment or prohibitory assessment or the value of any trees destroyed or appropriated or any compensation or damages, payable under this Act or cost of eviction or removal of encroachments, or any portion of such fine assessment, prohibitory assessment, value of trees, compensation, damages or cost.

(2) No suit, prosecution or other legal proceeding shall lie against the Government of the Board of Revenue or any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

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