

**Twelfth Kerala Legislative Assembly**

**Bill No. 301**

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**THE REGISTRATION (KERALA AMENDMENT) BILL, 2009**

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*BILL*

*further to amend the Registration Act, 1908, in its application to the State of Kerala.*

*Preamble.*— WHEREAS, it is expedient further to amend the Registration Act, 1908, in its application to the State of Kerala, for the purposes hereinafter appearing ;

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

1. *Short title and commencement.*— (1) This Act may be called the Registration (Kerala Amendment) Act, 2009.

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

(3) It shall come into force at once.

2. *Amendment of section 17.*— In section 17 of the Registration Act, 1908 (Central Act 16 of 1908) (hereinafter referred to as the principal Act),—

(i) in sub-section (1), after clause (e), the following clauses shall be inserted, namely:—

“(f) Instruments purporting or operating to effect a contract for the sale of immovable property of the value of one hundred rupees and upwards ;

(g) Power of attorney creating any power or right of management, administration, development, transfer or any other sort of transaction relating to immovable property of the value of one hundred rupees and upwards other than those executed in favour of father, mother, wife, husband, son, daughter, brother or sister of the executant.”;

(ii) in sub-section (2), the Explanation shall be omitted.

3. *Amendment of section 71.*—In section 71 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) No registering officer shall accept for registration any document involving transfer of property including contract for sale of immovable property belonging to or vested in the Government of Kerala or public sector undertakings operating in the State unless it is accompanied by a no objection certificate issued by an officer authorised by the State Government in this behalf.”.

4. *Insertion of new sections 83A and 83 B.*—After section 83 of the principal Act, the following sections shall be inserted, namely:—

“83 A. *Cancellation of registered documents in certain cases.*—(1) If on enquiry by an officer in the Registration Department not below the rank of the Deputy Inspector General of Registration, it is found that some one has falsely personated another, and in such assumed character presented, admitted the execution and got registered any document by a registering officer and the existence of such a document is detrimental to the interest of another person, the same shall be cancelled by the Inspector General of Registration on application made to him in such form as may be prescribed.

(2) If on an enquiry conducted by the District Collector *suo motu* or on the basis of a complaint received by him, it is found that any Government land or land owned by a public sector undertaking, has been transferred on the strength of a bogus document which is got registered without following the procedure prescribed in sub-section (3) of section 71, the District Collector may make recommendation to the Inspector General of Registration to cancel the registration of such document.

(3) On receipt of such recommendation from the District Collector, the Inspector General of Registration shall cancel the registration of such document after following the procedure prescribed.

83B. *Appeal to Government from orders of the Inspector General of Registration.*—Any person aggrieved by an order of the Inspector General of Registration under section 83A, may prefer an appeal before the Government within thirty days from the date of receipt of such order, and the Government shall pass an order confirming, modifying or cancelling the order of the Inspector General of Registration as they deem fit.”.

#### STATEMENT OF OBJECTS AND REASONS

Due to the high demand for land in Kerala, real estate has become an important area of speculative business and the tendency of making bogus documents to grab lands owned by Government, non-resident Indians or poor

illiterate people is increasing. There is a public perception that the absence of a provision in the Registration Act, 1908 making registration of agreement to sell immovable property mandatory is being misused by economic offenders to deal in real estate transaction and park their ill gotten wealth with an eye on generating more wealth by making it part of speculative business. As there is no provision in the Act as it now exists to prevent the above said transactions and also to refuse registration of documents which involve transfer of ownership of land belonging to Government or other public sector undertakings, Government have examined the matter in detail and decided to make State amendments in the Registration Act, 1908. The instruments of contract for sale and power of attorney are not compulsorily registrable documents in the State. Hence it is decided to make provisions for the registration of agreement for sale compulsory and also to make power of attorney creating right other than those executed between family members as compulsory registrable documents. It is intended to instead to insert clauses (f) and (g) to sub-section (1) of section 17.

It has come to the notice of the Government that immovable property belonging to or vested in the Government of Kerala or other public sector undertakings in the State are also fraudulently being transferred. As there is no provision in the Act as it now exists, to refuse registration of documents which involve transfer of ownership of land belonging to Government or other public sector undertakings, Government have decided to prohibit registering officers from accepting for registration documents involving transfer of Government property unless they are accompanied by a no objection certificate issued by an officer authorised by the State Government. It is intended to amend section 71 by inserting sub-section (3) to the said Act.

As the Act now exists, Government are not empowered to cancel documents, which are found registered through fraudulent means. Hence Government have decided to make a provision for cancellation of registered documents got registered by someone falsely personating another, which is detrimental to the interest of another person and also to cancel registration of bogus documents executed without following the procedure prescribed in sub-section (3) of section 71. Any person aggrieved by an order of cancellation of registration of bogus documents may prefer an appeal to Government. New sections 83A and 83B are inserted for the above purpose.

The Bill seeks to achieve the above objects.

## FINANCIAL MEMORANDUM

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

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill, which proposes to insert new section 83A in the principal Act, seeks to empower the Government to prescribe the form of application to apply for cancellation of registered documents in certain cases.

The above matter is routine and administrative in nature. The delegation of legislative power is, thus, of a normal character.

S. SHARMA

EXTRACT OF THE RELEVANT PORTIONS OF THE REGISTRATION ACT, 1908  
(CENTRAL ACT 16 OF 1908)

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17. *Documents of which registration is compulsory.*—The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (XX of 1866), of the Registration Act, 1871 (VIII of 1871), or the Indian Registration Act, 1877 (III of 1877), or this Act came or comes into force, namely :

(a) instruments of gift of immoveable property ;

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(e) non-testamentary instruments transferring of assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property :

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

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(2) Nothing in Cls. (b) and (c) of sub-section (1) applies to—

(i) any composition deed ; or

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(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

*Explanation.*—A document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

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71. *Reasons for refusal to register to be recorded.*—(1) Every Sub-Registrar refusing to register a document except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words “Registration refused” on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

83. *Registering Officer may commence prosecutions.*—(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Registrar, or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

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