

Twelfth Kerala Legislative Assembly
Bill No. 349

THE MUNNAR SPECIAL TRIBUNAL BILL, 2010

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Kerala Legislature Secretariat
2010

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BILL

to provide for the constitution of a Special Tribunal for the adjudication of disputes in respect of land in Munnar area comprising the villages of Chinnakanal, Kannan Devan Hills, Santhanpara, Vellathooval and Aanavilasom.

Preamble.—WHEREAS, it is expedient to constitute a Special Tribunal for the adjudication of disputes in respect of land in Munnar area comprising the villages of Chinnakanal, Kannan Devan Hills, Santhanpara, Vellathooval and Aanavilasom by transferring the land related cases pending before the various courts and other authorities to the Tribunal and to provide for matters connected there with or incidental thereto;

AND WHEREAS, the land in Munnar area is rich in flora and fauna requiring preservation ;

AND WHEREAS, there has been large scale encroachments of lands in Munnar area, conversion of land, use of land for purposes other than for purposes assigned and indiscriminate exploitation of land and other natural resources in Munnar area ;

AND WHEREAS, the Government has taken steps under various enactments for evicting the encroachers, demolishing unauthorized or illegal construction or other structures in or upon Munnar area ;

AND WHEREAS, a large number of cases are pending before the various authorities, courts including High Court of Kerala ;

AND WHEREAS, many of the disputes are factual disputes which necessitates detailed examination of documents and adducing evidence ;

AND WHEREAS, the Government intends to settle once and for all these disputes by constituting a Special Tribunal for taking a final decision thereon within a fixed time limit ;

BE it enacted in the Sixty-first year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Munnar Special Tribunal Act, 2010.

(2) It shall be deemed to have come into force on the 14th day of June, 2010.

2. *Definitions.*—*In* this Act, unless the context otherwise requires,—(a) ‘Authority’ means the authorities which have been constituted by the Government to decide the disputes in Munnar area and includes any Officer of the Government before whom the cases related to Munnar area is pending;

(b) ‘Chairman’ means the Chairman of the Tribunal;

(c) ‘Court’ means the civil courts in the State of Kerala;

(d) ‘Dispute’ means all disputes with respect to ownership, possession, occupation, use or any rights whatsoever over or concerning the land in Munnar area as well as all constructions and other uses of the land in such area which are pending before any authority or courts;

(e) ‘High Court’ means the High Court of Kerala;

(f) ‘Member’ means the member of the Tribunal;

(g) ‘Munnar area’ means all lands comprised in the villages of Chinnakkanal, Kannan Devan Hills, Santhanpara, Vellathooval and Aanavilasam in Devikulam and Udumpanchola Taluks in Idukki District;

(h) ‘Notification’ means notification published in the Official Gazette;

(i) ‘prescribed’ means prescribed as per rules;

(j) ‘Senior District Judge’ means a District Judge having not less than eight years service as District Judge;

(k) “Tribunal” means the Special Tribunal constituted under section 3 of the Act.

3. *Constitution of Tribunal and Functions thereof.*—(1) The Government shall, by notification, constitute a Tribunal called Munnar Special Tribunal to exercise the powers and functions under this Act.

(2) The Tribunal shall consist of three members of whom one shall be a Senior District Judge nominated by the Government in consultation with the Chief Justice of the High Court, who shall be the Chairman of the Tribunal.

(3) The other two members of the Tribunal shall be nominated by the Government of whom one shall be a person qualified to be appointed as a High Court Judge and the other shall be a retired District Judge.

(4) The salaries and allowances payable to and the other terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

(5) The Chairman and other members shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

(6) The State Government shall in consultation with the Chairman determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees.

(7) The salaries and allowances and conditions of service of the officers and other employees shall be such as may be prescribed.

(8) The Chairman shall exercise financial and administrative powers for the functioning of the Tribunal or may delegate the same in accordance with the rules as may be prescribed.

(9) Save as otherwise expressly provided in this Act, the Tribunal shall exercise powers and authority exercisable by the Civil Court of competent jurisdiction for adjudication or trial of disputes or complaints with respect to disputes in Munnar area and matters connected therewith or incidental thereto.

(10) It shall be competent for the Chairman or any other member, as authorised by the Chairman in this behalf, to hold sitting individually and exercise the jurisdiction, functions and powers of the Tribunal relating to the cases as entrusted by the Chairman.

4. *Transfer of disputes to the Tribunal.*—(1) Notwithstanding anything contained in any other law for the time being in force or order, decree or judgment, all disputes in respect of Munnar area pending before any Court or any other authority except the High Court and the Supreme Court shall stand transferred to the Tribunal immediately on the commencement of this Act.

(2) It shall be the duty of all courts and other authorities except the High Court and the Supreme Court to transfer all disputes relating to Munnar area to the Tribunal within two weeks of the constitution of the Tribunal.

5. *Power of the High Court to refer cases to the Tribunal.*—(1) Notwithstanding anything contained in any other law for the time being in force or order, decree or judgment, it shall be competent for the High Court to refer any case pending before it in respect of Munnar area, to which the Tribunal is empowered to adjudicate as per this Act, for final decision.

(2) On such reference the Tribunal shall proceed with the matter and pass orders under this Act which shall be final.

6. *Power of the Tribunal to make Regulations.*—Subject to the previous sanction of the Government, the Tribunal shall, for the purpose of regulating its own procedure make regulations consistent with the provisions of this Act and the rules made thereunder.

7. *Power of the Tribunal.*—The Tribunal shall, for the purpose of exercising any power conferred by or under this Act, have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of any document ;

(c) receiving evidence on affidavit ;

(d) issuing commission for the examination of witnesses or for local investigation ;

(e) inspecting any property or thing concerning which any decision has to be taken ;

(f) requisitioning of any public record or copy thereof from any court or office ; and

(g) any other matter as may be prescribed.

8. *Proceedings to be deemed to be judicial proceedings.*—All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

9. *Appeal.*—(1) The Government or any person objecting to the decision passed by the Tribunal may within sixty days of the date of decision file appeal against such decision before the High Court:

Provided that the High Court shall entertain an appeal under sub-section (1) only if there is a substantial question of law involved and shall not entertain an appeal as regards factual aspects alone.

(2) The appeal shall be in the prescribed form and shall be verified and accompanied by the fee as may be prescribed.

10. *Bar of jurisdiction of Civil Court.*—Except as otherwise provided in this Act, no civil court shall have jurisdiction to decide or deal with any question or to determine any matter which is, by or under this Act, required to be decided or dealt with or to be determined by the Tribunal.

11. *Power to make rules.*—(1) The Government may, by notification, make rules consistent with this Act for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) all matters expressly required or allowed by this Act to be prescribed ; and

(b) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen 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 Legislative Assembly make any modification in the rule or decides that the rule should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

12. *Cessation of functioning of the Tribunal.*—(1) The Government, if it is satisfied that all disputes, either transferred or referred to the Tribunal under this Act have been finally disposed of and functioning of the Tribunal is no more required, may by notification, order cessation of the functioning of the Tribunal and the Tribunal shall thereupon cease to function and in such case it shall be deemed to have been wound up with effect from the date of the notification.

(2) All records and other materials of the Tribunal shall on such cessation under sub-section (1) shall be transmitted to the District Court and such record shall be deemed to be part of the record of the District Court.

13. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions or take such measures not inconsistent with the provisions of this Act as appears to it to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Any order made by the Government under sub-section (1) shall be laid as soon as may be after such order is made before the Legislative Assembly.

14. *Repeal and savings.*—(1) The Munnar Special Ordinance, 2010 (27 of 2010), is hereby repealed.

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

STATEMENT OF OBJECTS AND REASONS

Munnar area is rich in flora and fauna and therefore it requires utmost preservation. It has also come to the notice of Government that natural resources in Munnar area are being exploited largely. Besides, the land in the said area has been subject to large scale encroachments, conversion and used for purposes other than for purposes assigned. In order to prevent this tendency and to preserve the Munnar area, the Government has taken many steps for demolishing the unauthorized or illegal constructions and structures and evicting such encroachers under various enactments. As a result of such measures taken by the Government and for other reasons connected with the land, a large number of disputes and cases are pending before the various authorities and courts including High Court of Kerala.

Most of the disputes are factual disputes which can be settled only by detailed examination of documents 'and evidences.

Therefore, the Government have decided to constitute a Special Tribunal for the adjudication of cases and disputes in respect of the land in Munnar Area comprising the villages of Chinnakanal, Kannan Devan Hills, Santhanpara, Vellathooval and Aanavilasom by transferring such land related cases pending before various courts and other authorities to the Special Tribunal.

2. As Legislative Assembly of the State of Kerala was not in session and the Governor of Kerala is satisfied that circumstances had existed which rendered it necessary for him to take immediate action, the Governor of Kerala

promulgated the Munnar Special Tribunal Ordinance, 2010 on the 12th June, 2010 and the same was published in the Kerala Gazette Extraordinary No. 1340 dated the 14th June, 2010 as Ordinance No. 27 of 2010.

3. The Bill seeks to replace the said Ordinance by an Act of the State Legislature.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of the Munnar Special Tribunal with Senior District Judge as Chairman, a person qualified to be appointed as High Court Judge and a person who shall be retired District Judge as members. Sub-clause (6) of the said clause empowers the Government to appoint officers and Staff required for the discharge of the functions of the Tribunal. As per the said provisions there will be a recurring expenditure of rupees 50 lakhs per annum for incurring expenses towards the functioning of the Tribunal, salaries and allowances, travelling expenses of the members, officers and staff, infrastructure facilities and other expenses connected therewith.

There will be no financial expenditure from the Consolidated Fund of the State if the other clauses of the Bill are enacted and implemented.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 3 of the Bill seeks to empower the Government, by notification, to constitute a Tribunal called Munnar Special Tribunal. Sub-clause (4) of the said clause seeks to empower the Government to prescribe the salaries and allowances payable to and the other terms and conditions of service of the Chairman and other members.

Sub-clause (7) of the said clause seeks to empower the Government to prescribe the salaries and allowances and conditions of service of the officers and other employees. Sub-clause (8) of the said clause seeks to empower the Government to prescribe the financial and administrative powers of the Tribunal and to delegate the same by prescribing rules.

2. Sub-clause (2) of clause 9 of the Bill seeks to empower the Government to prescribe the form, the manner of verification and fees for filing appeal under sub-clause (1) of the said clause.

3. Sub-clause (1) of clause 11 of the Bill seeks to empower the Government to make, by notification, rules consistent with the Act for carrying out the provisions of the Act.

4. Clause 12 of the Bill seeks to empower the Government to issue order, by notification, for cessation of the functioning of the Tribunal.

The matters in respect of which notifications or orders may be issued or rules may be made are matters of procedure and are of routine and administrative in nature. Further, the rules are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, therefore, of a normal character.

KODIYERI BALAKRISHNAN

(True Translation)