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Thirteenth Kerala Legislative Assembly

Bill No. 357

**THE KERALA CASHEW FACTORIES (ACQUISITION)
AMENDMENT BILL, 2015**

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BILL

further to amend the Kerala Cashew Factories (Acquisition) Act, 1974.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Cashew Factories (Acquisition) Act, 1974 for the purposes hereinafter appearing;

1. *Short title and commencement.*—(1) This Act may be called the Kerala Cashew Factories (Acquisition) Amendment Act, 2015.

(2) It shall be deemed to have come into force on the 1st day of May, 1984.

2. *Amendment of section 3A.*—In section 3A of the Kerala Cashew Factories (Acquisition) Act, 1974, (hereinafter referred to as the principal Act), in sub-section (1),—

(i) after the words, “closed for a period of not less than three months” the words “prior to the date of coming into force of this Act or any day thereafter” shall be added;

(ii) in the proviso, after the words “resolution of the Legislative Assembly”, the words, figures and brackets, “which shall be passed within a period of six months from the date of publication of the order under sub-section (1) of this section” shall be added.

(iii) after the proviso, the following explanation shall be inserted, namely:—

“*Explanation.*—The vesting in pursuance of the order mentioned in sub-section (1) shall take effect on the date of publication of such order.”.

3. *Insertion of section 6A.*—After section 6 of the principal Act, the following section shall be inserted, namely:—

“6A. *Acquisition of factories specified in Schedule III.*—(1) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in any other law, agreement or other instrument for the time being in force, it is hereby declared that it is expedient in public interest that the cashew factories specified in Schedule III of this Act shall, stand transferred to, and vest in, the Government with effect from the date noted against each:

Provided that such transfer shall be supported by a resolution of the Legislative Assembly which shall be passed within a period of six months from the date of publication of the Kerala Cashew Factories (Acquisition) Amendment Act, 2015 in the Gazette.

(2) The provisions of section 4, sections 7 to 16 (both inclusive) of the Act shall, as far as may be, apply to, or in relation to, the cashew factory in relation to which a declaration has been made under sub-section (1) of section 3A.

(3) For the removal of doubt it is hereby declared that the dates mentioned in the Schedule against each factory shall be the ‘appointed day’ in respect of that factory for the purposes of the Act.

(4) All acts, proceedings or things done or taken by the Government or any officer or authority in respect of cashew factories mentioned in the Schedule III including all the orders issued under sub-section (1) of section 8 during the periods commencing on and from the dates noted against each and ending with the date of publication of the Kerala Cashew Factories (Acquisition) Amendment Act, 2015 in the Gazette, shall, for all purposes be and shall be deemed always to have been as valid and effective as if the amendments made to the Act by the said amendment Act had been in force at all material times.”.

4. *Amendment of section 9.*—In section 9, after sub-section (7), the following sub-sections shall be inserted, namely:

“(8) Notwithstanding anything contained in any other law for the time being in force or any judgment, order or decree passed by any court, tribunal or authority, where the occupier or owner of a cashew factory has accepted the amount determined in accordance with the provisions herein contained, the cashew factory shall be deemed to have been conveyed to the Government by means of execution of a conveyance as defined in section 54 of the Transfer of Property Act, 1882 (Central Act 4 of 1882) and accordingly the right, title and

interest of the occupier or owner shall stand extinguished upon the date of receipt of the compensation.

(9) If the conveyance referred to in sub-section (8) has taken place, the Government shall not be obliged to give possession of the factory back to the owners/occupiers.”.

5. *Insertion of Schedule III.*—After Schedule II of the principal Act, the following Schedule shall be inserted, namely:—

SCHEDULE III

(See Section 6A)

<i>Sl. No.</i>	<i>Reg. No. of the factory</i>	<i>Name, description and details of factories</i>	<i>Date from which it is vested in Government</i>
(1)	(2)	(3)	(4)
1	K.U.28	M/s Grand Cashew Corporation, Chengamanad, located at Melila Village, Kottarakkara Taluk, Kollam District.	11-5-1984
2	K.U.96	M/s K. A. Karim & Sons, Kilikolloor, located at Kilikolloor Village, Kollam Taluk, Kollam District.	11-5-1984
3	Q.38	M/s P. K. Damodar Cashew Company, Eravipuram, located at Eravipuram Village, Kollam Taluk, Kollam District.	27-7-1984
4	Q.97	M/s Quilon Exports, Chathannoor, located at Chathannoor Village, Kollam Taluk, Kollam District.	27-7-1984
5	Q.150	M/s Dhanalckshmi Exports, Navaikulam, located at Navaikulam Village, Chirayinkil Taluk, Thiruvananthapuram District.	27-7-1984

(1)	(2)	(3)	(4)
6	K.U.59	M/s Rajasree Exports Entreprises, Perinadu, located at Perinadu Village, Kollam Taluk, Kollam District.	27-7-1984
7	K.U.207	M/s Viswanath Cashew Factory, Chathinamkulam, located at Kilikolloor Village, Kollam Taluk, Kollam District.	8-2-1985
8	K.U.185	M/s Dalmia International, Perumpuzha, located at Kottamkara Village, Kollam Taluk, Kollam District.	8-2-1985
9	A.P.9	M/s Standard Cashew Industries, Pathiyoor, located at Pathiyoor Village, Karthikappally Taluk, Alappuzha District.	25-4-1985
10	A.P.11	Rajmohan Cashew Limited, Eruva, located at Eruva, Kayamkulam in Karthikappally Taluk, Alappuzha District.	11-6-1986.

STATEMENT OF OBJECTS AND REASONS

1. The Kerala Cashew Factories (Acquisition) Act, 1974 empowers Government in the public interest to acquire certain cashew factories to prevent large scale unemployment among the workers in the cashew industry and to provide employment to the workers who have been rendered unemployment and to secure to them just conditions of service.

2. The Government have acquired certain cashew factories by invoking section 3 of the Kerala Cashew Factories (Acquisition) Act, 1974. The above action of the Government was challenged by the original owners. In Indian Nut Product Vs. Union of India reported in 1994 (2) KLT 598, the Hon'ble Supreme Court had upheld the validity of the Kerala Cashew Factories (Acquisition) Act, 1974, however the Court declared certain notification issued by the Government under sub-section (1) of section 3 of the aforesaid Act as null and void. Based on the above decision of the Supreme Court, the Kerala High Court disposed of certain petitions pending in the High Court against acquisition under the said Act and direct the Government to handover the factories to the original owners.

3. The main ground for quashing the notification was that the Government had not given proper notice as required under section 3 of the Act and that the parties were not given sufficient opportunity of being heard before final orders were passed by the Government.

4. The factories are now under the management of Cashew Development Corporation and also CAPEX. The Hon'ble Supreme Court vide its judgment dated 4th February, 2015 in Civil Appeal No. 3962/07 and 3963/07 has quashed section 6 of the Kerala Cashew Factories Acquisition (Amendment) Act, 1995 and has directed that the 10 Cashew Factories and the land appurtenant thereto that have been taken over by the State for CAPEX under the said Amending Act must be handed back to its original owners within eight weeks from the date of judgment.

5. If the cashew factories are handed over to the previous owners based on the directions of the Court, the owners may not be in a position to start work in the near future for the reason that they are not in cashew trade for a long period and due to paucity of raw cashew nut in the world market. There will be large scale unemployment among the workers in cashew industry. There will also be socio-economic disorders in the southern district of the State, where there is a concentration of cashew factories. Therefore to tide over the situation, Government intends to arm with a new legislation to acquire certain factories from the date of original notification for acquisition.

6. The Bill seeks to amend the Kerala Cashew Factories (Acquisition) Act, 1974, to achieve the above object.

FINANCIAL MEMORANDUM

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

P. K. KUNHALIKUTTY

EXTRACT OF THE RELEVANT PORTIONS FROM THE KERALA
CASHIEW FACTORIES (ACQUISITION) ACT, 1974
(29 OF 1974)

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3A. *Power to acquire any cashew factory in public interest.* (1)
Notwithstanding anything contained in section 3, if the Government are satisfied, in relation to a cashew factory, that it has been closed for a period of not less than three months and such closure has prejudicially affected the interest of the majority of the workers engaged in that factory and that immediate action is necessary to restart the cashew factory and such restarting is necessary in the public interest, they may, by order published in the Gazette, declare that the cashew factory shall stand transferred to, and vest in, the Government:

Provided that no order under this sub-section shall be published unless the proposal for such acquisition is supported by a resolution of the Legislative Assembly.

(2) The provisions of sub-section (3) of section 3 and section 4 shall, as far as may be, apply to a declaration made under sub-section (1), as they apply to a declaration made under sub-section (1) of section 3.

(3) The provisions of section 7 to 16 (both inclusive) shall, as far as may be, apply to, or in relation to, the cashew factory, in respect of which a declaration has been made under sub-section (1), its occupier or Government, as the case may be, as they apply to a cashew factory in relation to which a declaration has been made under sub-section (1) of section 3.

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6. *Declaration as to acquisition of certain cashew factories.*—(1) It is hereby declared that it is expedient in the public interest that the cashew factories specified in the Schedule to this Act shall, notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other

authority and notwithstanding anything contained in any other law, agreement or other instrument for the time being in force, stand transferred to, and vest in, the Government with effect from the date noted against each.

(2) The provisions of section 4, section 7 to 16 (both inclusive) of the principal Act shall, as far as may be, apply to, or in relation to, the cashew factory in respect of which sub-section (1) apply, as they apply to a cashew factory in relation to which a declaration has been made under sub-section (1) of section 3A.

(3) For removal of doubt it is hereby declared that the dates mentioned in the Schedule against each factory shall be 'the appointed day' in respect of that factory for the purposes of the principal Act.

(4) All acts, proceedings or things done or taken by the Government or any officer or authority in respect of cashew factories mentioned in the Schedule including all the orders issued under sub-section (1) of section 8, during the periods commencing on and from the dates noted against each and ending with the date of publication of this Act in the Gazette, shall, for all purposes be, and shall be deemed always to have been, as valid and effective as if the amendments made to the principal Act by this Act had been in force at all material times.

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9. *Payment of amount.*—(1) The occupier of every cashew factory which is acquired under this Act shall be paid by the Government an amount which shall be determined in accordance with the principles specified in the Schedule:

Provided that where the occupier is not, the owner of the cashew factory, such owner shall be entitled to such portion of the amount as may be determined by the District Court under sub-section (5).

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(7) The amount determined in accordance with the foregoing provisions shall be paid to the person or persons entitled thereto in cash within a period of six months from the date of such determination:

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SCHEDULE II

(See section 3B)

<i>Sl. No.</i>	<i>Reg. No. of the cashew factory</i>	<i>Name, description and details of cashew factory</i>	<i>Name and address of the owner</i>
(1)	(2)	(3)	(4)
1	Reg. No. AP. 10	Fy. No. 4, Krishnapuram, Kayamkulam, located at Krishnapuram Village, Karthikapally Taluk, Alleppey Dist., taken over on lease on 1-3-1971	Shri S. Ramachandra Naik, 23-2002 Kadri Temple Road, Mangalore.
2	Reg. No. KU. 2	Fy. No. 5, Mynagappally, Karunagappally located at Mynagappally Village, Karunagappally Taluk, Kollam Dist., taken over on lease on 15-3-1971	Smt. K. Devayani Amma, Jupiter Cashew Co., Kochupilammoodu, Kollam.
3	Reg. No. KT. 72	Fy. No. 7, Nooranadu, Kayamkulam located at Nooranadu Palamel Village, Mavelikkara Taluk, Alleppey Dist., taken over on lease on 11-5-1971	T. G. Walter, Mammikunnu Bunglow, Mundakkal, Kollam.
4	Reg. No. KU. 78	Fy. No. 8, Puthoor, Kollam located at Pavithreswaram Village, Kollam Taluk, Kollam District, taken over on lease on 12-5-1971	S. Ramachandra Naik, 23-2002 Kadri Temple Road, Mangalore.
5	Reg. No. Q. 1	Fy No. 9, Kilimanoor, Trivandrum located at Pazhayakunnummel Village, Chirayinkeezh Taluk, Trivandrum Dist., taken over on lease on 3-6-1971	Smt. Devayani Amma, Jupiter Cashew Co., Kochupilammoodu, Kollam.

(1)	(2)	(3)	(4)
6	Reg. No. KU. 64	Fy. No. 11, Edamulakkal, Edamulakkal Village, Pathanapuram Taluk, Kollam Dist., taken over on lease on 14-4-1971	M/s Ramsons & Co., Kollam-4.
7	Reg. No. Q. 55	Fy. No. 12, Chathanoor, Meenadu Village, Kollam Taluk, Kollam Dist., taken over on lease on 16-8-1971	Badarudeen Musaliar, Kandannachalil House, Kilikolloor, Kollam-4.
8	Reg. No. KU. 36	Fy. No. 14, Bharanikkavu, Sasthamcottah Village, Kunnathoor Taluk, Kollam Dist., taken over on lease on 9-2-1972	Smt. Umaiban Beevi, Kambikettle Veedu, Kilikolloor, Kollam.
9	Reg. No. KU. 41	Fy. No. 16, Adinadu, Kulasekharapuram Village, Karunagappally Taluk, Kollam Dist., taken over on lease on 7-2-1972	Smt. B. Leela, Padmalayam, Uliyacovil, Kollam.
10	Reg. No. KU. 53	Fy. No. 20, Elampalloor, Elampalloor Village, Kollam Taluk, Kollam Dist., taken over on lease on 14-2-1972	K. Mydeen Kunju & Sons, Kuthirapanthiyil Bunglow, Thevally, Kollam.
11	Reg. No. KU. 70	Fy. No. 22, Nedumpaikulam, Ezhukone Village, Kollam Taluk, Kollam Dist., taken over on lease on 28-2-1972	K. Suresh, Managing Partner, Shanmughavilas, Kilikolloor, Kollam.
12	Reg. No. KT. 71	Fy. No. 24, Karimulakkal, Chunakkara Village, Mavelikkara Taluk, Alleppey Dist., taken over on lease on 18-5-1972	T. G. Walter, Mammikunnu Bunglow, Kochupilammoodu, Kollam.

(1)	(2)	(3)	(4)
13	Reg. No. KU. 88	Fy. No. 26, Thettikuzhy, Thazhuthala Village, Kollam Taluk, Kollam District, taken over on lease on 11-3-1974	Smt. Ummasalummal, Kuruttazhikathu Veedu, Umayanalloor, Kollam.
14	Reg. No. Q. 95	Fy. No. 27, Eravipuram, Eravipuram Village, Kollam Taluk, Kollam Dist., taken over on lease on 13-3-1974	M/s Ramsons & Co., Kollam-4.
15	Reg. No. Q. 96	Fy. No. 28, Parippally, Parippally Village, Kollam Taluk, Kollam Dist., taken over on lease on 13-3-1974	M/s Ramsons & Co., Kollam-4.
16	Reg. No. KU. 86	Fy. No. 29, Paruthumpara, Mulavana and Ezhukone Village, Kollam Taluk, Kollam Dist., taken over on lease on 11-3-1974	M/s M. P. Govindan, & Sons, Kollam-4.
17	Reg. No. KU. 158	Fy. No. 30, Kunnathoor, Kunnathoor Village, Kunnathoor Taluk, Kollam Dist., taken over on lease on 21-3-1974	G. Bhanu Asan, Vishnu Nivas, Pattathanam, Kollam. <i>Present:</i> Sushamma, Sitaram, Acharandil House, Pattathanam, Kollam.
18	Reg. No. Q. 31	Fy. No. 32, Kanjamkadu, Kollam Corporation, Kollam Taluk, Kollam Dist., taken over on lease on 23-3-1974	Smt. Rajeswari, W/o Govindaraja Reddiyar, Raji Nivas, N.A.N.R. Compound, Main Road, Kollam.

(1)	(2)	(3)	(4)
19	Reg. No. Q. 243	Fy. No. 33, Kadakkal, Kadakkal Village, Kottarakkara Taluk, Kollam Dist., taken over on lease on 29-4-1974	Smt. B. Jalaja Kumari, Bhaskara, Temple Lane, Medical College P. O., Ulloor, Trivandrum.
20	Reg. No. KU. 9	Fy. No. 34, Chengamanadu, Melila Village, Kottarakkara Taluk, Kollam Dist., taken over on lease on 13-6-1974	Smt. Rajeswari, W/o Govindaraja Reddiyar, Raji Nivas, N.A.N.R. Compound, Main Road, Kollam.

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