

*THE KERALA LAND CONSERVANCY ACT, 1957

(Act 8 of 1958)

Amended by Acts 11 of 1971, 16 of 2000 and 29 of 2009

An Act to check the unauthorised occupation of Government lands ¹[and to provide for matters connected therewith or incidental thereto].

Preamble.— WHEREAS it is necessary to enact a uniform law for checking the unauthorised occupation of Government lands ¹[and to provide for matters connected therewith or incidental thereto.]

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.

2. Repeal.— The Travancore-Cochin Land Conservancy Act, 1951, and the Madras Land Encroachment Act, 1905, as in force in the Malabar district referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), are hereby repealed.

Case Law

State need not be a party: Possessory rights can be claimed as between persons who assert rival claims over Government land. In such actions the State need not be a party. *Appukkuttan Chettiyar v. Lathikadevi Amma* — 2005 KHC 46 : 2005 (1) KLT 260.

* This Act received the assent of the Governor on 13/01/1958 and was published in K. G. Ext. No. 3 dt. 15/01/1958 (w.e.f. 15/01/1958).

1. Added by Act 29 of 2009, published under Notification No. 20457/Leg.A1/2008/Law. dt. 07/10/2009 in K. G. Ext. No. 1843 dt. 07/10/2009 (w.e.f. 08/11/2008).

Statement of objects and reasons

Act 8 of 1958

I

The law relating to the prevention of unauthorised occupation of Government lands in the State is contained in the Travancore-Cochin Land Conservancy Act, 1951 and the Madras Land Encroachment Act, 1905. It is considered necessary to have a uniform law on the subject applicable to the whole State. The Bill seeks to achieve this purpose. (Published in K.G. Ext. No. 91 dt. 19/08/1957).

II

Act 11 of 1971

1. Experience in the working of the Kerala Land Conservancy Act, 1957, has revealed that the Act requires amendments for its effective and speedy implementation. For example, in cases of mass encroachments of Government lands and in cases where eviction of encroachers has to be immediately effected, the ordinary procedure under the Act is found to be ineffective. Therefore, a provision for empowering the Collector to take immediate action in such circumstance without following the ordinary procedure is considered necessary. Similarly the need for providing deterrent penalties in the case of continuing offences is very strongly felt, since the tendency to make inroads into Government lands is on the increase.

2. It is also considered necessary to make the Act applicable to lands belonging to other State Government, the Kerala State Electricity Board, etc.

3. As the Legislative Assembly was not in session, the required amendments were made by means of an Ordinance promulgated by the Governor on the 5th January, 1971 and published as Ordinance No. 1 of 1971. The Bill seeks to replace the Ordinance by an Act of the Legislature.

4. The Notes on clauses explain in detail the various provisions of the Bill.

Possessory rights whether can be claimed: Possessory rights can be claimed as between persons who assert rival claims over Government land. In such actions the State need not be a party. *Appukkuttan Chettiyyar v. Lathikadevi Amma* — 2005 KHC 46 : 2005 (1) KLT 260.

River vested in Panchayat: Concurrence of Panchayat necessary for invoking Land Conservancy Act. *Appu v. Tahsildar, Palghat* — 1974 KLT SN 67.

3. Property of Government defined.— (1) All public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same the bed of the sea and of harbours and creeks below high water mark, the beds and banks of rivers, streams, irrigation and drainage channels, canals, tanks, lakes, backwaters and water courses, and all standing and flowing water, and all lands wheresoever situated, save in so far as the same are the property of—

- (a) ²[Jenmies, Wargdars] or holders of Inams; or
- (b) ²[persons registered in the revenue records as] holders of lands in any way subject to the payment of land revenue to the Government; or
- (c) any other registered holder of land in proprietary right; or
- (d) any person holding land under grant from the Government otherwise than by way of a ²[lease or licence]; or
- (e) any person claiming through or holding under any of the persons referred to in clauses (a), (b), (c) or (d), are, and are hereby declared to be, the property of Government, except as may be otherwise provided by any law for the time being in force, subject to all rights of way and other public rights and to the natural and easement rights of other land owners and to all customary rights legally subsisting.

Explanation I.— Lands once registered in the name of a person but subsequently abandoned

(Statement of objects and reasons *contd.*...)

III

Act 29 of 2009

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 can be 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 for imposing penalty on those who encroach the revenue land and to make 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.

A Bill to replace Ordinance No. 41 of 2008 was published as Bill No. 239 of the Twelfth Kerala Legislative Assembly, but the same could not be introduced in, and passed by, the Legislative Assembly during its session which commenced on the 24th day of November, 2008 and ended on the 18th day of December, 2008. Therefore, the Kerala Land Conservancy (Amendment) Ordinance, 2009 (1 of 2009) was promulgated by the Governor on the 3rd day of January, 2009 and the same was published in the Kerala Gazette Extraordinary No. 28 dated 5th January, 2009.

A Bill to replace the Ordinance No. 1 of 2009 could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 13th day of February, 2009 and ended on the 3rd day of March, 2009. Therefore, the Kerala Land Conservancy (Amendment) Ordinance, 2009 (6 of 2009) was promulgated by the Governor on the 26th day of March, 2009 and the same was published in the Kerala Gazette Extraordinary No. 674 dated 26th March, 2009.

The Bill seeks to replace the Ordinance No. 6 of 2009 by an Act of the State Legislature.

2. Substituted by Act 11 of 1971 (w. e. f. 05/01/1971).

or relinquished, and all lands held by right of escheat, purchase, resumption, reversion or acquisition under the land Acquisition Act for the time being in force, are the property of Government within the meaning of this section.

³[**Explanation IA.**— Where the ownership and possession, or the possession, of any land are or is vested in the Government under Section 86 or Section 87 of the Kerala Land Reforms Act, 1963 (1 of 1964), such land shall, so long as it is in the possession of the Government, be the property of Government within the meaning of this section].

Explanation II.— In this section, the expression 'high water mark' means the highest point reached by the ordinary spring tide at any season of the year.

Explanation III.— Where, in regard to roads, lanes and canals, survey stones had been, in the original demarcation under the Survey Act in force planted for the sake of convenience and safety inside compound walls and gates of compounds, in house verandhas, door steps, porticoes, masonry drains and similar structures of a permanent nature, such walls, gates, verandhas, etc., shall not be deemed to be the property of Government within the meaning of this section.

³[**Explanation IV.**— (1) Lands belonging to the Government of any other State in India or the Kerala State Electricity Board or to a University established by law ⁴[or to any Panchayat as defined in the Kerala Panchayat Raj Act, 1994 (13 of 1994)] or any Municipality as defined in the Kerala Municipality Act, 1994 (20 of 1994) owned or controlled by the Government of Kerala or to a Municipal Corporation shall be deemed to be the property of Government within the meaning of this section.]

(2) All unassessed lands within the limits of private estates used or reserved for public purposes or for the communal use of villagers, and all public roads and streets vested in any local authority shall, for the purpose of this Act, be deemed to be the property of Government.

Case Law

Rivers : provisions of Land Conservancy Act: Although by virtue of S.218 of the Kerala Panchayat Raj Act, 1994, Achankovil river is vested in the fourth respondent Panchayat absolutely, the legislature has subsequently chosen to amend Explanation IV to S.3 of the Kerala Land Conservancy Act, in 2000 to retain the properties of the Panchayat also as Government properties. In spite of vesting of rivers in Panchayats under S.218 of Panchayat Raj Act, provisions of Land Conservancy Act are applicable and proceedings can be issued under the L.C. Act. *Anish v. District Collector* — 2012 KHC 2386 : 2012 (2) KLT 7.

Land formed by a sudden change in the course of a public river: Vests in Government: Only benefits the owner of that land and not to the owner whose land was separated by the bank of river when the river was flowing over it. Riparian rights cannot be claimed by any person against the State as riparian owner. *Riparian Rights. Mathai v. State of Kerala* — 1989 KHC 476 : 1989 (2) KLT 593 : 1989 (2) KLJ 418 : ILR 1990 (1) Ker. 392.

Eviction order for unauthorised occupation of poramboke land within Municipal Corporation area: Licence issued by Municipality to predecessor-in interest of petitioner. Concurrence of Municipal Corporation necessary before eviction. *Tahsildar, Kanayannur v. Lucy Eapen* — 1981 KLT SN 46 : AIR 1981 Ker. 61.

Encroachments over roads vested in Panchayats under S.62 of the Panchayats Act: Proceedings to be taken under the Land Conservancy Act. *Mytheen Mohammed v. Board of Revenue and Others* — 1974 KHC 43 : 1974 KLT 134 : ILR 1974 (1) Ker. 232.

4. "Poramboke" defined.— (1) "Poramboke" shall mean and include unassessed lands which are the property of Government under Section 3(1) or (2) used or reserved for public purposes or for the communal use of villagers such as.

- (a) all public roads, streets, lanes, pathways, the bridges, ditches, dykes and fences on or beside the same;

3. Inserted by Act 11 of 1971 (w. e. f. 05/01/1971).

4. Substituted for the words "or to a Municipal Corporation" by Kerala Decentralisation of Powers Act, 2000 (16 of 2000), G. O. (P) No. 3294/Leg. C1/2000/Law dt. 12/05/2000.

