

# \*THE KERALA CONSERVATION OF PADDY LAND AND WETLAND ACT, 2008

(Act 28 of 2008)

Amended by Act 14 of 2011

*An Act to conserve the paddy land and wetland and to restrict the conversion or reclamation thereof, in order to promote growth in the agricultural sector and to sustain the ecological system, in the State of Kerala*

**Preamble.**— WHEREAS, it has come to the notice of the Government that indiscriminate and uncontrolled reclamation and massive conversion of paddy land and wetland are taking place in the State;

AND WHEREAS, there is no existing law to restrict effectively, the conversion or reclamation of paddy land;

AND WHEREAS, the Government are satisfied that it is expedient, in public interest, to provide for the conservation of paddy land and wetland and to [restrict the conversion] or reclamation thereof, in order to promote agricultural growth, to ensure food security and to sustain the ecological system in the State of Kerala;

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 Conservation of Paddy Land and Wetland Act, 2008.

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

(3) It shall come into force at once.

\* Received the assent of the Governor on 11/08/2008. Published under Notification No. 19661/Leg. A1/2007/ Law dt. 12/08/2008, in K. G. Ext. No. 1790 dt. 12/08/2008 (w.e.f. 12/08/2008).

1. The word "restrict the conservation" corrected as per Erratum Notification No. 1673/Leg.A1/2009/Law. dt. 20/10/2009 in K. G. Ext. No. 1926 dt. 20/10/2009.

## Statement of Objects and Reasons Act 28 of 2008

Till recently, Kuttanad, Palakkad and such other paddy fields of Kerala were remained as the granaries of the State of Kerala. But the situation has changed for the last few decades. There has been an alarming shift from rice and subsistence food farming to cash crops. The area under rice cultivation has drastically declined from above eight lakhs hectares in the early 1970s to nearly two lakhs hectares in 2000s mainly due to conversion of paddy lands. Kerala is importing more than eighty per cent of its rice requirements from other States. Several social, economical and cultural changes have led to conversion of paddy fields. The paddy fields throughout Kerala is facing severe threats as they are being converted to cash crop plantations. Even the marshes are filled for new constructions. Majority of landowners feel that sustained paddy cultivation is not economically viable and they aspire to shift into more remunerative crops and cropping patterns. Paddy field conversion had led to enormous ecological degradation in the watershed region, reduction in humus formation, intensification of soil erosion that affected the fertility of soil, reduction in water level in wells, ponds etc. The ecological system loses its quality irrecoverably forever and the entire society is the loser. It has led to loss of direct and indirect employment to farm workers and rural women. The rural poor will have to experience acute water shortage than at present. They lost access to nutrient-rich, low cost food materials, which had been available in and around the paddy fields. Now majority are unaware of the true value of the loss of resources and its consequences on the livelihood conditions and gravity of the problem. It is very likely that the remaining paddy lands would be vanished in the near future, if the present policy is continued.

(2) In the wider interest of the society and mankind, paddy lands are to be preserved. Paddy is an amphibious crop that can be cultivated along with the maintenance of ecological functions of wetland and hence paddy cultivation is to be preserved and promoted at any cost.

(3) Similarly, wetlands are some of the most diverse ecosystems on earth as they have both land and aquatic characteristics. Different plant species of a wetland provide habitat for a variety of animal communities. In addition to

### Case Law

**Public interest litigation : Construction of cricket stadium at Edakochi:** Direction sought not to allow construction in the reclaimed lands. Held, construction activity of the proposed stadium should be pursued only on obtaining statutory clearance from various Authorities concerned. *Thampi C. G. and Another v. Union of India and Others* — 2011 (1) KHC 764 (DB).

**Effect of Paddy Land Act on orders passed under Kerala Land Utilisation Order:** Orders issued under the Kerala Land Utilisation Order are not affected by the enactment of Paddy Land Act. *Kaipadath Property Development Company (Pvt.) Ltd. v. State of Kerala and Others* — 2011 (1) KHC 291.

**Order issued under the Kerala Land Utilisation Order allowing conversion:** Impact of provisions of Paddy Land Act, 2008. Held, orders issued under the Kerala Land Utilisation Order cannot be taken as inoperative or is nullified by the provisions of the Paddy Land Act. *Kaipadath Property Development Company (Pvt.) Ltd. v. State of Kerala and Others* — 2011 (1) KHC 291.

**Deeds and documents:** Description of property as wetland in the document. Whether the property answers the definition of wetland under the Paddy Land Act. Held, usually in documents, nomenclature "wetland" is used in contra distinction to "dry land" relating to transaction of properties. Mere mention of wetland in the document cannot mean that it answers the description of wetland under the Act. *Kaipadath Property Development Company (Pvt.) Ltd. v. State of Kerala and Others* — 2011 (1) KHC 291.

**Interference of Court when there is statutory remedy:** When writ petition is entertained and interim orders passed, it cannot be said that Writ Court has no jurisdiction. When serious questions like interpretation of provisions of Act arises for consideration, Writ Court is duty - bound to consider and pass orders. *Kaipadath Property Development Company (P.) Ltd. v. State of Kerala and Others*. — 2011 (1) KHC 291.

micro organisms and invertebrates, reptiles are common in wetland. Many amphibians live in wetland during at least part of their life cycle. A large number of fish species require wetland habitat for spawning, feeding, or protection from predation. Birds are attracted to wetland by the abundant food resources and sites for nesting, resting and feeding. Inland wetland help control floods by storing water and slowly releasing it to downstream areas after the flood peak.

(4) Kerala has a total wetland area of 127930 hectares, out of which an area of 34200 is in the 'inland wetland' and 93730 hectares is in the 'coastal wetland'. We have three fresh water lakes at Pookot in Wayanad District, Sasthankotta in Kollam District and Vellayani in Thiruvananthapuram District. All the wetland including fresh water lakes are facing severe threat as they are drained, cleared and reclaimed for the use of agriculture, settlement, industrial and several other purposes. This behavior will certainly disturb the ecological balance and scarcity for drinking water, drying up of perennial water sources and saline intrusion in the sweet water wells.

(5) Therefore, it is proposed to bring a new legislation covering various aspects of the issue to conserve, regulate the reclamation and conversion of paddy fields and wetland in Kerala.

(6) The proposed enactment will facilitate conservation of paddy land and wetland; to regulate illegal and vast reclamation of paddy land and other wetland; indiscriminate clay mining from the paddy field; and to improve the overall ecological conditions of the State.

(7) The Bill seeks to achieve the above objects. (*Published in K. G. Ext. No. 1694 dt. 17/09/2007*).

#### Act 14 of 2011

As per Section 12 of the Kerala Conservation of Paddy Land and Wetland Act, 2008 it has been authorised to appoint an officer of the Revenue Department not below the rank of Revenue Divisional Officer as the authorised officers. It is the said authorised officers to inspect whether any provisions of the Act has been violated and also to take initial steps to seize and confiscate any vehicles or instruments used or intended to be used. The power to enter any premises and to inspect for the said purpose is also with such officer. Usually the illegal reclamation are reported before the Village Officer. Since the actions taken as per this by the Village Officer or Deputy Tahsildar or Tahsildar is not in accordance with the existing provisions, the actions taken by such officers will become violative of law. Further, since the officers below the Revenue Divisional Officer do not now have the power to enter into any premises and to conduct inspection and seize the vehicles and instruments etc. used against the provisions of the Act as per Section 19 of the Act also, the Government consider it necessary to empower the Government to appoint an officer not below the rank of Village Officer for the purposes of the said sections. As per Section 13 of the Act, the Collector is empowered only to take appropriate steps to restore to the original position of any paddy land reclaimed. The Government have decided to give this power in the matter of reclamation of wetland also. The Government consider that the said amendments are necessary to implement the provisions of the Act more effectively.

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 Conservation of Paddy Land and Wetland (Amendment) Ordinance, 2011 (38 of 2011) was promulgated by the Governor of Kerala on the 27th day of April, 2011 and the same was published in the Kerala Gazette Extraordinary No. 929 dated the 28th day of April, 2011.

The Bill seeks to replace Ordinance No. 38 of 2011 by an Act of the State Legislature. (*Published in K. G. Ext. No. 1392 dt. 16/07/2011*).

**Description of the land in the revenue records as 'nilam', whether conclusive to hold that land is a paddy land:** Mere description of the property on the revenue record by itself may not be conclusive and may not estop a party from producing materials to show otherwise. Question whether a land is a 'nilam' has to be adjudged based on materials on record. *Praveen K. v. Land Revenue Commissioner, Thiruvananthapuram and Others* — 2010 (2) KHC 499 : 2010 (2) KLT 617 (DB).

**Whether provisions of the KLU are valid after the enactment of the Paddy Land Act:** Except in the case of paddy land and wetland, the provisions contained in the KLU still survives in respect of the other food crops. Restriction imposed under KLU in respect of other food crops and conversion of such land will be continued to be governed by the provisions contained in the KLU. *Praveen K. v. Land Revenue Commissioner, Thiruvananthapuram and Others* — 2010 (2) KHC 499 : 2010 (2) KLT 617 (DB).

**Application under Kerala Land Utilisation Order:** If an application is made under the Kerala Land Utilisation Order, the same is not liable to be dismissed before an enquiry is held by the concerned authority under the Act and a finding is entered that the land in respect of which the application is made is a paddy land or a wetland. If the land is not found to be paddy land or wetland, application has to be considered as per the provisions of the KLU. *Praveen K. v. Land Revenue Commissioner, Thiruvananthapuram and Others* — 2010 (2) KHC 499 : 2010 (2) KLT 617 (DB).

**Order issued under the Kerala Land Utilisation Order allowing conversion:** Impact of provisions of Paddy Land Act, 2008. Held, orders issued under the Kerala Land Utilisation Order cannot be taken as inoperative or is nullified by the provisions of the Paddy Land Act. *Kaipadath Property Development Company (Pvt.) Ltd. v. State of Kerala and Others* — 2011 (1) KHC 291.

**2. Definitions.—** In this Act, unless the context otherwise requires,—

- (i) "Collector" means the Collector of the district and includes any other officer appointed or authorised by the Government to perform the functions of the Collector;
- (ii) "Committee" means the Local Level Monitoring Committee constituted under Section 5;
- (iii) "conversion" means the situation whereby, land that has been under paddy farming and its allied constructions like drainage channels, ponds, canals, bunds and ridges are put to use for any other purpose;
- (iv) "district" means a revenue district;
- (v) "District Level Authorised Committee" means the District Level Authorised Committee to be constituted under Section 9;
- (vi) "drainage channel" means the inlets or outlets for the flow of water to or from a paddy land;
- (vii) "Government" means the Government of Kerala;

#### Case Law

**Paddy land and wetland:** Filling up of 'Kole' land. Whether land can be ordered to be reclaimed. Held, wetland used for any paddy cultivation does not fall under paddy land or wetland. Paddy lands and rivers are specifically excluded from the definition of "wetland". Before passing order directing restoration of land to its earlier position, the District Collector will have to verify whether the land in question was a wetland or a land which was cultivated with paddy. Kole land which is a wetland cannot be ordered to be reclaimed. *Kaipadath Property Development Company (Pvt.) Ltd. v. State of Kerala and Others* — 2011 (1) KHC 291.

- (viii) "holder of paddy land" means a person holding any paddy land whether as owner or under a legal right;
- (ix) "intermediary crop" means a short term crop, cultivated in between two paddy cultivation periods in an interchangeable manner according to the ecological nature of the paddy land like vegetables, pulses, plantain, fish, etc.;

#### Case Law

**Paddy land : Meaning of:** Paddy land also includes lands suitable for paddy cultivation but uncultivated and left fallow. Hence, unsuitability of not being cultivated and left fallow cannot be a reason to exclude such lands from the definition of 'paddy land'. *Adani Infrastructure & Developers Pvt. Ltd., Mumbai and Others v. State of Kerala and Others* — 2014 (1) KHC 685 : 2014 (1) KLT 774.

**Land not cultivated with paddy but has growth of other plants and trees : Whether would come under the definition of paddy land:** Any paddy land left uncultivated, would be rendered uncultivable

