

THE KERALA PRIVATE FORESTS (Vesting and Assignment) Act, 1971

(Act 26 of 1971)

(As amended by Act 5 of 1978, Act 20 of 1981 and Act 36 of 1986)

An Act to provide for the vesting in the Government of private forests in the State of Kerala and for the assignment thereof to agriculturists and agricultural labourers for cultivation

Preamble.- Whereas the private forests in the State of Kerala are agricultural lands;

And whereas Government consider that such agricultural lands should be so utilized as to increase the agricultural production in the State and to promote the welfare of the agricultural population in the state;

And whereas Government also consider that to give effect to the above objectives it is necessary that the private forests should vest in the Government;

Be it enacted in the Twenty second year of the Republic of India as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Kerala Private Forests (Vesting and Assignment) Act, 1971.

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

(3) It shall be deemed to have come into force on the 10th day of May, 1971.

2. Definitions.- In this act, unless the context otherwise requires.-

(a) "appointed day" means the 10th day of May, 1971;

(b) "custodian" means the Chief Conservator of Forests of the state of Kerala or any other officer appointed by the Government, by notification in the Gazette, to exercise the powers and perform the functions of the custodian under this Act;

(c) "owner, in relation to a private forest, includes a mortgagee, lessor or other person having right to possession and enjoyment of the private forest;

(d) "person" includes a company, a religious or charitable institution of a public nature, a trust, a Hindu undivided family, a Marumakkathayam tarwad of tavazhi, an Aliyasanthana family or branch and a family governed by the Kerala Nambudiri Act, 1958 927 of 1958);

"prescribed" means prescribed by rules made under this Act;

"private forest" means-

(1) In relation to the Malabar district referred to in sub-section (2) of Section 5 of the state Reorganisation Act, 1956 (Central Act 37 of 1956)-

(i) any land to which the Madras Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding-

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964);

(B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.

Explanation.- Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops;

(C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated any other agricultural crop and

sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of , such buildings;

any forest not owned by the Government, to which the Madras Preservation of Private Forests Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.

(2) in relation to the remaining areas in the State of Kerala, any forest not owned by the Government, including waste lands which are enclaves within wooded areas.

Explanation.- For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs;

(g) "Tribunal" means a Tribunal constituted under Section 7.

3. Private forests to vest in Government.- (1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the state of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished.

(2) Nothing contained in sub-sections (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as is within

the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.

Explanation.- For the purposes of this sub-section, "cultivation" includes cultivation of trees or plants of any species.

(3) Nothing contained in sub-section (1) shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling are applicable to him under Section 82 of the said Act.

(4) Notwithstanding anything contained in the Kerala Land Reforms Act, 1963, private forests shall, for the purposes of sub-section (2) or sub-section (3), be deemed to be lands to which Chapter III of the said Act is applicable and for the purposes of calculating the ceiling limit applicable to an owner, private forests shall be deemed to be "other dry lands" specified in Schedule II to the said Act.

4. Private Forests to be deemed to be reserved forests.- All private forests vested in the Government under sub-section (1) of section 3 shall, so long as they remain vested in the Government, be deemed to be reserved forests constituted under the Kerala Forest Act, 1961 (4 of 1962), and the provisions of that Act shall, so far as may be, apply to such private forests.

5. Eviction of persons in unauthorized occupation.- (1) The custodian or any officer not below the rank of Divisional Forest Officer authorized by the custodian in that behalf may summarily evict any person in unauthorized occupation of any private forest vested in the Government under sub-section (1) of Section 3.

(2) Notwithstanding anything contained in any other law for the time being in force, the custodian or the officer authorized under sub-section (1) may for the purposes of that sub-section use such force as he deems necessary.

6. Demarcation of boundaries.- (1) As soon as may be after the appointed day, the custodian shall cause the boundaries of the private forests vested in the Government under sub-section (1) of Section 3 to be demarcated.

(2) Notwithstanding the pendency of an application under Section 8 before the Tribunal, the custodian may if he is satisfied that any land is a private forest vested in the Government under sub-section (1) of Section 3, cause the boundaries thereof to be demarcated as if such land has vested in the Government under that sub-section.

7. Constitution of Tribunals.- (1) The Government may, by notification in the Gazette, constitute one, or more than one Tribunal for the purposes of this Act.

(2) The Tribunal shall consist of a single person who is, or has been, or is qualified to be appointed as a District Judge.

(3) Where more than one Tribunal is constituted under sub-section (1), the Government shall also define the areas within which each Tribunal shall exercise jurisdiction.

(4) The Tribunal shall decide all matters within its competence and may review any of its decisions in the event of there being a mistake on the face of the record or correct any arithmetical or clerical error therein [x x x].

2[(4A) Subject to the provisions of sub-section (4) and Section 8 A, the decision of the Tribunal on any matter within its jurisdiction shall be final and conclusive].

(5) The Tribunal shall follow such procedure as may be prescribed.

8. Settlement of disputes.- (1) where any dispute arises as to whether-

(a) any land is a private forest or not; or

(b) any private forest or portion thereof has vested in the Government or not,

the person who claims that the land is not a private forest or that the private forest has not vested in the Government, 3[may, within such period as may be prescribed, apply to the Tribunal] for decision of the dispute.

(2) Any application under sub-section (1) shall be in such form as may be prescribed.

⁴[(3) If the Tribunal decides that any land is not a private forest or that a private forest or portion thereof has not vested in the Government and-

(a) no appeal has been preferred against the decision of the Tribunal within the period specified there for; or

(b) such appeal having been preferred has been dismissed by the High Court, the custodian shall, as soon as may be after the expiry of the period referred to in clause (a) or, as the case may be, after the date of the order of the High Court dismissing the appeal, restore possession of such land or private forest or portion, as the case may be, to the person in possession thereof immediately before the appointed day].

⁵[8A. Appeal to the High Court.- (1) The Government or any person objecting to any decision of the Tribunal may, within a period of sixty days from the date of that decision; appeal against such decision to the High Court:

Provided that the High Court may admit an appeal preferred after the expiration of the period of sixty days aforesaid if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the said period.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner shall be accompanied by a fee of one hundred rupees.

(3) On receipt of an appeal under sub-section (1), the High Court may, after giving the parties a reasonable opportunity of being heard, either in person or by a representative-

(a) confirm or cancel the decision of the Tribunal appealed against; or

set aside such decision and demand the case to the Tribunal for decision after such further inquiry as may be directed; or

pass such other orders as it may think fit.

(4) If the High Court decides that any land is not a private forest or that a private forest or portion thereof has not vested in the Government, the custodian shall, as soon as may be, restore possession of such land or private forest or portion, as the case may be, to the person in possession thereof immediately before the appointed day.

(5) Every order passed in appeal under this section shall be final].6[8B. Power of Custodian to apply for review of decisions of Tribunal.- (1) Notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force, or in any other law for the time being in force, or in any judgment, decree or order of any Court or other authority, the Custodian may, if he is satisfied that any decision of the Tribunal under Section 8 requires to be reviewed on the ground that such decision has been made on the basis of concessions made before the Tribunal without the authority in writing of the Custodian or the Government or due to the failure to produce relevant data or other particulars before the Tribunal or that an appeal against such decision could not be filed by reason of the delay in applying for and obtaining a certified copy of such decision, make an application to the Tribunal during the period beginning with the commencement of the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1986 and ending on the 31st day of March, 1987, for review of such decision.

(2) An application under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner.

(3) On receipt of an application under sub-section (1), the Tribunal shall, notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any law for the time being in force, or in any judgment, decree or order of any Court or other authority, review its decision and pass such orders as it may think fit.

8C. Power of Government to file appeal or application for review in certain cases.- (1) notwithstanding anything contained in this Act, or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, the Government, if they are satisfied that any decision of the Tribunal under Section 8 has been made on the basis of concessions

made before the Tribunal under Section 8 has been made on the basis of concessions made before the Tribunal without the authority in writing of the Custodian or the Government or due to the failure to produce relevant data or other particulars before the Tribunal or that an appeal against such decision could not be filed by reason of the delay in applying for and obtaining a certified copy of such decision, may, during the period beginning with the commencement of the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1986, and ending on the 31st day of March 1987, appeal against such decision to the High Court.

(2) Notwithstanding anything contained in this Act, or in the Limitation Act, or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force, or in any judgment, decree or order of any Court or other authority, the Government, if they are satisfied that any order of the High Court in an appeal under Section 8A (including an order against which an appeal to the Supreme Court has not been admitted by that Court) has been passed on the basis of concessions made before the High Court without the authority in writing of the Government or due to the failure to produce relevant data or other particulars before the High Court or that an appeal against such order could to be filed before the Supreme Court by reason of the delay in applying for and obtaining a certified copy of such order, may during the period beginning with the commencement of the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1986 and ending on the 31st day of March, 1987, make an application to the High Court for review of such order.

(3) Notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force or in any judgment, decree or order of any Court or other authority, the Government, if they are satisfied that any judgment or order [other than order referred to in sub-section (2)] passed by the High Court in any proceeding, related to any land which is a private forest and that such judgment or order has been passed due to suppression or misrepresentation of facts or due to the failure to produce relevant data or other particulars or that an appeal against such judgment or order could not be filed by reason of the delay in applying for and obtaining a certified copy of such judgment or order, may during the period beginning with the commencement of the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1986, and ending on the 31st day of March, 1987, make an application to the High Court for review of such judgment or order.

(4) An appeal under sub-section (1) or an application under sub-section (2) or sub-section (3), shall be in the prescribed form and shall be verified in the prescribed manner.

(5) On receipt of an appeal under sub-section (1) or an application under sub-section (2) or sub-section (3), the High Court may, notwithstanding anything contained in this Act, or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force, or in any judgment, decree or order of any Court or other authority, after giving a reasonable opportunity to the parties to be heard either in person or by representative, pass such orders thereon as it may think fit.

8D. Decisions and orders liable to be reviewed or appealed against to be stayed.- Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any Court or other authority,-

(a) any decision of the Tribunal referred to in sub-section (1) of Section 8B or in sub-section (1) of Section 8C;

(b) any order of the High Court referred to in sub-section (2) of Section 8C;

(c) any judgment or order of the High Court referred to in sub-section (3) of Section 8C; and

any proceedings in pursuance of any such judgment, decision or order,

shall stand stayed for a period of six months from the commencement of the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1986, (hereinafter in this section referred to as the said Act) and for the period beginning with the date of publication of the said Act in the Gazette, and ending on the 31st day of March, 1987 or, if an application for review of such judgment, decision or order is made under sub-section (1) of Section 8B or under sub-section (2) or sub-section 8C, as the case may be, or an appeal against such decision is filed under sub-section (1) of Section 8C, before the expiry of the said period of six months or during the period beginning with the date of publication of the said act in the Gazette and ending on the 31st day of March, 1987, till the disposal of such application or appeal, as the case may be, or, if such an application is made or an appeal is filed after the expiry of the said period of six months and before the date of publication of the said Act in the Gazette, from the date of such publication to the date of disposal of the application or appeal, as the case may be.]

9. No compensation to be payable for vesting, etc..- No compensation shall be payable for the vesting in the Government of any private forest or for the extinguishment of the right, title and interest of the owner or any other person in any private forest under sub-section (1) of section 3.

10. Assignment of private forests.- (1) The Government shall, after reserving such extent of the private forests vested in the Government under sub-section (1) of Section 3 or of the lands comprised in such private forests as may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population or for purposes ancillary thereto, assign on registry or lease to-

9a) agriculturists;

agricultural labourers;

members of Scheduled Castes and Scheduled Tribes who are willing to take up agricultural as means of their livelihood;

unemployed young persons belonging to families of agriculturists and agricultural labourers, who have no sufficient means of livelihood and who are willing to take up agriculture as means of their livelihood;

labourers belonging to families of agriculturists and agricultural labourers, whose principal means of livelihood before the appointed day was the income they obtained as wages for work in connection with or related to private forests and who are willing to take up agriculture as means of their livelihood, the remaining private forests or the lands comprised in the private forests on such terms and subject to such conditions and restrictions as may be prescribed.

(2) The Government may, by notification in the Gazette, delegate their power under sub-section (1) to any officer of the Government or any class of officers of Government, subject to such restrictions and control as may be specified in the notification.

(3) The extent of private forests or lands comprised in private forest which may be assigned to each of the categories of persons specified in sub-section (1) and the order of preference in which assignment may be made shall be such as may be prescribed.

11. Assignment to be made within two years.- Assignment of the private forests or the lands comprised therein under Section 10 shall, as far as may be, completed within two years from the date of publication of this Act in the Gazette.

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

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

requiring the discovery and production of any document;

receiving evidence on affidavit;

issuing commissions for the examination of witnesses or for local investigation;

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

requisitioning of any public record or copy thereof from any Court or office; and

any other matter which may be prescribed.

13. Bar of jurisdiction of civil Courts.- 7[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, the custodian or any other officer.

14. Indemnity.- No suit, prosecution or other legal proceedings shall lie against the Government or the Tribunal or the custodian or any other officer for anything in good faith done or intended to be done under this Act or any rule or order made there under.

15. Constitution of Agriculturists Welfare Fund.- (1) A fund called the agriculturists Welfare Fund shall be constituted by the Government to be utilized for the settlement and welfare of persons to whom private forests or lands comprised in private forests have been assigned under Section 10 and shall be administered in such manner as may be prescribed.

(2) The Fund referred to in sub-section(1) shall consist of grants or loans by or from the Government and monies received by the Government by the sale of trees standing in such portion of the private forests as are or may be assigned under section 10.

16. Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order do anything not inconsistent with such provisions which appears to them necessary for the purpose of removing the difficulty.

17. Power to make rules.- (1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, 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.

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

(3) Every rule made under this section 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 makes any modification in the rule or decides that the rule should not be made, the rule 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.

18. Repeal.- (1) The Madras Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949), as in force in the Malabar district referred to in sub-section (2) of Section 5 of the States Re-organisation Act, 1956 (Central Act 37 of 1956), the Kerala Private Forests (Assumption of Management) Act, 1956 (Central Act 37 of 1958) and the Kerala Private Forests (vesting and Assignment) Ordinance, 1971 (14 of 1971), are hereby repealed.

(2) Notwithstanding the repeal of the Kerala Private Forests (Vesting and Assignment) Ordinance, 1971 (14 of 1971) by sub-section (1), anything done or any action taken under that Ordinance shall be deemed to have been done or taken under this Act.

NOTIFICATIONS

S.R.O. No. 684/73.- Under Clause (b) of Section 2 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (Act 26 of 1971), and in supersession of the motification issued under G.O. (MS) 171/71/AD dated 28-6-1971 published as S.R.O No. 227/71 in the Kerala