

*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referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), are hereby repealed.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. *Appukuttan 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.

[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.

[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.

- (b) the beds and banks of rivers, irrigation and drainage channels, traffic canals, tanks, lakes, back-waters and water courses;
- (c) markets, burial grounds, landing ghauts; and
- (d) all other property which the Government may, for the purpose of this Act, from time to time, declare to be poramboke.

(2) **"Occupant" defined.**— "Occupant" shall mean a person actually in possession or occupation of a land which is the property of Government.

Case Law

Government cannot permit occupation of Government land otherwise than in terms of the Act: Bunk constructed on Government land allotted to a private party, Held, is able to possess it only in terms of the Act. Legality. *Govinda Rao B. v. District Collector and Others* — 1983 KHC 75 : 1983 KLT 328 : AIR 1983 Ker. 10.

5. Land which is the property of Government not to be occupied without permission.— ⁵[(1)] From and after the commencement of this Act, it shall not be lawful for any person to occupy a land which is the property of Government, whether a poramboke or not, without permission from the Government as may be empowered in this behalf.

⁶[**Explanation.**— For the removal of doubts it is hereby declared that the erection of any wall, fence or building or the putting up of any overhanging structure or projection (whether on a temporary or permanent basis) on or over any land aforesaid shall be deemed to be occupation of such land.]

⁷[(2) Notwithstanding anything contained in sub-section (1), it shall not be lawful for any person to erect or cause to erect any wall, fence or building or put up or cause to put up any overhanging structure or projection (whether on a temporary or permanent basis) on or over any land referred to in sub-section (1) except under and in accordance with the terms and conditions of a licence issued by the Government or such officer of the Government as may be empowered by them in this behalf.

(3) Any person desirous of obtaining a licence referred to in sub-section (2) may apply to the Government or to such officer of the Government as may be empowered by them in this behalf for an appropriate licence.

(4) An application under sub-section (3) shall be in such form and shall contain such particulars and shall be accompanied by such fee, as may be prescribed by rules made under this Act.]

Case Law

Proceedings under the Act: Held, can be initiated, even if the said lands are covered by orders issued by Taluk Land Board in ceiling case. Question whether property is owned by Government or not cannot be decided in a ceiling case. Taluk Land Board is more concerned with exemptions or identification of excess lands. *Harikumar P. R. and Another v. State of Kerala and Others* — 2013 (1) KHC 847 : 2013 (2) KLT 44 (DB).

Eviction of land belonging to Government: If Government does not have jurisdiction to initiate proceedings under the Act, with regard to lands to which, according to the Government, title vests with them, can only be reclaimed through Civil Court. *Harikumar P. R. and Another v. State of Kerala and Others* — 2013 (1) KHC 847 : 2013 (2) KLT 44 (DB).

Property occupied by Bar Association sought to be evicted citing it as Government land: Justifiability of: For effective dispensation of justice, a strong and effective Bar is absolutely essential. It is the bounden duty of the State to provide all paraphernalia for effective dispensation of justice. Government has to consider the claim of assignment of property in a more realistic manner. Land Assignment. *Paravur District Court Bar Association v. State of Kerala and Others* — 2013 (2) KHC 165.

Advocates' Association Chamber Complex: Construction of: Whether unauthorised: Since construction is carried out in the area which was under permissive occupation of the Association and is

5. Renumbered as sub-section (1) of that section by Act 11 of 1971, (w. e. f. 05/02/1971).

6. Added by Act 11 of 1971 (w. e. f. 05/01/1971).

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

in terms of permission granted by Government and Court, construction is authorised and proper. No inch of land lying within Court campus can be assigned under Land Assignment Act or other enactments. *Kerala High Court Advocates' Association v. State of Kerala and Others* — 2010 (1) KHC 681 : 2010 (2) KLT SN 36.

6. Earth, metal, laterite, lime-shell etc., not to be removed from land which is property of Government without permit.— (1) It shall not be lawful for any person to destroy, remove or appropriate for himself earth, ⁷[sand], metal, laterite, lime-shell or such other articles of value as may be notified by the Government from any land which is the property of Government, whether a poramboke or not, except under and in accordance with the terms and conditions of a permit issued by the Government or such officer of the Government as may be empowered in that behalf and on payment of compensation at the rate prescribed under sub-section (2).

(2) The Government may, from time to time, by notification in the Gazette, prescribe the rate at which compensation shall be payable for earth, ⁷[sand], metal, laterite, lime-shell or other notified articles of value destroyed, removed or appropriated from land which is the property of Government.

(3) Whoever unauthorisedly destroys, removes or appropriates for himself ⁸[x x x], metal, laterite, lime-shell or other notified articles of value from any land which is the property of Government, whether a poramboke or not, shall be liable to pay such fine not exceeding fifty rupees as may be imposed by the Collector and shall also be liable to pay by way of damages an amount equivalent to the compensation which would have been payable if sub-section (2) were applicable thereto.

⁹[(3A) Whoever unauthorisedly destroys, removes or appropriates for himself earth or sand from any land which is the property of Government, whether a poramboke or not, shall be liable to pay such fine,—

- (a) not exceeding one hundred rupees in the case of a first offence; or
- (b) not exceeding two hundred rupees in the case of a second or subsequent offence as may be imposed by the Collector and shall also be liable to pay way of damages an amount equivalent to the compensation which would have been payable if sub-section (2) were applicable thereto.

(3B) Whoever abets the commission of an offence punishable under sub-section (3A) shall be liable to pay such fine,—

- (a) not exceeding one hundred rupees where the offence abetted is a first offence; and
- (b) not exceeding two hundred rupees where the offence abetted is a second or subsequent offence; as may be imposed by the Collector].

(4) The Government may remit in whole or in part the ¹⁰[compensation, fine or damages] payable under this section,—

- (a) in favour of ¹¹[any agriculturist or agricultural labourer] if the earth, ⁹[sand], metal, laterite, lime-shell or other notified articles of value destroyed, removed or appropriated is for bonafide agricultural purposes, or
- (b) in favour of a co-operative society.

⁹[**Explanation.**— For the purpose of clause (a) "agricultural labourer" means a person whose principal means of livelihood is the income he gets as wages in connection with the agricultural operations he performs.]

8. Word "earth" omitted by Act 11 of 1971 (w. e. f. 05/01/1971).

9. Inserted by Act 11 of 1971, w. e. f. 05/01/1971.

10. Substituted for the words "compensation or damages" by Act 11 of 1971, w. e. f. 05/01/1971.

11. Substituted for the words "any agriculturist" by Act 11 of 1971, w. e. f. 05/01/1971.

¹²[7. Punishment for unauthorisedly occupying land which is the property of Government.— Notwithstanding anything contained in this Act,—

(a) whoever with the intention of using or holding any land which is the property of Government, whether poramboke or not, for any non-Governmental purpose, unlawfully enters or occupies such land shall be punishable with imprisonment of either description for a term which shall not be less than three years but which may extend to five years and shall also be liable to pay a fine which shall not be less than fifty thousand rupees, but which may extend to two lakhs rupees:

Provided that a person who is occupying any Government land not exceeding 5 cents as on the date of commencement of this Act and is not having any other land in his name or in the name of his family members and is having any of the following documents in order to prove that he was residing therein, namely, record of rights or a ration card or an electoral identity card issued in the address of such Government land which he is so occupying or a proceeding assigning house number to a building in such property or an electric connection or a water connection, issued by the competent authorities of the Government or the Local Self Government Institutions or the respective statutory bodies, as the case may be, shall not be considered as an unlawful occupant for the purpose of imposing punishment;

(b) whoever, for the purpose of effecting transfer of any land which is the property of Government for consideration or otherwise—

- (i) commits the offence of cheating by fraudulently or dishonestly creating documents; or
- (ii) makes or creates any forged document in support of any claim or title to such land shall be punishable with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to pay a fine which shall not be less than fifty thousand rupees, but which may extend to two lakhs rupees;

(c) Whoever being an officer entrusted with the responsibility of reporting unlawful occupation of land which is the property of Government or of initiating action to remove such unauthorised occupation fails to report or to initiate action to remove such unlawful occupation, shall be punishable with imprisonment of either description for a term which shall not be less than three years but which may extend to five years and shall also be liable to pay a fine which shall not be less than fifty thousand rupees, but which may extend to two lakhs rupees;

(d) Whoever erects or causes to erect any wall, fence or building or puts up or causes to put up any overhanging structure or projection, whether on a temporary or permanent basis in

12. Substituted 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). Prior to the substitution it read as:

"7. Punishment for unauthorisedly occupying land which is the property of Government.—

(1) Whoever occupies a land which is the property of Government, whether a poramboke or not, contrary to Section 5 shall be liable to pay—

- (a) such fine not exceeding two hundred rupees; and
- (b) in the case of a continuing contravention such additional fine not exceeding two hundred rupees for every day during which such contravention continues after fine has been imposed for the first such contravention as may be imposed by the Collector.

Provided that a person unauthorisedly occupying a land which is available for assignment under the Kerala Government Land Assignment Act, 1960, shall not be liable to pay any fine under sub-section (1) if—

- (i) he is eligible under the rules made under that Act for assignment of such land without auction; and
- (ii) he applies under those rules for the assignment of such land in his favour, either on registry or on lease.

(2) Without prejudice to any liability under sub-section (1), any person who erects or causes to erect any wall, fence or building or puts up or causes to put up any over-hanging structure or projection (whether on a temporary or permanent basis) in contravention of sub-section (2) of Section 5 shall be liable, on conviction by a Magistrate, to be punished with fine which may extend to two hundred rupees and, in the case of a continuing contravention, with an additional fine which may extend to two hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Explanation.—A tenant unauthorisedly holding over after the expiry of his term of lease is liable to a fine under this section."

contravention of sub-section (2) of Section 5, shall be punishable with imprisonment of either description for a term which shall not be less than one year but which may extend to two years and shall also be liable to pay a fine which shall not be less than ten thousand rupees, but which may extend to twenty five thousand rupees and in the case of a continuing contravention, such additional fine which may extend to five hundred rupees for each day during which the contravention continues after conviction for the first such contravention.]

Case Law

Summary eviction of tenant if legal: Lessee of Government land holding over offer the term of the lease and acceptance of rent by Government. Summary eviction of tenant is not legal. *X v. Y* — 1971 KLT SN 78.

13[8. Abetment of offences.— Whoever abets any offence punishable by or under this Act, if the act abetted is committed in consequence of the abetment or attempts to commit any such offence shall be punishable with the same punishment provided by or under this Act, for committing such offence.

9. Cognizance of offence.— (1) The offence under this Act shall exclusively be triable by a Court of Chief Judicial Magistrate.

(2) The offences specified under Section 7 shall be cognizable and non-bailable.]

10. Penalty for destruction or appropriation of trees.— Any person who destroys or appropriates any useful tree belonging to the Government shall be liable for damages not exceeding three times the value of the tree as adjudged by the Collector, and shall also be liable on conviction by a Magistrate to be punished with imprisonment for a term extending to six months or with fine not exceeding five hundred rupees, or with both.

Case Law

Proceedings whether quasi-criminal: Proceedings under S.10 is quasi-criminal. There must be strict proof before any person is convicted under the section. *State of Kerala v. Sreedharan Nair* — 1998 KHC 98 : 1998 (1) KLT 524 : 1998 (1) KLJ 595.

Proceedings for cutting of trees: Alleged wrong doer should be given statements made against him and the maker of the statement should be made available for cross examination. *Sasidharan v. District Collector* — 1974 KLT SN 76.

11. Liability of unauthorised occupant to summary eviction, forfeiture of crops etc.—

(1) Any person unauthorisedly occupying any land for which he is liable to ¹⁴[punishment under Section 7] may be summarily evicted by the Collector, and any crop or other product raised on the

13. Substituted 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). Prior to the substitution it read as:

"8. Levy of assessment on lands which are the property of Government unauthorisedly occupied.— (1) Any person unauthorisedly occupying a land which is the property of Government other than a poramboke and liable to pay a fine under Section 7 shall, in addition, be liable to pay by way of assessment for the whole period of his occupation such amount as may be fixed by the Collector in accordance with the rate that may be prescribed by the Government from time to time in this behalf.

(2) **Levy of prohibitory assessment on poramboke unauthorisedly occupied.—** Any person unauthorisedly occupying a poramboke and liable to pay a fine under Section 7 shall, in addition, be liable to pay such prohibitory assessment for the whole period of occupation as may be imposed by the Collector.

Payment of assessment under sub-section (1) or prohibitory assessment under this sub-section shall not confer any right of occupancy.

Explanation.— For the purpose of this section, occupation for any period during a financial year shall be deemed to be occupation for the whole of the financial year.

9. Liability for unauthorised occupation.— Any person unauthorisedly occupying any land which is the property of Government, whether a poramboke or not, and liable to a fine under Section 7 shall, in addition to the assessment or prohibitory assessment to which he may be liable under Section 8, be liable for the value, as adjudged by the Collector, of any useful tree destroyed or appropriated by him."

14. Words and figure "pay a fine under Section 7 and an assessment or prohibitory assessment under Section 8" Substituted 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).

land shall be liable to forfeiture, and any building or structure erected or anything deposited thereon shall also if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture. Forfeiture under this section shall be adjudged by the Collector and any property so forfeited shall be disposed of as the Collector may direct.

(2) **Mode of eviction.**— An eviction under this section shall be made in the following manner, namely:—

By serving a notice on a person reputed to be in occupation or his agent requiring him within such time as the Collector may deem reasonable after receipt of the said notice to vacate the land, and if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and, if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary into the facts of the case, and, if satisfied that the resistance or obstruction still continues, may issue a warrant for the arrest of the said person, and on his appearance may send him with a warrant in the Form of the Schedule for imprisonment in the Civil Jail of the district for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance:

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under Section 183, 186 and 188 of the Indian Penal Code in respect of the same facts.

¹⁵[(3) Notwithstanding anything contained in sub-section (2) where the Collector is of opinion in any case falling under sub-section (1) that it is expedient in the public interest to take urgent action without following the procedure laid down in sub-section (2) he may, after recording his reasons for so doing, issue a notice to the person in occupation calling upon him to vacate the land within such period as may be specified in the notice, and if the land is not vacated within the said period, any officer authorised by the Collector may enter upon the land and take possession of the same, if necessary by using such force as the circumstances may justify].

Case Law

Procedure for eviction of unauthorised occupation from Government lands: Collector has a duty under Section 12 to give notice to the occupant, record their statement, allow them to adduce evidence and pass an order in writing considering all matters. *Vathsan v. V. Government of Kerala and Others* — 2003 KHC 647 : 2003 (2) KLT SN 111 : 2003 (2) KLJ 271 : ILR 2002 (3) Ker. 245.

Acquisition of land for public road at the instance of a Municipal Corporation: Encroachment: Proper authority to take action for eviction. *Joseph K. R. v. Dist. Collector* — 1986 KHC 431 : 1986 KLT SN 57 : 1986 KLJ 581.

Unauthorised occupant of Govt. land cannot claim value of trees planted by him when evicted. *Nachimuthu Gounder v. State of Kerala* — 1980 KLT SN 53.

Scope of eviction: Need to take specific ground in the writ petition. *Hameed v. State of Kerala* — 1979 KLT SN 97.

Encroachment on the land of the Cochin Devaswom: Jurisdiction of the Tahsildar: There is no corresponding provision relating to the Devaswom lands in the Cochin area the Control over which is tested in the Cochin Devaswom Board. Nor is any other statutory provision brought to ray notice on the side of the respondents which empowers the Tahsildar to invoke his powers under the Act in respect of encroachment made on lands belonging to the Devaswoms in the Cochin area. *X v. Y* — 1977 KLT SN 48.

12. Prior notice to occupant etc.— The Collector shall, before passing an order under this Act, give notice to the occupant or other person likely to be affected by the order, and record any statement which such occupant or person may make and any evidence which he may adduce within a reasonable time, and all orders passed by the Collector under this Act shall be in writing and under his hand:

¹⁶[Provided that no such notice shall be necessary—

15. Inserted by Act 11 of 1971, w. e. f. 05/01/1971.

16. Added by Act 11 of 1971, w. e. f. 05/01/1971.

- (i) When the Collector takes action under sub-section (3) of Section 11; or
- (ii) in the case of any person unauthorisedly occupying any land which is the property of Government, if, within a period of two years prior to the date of such occupation, he had been evicted from such land under Section 11 or had vacated such land voluntarily after the receipt of a notice under this section or Section 11].

¹⁷[The Collector may require any subordinate officer not below the rank of Deputy Tahsildar or any other officer authorised by the Government in this behalf to hold the enquiry as prescribed in the preceding paragraph and submit the record to him; and on such record the Collector may pass orders].

For the purpose of Section 199 of the Indian Penal Code the proceedings taken by the Collector under this section shall be deemed to be judicial proceedings.

Case Law

Scope: Whether entitled to get notice: Person in occupation of land on which building stands is entitled to get notice. *Poulo v. State of Kerala* — 1976 KLT SN 52.

Land Conservancy Rules, 1958, R.11: Action for eviction against encroacher: To be taken only after serving the final order under S.12 accompanied by notice in Form C. Remedies of encroacher. *Holy Cross Church v. Tahsildar, North Parur* — 1973 KHC 151 : 1973 KLT 663.

13. Power to make rules.— (1) The Government may make rules or orders either generally or in any particular instance,—

¹⁸[x x x x]

- (c) declaring that any particular land or class of lands shall not be open to occupation;
- (d) regulating the service of notices under this Act;
- (e) regulating the manner in which the powers of the Collector under this Act may be exercised; and
- (f) generally to carry out the provisions of this Act.

Such general rules or orders shall be made only after previous publication in the Gazette.

(2) All rules and orders framed under sub-section (1) shall be placed on the table of the Assembly for a period of fourteen days when it is in session and shall be subject to such modification by way of amendment or repeal made by the Assembly during the period when they are so laid.

14. Recovery of fines, ¹⁹[x x x x] etc., as arrears of land revenue.— All fines, ²⁰[x x x x] value of trees destroyed or appropriated, compensation or damages payable under Section 6 and all costs of eviction and removal of encroachments shall be recovered as arrears of land revenue under the provisions of the Revenue Recovery Act for the time being in force.

15. Officers to exercise powers of Collector.— The Government may, by notification in the Gazette, authorise any officer ²¹[including the Secretaries of Panchayats and Municipalities] by name or by virtue of his office to exercise all or any of the powers conferred on a Collector under this Act.

17. Substituted by Act 11 of 1971, w.e.f. 05/01/1971.

18. Omitted 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). Prior to the omission it read as:

"(a) regulating the rates of assessment under Section 8(1);

(b) regulating the imposition of prohibitory assessment under Section 8(2);"

19. Word "assessment" omitted 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).

20. Words "assessments and prohibitory assessments" omitted 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).

21. Inserted by Kerala Decentralisation of Powers Act, 2000 (16 of 2000), G. O. (P) No. 3294/Leg. C1/2000/Law dt. 12/05/2000.

22[16. Appeal and revision.— (1) Any person aggrieved by any decision or order under this Act of any officer authorised under Section 15 may appeal,—

(a) where such officer is the Revenue Divisional Officer, to the Collector:

Provided that no such appeal shall lie in any case where the order is passed by the Revenue Divisional Officer on appeal under clause (b); and

(b) in all other cases, to the Revenue Divisional Officer, and the Collector or the Revenue Divisional Officer, as the case may be may pass such order on the appeal as he thinks fit.

(2) The Collector may either suo motu or on application revise any decision made or order passed under this Act by any officer authorised under Section 15:

Provided that where such officer is the Revenue Divisional Officer, the Collector shall not on application revise any decision made or order passed otherwise than on appeal:

Provided further that the Collector shall not revise any decision or order if an appeal against such decision or order is pending or if the time for preferring appeal, if any, against such decision or order has not expired.

(3) Any person aggrieved by any decision or order of the Collector under this Act (otherwise than on appeal or revision) may appeal to ²³[the Commissioner of Land Revenue], and the Board of Revenue may pass such order on the appeal as it thinks fit.

(4) ²³[The Commissioner of Land Revenue] may either Suo motu or on application revise any order passed by the Collector on appeal.

(5) The Government may either suo motu or on application revise any order passed by ²³[the Commissioner of Land Revenue] on appeal.

(6) No order shall be passed under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) without giving the party who may be affected thereby an opportunity of being heard.

(7) Pending disposal of any appeal or revision under this Act, the appellate authority or the revising authority, as the case may be, may suspend the execution of the decision or order appealed against or sought to be revised.

Case Law

Appeal from the order of Tahsildar before Revenue Divisional Officer: Jurisdiction to revise the order: Held, order is revisable. *X v. Y* — 1977 KLT SN 77.

17. Limitation for appeal and revision.— (1) No appeal or revision shall be preferred under Section 16 after the expiration of thirty days from the date on which the decision or order appealed against or sought to be revised was received by the appellant or applicant, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), the appellate authority or the revising authority may admit an appeal or application for revision preferred after the period specified in that sub-section, if such authority is satisfied that the appellant or applicant had sufficient cause for not preferring the appeal or application within that period.

(3) The Collector shall not suo motu initiate proceedings to revise any decision or order after the expiry of one year from the date on which such decision has been made or order has been passed.

(4) The Government or ²⁴[the Commissioner of Land Revenue] shall not suo motu initiate proceedings to revise any order after the expiry of one year from the date on which such order has been passed.

22. Substituted by Act 11 of 1971, w. e. f. 05/01/1971.

23. Words "the Board of Revenue" substituted 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).

24. Words "the Board of Revenue" substituted 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).

18. Petition of appeal or application for revision to be accompanied by the decision or order appealed against or sought to be revised.— Every petition of appeal or application for revision under this Act shall be accompanied by the decision or order appealed against or sought to be revised or by an authenticated copy of the same].

19. Saving of operation of other laws in force.— Nothing contained in this Act shall be construed as exempting any person unauthorisedly occupying land from liability to be proceeded against under any other law for the time being in force:

²⁵[Provided that if any punishment has been imposed under Section 7, no further punishment shall be imposed under any other law for the same offence.]

20. Saving of suits by persons aggrieved by proceedings under this Act.— No suit against the Government shall be entertained in any Civil Court in respect of any order passed under this Act except upon the ground that the land in respect of which such order has been passed is not a land which is the property of Government whether a poramboke or not:

Provided that Civil Courts shall not take cognizance of any such suit unless it shall be instituted within one year from the date on which the cause of action arose.

²⁶[**20A. Bar of jurisdiction of Civil Courts.**— ²⁷[(1) No Civil Court shall have jurisdiction to entertain any suit or other legal proceedings against the Government in respect of any action taken by it for the eviction of any person, who is in unauthorised occupation of any land which is the property of Government, whether poramboke or not, or for the recovery of any fine or any other sum due to the Government under this Act.]

(2) No suit, prosecution or other legal proceeding shall lie against the Government or ²⁸[the Commissioner of Land Revenue] or any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder].

Case Law

Suit for injunction and declaration by the Devaswom: Bar of civil: Is only in respect of a suit for eviction as per S.20A of Land Conservancy Act. Suit for declaration and injunction is maintainable. *Shamsudeen v. Travancore Devaswom Board* — 2001 KHC 93 : 2001 (1) KLT 292 : 2001 (1) KLJ 11.

Whether S.20A excludes from its ambit suits under S.6 of the Specific Relief Act: S.20A only disables Civil Courts from entertaining suits filed by the State for eviction of persons in unauthorised occupation of any land which is the property of the Government. *Kuruvilla Yohannan v. Kumaran* — 1989 KHC 540 : 1989 (2) KLT 859 : 1989 (2) KLJ 654 : ILR 1990 (1) Ker. 447.

Suit whether barred by S.20A: Suit by a person in possession of Government land for eviction of unauthorised occupant. Not barred by S.20A. *Philip and Others v. Skaria and Others* — 1987 KHC 79 : 1987 (1) KLT 213 : 1987 KLN 123.

25. Substituted 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). Prior to the substitution it read as:

"Provided that, if any penalty has been levied under Section 7 or Section 8 of this Act, no similar penalty shall be levied from him under any other law in respect of such occupation."

26. Inserted by Act 11 of 1971, w. e. f. 05/01/1971.

27. Substituted 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). Prior to the substitution it read as:

"(1) No Civil Court shall have jurisdiction to entertain any suit or proceeding for the eviction of any person who is in unauthorised occupation of any land which is the property of Government, whether a poramboke or not, or the recovery of any fine, assessment, or prohibitory assessment or the value of any trees destroyed or appropriated or any compensation or damages, payable under this Act or cost of eviction or removal of encroachments, or any portion of such fine, assessment, prohibitory assessment, value of trees, compensation, damages or cost."

28. Words "the Board of Revenue" substituted 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).

SCHEDULE

Form of warrant to be issued by the Collector under Section 11

To

Seal

The Officer in charge of the Civil Jail at

Whereas AB of has resisted or obstructed CD in removing EF (or himself, that is; the said AB) from certain land in the village of..... in thetaluk, and whereas it is necessary in order to prevent the continuance of such obstruction or resistance, to commit the said AB to close custody, you are hereby required under the provisions of Section 11 of the Kerala Land Conservancy Act, 1957, to receive the said AB into the Jail under your charge and there to keep him in safe custody for..... days.

Dated this day of

(Signature of Collector)

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