

Kerala Land Conservancy Act, 1957

8 of 1958

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SCHEDULE 1 :- SCHEDULE I

Kerala Land Conservancy Act, 1957

8 of 1958

An Act to check the unauthorised occupation of Government lands.
Amended by Preamble.--WHEREAS it is necessary to enact a uniform law for checking the unauthorised occupation of

Government lands ; 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referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 87 of 1956) are hereby repealed.

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 harbors 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 the flowing water and all lands wherever situated, save in so far as the same are the property of--

Jenmies, Wargdars of holders of Inams ; or

Persons registered in the Revenue Records as holders of lands in any way subject to the payment of land revenue to the Government ; or

Any other registered holder of land in proprietary right ; or

Any person holding land under grant from the Government otherwise than by way of a lease or license ; or

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 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 verandahs door steps porticoes masonry drains and similar structures of a permanent nature, sicwalls, gates, verandahs, etc shall not be deemed to be the property of Government within the meaning of this section.

Explanation IV.-Lands belonging to the Government of any other State in India or the Kerala State Electricity Board or to a university established by law or to a corporation owned or controlled by the Government of Kerala or to a municipal; corporations 16 [or to any Panchayat or Municipality] shall be deemed to the property or Government within the meaning of the section.]

16 Substituted by Act 16 of 2000.

(2) All unassessed lands within the limits of private estates used or reserved for public purposes or for the communal use 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.

4. Section 4 :-

(1) "Poramboke" defined .--"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--

all public roads, streets, lanes , Pathways the bridges, ditches dykes and fences on or beside the same.

The beds and banks of rivers irrigation and drainage channels, traffic canals tanks, lakes back-waters and water courses; Markets , burial grounds landing ghauts; and 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 .

5. Land Which Is The Property Of The Government Not To Be Occupied Without Permission :-

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 or such officer of the Government as may be empowered in this behalf.

2[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].

3[(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 license 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 license 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 license.

(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.

6. Earth Metal , Laterite, Lime Shell Etc., Not 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, 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, 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 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 50 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.

3[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.-

not exceeding one hundred rupees in the case of a first offence;

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 by 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,--

not exceeding one hundred rupees where the offence abetted is a first offence; and

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 compensation or damages payable under this section,--

in favour of 16[any agriculturist or agricultural labourer if the earth sand,metal laterite, lime-shell or other notified articles of value

destroyed, removed or appropriated is for bonafide agricultural purposes, or

in favour of a co-operative society.

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

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

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-

he is eligible under the rules made under that Act for assignment of such land without auction; and

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 terms of lease is liable to a fine under this section.

8. Section 8 :-

(1) Levy of assessment on lands which are the property of Government unauthorisedly occupied.--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 and the liability to pay such assessment shall cease from the date on which the land concerned is relinquished.

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 years].

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 to the value as adjudged by the Collector of any useful tree destroyed or appropriated by him.

10. Penalty For Destruction Or Appropriation Of Tress :-

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 trees as adjudged by the Collector, and shall also be liable on conviction by a magistrate to be punished with imprisonment for a terms extending to six months or with fine not exceeding five hundred rupees, or with both.

11. Liability Of Unauthorised Occupant To Summary Eviction, Forfeiture Of Crops, Etc :-

Any person unauthorisedly occupying any land for which he is liable

to pay a fine under section 7 and an assessment or prohibitory assessment under section 8 may be summarily evicted by the Collector, and any crop or other product raised on the 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 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 enquiry 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.

(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 subsection (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 to take possession of the same, if necessary by using such force as the circumstances may justify].

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.

Provided that no such notice shall be necessary-

(1)When the collector takes action under sub- section (3) of section 11; or 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 under the receipt of a notice under this section or section 11].

The Collector may require any subordinate officer not below the rank of a Deputy Tahsildar or any other officer authorised by the government in this behalf to hold the enquiry as prescribed in the preceding Paragraph 1 of this section and submit the record to him. On such record the Collector may pass Order.

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.

13. Power To Make Rules :-

(1) The Government may make rules or orders, either generally or in any particular instance,--

regulating the rates of assessment under section 8 (1) ;

regulating the imposition of prohibitory assessment under section 8 (2) ;

declaring that any particular land or class of lands shall not be open to occupation;

regulating the service of notices under this Act ;

regulating the manner in which the powers of the Collector under this Act may be exercised ; and

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, Assessment, Etc., As Arrears Of Land Revenue :-

All fines, assessments and prohibitory assessments, 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 Exercises Powers Of Collector :-

The Government may, by notification in the Gazette, authorise any officer 16.[including the secretaries of Panchayats or Municipalities] by name or by virtue of his office to exercise all or any of the powers conferred on a Collector under this Act.

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 ios 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,

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 revice any decesion made or order passed otherwise than aon appeal; provided further that the Col.ector shall not revice any decision or order if an appeal against such decion or order is spending or if the time for preferring an appeal if any,against such decision or order has not expired .

Any person aggrieved by any decion or order of the Collector under this act(otherwise than on appeal or revision)may appeal to the Board of Revenue,and the Board of Revenue may pass such order on the appeal as the things fit .

The Board of Revenue may either "suo motu" or on application

revise any order passed by the Collector on appeal.

Government may The Board of Revenue may either "suo motu" or on application revise any order passed by the Board of Revenue on appeal.

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 there by an opportunity of being heard.

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.

17. Limitation For Appeal.And Revision :-

(1) No appeal or revision shall be preferred under section 16 after the expiration of 30 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 the Board of Revenue not suo motu initiate proceedings to revise any order after the expiry of one year from the date on which such decision has been passed.

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.

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.

20. Saving Of Suits By Person 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.

20A. Bar Of Jurisdiction Of Civil Courts :-

(1)No civil court shall have jurisdiction to entertain any suit or proceeding for the eviction of any person who 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 or prohibitory assessment or the value of any trees compensation damages or cost.

(2)No suit, prosecution or other proceeding shall lie against the Government or the Board of Revenue or any Officer of the Government or 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 .

SCHEDULE 1

SCHEDULE I

Form of warrant to be issued by the Collector under Section 1

To

The Officer in charge of the Civil Jail at

Whereas A.B. of has resisted or obstructed C.D.in removing E.F (Or himself ,that

is, the said A.B) from certain land in the Village of in the taluk , and whereas it is necessary, in order to prevent the continuance of such obstruction or resistance, to commit the said A.B.to close custody, you are hereby required under the provisions of section 11 of the Kerala Land Conservancy Act, 1957, to receive the said A.B. into the Jail under your charge and there to keep him in safe custody for

Dated this. day of (Signature of Collector)