

Kerala Scheduled Tribes (Restriction On Transfer Of Lands And Restoration Of Alienated Lands) Act, 1975

31 of 1975

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An Act to provide for restricting the transfer of lands by members of Scheduled Tribes in the State of Kerala and for the restoration of possession of lands alienated by such members and for matters connected therewith WHEREAS it is expedient to provide for restricting the transfer of lands by members of Scheduled Tribes in the State of Kerala and for the restoration of possession of lands alienated by such members and for matters connected therewith; BE it enacted in the Twenty-sixth Year of the Republic of India as

follows:-

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975.

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

(3) It shall come into force on such date as the Govern ment may, by notification in the Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,

(a) "competent authority", with reference to any land, means the District Collector of the district in which the land is situate or any other officer appointed by the Government to be the competent authority for the purposes of this Act for the area in which that land is situate;

(b) "immovable property" includes standing crops and trees but does not include growing grass;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "Revenue Divisional Officer", with reference to any land, means the Revenue Divisional Officer having jurisdiction over the area in which that land is situate or any other officer appointed by the Government to perform the functions of the Revenue Divisional Officer under this Act, in the area in which that land is situate;

(e) "Scheduled Tribe" means any of the Scheduled Tribes in relation to the State as specified in the Constitution (Scheduled Tribes) Order, 1950 ;

(f) "State" means the State of Kerala ;

(g) "transfer", in relation to immovable property means an act by which immovable property is conveyed by any documentary or oral transaction, whether by way of mortgage with or without possession, lease, sale, gift or exchange, or in any other manner, not being a testamentary disposition; and includes a charge, vilapanayam, unduruthi, contract relating to immovable property, mortgage, pledge or hypothecation of crops or standing trees on payment of consideration or otherwise, voluntary surrender and abandonment.

Explanation. For the purposes of this clause,

(i) "vilapanayam" means hypothecation of crops on payment of consideration or otherwise;

(ii) "unduruthi" means an assignment of the right to collect the

usufructs available or anticipated to be available on any land during a specified term for a specified price.

3. Exemptions :-

Nothing contained in this Act shall apply to

(a) the lease of any land or building or both granted by the Administrator General, Official Trustee or Official Receiver ; or

(b) the mortgage, pledge or hypothecation of any immovable property by a member of a Scheduled Tribe in favour of the Government as security for the purpose of obtaining any loan or other assistance from the Government; or

(c) the mortgage, pledge or hypothecation of any immovable property by a member of a Scheduled Tribe in favour of a co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969), or a corporation or a nationalised bank or any other financing agency, not being a private agency or a money-lender, as security for any loan advanced by such society, corporation, bank or other agency.

4. Restriction On Transfer :-

Notwithstanding anything to the contrary contained in any other law, or in any contract custom or usage, or in any judgment, decree or order of any court, any transfer effected by a member of a Scheduled Tribe, of immovable property possessed, enjoyed or owned by him, on or after the commencement of this Act to a person other than a member of a Scheduled Tribe, without the previous consent in writing of the competent authority, shall be invalid.

5. Certain Transfers To Be Invalid :-

Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, custom or usage, or in any judgment, decree or order of any court, any transfer of immovable property possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe, effected on or after the 1st day of January 1960, and before the commencement of this Act shall be deemed to be invalid.

6. Reconveyance Of Property :-

(1) Where by reason of a transfer of immovable property which is invalid under section 4 or section 5, a member of a Scheduled Tribe has ceased or ceases to be in possession or enjoyment thereof, he shall be entitled to the restoration of possession or enjoyment, as the case may be, of such property.

(2) Any person entitled to be restored to the possession or enjoyment of any immovable property under sub-section (1) or any other person on his behalf may make an application, either orally or in writing, to the Revenue Divisional Officer within a period of one year from the date of commencement of this Act or such further period as may be specified by Government by notification in the Gazette,

(a) for restoration of possession or enjoyment, as the case may be, of such property, if such transfer had been made before the date of commencement of this Act; or

(b) for restoration of possession or enjoyment, as the case may be, of such property and for the prosecution of the person who has procured such transfer, if such transfer, was made on or after the date of commencement of this Act.

(3) On receipt of an application under sub-section (2), the Revenue Divisional Officer shall make or cause to be made necessary inquiries in respect of such application and, if he is satisfied that the applicant or the person on whose behalf the application has been made is entitled to restoration of possession or enjoyment, as the case may be, of the immovable property mentioned in the application, he shall, by order, direct the person in possession or enjoyment of such property to deliver possession thereof to the applicant or to the person on whose behalf the application has been made, or, as the case may be, to allow him to enjoy such property, within a period of thirty days from the date of service of the order and also specify the amount payable under section 11 :

Provided that no order under this sub-section shall be made unless the person in possession or enjoyment of the property has been given a reasonable opportunity of being heard in the matter.

(4) Every order made under sub-section (3) shall be served on the person for whom it is intended,

(a) by delivering or tendering it to that person; or

(b) if it cannot be delivered or tendered to that person by delivering or tendering it to any officer of such person or any adult member of the family of such person or by affixing a copy thereof on the outer-door or some conspicuous part of the premises in which that person is known to have last resided or carried on

business or personally worked for gain; or

(c) failing served by any of these means, by registers post.

(5) Any person aggrieved by an order of the Revenue Divisional Officer under sub-section (3) may, within a period of thirty days from the date of service of the order, prefer an appeal to the competent authority, and the decision of the competent authority on such appeal shall be final and shall not be called in question in any court of law .

(6) Where an order under sub-section (3) has not been complied with, and

(a) an appeal has not been preferred within the time allowed for such appeal; or

(b) an appeal having been preferred has been dismissed, the Revenue Divisional Officer shall cause the immovable property to which the order relates to be delivered to the transferor by putting him in possession or enjoyment of that property, if need be, by removing any person who refuses to vacate the same.

7. Suomotu Action By Government :-

(1) Notwithstanding anything contained in section 6, the Government may, of their own motion, by order, direct the person in possession or enjoyment of any immovable property to deliver possession thereof to a member of a Scheduled Tribe or allow such a member to enjoy such property, if they are satisfied after necessary inquiries that such member was deprived of the possession or enjoyment, as the case may be, of that immovable property by reason of a transfer which is invalid under section 4 or section 5 :

Provided that no order under this sub-section shall be made unless the person in possession or enjoyment of the property has been given a reasonable opportunity of being heard in the matter.

(2) Every order under sub-section (1) shall be served on the person for whom it is intended in the manner specified in sub-section (4) of section 6.

(3) An order under sub-section (1) shall be final and shall not be questioned in any court.

8. Burden Of Proof :-

Where, in any proceedings under this Act, or in the trial of an offence punishable under section 13, the validity of any transfer of immovable property is called in question, the burden of proof of the

validity shall, notwithstanding anything contained in any other law for the time being in force, lie on the person who claims such transfer to be valid.

9. In Admissibility Of Deeds For Purposes Of Registration :-

Notwithstanding anything contained in the Registration Act, 1908 (Central Act 16 of 1908), no deed of transfer of any immovable property executed in contravention of or contrary to the provisions of this Act shall be accepted in registration.

10. Prohibition To Attachment Of Immovable Properties :-

For the execution of a money decree against a member of a Scheduled Tribe, no right or interest held by him in any immovable property, shall be liable to be attached or sold except to the extent and in the manner prescribed.

11. Liability To Pay Amount :-

(1) Notwithstanding anything contained in any other law for the time being in force where the possession or enjoyment of any immovable property is restored to a member of a Scheduled Tribe under this Act, an amount equal to the aggregate of the actual amount of consideration received by such member at the time of the transfer and an amount determined by the competent authority for improvements, if any, made after the transfer and before such restoration shall be paid by him to the person from whom possession or enjoyment, as the case may be, was restored, in accordance with the rules made under this Act:

Provided that no amount shall be payable if the transfer was effected on or after the commencement of this Act.

(2) The amount determined by the competent authority under sub-section (1) shall be final and shall not be called in question in any court.

(3) The amount payable under sub-section (1) shall be recoverable in such manner as may be prescribed.

12. Government To Advance Loan For Payment Of Amount :-

(1) The Government may, subject to such rules as may be made in this behalf, advance loans to the members of Scheduled Tribes who are liable to pay amounts under section 11.

(2) Loans advanced under sub-section (1) shall be repaid in

twenty equal annual instalments in accordance with such rules as may be made in this behalf.

(3) If any default is made in the repayment of a loan advanced under sub-section (2), the amount in default shall be recoverable under the Kerala Revenue Recovery Act as if it were arrear of public revenue due on land.

13. Offences And Penalties :-

Any person who on or after the commencement of this Act procures transfer of any immovable property in contravention of the provisions of section 4, shall be punishable with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

14. Cognizance Of Offences :-

(1) No court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act:

Provided that the Government may constitute one or more than one special court exclusively for the trial of the offences under this Act.

(2) In a case where transfer of immovable property in contravention of section 4 has been made on or after the commencement of this Act, the Revenue Divisional Officer shall file a complaint to the Magistrate having jurisdiction or to the special court, as the case may be, for the trial of the offences under this Act.

(3) Any person aggrieved by a transfer in contravention of section 4 or any other person on his behalf shall also be entitled to file a complaint before a Magistrate having jurisdiction or to the special court, as the case may be, for the trial of the offence under this Act.

15. Bar On Proceedings Against Scheduled Tribes Under Chapter X Of The Code Of Criminal Procedure :-

Where a person claiming to be a member of a Scheduled Tribe or any other person on his behalf applies to the Revenue Divisional Officer for the restoration of possession or enjoyment of any land under the provisions of this Act, or where the Government take suo motu action under section 7 for the restoration of the possession or enjoyment of any immovable property to any person, then

notwithstanding anything contained in any other law for the time being in force, no Magistrate shall have jurisdiction under Chapter X of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in respect of any dispute between that person and any other person claiming to be in possession or enjoyment of the said land.

16. Legal Practitioner Not To Appear In Proceedings Under The Act :-

No legal practitioner shall appear, plead or act on behalf of any party in any proceedings before the Revenue Divisional Officer or the competent authority or the Government, except with the written permission of such officer or authority or the competent authority or the Government, except with the written permission of such officer or authority or the Government, as the case may be.

17. Powers Of Competent Authority And Revenue Divisional Officer :-

(1) The competent authority and the Revenue Divisional Officer while making inquiries under this Act shall 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 of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) any other matter which may be prescribed.

(2) The decisions of the competent authority and the Revenue Divisional Officer under this Act shall have the force of a decree of a civil court.

18. Power To Remove Difficulties :-

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

19. Protection Of Action Taken In Good Faith :-

No suit, prosecution or other legal proceedings shall lie against any person for anything done or purporting to be done in good faith under this Act or the rules made thereunder.

20. Saving Of Other Laws :-

The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act except to the extent provided in this Act.

21. Bar Of Jurisdiction Of Civil Courts :-

No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is, by or under this Act, required to be settled, decided or dealt with or to be determined by the competent authority or the Revenue Divisional Officer.

22. Power To Make Rules :-

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

(2) Every rule made under this Act 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 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.