

THE KERALA RESTRICTION ON TRANSFER BY AND
RESTORATION OF LANDS TO SCHEDULED
TRIBES ACT, 1999

(Act 12 of 1999)

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ACT 12 OF 1999 *

THE KERALA RESTRICTION ON TRANSFER BY AND RESTORATION OF LANDS TO SCHEDULED TRIBES ACT, 1999

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.

Preamble —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 Fiftieth Year of the Republic of India as follows:—

1 *Short title, extent and commencement* —(1) This Act may be called the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999.

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

(3) It shall be deemed to have come into force on the 24th day of January, 1986.

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 purpose of this Act, for the areas in which the land is situate;

(b) “land” means any agricultural land;

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

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(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" means the transfer made by any person belonging to the Scheduled Tribe of lands in his ownership and possession to a person other than a member of the Scheduled Tribe by way of sale, mortgage, lease, gift and includes 'vilapanayam' and 'unduruthy'.

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 to any land during a specified term for a specified price.

3. *Explanations.*—Nothing contained in this Act shall apply to,—

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

(b) the mortgage, pledge or hypothecation of any land 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 land 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 members of the Scheduled Tribe, of land 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*—(1) 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 land 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:

Provided that nothing in this section shall render invalid any transfer of land possessed, enjoyed or owned by a member of a Scheduled Tribe to a person other than a member of a Scheduled Tribe effected during the aforesaid period and the extent of which does not exceed two hectares.

(2) Notwithstanding anything contained in sub-section (1) or in any judgment, decree or order of any court or other authority, in cases where the land involved in such transfer is used for agricultural purposes, the transferee thereof shall be entitled to retain in his possession the said land upto an extent of two hectares which shall be demarcated by the Revenue Divisional Officer by order and in the manner as may be prescribed.

6 *Allotment of lands*—Notwithstanding anything contained in section 5 or in any judgment, decree or order of any court or other authority a member of a Scheduled Tribe who had effected any transfer of land, possessed, enjoyed or owned by him, to a person other than a member of a Scheduled Tribe, between the 1st day of January, 1960 and the 24th day of January, 1986 and where an application for restoration of right under section 6 of the Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (31 of 1975) has been filed before publication of this Act in the Gazette, but the possession or enjoyment thereof, has not been restored to him and such transfer has been validated by the proviso to sub-section (1) of section 5 or the transferee thereof has been made eligible for the retention of said land under sub-section (2) of section 5, shall be entitled to restoration of equal extent of land by way of allotment from the Government:

Provided that where the extent of the land so allotted in respect of which there is eligibility for restoration of rights, is less than forty ares, Government shall allot the rest of the land required to make the total extent equal to forty Ares (One acre).

7. *Reconveyance of land.*—(1) Where by reason of a transfer of land, 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 land.

(2) Any person entitled to be restored to the possession or enjoyment of any land under sub-section (1) or any other person on his behalf may make an application, either orally or in writing, to the Revenue Divisional Office within a period of one year from the date of publication of this Act in the Gazette 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 land 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 land and for the prosecution of the person who has procured such transfer, if such transfer was made on or after the date of publication of this Act in the Gazette

(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 land mentioned in the application, he shall, by order, direct the person in possession or enjoyment of such land 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 land.

Provided that no order, under this sub-section shall be made unless the person in possession or enjoyment of the land 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 service by any of these means, by registered post.

(5) Any person aggrieved by an order of the Revenue Divisional Officer under sub-section (3) or sub-section (2) of section 5 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, 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 land to which the order relates to be delivered to the transferee or by putting him in possession or enjoyment of that land if need be, by evicting any person who refuses to vacate the same.

8. *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 land 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

9. *Government to provide grants for the payment.*—The Government shall, subject to such conditions as may be prescribed provide grants to the eligible members of Scheduled Tribes who are liable to pay amounts under section 8.

10. *Assignment of land.*—(1) Notwithstanding anything contained in section 6 or in the Kerala Government Land Assignment Act, 1960 (30 of 1960) and the rules issued thereunder, the Government shall assign

land to the landless families of the Scheduled Tribes in the State, an extent not exceeding forty ares of land in the district they reside within a period of two years from the date of publication of this Act in the Gazette or such further period as may be specified by Government by notification in the Gazette, and in the manner as may be prescribed.

(2) Where the extent of the land in the possession and enjoyment of any family of the Scheduled Tribe in the State, is less than 40 Ares such family shall be entitled to get assigned land which is necessary to make the total extent of the land equal to 40 Ares.

11. *Constitution of Scheduled Tribe Rehabilitation and Welfare Fund and its utilisation*—(1) A fund known as "Scheduled Tribe Rehabilitation and Welfare Fund" may be constituted by the Government and administered in such manner as may be prescribed.

(2) The Fund shall be utilised by the Government for construction of houses for the Tribal families and for other welfare measures as per the rules or in any scheme framed thereunder.

Provided that priority shall be given to construct and provide houses to the homeless Scheduled Tribe families

12. *Offences and penalties*—Any person who, on or after the date of publication of this Act in the Gazette procures transfer of any land 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 five thousand rupees

13. *Cognizance of offences*.—(1) 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 land in contravention of section 4 has been made on or after the publication of this Act in the Gazette 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.

14. *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, 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

15. *Powers of competent authority and Revenue Divisional Officer.*—(1) The competent authority and 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 and shall be executed through the civil court having jurisdiction over the area in which the land is situate.

16. *Legal Assistance.*—The Government shall provide for legal assistance to the members of Scheduled Tribes for the execution of the orders of the Competent Authority or of the Revenue Divisional Officer.

17. *Power to remove difficulties*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, do anything not inconsistent with such provisions which appear to them to be necessary or expedient for the purpose of removing the

(2) No order under sub-section (1) shall be made after the expiration of a period of two years from the publication of this Act in the Gazette.

(3) Every order made under sub-section (1) 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 order or decides that the order should not be made, the order 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 order

18. *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

19. *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

20. *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.

21. *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 it, 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.

22. *Repeal and saving*.—(1) The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (31 of 1975) is hereby repealed

(2) Notwithstanding the repeal of the said Act, all orders issued by the competent authority or the Revenue Divisional Officer, so far as they are not inconsistent with the provisions of this Act shall be deemed to have been made under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act. Every proceedings pending before a court on a complaint under section 14 of the said Act shall be deemed as a proceeding under the corresponding provisions of this Act and shall be continued accordingly