

Fifteenth Kerala Legislative Assembly

Bill No.91

**THE KERALA PRIVATE FORESTS (VESTING AND
ASSIGNMENT) AMENDMENT BILL, 2022**

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further to amend the Kerala Private Forests (Vesting and Assignment) Act, 1971.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971) for the purposes hereinafter appearing ;

BE it enacted in the Seventy-third Year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Kerala Private Forests (Vesting and Assignment) Amendment Act, 2022.

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

2. *Amendment of section 3.*— In section 3 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971) (hereinafter referred to as the principal Act) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Notwithstanding anything contained in the Kerala Land Reforms Act, 1963 (1 of 1964) or in any other law for the time being in force or in any judgment, decree or order of any court or tribunal, a certificate of purchase issued under sub-section (1) of section 72K of the said Act may be a piece of evidence, but not a conclusive proof for the purposes of this Act for proving that the land held by a person is under the personal cultivation as on the date of commencement of this Act.”.

3. *Repeal and saving.*— (1) The Kerala Private Forests (Vesting and Assignment) Amendment Ordinance, 2021 (140 of 2021) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971) provides for vesting in the Government of private forests in the State and for the assignment thereof to agriculturists and agricultural labourers for cultivation.

2. As per sub-section (2) of section 72K of the Kerala Land Reforms Act, 1963 (1 of 1964), the certificate of purchase issued under sub-section (1) shall be conclusive proof of the assignment to the tenant of the right, title and interest of the landowner and the intermediaries, if any, over the holding or portion thereof to which the assignment relates. The Hon'ble Supreme Court in State of Kerala Vs. Mohammed Basheer [2019 (1) KLT 386 (SC)] has held that the certificate of purchase issued under sub-section (2) of section 72K of the Kerala Land Reforms Act, 1963 (1 of 1964) is also a conclusive proof that the respondent has been in possession of the land as a cultivating tenant and the said land is exempted from vesting under sub-section (2) of section 3 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971). The said judgment will have far reaching consequences in respect of forest lands in the State and would cause heavy loss of pristine forests in the State. If this situation prevails, 90% of the pending cases before the Hon'ble High Court of Kerala in respect of the said provisions of the Kerala Private Forests (Vesting and Assignment) Act, 1971 are likely to be decided against the State. This will create devastating and sweeping effects in the private forest litigations. Hence, the Government have decided to amend section 3 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971) with retrospective effect from the 10th day of May, 1971.

3. 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 Private Forests (Vesting and Assignment) Amendment Ordinance, 2020 was promulgated by the Governor of Kerala on the 22nd day of May, 2020 and the same was published in the Kerala Gazette Extraordinary No. 1262 dated 25th day of May, 2020 as Ordinance No. 35 of 2020.

4. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced on the 24th day of August, 2020 and ended on the same day.

5. In order to keep alive the provisions of the said Ordinance, the Kerala Private Forests (Vesting and Assignment) Amendment Ordinance, 2020 was promulgated by the Governor of Kerala on the 26th day of September, 2020 and the same was published in the Kerala Gazette Extraordinary No. 2202 dated 29th day of September, 2020 as Ordinance No. 59 of 2020.

6. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly during its one day session held on the 31st day of December, 2020 or during its session which commenced on the 8th day of January, 2021 and ended on the 22nd day of January, 2021.

7. In order to keep alive the provisions of the said Ordinance, the Kerala Private Forests (Vesting and Assignment) Amendment Ordinance, 2021 was promulgated by the Governor of Kerala on the 9th day of February, 2021 and the same was published in the Kerala Gazette Extraordinary No. 671 dated 10th day of February, 2021 as Ordinance No.30 of 2021.

8. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Fifteenth Kerala Legislative Assembly during its session which commenced on the 24th day of May, 2021 and ended on the 10th day of June, 2021.

9. In order to keep alive the provisions of the said Ordinance, the Kerala Private Forests (Vesting and Assignment) Amendment Ordinance, 2021 was promulgated by the Governor of Kerala on the 1st day of July, 2021 and the same was published in the Kerala Gazette Extraordinary No. 1915 dated 2nd day of July, 2021 as Ordinance No. 52 of 2021.

10. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced on the 22nd day of July, 2021 and ended on the 13th day of August, 2021.

11. In order to keep alive the provisions of the said Ordinance, the Kerala Private Forests (Vesting and Assignment) Amendment Ordinance, 2021 was promulgated by the Governor of Kerala on the 23rd day of August, 2021 and the same was published in the Kerala Gazette Extraordinary No. 2457 dated 24th day of August, 2021 as Ordinance No. 98 of 2021.

12. A Bill to replace the said Ordinance by an Act of the State Legislature was published as bill No. 47 of the fifteenth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 4th day of October, 2021 and ended on the 11th day of November, 2021.

13. In order to keep alive the provisions of the said Ordinance, the Kerala Private Forests (Vesting and Assignment) Amendment Ordinance, 2021 was promulgated by the Governor of Kerala on the 13th day of November, 2021 and the same was published in the Kerala Gazette Extraordinary No. 3337 dated 14th day of November, 2021 as Ordinance No. 140 of 2021.

14. The Bill seeks to replace Ordinance No. 140 of 2021 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

A. K. SASEENDRAN

EXTRACT FROM THE KERALA PRIVATE FORESTS
(VESTING AND ASSIGNMENT) ACT, 1971
(26 OF 1971)

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

(2) Nothing contained in sub-section (1) shall apply in respect of so much extent of land comprised in private forest held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.

Explanation:—For the purposes of this sub-section, “cultivation” includes cultivation of trees or plants of any species.

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

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

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