

KERALA PRIVATE FORESTS (VESTING AND ASSIGNMENT) ACT, 1971 (NO.26 OF 1971)

238 THE KERALA PRIVATE FORESTS (VESTING AND ASSIGNMENT) ACT, 1971 (Act 26 of 1971) CONTENTS Preamble. Sections 2. 3. 4. 5. 6. 7. 8. 9. 10. 11 12. 13. 14 15 16. 17 18 Short title, extent and commencement. Definitions. Private forests to vest In Government Private forests to be deemed to be reserved forests Eviction of persons in unauthorised occupation. Demarcation of boundaries. Constitution of Tribunals Settlement of disputes. No compensation to be payable for vesting, Assignment of private forests. Assignment to be made within two years. Power of Tribunal and custodian. Bar of jurisdiction of Civil courts. Indemnity. Constitution of Agriculturists Welfare Fund. Power to remove difficulties. Power to make rules Repeal etc 239 THE KERALA PRIVATE FORESTS (VESTING AND ASSIGNMENT) ACT, 1971 * (Act 26 of 1971) An Act to provide for the vesting in (the Government of private forests in the State of Kerala and for the assignment thereof to agriculturists and agricultural labourers for cultivation Preamble.—WHEREAS the private forests in the State of Kerala are agricultural lands ; AND WHEREAS Government consider that such agricultural lands should be so utilised as to increase the agricultural production in the State and to promote the welfare of the agricultural population in the State ; AND WHEREAS Government also consider that to give effect to the above objectives it is necessary that the private forests should vest in the Government ; BE it enacted in the Twenty-second Year of the Republic of India as follows I. Short title, extent and This Act may be called the Kerala Private Forests (Vesting and Assignment) Act, 1971. (2) It extends to the whole of the State of Kerala. (3) It shall be deemed to have come into force on the 10th day of May, 1971

2. Definitions.—In this Act, unless the context otherwise requires,— (a) "appointed day" means the 10th day of May, 1971 (b) "custodian" means the Chief Conservator of Forests of the State of Kerala or any other officer appointed by the Government, by notification in the Gazette, to exercise the powers and perform the functions of the custodian under this Act; (c) "owner" in relation to a private forest, includes a mortgagee, lessee or other person having right to possession and enjoyment of the private forest , * Published in the Gazette Extraordinary No. 363, dated 23rd August, 1971. 240 (d) "person" includes a company, a religious or charitable institution of a public nature, a trust, a Hindu undivided family, a Marumakkathayam or a family governed by the Kerala Nambudiri Act, 1958 (27 of 1958) , (e) "prescribed" means prescribed by rules made under this Act ; (f) "private forest" means,— (1) in relation to the Malabar district referred to in sub-section (2) of section 5 of the States Re-organisation Act, 1956 (Central Act 37 of 1956),— (i) any land to which the Madras Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949). applied immediately before the appointed day excluding— (A) lands which are gardens or orchards as defined in the Kerala Land Reforms Act, 1963 (1 of 1964) ; (B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market , used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops (C) lands which are principally cultivated with cashew or other fruit-bearing trees or are principally cultivated with any other agricultural crop ; and (D) Sites of buildings and lands appurtenant to, and necessary for the convenient enjoyment or use of, such buildings ; (n) any forest not owned by the Government. to which the Madras Preservation of Private Forests Act, 1949, did not apply, including waste lands which are , enclaves within wooded areas ; (2) in relation to the remaining areas in the State of Kerala, any forest not owned by the Government, including 241 waste lands which are enclaves within wooded areas. Explanation.—For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs ; (g) "Tribunal" means a Tribunal constituted under section 7

3. Private forests to vest in 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 forests 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 forests 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 11 to the said Act. 4 Private forests to be deemed to be reserved forests.— All private forests vested in the Government under sub-section 242 (1) of section 3 shall, so long as they remain vested in the Government, be deemed to be reserved forests constituted under the Kerala Forest Act, 1961 (4 of 1962), and the provisions of that Act shall, so far as may be, apply to such private forests

5. Eviction of persons in unauthorised) The custodian or any officer not below the rank of Divisional Forest Officer authorised by the custodian in that behalf may summarily evict any person in unauthorised occupation of any private forest vested in the Government under sub-section (1) of section 3.(2) Notwithstanding anything contained in any other law for the time being in force, the custodian or the officer authorised under sub-section (1) may for the purposes of that sub-section use such force as he deems necessary

6. Demarcation of As soon as may be after the appointed day, the custodian shall cause the boundaries of the private forests vested in the Government under sub-section (1) of section 3 to be demarcated (2) Notwithstanding the pendency of an application under section 8 before the Tribunal, the custodian may, if he is satisfied that any land is a private forest vested in the Government under sub-section (1) of section 3, cause the boundaries thereof to be demarcated as if such land has; vested in the Government under that sub-section

7. Constitution of Tribunals.—(1) The Government may, by notification in the Gazette, constitute one, or more than one, Tribunal for the purposes of this Act. (2) The Tribunal shall consist of a single Person who is, or has been, or is qualified to be appointed as, a District Judge (3) Where more than one Tribunal is constituted under sub-section (1), the Government shall also define the areas within which each Tribunal shall exercise jurisdiction. (4) The Tribunal shall decide all matters within its competence and may review any of its decisions In the event of there being a mistake on the face of the record or correct any arithmetical or clerical error therein but subject thereto, the decision of the Tribunal on any matter within its jurisdiction shall be final and conclusive 243 (5) The Tribunal shall follow such procedure as may be prescribed

8. Settlement of disputes.—(1) Where any dispute arises as to whether— (a) any land is a private forest or not; or (b) any private forest or portion thereof has vested in the Government or not, the person who claims that the land is not a private forest or that the private forest has not vested in the Government, may apply to the Tribunal for decision of the dispute. (2) Any application under sub-section (1) shall be in such form as may be prescribed. (3) If the Tribunal decides that any land is not a private forest or that private forest or portion thereof has not vested in the Government, the custodian shall, soon as may be, restore possession of such land or private forest or portion, as the case may be, to the person in possession thereof immediately before the appointed day. 9 No compensation to be payable for vesting, etc.—No compensation shall be payable for the vesting in the Government of any private forest or for the extinguishment of the right, title and interest of the owner or any other person in any private forest under sub-section (1) of section 3

10. Assignment of private forests.—(1) The Government shall, after reserving such extent of the private forests vested in the Government under sub-section (1) of section 3 or of the lands comprised in such private forests as may be necessary for purposes directed towards the promotion of agriculture or the

welfare of the agricultural population or for purposes ancillary thereto, assign on registry or lease to-- (a) agriculturists ; (b) agricultural labourers ; (c) Members of Scheduled Castes and Scheduled Tribes who are willing to take up agriculture as means of their livelihood ; (d) vnemployed young persons belongmg to families of agriculturists and agricultural labourers, who have no sumcient means of livelihood and who are willing to take up agriculture as méans of their livelihood , 3/23—16a 244 (e) labourers belonging to families of agriculturists and agricultural labourers, whose principal means of livelihood before the appomted day was the income they obtained as wages for work in connection With or related to private forests and who are willing to take up agriculture as means of their livelihood, the remaining private forests or the lands comprised in the private forests on such terms and subject to such conditions and restrictions as may be prescribed. (2) The Government may, by notification in the Gazette, delegate their power under sub-section (I) to any offcer of the Government or any class of officers of Government, sub• ject to such restrictions and control as may be specified in the notification. (3) The extent of private forests or lands comprised in private forests which may be assigned to each of the cate- gories of persons specified in sub-section (1) and the order of preference in which assignment may be made shall be such as may be prescribed

11. Assignment to be made within two ment of the private forests or the lands comprised therein under section 10 shall, as far as may be, be completed within two years from the date of publication of this Aet in the Gazette

12. Power of Tribunal and custodiam—The Tribunal and the custodian shall, for the purpose of exercising any power conferred by or under this Act, have all the powers of a civil court while trying a suit under the Code of Civil Pro- cedure, 1908 (Central Act 5 of 1908), in respect of the follow- tng matters, namely (a) summomng and enforcing the attendance of any person and examining him on oath ; (b) requiring the discovery and production of any document ; (c) recgiving evidence on amdavit; (d) issuing commissions for the examination of wit- nesses or for local investigation ; (e) inspecting any property or thing concerning which any decision has to be taken ; 245 (f) requisitioning of any public record or copy thereof from any court or oince ; and (g) any other matter which may be prescribed

13. Bar of jurisdiction of civil courts.—No court shall have jurisdiction to decide or deal With any question or to determme any matter which IS, by or under this Act, re- quired to be decided or dealt With or to be determmed by the Tribunal, the custodian or any other omcer

14. Indemnity.—No suit, prosecution or other legal pro- ceedmgs shall he agamst the Governrnt or the Tribunal or the cus,odlan or any mher omcer for anythmg In good tazch done or Intended to be done under thLS Act or any rule or order made thereunder

15. Constitution of Agriculturists Welfare A fund called the Agriculturists Welfare Fund shall be con- stituted by the Government to be utilised for the settlement and welfare of persons to whom private foresis or lands com- prised m private toresLS have been assigned under section IO and shall be adnurnstered in such manner as may be prescribed.(2) The Fund referred to m sub-section (I) shall con- Sist of grants or loans by or from the Government and momes received by the Government by the sale oi trees s, andmg In such portaons of the private forests as are or may be assigned under sectaon 10

16. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions oi this Act, the Govern- ment may, as occasion may require, by order do anytmng nol inconsistent With such provusions which appears to them necessary for the purpose of removmg the armculty

17. Power to make The Government may, by notification in the Gazette, make rules to carry out the pur- poses of this Act.(2) In particular, and without prejudice to the generality of the foregomg power, such rules may any of the iollowmg matters, namely (a) all matters expressly required Act to be prescnbed ; (b) any other matter which has prescribed, proude for all or or allowed by this to be, or may be, 246 (3) Every rule made under this section shall be laid as soon as may be after it IS made before the Legislative As- sembly while It IS in session for a total period of fourteen days which may be comprised in one session or in two suc- cessive sessions, and, If before the expiry of the session m 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 modi- fication or annulment shall be without preJudlce to the vali- dity of anything previously done under that rule 18. The Madras Preservation of

Private Forests Act, 1949 (Madras Act XXVII of 1949), as in force In the Malabar District referred to In sub-section (2) of section 5 of the States Re-orgamsation Act, 1956 (Central Act 37 of 1956), the Kerala Private Forests (Assumption of Management) Act, 1957 (13 of 1958) and the Kerala Private Forests (Vesting and Assignment) Ordinance, 1971 (14 of 1971), are hereby repealed. (2) Notwithstanding the repeal of the Kerala Pnvqte Forests (Vesting and Assignment) Ordinance, 1971 (14 of 1971), by subsection (1), anything done or any action taken under that Ordinance shall be deemed to have been done or taken under this Act.—

