

Thirteenth Kerala Legislative Assembly
Bill No. 225

THE KERALA MUNICIPALITY (AMENDMENT) BILL, 2013

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further to amend the Kerala Municipality Act, 1994.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Municipality Act, 1994 for the purposes hereinafter appearing;

BE it enacted in the Sixty-fourth Year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Municipality (Amendment) Act, 2013.

(2) It shall be deemed to have come into force on the 25th day of November, 2012.

2. *Amendment of section 233.*—In section 233 of the Kerala Municipality Act, 1994 (20 of 1994) (hereinafter referred to as the principal Act),—

(a) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The limits of rates of basic property tax fixed by the Government under sub-section (2) and the rates of basic property tax once determined by the Council under sub-section (3) subject thereto shall be in force for five years from the date on which they come into force and thereafter on completion of every five years, the Government and the Council, respectively, shall, revise the rates of basic tax by making an enhancement at the rate of five per cent on the existing limits and rates in each year in such a manner as to have an enhancement of twenty five per cent by the completion of the period of five years, so as to be in force for the next five years. While assessing the tax in accordance with the revised rate of tax as stated above,—

(a) in the case of buildings which are new, reconstructed and altered in usage, the Secretary shall fix the tax as prescribed and take further action;

(b) in the case of building which does not belong to the category stated in clause (a) and the annual property tax of which is fixed once based on the plinth area, the Council shall, for the purpose of revising the succeeding five year tax, revise the tax by making an enhancement of twenty five per cent along with the existing annual property tax and accordingly the Secretary shall give demand notice for the next five years to the owner of the building:

Provided that while revising such annual property tax, no deduction or addition under sub-section (7) shall be applicable.”.

(b) in sub-section (7), items (iii), (vii) and (ix) shall be omitted;

(c) in the proviso to sub-section (9), the words “the construction of wall of the building” shall be omitted;

(d) in sub-section (10), for the words “within sixty days”, the words “within thirty days” shall be substituted;

(e) sub-section (12) shall be omitted;

(f) sub-section (14) shall be omitted;

(g) in sub-section (19), for item (ii), the following item shall be substituted, namely:—

“(ii) determination of the minimum limit and the maximum limit of enhancement of annual property tax ;”.

3. *Amendment of section 235.*—In section 235 of the principal Act, after clause (b), the following clause shall be inserted, namely:—

“(ba) buildings exclusively used for educational purposes under the ownership of educational institutions having recognition of the Government and up to the level of Higher Secondary and hostel buildings in which the students of such institutions reside;”.

4. *Amendment of section 447.*—In section 447 of the principal Act, after sub-section (6), the following sub-sections shall be inserted, namely:—

“(7) Notwithstanding anything contained in the Abkari Act, 1077 (1 of 1077) or in any other law for the time being in force, no person shall, without the previous permission of the Municipality and otherwise than in accordance with the conditions specified in the permission, establish an Abkari shop within a municipal area;

(8) While granting permission to establish an Abkari shop near an educational institution or place of worship, the distance limit prescribed in the

Abkari Act for the time being in force or the rules framed thereunder shall be complied with and the Municipality shall not grant permission to establish an Abkari shop within the said distance limit.

(9) A Municipality shall be competent, in the interest of public peace or morality or on the grounds of convenience or nuisance, to order shifting from one place to another or closing of an Abkari shop within a period not exceeding fifteen days, as may be directed in this behalf.

(10) Notwithstanding anything contained in this section, the provisions of sub-sections (7) to (9) shall not be applicable to any Abkari shop existing on the 25th day of November, 2012, the date of commencement of the Kerala Municipality (Second Amendment) Ordinance, 2012 (64 of 2012), or, subject to all existing legal provisions, for re-establishing the toddy shops existing on the said date, in the area within the boundaries allotted for establishing them.

Explanation: "Abkari shop" means a toddy shop or a foreign liquor shop or a foreign liquor retail shop or an establishment having FL-9 licence or a bar hotel, under the Abkari Act, 1077 and the rules made thereunder."

5. *Repeal and saving.*—(1) The Kerala Municipality (Amendment) Ordinance, 2013 (33 of 2013) 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 Government had received several complaints consequent to the implementation of revision of the property tax in the State. Besides, it has also come to the notice of the Government that since the property tax is not being revised periodically, Local Self Government Institutions are incurring revenue loss. Considering the above issues, the Government have decided to suitably amend sections 233 and 235 of the Kerala Municipality Act so as to make the revision of property tax possible in every five years and to exempt the buildings exclusively used for educational purposes up to the level of Higher Secondary under the ownership of educational institutions having recognition of the Government and the hostel buildings wherein the students of such institutions reside.

2. Besides, the Government consider that necessary provisions to make the previous permission of the Municipality concerned compulsory for establishing

Abkari shops and to ensure compliance of the conditions specified by the Municipality in such permission and provisions regarding distance constraints from educational institutions and places of worship, as prescribed in the Abkari Act and Rules, shall be incorporated in the Act. Further, in order to incorporate provisions in the Act empowering Municipalities to re-establish and close Abkari shops in public interest, the Government have also decided to amend section 447.

3. As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala Municipality (Second Amendment) Ordinance, 2012 (64 of 2012) and the Kerala Municipality (Fourth Amendment) Ordinance, 2012 (65 of 2012) were promulgated by the Governor of Kerala on the 24th day of November, 2012 and the same were published, respectively, in the Kerala Gazette Extraordinary No. 1263 and 1264, dated 25th November, 2012.

4. Bills to replace the said Ordinances by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 10th day of December, 2012 and ended on the 21st day of December, 2012.

5. As the provisions of the said Ordinance are to be kept alive and the State Legislative Assembly was not in session, the Kerala Municipality (Amendment) Ordinance, 2013 (10 of 2013) was promulgated by the Governor on the 14th day of January, 2013 and the same was published in the Kerala Gazette Extraordinary No. 118 dated 15th January, 2013.

6. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 1st day of February, 2013 and ended on the 19th day of February, 2013.

7. As the provisions of the said Ordinance are to be kept alive and the State Legislative Assembly was not in session, the Kerala Municipality (Amendment) Ordinance, 2013 (23 of 2013) was promulgated by the Governor on the 26th day of January, 2013 and the same was published in the Kerala Gazette Extraordinary No. 562 dated 27th February, 2013.

8. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 15th day of March, 2013 and ended on the 10th day of April, 2013.

9. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Kerala Municipality (Amendment) Ordinance, 2013 (33 of 2013) was promulgated by the Governor on the 25th day of April, 2013 and the same was published in the Kerala Gazette Extraordinary No. 1172 dated 26th April, 2013.

10. This Bill seeks to replace Ordinance No. 33 of 2013 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.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause (a) of sub-section (4) of section 233 proposed to be inserted in the principal Act by clause 2 of the Bill empowers the Government to make rules prescribing the manner in which the Secretary shall fix the tax while fixing the rates of basic property tax in the case of buildings which are new, reconstructed and altered in usage.

2. The matter in respect of which rules may be made are matters of procedure and are of routine or of administrative nature. Further, the rules after they are made, will be subject to scrutiny by the Legislative Assembly. The delegation of legislative power is, therefore, of a normal character.

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(14) The Secretary may, on the basis of the return submitted by the owner of the building, assess provisionally, the annual property tax of the building and levy tax as such by issuing such demand notice and subsequently after conducting inquiry in respect of the building, confirm or revise the tax assessed earlier. The assessment of tax shall be provisional until conducting inquiry in respect of the building by the Secretary assesses the property tax of the building.

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(19) The Government may, by notification in the Gazette, make rules in respect of the following:—

(i) the procedure to be followed by the Council for fixing the rates of basic property tax to be made applicable to the area of the Municipality subject to the limits specified by the Government and for publishing the same.

(ii) fixing the increase in the upper limit of annual property tax;

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235. *Exemption from property Tax, service cess etc.*—(1) The following buildings and lands shall be exempted from the property tax as may be levied under section 233 and service cess as may be levied under sub-section (4) of Section 230, namely:—

(a) buildings set apart for public worship and actually so used or used for incidental purposes, religious study centres;

(b) buildings exclusively used for educational purposes or allied purposes under the ownership of educational institutions owned by the Government, aided or functioning with the financial assistance of the Government and the hostel buildings wherein the students of the said institutions reside;

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447. *Purpose for which places may not be used without licence.*—(1) A Municipality may notify by publication in the Gazette or in any other manner as may be prescribed that no place within the Municipal area shall be used for anyone or more of the purposes specified in the rules made in this behalf or for

