Thirteenth Kerala Legislative Assembly Bill No. 225

THE KERALA MUNICIPALITY (AMENDMENT) BILL, 2013

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THE KERALA MUNICIPALITY (AMENDMENT) BILL, 2013

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BILL

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;

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(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, inorder 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.

MANJALAMKUZHI ALI.

EXTRACT OF RELEVANT PORTIONS FROM THE KERALA MUNICIPALITY ACT, 1994 (20 OF 1994)

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accordance wi levy property	th the provisions of thi tax on every building the area of the respect of the Act.	s Act and the rules as (including the land a	may be prescribed ppurtenant thereto?		
(2)	**	**	**		
(3)	**	**	**		
under sub-sec Council subjecthe date on wifive years an Municipality sibasic property Secretary shall procedures rev	The limits of rates of betion (2) and the rates of the thereto, under sub-section they came into form the defore the expiry of the hall revise the limits of tax respectively, so as all, in accordance with surise and fix the revised iry of the period.	of basic property tax on (3) shall have effec- ree and thereafter on co- of the period, the Go- rates of basic property to be in effect for the arch revision of rates, a	determined by the t for five years from completion of every overnment and the tax and the rates of next five years. The after completing the		
(5)	**	**	**		
(6)	**	**	**		
(7) section (6), or	In the basic property the basis of the factor	=	ulated as per sub-		
	**	**	**		
(iii) variation in the plinth area of the building;					
	**	**	**		
(vii) (Construction of wall of	the building;			
	**	**	**		

(ix) nature of use of the building (that is whether used for personal purpose or given on rent)—

the Secretary in accordance with the classification of factors specified in the Rules and at the rate fixed for each category, allow deductions and make additions, as the case may be:

Provided that the aggregate deductions so allowed in respect of all items shall not exceed seventy five per cent of the basic property tax.

(8) ** **

(9) In the case of a building, if two or more uses or its sub categories referred to in sub-section (2) or any two or more factors referred to in sub-section (7) or two or more kinds of factor are applicable at the same time, the aggregate of annual property tax shall be assessed by reckoning separately, the property tax as applicable to the respective part of the building:

Provided that, if more than one kind of anyone of the factors such as construction of roof of the building, construction of floor of the building, the construction of wall of the building are applicable to a building at the same time the annual property of tax of the building shall be assessed on the basis of that kind applicable to more than half portion of the aggregate plinth area.

(10) After publishing the rate of basic property tax applicable to the area of Municipality and the notification classifying the areas of the Municipality into different zones, the Secretary shall by a public notice, publish the general details helpful to the owners to assess the annual property tax of their buildings by themselves, in accordance with such details as the plinth areas of the building, the permissible deductions and the additions that may be made in the basic property tax, by said notice, demand the owners of the building to submit the returns in respect of the property in the prescribed form within sixty days from the date of publication of such public notice. The format/copy of the Form shall be made available to the owners of the building free of cost.

(11) ** **

(12) On inquiry by the Secretary if it is found that the owners of the building or the person authorized has furnished false or misleading particulars in the return or that the return has not been submitted within the stipulated time, the owner of the building shall also be liable to pay fine prescribed in addition to the actual property tax payable for the building as per law.

(13) ** **

(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.				

(15)	**	**	**	
(16)	**	**	**	
(17)	**	**	**	
(18)	**	**	**	

- (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;

** ** **

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

any other trade without a licence and except in accordance with the conditions specified therein and where the licence is for running hostels, restaurants, eating houses, coffee houses, Abkari shop, laundries, travel agency or barber saloons, the licence shall always contain and be deemed to contain a condition that admission or service therein shall be available to any member of the public:

Provided that no notification under this sub-section shall take effect before the expiry of sixty days from the date of its publication.

(2)	**	**	**
	**	**	**

(6) If the order on an application for any licence or permission are not communicated to the applicant within thirty days after the receipt of the application by the Secretary or within such longer period, as may be prescribed in any class of cases the application shall be deemed to have been allowed for the period required in the application, subject to the Act, rules and bye-laws and all conditions which would have been ordinary imposed.

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