

THE KERALA PROPERTY DEALERS (LICENSING AND REGULATION) BILL

A bill to provide for licensing and regulating the business dealings of Property Dealers known by whatever names like property consultants, real estate dealers, real estate agents etc. and to protect the interests of the persons receiving services rendered by such property dealers and for matters connected therewith or incidental thereto.

BE it enacted in the Fifty ninth year of the Republic of India.

1. (1) This Act may be called The Kerala Property Dealers (Licensing and Regulation) Act

(2) It shall extend to the whole of the State.

(3) It shall come into force on such date as the Government may notify in the Gazette.

2. *Definition.*—In this Act unless the context otherwise requires,

(a) “Collector” means the collector of the District or any other officer specially appointed by the Government under this Act.

(b) “Commission” means the sum received by the Property Dealer as remuneration for service rendered to the customers at the rates notified by the Government from time to time.

(c) “Commissioner” means any officer nominated by the Government at the State level or zonal level consisting for two or more districts as determined by the Government.

(d) “Immovable property” includes land, buildings of all kinds including apartments both residential and non-residential.

(e) “License” means a license granted under this Act.

(f) “Property Dealer” means any person, a group of persons, firms, Companies Private or Public engaged in the business of negotiating and finalizing transactions with reference to immovable properties such as sale, purchase, exchange, lease or license or any such dealing for remuneration in kind or cash, by whatever name it may be called.

(g) “Government” means Government of Kerala.

3. *Licensing of Property Dealers and fixation of rates of Commission for transactions.*—

(a) On and after the commencement of this Act no property dealer either personally or through his agent shall enter into any transaction of sale, purchase, exchange, lease, license etc. in respect of any immovable property with any body without obtaining a license under this Act.

(b) On and after the commencement of this Act, no property dealer shall accept any remuneration by way of Commission or otherwise for the services rendered by him in connection with any transaction negotiated or finalized by him with any person or persons except at the rates notified by the Government from time to time under this Act.

4. *Application for the grant of license.*—(a) Application for the grant of renewal of license under this Act may be submitted to the Collector within whose jurisdiction the applicant intends to function as property dealer.

(b) On receipt of an application the Collector shall conduct such enquiries and grant or refuse license applied for.

(c) In cases where the Collector on enquiry finds no justification to grant the license he may grant the applicant an opportunity to be heard before passing final orders in the application.

(d) Government may frame rules prescribing the form in which the application is to be filed and the terms and conditions subject to which the license shall be granted and notify the same for information of the public.

5. *Grant of license.*—A license shall be granted on such terms and condition, as may be prescribed.

6. *Collector shall adjudicate the disputes between the property dealer and parties.*—Any dispute arising between the property dealer and any of the parties to the deal under this Act or the rules framed thereunder shall be decided by the collector on an application made by the aggrieved person in such form and manner as may be prescribed.

7. *Appeal.*—Any person aggrieved by an order made by the collector may within a period of sixty days of communication to him of such order prefer an appeal to the Commissioner within whose jurisdiction the Collector is functioning if there are Commissioner's more than one in the State. Order passed by the Commissioner shall be final in such form and manner, as may be prescribed:

Provided that the Commissioner may entertain an appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

No civil court shall have jurisdiction to entertain, proceed, settle, decide or deal with any matter which is required to be settled, decided or dealt with under this Act by the authorities empowered thereunder.

8. *Amount payable under the Act to be recovered as Revenue due.*—The amount or other sum payable under this Act and the amount of any penalty imposed under this Act may be recovered as arrears of land revenue.

9. *No suit or other proceedings against the officers.*—No suit prosecution or other proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under or in pursuance of this Act or any rules made thereunder.

10. *Officers to be public servants.*—Every officers and officials acting under or in pursuance of the provisions of this Act or any rules made thereunder shall be deemed to be a public servant with in the meaning of section 21 of the Indian Penal Code 1860 (Central Act 45of 1860).

11. *Powers of Collector in enquiries.*—In all enquiries and proceedings under this Act the Collector shall have such powers and follow such procedures as may be prescribed.

12. *Power to correct mistakes etc.*—Clerical or arithmetical mistakes in any order passed by any officer or authority under this act or errors occurring therein form any accidental slip or omission may at any time be corrected by such officer or authority either on his own motion or on an application received in this behalf from any of the parties.

13. *Powers of Civil Courts.*—Any officer or authority holding an enquiry or hearing an appeal under this Act shall have the powers of a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), relating to—

- (a) Proof of facts by affidavits
- (b) Enforcing attendance of any person and his examination on oath.
- (c) Production of documents.

And every such officer or authority shall be deemed to be a civil court.

14. *Offences and penalties.*—(1) Any person who contravenes any provision of this Act or any rule made thereunder shall be punishable on first conviction with imprisonment of either description for a term which may extend to six months and with fine which may extend to ten thousand rupees and in the event of second or subsequent conviction with imprisonment for a term of not less than one year but which may extend to two years and also with a fine not less than twenty-five thousand rupees which may extend to fifty thousand rupees.

(2) Any person or company or society found indulging in the property consulting business, without having a valid license under this Act shall be punished by such authority as may be prescribed with a fine of fifty thousand rupees in the case of an individual or one lakh rupees in case of a society company or any organization and shall also be liable to pay all the benefits so received and the damages suffered by the affected party while dealing with the property for which commission has been paid by any party to the deal.

15. *Power to frame Rules.*—(1) The State Government may by notification in the official gazette make rules for carrying out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for.

- (a) The form and manner and the fee for grant or renewal of license under section 4;
- (b) The terms and conditions of grant of license under section 5;

- (c) The form and manner for filling application under section 6;
 - (d) The form and manner for filling appeal under section 7;
 - (e) The powers and procedures for enquiries and proceeding under section 14;
 - (f) Any other matter which is to be or may be prescribed.
- (3) Every rule made under this Act shall be laid as soon as may be after is made before the house of State legislature while it is in session.

Statement of Objects and Reasons

It had become essential to regulate the functioning of property dealers so that the people accessing their services are not harassed and to put in place a proper system and procedure for compulsory registration of property dealers/agent and the manner in which they conduct their business. The present measure seeks to regulate the functioning of property dealers, property consultants and estate agents to promote appropriate standards of conduct and competency for persons engaged in property dealings and to protect the interests of persons using the services of the property dealers, property consultants and estate agents and for matters connected therewith or incidental thereto.
