

[Translation in English of “2005-ലെ കോവളം കൊട്ടാരം (വീണ്ടെടുക്കൽ വഴി ഏറ്റെടുക്കൽ) ആക്ട്” published under the authority of the Governor.]

ACT No. 25 OF 2005

THE KOVALAM PALACE (TAKING OVER BY RESUMPTION) ACT, 2005*

An Act to provide for taking over and Protection by resumption of the historic site of Kovalam Palace and the surrounding buildings and lands by the Government of Kerala.

Preamble.—WHEREAS, the Government of Kerala had sanctioned the possession of the Kovalam Palace and the adjacent property measuring 4.13.30 hectares along with other lands to the Department of Tourism, Government of India in the year 1970 for the purpose of development of tourism in Kerala pending finalization of the terms and conditions of transfer;

AND WHEREAS, the terms and conditions of transfer have not been finalised thereafter;

AND WHEREAS, the India Tourism Development Corporation, the agency of the Department of Tourism, Government of India which had been in possession of the Kovalam Palace and the surrounding buildings and lands had retransferred the possession of the buildings and lands to M/s. M-Far Hotels Limited, a company registered under the Companies Act, 1956 consequent on the privatization of Hotels by the Government of India during July, 2002;

AND WHEREAS, the said transfer was without the prior consent of the Government;

AND WHEREAS, the Government are still the owner and the title holder of the said Kovalam Palace;

AND WHEREAS, the Government had taken over possession of the Kovalam Palace building and a major portion of the surrounding lands on the 27th day of

* Received the assent of the Governor on the 12th day of August, 2005 and published in the Kerala Extraordinary Gazette No. 1842 dated 12th August, 2005.

September, 2004 consequent on the Government Order in G.O. (P) No. 302/2004/RD issued on the 25th day of September, 2004;

AND WHEREAS, the Hon'ble High Court of Kerala has in its judgment dated the 8th April, 2005 in W.A. No. 1796 of 2004 in *M/s. M-Far Hotels Ltd. and another Vs. Union of India and others* has quashed the Government Order by which the possession was taken;

AND WHEREAS, the Hon'ble High Court has observed that the petitioner therein could not be dispossessed of property save by authority of law and also observed that the judgment would not stand in the way of the State of Kerala to proceed through a known process of law;

AND WHEREAS, the historic site of Kovalam Palace is also one of tourist attraction and serve the public purpose of tourism;

AND WHEREAS, it is expedient in the public interest to ensure that the interests of the general public are served by retaining the Kovalam Palace to serve the public purpose and in particular by retaining the Kovalam Palace and the surrounding lands as object of historic interest and heritage site;

AND WHEREAS, the above said object has to be achieved by retaining the Kovalam Palace and the surrounding lands as object of historic interest and heritage site;

BE it enacted in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Kovalam Palace (Taking over by Resumption) Act, 2005.

(2) It shall be deemed to have come into force on the 25th day of September, 2004.

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

(a) “Commissioner” means the Commissioner of Payment of compensation appointed under section 6;

(b) “Government” means the Government of Kerala;

(c) “Kovalam Palace” means the Palace known as Halcyon Castle constructed by the then Regent. Maharani Sethulekshmi Bai of Travancore in the land in Survey No. 7/1 of Vizhinjam Village of Neyyattinkara Taluk in Thiruvananthapuram District and the surrounding buildings and lands measuring 4.13.30 hectares;

(d) “Prescribed” means prescribed by rules made under this Act.

CHAPTER II

TAKING OVER BY RESUMPTION OF KOVALAM PALACE

3. Taking over by resumption of Kovalam Palace.—(1) Notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any Court or in any contract or other document, with effect on and from the date of commencement of this Act, the possession of the historic site of Kovalam Palace shall stand transferred to and vest in the Government free from all encumbrances and the right, title and interest of all other persons in respect of the lands and buildings shall stand extinguished.

(2) Notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any Court or in any contract or other document, the possession of the historic site of Kovalam Palace already taken by the Government on the 27th day of September, 2004 shall be deemed to have been taken under the provisions of this Act and shall be deemed to be possessed as validly taken under the provisions of this Act on and from the 27th day of September, 2004.

4. *General effect of vesting.*—(1) Notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any Court or in any contract or other arrangement in so far as it relates to the historic site of Kovalam Palace in force immediately before the commencement of this Act shall be deemed to have been terminated on such commencement.

CHAPTER III

PAYMENT OF COMPENSATION FOR IMPROVEMENTS

5. *Payment of amount.*—(1) For any improvements made to the historic site of Kovalam Palace and for the value of any interest which may have accrued in favour of any person during the period from the date of handing over of the possession by the Government in 1970 to the date of resumption by the taking over by the Government under section 3, there shall be given by the Government for the value of such improvements made to Kovalam Palace or any other right which shall have accrued to any person an amount by way of compensation by following the principles specified in sub-section (2).

(2) The principles to be observed in the payment of compensation shall be:—

(a) in respect of any improvement made to the building or the land, the value for such improvement shall be at the rate prevalent at that time;

(b) depreciation at the rate of five per cent per annum subject to a maximum of fifty per cent towards cost of building;

(c) for any interest which may have accrued, its value may be computed in the manner as may be prescribed;

(d) any improvement made without the legal sanction from the Local Self Government Institutions or Local Authorities or other Government Authorities in the said area shall not be eligible for compensation.

CHAPTER IV

COMMISSIONER OF PAYMENT

6. *Appointment of Commissioner of Payment of Compensation.*—(1) The Government shall, for the purpose of payment of compensation under section 5, by notification in the Gazette, appoint an officer not below the rank of a District Collector as the Commissioner of Payment of Compensation.

(2) The Government may appoint such other officers as they may think fit to assist the Commissioner in the exercise of the powers conferred on the Commissioner under this Act.

(3) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of the State of Kerala.

7. *Claims to be made to the Commissioner.*—(1) Any person having a right to compensation under section 5 shall prefer a claim before the Commissioner in such manner and within such period as may be prescribed.

(2) The Commissioner shall examine each claim with relevant details and after giving the affected person an opportunity of being heard and by applying the principles for payment of compensation, determine the amount payable and such payment shall be made in the manner prescribed.

(3) The Commissioner shall have the powers to regulate his own procedure in all matters arising out of the exercise of his powers in payment of compensation and for the purpose of making any investigation under this Act, and shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), while trying a suit in respect of the following matters, namely:—

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the issuing of any Commission for the examination of witnesses;

(d) such other matters as may be prescribed.

8. *Appeal by Claimants.*—Any claimant who feels aggrieved by the decision of the Commissioner under section 7 may prefer an appeal within thirty days from the date of knowledge of the decision in writing to the Principal District Court of Thiruvananthapuram.

CHAPTER V

MISCELLANEOUS

9. *Act to have overriding effect.*—The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law other than this Act or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any Court or other authority.

10. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Government or any of its officers or employees for any act or omission which is in good faith done or intended to be done or omitted to be done under this Act.

11. *Bar of jurisdiction of Civil Court.*—Except as otherwise provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question or to determine any matter which is, by or under this Act, required to be decided or dealt with or to be determined by the Commissioner or any other officer.

12. *Power to make rules.*—(1) The Government may, by notification in the Official Gazette make rules either prospectively or retrospectively to carry out the purposes of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in 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 modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

14. *Validation.*—Notwithstanding anything contained in the Government Order in G.O. (P) No. 302/2004/RD issued on the 25th day of September, 2004, or in any judgment, decree or order of any Court, all acts done in the matter of taking possession of the historic site of Kovalam Palace and the surrounding buildings and lands during the period from the 25th day of September, 2004 to the date of publication in the Gazette of the Kovalam Palace (Taking over by Resumption) Ordinance, 2005 shall be deemed to have been validly done under the provisions of this Act and accordingly no suit or other proceeding shall be maintained or continued in any Court or before any authority for divesting the Kovalam Palace and the Surrounding buildings and lands.

15. *Repeal and Saving.*—(1) The Kovalam Palace (Taking over by Resumption) Ordinance, 2005 (6 of 2005) 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 said Ordinance shall be deemed to have done or taken under this Act.