

Kerala Cashew Factories (Requisitioning) Act, 1979

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Act 6 of 1979

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Kerala Cashew Factories (Requisitioning) Act, 1979(Act No. 6 of 1979)An Act to provide for the requisitioning of cashew factories leased out to the Kerala State Cashew Development Corporation. Whereas certain cashew factories had been leased out by the owners thereof to the Kerala State Cashew Development Corporation Limited, which is a company owned by the Government of Kerala; And Whereas such cashew factories were at the time of the lease either closed down or run by person other than the owners thereof; And Whereas the term of the lease in respect of some of such cashew factories has expired and the owners of some of such factories are not willing to extend the term of the lease; And Whereas suits have been filed in the courts by the owners of some of such cashew factories for delivery of possession thereof; And Whereas in the interests of the workers of the cashew factories it is considered necessary to enable the said Corporation to continue in possession and management of such of those cashew factories which if given back to the owners thereof could not be run properly and in accordance with law and would either be sold or leased out to private individuals; Be it enacted in the Thirtieth Year of the Republic of India as follows:-.

1. Short title, extent and commencement.

(1) This Act may be called the Kerala Cashew Factories (Requisitioning) Act, 1979. (2) It extends to the whole of the State of Kerala. (3) It shall be deemed to have come into force on the 13th day of November 1978.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a) "cashew factory" means a factory as defined in the Factories Act, 1948 (Central Act 63 of 1948), wherein processing of cashew nuts is being carried on and includes the factory building, the site thereof and the buildings and lands appurtenant thereto used or necessary for, or in connection with, the working of the factory; (b) "Corporation" means the Kerala State Cashew Development Corporation Limited,

incorporated under the Companies Act, 1956 (Central Act 1 of 1956);(c)the expression "Person interested", in relation to any cashew factory, includes all persons claiming or entitled to claim an interest in the amount payable on account of the requisitioning of that factory under this Act;(d)"prescribed" means prescribed by rules made under this Act;(e)"processing", with reference to cashew nuts, includes extraction of cashew nut oil, roasting, shelling, peeling, grading and treating of cashew nuts;(f)"Tribunal" means the Tribunal appointed under section 6.

3. Power to requisition cashew factories.

(1)Where the Government are satisfied that if the owner of a cashew factory which is in the possession of the Corporation under a lease, whether current or time expired, is put in possession thereof, such owner could not run that factory properly and in accordance with law and would either sell it or lease it out to any private individual and there would be large scale unemployment of the workers of that factory or their conditions of service would be adversely affected the Government may, notwithstanding any judgement, decree or order of any court, 2[by order published in the Gazette-(a)requisition that cashew factory for such period not exceeding five years as may be specified in the order;(b)Extend the period of requisition by five years at a time;(c)make such further orders as appear to them to be necessary or expedient in connection with the requisition]:Provided that before making an order under this sub-section in respect of a cashew factory, the Government shall give the owner of that factory and every person interested in that factory a notice of their intention to take action under this sub-section and the grounds therefor and consider the objections that may be preferred in pursuance of such notice.(2)Where a cashew factory is requisitioned under sub-section (1), such cashew factory together with all machinery other accessories and other movable properties as were immediately before the date of publication of the order under sub-section (1) in the possession of the Corporation and all books of account, registers and other documents relating thereto shall vest in the Government with effect from the said date.(3)The Government may, by order in writing, direct that a cashew factory vested in them under sub-section (2) shall, instead of continuing to vest in them, vest in the Corporation with effect from such date, not being a date earlier than the date of publication of the order under sub-section (1), as may be specified in the order.(4)Where an order vesting a cashew factory in the Corporation is made under sub-section (3), all rights, liabilities and obligations of the Government in relation to such factory shall, on and from the date of such vesting, be deemed to have become the rights, liabilities and obligations respectively of the Corporation.

4. Release from requisition.

(1)The Government may at any time release from requisition any cashew factory requisitioned under section (3) and thereupon the Government or the Corporation, as the case may be, shall as far as possible restore the factory in as good a condition as it was when possession thereof was taken by virtue of the lease executed by it with the owner of cashew factory, subject to the provisions contained in such lease and to the changes caused by reasonable wear and tear and irresistible force.(2)Where any cashew factory is to be released from requisition under sub-section (1), the Government may, after such inquiry, if any, as they may in any case consider necessary to make or cause to be made, specify by order in writing the person to whom possession of such cashew factory

is to be given.(3)The delivery of possession of a cashew factory to the person specified in an order under sub-section (2) shall be a full discharge of the Government and, in the case of a cashew factory vested in the Corporation, also of the Corporation from all liabilities in respect of such cashew factory, but shall not prejudice any right in respect of that cashew factory which any other person may be entitled by due process of law to enforce against the person to whom possession of the cashew factory is given.(4)Where any person to whom possession of a cashew factory is to be given is not found and has no agent or other person empowered to accept delivery on his behalf, the Government shall cause a notice declaring that the cashew factory is released from requisition to be affixed on some conspicuous part of the premises of the cashew factory and shall also publish the notice in the Gazette.(5)Where a notice referred to in sub-section (4) is published in the Gazette, the cashew factory specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be, deemed to have been delivered to the person entitled to possession thereof, and the Government or the Corporation shall not be liable for any compensation or other claim in respect of such cashew factory for any period after the said date.(6)Where any cashew factory requisitioned under section 3 or any material part thereof is wholly destroyed or rendered sub-stantially and permanently unfit for carrying on processing of raw cashew nuts by reason of fire, earthquake, tempest, flood or violence of any mob or other irresistible force, the requisition shall, at the option of the Government, be void:Provided that the benefit of this sub-section shall not be available to the Government where the inquiry to such cashew factory is caused by any wrongful act or default of the Government or the Corporation.

5. Payment of amount.

(1)Where any cashew factory is requisitioned under this Act there shall be paid rent for the cashew factory, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,-(a)where the amount of rent can be fixed by agreement, it shall be paid in accordance with such agreement;(b)where no such agreement can be reached the Government shall by order.(i)determine the rent at a rate which shall be in excess of the amount of rent which was being paid by the Corporation for that cashew factory immediately before the date of publication of the order under sub-section (1) of section 3 by twenty-five per cent of such amount and(ii)specify the person or persons to whom such rent shall be paid.(2)Any person aggrieved by an order of the Government under sub-section (1) may, within thirty days from the date of such determination, apply to the Tribunal for modification of such order:Provided that the Tribunal may entertain the application after the expiry of the said period of thirty days if it is satisfied that the applicant was prevented by sufficient cause from presenting the application in time.(3)In determining the amount of rent payable for a cashew factory requisitioned under this Act, the Tribunal shall have regard to-(a)the nature and plinth area of the buildings and other structures and the value of the accessories and fixtures minus depreciation at the rate of five per cent per annum subject to a maximum of fifty per cent depreciation;(b)the capacity of the cashew factory for processing raw cashew nuts;(c)rate of rent of other cashew factories in the locality at the commencement of this Act; and(d)express on account of re-occupying the premises upon release from requisition.

6. Tribunal.

(1)The Government shall, by notification in the Gazette, appoint a Tribunal to exercise the powers conferred on the Tribunal under this Act.(2)The Tribunal shall consist of a person who is a District Judge.

7. Appeals from decision of Tribunal.

- Any person aggrieved by any decision of the Tribunal may, within thirty days from the date of such decision, prefer an appeal to the High Court against such decision:Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient case from filing the appeal in time.

8. Mode of payment of rent.

- The amount of rent payable under this Act shall, subject to any rules made thereunder, be paid by the Government to the person or persons entitled thereto by means of cheque:Provided that the amount of rent payable under this Act in respect of a cashew factory vested in the Corporation in pursuance of an order made under sub-section (3) of section 3 shall be paid by the Corporation.

9. Service of notice or order.

(1)Every notice or order issued or made under this Act shall,-(a)in the case of any notice or order affecting a corporation or firm be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908); and(b)in the case of any notice or order affecting an individual person (not being a corporation or firm), be served on such person-(i)by delivery or tendering it to that person; or(ii)if it cannot be so delivered or tendered by delivering or tendering it to any officer of such person or any adult male member of the family of such person, or by affixing a copy thereof on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain, or failing service by these means;(iii)by registered post.(2)Where the ownership of the cashew factory is in dispute, or where the persons interested in the cashew factory are not readily traceable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in Gazette and where possible, by affixing a copy thereof on any conspicuous part of the premises of the cashew factory to which it relates.

10. Protection of action taken in good faith.

(1)No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.(2)No suit or other legal proceeding shall lie against the Government or the Corporation for any damage caused or likely to be caused by anything which is in good faith done or intended to

be done in pursuance of this Act or any rule or order made thereunder.

11. Bar of jurisdiction of civil courts.

- Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Government or the Corporation of the Tribunal are or is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

12. Power to make rules.

(1)The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.(2)Every rule made under this Act 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. Repeal and saving.

(1)The Kerala Cashew Factories (Requisitioning) Ordinance, 1978 (26 of 1978), is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.