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SUPPLEMENT

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PARTITION (AMENDMENT)

A

BILL

to amend the Partition Law, No. 21 of 1977

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STATEMENT OF LEGAL EFFECT

Clause 2 : This clause inserts new section 2A to the Partition Law, No. 21 of 1977 (hereinafter referred to as the “principal enactment”). The new section enables the praveni nilakaraya or any person who derives title from a praveni nilakaraya in a praveni pangu of a temple land to institute a partition action for the partition or sale of such praveni pangu in accordance with the provisions of the principal enactment.

Clause 3 : This clause amends section 15 of the principal enactment by making provisions for the public announcement on the partition action by way of exhibiting a banner and using a loudspeaker to enable all persons having interest in the land to be partitioned, to become aware of such partition action.

Clause 4 : This clause amends section 16 of the principal enactment which enables the court to issue further commissions to any surveyor referred to in section 73 either on its own motion or at the instance of any party to the action for the adjudication of the action.

Clause 5 : This clause amends section 17 of the principal enactment and is consequential to the amendment made to section 15 of the principal enactment by clause 3.

Clause 6 : This clause amends section 23 of the principal enactment by providing for a time period to file a list of documents to a party who intervenes after the first date fixed for trial.

Clause 7 : This clause amends section 27 of the principal enactment enabling the court to issue the commission for the division of the land in to lots to the surveyor who made preliminary survey or any surveyor whose name is in the list referred to in section 73 or any other surveyor upon agreement of all parties who have been awarded any right by the interlocutory decree entered under section 26 of the principal enactment.

Clause 8 : This clause amends section 30 of the principal enactment and is consequential to the amendment made to section 15 of the principal enactment by clause 3.

Clause 9 : This clause replaces section 36A of the principal enactment by providing a person dissatisfied with an order made under section 36 to prefer an application for leave to appeal to the Court of Appeal against such order.

Clause 10 : This clause amends section 45A of the principal enactment by rectifying an error occurred in that section in making a wrong reference inadvertently to sections 36A and 45A.

Clause 11 : This clause amends section 48 of the principal enactment and is consequential to the amendment made to the principal enactment by clause 2.

Clause 12 : This clause amends section 57 of the principal enactment and is consequential to the amendment made to section 15 of the principal enactment by clause 3.

Clause 13 : This clause amends section 83 of the principal enactment by the insertion of definitions for the terms “praveni nilakaraya”, “praveni pangu”, “temple” and “trustee” and is consequential to the amendment made to the principal enactment by clause 2.

Clause 14 : This clause amends the form which bears the title “REPORT BY GRAMA NILADHARI” in the Second Schedule to the principal enactment and is consequential to the amendment made to section 15 of the principal enactment by clause 3.

Partition (Amendment)

L.D.—O. 68/2021

A N ACT TO AMEND THE PARTITION LAW, NO. 21 OF 1977

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Partition (Amendment) Act, No. of 2023. Short title

5 2. The Partition Law, No. 21 of 1977 (hereinafter referred to as the “principal enactment”) is hereby amended by the insertion immediately after section 2 thereof, of the following new section which shall have effect as section 2A thereof:- Insertion of section 2A in Law, No. 21 of 1977

10 “Institution of partition action by a praveni nilakaraya 2A. (1) Every praveni nilakaraya or any person who derives title from a praveni nilakaraya in a praveni pangu of a temple land shall be entitled to institute a partition action for the partition or sale of such praveni pangu in accordance with the provisions of this Law.

15 (2) Where there are more than one praveni nilakarayas or persons having an interest in a praveni pangu, such praveni nilakarayas or such persons may be made parties to any action instituted under subsection (1).

20 (3) (a) For the avoidance of doubt, it is hereby stated that the partition or sale of a praveni pangu shall not affect any rights of a temple enforceable under the provisions of the Service Tenures Ordinance (Chapter 467) and
25 the temple shall be entitled to exercise rights under such Ordinance through its trustee or Viharadhipathi as the case may be, as though no partition or sale had occurred in respect of the entirety of the praveni pangu or any portion
30 thereof as the case may be.

5 (b) Any right of a temple enforceable under the Service Tenures Ordinance (Chapter 467) shall remain unaffected irrespective of the fact that a trustee or a Viharadhipathi of such temple has been or has not been made a party to a partition action instituted under the provisions of this section.

10 (4) (a) A trustee appointed with reference to a temple referred to in subsection (1) under the provisions of the Buddhist Temporalities Ordinance (Chapter 318) or a Viharadhipathi of a temple which is exempted under the provisions of section 4(1) of the Buddhist Temporalities Ordinance (Chapter 318), as the case may be, may make an application to be a party to the partition action instituted under subsection (1).

20 (b) Where such trustee or Viharadhipathi, as the case may be, makes an application under paragraph (a) of this subsection, the court shall make such trustee or Viharadhipathi a party to such action.”.

3. Section 15 of the principal enactment is hereby amended as follows:-

Amendment
of section 15
of the
principal
enactment

25 (1) by the repeal of subsections (2) and (3) of that section and substitution therefor of the following subsections:-

30 “(2) Every Grama Niladhari to whom a copy of such notice and a copy of a translation thereof are sent by registered post under subsection (1) of this section shall cause the contents of the notice, including the Schedule of the land or lands, as the case may be, to be exhibited in a banner displayed, in the manner as may be prescribed by regulations,

5 in a conspicuous place in his office or close to his office for a period of not less than thirty days, and shall forward to the court a report to that effect substantially in the form set out in the Second Schedule.

(3) The Grama Niladhari shall also cause the contents of the notice sent to him under subsection (1) of this section, including the Schedule of the land or lands as the case may be-

10 (a) to be exhibited in a banner, in a conspicuous position in the land or lands as the case may be, in the manners as may be prescribed by regulations; and

15 (b) to be orally proclaimed by way of public announcement made using a loudspeaker at such land or each of such lands and at any public place close to such land or each of such lands, as the case may be,

20 and shall forward to the court a report to that effect substantially in the form set out in the Second Schedule.”;

(2) by the addition, at the end of that section of the following new subsection:-

25 “(4) The cost of the publication done under subsections (2) and (3) of this section shall be borne by the plaintiff in the first instance and shall be recoverable “*pro rata*”. The Grama Niladhari shall forward an affidavit to the court affirming the execution of the publications referred to in
30 subsections (2) and (3) of this section along with the reports referred to in subsections (2) and (3) of this section within two months from the date of receipt of such notice.”.

4. Section 16 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and substitution therefor of the following subsection:-

Amendment
of section 16
of the
principal
enactment

5 “(2) (a) The commission issued to a surveyor under subsection (1) of this section shall be substantially in the form set out in the Second Schedule and shall have attached thereto a copy of the plaint certified as a true copy by the registered attorney for the plaintiff.

10 (b) The court may, upon transmit to it under section 18 the plan prepared by the surveyor in the execution of the commission issued under subsection (1), order to issue a further commission, on its own motion or at the instance of any party to the action, authorizing-

15 (i) the surveyor referred to in subsection (1) or any other surveyor whose name is specified in the list of surveyors referred to in section 73, to survey any larger or smaller portion of the land that was surveyed under the commission issued under subsection (1); or

20 (ii) any surveyor other than the surveyor referred to in subsection (1) and whose name is specified in the list of surveyors referred to in section 73, to resurvey the land that was surveyed under the commission issued under
25 subsection (1),

and the court may also direct the surveyor who executes the further commission to superimpose the plan prepared under the further commission on the plan prepared in the execution of the commission issued under subsection
30 (1) or to carry out any other similar matter necessary for the adjudication of the action.

(c) In the execution of the further commission referred to in paragraph (b), the provisions of paragraph (a) of this subsection, the provisions of subsections (1), (3), (4), (5) and (6) of this section and the provisions of sections 17 and 18 shall *mutatis mutandis*, apply in respect thereof.”.

5. Section 17 of the principal enactment is hereby amended in subsection (2) of that section by the substitution for the words “after beat of tom-tom,” of the words “by way of public announcement made using a loudspeaker,”.

Amendment of section 17 of the principal enactment

6. Section 23 of the principal enactment is hereby amended in subsection (1) of that section by the substitution for all the words from “Every party to a partition action shall,” to “the contents of such documents.” of the words-

Amendment of section 23 of the principal enactment

15 “Every party to a partition action shall, not less than thirty days before the date first fixed for the trial of the action, file or cause to be filed in the court a list of documents on which he relies to prove his right, share or interest to, of or in the land together with an abstract of the contents of such documents. Where a party is allowed to intervene after the first date fixed for trial, such party shall file a list of documents within thirty days of such intervention.”.

7. Section 27 of the principal enactment is hereby amended by the repeal of subsection (3) of that section and substitution therefor of the following subsection:-

Amendment of section 27 of the principal enactment

30 “(3) Where the court decides that the land or any portion thereof shall be partitioned, the commission under subsection (2) of this section shall be issued to the surveyor who made the preliminary survey under section 17 unless the court decides to issue it to any other surveyor whose name is specified in the list referred to in section 73 or where court deemed fit,

notwithstanding anything to the contrary in section 73, to any other surveyor upon agreement of all parties who have been awarded any right by the interlocutory decree entered under section 26.”.

5 **8.** Section 30 of the principal enactment is hereby amended in subsection (3) of that section by the substitution for the words “after beat of tom-tom,” of the words “by way of public announcement made using a loudspeaker,”. Amendment of section 30 of the principal enactment

10 **9.** Section 36A of the principal enactment is hereby repealed and the following section is substituted therefor:- Replacement of section 36A of the principal enactment

“Application for leave to appeal 36A. Any person dissatisfied with an order made by the court under section 36 may prefer an application for leave to appeal to the Court of Appeal in terms of subsection (2) of section 754 of the Civil Procedure Code (Chapter 101) against such order.”.

15 **10.** Section 45A of the principal enactment is hereby amended in subsection (2) of that section by the substitution for the words “under sections 36A and 45A” of the words “under sections 36 and 45”. Amendment of section 45A of the principal enactment

25 **11.** Section 48 of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words “a lease at will or for a period not exceeding one month.” of the words “a lease at will or for a period not exceeding one month or the rights of a temple enforceable under the Service Tenures Ordinance (Chapter 467).”.

30 **12.** Section 57 of the principal enactment is hereby amended by the repeal of paragraph (d) of subsection (1) of that section and substitution therefor of the following paragraph:- Amendment of section 57 of the principal enactment

“(d) the cost incurred in the display of the banner and the proclamation made under section 15 and the cost incurred in the proclamation made under section 17;”.

13. Section 83 of the principal enactment is hereby amended as follows:-

Amendment
of section 83
of the
principal
enactment

- 5 (1) in the definition of the expression “land” by the substitution for the words “of that action;” of the words “of that action and it shall also include the praveni pangu of a temple land as specified in section 2A;”;
- 10 (2) by the insertion immediately after the definition of the expression “partition action”, of the following new definitions:-
 - 15 ““praveni nilakaraya” shall have the same meaning assigned to it under section 2 of the Service Tenures Ordinance (Chapter 467) to the extent it relates to a temple;
 - 20 “praveni pangu” shall include any land or a part of any land held by one or more persons subject to the performance of any service or rendering of any duties to the temple as defined in section 2 of the Buddhist Temporalities Ordinance (Chapter 318) in respect of which an order for commuted dues in lieu of services under section 15 of the Service Tenures Ordinance (Chapter 467) has been made
 - 25 and shall include the same meaning assigned to it in section 2 of the Service Tenures Ordinance (Chapter 467) to the extent it relates to a temple;”;
- 30 (3) in the definition of the expression “surveyor” by the substitution for the words “ the time being in force.” of the words “the time being in force;”;
- (4) by the insertion immediately after the definition of “surveyor”, of the following new definitions:-

5 ““temple” shall have the same meaning assigned to it in section 2 of the Buddhist Temporalities Ordinance (Chapter 318) in so far as such temple is possessed of rights as specified under the Service Tenures Ordinance (Chapter 467); and

“Trustee” shall have the same meaning assigned to it in section 2 of the Buddhist Temporalities Ordinance (Chapter 318).”.

10 **14.** The Second Schedule to the principal enactment is hereby amended in the Form prescribed under subsection (2) of section 15 which bears the title “REPORT BY GRAMA NILADHARI” as follows:-

Amendment of the Second Schedule to the principal enactment

15 (1) by the substitution for the words and figures “(Section 15(2))” of the words and figures “(subsections (2) and (3) of section 15)”; and

(2) by the substitution for the words “I have exhibited the annexed notice with translations on the notice board of my office” of the following:-

20 “I have exhibited the contents of the notice, including the Schedule of the land in a banner displayed in a conspicuous place in my office and in a conspicuous place in the land and orally proclaimed by way of public
25 announcement made using a loudspeaker at such land and at any public place close to such land.”.

15. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency

