KARNATAKA ACT NO. 38 OF 2014

THE KARNATAKA LAND GRABBING PROHIBITION ACT, 2011

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STATEMENT OF OBJECTS AND REASONS

Amending Act 37 of 2014.- The Karnataka Land Grabbing (Prohibition) Bill 2007 with the following Statement of Objects and Reasons was passed by both the houses of the Karnataka State Legislature namely;-

"It has come to the notice of the Government that there are organised attempts on the part of certain lawless persons operating individually and in groups to grab either by force, or by deceit or otherwise lands belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf. The land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and indulging in large scale and unprecedented and fraudulent sales of land through unscrupulous real estate dealers or otherwise in favour of certain sections of people, resulting in large scale accumulation of the unaccounted wealth. As public order is adversely affected by such unlawful activities of land grabbers in the State, particularly in respect of urban and urbanisable lands, the State Government has felt that it is necessary to curb such unlawful activities immediately by enacting a special law in this regard.

Hence, the State Government of Karnataka with a view to prohibit the activities of land grabbing and to provide for matters connected therewith has proposed to bring the Karnataka Land Grabbing (Prohibition) Act into force. Apart from declaring land grabbing as unlawful, the State Government desires to prohibit land grabbing. Therefore, it is proposed to provide for penalty for offences in connection with land grabbing to effectively implement this Act and for the purpose of providing speedy enquiry into an alleged act of land grabbing and trial of cases in respect of the ownership and title to, or lawful possession of the land grabbed by Notification constitute a Special Court. It is felt that the State Government will be able to curb the illegal land grabbing by enforcing the proposed legislation."

Accordingly, the Karnataka Bhu Kabalike (Nishedha) Vidheyaka, 2007 as passed by both the houses the State Legislature was sent to Government of India to obtain the assent of the President.

The Government of India in its letter No.17/20/2007- Judl and PP dated 16/20.8. 2007, on the suggestion made by the Ministry of Corporate Affairs had suggested modification to the Karnataka Bhu kabalike (Nisheda) Vidyeyaka 2007. Accordingly clause 6 of the Bill has been modified by incorporating Explanation for the word Company and Director.

The Government of India vide letter No. 17/20/2007 – Judl & PP dated:18-06-2010, had suggested modifications to sub-clause (2) of clause 2 of the Bill on the suggestions made by the Ministry of Minority Affairs and also to the sub-clause (2) of clause 1 of the Bill on the suggestion made by the Department of Legal Affairs. Accordingly the State Government vide its letter No. DPAL 22 SHASHANA 2007, dated 7.9.2010 Communicated its acceptance to make the said modification by amending the Bill, by extending the provisions to the lands belonging to the Wakfs, Hindu Religious Institutions and Charitable Endowments and requested the Government of India to obtain the assent of the President to the said Bill and also to obtain previous instructions to the modifications to be issued in the form of an Ordinance.

The Government of India vide its letter No. 17/20/2007 – Judl & PP dated:03-03-2010/2011 has directed the State Government to consider withdrawing the present Bill (LA Bill No.27 of 2007) and submit a modified Bill instead of concurrent promulgation of any amendment Ordinance.

Hence the Bill.

[L.A. Bill No. 43 of 2011 , File No. Samvyashae 22 Shasana 2007]

[Entry 18 and 64 of List II of the Seventh Schedule to the Constitution of India.]

KARNATAKA ACT NO. 38 OF 2014
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THE KARNATAKA LAND GRABBING PROHIBITION ACT, 2011
(Received the assent of the President on the Ninth day of October, 2014)

An Act to provide for measures to curb organized attempts to grab lands whether belonging to the Government, wakf or the Hindu Religious Institutions and Charitable Endowments, local authorities or other statutory or non-statutory bodies owned or controlled or managed by the Government.

And whereas such land grabbers are forming bogus cooperative housing societies or setting up fictitious claims and indulging in large scale, unprecedented and fraudulent sale of such lands through unscrupulous real estate dealers or otherwise in favour of certain sections of the people resulting in large accumulation of unaccounted wealth and quick money to land grabbers and thereby adversely affecting public order;

And whereas, having regard to the resources and influence of the persons by whom, the large scale, on which and the manner in which, the unlawful activity of land grabbing was, has been, is being organised and carried on in violation of law, as land grabbers in the State of Karnataka, it is necessary and expedient to curb immediately such unlawful activity of land grabbing.

Be it enacted by the Karnataka State Legislature in the sixty second year of the Republic India as follows:-

1. Short title, application and commencement.- (1) This Act may be called the Karnataka Land Grabbing Prohibition Act, 2011.

(2) It applies to land belonging to the Government**,** Wakf or the Hindu Religious Institutions and Charitable Endowments, local authority or any statutory or non-statutory body owned, controlled or managed by the Government in the State of Karnataka.

(3) It shall come into force at once.

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

(a) “Charitable Endowment” means Charitable Endowment as defined in sub-section (5) of section 2 of the Hindu Religious Institutions and Charitable Endowments Act, 1997 (Karnataka Act 33 of 2001);

(b) “Government’’ means the State Government;

(c) “Hindu Religious Institution” means the Hindu Religious Institution as defined in sub-section (17) of section 2 of the Hindu Religious Institutions and Charitable Endowments Act, 1997 (Karnataka Act 33 of 2001);

(d) “Land’’ includes,-

(i) land belonging to the Government, Wakf or the Hindu Religious Institutions and Charitable Endowments, a local authority, a statutory or non statutory body owned, controlled or managed by the Government;

(ii) rights in or over land, benefits to arise out of land, and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth;

(e)“land grabber’’ means a person or group of persons or a Society, who commits or has committed land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest;

(f) “land grabbing’’ means every activity of grabbing of any land, without any lawful entitlement and with a view to illegally taking possession of such land, or enter into or create illegal tenancies or lease and licences agreements construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and license basis for construction, or use and occupation, of unauthorised structures; and the term “to grab land’’ shall be construed accordingly;

(g) "local authority" includes the Municipal Corporation, a Municipal Council, Zilla Panchayat, Taluk Panchayat, Gram Panchayat, Town Panchayat, Industrial Township, Improvement Board,

Urban Development Authority and Planning Authority or any Local Self Government body or institution by whatever name called constituted under any law for the time being in force;

(h) "notification'' means a notification published in the Karnataka Gazette; and the word "notified'' shall be construed accordingly;

(i) "person'' includes a group or body of persons, any company or an association, whether incorporated or not;

(j) "prescribed'' means prescribed by rules made under this Act;

(k) 'Special Court' means a Special Court constituted under section 7;

(l) "unauthorised structures'' means any structure constructed, without express permission of the concerned competent authority under relevant law for the time being in force;

(m) "Wakf" means wakf as defined in clause (r) of section 3 of the Wakf Act, 1995 (Central Act 43 of 1995).

3. Land grabbing to be unlawful.- Land grabbing in any form is hereby prohibited and declared unlawful and any activity connected with or arising out of land grabbing shall be an offence punishable under this Act.

4. Prohibition of land grabbing.- (1) No person shall commit or cause to be committed land grabbing, by himself or through any other person.

(2) Any person who, on or after the commencement of this Act, continue to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, Wakf, Hindu Religious Institution and Charitable Endowments, local authority, statutory or non-statutory body owned, controlled or managed by the State Government shall be guilty of an offence under this Act.

(3) Whoever contravenes the provisions of sub-section (1) or sub-section (2) shall on conviction, be punished with imprisonment for a term which shall not be less than one year but which may extend to three years, and with fine which may extend to twenty five thousand rupees.

5. Penalty for other offences in connection with land grabbing.- Whoever, with a view to grabbing land in contravention of the provisions of this Act or in connection with any such land grabbing,-

(a) sells or allots, or offers or advertises for sale or allotment, or has in his possession for the purpose of sale or allotment any land grabbed;

(b) instigates or incites any person to commit land grabbing;

(c) uses any land grabbed or causes or permits knowingly to be used for purposes, connected with sale or allotment; or

(d) enters into an agreement for construction of any structure or buildings on such land;

(e) causes or procures or attempts to procure any person to do any of above mentioned acts;

shall, on conviction, be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may extend to twenty five thousand rupees.

6. Offences by companies.- (1) Where an offence against any of the provisions of this Act or any rule made thereunder has been committed by a company, every person who at the time of the offence was committed, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of the such offence.

(2) Notwithstanding anything contained in sub-section (1), where any such offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section:-

(a) "company, trust, firm, society" means respectively a company defined under the Companies Act, 1956 (Act No.1 of 1956), trust defined under the Indian Trust Act, 1882 (Act No.2 of 1882), firm defined in the Indian Partnership Act, 1932 (Act No.9 of 1932), Society defined in the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) or other association of individuals; and

(b) "director'' in relation to:-

(i) a company means the director as defined in sub-section (13) of section 2 of the Companies Act, 1956 and partner means a partner in the firm;

(ii) a society, a trust or other association of individuals, means the person who is entrusted under the relevant provisions of the Act or rules of the society, trust or other association with management of the affairs of the society, trust or other association, as the case may be.

7. Constitution of Special Courts.- (1) The Government may, for the purpose of providing speedy enquiry into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed and those offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964, by notification, constitute a Special Court.

(2) A Special Court shall initially consist of a Chairman and four other members, to be appointed by the Government.

(3) The Chairman shall be a person who is or was a judge of a High Court and of the other four members, two shall be persons who are or were District Judges (hereinafter referred to as Judicial Members) and the other two members shall be persons who hold or have held a post not below the rank of a Deputy Commissioner of the District (hereinafter referred to as Revenue Members):

Provided that the appointment of a person who was a Judge of a High Court as the Chairman of the Special Court shall be made after consultation with the Chief Justice of the High Court.

(4) The Government, if, it is of the opinion that Additional Bench of the Special Court is necessary for trial of such cases, may likewise constitute Additional Bench of Special Court, by notification, in respect of such area, as may be specified therein.

(5) Such Additional Bench shall consist of one Judicial member and one Revenue member with a qualification specified in sub-section (3).

(6) The Government from time to time likewise, by notification, reconstitute the Special Court constituted under sub-section (1).

(7) The Chairman or other member shall hold office as such for a term of three years from the date on which he enters upon his office, or until the Special Court is reconstituted whichever is later.

(8) (a) Subject to the other provisions of this Act, the jurisdiction, powers and authority of the Special Court may be exercised by benches thereof one comprising of the Chairman, a judicial member and a Revenue member and the other comprising of a Judicial Member and a Revenue member.

(b) Where the bench comprises of the Chairman, he shall be the Presiding Officer of such a bench and where the bench consists of two members, the Judicial Member shall be the Presiding Officer.

(c) It shall be competent for the Chairman either suo-moto or on a reference made to him to withdraw any case pending before the bench comprising of two members and dispose of the same or to transfer any case from one bench to another bench.

(d) Where it is reasonably apprehended that the trial of Civil liability of a person accused of an offence under this Act, is likely to take considerable time, it shall be competent for the Chairman to entrust the trial of the criminal liability of such offender to another bench in the interest of speedy disposal of the case.

(e) Where a case under this Act is heard by a bench consisting of two members and the members thereof are divided in opinion, the case with their opinions shall be laid before another judicial member or the Chairman and that member or Chairman, as the case may be after such hearing as he thinks fit, shall deliver his opinion and the decision or order shall follow that opinion.

(9) The quorum to constitute a meeting of any bench of the Special Court shall be two.

(10) No act or proceeding of the Special Court shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution or re-constitution thereof.

8. Authorization of officers.- The Government, may, by notification, authorize an officer of the Government, not below the rank of Tahsildar, to be the officer responsible for administration and effecting implementation of the provisions of this Act, initiate legal action against the persons contravening the provisions of this Act and exercise such powers and performs such functions, in respect of such area, as may be specified in the notification.

9. Procedure and powers of the Special Courts.- (1) The Special Court may, either suo-moto or on application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed or offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964 whether before or after the commencement of this Act, and pass such orders including orders by way of interim directions as it deems fit.

(2) The Special Court shall for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter.

(3) In respect of an alleged act of land grabbing or the determination of questions of title and ownership to, or lawful possession of any land grabbed under this Act and offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964, shall be tried only in a Special Court constituted for the area in which the land grabbed is situated; and the decision of the Special Court shall be final:

Provided that if, in the opinion of the Special Court, any application filed before it, is prima facie frivolous or vexatious, it shall reject the same without any further enquiry.

(4) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But additional evidence, if any adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charge made against him or any person charged together with him in the criminal proceeding:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the special court or give rise to any presumption against himself or any person charged together with him at the same proceeding.

(5) (a) The Special Court shall, while deciding the civil liability of a person shall follow its own procedure which is not inconsistent with the provisions of the Code of Civil Procedure, 1908.

(b) Every offence punishable under this Act shall be tried summarily.

(c) When a person is convicted of an offence of land grabbing attended by criminal force or show of force or by Criminal intimidation, and it appears to the Special Court that, by such force or show of force or intimidation, the land has been grabbed, the Special Court may if it thinks fit, order that possession of the same be restored after evicting by force, if necessary.

(6) Every case under sub-section (1) shall be disposed of finally by the Special Court, as far as possible, within a period of six months from the date of institution of the case before it.

(7) Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of; any land grabbed shall be binding on all persons having interest in such land:

Provided that the Special Court shall, by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Court from any person including the custodian of evacuee property within the period specified therein shall be considered by it:

Provided further that where the custodian of evacuee property objects to the Special Court taking cognizance of the case, the Special Court shall not proceed further with the case in regard to such property:

Provided also that the Special Court shall cause a notice of taking cognizance of the case under the Act, served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

(8) It shall be lawful for the Special Court to pass such order as it may deem fit to advance the cause of justice. It may award compensation in terms of money for wrongful possession of the land grabbed which shall not be less than the amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land payable by the land grabber to the owner of the grabbed land and may direct re-delivery of the grabbed land to its rightful owner. The amount of compensation and profits, so awarded and costs of re-delivery, if any, shall be recovered

as an arrear of land revenue in case the Government is the owner, or as a decree of a Civil Court, in any case to be executed by the Special Court:

Provided that, the Special Court shall, before passing an order under this sub-section, give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard, and consider every such representation and evidence.

10. Special Court to have the powers of the Civil Court and the Court of Session.- Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of Sessions and shall have all the powers of a Civil Court and a Court of Sessions and person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

11. Burden of proof.- Where in any proceedings under this Act prima facie proved to be the land owned by the Government, the Special Court shall presume that the person who is alleged to have grabbed the land is a land-grabber and the burden of proving that the land has not been grabbed by him shall be of such person.

12. Staff of the Special Court.- (1) The chairman of the Special Court may appoint officers and other employees required to assist the Special Court in the discharge of its functions under this Act.

(2) The categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances, method of recruitment and other conditions of service and the administrative powers of the Chairman of the Special Court shall be such as may be prescribed, after consultation with the Chairman.

13. Power to try offences.- All offences punishable under this Act shall be cognizable. Every offence punishable under this Act shall be tried by a magistrate of the first class specially empowered by the Government in this behalf by notification in the official gazette wherever Special Court is not constituted.

14. Persons acting under the Act to be public servants.- Every person acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

15. Protection of persons acting in good faith.- No suit, prosecution or other legal proceeding shall lie against any officer or employee of the Special Court or any officer of the Government for anything done in good faith or intended to be done under this Act or the rules made thereunder.

16. Act to override other laws.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a court or any other tribunal or authority.

17. Review.- The Special Court may in order to prevent the miscarriage of justice review its judgment or order passed under section 9 but no such review shall be entertained except on the ground that it was passed under a mistake of fact, ignorance of any material fact or an error apparent on the face of the record:

Provided that it shall be lawful for the Special Court to admit or reject review petitions in circulation without hearing the petitioner:

Provided further that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected.

18. Power to make rules.- (1) The Government may, by notification, after previous publication make rules for carrying out the purposes of this Act.

(2) Every rule made under this section shall, immediately after it is made, be laid before each House of the State Legislature if it is in session and if it is not in session in the session immediately following, for a total period of fourteen days which may be comprised in one session, or in two successive sessions and if before the expiration of the session in which it is so laid or the session

immediately following both Houses agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, 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.

19. Power to make regulations.- (1) The Special Court may, by notification, with the concurrence of the Government, make regulations not inconsistent with the provisions of this Act or the rules made thereunder relating to the procedure to be followed for the conduct of the cases and for regulating the manner of taking decisions.

(2) The Special Court may cause a public notice of the substance of such regulations for the information of the general public.

(3) Every regulation made under this section shall, immediately after it is made, be laid before such House of the Legislature of the Sate if it is in session, and if it is not in session in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following the State Legislature agrees in making any modifications in the regulation or in the annulment of the regulation, the regulation shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be; so however, that any such modification or annulments shall be without prejudice to the validity of anything previously done under that regulation.

20. Transfer of pending cases.- Any case, pending before any court or other authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the Special Court.

21. Prohibition of alienation of lands grabbed.- Any transaction relating to an alienation of a land grabbed or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise, or any partition effected or a trust created in respect of such land, which has taken place whether before or after the commencement of this Act shall, except to the extent ordered by the Special Court be null and void.

The above translation of ಕರ್ನಾಟಕ ಭೂಕಬಳಿಕೆ ನಿಷೇಧ ಅಧಿನಿಯಮ, 2011 (2014ರ ಕರ್ನಾಟಕ ಅಧಿನಿಯಮ ಸಂಖ್ಯೆ: 38) be published in the official Gazette under clause (3) of Article 348 of the Constitution of India.

VAJUBHAI VALA
GOVERNOR OF KARNATAKA

By Order and in the name of the Governor of Karnataka,

S.B. GUNJIGAVI
Secretary to Government,
Department of Parliamentary Affairs