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Kerala Minerals (Vesting of Rights) Act, 2021

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Fifteenth Kerala Legislative Assembly

Bill No. 59

**THE KERALA MINERALS (VESTING OF RIGHTS)
BILL, 2021**

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[Translation in English of “2021-ലെ കേരള ധാതുക്കൾ (അവകാശങ്ങൾ നിക്ഷിപ്തമാക്കൽ) ബിൽ” published under the authority of the Governor.]

THE KERALA MINERALS (VESTING OF RIGHTS)

BILL, 2021

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to vest the rights of the minerals in the soil and subsoil of the land in the State excluding the land comes under the purview of Travancore Proclamation dated 14th day of June, 1881 and Cochin Proclamation of 1905.

Preamble.—WHEREAS, it is expedient to vest the rights of the minerals in the soil and subsoil of the land in the State excluding the land comes under the purview of Travancore Proclamation dated 14th day of June, 1881 and Cochin Proclamation of 1905;

BE it enacted in the Seventy-second Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Minerals (Vesting of Rights) Act, 2021.

(2) It shall be deemed to have come into force on the 30th day of December, 2019.

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

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

(b) “minerals” means minerals and minor-minerals as defined in clause (a) and clause (e) respectively, of section 3 of Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957);

(c) “prescribed” means prescribed by rules made under this Act;

(d) “State” means the State of Kerala.

3. *Vesting of minerals*.—Notwithstanding anything contained in any other law or in any judgment or decree or order of any court or proclamation, all rights in the minerals in the soil and subsoil of all lands of whatsoever ownership or tenure shall stand vested in and shall be subject to the control of the State Government from the date of commencement of this Act.

4. *Manner of vesting*.—The manner of vesting of the rights of the minerals in the soil and subsoil of the land in the State excluding the land comes under the purview of Travancore Proclamation dated 14th day of June, 1881 and Cochin Proclamation of 1905 shall be in the same manner as is vested in the State in the Travancore and Cochin areas mentioned above.

5. *Power to make rules*.—(1) The Government may, by notification in the Gazette, make rules for carrying out the provisions 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 the rule.

6. *Power to remove difficulties*.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Gazette, makes such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient, for removing the difficulty:

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

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly.

7. *Repeal and saving.*—(1) The Kerala Minerals (Vesting of Rights) Ordinance, 2021 (124 of 2021) 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 been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The right of the mineral wealth vest with the Government as per Travancore Proclamation dated 14th June 1881, and Cochin proclamation of 1905. The Hon'ble Supreme Court in *Thressiamma Jacob v. Geologist, Department of Mining & Geology and others* [2013 (9) SCC 725], in relation to the ownership of rights over the mineral wealth in the land of the erstwhile Malabar area, held that ownership of mineral rights follows ownership of the land, unless owner of the land is deprived of the same by some valid process of law. As per the said judgment, in the absence of a legislation for the aforesaid purpose, the ownership right over the mineral wealth in the soil of the land in the erstwhile Malabar area is vested in the owner of the property. Therefore the rights over the minerals in the lands of the erstwhile Travancore-Cochin area vested in the State while the rights over the minerals in the land erstwhile Malabar area vested in the owner of the said land.

2. In the above circumstances, the Government have decided to bring a legislation so as to vest the right of ownership of minerals in the soil and sub-soil of erstwhile Malabar area in the Government, for the purpose of implementing a uniform law with respect to the ownership of minerals in the soil and sub soil of the land.

3. As the above proposal had to be given effect to immediately and the Legislative Assembly of the State of Kerala was not in session, the Kerala Mineral (Vesting of Rights) Ordinance, 2019 (43 of 2019) was promulgated by the Hon'ble Governor on the 29th day of December, 2019 and the same was published in the Kerala Gazette Extraordinary No. 3249 dated 30th December, 2019.

4. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly in its session convened on the 31st day of December, 2019.

5. As the provisions of the said Ordinance had to be kept alive and the Kerala Legislative Assembly was not in session, the Governor of Kerala had promulgated the Kerala Minerals (Vesting of Rights) Ordinance, 2020 (4 of 2020) on the 14th day of January, 2020 and the same was published as in the Kerala Gazette Extraordinary No. 94 dated 14th day of January, 2020;

6. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced on the 29th day of January, 2020 and ended on the 12th day of February, 2020.

7. As the provisions of the said Ordinance had to be kept alive and the Kerala Legislative Assembly was not in session, the Governor of Kerala had promulgated the Kerala Minerals (Vesting of Rights) Ordinance, 2020 (12 of 2020) on the 17th day of February, 2020 and the same was published in the Kerala Gazette Extraordinary No. 541 dated 18th day of February, 2020;

8. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced on the 2nd day of March, 2020 and ended on the 13th day of March, 2020.

9. As the provisions of the said Ordinance had to be kept alive and the Kerala Legislative Assembly was not in session, the Governor of Kerala had promulgated the Kerala Minerals (Vesting of Rights) Ordinance, 2020 (23 of 2020) on the 31st day of March, 2020 and the same was published in the Kerala Gazette Extraordinary No. 1011 dated 31st day of March, 2020 ;

10. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly in its session convened on the 24th day of August, 2020 ;

11. As the provisions of the said Ordinance had to be kept alive and the Kerala Legislative Assembly was not in session, the Governor of Kerala had promulgated the Kerala Minerals (Vesting of Rights) Ordinance, 2020 (64 of 2020) on the 26th day of September, 2020 and the same was published in the Kerala Gazette Extraordinary No. 2219 dated 29th day of September, 2020;

12. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala, during its session which convened on 31st day of December, 2020 and during its session which commenced on the 8th day of January, 2021 and ended on the 22nd day of January, 2021;

13. As the provisions of the said Ordinance had to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Governor of Kerala had promulgated the Kerala Minerals (Vesting of Rights) Ordinance, 2021 (11 of 2021) on the 9th day of February, 2021 and the same was published in the Kerala Gazette Extraordinary No. 664 dated 10th day of February, 2021.

14. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly in its session which commenced on the 24th day of May, 2021 and ended on the 10th day of June, 2021.

15. As the provisions of the said Ordinance had to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Governor of Kerala had promulgated the Kerala Minerals (Vesting of Rights) Ordinance, 2021 (91 of 2021) on the 1st day of July, 2021 and the same was published in the Kerala Gazette Extraordinary No. 1931 dated 2nd day of July, 2021.

16. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Kerala Legislative Assembly in its session which commenced on the 22nd day of July, 2021 and ended on the 13th day of August, 2021.

17. As the provisions of the said Ordinance had to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Governor of Kerala had promulgated the Kerala Minerals (Vesting of Rights) Ordinance, 2021 (124 of 2021) on the 23rd day of August, 2021 and the same was published in the Kerala Gazette Extraordinary No. 2459 dated 24th day of August, 2021.

18. The Bill seeks to replace Ordinance No. 124 of 2021 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to empower the Government to make rules.

2. Clause 6 of the Bill seeks to empower the Government to make provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty by an Order published in the Gazette if any difficulty arises in giving effect to the provisions of this Act.

3. The matters in respect of which rules may be made or orders may be issued are matters of procedure and are of routine or administrative in nature. Further, the rules, after they are made, are subject to scrutiny by the Legislative Assembly. The delegation of legislative power is, thus, of normal character.

P. RAJEEVE