



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष ४, अंक २३(३)]

मंगळवार, मार्च २७, २०१८/चैत्र ६, शके १९४०

[पृष्ठे ८, किंमत : रुपये २७.००

असाधारण क्रमांक ५१

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Confiscation of Disproportionate Property (of Public Servants) Bill, 2018 (L. A. Bill No. XXIX of 2018), introduced in the Maharashtra Legislative Assembly on the 27th March 2018, is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

RAJENDRA G. BHAGWAT,

I/c. Secretary (Legislation) to Government,
Law and Judiciary Department.

L. A. BILL No. XXIX OF 2018.

A BILL

to provide for confiscation of property of any public servant who has committed an offence of criminal misconduct; and matters connected therewith or incidental thereto.

WHEREAS, it is expedient to provide for confiscation of property of any public servant who has committed an offence of criminal misconduct; and matters connected therewith or incidental thereto; it is hereby enacted in the Sixty-ninth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

Short title and
extent.

1. (1) This Act may be called the Maharashtra Confiscation of Disproportionate Property (of Public Servants) Act, 2018.

(2) It shall extend to the whole of the State of Maharashtra.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “Corruption Act” means the Prevention of Corruption Act, 1988 ;

49 of
1988.

(b) “Designated Court” means the Court designated by the Government by notification in the *Official Gazette*, for the purposes of this Act ;

(c) “offence” means the offence of criminal misconduct as specified in clause (e) of sub-section (1) of section 13 of the Corruption Act either independently or in combination with any other provisions of the said Act or any provision of the Indian Penal Code or any other Act ;

45 of
1860.
38 of
1944.

(d) “Ordinance” means the Criminal Law (Amendment) Ordinance, 1944 ;

(e) “public servant” means public servant as defined in clause (c) of section 2 of the Corruption Act ;

(f) “Special Judge” means the Special Judge appointed by the Government under section 3 of the Corruption Act.

(2) Words and expressions used herein but not defined in this Act shall have the same meanings respectively assigned to them in the Ordinance and the Corruption Act.

CHAPTER II

CONFISCATION OF PROPERTY

Application
for
confiscation of
property.

3. (1) Notwithstanding anything contained in any other law for the time being in force, where the State Government on the basis of a report from the Director General, Anti-Corruption Bureau, Maharashtra State, duly approved by the Committee under the Chairmanship of Additional Chief Secretary Home Department along with Director General, Anti-Corruption Bureau and Secretary of the concerned Administrative Department as member, has reasonable ground to believe that, any public servant who has held or is holding public office or has been a public servant, committed the offence, and has assets in excess of 50% of his known sources of income or rupees ten lakh, whichever is more, the State Government may, authorize the officer of the rank of Deputy Superintendent of Police, for making an application to the Designated Court, for confiscation of the money and property of such public servant under this Act.

(2) Notwithstanding anything contained in any other law for the time being in force, in cases where, the Government has initiated action for attachment of money and property of public servant under the provisions of the Corruption Act and the Ordinance, before the commencement of this Act, the State Government may, take action for confiscation of the money and property of such public servant under the provisions of sub-section (1), before the Designated Court.

(3) An application under sub-sections (1) and (2),—

(a) shall be accompanied by affidavit, stating the grounds on which the belief that the said person has committed the offence, the amount of money and estimated value of other property believed to have been procured by means of the offence ; and

(b) shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.

4. (1) Upon receipt of an application under section 3, the Designated Court has reasonable grounds so to do, it shall serve a notice upon such person calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than sixty days, to indicate the source of his income, earnings or assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant information and particulars, and to show cause as to why any of such money or property or both, should not be declared to have been acquired by means of the offence and be confiscated to the State Government.

Notice for
confiscation.

(2) Where a notice under sub-section (1) to any person specifies any money or property or both as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

(3) A public notice shall be issued containing the particulars of the properties to be confiscated. Any person may make an application before the Designated Court specifying his interest in such property. The Designated Court shall consider such application while deciding the matter.

(4) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the Designated Court, by such person or the State Government, shall be open to rebuttal but the rebuttal shall be confined to the trial for determination and adjudication of guilt of the public servant by the Special Judge under the Corruption Act.

5. Upon receipt of an application made under section 3, the Designated Court shall, serve a notice upon the Registrar or Sub-Registrar of the registration office in whose jurisdiction the property is situated. Thereafter, the Registrar or Sub-Registrar shall not register any transfer of the said property by any mode whatsoever, till the application filed under section 3 is finally decided.

Bar of
registration of
property.

6. (1) Where the Designated Court is of the opinion that, there are reasonable grounds to believe that some of the money or property or both specified in the show cause notice has been acquired by such means of which constitutes an offence, but it is not able to identify specifically such money or property, then it shall be lawful for the Designated Court to record his findings to the best of his judgment.

Confiscation
of property in
certain cases.

(2) Where the Designated Court records the findings under sub-section (1), it shall declare that such money or property or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances :

Provided that, if such person is ready to deposit the market value of the property attached or confiscated with the Designated Court, such money or property shall not be attached or confiscated.

(3) Every proceeding under this Act shall be disposed off within a period of six months from the date of service of the notice under sub-section (1) of section 4.

(4) The order of confiscation passed by the Designated Court shall not be final unless confirmed by the High Court and till such time, such order is so confirmed, the properties specified in such order of the Designated Court under sub-section (2) shall remain attached.

(5) The order of confiscation passed under sub-section (2) shall subject to the order passed in appeal, if any under section 9, be final and shall not be called in question in any Court of law.

Administration
of confiscated
property.

7. The Government shall prescribe by rules the manner in which the property confiscated under this Act shall be administered.

Transfer to be
null and void.

8. Where, after the issue of a notice under sub-section (1) of section 4, any money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be null and void.

Appeal.

9. (1) Any person aggrieved by any order of the Designated Court, may appeal to the High Court within thirty days from the date of order.

(2) Upon any appeal preferred under sub-section (1), the High Court may, after giving such person an opportunity of being heard, pass such order as it deems fit.

Power to take
possession.

10. (1) Where any property has been confiscated under sub-section (2) of section 6, the Designated Court shall order such person as well as any other person, who may be in possession of the money or property or both to surrender or deliver possession thereof, to the Designated Court or to any person duly authorized in this behalf, within thirty days of the service of the order :

Provided that, the Designated Court on an application made in that behalf and being satisfied that, such person is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property to the Government.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the Designated Court may take possession of the property and may, for that purpose, use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the Designated Court may, for the purpose of taking possession of any money or property or both referred to in sub-section (1), requisition the services of any police officer upto the rank of Deputy Superintendent of Police to assist it and it shall be the bounden duty of such officer to comply with such requisition.

11. Where an order of confiscation made under sub-section (2) of section 6 is modified or annulled by the High Court during the process for confirmation or in appeal or where such person is acquitted of the offences under the Corruption Act, the money or property or both shall be returned to such person and in case, it is not possible to return the property, such person shall be paid the price thereof, including the money so confiscated.

Refund of confiscated money or property.

CHAPTER III

MISCELLANEOUS

12. No notice issued or served, no declaration made and no order passed under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein, if such property or person is identifiable from the description so mentioned.

Notice or order not to be invalid for error in description.

13. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

Act to be in addition to any other law.

14. Notwithstanding anything contained in the Criminal Law (Amendment) Ordinance, 1944 and the Prevention of Corruption Act, 1988 or any other law for the time being in force, the provisions of this Act shall prevail in case of any inconsistency.

38 of 1944.
49 of 1988.

Overriding effect.

15. Save as provided in section 9, notwithstanding anything contained in any other law for the time being in force, no suit or other legal proceedings shall be maintainable in any Court in respect of any money or property or both ordered to be confiscated under section 6.

Bar to other proceedings.

16. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of the Act.

Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the *Official Gazette*, the rule shall, from the date of publication of such decision in the *Official Gazette*, 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 or omitted to be done under that rule.

17. No suit, prosecution or other legal proceeding shall lie against the Government or any officer or employee of the Government, for anything done or purported to have been done in good faith, in pursuance of the provisions of this Act or the rules made thereunder.

Protection of action taken in good faith.

Power to
remove
difficulties.

18. (1) If and difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order, published in the *Official Gazette*, do anything, not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purposes of removing 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.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

STATEMENT OF OBJECTS AND REASONS

Complaints against the public servant regarding corruption, misuse of the post for benefits other than legal remuneration, and accumulation of wealth more than known sources of income are dealt with as per the provisions of the Prevention of Corruption Act, 1988 (49 of 1988) and the Criminal Law (Amendment) Ordinance, 1944 (38 of 1944). The Prevention of Corruption Act, 1988 provides for appointment of special judges to try the offences punishable under the said Act and punishment for such offences ; and the Criminal Law (Amendment) Ordinance, 1944 provides for attachment of property of the scheduled offences, it includes certain offences punishable under the Indian Penal Code (45 of 1860) and the Prevention of Corruption Act, 1988.

2. As per the provisions of the said Criminal Law (Amendment) Ordinance, 1944, the assets are only attached and cannot be confiscated. The attached assets are in the custody of the public servant, he can enjoy the property and its relevant benefits up to the end of all court proceedings.

3. There are sufficient grounds to believe that, the assets of the public servant are vastly disproportionate of their known sources of income. It is, therefore proposed, where the State Government on the basis of a report from the Director General, Anti-Corruption Bureau, Maharashtra State, duly approved by the Committee under the Chairmanship of Additional Chief Secretary, Home Department alongwith Director, Anti-Corruption Bureau and Secretary of the concerned administrative Department as members, has reasonable ground to believe that, any public servant, who has held or is holding public office or has been a public servant, committed the offence, and has assets in excess of 50% of his known sources of income or rupees ten lakh, whichever is more, the State Government may, authorize the officer of the rank of Deputy Superintendent of Police, for making an application to the Designated Court, for confiscation of the money and property of such public servant. It is also proposed to constitute Designated Court to initiate the proceeding of confiscation, which will be separate from the trial for the offence. The Government considers it expedient to enact a special law for confiscation of the money and property of the public servant who has committed the offence of criminal misconduct as specified in clause (e) of sub-section (1) of section 13 of the Prevention of Corruption Act, 1988.

4. The salient features of the Bill are broadly as follows :—

- (a) appointment of Designated Court ;
- (b) confiscation of disproportionate property of public servant ;
- (c) transfer of such property pending the proceeding to be null and void ;
- (d) time limit for speedy disposal of cases ;
- (e) refund of confiscated money or property, if person is acquitted.

5. The Bill is intended to achieve the above objectives.

Mumbai,
Dated the 26th March 2018.

DEVENDRA FADNAVIS,
Chief Minister.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposals for delegation of legislative power, namely :—

Clause 2(b).—Under this clause, power is taken to the State Government to designate a Court by notification in the *Official Gazette*, for the purposes of the Act.

Clause 7.—Under this clause, power is taken to the State Government to make rules to provide the manner in which the property confiscated under the Act shall be administered.

Clause 16(1).—Under this clause, power is taken to the State Government, to make rules, by notification in the *Official Gazette*, to carry out the purposes of the Act.

Clause 18(1).—Under this clause, power is taken to the State Government, to issue within a period of two years from the date of commencement of this Act an order published in the *Official Gazette*, for removal of difficulties, if any, that may arise in giving effect to the provisions of the Act.

2. The above-mentioned proposals for delegation of legislative power are of normal character.