

GOVERNMENT OF KELANTAN

Enactment No. 26 of 1938

As amended by :
Notification
No. 107 of 1938,
Enactment No. 26
Of 1940. enactment
No. 5 of 1941.
F.M. Ord. No. 71
Of 1949.F.M. Ord.
No. 11 of 1952

A.C. Baker,
British Adviser

Seal
H.H.the Sultan

AN ENACTMENT TO CONSOLIDATE AND AMEND THE LAW RELATING TO LAND, THE CONDITIONS OF TENURE THEREOF, REGISTRATION OF TITLE THERETO AND COLLECTION OF REVENUE THEREFOR

It is hereby enacted by His Highness the Sultan in Council as follows :-

PART 1

GENERAL

Short title and
Commencement
Subs.F.M. 11/52

1. (i) This Enactment may be cited as the Land Enactment, 1938 and shall come into force on the 1st day of January, 1939.

Repeal

(ii) Upon the coming into force of this Enactment, all the Enactments, Notices, Notifications and Circulars specified in Schedule 1 and all previous land law are hereby repealed: Provided that nothing in this Enactment contained shall affect the past operation of or anything done or any appointment made under any previous land law hereby repealed, and right, liberty, privilege, obligation or liability imposed or incurred in respect of land alienated under any such land law shall, except as hereinafter expressly provided, be subject to the provisions of this Enactment.

Subs.F.M.11/52

Exception

(iii) Nothing in this Enactment contained shall be deemed to prevail against the provisions of The Sultanate Lands Enactment 1934 of the Malay Reservations Enactment 1930 or of any enacted amendments to those Enactments.

2. In this Enactment :-

“Native of Kelantan” means a person who falls within any of the following classes:-

(a) any person born in Kelantan whose father was a Malay;

- (b) any person born in Kelantan whose mother was a Malay and whose father was a Muslim;
- (c) any person wherever born whose father as a Malay born in Kelantan;
- (d) any person wherever born both of whose parents werw Malays and who has resided at least 15 years in Kelantan;
- (e) any person who was born in Kelantan and whose father as also born in Kelantan.

PART 2

ALIENATION

State land to whom alienable

9. State land may be alienated only to
- (a) an individual person, not being a minor, or
 - (b) a company a authorised by its constitution to hold land and duly registered under the foreign Companies Enactment or incorporated under any Enactment which may be passed regulating Companies in Kelantan, or
 - (c) a body corporate authorised to hold land in corporated by any lay in force for the time being or constituted by Royal Charter of Letters of Patent of His Britannic majesty, or
 - (d) a duly constituted representative under a certificate or representation:

PART 8

TRANSFER

Restriction of Sale of land to non-Kelantanese

104. (i) Notwithstanding anything contained in section land register shall refuse to register any transfer , charge or lease of land by a native of Kelantan to a party who is not a native of Kelantan, until such transaction has received the sanction of His Highness the Sultan in Council subject to the imposition of such restriction in interest and such conditions in the document of title and such terms of rent therein as he may think fit and any such transfer, charge or lease shall be null and void unless the previous sanction of His Highness the Sultan in Council shall have been obtained:

Ord.25/54.

Provided that the provisions of this subsection shall not Apply to a charge to a person specified in Schedule 26A.

Charges

(ii) The restrictions set out in section 105 shall apply to charges although the registration thereof may have been approved by His Highness the Sultan in Council under subsection (i).

(iii) Upon the approval of the registration of any transaction under subsection (i) the State Secretary shall forward to the Land Registrar a certificate in the form in Schedule 26.

Ord.25/54.

(iv) His Highness the Sultan in council may from time to time by order published in the Gazette add to, delete from or amend Schedule 26A.

**Restriction in
Regard to sales
under the land
enactment or by
Order of any
Court**

105 (i) At every auction sale of any land which is registered in the name of a native of Kelantan, when such sale has been ordered by a District Officer under the provisions of this Enactment or by any court, no person who is not a native Kelantan shall be allowed to bid unless His Highness the Sultan in Council has on the application of person interested in the result of such sale ordered prior to the sale that persons who are not natives of Kelantan may be allowed to bid, and every purchase of such land by a person who is not a native of Kelantan shall be null and void notwithstanding that the land was knocked down to such person by the auctioneer or person conducting the sale.

(ii) “ A person interested in the result of a sale “ shall mean:

- (a) In the case of a sale of land ordered by the District Officer under the provisions of this Enactment, any person who has or claims any interest in the land as owner, chargee or lessee;
- (b) In the case of a sale of land ordered by any Court, any person who is a party to the proceeding wherein such is ordered or any other person who is in the opinion of such Court interested in the result of such sale.

(iii) Applications under subsection (i) shall be made in the first instance to a District Officer or the case may be for submission to His Highness the Sultan in Council.

(iv) When His Highness the Sultan in Council has ordered that persons who are not natives of Kelantan may be allowed to bid at any sale, the State Secretary shall forward to the District Officer or Court concerned a certificate in the form of Schedule 27.

Restriction on enforcement of agreements for sale of land to non-Kelantanese

106 (i) In any proceedings brought to enforce an agreement by a person who is a native of Kelantan to transfer any land of which he is the owner to any person who is not a native of Kelantan, the Court before which such proceedings are had shall not grant specific performance of such agreement unless on the application of a party interested His Highness The Sultan in Council shall have authorised such Court to grant specific performance of such agreement.

(ii) “ A part interested “ shall mean a party to any agreement whereof specific performance is claimed and any person who is in the opinion of the Court interested in the specific performance of such agreement.

(iii) Every application under subsection (i) for the authorisation of specific performance shall be made to the Court, which shall forward it to the State Secretary for submission to His Highness the Sultan in Council.

(iv) When His Highness the Sultan in Council has made any order authorising the specific performance of an agreement the State Secretary shall forward to the Court a certificate in the form of schedule 28

Doubt as to Meaning of “Native of Kelantan”

107 (i) If any doubt shall arise as to whether any person is a native of Kelantan for the purposes of this Enactment, the officer concerned or any party interested may refer the matter to the State Secretary for the decision of His Highness the Sultan in Council and His Highness’s decision thereon shall be final and shall not be called in question by any person.

Procedure as to registration.

108. When any document evidencing any transaction or order in respect whereof an order has been made by His Highness the Sultan in Council under the provisions of section 104, 105 or 106 is presented for registration in any Land Office, there shall be attached to such document a certificate of the State Secretary in the form in Schedules 26, 27 or 28 as the case may be or a certified copy thereof and no such document shall be registered unless and until such certificate or certified copy is attached to such document.