CHAPTER VII

THE KERALA MUNICIPALITIES ACT

The Kerala Municipality Act, 1994 which came into force on the 30th day of May 1994 replaces the Kerala Municipality Act, 1960. The new Municipality Act, 1994 has incorporated into it several provisions in tune with the Constitution (Seventy fourth) Amendment Act. In fact prior to the enactment of the 1960 Act, the laws regarding municipalities in force were the Travancore District Municipalities Act, 1116 in the Travancore area and Cochin Municipal Act, 1113 in Cochin region. Similarly the Madras District Municipalities Act, 1920 was in force in the Malabar area of the State. The reason for the enactment of 1960 Act was to enforce a uniform law on the subject applicable to all the municipalities in the State of Kerala and the Act came into force on 01/09/1961. After reviewing the above said Act the government felt that changes are to be made in the Act in order to bring into conformity the Constitution (seventy fourth) Amendment Act and accordingly instead of making amendments to the then existed Kerala Municipalities Act, 1960, the Government enacted the new Kerala Municipality Act, 1994 applicable uniformly to the municipal councils, municipal corporations and town panchayats.

The Constitution (Seventy fourth) Amendment Act, 1992 added part IX-A and the twelfth schedule into the Constitution. Part IZ-A contains 18 new Articles i.e., Art 243G to Art 243ZG and the twelfth schedule which incorporates 18 items. By this amendment, constitutional sanction has been provided for the urban self-governing institutions like municipalities and municipal corporations, ensuring regular elections and enabling them to play a greater role and participation in the development of urban areas.

The 1999 Amendment to the Kerala Municipality Act has made drastic changes in the Act. All those changes and other amendments have been incorporated at its appropriate places. In the appendix, law relating to Ombudsman for Local Self Government Institutions and its Inquiry of complaints and Service Conditions Rules, Tribunal for Local Self Government Institutions, Special Rules of employees are incorporated. Towards the end, the Municipal Solid Wastes (Management and Handling) Rules and
Rules for Assignment of Land with Corporation and Municipal Areas have been appended.

An Act to replace the present enactments relating to municipalities and municipal corporations by a comprehensive enactment in line with the Constitution (Seventy Fourth) Amendment Act.

Whereas the Kerala Municipalities Act, 1960 and the Kerala Municipal Corporations Act, 1961, the laws with respect to the functioning of urban local bodies prevailing in the State are not in conformity with the provisions of Part 1XA of the Constitution of India inserted by the Constitution (Seventy Fourth Amendment) Act, 1992. And whereas it is expedient to replace the said enactments by a comprehensive enactment in line with the Constitution (Seventy Fourth Amendment) Act, 1992 for securing a greater measure of participation of the people in planned development and in local Governmental affairs by constituting town panchayats, municipal councils and municipal corporations;

- To endow such municipalities with necessary powers and authority to enable them to function as institutions of self-government;
- To entrust such municipalities with the functions of the preparation of plans and implementation of schemes for economic development and social justice including the implementation of schemes in relation to the matters listed in the Twelfth Schedule to the Constitution.

7.1 Statement of Objects and Reasons

In order to enshrine in the Constitution certain basic and essential features of municipal bodies and to impart certainty, continuity and strength to them, a new part, namely part IX A has been added in the Constitution by the Constitution (Seventy-Fourth) Amendment Act, 1992.

Provisions in accordance with the Constitution (Seventy-fourth Amendment) Act, 1992 have to be made in the state enactments relating to the municipal councils and municipal corporations before 31-5-1994. The Government consider that instead of making amendments to the existing Kerala Municipalities Act and the Kerala Municipal Corporations Act, it would be better to enact a new Municipalities Act applicable
uniformly to the municipal councils, municipal corporations and nagar panchayats, incorporating the provisions in accordance with the Constitution (Seventy-Fourth) Amendment Act, 1992. With effect on and from the commencement of this Act, the Government consider it necessary to repeal the Kerala Municipalities Act, 1960 the Kerala Municipal Corporations Act, 1961 the Guruvayur Township Act, 1960 and the provisions of the Kerala Local Authorities (Constitution and Preparation of Electoral Rolls) Act, 1994 in so far as they relate to municipalities.

**Constitution and composition of Municipalities**

Subject to the provisions of the Constitution, the legislature of the State may by law make provisions with respect to the composition of municipalities, provided that the ratio between the population of the territorial area of urban local bodies at any level and the number of seats in such urban local bodies to be filled by election shall, so far as practicable, be the same throughout the municipal area. The legislature of the state may provide for the representation of the chairpersons of the municipalities at the corresponding level.

The chairpersons and members of urban local bodies at different levels are to be elected according to the provisions of the Act and corresponding rules, published thereunder. Reservation of seats for SC / ST, mandatory representation of women in membership as well as leadership is also provided by the corresponding provisions of the Act according to the Constitutional prescriptions. Duration of elected urban local bodies is also stipulated by the Act. Conditions of qualifications and disqualifications of candidates and elected representatives in different urban local bodies is also envisaged in the Kerala Panchayat Raj Act.

**Constitution and composition of Wards Committees**

There shall be constituted ward committees, consisting of one or more wards, within the territorial area of a municipality having a population of three lakhs or more. The legislature of a State may, by law, make provision with respect to

- the composition and the territorial area of a ward committee;
- the manner in which the seats in a wards committee shall be filled.
A member of a municipality representing a ward within the territorial area of the Wards Committee shall be a member of that committee. Where a wards committee consists of

- one ward, the member representing that ward in the municipality; or
- two or more wards, one of the members representing such wards in the municipality elected by the members of the wards committee, shall be chairperson of that committee.

Nothing in this article shall be deemed to prevent the legislature of a State from making any provision for the constitution of committees in addition to the wards committees.

7.2 Powers, authority and responsibilities of Municipalities

Subject to the provisions of this Constitution, the legislature of a State may, by law, endow

- the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to:
  - the preparation of plans for economic development and social justice;
  - the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
- the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule

Power to impose taxes by, and Funds of, the Municipalities

The Legislature of a State may, by law:

- authorise a municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
• assign to a municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
• provide for making such grants-in-aid to the municipalities from the Consolidated Fund of the State; and
• provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law.

**Finance Commission**

The Finance Commission constituted under Article 243-1 shall have the power to review the financial position of the Municipalities and make recommendations to the Governor as in the case of panchayat raj institutions. The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

**Audit of accounts of Municipalities**

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts. State Audit Department is vested with the authority under corresponding law to audit the accounts of municipal institutions.

**Constitution, alteration and conversion of Municipalities**

The Government shall, by notification in the Gazette, constitute with effect from such date as specified in the notification,

• a "Town Panchayat" for a transitional area;
• a "Municipal Council" for a smaller urban area; and
• a "Municipal Corporation" for a larger urban area, and specify the name of such Municipalities.

The Government may, by notification,

• exclude any municipal area from the operation of this act; or
• exclude from a municipal area comprised therein and defined in the notification; or
• divide any municipal area into two or more municipal areas; or
• unite two or more municipal areas; or
• unite the territorial area of a Panchayat geographically lying adjacent to a Municipal area, with the Municipality; or
• convert a Village Panchayat into a Town Panchayat or a Municipal Council; or
• convert a Town Panchayat into a Municipal Council; or
• convert a Municipal Council into a Municipal Corporation:

Provided that, before issuing such a notification the requirements under the law shall be fulfilled and the suggestions and opinions of the village panchayat or town panchayat or Municipal Council or Municipal Corporation concerned, shall be considered. Any notification issued shall not be brought into force except in such a way as to coincide with the expiry of the term of the existing Municipal Council or village panchayat in that territorial area. The Government may at the request of a Municipality or after consultation with the Municipality, at any time, alter the name of a Municipality, after previous publication of the proposal by notification in the Gazette. Where any village panchayat area is constituted as, or included in, a Municipality, the Government may pass such orders as they may deem fit as to the transfer to the Municipality or disposal otherwise of the assets or institutions of such panchayat in that area, and as to the discharge of the liabilities if any, of such panchayat relating to such assets or institutions. Where any village panchayat area is constituted as, or included in a Municipality, all taxes, fees or other charges levied in that area under the enactments or regulations then in force shall, from the date of constitution or inclusion, as the case may be, cease to have effect and all such taxes, fees or other charges shall be levied in that area in accordance with the provisions of the Act and the rules, regulations and bye-laws made thereunder.

Where a Municipality is abolished, the Act and all notifications, rules, regulations, bye-laws, orders, directions and powers issued, made or conferred under the Act shall cease to apply to the area comprised within the Municipality, the balance of the Municipal fund and all other property vested in the Municipality at the time of its abolition shall vest in the succeeding local authority coming into existence or if a local authority does not come into existence in that area, in the Government and the liabilities
of the Municipality shall be transferred to such local authority or as the case may be, the Government. All funds and property vested in the Government shall be applied to discharge the liabilities transferred to the Government and for the promotion of the safety, health, welfare or convenience of the inhabitants of the area comprised in the Municipality. The delinking of certain urban areas from the municipalities for being treated as rural areas is unconstitutional and void. A rural area after its transition to be an urban area thereby becoming a smaller urban area or a larger urban area cannot be converted to be rural area. No such exercise can be done under the provisions of Part IX A of the Constitution of India or otherwise.

**Incorporation and Administration of Municipality**

Every Municipality shall be a body corporate by the name of the Municipality specified in the notification issued shall have perpetual succession and a common seal, and shall, subject to any restriction or alteration imposed by or under this Act or any other law, be vested with the capacity of suing or being sued in its corporate name, of acquiring, holding and transferring property, movable or immovable, of entering into contracts, and of doing all things necessary, proper or expedient for the purpose for which it is so constituted. Every Municipality, shall exercise such powers, perform such duties and functions and shall have such responsibilities and authority as are provided by or under this Act or any other law for the time being in force.

**Constitution of Council**

The Government shall, in accordance with the criteria specified, notify the total number of seats of the Councillors to be filled up by direct election in a Town Panchayat, Municipality and Municipal Corporation considering the population of the area of the Municipality concerned. The Government may, after publishing the

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77 section 4, the Kerala Municipalities Act, 1994
78 sub-sections (1) to (4) substituted by Act 14 of 1999. Prior to the substitution sub-section (1) to (4) read as:
1. “A Municipality other than a municipal corporation, shall consist of such number of seats to be represented by Councillors, as notified by the Government.
2. A Municipal corporation shall consist of such number of seats to be represented by Councilors as may be notified by the Government, provided that such number shall not be less than forty or more than fifty.
3. The Councillors of every Municipality shall be chosen by direct election.
relevant data according to each census, vary the total number of seats of Councillors in a Municipality notified under the law.

**Functions of the Chairperson**

The Chairperson of a Municipality shall-

- convene the meetings of the Council;
- exercise the powers and discharge the duties specifically conferred or imposed on him by this Act; and
- exercise overall supervision over the working of the Municipality and shall coordinate the functions of the Municipality, the Secretary and the Committees thereof.

**7.3 Powers of Chairpersons**

Subject to the provisions of this Act, the Chairperson shall have powers of inspection and may give such directions and orders as he thinks fit with regard to the implementation of any resolution of the Council or Committees in the discharge of any function of a Municipality and the Secretary shall be bound to comply with such direction. Except as otherwise provided in this Act or thereunder, the administrative powers to implement the provisions of this Act and the resolutions passed by a Council, shall be vested in the Chairperson and he shall be directly responsible for the proper discharge of the functions imposed by or under this Act. Without prejudice to the generality of the foregoing provisions the Chairperson shall-

- preside over and control the proceedings of the meetings of the council of the Municipality of which he is the Chairperson;
- supervise and control the acts done and steps taken by the officers and employees of the Municipality, prepare the confidential report of the Secretary and also review the confidential reports prepared by the Secretary in respect of other employees;
- meet the contingent expenses to such extent, as may be fixed by the Government from time to time;

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4. The Councillor may nominate not more than two persons having special knowledge or experience in municipal administration to be Special Councilors. The Special Councilors shall have all the rights of a Councillor except the right to vote.
• authorise the payment and repayment of money relating to the Municipality;
• cause to be prepared the statements and reports required to be prepared by or under the Act.
• exercise such other powers and perform such other functions that may be conferred or entrusted under the provisions of this Act or the rules made thereunder.

The chairperson may, in emergent circumstances, direct the execution of any work or performance of any act, in respect of which sanction of the council is necessary and in his opinion the immediate execution or performance of which is necessary for the safety of the public and may also direct that the expenses incurred for the execution of such work or performance of such act be paid from the fund of the municipality. The chairperson shall call the secretary or any officer or employee under the control of municipality including the Government Officer or employee transferred by the Government to the service of the municipality to discuss with him on any matters relating to the functions and administration of the municipality which are vested in or delegated to the municipality by or under the Act, and it shall be the duty of such officer or employee to attend such discussion or the meetings convened by the chairperson. The chairperson shall have the power to suspend from service any officer or employee in the service of municipality if necessary, other than the secretary and other Government Officers in the gazetted rank, transferred to the service of the municipality, where disciplinary action have to be taken against them, on grounds of gross negligence of duty, dereliction of duty and violation of rules and standing orders, provided that the chairperson shall place the order of suspension before the council in its next meeting and get the order ratified by the council, failing which the order shall stand invalid. The chairperson shall have the power to call for from the secretary or any other officer under the municipality, any file and record in writing relating to the administration of the municipality and issue directions and orders thereon in accordance with the provisions of the Act, rules or standing orders made thereunder, provided that the chairperson shall not call for the files and records which are related to the exercise of statutory functions regarding municipal administration vested only in the secretary or any other officer. The chairperson shall refer to the Government for decision at once, any resolution passed by the council which in his opinion has not been legally passed or is in excess of
power conferred by the Act or any other law or if carried out is likely to endanger human life or health or public safety.

The administrative power to implement the provisions of this Act and the resolutions passed by a Council shall be vested in the Chairperson\(^79\). Therefore, if there are other provisions of the Act, the power of the Chairperson under section 15(2) is subject to such other provisions contained in the Act. Further the later provision of sub-section (2) of section 15 clearly states that "the administrative powers to implement the provisions of this Act and the resolutions passed by a Council". Hence, there has to be a decision by the Council. Section 29 does not give an overriding effect to the other provisions of the Act. Further it is the Municipal Council which is the authority who can assign the exercise of the power in the manner prescribed which functions are assigned by or under this Act to any person including the Chairman, Secretary or a Standing Committee, as the case may be.

The Chairperson is authorised to write the confidential report of the Secretary and under the statutory scheme, the Secretary is bound to respect the views of the Chairman\(^80\). So, when power is conferred on two statutory authorities to suspend an employee and when the superior authority orders that the employee need not be suspended, the inferior authority though having concurrent power, cannot exercise the power to suspend the delinquent. The power under Rule 15 of the Municipal Common Service Rules is subject to the power of the Chairperson under Section 15(6) of the Act. The power conferred by a subordinate legislation can never override the power conferred by a plenary legislation on a superior authority. So, when the Chairperson having regard to the facts of this case that the petitioner need not be suspended, the Secretary has no power to overrule the same and suspend her from service.

Standing Committee

In every Municipality there shall be constituted Standing Committees as follows, namely,

- In a Municipal Council
  - Standing Committee for Finance

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\(^79\) Paraman v. Kodungallur Municipality, 2005 (3) KLT 53
\(^80\) Maheswari v. Alappuzha Municipality, 2003 (1) KLT 833, 2003 (2) KLJ 587, 2003 (1) KLJ 670
Standing Committee for Development
Standing Committee for Welfare
Standing Committee for Health
Standing Committee for Works
Standing Committee for Education, Arts and Sports

In a Municipal Corporation
Standing Committee for Finance
Standing Committee for Development
Standing Committee for Welfare
Standing Committee for Health
Standing Committee for Works
Standing Committee for Town planning
Standing Committee for Appeal relating to Tax
Standing Committee for Education, Arts and Sports

Constitution and Election to the Standing Committee

Every Standing Committee shall consist of such number of members as may be decided by the Council including its Chairman and it shall be in such a manner that every Councillor, except the Chairperson and the Deputy Chairperson shall be elected as a member of any one of the Standing Committee and the number of members to be elected to each Standing Committee shall, as far as possible, be equal.

Function of the Standing Committee

The powers and functions of the Standing Committees of the Municipality shall be as follows, namely,

- The Standing Committee for Finance of Municipal Council shall supervise the utilization of the budget grants and watch carefully the timely assessment and collection of taxes, fees, rents and other sums due to the Municipal Council, shall dispose of appeals on taxation and to give directions to the Secretary to levy tax in respect of cases which escaped assessment and to reassess undervalued cases and allied matters.
- The Standing Committee for Development of the Municipal Council shall deal with matters of agriculture, soil conservation, social forestry, animal husbandry,
dairy development, minor irrigation, fisheries, small scale industry, co-operation and institutional finance and shall prepare the development plans for the Municipal Council integrating the proposals of other Standing Committees;

- The Standing Committee for Welfare of the Municipal Council shall deal with matters relating to the welfare of women and children, development of scheduled castes and scheduled tribes, social welfare, social security pension and financial assistance, poverty alleviation, slum improvement and public distribution system;
- The Standing Committee for Health of the Municipal Council shall deal with the matters of public health and health services, sanitation, control of dangerous and offensive trade;
- The Standing Committee for Works of the Municipal Council shall deal with matters of public works, housing, town planning including regulation of building constructions, environment, electricity, water supply, drainage and sewerage;
- The Standing Committee for Education, Arts and Sports of the Municipal Council shall deal with respective subject matter in corresponding areas.

Similar functions are performed by the respective standing committees in municipal corporations also.

- The Standing Committee for Town-Planning of the Municipal Corporation shall deal with matters of town planning including regulation of building constructions, environment, urban beautification, promotion of art and culture and preservation of monuments and places and buildings of archaic importance; heritage value and natural beauty;
- The Standing Committee for Appeal relating to Tax of the Municipal Corporation shall dispose of appeals on taxation and give directions to the Secretary to levy tax in respect of cases which escaped assessment and to reassess undervalued cases.

The Standing Committee of the municipalities may, exercise such other powers and discharge such other functions as entrusted to it by the Council in the respective subjects in addition to the powers and functions conferred on it under sub-section (1). Every resolution passed by the Standing Committee shall be placed in the next meeting of the Council and the Council shall have power to modify the same if found necessary.
Steering Committee

In every Municipality there shall be a Steering Committee consisting of the chairperson, deputy chairperson, and chairmen of standing committees and chairperson shall be the chairman of the said Committee. Steering Committee shall,

- co-ordinate and monitor the functioning of the Standing Committees,
- discharge the powers and functions entrusted to it by the Council.

Functions of the Chairman of the Standing Committee

The Chairman of a Standing Committee shall preside at its meetings and in his absence, a member chosen by the members present from among themselves shall preside over the meeting. A member presiding at a meeting of the Standing Committee shall, while so presiding, have all the powers and be subject to all the obligations of the Chairman. The person presiding over the meeting shall control the meeting and shall decide all points of order and procedure arising at or in connection with a meeting.

7.4 Administration of Municipality

Subject to the provisions of the Kerala Municipality Act, the Administration of the Municipality shall vest in the Council, and the Council shall, if necessary, be entitled to exercise, in the manner prescribed, the functions expressly assigned by or under this Act or any other law to the Chairperson, the Secretary, a Standing Committee or any other Committee.

Powers, functions and responsibilities of Municipality

The administration of a municipal area in respect of the matters enumerated in the first schedule shall, subject to the provisions of the Act and such other provisions as may be prescribed in this behalf and the provisions of other Acts and the rules made thereunder vest in the municipality and it shall have the power and responsibility to prepare and implement schemes for economic development and social justice in relation to the matters enumerated in the First Schedule, provided that, it shall be the duty of the municipality to render necessary service to the inhabitants of the municipal area in respect of the matters enumerated as mandatory functions in the first schedule. Municipality shall have such powers, authority and responsibilities of the Government,
to enable it to function as an institution of self-government in respect of the matters entrusted to it. The Government shall, as soon as may be after the coming into force of the Act, transfer all institutions, schemes, buildings, other properties, assets and liabilities connected with the matters mentioned in the First Schedule, to the municipalities concerned. The Central and State Plan allocations, for the time being in force and the annual budget allocation in respect of the subjects transferred to the municipalities by the Government shall be wholly allotted to the respective municipalities. The municipality shall manage to institutions and administer the schemes transferred to it, subject to the guidelines and technical directions from the Government and in accordance with the State and National policies.

Every institutions transferred by Government to the municipality shall be in the name of that municipality and shall be known accordingly. The municipality shall not have power to sell, transfer, alienate or mortgage any property transferred to it under the law. Government may resume any property transferred to the Municipality, if it is no more required by the municipality for the purpose for which it was so transferred. There shall be constituted a managing committee consisting of not more than fifteen members including its chairman in the prescribed manner for public health institutions transferred to the municipality. Where any scheme, project or plan involves selection of beneficiaries, the criterion for the eligibility and priority for such selection shall be determined by the municipality subject to the terms and conditions of the scheme, project or plan and such criteria shall be published in the prescribed manner and shall be intimated to the ward committee or the ward sabha concerned. The municipality shall invite applications for the selection of beneficiaries and prepare the draft priority list after making enquiry on the applications received in this behalf and send it for the consideration of the ward committee or the ward sabha concerned. The ward committee or the ward sabha shall scrutinise the draft priority list for the selection of beneficiaries in a meeting convened inviting the applicants also and prepare the final list and forward it for the approval of the council. The Council shall not alter the priority of the list prepared by the ward committee or the ward sabha.

Appointment of Committees

The Council may, subject to the provisions of the Act, constitute Committees for the purpose of exercising such powers, discharging such duties or performing such
functions, as it may delegate to them, and may appoint any Councillor or Committee to enquire into and report or advise on any matter referred to him or it. (2) The Council may specially invite as members of any Committee, persons who are not Councillors but who may, in the opinion of such council, possess special qualifications for serving in such Committee, provided that the number of persons so invited shall not, in any case, exceed one-third of the total number of members of that committee.

**Constitution and proceedings of a Joint Committee**

The council of a municipality may, if the local self-government institutions so decide or if so required by the Government, join with any other local self-government institutions to constitute a joint committee for any purpose in which they are jointly interested or for any matter for which they are jointly responsible. The joint committee shall not include any person as member who is not a councillor or a member of a panchayat, but any person who in the opinion of the committee, possesses special qualifications for serving in that committee, may be allowed to participate as special invitees in the meetings of the committee. The constitution and proceedings of a joint committee shall be governed by such regulations as may be made by the local self-government institutions concerned with their mutual agreement, which shall include provisions for all or any of the following matters namely

- the total number of members of a joint committee;
- the number of councillors and other persons who shall be members of the joint committee;
- quorum of the joint committee;
- the appointment of the chairman of the joint committee and the manner of appointment;
- the term of office of the members and the chairman;
- the powers [of the local self-government institution concerned which may be exercised by the joint committee; and
- the procedure to be followed by the joint committee.

The local self-government institutions concerned may, with their mutual agreement vary or revoke regulations made under sub-section(3). Notwithstanding anything contained in sub-section(3), Government may issue such directions as they
think necessary or desirable in respect of all or any of the matters referred to therein and the joint committee shall be bound to comply with such directions. Where any dispute or difference of opinion arises between the local self-government institutions in respect of the constitution or functioning of a joint committee under this section it shall be referred to the Government, whose decision thereon shall be final.

**Constitution of Ward Committees**

In every municipality where the population exceeds one lakh, there shall be constituted a ward committee for each ward of that municipality as provided in Section 43, within three months from the date of its constitution.

**Constitution of Ward Sabhas**

In every municipality where the population does not exceed one lakh, there shall be a ward sabha for each of its ward and all persons included in the electoral roll of that ward shall be members of that ward sabha. The councillor who represent a ward shall be convener of that ward sabha, but due to any reason, physical or otherwise, the convener is unable to perform his function as such the chairperson may appoint a councillor representing any adjacent ward as the convener. The ward sabha shall meet at least once in three months at a specified place and every meeting of the ward sabha shall be presided over by the chairperson or in his absence, deputy chairperson or any standing committee chairman authorised by the chairperson or in their absence by the convener. The convenor of the ward sabha shall convene an extraordinary meeting of the ward sabha within fifteen days when a request is made in writing by not less than ten per cent of the electors in the ward for discussing the matters raised in the request, provided that such special meeting shall be convened only once during the period between two ordinary meetings.

**Composition of Ward Committee**

The Ward Committee shall consist of the members as envisaged in the Act.81 The ward committee shall meet at least once in three months for discharging the duties and performing the functions as may be assigned to it by the Council, from time to time. (2) The meeting of a Ward Committee shall be convened by its Chairman. (3) The

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81 section 43, the Kerala Municipalities Act
Chairman, or in his absence, a member chosen, by the members present, from among
themselves, shall preside over the meeting. (4) The Secretary and the Heads of
Departments in the services under the Municipality shall attend the meetings of the Ward
Committee and produce any document or furnish any information or report required by
that Committee.

**Functions of Ward Committees and Ward Sabhas**

The functions of the Ward Committee or Ward Sabha shall be subject to such
manner and procedure as may be prescribed in the Act§2. The Ward committee or the
Ward Sabha as the case may be, may in its ordinary meeting or in a special meeting
convened for the purpose, discuss the development programmes of the previous year
and it is entitled to know the amount earmarked in the budget, the details about the plan
out-lay and the object-wise allocation of funds and also the details of the estimates and
cost of materials of the works executed or proposed to be executed in the Ward. The
audit report or performance audit report coming for the consideration of the Ward
Committee or Ward Sabha shall be discussed in its meeting and its opinion,
recommendations, and suggestions be communicated to the council concerned.

**Duties and rights of Ward Committees and Ward Sabhas**

The Ward Committees and Ward Sabhas shall have the following duties, namely,

- disseminate information regarding the development and welfare activities;
- participate and propagate the programmes regarding health and literacy and
  other similar time-bound development, programmes;
- Collect essential Socio-economic basic data;
- provide information by collecting the progress regarding development activities;
- adopt moral means for payment of taxes, repayment of loans, improvement of
  environmental cleanliness and maintenance of social harmony;
- mobilise, resources locally to augment the financial sources of the Municipality;
- (vii) supervise development activities as voluntary groups;
- make arrangements to report immediately the occurrence of epidemics, natural
calamities etc.;

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§2 section 45, the Kerala Municipalities Act, 1994
• co-ordinate and implement the activities for the protection of nature to import knowledge to the people on environmental problem.

The Ward Committee and the Ward Sabha shall have the following rights, namely,

• to get information regarding the services to be rendered and the activities proposed to be carried by the officers concerned during the next three months;
• to get information on the detailed estimate regarding the works proposed to be undertaken;
• to know whether each decision of the council of the Ward area is logical;
• to know about the follow up actions taken, decision of the Ward Sabha and the Ward Committee, as the case may be, and about the detailed reasons for not implementing any decision;
• to get information regarding detailed town planning schemes building construction permits etc. in the ward

Absence of political will from the side of the councillor, non-co-operation of general public, involvement of beneficiary people and non-influential nature etc. lead to inactive and on-effective character of ward sabha and ward committee.

7.5 The Secretary of Municipality

For every Municipality there shall be a Secretary appointed by the Government, in consultation with that Municipality, who shall be an officer of the Government borne on such cadre, as may be prescribed, and shall be the Executive Officer of the Municipality and the other officers and employees of the Municipality shall be subordinate to him. The Secretary shall not without the sanction of the Municipality or the Government, undertake any work unconnected with his office. The pay and allowances of the Secretary, as fixed by the Government from time to time, shall in the first instance to be paid from the State funds. The whole of the pay and allowances paid to the Secretary and the contributions towards his leave salary and pension to the extent required shall be credited monthly to the State funds by the Municipality. The Government may grant leave to the Secretary and appoint a substitute or nominate an officer to hold charge of his office during his absence. The Secretary shall be the custodian of all Municipal properties and records including all papers and documents connected with the proceedings of the Council and the Standing Committees and other
Committees, and shall arrange for the performance of such functions, as may be entrusted to him by the said bodies. The Government may, at any time, transfer the Secretary, from a Municipality and if the Council, on the strength of a resolution, passed at a special meeting convened for this purpose, by a simple majority vote of the approved strength of the Council, recommends a transfer, the Government shall do so, provided that before considering such a resolution by the council the Secretary shall be given an opportunity to give a representation and if requested of being heard by the Council or the Chairperson. The Government may, either *suo motu* or on application, call for the records of any order passed by the authority under sub-section and may review such order and pass such order in that regard, as it deems fit.

Where disciplinary proceedings have to be initiated against the Secretary, the Chairperson shall have the power to conduct an enquiry against him and in the case of imposition of a major penalty, to report to the Government with approval of the council to take further action under the rules applicable to the Secretary and the Government shall as soon as the report is received, take appropriate action and intimate the final decision taken thereon, in writing to the Chairperson. The Government may by a general or special order designate any officer of the Government transferred to the service of the Municipality as an ex-officio Secretary and the person so appointed shall have all the powers and functions of the Secretary, in respect of the subjects dealt with by them, provided that no application for review shall be entertained if it is preferred after 30 days from the date of receipt by the applicant of the order sought to be reviewed. The Government shall not pass any order affecting any party if that party had not been given an opportunity for submitting a representation and the Government shall not *suo motu* review an order, if more than one year has elapsed since the date of the order sought to be reviewed.

**Functions of the Secretary**

Apart from the Panchayat Raj System, considerable number of functions are delegated to the chief executive of urban local bodies. Hence, the secretary shall,

- record his opinion in writing on all matters with which he is concerned and which require the decision of the chairperson, the council or the standing committee; and
- implement the resolutions of the council and the standing committee,
Provided that where the secretary is of opinion that any resolution has not been legally passed or exceeds the powers conferred by the Act or by any other law or by the rules made thereunder or that if carried into effect it may endanger communal harmony or public safety or it is contrary to the Central-State Policy, the secretary shall request the council in writing to review the matter and express his views during review by the council and if the council sticks on to its earlier decision, he shall refer it to the Government for appropriate action and decision, after intimating the matter to the chairperson. Where, on review of the resolution, the council decides to implement the same and the decision of the Government have not been intimated within fifteen days from the date of reference to the Government, the secretary shall implement the said resolution and the matter be intimated to the Government. Provided also that no approval of the chairperson is required for the secretary to refer the matter to the council or the Government as aforesaid, but he shall give a copy of the report sent to the Government, to the chairperson.

- furnish periodical reports to the council and the standing committees, as the case may be, regarding the action taken or progress made in implementing the resolutions of the council or the standing committees and
- implement the directions of the Chairperson, provided that where the Secretary is of opinion that any direction given by the Chairperson is in excess of the powers conferred under the provisions of this Act or any other law or the rules made thereunder, he may first bring the matter to the notice of the Chairperson and if the Chairperson repeats his direction and if the Secretary sticks on to his earlier opinion, he shall report that matter to the council in the manner as may be prescribed;
- exercise such of the powers and perform such of the functions as may be specifically conferred or delegated by or under this Act;
- incur the expenditure authorised by the council or the Chairperson, subject to the budgetary provision;
- make payments for all kinds of expenditure authorised by the Municipality, either by cheque or in cash;
- maintain and keep the accounts as to the receipts and expenditure of the Municipality;
be responsible for the safe custody of the Municipal fund;
keep the records in respect of the meetings and proceedings of the council, standing committees and other committees;
take disciplinary action against the Municipal employees with the knowledge of the Chairperson; and
assist the Chairperson and the council to co-ordinate the functions of the officers and institutions transferred to the Municipality.

All litigations for or against the municipality shall be conducted by or against the secretary.

Regarding commissioner's power to review orders, there is nothing stated in any of the provisions that after effecting the alteration in the registry, the Commissioner has got the power to reopen the matter and make alterations in the alteration already made.\textsuperscript{83}

It is reasonable to think that the Legislature did not intend to confer on the Secretary the power to suspend the employees from service and that intention is reflected in the Act. Legislature has conferred the power to the Chairperson to suspend the employees by an express provision making its intention clear. A plain reading of the corresponding section makes it clear that the power of the Secretary is confined to the act of taking disciplinary action and the same has to be done with the knowledge of the Chairperson. The section does not say that the Secretary has got the power to suspend the employee from service.\textsuperscript{84} Justice S. B. Sinha ordered that execution of contract by commissioner, and requirement of prior approval by the standing committee is not an essential formality. Requirement of certain documents for such approval cannot be dismissed on grounds of locus standi.\textsuperscript{85}

**Rights and duties of Secretary**

The secretary shall attend the meetings of the council and the meetings of the standing committee or any other committee of a municipality and may take part in the discussions thereat; as an advisor, but shall not have the right to move any resolution or to vote. Subject to any direction given or any restriction imposed by the Government or

\textsuperscript{83} Abdul Salam Hajee v. Municipal Commissioner, ILR 1976(1) Ker. 393
\textsuperscript{84} Pradeep Kumar v. State of Kerala, 2005 (4) KLT 396 (2003 (1) KLT 833 referred to)
\textsuperscript{85} Narendra Kishore Ganesh Joshi v. Commissioner, Municipal Corporation of Kalyan & Dombivali and others, AIR 2005 SC 34
the municipality, the secretary may, by order in writing, delegate any of his functions to any officer or employee of the municipality who shall be bound to carry out such functions. The discharge of the functions so delegated shall be subject to such restrictions, limitations and conditions as may be laid down by the secretary and shall also be subject to his control and revision. The officer or employee to whom the power is delegated under the law shall have all the rights, privileges and authority of the secretary with respect to such functions and shall like-wise be subject to all liabilities arising out of the exercise of such powers, privileges or authority. The secretary shall for the discharge of his functions vested in him by or under the Act or in any other law, have the power after informing the chairperson to incur expenditure not exceeding Rs. 25,000 out of the municipal fund. The secretary shall give the required information regarding the functions of the municipality to the Government or to the officers or to the agency authorised by it. The secretary shall be responsible for furnishing necessary information to the legislative committee or answer the legislative assembly interpellations and in order to avoid delay, such information may be sent directly to the Government or to the officer authorised by it in this behalf and thereafter submit to the chairperson for information. The secretary shall take follow up action on performance audit reports and other audit reports.

**Preparation of Development plans by Municipalities**

Ward committee or ward sabha as the case may be shall prepare every year in such form, as may be prescribed, a development plan for the ward along with an estimate of the expenditure therefor, for the next year and after finalising it in a meeting held three months before a financial year, submit the same to the Municipality concerned. Every municipality shall prepare every year a development plan for the succeeding year considering the development plans submitted by the ward committees or ward sabhas of the municipality in the prescribed manner for that municipal area and submit the same to the District Planning Committee before such date as prescribed. For the purpose of this section "development plan" means a development plan for economic development, social justice, Improvement of living conditions, creation of employment opportunities and increase of production capacity] in relation to matters enumerated in the Twelfth Schedule to the Constitution including the matters to which the administrative power vests in the Municipality under the provisions of this Act or any other law. Every Municipality shall prepare a master plan for its development in the
prescribed manner with focus on scientific spatial planning taking into account its resources and as per the fiscal investment and submit the same to the District Planning Committee. Municipality shall have the power to prepare and implement detailed town planning schemes as per the laws relating to Town Planning for the time being in force subject to the master plan approved by the Government.

7.6 District Planning Committee (DPC)

Kerala Legislature envisaged the provision for District Planning Committee within the Municipalities Act according to the constitutional framework. DPC has jurisdiction over both panchayat raj and nagarapalika institutions. The Government shall constitute in every district, a District Planning Committee at the district level to consolidate the plans prepared by the panchayats and the municipalities in a district and to prepare a draft development plan for the district as a whole. The committee shall consist of fifteen members of whom;

- twelve members shall be elected, in such manner as may be prescribed, by and from amongst the elected members of the panchayats at the district level and of the municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;
- the president of the district panchayat in that district;
- one shall be a person having considerable experience in administration and planning, nominated by the Government;
- the district collector concerned, ex-officio member in DPC
- the members mentioned shall be elected under the guidelines, supervision and control of the State Election Commission;
- the president of the district panchayat mentioned shall be the chairman of the committee;
- the district collector referred to shall be the secretary of the committee.

The district level officers of the departments of the Government in the district shall be the joint secretaries of the committee. The members of the House of the People (Lok Sabha) and the members of the legislative assembly of the State, representing any area comprised in a district shall be permanent invitees of the District Planning Committee of that district, provided that where the area which a Member of the House
of the People (Lok Sabha) or a member of the Legislative Assembly of the State represents, comprises partly in one district and partly in another district, he shall be a permanent invitee to the District Planning Committee of both the districts in which the area he represents is comprised. A member of the Council of States (Rajya Sabha) representing the State shall be a permanent invitee to the District Planning Committee of the district in which he is registered as elector in the electoral roll of any municipality or panchayat. A member nominated to the Legislative Assembly of the State shall be a permanent invitee to the District Planning Committee of the district in which he ordinarily resides.

Where a member of parliament or a member of the legislative assembly of the State is appointed as Minister or elected as speaker or deputy speaker or appointed as the Government Chief Whip or recognised as Leader of the Opposition, he may nominate a person from the area he represents as Member to represent him in the District Planning Committee or the District Planning Committees of the district or districts to which he was a permanent invitee. The committee shall consolidate the plans prepared by the panchayats and the municipalities in the district and prepare a draft development plan for the district as a whole and perform such other functions relating to district planning, as may be assigned to it by the Government, from time to time, by notification in the gazette. The committee shall, in preparing the draft development plan

- have regard to,
  - matters of common interest between the panchayats and the municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of the infrastructure and environmental conservation; and
  - the extend and the type of available resources, whether financial or otherwise;
- consult such institutions and organisations as the Governor may, by order specify.

The chairman shall forward the development plan, as recommended by the committee, to the Government for approval. The Government shall, while preparing the state plan consider the proposal and priorities included in the draft development plans.
prepared for each districts by the District Planning Committee. The District Planning Committee shall monitor the quantitative and qualitative progress, especially its physical and financial achievements, in the implementation of the approved district planning schemes and State plans relating to the district and it shall evaluate the action programmes already completed. The procedure to be followed in the meeting of the committee, including the quorum for such meeting, shall be governed by such rules as may be prescribed.

**Metropolitan Planning Committee**

The Government shall, by notification in the Gazette, constitute a Metropolitan Planning Committee in a Metropolitan area to prepare a draft development plan for such area as a whole. The Metropolitan Planning Committee shall be constituted and is supposed to function according to the corresponding provisions as in the case of DPC.

The Secretary shall forward the development plan, as recommended by the Metropolitan Planning Committee, to the Government for approval. The procedure to be followed in the meeting including the quorum for such meeting shall be governed by such rules as may be prescribed.

**7.7 Power of Government for purposes of control**

Government or the officer authorised by them in this behalf may inspect any office under the control of the Municipality or any movable property kept therein or any immovable property or any work which is in progress. The Government or the officer authorised by them in this behalf may

- call for any document in the Custody of the Municipality
- require the Chairperson or the Secretary to furnish any return, plan, estimate, statement, account or statistics;
- require the Chairperson or the Secretary to furnish any information or report or any matter relating to the Municipality; and
- record in writing any observation for the consideration of the Council, Chairperson or Secretary, as the case may be, in regard to the proceedings or functions of the Council, Chairperson or Secretary.
The Chairperson, Secretary and other officers shall be liable for facilitating the exercise of the powers and for fulfilling the requirements under the Act. The Government or the officer authorised by them shall return to the municipality any document, register or records received from it within ninety days from the date of its receipt and if necessary, the Government may keep certified copies of the same. The Government may arrange for the conduct of periodical performance audits with respect to the administration of the municipality and the works and schemes implemented or being implemented by the municipality in the manner prescribed.

**Power to suspend and cancel resolutions**

The Government may, *suo-moto* or on a reference by the Chairperson the Secretary, or a Councillor of the Municipality or on a petition received from a citizen, cancel or amend a resolution passed or a decision taken by the council, which in their opinion,

- has not been legally passed or taken; or
- is in excess or abuse of the powers conferred by this Act or any other law; or
- is likely to endanger human life, health safety, communal harmony or public peace, or is likely to lead to a riot or quarrel; or
- has violated the guidelines issued by the Government in the matter of implementation of plans, schemes or programmes or the conditions of grants.

Before cancelling or amending a resolution or decision, the Government shall refer the matter for the consideration of the Ombudsman\(^{86}\) or to the Tribunal for the Local Self Government Institutions\(^{87}\) and the Tribunal shall, after giving the Municipality an opportunity of being heard, furnish a report to the Government with its finding based on which the Government may cancel, amend or approve that resolution or decision. The Government shall not entertain any petition for cancellation or amendment of any resolution or decision of the council if an alternate redressal is available to the petitioner through the Tribunal. Where the Government are of opinion that a resolution or a decision of the Council shall be cancelled or amended they may temporarily stay the implementation of Such resolution or decision and may direct the

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\(^{86}\) section 271 G of the "Kerala Panchayat Raj Act, 1994

\(^{87}\) section 271 S, ibid.
council to keep its implementation in abeyance till it is finally disposed of by completing the procedure under the law.

**Power of the Government to issue direction to Municipality**

Notwithstanding anything contained in the Act, the Government shall have the power to issue directions to the municipality in accordance with the national and state policies in matters of finance, maintenance of accounts, office management, selection of schemes, sites and beneficiaries, proper functioning of ward sabhas and ward committees, welfare programmes, environment control etc. and the municipality shall comply with such directions. Where default or abuse of power in the implementation of schemes or maintenance of accounts is reported or specific complaint has been received in the matter, the Government may arrange for such enquiry as it deems fit and the municipality shall co-operate with that enquiry. After such enquiry, the Government may take actions which are necessary and permissible under the Act.

**Delegation of powers**

The Government may, by notification in the gazette, authorise one or more officers to exercise any of the powers vested in them under the Act, except the power to make rules, in respect of any municipality or all municipalities and in like manner withdraw such authorisation. The exercise of any of the powers delegated under the Act shall be subject to such restrictions and conditions as may be specified in the notification. The Government shall also have the power to control or review the acts or proceedings of any person so authorised.

**Action by Government in default of Municipal Authority**

Whereas, at any time, it appears to the Government that a municipal authority has made default in performing any duty imposed on it by or under the Act or any other law for the time being in force, they may, by order in writing, direct such authority to perform the duty within such period, as may be specified, therein, and such authority shall be bound to comply with such direction. If such duty is not performed or such order is not carried out within the period specified, the Government may, after giving a reasonable opportunity to the municipality, to its chairperson or to the Secretary, as the case may be, to show cause why further action should not be taken, appoint any officer or authority to perform the duty or to carry out the functions and the expenses to be
incurred for that shall be paid from the funds of the municipality within such time as determined by the Government. If the expenses directed by the Government to be paid from the fund of the municipality is not paid in the manner specified, orders may be passed directing the person having the custody of the said fund to pay it in priority to any other charge against that fund, except service charges of authorised loans, or deduct that amount from the share of taxes or any grant due to the municipality. The person referred to in law shall, as far as the funds in the account of the municipality permits, be liable to comply with the order passed by the Government.

Power of Government to undertake certain works

The Government may, with the consent of a municipality, undertake on its behalf the construction of water supply, drainage or any other work, appoint any officer or person to carry out the construction of such works and direct that the expenses including the pay and allowances of such officers be paid from the municipal fund in priority to any charges except charges for the service of authorised loans.

7.8 Annual Administration Report

Every municipality shall in accordance with the provisions of the Act publish a report of its administration in each year in such form and with such details as the Government may direct, within the thirtieth day of September of the succeeding year and where the report is not published within the said time limit, the Government may withhold the payment of grants due to the municipality thereafter. The draft of the Administration Report in respect of the institutions, offices and officers under the control of the municipality shall be prepared by the heads of such institutions and offices and furnish to the secretary of the municipality and he shall prepare the draft of the administration report of that municipality in consultation with the chairperson and place it before the standing committee for finance for scrutiny and then to the council for approval. The Administration Report of the municipality as approved council and published shall be forwarded to the officer authorised by the Government and that officer shall before the thirty first day of December every year submit to Government a consolidated report containing abstracts of the administration reports of the municipalities. The Administration Report of the municipality as approved council and published shall be forwarded to the officer authorised by the Government and that officer shall before the thirty first day of December every year submit to Government a
consolidated report containing abstracts of the administration reports of the municipalities. The Government shall, as soon as may be, after the receipt of the consolidated report lay the same, along with a review report of the Government before the Legislative Assembly in its next session and such laying shall be within forty-five days from the first day of the session.

**Power of Government to dissolve Municipality**

Before the expiry of a financial year, if the council fails to approve, the budget of the municipality for the succeeding financial year, and if, for that reason, there is financial crisis to the municipality or if the majority of the councillors resign or have been disqualified, the Government may, by notification in the gazette, dissolve the municipality from such date as may be specified therein and shall forward a copy thereof to the State Election Commission, provided that before such dissolution, the municipality shall be given a reasonable opportunity of being heard. Where the Government are of opinion that a municipality consistently makes default in performing the duties imposed on it by law or in carrying out the orders or directions issued in accordance with law by the Government or exceeds or abuses its powers, they may, by notification in the gazette, dissolve the said municipality and shall forward a copy thereof to the State Election Commission, provided that the Government shall, before such dissolution communicate to the municipality their intention to dissolve the Municipality giving reasons therefore and give the municipality a reasonable opportunity to show cause against the same and consider its objection or explanation, if any. After considering the objection or explanation of the municipality, it is considered that the municipality shall be dissolved the advice of the Ombudsman\(^88\) shall be sought and the final decision shall be taken on the basis of that advice.

A municipality dissolved shall be reconstituted within such time as the Government may specify in that behalf which shall not be later than six months from the date of dissolution, provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election for reconstituting the Municipality for such period. Upon the dissolution of a Municipality all the Councillors, including the Chairperson and the Deputy Chairperson shall forthwith be deemed to have vacated their offices. A

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\(^88\) section 271G of the Kerala Panchayat Raj Act, 1994
Municipality which is constituted upon dissolution before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued had it not been so dissolved. Every notification issued shall, as soon as may be, after it is issued, be laid before the Legislative Assembly while it is in session and if it is not in session, at the commencement of the ensuing session and the approval of the Assembly obtained.

**Appointment of Special Officer or Administrative Committee for the administration of Municipality**

Where the term of a municipality has been expired and a new municipality has not been constituted or where a municipality has been dissolved, Government shall, by notification in the gazette, appoint a Special Officer or an Administrative Committee consisting of not less than three members who are Government employees for the period as may be specified in the notification for the administration of the municipality, provided that, the term of appointment shall, not in any case be exceeded six months. The Administrative Committee or the Special Officer appointed shall, subject to the control of the Government and to such instructions or directions as the Government may issue, from time to time, have all the powers and functions of the council, the chairperson, the deputy chairperson and the committees of the municipality and take all such actions as may be required in the interests of the municipality.

**Vesting of Public Streets and appurtenance in Municipality**

Notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 (8 of 1958) or in any other law for the time being in force all public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same, and all adjacent land not being private property appertaining thereto in any municipal area other than National Highway or State Highway or major district road or roads classified by Government as such shall stand transferred to, and vest absolutely in the municipality together with all pavements, stones and other materials and other things provided therein, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the municipal fund or otherwise in, alongside or under such roads and all works, materials and things appertaining thereto. Notwithstanding anything contained in the Act the Government may, by notification in the Gazette, at any time, withdraw such public roads and or streets, sewer drain, drainage work tunnel or culvert adjacent to it.
from the control of the Municipality for the purpose of classifying, it as any public road, street National Highway, State Highway or Major District road under the control of Municipality and thereupon it shall revest in the Government on issuing such a notification, provided that before issuing such a notification, the Government shall consult the Municipality concerned and give due regard to the objections, if any.

Duty of Municipality in respect of public streets withdrawn from its control

Where any public street has been withdrawn from the control of a Municipality under the law, and placed under the control of the Government or under the control of any other authority by the Government, it shall be the duty of the Municipality to provide at the cost of the municipal fund, to such extend as the Government may, by general or special order, direct

- for the lighting, watering, scavenging and drainage of such street;
- for the provision, maintenance and repair of the water-supply mains, drains and sewers in, alongside, or under such street;
- for the provision, maintenance and repair of footways attached to such street.

provided that where in the discharge of such duties, it is necessary for the Municipality to open and break up the soil or pavement of any such street, the Municipality shall obtain the previous consent of such officer as the Government may by general or special order, specify. In cases of emergency, the Municipality may, without such consent, open and break up soil or pavement of any such street, but shall, as far as practicable, restore such soil or pavement to the condition in which it was immediately before it was opened and broken up; and a report of the action so taken and the reasons therefor shall be sent forthwith to the officer specified under the foregoing proviso.

Under section 307 of the Orissa Municipal Act, 1950, unauthorised occupants in the pavement of the corporation, erection of or handling of corporation property without permission has no legality in that respect89.

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89 Footpath Khayudra Byabasai Sangha, Bhubaneswar v. State of Orissa and others, AIR 2010 (NOC) 125 Orissa
Transfer of water courses, springs, reservoirs, etc, to Municipalities

Notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 or in any other law for the time being in force, all public watercourses including those which the public have been using so as to give them easement rights over them, (other than rivers flowing through the municipal areas and other areas as may be specified by Government, by notification in the gazette) whether existing at the commencement of the Municipality Act or were made; set up or constructed, thereafter whether made or constructed at the cost of the Municipality or not, along with their river beds, banks, springs, channels for irrigation and drainage, canals, lakes, backwaters, water courses all water whether standing, or flowing streams, reservoirs, ponds, water beds, fountains, wells, 'kappus' channels stand pipes, and other water reservoirs and any land appertaining there to other than private property shall stand transferred to and shall absolutely vest in the Municipality, provided that nothing contained in this sub-section shall apply to an irrigation project or any work connected therewith or any land appertaining thereto. Subject to the provisions of this Act, all rights and liabilities of the Government in respect of the water-courses, springs, reservoirs, ponds, water beds, fountains, wells, channels, standpipes and other works connected with water shall be vested on the municipality and shall be the rights and liabilities of the municipality from the date of such vesting.

Management of public institution

The management, control and administration of every public institution maintained exclusively out of the Municipal fund shall vest in the municipality. When any public institution has been placed under the direction, management and control of the municipality, all property, endowments and funds belonging thereto shall be held by the municipality in trust for the purposes to which such property, endowments and funds were lawfully applicable at the time when the institution was so placed.

Power of Municipality to acquire and dispose of property

A municipality may in the manner prescribed, acquire any property such as land or building within or outside its municipal area or dispose of any of its properties with the prior approval of the Government for providing any arrangement or facility for a public purpose. A municipality may construct commercial or other buildings and let
them out to the public who need them on licence and may charge such fees as it may fix for the use and occupation of the same, provided that after the said period, a licence may be renewed subject to such terms and conditions as may be fixed at that time.

**Power of Municipality to execute works on contract or otherwise**

The council may determine, either generally in the case of any class of works or specially in the case of any specific work, as to whether the works shall be executed through a contractor or directly or through any beneficiary committee, provided that if any work is done by a benami contractor, in the guise of a beneficiary committee or of direct execution the amount expended on such work shall be deemed to be misappropriation of funds and the amount shall be recovered from those who are responsible for such expenditure. Every municipality, may, if it is found necessary in the interests of administration, enter into contracts with any person or agency for the performance of any work which the council is under a duty to discharge under the Act, for such period and subject to such conditions as it may deem fit. The preparation of estimates of works, its execution, the supervision thereof and incurring the expenditure thereto shall be done in the manner as prescribed.

**7.9 Constitution of a common municipal service**

The Government may, subject to such rules as may be prescribed, constitute a common municipal service for the employees under the service of the municipalities in the State and regulate the recruitment and conditions of service of the employees of the municipalities. Subject to such rules as may be made the power to sanction leave to the officers and employees of the municipality shall be vested in the secretary. The municipal council shall subject to such rules as may be made in this behalf, have the power to impose minor penalties on any officer or employee of the municipality. An appeal may be preferred against an order of the Council imposing a minor penalty to the authority empowered (hereinafter referred to as "authority") in this behalf. An appeal shall be in such form and shall be filed within such time and manner as may be prescribed. The Authority shall, on receipt of an appeal give the appellant an opportunity of being heard and may either confirm, cancel or modify the order appealed against or may pass such other order as it deems fit. The Government may, either *suo motu* or on application call for the records relating to any order passed as above stated in order to review such order and may pass such order in respect of the same as they deem
fit. In the case where disciplinary proceedings, which may result in the imposition of a major penalty, have to be initiated, against officers or employees of the municipality, the Chairperson shall have the power to report to the authority competent to impose major penalty on such officer or employee. Under the rules applicable to such officer or employee, and the authority shall consider the report and inform the chairperson the final decision taken thereon. Every municipality shall, make available the services, of its officers and employees, for the performance of the functions, entrusted by the Government, which involved the implementation of any scheme, project or plan, provided that no application for review shall be entertained after the expiry of thirty days from the date the order sought to be reviewed was received by the applicant. An order affecting any party shall be passed only after giving that party an opportunity of submitting a representation. No review shall be done by the Government *suo motu* after the expiry of one year from the date of the order sought to be reviewed.

**The Health Officer, the Engineer, the Electrical Engineer**

The Government may, after consulting a municipality, sanction a post of health officer and a post of municipal engineer for that municipality. The Government may, after consulting a municipality, which has undertaken the generation, transmission or supply of electrical energy, sanction a post of municipal electrical engineer for that municipality. The Government may sanction the post of deputy secretary, finance manager, accounts officer, revenue officer and such other posts in a municipal corporation and giving due regard to the necessity and financial soundness of a municipality may also sanction similar posts in a town panchayat and a municipal council. The finance manager shall, in addition to his duty as such, function as the advisor and secretary to the standing committee for taxation, finance and accounts of the municipality concerned.

**Control of Chairperson over Health Officer**

Notwithstanding anything contained in Travancore-Cochin Public Health Act, 1955 or Madras Public Health Act, 1939, the functions vested in the Secretary under this Act relating to public health matters and which are conferred upon the Health Officer by the Travancore-Cochin Public Health Act, 1955 or the Madras Public Health Act, 1939, except the functions involving expenditure from the Municipal fund, shall be exercised by the health officer subject to the control and supervision of the chairperson.
Where there is no health officer in any municipality the senior medical officer of hospital, or public health centres or dispensaries under the control of the municipality, shall be the health officer ex-officio of the municipality.

**Special Provisions regarding Government servants lent to Municipality**

Subject to the terms and conditions as prescribed, the Government may transfer their officers and employees to the service of the municipalities for the implementation of schemes, projects and plans entrusted or vested in the municipality under the Act. The Government officers and employees transferred to a municipality, shall perform, in addition to their normal functions, any other connected functions assigned to them by the municipality as if they are officers and employees of the municipality. The officers and employees so transferred shall be under the control and supervision of the municipality, and the terms and conditions in regard to their services including disciplinary actions, shall continue to be the same as that applicable to them under the Government subject to the other provisions of the Act. The salary of the Government employees transferred to the municipality shall be paid by the Government, until the Government decides that it shall be paid from the municipal fund.

**7.10 Control of Secretary over establishment**

Subject to the provisions of the Act and bye-laws and regulations for the time being enforced, the secretary shall specify the duties of the officers and employees of the municipal establishment and secretary shall exercise supervision and control over them.

**Power of Chairperson over establishment**

The chairperson shall exercise supervision and control over the work of all officers and staff under the municipality, including the Government officers and employees who have been transferred to the municipality by the Government, and may require the secretary, to make available all necessary reports and information relating to their work and shall have authority to issue all directions necessary for the speedy implementation of the decisions of the Council, or a Committee thereof.
Exercise of statutory functions of the officials.

Where any officer of the municipality is vested with any statutory powers or functions to be independently and solely exercised by such officer, the council, the chairperson, the chairman of standing committee or any councillor, shall not interfere with or influence in the exercise of such powers or functions by such officer.

Enumeration of taxes and duties

Every Municipality may levy

- a property tax;
- a profession tax;
- a tax on animals and vessels;
- a show tax;
- a tax on advertisements;
- a tax on timber brought into the municipal area;
- a duty on certain transfers of immovable property in the shape of an additional stamp duty subject to the rules framed by Government.

The Municipality may, for the purpose of providing any specific civic service or amenity levy a surcharge on any tax other than profession tax levied by the Municipality, Provided that no surcharge shall be levied if a tax or cess is already being levied for the same purpose. Such surcharge shall, in no case, exceed ten per cent, of the amount of the tax.\(^\text{90}\)

It is open to the State legislature to pass a law on advertisements.\(^\text{91}\) Therefore, S. 126 which authorizes the municipality to levy a tax on advertisements is perfectly valid. A tax on such an advertisement would certainly have nothing to do with the profession calling or of the person making the advertisement and will not be considered as a tax on profession, trade or calling. The fact that the advertisement in this case is in connection with the trade, calling or profession of the petitioner would not alter the character of the tax and make it one on the trade, calling or profession of the petitioner.

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\(^{90}\) See section 230 of the Kerala Municipalities Act

But levy of general tax upon dwelling house constructed on land within environment green belt was held as arbitrary by J. S. B. Sinha.92

Prohibition of advertisement without written permission of the Secretary

No advertisement shall, after the levy of the tax under section 271 has been determined upon by the council, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the municipal area or shall be displayed in any manner whatsoever in any place in that area without the written permission of the secretary. The Secretary shall not grant such permission if;

- the advertisement contravenes any bye-law made by the council under clause (32) of section 567; or
- the tax, if any, due in respect of the advertisement has not been paid.

Subject to the provisions of the Act, in the case of an advertisement liable to advertisement tax the Secretary shall grant permission for the period to which the payment of tax relates and no fee shall be charged in respect of such permission, provided that the provisions of this section shall not apply to any advertisement erected, exhibited, fixed or retained on the premises of a railway administration relating to the business of a railway administration.

An advertisement is a matter that draws attention of the public or segment of public to a product, service, person, organization or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organization or line of conduct intended to promote sale or use of product or range of products. An advertisement is an information that producer provides about its products or services. An advertisement tries to get consumers to buy a product or a service. An advertisement is generally of goods and services and is an information intended for the potential customers and not a mere display of the name of the company unless the same happens to be a trade mark or trade name.

Advertisement sign means any sign either free, supported or attached to a building or other structure which advertises an individual, a firm, a society an

92 Municipal Corporation v. Rishiraj Jain and others, AIR 2006 SC 3268
93 ICICI Bank v. Municipal Corporation of Greater Bombay, 2005 (4) KLT SN 33
establishment or a product displayed on the said premises for identification purposes\textsuperscript{94}. Hoarding put up even in a private land would fall within the definition of the building under the Building Rules. Once it falls within the definition of the building, Corporation has got the right to seek removal of the structure if erected without their permission. Before erecting the hoarding, permission has to be obtained from the Corporation.

**Power to assess in case of escape from assessment**

Notwithstanding anything to the contrary contained in the Act or the rules made thereunder, where for any reason a person liable to pay any tax or fees leviable has escaped assessment in any half-year, the secretary may at any time within four years from the date on which such person should have been assessed, serve on him a notice assessing to the tax or fee due and demanding payment thereof within fifteen days from the date of such service and thereupon the provisions of the Act and the rules made thereunder shall, so far as may be, apply as if the assessment was made in the half-year to which the tax or fee relates.

**Municipal Fund**

All moneys received by a municipality under the Act or the rules made thereunder or any other law for the time being in force, shall constitute a fund which shall be called the Municipal Fund and shall be utilised and disposed of subject to the provisions of the Act or any other laws. The items of income to be credited to the Municipal Fund consist of the following, namely

- Taxes, duties cess and surcharge levied under the Act or any other law, the rent from properties, fees from licences and permissions and its income from other miscellaneous items;
- Share of the taxes levied by the Government and transferred to the municipality and the grants released to the municipality by the Government;
- Grants released by the Government for the implementation of schemes, projects and plans formulated by the municipality;

\textsuperscript{94} Vimal Arakkal v. Corporation of Cochin, 2005 (1) KLT 121, (2004 (3) KLT 413 confirmed, 2002 (2) KLT 625 referred to)
Grants released by the Government for the implementation of the schemes, projects and plans assigned or entrusted to the municipality under the Act; and

Money raised through donations and contributions from the public and non-governmental agencies.

All fees for licences and permissions received by the Municipality under this Act or any other law shall be accounted separately and shall be utilised for the purpose for which such fees are levied. Grants released by the Government to the Municipality for the implementation of the schemes, projects and plans shall be utilised only for that purpose for which such grants are released. The share of taxes levied by the Government and transferred to the Municipality and the grants released to the Municipality shall be fixed by the Government with due regard to the recommendations of the Finance Commission and the needs of development and the cost of the Municipal administration and services, provided that any sum due from a Municipality to the Government or any fund established or operated or administered under any rules made under, this Act or any fund borrowed from any public sector undertaking or any agency on Government guarantee may be adjusted by the Government from any grant or sum due to the Council then and thereafter. No expense, financial assistance or grant for a purpose not directly concerned with the function of the Municipality specified in this Act or rules made thereunder or any other law shall be made by a Municipality in excess of the annual limit that may be specified by the Government. All amounts accounted to the Municipal fund and of its release under this Act, shall be in full rupee.

Annual report regarding grants

The Chief Secretary of the State shall submit an annual report to the Governor, immediately after the expiry of each financial year, regarding any amount of grants to be received annually by the municipality as per any law or otherwise, and the actual amount given to the municipality and the criterion adopted by the Government for such payment. Annual report shall be laid before the Legislative Assembly, within the first six months of the next financial year.

Constitution of poverty alleviation fund

Every Municipality shall provide in its Annual Budget two per cent of the revenue receipt of the Municipality for constituting a separate fund to be called Poverty
Alleviation Fund for implementing poverty alleviation programmes in the municipal area, which shall be utilised subject to such guidelines as the Government may issue from time to time.

**Estimates of receipts and expenditure to be prepared annually by the Secretary**

The secretary shall, subject to such rules as may be prescribed and such instructions as may be issued by the Government, in this behalf from time to time on or before the fifteenth day of January each year prepare and submit to the standing committee concerned a budget containing a detailed estimate of receipts and expenditure for the ensuing year, and, if in his opinion, it is necessary or expedient to vary taxation or to raise loans, shall submit his proposals in regard thereto.

**Budget estimate to be prepared by the Standing Committee**

The Standing Committee concerned shall by considering the estimate and proposals of the Secretary and the officials dealing with the respective subjects concerned submit their proposals to the Standing Committee for finance and after considering those proposals and all the requirements of this Act the Standing Committee for finance shall prepare budget estimate of the receipts and expenditure of the Municipality for the next year. The budget estimate shall;

- provide for the payment, as they fall due, of all instalments of principal and interest for which the Municipality may be liable on account of loans; and
- allow for a cash balance at the end of the year of not less than 65A[five per cent] of the revenue of the Municipality.

**Annual Financial Statement**

The secretary of a municipality shall publish, not later than the first week of June, an annual financial statement of the preceding year, approved by the Council, in such form as may be prescribed embodying a classified abstract of receipts and payments of the municipality under revenue, capital and debt heads, a demand, collection and balance statement and a statement of the general financial position of the municipality. As soon as may be, after the publication of the financial statement, the Secretary shall forward a copy thereof to the auditors.
Accounts and Audit

The Municipality shall maintain its accounts and other books connected with the accounts in the manner and form as prescribed and shall enter the receipt and expenditure accounts forthwith in such books. The responsibility to maintain or cause to maintain the accounts and the connected books of the Municipality in the manner and form as prescribed and to submit or cause to submit such accounts to the Local Fund Examiner for conducting audit in the time shall rest with the Secretary. The Examiner of Local Fund Accounts and his nominees shall be the auditors of the Municipality. The auditors shall maintain a continuous audit of the accounts of the Municipality and shall, after completing the audit for a year or for any shorter period or for any transaction or series of transactions, send a report to the Municipality concerned and a copy thereof to Government. The auditors shall specify in the report all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Municipality or any laws or waste of money, or other property thereof caused by the neglect or misconduct of the officers or authorities of the Municipality. The auditors shall also report to Government on any other matter relating to the accounts of the Municipality as required by the Government.

Power of Municipality to borrow money

The Municipality may in pursuance of any resolution passed at a special meeting of the Council borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees, service charges, and dues authorised by or under this Act, any sums of money which may be required

- for the construction of works; or
- for acquisition of lands and buildings; or
- for slum clearance and construction of tenements; or
- to pay off any debt due to the Government; or
- to repay a loan raised by the Municipality; or
- for town improvement Schemes; or
- for any public utility Schemes maintained or proposed to be maintained by the Municipality, provided that
no loan shall be raised without the previous sanction of the Government or otherwise than in accordance with the provisions of the Kerala Local Authorities Loans Act, 1963 (30 of 1963) and the rules issued thereunder;

the amount of the loan the rate of interest and the terms including the date of floatation, the time and method or repayment and the like shall be subject to the approval of the Government.

When any sum of money has been borrowed no portion thereof shall, without the previous sanction of the Government, be applied for any purpose, other than that for which it was borrowed.

**Maintenance and investment of sinking funds**

The Municipality shall maintain sinking funds for the repayment of money borrowed on debentures issued and shall pay by quarterly instalments into such sinking funds such sum as will be sufficient for the repayment within the period fixed for the loan of all moneys borrowed on debentures issued and in the event of default in payment of quarterly instalments, the grants due from Government shall be remitted to the Sinking Fund.

**Vesting of existing water supply and sewerage, services under the water authority in the Municipality**

Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 or in any other law, from the date specified by the Government by notification in the gazette, in respect of water supply and sewerage for any of the Municipality and situated only within its area and vested in the Water Supply Authority immediately before such date

- all assets including other equipments, all plants, machineries, water works, pumping station, as the case may be, in, along, over or under any public streets in the area of municipality, all buildings lands and other works, materials, stores and things appurtenant thereto, all the water supply and sewerage service, sewerage works and sewage forms and all buildings, lands, other works, materials stores, and things, execution of works, conduct of water supply,
distribution, fixing water charge, collection etc., shall vest in and stand transferred to the municipality referred in the notification; and

- all the rights, liabilities and obligations of the Water Authority as the case may be, whether arising out of any contract or otherwise relating to the water authority, the right to recover arrears of sewerage charge, water charge, meter rent and of any cost of fees relating to water supply and sewerage services, shall be the rights, liabilities and obligations of the municipality specified in the notification.

The properties, assets, rights, liabilities and obligations referred shall be valued in such manner as may be fixed by the Government and shall be given to the water authority by the respective municipality in the manner prescribed. Where any doubt or dispute arises as to whether any property or asset has vested in the municipality or any rights, liabilities or obligations have become the rights, liabilities and obligations of the municipality under this section, such doubt or dispute shall be referred to the Government whose decision thereon shall be final and the Water Authority and the concerned. The municipality to which the properties, assets, and service relating to water supply and sewerage construction have been transferred, necessary staff of the Water Authority as may be required to continue such service shall be conceded to that municipality as decided by the Government. On issuing a notification by the Government, from the date specified in the notification, the Water Authority shall be excluded from all the powers and rights which it had under the Kerala Water Supply and Sewerage Act, 1986 within the area of the said municipality and the concerned municipality shall perform all such powers and rights.

**Administrative power of the Municipality with regard to the existing water supply and sewerage schemes**

Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 or any other law, the water supply and sewerage schemes useful for the residents in the land area of more than one local self-government institutions which cannot be vested or transferred to the municipality, the power with regard to the maintenance and operation of such schemes shall be vested in the committee constituted for this purpose by the Government.
**Power of Municipalities to prepare and implement schemes with regard to water supply and sewerage**

Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 or in any other law, each Municipality have the power and right to prepare and implement the water supply scheme or the sewerage scheme within its Municipal area. The Municipality which prepare and implement the water supply scheme and drainage scheme may realise water charge and service charge for sewerage from the beneficiaries in the manner as prescribed.

**Provision for lighting public streets**

Municipality shall cause the public streets in its land area to be lighted and for that purpose shall provide such lamps and works as it deem necessary. The Kerala State Electricity Board shall provide the required electrical energy and technical assistance to the Municipality, at the rates fixed by Government and on other conditions, as prescribed.

**Power to carry wire, pipes, drains etc., through private property**

The secretary may, for the purpose of implementation of any scheme for water supply or drainage entrusted to a municipality or for its maintenance or for the establishment or maintenance of any lighting of public streets carry any cable, wire, pipe, drain or channel of any kind through, across, under, or over any road, street or place laid out for road or street and after giving fifteen days’ notice in writing to the owner or occupier, through, across, under, over or up the side of, any land or building in the Municipality, and may place and maintain posts, poles standards, brackets or other contrivances to support wires and lights on any pole or post in the Municipality not owned by the State or the Central Government and may do all acts necessary or expedient for repairing or maintaining any such cable, wire, pipe, drain, channel, post, pole, standard, bracket or other similar contrivance in an effective state for the purpose of which it is intended to be used or for removing the same.
Provision of public latrines

A Municipality shall provide and maintain in proper and convenient places a sufficient number of public latrines and shall cause the same to be daily cleansed and kept in proper order.

Licensing of public latrines

The Secretary may issue licence, for the period as fixed by the Council, for providing and maintaining latrines for public use. No person shall keep a public latrine without a licence. Every licensee of a public latrine shall maintain it clean and in proper order.

Removal of solid waste, rubbish and solid waste accumulated on non-residential premises

The Secretary may, if he thinks fit, by notice in writing, require the owner or the occupier of any premises used as

- a factory, workshop or a place for carrying on any manufacturing process, or
- a market or trade premises, or
- a slaughter house, or
- a hotel, eating house, or restaurant, or
- a hospital or a nursing home, or
- a warehouse or godown, or
- a place to which large number of persons resort, where rubbish, offensive matter, filth, trade refuse, special wastes, hazardous wastes or excrementitiously and polluted matters are accumulated in large quantities, to collect such matters accumulating thereon and to remove the same to a depot or place provided or directed by the Secretary at such time and in such manner and by such routes as may be specified in the notice.

Prohibition of improper disposal of carcasses, rubbish and filth

No person shall, after due provision has been made under section 326 by the Municipality for the deposit and removal of rubbish, solid waste, carcasses or filth deposit the same;
• in any street or on the veranda of any building or on any unoccupied ground alongside any street or on any public quay, jetty or landing place, or on the bank of a water course or tank; or
• in any dustbin or in any vehicle not intended for the removal of the same; or
• in any vehicle or vessel intended for such removal save for the purpose of deodorizing or disinfecting the same.

Without prejudice to the generality of the provisions in sub-section(l) no person shall deposit or cause or permit to be deposited any building rubbish on or along any street, public or private land without the previous permission of the Municipality.

Prohibition of commission nuisance in public streets

No person shall commit a nuisance by relieving himself in any street, public place or thoroughfare or permit any person under his control to do so.

Power to inspect premises for sanitary purposes

The Secretary or any officer authorised by him may, at any time, inspect any premises for the purpose of ascertaining compliance with the provisions of this Act.

Punishment for depositing or throwing any rubbish or solid waste

Whosoever deposits or throws any rubbish, solid waste, filth or carcasses in contravention of the provisions in this Chapter shall on conviction be punishable with fine which shall not be less than fifty rupees but may extend to two hundred and fifty rupees.

Power of Municipal authorities

The Municipality may,

• lay out and make new Public streets;
• construct bridges and sub-ways;
• turn, divert or with the special sanction of the Government permanently close any public street or part thereof; and
• widen, open, extend or otherwise improve any public street.
Reasonable compensation shall be paid to owners or occupiers, as the case may be, of any land or buildings which are required for or affected by any such purposes.

**Prohibition of obstruction in or over streets**

No person shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street.

**Removal of encroachments**

The Secretary may, by notice, require the owner or occupier of any premises to remove or alter any projection. Encroachment or obstruction other than a door, gate, bar or ground floor window situated against or in front of such premises and in or over any street. Where the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or may with the permission or licence of any authority duly empowered in that behalf, and that the period, if any, for which the permission or licence, is valid has not expired, the Municipality shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same. Where the Secretary is satisfied that any road or public street including footpath, if any, thereof belonging to the Municipality or vested in it or otherwise is encroached upon by any person in any form, either temporarily or permanently so as to cause obstruction or hindrance or inconvenience to traffic and users of the street, the Secretary may summarily evict such encroachments and may seize and dispose of any belonging or article that may be found on such road or street and no person shall be entitled to claim compensation for any action taken by the Secretary in this behalf.

Dr. A. R Lakshman observed that, unauthorised construction and its demolition, the power to order is the discretion of the commission. The High Court cannot issue mandamus for demolition, under section 351(l) of the Mumbai Municipal Corporation Act.95 Under section 345A of the Delhi Municipal Corporation Act, 1957, searching of premises can be exercised on use of or change of uses of premises either before or after demolition order is passed. Misuse of residential premises for commercial purpose, the misuse cannot of condoned in the ambit of unauthorized development under section

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95 *Muni Savarat Swami Jain, SMP Sangh v. Arun Nadhuram Gaikwad and others, AIR 2007 SC38*
31A of Delhi Development Authority Act, 1957. Under J&K Municipality Act, (sections 229(1)(d) and 229 (4) in unauthorized construction, the order of demolition is valid. Construction of commercial complex in contradiction of sanction plan and converting land use from residential to commercial was held as unlawful by J. Srikrishna.

**Power to allow certain works**

The Municipality may grant a licence, subject to such conditions and restrictions as it may think fit, to the owner or occupier of any premises to cover drains necessary for access to the premises. A Municipality may grant a licence, subject to such conditions and restrictions as it may think fit, for the temporary erection of pandals and other structures in a public street vested in the Municipality or in any other public place the control of which is vested in the Municipality. A Municipality shall have power to lease roadsides and street margins vested in it for occupations on such terms and conditions and for such period as it may fix. No licence or a lease under shall be granted if the construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. The Government may, by notification, restrict and impose such control in, as they may think fit, the exercise by Municipalities in general or by any Municipality in particular, of the powers. On the expiry of any period for which a licence has been granted under this section, the Secretary, may, without notice, cause any construction to be removed, and the cost thereof shall be recovered in the manner provided in section 538 from the person to whom the licence was granted.

The Corporation can remove unauthorised bunk ships without giving notice. However, the corporation may evolve necessary schemes with the aid of the Government for rehabilitation of the evictees and allot such bunks according to seniority of course reserving a percentage for handicapped and socially backward. This will reduce hardship, if any, that may be caused to petitioners, as they are earning their livelihood by carrying on business in these shops occupied by them.

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96 M. C. Mehta v. Union of India and others, AIR 2006 SC 1325
97 Kewal Kishan Gupta v. Jammu & Kashmir Special Tribunal and others, AIR 2005 SC 2578
98 Vijayalekshmi v. Corporation of Trivandrum, 2003 (3) KLT SN 141 (19918 (2) KLT SN 64, 1995 (1) KLT 100, AIR 1985 SC 1206, AIR 1992 SC 1153 referred to)
The local authorities are empowered to give licence for occupation on the road side margins, if it not likely be injurious to the health of general public or public use\(^99\). In the situation, it could be held that the corporation has absolute powers in these regions and of course State Government is empowered to issue appropriate instructions, if they are of the opinion that occupation is permitted indiscriminately. The corporation apparently has taken a decision to remove bunks which had originally been sanctioned, after the expiry of the term, or in any case, exercising the powers reserved with them at the time of allotment. This cannot be termed as objectionable. It has to be held that as at present the persons are unauthorisedly occupying road margins without licence. It is possible for the corporation therefore to exercise the powers of eviction even without notice. Power is vested on them to remove the constructions at their discretion.

**Building Rules**

The Government may make rules on the regulation or restriction of use of sites for building purpose without prejudice to the generality of the powers conferred rules made under that clause may provide that

- no insanitary or dangerous site shall be used for building construction; and
- no site shall be used for the construction of a building intended for public worship, if the construction thereon will wound the religious feelings of any class of persons and other prescriptions as per the law.

If there is any contradiction in dealing with building permits by the local body and any parallel development authority, legal binding is to be vested with the decision of the concerned municipality. In contravention of that, a Development Authority performs its function, it will amount to a grave illegality in allotting residential plots for non-residential purposes\(^100\). The open space in a residential area or in busy townships is treated as lung space of the area. It provides fresh air and refreshment to the persons in the neighbourhood. Its presence ameliorates the hazards of pollution and it has to be preserved and protected for the sustenance of the men around.


While granting exemption, Government shall have due regard to the right of privacy, right to light and air, right of easement of the neighbour, right of public in general and the problems of traffic, flood and rain\(^{101}\). Apart from showing reasons in the order granting exemptions, order also should show the Government have bestowed its attention to the right of privacy, right to light and air, right of easement of the neighbour, right of public in general and the problems of traffic, flood and rain. After the commencement of the Act, power to grant exemption can be exercised by the Government only in accordance with the Act. In, it was held that municipal corporations cannot levy charges on the lands and buildings owned by the Union of India\(^{102}\).

**Requirement of prior approval of site**

The secretary shall not grant permission to construct or reconstruct a building unless and until he has approved the site on an application made under the Act.

**Prohibition of commencement of work without permission**

The construction or reconstruction of a building shall not begin unless and until the secretary has granted permission for the execution of the work.

**Stoppage of work endangering human life**

Notwithstanding anything contained in any of the provisions in the Act, the secretary may, at any time, stop the construction or reconstruction of any building if, in his opinion, the work in progress endangers human life.

**Power to regularise the unlawful building construction**

Notwithstanding anything contained in the Act, if any person or institution unlawfully, developed any land or constructed any building on or before 15th October 1999, the Government may after consultation with the concerned municipality on realisation of a compounding fee as prescribed, regularise such land development or building construction.

\(^{101}\) Thajudin v. District Collector, Kannur, 1996 (2) KLT 525, 1996 (2) KLJ 271, ILR 1996 (3) Ker. 720

\(^{102}\) Food Corporation of India v. Alleppy Municipality and others, ILR 1996 (2) Ker. 445, AIR 1996 Ker.241
Order of stoppage of buildings or works in certain cases

Where the erection of any building or the execution of any work has been commenced or is being carried on (but has not been completed) without obtaining the permission of the secretary or in contravention of any decision of the council or any of the provisions of the Act or any rule or bye-law made thereunder or any lawful direction or requisition given or made under the Act, or the rules or bye-laws, the secretary may, without prejudice to any other action that may be taken under the Act, by order require the person at whose instance the building or the work has been commenced or it being carried on, to stop the same forthwith. Where such order is not compiled with, the secretary may require any police officer to remove such person and all his assistants and workmen from the premises within such time as may be specified in the requisition, and such police officer shall comply with the requisition accordingly.

Precautions in case of dangerous structures

Where any structure is deemed by the secretary to be in a ruinous state and dangerous to the passers-by or to the occupiers of neighbouring structures, the secretary may by notice require the owner or occupier of such structure to fence off, take down, secure, demolish or repair the same so as to prevent any danger therefrom. Where immediate action is necessary, the secretary shall, before giving such notice or before the period of such notice expires, cause to fence off, take down, secure, demolish or repair such structures, or fence off a part of any street or take such temporary measures as he deems fit to prevent danger, and the cost thereof shall be recoverable from the owner or occupier in the manner provided in the Act. Where in the opinion of the secretary the said structure is imminently dangerous to the inmates thereof, the secretary shall order the immediate evacuation thereof, and any person disobeying the order may cause to be removed if necessary, with the assistance by a police officer.

Precaution in case of dangerous trees

Where any tree or any branch of a tree or the fruits of any tree deemed by the secretary to be likely to fall and thereby endanger any person or any structure, the secretary may, by notice, require the owner of the said tree to secure, lop or cut down the said tree or any branch thereof so as to prevent any danger therefrom. Where immediate action is necessary, the secretary shall before giving such notice or before the
period of such notice expires cause to secure, lop or cut down the said tree or branch thereof or remove the fruits thereof or fence off a part of any street to take such other temporary measures as he deems fit to prevent danger, and the cost thereof shall be recoverable from the owner of the tree in the manner provided in the Act.

An authority which yields extensive powers must own corresponding responsibilities. Any failure of the authorities in carrying out such statutory duties can be only at their risk and liability. Under the Act, the duty is cast on the Commissioner to be vigilant about a tree likely to fall and thereby to endanger any person or structure. It is for him to evaluate the intensity or the imminence of the danger. It is for him to take a remedial action. The situations where immediate action is necessary are dealt with in the Act. It is open to the commissioner to take action without issue of a notice to the owner of the tree or before the expiry time fixed in the notice already served. The basic requirement is to obviate danger from the dangerous tree to any person or to a structure. Discharge of this statutory duty is independent of any complaint preferred in that behalf by an aggrieved person. The commissioner should certainly ensure that such periodic supervision is made effectively and efficiently.

**Power to stop dangerous quarrying**

Where in the opinion of the secretary, the working of any quarry or the removal of stone, earth or other material from any place is dangerous to persons residing in or having legal access to the neighbourhood thereof or creates or is likely to create a nuisance, the secretary may, by notice, require the owner or person having control of the said quarry or place to discontinue working the same or to discontinue removing stone, earth or other material from such place or make such order as he deems necessary for the purpose of preventing danger or abating the nuisance arise or likely to arise from such quarry or place.

**Duty of Municipality in respect of public well cess pools**

The municipality shall keep and maintain in a clean condition all wells, ponds and reservoirs which are not in private property and operate it in a manner useful to the public.

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103 Municipal Commissioner v. David J. Bhanu, 1988 (1) KLT 675
Public wells open to all

All wells, tanks and reservoirs maintained by a municipality shall be open to use and enjoyment by all members of the public.

Prohibition on regulation of washing of animals or clothes or fishing or drinking in public water courses and tanks

A municipality may in the interest of public health, regulate or prohibit washing of animals, clothes or other things or fishing in any public spring, tank, well, public water course or part thereof within the municipal area and may set apart any such place for drinking or for bathing or for washing clothes or animals, respectively or for any other specified purpose.

Secretary to act in default

Where any person fails to comply with a requisition made by the secretary, the secretary may, without prejudice to any other action that may be taken against such person, cause the act or the work to be done and the expenses incurred thereby may be recovered from such person in such manner as arrears of property tax under the Act.

Abatement of overcrowding in dwelling house or dwelling place

Where it appears to the secretary that any dwelling house or other building which is used as a dwelling place or any room in such dwelling house of building is so overcrowded as to endanger the health of the inmates thereof, he may with the approval of the standing committee concerned, by a written order, require the owner of the building or room within a reasonable time not exceeding four weeks to be specified in the said order, to abate such overcrowding by reducing the number of lodgers, tenants or other inmates of the building or room or may pass such other order as he may deem just and proper to abate such overcrowding. A municipality may by written order declare what amount of superficial and cubic space shall be deemed for the purposes to be necessary for each occupant of a building or room. Where any building or room referred above has been sub-let, the landlord of the lodgers, tenants, or other actual inmates of the same shall, for the purposes deemed to be the owner of the building or room. It shall be incumbent on every tenant, lodger or other inmate of a building or room to vacate on being required by the owner so to do, in pursuance of any requisition.
Prohibition of feeding of certain animals on filth

No person shall feed or permit any animal, which is kept by him for dairy purpose or which may be used for food, to be fed on filth.

Prohibition of keeping of animals so as to cause nuisance or danger

No person shall keep any animal on his premises so as to cause nuisance or danger to any person in the neighbourhood.

Licensing of dogs

No person shall keep any dog except with a licence obtaining from the Secretary and every owner shall cause his dog to be inoculated against rabies.

Purpose for which places may not be used without licence

A Municipality may notify by publication in the Gazette or in any other manner as may be prescribed that no place within the Municipal area shall be used for any one or more of the purposes specified in the rules made in this behalf or for any other trade without licence and except in accordance with the conditions specified therein and where the licence is for running hostels, restaurants, eating houses, coffee houses, Abkari shop, laundries, travel agency or barber saloons, the licence shall always contain and be deemed to contain a condition that admission or service therein shall be available to any member of the public, provided that no notification shall take effect before the expiry of sixty days from the date of its publication. The owner or occupier of every such place shall within thirty days of the publication of the notification apply to the Secretary for a licence for the use of such place for such purpose. The Council shall, within thirty days from the date of receipt of the application, by order and subject to such terms and conditions as it deems fit, either grant a licence for the use of a place for conducting a dangerous or offensive trade or in the interest of the public refuse to grant such licence. The Secretary shall, within fifteen days from the date of receipt of the application, by order and subject to such terms and condition as he deems fit, either grant licence for using a place to conduct a common trade or in the interest of the public refuse to grant such licence. Every application for any licence or permission or for its renewal under this Act or the rules or bye-laws made thereunder, shall be made not less
than thirty days and not more than ninety days before the earliest day on which such
licence or permission is required or the licence expires.

The legislature made it absolutely clear that the Municipal authorities have to
issue licence to abkari shops and their authority is not altogether taken away by the said
amendment\textsuperscript{104}. Apart from this, the deleted Sub-section 6 of Section 447 provided for
previous permission from the Municipality for starting abkari shop within the
Municipality prior to its deletion. Therefore, it was within the powers of the
Municipality whether to permit or not to permit any abkari shop within the municipal
area.

There cannot be any levy of licence fee from the private hospitals working in the
municipal area unless the rules are framed authorising the grant of licence and levy of
fee for the same\textsuperscript{105}.

The distinction between a tax and a fee lies primarily in the fact that a tax is
levied as a part of a common burden while a fee is a payment for a special benefit or
privilege\textsuperscript{106}. For sustaining the imposition of a fee there must be special benefits to the
payer. The fact that the levy of fee ensures not only the payers but also some others will
not in any way go to defeat the levy. In any case, the levy of the fee must be for some
special benefit to the payer.

\textbf{Consultation with the Municipality for establishing the Industrial estate or
Industrial development area by the Government}

The Government or any agency controlled by the Government shall consult a
Municipality before opening an Industrial Estate or Industrial Development Centre or
Industrial Area or Industrial Growth Centre or Export Processing Sector or Industrial
Park within the Geographical area of that Municipality.

\textbf{Abatement of nuisance from factory, workshop etc.}

Where any factory, workshops, workplace or machinery causes nuisance, which
in the opinion of the Council, is by reason of a particular kind of fuel being used or by
reason of the noise or vibration created, or discharge of poisonous gas or emission, of

\textsuperscript{104} Noushad v. Kayamkulam Municipality, 2006 (2) KLT 319
\textsuperscript{105} Shaji v. State of Kerala, 2004 (1) KLT 118
\textsuperscript{106} K. P Oil Mills v. Commissioner, Ponnnanni Municipality, 1987(1) KLT 123
foul odour or smoke or dust, the Secretary may direct the person in charge of such
dustry or workshop or workplace or machinery for the abatement of such nuisance
within a reasonable time.

Provision of Municipal Slaughter house

Every Municipality shall provide sufficient number of places for the use as municipal
slaughter houses and may charge rents and fees at such rates as it may think fit for use
thereof. But, if any complaint is received regarding the conduct of such slaughter houses
from nearby residents, steps shall be taken to start such slaughterhouses only after
examining such complaints in detail.

Presently the provision is available only for slaughtering cattle, goat, sheep and
pig, within the Corporation limits. There is no qualified Veterinary Surgeon, who can
certify the fitness of a camel or the suitability of its meat for human consumption or a
licensed person, to slaughter a camel. There are no licensed persons within the
Corporation limits, for the sale of also. The licence to sell beef will not enable the sale
of camel's meat.

Regulation of milk trade

No person shall without or otherwise than in conformity with a licence from the
secretary;

- carry on within a municipal area the trade or business of a dealer in or importer
  or seller or hawker of milk or dairy produce;
- use any place in a municipal area for the sale of milk or dairy produce; Provided
  that no such licence shall be granted to any person who is suffering from a
dangerous disease.

\[107\] Siraj v. District Collector, 2006 (1) KLT 47
Public market

All markets which are acquired, constructed, repaired or maintained out of the municipal fund shall be deemed to be public markets and such markets shall be open to all members of the public.

Though it is open to the municipality to provide storage space for ice, that does not mean that other persons cannot bring ice blocks for sale in limited quantity which does not require any special storage space\textsuperscript{108}. Such a right is inherent in S. 457. Ice, unlike articles like fish, meat etc. does not cause any health hazards. No specific reason has been pointed out, during hearing as to why sale of ice cannot be held along with other articles in the ordinary area where sale of different articles take place. Of course, they will be liable to pay whatever fees that other vendors also are liable to pay to the municipality, but merely because there is one specific storage space for ice provided in the market, one cannot be flushed out from the market altogether with regard to their sale of ice in blocks in the open.

Powers in respect of public markets

A municipality may provide places for use as public markets. The municipality may, in any public market, levy any one or more of the following fees at such rates and may place the collection of such fees under the management of such persons as may appear to it proper or may farm out collection of such fees for any period not exceeding three years at a time and on such terms and subject to such conditions as it may deem fit;

- fees for the use of or for the right to expose goods for sale in such markets,
- fees for the use of shops, stalls, pans or sands in such markets;
- fees on goods for sale brought to such markets on vehicles or pack animals or by head load;
- fees on animals brought for sale into or sold in such markets, and
- licence fees on brokers, commission agents, weigh men and measures practising their calling in such markets.

\textsuperscript{108} \textit{Aluva Municipality v. Benni}, 2001 (2) KLT SN. 14 p. 14, 2001 (1) KLJ 680 (1957 KLT 342 relied on)
The municipality may, with the sanction of the Government close any public market or part thereof.

It cannot be held that occupants of the municipal stalls in public market are not liable to pay the fee prescribed. Municipal council’s power is entirely different from the collection of monthly rent from the occupants of its stalls in public market. Merely on the ground that the agreement between the municipal council and the person in occupation of the stall does not mention anything about occupants liability to pay the fee contemplated it cannot be said that the occupant has no liability to pay the fee as per the statute.

**Licence for private markets**

No person shall open a new private market or continue to keep open a private market except on a licence from the Municipality. Application for a licence shall be made by the owner of the place in respect of which the licence is sought to be renewed, not less than six weeks before the expiry of the period for which the licence has been granted and in the case of a new market, six weeks before the date on which the market is proposed to be opened. The Municipality shall, as regards private markets already established and may, at its direction as regards new private markets grant the licence applied for subject to such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, water supply, width of paths and ways, weights and measures to be used, and rents and fees to be charged in such market as it may think proper or it may, for reasons to be recorded in writing, refuse to grant any such licence for any new private market. The Municipality may, however at any time, modify the conditions of a licence to take effect from any specified date or suspend or cancel any licence for breach of any conditions thereof. Where a licence is granted, refused, modified, suspended or cancelled under this section, the Municipality shall cause a notice of such grant, refusal, modification, suspension or cancellation in English and the language of the locality to be pasted in some conspicuous place at or near the entrance to the place in respect of which the licence was sought or had been obtained. Every licence granted under this section shall expire at the end of the year in which it is granted.

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The corporation cannot refuse to renew the licence for the reason that the application is belated\textsuperscript{110}. It is always the duty of the licensee to apply for the renewal of licence within the time stipulated. If it is not done, the municipality has every power to close down the market. But that does not mean that once an order for closing down is made, the licensee cannot apply for the renewal of licence. The delay in filing the application for renewal of licence does not enable the authorities to refuse to grant licence.

The Act does not prescribe any prohibition in establishing a market by the side of a busy highway\textsuperscript{111}. A renewal application cannot straight away be dismissed on the ground that the conducting of the market will create traffic problems. It enables the municipality to prescribe conditions for avoiding traffic jam and regarding parking. Hence, straight away the application cannot be dismissed. Further, the municipality itself has allowed three persons to have their stalls in the market. It was also held that it will allow others also to open new stalls in fish, etc. this itself goes against the case of municipality that the conducting of the trade in the market will create traffic hazards.

**Power of Municipality in respect of private market**

A Municipality may, by notice, require the owner, occupier or farmer of any private market to;

- Construct approaches, entrances, passages, gates, drains and cess pits or such market and provide it with latrines of such description and in such position and number as the Municipality may think fit;
- roof and pave the whole or any portion of it or pave any portion of the floor with such materials as will in the opinion of the Municipality secure imperviousness and ready cleansing;
- ventilate it properly and provide it with supply of water.
- provide passages of sufficient width between the stalls and make such alterations in the stalls, passages, shops, doors or other parts of the markets as the Municipality may direct; and
- keep it in clean and proper state and remove all filth and refuse therefrom.

\textsuperscript{110} Elamkulam Village Co-operative Society Ltd. v. Corporation of Kochi, 1999(3) KLT SN. 74, P. 72

\textsuperscript{111} ibid
Suspension or refusal of licence in default

Where any person after notice given to him in that behalf by the municipality fails within the period and in the manner specified in the said notice to carry out any of the works specified in the Act, the municipality may suspend the licence of the said person or may refuse to grant to him a licence, until such works have been completed. No person shall open or keep open any such market after suspension or refusal of the licence.

Under section 460 of the Kerala Municipalities Act, 1994, application of renewal of licence for a private market is filed after the expiry of the prescribed period for renewal of licence. The finding of the High Court is that there is no law in making an application beyond the time of expiry is not proper and retrospective renewal is improper. The court stated that as per the principle of law ex turpi causa non oritor actio, i.e., an agreement which opposes public policy as laid down could be void and of no effect.112

Butcher's fishmonger's and poulterer's Licence

No person shall without or otherwise than in conformity with a licence from a Municipality carry on the occupation of butcher, fishmonger or poulterer or use any place for the sale of flesh or fish intended for human food in any place within a Municipal area, provided that no licence shall be required for a place used for the selling or storing for sale of preserved fish or flesh kept in airtight and scaled containers. The Secretary may, by order and subject to such restrictions as to supervision and inspection as he thinks fit, grant or refuse to grant such licence.

The resolution restricting trade in dry fish outside the market is reasonable113. The phrase reasonable restriction connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of public. It was in the interest of general public health that the council passed the resolution that trade in dry fish should be conducted only in Chalil market. The resolution only imposes a reasonable restriction upon the fundamental right of the petitioner.

112 Corporation of Kochi v. Elamakkara Village Cooperative Society Ltd., AIR 2006 SC 3093
Duty of Secretary to inspect

The Secretary shall make provision for the constant and vigilant inspection of animals, carcasses, meat, poultry, flesh, fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter, oil and any other articles exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale or preparation for sale.

Power of Secretary for purposes of inspection

The Secretary or any person authorised by him in writing for the purpose may, without notice, enter any slaughter house or any place where animals, poultry or fish intended for food are exposed for sale or where articles of food are being manufactured or exposed for sale at any time by day or night when the slaughter, exposure for sale or manufacture is being carried on and inspect the same and any utensil or vessel used for manufacturing, preparing or containing any such article. Where the Secretary or any person authorised by him has reason to believe that in any place any animal intended for human food is being slaughtered or any carcasses, is being skinned or cut up, or that any food is being manufactured, stored, prepared, packed, cleansed, kept or exposed for sale or sold without or otherwise than in conformity with a licence, he may enter any such place without, notice, at any time, by day or night for the purpose of satisfying himself whether any provision of laws, byelaws or regulations or any condition of a licence is being contravened. In any legal proceeding in respect of the powers exercised under the Act in which it is alleged that any animal, poultry, fish or articles of food were not kept, exposed, hawked about, manufactured, prepared, stored, packed or cleansed for sale, or were not intended for human food, the burden of proof shall lie on the party so alleging.

Power of Secretary to seize deceased animal, noxious food, etc.

Where any animal, poultry or fish intended for food appears to the Secretary or to the person authorised by him, to be diseased, or any food appears to him to be noxious, or if any vessel or utensil used in manufacturing, preparing or containing such articles appears to be of such kind or in such state as to render the article noxious, he may seize or carry away or secure such animal, article of food, utensil or vessel.
Provision of burial and burning grounds and crematoria within or without Municipal area

Every Municipality shall, where there is no necessary land or arrangement to be used as burial or burning grounds or crematoria, arrange land to be used as burial or burning grounds or crematoria within or outside the limits of the Municipal area, by meeting the expense from the Municipal fund, in accordance with the provisions of Section 484 and may charge rent and fees for the use thereof, Provided that in providing burial or burning grounds or crematoria outside the limits of the Municipal area, the opinion of the District Medical Officer also shall be sought and the prior permission of the Local Self Government Institution, within the area of which it is intended to be provided, shall be obtained. The Municipality may farm out the collection of such rents and fees for any period not exceeding three years at a time and on such terms and conditions as it may think fit. Where the Municipality provides any such place without the limits of its municipal area, all the provisions of this Act and all bye-laws framed thereunder for the management of such places within the municipal area shall apply to such place.

Compulsory registration of births and deaths

Every Municipality shall register all births and deaths occurring in the Municipal area under the Registration of Births and Deaths Act, 1969 and the rules made thereunder and make the registration compulsory.

Power of Municipality to prohibit use of water likely to spread infection

Where the health officer or local medical officer certifies that the water in any well, tank or other places within a municipal area, if used for drinking is likely to endanger or cause the spread of any dangerous disease, the Municipality may, by public notice, prohibit the removal or use of such water for drinking and domestic purposes during a specified period mentioned in the notice.

Power to order closure of places of public entertainment

In the event of the prevalence of any dangerous disease within a municipal area the municipality may, by notice, require the owner or occupier of any building, booth or
tent used for purposes of public entertainment to close the same for such period as it may fix.

7.11 Appeal and revision

An appeal may be preferred to the council against any notice issued or any order passed or action taken by the chairperson or the secretary under any of the provisions of the Act or the rules or bye-laws or regulations made thereunder. An appeal against any notice or order of the Secretary on the levy of tax, may be preferred to the Standing Committee for Finance in the case of Town Panchayat or Municipal Council and to the Standing Committee for appeals on taxation in the case of Municipal Corporation. Pending decision on an appeal filed under sub-section (1) the Chairperson may, if an application is made, stay the operation of the notice, order or other proceedings on which the appeal is based. Every case in which an order has been passed under sub-section (3) shall be reported to the Council at its next ordinary meeting or at its next meeting along with the reasons in full for passing such order by the Chairperson and the Council shall either ratify the said order with or without modification or revoke failing which it shall lapse. An appeal shall be filed within thirty days from the date of receipt of the order and dispose of the same by the Council or the Standing Committee, as the case may be, in the manner as it deems fit, within sixty days from the date of its receipt.

General provisions regarding penalties

Whoever

- contravenes any provision of this Act or the sections specified in column (I)of the Fourth Schedule: or
- contravenes any order made under any section specified in the said schedule; or rule thereunder;
- fails to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of the provisions of any of the said sections or rules, shall, on conviction, be punished with fine which may extend to the amount specified against each item

Provided that in all cases the court shall, taking into account the nature and circumstances of each case, order in addition to a sentence of fine, compliance
with the direction or requisition made or issued under this Act or the rules made thereunder within such time as may be specified in such order.

Whoever, after having been convicted of-

- contravening any provision of this Act or the sections specified in column (1) of the Fourth Schedule; or
- contravening any order under any section specified in the said Schedule or rule thereunder; or
- failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of any of the said sections or rule, continues to contravene the provisions of the said sections, rules or orders or to neglect to comply with the said direction or requisition, as the case may be, shall on conviction, be punished for each day during which the offence continues, with fine which may extend to the amount specified against each item. Provided that in all cases, the Court shall, in addition to a sentence of fine, order simple imprisonment of the offender or defaulter till the order of direction is, or caused to be, complied with.

**Right to Information**

Regarding right to information as part of good governance in urban local bodies, similar provisions as in the case of Panchayat raj institutions incorporated in Municipalities Act also. Respective functionaries are entrusted to dispose of allied subject matters.

**Power of persons conducting enquiries**

Every inspecting or superintending officer holding any enquiry into matters falling within the scope of their duties shall have, for the purposes of such enquiry, the same powers in regard to the issue of summonses for the attendance of witnesses and the production of documents as are conferred upon the revenue officers by the Kerala Enquiries and Summonses Act, 1960 and the provisions of that Act shall apply to summonses issued and to persons summoned by virtue of the powers conferred by this section.
Power of Government to make rules

The Government may, by notification in the Gazette, make rules, either prospectively or retrospectively, to carry out all or any of the purposes of this Act in particular and without prejudice to the generality of the foregoing power.

Power of Government to amend the Schedules

The Government may, by notification in the gazette, make additions to the entries in a Schedule to the Act. No Schedule to the Act or any entry in such Schedule shall be omitted except by the authority of a law made by the State Legislature\textsuperscript{114}.

Power of Council to make bye-laws

The Council may make bye-laws not inconsistent with the provisions of this Act and the rules made thereunder or any other law, to provide for its own procedure formalities, process of functioning and other concerned matters. Such bye-laws are to be submitted before the government accordingly to take concurrence therefrom\textsuperscript{115}.

Power to give retrospective effect to certain bye-laws

The Council may, with the previous sanction of the Government, and subject to the provisions hereinafter contained in this Chapter make bye-laws with retrospective effect.

Power of the Council to make regulations

The Council may make regulations not inconsistent with the provisions of this Act and the rules made thereunder on any matter and in respect of which regulations are to be, or may be, made under this Act.

Confirmation of bye-laws or regulations

No bye-law or regulation or any cancellation or alteration thereof shall have effect until the same is approved and confirmed by the Government. A bye-law or regulation or cancellation or alteration thereof approved and confirmed shall be published in the

\textsuperscript{115} section 567 of the Kerala Municipalities Act, 1994
Gazette and shall come into operation on the date of such publications unless a different date is provided therein.

**Cancellation of Bye-laws or Regulations**

The Government, may for the reasons to be specified in the order in this behalf, cancel any Bye-law or Regulation and thereafter such Bye-law or Regulation shall be of no effect, provided that before cancelling any Bye-law or Regulation under this section, the Council concerned shall be given an opportunity to express its opinion in respect of the cancellation.