

The Evacuee Interest (Separation) Act, 1951

UNION OF INDIA

India

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Act 64 of 1951

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An Act to make special provisions for the separation of the interests of evacuees from those of other persons in property in which such other persons are also interested and for matters connected therewith. WHEREAS it is expedient to make special provisions for the separation of the interests of evacuees from those of other persons in property in which such other persons are also interested and for matters connected therewith; AND WHEREAS some of the aforesaid provisions may relate to certain matters in the State List and Parliament is empowered, in pursuance of a Resolution passed under Article 249 of the Constitution, to make such laws; BE it therefore enacted by Parliament as follows:-

Chapter I

PRELIMINARY

1. Short title and extent.

(1) This Act may be called the Evacuee Interest (Separation) Act, 1951. (2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in the States of Assam, West Bengal, Tripura, Manipur and Jammu and Kashmir.

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

(a) "appellate officer" means an officer appointed as such by the State Government under section 13; (b) "claim" means the assertion by any person, not being an evacuee, of any right, title or interest in any property--(i) as a co-sharer or partner of an evacuee in the property; or (ii) as a mortgagee of the interest of an evacuee in the property; or Supplemented in:- (a) Am., in Panjab by Punjab Act 15 of 1960. (b) Kerala in Kerala Act 15 of 1960. (c) Andhra Pradesh by Andhra Pradesh Act 28 of 1960. (d) U. P. by U. P. Act 5 of 1961. (e) Bihar by Bihar Act 20 of 1960. (f) Madras by Madras 3 of 1961. (g) Rajasthan by Rajasthan Act 1 of 1961. (h) Mysore by Mysore Act 3 of 1961. (iii) as a mortgagor having

mortgaged the property or any interest therein in favour of an evacuee; and includes any other interest which such person may have jointly with an evacuee and which is notified in this behalf by the Central Government in the Official Gazette;(c)" competent officer" means an officer appointed as such by the State Government under section 4;(d)" composite property" means any property which, or any property in which an interest, has been declared to be evacuee property or has vested in the Custodian under the Administration of Evacuee Property Act, 1950 (31 of 1956), and--(i)in which the interest of the evacuee consists of an undivided share in the property held by him as a co-sharer or partner of any other person, not being an evacuee; or(ii)in which the interest of the evacuee is subject to mortgage in any form in favour of a person, not being an evacuee; or(iii)in which the interest of a person, not being an evacuee, is subject to mortgage in any form in favour of an evacuee; or(iv)in which an evacuee has such other interest jointly with any other person, not being an evacuee, as may be notified in this behalf by the Central Government, in the Official Gazette;(e)" evacuee interest", in relation to a composite property, means the right, title and interest of an evacuee in that property;(f)" mortgage debt" means any liability in respect of a property due under any form of mortgage (including any usufructuary mortgage or mortgage by conditional sale) whether such liability is payable presently or in future, or under any decree or order of a Court or otherwise, or whether ascertained or not, which--(i)in any case where it is incurred by an evacuee, is secured by the mortgage of the interest of the evacuee in the property in favour of a person, not being an evacuee;(ii)in any case where it is incurred by a person not being an evacuee, is secured by the mortgage of the interest of such person in the property in favour of an evacuee; but does not include any such liability of an evacuee arising out of any transaction entered into after the 14th day of August, 1947 unless such transaction has been confirmed by the Custodian under the Administration of Evacuee Property Act, 1950 (31 of 1950);(g)" prescribed" means prescribed by rules made under this Act;(h)" principal money", in relation to a mortgage deed executed by an evacuee, means--(i)in the case of a mortgage deed which has not been executed by way of renewal of a prior mortgage deed, the sum of money advanced by way of loan at the time of the execution of the mortgage deed;(ii) in the case of a mortgage deed which has been executed at any time before the 1st day of January, 1940 , by way of renewal of a prior mortgage deed, the consideration for which the renewed mortgage deed was executed;(iii)in the case of a mortgage deed which has been executed at any time after the 1st day of January, 1940 , by way of renewal of a prior mortgage deed executed before that date, the sum of money which became due on the 1st day of January, 1940 , on account of the money advanced on the prior mortgage deed and interest thereon up to the said date;(iv)in the case of a mortgage deed which was executed at any time after the 1st day of January, 1940 , by way of renewal of a prior mortgage deed which was also executed after that date, the sum of money advanced by way of loan at the time of the execution of the prior mortgage deed; Explanation.-- For the purpose of calculating the principal money in relation to any mortgage deed which has been executed by way of renewal of a prior mortgage deed, any sum of money advanced at the time of such renewal in addition to the sum of money which was due on the prior mortgage deed shall also be taken into account.(i)all words and expressions used, but not defined in this Act and defined in the Administration of Evacuee Property Act, 1950 (31 of 1950), shall have the meanings assigned to them in that Act.

3. Act to override other laws.

Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

Chapter II

SEPARATION OF EVACUEE INTEREST IN COMPOSITE PROPERTY

4. Power to appoint competent officers.

(1)The State Government may, with the approval of the Central Government, by notification in the Official Gazette, appoint as many competent officers as may be necessary for the purpose of performing the functions assigned to them by or under this Act, and a competent officer may perform his functions in such local area or areas as may be specified in the notification.(2)No person shall be qualified to be appointed as a competent officer under this Act unless he has held a judicial office for at least five years, or has been an advocate or a pleader for at least seven years.

5. Jurisdiction of competent officers.

A competent officer shall have jurisdiction to decide any claim relating to any composite property situate within the limits of the local area of his jurisdiction and such cases or classes of cases as may, by general or special order, be transferred to him under section 19 by the Central Government or the appellate officer.

6. Notice to submit claims.

(1)For the purpose of determining or separating the evacuee interest in a composite property, any competent officer having jurisdiction over such property may, either on information received in this behalf from the Custodian or on an application from a claimant, issue, in such form and manner as may be prescribed,--(a)a general notice requiring all persons who claim interest in such property, and(b)also a notice on every person who, in the opinion of the competent officer, may have a claim in such property, to submit claims, if any, in respect of that property.(2)An application under sub-section (1) shall be in such form and manner as may be prescribed.(3)No application under this section shall be entertained if filed after the expiry of one year from the commencement of the Evacuee Interest (Separation) Amendment Act, 1960 (27 of 1960).]

7. Submission of claims.

(1) Any person claiming an interest in a composite property may, within sixty days of the date of the issue of the general notice or service of individual notice under section 6, whichever is later, submit to the competent officer a statement of his claim in writing and signed and verified in the prescribed manner. (2) A statement of claim under sub-section (1) shall be drawn up, as far as may be, in the form of pleadings under the Code of Civil Procedure, 1908 (5 of 1908) and shall include the following particulars, namely:—(a) the nature of the interest of the claimant in the composite property; (b) the estimated money value of the composite property; (c) where the claim is made by a co-sharer or partner, the extent of the share of the claimant and the money value of such share; (d) where the claim is made by a mortgagee,—(i) the principal money and the rate of interest chargeable under the mortgage deed; (ii) payments made towards the mortgage debt after the principal money was advanced or deemed to have been advanced; (iii) the history of the mortgage debt in so far as it is relevant to the determination of the principal money; (iv) particulars of the property mortgaged and the estimated value of such property; (v) particulars of any property the possession of which has been taken by the mortgagee as security for, or in lieu of payment of, the mortgage debt; (vi) the total amount claimed under the mortgage debt in accordance with the provisions of this Act; (e) where the claim is made by a mortgagor, the total amount due under the mortgage debt and the particulars necessary to determine the same; (f) the order of preference in which the claimant desires to have his interest separated from that of the evacuee under section 10; (g) any other particulars which may be prescribed. (3) The claimant shall, along with the submission of claim under sub-section (1), file true copies of all documents in his possession or power on which the claim is based and a list of any other documents (whether in his possession or power or not) on which he intends to rely as evidence in support of his claim; and the claimant shall, whenever required to do so by the competent officer, produce all the documents of which true copies have been filed and also the documents in his possession or power which have been entered in the list. (4) No document which should have been but has not been filed in accordance with the requirements of sub-section (3), shall be received at any stage of the proceedings without the leave of the competent officer.

8. Decision by competent officer.

(1) On receipt of a statement of claim under section 7, the competent officer shall, subject to the provisions of sub-sections (2) and (3), hold an inquiry into the claim in accordance with the procedure laid down in section 17 and pass an order determining the interest of the evacuee and the claimant in the property in question and the order shall contain all or any of the following particulars, namely:—(a) the money value of the property; (b) in any case where the evacuee and the claimant are co-sharers or partners, their respective shares in the property and the money value of such shares; (c) in any case where the claim is made by a mortgagor, the amount due to the evacuee; (d) in any case where the claim is made by a mortgagee, the amount due under the claim in accordance with the provisions of section 9. (2) Where the Custodian under the Administration of Evacuee Property Act, 1950 (31 of 1950), has determined that the property in question or any interest therein is evacuee property, the decision of the Custodian shall be binding on the competent officer: Provided that nothing contained in this sub-section shall debar the competent officer from

determining the mortgage debt in respect of such property or any interest therein or from separating the interest of the evacuee from that of the claimant under section 10.(3)If there is any dispute as to whether a liability is a mortgage debt or not or whether any claim submitted under section 7 exists, the competent officer shall decide such dispute: Provided that a decree of a Civil Court (other than an ex- parte decree passed after the 14th day of August, 1947) shall, subject to the provisions of sections 9 and 10, be binding on the competent officer in respect of any matter which has been finally decided by such decree; and where any matter was decided by an ex- parte decree passed by a Civil Court after the 14th day of August, 1947 , the competent officer may decide such matter afresh and on such decision being made, the ex- parte decree shall be deemed to have no effect.

9. Certain reliefs in respect of mortgaged property of evacuees.

(1)Notwithstanding anything to the contrary in any law or contract or any decree or order of a Civil Court or other authority, where the claim is made by a mortgagee, no mortgaged property of an evacuee shall, subject to the provisions of sub- section (2), be liable for the payment of interest at a rate exceeding five per cent. per annum simple on the principal money advanced or deemed to have been advanced.(2)Where a mortgagee has taken possession on any terms whatsoever of any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed; and if the aforesaid period has not expired and the mortgage debt has not been extinguished, the competent officer shall determine the mortgage debt due having regard to the proportion which the unexpired portion of that period bears to the total of that period.

10. Separation of the interests of evacuees from those of claimants in composite property.

Notwithstanding anything to the contrary in any law or contract or any decree or order of a Civil Court or other authority, the competent officer may, subject to any rules that may be made in this behalf, take all such measures as he may consider necessary for the purpose of separating the interests of the evacuees from those of the claimants in any composite property, and in particular may,--(a) in the case of any claim of a co- sharer or partner,--(i)direct the Custodian to pay to the claimant the amount of money assessed in respect of his share in the composite property or deposit the same in a Civil Court having jurisdiction over such property and deliver possession of the property to the Custodian and the claimant may withdraw the amount in deposit in the Civil Court; or(ii)transfer the property to the claimant on payment by him of the amount of money assessed in respect of the share of the evacuee in the property; or(iii)sell the property and distribute the sale proceeds thereof between the Custodian and the claimant in proportion to the share of the evacuee and of the claimant in the property; or(iv)partition the property according to shares of the evacuee and the claimant and deliver possession of the shares allotted to the evacuee and the claimant to the Custodian and the claimant respectively;(b)in the case of any claim of a mortgagor or a mortgagee,--(i)pay to the Custodian or the claimant the amount payable under the mortgage debt and redeem the mortgaged property; or(ii)sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof; or(iii)partition the property between the

mortgagor and the mortgagee having regard to the share to which the mortgagee would be entitled in lieu of his claim;(c)adopt a combination of all or some of the aforesaid measures: Provided that before taking any measure under this section, the competent officer shall take into account the order of preference filed by the claimant under clause (f) of sub- section (2) of section 7; and in any case where the claimant is a mortgagor and tenders the amount due, the competent officer shall accept the same in full satisfaction of the mortgage debt.

11. Vesting of evacuee interest in the Custodian free from encumbrances and payments, etc., to be valid discharge from all claims.

(1)Where in respect of any property, notice under section 6 is issued but no claim is filed or found to exist or where any claim in respect of such property is found to exist and the competent officer separates the evacuee interest therein under section 10, the whole property, or, as the case may be, the evacuee interest in the property thus separated shall vest in the Custodian free from all encumbrances and liabilities and any payment, transfer or partition made or effected under section 10, in satisfaction of any claim in respect of the property shall be a full and valid discharge of all claims in respect of the property.(2)The Custodian may take possession of any such property by evicting the claimant and other persons who may be in occupation thereof and may, for that purpose, use or cause to be used such force as may be necessary:Provided that the Custodian shall not disturb the possession of any person (other than the claimant) who was in lawful possession of the property at the commencement of this Act and has continued in such possession.

12. Rights of claimants inter se and by other persons against claimants not to be affected.

Nothing in this Chapter shall prejudice any rights in respect of the property transferred or delivered, or payment made, to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the property is delivered or transferred or the payment is made.

Chapter III

APPEAL, REVISION AND POWERS AND PROCEDURE OF COMPETENT OFFICERS AND APPELLATE OFFICERS

13. Power to appoint appellate officers.

(1)The State Government with the approval of the Central Government may, by notification in the Official Gazette, appoint as many appellate officers as may be necessary for the purpose of hearing appeals against the orders of the competent officers and an appellate officer shall have jurisdiction over such local area or areas as may be specified in the notification.(2)No person shall be qualified to be appointed as an appellate officer under this Act unless such person--(a)is, or has been, or is qualified for appointment as, a Judge of a High Court; or(b)is, or has been, a District Judge.

14. Appeals.

(1) Any person aggrieved by an order of the competent officer made under section 8 or section 10 may, within sixty days from the date of the order, prefer an appeal to the appellate officer in such form and manner as may be prescribed: Provided that the appellate officer may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) The appellate officer may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such orders as he deems fit.

15. Power of revision of the appellate officer.

The appellate officer may at any time call for the record of any proceeding in which the competent officer has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit: Provided that the appellate officer shall not pass an order under this section prejudicially to any person without giving him a reasonable opportunity of being heard.

16. Amendment of orders.

Clerical or arithmetical mistakes in orders passed by a competent officer or an appellate officer or errors arising therein from any accidental slip or omission, may, at any time, be corrected by the competent officer or the appellate officer either of his own motion or on an application received in this behalf from any of the parties.

17. Powers and procedure of competent officers and appellate officers.

(1) A competent officer or an appellate officer shall, for the purpose of holding any inquiry or hearing any appeal under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:—(a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) issuing commissions for the examination of witnesses; (d) any other matter which may be prescribed; and any proceeding before the competent officer or the appellate officer shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code (45 of 1860), and the competent officer or the appellate officer shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898). (2) An appellate officer shall, subject to the provisions of this Act, have such further powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when hearing an appeal. (3) Subject to any rules made in this behalf, the competent officer and appellate officer shall follow the same procedure as a Civil Court does in regard to civil suits including recording of evidence and the provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, apply to such proceedings.

18. Finality of orders.

Save as otherwise expressly provided in this Act, every order made by any appellate officer or competent officer shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit, application or execution proceedings.

Chapter IV MISCELLANEOUS

19. Power to transfer cases.

(1)The Central Government or the appellate officer may, by order in writing at any time, transfer any case pending before a competent officer to another competent officer for holding the inquiry and the competent officer to whom the case is so transferred may proceed either de novo or from the stage at which it was transferred.(2)The Central Government or the State Government may, by order in writing at any time, transfer any appeal pending before an appellate officer to another appellate officer for hearing the appeal and the appellate officer to whom the appeal is so transferred may proceed either de novo or from the stage at which it was transferred.

20. Jurisdiction of Civil Courts barred in certain matters.

(1)Save as otherwise expressly provided in this Act, no Civil or Revenue Court shall entertain any suit or proceeding in so far as it relates to any claim to composite property which the competent officer is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the competent officer in respect of the composite property shall be granted by any Civil Court or other authority.(2)All suits and proceedings pending before a Civil or Revenue Court at the commencement of this Act shall, in so far as they relate to any claim filed before a competent officer under section 7, be stayed during the pendency of any proceeding under this Act.(3)Nothing in sub- section (1) shall prevent any Civil or Revenue Court from entertaining any suit or proceeding relating to any right in respect of any payment made, or property transferred or delivered, to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the payment is made or the property is delivered or transferred.

21. Competent officer and appellate officer to be a public servant.

Every competent officer and appellate officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

22. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against the appellate officer or the competent officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

23. Power to make rules.

(1)The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-(a) the form of any notice and the manner of its service;(b)the form and manner in which an application may be filed under section 6;(c)the form and manner in which claims may be submitted and the particulars which a statement of claim may contain;(d)the manner in which inquiries under this Act may be held and the procedure to be followed by competent officers in such proceedings;(e)the form and manner in which appeals may be preferred against the order of competent officers and the procedure to be followed by appellate officers;(f)the powers vested in a Civil Court which may be exercised by the competent officers and appellate officers while holding an inquiry or hearing an appeal, as the case may be, under this Act;(g)the manner of separating the interests of the evacuees from those of claimants in any composite property;(h)any other matter which has to be, or may be, prescribed under this Act.