

# **The Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006**

JAMMU & KASHMIR

India

## **The Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006**

### **Rule**

### **THE-JAMMU-AND-KASHMIR-STATE-EVACUEES-ADMINISTRATION-O of 2006**

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The Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006(Act No. 6 of Svt. 2006)[Promulgated by Shree Yuvaraj under section 5 of the Jammu and Kashmir Constitution Act, 1996, and published in the Government Gazette dated 21st Bhadon, 2006.]An Act to provide for the administration of Evacuees' Property in the Jammu and Kashmir State.Whereas it is expedient to provide for the administration of evacuees' property in the Jammu and Kashmir State.Now, therefore, in exercise of the powers reserved under section 5 of the Jammu and Kashmir Constitution Act, 1996, read with the Proclamation issued by His Highness and published in the extraordinary issue of the Jammu and Kashmir Government Gazette dated 7th Har, 2006 Yuvaraj Shri Karan Singh Ji Bahadur is pleased to enact as follows :-Chapter-I Preliminary

### **1. Short title, extent and commencement.**

(1)This Act may be called the Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006.(2)It extends to the whole of the Jammu and Kashmir State.(3)It shall come into force at once.

### **2. Definitions.**

- In this Act, unless there is anything repugnant in the subject or context,-(a)"allotment" means the [grant by the Government or the Custodian] [Substituted by Act XXIII of Svt. 2007 for 'grant by the Custodian'.] or any other person duly authorised by the Custodian in this behalf of a temporary right of use and occupation of any immovable property of an evacuee to any person otherwise than by way of lease;(aa)[ "Custodian General" means the Custodian General of evacuee property in the State of

Jammu and Kashmir, appointed by the Government under section 3-A;] [Clause (aa) interested by Act XXIII of Svt. 2007.](b)"Custodian" means the Custodian or Custodians for the State or part thereof and includes any Additional, Deputy or Assistant Custodian of evacuee property appointed for the State or part thereof;(c)"evacuee" means any person,-(i)who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leaves or has on or after the 1st day of March, 1947, left any place in the State for any place outside the territories now forming part of India, or(ii)who is resident in any place now forming part of Pakistan or in any such part of the territory of the Jammu and Kashmir State as is under operational control of the Pakistan Armed Force, and who for that reason is unable to occupy, supervise or manage in person his property in the State or whose property in the State has ceased to be occupied, supervised or managed by any person or is being occupied, supervised or managed by an unauthorised person, or(iii)[ who has, after the 14th day of August, 1947, acquired by way of allotment or lease or by means of unlawful occupation or other illegal means, any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan or any such part of the territories of the Jammu and Kashmir State as is under the operational control of the Pakistan Armed Forces;] [Sub-clause (iii) substituted by Act XXIII of Svt. 2007.](d)[ "evacuee property" means any property in which an evacuee has any right or interest (whether personally or has a trustee or as a beneficiary or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer unless such transfer has been confirmed by the Custodian, but does not include- [Clause (d) substituted by Act XXIII of Svt. 2007.](i)any ornaments, any wearing apparel, cooking vessels, or other household effects in the immediate physical possession of evacuee;(ii)any property belonging to a Joint Stock Company, the registered office of which was situated before the 15th day of August, 1947, in any place now forming part of Pakistan or any such part of the territories of the Jammu and Kashmir State as is under the operational control of the Pakistan Armed Forces and continues to be so situated after the said date;(e)"Prescribed" means prescribed by rules made under this Act;](f)"Property " means property of any kind, and includes any right or interest in such property, but does not include mere right to sue [\* \* \* \*] [Words 'or a cash deposit in a Bank' deleted by XXIII of Svt. 2007.];(g)"unauthorised person" means any person (whether duly empowered in this behalf by the evacuee or otherwise) who, after the [14th day of August] [Substituted by Act XXII of Svt. 2007 for '15th day of August'.], 1947, has been occupying, supervising or managing the property of an evacuee without the approval of the Custodian.

### **3. Act to override other laws.**

- [(1) 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.(2)For the removal of doubts, it is hereby declared that nothing in any other law controlling the rents of, or evictions from, any property shall apply or be deemed ever to have applied to evacuee property.] [Sub-section (2) inserted by Act XXI of 1974, section 2]Chapter-II [Evacuee Property and Vesting Thereof in the Custodian] [Inserted by Act XXIII of svt. 2007 for '15th day of August]

**3A. [ Appointment of Custodian General and Deputy Custodian General. - The Government may, by notification in the Government Gazette, appoint a Custodian General and one or more Deputy Custodians General as may be necessary for the purpose of discharging the duties imposed upon the Custodian General and the Deputy Custodian General by or under this Act.] [Section 3-A substituted by Act VII of Svt. 2010 (section 3-A was originally inserted by Act XXIII of Svt. 2007.)]**

**4. [ Custodians and their rights, powers, duties and liabilities, appointment of Custodians, etc. - (1) The Government may, by notification in the Government Gazette, appoint for the State or any part thereof one or more Custodians, and as many Additional, Deputy or Assistant Custodians of evacuee property as may be necessary for the purpose of discharging the duties imposed on the Custodians by or under this Act.**

(2) Subject to the provisions of this Act, all Custodians, Additional, Deputy or Assistant Custodians of evacuee property shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian General. (3) Subject to the provisions of sub-section (2) Additional, Deputy and Assistant Custodians of evacuee property shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian, but the Government may, by general or special order, provide for the distribution of work among them.] [Section 4 substituted by Act XXIII of Svt. 2007.]

**4A. [ Appointment of staff. - (1) The Custodian General may, with the approval of the Minister Incharge Evacuee Property Department, appoint such officers and employees as may be required for carrying out the purposes of this Act.**

(2) The method of recruitment and conditions of service of the officers and employees appointed under sub-section (1), shall be such as may be prescribed.

**4B. Powers of the Minister Incharge to make transfers.**

- Notwithstanding anything contained in this Act or in any other law for the time being in force, the Minister Incharge Evacuee Property Department shall have the power of transferring officers and employees of Evacuee Property Department, appointed under section 4-A, to a Department of the Government and vice versa : Provided that the conditions of service of such officers and employees are not affected by such transfers.] [Inserted by Act VII of 1980, section 2.]

## **5. Vesting of evacuee property in the Custodian.**

- [(1) Subject to the provisions of this Act, all evacuee property situated in the State shall be deemed to have vested in the Custodian,-(a)in case of the property of an evacuee as defined in sub-clause (i) of clause (c) of section 2, from the date on which he leaves or left any place in the State for any place outside the territories now forming part of India;(b)in the case of the property of an evacuee as defined in sub-clause (ii) of clause (c) of section 2, from the 15th day of August 1947; and(c)in the case of any other property, from the date it has been registered as evacuee property.(2)Where immediately before the commencement of this Act, any property in the State had vested evacuee property in any person exercising the powers of a Custodian under any corresponding law in force in the State immediately before such commencement, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed under this Act, and shall continue to so vest.] [Section 5(1) and (2) substituted by Act XXIII of Svt. 2007.](3)Where any property belonging to a joint stock company had vested in any person exercising the powers of a Custodian immediately before the commencement of this act, then, nothing contained in clause (d) of section 2 shall affect the operation of sub-section (2), but the Government may, by notification in the Government Gazette, direct that the Custodian shall be divested of any such property in such manner and after such period, as may be specified in the notification.

## **6. Notification of evacuee property.**

(1)The Custodian may, from time to time, notify, either by publication in the Jammu and Kashmir Government Gazette or in such other manner as may be prescribed, evacuee properties which have vested in him under this Act.(2)Where after the vesting of any evacuee property in the Custodian any person is in possession of any such property he shall be deemed to be holding it on behalf of the Custodian and shall, on demand, surrender possession of it to the Custodian or any person duly authorised by him in this behalf.

## **7. Power of Custodian to take possession of evacuee property vested in him.**

- If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian or to any person duly authorised by him in this behalf, the Custodian may use such force as is necessary for taking possession of such property and may, for this purpose, after giving reasonable warning and facility to any women not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other Act necessary for the said purpose.

## **8. Claim by interested persons.**

(1)Any person claiming any right to or interest in, any property, which has been notified under section 6 as evacuee property, or in respect of which a demand requiring surrender of possession has been made by the Custodian, may prefer a claim to the Custodian on the grounds that,-(a)the

property is not evacuee property; or(b)his interest in the property has not been affected by the provisions of this Act.(2)Any claim under sub-section (1) shall be preferred by an application made within thirty days from the date on which the notification was issued on the demand requiring surrender of possession was made by the Custodian :Provided that the Custodian may, for sufficient reasons to be recorded, entertain the application even if it is made after the expiry of the aforesaid period :[Provided further that every application under sub-section (2) shall be accompanied by an affidavit to the effect that the property claimed is not subjudice before any court of law having jurisdiction.] [Inserted by Act XIX of 1987, section 2.](3)On receiving an application under sub-section (2), the Custodian shall hold a summary inquiry in the prescribed manner, take such evidence as may be produced and pass an order, stating the reasons therefor, either rejecting the application or allowing it wholly or in part.(4)[ For the purposes of this section Custodian means the Custodian appointed under section 4 for any Province of the State.] [Added by Act XIX of 1987, section 2.]

## **9. Powers and duties of the Custodian generally.**

(1)[Subject to the provisions of any rules that may be made in this behalf by the Government, the Custodian may] [Substituted by Act XXVI of 1963.] take such measures as he considers necessary or expedient for the purposes of administering, [imposing] [Word 'imposing' inserted by Act XXXVI of Svt. 2011], preserving and managing, any evacuee property [and generally for the purpose of enabling him satisfactorily to discharge any of duties imposed on him by or under this Act] [Substituted by Act XXIII of Svt. 2007 for 'which has vested in him'.] and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.(2)Without prejudice to the generality of the provisions contained in sub-section (1) the Custodian may, for any of the purposes aforesaid-(a)carry on the business of the evacuee;(b)appoint a manager for the property of the evacuee or for carrying on any business or undertaking of the evacuee and authorise the manager to exercise any of the powers of the Custodian under this section;(c)enter or authorise any other person to enter on any land or premises to inspect any evacuee property;(d)take all such measures as may be necessary to keep any evacuee property in good repair;(e)complete any building which has vested in him requires to be completed;(ee)[ improve with the previous sanction of the Government any evacuee property; [Clause (ee) inserted by Act XXXVI of Svt. 2011.]]Provided that notwithstanding contained in this Act, such property shall not be restored to the evacuee concerned unless he pays the cost of the improvements made therein after adjusting the amount that has accrued to him on account of any income on such property.Provided further that where such property is land, the government may grant him land in exchange or price thereof as may be determined by the public works Department and in the event of exchange, the land granted in exchange to the evacuee will vest in the evacuee and that formerly owned by the evacuee will vest in the Government.Explanation. - "Improvement" means any work by which the value of the property has been and continues to be increased and includes amongst other things erection of a building, renewal or reconstruction of any structure or any alteration therein or addition thereto as is not of the nature of mere repairs and directly increase its value, the planting of trees, the reclaiming, clearing, increasing, levelling or terracing of land or the construction of works for drainage of land or for protection of property against floods or from erosion or from damage by water;](f)require any person to furnish such returns, accounts or other information in relation to evacuee property and to

produce such documents as the Custodian considers necessary for the discharging of his duties under this Act;(g)take such action as may be necessary for the recovery of any debt due to the evacuee; 572(h)institute, defend or continue any legal proceedings in any Civil or Revenue Court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or compromise any claims, debts or liabilities on behalf of the evacuee;(i)raise with the previous sanction of the Government on the security of the evacuee property such loans as may be necessary;(j)incur any expenditure, including the payment of taxes, duties, cesses and rates to the Government or to any local authority or of any amounts due to any employee of the evacuee or of any debt due by the evacuee to any person;(k)pay with previous sanction of the Government to the evacuee or to any member of his family or to any other person as in the opinion of the Custodian is entitled thereto any sums of money [out of the funds in his possession;] [Added Act XXIII of Svt. 2007.](l)allot in accordance with any rules made in this behalf by the Government or transfer in any manner whatsoever any evacuee property, notwithstanding anything contained in any law or agreement to the contrary relating thereto :Provided that the Custodian shall not [sell or transfer any [\* \*] [Substituted by Act XXXII of 1974. section 2.] property] or any business or other undertaking of the evacuee, except with the previous approval of the [Custodian General; ] [Substituted by Act XXIII of Svt. 2007. for 'Government'.](ll)[ allow any displaced person or an authorised allottee to raise farm-hut on an area not exceeding three marlas on the evacuee land allotted to him. [Inserted by Act XV of 1978. section 2.]Explanation. - For purposes of this clause the words, "displaced persons" and "evacuee land" shall have the same meaning as in section 2 of the Jammu and Kashmir Displaced persons (Permanent Settlement) Act, 1971;](m)invest any money held by him in any of the securities approved by the Government or in the prescribed manner;(mm)[ redeem in accordance with law any property held by a person as mortgagee;] [Inserted by Act XXVII of 1975, section 2.](n)delegate, by general or special order, all or any of his functions under this Act to such officers or persons as he thinks fit.

**9A. [ Prohibition of erection or re-erection of buildings without permission. -**  
**(1) No person possession or occupying any evacuee property, [x x x]**  
**[Inserted by Act XXVII of 1975, Section 3.] whether as an allottee or**  
**otherwise, shall erect or re-erect any building thereon without the sanction in**  
**writing of the Custodian.**

(2)Where any building is erected or re-erected without the sanction referred to in sub-section (1) or in contravention of any condition subject to which such sanction has been granted, such erected or re-erected portion of the building shall be deemed to be the evacuee property under this Act and the person erecting, re-erecting, possessing or occupying the property whether as an allottee or otherwise shall have no right or claim for the ownership of such erected or re-erected portion or any compensation in lieu thereof :Provided that where any person seeks sanction only for repairs of the building, the Custodian shall accord sanction within one month from the date of receipt of the application and if the Custodian fails to accord it within that period, it shall be deemed to have been accorded.Explanation. - In this section-(a)"building" means any shop, house, hut, out-house, shed, superstructure and stable whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, metal or any other material whatever and includes a wall and a

well;(b)"erect or re-erect" any building includes-(i)any material alteration or enlargement of any building;(ii)the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;(iii)the conversion into more than one place for human habitation of a building originally constructed as one such place;(iv)the conversion of two or more places of human habitation into a greater number of such places.(v)such alteration of a building as affects an alteration in its drainage or sanitary arrangement or effect its stability;(vi)the addition of any rooms, buildings, out-houses or other structures to any building;(vii)reconstruction of a building or a portion thereof by means of props commonly known as "Pand Pand" in Kashmir Valley.]

## **10. Power to vary or cancel leases or allotments of evacuee property.**

(1)Notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any such lease or of any agreement on which any evacuee property is held or occupied by any person, whether such allotment, lease or agreement was granted or entered into before or after commencement of this Act :Provided that no allotment shall be cancelled except as provided for in the rules framed by the Government in this behalf :[Provided further that the Custodian shall not amend, vary or alter any of the terms of an allotment or lease or agreement involving financial implications except with the previous approval of the Custodian General.] [Inserted by Act XXVII of 1975, section 4.](2)Where by reason of any action taken under sub-section (1) any person has ceased to be entitled to possession of any evacuee property, he shall on demand by the Custodian surrender possession of such property to the Custodian or any person [duly] [Inserted by Act XXIII of Svt. 2007.] authorised by him in this behalf.(3)if any person fails to surrender possession on demand under sub-section (2), the Custodian may, notwithstanding anything [to the contrary] contained in any other law for the time being in force, eject such person and take possession of such property in the manner provided in section 7.

**10A. [ Revision of Rent. - (1) If at any time the Government is of the opinion that it is necessary to revise the rates of rent of evacuee property so as to make the rent reasonable, it may by rules provide guide-lines and specific norms in that behalf, and the Custodian shall thereupon revise the rent of the evacuee property generally or specifically, as he deems fit, after providing to the occupant an opportunity of being heard.**

(2)Without prejudice to the generality of the foregoing provision the rent of any evacuee property shall be assessed and fixed in each case on the basis of capital cost prevalent in the year of construction of such property in accordance with the rent norms of the Public works Department so far as may be practicable :Provided that in the case of any evacuee property constructed on or before 15th of August, 1947, the rent-shall be fixed in accordance with the rent norms of the Public Works Department in the said year, so far as may be practicable.Explanation. - For purposes of assessment of rent sub-section (2) the capital cost shall be the cost of constructing evacuee property and any capital expenditure incurred after such construction which have added to or add to accommodation

and involve replacement of the existing type of work for one of a more expensive character.(3)Where a vacant evacuee land is allotted to a person, ground rent shall be payable annually for such land at such rates as may be prescribed :Provided that where structure has been raised on or after 1st day of January, 1948, or is raised in future on such land a premium shall also be payable at such rate as may be prescribed.Explanation. - Different rates of ground rent and of premium may be prescribed for the propose for different use of land e.g. residential, commercial or industrial.(4)Any rent fixed by the Custodian under this section shall be payable by the person occupying such property notwithstanding anything contrary contained in any lease, agreement or any other arrangement relating thereto, as of the rent so revised was fixed in such lease, agreement or other arrangement, as the case may be, with effect from the date of such revision.(5)If any person occupying any evacuee property refuses or fails to payment at the rate fixed under this section, the Custodian shall in the manner provided in section 7 evict that person from such property and take possession thereof.(6)Notwithstanding anything contained in this Act,-(a)an appeal against the order of the Custodian under subsection (1), shall lie to the Custodian General within a period of 30 days from the date of issue of such order;(b)the Minister incharge of the Evacuee property Department may, at any time, either on his motion or on application made to him in this behalf, call for the record of any case in which the Custodian or Custodian General has passed an order and may pass such order as he thinks fit.(7)No court shall have jurisdiction to entertain any suit, proceeding or application or grant stay or injunction in respect of anything done or proposed to be done under this section.] [Inserted by Act III of 1977, section 2.]

## **11. Payments to Custodian to be valid discharge.**

(1)Any amount due to any evacuee in respect of any property which has vested in the Custodian or in respect of any transaction entered into by the evacuee shall be paid to the Custodian by the person liable to pay the same.(2)Any payment made otherwise than in accordance with subsection (1) shall not be deemed to discharge the person paying it from his obligation [to pay the amount due] [Inserted by Act XXIII of Svt. 2007.], and shall not affect the right of the Custodian to enforce such obligation against [any] [Inserted by Act XXIII of Svt. 2007.] such person.

## **12. Expenditure by Custodian how to be recouped.**

- Subject to the provisions of section 36, any expenditure incurred by the Custodian in the exercise of any power conferred by this Act, shall, in relation to any evacuee property in respect of which [it] [Inserted by Act XXIII of Svt. 2007.] has been incurred, be a charge on such property and shall have priority over all other charges on the property, and such expenditure may be met or recouped by the Custodian out of the income accruing from such property or the sale proceeds thereof.

## **13. Maintenance of accounts by Custodian.**

(1)The Custodian shall maintain a separate account of the property of each evacuee of which he has taken possession, and shall cause to be made therein entries of all receipts and expenditure in respect thereof.(2)The accounts shall be maintained in such form and in such manner as may be prescribed.(3)The [Custodian General] [Substituted by Act XXIII of Svt. 2007. for 'Government'.]



shall cause such accounts to be inspected and audited at such intervals and by such persons as may be prescribed.

## 14. Restoration of property.

(1)The Custodian may, on application made to him [in this behalf in writing] [Substituted by Act XXIII of Svt. 2007. for 'in this behalf'.] by an evacuee or any person claiming to be the heir of [an evacuee] [Substituted by Act XXIII of Svt. 2007. for 'such evacuee'.]. Restore, subject to such terms and conditions as he may think fit to impose, the evacuee property to which the evacuee or other person would have been entitled if this Act were not in force :Provided that the applicant produces in support of his application a certificate from the Government or from any person authorised by the Government in this behalf to the effect that the evacuee property may be so restored if the applicant is otherwise entitled thereto :[Provided further that every application under this sub-section shall be accompanied by an affidavit to the effect that the property claimed is not sub judice before any court of law having jurisdiction.] [Substituted by Act XIX of 1987, section 3.](2)On receipt of [an application] [Substituted by Act XXIII of Svt. 2007 for 'any application'.] under sub-section (1), the Custodian shall cause public notice thereof to be given in the prescribed manner and after holding a summary inquiry [into the claim] [Substituted by Act XXIII of Svt. 2007 for 'into the claims'.] in such manner as may be prescribed, may-(i)make a formal order declaring that property shall be restored to the applicant; or(ii)reject the application; or(iii)refer the application to a Civil Court for the determination of his claim and title to the property.(3)Upon the restoration [\* \* \*] [Words 'of possession' deleted by Act XXIII of Svt. 2007 for 'into the claims'.] of the property to the evacuee or to any of his heirs, the Custodian shall stand absolved of all responsibilities in respect of the property so restored, but such restoration shall not prejudice the rights, if any, in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored :Provided that no order for restoration shall be made unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof :Provided further that every lease granted in respect of the property by or on behalf of the Custodian shall have effect against the person to whom restoration is made until such lease is determined by lapse of time or by operation of law.(4)The Custodian shall, [on demand] [Inserted by Act XXIII of Svt. 2007 for 'into the claims'.], furnish to the evacuee or to his heir, as the case may be, a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property.(5)[ For the purposes of this section "Custodian" means the Custodian appointed under section 4 for any province of the State.] [Added by Act XIX of 1987, section 3.]

**14A. [ Transfer of property in lieu of evacuee property. - (1) Where any evacuee or his heir is entitled to the restoration of any evacuee property on an application made by him in this behalf [under section 14 or where the claim of any person is established under section 8] [Section 14-A inserted by Act XIV of 1962.] and the Government or any Officer not below the rank of the Financial Commissioner authorised by the Government in this behalf, is of the opinion that it is not expedient or practicable to restore the whole or any**

**part of such property to the applicant by reason of such property or a part thereof being in the possession of a displaced person or otherwise, then, notwithstanding anything contained in this Act, it shall be lawful for the Government-**

(a) to transfer to the applicant in lieu of the evacuee property or any part thereof, any immovable property belonging to the Government which, as nearly as may be, is of the same value as the evacuee property, or any part thereof, as the case may be; or (b) [ to acquire any land allotted to such displaced person in respect of which claim has been established under section 8 or 14 of this Act, by publishing a notification in the Government Gazette to the effect that the Government has decided to acquire such land in pursuance of this section; [Substituted by Act XIX of 1987.](c) subject to the provisions of section 14-B, on and from the date of publication of the notification under clause (b), the right, title and interest of any person in the land shall be extinguished and the land shall vest absolutely in the Government free from all encumbrances : Provided that the displaced person shall continue to be in possession thereof on the same conditions on which he held it immediately before the date of the said notification; Provided further that notwithstanding anything contained in the State Land Acquisition Act, Samvat 1990, when a notification under this section is made, it shall be deemed as if notification under sections 4, 6 and 7 of the said Act have been made.](2) Where in pursuance of sub-section (1) any evacuee or his heir has been granted any immovable property belonging to the Government or the property of any evacuee has been acquired, his right, title and interest in such evacuee property shall be deemed to have been extinguished and vested absolutely in the Government free from all encumbrances and the displaced person to whom such property stands allotted under valid order, shall continue to be in possession of such property on the same conditions on which he held the property immediately before it was vested in the Government.(3) Where in pursuance of sub-section (1) an evacuee or his heir has been granted immovable property in lieu of evacuee property and the evacuee or his heir has any objection to the evaluation of the property granted to him in lieu of the evacuee property, he may, within 90 days from the date of such grant, apply to the Government stating the grounds of his objection and on receipt of such application the Government shall refer the matter to the District Judge within whose jurisdiction the property is situated, for determining the question of evaluation of the property granted to the applicant.]

**14B. [ Compensation for the land acquired under section 14-A. - (1) Whenever a notification is made under section 14-A, there shall be paid to the rightful claimant compensation and simple interest thereon at the rate of 4% per annum from the date of issue of notification till the date of payment.**

(2) For purposes of determination of compensation and interest thereon the provisions of section 9, 9-A, 11, 12, 18, 23, 24 and 31 of the State Land Acquisition Act, Samvat 1990, shall apply.

## **14C. Compensation for the land redeemed.**

(1) Any property, mortgaged with an evacuee and declared as evacuee property, allotted to a displaced person under valid orders, but redeemed by the mortgagor under any law for the time being in force, shall continue to remain in possession with such person on the same conditions on which he held it before the date of redemption. (2) Where any property mentioned in sub-section (1) is redeemed by the owner (mortgagor) thereof, it shall be lawful for the Government notwithstanding anything in this Act, to- (a) transfer to the owner, in lieu of the property, any immovable property belonging to the Government having the same value; or (b) acquire such property by publishing a notification in the Government Gazette to the effect that the Government has decided to acquire such land in pursuance of this section. (2) The provisions of section 14-B of this Act shall apply mutatis mutandis in relation to payment of compensation and interest thereon. [Section 14-B, 14-C inserted by Act XIX of 1987, section 5.] Chapter-III Certain Consequences of Property Vesting in Custodian

## **15. Exemption from attachment, sale etc.**

(1) No property which has vested in the Custodian shall be liable to attachment, distress or sale in execution of a decree or [order of a Court or of any other authority] [Substituted by Act XXIII of Svt. 2007 for 'order of a Court or any other authority'.], and no injunction in respect of any [such property shall be granted by any Court or other authority.] [Substituted by Act XXIII of Svt. 2007 for 'order of a Court or any other authority' for 'such property can'.] (2) Any attachment or injunction subsisting on the commencement of this act in respect of any evacuee property which has vested in the Custodian shall cease to have effect on such commencement, and any transfer of such property under the orders of a Court or any other authority made after such date as may be specified in this behalf by the Government by notification in the Jammu and Kashmir Government Gazette, shall be set aside if an application is made to such Court or authority by or at the instance of the Custodian within three months from the commencement of this Act.

## **16. Occupancy or tenancy right not to be extinguished.**

- Notwithstanding anything contained in any other law for the time being in force, the right of occupancy in any land of an evacuee which has vested in the Custodian shall not be extinguished, nor shall an evacuee or the Custodian, whether as an occupancy tenant or a tenant for a fixed term of any land, be liable to be ejected or deemed to have become so liable on any ground whatsoever for any default of the Custodian. Chapter-IV Penalties and Procedure

## **17. Penalty for failure to surrender possession of evacuee property.**

- Any person who fails to comply with a notice or demand by or on behalf of the Custodian under this Act, to surrender possession of any evacuee property shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**17A. [ Penalty for wrongfully paying or receiving rents, etc. in respect of evacuee property. - Any person who pays to or receives from any other person any sum of money in respect of any property which he knows or has reason to believe to be evacuee property or is likely to be declared to be evacuee property within the meaning of this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both :**

Provided that nothing contained in this section shall apply to render punishable any payment made to or received by the Custodian.

**17B. Penalty for concealing evacuee property.**

- Any person who wilfully conceals any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment of either description which may extend to six months, or with fine, or with both.] [Section 17-A and 17-B inserted by Act XXIII of Svt. 2007.]

**18. Penalty for causing damage to evacuee property.**

- Any person who wilfully destroys or causes damage to any evacuee property or unlawfully converts to his own use shall be punishable with imprisonment of either description for a term which may extend to three years or with fine, or with both.

**19. Penalty for false declaration in certain cases.**

- Any person who-(i)for the purpose of obtaining an allotment or lease of any evacuee property, makes a declaration or statement which is false or which he either knows or has reason to believe to be false or does not believe to be true, or(ii)furnishes any return, account or information which is material to any of the purposes of this Act and which is false or which he either knows or has reason to believe to be false or does not believe to be true, shall be punishable with imprisonment which extend to three years, or with fine, or with both.

**20. Penalty for offences not expressly provided for.**

- Whoever contravenes any provisions of this Act or of any order made thereunder or direction given under this Act or obstructs the lawful exercise of any power conferred by or under this Act shall, if no express provision is made by this act for the punishment of such contravention or obstruction, be punishable with imprisonment of either description for a term which may extend to six months, or fine, or with both.

## **21. Penalty for abetment.**

- Whoever abets any of the offences punishable under this Act shall be punishable with the punishment provided for the offences.

## **22. Offences to be cognizable.**

- Notwithstanding anything contained in the of a Criminal Procedure, 1989 (Act XXIII of 1989), all offences under this Act shall be cognizable.

## **23. Cognizance of offences by Courts.**

- No Court shall take cognizance of any offence punishable under this Act, save upon complaint in writing made by a public servant with the previous sanction of the Government by general or special order in this behalf.

## **24. Offences to be tried summarily.**

- Any Magistrate empowered to try in a Summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1989 (Act XXIII of 1989), may, if such Magistrate thinks fit and if an application is made in this behalf by the complainant, try any offence under this Act in accordance with the provisions contained in section 262 to 265 of the said Code. Chapter-V  
Miscellaneous

## **25. Restriction on transfer by evacuee.**

(1) No transfer of any right or interest in any evacuee property, made in any manner whatsoever by or on behalf of an evacuee after such date as may be specified in this behalf by the Government by notification in the Jammu and Kashmir Government Gazette, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the [Custodian General] [Substituted by Act XIX of 1987, 5.6, (i)]. (2) An application for confirmation of such transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them, to the [Custodian General] [Substituted by Act XIX of 1987, 5.6, (i)] within two months from the date of registration of the deed of transfer or within two months from the commencement of this Act, whichever is later : Provided that the [Custodian General] [Substituted by Act XIX of 1987, 5.6, (i)] may, for sufficient reasons to be recorded, entertain the application even if it is made after the expiry of the aforesaid period. (3) The [Custodian General] [Substituted by Act XIX of 1987, 5.6, (i)] shall hold summary inquiry into the application in the prescribed manner, and may reject the application if he is of opinion that-(a) the transaction has not been entered into in good faith or for valuable consideration, or (b) the transaction is prohibited under any law for the time being in force, or (c) the transaction ought not to be confirmed for any other reason. (4) If the application is not rejected under sub-section (3), the [Custodian General] [Substituted by Act XIX of 1987, 5.6, (i)] may confirm the transfer either

unconditionally or subject to such terms and conditions as he thinks fit to impose.(5)[ The [Government] [Sub-section (5) inserted by Act XXXII of 1974, section 4.] shall, before making any order under this section obtain the approval of the Custodian General.]

**25A. [ Restriction on transfer of the property. - (1) No property to which claim is established under section 8 or 14, whether possession thereof has been taken or not by the claimant, may be sold or disposed of in any manner whatsoever without the previous permission of the Government.**

(2)Any person desirous of selling or disposing of the property referred to in sub-section (1) may apply in the prescribed manner to the Minister Incharge for grant of permission.(3)The minister Incharge shall refer the application to the Deputy Commissioner of the district concerned who shall report the full facts through Custodian General and state whether :(a)the transaction is being made in good faith or for valuable consideration; or(b)the transaction is prohibited under any law for the time being in force; or(c)the permission to the sale of the property has to be rejected for any other reason.(4)If the application' is not rejected under sub-section (3), the Government may grant the permission subject to such terms and conditions as it thinks fit.] [Inserted by Act XIX of 1987, section 7.]

**26. Prohibition of transfer of immovable property generally in certain areas.**

- The Government may, by notification in the Jammu and Kashmir Government Gazette, declare that in such areas and for such periods as may be specified in the notification transfer of any immovable property or class of immovable property shall be prohibited, and where any such declaration has been made, no transfer of any immovable property shall be made during the period in that area except with the previous approval in writing of the Collector of the District in which the property or the greater part thereof is situated.

**27. Custodian's right to take possession not affected by death of evacuee, etc.**

- Where in pursuance of the provisions of this Act the Custodian has taken possession of any evacuee property, such possession shall not be deemed [to be] [Inserted by Act XXIII of Svt. 2007.] wrongful nor shall anything done in consequence thereof be deemed to be invalid or affected by reason only that at the material time the evacuee who had a right or interest in the property had died or had ceased to be an evacuee.

**28. [ Certain officers to be public servants. - The Custodian General, the Custodian and every other person duly appointed to discharge any duties imposed on them by this Act, or the rules or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code (Act XII of 1989).] [Section 28 substituted by Act XXIII of Svt.**

**2007.]**

## **29. Powers of the Custodian while holding inquiry under this Act.**

- While [holding any inquiry] [Substituted by Act XXIII of Svt. 2007 for 'holding an enquiry'] under this Act, the Custodian shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1977 (Act X of 1977), when trying a suit in respect of the following matters, namely :- (a) enforcing the attendance of any person and examining him on oath; (b) compelling the discovery and production of documents; (c) any prescribed matter; and the inquiry by the Custodian shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 Ranbir Penal Code (Act XII of 1989), and the Custodian shall be deemed to be a Court within the meaning of [sections 480 and 482] [Substituted by Act XXIII of Svt. 2007 for 'holding an enquiry' for 'section 482'.] of the Code of Criminal Procedure, 1989 (Act XXIII of 1989).

**29A. [ Power of the Custodian to impose penalties. - Notwithstanding anything contained in Chapter V of this Act, any person who contravenes any provisions of this Act or abets the contravention thereof, shall be imposed a penalty by the Custodian which may extend to ten thousand rupees but shall not be less than five hundred rupees.] [Inserted by Act XIX of 1987, section 8.]**

## **30. Appeal, review and revision.**

(1) Any person aggrieved by an order made under section 8, section 14, [section 25 or section 29-A] [Substituted by Act XIX of 1987, section 9.] may prefer an appeal - (a) to the Custodian, where the original order has been passed by a Deputy or an Assistant Custodian; (b) to [the Custodian General] [Substituted by Act XXIII of Svt 2007 for 'High Court'.], where the original [or appellate] [Inserted by Act XXIII of Svt 2007 for 'High Court'.] order has been passed by the Custodian, an Additional Custodian or an authorised Deputy Custodian; (c) [ to the High Court, against the order of the Custodian General : [Clause (c) with proviso inserted by Act XXIII of Svt. 2007.] Provided that no appeal shall lie to the High Court against concurrent finding of the Custodian and the Custodian General. ] (2) The appeal shall be presented in such manner and within such time as may be prescribed. (3) The Custodian to whom the appeal is preferred under clause (a) of sub-section (1), may dispose of it himself, or may make it over for disposal to an Additional Custodian or to a Deputy Custodian authorised by the Custodian in writing in this behalf (in this section referred to as the authorised Deputy Custodian) : Provided that no appeal from an order of a Deputy Custodian shall be made over for disposal to the authorised Deputy Custodian. (4) [The [Custodian General] [Substituted by Act XVIII of 1978, Section 2.] or the Custodian] may, at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding under this Act which is pending before, or has been disposed of, by an officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of any order passed in the said proceeding and may pass such order in relation thereto as he thinks fit : Provided that [[the

Custodian General] [Substituted by Act XVIII of 1978, section 2.] or the Custodian] shall not under this sub-section pass an order revising or modifying any order affecting any person without giving such person [a reasonable] [Substituted for 'an' by Act XXIII of Svt. 2007.] opportunity of being heard:[Provided further that the custodian General shall not call for the record of any proceeding in which Custodian has with his previous approval under section 10 or section 25, passed an order.] [Substituted by XVIII of 1978, section 2.](5)The [Custodian General] [Inserted by Act XXIII of Svt. 2007.], Custodian, Additional Custodian or authorised Deputy Custodian, but not a Deputy or an Assistant Custodian, may, after giving notice to the parties concerned, review his own order.(6)Subject to the foregoing provisions of this section, any order made by the [Custodian General] [Inserted by Act XXIII of Svt. 2007.], Custodian Additional Custodian, authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding.

**30A. [ Powers of revision of the Minister Incharge. - The Minister Incharge of the Evacuee's Property Department may at any time, either on his own motion or an application made to him in this behalf, call for the record of any proceeding in which any Custodian or Custodian General has passed an order under the provisions of this Act 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 Minister Incharge shall not pass an order under this section, prejudicial to any person, without giving him an opportunity of being heard.] [Substituted by Act XXVIII of 1978, section 3]

### **31. Jurisdiction of Civil Courts barred in certain matters.**

(1)Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction-(i)to entertain or adjudicate upon any question whether any property is or is not evacuee property or whether an evacuee has or has not any right or interest in any evacuee property; or(ii)[ to question the legality of any action taken by the Custodian General or the Custodian under this Act;] [Clause (ii) substituted by Act XXIII of Svt. 2007.](iii)in respect of any matter which the [Custodian General or the Custodian is] [Substituted by Act XXIII of Svt. 2007 for 'Custodian'.] empowered by or under this Act to-determine.

### **32. Protection of action taken in goodfaith.**

(1)No suit, prosecution or other legal proceeding shall lie against the [Custodian General or the Custodian] [Substituted by Act XXIII of Svt. 2007 for 'Custodian'.] or any person acting under his direction 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] [Substituted by Act XXIII of Svt. 2007. for 'rules'.] made



thereunder.(2)No suit or other legal proceeding shall lie against the Government, [the Custodian General] [Inserted by Act XXIII of Svt. 2007.] or the Custodian or any other person in respect of any damage caused or likely to be caused by anything in good faith done or intend to be done in pursuance of this Act or of any [rules or orders] [Substituted by Act XXIII of Svt. 2007 for 'rules'.] made thereunder.

### **33. Recovery of arrears.**

- Any sum due to the Government or to the Custodian under the provisions of this Act may be recovered [as if it were an arrear] [Substituted by Act XXIII of Svt. 2007 for 'as arrears'.] of land revenue.

### **34. Records to be public documents.**

- All records prepared or registers maintained under this act shall be deemed to be public documents within the meaning of the Jammu and Kashmir Evidence Act, 1977 (XII of 1977), and shall be presumed to be genuine until the contrary is proved.

### **35. Notice to the Custodian.**

(1)If in any suit it appears to the civil or revenue Court that a question relating to the property of an evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.(2)A Court may, at any stage of a suit or proceeding, either on its own motion or on application made in this behalf by the Custodian, make an order that the Custodian shall be added as a party to the suit or proceeding if the Court is satisfied that such addition is necessary or proper for the satisfactory determination of the suit or proceeding.

### **36. Fees payable to the Custodian.**

(1)The Government may prescribe the fees payable to the Custodian for the management or disposal of the property vested in him.(2)Such fees shall be payable out of the income or sale proceeds of such property and shall be a first charge on the property.

### **37. Power to exempt.**

- The Government may, by notification in the Jammu and Kashmir Government Gazette, exempt any person or class of persons or any property or class of property from the operation of all or any of the provisions of this Act.

### **38. Delegation of Powers.**

(1)The Government may, by order, direct that the powers exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised

by an officer subordinate to the Government.(2)[ Subject to the provisions of this Act and of the rules and orders made thereunder, the Custodian General may delegate all or any of his powers under this Act to a Deputy Custodian General.] [Existing sub-section (2) of section 38 re-numbered as sub-section (3) and subsection (2) inserted by Act VII of Svt. 2010.](3)Subject to the provisions of this Act and the [rules and orders] [Substituted by Act XXIII of Svt. 2007 for 'rules'.] made thereunder, the Custodian may, by order, delegate all or any of his powers and functions under this Act to an Additional, Deputy or Assistant Custodian subject to such conditions, if any, as may be specified in the order.

### **39. Power to make rules.**

(1)The Government may, by notification in the Jammu and Kashmir Government 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 terms and conditions of service of the Custodian and other officers appointed under this Act and for the furnishing of security by them;(b)the work to be performed by the Custodian and the Additional, Deputy and Assistant Custodian;(c)the manner in which evacuee properties which have vested in the Custodian may be notified;(cc)[ the manner in which the land or property may be notified for acquisition purposes;] [Inserted by Act XIX of 1987, section 10.](d)the manner in which possession of any evacuee property may be taken by the Custodian;(e)the manner in which inquiries under this Act may be held;(e-i) the manner in which and the conditions subject to which the Custodian may allot any immovable property vested in him;(f)the circumstances in which, and the conditions subject to which, the Custodian may sell any immovable property vested in him and the procedure governing the grant of leases and the period for which leases may be granted;(g)the circumstances in which, leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied;(h)the securities in which the Custodian may invest any monies held by him;(i)the form and manner in which books of account and other records shall be maintained by the Custodian, and the persons by whom and the times at which such books of account may be audited;(j)the manner in which any monies due to the Custodian may be recovered;(k)the nature of cases in which and the circumstances under which and the conditions subject to which certificates for restoration of property under section 14 may be issued;(l)the nature of cases and the circumstances in which the Custodian may refer an applicant under section 15 to a Civil Court;(m)the powers vested in a Civil Court which may be exercised by the Custodian while holding any inquiry under this Act;(n)the nature of cases in which and the circumstances under which the Custodian may confirm or refuse to confirm a transfer under section 25;(o)the form and the manner in which and the time within which appeals and application for revision may be preferred under section 30 and the fees payable in respect thereof;(p)the fees payable to the Custodian for the management and disposal of any property vested in him and the manner in which such fees shall be paid;(q)the form in which any notice under this Act may be issued and the manner of its service and publication or the form in which any demand may be made by the Custodian;(r)the delegation of powers and functions of the Custodian to the Additional, Deputy or Assistant Custodian;(s)any other matter which has to be or may be prescribed under this Act.

#### **40. Repeal and savings.**

(1)The Jammu and Kashmir Evacuee (Administration of Property) Act, 2005 (X of 2005) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by the Jammu and Kashmir Evacuees' (Administration of Property) Act, 2005 shall be deemed to have been done or taken in the exercise of the powers conferred by this Act, and any penalty incurred or proceedings commenced under that Act shall be deemed to be a penalty incurred, or proceeding commenced under this Act as if this Act were in force on the day when such thing was done, action taken, penalty incurred or proceeding commenced.

#### **41. [ Power of Government to apply Act to other persons. - (1)**

**Notwithstanding anything contained in this Act, the Government may, by notification in the Government Gazette, apply provisions of this Act to a person or class of persons who after the 15th day of august, 1947, on account of civil disturbances or the fear of such disturbances, left any place in the State for any place outside the State except the territories now forming part of Pakistan or such part of the state as is under the operational control of the Pakistan Armed Forces and who for reason beyond their control are unable to occupy, supervise or manage in person their property in the State.**

(2)Property of such persons shall vest in the Custodian from the date of the order passed under sub-section (1) and for the purposes of this Act shall be treated as evacuee property.] [Section 41 inserted by Act XXIII of Svt. 2007.]