

The West Bengal Evacuee Property Act, 1951

WEST BENGAL

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Act 5 of 1951

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The West Bengal Evacuee Property Act, 1951 West Bengal Act 5 of 1951 [21st March, 1951.] An Act to provide for certain matters relating to evacuee property. Whereas it is expedient to provide for certain matters relating to evacuee property : It is hereby enacted as follows :-

1. Short title, extent and commencement.

(1) This Act may be called the West Bengal Evacuee Property Act, 1951. (2) It extends to the whole of West Bengal. (3) It shall come into force immediately on the West Bengal Evacuee Property Ordinance, 1951, ceasing to operate. (4) It shall not apply to any property acquired or requisitioned by the State Government for the purposes of the State or for any public purpose.

2. Definitions.

- In this Act, unless there is anything repugnant in the subject or context, -(a) "allotment" means the grant by the Collector of a temporary right to use and occupy any property otherwise than by way of lease; (b) "appointed day" means the 31st day of March, 1951; (c) "evacuee" means a person ordinarily resident in West Bengal who on account of communal disturbances or the fear of such disturbances leaves, or has after the 15th day of August, 1947, left, West Bengal, for any place in Pakistan and includes the legal heirs of such person; (d) "property" means immovable property; (e) "prescribed" means prescribed by rules made under this Act; (f) "the Collector" used in relation to any property means -(i) where the property is situated within Calcutta as defined in section 3 of the Calcutta Police Act, 1866 or within the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866 -the Commissioner of Police, Calcutta, or an officer appointed in this behalf by the State Government to perform all or any of the functions of a Collector under this Act; (ii) where the property is situated elsewhere than as aforesaid -the Collector of the district within which the property is situated, or an Additional District Magistrate of such district, appointed in this behalf by the State Government to perform all or any of the functions of a Collector under this Act; (g) "the Committee" means the Evacuee Property Management Committee for West Bengal

constituted under sub-section (1) of section 11;(h)"urban area" means Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923 or any place where the Bengal Municipal Act, 1932, is in force and includes any other area declared by the State Government to be an urban area for the purpose of this Act, by notification in the Official Gazette.

3. Evacuee property.

- Every property of an evacuee lying in West Bengal, other than property in charge of the Court of Wards, is hereby declared to be evacuee property.

4. Powers and duties of a Collector.

(1)The Collector or an officer to whom the power of a Collector are delegated under section 10, if he is satisfied with respect to any evacuee property that such property is lying unoccupied, uncultivated or uncared for, or has come to be wrongfully used or occupied by any person, may, by order styled a Collector's order, subject to any general or special orders of the State Government, -(a)take such measures as he considers necessary or expedient for the purposes of protecting and preserving such property and do such acts and incur such expenses as may be necessary or incidental for such purposes;(b)remove or cause to be removed, by force if necessary, any person who is wrongfully using or occupying such property.(2)Where an order has been passed in respect of any evacuee property of an evacuee the Collector shall report to the Committee -(i)if before the expiry of the appointed day, the evacuee makes to the Collector a declaration of his intention not to return to West Bengal-as soon as may be, after he received such declaration;(ii)If before the expiry of the appointed day the evacuee does not make a declaration to the Collector of his intention not to return to West Bengal-as soon as may be after the appointed day.

5. Cancellation of Collector's Order and delivery of possession.

(1)An evacuee who returns to West Bengal before the expiry of the appointed day may apply in writing to the Collector before the expiry of that day -(a)where a Collector's Order has been made in respect of any of his evacuee property and such property is not in the wrongful use or occupation of any person-for the cancellation of such order;(b)where a Collector's Order has been made in respect of any of his evacuee property and such property is in the wrongful use or occupation of any person-for the cancellation of such order and for the delivery of possession of such property; and(c)where a Collector's Order has not been made in respect of any of his evacuee property and such property is in the wrongful use or occupation of any person-for the delivery of possession of such property.(2)Upon an application aforesaid being made the [Collector shall] [Words substituted for the words 'Collector may' by W.B. Act 20 of 1951.], after making such summary inquiry as he thinks fit, -(a)in cases coming under sub-clause (a) or (b) of sub-section (1) cancel the Collector's Order ; and(b)in cases coming under clause (b) or (c) of sub-section (1), also cause the possession of such property to be delivered to the evacuee and may use or cause to be used force for such purposes, if necessary :[Provided that where] [Words substituted for the brackets, figure and word '(3) Where' by W.B. Act 20 of 1951.] the Collector is of opinion that the cancellation of the Collector's Order or the delivery of possession would not be feasible under sub-section (2), he shall report the

case to the State Government and the State Government shall thereupon [refer the case for advice to the Minority Commission constituted for the time being by the State Government] [Words substituted for the words and figures 'refer the case to the Minority Commission constituted under Notification No. 2276 CR/CR-481/50, dated the 6th May, 1950, for advice' by W.B. Act 18 of 1952.]. The State Government shall after considering such advice pass such order as it thinks fit, so however, that if the State Government is of opinion that exceptional circumstances exist on account of which it would not be feasible to cancel the Collector's Order or to cause the possession of the evacuee property to be delivered, it shall take such steps for adequately rehabilitating the evacuee as it deems necessary.

6. Exceptions, etc.

(1) Save and except as provided in sub-section (2), nothing in section 5 shall apply to any evacuee property of an evacuee, situated within an urban area, if the evacuee left West Bengal for a place in Pakistan, prior to the 1st day of January, 1950. (2) The provisions of section 5 shall apply to an evacuee property of an evacuee situated within an urban area held by the evacuee as a tenant-at-will or a thika tenant or a monthly tenant, if, and only if on the date of the application under sub-section (1) of section 5, such property is not in the possession of a person other than the evacuee, holding under a lease granted by or with the authority of the immediate landlord of the evacuee.

7. Exemption of evacuee property from attachment, etc.

(1) No evacuee property shall be liable to attachment, distraint or sale in execution of a decree or order of a Court, or any other authority, while a Collector's Order is in force in respect of such property. (2) In computing the period of limitation applicable to any suit, appeal or application in respect of any evacuee property the time during which a Collector's Order remains in force in respect of such property shall be excluded.

8. Expenses incurred by the Collector.

- Any expenses incurred by the Collector in the exercise or discharge of any powers, duties or functions under this Act or the rules made thereunder, in respect of any evacuee property shall be the first charge on the receipts derived from such property, and any such expenses may be recouped by the Collector out of such receipts.

9. Maintenance of accounts and payments to the evacuee or his successor.

(1) The Collector shall, in the prescribed manner, maintain an account of the receipts derived from and the payments made in respect of every evacuee property, while a Collector's Order is in force in respect of such property. (2) Upon the cancellation of a Collector's Order under section 5 or upon a Collector's Order standing cancelled under sub-section (4) of section 17, the Collector shall pay to the evacuee in respect of whose evacuee property the Collector's Order was made or his successors in interest, as the case may be, the balance which remains after deducting the payments made in

respect of such property from the receipts derived from such property.

10. Delegation of powers by the Collector.

- The Collector may, by general or special order, delegate all or any of his powers, duties or functions under this Act or the rules made thereunder to such officer of the State Government as he thinks fit.

11. Constitution of the Committee.

(1)The State Government shall, by notification in the Official Gazette, constitute an Evacuee Property Management Committee for West Bengal.(2)The Committee shall consist of a President and three other members.(3)The President shall be an officer of the State Government appointed in this behalf by the State Government from time to time, and the other members shall be appointed by the State Government from among the members of the Minority Community.(4)The Committee shall be a body corporate by the name of the Evacuee Property Management Committee of West Bengal and shall have perpetual succession and a common seal and shall by the said name sue and be sued.

12. Resignation and removal of members and filling up of vacancies.

(1)A member of the Committee, other than the President, may, by writing under his hand, delivered to the prescribed officer of the State Government, resign his office after giving one month's notice of his intention to resign.(2)The State Government may at any time remove any member of the Committee on any of the following grounds, namely :-(a)that he has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude;(b)that he has applied to be adjudged or has been adjudged an insolvent ;(c)that he, in the opinion of the State Government, is incompetent, or incapable of or unfit to perform the duties of his office on account of physical or mental infirmity ;(d)that he, in the opinion of the State Government, has been mismanaging the properties of which the Committee has taken charge.(3)In the event of vacancy occurring in the office of any member of the Committee, other than the President, by death, resignation, removal or otherwise, the State Government shall fill up the vacancy in the manner provided in sub-section (3) of section 11.

13. Conduct of business of the Committee.

- The Committee may, with the approval of the State Government, make regulations for conducting its business and may act notwithstanding any vacancy in the office of any member other than that of the President :Provided that the quorum for a meeting of the Committee shall be two members, one of whom shall be the President.

14. Officers of the Committee.

(1) In the exercise or discharge of its powers, duties and functions, the Committee may be assisted by such number of officers (hereinafter referred to as Administrative Officers) as may be appointed by the Committee with the approval of the State Government and by such other staff as may be appointed by the Committee. (2) An Administrative Officer shall, on appointment, furnish such security as may be fixed by the State Government.

15. Allowances of President and members and remuneration of officers.

(1) The members of the Committee shall not be entitled to any salary but may receive such allowances as may be fixed by the State Government. (2) The remuneration of the Administrative Officers and of other staff shall be such as may be fixed by the State Government.

16. Expenses incurred by the Committee.

(1) The salary and allowances of the President, the allowances of other members of the Committee, the remuneration of the Administrative Officers and other staff and such other expenses as may be incurred by the Committee in the exercise or discharge of any of its powers, duties and functions under this Act or the rules made thereunder in respect of any evacuee property, shall be defrayed out of levy at such rate, as may be prescribed, on the receipts derived from such property and shall, subject to the provisions of section 8, be a first charge on such receipts. (2) The State Government may from time to time make such advances to the Committee as may be necessary to enable it to function. All such advances shall be recoverable with interest at three per centum per annum from the receipts derived from the properties which may vest in the Committee and shall subject to sub-section (1) be a charge on every and all such properties and shall have priority over all other charges on every and all such properties.

17. Management by the Committee.

(1) The Committee may take charge of any evacuee property of an evacuee in the following cases :- (a) where a report is received from the Collector under sub-section (2) of section 4, or (b) where before the appointed day the evacuee makes a declaration before the prescribed authority of his intention not to return to West Bengal, or (c) where after the appointed day the evacuee has not returned to West Bengal, whether there is or is not a declaration by the evacuee of his intention not to return or whether there is or is not an application to the Committee to take charge of his property. (2) Before taking charge of an evacuee property, the Committee shall cause a public notice to be given in the prescribed manner calling for objections to the taking of charge of such property by the Committee to be filed before the Committee within a date specified in such notice. (3) Where objections are filed under sub-section (2), the Committee shall summarily decide the objections after calling, if necessary, for a report from the Collector of the district in which the property or any part thereof is situated. (4) If there are no such objections as aforesaid or if the Committee, after proceeding in the manner aforesaid, rejects all such objections, the Committee shall pass an order

directing that the charge of the property be taken by the Committee and thereupon such property shall vest in the Committee and any Collector's Order made in respect of such property shall stand cancelled.(5)Where any evacuee property vests in the Committee under subsection (4), the Committee shall, as soon as may be, give public notice of the fact in the prescribed manner.(6)Notwithstanding anything contained in the foregoing provisions of this section, the Committee shall not take charge of any evacuee property if the evacuee being the sole owner or the entire body of co-sharer owners of such property, objects to the charge thereof being taken by the Committee and furnishes evidence to the satisfaction of the Committee that adequate arrangements have been made for the management and proper utilization thereof.(7)Nothing in this section shall affect the right of any person to establish his title in a competent Court.

18. Power of evacuee to dispose of property.

(1)An evacuee, whose property has vested in the Committee, may nevertheless at any time dispose of such property by sale, exchange, gift, mortgage (not being an usufructuary mortgage) or otherwise but not by way of lease.(2)Upon such disposition as aforesaid, the evacuee shall intimate the Committee thereof and the Committee shall, as soon as may be, cause a public notice to be given in the prescribed manner.(3)A disposition as aforesaid shall, subject to the provision of sub-section (3) of section 21, take effect on and from the date of the publication of the notice referred to in sub-section (2) and on and from that date the evacuee property shall cease to vest in the Committee and the Committee shall be absolved of all further responsibility in respect thereof.

19. Power, rights and liabilities of the committee.

(1)Subject to the provisions of this Act, the Committee shall have all the rights, powers and liabilities of an owner in respect of any evacuee property of an evacuee vested in it.(2)The Committee shall take such measures as may be necessary for the good management and protection of any evacuee property of an evacuee vested in it, for the assertion of title thereto and for obtaining possession thereof and may for such purposes do all acts and incur all expenses which are necessary or incidental.(3)(i)The Committee shall maintain, in the prescribed form, accounts of all evacuee property vested in it, a separate account being maintained in respect of each evacuee or where the property of a body of co-sharer evacuees are managed jointly, in respect of each such body of co-sharer evacuees.(ii)The State Government shall cause such accounts to be audited at such intervals and by such person as may be prescribed. The cost of such audit shall be paid by the Committee according to the prescribed scale.(iii)A copy of the audited accounts as aforesaid of the evacuee property shall be supplied to the evacuee or the body of co-sharer evacuees by the Committee on application and the audited accounts shall also be available in the prescribed manner for inspection by the evacuee or any co-sharer evacuee or any agent of the evacuee or a co-sharer evacuee authorised in writing.(4)The Committee shall pay to an evacuee in such manner and at such intervals as may be prescribed, the receipts derived from his property vested in the Committee, after deducting therefrom all sums debitable to such receipts.

20. Certain payments not to be valid discharge.

- No payment made, after publication of a notice under sub-section (5) of section 17, on account of any amount due to the evacuee in respect of his property vested in the Committee save and except the Committee or some person appointed by the Committee, shall constitute a valid discharge of any liability in respect thereof.

21. Restrictions on transfer by Committee.

(1) Save and except as provided in sub-section (2), the Committee shall not be entitled to transfer any evacuee property vested in it, except with the written consent of the evacuee. (2) The Committee may lease or let out any evacuee property vested in it or part thereof for a period, not exceeding [three months] [On section 2 of W.B. Act 30 of 1954, being brought into force, the words 'five years' shall be substituted for the words 'three months' and the words 'ten years' shall be substituted for the words 'twelve months', vide clauses (a) and (b) of Section 2 of W.B. Act 30 of 1954.] in the case of evacuee property situated in an urban area and not exceeding [twelve months] [On section 2 of W.B. Act 30 of 1954, being brought into force, the words 'five years' shall be substituted for the words 'three months' and the words 'ten years' shall be substituted for the words 'twelve months', vide clauses (a) and (b) of Section 2 of W.B. Act 30 of 1954.] in the case of other evacuee property, at any one time : Provided that in leasing or letting out the evacuee property, the Committee shall give on each occasion the first preference to the person to whom any allotment of such property or a part thereof was made by the Collector under the West Bengal Evacuee Property Ordinance, 1951, except where the Collector reports to the Committee that such person committed a breach of the terms and conditions of such allotment, or where such property consists of land used for or in connection with agricultural purposes, neglected to cultivate such property properly. (3) A lease or letting out as aforesaid shall be binding on the evacuee and his successors in interest but only for the period for which the evacuee property is leased or let out. (4) Notwithstanding anything contained in any other law for the time being in force, nothing in this section shall confer a right of occupancy on any person to whom any evacuee property is leased or let out by the Committee. (5) If the person to whom any evacuee property is leased or let under sub-section (2) holds over after the expiry of the period of lease or letting out, such person shall be liable to be evicted without notice.

22. Restoration of property to evacuee.

(1) An evacuee may at any time after he returns to West Bengal but not later than the appointed day apply in writing to the Committee for the restoration of any of his evacuee property of which the Committee has taken charge. (2) As soon as may be after such application is received, the Committee shall cause a public notice to be given in the prescribed manner that such property shall be restored to the applicant if no objections to his title are received within a date specified in such notice. (3) If no objections as aforesaid are received within the date specified in such notice, the Committee shall make an order that the evacuee property be restored to the applicant. (4) If any objections as aforesaid are received within the date specified in such notice, the Committee shall summarily decide such objections after calling, if necessary, for a report from the Collector of the district in which the property or any part thereof is situated. If the Committee, after proceeding in the manner

aforesaid, rejects such objections, the Committee shall make an order that the evacuee property be restored to the applicant.(5)Upon an order under sub-section (3) or sub-section (4) being made, the evacuee property shall cease to vest in the Committee and shall, subject to sub-section (3) of section 21, vest in the applicant and the Committee shall, subject to sub-section (6), be absolved of all further responsibility in respect of the evacuee property.(6)The Committee shall, as soon as may be, give public notice in the prescribed manner of any order made under sub-section (3) or sub-section (4).(7)Nothing in this section shall affect the right of any person to establish his title in a competent Court.

23. Possession to be delivered by force, if necessary.

(1)If any evacuee property, the charge of which is taken by the Committee or in respect of which an order under sub-section (3) or sub-section (4) of section 22 has been made, is found to be in the wrongful use or occupation of any person, the Collector shall, on application made to him by the Committee or the evacuee, as the case may be, cause the possession of such property to be delivered to the Committee or to the evacuee, as the case may be, and may use or cause to be used such force as may be necessary for the purpose.(2)Any person in the wrongful use or occupation of such property shall, in addition to being proceeded against under sub-section (1), be liable to pay to the Committee or the evacuee, as the case may be, damages for such wrongful use or occupation.

24. Restoration of management of property to a certain class of returning evacuees.

(1)An evacuee who returns to West Bengal after the appointed day but not later than the 31st day of December, 1953, may apply in writing to the Committee for restoration of management of his evacuee property of which the Committee has taken charge.(2)As soon as may be after such application is received, the Committee shall cause a public notice to be given in the prescribed manner that the management of such property shall be restored to the applicant if no objections to his title are received within a date specified in such notice.(3)If no objections as aforesaid are received within the date specified in such notice, the Committee shall make an order that the management of the evacuee property be restored to the applicant.(4)If any objections as aforesaid are received within the date specified in such notice, the Committee shall summarily decide such objections after calling, if necessary, for a report from the Collector of the district in which the property or any part thereof is situated. If the Committee, after proceeding in the manner aforesaid, rejects such objections, the Committee shall make an order that the management of the evacuee property be restored to the applicant.(5)An order for restoration of management of an evacuee property under sub-section (3) or sub-section (4) shall be made with as much expedition as possible and in any case within six months from the date of the application under sub-section (1).(6)(a)Upon an order under sub-section (3) or sub-section (4) being made, the management of the evacuee property shall vest in the evacuee.(b)Upon the vesting of the management of the evacuee property in him, the evacuee shall have all the rights, powers and liabilities of an owner in respect of the evacuee property, and the Committee shall subject to sub-section (7) be absolved of all further responsibility in respect of such property and sub-sections (2) and (3) of section 18, section 19, section 20 and section 21 shall cease to apply in respect of the evacuee property.(7)The Committee shall, as soon as

may be, give public notice in the prescribed manner of any order made under sub-section (3) or sub-section (4). (8) Nothing in this section shall affect the right of any person to establish his title in a competent Court.

25. Delegation of powers, duties and functions.

(1) The State Government may delegate all or any of its powers, duties and functions under this Act or the rules made thereunder to the Board of Revenue or to the Commissioner of a Division. (2) The Committee may delegate all or any of its powers, duties and functions under this Act or the rules made thereunder to an Administrative Officer to be performed or exercised within his jurisdiction.

26. Control of Administrative Officer.

(1) All Administrative Officers shall be under the supervision and control of the Committee and the Committee may, on its own motion or on application, review, rescind or vary any order of an Administrative Officer. (2) The Collector or such other officer as may be authorised by the State Government in this behalf shall have power to inspect the work of any Administrative Officer and the staff subordinate to him and examine any records, books of accounts or other documents maintained by the Administrative Officer.

27. President, members and officers to be public servants.

- The President, other members of the Committee, every Administrative Officer and every other person duly appointed under this Act or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

28. Sums payable under this Act recoverable as public demand.

- All sums payable to the Collector or the State Government [or the Committee] [Words inserted by W.B. Act 30 of 1954.] under this Act shall, without prejudice to any other mode of recovery, be recoverable as arrears of public demand.

29. Bar of jurisdiction.

- Save and except as expressly provided in this Act, no order of the State Government or of the Collector, or of the Committee or of an Administrative Officer, made or purported to be made under this Act or the rules made thereunder, shall be questioned in any Court.

30. Protection and indemnity.

(1) No suit or other legal proceeding shall lie against the State Government or any servant of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder. (2) No suit, prosecution or other legal proceeding shall lie

against the Committee or any person for anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.(3)No suit, prosecution or other legal proceeding shall lie against the State Government or any servant of the State Government for anything which, before the commencement of this Act, was in good faith done or intended to be done for the protection, preservation or management of any property of an evacuee.

31. Repeal of West Bengal Act 18 of 1949.

- The West Bengal Evacuee (Administration of Property) Act, 1949, is hereby repealed.

32. This Act to override other law.

- The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law.

33. Savings and validation.

(1)Any rule, order, or appointment made, any notification issued, and proceedings commenced, any action taken, or anything done under any provision of the West Bengal Evacuee Property Ordinance, 1951, shall, on the said Ordinance ceasing to operate, be deemed to have been made, issued, commenced, taken or done under the corresponding provisions of this Act as if this Act had commenced on the 6th day of February, 1951.(2)Any allotment of an evacuee property made or purported to have been made before the commencement of the West Bengal Evacuee Property Ordinance, 1951, by the Collector which could have been validly made if the said Ordinance had been in force when such allotment was made or purported to have been made, shall if confirmed by the Collector in writing on or before the 31st day of March, 1951, be deemed to have been duly made under the said Ordinance.

34. Power to make rules.

(1)The State Government may make rules for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely :-(a)the manner in which the accounts referred to in sub-section (1) of section 9 shall be maintained;(b)the officer to whom the writing referred to in sub-section (1) of section 12 shall be delivered;(c)the rate of the levy referred to in sub-section (1) of section 16;(d)the manner in which a public notice shall be given under sub-section (2) or sub-section (5) of section 17, sub-section (2) of section 18, sub-section (2) or sub-section (6) of section 22, or sub-section (2) or sub-section (7) of section 24;(e)the form in which accounts referred to in clause (i) of sub-section (3) of section 19 shall be maintained, the intervals at which and the persons by whom, such accounts shall be audited under clause (ii) of that sub-section and the scale referred to in that clause;(f)the manner in which audited accounts shall be available for inspection under clause (iii) of sub-section (3) of section 19;(g)the manner in which and the intervals at which payments under sub-section (4) of section 19 shall be made;(h)any other matter required to be

prescribed under this Act.