

The Bihar Evacuee Property (Management) Act 1953

JHARKHAND

India

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Act 10 of 1955

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The Bihar Evacuee Property (Management) Act 1953(Bihar Act 10 of 1955)For Statement of Objects and Reasons please see the Bihar Gazette (Extra Ordinary) dated 7.4.1953.[President's assent first published in the Bihar Gazette, dated the 1st June, 1955.]An Act to provide for the management of evacuee property belonging to evacuees who have migrated from Bihar to the province of East Bengal in Pakistan and formatters incidental thereto.Whereas it is expedient to provide for the management of evacuee property, belonging to evacuees who have migrated from the Bihar to the Province of East Bengal in Pakistan and for matters incidental thereto;It is hereby enacted as follows:-

Chapter I Preliminary

1. Short title, extent and commencement.

(1)This Act may be called the Bihar Evacuee Property (Management) Act, 1953.(2)It extends to the whole of the State of Bihar.(3)It shall come into force at once.(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 a person duly authorised in this behalf of a right of use or occupation of any evacuee property to any other person, but does not include a grant by way of lease;(b)"Central Act" means the Administration of Evacuee Property Act, 1950 (XXXI of 1950);(c)"Committee" means the Evacuee Property Management Committee constituted under Section 4;(d)"Evacuee" means any person who, on account of communal disturbance or fear thereof, has, between the 1st October,

1946 and the 11th April, 1950, left any place in the State of Bihar for any place now forming Part of the Province of East Bengal in Pakistan and has decided not to return to Bihar and includes, in case of his death, his legal heirs. Explanation. - (i) A statement made by such person that he left Bihar on account of communal disturbance or fear thereof will be presumed to be correct unless there is evidence to the contrary. (ii) A Government servant in Bihar who opted for service in Pakistan in 1947 and is now employed in the Province of East Bengal in Pakistan, but has his home in Bihar, will be deemed to have left Bihar on account of communal disturbances or fear thereof on the basis of a statement made by him to that effect unless there is evidence to the contrary. (e) "Evacuee property" means any immovable property in the State of Bihar belonging to a person who is an evacuee within the meaning of this Act, and which, on application made by the evacuee, with a view to bring the property under the provisions of this Act - (i) is declared by the State Government, after such inquiry as it may think fit, to be evacuee property under this Act; or (ii) if it was already declared to be evacuee property under Section 7 of the Central Act, is exempted under Section 52 of that Act from the operation of all its provisions: Provided that no such application shall be entertained unless it is accompanied by a declaration in writing by the evacuee of his decision not to return to Bihar: Provided further that no such declaration shall be necessary in the case of a legal heir who has not migrated to Pakistan but becomes an evacuee by reason of the death of the evacuee of whom he is heir; and (f) "Prescribed" means prescribed by rules made under this Act.

3. Act to override other laws.

- 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

Committee and its Staff

4. Constitution of the Committee.

(1) The State Government shall, by notification in the Official Gazette, constitute an Evacuee Property Management Committee for Bihar. (2) 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 time to time from among the members of the community to which the evacuee belong. (4) The Committee shall be a body corporate by the name of the Evacuee Property Management Committee of Bihar and shall have perpetual succession and a common seal and shall by the said name sue and be sued.

5. 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 President of the Committee, 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 performing, 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 a 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 subsection (3) of Section 4.

6. 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 of two members one of whom shall be the President.

7. Officers of the Committee.

(1)In 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.

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

(1)The members of the Committee other than the President shall not be entitled to any salary but the President and other members 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.

9. 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 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.

Chapter III

Evacuee Property and vesting thereof in the Committee

10. Vesting of Evacuee Property in the Committee.

(1)An evacuee property shall be deemed to have vested in the Committee-(a)in the case of property which has not been declared to be evacuee property under Section 7 of the Central Act, immediately after the State Government has declared it as evacuee property under this Act;(b)in the case of property which has been declared to be evacuee property under Section 7 of the Central Act but has on application been subsequently exempted under Section 52 of the said Act to be brought under the provisions of this Act, from the date of such exemption.(2)Where under sub-section (1) any property has vested in the Committee, neither the date of the evacuee nor the fact of the evacuee ceasing to be an evacuee thereafter shall affect the vesting or render invalid anything done in consequence thereof.

11. Power of Committee to take possession of evacuee property vested in it.

(1)Where, after any evacuee property has vested in the Committee, any person is in possession thereof, he shall be deemed to be holding it on behalf of the Committee and shall on demand surrender possession of it to the Committee or any other person duly authorised by the Committee in this behalf:Provided that in case any evacuee property is in possession of any person under an allotment or lease made under the Central Act, the Committee shall not take action under this sub-section until such allotment or lease is terminated by efflux of time or by operation of law.(2)If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Committee or to any person duly authorised by it in this behalf, the Committee may use or cause to be used such force as may be necessary for taking possession of such property, and may, for this purpose, after giving reasonable warning and facility to any woman 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.

12. Powers and duties of the Committee generally.

- Subject to the provisions of this Act and any rules that may be made in this behalf the Committee shall, in respect of any evacuee property vested in it, have all the rights, powers and liabilities of an owner for the purposes of securing, administering, preserving and managing such property, and generally, for the purpose of satisfactory discharge by the Committee of any of the duties imposed on it by or under this Act, and may, for such purposes as aforesaid, do all acts and incur expenditure necessary or incidental thereto:Provided that nothing in this section shall empower the committee to return or restore the evacuee property to the evacuee or any person claiming through him and such return or restoration if made, shall not confer any right, title or interest in the property on any

person.

13. Lease of Evacuee Property 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 in the case of evacuee property situated in an urban area and not exceeding twelve months in the case of other evacuee property at any one time: Provided that in leasing or letting out an evacuee property, the Committee shall on each occasion give the first preference to the person to whom any allotment of such property or part thereof was made by the Custodian of Evacuee Property under the Central Act, except where the Committee is satisfied 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 of an evacuee property shall be binding on the evacuee and his successor-in-interest, but only for the period for which such 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 out holds over after the expiry of the period of the lease or letting out such person shall be liable to be evicted by the Committee, or any person authorised by it without notice, and for this purpose the Committee shall have all the powers under sub-section (2) of Section 11.

14. Special provisions with respect to certain trust properties.

- Where any evacuee property which has vested in the Committee is property in trust for a public purpose of a religious or charitable nature, the property shall remain vested in the Committee only until such time as fresh trustees are appointed in the manner provided by law, and pending the appointment of fresh trustees the trust property and the income thereof shall be applied by the Committee for fulfilling, as far as possible, the purposes of the trust. Explanation. - (1) In this sub-section "property in trust for a public purpose of a religious or charitable nature" includes a public waqf and the expression "trustee" includes a mutawalli of such waqf. (2) In respect of any waqf-alal-aulad-(a) where the mutawalli is an evacuee, the property forming the subject-matter of the waqf shall vest in the Committee, subject to rights and interests of such of the beneficiaries as are not evacuee ; (b) where not all the beneficiaries are evacuees, the rights and interest of such of the beneficiaries as are evacuees shall alone vest in the Committee.

15. Power of an evacuee to disposal 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 a usufructuary mortgage) or otherwise, but not by way of lease : Provided that any such disposition of evacuee property shall be subject to allotment or lease or letting out, if any, made by the Custodian of Evacuee Property under Central Act or the Committee, as the case may be. (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 provisions of sub-section (3) of Section 13, take effect on and from the date of the publication referred to in sub-section (2) and on and from that date of the notice evacuee property shall cease to vest in the Committee and the Committee shall be absolved of all further responsibility in respect thereof.

16. Cancellation of transfer of evacuee property under certain circumstances.

- Where there are reasons to believe that any transfer of evacuee property made by the evacuee himself or by the Committee with the consent of the evacuee is intended to have, or has, the effect of transferring defacto control, management or possession of the property to the evacuee or to his prospective heirs which he or his prospective heirs would not otherwise have been entitled to under the provisions of this Act, the State Government or the Committee may cancel the transfer, provided that such action shall not be taken without giving the transferor and the transferee reasonable opportunity of showing cause against such action being taken.

17. Payment to Committee to be valid discharge.

(1)All amounts including amounts due to the evacuee in respect of any transaction relating to evacuee property shall be paid to the Committee by that person liable to pay the same, and such payment shall operate as a valid discharge to the person making the payment to the extent thereof.(2)Any payment made otherwise than in accordance with sub-section (1) shall not discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Committee to enforce such obligation against any such person.

18. Maintenance of accounts by the Committee.

(1)The Committee shall maintain a separate account of the property of each evacuee or body of co-sharer evacuees possession whereof has been taken by it, 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 State Government shall cause the accounts maintained under this section to be inspected and audited at such intervals and by such persons as may be prescribed. The cost of such audit shall be paid by the Committee according to the prescribed scale.(4)A copy of the audited account 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 co-sharer evacuee authorised in writing.

Chapter IV

Miscellaneous

19. Exemption from attachment, sale.

- Save as otherwise expressly provided in this Act, no property which has vested in the Committee shall be liable to attachment, distress or sale in execution of any decree or order of a Court or of an order of any other authority, and no injunction in respect of any such property shall be granted by any Court or other authority.

20. Occupancy or tenancy right not to be extinguished.

- Nothing contained in any other law for the time being in force shall be deemed to extinguish the right of occupancy in any land or the site of any house or other building of an evacuee which has vested in the Committee, and notwithstanding anything contained in any such law, neither the evacuee nor the Committee, whether as an occupancy tenant or as a tenant for a fixed term of any land or the site of any house or other building, shall be liable to be ejected or deemed to have become so liable on any ground whatsoever for any default of the Committee.

21. Control of Administrative Officers.

(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.

22. 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 (XLV of 1890).

23. Penalty for causing damage to evacuee property.

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

24. Penalty for contravention of the provisions of the Act, other etc.

- Any person who contravenes any provision of this Act or of any rule or order made thereunder or obstructs the lawful exercise of any power conferred by or under this Act, or makes default in complying with any requirement of this Act or of any rule or order made thereunder, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with

both.

25. Penalty for abatement.

- Any person who abets any of the offences punishable under this Act shall be punishable with the punishment provided for the offence.

26. Recovery of arrears.

- Any sum due to the State Government or to the Committee under the provisions of this Act may be recovered as if it were an arrear of land revenue.

27. 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 Indian Evidence Act, 1972 (1 of 1872) and shall be presumed to be genuine until the contrary is proved.

28. Notice of suits to the Committee.

(1) If in any suit or proceeding 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 Committee. (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 Committee, make an order that the Committee 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.

29. Bar of jurisdiction.

- Save and except as expressly provided in this Act, no order of the State Government or 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 be 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.

31. Power of State Government to take action with regard to evacuee property.

- The State Government may, for the purpose of regulating the administration and management of any property which has vested in the Committee under the provision of this Act, pass such order or direct such action to be taken in relation thereto as, in its opinion, the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act.

32. Delegation of powers, duties and functions.

(1)The State Government may, by general or special order, direct that any power 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 State Government.(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.

33. Power to make rules.

(1)The State 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 term and conditions of service of the officers and servants appointed under this Act and for furnishing of security by them;(b)the rate of levy referred to in sub-section (i) of Section 9;(c)the persons by whom and the times at which books of accounts maintained under this Act may be inspected and audited;'(d)the manner in which evacuee properties which have vested in the Committee may be notified;(e)the manner in which possession of any evacuee property may be taken by the Committee;(f)the manner in which trust properties which have vested in the Committee may be administered or otherwise dealt with;(g)the procedure governing the grant of leases;(h)the securities in which the Committee may invest any moneys held by it;(i)the manner in which any moneys due to the Committee may be recovered;(j)the form and manner in which books of accounts and other records shall be maintained by the Committee;(k)the form in which any notice under this Act may be issued, the manner of its service and publication and the form in which any demand may be made by the Committee; and(l)any other matter which has to be or may be prescribed under this Act.