

THE PAKISTAN ADMINISTRATION OF EVACUEE PROPERTY ACT, 1957

[¹Act No. XII of 1957]

[As amended up-to-date]

[15th March, 1957]

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Preamble

An Act to provide for the administration of evacuee property in Pakistan and for certain matters incidental thereto

Whereas it is expedient to provide for the administration of evacuee property in Pakistan and for certain 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 Pakistan (Administration of Evacuee Property) Act, 1957.

(2) It extends to West Pakistan [2]*****

(3) It shall come into force at once.

2. Definitions. In this, Act, unless there is anything repugnant in the subject or context, --

(1) "Custodian" means a Custodian of Evacuee Property appointed under Section 6 and includes an Additional, Deputy or Assistant Custodian;

(2) "evacuee" means" any person, --

(a) who, on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances, on or after the first day of March, 1947, leaves or has left any place in the territories now comprising Pakistan for any place outside those territories; or

(b) who acquires or has acquired, on or after the aforesaid date, 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 property under any law for the time being in force in India or in any area occupied by India; or

(c) who is resident in any place in the territories now comprising India or in any area occupied by India and, --

i. is unable to occupy, supervise or manage in person his property in Pakistan; or

ii. whose property in Pakistan has ceased to be occupied, supervised or managed by any person or is being occupied supervised or managed by a person (whether duly empowered in this behalf by him or otherwise) whose authority or right so

- to do on or after the aforesaid date has not been accepted or approved by the Custodian; or
- (d) whose business or undertaking in Pakistan, in the case of a corporation, has on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances, or the fear of such disturbances, ceased to function, wholly or partially, or is being carried on by persons (whether duly empowered in this behalf by the corporation or its management or otherwise) whose authority to do so on or after the first day of March, 1947, has not been accepted or approved by the Custodian; or
 - (e) being a joint stock company, more than fifty per cent of the shares of which are held by persons who are evacuees;
- (3) "evacuee property" means any property in which an evacuee has any right or interest (whether personally or as a trustee or a beneficiary or in any other capacity), and includes, --
- a. any right or interest in joint Hindu family property which would accrue to the evacuee upon the partition of the same; or
 - b. property of an evacuee obtained by transfer on or after the first day of March, 1947, until the transfer is confirmed by the Custodian;

but does not include-

- i. any ornaments or wearing apparel or any cooking vessels or other household effects in the immediate possession of an evacuee, or
 - ii. any property belonging to a joint stock company the registered office of which was situated, before the fifteenth day of August, 1947, in any place in the territories now comprising India and continues to be so situated after the said date;
- (4) "prescribed" means prescribed by rules made under this Act;
- (5) "property" means property of any kind, and includes any right or interest in such property and any debt or actionable claim, but does not include a mere right to sue;
- (6) "displaced person" means a person who having been ordinarily resident in any place in the territories now comprising India or in any occupied by India has on account of the setting up of the Dominions of Pakistan and India or account of civil disturbances or the fear of such disturbances, taken refuge in Pakistan;
- (7) "registering officer" means a Registrar or Sub Registrar appointed under Section 6 of the Registration Act, 1908, or any other officer discharging for the time being the functions of such Registrar or Sub-Registrar;
- [3] [8] "Rehabilitation Authority" means any Rehabilitation Board, Rehabilitation Commissioner, or Additional, Deputy or Assistant Rehabilitation Commissioner appointed under the Pakistan Rehabilitation Act, 1956, or any other officer appointed under any law for the time being in force relating to the rehabilitation of displaced persons or social and economic rehabilitation in Pakistan.
- [4] *****

3. Property not to be treated as evacuee property on or after 1st January, 1957.

- (1) Notwithstanding anything contained in this Act, no person or property not treated as

evacuee or as evacuee property immediately before the first day of January, 1957 shall be treated as evacuee or, as the case may be, as evacuee property, on or after the said date.

(2) Nothing in sub-section (1) shall apply, --

(a) to any person in respect of whom or to any immediately before the date mentioned therein for property in respect of which any action has commenced or any proceedings are pending treating such person as evacuee or such property as evacuee property; or

(b) to any property which is occupied, supervised, or managed by a person whose authority or right so to do after the twenty-eighth day of February, 1947, has not been accepted or approved by the Custodian.

[^{5]} **3-A.** (1) Notwithstanding anything contained in this Act, no person or property treated as evacuee or as evacuee property immediately before the commencement of the Pakistan (Administration of Evacuee Property) (Amendment) Act, 1958, shall be declared to be non-evacuee or, as the case may be, non-evacuee property, on or after such commencement.

(2) Nothing in sub-section (1) shall apply to any evacuee in respect of whom or to any evacuee property in respect of which any action has commenced or any proceedings are pending immediately before such commencement as aforesaid for treating such evacuee as non-evacuee property.

4. Final determination of evacuee status. If any question arises whether a person is an evacuee or not, the Custodian may refer the question to the Central Government, whose decision shall be final.

5. Act to over ride other laws. (1) The provisions of this Act, and any rule or order 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.

CHAPTER II

Appointment of Custodians and vesting and possession of Evacuee Property

6. Appointment of Custodians. (1) For the purpose of carrying this Act into effect, the Central Government may, by notification in the official Gazette, appoint one or more Custodians of Evacuee Property for such area as may be specified in the notification.

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(3) The term "Custodian" in sub-section (2) shall not be deemed to include an Additional Deputy or Assistant Custodian.

7. Vesting of evacuee property in Custodian. (1) All evacuee property shall vest and shall be deemed always to have vested in the Custodian with effect from the first day of March, 1947.

(2) Where any evacuee property which has vested in the Custodian or of which possession has been taken by the Custodian is property in trust for a public purpose of a religious or charitable nature, it shall be lawful for the Central Government, notwithstanding anything contained in the instrument of trust or any law for the time being in force, to appoint, by general or special order, new trustees in place of the evacuee trustees and the property shall remain vested in the Custodian or in his possession only until such time as the new trustees are so appointed and pending the appointment of such new trustees the trust proper and the income thereof shall be applied by the Custodian for fulfilling, as far as possible, the purpose of the trust.

(3) Where any property in Pakistan belonging to a joint stock company has vested in or been taken possession of by any person exercising the powers of a Custodian under any law in force immediately before the first day of January, 1957, nothing contained in clause (3) of Section 2 shall affect the operation of sub-section (1), but the Central Government may by notification in the official Gazette direct that the Custodian shall be divested or dispossessed of any such property in such manner and after such period as may be specified in the notification.

8. Certain rights not to be extinguished. (1) Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, or rights as lessee or grantee, nothing contained in any law for the time being in force or in any contract or in any instrument having the force of law or in any decree or order of any Court or any other authority shall extinguish or be deemed to have extinguished any such rights on the occupant, tenant, lessee or grantee becoming an evacuee or at any time thereafter so as to prevent such rights from vesting in the Custodian or being dealt with as evacuee property, and neither the Custodian nor the evacuee shall be or shall be liable to be ejected or be deemed to have become so liable on any ground whatsoever for any default of,--

(a) the evacuee committed after he became an evacuee or within a period of one year immediately before the date of his becoming an evacuee, or
(b) the Custodian.

(2) Where any person acquires or has acquired any rights in respect of any property by reason of his being in possession of that property whether in pursuance of a grant, lease or

allotment made by any authority or otherwise, the acquisition of such rights shall not in any way affect or be deemed to have affected the rights and powers conferred on the Custodian under this Act in respect of that property.

9. Special provision with respect to transfer of occupancy or tenancy rights of evacuees. (1) Where occupancy or tenancy rights have vested in the Custodian and have been allotted as evacuee property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian is not an evacuee, declare by general or special order, that with effect from such date as may be specified in the order, he shall stand absolved of all responsibilities with respect to the property or the allotment.

(2) On the making of such declaration as is referred to in sub-section (1), --

(a) the allotment of the evacuee occupancy or tenancy rights shall be deemed to have effect as if granted by the lessor under whom the property was held before it vested in the Custodian and shall continue to have such effect until it is determined by lapse of time or by operation of law,

(b) all sums realised by the Custodian in respect of such allotments before the date of declaration referred to in sub-section (1) shall, subject to the deduction of the fee, if any, payable to the Custodian, be payable to the lessor.

(3) Nothing contained in this section shall

(a) be deemed to empower the Custodian or a Rehabilitation Authority to grant, without the consent in writing of the original lessor or his successor-in-interest, --

i. where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease; or

ii. where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease; or

(b) render the Custodian or the Rehabilitation Authority liable to any person for any sum in excess of the sum payable to the lessor under clause (b) of sub-section (2).

10. Holding of evacuee property and its surrender. (1) Every person who is, or has at any time, after, the twenty-Eighth day of February, 1947, been in possession, supervision or management of any evacuee property, shall be deemed to be hold or to have held, as the case may be such property on behalf of the Custodian.

(2) Every person who is in possession, supervision or management of any evacuee property or property which he knows or has reason to believe is evacuee property, and whose authority or right to occupy, supervise or manage such property after the twenty eighth day of February, 1947, has not been accepted or approved by the Custodian, shall, as soon as may be but not later than such date as may be notified by the Central Government in the official Gazette, intimate to the Custodian in writing his willingness to surrender such property to the

Custodian or to any person authorised by the Custodian in this behalf and shall surrender the same if called upon by the Custodian, or any person authorised as aforesaid.

(3) The provisions of sub-section (2) shall not apply to any person who is in possession, supervision or management of any evacuee property by virtue of an allotment made by a Rehabilitation Authority.

11. Submission of information and accounts to Custodian. As soon as may be but not later than such date as may be notified by the Central Government in the official Gazette, every person who is, or has at any time after the Twenty-eight day of February, 1947, been in possession, supervision or management of any evacuee property or property which he knows or has reason to believe is evacuee property, and whose authority or right to occupy, supervise or manage such property after twenty-eight day of February, 1947, has not been accepted or approved by the Custodian, shall submit to the Custodian, or to any person authorised by him in this behalf, --

- (a) full information relating to such property, including the date since when, or the period for which, he has been in possessions, supervision management thereof, and
- (b) a detailed account of the rents, profits, income and other moneys received, or benefits derived from such property since the first day of March, 1947, or for the period he has been in possession, supervision or management thereof.

12. Power of Custodian to take possession of evacuee property. If any person who is in possession supervision or management of any evacuee property or property which he knows or has reason to believe is evacuee property and whose authority or right to occupy, supervise or manage such property alter the twenty-eight day of February, 1947, has not been accepted or approved by the Custodian does not surrender such property to the Custodian or the person authorised by him in this behalf then, without prejudice to any other action or penalty to which such person may otherwise be liable, 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 woman not appearing in public to withdraw, remove or break upon any lock, bolt or door, or do any other act necessary for the said purpose.

13. Powers of Custodian to manage property part of which is evacuee property.

(1) Where any property is held by or on behalf of persons one or more of whom are and one or more of whom are not, evacuees, then if the greater part of such property reckoned according to the value of the whole, is held by or on behalf of those of such persons who are evacuees, the Custodian may take possession and assume control and management of the whole of such property.

(2) Where such property is joint Hindu family property the Custodian shall deem the property to have been partitioned into national shares, held by or on behalf of those members of the family who are evacuees constitute the greater part of such property, reckoned according to the value of the whole, the Custodian may take possession and assume control and management of the whole of such property

(3) Notwithstanding the provisions of sub-sections (1) and (2), the Custodian shall, on an application being made in this behalf by all or any of these persons who are not evacuees, partition such property, if capable of being partitioned, and determine the shares of such person or persons.

14. Payment to Custodian. (1) Any amount due to an evacuee or payable in respect of any evacuee property or property which the Custodian has taken possession, shall be paid to the Custodian by the person liable to pay the same.

(2) Any person who makes a payment under sub-section (1) shall be discharged from further liability to pay to the extent of the payment made.

(3) Without prejudice to any penalty to which he may be liable under Section 35 any person who makes or has made any payment otherwise than in accordance with sub-section (1) or any law for the time being in force requiring payment of any such amount as is mentioned in sub-section (1) to be made to the Custodian shall not be discharged from his obligation to pay the amount due, and the right of the Custodian to enforce such obligation against such person shall remain unaffected.

(4) Notwithstanding anything in sub-section (1) or sub section (3), any payment by a person who being immediately before the first day of March, 1947, a tenant of another person who on or after that day became an evacuee, has between that day and the fifteenth day of October, 1949, paid any amount on account of rent in respect of the tenancy to that other person or to an agent authorised by him to receive such rent shall be discharged from further liability to pay to the extent of the payment made as if the payment had been made in accordance with sub-section (1).

15. Recovery of damages for unauthorised possession. Any person who has been in possession or occupation of evacuee property in an unauthorised manner or is found to have misappropriated or unlawfully converted evacuee property to his own use, or caused loss to it by his act or omission shall without prejudice to any other action or penalty to which he may otherwise be liable, pay such damages as may be assessed by the Custodian:

Provided that no such damages shall be assessed by the Custodian without giving notice to the person concerned.

16. Exemption from legal process. (1) Property which has vested in, or of which possession has been taken by the Custodian shall be exempt from all legal process, including seizure, distress, ejectment, attachment or sale by any officer of a Court or any other authority, and no injunction or other order of whatever kind in respect of such property shall be granted or made by any Court or any other authority, and the Custodian shall not be divested or dispossessed of such property by operation of any law for the time being in force.

(2) Upon the commencement of this Act, any such legal process as aforesaid subsisting immediately before such commencement shall cease to have effect and all evacuee property in custody of any Court, or Receiver, guardian or other officer or person appointed

by it, shall, upon delivery of the same being called for by the Custodian, be delivered to the Custodian.

(3) Nothing contained in the foregoing sub-sections shall, --

- (a) prevent a Civil Court from ordering specific performance of any agreement to sell or exchange immovable evacuee property where such agreement has been approved by the Custodian, or a Registering Officer from registering a deed of sale or exchange relating to such property where a certificate under section 20 has been granted by the Custodian; or
- (b) affect any power conferred on the Central Government by or under any law for the time being in force to requisition or acquire property, and it is hereby declared that if by or under such law or any other law for the time being in force a like power is conferred upon or delegated to a Provincial Government, the Provincial Government may exercise the same in relation to evacuee property with and only with the previous approval of the Central Government and subject to such directions as the Central Government may at any time see fit to give.

17. Publication of list of evacuee property. The Custodian may publish by notification in the official Gazette a list of evacuee property in any area.

CHAPTER III

Allotment of Evacuee Property

18. Allotment of evacuee property for rehabilitation. (1) A Rehabilitation Authority may, for the purposes of the rehabilitation of displaced persons, or social or economic rehabilitation in Pakistan, allot to any person any evacuee property or property of which the Custodian has taken possession under Section 13:

Provided that no property which is subject to an order under clause (1) of sub-section (2) of Section 25 shall be allotted by the Rehabilitation Authority without the previous approval in writing of the Custodian.

(2) Every allotment of evacuee property made between the first day of March, 1947, and the commencement of this Act. shall be deemed to have been made under sub-section (1).

(3) Where any evacuee property has been allotted under this section the Rehabilitation Authority making the allotment shall, as soon as may be, furnish to the Custodian such

description of the property allotted and such particulars of the person to whom it has been allotted as may be prescribed.

(4) The terms and conditions on which evacuee property whether allotted before or after the commencement of this Act, may be held shall be determined by the Custodian and the Custodian may revise or amend such terms or conditions.

(5) Every person to whom evacuee property has been allotted shall be deemed to hold the property on the terms and the conditions determined under sub-section (4),

(6) If any person fails to comply with the aforesaid terms and conditions the Custodian may eject such person and take possession of the property.

CHAPTER IV

Transfer and Restoration of Property

19. Prohibition of transfers of property generally. The Central Government may, by notification^[7] in the official Gazette, declare that in such area and for such period as may be specified in the notification, the transfer of any property or class of property, or the creation of any right or interest therein or encumbrance thereon shall be prohibited, and where any such declaration has been made, no such transfer or creation shall be made during the period in the area except with previous approval in writing of the Custodian:

Provided that nothing in this section shall prevent the transfer of movable property of which an evacuee has immediate physical possession.

20. Restriction on transfer by evacuees. (1) No creation or transfer of any right or interest in or encumbrance upon any property made in any manner whatsoever on or after the first day of March, 1947, by or on behalf of an evacuee, or by or on behalf of a person who has become an evacuee after the date of such creation or transfer, shall be effective so as to confer any right or remedy on any party thereto or on any person claiming under any such party, unless it is confirmed by the Custodian.

(2) An application for confirmation of such creation of a right or encumbrance or transfer as aforesaid may be made to the Custodian within the prescribed period by any party thereto, or by any person claiming under or lawfully authorised by such party.

(3) The Custodian shall hold a summary inquiry into the application in the prescribed manner, and, --

- (a) shall reject the application if the creation or transfer, --
 - i. was or is prohibited under any law for the time being in force, or.
 - ii. was not or is not covered by a certificate from the prescribed income tax authority to the effect that no objection exists to such creation or transfer;
- (b) may reject the application if he is of opinion that the creation or transfer, --
 - i. was not or has not been entered in good faith or for adequate consideration, or
 - ii. ought for any other reason not to be confirmed.

(4) If the application is not rejected under sub-section (3), the Custodian may confirm the creation or transfer either unconditionally or subject to such terms and conditions as he thinks fit to impose.

21. [Registration of documents and mutation of names] Omitted by the Pakistan Administration of Evacuee Property) (Amtd.) Ordinance, 1962 (LXIII of 1962), S. 2.

22. Claims by interested persons. (1) Any person claiming any right or interest in any property treated by the Custodian or a Rehabilitation Authority as evacuee property may prefer a claim to the Custodian on the ground 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) An application under sub-section (1) shall be made within the prescribed period being a period of not less than thirty days from the prescribed date.

(3) On receiving an application under sub-section (2), the Custodian shall hold a summary inquiry in the prescribed manner and after taking such evidence as may be produced shall pass an order, stating the reasons therefor, rejecting the application or allowing it wholly or in part on such terms and conditions as he thinks fit to impose.

23. Restoration of evacuee property. (1) Subject to the provisions of sub-sections (2) and (3), the Custodian may, on application made to him in this behalf by an evacuee or any person claiming to be the heir or survivor of an evacuee and producing in support of his application a certificate from the Central Government or from any person authorised by it in this behalf to the effect that the evacuee property may be restored if the evacuee or such other person is otherwise entitled thereto, restore, on such terms and conditions as he may think fit to impose, any evacuee property to which the evacuee or such person claiming as aforesaid would have been entitled If this Act were not in force.

(2) On receipt of an 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 application in such manner as may be prescribed, may, --

- (a) make an applicant, or order restoring the property to the applicant, or
- (b) refer the applicant to a Civil Court for the determination of his claim and title to the property, or
- (c) reject the application:

Provided that no order for restoration shall be made under this section 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.

(3) Upon the restoration of the property to the evacuee or such other person as aforesaid, the Custodian shall stand absolved of all responsibilities in respect of the property so restored but restoration shall not prejudice the right, 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 every allotment made by a Rehabilitation Authority shall have effect against the person to whom restoration is made until such allotment is duly cancelled or determined by the Rehabilitation Authority.

(4) The Custodian shall on application made to him in this behalf, furnish to the person to whom restoration is made under this section, a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property restored.

24. Custodian to save effect of allotment orders. No order made by the Custodian under the provisions of sub section (3) of Section 22 or of clause (a) of sub-section (2) of Section 23 in respect of property which is subject to an allotment under the Pakistan Rehabilitation Act, 1956, shall affect any allotment order to which the property is so subject.

CHAPTER V

Powers and Duties of Custodians

25. Powers and the duties of the Custodian generally. (1) The Custodian may take such measures as he considered necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property or property of which possession has been taken by 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, --

- (a) carry on the businesses or undertaking 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 or permit the completion of any building which requires to be completed and make or permit the making of additions or alterations to any existing building;
- (f) construct or permit the construction of buildings on evacuee plots;
- (g) replace or install machinery in any factory;
- (h) direct any person, notwithstanding anything contained in any other law for the time being in force relating to the disclosure of any information by a public servant or any other person, to furnish such returns, accounts or other information in relation to any property and to produce such documents as the Custodian considers necessary for the discharge of his duties under this Act;
- (i) direct any banking company, to furnish such information as the Custodian may require with respect to any remittance made by any person to any place outside the territories now comprising Pakistan after the twenty-eighth day of February, 1947;
- (j) search, or authorise any other person to search any building or place in which the Custodian has reason to believe that any evacuee property or any document tending to show that any person is an evacuee or that any property is being kept or concealed and take possession thereof,
- (k) where the evacuee property consists of a share or shares in a company, exercise, notwithstanding anything contained in the Companies Act, 1913, or in the articles of association of the company, such rights in the matter of making a requisition for the convening of a meeting or of presenting a petition to the Court under the provisions of the said Act or articles of association, or in any other matters, as the evacuee shareholder could have exercised if this Act were not in force;
- (l) take such action as may be necessary for the recovery of any debt due to the evacuee;
- (m) to determine the rent to be recovered from a person found in unauthorised occupation of evacuee property for the period of such occupation;
- (n) institute, defend or continue any legal proceeding 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 to a Civil Court for adjudication or compromise any claims, debts or liabilities on behalf of the evacuee;
- (o) raise on the security of the evacuee property such loans as may be necessary;
- (p) create a charge on evacuee property;
- (q) incur or allow any expenditure to be incurred in the prescribed manner including the payment of taxes, duties, cesses and rates to the Government or to any local authority or of any debt due by the evacuee or any claim against him after satisfying himself as to the genuineness of such [¹⁸] [dues or claims];
- (r) pay any sum to the evacuee or to such member of his family or to such other persons as in the opinion of the Custodian is entitled thereto;
- (s) transfer any evacuee property, notwithstanding anything contained in any law or agreement to the contrary relating thereto:

Provided that the Custodian shall not under this clause or the next succeeding clause transfer any immovable evacuee property or any business or undertaking which is evacuee property, except with the previous approval of the Central Government;

- (t) demolish or dismantle any evacuee property which in the opinion of the Custodian cannot be repaired, or sell the site and the materials thereof;
- (u) evict an unauthorised occupant of evacuee property with such force as may be necessary;
- (v) demolish or dismantle any unauthorised construction on evacuee property with such force as may be necessary:

Provided that the Custodian shall not take such action without giving an opportunity to the person concerned to remove the unauthorised construction within a specified period to accept such compensation as may be fixed by the Custodian;

- (w) partition or permit a Rehabilitation Authority to partition any property or rights therein if a share in such property or rights consists of evacuee property;
- (x) permit the Rehabilitation Authority to effect consolidation of holding of evacuees;
- (y) make payments, out of moneys held by him, for the maintenance of displaced persons, in the prescribed manner;
- (z) invest in any security approved by the Central Government or in the prescribed manner any money held by him.

26. Evaluation of evacuee property. (1) The Custodian may determine the value of any property vesting in him or empower the Rehabilitation Authority of the area to do so.

(2) If it appears to the Central Government in any case that the value of any property determined under sub-section (1) is not proper it may make necessary enquiry in the matter and pass such orders as it may think proper and the order so passed shall be final.

27. Loans on the security of allotted agricultural land. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, any person to whom evacuee property comprising agricultural land has been allotted in pursuance of Section 6 of the Pakistan Rehabilitation Act, 1956, may, if so authorised in writing by the Custodian, obtain a loan against the security of such land from the Corporation on such terms and conditions as may be agreed upon.

(2) If the person who obtains a loan under sub-section (1) makes default in the repayment thereof and the Corporation is not able to re-cover its dues from the other securities or sureties furnished by such person, it may inform the Custodian of the default and request him to sell the land, and upon such request being received the Custodian shall sell so much of the land as necessary to repay the loan.

Explanation. In this section Corporation means the Agricultural Development Finance Corporation established under the Agricultural Development Finance Corporation Act, 1952.

28. Expenditure by Custodian how to be recouped. Subject to the provisions of Section 47, and section 22 of the Pakistan Rehabilitation Act 1956, any expenditure incurred

by the Custodian in the exercise of any power conferred by this Act shall in 1956 relation to any evacuee property in respect of which it 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.

29. 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 account shall be maintained in such form and in such manner as the Central Government may direct.

(3) The Central Government shall cause the account to be inspected and audited at such intervals and by such persons as may be prescribed.

[^{19]}**30. Powers of Custodian when holding inquiry.** (1) When holding an inquiry under this Act the Custodian shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely: --

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the discovery and production of documents, articles and things;
- (c) issuing a commission for the examination of witnesses;
- (d) any prescribed matter.

(2) Every proceeding before the Custodian under this Act shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Pakistan Penal Code and the Custodian shall be deemed to be a Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898.

CHAPTER VI

Offences and Penalties

31. Causing damage to evacuee property. Any person who wilfully causes damage or allows damage to be caused to any evacuee property or misappropriates or unlawfully converts it to his own use shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

32. Concealment of evacuee property, etc. Any person who, with intent to evade the provisions of this Act, conceals, destroys, mutilates or defaces any property, book or other document, or knowingly allows such concealment, destruction, mutilation or defacement, to be caused, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

33. False statement or declaration. Any person who, --

- (a) for the purpose of obtaining allotment, transfer or possession of any evacuee property, makes a statement or declaration or files a document which is false or which he either knows or has reason to believe to be false or does not believe to be true, or
- (b) furnishes any return, account or information which is material to any of the purposes of this Act and which is false or does not believe to be true,

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

34. Failure to surrender property or submit information and account to Custodian. If any person fails to intimate his willingness to surrender, or when called upon to surrender fails to surrender any evacuee property In accordance with the provisions of sub-section (2) of Section 10 or to submit such information or account as is required under section 11 he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

35. Failure to comply with direction, etc. If any person fails to comply with a direction issued by the Custodian in exercise of powers conferred by clause (h) or clause (i) of Section 25 or refuse to allow access to any land or premises in accordance with the provisions of clause (c) thereof he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

36. Offences not expressly provided for. Save as provided in Sections 31 to 35 whoever contravenes any of the provisions of this Act or of any rule or order made thereunder or obstructs the lawful exercise of any power conferred thereby shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

37. Attempt and abetment. Whoever attempts to commit, or abets, or attempts to abet, or does any act preparatory to the commission of, any offence punishable under this Act shall be deemed to have committed that offence.

38. Offence to be cognizable. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, all offences punishable under this Act shall be cognizable but bailable.

39. Cognizance of offences by Courts. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence, made with the previous sanction of the prescribed Custodian.

40. Offences may be tried summarily. Any Magistrate or Bench of Magistrates empowered for the time being to try in a summary way the offences specified in sub-section (1) of Section 260 of the Code of Criminal Procedure, 1898, may if such Magistrate or Bench of Magistrates thinks fit, on application in this behalf being made by the prosecution, try any offence punishable under this Act in accordance with the provisions contained in Sections 262 to 265 of the said Code.

CHATER VII

Supplementary and Procedural

41. Jurisdiction of Courts barred. (1) Save as expressly provided in this Act no civil or revenue Court or any other authority shall have jurisdiction.

- (a) to entertain or adjudicate upon any question arising in any suit, appeal, application or other proceedings as to whether any person is or is not evacuee or whether any property is or is not evacuee property or what right or interest, if any, an evacuee has in any such property;
- (b) to question the legality of anything done under this Act by or at the instance of the Custodian, or
- (c) in respect of any matter which the Custodian is empowered by or under this Act to determine.

(2) Whenever any question such as is referred to in clause (a) of sub-section (1) arises in any Court, or before any other authority, the Court or authority shall state the question with relevant particulars and remit it to the Custodian for decision, and shall adjourn the proceedings in which the question arises until the decision of the Custodian is given, and the decision of the Custodian on the question stated shall be conclusive.

(3) No decision, decree or order of any court or authority in respect of any evacuee or evacuee property passed between the first day of March, 1947, and the fifteenth day of October 1949, shall be binding on the Custodian or affect any right or interest of an evacuee in any property affected by such decision, decree or order unless it is accepted or approved by the Custodian.

(4) ^[10][Save as provided by or under this Act, no Court] or other authority shall be competent to grant an injunction or other order in relation to any proceeding before the Custodian under this Act, or anything done or intended to be done by or at the instance of the Custodian under this Act.

(5) Nothing in the foregoing sub-section shall prevent the adjudication by a Civil Court of a dispute between evacuees relating to a right in evacuee property upon a reference made to it by the Custodian or with the Custodian's previous approval.

42. Presumption as to orders of Custodian. Every order purporting to be made or signed by the Custodian under this Act shall be presumed to have been made or signed by the Custodian until the contrary is proved.

43. Appeal, revision and review. (1) Any person aggrieved by a final order under Section 20, Section 22 or Section 23 passed by a Deputy or Assistant Custodian may prefer an appeal to the Custodian.

(2) The appeal shall be presented in such manner and within such time as may be prescribed.

(3) The Custodian to whom an appeal is preferred under sub-section (1) may dispose of it himself, or make it over for disposal to an Additional Custodian.

(4) The Custodian may, at any time, either of his own motion or on application made to him within the prescribed period in this behalf call for the record of any proceeding for the administration of evacuee property, which is pending before or has been disposed of by an officer subordinate to him, including an Additional Custodian, 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 shall not pass an order revising or modifying an order affecting any person without giving such person and the Rehabilitation Authority an opportunity of being heard.

(5) The Custodian may dispose of a case under sub-section (4) himself or, except when it relates to an order of an Additional Custodian, make it over to an Additional Custodian for disposal.

[¹¹] [(6) Clerical or arithmetical mistakes in any order passed by any Custodian under this Act, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Custodian concerned or his successor-in-office.]

[12] *****

[¹³] (7) Subject to the foregoing provisions of this section, [¹⁴] [and the other provisions of this Act.) any order made by the Custodian, or Additional, Deputy or Assistant Custodian shall be final and shall not be called in question in any Court.

[¹⁵] **43A. Revision by High Court.** (1) If in any case in which a Custodian has, on or after the first day of January, 1953, declared an evacuee or any evacuee to be non-evacuee or, as the case may be, non-evacuee property, the Central Government or the Government of West Pakistan considers it necessary so to do, it may, notwithstanding anything in this Act or in any other law for the time being in force send within six months of the commencement of the Pakistan (Administration of Evacuee Property) (Amendment) Act, 1958, or within three months of such declaration, whichever be later, the record of the case to the High Court for the purpose of satisfying itself as to the legality or propriety of the order passed by the Custodian, and the High Court may pass such order in the case as it may deem fit.

(2) Notwithstanding the provisions of sub-section (1), the High Court may, on an application made to it in this behalf by any person within the period specified in the said sub-section, call for the record of any such case as is referred to therein, not being a case the record of which has already been sent to the High Court, for the purpose of satisfying itself as to the legality or propriety of the order passed by the Custodian, and may pass such order as it may deem fit.

(3) Any case, the record of which has been sent to the High Court under sub-section (1) or has been called by the High Court under sub-section (2) shall be heard by a Bench of not less than two Judges the High Court, and in respect of such case the provisions of Section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply.

(4) Where the High Court passes an order to the effect that any evacuee property declared to be non- evacuee property should not have been so declared, and such property is or has been in the hands of a bona fide purchaser or purchasers for adequate value, the High

Court shall determine the amount of compensation to be paid to such purchaser or purchasers after such property has revsted in the Custodian.

43-B. Any order passed by a Custodian declaring any evacuee to be non-evacuee or any evacuee property to be non evacuee property shall take effect, and be deemed always to have taken effect, subject to such order, if any, as the High Court may pass under Section 43-A)

[^[16]] **43-C.** (1) If any case where evacuee property has been acquired with permission of the Central Government under Section 16 of the Pakistan (Administration of Evacuee Property) Act, 1957, or such property has been transferred under clause (r) of sub-section (2) of Section 25 of the said Act, or under the corresponding provision of any other law on this subject in force at the time of such acquisition or transfer, the Central Government is of the opinion that the price assessed or paid for the acquisition or transfer of such property was not adequate, it may refer the case to the Custodian, and the Custodian, after giving notice to the parties concerned and holding such inquiry, if any, as he may consider necessary, may, if he is satisfied that the price assessed or paid was inadequate, and notwithstanding any order to the contrary passed by a Provincial or Central Government, or by a Custodian, and the execution of any deed of conveyance, or agreement, by or on behalf of the person, authority, company or Government (hereinafter referred to as the transferee) for whom the said property has been acquired or to whom it has been transferred, or delivery of possession to the said transferee, report to the Central Government which of the under-mentioned courses should, in his opinion, be followed, namely: --

- (a) that the transferee be directed to pay such further sum to the Custodian as the Custodian may report to be necessary to make up the price and that, if such sum is not paid within the time fixed for the purpose, resumption of such property be ordered subject to a refund to the transferee of the price paid by him, and, if any buildings have been erected upon or improvements made on or in the property by the transferee, on payment to him of their value as estimated by the Custodian; or
- (b) that, without directing the transferee to pay such further sum as aforesaid resumption of the property so acquired or transferred be ordered, subject to a refund and payment as aforesaid.

(2) Upon receiving a report under sub-section (1) from the Custodian and considering it the Central Government shall have power to give a direction or order, as may seem to it fit, in pursuance of clause (a) or clause (b) of sub-section (1) and if it orders resumption of the property the property shall, upon the making of the order, vest forthwith in the Custodian.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, the property resumed under sub-section (1) shall forthwith be and be treated as evacuee property.]

44. Transfer of pending cases. (1) The Central Government after giving notice to and hearing the parties concerned if they appear may transfer any application, appeal,

revision or other proceeding pending before a Custodian at any stage to another Custodian for disposal whenever it appears to it that such transfer will promote the ends of justice or tend to general convenience of parties or witnesses and on such transfer the Custodian to whom the case is transferred shall have the same power in respect thereof as the Custodian from whom the case is transferred.

(2) The Custodian after giving notice to and hearing the parties concerned if they appear may transfer any application, appeal, revision or other proceeding pending before an Assistant, Deputy or Additional Custodian at any stage to another Assistant, Deputy or Additional Custodian within his jurisdiction for disposal whenever it appears to him that such transfer will promote the ends of justice or tend to general convenience of parties or witnesses, and on such transfer the Assistant, Deputy or Additional Custodian to whom the case is transferred shall have the same powers in respect thereof as the Assistant, Deputy or Additional Custodian from whom the case is transferred.

45. Disposal of certain appeals, etc., validated. (1) Notwithstanding anything contained in the Pakistan (Administration of Evacuee Property) (Second) Ordinance, 1956, or in any other law continued or deemed to be continued by that Ordinance, where the Custodian, in purported exercise of the power to transfer appeals and revision petitions for disposal by Deputy and Additional Custodians, transferred any appeal or revision petition to any Deputy or Additional Custodian, and such appeal, revision has before the commencement of this Act, been disposed of by such Deputy or Additional Custodian, it shall be deemed to have been lawfully transferred and validly disposed of.

(2) Anything done, action taken, proceeding commenced, right acquired or liability incurred by any person pursuant to any such transfer or disposal as is referred to in sub-section (1) shall be deemed to have been lawfully done, taken, commenced, acquired, or incurred, as the case may be, and no suit, prosecution or other legal proceeding shall lie against any person or authority for anything done or intended in good faith to be done in the course or as a result of or in connection with such transfer or disposal.

46. Appearance by counsel or agent. ^[17](1) Any person who is entitled or required to attend before a Custodian in connection with any proceeding under this Act, otherwise than when called upon to attend personally for examination on oath or affirmation, may attend and be represented by his duly authorised agent, and any petition application, or memorandum in appeal, review or revision or otherwise, may be presented by counsel or such agent.

(2) In this section "counsel" means an Advocate or Pleader or any person entitled or to plead in any Civil Court.

CHAPTER VIII

Miscellaneous

47. Fees payable to the Custodian. (1) The Central Government may prescribe the fees payable to the Custodian for the Administration of Evacuee Property.

(2) Such fees shall be payable out of the income or sale proceeds of such property and shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on the property.

48. Recovery of dues under the Act. Any sum due in pursuance of an order passed by the Custodian in respect of any property treated as evacuee proper or property of which possession has been taken by the Custodian or as sale proceeds of any such property may be recovered by the Custodian as arrears of land revenue.

49. Police Assistance. Every police officer having jurisdiction in the area concerned shall assist the Custodian or any person authorised by him in this behalf demanding his aid in the lawful exercise of any power conferred on the Custodian under this Act.

50. Receipt to be given. A receipt shall be given for any money paid or recovered under this Act.

51. Certain persons to be public servants. The Custodian and every other person duly appointed or authorised to discharge any functions under this Act, or the rules or orders made thereunder shall be deemed to be a public servant within the meaning of Section 21 of the Pakistan Penal Code.

52. Records to be public documents. All records prepared or registers maintained under this Act, or the rules or orders made thereunder shall be deemed to be public documents within the meaning of the Evidence Act, 1872, and shall be presumed to be genuine until the contrary is proved.

53. Protection of action taken in good faith. No suit, prosecution or other legal proceeding shall lie against the Central or Provincial Government, or against the Custodian on Rehabilitation Authority, or any person authorised by either of them, in respect of anything done or in good faith intended to be done in pursuance of this Act or of any rule or orders made thereunder, or for any damage caused or likely to be caused by any such thing as aforesaid.

54. Acts done not affected by death of evacuees, etc. Where in pursuance of the provisions of this Act any property has vested in the Custodian, neither the death of the person, who had any right or interest in that property at any time after the property had so vested, nor the fact that any person believed to be evacuee was not or had ceased to be an evacuee at any material time, shall effect the vesting or render invalid anything done in consequence thereof.

55. Power to exempt. The Central Government may, by notification^[18] in the official 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.

56. Power of Central Government to take action with regard to evacuee property. The Central Government may, for the purpose of regulating the administration of any evacuee property, make such order or direct such action to be taken in relation thereto as in its opinion the circumstances of the case required and as is not inconsistent with any of the provisions of this Act.

57. Power to make rules. (1) The Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary for carrying 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 the furnishing of security by them;
- (b) the work to be performed by the Custodian and the Additional Deputy and Assistant Custodians;
- (c) manner in which entry or search under clause the (c) or clause (j) of sub-section (2) of Section 25 may be made or possession of any evacuee property may be taken by the Custodian;
- (d) the manner which inquiries under this Act may in the be held;
- (e) the description of the property allotted and particulars of the allottee which the Rehabilitation Authority shall furnish to the Custodian;
- (f) the time within which application for confirmation under Section 20 or preferring claims under Section 22 may be made;
- (g) the income tax authority who may issue no objection certificates under Section 20;
- (h) the nature of cases and the circumstances in which, and the conditions subject to which, certificates for restoration of property under Section 23 may be issued;
- (i) the nature of cases and the circumstances in which the Custodian may refer an applicant under Section 23 to a Civil Court;
- (j) the circumstances in which and the conditions subject to which the Custodian may transfer any immovable evacuee property;
- (k) the persons by whom and the times at which accounts may be inspected and audited;
- (l) the powers vested in a Civil Court which may be exercised by the Custodian when holding any inquiry under this Act;
- (m) the manner in which, and the time within which, appeals and applications for revision and review shall be preferred under Section 43 and the fees payable in respect thereof;
- (n) the fees payable to the Custodian for the administration of evacuee property;
- (o) the manner in which any notice under this Act shall be issued, served or published;
- (p) the delegation of powers and functions of the Custodian to the Additional, Deputy or Assistant Custodian;
- (q) any other matter to be prescribed under this Act.

58. Delegation of power. (1) The Central Government may, by general or special order notified in the official Gazette direct that the powers exercisable by it under this Act shall be exercised by such officer, and in such circumstance and under such conditions if any, as may be specified in the order.

(2) The Custodian may by general or special order delegate all or any of his functions under this Act, except the functions under Section 43 to such officer or person as he thinks fit.

59. [Repeal] Rep. by the Repealing and Amending Ordinance, 1965 (X of 1965), S. 2nd, 1st Sch.

References:

- [1] For the Statement of Objects and Reasons, see Gaz. of P., dated the 19th February, 1957 Ext. pp. 377-382. This Act shall apply to the Excluded Areas of West Pakistan with effect from the 29th June 1957, see Gazette of West Pakistan, 1957, Pt. I, p. 381.
- [2] The words "and the Federal Territory of Karachi", as amended by the Repealing and Amending Ordinance, 1961 (I of 1961), have been omitted by A. O., 1964, Art. 2, and Sch.
- [3] Clause (8) was amended and clause (9) added by the Pakistan (Administration of Evacuee Property) (Amdt.) Ordinance, 1959 (22 of 1959). with effect from the 14th April, 1959 and the amendments have ceased to be the part of the Act and shall be deemed to have been rep. with effect from the 1st January, 1961.
- [4] Clause (8) was amended and clause (9) added by the Pakistan (Administration of Evacuee Property) (Amdt.) Ordinance, 1959 (22 of 1959). with effect from the 14th April, 1959 and the amendments have ceased to be the part of the Act and shall be deemed to have been rep. with effect from the 1st January, 1961.
- [5] New Section 3-A ins. by the Pakistan (Administration of Evacuee Property) (Amdt.) Act. 1958 (45 of 1958), S. 2 but this Amendment Act XLV of 1958 was repealed vide Section 7 of Ordinance XXII of 1959 (Pakistan Administration of Evacuee Property) (Amdt.) Ordinance, 1959. dated 11th April, 1989. Gazette. Extraordinary 14th April, 1959.
- [6] The original sub-section (2) omitted by the Displaced Persons Laws Amendment Ordinance 1965 (18 of 1965), S. 2 and Sch.
- [7] For such notifications, see Gaz of P., 1957 PL I. pp. 159-160, ibid 1958. Pt. I, pp. 169-170 and ibid 1959, P. 502, ibid., 1963. Ext., pp. 859-860 and ibid., 1964, Ext., p: 595.
- [8] Subs. by the Repealing and Amending Ordinance, 1961 (1 of 1971). Section 3 and 2nd Sch., for 'dues claims'.
- [9] Section 30 was amended by the Pakistan (Administration of Evacuee Property) (Amdt.) Ordinance, 1959 (22 of 1959), with effect from the 14th April, 1989 and the amendments have ceased to be the part of the Act and shall be deemed to have been rep. with effect from the 1st January, 1961.
- [10] Subs. by the Pakistan (Administration of Evacuee Property) (Amdt.) Act, 1958 (45 of 1958), S. 3, for "No Court".
- [11] Subs. by the Pakistan (Administration) of Evacuee Property) (Amdt.) Ordinance, 1962 (63 of 1962), S. 3, for the original sub-section (6).
- [12] Proviso omitted by the Pakistan (Administration of Evacuee Property) (Amdt.) Act. 1958 (45 of 1958), S. 4.
- [13] Sub-section (7) was amended by the Pakistan (Administration of Evacuee Property) (Amdt.) Ordinance, 1959 (22 of 1959) which effect from the 14th April, 1959 and the

amendment ceased to be the part of the Act and shall be deemed to have been repealed with effect from the 1st January, 1961.

[14] Ins. by Act 45 of 1958, S. 4.

[15] Ss. 43A and 43B ins. ibid. S. 5. These sections were subs. by Ordinance (22 of 1959), with effect from the 14th April, 1959 and the substitution ceased to be the part of the Act and shall be deemed to have been rep. with effect from 1st January, 1961.

[16] Ins. by the Pakistan (Administration of Evacuee Property) (Amtd.) Ordinance 1960 (41 of 1960), S. 2.

[17] Sub-section (1) was amended by the Pakistan (Administration of Evacuee Property Ordinance, 1959 (22 of 1959) with effect from the 14th April, 1959 and the amendment ceased to be the part of the Act and shall be deemed to have been rep, with effect from the 1st January, 1961.

[18] For notifn. exempting from the operation of Section 20 of this Act, the shares held by evacuees in non-evacuees Joint Stock Companies in Pakistan, see Gaz of P., 1958, Pt. I, p. 404.