

The Transfer Of Evacuee Deposits Act, 1954

UNION OF INDIA

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Act 15 of 1954

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27.

/1378The question of transfer from Pakistan to India and vice versa of deposits in the custody or control of civil or revenue Courts and of moveable properties in the custody or control of courts of wards which apply to persons who have migrated from one country to the other was first considered in June, 1950 by the Governments of India and Pakistan and it was then agreed that legal power should be taken to enable the transfer of such deposits or other moveable properties. The question was further discussed when the representatives of the two Governments in Karachi in July-August of last year. It has now been agreed that such deposits and moveable properties should be transferred to the other country under a law made for the purpose and the Government of Pakistan would take similar action on the other side. The law is to provide for en bloc transfers of such properties from what are called "mass migration areas" where both the parties interested in the deposits happen to be evacuees. In respect of other cases, where only one of the parties happens to be an evacuee, the Custodian is vested with the power to transfer any deposits and other properties from Pakistan and for their distribution to their rightful owners in this country. As the arrangements between the two countries had to be given effect to on the 1st February, 1954, an Ordinance had to be promulgated which is now being replaced by this Bill. This law will apply only to those areas in which the Administration of Evacuee Property Act, 1950, is now in operation. The Government of Pakistan has also taken action to implement the agreement between the two countries by promulgating the Transfer of Evacuee Deposits Ordinance, 1954 (1 of 1954)" - Gazette of India, Extra, Pt. II, Section 2, page 103.[26th March, 1954]An Act to provide, in pursuance of an agreement with Pakistan, for the transfer to that country of certain deposits belonging to evacuees, the reception in India of similar deposits belonging to displaced persons, and matters connected therewith.WHEREAS an agreement has been arrived at with Pakistan for the transfer to that country of certain deposits belonging to evacuees, the reception in India of similar deposits belonging to displaced persons, and matters connected therewith;BE it enacted by Parliament as

follows:--

1. Short title, extent and commencement.

(1) This Act may be called the Transfer of Evacuee Deposits Act, 1954. (2) It extends to the whole of India, except [the territories which, immediately before the 1st November, 1956, were comprised in] [Inserted by the Adaptation of Laws (No. 3) Order, 1956.] the States of Assam, West Bengal, Tripura, Manipur and Jammu and Kashmir. (3) It shall be deemed to have come into force on the 1st day of February, 1954.

2. Definitions.

In this Act, unless the context otherwise requires,--(a) "Custodian" means a Custodian of Deposits appointed under section 3, and includes an Assistant Custodian of Deposits; (b) "deposit" means--(i) any movable property in the custody or under the control of any Civil or Revenue Court in respect of any proceedings before it; or (ii) any movable property under the superintendence or in the custody of a court of wards under any law for the time being in force, whether such movable property is in the actual custody of the court of wards, or in that of some other authority on its behalf; or (iii) any movable property in the custody or under the control of a manager; and includes any securities, insurance policies and negotiable instruments in the custody or under the control of any such Civil or Revenue Court or under the superintendence or in the custody of such court of wards or in the custody or under the control of such manager. Explanation I.--"Securities" include shares, scrips, stocks, bonds, debentures, debenture stocks or other marketable securities of a like nature in or of any body corporate and also Government securities. Explanation II.--Where any deposit in the custody or under the control of any Civil or Revenue Court or under the superintendence or in the custody of a court of wards or in the custody or under the control of the manager has vested in the Custodian of Evacuee Property as evacuee property, such deposit shall, for the purposes of this Act, be deemed to be in the custody or under the control of such Civil or Revenue Court or under the superintendence or in the custody of the court of wards or in the custody or under the control of the manager, as the case may be; (c) "displaced person" means any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan, has, on or after the 1st day of March, 1947, left, or been displaced from, his place of residence in such area and who has been subsequently residing in India; (d) "evacuee" means any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, has, on or after the 1st day of March, 1947, left any place in the territories to which this Act extends and who is not residing in any place forming part of Pakistan; (e) "manager" means the manager of an encumbered estate appointed under any law for the time being in force relating to encumbered estates; (f) "transferable deposit" means a deposit in which an evacuee has any right or interest, to the extent of that right or interest; (g) "prescribed" means prescribed by rules made under this Act.

3. Appointment of custodian and Assistant Custodians of Deposits.

(1)The Central Government may, by notification in the Official Gazette, appoint a Custodian of Deposits and as many Assistant Custodians of Deposits as may be necessary for the purpose of discharging the duties imposed upon the Custodian and Assistant Custodians by or under this Act.(2)Subject to the provisions of this Act, the Custodian and Assistant Custodians of Deposits shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Central Government, and the Central Government may, by general or special order, provide for the distribution of work among them.(3)Subject to the provisions of this Act, the Assistant Custodians of Deposits shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian.

4. Transfer of deposits in mass migration area.

(1)Where a Civil or Revenue Court or a court of wards situated in a mass migration area or the manager exercising jurisdiction in any such area is satisfied--(a)in the case of a Civil or Revenue Court other than a Civil Court exercising jurisdiction under the Guardians and Wards Act, 1890 (8 of 1890) or the manager, that all the parties interested in a deposit are Muslims;(b)in the case of a Civil court exercising jurisdiction under the Guardians and Words Act, 1890 (8 of 1890), that both the guardian and the minor interested in a deposit are Muslims;(c)in the case of a court of wards having under its superintendence or custody a deposit, that the ward is a Muslim;the Civil or Revenue Court or the court of wards or the manager, as the case may be, shall, as soon as may be after the commencement of this Act, transfer the deposit along with the records relating thereto, to such authorized officer or authority in Pakistan as the Central Government may, by general or special order, specify in this behalf:Provided that where, in the opinion of any such Civil or Revenue Court or the court of wards or the manager, any of the persons interested in a deposit is not an evacuee, the deposit shall not be transferred to Pakistan under this section.(2)Every Civil or Revenue Court and every court of wards and the manager shall, as soon as may be, send to the Custodian in such form as may be prescribed particulars of all deposits transferred to Pakistan under sub-section (1).Explanation.--In this section, the expression "mass migration area" means the territories [which immediately before the 1st November, 1956, were] [Inserted by the Adaptation of Laws (No. 3) Order, 1956.] comprised in the following States or areas, namely:-(i)the State of Punjab;(ii)the State of Patiala and East Punjab States Union;(iii)the State of Ajmer;(iv)the State of Delhi;(v)the State of Himachal Pradesh;(vi)the districts of Alwar, Bharatpur and Bikaner in the State or Rajasthan, and the districts of Saharanpur, Dehra Dun, Meerut and Muzaffarnagar in the State of Uttar Pradesh.

5. Procedure for transfer of certain other deposits to Pakistan.

(1)Where either on a request received in this behalf from any such officer or authority in Pakistan as may be specified in this behalf by the Central Government by notification in the Official Gazette, or on any other information available to him, the Custodian is of opinion that there is a transferable deposit to which the provisions of section 4 do not apply, he may send for the record relating thereto from any Court or other authority and inspect the same.(2)If, after making any such inspection as is

referred to in sub-section (1) and after making such further inquiry into the matter as may be prescribed, the Custodian is satisfied that the deposit is a transferable deposit within the meaning of this Act, he may, by order, direct that the deposit shall be transferred to such authorized officer or authority in Pakistan as the Central Government may, by general or special order, specify in this behalf, and any Court or other authority holding in its custody or under its control any such deposit shall comply with the direction.(3)Notwithstanding anything contained in this section, where in respect of any deposit the extent of the right or interest of an evacuee in such deposit is not easily ascertainable or, having regard to the nature of the deposit, it is in the opinion of the Custodian not practicable to separate the right or interest of the evacuee from the right or interest of other persons in such deposit, the Custodian shall not transfer any part of the deposit to Pakistan.

6. Transfer of records relating to transferable deposit.

(1)Where a transferable deposit is directed to be transferred to Pakistan under the provisions of section 5, the Custodian may send the record relating to the deposit, or, if it is expedient so to do, only a certified copy of such part of the record as, in the opinion of the Custodian, is material to the case to the Government of Pakistan or to such officer or authority to whom or to which the deposit has been directed to be transferred.(2)If a certified copy only is sent in pursuance of sub-section (1), the original record, together with a copy of the order of the Custodian under section 5, shall be returned to the Court or other authority from which it was obtained.

7. Power of Court or Custodian to convert deposits into money before transmission to Pakistan.

Where the transfer to Pakistan of any article which is a transferable deposit is prohibited under any law for the time being in force, it shall be lawful for a Civil or a Revenue Court, or the court of wards or the manager or the Custodian, as the case may be, to convert such article into money in such manner as may be prescribed, and upon such conversion the provisions of this Act shall apply to the proceeds thereof as they apply to a transferable deposit.

8. Cesser of jurisdiction in respect of deposits transferred.

Upon the transfer of any transferable deposit under section 4 or in pursuance of an order of the Custodian under section 5, all Courts and authorities in India shall, save as otherwise provided in this Act. cease to have or exercise any jurisdiction in relation to the deposit so transferred in so far as it relates to the right or interest of any evacuee in the deposit.

9. Reception in India of deposits transferred from Pakistan.

(1)It shall be lawful for the Custodian to receive and hold in his custody any deposit transferred by any such officer or authority in Pakistan as may be specified by the Central Government by general or special order as being a deposit belonging to any displaced person in India.(2)On receipt of any such deposit as it referred to in sub-section (1), the Custodian shall cause notice thereof to be given

in such manner as may be prescribed to all persons who may, in his opinion, be interested in the deposit, and after giving a reasonable opportunity to such persons to be heard in the matter and after inspecting any such record relating to the deposit as may be transferred from Pakistan, dispose of the deposit in the manner following, that is to say--(a)if there is only one claimant entitled to the deposit or if all the claimants, where there are more than one, appear before the Custodian and there is no dispute as to the distribution of the deposit, pay the deposit to that claimant or, as the case may be, distribute the deposit among the claimants in the manner agreed to by them;(b)if all the claimants do not appear before the Custodian or if all such claimants appear but do not agree as to the person or persons entitled to the deposit or to the manner of its distribution among them, the Custodian shall forward the deposit and the records relating thereto to the principal Civil court of original jurisdiction within whose jurisdiction all, or the largest number of claimants, reside, or where the claimants residing within the jurisdiction of two or more Courts are equal in number, to the Court which, in the opinion of the Custodian, would best serve the convenience of claimants.(3)The Court to which a deposit and any record relating thereto are forwarded under sub-section (2) shall proceed to deal with the matter as if the deposit had been made in compliance with an order made by it in a proceeding before it and, after making such further inquiry into the matter as it thinks fit, award the deposit to or distribute it among the person or persons who in its opinion is or are entitled thereto.(4)An appeal shall lie from every order passed by any Court under sub-section (3) to the Court authorized to hear appeals from the decisions of such Court if the amount or value of the subject matter of the claim made in the appeal exceeds two thousand rupees.(5)The disposal of any deposit in accordance with the provisions of this section shall discharge the Custodian from any liability to any person in respect of the deposit.

10. Powers of custodian.

The Custodian shall have all the powers vested in a Civil Court under the Code of civil Procedure, 1908, (5 of 1908) when trying a suit in respect of the following matters, namely:-(a)discovery and inspection;(b)enforcing the attendance of witnesses and requiring the deposit of their expenses;(c)compelling the production of documents;(d)examining witnesses on oath;(e)reception of evidence on affidavits;(f)issuing commissions for the examination of witnesses; and may summon and examine suo motu any person whose evidence appears to him to be material; and shall be deemed to be a Civil Court within the meaning of section 480 and section 482 of the Code of Criminal Procedure, 1898. (5 of 1898)Explanation.--For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Custodian shall be the limits for which he is appointed.

11. Jurisdiction or Civil Courts barred.

No Civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the Custodian in connection with the transfer of any transferable deposit or with the disposal of any deposit received from Pakistan as belonging to a displaced person.

12. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against the Central Government or any Custodian or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder.

13. Power to make rules.

(1)The Central Government may, by notification in the Official Gazette, make [rules] [See Gazette of India, 1955, Extraordinary, Pt. II, Sec. S, p. 2003] to carry out the purposes of this Act.(2)In particular, and without prejudice to the generality of the foregoing power, such rules may--(a)define the terms and conditions of service of the Custodian and Assistant Custodians and the local limits of their respective jurisdictions and the distribution of work among them or the transfer of work from one to another of the Custodian and Assistant Custodians;(b)the manner in which deposits and records relating thereto may be transferred to Pakistan;(c)prescribe the manner in which any inquiry under this Act may be held;(d)the manner in which a transferable deposit may be converted into money under section 7;(e)specify the persons to whom and the manner in which notices of any proceedings under this Act shall be given;(f)prescribe the manner in which certified copies of any record may be prepared under this Act and the fees, if any, which may be levied in respect of such certified copies;(g)prescribe the form in which any application may be made to the Custodian under this Act.

14. Repeal of Ordinance 6 of 1954.

[Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and Sch. I.]