

# ALL INDIA LAW DIGEST

2006

## (STATUTORY DIARY)

### BOOK REVIEWS/JOURNAL

#### CONFLICT OF LAWS : EVACUEE PROPERTY LAW V. A.P. LAND GRABBING (PROHIBITION) LAW

*By*

—**MOHAMMED ASADULLAH,**  
B.Sc., L.L.B., PGDCL., (LLM)

The laws of evacuee property have been in operation since more than five decades. Though appears to be obsolete, they have their own importance as the acquired properties have become very valuable and located in the heart of the cities. Recent scams in respect of these properties are testimony how vulnerable these properties are. The Frontline in its article titled “A controversy in Hyderabad” commenting on the allotments made by the Chief Commissioner Land Administration, A.P. Hyderabad in the year 2002 observed that “Instead, to resort to outright allotment of such land, whose market value, even by the estimates of the Revenue Department, adds upto a few hundred crores, leads to doubts of a nexus between the land mafia, the political class and sections of the bureaucracy.”

Due to ever increasing pressure on the land, recent boom in real estate business and depletion of prime lands are tempting the unsocial elements or resourceful persons to usurp these lands by one way or other. This may be attributed to lack of vigilance,

failure of administration to protect these lands and the enforcement of inconsistent laws without proper and in depth study and consequences arising thereof during practical implementation. In this paper I have tried to emphasize the discrepancies and conflicts between Evacuee property law and A.P. Land Grabbing (Prohibition) law in the state.

The Administration of Evacuee Property Act, 1950 (hereafter called the AEP Act) was promulgated by the Government of India after the partition of the country into the dominions of India and Pakistan. The Act provides for the administration of evacuee property and certain matters connected therewith. The object of the AEP Act is that this property has ultimately to be used for compensating the displaced persons who had lost their property in Pakistan. Though the title of the AEP Act connotes that the Act is meant for Administration of Evacuee Properties, it also deals with how the evacuee property vests with the Custodian, his powers and duties and appeals, review

and revision against the decisions of the various authorities. All persons who left India on or after 1-3-1947 but before 7th May, 1954 due to setting up of domains of India and Pakistan or due to civil disturbances or fear of such disturbances were declared as evacuee and their properties were declared as evacuee properties by the custodian under publication of notification in the official Gazette or any other prescribed manner. Once the notification under Section 7 of the AEP Act is issued by the Custodian and it was not challenged under the provisions of the AEP Act by not filing any Appeal or Revision before the appropriate authority within the statutory period stipulated in Sections 24 and 27 read with Rule 31, such notification will become final and all evacuee properties will vests with the Custodian of evacuee property. The process of declaration of evacuee properties was ended long back in the year 1954 under AEP Act.

There are provisions in the Act barring the jurisdiction of the Civil Courts in certain matters. Section 17 of the Act provides for exemption of evacuee property from processes of Court, *etc.* Section 46 bars jurisdiction of the civil Courts and Revenue Courts to entertain or adjudicate upon any question whether any property or any right to interest in any property is or is not an evacuee property; to question the legality of any action taken by the Custodian-General or the Custodian under the Act; or in respect of any matter which the Custodian-General or Custodian is empowered by or under this Act to determine.

All evacuee properties declared under the Administration of Evacuee Property Act, 1950 were acquired under Section 12 of the Displaced persons (Compensation and Rehabilitation) Act, 1954 to provide for the payment of Compensation and Rehabilitation grant to displaced persons from Pakistan and for matters connected therewith such as

payment of rehabilitation grants to displaced persons and to acquire right, title and interest of evacuees in evacuee properties in India by Government. Accordingly the Central Government acquired all evacuee properties by publishing notifications under Section 12(1) of the EPCR Act in Official Gazette. On publication of a notification under Section 12(1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances and all evacuee property acquired under this section shall form part of the compensation pool as per sub-section (4) of Section 12.

Delivering the judgment, your Lordships Hon'ble *P.N. Singhal*, J., of Supreme Court in Civil Appeal No.2409 of 1968 dated : 25-1-1975 observed that "the Counsel for the appellant tried to argue that the evacuee property in question could not have vested in the Central Government until compensation for its acquisition had been determined and paid. The argument is however, quite futile in face of the clear provisions of sub-section (2) of Section 12 of the Act that on the publication of the notification under sub-section (1), the right, title and interest of the evacuee shall be extinguished in the evacuee property and it shall vest absolute in the Central Government from all encumbrances".

Since, the Central Government acquired all evacuee properties by notification under Section 12 of the DPCR, Act 1954 thereby extinguishing the right, title and interest and all evacuee property are vested absolutely in the Central Government free from all encumbrances [Section 12(2)]. As such presently there is no property to be treated, as evacuee property under the AEP Act, but whatever the properties still exists they form

part of compensation pool and vests with the Central Government. To these pool properties, no provisions of AEP Act will apply and as such no property can be treated as evacuee property.

Section 15 of DPCR Act is an important provision which states that no property which forms part of the compensation pool and which is vested in the Central Government under the provisions of this Act shall be liable to be *proceeded against for any claim in any manner whatsoever* in execution of any decree or order or by any other process of *any Court or other authority*. Further more, according to Section 36 of the DPCR Act the Jurisdiction of the Civil Court is barred to entertain any suit or proceedings in respect of any matter which the Central Government or any officer or authority appointed under this Act or empowered by the DPCR Act and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Both the AEP Act and the DPCR Act, 1954 are Central Acts and the officers of the State Government are working under the delegated powers of the Central Government though the pool properties were transferred to State Government under package deal in the year 1980.

While the statutory provisions of pool properties stands thus, Section 2(cc)(i) of the A.P. Land Grabbing (prohibition) Act, 1982 defines the term “land belonging to a private person” means any land belonging to (i) an evacuee (ii) a military personnel; or (iii) any other private individual. This definition gives scope to treat the evacuee property as the property of an evacuee belonging to a private person. As such every property even after notified as pool property under Section 12 of the DPCR Act and absolutely vested with the Government, is treated as

property of evacuee *i.e.*, land belonging to a private person and the very nature of evacuee property is being challenged by unscrupulous elements taking recourse to this provision in the LG Courts at this distance of time, reopening the issues already settled and became final detrimental to the interest of the Government.

The A.P. Land Grabbing (Prohibition) Act, 1982 (Act No.12 of 1982) (hereafter called the LG (P) Act) enacted by the Andhra Pradesh Legislature and came into force on 29th June 1982.

The intention of the legislature is rightly directed to protect the lands of the Government and other institutions including the private persons from individuals and organized attempts of the land grabbers to grab such lands that have been increasing considerably in the wake of rise in the value of land most particularly in urban and semi-urban areas and in the result the public order is adversely effected by such unlawful activity of the land grabbers. But in the course, it appears that no proper appreciation of other laws was taken into account while drafting the provisions of the LG (P) Act that are contradictory to each other. This is poising much damage to Government as well as to the private person rather than the benefit intended by such legislation. The contradictory provisions of the LG (P) Act with that of Evacuee property laws can well be highlighted.

The object for insertion of the above definition to the principal Act had been enumerated in the Notes to clause 3 in the statement of the objects and reasons to the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Bill, 1987 as “the Section 4 of the principal Act, prohibits, among other things, grabbing of land belonging to private persons. The scope of ‘Land belonging to private person’, it was felt, should be specified so that the lands

belonging to certain clauses of persons, namely, evacuees, military personnel and any other private individual also may be brought within the purview of that definition.”

### *Conclusion*

Unequivocally it is an error in treating the property of evacuee as the property belonging to private person, as there is no evacuee property existing as on today and only acquired evacuee properties are now available which vests absolutely with the Central Government free from all encumbrances, free from right, title and interest of any evacuee in the evacuee property after the publication of notification under Section 12(1) of the DPCR Act, 1954.

Moreover, according to Sections 7-A and 8 of the LG (P) Act the Special Tribunals and Special Courts should specify the fact of taking cognizance of the case under this Act by notification and if the custodian of evacuee property objects to the Special Tribunal or Special Court as the case may be, for taking the cognizance of the case, the Special Tribunal shall not proceed further with the case in regard to such property. A notification as defined under Section 2(f) means a notification published in the Andhra Pradesh Gazette, and the word notified shall be construed accordingly. Whenever the Special Tribunal or Court intends to take cognizance of any case, they should first published in the A.P. Gazette by giving some specified period to receive objections if any, particularly from the Custodian Evacuee property whenever the property involved is supposed to be an evacuee property. There is a doubt always persisting that any such notification is being published and any notice is being given to the Custodian of evacuee property. Even when the District Collector who is delegated with the powers of the Deputy Custodian bring to

the notice of the fact that the property involved is an acquired property, the Special Courts, instead of refraining from taking up the cognizance of the case, are deciding the cases on the issues of legality of notification, manner of notification, right and title *etc.*, of the evacuee property under the AEP Act, 1950 which have become final long back. As a matter of fact, the Special tribunals or Special Courts shall not take the cognizance of the cases filed against any acquired properties under DPCR Act. It is clear from the legal position discussed above, even the validity of orders passed by these tribunals/ Courts over acquired properties are questionable.

The legal position is abundantly clear that there are no evacuee properties exiting and whatever the properties left over are only acquired properties free from all encumbrances under DPCR Act and absolutely vests with the Government. Hence, the acquired evacuee properties should not be treated as the property of a private person and that Section 2(cc) in the LG (P) Act, which is contradictory with the provisions of the DPCR Act. As there are no evacuee properties to be considered as evacuee properties under the AEP Act at present, the Special Tribunals/Courts should not take cognizance of the cases in which the acquired properties are involved and even any orders are already passed conferring any title or caused to confer any title over such properties, their validity is always remain opens to be questioned.

To sum up, the term of evacuee from the Section 2(cc) of A.P. Land Grabbing (prohibition) Act, 1982, which is giving much misconception in treating the acquired property as the land of private persons, shall be deleted with retrospective effect, as it is not in consonance with the provisions of the DPCR Act, which is a Central legislation.