

## **EVACUEE INTEREST (SEPARATION) ACT, 1951**

**64 of 1951**

**[31st October, 1951]**

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## **EVACUEE INTEREST (SEPARATION) ACT, 1951**

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STATEMENT OF OBJECTS AND REASONS "Custodians India are declaring the interest of evacuees in immovable property as evacuee property under Administration of Evacuee Property Act, 1950. Where such evacuee interest is found to be inter-mixed with non-evacuee interest in one and the same property, it becomes difficult to determine the exact property or value thereof, which vests in the Custodian. It is proposed, by means of this Bill, to provide an expeditious method for the assessment and separation of evacuee and non-evacuee interests in such property. This will help in the evaluation of the evacuee property pool. 2. Certain properties in which evacuee and non-evacuee interests are inter-mixed are in the exclusive possession of non-evacuee co-sharers or mortgages. The Bill will enable partition of such properties or settlement of claims of the non-evacuees, thereby releasing further property, for the benefit of the evacuee property pool. In other cases properties which contain non-evacuee admixture are in the possession of the Custodian and the non-evacuees holding interest therein are unable to obtain any benefit therefrom or satisfaction of their claims in view of the prohibitory provisions of S.17 of the Administration of Evacuee Property Act, 1950. The Bill will provide a way for the settlement of such claims. The separation of evacuee and non-evacuee interests will release the evacuee property pool from encumbrances and enable consolidation and better administration of the pool. 3. In assessing the respective interest of evacuees and non-evacuees, certain reliefs e.g., reduction of interest, have been provided in favour of evacuee mortgagors as they have been rendered unable to redeem their property on account of causes beyond their control, and their property might have deteriorated in the absence of their personal supervision". - Gaz. of Ind., 18-8-1951, Pt. II Section 2, p. 541.

### CHAPTER 1 PRELIMINARY

#### **1. Short title and extent :-**

(1) This Act may be called the Evacuee Interest (Separation) Act, 1951.

(2) It extends to the whole of India except <sup>1</sup> [the territories which, immediately before the 1st November, 1956, were comprised in the States] of Assam, West Bengal, Tripura, Manipur and Jammu and Kashmir.

1. Inserted by the Evacuee Interest (Separation) Amendment Act, 1960 (27 of 1960), S. 2.

## **2. Definitions :-**

In this Act, unless the context otherwise requires,-

(a) "appellate officer" means an officer appointed as such by the State Government under Section 13 ;

(b) "claim" means the assertion by any person, not being an evacuee, of any right, title or interest in any property -

(i) as a co-sharer or partner of an evacuee in the property; or

(ii) as a mortgagee of the interest of an evacuee in the property; or

(iii) as a mortgagor having mortgaged the property or any interest therein in favour of an evacuee; and includes any other interest which such person may have jointly with an evacuee and which is notified in this behalf by the Central Government in the Official Gazette;

(c) "competent officer" means an officer appointed as such by the State Government under section 4 .

(d) "composite property" means any property which or any property in which an interest, has been declared to be evacuee property or has vested in the Custodian under Administration of Evacuee Property Act, 1950 and -

(i) in which the interest of the evacuee consists of an undivided share in the property held by him as a co-sharer or partner of any other person, not being an evacuee; or

(ii) in which the interest of the evacuee is subject to mortgage in any form in favour of a person, not being an evacuee; or

(iii) in which the interest of a person, not being an evacuee, is subject to mortgage in any form in favour of an evacuee; or

(iv) in which an evacuee has such other interest jointly with any other person, not being an evacuee, as may be notified in this behalf by the Central Government, in the Official Gazette;

Administration of Evacuee Property Act, 1950 .We have, accordingly, amended the definition and have also made changes consequential on the amendment of the definition of 'claim' ".-S. C. R.

(e) "evacuee interest", in relation to a composite property, means the right, title and interest of an evacuee in that property;

(f) "mortgage debt" means any liability in respect of a property due under any form of mortgage (including any usufructuary mortgage or mortgage by conditional sale) whether such liability is payable presently or in future or under any decree or order of a Court or otherwise, or whether ascertained or not, which -

(i) in any case where it is incurred by an evacuee, is secured by the mortgage of the interest of the evacuee in the property in favour of a person, not being an evacuee:

(ii) in any case where it is incurred by a person not being an evacuee, is secured by the mortgage of the interest of such person in the property in favour of an evacuee:

Administration of Evacuee Property Act, 1950 ;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "principal money", in relation to a mortgage deed executed by an evacuee, means -

(i) in the case of a mortgage deed which has not been executed by way of renewal of a prior mortgage deed, the sum of money advanced by way of loan at the time of the execution of the mortgage deed;

(ii) in the case of a mortgage deed which has been executed at any time before the 1<sup>st</sup> day of January, 1940, by way of renewal of a prior mortgage deed, the consideration for which the renewed mortgage deed was executed;

(iii) in the case of a mortgage deed which has been executed at any time after the 1<sup>st</sup> day of January, 1940, by way of renewal of a prior mortgage deed executed before that ' date, the sum of money which became due on the 1<sup>st</sup> day of January, 1940, on account of the money advanced on the prior mortgage deed and interest

thereon up to the said date;

(iv) in the case of a mortgage deed which was executed at any time after the 1st day of January, 1940, by way of renewal of a prior mortgage deed which was also executed after that date, the sum of money advanced by way of loan at the time of the execution of the prior mortgage deed; Explanation.- For the purpose of calculating the principal money in relation to any mortgage deed which has been executed by way of renewal of a prior mortgage deed, any sum of money advanced at the time of such renewal in addition to the sum of money which was due on the prior mortgage deed shall also be taken into account.

(i) all words and expressions used, but not defined in this Act and defined in the Administration Evacuee Property Act, 1950, shall have the meanings assigned to them in that Act.

### **3. Act to override other laws :-**

Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

## **CHAPTER 2**

### **SEPARATION OF EVACUEE INTEREST IN COMPOSITE PROPERTY**

### **4. Power to appoint competent officers :-**

(1) The State Government may with the approval of the Central Government, by notification in the Official Gazette, appoint as many competent officers as may be necessary for the purpose of performing the functions assigned to them by or under this Act, and a competent officer may perform his functions in such local area or areas as may be specified in the notification.

(2) No person shall be qualified to be appointed as a competent officer under this Act unless he has held a judicial office for at least five years, or has been an advocate or a pleader for at least seven years.

### **5. Jurisdiction of competent officers :-**

A competent officer shall have jurisdiction to decide any claim relating to any composite property situate within the limits of the local area of his jurisdiction and such cases or classes of cases as may, by general or special order, be transferred to him under

section 19 .by the Central Government or the appellate officer.

## **6. Notice to submit claims :-**

(1) For the purpose of determining or separating the evacuee interest in a composite property, any competent officer having jurisdiction over such property may, either on information received in this behalf from the Custodian or on an application from a claimant, issue, in such form and manner as may be prescribed,-

(a) a general notice requiring all persons who claim interest in such property, and

(b) also a notice on every person who, in the opinion of the competent officer, may have a claim in such property,

(2) An application under sub-section (1) shall be in such form and manner as may be prescribed.

**1** [(3) No application under this section shall be entertained if filed after the expiry of one year from the commencement of the Evacuee Interest (Separation) Amendment Act, 1960.]

1. For the Evacuee Interest (Separation) Rules, 1951, see S. R. O. 108, published in Gaz. of Ind., 1952, Pt. II. Sec. 3, p. 109.

## **7. Submission of claims :-**

(1) Any person claiming an interest in a composite property may, within sixty days of the date of the issue of the general notice or service of individual notice under section 6 , whichever is later, submit to the competent officer a statement of his claim in writing and signed and verified in the prescribed manner.

**1** [ \* \* \* \* \* ]

(3) The claimant shall, along with the submission of claim under sub-section ( 1), file true copies of all documents in his possession or power on which the claim is based and a list of any other documents (whether in his possession or power or not) on which he intends to rely as ' evidence in support of his claim; and the claimant shall, whenever required to do so by the competent officer, produce all the documents of which true copies have been filed and also the documents in his possession or power which have been entered in the list.

(4) No document which should have been but has not been filed in

accordance with the requirements of sub-section (3), shall be received at any stage of the proceedings without the leave of the competent officer.

1. For the Evacuee Interest (Separation) Rules, 1951, see S. R. O. 108, published in Gaz. of Ind., 1952, Pt. II. Sec. 3, p. 109.

**8. Decision by competent officer :-**

**9. Certain reliefs in respect of mortgaged property of evacuees :-**

(1) Notwithstanding anything to the contrary in any law or contract or any decree or order of a Civil Court or other authority, where the claim is made by a mortgagee, no mortgaged property of an evacuee shall, subject to the provisions of sub-section (2), be liable for the payment of interest at a rate exceeding five per cent per annum simple on the principal money advanced or deemed to have been advanced.

(2) Where a mortgagee has taken possession on any terms whatsoever of any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have been taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed; and if the aforesaid period has not expired and the mortgage debt has not been extinguished, the competent officer shall determine the mortgage debt due having regard to the proportion which the unexpired portion of that period bears to the total of that period.

**10. Separation of the interests of evacuees from those of claimants in composite property :-**

Notwithstanding anything to the contrary in any law or contract or any decree or order of a Civil Court or other authority, the competent officer may, subject to any rules that may be made in this behalf, take all such measures as he may consider necessary for the purpose of separating the interests of the evacuees from those of the claimants in any composite property, and in particular may,-

(a) adopt a combination of all or some of the aforesaid measures;

Provided that before taking any measure under this section, the

competent officer shall take into account the order of preference filed by the claimant under clause (f) of sub-section (2) of section 7 ; and in any case where the claimant is a mortgagor and tenders the amount due, the competent officer shall accept the same in full satisfaction of the mortgage debt.

**11. Vesting of evacuee interest in the Custodian free from encumbrances and payments, etc., to be valid discharge from all claims :-**

(2) The Custodian may take possession of any such property by evicting the claimant and other persons who may be in occupation thereof and may, for that purpose, use or cause to be used such force as may be necessary: Provided that the Custodian shall not disturb the possession of any person (other than the claimant) who was in lawful possession of the property at the commencement of this Act and has continued in such possession.

**12. Rights of claimants inter se and by other persons against claimants not to be affected :-**

Nothing in this Chapter shall prejudice any rights in respect of the property transferred or delivered, or payment made, to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the property is delivered or transferred or the payment is made.

CHAPTER 3

APPEAL, REVISION AND POWERS AND PROCEDURE OF COMPETENT OFFICERS AND APPELLATE OFFICERS

**13. Power to appoint appellate officers :-**

(1) The State Government with the approval of the Central Government may, by notification in the Official Gazette, appoint as many appellate officers as may be necessary for the purpose of hearing appeals against the orders of the competent officers and an appellate officer shall have jurisdiction over such local area or areas as may be specified in the notification.

**14. Appeals :-**

(2) The appellate officer may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such orders as he deems fit.

**15. Power of revision of the appellate officer :-**

The appellate officer may at any time call for the record of any proceeding in which the competent officer has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit: Provided that the appellate officer shall not pass an order under this section prejudicially to any person without giving him a reasonable opportunity of being heard.

**16. Amendment of orders :-**

Clerical or arithmetical mistakes in orders passed by a competent officer or an appellate officer or errors arising therein from any accidental slip or omission, may, at any time, be corrected by the competent officer or the appellate officer either of his own motion or on an application received in this behalf from any of the parties.

**17. Powers and procedure of competent officers and appellate officers :-**

**18. Finality of orders :-**

Save as otherwise expressly provided in this Act, every order made by any appellate officer or competent officer shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit, application or execution proceedings.

CHAPTER 4

MISCELLANEOUS

**19. Power to transfer cases :-**

(1) The Central Government or the appellate officer may, by order in writing at any time, transfer any case pending before a competent officer to another competent officer for holding the inquiry and the competent officer to whom the case is so transferred may proceed either de novo or from the stage at which it was transferred.

(2) The Central Government or the State Government may, by order in writing at any time, transfer any appeal pending before an appellate officer to another appellate officer for hearing the appeal and the appellate officer to whom the appeal is so transferred may proceed either de novo or from the stage at which it was transferred.

**20. Jurisdiction of Civil Courts barred in certain matters :-**

(1) Save as otherwise expressly provided in this Act, no Civil or

Revenue Court shall entertain any suit or proceeding in so far as it relates to any claim to composite property which the competent officer is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the competent officer in respect of the composite property shall be granted by any Civil Court or other authority.

(3) Nothing in sub-section (1) shall prevent any Civil or Revenue Court from entertaining any suit or proceeding relating to any right in respect of any payment made, or property transferred or delivered, to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the payment is made or the property is delivered or transferred.

**21. Competent officer and appellate officer to be public servant :-**

Every competent officer and appellate officer shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 .

**22. Protection of action taken in good faith :-**

No suit, prosecution or other legal proceeding shall lie against the appellate officer or the competent officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

**23. Power to make rules :-**