
ADMINISTRATION OF EVACUEE PROPERTY ACT, 1950

31 of 1950

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^a[a] Substituted for the words "the States'-by A.L.O.,1956.

STATEMENT S OF OBJECTS AND REASONS "On account of the setting up of the two Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances a large number of people migrated from one Dominion to the other. It was not possible for such people to make any satisfactory arrangement for the management of the property left behind by them for the efficient management and administration of evacuee property, the Government of East Punjab promulgated an Ordinance, which was converted into an Act East Punjab Evacuees (Administration of Property) Act, 1947. This Act, with certain modifications, was extended to Delhi and Ajmer-Merwara. On the 13th of June, 1949 an Ordinance was promulgated for the Chief Commissioners' Provinces - the Administration of Evacuee Property (Chief Commissioners' Provinces) Ordinance, 1949 (XII of 1949). The Governor's Provinces and States, including Hyderabad, promulgated Ordinances on similar lines. It was, however, felt that there should be uniform legislation relating to evacuee property throughout India, except Assam, West Bengal, Manipur, Tripura and Cooch-Bihar, where the problems are slightly different. By an amendment of Government of India Act, 1935, the custody, management and disposal of evacuee property was made a subject in the Concurrent Legislative List. On the 18th of October, 1949, an Ordinance called the Administration of Evacuee Property Ordinance (1949) (XXVII of 1949) was promulgated which extended to all the Provinces of India (except Assam and West Bengal) and to all the Acceding States (except Cooch-Bihar, Manipur and Tripura). This Ordinance will expire in April, 1950. It is desirable to re-enact Ordinance No. 27 of 1949 as an Act of the Legislature". -Gaz. of India, 17-12-1949, Pt. V, page 464. Act No. 66 of 1950.- Prior to the 26th January, 1950 - the date of coming into force of the new Constitution - Parliament had no powers to legislate for Hyderabad

State and, consequently, the Administration of Evacuee Property Ordinance No. 27 of 1949 was not made applicable to that State. The State Government promulgated in December, 1949 a Regulation for the administration of evacuee property on, practically, the same lines as the Central Ordinance. After the coming into force of the new Constitution, Parliament passed in April, 1950 the Administration of Evacuee Property Act No. 31 of 1950. This Act extends to the whole of India (including Hyderabad State), except the States of Assam, West Bengal, Tripura, Manipur, and Jammu and Kashmir, Unfortunately, due to an inadvertent omission, no provision was made in the Act of Parliament repealing the previous Hyderabad Regulation relating to the administration of evacuee property, or saving the actions taken thereunder. The Administration of Evacuee Property (Amendment) Bill, 1950, seeks to rectify the anomaly so as to extend the scope of section 58 of the Administration of Evacuee Property Act No. 31 of 1950 to include the Hyderabad Regulation with retrospective effect from the date of the commencement of the Act. The effect of the amendment would be formally to repeal the Hyderabad Regulation and save all actions taken thereunder. - SOR - Gaz. of Ind., 5-8-1950, Pt. II, S. 2, Ext., P. 298 Act No. 22 of 1951.- An agreement was arrived at with the Government of Pakistan in June 1950 according to which property of Joint Stock Companies should be treated as evacuee property if the holders of the majority of shares of such companies have migrated to Pakistan. The existing Administration of Evacuee Property Act, 1950 (31 of 1950) does not admit of such property being treated as evacuee property. It is proposed to amend the definition of evacuee property so as to make the property of such companies evacuee property. 2. Section 17 of the Administration of Evacuee Property Act was designed to bar the jurisdiction of civil courts in matters relating to execution of decrees and orders concerning evacuee property. While it was felt that the existing section was comprehensive enough, civil courts have found a lacuna in the section and orders have been issued by some civil courts for appointment of receivers, etc., in respect of evacuee property. Such orders are contrary to the spirit underlying the Administration of Evacuee Property Act and also contrary to the understanding between the Governments of India and Pakistan that evacuee property will not be allowed to be attached, sold, etc., under orders of civil courts. It is proposed to rectify this lacuna by this amending Bill. - SOR - Gaz. of Ind., 30-12-1950, Pt. II, S. 2, Ext., P. 660. Act No. 11 of 1953.- The Bill is designed to

incorporate in the Administration of Evacuee Property Act, 1950 (XXXI of 1950), certain changes that are considered necessary on account of the changed circumstances since the legislation was originally enacted. Provisions relating to "intending evacuees" in the Act are no longer considered necessary and they are accordingly being deleted. Certain difficulties which are being experienced by a section of the population in disposing of their property on account of the existing provisions of the Act are also sought to be removed by means of amendments to section 40 and Rule 41 of the Act. Opportunity has also been taken to incorporate certain other changes which are considered necessary in the light of the experience of the working of the Act. -S.O.R. Gaz. of Ind., 9-8-1952, Pt. II, S. 2. Ext., p. 358. Act No. 91 of 1956.- The evacuee property law has been in operation for over eight years. Certain provisions of the law were repealed in 1953. With the decision to acquire the right, title and interest of evacuee owners in their properties in India and utilise such properties-for payment of compensation to displaced persons, it was felt that there was no reason to continue the evacuee property law as it then existed. Accordingly, certain sections of the law were abrogated by the Administration of Evacuee Property (Amendment) Act, 1954. Further, it was provided that no notice for declaring a property as evacuee property should be issued after April 8, 1955. 2. After April 8, 1955, the judicial work of the Custodians has been largely confined to the disposal of cases pending on that date. Although by now the number of pending cases has been brought down substantially, it was felt that unless the procedure was simplified their disposal would take considerable time causing hardship to the affected parties. Further, such of the properties as may be declared evacuee properties in the pending cases would not become available for utilisation under the Compensation Scheme until these cases are finally disposed of. 3. Under the simplified procedure :- (1) Inquiry into the title of applicants for restoration of property under section 16 will be made along with the preliminary inquiry and not after the grant of a certificate as hitherto (clause 6). (2) The Custodian's powers of review and revision, and the Custodian General's power of review have been withdrawn (clauses 8 and 9). (3) Custodians have been debarred from reopening, in exercise of their power of general superintendence and control, cases already decided by them (clause 2(b) (ii)). (4) Appeals in regard to properties up to the value of Rs. 2,000 would lie to the Custodian, and those exceeding that limit to the Custodian-

General. A second appeal has, however, been provided to the Custodian-General on a point of law in the case of proceedings relating to properties of the value not exceeding Rs. 2,000. The provisions for appeal to the District Judge has been deleted (clauses 7 and 6). (5) Fresh trustees for properties of a religious and charitable nature vested in the Custodians can now be appointed by the Central Government (clause 5). 4. Judicial pronouncements have held that powers under section 48 are not wide enough to enable Custodians to recover dues relating to evacuee property arising out of leases, etc., granted by them. The section is being suitably amended in order to carry out its real intention (clause 12). 5. In order to facilitate the integration of the Custodians' Organisation with the machinery set up by the Central Government for payment of compensation to displaced persons, the Central Government have assumed the power to appoint Custodians (clause 2). 6. Opportunity has also been taken to delete certain provisions which have now become obsolete.-S.O.R. Gaz. of Ind., 21-11-1956, Pt. II, S. 2, Ext., p. 884. Act No. 1 of 1960.- Certain difficulties are being experienced in the working of the Administration of Evacuee Property Act, 1950, and they are hindering the early completion of residual work. It is proposed to amend the Act suitably to remove these difficulties. 2. Section 8 of the Act was intended to provide for automatic vesting of evacuee property in the Custodian where such property had vested in any person exercising the powers of Custodian under any Provincial or State law repealed thereby. The validity of such repealed Provincial or State law has been questioned in certain High Courts. It is proposed to make the position clear beyond doubt and to validate such vesting. 3. At present there is no specific provision in the Act empowering the Custodian to determine and recover rent or damages from statutory tenants or unauthorised occupants of evacuee property nor for the recovery of compensation in cases where damage is caused ' to evacuee property by the occupants. It is proposed to insert a new section 10A to empower the Custodian to determine and recover rent and damages in such cases. Difficulties are also sometimes experienced where evacuee and non-evacuee interests are inter-mixed and the nonevacuee owners are unwilling or not in a position to purchase the evacuee share. In such cases, it is necessary to empower the Custodian to purchase non-evacuee property out of the cash balances lying with him or in the evacuee pool. Section 10 is being suitably amended for the purpose. 4. Under the existing Act, a Custodian has no powers to

call for any returns, accounts or other information. This power is necessary in the interest of better administration and management of evacuee property and a new section 42 is sought to be inserted for the purpose. 5. Instances have come to notice where some properties were wrongly declared to be evacuee property and they were also acquired. To afford relief in such genuine and hard cases, it is necessary to empower the Custodian-General under section 27 to restore such property to the non-evacuee owner, even in cases where the property has been acquired under Displaced Persons (Compensation and Rehabilitation) Act, 1954. Section 27 is being suitably amended for the purpose. 6. When the Central Government delegates any of its powers to a State Government, there is no provision in the existing Act enabling the State Government to re-delegate the power to any officer or authority subordinate to it. It is necessary to empower the State Government to do so, particularly in relation to management of evacuee trust properties and section 55 is proposed to be amended suitably for the purpose. -S.O.R. Gaz. of Ind., 15-12-1959, Pt II, S.2, Ext., p. 1145.

CHAPTER 1

PRELIMINARY

1. Short title and extent :-

(1) This Act may be called The Administration of Evacuee Property Act, 1950.

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

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "allotment" means the grant by a person duly authorised in this behalf of a right of use or occupation of any immovable evacuee property to any other person, but does not include a grant by way of lease;

(b) "Custodian General" means the Custodian General of Evacuee Property in India appointed by the Central Government under section 5 ;

(c) "Custodian" means the Custodian for the State, and includes any Additional, Deputy or Assistant Custodian of evacuee property appointed in that State"

(d) "evacuee" means any person-

(i) 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, leaves or has, on or after the 1st day of March 1947, left, any place in a State for any place outside the territories now forming part of India, or

(ii) who is resident in any place now forming part of Pakistan and who for that reason is unable to occupy, supervise or manage in person his property in any part of the territories to which this Act extends, or whose property in any part of the said territories has ceased to be occupied, supervised or managed by any person or is being occupied, supervised or managed by an unauthorised person, or

(iii) who has, after the 14th day of August 1947, obtained, otherwise than by way of purchase or exchange, any right to, interest in or benefit from any property which is treated as evacuee .or abandoned property under any law for the time being in force in Pakistan, ¹ [or

(iv) who has, after the 18th day of October 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends; or

(v) who has, after the 18th day of October 1949, acquired, if the acquisition has been made in person, by way of purchase or exchange, or, if the acquisition has been made by or through a member of his family, in any manner whatsoever, any right to, interest in, or benefit from, any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan;]

Explanation [1].- For the purposes of sub-clause (iii), the acquisition of any right to, interest in or benefit from any such property as is referred to in that sub-clause by a firm, private limited company or trust of which any person or any member of the family of such person wholly dependent on him for the ordinary necessities of life is a partner, member of beneficiary, as the case

may be, shall be deemed to be an acquisition by that person within the meaning of that sub-clause.

[Explanation 2.- For the purposes of sub-clause (iv), the transfer to Pakistan by any person of any reasonable sum of money in accordance with the rules made in this behalf by the Central Government for the purpose of financing any transaction in the ordinary course of his trade or for the maintenance of any member of the family of such person shall not be deemed to be a transfer of his assets within the meaning of that sub-clause.

Explanation III.- For the purposes of sub-clause (v), the acquisition of any right to, interest in, or benefit from any such property as is referred to in that sub-clause by a firm, private limited company or trust of which any person is a partner, member or beneficiary, as the case may be, shall be deemed to be an acquisition by that person of such right, interest or benefit within the meaning of that sub-clause;]

(e) [* * * * *]

(f) ["evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August 1947, by any mode of transfer which is not effective by reason of the provisions contained in Section 40 ,] but does not include-

(i) any ornament and any wearing apparel, cooking vessels or other household effects in the immediate possession of an evacuee;

(ii) any property belonging to a joint stock company, the registered office of which was situated before the 15th day of August 1947, in any place now forming part of Pakistan and continues to be so situated after the said date:

(g) "member of the family" means any member of the family of any person who is wholly dependent upon the earnings of such person for the provisions of the ordinary necessities of life or who shares with such person in the ordinary expenses of the household to which they jointly belong or who owns property or carries on business jointly with such person;

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

(i) "property" means property of any kind, and includes any right or interest in such property;

(j) "unauthorised person" means any person (whether duly empowered in this behalf by the evacuee or otherwise) who, after the 14th day of August 1947, has been occupying, supervising or managing the property of an evacuee without the approval of the Custodian.

1. Existing section was numbered as sub-section (1) and sub-section (2) was added by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 2, (8-10-1954).

3. 3 :-

References to enactments not in force in Part B States. (Omitted by the Administration of Evacuee Property (Amendment) Act, 1953 (2 of 1953), S.3 [6-5-1953]).

4. Act to override other laws :-

¹[(1)] 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.

¹ [(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.]

1. Existing section was numbered as sub-section (1) and sub-section (2) was added by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 2, (8-10-1954).

CHAPTER 2

EVACUEE PROPERTY AND VESTING THEREOF IN THE CUSTODIAN

5. Appointment of Custodian-General, Deputy Custodian-General etc :-

The Central Government may, by notification in the Official Gazette, appoint a Custodian-General and as many Deputy and Assistant Custodians-General as may be necessary for the purpose of discharging the duties imposed upon the Custodian-General and the Deputy and Assistant Custodians-General by or under this Act.

6. Appointment of Custodians, etc :-

¹[(1) The Central Government, may, by notification in the Official

Gazette, appoint for any State a Custodian, and as many Additional, Deputy or Assistant Custodians of Evacuee Property as may be necessary for the purpose of discharging the duties imposed on the Custodian by or under this Act, and the same person may be appointed, as the custodian, or as the case may be, Additional, Deputy or Assistant Custodian of Evacuee Property for two or more States.]

(2) Subject to the provisions of this Act, all Custodians, Additional, Deputy or Assistant Custodians of evacuee property shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian- General.

(3) Subject to the provisions of sub-section (2), Additional, Deputy and Assistant Custodians shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian for the State, but the ²[Central Government] may, by general or special order, provide for the distribution of work among them. ³ [Provided that nothing in this sub-section shall be deemed to empower the Custodian to question any order made by an Additional, Deputy or Assistant Custodian in respect of any matter which the Additional, Deputy or Assistant Custodian is empowered by or under this Act to determine.]

1. Sub-section (1) was substituted by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 6 (w.r.e.f. 22-10-1956).

2. Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954).

3. Sub-section (2) was substituted for sub-sections (2) and (2-A), Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954), (91 of 1956), S. 6.

7. Notifications of evacuee property :-

(1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.

¹ [(1A) Where during the pendency of any proceeding under sub-section (1) for declaring any property to be evacuee property any person interested in the property dies, the proceeding shall, unless

the Custodian otherwise, directs, be continued and disposed of as if such person were alive.]

(2) Where a notice has been issued under sub-section (1) in respect of any property, such property shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being transferred or charged in any way, except with the leave of the Custodian and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

(3) The Custodian shall, from time to time, notify, either by publication in the Official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1).

1. Sub-section (1) was substituted by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 6 (w.r.e.f. 22-10-1956).

7A. Property not to be declared evacuee property on or after 7th May 1954 :-

Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954: Provided that nothing contained in this section shall apply to-

(a) any property in respect of which proceedings are pending on the 7th day of May, 1954 for declaring such property to be evacuee property; and

(b) the property of 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 had left on or after the 1st day of March, 1947, any place now forming part of India, and who on the 7th day of May, 1954 was resident in Pakistan. Provided further that no notice under Section 7 for declaring any property to be evacuee property with reference to Clause (b) of the preceding proviso shall be issued after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954.

Explanation 1.- A person shall be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of Clause (b) of the first proviso, if he was ordinarily residing in Pakistan before that date, notwithstanding that he was temporarily

absent from Pakistan on that date.

Explanation II.-A person who had left India for Pakistan before the 7th day of May, 1954, on the authority of a passport or any other valid travel document issued by any competent authority in India, and who was temporarily residing in Pakistan on that date, shall not be deemed to have been resident in Pakistan on that date within the meaning of Clause (b) of the first proviso.

Explanation III.- A person who had left Pakistan for India on or after the 18th day of July, 1948, and who was in India on the 7th day of May, 1954, shall, unless he came to India under a valid permit for permanent return or for permanent settlement, issued under Influx from Pakistan (Control) Act, 1949, be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of Clause (b) of the first proviso.]

8. Vesting of evacuee property in the Custodian :-

(1) Any property declared to be evacuee property under Section 7 shall be deemed to have vested in the Custodian for the State-

(a) in the case of the property of an evacuee as defined in sub-clause (i) of Clause (d) of Section 2 , from the date on which he leaves or left any place in a State for any place outside the territories now forming part of India;

(b) in the case of the property of an evacuee as defined in sub-clause (ii) of Clause (d) of Section 2 , from the 15th day of August, 1947; and

(c) in the case of any other property, from the date of the notice given under sub-section (1) of Section 7 in respect thereof.

(2) Where immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising the powers of Custodian under any law repealed hereby the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act, and shall continue to so vest : Provided that where at the commencement of this Act there is pending before the High Court, the Custodian or any other authority for or in any State any proceeding under Section 8 or S.30 of the Administration of

Evacuee Property Ordinance, 1949, or under any other corresponding law repealed by the Administration of Evacuee Property Ordinance, 1949 (27 of 1949), then notwithstanding anything contained in this Act or in any other law for the time being in force, such proceeding shall be disposed of as if the definitions of 'evacuee property' and 'evacuee' contained in Section 2 of this Act had become applicable thereto.

¹[(2A) Without prejudice to the generality of the provisions contained in sub-section (2), all property which under any law repealed hereby purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in, or the invalidity of, such law or any judgment, decree or order of any Court, be deemed for all purposes to have validity vested in that person, as if the provisions of such law had been enacted by Parliament and such property shall, on the commencement of this Act, be deemed to have been evacuee property declared as such within the meaning of this Act and accordingly, any order made or other action taken by the Custodian or, any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken.]

(3) Where any property in a State belonging to a joint stock company had vested in any person exercising the powers of a Custodian under any law previously in force, then nothing contained in Clause (f) of Section 2 shall affect the operation of sub-section (2), but the ² [Central Government] may, by notification in the Official Gazette, direct that the Custodian shall be divested of any such property in such manner and after such period as may be specified in the notification.

(4) Where after any evacuee property has vested in the Custodian any person is in possession thereof, he shall be deemed to be holding it on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

1. Sub-section (1) was substituted by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 6 (w.r.e.f. 22-10-1956).

2. Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954).

9. Power of Custodian to take possession of evacuee property vested in him :-

If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian or to any person duly authorised, by him in this behalf, the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may, for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.

10. Powers and duties of the Custodian generally :-

(1) Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act 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, for any of the purposes aforesaid,

(a) carry on the business 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, 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 any building which has vested in him and which requires to be completed;

¹[(f), (g) and (h) * * * * *],

(i) take such action as may be necessary for the recovery of any debt due to the evacuee;

(j) 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 compromise any claims, debts or liabilities on behalf of the evacuee;

¹[(k) * * * * *]

(l) in any case where the evacuee property which has vested in the Custodian consists of a share or shares in a company, exercise, notwithstanding anything to the contrary contained in Companies Act, 1913 , or in the articles of association of the company, the same 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 Companies Act, 1913 , or the articles of association of the company or in any other matter as the evacuee shareholder himself could have done had he been present, although the name of the Custodian does not appear in the register of members of the company;

³[(11) in any case where the evacuee property which has vested in the Custodian consists of fifty-one per cent or more of the shares in a company, the Custodian may take charge of the management of the whole affairs of the company and exercise, in addition to any of the powers vested in him under this Act, all or any of the powers of the directors of the company notwithstanding that the registered office of such company is situate in any part of the territories to which this Act extends, and notwithstanding anything to the contrary contained in this Act or Companies Act, 1913 , or in the articles of association of the company: Provided that the Custodian shall not take charge of such management of the company except with the previous approval of the Central Government;]

(m) incur any expenditure, including the payment of taxes, duties, cesses and rates to Government or to any local authority ⁴[* * *];

(n) pay to the evacuee, or to any member of his family or to any other person as in the opinion of the Custodian is entitled thereto, any sums of money out of the funds in his possession;

(o) transfer in any manner whatsoever any evacuee property, notwithstanding anything to the contrary contained in any law or agreement relating thereto: Provided that the Custodian shall not sell any immovable property or any business or other undertaking of the evacuee, except with the previous approval of the Custodian-General;

5 (p) acquire any non-evacuee interest in evacuee property, whether by way of purchase or otherwise: Provided that no such acquisition shall be made except with the previous approval of the Custodian-General.]

(q) delegate by general or special order, all or any of his functions under this Act to such officers or persons as he thinks fit:

[* * * * *]

1. Sub-section (1) was substituted by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 6 (w.r.e.f. 22-10-1956).

3. Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954).

4. Sub-section (2) was substituted for sub-sections (2) and (2-A), Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954), (91 of 1956), S. 6.

5. Explanation was added, Sub-section (2) was substituted for sub-sections (2) and (2-A), Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954), (91 of 1956), S. 6., (42 of 1954), S. 6.

10A. Power to recover rent or damages in respect of evacuee property vested in the Custodian :-

(1) Where any person is in arrears of rent in respect of any evacuee property vested in the Custodian, the Custodian may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is deemed to be holding any evacuee property on behalf of the Custodian under sub-section (4) of Section 8 , the Custodian may, having regard to such principles of assessment of rent as may be prescribed, by order, assess the rent payable in respect of such property and that person shall be liable to pay the rent so assessed.

(3) Where any person is, or has at any time been, in unauthorised possession of any evacuee property vested in the Custodian, the Custodian may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such property and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(4) Where any person being in possession of any evacuee property vested in the Custodian has caused damage to any such property, the Custodian may assess the compensation payable on account of the damages so caused and may, by order, require that person to pay the compensation within such time and in such instalments as may be specified in the order.

(5) No order shall be made under sub-section (2) or sub-section (3) or sub-section (4), until after the issue of a notice in writing to the person concerned calling upon him to show cause within such time as may be specified in the notice why such order should not be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Custodian.]

11. Special provisions with respect to certain trust properties :-

¹ [(1) Where any evacuee property which has vested in 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 only until such time as the new trustees are so appointed; and pending the appointment of such new trustees the trust property and the income thereof shall be applied by the Custodian for fulfilling, as far as possible, the purpose of the trust.]

(2) In respect of any Wakf-alal-aulad.-

(a) Where the mutawalli is an evacuee, the property forming the subject-matter of the wakf shall vest in the Custodian subject to the rights of the beneficiaries under the wakf, if any, who are not evacuees;

(b) Where not all the beneficiaries are evacuees, the rights and interests of such of the beneficiaries as are evacuees shall alone vest in the Custodian.

1. Sub-section (1) was substituted by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 6 (w.r.e.f. 22-10-1956).

12. Power to vary or cancel leases or allotments of evacuee

property :-

(1) Notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by a person, ¹[whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act.] ²[Provided that in the case of any lease granted before the 14th day of August 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee-

(a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; ³[or]

(b) has used or is using such property for a purpose other than that for which it was leased to him;] ³ [or

(c) has failed to pay rent in accordance with the terms of the lease.

Explanation.- In this sub-section, 'lease' includes a lease granted by the Custodian and 'agreement' includes an agreement entered into by the Custodian.]

(2) Where by reason of any action taken under sub-section (1), any person has ceased to be entitled to possession of any evacuee property, he shall on demand by the Custodian surrender possession of such property to the Custodian or to any person duly authorised by him in this behalf.

(3) If any person fails to surrender possession of any property on demand under sub-section (2), the Custodian may, notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such property in the manner provided in Section 9 .

1. Sub-section (1) was substituted by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 6 (w.r.e.f. 22-10-1956).

2. Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954).

3. Sub-section (2) was substituted for sub-sections (2) and (2-A), Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954), (91 of 1956), S. 6.

12A. Special provisions with respect to transfer of tenancy rights of evacuees :-

(1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, where tenancy rights have vested in the Custodian as evacuee property and the Custodian has granted a lease in respect of such 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 lease granted by him.

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

(a) the lease granted by the Custodian shall be deemed to have effect as if granted by the lessor under whom the property was held immediately before the Custodian assumed possession or control thereof 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 the said lease before the date of the declaration referred to in sub-section (1) shall, subject to the deduction of fees, if any, payable to the Custodian, become payable to the lessor against whom the lease has now effect.

(3) Nothing contained in this section shall-

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

(i) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; 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;

(b) render the Custodian liable to any person for any sum in excess of the sum payable to the lessor under Clause (b) of sub-section (2), or

(c) prejudice any rights of the lessor or the lessee, to which he may be entitled ' under any other law for the time being in force, consistently with the terms and conditions, if any, of the lease granted by the Custodian.]

13. Payments to Custodian to be valid discharge :-

(1) Any amount due to any evacuee in respect of any property which has vested in the Custodian or in respect of any transaction entered into by the evacuee, shall be paid to the Custodian by the person liable to pay the same.

(2) Any payment made otherwise than in accordance with sub-section (1) shall not discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Custodian to enforce such obligation against any such person.

14. Recouping of expenditure by Custodian :-

Any expenditure incurred by the Custodian in the exercise of any power conferred by or under this Act shall, in relation to any evacuee property in respect of which it has been incurred, be a charge on such property and shall, subject to the provisions of Section 51 , 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.

15. Maintenance of accounts by Custodian :-

(1) The Custodian shall maintain a separate account of the property of each evacuee possession whereof has been taken by him, and shall cause to be made therein entries of all receipts and expenditure in respect thereof.

(2) The accounts shall be maintained in such form and in such manner as may be prescribed. The ¹ [Central Government] shall cause the accounts maintained under this section to be inspected and audited at such intervals and by such persons as may be prescribed.

1. Sub-section (1) was substituted by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 6 (w.r.e.f. 22-10-1956).

16. Restoration of evacuee property :-

¹[(1) Subject to such rules as may be made in this behalf, any

evacuee or any person claiming to be an heir of an evacuee may apply to the Central Government or to any person authorised by the Central Government in this behalf (hereinafter in this section referred to as 'the authorised person') that any evacuee property which has vested in the Custodian to which the applicant would have been entitled if this Act were not in force, may be restored to him.]

2[(1A) No application made under sub-section (1) shall be entertained unless-

(a) before making the application, the applicant has filed all appeals and revision applications permissible under this Act against the order declaring the property of the evacuee to be evacuee property and the Custodian-General has made a Final order in the case; and

(b) the application is made within sixty days of the final order of the Custodian-General: Provided that any such application by an evacuee who migrated to West Pakistan from the State of Uttar Pradesh during the period between the 1st day of February, 1950 and 31st day of May, 1950 and who is permitted to return to India for permanent resettlement may be entertained if it is made within sixty days of the return of the evacuee to India: Provided further that nothing contained in this sub-section shall apply to an application under sub-section (1) which is pending on the commencement of the Administration of Evacuee Property (Amendment) Act, 1954.

Explanation.- In this sub-section, the expression 'Custodian-General' shall include a Deputy Custodian-General and an Assistant Custodian-General.]

3[(2) On receipt of an application under sub-section (1), the Central Government or the authorised person, as the case may be, shall cause public notice thereof to be given in the prescribed manner and after causing an inquiry into the claim to be held in such manner as may be prescribed shall-

(a) if satisfied-

(i) that the conditions prescribed by rules made in this behalf have been satisfied;

(ii) that the evacuee property is the property of the applicant; and

(iii) that it is just or proper that the evacuee property should be restored to him; make an order restoring the property to the applicant, or

(b) if not satisfied, reject the application: Provided that where the application is rejected on the ground that the evacuee property is not the property of the applicant, the rejection of the application shall not prejudice the right of the applicant to establish his title to the property in a Civil Court, or

(c) if there is any doubt with respect to the title of the applicant to the property, refer him to a Civil Court for the determination of his title : Provided that no order for the restoration of any evacuee property shall be made under this sub-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 to the heir, as the case may be, the Custodian shall stand absolved of all responsibilities in respect of the property so restored, but such restoration shall not prejudice the rights, 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 lease granted in respect of the property by or on behalf of the Custodian shall have effect against the person to whom restoration is made until such lease is determined by lapse of time or by operation of law.

⁴ [Explanation.- For the purpose of the proviso to this sub-section, an allotment shall be deemed to be a lease and shall have effect against the person to whom the restoration is made to the same extent and in the same manner as if it were a lease.]

(4) The Custodian shall, on demand, furnish to the evacuee or to the heir, as the case may be, a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property.

1. Sub-section (1) was substituted by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 6 (w.r.e.f. 22-10-1956).

2. Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954).

3. Sub-section (2) was substituted for sub-sections (2) and (2-A), Sub-section (1-A) was inserted by the Administration of Evacuee

Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954), (91 of 1956), S. 6.

4. Explanation was added, Sub-section (2) was substituted for sub-sections (2) and (2-A), Sub-section (1-A) was inserted by the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954), S. 6 (8-10-1954), (91 of 1956), S. 6., (42 of 1954), S. 6.

CHAPTER 3

CERTAIN CONSEQUENCES OF PROPERTY VESTING IN CUSTODIAN

17. Exemption of evacuee property from processes of Court, etc :-

¹ [(a) Save as otherwise expressly provided in this Act, no evacuee property which has vested or is deemed to have vested in the Custodian under the provisions of this Act shall, so long as it remains so vested, be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any Court or other authority, and any attachment or injunction or order for the appointment of a receiver in respect of any such property subsisting on the commencement of the Administration of Evacuee Property (Amendment) Act, 1951, shall cease to have effect on such commencement and shall be deemed to be void.

(2) Where, after the 1st day of March, 1947, any evacuee property which has vested in the Custodian or is deemed to have vested in the Custodian under the provisions of this Act has been sold in execution of any decree or order of any Court or other authority, the sale shall be set aside if an application in that behalf has been made by the Custodian to such Court or authority on or before the 17th day of October, 1950.]

1.

Substituted by the Administration of Evacuee Property (Amendment) Act, 1953 (11 of 1953), S. 8 (6-5-1953).

18. Occupancy or tenancy 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, 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, shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all

or any of the powers conferred on him by this Act in respect of any such rights, and, notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a certain time, monthly or otherwise, of any land, or house or other building 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 preceding the date of his becoming an evacuee; or

(b) the Custodian.

(2) Where any person acquires or has acquired any rights under a Provincial Act or a State Act in respect of any property by reason of being in possession of that property, whether in pursuance of a grant, lease, or allotment made by the Custodian 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.]

CHAPTER 4

PROPERTY OF INTENDING EVACUEES

19. . :-

Chap. IV was repealed by the Administration of Evacuee Property (Amendment) Act, 1953 (2 of 1953), S. 9 (6-5-1953).]

20. . :-

Chap. IV was repealed by the Administration of Evacuee Property (Amendment) Act, 1953 (2 of 1953), S. 9 (6-5-1953).]

21. . :-

Chap. IV was repealed by the Administration of Evacuee Property (Amendment) Act, 1953 (2 of 1953), S. 9 (6-5-1953).]

22. . :-

Chap. IV was repealed by the Administration of Evacuee Property (Amendment) Act, 1953 (2 of 1953), S. 9 (6-5-1953).]

23. . :-

Chap. IV was repealed by the Administration of Evacuee Property (Amendment) Act, 1953 (2 of 1953), S. 9 (6-5-1953).]

CHAPTER 5

APPEALS, REVIEW AND REVISION

24. Appeals from orders under sections 7, 40 and 48 :-

¹ [(1) Any person aggrieved by an order made under section 7 , section 40 or section 48 may prefer an appeal-

(a) to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian and the amount or the value of the property which is the subject-matter of the order does not exceed two thousand rupees;

(b) to the Custodian-General, in any other case.

(1A) An appeal shall lie to the Custodian-General from any order made on appeal by the Custodian under clause (a) of sub-section (1) on the ground that the order is contrary to law.

(1B) An appeal under this section shall be made in such manner and within such time as may be prescribed.]

(2) The Custodian to whom an appeal is preferred under clause (a) of sub- section (1) may dispose of it himself or may make it over for disposal to an Additional Custodian or to a Deputy Custodian authorised by the Custodian in writing in this behalf (in this Chapter referred to as the Authorised Deputy Custodian): Provided that no appeal from an order of a Deputy Custodian shall be made over for disposal to the Authorised Deputy Custodian.

1. the words "District Judge" were omitted by the Administration of Evacuee Property (Amendment) Act. 1956 (91 of 1956), S. 9 (w.e.f. 22-10-1956).

25. Appeals from other orders :-

Repealed by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 8 (22-10-1956).]

26. Powers of review or revision of Custodian etc :-

Repealed by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 8 (22-10-1956).]

27. Powers of revision of Custodian-General :-

(1) The Custodian-General may at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding in which any ¹ [* * * *] Custodian 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 Custodian-

General shall not pass an order under this sub- section prejudicial to any person without giving him a reasonable opportunity of being heard,

[(1A) * * * * *

(2) and (3) * * * * *]

[Explanation.- The power conferred on the Custodian-General under this section may be exercised by him in relation to any property, notwithstanding that such property has been acquired under S.12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.]

1. the words "District Judge" were omitted by the Administration of Evacuee Property (Amendment) Act. 1956 (91 of 1956), S. 9 (w.e.f. 22-10-1956).

28. Finality of orders under this Chapter :-

Save as otherwise expressly provided in this Chapter, every order made by the Custodian-General, ¹ [* *], Custodian, Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding.

1. the words "District Judge" were omitted by the Administration of Evacuee Property (Amendment) Act. 1956 (91 of 1956), S. 9 (w.e.f. 22-10-1956).

CHAPTER 6

PENALTIES AND PROCEDURE

29. Penalty for failure to surrender possession of evacuee property :-

Repealed by the Administration of Evacuee Property (Amendment) Act, 1956(91 of 1956), S. 8, (22-10-1956).]

30. Penalty for wrongfully paying or receiving rents, etc :-

Repealed by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S.8 (22-10-1956).]

31. Penalty for concealing evacuee property :-

Repealed by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), S. 8 (22-10-1956).]

32. Penalty for pausing damage to evacuee property :-

Any person who wilfully destroys or causes damage to any evacuee

property or unlawfully converts it to his own use shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

33. Penalty for false declaration in certain cases :-

Repealed by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), Section 8 (22-10-1956).]

34. Penalty for offences not expressly provided for :-

Any person who contravenes any provision of this Act or of any rule or order made thereunder, or obstructs the lawful exercise of any power conferred by or under this Act, or makes default in complying with any requirement of this Act or of any rule or order made thereunder, shall, if no express provision is made by this Act for punishment of such contravention, obstruction or default, be punishable with imprisonment for a term which may extend to six months, or with fine or with both.

35. Penalty for offences committed by companies :-

Repealed by the Administration of Evacuee Property (Amendment) Act, 1956 (91 of 1956), section 8 (22-10-1956).]

36. Penalty for abetment :-

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

37. Offences to be cognisable :-

Notwithstanding anything contained in Code of Criminal Procedure, 1898, all offences under this Act shall be cognizable.

38. Procedure for prosecution :-

No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the ¹ [Central Government] or of any officer authorised in this behalf, by general or special order, by the State Government.

1. Section 40 was substituted by Administration of Evacuee Property (Amendment) Act, 1953, (11 of 1953), S. 13 (6-5-1953).

39. Offences may be tried summarily :-

Any Magistrate empowered to try in a summary way the offences specified in sub-section (1) of S.260 of Code of Criminal Procedure, 1973, may, if an application is made in this behalf by the complainant and the Magistrate thinks fit, try any offence under this Act in accordance with the provisions contained in sections 262 to S.265 of the Code of Criminal Procedure, 1898 of that Code, but

nothing contained in sub-section (2) of section 262 of that Code shall apply to any such trial.

CHAPTER 7

MISCELLANEOUS

40. Validity of transfers respecting property subsequently declared to be evacuee property :-

(1) No transfer made after the 14th day of August, 1947, [but before the 7th day of May, 1954,] by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them, if, at any time after the transfer, the transferor becomes an evacuee within the meaning of section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

(2) Nothing contained in sub-section (1) shall apply to the transfer for valuable consideration of any such property as is referred to therein in any of the following cases, namely:

(a) where the transfer has been made with the previous approval of the Custodian before the commencement of the Administration of Evacuee Property (Amendment) Act, 1953;

(b) where the transferor has not left [* * *] India for Pakistan within a period of two years from the date of the transfer: Provided that in the case of a transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1953, the transferor had not left India for Pakistan before such commencement, notwithstanding that a period of two years had already elapsed before such commencement;

(c) where the transfer is made after the commencement of the Administration of Evacuee Property (Amendment) Act, 1953, and-

(i) the value of the property or properties transferred in any one year is less than five thousand rupees, or

(ii) the transfer is made with the previous approval of the Custodian or in the prescribed cases with the previous approval of the Custodian-General.

(3) An application under sub-section (1) for the confirmation of any transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the date of the transfer or within two months from the date of the declaration or notification referred to in sub-section (1) whichever is later, and the provisions of S.5 of the Limitation Act, 1908 shall apply to any such application.

(4) Where an application under sub-section (1) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescribed manner and may reject the application if he is of opinion that-

(a) the transaction has not been entered into in good faith or for valuable consideration; or

(b) the transaction is prohibited under any law for the time being in force; or

(c) the transaction ought not to be confirmed for any other reason.

(5) Where, in respect of any transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1953, any application for confirmation thereof has been rejected solely on the ground-

(a) that although the transaction was entered into in good faith, the consideration paid was not adequate, or

(b) that the application was barred by limitation, then, notwithstanding anything to the contrary contained in any law or contract or decree or order of a Civil Court or other authority, but subject to any rules that may be made by the Central Government in this behalf, the Custodian may and shall, where the application for confirmation was rejected by the Custodian-General, if the Custodian-General so directs, exercise any of the following powers in respect of the transfer, namely:-

(i) confirm the transfer if the consideration paid for the transfer is adequate;

(ii) confirm the transfer, if the transferee agrees to pay to the Custodian the difference in value between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor;

(iii) if the transferee agrees, take possession of such part of the

property as, after dividing it by metes and bounds, is equivalent in value to the difference between the value of the property as assessed by the Custodian and the amount paid by the transferee to the transferor;

(iv) if the transferee agrees, take possession of the entire property by paying off to the transferee the amount which the Custodian finds as having been actually paid by the transferee to the transferor as consideration for the transfer; or

(v) if the transferee does not agree to any of the courses referred to in clauses (ii) to (iv) inclusive, auction the property and if the sale proceeds exceed the amount actually paid by the transferee, pay to the transferee the amount paid by him and take over the balance and if the sale proceeds are equivalent to, or fall short of, the amount actually paid by the transferee, pay the entire sale proceeds to the transferee

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

(7) The Custodian may, in respect of any application for confirmation of a transfer pending before him on the commencement of the Administration of Evacuee Property (Amendment) Act, 1953, which is liable to be rejected on either of the grounds specified in clauses (a) and (b) of sub-section (5), exercise any of the powers conferred on him under that sub-section.

[(8) * * * *]

41. Transactions relating to evacuee property, void in certain circumstances :-

Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be declared to be evacuee property within the meaning of this Act, shall be void unless entered into by or with the previous approval of the Custodian.]

42. Power to call for information :-

The Custodian may, for the purpose of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act, require any person to

submit to him such accounts, books or other documents or to furnish to him such information relating to any evacuee property as he may reasonably think necessary.]

43. Vesting of property in Custodian not affected by death of evacuee, etc :-

Where in pursuance of the provisions of this Act any property has vested in the Custodian, neither the death of the evacuee at any time thereafter nor the fact that the. evacuee who had a right or interest in that property had ceased to be an evacuee at any material time shall affect the vesting or render invalid anything done in consequence thereof.

44. Certain officers to be public servants :-

The Custodian-General, the Custodian and every other person duly appointed to discharge any duties imposed on them by this Act or the rules or orders made thereunder shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 .

45. Powers of the Custodian while holding inquiry :-

For the purposes of holding any inquiry under this Act, the Custodian shall have the same powers as are vested in a civil Court under 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;
- (b) compelling the discovery and production of documents;
- (c) any prescribed matter;

and the inquiry by the Custodian shall be deemed to be a judicial proceeding within the meaning of sections 193 and Section 228 of the Indian Penal Code, 1860 and the Custodian shall be deemed to be a Court within the meaning of sections 480 and S.482 of the Code of Criminal Procedure, 1898.

46. Jurisdiction of civil Courts barred in certain matters :-

Save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction-

- (a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

1 [(b) * * * * *]

(c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.

1. Substituted (and shall be deemed always to have been substituted) by the Administration of Evacuee Property (Amendment) Act, 1950 (66 of 1950), S. 2.

47. Protection of action taken in good faith :-

(1) No suit, prosecution or other legal proceeding shall lie against the Custodian-General or the Custodian or any person acting under the direction of the Custodian 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.

(2) No suit or other legal proceeding shall lie against the Central Government, the State Government, the Custodian-General or the Custodian or any other person in respect of any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

48. Recovery of certain sums as arrears of land revenue :-

(1) Any sum payable to the Government or to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise, howsoever, may be recovered in the same manner as an arrear of land revenue.

(2) If any question arises whether a sum is payable to the Government or to the Custodian within the meaning of sub-sec. (1), the Custodian shall, after making such inquiry as he may deem fit, and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question; and the decision of the Custodian shall, subject to any appeal or revision under this Act, be final and shall not be called in question by any Court or other authority.

(3) For the purposes of this section, a sum shall be deemed to be payable to the Custodian, notwithstanding that its recovery is barred by Limitation Act, 1908, or any other law for the time being in force relating to limitation of actions.]

49. Record to be public documents :-

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

50. Notice of suit to the Custodian :-

(1) If in any suit it appears to the civil or revenue Court that a question relating to the property of an evacuee or an intending evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.

(2) A Court may, at any stage of a suit or proceeding, either on its own motion or on application made in this behalf by the Custodian, make an order that the Custodian shall be added as a party to the suit or proceeding, if the Court is satisfied that such addition is necessary or proper for the satisfactory determination of the suit or proceeding.

51. Fees payable to the Custodian :-

(1) The ¹ [Central Government] may fix the fees payable to the Custodian for the management or disposal of any property vested in him.

(2) Such fees shall be payable out of the income or sale proceeds of such property and shall be a first charge on the property.

1. Substituted (and shall be deemed always to have been substituted) by the Administration of Evacuee Property (Amendment) Act, 1950 (66 of 1950), S. 2.

52. Power to exempt :-

The Central Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act or of the rules made thereunder shall not apply, or shall be deemed never to have applied, or shall cease to apply, or shall apply only with such modifications or subject to such conditions, restrictions or limitations as may be specified in the notification, to or in relation to any class of persons or class of property.]

53. Power to give directions :-

The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions contained in this Act or of any rules or orders made

thereunder.

54. 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 property which has vested in the Custodian under the provisions of his Act, pass such order or direct such action to be taken in relation thereto as, in its opinion, the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act.

55. Delegation of powers :-

(1) The Central Government may direct that any power exercisable by it under this Act shall be exercisable also by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government as may be specified in the direction.

¹ [(2) Any power exercisable by a State Government by virtue of a direction under sub-section (1) may, unless otherwise provided in such direction, be exercised also by such officer or authority as the State Government may specify in this behalf.]

(3) Subject to the provisions of this Act and of the rules and orders made thereunder, the Custodian-General may delegate all or any of his powers under this Act to any Deputy or Assistant Custodian-General.

(4) Subject to the provisions of this Act and of the rules and orders made thereunder, the Custodian may delegate all or any of his powers under this Act to any Additional, Deputy or Assistant Custodian, subject to such conditions, if any, as may be specified by the Custodian.

1. Substituted (and shall be deemed always to have been substituted) by the Administration of Evacuee Property (Amendment) Act, 1950 (66 of 1950), S. 2.

56. Power to make rules :-

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:-

(a) the terms and conditions of service of the Custodian-General;

(b) the manner in which inquiries under this Act may be held;

¹ [((bb) the transfer by the Custodian of any case pending before any officer subordinate to him or the withdrawal to himself for disposal of any case so pending or the exercise of any similar powers by the Custodian-General in respect of cases pending before any officer subordinate to him;]

(c) the manner in which evacuee properties which have vested in the Custodian may be notified;

(d) the manner in which possession of any evacuee property may be taken by the Custodian;

(e) the manner in which any person claiming any right to, or interest in, any property which has been notified as evacuee property may, have his claim registered and disposed of;

(f) the manner in which any attachment may be made by Custodian;

(g) the manner in which trust properties which have vested in the Custodian may be administered or otherwise dealt with;

(h) the circumstances in which, and the conditions subject to which, the Custodian may sell any immovable property vested in him, and the procedure governing the grant of leases and the period for which leases may be granted;

(i) the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied;

(j) the securities in which the Custodian may invest any moneys held by him;

(jj) the manner in which rent of any property or damage for unauthorised possession of any property may be assessed, and the principles which may be taken into account in assessing such rent or damages;]

(k) the manner in which any moneys due to the Custodian may be recovered;

(l) the form and manner in which books of accounts and other records shall be maintained by the Custodian;

(m) the form in which any notice under this Act may be issued the manner of its service and publication and the form in which any demand may be made by the Custodian;

(n) the nature of cases and the circumstances in which and the conditions subject to which certificates for restoration of property under section 16 may be issued;

[(o) * * * * *]

(p) the powers vested in a Civil Court which may be exercised by, the Custodian while holding any inquiry under this Act;

[(q) the manner in which applications for the previous approval of the Custodian may be made under section 40 and the matters which he shall take into account in granting such approval, and the nature of the cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under that section;]

(r) the form and manner in which and the time within which appeals and applications for revision may be preferred under Chapter V, and the fees payable in respect thereof;

[(s) the terms and conditions of service of the Custodian and other officers appointed under this Act and for the furnishing of security by them;]

(t) the work to be performed by the Custodian and the Additional, Deputy or Assistant Custodian;

(u) the delegation of powers of the Custodian to the Additional, Deputy or Assistant Custodians;

(v) the fees payable to the Custodian for the management and disposal of any property vested in him and the manner in which such fees shall be paid;

(w) the persons by whom and the time at which books of accounts maintained under this Act may be inspected and audited;

(x) any other matter which has to be or may be prescribed under this Act.

[(3) * * * * *]

[(4) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is

in session for a period of thirty days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

1. Substituted (and shall be deemed always to have been substituted) by the Administration of Evacuee Property (Amendment) Act, 1950 (66 of 1950), S. 2.

57. Temporary amendment of Section 54 of the Indian Income-tax Act, 1922 :-

During the continuance of this Act, sub-section (3) of Section 54 of the Income tax Act, 1922 , shall have effect as if after Clause (o) thereof, the following clause had been inserted, namely:- "(p) of any such particulars to the Custodian of Evacuee Property appointed under the Administration of Evacuee Property Act, 1950, for the purpose of enabling him to discharge the duties imposed upon him by or under the said Act."

58. Repeals and savings :-

(1) The Administration of Evacuee Property Ordinance, 1949 and the Hyderabad Administration of Evacuee Property Regulation are hereby repealed.

(2) If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law which corresponds to this Act and which is not repealed by sub-section (1), that corresponding law shall stand repealed.

(3) The repeal by this Act of the Administration of Evacuee Property Ordinance 1949, or the Hyderabad Administration of Evacuee Property Regulation or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or corresponding law and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken.]

