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THE TRANSFER OF EVACUEE DEPOSITS ACT, 1956

ACT NO. XLV OF 1956

[12th November, 1956]

An Act to provide, in pursuance of an Agreement with India, for the transfer to that country of certain deposits belonging to evacuees, the reception in Pakistan of similar deposits belonging to refugees and matters connected therewith.

WHEREAS, in pursuance of an Agreement with India, it is expedient to provide for the transfer to that country of certain deposits belonging to evacuees, the reception in Pakistan of similar deposits belonging to refugees and matters connected therewith ;

It is hereby enacted as follows :—

1. Short title, extent and commencement.— (1) This Act may be called the Transfer of Evacuee Deposits Act, 1956.

(2) It extends to '[the whole of Pakistan] 7[* * *].

(3) It shall come into force at once.

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

(a) “Custodian” means the Custodian of Deposits appointed under section 3, and includes an Assistant Custodian of Deposits ;

(b) “deposit” means—

(i) any movable property in the custody or under the control of any Civil or Revenue court in respect of any proceedings before it ; or

(ii) any movable property under the superintendence or in the custody of a Court of Wards under any law for the time being in force, whether such movable property be in the actual custody of the Court of Wards, or in that of some other authority on its behalf ; or

(iii) any movable property in the custody or under the control of a Manager;

and includes any securities, insurance policies and negotiable instruments in the custody or under the control of any such Civil or Revenue court or under the superintendence or in the custody of such Court of Wards or in the custody or under the control of a Manager.

'Subs. by the Federal Adaptation of Laws Order, 1975 (P. O. No. 4 of 1975), Art. 2 and Sch. Omitted by the Central Adaptation Order of Laws 1964 (P. O. No. 1 of 1964), Art. 2 and Sch.

Explanation I.—“Securities” include shares, scrips, stocks, bonds, debentures, debenture stocks, or other marketable securities of a like nature in or of any body corporate and also Government securities.

Explanation II—Where any deposit in the custody or under the control of any Civil or Revenue court or under the superintendence or in the custody of a Court of Wards or in the custody or under the control of the Manager has vested in the Custodian of Evacuee Property, such deposit shall, for the purposes of this Act, be deemed to be in the custody or under the control of such Civil or Revenue court or under the superintendence or in the custody of the Court of Wards or in the custody or under the control of the Manager as the case may be;

(c) “refugee” means a person who, having been ordinarily resident in any place in the territories now comprising India, or in any area occupied by India, has, on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances, taken refuge in Pakistan ;

(d) “evacuee” means any person who, on account of the setting up of the Dominions of Pakistan and India or on account of civil disturbances or the fear of such disturbances, has, on or after the first day of March, 1947, left any place to which this Act extends and who is now residing in any place forming part of India ;

(e) “Manager” means the manager of an encumbered estate appointed under any law for the time being in force relating to encumbered estates ;

(f) “transferable deposit” means a deposit in which an evacuee has any right or interest to the extent of that right or interest ;

(g) “prescribed” means prescribed by rules made under section 13.

3. Appointment of Custodian and Assistant Custodian of Deposits.—(1) The [Federal Government] may, by notification in the official Gazette, appoint a Custodian of Deposits and as many Assistant Custodians of deposits as may be necessary for the purpose of discharging the duties imposed upon the Custodian and Assistant Custodians by or under this Act.

(2) Subject to the provisions of this Act, the Custodian and Assistant Custodians of Deposits shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the [Federal Government], and the [Federal Government] may, by general or special order, provide for the distribution and transfer of work among them.

(3) Subject to the provisions of this Act, the Assistant Custodians of Deposits shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian.

4. Procedure for transfer of certain deposits.— (1) Where a Civil or Revenue court or a Court of Wards or a Manager is satisfied—

'Subs. by the Federal Adaptation of Laws Order, 1975 (P. O. No. 4 of 1975), Art. 2 and Sch.

(a) in the case of a Civil or Revenue court other than a Civil court exercising jurisdiction under the Guardians and Wards Act, 1890 (VIII of 1890), or Manager that no party interested in a deposit is a Muslim ;

(b) in the case of a Civil court exercising jurisdiction under the Guardians and Wards Act, 1890 (VIII of 1890), that neither the guardian nor the minor interested in a deposit is a Muslim;

(c) in the case of a Court of Wards having under its superintendence or custody a deposit, that the ward is not a Muslim ;

the Civil or Revenue court or the Court of Wards or the Manager, as the case may be, shall, as soon as may be after the commencement of this Act, transfer the deposit, along with the records relating thereto, to such authorised officer or authority in India as the '[Federal Government]' may by general or special order specify in this behalf:

Provided that where in the opinion of the Civil or Revenue court or the Court of Wards or the Manager, as the case may be, any of the persons interested in a deposit is not an evacuee, the deposit shall not be transferred to India.

(2) Every Civil or Revenue court and every Court of Wards or Manager shall, as soon as may be, send to the Custodian in such form as may be prescribed, particulars of all deposits transferred to India under sub-section (1).

5. Procedure for transfer of certain other deposits.— (1) Where either on a request received in this behalf from any such officer or authority in India as may be specified in this behalf by the '[Federal Government]' by notification in the official Gazette, or on any other information available to him, the Custodian is of opinion that there is a transferable deposit to which the provisions of section 4 do not apply, he may send for the record relating thereto from any court or other authority and inspect the same.

(2) If, after making any such inspection as is referred to in sub-section (1) and after making such further inquiry into the matter as may be prescribed, the Custodian is satisfied that the deposit is a transferable deposit, he may, by order, direct that the deposit shall be transferred to such authorised officer or authority in India as the '[Federal Government]' may, by general or special order, specify in this behalf, and any court or other authority holding in its custody or under its control any such deposit shall comply with the direction.

(3) Notwithstanding anything contained in this section, where in respect of any deposit the extent of the right or interest of an evacuee in such deposit is not easily ascertainable or having regard to the nature of the deposit it is in the opinion of the Custodian not practicable to separate the right, or interest of the evacuee from the right or interest of other persons in such deposit, the Custodian shall not transfer any part of the deposit to India.

6. Transfer of records relating to transferable deposits.— (1) Where a transferable deposit is directed to be transferred to India under the provisions of section 5, the Custodian may send the record relating to the deposit, or if it is expedient so to do only a certified copy of such part of the record as in the opinion of the Custodian is material to the case, to the Government of India or to such officer or authority to whom or to which the deposit has been directed to be transferred.

'Subs. by the Federal Adaptation of Laws Order, 1975 (P. O. No. 4 of 1975), Art. 2 and Sch.

(2) If a certified copy only is sent in pursuance of sub-section (1), the original record, together with a copy of the order of the Custodian under section 5 shall be returned to the court or other authority from which it was obtained.

7. Power of Court or Custodian to convert deposits into money before transmission to India. Where the transfer to India of any article which is or forms part of a transferable deposit is prohibited under any law for the time being in force, it shall be lawful for the Civil or Revenue court, or the Court of Wards or the Manager or the Custodian, as the case may be, to convert the article into money in such manner as may be prescribed, and upon such conversion the provisions of this Act shall apply to the proceeds thereof as they apply to transferable deposit.

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

9. Reception in Pakistan of deposits transferred from India.— (1) It shall be lawful for the Custodian to receive and hold in his custody any deposit transferred by any such officer or authority in India as may be specified by the [Federal Government] by general or special order as being a deposit belonging to any refugee.

(2) On receipt of any such deposit as is referred to in sub-section (1), the Custodian shall cause notice thereof to be given in such manner as may be prescribed to all persons who may appear to be interested in the deposit, and after giving a reasonable opportunity to such persons to be heard in the matter and after inspecting any such record relating to the deposit as may be transferred from India, dispose of the deposit in the manner following, that is to say,

(a) if the claimant, where there is only one claiming and entitled to the deposit, or if all the claimants, where there are more than one, appear before the Custodian and there is no dispute as to the distribution of the deposit, the Custodian shall pay the deposit to that claimant, or, as the case may be, distribute the deposit among the claimants in the manner agreed to by them ;

(b) if all the claimants do not appear before the Custodian or if all such claimants appear but do not agree as to the person or persons entitled to the deposit or to the distribution of the deposit among them the Custodian shall forward the deposit and the records relating thereto to the principal Civil court of original jurisdiction within whose jurisdiction all or the largest number of claimants reside, or where the claimants residing within the jurisdictions of two or more of such courts are equal in number, to the court which in the opinion of the Custodian shall best serve the convenience of the claimants.

(3) The court to which a deposit and any record relating thereto are forwarded under sub-section (2), shall proceed to deal with the matter as if the deposit had been made in compliance with an order made by it in a proceeding before it and, after making such further inquiry into the matter as it may think fit, award the deposit to the person or distribute it among the persons who in its opinion is or are entitled thereto.

'Subs. by the Federal Adaptation of Laws Order, 1975 (P. O. No. 4 of 1975), Art. 2 and Sch.

(4) Any party aggrieved by an order made by a court under sub-section (3) may appeal against the order if the value of the claim made in the appeal exceeds two thousand rupees as against an appealable decree or, where the value of the claim is less, apply for a revision as against a non-appealable decree ; and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), and of the Court Fees Act, 1870 (VII of 1870), shall apply accordingly to such appeal or application for revision.

(5) The disposal of any deposit in accordance with the provisions of this section shall discharge the Custodian from any liability to any person in respect of the deposit.

10. Powers of Custodian. The Custodian shall have all powers vested in a Civil court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit, in respect of the following matters, namely :—

(a) discovery and inspection ;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses ;

(c) compelling the production of documents ;

(d) examining witnesses on oath ;

(e) reception of evidence and affidavits ;

(f) issuing commissions for the examination of witnesses:

and may summon and examine suo motu any person whose evidence appears to him to be material ; and shall be deemed to be a Civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

Explanation.— For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Custodian shall be the local limits for which he is appointed.

11. Jurisdiction of Civil courts barred. No Civil court shall question the legality of any action taken or of any decision given by the Custodian in connection with the transfer of any transferable deposit or with the disposal of any deposit received from India as belonging to a refugee.

12. Protection of action taken in good faith. No suit, prosecution or other legal proceedings shall lie against the '[Federal Government]' or any Custodian or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder.

13. Power to make rules.— (1) The '[Federal 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—

'Subs. by the Federal Adaptation of Laws Order, 1975 (P. O. No. 4 of 1975), Art. 2 and Sch.

(a)

(b)

(c)

(d)

(2)

(g)

14,

define the terms and conditions of service of Custodians and the local limits of their respective jurisdictions and provide for the distribution and transfer of work among or from them ;

prescribe the manner in which deposits any records relating thereto may be transferred to India;

prescribe the manner in which and inquiry under this Act may be held;

prescribe the manner in which a transferable deposit may be converted into money under section 7;

specify the persons to whom and the manner in which notices of any proceedings under this Act shall be given;

prescribe the manner in which certified copies of any record may be prepared under this Act and the fees, if any, which may be levied in respect of such certified copies;

prescribe the form in which any application may be made to the Custodian under this Act.

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'Rep. by the Repealing and Amending Ordinance, 1965 (X of 1965), s. 2 and 1st Sch.