

THE AZAD KASHMIR
PROTECTION OF EVACUEE PROPERTY ACT, 1950.

An act to provide for the protection and Care of the property OF
evacuees from Azad Kashmir territory

Preamble:- Whereas it is expedient to make provision for the protection
and care of the property of evacuees from Azad Kashmir territory ;

It is hereby enacted as follows :-

1. Short title extent and commencement:- (i) This Act may be
called the Azad Kashmir Protection of Evacuee Property
Act, 1950.

(ii) It extends to the whole of Azad Kashmir territory.
(iii) It shall come into force at once.

2. Appointment of Custodian, Additional Custodian and
Deputy and Assistant Custodian:- (i) For the purpose of
carrying out the provisions of this Act the Azad Kashmir
Government may appoint :-

(a) a Custodian and an Additional Custodian of Evacuee
Property for Azad Kashmir Territory generally ; and

(b) one or more Deputy Custodian and Assistant Custodians
of evacuee property for such local areas as may be
specified in the order.

(ii) In the succeeding sections of this Act unless the context
otherwise requires, the expression 'Custodian' means the
Custodian of evacuee property and includes an Additional
Custodian, a Deputy Custodian and an Assistant Custodian
of evacuee property.

3. Operation of other Laws:- (i) The provisions of this Act and
the rules made thereunder shall have effect notwithstanding
anything inconsistent therewith in any enactment other than
this Act or in any instrument having effect by virtue of any
such enactment.

(ii) Every order purporting to be made or signed by a Custodian in exercise of any of the powers conferred by or under this Act shall be presumed, within the meaning of the Indian Evidence Act, 1872, to have been so made by the Custodian and no such order shall be called in question in any court.

Power of Custodian of evacuee property and vesting such property in the Custodian:-

(i) Subject to the provisions of this Act a Custodian may by general or special order, with reference to the location or description of a specific or any class of evacuee property, assume possession of or control over the property mentioned in the order which shall be notified. From the date of the order the holder of such property, if any, shall be deemed to be holding it on behalf of the Custodian and shall on demand, surrender possession of it to the Custodian or a person duly authorised by him in this behalf. The Custodian may take such measures as he consider necessary or expedient for preserving or safeguarding such property.

(ii) Any person complying with the order of the Custodian shall not be liable to any suit, criminal prosecution or other legal proceedings by reason only of such compliance.

(iii) The Azad Kashmir Government may by order :-

(a) vest or provide for and regulate the vesting in the prescribed Custodian, such evacuee property as may be prescribed ;

(b) vest in the prescribed Custodian the right to pool together and to transfer such evacuee property as may be prescribed, to refugees or other persons, resident, in and Azad Kashmir Territory and owing property in the prescribed territories, on such terms and conditions as may be prescribed.

(iv) When in pursuance of an order made under sub-section (iii) any evacuee property or the right to transfer such property is vested in a Custodian, neither the vesting nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time

(a) some person who was or might have been interested in the property and who was an evacuee had died or had ceased to be an evacuee ; or

(b) some person who was so interested and who was believed by the Custodian to be an evacuee was not an evacuee.

Evacuee Property required or allotted by Rehabilitation

Authority:-

(i) Whenever any Rehabilitation Authority requires any evacuee

(ii) Persons who have been allotted any evacuee property by

property for the purpose of the social and economic rehabilitation of refugees under any law for the time being in force in Azad Kashmir Territory such Authority shall send a written intimation to the effect containing all available particulars of the property to the prescribed Custodian. The property shall then be taken over by the Rehabilitation Authority on such terms and conditions as may be agreed upon by the Custodian and that Authority.

way of lease, by any Rehabilitation Authority, without compliance with the procedure laid down in sub-section (i) shall be deemed to be tenants or lessees on such terms and conditions as may be agreed upon by the Custodian and the Rehabilitation Authority concerned and the said Authority shall, be deemed to be a duly authorised agent of the Custodian for this purpose. It shall be the duty of such Rehabilitation Authority to furnish all available particulars of the allowed property and of the allottee, to the Custodian immediately or as soon as may be after the allotment.

Persons in unauthorised possession of evacuee property:-

(i) If any person is in unauthorised possession of any immovable evacuee property, a Custodian may at his option, treat him either as a trespasser and eject him therefrom by serving on him an order to vacate the property in the prescribed manner or may treat him as a tenant of such property on such terms and conditions as may be agreed upon between him and the Custodian.

(ii) If the unauthorised occupant, who is treated as a tenant by the Custodian, refuses or fails to pay the agreed rent by the

agreed date or to comply with any other of the agreed terms and conditions, he may be ejected from the property as a trespasser in the manner provided in sub-section (i).

(iii) The powers conferred on the Custodian by sub-sections (i) and (ii) may be delegated by him to any Rehabilitation Authority by a general or special order, to be published in the official gazette, subject to such conditions as may be specified in the order.

Penalty for noncompliance with orders of Custodian:- Failure to comply with any order, issued lawfully by the Custodian or his delegate shall be deemed to be a cognizable offence punishable with imprisonment of either description for a term which may extend to two years or with fine or with both.

Claims by interested persons:- (i) Subject to the other provisions of this Act any occupant or holder of evacuee property or any other person claiming an interest therein may, by petition to the prescribed Custodian, ask for a declaration:

(a) that the property in question is not evacuee-property ;
 (b) that it is evacuee property to a limited extent only.

(ii) On receipt of such a petition, the Custodian may record such evidence as the petitioner can produce in support of his claim and may hold such further inquiry into the matter, as he may deem fit. At the close of the enquiry the Custodian may pass an order allowing the claim on such terms and conditions as he may deem just or reject it in whole or in part.

Transfer of evacuee property:- (i) No transfer of any right, in or over any evacuee property evacuee made by an evacuee, his agent, assign, or attorney, on or property after the 24th of October, 1947 shall be effective so as to confer any rights or remedies in the parties to such transfer or any person claiming under them unless an application is made to the prescribed Custodian for the registration of such transfer and the transfer is registered by the Custodian within the prescribed time.

(ii) The Custodian shall not register a transfer unless :

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(a) the consideration is paid in his presence or in the case of exchanges or past transfers, the transaction is proved to be a bonafide one for valuable consideration to the satisfaction of the Custodian ; and

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there is produced before the Custodian a certificate signed by the prescribed Income Tax Authority certifying that the transferer has paid all taxes due from him to the Income Tax Department in respect of his property, businesses or undertakings or has made satisfactory arrangements for the payment thereof.

(iii) The Custodian may refuse to register any transfer if, in his opinion, the transfer is one which is prejudicial to the prescribed objects.

(iv) If a transfer is registered by the Custodian such registration shall be deemed to be registration under the provisions of the Registration Law inforce in Azad Kashmir without payment of any fees prescribed by or under that law or stamp Law inforce in Azad Kashmir Territory.

If an order ejecting a person is passed under section 6 or a final order is passed under section 7 or section 9 by a Deputy Custodian, an appeal shall lie at the instance of the aggrieved party to the Custodian of Evacuee Property, Azad Kashmir who may dispose of the appeal himself or make it over for disposal to the Additional Custodian. The appeal shall be filed in such manner and within such time as may be prescribed. Subject to the decision in such appeal, if any, an order passed by a Deputy Custodian and any original or appellate order passed by the Custodian of Evacuee Property, Azad Kashmir or the Additional Custodian, shall be final and conclusive and shall not be called in question in any Court, by way of further appeal or revision or in any original suit, execution, application or other petition.

Jurisdiction of civil Courts barred in certain matters:-

(i) No Court shall entertain or adjudicate on a claim in any suit, appeal, execution application or other proceeding as to whether any property is or is not evacuee property or as to what interest, if any, an evacuee has in such property except in the case of a claimant who has been referred to the civil Court under section 17 of this Act for establishment of his title.

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(ii) No decision of any Court on a claim such as is referred to in sub-section (i) given between the 24th October, 1947 and the coming into force of this Act, shall be binding on the Custodian or shall affect the rights or interest of any evacuee in the property in question.

(iii) All property of which the Custodian has assumed possession or control under section 4 of this Act, shall be exempt from attachment or sale in execution of a decree of a civil court or in pursuance of an order issued by any court.

(iv) No Court shall be competent to issue an injunction or other order in relation to any act done or intended to be done by or in relation to any proceedings pending before a Custodian.

In relation to proceedings under this Act, involving the powers of civil Court holding of an inquiry, for certain proceedings the Custodian shall have all the powers of the Civil Court in respect of the summoning and examination of parties, witnesses or other persons who, in the Custodian's belief possess any relevant information or document, the discovery or production of documents and the use of such documents or their copies as evidence in the

inquiry.

The powers of Custodian:- The Custodian shall have power :-

(a) to take all proper measures necessary for carrying out his duties under this Act, and to incur expenditure incidental thereto ;

(b) to grant a lease in the prescribed form for any period not exceeding one year at a time of any immovable property and any undertaking or business of which he has taken possession or which is ordered to vest in him ;

(c) to execute receipts for lease money paid by lessees appointed by him or who have attorned to him, and for any debts due to any evacuee whose property, undertaking or business is in his possession or control which may be paid to him by the debtor ;

(d) out of any money belonging to an evacuee in his possession or out of the income or proceeds of sale if necessary of evacuee properly to pay :

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(i) any taxes, duties, cesses, rates, which may be leviable by the Azad Kashmir Government or any local authority in relation to any property, undertaking or business of such evacuee, in his possession or control and to defray the costs of necessary repairs to such property ;

(ii) sums due to a person having a claim against the person or property of any evacuee if the claim in the opinion of the Custodian does not involve any complicated question of law or fact or if the claim is based on a decree or order of a competent Court ;

out of the money held by him on behalf of evacuees, make payments to refugee or other prescribed persons in accordance with rules framed under this Act ;

to sell or direct the sale of any livestock, standing crops or any other property in his possession which is subject to speedy and natural decay or whose sale is, in the opinion of the Custodian expedient or necessary :

Provided that if any such property consists of food-grains, exceeding Rs. 100/- in value, it shall be offered for sale in the first instance to the Director of Foodgrains Azad Kashmir Territory ;

When any immovable property belonging to an evacuee whether existing in a demolished state or standing wholly 'or partially intact, through imminent risk of collapse or for any other reason, is a source of danger to persons in the vicinity thereof to have it demolished and the debits cleared and in such a case to direct the sale of the material or the property salvaged from the debits ;

in so far as it may be necessary for carrying out any of the duties of exercising any of the powers imposed or conferred by or under this Act, to institute or defend in his capacity as Custodian, any suit or legal proceedings in relation to any property, undertaking or business in his possession or control or any property of which he is entitled under this Act, to take possession ;

to prepare a scheme for polling together immovable property

belonging to evacuees for its transfer to refugees and other

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prescribed persons in case the Azad Kashmir Government passes a vesting order under sub-section (iii) of section 4 ;

(j) to enter in any land or premises for purposes of inspection of any evacuee property or for taking it into possession and to authorise any other person to do so ;

(k) to require any person to furnish the Custodian with such returns, accounts or other information in relation to evacuee property and to produce such documents as the Custodian considers necessary for the discharge of his functions under this Act ;

(1) in general to do such other acts as may be necessary for bringing the provisions of this Act into effective operation.

Provision regarding charges:- If action is taken by the Custodian under clause (g) of section 13, the expenditure incurred in that behalf shall be a charge on the properties involved in such portions as may be prescribed and shall have priority over all other charges. Such expenditure may be met or recouped by the Custodian out of the income or proceeds accruing from the properties concerned.

Persons making payment to Custodian to be discharged of liability:- Persons who make payments to the Custodian of debts due to evacuees or of rents in respect of evacuee property shall be discharged from all liability in respect of such debts or rents or such properties to the extent of the payments made.

Levy of fees:- The Azad Kashmir Government may levy fees in relation to any proceeding or enquiry held by a Custodian or in relation to any evacuee property of which the Custodian assumes control or possession or which may vest in him by order of the Azad Kashmir Government. Such fees shall be payable by persons at whose instance or in whose interest the proceeding or inquiry is held or as the case may be, by the persons to whom such property is restored or by the owner, if his whereabouts are known and shall be recoverable as an arrears of land revenue.

Restoration of property:- Unless in the opinion of the Custodian the restoration would be prejudicial to the prescribed objects the owner of any evacuee property shall be entitled to

restoration thereof on such conditions as the Custodian may
deem fit if he comes over to Azad Kashmir to occupy his

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residence or run his business in Azad Kashmir Territory on application to the Custodian and on payment of such excess, if any, of expenditure over receipts in respect of such property, undertaking or business as appears from the Custodian's account books and of the fees leviable under section 16 ;

Provided that the Custodian shall give not less than 15 days public notice of every such application by proclamation in the locality, affixation on the property and any other method which may consider suitable and where the application is opposed, if the Custodian is not satisfied after necessary inquiry concerning the title of the application, he shall refuse to deliver possession and may refer the applicant to a civil court ;

Provided further that where the applicant claims as an heir to an evacuee owner, the Custodian may refuse to restore possession unless the applicant produces a succession certificate or letters of administration or probate of a will from a competent court ;

Provided further that every lease validly granted by the Custodian or any Rehabilitation Authority shall have effect as against the owner or any claimant until determined by lapse of time or operation of law.

Recovery of rents:- All arrears of rents recoverable in respect of any evacuee property may be recovered as arrears of land revenue if a certificate to that effect is issued by the Custodian.

Accounts to be maintained:- The Custodian shall keep such books of account as may be prescribed in respect of all evacuee property coming into his possession, giving the prescribed details of income accruing from or expenditure incurred in relation to such property. The books shall be subject to regular audit in the manner prescribed.

No suit prosecution or other legal proceeding shall lie against the Jammu and Kashmir Government or the Custodian or any person acting under his direction, for anything which is in good faith done or intended to be done in pursuance of this Act or for any loss or damage caused to or in respect of any property which may be ordered to vest in the Custodian or of which he has assumed control or possession.

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Power to make rules:- The Azad Kashmir Government may make such rules as appear to it to be necessary for carrying out the provisions or purposes of this Act.

Definitions:- In this Act unless the context otherwise requires :-

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"Person" includes a corporation or association of persons whether incorporated or not.

"Prescribed" means prescribed any rules made under this Act.

"Property" means all kinds of movable or immovable property but does not includes :-

(i) cash deposits in Banks ;

(ii) any actionable claims, otherwise that in relation to any undertaking or business of which the Custodian assumes possession or control ;

(iii) debts other than those towards which payment is tendered voluntarily by debtors.

"Evacuee" means any person belonging to Jammu and Kashmir State who has been or is absenting himself from his normal place of residence owing to the War of liberation or who is unable personally to occupy, supervise or take possession of his property in Azad Kashmir or in the case of a corporation, whose business or under-taking has ceased to operate wholly or partially owing to the said War of Liberation or is being operated by an unauthorised person or an agent or a manager appointed after the 24th October, 1947, whose appointment has not been approved by the Custodian.

"Evacuee Property" means the property of any evacuee in Azad Kashmir or property which vests in an evacuee under a trust or other instruments.

"Rehabilitation Authority" means any authority empowered under any law relating to the social and economic rehabilitation of refugees in Azad Kashmir for the time being inforce.

(g) "Refugee" means a person belonging to Jammu and Kashmir State who has taken refuge in Azad Kashmir or in Pakistan following the War of Liberation in the Jammu and Kashmir State or who though resident in Azad Kashmir Territory has been deprived of the enjoyment of immovable property in the Jammu and Kashmir State.