

PART I

HARYANA GOVERNMENT
LEGISLATIVE DEPARTMENT

Notification

The 16th April, 2008

No. Leg. 8/2008.—The following Act of the Legislature of the State of Haryana received the assent of the Governor of Haryana on the 8th April, 2008, and is hereby published for general information :—

HARYANA ACT NO. 7 OF 2008

THE HARYANA EVACUEE PROPERTIES (MANAGEMENT AND
DISPOSAL) ACT, 2008

AN

ACT

to provide for management and disposal of evacuee properties in the State of Haryana and for the matters connected therewith and incidental thereto.

BE it enacted by the Legislature of the State of Haryana in the Fifty-ninth Year of the Republic of India as follows :—

1. (1) This Act may be called the Haryana Evacuee Properties (Management and Disposal) Act, 2008.

Short title and commencement.

(2) It shall be deemed to have come into force with effect from the 6th September, 2005.

2. In this Act, unless the context otherwise requires,—

Definitions.

- (a) "displaced person" means 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 in any area now forming part of West Pakistan, has, after the 1st day of March, 1947, left or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident of any place now forming part of India and who for that reasons is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, and also includes the successors-in-interest of any such person;

(b) "evacuee property" means any evacuee property which has been received by the State Government from the Government of India in any manner or has become evacuee by operation of any law, rules or orders or any other property described as such in the revenue record and includes the properties mortgaged by erstwhile Muslim evacuee owners in favour of locals or *vice-versa*;

(c) "family" in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children;

Explanation.—For the purpose of this clause, "minor" means a person who has not completed the age of eighteen years;

(d) "medical authority" for the purposes of this Act shall have the same meaning as assigned to it under clause (p) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

(e) "person with disability" means a person suffering from not less than forty percent of any disability as certified by a medical authority;

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

(g) "public dues" mean use and occupation charges in respect of any evacuee property which had remained in unauthorized possession of a person and includes charges on account of damages to the property;

(h) "Secretary" means the Secretary to Government, Haryana, Rehabilitation Department;

(i) "State Government" means the Government of the State of Haryana;

(j) "Tehsildar" means Tehsildar (Sales) and includes Naib Tehsildar (Sales) / Naib Tehsildar (Rehabilitation) appointed under sub-section (1) of section 3;

(k) "unauthorized occupant" means a person who is in unauthorized occupation of any evacuee property—

(i) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant or public auction; or orders of any competent authority; or

(ii) where he, notwithstanding anything contained in para (i) has, whether before or after the commencement of this

Act, entered into possession thereof in pursuance of an order obtained by him by means of fraud, misrepresentation or concealment of any material fact; or

(iii) where he, being an allottee, lessee, grantee or auction-purchaser, has by reasons of the determination or cancellation of his allotment, lease, grant or auction in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such evacuee property; or

(iv) where he has purchased any evacuee property from an allottee or legal heir of the allottee, as the case may be, and entered into possession thereof in pursuance to sale-deed of such property and subsequently such allotment has been cancelled; or

(v) where any person authorized to occupy, any evacuee property has, whether before or after the commencement of this Act—

(a) sublet, in contravention of the terms of the allotment, lease, grant or auction without the permission of the State Government or of any other authority competent to permit such subletting, the whole or any part of such evacuee property; or

(b) otherwise acted in contravention of any of the terms, express or implied under which he is authorized to occupy such evacuee property.

Explanation.— For the purposes of sub-clause (a), a person shall not merely by reason of the fact that he has paid any rent, be deemed to have entered into possession as allottee, lessee, grantee or auction-purchaser;

(i) “verified claim” means any claim in lieu of the land left by a displaced person in West Pakistan in whose favour any order for allotment of land has been passed by the Chief Settlement Commissioner, Haryana or Secretary under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Central Act 44 of 1954), repealed by the Displaced Persons Claims and Other Laws Repeal Act, 2005 (Central Act 38 of 2005), and allotment has not been made.

3. (1) The State Government shall, by notification in the Official Gazette, appoint a Chief Commissioner (Sales), as many Commissioners (Sales), and Tehsildars (Sales) or Naib Tehsildars (Sales)/ Naib Tehsildars (Rehabilitation), Appointment of Chief Commissioner (Sales) and other officers.

as may be necessary for the purpose of performing the functions assigned to them by or under this Act.

(2) The Chief Commissioner (Sales) shall have general superintendence and control over the Commissioners (Sales), Tehsildars (Sales) and Naib Tehsildars (Sales)/Naib Tehsildars (Rehabilitation) in the State and may issue necessary directions for carrying out the purposes of this Act.

Power to transfer
evacuee property.

4. (1) The Tehsildar may transfer, except under clause (d) below, on such terms and conditions as may be prescribed, any evacuee property with the prior approval of the State Government,—

- (a) by allotment to the displaced persons against their verified claims;
- (b) by sale through public auction;
- (c) by sale through auction restricted to the members of the Scheduled Castes and Backward Classes as notified by the State Government from time to time on such terms and conditions as may be prescribed;
- (d) by sale through negotiation to any department of Government of India, State Government, Boards and Corporations duly constituted under any law, Panchayati Raj Institutions or other registered bodies and cooperative societies registered under any general or special law for a public purpose, at such price, terms and conditions, as the State Government may, determine by general or special order;
- (e) to the persons on the basis of his possession under any policy, scheme or rules;
- (f) to any person with disability on such terms and conditions as may be prescribed:

Provided that except in the case of allotment under clause (a) and in the case of a sale under clause (d), the maximum area that may be transferred to any person, including the area, if any, already owned by him, shall not exceed five acres:

Provided further that the sale under clause (d) above, shall be done in accordance with the Rules of Business of the Government of Haryana, 1977. However, the conveyance deed for the transfer of the evacuee property under clause (d) above shall be issued by the concerned Tehsildar:

Provided further that land in rural area and urban area which is free from encroachment shall be transferred to the concerned Gram Panchayat and concerned Municipal Committee respectively on the terms and conditions as the State Government may by general or special order direct.

(2) Every Tehsildar selling any evacuee property by public auction

or otherwise under sub-section (1), shall be deemed to be a revenue officer within the meaning of sub-section (4) of section 89 of the Registration Act, 1908 (XVI of 1908).

5. (1) Where a Tehsildar is satisfied that any person is or has at any time been in unauthorized occupation of any evacuee property or caused damages to evacuee property in any manner, then, without prejudice to any other action which may be taken against that person, the Tehsildar 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 evacuee property and may, by order, require that person to pay the damages within such period and in such installments as may be specified in the order:

Power to recover damages.

Provided that no order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

(2) In case the affected person fails to pay such assessed damages, the same shall be recovered as arrears of land revenue.

6. (1) The Tehsildar may cancel any lease or transfer of any evacuee property with prior approval of State Government in such manner as may be prescribed:

Power to cancel lease or transfer of any evacuee property and to take possession.

Provided that no lease or transfer shall be cancelled, under this sub-section without giving a reasonable opportunity of being heard.

(2) Where any person—

- (a) has ceased to be entitled to the possession of any evacuee property by reason of any action taken under sub-section (1); or
- (b) is, in the opinion of the Tehsildar, otherwise in unauthorized possession of any evacuee property,

he shall, after he has been given a reasonable opportunity of showing cause against his eviction from such evacuee property, surrender possession of the property on demand being made in this behalf by the Tehsildar.

(3) If any person fails to surrender possession of any evacuee property on demand made under sub-section (2), the Tehsildar may, eject such person and take possession of such property and may, for such purpose, use or cause to be used such force as may be necessary.

7. (1) Any person aggrieved by an order of the Tehsildar under this Act may, within a period of thirty days from the date of the order, prefer an appeal to the Commissioner (Sales), in such form and manner as may be prescribed:

Appeal.

Provided that the Commissioner (Sales) may entertain an appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was

prevented by sufficient cause from filing the appeal within the stipulated period, but no appeal shall be entertained after the period of ninety days from the date of such order.

(2) The Commissioner (Sales) after hearing the appeal, may confirm, vary or reverse the order appealed against or pass such order, as he may deem fit.

Revision.

8. (1) Any person aggrieved by an order of the Commissioner (Sales) may, within a period of sixty days from the date of the order, prefer a revision to the Chief Commissioner (Sales) in such form and manner as may be prescribed:

Provided that the Chief Commissioner (Sales) may entertain the revision after the expiry of the said period of sixty days, if he is satisfied that the applicant was prevented by sufficient cause from filing the revision within the stipulated period, but no revision shall be entertained after one hundred and twenty days from the date of the order of the Commissioner (Sales).

(2) The Chief Commissioner (Sales) may, after hearing the revision, confirm, vary or reverse the order under revision or pass such order, as he may deem fit.

Certain residuary powers of State Government.

9. The State Government may at any time call for the record of any proceedings under this Act and may pass such order 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 or the rules made thereunder:

Provided that the powers of State Government under this section shall be exercised by the Secretary:

Provided further that no order which prejudicially affects the interest of any person shall be passed under this section without giving him a reasonable opportunity of being heard.

Powers of officers.

10. Every officer appointed under this Act shall, for the purpose of making any enquiry or hearing an appeal or revision under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) requisitioning of any public record from any court or office;
- (d) issuing commissions for examination of witnesses;
- (e) any other matter which may be prescribed,

and any proceedings before any such officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code,

1860 (Act XLV of 1860) and every such officer shall be deemed to be a civil court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973 (Act 2 of 1974).

11. The State Government may, by an order in writing at any time, transfer any case pending before an officer appointed under this Act to another officer and the officer to whom the case is so transferred may, subject to any special direction in the order of transfer, proceed from the stage at which it was so transferred.

Powers to transfer cases.

12. The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

Act to over-ride other laws.

13. (1) Any person who furnishes false, wrong or incorrect information or document or evidence in whatsoever manner to any officer appointed under this Act, shall be punishable with imprisonment for a term which may extend upto one year or with a minimum fine of two thousand rupees which may extend upto five thousand rupees or with both.

Penalty.

(2) No court shall take cognizance of any offence punishable under this Act, save upon a complaint in writing made by an officer, authorized by the Chief Commissioner (Sales) by any general or special order made in this behalf.

14. (1) Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter, which the State Government or any officer appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Bar of jurisdiction.

(2) No civil court shall have jurisdiction to entertain or adjudicate upon any question whether any immovable property or any right, title or interest in such immovable property falls or does not fall within the definition of evacuee property.

15. No suit or other legal proceeding shall lie against the State Government or any person appointed under this Act in respect of anything which is done in good faith or intended to be done in pursuance of the provisions of this Act and any rules or orders made thereunder.

Protection of action taken in good faith.

16. No officer or any member of his family or other persons having any duty to perform in connection with the valuation or sale of any evacuee property, or having any official connection with the Rehabilitation Department, Haryana, shall, either directly or indirectly bid for or otherwise acquire or attempt to acquire any interest in such property.

Certain persons not eligible to purchase property.

17. Every officer appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Act XLV of 1860).

Officers to be public servants.

Non-applicability
of Punjab Tenancy
Act, 1887.

18. No person shall be declared as occupancy tenant in respect of any evacuee property under the Punjab Tenancy Act, 1887 (Act XVI of 1887).

Powers to make
rules.

19. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act including management and disposal of evacuee properties and maintenance of records, as may be necessary from time to time.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session. If the House agrees in making any modification in the rule or the House agrees 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.

Saving.

20. Anything done or any action taken by the Secretary, Special Secretary, Joint Secretary, Deputy Secretary or Tehsildar by virtue of the powers delegated by the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act XLIV of 1954), repealed by the Displaced Persons Claims and Other Laws Repeal Act, 2005 (Central Act 38 of 2005), shall be deemed to have been done or taken under the corresponding provisions of this Act as if this Act were in force on the date on which such thing was done or action taken.

M. S. SULLAR,
Secretary to Government Haryana,
Legislative Department.