

ASSAM ACT XI OF 1951

***THE ASSAM EVACUEE PROPERTY ACT, 1951**

[Published in the "Assam Gazette, Extraordinary", dated the 20th April 1951]

An Act to provide for certain matters relating to evacuee property

Whereas it is expedient to provide for certain matters relating to evacuee property ;

It is hereby enacted as follows :—

1. **Short title, extent and commencement.**—(1) This Act may be called the Assam Evacuee Property Act, 1951.

(2) It extends to the whole of Assam.

(3) It shall come into force at once.

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

(a) "*Adhiar*" means a person who under the system generally known, as *Adhi* (whether *Guchi-adhi* or *Guti-adhi*), *barga*, *chukti*, *bhag* or *chukani*, cultivates the land of another person on condition of delivering a share or quantity of the produce of such land to that person ;

*For Statement of Objects and Reasons see "Assam Gazette", 1951, Part V, page 36.

- (b) "allotment" means the grant by the Deputy Commissioner of the temporary right to use and occupy any property otherwise than by way of lease ;
- (c) "appointed day" means the 31st day of March 1951 ;
- (d) "the Committee" means the Evacuee Property Management Committee for Assam constituted under sub-section (1) of section 12 of this Act ;
- (e) "the Deputy Commissioner" means the Deputy Commissioner of the district within which the evacuee property is situated ;
- (f) "evacuee" means a person ordinarily resident in Assam who on account of communal disturbances or the fear of such disturbances leaves, or has after the 15th August 1947 left, Assam, for any place in Pakistan and also includes his legal heir ;
- (g) "property" means immovable property ;
- (h) "prescribed" means prescribed by rules made under this Act ;
- (i) "Urban area" means any area included in a Municipality or a small town constituted under the provisions of the Assam Municipal Act, 1923 (Assam Act I of 1923), and such other areas as may be notified by the State Government in the Official Gazette as urban areas for the purposes of this Act.

3. **Evacuee property.**—Every property in Assam in which an evacuee has a right or interest other than—

- (a) property in charge of the Court of Wards, and
- (b) property covered by an annual patta in a tribal belt or tribal block, is hereby declared to be evacuee property.

4. **Deputy Commissioner's Order.**—(1) The Deputy Commissioner or an officer to whom the powers of a Deputy Commissioner are delegated under section 11 of this Act if he is satisfied with respect to any evacuee property that such property is lying un-occupied, uncultivated or uncared for, or has come to be wrongfully used or occupied by any person, may make an order in the prescribed form, styled a Deputy Commissioner's Order in respect of such property.

(2) While a Deputy Commissioner's Order is in force in respect of any evacuee property of an evacuee, the Deputy Commissioner, subject to any general or special orders of the State Government,—

- (a) may take such measure as he considers necessary or expedient for the purposes of managing, protecting and preserving such property and may for such purposes do such acts and incur such expenses as may be necessary or incidental ;
- (b) may remove or cause to be removed by force if necessary, any person who is wrongfully using or occupying such property ;
- (c) may, subject to the provisions of section 5, make any allotment of such property or part thereof to any person on such terms and conditions, as he thinks fit ;
- (d) shall report to the Committee—
 - (i) if before the expiry of the appointed day, the evacuee makes to the Deputy Commissioner a declaration of his intention not to return to Assam—as soon as may be, after he receives such declaration ;
 - (ii) if before the expiry of the appointed day, the evacuee does not make a declaration to the Deputy Commissioner of his intention not to return to Assam—as soon as may be, after the appointed day.

5. **Provisions as to allotments.**—(1) No allotment shall be made—

- (a) where the evacuee property consists of residential or business premises or vacant land situated within an urban area—for a period extending beyond the 7th day of February, 1951 ;

- (b) where the evacuee property consists of land or homestead used for or in connection with agricultural purposes—for a period extending beyond the 7th day of February, 1951.
- (2) An allotment and the terms and conditions thereof shall be binding on the evacuee in respect of whose evacuee property the allotment has been made, and also on the Committee but only for the period for which the allotment is made.
- (3) Nothing in this Act shall be deemed to confer on any person to whom an allotment is made, any transferable right or the status of a tenant or of a lessee.
- (4) No person to whom an allotment of any evacuee property is made, shall remain on such property after the expiry of the period of allotment and any person so remaining, shall, if a Deputy Commissioner's Order in respect of such property is in force, be deemed to be wrongfully using or occupying such property within the meaning of clause (b) of sub-section (2) of section 4.

6. Cancellation of Deputy Commissioner's Order and delivery of possession.—(1) An evacuee who returns to Assam before the expiry of the appointed day may apply in writing to the Deputy Commissioner before the expiry of that day—

- (a) where a Deputy Commissioner's Order has been made in respect of his evacuee property and such property is not in the wrongful use or occupation of any person—for the cancellation of such order;
- (b) where a Deputy Commissioner's Order has been made in respect of any of his evacuee property and such property is in the wrongful use or occupation of any person—for the cancellation of such order and for the delivery of possession of such property, and
- (c) where any of his evacuee property is in the wrongful use or occupation of any person—for the delivery of possession of such property.
- (2) Upon an application as aforesaid being made the Deputy Commissioner shall—
- (a) in cases coming under clause (a) or (b) of sub-section (1) cancel the Deputy Commissioner's Order;
- (b) in cases coming under clause (b) or (c) of sub-section (1), cause the possession of such property to be delivered to the evacuee and may use or cause to be used such force as may be necessary for such purpose.
- (3) Where the Deputy Commissioner is of opinion that the cancellation of the Deputy Commissioner's Order or the delivery of possession would not be feasible under sub-section (2), he shall report the case to the State Government and the State Government shall thereupon refer the case to the Minority Commission constituted under Notification No.RHM.65/50/14, dated the 4th June 1950, for advice. The State Government shall after considering such advice pass such order as it thinks fit, so however, that if the State Government is of opinion that exceptional circumstances exist on account of which it would not be feasible to cancel the Deputy Commissioner's Order or to cause the possession of the evacuee property to be delivered, it shall take such steps for the adequate rehabilitation of the evacuee as it deems necessary.

(4) The cancellation of the Deputy Commissioner's Order under clause (a) of sub-section (2) shall have effect subject to the provisions of sub-section (2) of section 5.

7. Exceptions.—Nothing in section 6(2)(b) shall apply to the following:—

- (a) an evacuee property of an evacuee, situated within a urban area, if the evacuee left Assam prior to the 1st day of January, 1950, or

(b) an evacuee property which, at the time of his leaving Assam, was held by the evacuee as—

(i) a tenant-at-will or *thika* tenant or monthly tenant in an urban area, or

(ii) an *adhiar* in an area other than an urban area,

if, on the date of receipt by the Deputy Commissioner, of an application under sub-section (1) of section 6, such property is

(a) let out in cases falling under (i) above, or

(b) allowed to be cultivated in cases falling under (ii) above,

by or with the authority of the immediate landlord of the evacuee to a person other than the evacuee.

8. **Exemption of evacuee property from attachment, etc.**—(1) No evacuee property shall be liable to attachment, distraint or sale in execution of a decree or order of a Court, or any other authority, while a Deputy Commissioner's Order is in force in respect of such property.

(2) In computing the period of limitation applicable to any suit, appeal or application in respect of any evacuee property, the time during which a Deputy Commissioner's Order remains in force in respect of such property shall be excluded.

9. **Expenses incurred by the Deputy Commissioner.**—(1) Any expenses incurred by the Deputy Commissioner in the exercise or discharge of any powers, duties or functions under this Act or the rules made thereunder, in respect of any evacuee property shall be the first charge on the receipts derived from such property and any such expenses may be recouped by the Deputy Commissioner out of such receipts.

(2) Subject to the provisions of sub-section (1) any land revenue, rent or cess payable in respect of such property shall have priority over other charges on the receipts derived from such property.

10. **Maintenance of accounts and payment to the evacuee or his successor.**—

(1) The Deputy Commissioner shall, in the prescribed manner maintain an account of the receipts derived from and the payments made in respect of every evacuee property, while a Deputy Commissioner's Order is in force in respect of such property.

(2) Upon the cancellation of a Deputy Commissioner's Order under section 6 or upon a Deputy Commissioner's Order standing cancelled under sub-section (4) of section 18, the Deputy Commissioner shall pay to the evacuee in respect of whose evacuee property the Deputy Commissioner's Order was made, or his successor-in-interest, as the case may be, the balance which remains after deducting the payments made in respect of such property from the receipts derived from such property.

11. **Delegation of Powers by the Deputy Commissioner.**—The Deputy Commissioner may, with the prior approval of the State Government, by general or special order, delegate all or any of his powers, duties or functions under this Act or the rules made thereunder to such officer of the State Government as he thinks fit.

12. **Constitution of the Committee.**—(1) The State Government shall, by notification in the **Official Gazette**, constitute an Evacuee Property Management Committee for Assam.

(2) The Committee shall consist of a President and three other members.

(3) The President shall be an officer of the State Government appointed in this behalf by the State Government from time to time, and the other members shall be appointed by the State Government from among the members of the Minority Community.

(4) The Committee shall be a body corporate by the name of the Evacuee Property Management Committee of Assam and shall have perpetual succession and a common seal and shall by the said name sue and be sued.

13. Resignation and removal of members and filling up of vacancies.—(1) A member of the Committee, other than the President, may, by writing under his hand, delivered to the prescribed officer of the State Government, resign his office after giving one month's notice of his intention to resign.

(2) The State Government may at any time remove any member of the Committee on any of the following grounds, namely—

(a) that he has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude ;

(b) that he has applied to be adjudged or has been adjudged an insolvent ;

(c) that he, in the opinion of the State Government, is incompetent, or incapable of or unfit to perform the duties of his office on account of physical or mental infirmity ;

(d) that he, in the opinion of the State Government, has been mismanaging the properties of which the Committee has taken charge.

(3) In the event of a vacancy occurring in the office of any member of the Committee, other than the President, by death, resignation, removal or otherwise, the State Government shall fill up the vacancy in the manner provided in sub-section (3) of section 12.

14. Conduct of business of the Committee.—The Committee may, with the approval of the State Government, make regulations for conducting its business and may act notwithstanding any vacancy in the office of any member other than that of the President :

Provided that the quorum for a meeting of the Committee shall be two members, one of whom shall be the President.

15. Officers of the Committee.—The Committee may appoint with the approval of the State Government such officers (hereinafter referred to as Administrative Officers) as may be necessary for the proper discharge of its functions under this Act and may also appoint such other staff as it considers necessary.

16. Allowances of President and Members and remuneration of Officers.—

(1) The members of the Committee shall not be entitled to any salary but may receive such allowances as may be fixed by the State Government.

(2) The remuneration of the Administrative Officers and of other staff shall be such as may be fixed by the State Government.

17. Expenses incurred by the Committee.—(1) The salary and allowances of the President, the allowances of other members of the Committee the remuneration of the Administrative Officers and other staff and such other expenses as may be incurred by the Committee in the exercise or discharge of any of its powers, duties and functions under this Act or the rules made thereunder, in respect of any evacuee property, shall be defrayed out of a levy at such rate, as may be prescribed, on the receipts derived from such property and shall, subject to the provisions of section 9, be a first charge on such receipts.

(2) The State Government may from time to time make such advances to the Committee as may be necessary to enable it to function. All such advances shall be recoverable with interest at three *per centum per annum* from the receipts derived from the properties which may vest in the Committee and shall subject to sub-section (1) be a charge on every and all such properties and shall have priority over all other charges on every and all such properties.

(3) The moneys received by the Committee from time to time under the provisions of this Act shall constitute a fund which may be declared to be a "local fund" under sub-section (4) of Section 2 of the Assam Local Funds (Accounts and Audit) Act, 1930, Assam Act II of 1930, by the State Government.

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18. Management by the Committee.—(1) The Committee may take charge of any evacuee property of an evacuee in the following cases—

- (a) where a report is received from the Deputy Commissioner under clause (d) of sub-section (2) of section 4, or
- (b) where the State Government has taken steps for the rehabilitation of the evacuee under sub-section (3) of section 6, or
- (c) where before the appointed day the evacuee makes a declaration before the prescribed authority of his intention not to return to Assam, or
- (d) where after the appointed day the evacuee has not returned to Assam, whether there is or not a declaration by the evacuee of his intention not to return or whether there is or is not an application to the Committee to take charge of his property.

(2) Before taking charge of an evacuee property, the Committee shall cause a public notice to be given in the prescribed manner calling for objections to the taking of charge of such property by the Committee to be filed before the Committee within a date specified in such notice.

(3) If after considering the objections filed within the date specified in such notice the Committee is of opinion that there is a dispute as to whether such property is the property of the evacuee, the Committee shall refer such dispute to the Deputy Commissioner for summary enquiry and decision.

(4) If there is no such dispute as aforesaid or if the Deputy Commissioner on being referred to under sub-section (3), decides that such property is the property of the evacuee, the Committee shall pass an order directing that the charge of the property be taken by the Committee and thereupon such property shall, subject to the provisions of sub-section (2) of section 5, vest in the Committee and any Deputy Commissioner's order made in respect of such property shall stand cancelled.

(5) Where any evacuee property vests in the Committee under sub-section (4), the Committee shall, as soon as may be, give public notice of the fact in the prescribed manner.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Committee shall not take charge of any evacuee property if the evacuee being the sole owner or the entire body of co-sharer owners of such property, objects to the charge thereof being taken by the Committee and furnishes evidence to the satisfaction of the Committee that adequate arrangements have been made for the management and proper utilisation thereof.

(7) Nothing in this section shall affect the right of any person to establish his title in a competent Court.

19. Power of evacuee to dispose of property.—(1) An evacuee, whose property has vested in the Committee, may, if he has an absolute transferable right therein according to the law in force for the time being, at any time dispose of such property by sale, exchange, gift or otherwise but not by way of lease or by usufructuary mortgage.

(2) Upon such disposition as aforesaid, the evacuee shall intimate the Committee thereof and the Committee shall as soon as may be, cause a public notice to be given in the prescribed manner.

(3) A disposition as aforesaid shall, subject to the provisions of sub-section (2) of section 5 and sub-section (3) of section 22, take effect on and from the date of the publication of the notice referred to in sub-section (2) and on and from that date the evacuee property shall cease to vest in the Committee and the Committee shall be absolved from all further responsibility in respect thereof.

20. **Power, rights and liabilities of the Committee.**—(1) Notwithstanding any other provision of this Act, the Committee shall have, in respect of any evacuee property of an evacuee vested in it, only such rights, interest, powers and liabilities as the evacuee had over such property.

(2) The Committee shall take such measures as may be necessary for the good management and protection of any evacuee property of an evacuee vested in it, for the assertion of title thereto and for obtaining possession thereof and may for such purposes do all acts and incur all expenses which are necessary or incidental.

(3) (i) The Committee shall maintain in the prescribed form, accounts of all evacuee property vested in it, a separate account being maintained in respect of each evacuee or where the property of a body of co-sharer evacuees is managed jointly, in respect of each such body of co-sharer evacuees.

(ii) The State Government shall cause accounts to be audited at such intervals and by such person as may be prescribed. The cost of such audit shall be paid by the Committee according to the prescribed scale.

(iii) A copy of the audited accounts as aforesaid of the evacuee property shall be supplied to the evacuee or the body of co-sharer evacuees by the Committee on application and the audited accounts shall also be available in the prescribed manner for inspection by the evacuee or any co-sharer evacuee or any agent of the evacuee or a co-sharer evacuee authorised in writing.

(4) The Committee shall pay to an evacuee in such manner and at such intervals as may be prescribed, the receipts derived from his property vested in the Committee, after deducting therefrom all sums debitable to such receipts.

21. **Certain payments not to be valid discharge.**—No payment made, after publication of a notice under sub-section (5) of section 18, on account of any amount due to the evacuee in respect of his property vested in the Committee save and except to the Committee or some person appointed by the Committee, shall constitute a valid discharge of any liability in respect thereof.

22. **Restrictions on transfer by Committee.**—(1) Save and except as provided in sub-section (2), the Committee shall not be entitled to transfer any evacuee property vested in it, except with the written consent of the evacuee.

(2) Subject to sub-section (1) of section 20, the Committee may grant a lease of any evacuee property vested in it or part thereof for a period not exceeding three months in urban areas and twelve months in other cases, at any one time :

Provided that in granting such lease the Committee shall on each occasion give the first preference to the person to whom any allotment of such property or a part thereof was made, except where the Deputy Commissioner reports to the Committee that such person committed a breach of the terms and conditions of such allotment, or where such property consists of land used for or in connection with agricultural purposes, neglected to cultivate such property properly.

(3) A lease as aforesaid shall be binding on the evacuee and his successors-in-interest but only for the period for which the lease is granted.

(4) Notwithstanding anything contained in this Act or any other law, no lease granted by the Committee under this section shall confer a heritable or transferable right to any person to whom it is granted.

(5) If the person to whom a lease is granted under sub-section (2) holds over after the expiry of the lease, he shall be liable to eviction by order of a competent Court of law.

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23. Restoration of property to evacuee.—(1) An evacuee may at any time after he returns to Assam but not later than the appointed day apply in writing to the Committee for the restoration of any of his evacuee property of which the Committee has taken charge.

(2) As soon as may be after such application is received, the Committee shall cause a public notice to be given in the prescribed manner that such property shall be restored to the applicant if no objections to his title are received within a date specified in such notice.

(3) If no objections as aforesaid are received within the date specified in such notice, the Committee shall make an order that the evacuee property be restored to the applicant.

(4) If any objections as aforesaid are received within the date specified in such notice, the Committee shall summarily decide such objections after calling, if necessary, for a report from the Deputy Commissioner of the district in which the property or any part thereof is situated. If the Committee, after proceeding in the manner aforesaid, rejects such objections, the Committee shall make an order that the evacuee property be restored to the applicant.

(5) Upon an order under sub-section (3) or sub-section (4) being made, the evacuee property shall cease to vest in the Committee and shall, subject to sub-section (3) of section 22, vest in the applicant and the Committee shall, subject to sub-section (7), be absolved of all further responsibility in respect of the evacuee property.

(6) The Committee shall, as soon as may be, give public notice in the prescribed manner of any order made under sub-section (3) or sub-section (4).

(7) Nothing in this section shall affect the right of any person to establish his title in a competent Court.

24. Restoration or management of property to a certain class of returning evacuees.—(1) An evacuee who returns to Assam after the appointed day but not later than the 31st day of December 1953, may apply in writing to the Committee for restoration or management of his evacuee property of which the Committee has taken charge.

(2) As soon as may be after such application is received, the Committee shall cause a public notice to be given in the prescribed manner that the management of such property shall be restored to the applicant if no objections to his title are received within a date specified in such notice.

(3) If no objections as aforesaid are received within the date specified in such notice, the Committee shall make an order that the management of the evacuee property be restored to the applicant.

(4) If any objections as aforesaid are received within the date specified in such notice, the Committee shall summarily decide such objections after calling, if necessary, for a report from the Deputy Commissioner of the district in which the property or any part thereof is situated. If the Committee, after proceeding in the manner aforesaid, rejects such objections, the Committee shall make an order that the management of the evacuee property be restored to the applicant.

(5) An order for restoration or management of an evacuee property under sub-section (3) or sub-section (4) shall be made with as much expedition as possible and in any case within six months from the date of the application under sub-section (1).

(6) Upon an order under sub-section (3) or sub-section (4) being made, the evacuee property shall cease to vest in the Committee and shall, subject to sub-section (3) of section 22, vest in the applicant and the Committee shall, subject to sub-section (7), be absolved of all further responsibility in respect of the evacuee property.

(7) The Committee shall, as soon as may be, give public notice in the prescribed manner of any order made under sub-section (3) or sub-section (4).

(8) Nothing in this section shall affect the right of any person to establish his title in a competent Court.

25. Possession to be delivered by force if necessary.—(1) If any evacuee property, the charge of which is taken by the Committee or in respect of which an order under sub-section (3) or sub-section (4) of section 23 has been made, is in the wrongful use or occupation of any person, the Deputy Commissioner shall, on application made to him by the Committee, cause such person to be evicted from such evacuee property and may use or cause to be used such force as may be necessary for the purpose.

(2) Any person in the wrongful use or occupation of such property shall, in addition to being proceeded against under sub-section (1), be liable to pay to the Committee damages for such wrongful use or occupation.

26. Delegation of powers, duties and functions.—The Committee may delegate all or any of its powers, duties or functions under this Act or the rules made thereunder to an Administrative Officer to be performed or exercised within his jurisdiction.

27. Control of Administrative Officers.—(1) All Administrative Officers shall be under the supervision and control of the Committee and the Committee may, on its own motion or on application, review, rescind or vary any order of an Administrative Officer.

(2) The Deputy Commissioner or such other officer as may be authorised by the State Government in this behalf shall have power to inspect the work of any Administrative Officer and the staff subordinate to him and examine any records, books of account or other documents maintained by the Administrative Officer.

28. President, members and Officers to be public servants.—The President, the other members of the Committee, every Administrative Officer and every other person duly appointed under this Act or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

29. Bar of jurisdiction.—Save and except as expressly provided in this Act, no order of the State Government or of the Deputy Commissioner, or of the Committee or of an Administrative Officer, made or purported to be made thereunder, shall be questioned in any Court of law.

30. Protection and indemnity.—(1) No suit or other legal proceeding shall lie against the State Government or any servant of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.

(2) No suit, prosecution or other legal proceeding shall lie against the Committee or any person for anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.

(3) No suit, prosecution or other legal proceeding shall lie against the State Government or any servant of the State Government for anything which before the commencement of this Act, was in good faith done or intended to be done for the protection, preservation or management of any property of an evacuee.

31. Recovery of dues.—Any sum payable to the Deputy Commissioner or to the Committee under this Act or the rules made thereunder may be recovered as if the same were an arrear of land revenue.

32. Act to override other law.—The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law.

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33. **Power to make rules.**—(1) The State Government may make rules for carrying out the purposes of this Act.

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

- (a) the form of an order by the Deputy Commissioner under sub-section (1) of section 4 ;
- (b) the manner in which the accounts referred to in sub-section (1) of section 10 shall be maintained ;
- (c) the officer to whom the writing referred to in sub-section (1) of section 13 shall be delivered ;
- (d) the rate of the levy referred to in sub-section (1) of section 17 ;
- (e) the manner in which a public notice shall be given under sub-section (2) or sub-section (5) of section 18, sub-section (2) of section 19, sub-section (2) or sub-section (6) of section 23 or sub-section (2) or sub-section (7) of section 24 ;
- (f) the form in which accounts referred to in clause (i) of sub-section (3) of section 20 shall be maintained, the intervals at which and the persons by whom such accounts shall be audited under clause (ii) of that sub-section and the scale referred to in that clause ;
- (g) the manner in which audited accounts shall be available for inspection under clause (iii) of sub-section (3) of section 20 ;
- (h) the manner in which and the intervals at which the payment under sub-section (4) of section 20 shall be made ;
- (i) any other matter required to be prescribed under this Act.

34. **Repeal and Saving.**—(1) The Assam Evacuee Property Ordinance, 1951 Assam Ordinance No.I of 1951, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in exercise of any powers conferred by or under the said Ordinance shall be deemed to have been done or taken in 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 taken.