

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLTAMENTARY AFFAIRS DEPARTMENT
MUZAFFARABAD**

Dated the 9th October, 1985.

No. 2017/LD/85. The following Ordinance made by the President on the 9th day of October, 1985, is hereby published for general information:-

(ORDINANCE CCXLV OF 1985)

AN

ORDINANCE

to amend the Pakistan Administration of Evacuee Property Act, 1957.

WHEREAS it is expedient to provide the manner for the permanent social and economic rehabilitation of allottees of evacuee property by granting them proprietary rights in such allottee evacuee property;

AND WHEREAS the Government has also consented to the grant of such proprietary rights to the refugees in the allotted evacuee property;

AND WHEREAS the Legislative Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by subsection (1) of Section 41 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance:-

1. **Short title and Commencement.**- (1) This Ordinance may be called the Pakistan Administration of Evacuee Property (Amendment) Ordinance, 1985.
 - (2) It shall extend to the whole of Azad Jammu and Kashmir territory.
 - (3) It shall come into force at once.
2. **Definitions.**- In this Ordinance, unless there is anything repugnant in the subject or context,-
 - (a) "Act" means Pakistan Administration of Evacuee Property Act, 1957, as adapted in Azad Jammu and Kashmir;
 - (b) "Allottee of Evacuee Property" shall mean the person under the Rehabilitation Act, 1956 as adapted in Azad Jammu and Kashmir at the time of enforcement of this Ordinance and shall include any person to whom any evacuee property is allotted in future under the said Act, or any other law or the time being in force;
 - (c) 'Government' means the Azad Government of the state of Jammu and Kashmir;
 - (d) 'Owner' shall mean the owner on the evacuee property as shown immediately before the war of liberation in 1947 or

his heirs, survivors of successors who is/are by his personal law entitled to inheritance;

- (e) “Rehabilitation Commissioner” means an officer appointed as such by the Government under the provisions of Pakistan Rehabilitation Act, 1956, as adapted in Azad Jammu and Kashmir.

3. **Amendment of Section 18, Act, XII of 1957.**- In the Pakistan Administration of Evacuee Property Act, 1957 (Act XII of 1957), hereinafter referred to as the said Act, in Section 18 sub-section (6) the following new sub-section (7) shall be added and shall be deemed always to have been so added:-

“(7) the Government may, cancel the allotment of an evacuee property made in favour of any allottee, on the basis of inquiry, made by the Rehabilitation Authority that the allottee has abandoned the allotted property or has consented to the cancellation of allotment.”

4. **Addition of Section 18-A and 18-B, Act XII of 1957.**- In the said Act, after Section 18, the following new Sections shall be added, namely:-

- “18-A. (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of the next following sub-sections the allottees holding allotment of evacuee property in Azad Jammu and Kashmir shall enjoy the proprietary rights in respect of such property so, however, that such allottee, and every other person to whom any such property subject to the condition that, if the owner of such property is transferred, by the allottee whether by way of sale, gift, mortgage or otherwise shall hold the property shall return to Azad Jammu and Kashmir at the time when a plebiscite is about to be, or is being, held in the State of Jammu and Kashmir in accordance with the UNCIP Resolution of the fifth day of January, 1949, and shall claim the property, the allottee or other person holding that property, shall surrender, the property in favour of the person who is declared to be the right-ful owner by the Custodian paying to the allottee or transferee the cost of any improvement made in the property:

Provided that in the cases where the Evacuee Property is held by any old tenant as defined in Government Order No. 25/60, than, notwithstanding the grant of proprietary rights to the allottee in respect of such Evacuee Property the old tenant shall have the protection against the ejection to the extent indicated in para 1 (e) of the Government Order No. 25/60 and he shall be liable to pay the rent to the allottee as provided therein.

(2) The proprietary rights in pursuance of sub-section (1) shall be granted by the Custodian to every allottee after realizing from such allottee the cost and other dues prescribe by the rules, in the form of "Proprietary Rights Transfer Order" on the Certificate of Entitlement from the Rehabilitation Commissioner.

(3) The Rehabilitation Commissioner shall issue a Certificate of Entitlement under sub-section (2) after satisfying himself to the effect:-

- (a) that the allottee is entitled to the allotment of evacuee property in Azad Jammu and Kashmir;
- (b) that the allotment has been made by the competent authority;
- (c) that the allotment is within scale prescribed by the Government from time to time.

Provided that the land in respect of which an allottee has received compensation from the Government shall be excluded for the purposes of entitlement from the maximum limit of entitlement and

- (d) that the allottee has filed a form of holding of evacuee property prescribed by the Custodian of Evacuee Property.

(4) The order of Rehabilitation Commissioner refusing to issued a Certificate of entitlement shall be appealable to an officer authorised by Government in this behalf.

(5) An order of Custodian granting or refusing to grant proprietary rights under sub-section (1) shall be revisable by the Divisional Bench of High Court.

(6) The Rehabilitation Commissioner or as the case may be the Custodian may review his own order to correct any clerical mistake or such omission which is apparent on the face of record.

Provided that no order shall be reviewed without notice to the parties likely to be effected by the review.

(7) The period of limitation for appeal, review or revision under sub-section (4) and (5) shall be 90 days from the date of order or the date on which it is communicated to person concerned whichever is later.

18-B. (1) Notwithstanding anything contained contrary in any

other law, for the time being in force, and without prejudice to the generality of the powers which already vest in him, the Custodian may cancel any allotment of evacuee property in the following cases:-

- (a) where an allottee has failed to comply with the terms and conditions of allotment within the meaning of Section 18 of the Act;
- (b) where an allottee has, to the satisfaction of the Custodian, voluntarily surrendered or abandoned the allotment;
- (c) where the allotment has been made in violation of law or is without jurisdiction;
- (d) where the evacuee property stand allotted to more than one persons and it is necessary to determine the entitlement to such allotment;
- (e) where an allotment is in excess of the prescribed scale and it is necessary to bring allotment within scale in order to confer proprietary rights in accordance with law, upon such allottee. The Custodian shall exercise the powers of Multiple Judge under Multiple Allotment Act, 1961, in cases processed or being processed for the grant of proprietary rights.

(2) The Custodian may eject similarly with the use of such force as may be necessary any person found in unauthorised possession of evacuee property or a person who is found by the custodian to be unsuitable, person to hold such evacuee property or a person who in the opinion of the Custodian subsequently becomes unsuitable to hold such property.

(3) The orders passed by the Commissioner under sub-section (3) of Section 18-A except as provided by sub-section (4) of Section 18-A and orders passed by Revising Authority under sub-section (4) of Section 18-A shall be final and shall not be called in question in any court or authority.

(4) An order passed by Custodian under sub-section (2) of Section 18-A except as provided by sub-section (5) of Section 18-A and orders passed under Section 18-B shall be final and shall not be called in question in any court or authority.”

6. **Savings.-** Notwithstanding any judgment, decree or order of any court including High Court, every thing done, all actions taken, notifications issued, orders or appointments made, proceedings

Volume VIII (1985-88)

initiated, jurisdiction or powers exercised under the provisions of the Pakistan Administration of Evacuee Property (Amendment) Ordinance, 1980 (Ordinance XXXVIII of 1980) or its succeeding Ordinances issued from time to time shall be deemed to have been validly done, taken, issued, made, initiated or exercised under this Ordinance.

Sd/-
(Major General (R) Abdul Rehman Khan)
President,
Azad Jammu & Kashmir.
