

Bill No. 75 of 2010

THE ENEMY PROPERTY (AMENDMENT AND VALIDATION)
BILL, 2010

A

BILL

further to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Enemy Property (Amendment and Validation) Act, 2010.

Short title and commencement.

(2) It shall be deemed to have come into force on the 2nd day of July, 2010.

34 of 1968.

2. On and from the date of commencement of the Enemy Property Act, 1968 (hereinafter referred to as the principal Act), in section 5, after sub-section (2), the following shall be inserted and shall be deemed to have been inserted, namely:—

Amendment of section 5.

‘(3) The enemy property vested in the Custodian shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue to remain vested in the Custodian till it is divested by the Central Government.

Explanation.—For the purpose of this section, “enemy property vested in the Custodian” shall include all titles, rights and interest in, or any benefit arising out of, such property vested in him under the Act.’.

Insertion of new section 5A.

3. After section 5 of the principal Act, the following section shall be inserted, namely:—

Issue of certificate by Custodian.

“5A. The Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him under the Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein.”.

Amendment of section 6.

4. On and from the date of commencement of the principal Act, in section 6, the following *Explanation* shall be inserted and shall be deemed to have been inserted, namely:—

“*Explanation.*—For the removal of doubts, it is hereby declared that, for the purposes of this section, the transfer of any enemy property shall not include any transfer or any claim of transfer made,—

(a) through oral will or oral gift; or

(b) by concealment of enemy nationality; or

(c) in case the transfer of such property requires the permission of the Reserve Bank of India or any other competent authority, without such permission; or

(d) without the permission of the Custodian.”.

Amendment of section 8.

5. In section 8 of the principal Act, in sub-section (2),—

(a) after clause (i), the following clause shall be inserted, namely:—

“(ia) fix and collect the rent, standard rent, lease rent, licence fee or usage charges, as the case may be, in respect of enemy property;”;

(b) after clause (iv), the following clause shall be inserted, namely:—

“(iva) secure vacant possession of the enemy property by evicting from the unauthorised or illegal occupant or trespasser and remove unauthorised or illegal constructions, if any;”.

Insertion of new section 10A.

6. After section 10 of the principal Act, the following section shall be inserted, namely:—

Transfer of immovable property belonging to enemy.

“10A. (1) Where the Custodian proposes to sell any enemy immovable property vested in him, as referred to in section 8, to any person, he may on receipt of the sale proceeds of such property, issue a certificate of sale in favour of such person and such certificate of sale shall, notwithstanding the fact that the original title deeds of the property have not been handed over to the transferee, be valid and conclusive proof of ownership of such property by such person.

(2) Notwithstanding anything contained in any law for the time being in force, the certificate of sale, referred to in sub-section (1), issued by the Custodian shall be a valid instrument for the registration of the property in favour of the transferee and the registration in respect of enemy property for which such certificate of sale had been issued by the Custodian, shall not be refused on the ground of lack of original title deeds in respect of such property or for any such other reason.”.

Amendment of section 11.

7. In section 11 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The Custodian, Deputy Custodian or Assistant Custodian shall have, for the purposes of exercising powers or discharging his functions under this Act, the

5 of 1908.

same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while dealing with any case under this Act, in respect of the following matters, namely:—

(a) requiring the discovery and inspection of documents;

(b) enforcing the attendance of any person, including any officer dealing with land, revenue and registration matters, banking officer or officer of a company and examining him on oath;

(c) compelling, the production of books, documents and other records; and

(d) issuing commissions for the examination of witnesses or documents.”.

8. In section 17 of the principal Act, in sub-section (1), for the words “two per centum”, at both the places where they occur, the words "five per centum" shall be substituted. Amendment of section 17.

9. On and from the date of commencement of the principal Act, after section 18, the following section shall be inserted and shall be deemed to have been inserted, namely:— Insertion of new section 18A.

“18A. Any income received in respect of the enemy property by the Custodian shall not, notwithstanding that such property had been divested or transferred to any other person, be returned or liable to be returned to such person or any other person unless so directed by order, by the Central Government.”. Income not liable to be returned.

10. After section 18A of the principal Act, [as so inserted by section 9 of this Act], the following sections shall be inserted, namely:— Insertion of new sections 18B and 18C.

“18B. No court shall have jurisdiction to order divestment from the Custodian of enemy property vested in him under this Act or direct the Central Government to divest such property from the Custodian. Bar of jurisdiction of courts in matters of divesting.

Explanation.—For the removal of doubts, it is hereby declared that the courts shall have jurisdiction to adjudicate whether the property claimed to be vested in the Custodian is an enemy property or not.

18C. The Central Government may, by general or special order, direct that any or all enemy property vested in the Custodian under this Act shall be sold or disposed off in such manner as may be prescribed.”. Disposal of enemy property vested in Custodian by Central Government.

11. In section 20 of the principal Act, in sub-section (3), for the words "five hundred rupees", the words "ten thousand rupees" shall be substituted. Amendment of section 20.

12. In section 23 of the principal Act, in sub-section (2), after clause (d), the following clause shall be inserted, namely:— Amendment of section 23.

“(da) the manner of sale or disposal of the enemy property vested in the Custodian under section 18C;”.

13. After section 25 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 26.

“26. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,— Validation.

(a) the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2010, shall have and shall be deemed always to have effect for all purposes as if the provisions of this Act, as amended by the said Act, had been in force at all material times;

(b) any enemy property divested from the Custodian to any person under the provisions of this Act, as it stood immediately before the commencement of the Enemy Property (Amendment and Validation) Act, 2010, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the Custodian in the same manner as it was vested in the Custodian before such divesting of enemy property under the provisions of this Act, as if the provisions of this Act, as amended by the aforesaid Act, were in force at all material times;

(c) no suit or other proceedings shall, without prejudice to the generality of the foregoing provisions, be maintained or continued in any court or tribunal or authority for the enforcement of any decree or order or direction given by such court or tribunal or authority directing divestment of enemy property from the Custodian vested in him under section 5 of this Act, as it stood before the commencement of the Enemy Property (Amendment and Validation) Act, 2010, and such enemy property shall continue to vest in the Custodian under section 5 of this Act, as amended by the aforesaid Act, as the said section, as amended by the aforesaid Act, was in force at all material times;

(d) any transfer of any enemy property, vested in the Custodian, by virtue of any order of attachment, seizure or sale in execution of decree of a civil court or orders of any tribunal or other authority in respect of enemy property vested in the Custodian which is contrary to the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2010, shall be deemed to be null and void and notwithstanding such transfer, continue to vest in the Custodian under this Act.”.

Amendment
of Act 40 of
1971.

14. In the Public Premises (Eviction of Unauthorised Occupants) Act, 1971,—

(a) in section 2, in clause (e), after sub-clause (3), the following sub-clause shall be inserted, namely:—

“(4) any premises of the enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968;”

34 of 1968.

(b) in section 3, in clause (a),—

(i) in the second proviso, the word “and” shall be omitted;

(ii) after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that the Custodian, Deputy Custodian and Assistant Custodian of the enemy property appointed under section 3 of the Enemy Property Act, 1968 shall be deemed to have been appointed as the Estate Officer in respect of those enemy property, being the public premises, referred to in sub-clause (4) of clause (e) of section 2 of this Act for which they had been appointed as the Custodian, Deputy Custodian and Assistant Custodian under section 3 of the Enemy Property Act, 1968.”.

34 of 1968.

Repeal and
savings.

15. (1) The Enemy Property (Amendment and Validation) Ordinance, 2010 is hereby repealed.

Ord. 4 of 2010.

(2) Notwithstanding such repeal, anything done or any action taken under the Enemy Property Act, 1968 or the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts as amended by this Act.

34 of 1968.

40 of 1971.

STATEMENT OF OBJECTS AND REASONS

The Enemy Property Act, 1968 was enacted on the 20th August, 1968 to, *inter alia*, provide for the continued vesting of enemy property vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962 and for matters connected therewith.

2. Of late, there have been various judgments by various courts that have adversely affected the powers of the Custodian and the Government of India as provided under the Enemy Property Act, 1968. In view of such interpretation by various courts, the Custodian has finding it difficult to sustain his actions under the Enemy Property Act, 1968.

3. In the above circumstances, it has become necessary to amend the Enemy Property Act, 1968, *inter alia*, to clarify the legislative intention with retrospective effect providing—

(a) that the enemy property shall continue to vest in the Custodian till it is divested by the Central Government, even if the enemy subject or enemy firm ceases to be enemy due to death, extinction, winding up of business or change of nationality or that the legal heir or successor is a citizen of India or a citizen of a country which is not an enemy;

(b) to authorise the Custodian, after making such enquiry as he deems necessary, to declare that the property of the enemy, or the enemy subject, or the enemy firm vest in him under the aforesaid Act and issue a certificate to that effect which would be evidence of facts stated therein;

(c) that the transfer of any enemy property shall not include any transfer or any claim of transfer made through oral will or oral gift or by concealment of enemy nationality or, in case the transfer of such property require the permission of the Reserve Bank of India or any other competent authority, any transfer without such permission or without the permission of the Custodian;

(d) that no court shall have jurisdiction to order divestment from the Custodian of enemy property vested in him under the aforesaid Act or direct the Central Government to divest such property from the Custodian, but the court shall have jurisdiction to adjudicate whether the property claimed to be vested in the custodian is an enemy property or not;

(e) to authorise the Central Government to direct that any or all enemy property vested in the Custodian under the aforesaid Act shall be sold or disposed of in such manner as may be prescribed;

(f) that any transfer or any other action taken contrary to the provisions of the aforesaid Act, as amended by the proposed legislation, would be null and void.

4. In order to have speedy and effective eviction of unauthorised occupants from the enemy property under the Custodian, it is proposed to amend the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 so as to declare the Custodian, Deputy Custodian and Assistant Custodian of Enemy Property appointed under the Enemy Property Act, 1968 as “Estate Officer” in respect of the enemy properties.

5. As Parliament was not in session and an urgent legislation was required to be made, the President promulgated the Enemy Property (Amendment and Validation) Ordinance, 2010 on the 2nd July, 2010.

6. The Bill seeks to replace the aforesaid Ordinance.

P. CHIDAMBARAM.

NEW DELHI;
The 22nd July, 2010.

ANNEXURE

EXTRACTS FROM THE ENEMY PROPERTY ACT, 1968

(34 OF 1968)

	*	*	*	*	*
Power of Custodian In respect of enemy property vested to him.	8. *	*	*	*	*
	(2) Without prejudice to the generality of the foregoing provision, the Custodian or such person as may be specifically authorised by him in this behalf, may, for the said purpose,—				
	*	*	*	*	*

Levy of fees.		17. (1) There shall be levied by the Custodian fees equal to two per centum of—			
		(a) the amount of moneys paid to him;			
		(b) the proceeds of the sale or transfer of any property which has been vested in him under this Act; and			
		(c) the value of the residual property, if any, at the time of its transfer to the original owner or other person specified by the Central Government under section 18:			
		Provided that in the case of an enemy whose property is allowed by the Custodian to be managed by some person specially authorised in that behalf, there shall be levied a fee of two per centum of the gross income of the enemy or such less fee as may be specifically fixed by the Central Government after taking into consideration the cost of direct management incurred by that Government, the cost of superior supervision and any risks that may be incurred by that Government in respect of the management:			
		Provided further that the Central Government may, for reasons to be recorded in writing, reduce or remit the fees leviable under this sub-section in any special case or class of cases.			

Explanation—In this sub-section “gross income of the enemy” means income derived out of the properties of the enemy vested in the Custodian under this Act.

	*	*	*	*	*
Penalty.	20. (1) *	*	*	*	*
	(3) If any person fails to comply with a requisition made by the Custodian under sub-section (1) or sub-section (2) of section 11, he shall be punishable with fine which may extend to five hundred rupees.				
	*	*	*	*	*

Power to make rules.		23. (1) *			
		*	*	*	*
		(2) Without prejudice to the generality of the foregoing power, such rules may provide for—			
	*	*	*	*	*

EXTRACT FROM THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

(40 OF 1971)

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

(e) "public premises" means—

* * * * *

3. The Central Government may, by notification in the Official Gazette,—

Appointment
of estate
officers.

(a) appoint such persons, being gazetted officers of Government or of the Government of any Union territory or officers of equivalent rank of the statutory authority, as it thinks fit, to be estate officers for the purposes of this Act:

Provided that no officer of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with the Speaker of the Lok Sabha:

Provided further that an officer of a statutory authority shall only be appointed as an estate officer in respect of the public premises controlled by that authority; and

* * * * *

LOK SABHA

A

BILL

further to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of
Unauthorised Occupants) Act, 1971.

(Shri P. Chidambaram, Minister of Home Affairs)