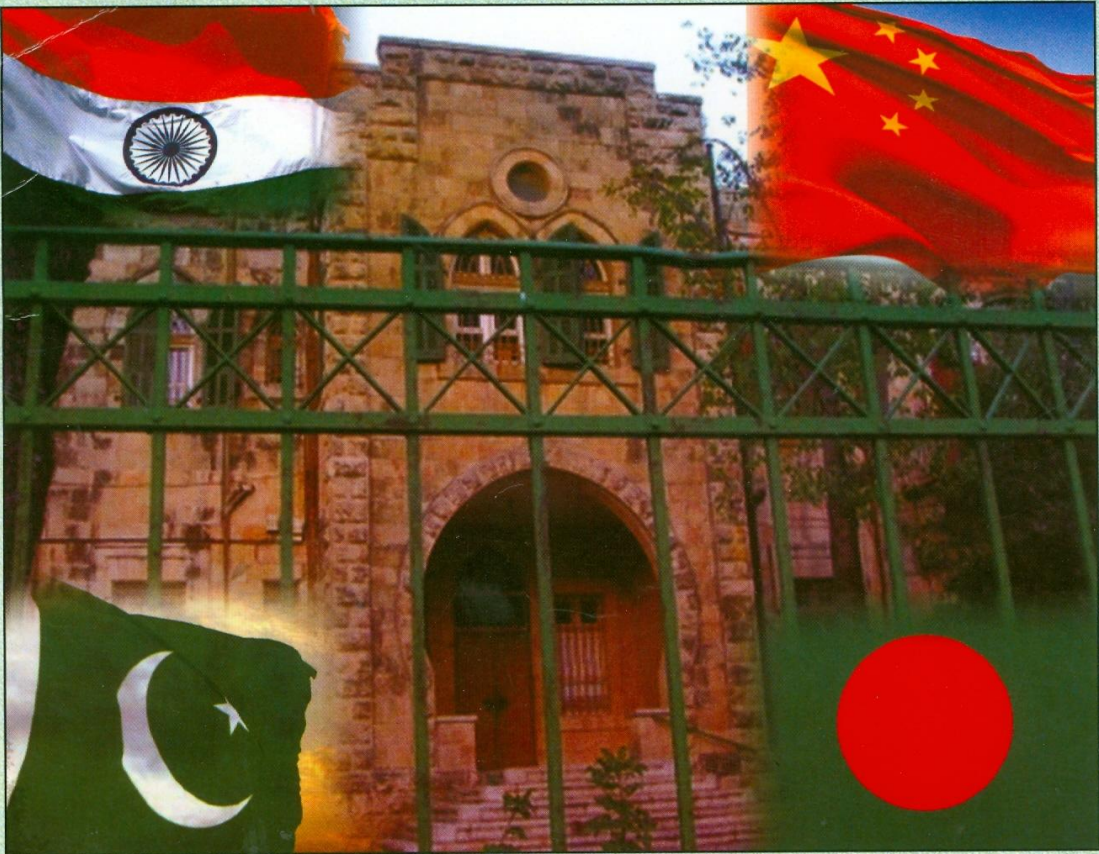


Intervention Paper

The Issue of Enemy Property and India's National Interest



INDIA POLICY FOUNDATION

Intervention paper

The Issue of Enemy Property And India's National Interest

A critical study of Indian government's approach to enemy properties

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India Policy Foundation

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Preface

The frenzied pace at which the UPA dispensation is working to restore the property back to the descendants of those who had opted to go over to Pakistan is another reminder to the nation of the price we (those most affected by the creation of Pakistan- Hindus and Sikhs) have to go on paying, while our "secular" ruling class continues to abet and patronize the ideology of hatred and fanaticism that had led to the cataclysmic events. This means that the families of the Muslim separatists are to be handed back their ancestors' properties, even if they had been guilty for the creation of Pakistan. Shocking and strange as it is, this is the reality of the bizarre arithmetic of partition.

After all, the Congress has been consistently toeing an unsullied "secular" tradition of promoting Islamic interests at the cost of the Hindus. Look at the presence of a Muslim League Minister in the "secular" Central government. Immediately after independence, Shyama Prasad Mukherjee, (who had a mysterious death in Abdhullah's jail in Srinagar) had exposed Pandit Nehru's spurious secularism when he had rightly accused the latter of "white-capping" the Muslim Leaguers! Remember Dr. Manmohan Singh's blatant communal favoritism promising the Muslims the first priority over the resources of the State, his "alleged" sleeplessness over the fate of Muslim terrorists and the crude attempt to provide for communal reservation through the Sachar(another refugee) Committee and the blunder at Sharm-al-Sheikh and his government's failure to penalize Pakistan for the massacre in Mumbai an impressive secular record indeed! One may also note, how all the Muslim members of the Parliament, cutting across the political divide had united in exerting pressure on this government and do their bidding on the Enemy Property Act. Did it remind anyone of Aga Khan's deputation to Simla in 1906 in this concerted move?

In the process, a country which was divided in 1947 on religious lines is now expected to recall the memory of many successful protagonists of the Pakistan movement, who were responsible for one of the biggest on-going genocides and forced migrations in history. This dimension needs further elaboration. Among the intended beneficiaries are people whose ancestors (like fathers and grandfathers) were among the founders, financers of a vicious communal hatred against the Hindus, and the very idea of a united India and Bharat Mata. It is with funds provided by them (many of which must have come from what now constitutes the enemy property), that some of the most successful anti-Hindu pogroms like those of "Direct Action" (16th Aug 1946), and the mayhem at Noakhali and other programmes for partitioning India were organized by Jinnah and his close associates. Some of these Muslim leaders subjected millions of Hindus and Sikhs in both wings of Pakistan to all kinds of indignities, humiliation and mass killing and then compelled the remainder to flee of India.

In light of this blood-soaked record, it would be perfectly legitimate and moral on the part of the victims of partition to demand a share of this property. After all, initially all the landed property in India had originally belonged to the Hindus only. Why can't the Hindus demand a share in their inheritance?

It may be quite pertinent to ask in this generous give-away, if people who were responsible for the colossal human suffering and vivisection of India should not be made to pay the cost for the unprecedented crime they had committed against humanity? After all, many of the people who migrated to Pakistan did so, because they had expressed their reluctance to live with the majority of the land, but the Hindus, Sikhs and Buddhists who were thrown out from both the wings of Pakistan did not want so till the conditions turned "nasty, brutish and short" in a matter of few weeks. The latter were compelled to abandon their hearth and home, because they found conditions inhuman in this Islamic country. Since it is absurd for those refugees and their descendants to return to their ancestral homeland, is it not possible for the UPA government to ensure that they were given the amount equivalent to the property left behind by their families? Whatever little exchange of property took place between the affected parties in both the Western and Eastern parts was grossly unfair to the Hindus and Sikhs. What happened to the evicted Jumma Buddhist people from the Chittagong Hill Tracts who are still languishing in our Arunachal for many decades?

The intended beneficiaries and their patrons in India's ummah-friendly "secular" establishment must remember that the Hindus, Sikhs and Christians who formed 23% of the population in Western Pakistan at partition had been reduced to less than 2% now. Similarly, the Hindus and Buddhists who formed 30% of the population in Eastern Bengal/Pakistan have been reduced to less than 10%.

There is a practical dimension too; the country is being saddled with the unenviable task- to decide the title to this property in question. More than 63 years of the event, how easy would be the task to determine the exact number of the legal heirs and their authenticity?

If this dispensation is so determined to do "justice" to the descendants of the Pakistan movement, they must, then, first ensure that the Hindus of our own Kashmir valley who had been forced to become refugees in their own land primarily because of the logical extension of article 370, and the free-hand given to the Pan-Islamic expansionists, were now at least helped to return to their abandoned homeland with full-proof security.

Secondly, the authorities have to immediately put in place, a mechanism to restore the landed property including the homestead lands and orchards etc to those Kashmiri Hindu refugees, who had no other option but sell them for a pittance (distress sale) at that time of their flight to the Hindu-majority areas in India.

Thirdly, it is the duty of the ruling class of India to ensure that the refugees from Pakistan living in Kashmir must be given their complete voting rights in the local assembly. Last but not least, the GOI and our "secular" establishment must ensure that the religious minorities left in Pakistan and Bangladesh were treated as human beings and not subjected to everyday harassment, blatant discrimination, dispossession through their own Enemy/Vested Property Acts, denial in all walks of life and forced conversion to Islam leading to their unending exodus to India.

It is a matter of solace that IPF has taken up the issue of Enemy Property Act and came out with an intervention paper. I hope that it would not only enlighten the people on the issue but also compel the government to rethink on its approach towards enemy properties. It is really strange to note that such move to amend the Enemy Property Act has not been starkly challenged. Earlier IPF's monograph "Deceptive Equality: Deconstructing the Equal Opportunity Commission" made a strong impact.

Prof. Rakesh Sinha, who is also Honorary Director of the Foundation, has written an introduction of this Intervention Paper and has dealt with the background of the Enemy Property Act. Two veteran journalists with the help of a competent research team have brilliantly examined the question of Enemy Property and its related issues. Sushma Wahengbam, a fellow at IPF, has coordinated the entire project.

Lastly I hope this intervention paper will create strong public opinion which will help our legislators to have more constructive plans on the issue keeping the National Interest above their political Agenda.

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Introduction

Policy formulation, its implementation and revision in the light of judicial intervention or on people's demand are very natural in a democratic country. No policy or law should be considered absolute or static. They should be critically reexamined in the changing circumstances and requirements. But such reexamination of a law or policy must not violate the letter and spirit of the Constitution. However in many cases policy revision in India is done rather on sectarian considerations ignoring larger interest of the country, the latest instance being the Enemy Property (Amendment and Validation) Second Bill 2010.

The government of India enacted a law in 1968 known as Enemy Property Act under which the government has the right to acquire the property of those people who were directly or indirectly associated with India in 1962 and 1965, respectively. Such type of legislations is in vogue in other parts of the country and are invariably enacted when one country is in the state of war with the other. After the war the government can dispose off the enemy property. The enemy property are put under a 'Custodian', or officers who are assigned to manage enemy properties. In India, the Enemy Property Act, 1968 had made a provision for a custodian who legally became owner of the enemy property.

Number of such properties in India under custodians mounted up due to partition, and three successive wars (two with Pakistan in 1965 and 1971 and one with China in 1962). These properties have been mismanaged, controlled by vested interests, tenants and mafia groups. The government of India could not follow an unambiguous and scientific approach to deal with such

properties. Most of the prized properties remained under the control of tenants who pay a nominal amount as rent. Pakistan and newly born Bangladesh resolved the issue and disposed off enemy properties but India could not do anything since 1947 till date. The valuation of these properties acquired in 40's and 60's went up and reached to thousands of crore of rupees.

Breeding conflicts, claims and counter claims over ownership of these properties has turn out to be the norms of the day. One such notable claim that has rocked the country over the Enemy Property was the claim on the property of Raja Memudaba. A bench of the Supreme Court presided over by Justice Ashok Bhan had ruled in favor of the son of Raja Mehmudabad¹ who was the treasurer of the Muslim League and trusted lieutenant of the founder of Pakistan Md Ali Jinnah. The judgment created chaos and thousands of such 'claimants' are encouraged to use the verdict to gain control over enemy properties. As a remedial measure, to thwart various other similar claims, the government of India promulgated an Ordinance, but it lapsed on September 6, 2010 and subsequently Union ministry for home affairs drafted a bill "the Enemy Property" (Amendment and Validation) Second Bill, 2010". This Bill (No. 75 of 2010) was the replica of the Ordinance but things changed. The vested interests shrouded the matter and the easiest way to defeat the bill was to denounce, deride and demean it as 'anti-Muslim'. Muslims members of Parliament forgetting that they are elected not by a separate electorate but by the joint electorate of a secular India have developed a habit to use their number and influence as a Muslim pressure group. The campaign undertaken by Muslim MPs against the Bill (75 of 2010) gave an impression that something wrong is being done to the community. The question arises: How did the issue of Raja Mehmudabad become the Muslim issue? He fought the case in individual capacity; he won the case in the Supreme Court as an individual. Why is religion is being dragged in that sensitive issue?

The vested interests masquerading under the grab of so called protector of minority's interests succeeded and the government finally redrafted the Bill and was introduced in the Lok Sabha during the Winter Session 2010. Conspicuously, the argument used in the bill all together negated the

¹ Raja of Mehmudabad, an Indian citizen, owing vast properties mainly in Uttar Pradesh migrated to Pakistan along with his minor son soon after the partition of India. He ceased to be Indian citizen and had acquired the citizenship of Pakistan... His wife Kaneez Abidi remained in India.

statements, facts, logic, arguments and historical justifications used in the earlier bill.

The Second Bill, though could not be brought for discussion due to adjournment of Parliament, was part of a communal agenda. The question comes, up, 'Is enemy property of Muslim/Hindu or majority/minority issue?' Had there been a war with Nepal or Bhutan then the properties seized would have been called the enemy property.

During the Indo-Chinese war in 1962, the government of India under the Defence of India Rules of 1962 seized 80 properties of the Chinese-origin owners who migrated or deported through 58 notifications issued in 1963. These properties are scattered in Tangra, Kolkata, Darjeeling, Shillong, Makum, Silchar and Tinsukia in Assam, two in Siliguri and one in New Delhi.² Properties seized after partition were not described as enemy properties till China and Pakistan waged war against India. Before enacting the Enemy Property Act 1968, the Indian State maintained properties of those who migrated to Pakistan leaving their properties behind under the Evacuee Property Act.

Against five million Hindus and Sikhs who crossed over "the border" into East Punjab almost an equal number of Muslims crossed over to Pakistan. It created the problem of refugees' properties.³ There was a great disproportion in the value of agricultural land, factories, plant, machinery, shops and houses owned by non-Muslims and Muslims in the affected areas.⁴ The Pakistan government proclaimed Ordinance No VII of 1947, which banned transfer by any property by an evacuee and various conditions were imposed preventing an evacuee through his agent, assignee or attorney, from selling or exchanging his property. According to this ordinance, Evacuee Property was defined as

² Hope for Calcutta war property heirs. The Telegraph, October 21, 2010.

³ J Vijaytunga, The Problem of Indian Refugee Property. The Foreign Relations Society of India, New Delhi, Altogether 7.5 million Hindus (including 2.6 million from East Bengal) were violently torn from their farms and stores, factories and homes, shops and offices and thrown into disorderly heap upon the lap of Mother India". Ibid, p. 2.

⁴ Land left behind by Hindus and Sikhs were most fertile while those left by Muslims was comparatively barren. Thus the difference in the value of agricultural land owned by Non Muslims, who have since become refugees, and owned by Muslims who emigrated to Pakistan was about Rs. three thousand million. The difference in the value of immovable property (other than agricultural land) owned by refugees and since seized or requisitioned by Pakistan who left Pakistan and that of immovable property left behind Indian Muslims is not less than Rs. 10,000,000,000. Ibid. Pp 3-4.

such property the owner of which could not "personally occupy or supervise to take delivery from the place of deposit." When the government of India protested at Inter Dominion Conference in Delhi (December 18-20, 1947), Pakistan took up the attitude that the Government of India could enact similar measures. Vijaytunga writes, "Knowing as they (Pakistan) did that property left behind by non-Muslims in Pakistan was worth ten times the property left behind by Muslims in India, this was neither a sympathetic nor a statesmanlike attitude."⁵

Pakistani subjects took advantage of the existing lenient regulations of Indian laws and profited by transactions with regard to their properties in India. This led the government of India to revise her Evacuee Law on June 13, 1949. Under the new law a person became an "evacuee" only if he leaves India or is a resident of Pakistan or acquires any interest in evacuee property in Pakistan.⁶

Pakistan promulgated very discriminatory Evacuee Property Ordinance on October 15, 1949. According to the ordinance, if a person continues to live in Pakistan and had never Pakistan he would be regarded as Evacuee even if any relation of his, no matter now distant the relationship is, had migrated to India. India promulgated Central Evacuee Property Ordinance. Under this Ordinance an owner of "Evacuee Property" was asked to show cause why action under the law not be taken against him, he could defend his right and appeal against the Custodian's order.⁷

It is evident that the Bill II was the result of one sided lobbying, communalism and weak coalition government. Such politics would give birth to a child whose jurisdiction will not be confined to the enemy property but rewriting the history of partition and migration. In a communication dated August 22, 1949 the government of India foresaw continuation of the dispute on properties in future too, "without a just and fair solution to the vexed question of evacuee

⁵ The Muslims come to India for disposing of their movable and immovable property (including cash, gold, jewelry, securities etc.) the same was not rue to their counterparts Hindu refugees), Instances like Benu Black Train Massacre haunted Hindu refugees. The train which left Benu, in the North West Frontier Province, was forcibly diverted from its normal route and stopped in the night of January 11, 1948. Muslim gangs fell upon the helpless refugees and butchered the old and the young, raped the women and when they left they took away 300 young women. There was not a single young woman among the 200 women left behind. One thousand five hundred men, women and children were killed, four hundred wounded, and one hundred were missing and could not be accounted for. (see ibid p6-7).

⁶ Ibid. p13.

⁷ Ibid. p14.

property. The great bitterness that now exists between the people of two dominions is bound to continue for indefinite period." The Enemy Property Act, 1968 is based on the history of post partition development on the one hand and the three wars on the other. Pakistan, Bangladesh and China resolved, disposed off enemy properties but India could not do so. Unfortunately, it has complicated the issue due to her own petty politics. It is bound to wound the civil society in a different way if it is not dealt with objectively. Enemy Property Act should not be allowed to become part of a communal agenda. It is a purely a policy matter and should be treated with secular perspective with a sense of history.

Prof. Rakesh Sinha
Hon. Director
India Policy Foundation

The Issue of Enemy Property And India's National Interest

Mohammad Ali Jinnah, the founder of Pakistan kept fighting till his death, to get back his posh bungalow at Malabar Hill, Mumbai, known as Jinnah House. His daughter Deena Vaidya, too, could not succeed in getting the property of his father. But Mohammad Amir Mohammad Khan alias Sulaiman Khan, the son of the late Raja of Mehmoodabad, who was the Treasurer of the Muslim League, close associate to Mohammad Ali Jinnah, the founder of Pakistan, won the claims of hi fathers property in Supreme Court after a 32-year long legal battle, which had been seized by the Govt. of India as Enemy Property. The Supreme Court in 2005 had ruled in Khan's favor.⁸

This has triggered a new controversy over Enemy Property in India. The 2,168 properties of migrants who left for Pakistan are spread across Bengal, Andhra Pradesh, Gujarat, Bihar and Uttar Pradesh, with the largest chunk.⁹ However, the number is more than what the government has said. According to a report there are not less than twenty thousand enemy properties in the country.¹⁰ Almost 200 such properties in Delhi are under the control of land mafia.¹¹ Another report counts 700 enemy properties in Delhi.¹² There are 360 enemy properties in Kolkata and most of them are under the illegal occupations.¹³ There is no authentic valuation of such properties. However, it is estimated that total value of such properties may be between one lakh crore rupees to one lakh fifty thousand crore rupees.

⁸ Jinnah's house and Raja Mehmoodabad's property are covered under two different acts respectively Evacuee Property act 1948 and Enemy Property Act 1968.

⁹ Hope for Calcutta war property heirs, The Telegraph, October 21, 2010

¹⁰ Delhi High Court Curbs Enemy Property Act Ordinance enforcement, The Hindustan Times, August 15, 2010.

¹¹ Delhi land mafia gobbles up 200 enemy properties, DNA, July 31, 2010; also see The Statesman on the Registry of 'enemy properties'. January 19, 2010.

¹² Government Bans sale of land left behind during partition, The Times of India, January 18, 2010.

¹³ The Bitter Reality, The Week, October 3, 2010.

This development has led to a slew of suits from other claimants, virtually opening a Pandora's box. The most interesting case was a claim filed in the Allahabad High Court, where a person claimed nearly one-third of Agra-including the Taj Mahal-furnishing documents that proved his lineage. The high court dismissed the case on the ground that the properties were over 300 years old. Interestingly, the appellant has now moved the Supreme Court. Among other property owners in Uttar Pradesh are Kudart Hussain (Shahjahanpur), Raja Saadat Ali (Behraich) and Ammiruddin and Dr. Mohammad Raja (Allahabad). Most of such claimants are based in Pakistan. However, legal activities regarding their claims have started in the courts of India. The government's approach has encouraged people to claim such properties using fake documents, and other illegitimate means. For instance at least property worth of 100 crores under the name of Aisha Begum in Muzaffar Nagar, an identity unknown to the people and government record, have claimants of her properties.¹⁴ Some of the claimants had even allegedly managed to come out with 'adoption certificates' so that they can claim their rights over such valuable properties.

The Background

The 1962 Indo-China war and subsequently Indo-Pak war in 196 led the government to enact a new law "Enemy Property Act 1968." Under this Act, the Union Govt. is the keeper or custodian of all enemy properties, Indian government's approach has been ambiguous and indecisive. The increasing value of such properties enticed people to make claims of such properties. Many of them have even approached has been ambiguous and indecisive. The increasing value of such properties enticed people to make claims of such properties. Many of them have even approached the court. The government has not shown resilience and firmness while handling such court cases. Consequently a decision of the Supreme Court has demolished the enemy

¹⁴ Three Plots of Land and Missing Begum, Sunday Express, October 24, 2010; the reports says, "Aisha Begum, it seems, is getting wealthier by the day. Only nobody knows who Aisha Begum is.

"Aisha Begum is only a name now. No one here knows where she lived or who she was. No one has claimed to be her heir either," says Ashok Malik, principal of Chaudhary Chhotu Ram (P.G.) College, Muzaffarnagar. The college has leased out two properties registered in Aisha Begum's name.

Till last year, Aisha Begum, wife of Ahsanul Haq, was the owner of two properties: plots 1190 and 1191, totaling 0.307 hectares, in Muzaffarnagar. At present, this is part of a 13 hectare agricultural farm of the Chaudhary Chhotu Ram (P.G.) College.

property act. Alarmed by the court's judgment in favor of a claimant, the Government of India brought out an Ordinance on July 2, 2010 to scuttle attempts by so called legal heirs of the owners to reclaim the properties through court cases.

Several Muslim MPs opposed this move and pleaded that legal heirs be allowed to hold the properties. The issue had rocked the Indian Parliament in the Monsoon session (2010), when Dr. Manmohan Singh led UPA Govt. at the Centre introduced The Enemy Property (Amendment & validation) Bill, 2010 in the Lok Sabha (which was supposed to amend the Enemy Property Act 1968). The Bill makes it clear that courts would have no jurisdiction over occupation of properties which have been left behind by those who went to Pakistan after the Partition and whose property has been declared as enemy property. It is noteworthy to mention here that Enemy Properties are those properties which were seized by the government when the owner showed disloyalty at the time of the national crisis, helped the aggressor nations and opted the nationality of such aggressors.

The government's move to curtail the legal heir from claiming the property, entailed reaction from a quarter of politicians and members of parliament. The issue was not debated keeping in mind the context, reference and national interests but it was given a communal interpretation by Muslim members and their support seekers. They opposed the bill tooth and nail. They castigated it as an attack on Muslim community.¹⁵ Prime Minister Manmohan Singh acceded to the request of a cross-party delegation of Muslim MPs, including several Ministers, who met him on August 4, 2010 to withdraw the existing law¹⁶, The Union Govt. took a U-turn and succumbed to the pressure of Muslim MPs led by leaders even from its own ruling Congress party.¹⁷

¹⁵ SP, RJD call Enemy Property Bill 'anti Muslim', The Indian Express August 30, 2010; also see The Telegraph, Govt. **prod** on property bill, August 28, 2010.

¹⁶ Enemy property's ordinance to be allowed to lapse, The Hindu, August 7, 2010; Those who met Dr. Sing included Union Minister for New and Renewable Energy Farooq Abdullah (National Conference), Union Minister of State for Minority Affairs Salman Khurshid (Congress), Union Minister of Tourism Sultan Ahmed (Trinamool Congress), Union Minister of State for Railways E. Ahamed (Muslim League), Rajya Sabha Deputy Chairperson K. Rehman Khan, Rajya Sabha member and Congress general secretary Mohsina Kidwai and Rajya Sabha members Naznin Faruque, Ahmad Sayeed Malihabadi and Mohammad Adeb.

¹⁷ Enemy property Heirs may get rights, The Pioneer, August 14, 2010

The government was forced to redraft the bill to 'placate' the Muslim MPs.¹⁸ The Union Cabinet approved the proposal of the Ministry of Home Affairs to introduce the Enemy Property (Amendment and Validation) Second Bill, 2010 to make amendments to the Enemy Property Act 1968.¹⁹ Salman Khursid, Minister for Minority Affairs, has been at the forefront to dilute the four decades old law. Besides his communal biasness he was also bound to favor his 'clientele'. A national daily reports the politics and lobbying behind the curtain. "The Union Cabinet on Wednesday approved a bill meant to amend the Enemy Property Act 1968, after a heated exchange between home minister P. Chidambaram and Minority Affairs Minister Salman Khurshid.

Quoting sources, the paper further unfolds, "sparks flew in the meeting when Khursheed expressed reservations about the way the Home Ministry had handled the matter after courts restored "enemy properties" to Raja counsel and which is a conflict of interest."²⁰

The ordinance lapsed on September 6, 2010. The proposal to bring a fresh ordinance to protect the national interest failed to get approval due to fear of Muslim resentment. Finally the government dropped the proposal for a new ordinance.²¹ However, Attorney-General G.E. Vahanvati strongly pleaded that the custodian should the enemy property till the government takes a final decision.²²

The Enemy Property (Amendment and Validation) Second Bill, 2010, which proposes to amend the Enemy Property Act 1968, was introduced in the Winter Session (2010) of the Lok Sabha.²³ But, the House got adjourned before the amendment could come up for discussion.

The Enemy Property (Amendment and validation) Second Bill will cover 80 properties seized under the Defence of India Rules of 1962 after their Chinese-origin owners migrated or were deported, and 2,168 highly prized properties declared "enemy property" through the 1968 law after their owners

¹⁸ "Enemy property bill" Govt. placates Muslim MPs, The Times of India, August 20, 2010.

¹⁹ Cabinet nod for new enemy property bill, The Hindu, October 21, 2010.

²⁰ Chidambaram, Khursid in row over Enemy Property Bill, The Times of India, October 21, 2010.

²¹ Cabinet drops plan on fresh ordinance on enemy property, The Times of India, September 8, 2010.

²² Cabinet nod for new enemy property bill, The Hindu, October 21, 2010.

²³ Govt. introduces Enemy Property Bill in Lok Sabha, The Business Standard, November 15, 2010.

migrated to Pakistan following the 1965 war.²⁴ If the government continues to proceed with this amendment its immediate impact will be, wrote the Telegraph, "The properties worth thousands of crore of rupees in the various parts of the country, seized by the government after the war with China, in 1962, and the 1965-war with Pakistan, could be returned" to the claimants" and "highly prized 2,168 properties declared "enemy property" through the 1968 law after their owners migrated to Pakistan following the 1965 war will come under the purview of the amended law."²⁵

The amendment says that transactions made before July 2, 2010, that conform to the Enemy Property Act (Section 18) will have legal sanction. If any property had been returned to the owner his lawful heir by a court order and if the lawful heir is a citizen of India by birth, the property will stay with that person. Thus the biggest beneficiary could be the Raja of Mahmoodabad, M.A. Mohammad Khan, who is expected to get control of his father's properties in Uttar Pradesh, thought to be worth around thousands of crores²⁶ The Supreme Court in 2005 had ruled in Khan's favor. Any other transaction before July 2 which has not followed these procedures will automatically stand cancelled. The 2,168 properties of migrants who left for Pakistan are spread across Uttar Pradesh (having the largest chunk), West Bengal, Andhra Pradesh, Gujrat and Bihar.

The New amendments, among other things, provide for the following:²⁷

- The enemy property shall continue to vest in the Custodian till it is divested by the Central Government;
- The enemy property could be divested only to the owner or his lawful heir;
- If the enemy property was divested from the Custodian before July 2, 2010, it shall stand transferred to and vest or continue to vest in the Custodian. If, however, the enemy property was divested from the Custodian by a valid order made under section 18 prior to July 2, 2010, or where the property had been returned to the owner or his lawful heir

²⁴ Hope for Calcutta War Property heirs, The Telegraph, October 21, 2010.

²⁵ Hope for Calcutta War Property heirs, The Telegraph, October 21, 2010.

²⁶ The valuation varies from Rs. 20,000 Crore to Rs. 50,000 Crore. According to Telegraph (October 21, 2010) the valuation of his property is 20,000 crore rupees. The Times of India estimates 30,000 crore rupees.

²⁷ Press Information Bureau, Government of India, Wednesday, October 20,2010.

by an order of the court; and if the lawful heir is a citizen of India by birth, such enemy property will continue to remain with such person;

- The transfer of any enemy property shall not include any transfer or any claim of transfer made through oral will or oral gift or if it has been done without the permission of the competent authority;
- No court shall order divestment from the Custodian or direct the Central Government to divest enemy property;
- The Central Government is authorized to direct the Custodian to sell or dispose of enemy properties in such manner as may be prescribed;
- To amend the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, to declare the Custodian, Deputy Custodian and Assistant Custodian of Enemy Properties as Estate Officer in respect of the enemy properties; once passed the amendments will have retrospective effect.

Enemy Property (Amendment and Validation) Bill considerably proposes three major amendments.

The first amendment allows enemy property to be claimed by its lawful heirs, provided they can prove their Indian citizenship "within 120 days". But this time period is not mentioned in the newly amended Second Bill which has been introduced in the Lok Sabha in the winter session of 2010.

The second proposed amendment was supposed to put limitation on courts, allowing the Custodian of Enemy Property of India to control the assets. It remains unaffected as the Govt. has made a provision in the latest Bill that "No court shall order divestment from the Custodian or direct the Central Government to divest enemy property".

In the first proposed amendment, the Govt. was to ensure that the legal rights of present occupants of enemy properties remain unaffected. But the latest version of the Second Bill says: "The Central Government is authorized to direct the Custodian to sell or dispose of enemy properties in such manner as may be prescribed" It further added: "To amend the Public Premises (Eviction of Unauthorized Occupants) Ac, 1971 to declare the Custodian, Deputy Custodian and Assistant Custodian of Enemy Properties as Estate Officer in respect of the enemy properties".

Enemy Property (Amendment and Validation) Second Bill, 2010

Let us examine the New Amendments in the Enemy Property (Amendment and Validation)

Second Bill, 2010 point wise:

- According to the Second Bill, The enemy property shall continue to vest in the Custodian till it is divested by the Central Government;

-The question is how long this provision will be kept open? And when will the Govt. finally close this issue? Are we expecting that some persons who had left this country to an enemy country and whose properties were seized as enemy properties may come back and reclaim their properties?

- According to the Second Bill, The enemy property could be divested only to the owner or his lawful heir;

-The question is whether the Indian Govt. waiting for the owner of these enemy properties to come back to India to reclaim their properties, will they be considered again as Indian citizens who had migrated to Pakistan or China and had been declared as Enemy decades ago?

-Why has the Indian Government not defined who to be treated as the lawful heirs.

-Why these so called lawful heirs were silent for decades in claiming their properties?

-Why has the Indian Government not set any deadline for such possible heirs?

In the first amendment there was provision to allow enemy property to be claimed by its lawful heirs, provided they can prove their Indian citizenship "within 120 days". But this time the period is not mentioned in the newly amended and announced Second Bill, which was one of the major demands of Muslim MPs in the Lok Sabha.

So the Govt. has clearly a U-turn and succumbed to the Indian Muslim MPs.

- According to the Second Bill, if the enemy property was divested from the Custodian before 2nd July, 2010, it shall stand transferred to and vest or continue to vest in the Custodian. If, however, the enemy property was divested from the Custodian by a valid order made under section 18 prior to 2nd July, 2010 or where the property had been returned to the owner or his lawful heir by an order of the court; and if the lawful heir is a citizen of India by birth, such enemy property will continue to remain with such person;

This provision has clearly been made to benefit²⁸ mainly and solely Mohammad Amir Mohammad Khan alias Sulaiman Khan, Son of Raja of Mehmoodabad first and then to those who may prove similar loyalty to the ruling party in the future.

Mohammad Amir Mohammad Khan alias Sulaiman Khan (born in 1943), Son of Raja of Mehmoodabad was elected to the State Assembly in 1985 and 1989 on a Congress ticket before he gave up active politics. His father Amir Ali Khan was one of the founders of the Muslim League, and it's Honorary Treasurer for several years. He was a close Associate of Mohammad Ali Jinnah and was also very close to the Nehru family.

Let's look at a proposed clause in the modified bill and its implication of the Raja:

If the enemy property was divested from the custodian by a valid order made under section 18 prior to July 2, 2010 (in the Raja's case it was done much earlier, in 2005) or where the property had been returned to the owner or his lawful heir by an order of the court (the Supreme Court in the case of the Raja); and if the lawful heir is a citizen of India by birth (which Amir Mohammad Khan alias Sulaiman Khan is), such enemy property will continue to remain with such person."²⁹

Significantly, the clause takes July 2, 2010 as a cut-off date, which is also the date on which the Central government had brought forth an Ordinance which sought to do away any court interference in the enemy property.

In order to accommodate the demands raised by Muslim MPs, Section 18 of the amended bill has been made more 'liberal'. It guarantees provision for the claimant to establish that he or she is the lawful heir, which clearly means the government will not be able to stop a person from claiming his or her property if he/she proves himself/herself as "lawful heir". Only thing appended with this amendment is the government's stand in withholding the property if the claim made is unsatisfactory. This will give, the Government enough scope to play politics in identifying the "heir" and keep the pot boiling forever....

²⁸ Fortunes smiles on Raja of Mehmudabad, by Pervez Iqbal Siddqui, TNN, The Times of India, August 6, 2010.

²⁹ Raja to get absolute control, by, The Time of India, October 22, 2010.

- According to amendments in the Second Bill, The transfer of any enemy property shall not include any transfer or any claim of transfer made through oral will or oral gift or if it has been done without the permission of the competent authority;
- The Second Bill clearly states: No court shall order divestment from the Custodian or direct the Central Government to divest enemy property.
According to the new amendments the courts ceases the powers to order divestment from the custodian or to direct the Central Govt. to divest enemy property, however, interestingly Govt. has kept the matter open by saying "The enemy property could be divested only to the owner or his lawful heir". Now who will decide about the owner or his lawful heir? Naturally, it is the Union Government which will decide the matter. This will give ample scope for politicization of the issue by the Union Govt.

Will it not open a Pandora's Box for many false and fabricated claims?

- The Central Government is authorized to direct the Custodian to sell or dispose of enemy properties in such manner as may be prescribed;

According to the New Amendments, "No court shall order divestment from the Custodian or direct the Central Government to divest enemy property". Then why does the Central Govt. want to keep the option open for itself by saying that "The Central Government is authorized to direct the Custodian to sell or dispose of enemy properties?"

The new Modifications in the controversial Enemy Property (Amendment and Validation) Second Bill 2010, defeats the original purpose of the Ordinance and Enemy property Act 1968.

Highlights of the (First) Enemy Property (Amendment and Validation) Bill, 2010

- The Enemy Property (Amendment and Validation) Bill, 2010 was introduced in the Lok Sabha on August 2, 2010 by the Minister for Home Affairs Sh. P. Chidambaram. The Bill seeks to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

- An ordinance titled the Enemy Property (Amendment and Validation) Bill, 2010 was notified by the government on July 2, 2010. The Bill had to replace the Ordinance.
- The Bill amends the provision declaring that all enemy property vested in the "custodian" of enemy property shall continue to vest in the custodian. The Bill states that the property shall continue to vest in the custodian irrespective of the death or extinction of the enemy. The custodian shall retain custody whether or not the heir of the enemy is an Indian citizen.
- The custodian can by order declare that such property vests in him and issue a certificate stating the same. The certificate shall be evidence of the property vesting in the custodian.
- The Act gives the central government the power to declare a transfer of enemy property void on certain grounds. The Bill states that the transfer of enemy property does not include: (i) a transfer made through oral will or gift, (ii) transfer made by concealment of enemy nationality, (iii) a transfer made without the permission of competent authorities such as the Reserve Bank of India if such permission is required, and (iv) without the permission of the custodian.
- The Bill makes certain additions to the power of the custodian.
 - (a) The custodian can sell any immovable property vested in him.
 - (b) On receiving the documents relating to the sale of the property, the custodian may issue a certificate of sale. The certificate of sale will be valid and conclusive proof of ownership of such property.

The first Bill states that the amendments made in the Bill shall be deemed to be applicable from the date of enactment of the Act. But now the Second Bill states that the amendments will have retrospective effect.

It is clear from the latest amendments that the present UPA Govt. is making all out efforts to benefit Amir Mohammad Khan alias Sulaiman Khan, the son of Raja of Mehmudabad whose father helped to create "Enemy" Pakistan.

Mohammad Amir Mohammad Khan alias Sulaiman Khan, Son of Raja of Mehmudabad's property was seized by the Indian Government along with other 'enemy properties' belonging to Muslims who migrated to Pakistan following the 1965 war between the two countries. Amir Ahmad Khan decided to become a Pakistani citizen in 1957.

The Time of India has given a clear picture of the real intent of the Congress led UPA Govt. at the centre. The report says: "The modified enemy property bill, if passed in the winter session of parliament, would make Mohammad Amir Mohammad Khan, a '*raja*' in the real sense, giving him absolute right over the properties worth Rs. 30,000 crore left behind by his father. And the text of the amendments appears tailor-made for him. If it's a coincidence, it is really a sweet one for Raja Mehmudabad".

Is it because he was a two time MLA of Congress Party and also because he was close to the Nehru family? According to *The Times of India* in its report on Aug. 6, 2010^{30B} "Amir Ahmed Khan was a young protégé of Mohammad Ali Jinnah, the founder of Pakistan, and also a friend of India's First Prime Minister Jawaharlal Nehru.³¹ ..."

"(Mohammad Ali) Jinnah was a close friend of my grandfather and took my father under his tutelage," Says Amir Ahmed Khan alias Sulaiman Khan³². His father would eventually become one of Jinnah's most ardent supporters, and Treasurer of the Muslim League."

What Now...

It is important to note that Amir Ahmad Khan had laid claim to more than 1,100 of the 2,168 cases that are now under dispute. If the government had the national and public interests in its mind, then the issue should have also been addressed by factoring in the various ceiling and land reform acts passed by the state governments. But it is somewhat strange that the entire issue was reduced to merely a question of ownership of the various properties to a property dispute that could be resolved by the issue of an ordinance/enactment of a law that does not uphold the public interest. It is strange that the political parties, MPs, Ministers and the Parliament should be so exercised about that essentially relates to the claims of one individual of "royal" descent whose father was the Treasurer of Muslim League and a close associate of Mohammad Ali Jinnah, the founder of Pakistan!³³

³⁰ A.B. India to return half a billion worth of estates to Muslim royal, by Dean Nelson, New Delhi, The Times of India, August 29, 2010.

³¹ The Times of India, August 6, 2010.

³² Legacy - Suleiman, After Vanvas, by Saba Naqvi, Outlookindia.com, March 13, 2006.

³³ Raja to get absolute control, by, The Times of India, October 22, 2010.

The approach of the government to enemy property can be gauged by the following fact. The Wadhwa Commission which had been set up by the Supreme Court in 2005 to decide the tenancy on Raja properties will lose its relevance after the amendments of the bill. This may give absolute power to Raja Mehmoodabad over properties left by his father. He will not be restrained by Urban Land Ceiling Act."³⁴ There are many questions which remain unanswered regarding Amir Mohammad Khan his father Raja Mehmoodabad opted Pakistan in 1957 vacating his properties. His wife Kaneez Abidi and Son Mohammad Amir Mohammad Khan remain in India. Raja Mehmoodabad died in London. Mohammad Amir Mohammad Khan approaches the India Government claiming rights on the property owned by his father. The property was taken under the control of the custodian soon after the law was enacted and the claim for the property was made after the Raja died and the court was approached in 1984.³⁵

Under the above circumstances, it has become necessary to amend the Enemy Property Act, 1968, inter alia, to clarify the legislative intention with retrospective effect."

The Govt. in its explanation to introduce the Bill No. 75 of 2010, Titled "The Enemy Property (Amendment and Validation Bill, 2010) had mentioned in its very first point, (1) that the enemy property shall continue to vest in the

³⁴ Raja to get absolute control, by, The Times of India, October 22, 2010.

³⁵ Raja of Mehmudabad, an Indian citizen, owing vast properties mainly in Uttar Pradesh migrated to Pakistan along with his minor son soon after the partition of India. He ceased to be Indian citizen and had acquired the citizenship of Pakistan. After a long stay in Pakistan he settled in London and died there in 1973. At the time of his death he was an Ambassador at large for his country of adoption. Junior Raja, who at the time of father's death had become a major, made no claim to the property. His mother claiming to have attachment to the Raja's palace, petitioned to the Custodian that the palace was in a dilapidated condition and she may be permitted to take care of it. The Custodian granted this request and she was paid a small salary for this service. Clearly the family knew that the property no longer belonged to them. The junior Raja lived most of the time abroad. During his minority, he travelled on his mother's Passport and after attaining majority he again and again obtained an Indian Passport, first from Lucknow, the second in Tehran, the third in Baghdad and all the later ones from London. In the 80s he returned to India and even became an elected member of the State Assembly. A question was raised about his being an Indian citizen then too, see <http://www.ramjethmalani.com/blog/?p=80>(Shri ramesthamalani's blog) *11, 1 & 2 - Bill No. 75 of 2010, Titled THE ENEMY PROPERTY (AMENDMENT AND VALIDATION BILL, 2010), Page- 5 Statement of Objects and Reasons, Dated 22nd of July, 2010, New Delhi, by P. Chidambaram.

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."

In any case, in 1981, Prime Minister Indira Gandhi had decided to release the 25% of impounded assets of their Indian heirs even though the law remained intact.

"Director Vigilance, Ministry of Commerce, wrote to the Raja Mohammad Amir Mohammad Khan on 07.03.1981 inter alia, informing him that the question of release (property) had been taken up by the Cabinet and the Cabinet had decided to release 25% of the said property in favor of the legal heirs and successors of his father". Supreme Court has noted in its verdict on dated 21/10/2005 in the Case No. Appeal (Civil) 2501 of 2002³⁶.

The Enemy Property Act of 1968 is part of the cumulative legacy of 1947 that the government would have done well to settle long before it got entangled in a web of law suits. The legislation, which came in the wake of the 1965 India-Pakistan war, relates to properties clearly and rightly labeled as "enemy properties" that were left behind by those who migrated to Pakistan at the time of the partition and thereafter.

Unfortunately, now the matter is being given a communal color by saying that it barred Indian Muslim citizens who claimed to be the legal and rightful heirs of the original owners from inheriting those properties. The Govt's attempt will surely hurt the sentiments of any Indian nationalist citizen be it a Hindu or of any other community.

The Government approved amendments to the 1968 Act, entitling the legal heirs to inherit the properties, provided they are Indian citizens and their suits were settled in a court before July 2, 2010. However, the Enemy Property (Amendment and Validation) Second Bill 2010, if approved by Parliament, is likely to resolve the issue only partially.

The proposed law is not balanced in its approach, although it seeks to bar any future litigation on the matter (the latter provision being needed to guard against dubious claimants), yet it upholds judicial rulings on title suits filed

³⁶ Supreme Court's verdict on 21/10/2005 in the Case No. Appeal (Civil) 2501 of 2002. Petitioner: Union of India & Another, Respondent: Raja Mohammad Amir Mohammad Khan in the bench of Ashok Bhan & Altamas Kabir.

before July 2, 2010, for giving benefits to some. Having been vested in a government-appointed Custodian since 1968, enemy properties should have been sold off or distributed among the poorer people of this country. Giving back a declared and confiscated Enemy Property to the same family will simply encourage anti-nationals.

The question is: Is it not a fact that the law seizes the properties of criminal absconders just to give a message to them that their criminal act will affect their whole family? Then why can't the same rule be applied in the case of persons who had left for Pakistan, an Enemy Country?

It seems that the Govt. was symbolically fighting against the petition of the Jr. Raja, a unique case where the Union Home Minister promulgated the ordinance and his own party leaders were all out to oppose it. Finally, they succeed in pressurizing the Prime Minister and forcing the entire UPA Govt. to take a clear cut U-Turn. Then what was the need for the Ordinance? Why did the cabinet approved it?

The reasons were very justifiably put forward by the Union government (P. Chidambaram, the minister for home affairs) on July 22, 2010: (2) at initial stages, the courts upheld the vesting of the enemy property in the Custodian and restrained themselves from interfering with the Government's action. However, of late there have been various judgments by different High Courts and the Supreme Court that have adversely affected the powers of the Custodian and the Government of India under the Enemy Property Act, 1968. The Custodian is finding it difficult to sustain his actions which, inter alia, included vesting of the enemy properties, removal of unauthorized encroachments, etc. (3) the courts in their judgments have held, inter alia, that (a) on the death of an enemy subject, the property devolves in succession and ceases to be enemy property if the successor is a citizen of India; (b) the enemy subject has the power to sell the property by virtue of section 6 of the said Act; (c) the Custodian has no right or title in the property and the enemy continues to have the right, title and interest in the property; (d) the Central Government does not have absolute power to divest the property. The power of the court to pass an appropriate order to custodian of property which ceases to be an Enemy Property is not taken away. The court also has the power to decide the Custodian's right to managing, preservation and control of enemy property for a limited purpose and for a temporary period. The courts have also held that in cases where a dispute arises as to whether a particular property is an enemy property, the custodian has no power to adjudicate and this issue can only be

decided by the court, the Custodian has been finding it difficult to sustain his actions under the provisions of the Enemy Property Act, 1968. (4) In the light of the above findings, the Government came up with the conclusion that immediate remedial measures has not been adopted, the prime objective of the Act would perish and immovable enemy properties worth hundreds of crore or rupees would fall in the hands of the persons who do not have any legitimate claim over these enemy properties. Hence, the desired need to amend the Enemy Property Act, 1968 aimed mostly to clarify the legislative intent and strengthen the hands of the Custodian and the Central Government and also to prevent the courts from issuing any orders for divestment of the enemy properties".

However, this justification could not bear the burden of communal politics and the government made a U-turn. It is like a lawyer pleading the case of a victim on 31st of mont and on 1st of next month pleads the case of offender. The government does not have any valid, logical and convincing argument to explain what made them negate their own argument in a span of just three months? Is it harping to degrade the Supreme Court by promulgating an Ordinance? Or does it mean that the national interest has little relevance over issues of potential vote bank?

Things changed after "a high-pitched campaign against the ordinance" which "isolated the Home Minister".³⁷ S S Ahulwalia, member, Rajya Sabha categorically charged the government for diluting the Enemy property Bill (I) meant to replace the ordinance, "under influence of leaders of a particular community. It is very unfortunate that communalism is being brought into the matter. The law is for everybody",³⁸ On 29th August, 2010, Mohammad Adeeb, Member of Parliament, wrote a letter to the Union Finance Minister Sh. Pranab Mukharjee, and reminded him that approximately 41 members of Parliament had met the PM on the day the Bill (Enemy Property Bill) was proposed to be tabled. He was very kind and had assured the MPs that the Bill would not come through and indeed the bill was not tabled then. He had also assured us that the ordinance would be allowed to lapse." The Muslim MPs demanded not to re promulgate the Ordinance and Govt. ceded their demand,³⁹ unmasking the real intent of the UPA government over the Amendment.

³⁷ Act bars transfer by oral gift or will, The Hindustan Time, October 20, 2010.

³⁸ IANS, 27th of August, 2010.

³⁹ Mohammad Adeeb, Member of Parliament's letter to the Union Finance Minister Shri Pranab Mukharjee dated 29th August, 2010.

The General public, on the other hand, is left puzzled by this very act of the government and laments that if this trend persists, the terrorists and criminals will continue with their never ending anti-national activities and will simply run away to take shelter in other countries without any fear of their properties being seized by the Indian government. If the Govt. fails to take these important points into consideration, it will certainly be committing a long lasting indelible historical blunder much to the detriment of the society at large.

The Enemy Property Act, 1968

No. 34 of 1968
(20th August, 1968)

An Act to 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.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:-

Short title, extent, application and commencement.

1. (1) This Act may be called the Enemy Property Act, 1968.
(2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India and to branches and agencies outside India of companies or bodies corporate registered or incorporated in India.
(3) It shall be deemed to have come into force on the 10th day of July, 1968.

Definitions.

2. In this Act, unless the context otherwise requires,-
 - a. "Custodian" means the Custodian of Enemy Property for India appointed or deemed to have been appointed under section 3 and includes a Deputy Custodian and an Assistant Custodian of Enemy Property appointed or deemed to have been appointed under that Section;

b. "enemy" or "enemy subject" or "enemy firm" means a person or country who or which was an enemy, an enemy subject or an enemy firm, as the case may be, under the Defence of India Act, 1962, and the Defence of India Rules, 1962, but does not include a citizen of India;

c. "enemy property" means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm;

Provided that where an individual enemy subject dies in the territories to which this Act extends, any property which immediately before his death, belonged to or was held by him or was managed on his behalf, notwithstanding his death, continue to be regarded as enemy property for the purposes of this Act;

d. "Prescribed" means prescribed by rules made under this Act.

Appointment of Custodian of Enemy Property for India and Deputy Custodian etc.

3. The Central Government may, by notification in the Official Gazette, appoint a Custodian of Enemy Property of India and one or more Deputy Custodians and Assistant Custodians of -Enemy Property for such local areas as may be specified in the notification.

Provided that the Custodian of Enemy Property for India and any Deputy Custodian or Assistant Custodian of Enemy Property appointed under the Defence of India Rules, 1962 shall be deemed to have been appointed under this section.

Appointment of Inspectors of Enemy Property

4. The Central Government may, either generally or for any particular area by notification in the Official Gazette, appoint one or more Inspectors of Enemy Property for securing compliance with the provisions of this Act and may, by general or special order, provide for the distribution and allocation of the work to be performed by them for securing such compliance: Provided that every Inspector of enemy firms appointed under the Defence of Rules, 1962 shall be deemed to be an Inspector of Enemy Property appointed under this section.

Property vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962 to continue to vest in Custodian.

5. Notwithstanding the expiration of Defence of India Act, 1962, and the Defence of India Rules, 1962 all enemy property vested before such expiration in the Custodian of Enemy Property for India appointed under the said Rules

and continuing to vest in him immediately before the commencement of this Act, shall, as from such commencement, vest in the Custodian.

Transfer of property vested in Custodian by enemy subject or enemy firm.

6. Where any property vested in the Custodian under this Act has been transferred, whether before or after the commencement of this Act, by an enemy or an enemy subject or an enemy firm and where it appears to the Central Government that such transfer is injurious to the public interest or was made with a view to evading or defeating the vesting of the property in the Custodian, then the Central Government may, after giving a reasonable opportunity to the transferee to be void and on the making of such order the property shall continue to vest or be deemed to vest in the Custodian.

Payment to Custodian of money otherwise payable to an enemy, enemy subject or enemy firm.

7. (1) Any sum payable by way of dividend, interest, share, profits or otherwise to or for the benefit of an enemy or an enemy subject or an enemy firm shall, unless otherwise ordered by the Central Government, be paid by the person by whom such sum would have been payable but for the prohibition under the Defence of India Rules, 1962 to the Custodian or such person as may be authorized by him on this behalf and shall be held by the Custodian or such person subject to the provisions of this Act.

(2) In cases in which money would, but for the prohibition under the Defence of India Rules, 1962 be payable in a foreign currency to or for the benefit of an enemy or an enemy subject or an enemy firm (other than cases in which money is payable under a contract in which provision is made for a specified rate of exchange), the payment shall be made to the Custodian in rupee currency at the middle official rate of exchange fixed by the Reserve Bank of India on the date on which the payment became due to that enemy, enemy subject or enemy firm.

(3) The Custodian shall subject to the provisions of Section 8 deal with any money paid to him under the Defence of India Rules, 1962 or under this Act and any property vested in him under this Act in such manner as the Central Government may direct.

Powers of Custodian in respect of enemy property vested in him.

8. (1) With respect to the property vested in the Custodian under this Act, the Custodian may take or authorize the taking of such measures as he considers

necessary or expedient for preserving such property and where such property belongs to an individual enemy subject, may incur such expenditure out of the property as he considers necessary or expedient for the maintenance of that individual or of his family in India/

(2) Without prejudice to the generality of the foregoing provisions, the Custodian or such person as may be specifically authorized by him in this behalf may, for the said purpose:-

- i. carry on the business of the enemy.'
- ii. take action for recovering any money due to the enemy.
- iii. make any contract and execute any document in the name and on behalf of the enemy;
- iv. institute, defend or continue any suit or other legal proceeding, refer any dispute to arbitration and compromise any debts, claims and or liabilities;
- v. raise on the society of the property such loans as may be necessary;
- vi. incur out of the property any such expenditure including the payment of any taxes, duties, cusses and rate to Government or to any local authority and of any wages, salaries, pensions, provident fund contributions to, or in respect of any employee of the enemy and the repayment of any debts due by the enemy to persons other than enemies;
- vii. transfer by way of sale, mortgage or lease or otherwise, dispose of any of the properties.
- viii. invest any moneys held by him on behalf of enemies for the purchase of Treasury Bills or such other government securities as may be approved by the Central Government for the purpose;
- ix. make payments to the enemy and his dependants;
 - x. make payments on behalf of enemy to persons other than those who are enemies, of dues outstanding on the 25th October, 1962; and
 - xi. make such other payments out of the funds of the enemy as may be directed by the Central Government.

Explanation: In this sub-section and in Sections 10 and 17 'enemy' includes an enemy subject and an enemy firm.

Exemption from attachment, etc.

9. All enemy property vested in the Custodian under this Act shall be exempt from attachment, seizure or sale in execution of decree of a civil court or orders of any other authority.

Transfer of securities belonging to an enemy.

10. (1) Where, in exercise of the powers conferred by Section 8, the Custodian proposes to sell any security issued by a company and belonging to an enemy, the company may, with the consent of the Custodian, purchase the securities, notwithstanding anything to the contrary in any law or in any regulation of the company and any securities so purchased may be re-issued by the company as and when it thinks fit so to do.

(2) Where the Custodian executes and transfers any securities issued by a company, the company shall, on receipt of the transfer and an order in this behalf from the Custodian register the securities in the name of the transferee notwithstanding that the regulations of the company do not permit such registration in the absence of the certificate, script or other evidence of title relating to the securities transferred.

Provided that any such registration shall be without prejudice to any lien or charge in favor of the company and to any other lien or charge of which the Custodian gives express notice to the company.

Explanation: In this Section 'securities' includes shares, stocks, bonds, debentures and debenture stock but does not include bills of exchange.

Powers of Custodian to summon persons and call for documents

11. (1) The Custodian may, by notice in writing, require any person whom he believes to be capable of giving information concerning any enemy property to attend before him at such time and place as may be specified in the notice and examine any such person concerning the same, reduce his statement to writing and require him to sign it.

(2) The Custodian may, by notice in writing, require any person whom he believes to have in his possession or control any account book, letter book, invoice, receipt or other document of whatever nature relating to any enemy property, to produce the same or cause the same to be produced before the Custodian at such time and place as may be specified in the notice and to

submit the same to his examination and to allow copies of any entry therein or any part thereof to be taken by him.

Protection for complying with orders of Custodian

12. Where any order with respect to any money or property is addressed to any person by the Custodian and accompanied by a certificate of the Custodian that the money or property in money or property vested in him under this Act, the certificate shall be evidence of the facts stated therein and if that person complies with the orders of the Custodian, he shall not be liable to any suit or other legal proceeding by reason only of such compliance.

Validity of action in pursuance of orders of Custodian

13. Where under this Act:-

a. any money is paid to the Custodian; or

b. any property is vested in the Custodian or an order is given to any person by the Custodian in relation to any property which appears to the Custodian to be enemy property vested in him under this Act, neither the payment, vesting nor order of the Custodian nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time-

i. some person who was or might have been interested in the money or property, and who was an enemy or an enemy firm, had died or had ceased to be an enemy or an enemy firm; or

ii. some person who was so interested and who was believed by the Custodian to be an enemy or an enemy firm, was not an enemy or an enemy firm.

Proceedings against companies whose assets vest in Custodian.

14. Where the enemy property vested in the Custodian under this Act consists of assets of a company, no proceeding, civil or criminal, shall be instituted under the Companies Act, 1956, against the company or any director, manager or other officer thereof except with the consent in writing of the Custodian.

Returns as to enemy property.

15. (1) The Custodian may call for from persons who, in his opinion, have any interest in, or control over, any enemy property vested in him under this Act, such returns as may be prescribed.

(2) Every person from whom a return is called for under sub-section (1) shall be bound to submit such return within the prescribed period.

Registers of returns.

16. (1) All returns relating to enemy property submitted to the Custodian under this Act shall be recorded in such registers as may be prescribed.

(2) All such registers shall be open to inspection subject to the payment of such fees as may be prescribed and to such reasonable restrictions as the Custodian may impose, to any person who, in the opinion of the Custodian, is interested in any particular enemy property as a creditor or otherwise and any such person may obtain a copy of the relevant portion from the registers on payment of the prescribed fees.

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 proceedings 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 authorized in that behalf, there shall be levied a fee of two per centum of the gross income of the enemy or such less fees as may be specifically fixed by the Central Government after taking into consideration the cost of direct management incurred by the 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.

2. The value of any property for the purpose of assessing the fees shall be the price which, in the opinion of the Central Government or of an authority empowered in this behalf by the Central Government, such property would fetch if sold in the open market.

3. The fees in respect of property may be levied out of any proceeds of the sale or transfer thereof or out of any income accrued there from or out of any other property belonging to the same enemy and vested in the Custodian under this Act.

4. The fees levied under this section shall be credited to the Central Government.

Divesting of enemy property vested in the Custodian.

18. The Central Government may, by general or special order, direct that any enemy property vested in the Custodian under this Act and remaining with him shall be divested from him and be returned, in such manner as may be prescribed, to the owner thereof or to such other person as may be specified in the direction and thereupon such property shall cease to vest in the Custodian and shall revest in such owner or other person.

Protection of action taken under the Act.

19. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Custodian or an Inspector of Enemy Property for anything which is in good faith done or intended to be done under this Act.

Penalty.

20. (1) If any person makes any payment in contravention of the provisions of sub-section (1) of Section 7, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both and he payment or dealing shall be void.

(2) If any person contravenes the provisions of sub-section (2) of section 10, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(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 the fine which may extend to five hundred rupees.

(4) If any person fails to submit the return under sub-section (2) of section 15, or furnishes such return containing any particular which is false and which he knows to be false or does not believe to be true, he shall be punishable with fine which may extend to five hundred rupees.

Offences by companies.

21. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly; Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this Section:

a. "company" means anybody corporate and includes a firm or other association of individuals; and

b. 'director', in relation to a firm means a partner in the firm.

Effect of laws inconsistent with the Act.

22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Power to make rule.

23. (1) The Central Government may make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

a. the returns that may be called for by the Custodian under sub-section (1) of Section 15 and the period within which such returns shall be submitted under sub-section (2) of that section

b. the registers in which the returns relating to enemy property shall be recorded under section 16.

c. the fees for the inspection of registers and for obtaining copies of the relevant portions from the registers under sub-section (2) of Section 16.

d. the manner in which enemy property vested in the Custodian may be returned under section 18.

e. any other matter which has to be or may be prescribed.

(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree 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.

Certain orders made under the Defence of India Rules, 1962 to continue in force

24. Every order which was made under the Defence of India Rules, 1962, by the Central Government or by the Custodian of Enemy Property for India appointed under those Rules, relating to enemy property and which was in force immediately before the expiration thereof shall, in so far as such order is not inconsistent with the provisions of this Act, be deemed to continue in force and to have been made under this Act.

Repeal and saving.

25. (1) The Enemy Property Ordinance, 1968, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

**The Enemy Property (Amendment and Validation)
Bill, 2010**

A

BILL

Further a amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follow:-

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

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

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:-

(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.

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

"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."

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 nay 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 require the permission of the Reserve Bank of India or any other competent authority, without such permission; or
- (d) Without the permission of the Custodian."

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, license 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 unauthorized or illegal occupant or trespasser and remove unauthorized or illegal constructions, if any."

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

"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 favor

of such person and such 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 favor 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."

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 powers of discharging his functions under this Act, the same powers as are vested in 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 document;
 - (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, document and other records;
- and
- (d) Issuing commissions for the examination of witness or document."

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.

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:-

"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."

10. After section 18A of the principal Act, {as so inserted by section 9 of this Act}, the following section shall be inserted, namely:-

"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 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."

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.

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

"(da) the manner of sale or disposal 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:-

"26, Notwithstanding anything contained in nay judgment, decree or order of any court, tribunal or other authority-

(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 amended by the aforesaid Act, were in force at all material times;

(c) no suit or other proceeding 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 property, vested in Custodian, by virtue of nay orders 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 provision 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."

14. In the Public Premises (Eviction of Unauthorized 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;"

(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 Custodian, Deputy Custodian and Assistant Custodian of the enemy property 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, 1986.

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

(2) Notwithstanding such repeal, anything done or any action taken under the Enemy Property Act, 1968 or the Public Premises (Eviction of Unauthorized 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.

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 matter 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 citizen of a country which would be evidence of facts stated therein;

(b) to authorized 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 requires the permission of the Reserve Bank 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 authorize 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 unauthorized occupants from the enemy property under the Custodian, it is proposed to amend the Public Premises (Eviction and Assistant Custodian of 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

**Full Test Judgment
Supreme Court of India**

CIVIL APPEAL NO. 2501 of 2002
Judge(s): ALTAMAS KABIR, CYRIAC JOSEPH
Date of Judgment: 19 January, 2010

UNION OF INDIA

versus

RAJA MOHAMMED AMIR MOD. KHAN

JUDGEMENT

ALTAMAS KABIR, J.

1. These two I.A. Nos. 47 and 48 of 2008 have been filed on behalf of the Respondent in connection with Contempt Petition No. 87 of 2006 filed in Civil Appeal No. 2501 of 2002, inter alia, for a direction upon the Union of India, and the Custodian of Enemy Property to release to the Respondent a sum of Rs. 1,77,38,828.11, being held by the said Custodian on account of the Estate of the Raja of Mahmoodabad.

2. It may be recalled that in Writ Petition No. 1524 of 1977 filed by the applicant herein, Raja Mohammed Amir Mohammad Khan, (Raja MAM Khan for short), the Bombay High Court, while allowing the writ petition, had directed the return of the properties of the Raja of Mehmudabad to the applicant. The decision of the Bombay High Court was challenged by the Union of India in this Court in Civil Appeal No. 2501 of 2002, which was disposed of on 21.10.2005, inter alia, with the following directions:

"The High Court had refused to grant the mesne profits to the respondents, against the aforesaid finding no appeal has been filed by the respondent. Since no appeal has been filed, the appellants are not entitled to the

mesne profits till the passing of the interim orders of status quo by this Court on 5.4.2002. The respondent would be entitled to the actual mesne profits by filing a suit, if so advised for this period. However, whatever moneys have been collected by the appellants by way of rent or lease etc. after 5.4.2002, till the handing over of the possession of these properties to the respondent be deposited/disbursed to the respondent within 8 weeks.

The appellants are directed to get the buildings (residence or offices) vacated from such officers and handover the possession to the respondent within eight weeks. Similarly, appellants are directed to handover the possession of other properties as well. The officers who are in occupation of the buildings for their residence or for their offices are also directed to immediately vacate and handover the buildings or the properties to the Custodian to enable him to handover the possession to the respondent in terms of the directions given. Failure to comply with the directions to handover the possession within 8 weeks will constitute disobedience of this order and the appellants would be in contempt of this order. Respondent would be at liberty to move an application in this Court if the above directions are not complied with for taking appropriate action against the appellants or their agents. Since the appellants have retained the possession of the properties illegally and in a high handed manner for 32 years the appeal is dismissed with costs which are assessed at Rs. 5 lacs."

3. In I.A. No. 47 it has been stated that when the properties were taken over by the Custodian, the amounts due and payable by the various occupants were collected by the office of the Custodian and credited to the account of the Estate of Mehmudabad in the Ledger of the Custodian maintained in his office at Mumbai. In view of the judgments of the Bombay High Court and this Court, holding the applicant to be the sole legal heir and successor of the Late Raja of Mehmudabad, he had succeeded to the properties belonging to the late Raja which had been taken over by the Custodian of Enemy Property under the provisions of the Enemy Property Act, 1968. It has further been contended that it could not, therefore, be disputed that the applicant is entitled to the moneys standing to the credit of the Estate of Mehmudabad in the Ledger Account maintained by the Custodian of Enemy Property.

4. According to the applicant, after continuous efforts, a copy of the Ledger Account was supplied to him in the month of December, 2007, by the office of the Custodian of Enemy Property and on perusal of the same it was discovered that a sum of Rs. 1,77,38,828.11 stood credited to the account of

the applicant as on 27.3.2002. On coming to know of the above, the applicant requested the Custodian by his letter dated 27.12.2007, to remit the amount which stood to his credit in the Ledger maintained by the office of the Custodian.

5. As no response was received to the said letter, another letter was issued to the Custodian on 6.2.2008, and in his reply the said Custodian replied that there was no provision in the Enemy Property Act, 1968, to refund any amount received from Enemy Property. In response it was also indicated clearly that no amount was admissible to the applicant by way of refund.

6. It is on account of such response from the Custodian of Enemy Property that I.A. No. 47 of 2008 was filed for the reliefs which are indicated in the prayer.

7. Appearing for the applicant, Mr. P.V. Kapur, learned Senior Advocate, submitted that after the clear and unambiguous directions given by this Court in its judgment dated 21.10.2005 in Civil Appeal No. 2501 of 2002, there could be no justification for the Custodian of Enemy Property to object to making over of the moneys collected by him on account of rents and profits to the applicant. Mr. Kapur submitted that the intent of the order of this Court was very clear that on being found to be the sole legal heir of the Raja of Mehmudabad, the applicant was entitled to his entire estate, which included all amounts which had been collected from the properties of the Estate and credited to the account of the Estate in the Ledger maintained by the office of the Custodian of Enemy Property.

8. As an alternate submission Mr. Kapur urged that in addition to the directions contained regarding disbursement to the applicant of the amount collected by the appellant by way of rent or lease after 5.4.2002 till the handing over of the possession of the properties to the applicants this Court had also directed the appellants to get the immovable properties of the Estate vacated and to hand over the possession of the same to the respondent/applicant within 8 weeks. The appellants were also directed to handover the possession of the other properties as well. (Emphasis supplied)

9. Mr. Kapur submitted that under the general directions given by this Court in respect of properties belonging to the Estate of Mehmudabad, which included the amount held by the Custodian on account of rents collected from the Estate of the Raja of Mehmudabad prior to 5.4.2002, the said Custodian

and the Union of India were bound to make over the said amount collected by the Custodian to the applicant.

10. Resisting the application filed on behalf of the respondent Mr. MAM Khan, the learned Additional Solicitor General, Ms., Indira Jai Singh submitted that in view of the categorical direction given in the order of 21.10.2005 passed by this Court, the question of making payment of the amount in question to the respondent did not arise. Ms. Jai Singh submitted that this Court had recorded the fact that the High Court had refused to grant mesne profits to the appellant and against that decision no appeal had been filed by him. Consequently, the applicant was not entitled to the mesne profits till the passing of the interim order of status quo by this Court on 5.4.2002. In the said order this Court for disbursement of the rents and profits from the said Estate prior to 5.4.2002, the claim of the applicant was misconceived. Ms. Jai Singh contended that if it had been the intention of this Court that the applicant would be entitled even to the rents and profits prior to 5.4.2002, then it would have given a clear direction for payment of the entire amount to the applicant.

11. As to the alternate submission of Mr. Kapur, the learned ASG urged that in view of what has been stated hereinabove, it could not have been the intention of this Court to release the entire sum of Rs. 1,77,38,828.11 being the amount of the rents and profits collected from the Estate of the Raja prior to 5.4.2002. Ms. Jai Singh submitted that the claim of the applicant was misconceived in view of the directions contained in the Judgment of this Court dated 21.10.2005.

12. In addition to her aforesaid submissions, Ms. Jai Singh also urged that neither of the two applications were maintainable since the appeal and the contempt petition in which they have been filed have already been disposed of earlier. Ms. Jai Singh submitted that having disposed of the appeal and the contempt petition, this Court had become functus officio and was bereft of jurisdiction for passing orders on the said two applications which are not in the nature of consequential reliefs being claimed from the disposed of matters but substantive applications raising substantial claims, de hors the reliefs prayed for in the appeal and the contempt petition. Ms. Jai Singh referred to various decisions on the question of the maintainability of applications filed in concluded proceedings, which we may refer to if it becomes necessary to do so.

13. Replying to Ms. Jai Singh's submissions, Mr. Kapur submitted that the answer to the question as to what is to be done in regard to the rents and profits collected prior to 5.4.2002, is clearly provided in Section 18 of the Enemy Property Act, 1968, which provides that the Central Government may be general or special order, direct that any enemy property vested in the Custodian under this Act and remaining with him shall be divested from him and be returned, in such manner as may be prescribed, to the owner thereof or to such other person as may be specified in the direction and thereupon such property shall cease to vest in the Custodian and shall revert in such owner or other person. It was submitted that there was neither any legal nor moral justification for the Custodian to hold on the said amount lying to the credit of the Estate of the Raja of Mehmudabad which had devolved upon the applicant as held by the Bombay High Court and confirmed by this Court.

14. On a careful consideration of the submissions made on behalf of the respective parties, we are of the view that a conscious distinction with regard to the rents and profits collected from the Estate of Raja of Mehmudabad prior to 5.4.2002 and thereafter, had been made by this Court while disposing of Civil Appeal No. 2501 of 2002 on 21st October, 2005. It was clearly the intention of the Court that in respect of rents and profits collected after the order of status-quo passed on 5th April, 2002, the same were to be made over by the Custodian to the applicant, but as far as the rents and profits collected prior to that date were concerned, the applicant would be required to file a suit to recover the same. We have been informed that, in fact, such a suit has been filed by the applicant and the same is pending decision.

15. Notwithstanding the use of the expression "mesne profits" in the first part of the directions given by this Court, what was intended was that all rents and profits collected in respect of the Estate of Raja of Mehmudabad prior to the order of status-quo passed on 5th April, 2002, would have to be treated separately and not with the other collections made from the estate. The use of the expression "mesne profits", in our view, would cover all the monies received by the Custodian for the period prior to 5th April, 2002, and would, thereafter, be covered by the aforesaid order of this Court directing the appellant to release to the respondent the sum of Rs. 1,77,38,828.11 held by the Custodian to the credit of the Estate of Raja of Mehmudabad. There interpretation sought to be given to the second part of this Court's order extracted above, will not include handing over of possession of the rents and profits prior to 5.4.2002, which had been excluded in the previous paragraph of

the judgment of this Court. In our view, the directions given to the appellants to hand over the possession of other properties, mentioned in the second part of the order extracted hereinabove, relates to the immovable properties of the estate and not the rents and profits collected by the Custodian from the estate prior 5.4.2002. The two sets of properties are dealt with separately and are on two different settings. Mr. Kapur's attempt to include both the movable and immovable properties of the Estate of Raja of Mehmudabad is misconceived and is not acceptable. Since the amount recorded in the Custodian's ledger as being credited to the Estate of Raja of Mehmudabad represents the collections made from the estate prior to the order of status-quo passed on 5th April, 2002, the Respondent has been given leave to recover the same by filling a suit. In view of the said order passed by this Court, it can no longer be argued that the directions to make over the possession of other properties to the applicant also included the rents and profits collected from the estate prior to 5.4.2002.

16. We are not, therefore, inclined to allow I.A. Nos. 47 and 48, which are, accordingly, dismissed. The applicant will be free to pursue his claim for the said amount of **Rs. 1,77,38,828.11** before the Civil Court.

17. There will, however, be no order as to costs.

VESTED PROPERTY ACT, 1974 (BANGLADESH)

An Act to provide for the Administration of certain properties vested in the Government or belonging to non-residents.

Whereas in an expedient to provide for the administration of certain properties vested in the Government or belonging to non-residents and for matters connected therewith;

It is hereby enacted as follows:-

**PART I
PERLIMINARY**

Short title and commencement

(1) This Act may be called Vested and Non-Resident Property (Administration) Act, 1974.

(2) It shall be deemed to have come into force on the 23rd of March, 1974.

Definitions. In this Act, unless there is anything repugnant in the subject or context, "Chairman" means the Chairman of a Committee "Committee" means a Vested or Non-Resident Property Management Committee constituted under section 3; "Member" means a member of the Committee; "non resident" who is not, or has ceased to be, a permanent resident of the territory now comprising Bangladesh or who has acquired a foreign nationality, but does not include a person who is an evacuee as defined in Article 2(c) of the **Bangladesh** (Restoration of Evacuee Property) Order, 1972 (P.O. No. 13 of 1972).

"Non-resident property" means any property owned by a non-resident, but does not include any property which

(i) Is owned by any person who is a citizen of the state which, at any time, after the 25th of March, 1971, was at war with, or engaged in military operation, against the People's Republic of Bangladesh;

(ii) Is abandoned property as defined in Article 2(i) of the Bangladesh Abandoned Property (Control Management and Disposal) Order, 1972 (P.O. No. 16 of 1972)

(iii) Has been nationalized or has been taken over and is being managed by the Government in public interest;

(iv) Is held by a foreigner under an agreement with the Government; or

(v) Has vested or is liable to be vested in the Government; "Prescribed" means prescribed by rules under this Act; "Vested property" means any property which has vested in the Government under Section 3(1) (a) of the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974, but does not include any share, stock, scrip, bond, debenture stock or other marketable security in or of a company or body corporate or any share of a partnership firm vested in the Government there under.

PART II

CONSTITUTION OF COMMITTEE

Constitution of Committee

(1) The Government may, by notification in the official Gazette, constitute for each sub-division a committee to be called the Vested and Non-Resident Property Management Committee for the purpose of this Act.

(2) A Committee shall consist of-The sub-divisional Magistrate, who shall also be its Chairman; and Four members not being persons in the service of the Republic, to be appointed by the government.

(3) The chairman shall be the Chief Executive Commissioner of the Committee.

(4) A member may at any time, resign his office by notice in writing addressed to the Chairman.

(5) The Government may, at any time, remove any member without assigning any reason.

4. Procedure of a Committee. A Committee shall subject to the provisions of this Act, have power to regulate its own procedure any may act not withstanding any vacancy in the office of any member; provided that the

Chairman and one member shall constitute the quorum for a meeting of the Committee.

5. Staff of A Committee. The Government shall make available to a Committee such staff as may be necessary for the discharge of its functions under this Act.

6. Allowances of member of a committee. The members of a Committee may receive such allowance as may be fixed by the Government.

PART III VESTED PROPERTY

7. Taking charge of vested properties.

(1) A Committee shall take charge of all vested properties within its jurisdiction: Provided that when any such property is situated within the jurisdiction of more than one Committee, such property shall be taken charge of by such Committee as the Government may direct.

(2) Subject to the provisions of this Act, a Committee taking charge of any vested property shall have all the power, rights and liabilities of the Government in respect of such property, and shall take such measures as may be necessary for the good management and protection of such property, for the assertion of title thereto and for maintaining and recovering possession, thereof, and may, for such purposes, do all acts and incur all expenses which are necessary and incidental: Provided that a Committee shall not be entitled to transfer, except by monthly or annual lease, any vested property.

(3) Subject to the provision of this Act and any other law for the time being in force, a Committee may with the written consent of the owner and in the prescribed manner transfer any vested property.

PART IV
NON-RESIDENT PROPERTY

8. Vesting of non-resident properties.

(1) Subject to the provisions of sub-sections (2) and (3) a Committee may, of its own motion or on the application of a non-resident or upon the direction of the Government, take charge of any non-resident property within its jurisdiction.

(2) Before taking charge of any non-resident property under sub-section (1), the Committee shall cause a public notice to be served in the prescribed manner calling to the objections to the taking charge of such property by the Committee to be filed within such period as may be specified therein, and if such property is in possession of any person, a copy of the notice shall also be served on such person in the prescribed manner.

(3) If an objection is filed under sub-section (2), the Committee shall decide the matter after giving the person filing the objection an opportunity of being heard and after making such inquiry as it may deem necessary.

(4) Any decision of the Committee under sub-section (3) shall not prejudicially affect the right of any person to establish title in a competent court.

(5) When the Committee takes charge of any non-resident property under sub-section (1), it shall pass a formal order recording such fact whereupon the property shall vest in the Committee.

(6) When any non-resident property has vested in the Committee under sub-section (5), the Committee shall, as soon as may be, give public notice of the fact in the prescribed manner.

9. Functions of a Committee in respect of non-resident properties vested in it.

(1) Subject to the provision of this Act, the Committee in which any non-resident property has vested shall have all the rights and liabilities of the non-resident concerned in respect of the property, and shall take such measures as may be necessary for the management and protection of such property, for the assertion of title thereto and for maintaining and recovering possession thereof, and for such purposes, do all acts and incur all expenses which are necessary

and incidental; Provided that a Committee shall not be entitled to transfer, except by monthly or annual lease, any non-resident property vested in it without the written consent of the non-resident vested in it, after reduction therefrom all sums properly debitable to such income.

(2) Subject to any other law for the time being in force, a Committee shall pay to a non-resident in the prescribed manner the income of any property of the non-resident concerned.

10. Rights of Non-Resident.

A non-resident, whose property has vested in a Committee may with the previous permission of the Committee and subject to any other law for the time being in force, dispose of such property by sale, exchange or gift:

Provided that no such permissions shall be given unless he pays to the Committee all sums due to in respect of such property,

Provided further that such disposition shall be subject to any lease granted by the Committee.

(2) A disposition of any non-resident property in contravention of the provisions of sub-section (1) shall be null and void.

(3) Upon disposition of any property under sub-section (14), the non-resident shall inform the Committee in writing of such disposition, and, on receipt of such information, the Committee shall, by a written order, release such property forthwith from its management and give public notice of such order in the prescribed manner whereupon the property shall cease to vest in the Committee.

PART V MISCELLANEOUS

11. Accounts and audit.

(1) A Committee shall maintain in the prescribed form a separate account in respect of each vested property taken charge by it and of each non-resident property vested in it and shall cause to be made therein entries of all receipts and payments made in respect thereof.

(2) The Government shall cause such accountants to be inspected and audited as such intervals and by such persons as may prescribed.

(3) A non-resident may inspect the accounts maintained in respect of his property vested in the Committee.

12. Certain Payments not to be valid discharge.

(1) All sums due to the Government or a non-resident from any person in respect of a vested property or a non resident-property shall be payable to the Committee which has taken charge thereof or in which such property has vested, and any payment made in contravention of the provision of this section shall not be deemed to be a valid discharge.

(2) All sums payable to a Committee by any person under sub-section (1) shall be recoverable as a public demand.

13. Expenses.

(1) a Committee may reimburse itself for, or pay or discharge out of the income of any vested property taken charge of it by it or, as the case may be, any non-resident property vested in it, all expenses reasonably incurred in respect of such property in discharging its functions.

(2) All expenses of the Committee not specifically related to any vested property or non-resident shall be defrayed out of a levy at a prescribed rate on the gross collections made by the Committee.

14. Surrender of non-resident property.

(1) If any non-resident or vested property is found to be in the unlawful possession of any person, and if such person does not surrender possession of such property to the Committee on being directed to do so on the date fixed by it, the Sub-Divisional Magistrate or any other Officer authorized by him in this behalf may, on the application of the Committee, enforce the surrender of such property by such person to the Committee and the Sub-Divisional Magistrate or the officer so authorized may use or cause to be used such force as may be necessary for taking possession of the property.

15 Produce of Records, etc.

(1) A Committee may, for the purposes of this Act, by notice in writing require any person to make or deliver to it a statement or to produce before it records and documents in his possession or control relating to any vested

property or non-resident as such time and place as may be specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under sub-section (1) shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the Penal Code (XLV of 1860).

16 Indemnity. No suit or other legal proceeding shall lie against the Government or a Committee for anything is in good faith done or to be done in pursuance of this Act or the rules made there under.

17. Power to make rules. The government may make rules for carrying out the purposes of this Act.

18. Repeal. The Evacuees (Administration of Immovable Property) Act, 1951 (E.B. Act XXIV of 1951), and the Vested and Non-Resident Property (Administration) Ordinance 1974 (Ord. V of 1974) are hereby, repealed.

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