

application to be made and an order to be obtained thereon, provided that the Court shall not be bound to adjourn the case, if for reasons to be recorded, it considers the application to be frivolous and provided that no such application shall be entertained unless made at the first hearing on which the accused is present."

(3) The following shall be deemed to have been inserted as section 540-B, namely:—

"Where an accused has by his voluntary act, rendered himself incapable of appearing before the Court, or resists his production before it, or behaves before it in a persistently disorderly manner, the Court may at any stage of the trial by order in writing made after such inquiry as it thinks fit, dispense with the attendance of the accused for such period as it may think fit and proceed with the trial in his absence. Such an order will, however, not affect the right of the accused to being represented by a pleader at any stage of the trial, or being present in person if he has become capable of appearing, or appears in Court and undertakes to behave in an orderly manner. Notwithstanding anything contained in the Criminal Procedure Code, no finding, sentence, or order passed shall be held to be illegal by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with as above."

(1) *Offences to be cognizable and non-bailable.*—Notwithstanding anything contained in the Code, any offence punishable under this Ordinance shall be cognizable and save as provided in subsection (2) be non-bailable.

(2) Notwithstanding anything contained in the Code, no person accused or convicted of an offence punishable under this Ordinance shall, if in custody be released on bail or on his own bond, unless—

(1) the prosecution has been given an opportunity to oppose the application for such release; and

(2) where the prosecution opposes the application and the offence is one punishable under any section of this Ordinance, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

14. *Savings as to orders and bar of legal proceedings.*—Except as provided in this Ordinance, no order made, direction issued, or proceeding taken under this Ordinance, shall be called in question in any Court, and no suit, prosecution, or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Ordinance, or for any loss or damage caused to or in respect of any property whereof possession has been taken under this Ordinance.

15. *Savings of other laws.*—The provisions of this Ordinance shall be in addition to, and not in derogation of, the provisions of any other Act, Ordinance or Regulation for the time being in force.

### Ordinance XV of 1949

#### AN ORDINANCE TO PROVIDE FOR THE ADMINISTRATION OF EVACUEE PROPERTY IN PAKISTAN AND FOR CERTAIN MATTERS INCIDENTAL THERETO

*Karachi, the 15th October, 1949*

Whereas an emergency has arisen which renders it necessary to provide for the administration of evacuee property in Pakistan and for certain matters incidental thereto;

Now, therefore, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5 ch. 2), the Governor-General is pleased to make and promulgate the following Ordinance :—

## CHAPTER I

### PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Pakistan (Administration of Evacuee Property) Ordinance, 1949.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once in West Punjab, the North-West Frontier Province, Sind, the Capital of the Federation and the Acceding States, and on such date in any other area as the Central Government may, by notification in the Official Gazette, appoint in this behalf for such area.

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

(1) "Custodian" means a Custodian of Evacuee Property appointed under section 5, and includes an Additional, Deputy or Assistant Custodian.

(2) "evacuee" means any person who—

(i) on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances, on or after the first day of March, 1947, leaves or has left any place in the territories now comprising Pakistan for any place outside those territories, or

(ii) acquires or has acquired, on or after the aforesaid date, in any manner whatsoever, any right to or interest in or benefit from any property which is treated as evacuee property under any law for the time being in force in India, or in any area occupied by India, or

(iii) is resident in any place in the territories now comprising India or in any area occupied by India and who for that reason is unable to occupy, supervise or manage in person his property in Pakistan or whose property in Pakistan has, whether wholly or partially, ceased to be occupied, supervised, or managed by any person, or is being occupied, supervised or managed by an unauthorised person ;

(3) "evacuee property" means any property in which an evacuee has any right or interest, or which is held by or for him in trust, and includes—

(a) any right of interest in joint Hindu family property which would accrue to the evacuee upon the partition of the same, or

(b) property obtained from an evacuee after the twenty-eighth day of February, 1947, until confirmed by the Custodian, but does not include—

(i) any movable property in the immediate physical possession of any evacuee, or

(ii) any property belonging to a joint stock company the head office of which was situated, before the fifteenth day of August, 1947, in any place in the territories now comprising India, and continues to be so situated after the said date ;

(4) "prescribed" means prescribed by rules made under this Ordinance ;

(5) "property" means property of any kind, and includes any right



or interest in such property and any debt or actionable claim, but does not include a mere right to sue or a cash deposit in a bank ;

(6) "refugee" means a person who, having been ordinarily resident in any place in the territories now comprising India, or in any area occupied by India, has, on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances, taken refuge in Pakistan ;

(7) "registering officer" means a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (XVI of 1908) or any other officer discharging for the time being the functions of such Registrar or Sub-Registrar.

(8) "Rehabilitation Authority" means any Rehabilitation Board, Rehabilitation Commissioner, or Additional, Deputy or Assistant Rehabilitation Commissioner, appointed under the Pakistan Rehabilitation Ordinance, 1948 (XIX of 1948), or any other officer appointed under any law for the time being in force relating to the rehabilitation of refugees or social and economic rehabilitation in Pakistan ;

(9) "unauthorised person" means any person (whether empowered in this behalf by the evacuee or otherwise) who, after the twenty-eighth day of February, 1947, has been occupying, supervising or managing any evacuee property without the approval of the Custodian.

3. *Final determination of evacuee status.*—If any question arises whether a person is an evacuee or not, the Custodian may refer the question to the Central Government, whose decision shall be final.

4. *Ordinance to override other laws.*—The provisions of this Ordinance, and any rule or order made thereunder, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of any such law.

## CHAPTER II

### APPOINTMENT OF CUSTODIANS AND VESTING AND POSSESSION OF EVACUEE PROPERTY.

5. *Appointment of Custodians.*—(1) For the purpose of carrying this Ordinance into effect, the Central Government may, by notification in the Official Gazette, appoint one or more Custodians of Evacuee Property for such area as may be specified in the notification.

(2) No person shall be appointed Custodian unless he—

(a) was at any time before the fifteenth day of August, 1947, a judge of a High Court in British India, or

(b) has, after the aforesaid date, been a judge of a High Court in India, or

(c) is or has been a Judge of a High Court in Pakistan.

(3) The term "Custodian" in subsection (2) shall not be deemed to include an Additional, Deputy or Assistant Custodian, or the Custodian in an Acceding State.

6. *Vesting of evacuee property in Custodian.*—(1) All evacuee property shall vest and shall be deemed always to have vested in the Custodian with effect from the first day of March, 1947.

(2) Where any property in Pakistan belonging to a joint stock company has vested in any person exercising the powers of a Custodian under any law in force immediately before the commencement of this



Ordinance, nothing contained in clause (3) of section 2 shall affect the operation of subsection (1), but the Central Government may by notification in the Official Gazette direct that the Custodian shall be divested of any such property in such manner and after such period as may be specified in the notification.

7. *Holding of evacuee property and its surrender.*—(1) Every person who is, or has at any time after the twenty-eighth day of February, 1947, been in possession, supervision or management of any evacuee property, shall be deemed to hold or to have held, as the case may be, such property on behalf of the Custodian.

(2) Every person who is in possession, supervision or management of any evacuee property or property which he knows or has reason to believe is evacuee property shall, as soon as may be but not later than sixty days from the commencement of this Ordinance, intimate to the Custodian in writing his willingness to surrender such property to the Custodian or to any person authorised by the Custodian in this behalf upon receipt of a notice from the Custodian that the property is evacuee property, and shall surrender the same if called upon by the Custodian or any person authorised as aforesaid.

(3) The provisions of subsection (2) shall not apply to any person who is in possession, supervision or management of any evacuee property by virtue of an allotment made by a Rehabilitation Authority.

8. *Submission of information and accounts to Custodian.*—As soon as may be but not later than sixty days from the commencement of this Ordinance, every person who is, or has at any time after the twenty-eighth day of February, 1947, been in possession, supervision or management of any evacuee property or property which he knows or has reason to believe is evacuee property, shall submit to the Custodian, or to any person authorised by him in this behalf,—

(a) full information relating to such property, including the date since when, or the period for which, he has been in possession, supervision or management thereof, and

(b) a detailed account of the rents, profits, income and other moneys received or benefits derived from such property since the first day of March, 1947, or for the period he has been in possession, supervision or management thereof.

9. *Power of Custodian to take possession of evacuee property.*—If any person who is in possession, supervision or management of any evacuee property does not surrender such property to the Custodian or the person authorised by him in this behalf as required by subsection (2) of section 7 then, without prejudice to any other action or penalty to which such person may otherwise be liable, the Custodian may use such force as is necessary for taking possession of such property and may for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock, bolt or door, or do any other act necessary for the said purpose.

10. *Power of Custodian to manage property part of which is evacuee property.*—(1) Where any property is held by or on behalf of persons one or more of whom are, and one or more of whom are not, evacuees, then if the greater part of such property, reckoned according to the value of the whole, is held by or on behalf of those of such persons who are evacuees, the Custodian may take possession and assume control and management of the whole of such property.



(2) Where such property is joint Hindu family property the Custodian shall deem the property to have been partitioned into notional shares, and if the notional shares held by or on behalf of those members of the family who are evacuees constitute the greater part of such property, reckoned according to the value of the whole, the Custodian may take possession and assume control and management of the whole of such property.

11. *Payment to Custodian.*—(1) Any amount due to any evacuee, or payable in respect of any evacuee property, shall be paid to the Custodian by the person liable to pay the same.

(2) Any person who makes a payment under subsection (1) shall be discharged from further liability to pay to the extent of the payment made.

(3) Without prejudice to any penalty to which he may be liable under section 29, any person who makes or has made any payment otherwise than in accordance with subsection (1) or any law for the time being in force requiring payment of any such amount as is mentioned in subsection (1) to be made to the Custodian shall not be discharged from his obligation to pay the amount due, and the right of the Custodian to enforce such obligation against such person shall remain unaffected.

12. *Exemption from legal process.*—(1) Property which has vested in, or of which possession has been taken by, the Custodian shall be exempt from all legal process, including seizure, distress, ejectment, attachment or sale by any officer of a Court, and no injunction or other order of whatever kind in respect of such property shall be granted or made by any Court.

(2) Upon the commencement of this Ordinance, any such legal process as aforesaid subsisting immediately before such commencement shall cease to have effect, and all evacuee property in custody of any Court, or Receiver, guardian or other officer or person appointed by it, shall, upon delivery of the same being called for by the Custodian, be delivered to the Custodian.

13. *Publication of lists of evacuee property.*—The Custodian may publish by notification in the Official Gazette a list of evacuee property in any area.

### CHAPTER III

#### ALLOTMENT OF EVACUEE PROPERTY

14. *Allotment of evacuee property for rehabilitation.*—(1) A Rehabilitation Authority may, for the purposes of the rehabilitation of refugees, or social or economic rehabilitation in Pakistan, allot any evacuee property to any person.

(2) Every allotment of evacuee property made for the purposes aforesaid between the first day of March, 1947, and the commencement of this Ordinance, shall be deemed to have been made under subsection (1).

(3) Where any evacuee property has been allotted under this section the Rehabilitation Authority making the allotment shall, as soon as may be, furnish to the Custodian such description of the property allotted and such particulars of the person to whom it has been allotted as may be prescribed.

(4) The terms and conditions on which evacuee property, whether allotted before or after the commencement of this Ordinance, may be



held shall be determined by the Custodian and the Custodian may revise or amend such terms or conditions.

(5) Every person to whom evacuee property has been allotted shall be deemed to hold the property on the terms and conditions mentioned in subsection (4).

(6) If any person fails to comply with the aforesaid terms and conditions the Custodian may take possession of the property.

#### CHAPTER IV

##### TRANSFER AND RESOTRATION OF EVACUEE PROPERTY

15. *Prohibition of transfers of property generally.*—The Central Government may, by notification in the Official Gazette, declare that in such area and for such period as may be specified in the notification, the transfer of any property or class of property, or the creation of any right or interest therein or encumbrance thereon, shall be prohibited, and where any such declaration has been made, no such transfer or creation shall be made during the period in the area except with the previous approval in writing of the Custodian :

Provided that nothing in this section shall prevent the transfer of movable property of which an evacuee has immediate physical possession.

16. *Restriction on transfer by evacuees.*—(1) No creation or transfer of any right or interest in or encumbrance upon any property made in any manner, whatever by an evacuee or by any person in anticipation of his becoming an evacuee or on behalf of the evacuee or such person on or after the first day of March, 1947, shall be effective so as to confer any right or remedy on any party thereto or on any person claiming under any such party unless such creation or transfer is confirmed by the Custodian.

(2) An application for confirmation of such creation of a right or encumbrance or transfer as aforesaid may be made to the Custodian within the prescribed period by any party thereto, or by any person claiming under or lawfully authorised by such party.

(3) The Custodian shall hold a summary inquiry into the application in the prescribed manner, and—

(a) shall reject the application if the creation or transfer—

(i) was or is prohibited under any law for the time being in force, or

(ii) was not or is not covered by a certificate from the prescribed income-tax authority to the effect that no objection existed or exists to such creation or transfer ;

(b) may reject the application if he is of opinion that the creation or transfer—

(i) was not or has not been entered into in good faith or for adequate consideration, or

(ii) ought for any other reason not to be confirmed.

(4) If the application is not rejected under subsection (3), the Custodian may confirm the creation or transfer either unconditionally or subject to such terms and conditions as he thinks fit to impose.

17. *Registration of documents.*—(1) Notwithstanding anything contained in the Registration Act, 1908 (XVI of 1908), or in any other enactment for the time being in force, no registering officer shall register



or accept for registration any document relating to any immovable evacuee property unless a certificate by the Custodian permitting registration is produced, and such certificate may contain such conditions as the Custodian may see fit to impose and shall have effect subject to those conditions.

(2) If any question arises whether any document presented for registration relates to immovable evacuee property or not, the registering officer shall direct the parties thereto to apply to the Custodian for a certificate that the document does not relate to any immovable evacuee property, and the registering officer shall not accept for registration or register such document without such certificate.

18. *Claims by interested persons.*—(1) Any person claiming any right or interest in any property treated by the Custodian or a Rehabilitation Authority as evacuee property may prefer a claim to the Custodian on the ground that—

- (a) the property is not evacuee property, or
- (b) his interest in the property has not been affected by the provisions of this Ordinance.

(2) An application under subsection (1) shall be made within the prescribed period being a period of not less than thirty days from the prescribed date.

(3) On receiving an application under subsection (2), the Custodian shall hold a summary inquiry in the prescribed manner, and after taking such evidence as may be produced shall pass an order, stating the reasons therefor, rejecting the application or allowing it wholly or in part on such terms and conditions as he thinks fit to impose.

19. *Restoration of evacuee property.*—(1) Subject to the provisions of subsections (2) and (3), the Custodian may, on application made to him in this behalf by an evacuee or any person claiming to be the heir or survivor of an evacuee and producing in support of his application a certificate from the Central Government or from any person authorised by it in this behalf to the effect that the evacuee property may be restored if the evacuee or such other person is otherwise entitled thereto, restore, on such terms and conditions as he may think fit to impose, any evacuee property to which the evacuee or such person claiming as aforesaid would have been entitled if this Ordinance were not in force.

(2) On receipt of an application under subsection (1), the Custodian shall cause public notice thereof to be given in the prescribed manner, and, after holding a summary inquiry into the application in such manner as may be prescribed, may—

- (a) make an order restoring the property to the applicant, or
- (b) refer the applicant to a Civil Court for the determination of his claim and title to the property, or
- (c) reject the application :

Provided that no order for restoration shall be made under this section unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof.

(3) Upon the restoration of the property to the evacuee or such other person as aforesaid, the Custodian shall stand absolved of all responsibilities in respect of the property so restored, but such restoration shall not prejudice the right, if any, in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored :



Provided that every allotment made by a Rehabilitation Authority shall have effect against the person to whom restoration is made until such allotment is duly cancelled or determined by the Rehabilitation Authority.

(4) The Custodian shall, on application made to him in this behalf, furnish to the person to whom restoration is made under this section, a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property restored.

## CHAPTER V

### POWERS AND DUTIES OF CUSTODIANS

20. *Powers and duties of the Custodian generally.*—(1) The Custodian may take such measures as he considers necessary or expedient for the purposes of administering, preserving and managing any evacuee property which has vested in him and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

(2) Without prejudice to the generality of the provisions contained in subsection (1), the Custodian may, for any of the purposes aforesaid,—

(a) carry on the business or undertaking of the evacuee ;

(b) appoint a manager for the property of the evacuee or for carrying on any business or undertaking of the evacuee and authorise the manager to exercise any of the powers of the Custodian under this section ;

(c) enter or authorise any other person to enter on any land or premises to inspect any evacuee property ;

(d) take all such measures as may be necessary to keep any evacuee property in good repair ;

(e) complete any building which requires to be completed and make additions to any existing building ;

(f) replace or instal machinery in any factory ;

(g) direct any person to furnish such returns, accounts or other information in relation to any evacuee property and to produce such documents as the Custodian considers necessary for the discharge of his duties under this Ordinance ;

(h) take such action as may be necessary for the recovery of any debt due to the evacuee ;

(i) institute, defend or continue any legal proceeding in any civil or revenue Court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or compromise any claims, debts or liabilities on behalf of the evacuee ;

(j) raise on the security of the evacuee property such loans as may be necessary ;

(k) incur, in the prescribed manner, any expenditure including the payment of taxes, duties, cesses, and rates to the Government or to any local authority or of any sums due to any employee of the evacuee or of any debt due by the evacuee to any person ;

(l) pay any sum to the evacuee or to such member of his family or to such other person as in the opinion of the Custodian is entitled thereto ;

(m) sell any evacuee property, notwithstanding anything contained in any law or agreement to the contrary relating thereto ;



Provided that the Custodian shall not under this clause or the next succeeding clause sell any immovable evacuee property or any business or undertaking which is evacuee property, except with the previous approval of the Central Government ;

(n) demolish or dismantle any evacuee property which in the opinion of the Custodian cannot be repaired, or sell the site of such property and the materials thereof ;

(o) permit a Rehabilitation Authority to partition land or rights in land if a share in such land or rights consists of evacuee property ;

(p) make payments, out of moneys held by him, for the maintenance of refugees from prescribed areas in the prescribed manner ;

(q) invest in any security approved by the Central Government or in the prescribed manner any money held by him ;

(r) delegate, by general or special order, all or any of his functions under this Ordinance to such officer or person as he thinks fit.

21. *Expenditure by Custodian how to be recouped.*—Subject to the provisions of section 38, and section 20 of the Pakistan Rehabilitation Ordinance, 1948 (XIX of 1948), any expenditure incurred by the Custodian in the exercise of any power conferred by this Ordinance shall, in relation to any evacuee property in respect of which it has been incurred, be a charge on such property and shall have priority over all other charges on the property and such expenditure may be met or recouped by the Custodian out of the income accruing from such property or the sale proceeds thereof.

22. *Maintenance of accounts by Custodian.*—(1) The Custodian shall maintain a separate account of the property of each evacuee of which he has taken possession, and shall cause to be made therein entries of all receipts and expenditure in respect thereof.

(2) The account shall be maintained in such form and in such manner as the Central Government may direct.

(3) The Central Government shall cause the account to be inspected and audited at such intervals and by such persons as may be prescribed.

23. *Powers of Custodian when holding inquiry.*—(1) When holding an inquiry under this Ordinance the Custodian shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit, in respect of the following matters, namely :—

(a) enforcing the attendance of any person and examining him on oath or affirmation ;

(b) compelling the discovery and production of documents, articles and things ;

(c) issuing a Commission for the examination of witnesses ;

(d) any prescribed matter.

(2) Every proceeding before the Custodian under this Ordinance shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 and for the purposes of section 196 of the Pakistan Penal Code (Act XLV of 1960), and the Custodian shall be deemed to be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

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## CHAPTER VI

## OFFENCES AND PENALTIES

24. *Causing damage to evacuee property.*—Any person who wilfully causes damage or allows damage to be caused to any evacuee property or unlawfully converts it to his own use shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

25. *Concealment of evacuee property, etc.*—Any person who, with intent to evade the provisions of this Ordinance, conceals, destroys, mutilates or defaces any property, book or other document, or knowingly allows such concealment, destruction, mutilation, or defacement to be caused, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

26. *False statement of declaration.*—Any person who—

(a) for the purposes of obtaining an allotment or transfer of any evacuee property, makes a statement or declaration which is false or which he either knows or has reason to believe to be false or does not believe to be true, or

(b) furnishes any return, account or information which is material to any of the purposes of this Ordinance and which is false or which he either knows or has reason to believe to be false or does not believe to be true,

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

27. *Failure to surrender property or submit information and account to Custodian.*—If any person fails to intimate his willingness to surrender, or when called upon to surrender fails to surrender any evacuee property in accordance with the provisions of subsection (2) of section 7 or to submit such information of account as is required under section 8, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

28. *Failure to comply with direction, etc.*—If any person fails to comply with a direction issued by the Custodian in exercise of the powers conferred by clause (g) of subsection (2) of section 20, or refuses to allow access to any land premises in accordance with the provisions of clause (c) thereof he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

29. *Offences not expressly provided for.*—Save as provided in sections 24 to 28, whoever contravenes any of the provisions of this Ordinance or of any rule or order made thereunder or obstructs the lawful exercise of any power conferred thereby shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

30. *Attempt and abetment.*—Whoever attempts to commit, or abets, or attempts to abet, or does any act preparatory to the commission of, any offence punishable under this Ordinance shall be deemed to have committed that offence.

31. *Offences to be cognizable.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), all offences punishable under this Ordinance shall be cognizable but bailable.

32. *Cognizance of offences by Courts.*—No Court shall take cognizance of any offence punishable under this Ordinance except on a report



in writing of the facts constituting such offence, made with the previous sanction of the prescribed Custodian.

33. *Offences may be tried summarily.*—Any Magistrate or Bench of Magistrates empowered for the time being to try in a summary way the offences specified in subsection (1) of section 260 of the Code of Criminal Procedure, 1898 (Act V of 1898), may, if such Magistrate or Bench of Magistrates thinks fit, on application in this behalf being made by the prosecution, try any offence punishable under this Ordinance in accordance with the provisions contained in sections 262 to 265 of the said Code.

## CHAPTER VII

### SUPPLEMENTARY AND PROCEDURAL

34. *Jurisdiction of Courts barred.*—(1) Save as expressly provided in this Ordinance no civil or revenue Court shall have jurisdiction—

(a) to entertain or adjudicate upon any question arising in any suit, appeal, application or other proceeding as to whether any property is or is not evacuee property, or whether an evacuee has or has not any right or interest in any such property, or

(b) to question the legality of anything done under this Ordinance by or at the instance of the Custodian, or

(c) in respect of any matter which the Custodian is empowered by or under this Ordinance to determine.

(2) Whenever any question such as is referred to in clause (a) of subsection (1) arises in any civil or revenue Court, the Court shall state the question with relevant particulars and remit it to the Custodian for decision, and shall adjourn the proceedings in which the question arises until the decision of the Custodian is given, and the decision of the Custodian on the question stated shall be conclusive.

(3) No decision of any Court on any question such as is referred to in clause (a) of subsection (1), given between the fourteenth day of August, 1947, and the commencement of this Ordinance, shall be binding on the Custodian, or affect any right or interest of any evacuee in any property affected by such decision.

(4) No Court shall be competent to grant an injunction or other order in relation to any proceeding before the Custodian under this Ordinance or anything done or intended to be done by or at the instance of the Custodian under this Ordinance.

(5) No Court shall be competent to grant relief against extinguishment, forfeiture or penalty to a person whose right to any immovable property is or has been extinguished or forfeited in accordance with the terms and conditions of any agreement or grant relating to such property and who at the time of the extinguishment or forfeiture of such right is or was an evacuee.

35. *Presumption as to orders of Custodian.*—Every order purporting to be made or signed by the Custodian under this Ordinance shall be presumed to have been made or signed by the Custodian until the contrary is proved.

36. *Appeal, revision and review.*—(1) Any person aggrieved by a final order under section 16, section 18 or section 19 passed by a Deputy or Assistant Custodian may prefer an appeal to the Custodian.

(2) The appeal shall be presented in such manner and within such time as may be prescribed.



(3) The Custodian to whom an appeal is preferred under subsection (1), may dispose of it himself, or make it over for disposal to an Additional Custodian.

(4) The Custodian may, at any time either of his own motion or on application made to him within the prescribed period in this behalf, call for the record of any proceeding for the administration of evacuee property, which is pending before or has been disposed of by, an officer subordinate to him, including an Additional Custodian, for the purpose of satisfying himself as to the legality or propriety of any order passed in the said proceeding, and may pass such order in relation thereto as he thinks fit:

Provided that the Custodian shall not under this subsection pass an order revising or modifying any order affecting any person without giving such person and the Rehabilitation Authority an opportunity of being heard.

(5) The Custodian or Additional Custodian may, within the prescribed period and after giving notice to the parties concerned and the Rehabilitation Authority, review his own order.

(6) Subject to the foregoing provisions of this section, any order made by the Custodian, or Additional, Deputy or Assistant Custodian shall be final and shall not be called in question in any Court.

37. *Appearance by counsel or agent.*—(1) Any person who is entitled or required to attend before a Custodian in connection with any proceeding under this Ordinance, otherwise than when called upon to attend personally for examination on oath or affirmation, may attend and be represented by counsel or by duly authorised agent, and any petition, application, or memorandum in appeal, review or revision, or otherwise, may be presented by counsel or such agent.

(2) In this section, "counsel" means an Advocate or Pleader or any person entitled or allowed to plead in any civil Court.

## CHAPTER VIII

### MISCELLANEOUS

38. *Fees payable to the Custodian.*—(1) The Central Government may prescribe the fees payable to the Custodian for the administration of evacuee property.

(2) Such fees shall be payable out of the income or sale proceeds of such property and shall, notwithstanding anything in any other law for the time being in force, be a first charge on the property.

39. *Recovery of arrears.*—Any sum due in respect of any property treated as evacuee property or the sale proceeds of any such property may be recovered by the Custodian as arrears of land revenue.

40. *Receipts to be given.*—A receipt shall be given for any money paid or recovered under this Ordinance.

41. *Certain persons to be public servants.*—The Custodian and every other person duly appointed or authorised to discharge any functions under this Ordinance or the rules or orders made thereunder shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

42. *Records to be public documents.*—All records prepared or registers maintained under this Ordinance, or the rules or orders made thereunder,



shall be deemed to be public documents within the meaning of the Evidence Act, 1872 (I of 1872), and shall be presumed to be genuine until the contrary is proved.

43. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Central or Provincial Government, or against the Custodian or Rehabilitation Authority, or any person, authorised by either of them, for anything done or in good faith intended to be done in pursuance of this Ordinance or of any rules or orders made thereunder, or for any damage caused or likely to be caused by any such thing as aforesaid.

44. *Acts done not affected by death of evacuee, etc.*—Anything done or purporting to have been done in pursuance of the provisions of this Ordinance shall not be affected or invalidated by reason only that at any material time some person believed to be an evacuee was not or had ceased to be an evacuee, or had died.

45. *Power to exempt.*—The Central Government may, by notification in the Official Gazette, exempt any person or class of persons, or any property or class of property, from the operation of all or any of the provisions of this Ordinance.

46. *Power to make rules.*—(1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it to be necessary for carrying out the purposes of this Ordinance.

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

(a) the terms and conditions of service of the Custodian and other officers appointed under this Ordinance, and the furnishing of security by them ;

(b) the work to be performed by the Custodian and the Additional, Deputy and Assistant Custodians ;

(c) the manner in which possession of any evacuee property may be taken by the Custodian ;

(d) the manner in which inquiries under this Ordinance may be held ;

(e) the description of the property allotted and particulars of the allottee which Rehabilitation Authority shall furnish to the Custodian ;

(f) the time within which applications for confirmation under section 16 or preferring claims under section 18 may be made ;

(g) the income-tax authority who may issue non-objection certificates under section 16 ;

(h) the nature of cases and the circumstances in which and the conditions subject to which, certificates for restoration of property under section 19 may be issued ;

(i) the nature of cases and the circumstances in which the Custodian may refer an applicant under section 19 to a civil Court ;

(j) the circumstances in which and the conditions subject to which the Custodian may sell any immovable evacuee property ;

(k) the persons by whom and the times at which accounts may be inspected and audited ;

(l) the powers vested in a civil Court which may be exercised by the Custodian when holding any inquiry under this Ordinance ;



(m) the manner in which, and the time within which, appeals and applications for revision and review shall be preferred under section 36 and the fees payable in respect thereof;

(n) the fees payable to the Custodian for the administration of evacuee property;

(o) the manner in which any notice under this Ordinance shall be issued, served or published;

(p) the delegation of powers and functions of the Custodian to the Additional, Deputy or Assistant Custodian;

(q) any other matter to be prescribed under this Ordinance.

47. *Delegation of power.*—The Central Government may, by general or special order notified in the Official Gazette, direct that the powers exercisable by it under this Ordinance shall be exercised by such officer, and in such circumstances and under such conditions if any, as may be specified in the order.

48. *Repeal and savings.*—The Pakistan (Protection of Evacuee Property) Ordinance, 1948 (XVIII of 1948), is hereby repealed:

Provided that every thing done, action taken, obligation, liability, penalty or punishment incurred, inquiry or proceeding commenced, officer appointed or person authorised, jurisdiction or power conferred, rule made and order issued, under any of the provisions of the said Ordinance, shall be continued, and, so far as may be, be deemed to have been respectively done, taken, incurred, commenced, appointed, authorised, conferred, made or issued under this Ordinance, and any enactment or document referring to any of the said provisions shall, as far as may be, be construed to refer to this Ordinance or to the corresponding provision thereof.

(2) Any provision of any law in force in any area immediately before the commencement of the aforesaid Ordinance and corresponding to any provision of that Ordinance, shall, so far as may be, be deemed to be a provision of the said Ordinance, and the proviso to subsection (1) shall, wherever necessary, be construed accordingly.

### Ordinance XVI of 1949

#### AN ORDINANCE TO AMEND THE PAKISTAN (ECONOMIC REHABILITATION) ORDINANCE, 1948 (XIX OF 1948)

*Karachi, the 15th October, 1949*

Whereas an emergency has arisen which renders it necessary to amend the Pakistan (Economic Rehabilitation) Ordinance, 1948 (XIX of 1948), for the purposes hereinafter appearing;

Now, therefore, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5 ch. 2), the Governor-General is pleased to make and promulgate the following Ordinance:—

1. *Short title.*—This Ordinance may be called the Pakistan (Economic Rehabilitation) (Amendment) Ordinance, 1949.

2. *Amendment of long title and preamble.* Ordinance XIX of 1948.—In the long title and preamble of the Pakistan (Economic Rehabilitation) Ordinance, 1948 (XIX of 1948), hereinafter referred to as "the said Ordinance", after the words "maintenance of the", the words "social and" shall be inserted.