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PARLIAMENT OF INDIA RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS

ONE HUNDRED AND FIFTY FIFTH REPORT

ON

**THE ENEMY PROPERTY (AMENDMENT & VALIDATION)
SECOND BILL, 2010**

**(PRESENTED TO THE CHAIRMAN, RAJYA SABHA ON 3rd NOVEMBER 2011)
(FORWARDED TO THE SPEAKER, LOK SABHA ON 3rd NOVEMBER 2011)**

**(PRESENTED TO RAJYA SABHA ONNOVEMBER, 2011)
(LAID ON THE TABLE OF LOK SABHA ONNOVEMBER, 2011)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
NOVEMBER, 2011/ KARTIKA, 1933 (SAKA)**

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**Composition of the
Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2010)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri Rishang Keishing
3. Dr. N. Janardhana Reddy
4. Shri S.S. Ahluwalia
5. Shri Naresh Chandra Agrawal
6. Shri Prasanta Chatterjee
7. Shri Javed Akhtar¹
8. Shri Tariq Anwar
9. Dr. V. Maitreyan
10. Shri D. Raja

Lok Sabha

11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Dr. Kakoli Ghosh Dastidar
14. Shri Ramen Deka
15. Shri L. Raja Gopal
16. Shri Mohd. Maulana Asrarul Haque
17. Shri Naveen Jindal
18. Shri Jitender Singh Malik
19. Shri Lalubhai Babubhai Patel
20. Shri Natubhai Gomanbhai Patel
21. Dr. Nilesh N. Rane
22. Shri Bishnu Pada Ray
23. Adv. A. Sampath
24. Shri Hamdullah Sayeed
25. Shri Neeraj Shekhar
26. Dr. Raghuvansh Prasad Singh
27. Shri Ravneet Singh
28. Shrimati Seema Upadhyay
29. Shri Harsh Vardhan
30. Shri Bhausahab Rajaram Wakchaure
31. Shri Dinesh Chandra Yadav

¹ Shri Javed Akhtar nominated w.e.f. 21 September 2011 *vice* Shri Tiruchi Siva, who resigned from the Membership of the DRSC on Home Affairs w.e.r. the 13 September, 2010.

**Composition of the Sub-Committee of
Department-related Parliamentary Standing
Committee on Home Affairs on the Bill
(As constituted on 27th April, 2011)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri S.S. Ahluwalia - Convenor
3. Shri Naresh Chandra Agrawal
4. Shri D. Raja
5. Dr. V. Maitreyan

Lok Sabha

6. Dr. Rattan Singh Ajnala
7. Shri Mohd. Maulana Asrarul Haque
8. Shri Harsh Vardhan
9. Shri Neeraj Shekhar

**Composition of the
Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2011)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri Rishang Keishing
3. Dr. N. Janardhana Reddy
4. Shri S.S. Ahluwalia
5. Shri Naresh Chandra Agrawal
6. Shri Prasanta Chatterjee
7. Shri Tariq Anwar
8. Dr. V. Maitreyan
9. Shri D. Raja
10. Shri Javed Akhtar

Lok Sabha

11. Shri L.K. Advani
12. Shri Sansuma Khunggur Bwiswmuthiary
13. Shri Khagen Das
14. Dr. Kakali Ghosh Dastidar
15. Shri Ramen Deka
16. Shri Lagadapati Raja Gopal
17. Shri Mohammad Asrarul Haque
18. Shri Naveen Jindal
19. Shri Jitender Singh Malik
20. Shri Babulal Marandi
21. Shri Baijayant Panda
22. Shri Lalubhai B. Patel
23. Shri Natubhai Gomanbhai Patel
24. Dr. Nilesh N. Rane
25. Shri Bishnu Pada Ray
26. Shri Adhi Sankar
27. Shri Hamdullah Sayeed
28. Shri Neeraj Shekhar
29. Shri Ravneet Singh
30. Shri Harsh Vardhan
31. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri P.P.K. Ramacharyulu, Joint Secretary
Shri D.K. Mishra, Joint Director
Shri Bhupendra Bhaskar, Assistant Director
Shri Sanjeev Khokhar, Committee Officer

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Fifty Fifth Report on the Enemy Property (Amendment & Validation) Second Bill, 2010 (**Annexure I**).

2.0 In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred* the Enemy Property (Amendment & Validation) Second Bill, 2010 (**Annexure-I**) as introduced in the Lok Sabha on 15th November, 2010, and pending therein, to the Committee on 30th December, 2010, for examination and report, by 15th February, 2011. The Committee sought further extension of time four times for presentation of the Report on the Bill, the last extension being granted upto 30th October, 2011.

3.0 The Enemy Property (Amendment & Validation) Second Bill, 2010 seeks to amend certain Sections of the Enemy Property Act, 1968. The Enemy Property Act, 1968 was enacted on the 20th August, 1968 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.

4.0 The Committee heard the official presentation of the Home Secretary on 2nd February, 2011. Since the provisions of the Enemy Property (Amendment and Validation) Second Bill have far reaching consequences in terms of settlement of disputes of enemy properties in the country, the Committee in the said sitting decided to seek written Memoranda from public/stakeholders interested in the subject matter of the Bill. Following this decision, a Press Communiqué (**Annexure II**) was issued seeking written memoranda from public/stakeholders, latest by 15th March, 2011, which was subsequently extended upto 15th April, 2011 on the requests received from Members of Parliament so that a large cross-section of the society, affected parties and the general public, could get an opportunity to submit their views/comments on the said Bill (**Annexure III**). In response thereto around ninety memoranda were received by the Committee. After scrutiny, relevant memoranda were forwarded to the Ministry of Home Affairs for their comments (**Annexure IV**).

5.0 The Department-related Parliamentary Standing Committee on Home Affairs in its sitting held on 25th April, 2011, decided to constitute a Sub-Committee on the Enemy Property (Amendment & Validation) Second Bill, 2010 to examine various provisions of the Bill and submit report thereon to it. The Chairman of the Committee, accordingly, constituted a sub-Committee on 27th April, 2011. The Sub-Committee held five sittings on 11th and 20th May, 19th & 27th July and 10th August 2011 to consider the Bill.

6.0 In its sitting held on 11th May, 2011, the Sub-Committee decided to seek written comments of State Governments, wherever enemy properties are located, and also to hear Chief Secretaries of some of the States after obtaining permission from the Hon'ble Chairman, Rajya Sabha. Accordingly, after obtaining the permission of Hon'ble Chairman, Rajya Sabha

* vide Rajya Sabha Parliamentary Bulletin Part II No. 47645 dated 1st September, 2010.

all the State/UTs Governments were requested to send their comments on the provisions of the Bill. In response thereto only six States/UTs have sent their comments. So far as, comments from remaining State Government is concerned the matter was pursued with them through reminders including the last one wherein it was informed that in case, comments were not received by 30th June, 2011, it would be presumed that the State Government had no comments to offer. Out of all the comments received, the comments received from the State of Uttar Pradesh and NCT of Delhi were sent to the Ministry of Home Affairs for their written comments (**Annexure V**).

7.0 The Sub-Committee heard the Home Secretary and the Custodian of the Enemy Property in India on the Bill in its sitting held on 20th May 2011. The Sub-Committee also took oral evidence of the Chief Secretary of the States of Goa, West Bengal, UP and NCT of Delhi in its sittings held on 19th and 27th July 2011. The Sub-Committee also had the benefit of expert views of Shri Lal Ji Tandon, Member, Lok Sabha from Lucknow, UP. Alongwith him some private witnesses also appeared in its sitting held on 10th August 2011.

8.0 The tenure of the Committee had ended on 31st August, 2011. The Sub-Committee ceased to exist with the expiration of the term of the Committee and after reconstitution of the Committee on 15th September, 2011, the Bill was considered by the Main Committee itself. The Main Committee had the expert opinion of Shri Ram Jethmalani, Member, Rajya Sabha and an eminent lawyer and also heard Shri Mohammad Amir Mohammad Khan, the erstwhile Raja of Mehmoodabad, on the Bill, in its sittings held on 30th September and 10th October 2011 respectively. The Committee also further heard the views of Chief Secretary, Government of NCT of Delhi in its sitting held on 10th October.

9.0 The Committee held internal discussion on the Bill in its sitting held on 14th and 24th October, 2011 and decided not to take up the Clause-by-clause consideration of the Bill and recommend the Government to bring forward a fresh Bill incorporating the views of the Members and observations of the Committee.

10.0 The Committee in its sitting held on 24th October, 2011 considered and adopted this Report and authorized its Chairman to present the same to the Chairman, Rajya Sabha when the House would not be in Session.

11.0 As per practice, the Secretaries and senior officers of the Legislative Department and the Department of Legal Affairs were also present in all the sittings to respond to the queries of the Members.

12.0 The Committee has made use of the following documents in preparing the Report:-

1. Enemy Property (Amendment and Validation) Second Bill, 2010;
2. Background Note on the Bill;
3. Enemy Property (Amendment And Validation) Ordinance, 2010 (No. 4 of 2010);
4. Enemy Property (Amendment and Validation) Bill, 2010 as introduced in the Lok Sabha on 2nd August, 2010 to replace the Ordinance;
5. Enemy Property Act, 1968 (34 of 1968);
6. Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (40 of 1971);

7. Suggestions/views made in memoranda received from public/stakeholders and comments of the Ministry of Home Affairs thereon;
8. Oral evidence tendered before the Committee; and
9. Comments of the Ministries of Home Affairs/Law & Justice on suggestions made by Members and others.

13.0 For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

M. Venkaiah Naidu
Chairman

Department-related Parliamentary
Standing Committee on Home Affairs

24th October, 2011/New Delhi

REPORT

Chapter-1

INTRODUCTION

1.1 The Bill

1.1.1 The Enemy Property (Amendment & Validation) Second Bill, 2010 as introduced on 15th November, 2010 seeks to amend certain Sections of the Enemy Property Act, 1968.

1.1.2 The Enemy Property Act, 1968 was enacted on the 20th August, 1968 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. There have been a number of judgements 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. According to the Ministry of Home Affairs, the amendments to the Enemy Property Act, 1968, are intended, inter alia, to clarify various matters connected with enemy properties, which are vested in the Custodian so that Custodian is able to function more effectively.

1.2 HISTORICAL BACKGROUND

1.2.1 According to background note as furnished by Ministry of Home Affairs, consequent on Chinese aggression in 1962, immovable properties, cash balances and firms belonging to the Chinese nationals were vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962. In the same way consequent to the aggression by Pakistan in 1965 and 1971, immovable and some specified movable Pakistani properties in India were vested in the Custodian of Enemy Property for India under the powers derived from the Defence of India Rules, 1962/1971.

1.2.2 The principal Act called “the Enemy Property Act, 1968” was enacted on the 20th August, 1968 for the administration and management of the Chinese and Pakistani enemy properties which were already vested in the Custodian of Enemy Property for India. It provides 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. The Enemy Property Act, 1968 was amended in 1977 to give effect to the Standing Order No. 5511 dated 18th December, 1971.

1.3 ROLE AND FUNCTIONS OF CUSTODIAN OF ENEMY PROPERTY

1.3.1 Explaining about the role of custodian the Ministry stated that the powers of the Custodian in respect of enemy property vested in him is given under Section 8 of the Enemy Property Act, 1968, which reads as under:-

- With respect to the property vested in the custodian under this Act, the Custodian may take or authorise 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.
- Without prejudice to the generality of the foregoing provision, the Custodian or such person as may be specifically authorized by him in this behalf, may for the said purpose,- carry on the business of the enemy; make action for recovering any money due to the enemy;
- make any contract and execute any document in the name and on behalf of the enemy ;
- institute, defend or continue any suit or other legal proceeding, refer any dispute to arbitration and compromise any debts, claims or liabilities;
- raise on the security of the property such loans as may be necessary;
- incur out of the property any expenditure including the payment of any taxes, duties, cesses and rates 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;
- transfer by way of sale, mortgage or lease or otherwise dispose of any of the properties ;
- 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;
- make payments to the enemy and his dependents;
- make payments on behalf of the enemy to persons other than those who are enemies, of dues outstanding on the 25th October, 1962 1[or on the 3rd December, 1971]; and
- make such other payments out of the funds of the enemy as may be directed by the Central Government.

1.3.2 The Ministry also stated that he is also being given more powers by adding following new provisions in the Enemy Property (Amendment and Validation) Second Bill, 2010 in Section 8 of the Enemy Property Act, 1968:

- Section 8 (2) (ia) “Fix and collect the rent, standard rent , lease rent, licence fee or usage charges, as the case may be, in respect of enemy property”; and
- Section 8 (2) (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.”

1.4 **REASONS FOR AMENDMENTS IN PRINCIPAL ACT**

1.4.1 The Ministry of Home Affairs mentioned that in the initial stages, the Courts were supportive of the Government’s action and upheld the automatic vesting of these properties in the Custodian of Enemy Property (CEP) and restrained themselves from interfering in the orders passed by the Custodian. Of late, however, there have been various judgments by various High Courts and the Supreme Court that had adversely affected the powers of the CEP and the Government of India under the Act. In view of such interpretation by the courts, the CEP was finding it extremely difficult to sustain his actions which, *inter alia*, include vesting of the properties, removal of unauthorized encroachments etc., in the face of these judgments.

1.5 **Important Decisions of Courts**

According to the Ministry of Home Affairs, interpretation of the courts about various provisions of the Act does not appear to be in consonance with the objects of the Act. The details of some of the important decisions of courts are as under:

1.5.1 **Union of India Vs Raja MAM Khan (Civil Appeal No.2501 of 2002)**

1.5.2 The Supreme Court has held in this case that:

- (i) On the death of an “Enemy”, the property devolves in succession and ceases to be “Enemy Property” if the successor is a citizen of India.

- (ii) The Enemy subject has the power to sell the property by virtue of section 6 of the Act.
- (iii) The Custodian has no right or title in the property and the Enemy continues to have the right, title and interest in the property.
- (iv) Natural legal heirs and successors, who are “Citizens of India” would be entitled to the property under the “Law of Succession”.
- (v) The Central Government does not have absolute power for divesting under section-18 of the Act and the power of the Court is not taken away to pass an appropriate order in a case where the property which vested in the Custodian ceases to be Enemy Property.
- (vi) On divestment of the property, the divestee would be entitled to the actual mesne profits by filing a suit, if so advised.
- (vii) The Custodian’s power is limited to managing, preservation and control of Enemy Property for a limited purpose and for a temporary period only.

1.5.3 The Ministry further informed that the above decision was given on 21st October, 2005 by the Supreme Court in the Special Leave Petition (Civil Appeal) filed by the Union of India. The review petition filed by Union of India was also dismissed on 16th December, 2005. Consequently, the judgment has been implemented.

1.5.4 Rameshwar Dayal and Ors Vs. Custodian of Enemy Property for India & Others (Civil Misc. Writ Petition No. 4490 of 1976 connected with Civil Misc. Writ Petition No.4484 of 1976.

1.5.5 In this case, the Allahabad High Court had held that there is no provision in the Act or Defence of India Rules, which empower the Custodian of Enemy Property to, in a case where someone disputes that a particular property is an enemy property, adjudicate or to give a determinative finding on the point in controversy. Likewise, there is no provision in the Act or the Rules which empowers the Custodian to take forcible possession of any property which he claims to have vested in him as enemy property. Whenever such controversy is raised, it has to be resolved by raising the issue in appropriate civil proceedings.

1.5.6 In this case no appeal was filed and the judgment has become final.

1.5.7 Chandra Madhab Sen and Ors Vs Union of India and Ors., (Writ Petition No.15217 (W) of 2007

1.5.8 In this case, the Calcutta High Court had held that it is evident from the provisions of section 6 of the Act that the exchange could be declared void only

by the Central Government by making an order according to provisions of section 6 and not otherwise. The Assistant Custodian of Enemy Property, Government of India, is not the authority to declare the exchange void. Only the Central Government is competent to make an order for the purpose.

1.5.9 In this case no appeal was filed and the judgment has become final.

1.5.10 Ambu Trikam Parmar Vs. Union of India & Others (Writ Petition No. 843 of 2009)

1.5.11 In this case, the Bombay High Court had held that under the provisions of the Act, there is no power in the CEP to evict a person in unauthorized occupation, without following due procedure which is by instituting legal proceeding or such steps for recovery which may be available in law.

1.5.12 This case was decided on 5th February 2010 and a review petition filed by the Government is pending and the decision has not been implemented.

1.5.13 Jeelani Begum and Others Vs. Union of India and Others (Writ Petition No.23835 of 1999 and Writ Petition No.8168 of 2006)

1.5.14 In this case, the High Court of Andhra Pradesh had held as under:

- (i) In the light of the ratio laid down by the Supreme Court in Raja Mohd. Amir Mohd. Khan's case, it is clear that the vesting in the Custodian does not divest the right of the enemy and what was contemplated under the Act was only temporary vesting in the Custodian which is limited to the extent of possession, management and control over the enemy property temporarily. Section 18 of the Act provides for divesting the Custodian of such property. The Central Government is empowered to make such order under Section 18.
- (ii) In the case on hand, it is apparent that the Central Government had failed to exercise such discretion conferred under Section 18 of the Act. The impugned order is not only cryptic but also without application of mind to any of the relevant factors. The only reason assigned in the impugned order that the property being the enemy property cannot be divested under Section 18 of the Act is contrary to the scope and object of Section 18 read with the other provisions of the Act as explained by the Supreme Court in Raja Mohd. Amir Khan's case. Hence the impugned order is liable to be set aside on that ground alone.

- (iii) Accordingly the Central Government is directed to consider the representation of the petitioners afresh and pass appropriate orders in accordance with law in terms of the decision of the Supreme Court in Raja Mohd. Amir Mohd Khan's case as expeditiously as possible preferably within a period of three months from the date of receipt of this order after affording due opportunity to the petitioners to substantiate their right, title and interest in respect of the property in question.

1.5.15 In this case, Central Government has decided in July, 2008 to divest the property to the legal heirs of Mrs. Jeelani Begum. However, the actual divestment of the property has yet to take place as the matter regarding production of succession certificate by the legal heirs is sub-judice.

1.6 The Enemy Property (Amendment and Validation) Ordinance, 2010

1.6.1 The Ministry while giving justification for issuing the Enemy Property (Amendment and Validation) Ordinance, 2010 stated that in the above explained circumstances, it had become necessary to amend the Enemy Property Act, 1968, with retrospective effect to, *inter alia*, clarify the legislative intention. The Enemy Property (Amendment and Validation) Ordinance, 2010 was promulgated on the 2nd day of July, 2010, providing:-

- That the enemy property shall continue to vest in the Custodian till it is divested by the Central Government, even if the enemy subject or enemy firm ceases to be enemy due to death, extinction, winding up of business or change of nationality or that the legal heir or successor is a citizen of India or a citizen of a country which is not an enemy;
- To authorise the Custodian, after making such enquiry as he deems necessary, to declare that the property of the enemy or the enemy subject or the enemy firm vest in him under the aforesaid Act and issue a certificate to that effect which would be evidence of the facts stated therein;
- 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 of India or any other competent authority, any transfer without such permission, or, without the permission of the Custodian;
- That no court shall have jurisdiction to order divestment from the Custodian of the 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;
- To authorise the Central Government to direct that any or all enemy property vested in the Custodian under the aforesaid Act shall be sold or disposed of in such manner as may be prescribed;
 - 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.

1.6.2 In order to have speedy and effective eviction of unauthorised occupants from the enemy property under the Custodian, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was also amended by the aforesaid Ordinance so as to declare the Custodian, Deputy Custodian and Assistant Custodian of enemy property appointed under the Enemy Property Act, 1968 as “Estate Officer” in respect of the enemy properties.

1.7 The Enemy Property (Amendment and Validation) Bill, 2010 and the Enemy Property (Amendment and Validation) Second Bill, 2010

1.7.1 The Enemy Property (Amendment and Validation) Bill, 2010 was introduced in the Lok Sabha on the 2nd August, 2010 to replace the Ordinance. This Bill was not passed by the House and consequently the ordinance lapsed on 6th September, 2010. In the circumstances, the Government withdrew the aforesaid Bill and introduced the Second Bill. The Ministry explaining about the circumstances that led to the introduction of the Enemy Property (Amendment and Validation) Second Bill, 2010 stated that the Second Bill *inter alia*, provides for the following, in addition to the provisions mentioned in paragraphs 1.6.1 and 1.6.2 above, namely:-

- That the enemy property will be divested only to the owner or, if the owner is dead, to any lawful heir and that the claimant shall have to establish, in accordance with the law, that he is the lawful heir;
- That any enemy property divested from the Custodian to any person under the provisions of the Enemy Property Act, 1968, as it stood immediately before 2nd July, 2010, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the Custodian. If, however, the enemy property had been 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 a court and the Government is satisfied that the property was returned to the owner or the lawful heir, such enemy property would continue to remain with such persons;

- That nothing contained in this Act shall affect the claim made by any person before any court or other authority against the owner or his lawful heir to whom the property was or may be returned under this Act and such claim shall be decided in accordance with law by the court or other authority, as the case be;
- To empower the Central Government to issue appropriate orders, within a period of six months from the date on which the proposed legislation receives the assent of the President, to remove any difficulty which may arise in giving effect to the provisions of the Act during the period beginning on the date on which the Enemy Property (Amendment and Validation) Ordinance, 2010 ceased to operate and ending immediately before the date on which the Enemy Property (Amendment and Validation) Second Bill, 2010 receives the assent of the President; and
- To provide that anything done or any action taken under the Enemy Property Act, 1968, or the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as amended by the proposed legislation, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by the proposed legislation.

1.7.2 The Ministry of Home Affairs further stated that these proposed amendments will have retrospective effect and come into force from the 2nd day of July, 2010 unless otherwise provided.

CHAPTER- II

PRESENTATION OF THE MINISTRY OF HOME AFFAIRS

2.1 Oral Evidence of Home Secretary

2.1.1 The Committee in its meeting held on 2nd February, 2011 heard the presentation of the Home Secretary on the Enemy Property (Amendment & Validation) Second Bill, 2010. The Custodian of Enemy Property was also present in the sittings. Besides, the Law Secretary and the Legislative Secretary also attended the meetings to clarify the legal and legislative queries, respectively, of the Members.

2.1.2 The Custodian of Enemy Property, Mumbai made a presentation before the Committee. He elaborated on the Laws/Rules/Notifications governing enemy properties; definition of enemy national for the purpose of enemy properties and what constituted enemy property; constraints/issues in final settlement of enemy property; duties and powers of the Custodian of Enemy Property of India; various decisions/judgments of Courts on the issue and difficulties faced in the management of enemy properties.

2.1.3 The CEP reiterated the objectives sought to be achieved by the proposed Bill which were provided by the Ministry in the Background Note, already detailed in Chapter-I of the report.

2.2 Views of the Union Home Secretary

2.2.1 Explaining about the reasons for introduction of the Second Bill, the Home Secretary, during his evidence tendered before the committee on 2 February, 2011 stated that there were a large number of lacunae in the original Enemy Property Bill as it did not have various provisions which would enable the Custodian of Enemy Property to have title and to dispose of the properties. Subsequent to that, the Supreme Court judgment also held, that even though the property is vested in the Government, as soon as the enemy died, the enemy's son is no longer an enemy. That is, in one sense, the Supreme Court said that the enemy's son cannot be treated as an enemy and he has his own legal rights under the Constitution. The Home Secretary went on to read the salient features of the Supreme Court judgment:

- On the death of an 'Enemy', the property devolves in succession and ceases to be "Enemy Property" if the successor is a citizen of India.
- The Enemy subject has the power to sell the property by virtue of Section 6 of the Act.

- The Custodian has no right or title in the property and the Enemy continues to have the right, title and interest in the property.
- Natural legal heirs and successors who are "Citizens of India" would be entitled to the property under the "Law of Succession".
- The Central Government does not have absolute power for divesting under Section 18 of the Act and the power of the Court is not taken away to pass an appropriate order in a case where the property which vested in the Custodian ceases to be Enemy Property.
- On divestment of the property, the divestee would be entitled to the actual mesne profits by filing a suit, if so advised.
- And, lastly, the Custodian's power is limited to managing, preservation and Control of Enemy Property for a limited purpose and for a temporary period only.

2.2.2 The Home Secretary further stated that it was in view of this and the related High Court judgements which also said that there is no provision in the Act or the Defence of India Rules which empowers the Custodian of Enemy Property in a case where someone disputes that a particular property is an enemy property or not, to adjudicate or give a determined finding on that issue. The courts also felt that there is no provision in the Act or Rules which empowers the Custodian to take forcible possession of any property which he claims to have vested in him as an Enemy Property.

2.2.3 The Home Secretary, during his further evidence tendered before the Committee on 20 May, 2011, stated that it would be no exaggeration to say that this subject of enemy property has been given a low priority in the Ministry. On a question as to why was this earlier with the Ministry of Commerce and how come it was transferred in 2007 to the Ministry of Home Affairs, the Home Secretary stated that there was a custodian of Enemy Firms, and also a Custodian of Enemy Trading. Therefore, in the earlier orders, it was not only the Custodian of Enemy Property but also he had an additional charge of Custodian of Enemy Firms and the Custodian of Enemy Trading. Now, with the enactment of the Act and the Defence of India Rules not being in force, he is the Custodian of Enemy Property.

2.2.4 The Home Secretary went on to say that there was nothing in it to be dealt by the Commerce Ministry, because Commerce Ministry was dealing with trade. It was found that there were a large number of properties all over India and the Commerce Ministry felt that the Home Ministry deals with the State Governments and, therefore, Home Ministry would be much more competent to deal with this issue. That is why the proposal was made and discussed in the Committee of Secretaries. The Committee of Secretaries agreed and then the Rules of Business were amended in the Government of India, transferring the Custodian of Enemy

Property Act, from the Commerce Ministry to the Home Ministry and then the files were transferred in 2007.

2.2.5 The Home Secretary agreed that the Custodian of Enemy Property was still getting a very low priority. It was partly because the office was located in Mumbai. It is an office where there is just one officer and one Assistant Custodian of Enemy Property based at Kolkata and the rest consisting of two Superintendents and clerks. So, basically, it is a two-officer establishment. One officer is in Mumbai and one is in Kolkata.

2.2.6 He also felt that looking at all issues and the information that has come out as a result - partly because of Committee's examination of the Bill - there is a vacuum in the entire system in which the Custodian of Enemy Property acts. One is the staffing pattern, which is abysmally low. He informed the Committee that they are taking steps to fill up the vacancies, create posts, and take the prolonged contract appointments. He was also of the opinion that for getting the details of the properties, writing to the State Governments, is not going to work. They will have to appoint, perhaps, Tehsildars, Revenue Inspectors, village officers and constitute special teams in each of the State. They would look at the concerned revenue records, etc., because in the districts all the officers are busy doing their routine work; and, asking them to give some information about what was done years ago, is not, again, the State Government's priority.

2.2.7 Explaining about the actions taken in Pakistan and China, the Home Secretary stated that unlike with reference to Pakistan, where it seized properties of Indians there and sold them, China never seized any property of any Indian in China; and, a policy decision will have to be taken whether in the light of the fact that post-1962, they did not seize any property of Indians, whether we need to seize the properties of Chinese. Those are policy issues that we will, have to examine.

2.2.8 In regard to some issues raised by the Members, the Home Secretary stated as under:

"whether the Custodian of the enemy property be there in perpetuity; whether the Custodian of the enemy property should not have a finite existence; it takes into account the properties, decides whether the properties have to be given to somebody, and rest of the properties are sold, the money is put into a Trust, decides that 75 per cent of what was due to those who came from Pakistan and were given only 25 per cent of their losses, subject to ceiling, look at it and pay them 75 per cent; then, the balance, which is there, maybe, goes back into the Consolidated Fund and, then, close this office once and for all."

2.2.9 When the chairman sought the view of Secretary, Department of Legal Affairs, on the apprehension of the Committee as to whether the Bill would withstand the judicial review or not, the Secretary opined as under:

"all the orders passed by the administrative authorities are subject to judicial review. The power of the High Courts and the Supreme Court cannot be taken away by any statute. Therefore, every order passed by any authority, whether in the Central Government or the State Government, are subject to judicial review. Whatever orders are passed, all of them can be scrutinized by the court in exercising the powers under articles 226 and 227, and sometimes wherever the Fundamental Rights are infringed, the Supreme Court can also take cognizance under article 32 of the Constitution. So far as appeal is concerned, it is a statutory remedy. Unless a statute provides for an appeal, appeal cannot lie to the higher court. But for writ jurisdiction or the power of court to take judicial review under articles 226 and 227, this cannot be taken away. This is the basic structure of the Constitution. Therefore, it cannot be infringed."

2.2.10 On a query by the Convenor of Sub-Committee as to how long it would take to complete the processing of cases, the Custodian of Enemy Property stated that 1,230 are pending as process cases, which are under inquiry. Reiterating what the Home Secretary stated the Custodian of Enemy Property agreed that there are infrastructure and manpower problems. He went on to add that, presently, no designated officer is in place in Mumbai Office of Custodian, who can give an opportunity of hearing to the concerned people. They had expected that the District officials would work for them but, unfortunately, the result was not that encouraging. The Custodian of Enemy Property further stated that, now, in principle, a post of Deputy Custodian has been created, who is expected to pursue these matters quickly to get the desired reports from the District Authorities and take a decision on this. He, therefore, informed the Committee that this process may take three to four years, because they have to provide opportunities to the concerned persons.

2.2.11 The Home Secretary further added that they were going to increase the manpower strength of the Custodian of Enemy Property. The proposal is with the Ministry of Finance. For the time being, they have asked them that they may take some people on contract basis. By September, the Home Secretary hoped to have all the people in position and thereafter they would begin the process of issuing notices, hearing the parties, etc.

2.2.12 The process of determining whether a property is Enemy Property is stated to have been expedited during 2009-10 and 2010-11 culminating into identification and vesting of 149 properties. The Ministry was asked about the time when the process has been carried out and the *modus operandi* thereof, the Ministry replied as under:

“The process of verification and identification of the enemy properties is going on for a long period due to absence of conclusive reports from the district authorities. The custodian has expedited the matter in recent years by issuing notices in some cases directly where partial reports / representations were made and orders were passed by him after affording opportunity of hearing to the concerned parties.”

2.2.13 The Home Secretary felt that the Courts have taken the word ‘custodian’ to mean that he was only keeping custody and the property belongs to somebody else. The Home Ministry, according to Home Secretary, says that once it is an enemy property, it belongs to the Central Government. The Central Government will then auction it off and distribute it to the people who have otherwise suffered by the enemy action. The Home Secretary added that the Custodian of Enemy Property is, actually, the owner of the enemy property and, therefore, they do not want the enemy property to be given back to other people, because then, there is no way, one can compensate the people who have otherwise suffered, the Indians who have suffered as enemy, whose properties have been taken over. He further stated that it was not to give benefit to any specific individual or otherwise. It is with reference to a particular Supreme Court Judgment which had been made earlier. It was suggested to make this Act retrospective and not affect those who have already complied with the decision of the Supreme Court. Subject to final verification, the Custodian says that wherever they have taken a decision that the property is not an enemy property, those properties have been returned; but wherever they have taken a decision that it is an enemy property, those properties continue to remain with them.

2.2.14 On a query as to whether rents were being received and people were staying in the enemy properties, the Custodian of Enemy Property informed the Committee that the properties are immovable properties. Particularly, in immovable properties, there must have been some resident even before the vesting took place. So most of the premises are tenanted even before the vesting took place, and, as such, the tenants and occupants are only paying at the old rates of rentals. He further stated that where it could have been possible, nominal increases have been made in rents.

2.2.15 According to Custodian of Enemy Property, most of the properties with the Custodian are mainly of Pakistan. He felt that it was Government of India's reprisal action. When Pakistan took properties of Indians, in reprisal thereto, Government of India issued a notification and issued orders to take control of properties. He further stated that when Defence of India Rules expired, Enemy Property Act was made.

2.2.16 The Convenor referring to the background note and pointing out to the words 'till a decision is taken for extinguishment of the Act', queried as to whether the Ministry of Home Affairs would foresee a time-frame of extinguishment of the Act. The Home Secretary replied that it might take five years' time. If it is done in three or four years time when all the properties are disposed of and nothing is left, then the office should be abolished.

2.2.17 The Convenor asked that if it may take two to four years just to identify whether it is an enemy property or not, and if they identify that the properties are enemy properties, then what would happen? The Home Secretary stated that a policy decision will be taken as to what is to be done with this.

2.2.18 When asked as to whether there was any cash in custody, the Custodian of Enemy Property stated that presently, approximately Rs.270 crore had been collected by way of income in cash. They were investing it in Treasury Bills and were in the process of identifying Government securities where they can invest it.

2.3 Application of Land Reforms Laws, Land Ceiling Acts Etc. To The Divestee

2.3.1 The written replies received from the Ministry on some of the queries are given in succeeding paras. One of the Members asked the Home Secretary as to whether other laws, i.e., Land Reforms Laws, Land Ceiling Act etc. shall apply to the divestee after divestment of the property. The Ministry of Home Affairs in the written reply stated as under:

“The enemy properties vested in the Custodian are not being subject to other laws of the respective State Governments. However, as and when it is divested from the Custodian and returned to the owner or his legal heir, all laws applicable to such properties shall apply. Ministry of Law has been requested to confirm this fact.”

2.3.2 Further the Ministry of Home Affairs also drew attention to the Section 22 of Enemy Property Act, 1968, which deals with the effect of laws inconsistent with the Act as under:-

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

2.3.3 The Law Ministry was requested to furnish its comments on the case of conflict between State Acts and the Central Act. They replied as under:-

“Under the Constitution of India, it is well-settled fact that where there is overlapping between the Union List and the State List, the Union List will have predominance. Article 246 (1) & (3) leave no manner of doubt on this account. In case of overlapping between the Union List and the Concurrent List, again the Union List must be preferred. In short, if any matter falls under an Entry in List I and also in List II, the Entry in List I shall prevail. This is called the principle of federal supremacy. The federation has pre-dominant legislative power. The State and Concurrent List are subordinate to it.”

2.3.4 The Ministry in its written reply to a query asked by a Member about the effect of the new amendments on the properties of Shri M.A.M. Khan, stated as under:-

“By virtue of provision in Section 26 (1) (b) of the proposed Enemy Property (Amendment & Validation) Second Bill, after it is passed, Shri M.A.M. Khan will be able to apply to the Central Government for release of the properties in his favour by producing evidence of his being legal heir. It may also be noted that the validity of the Enemy Property (Amendment and Validation) Ordinance, 2010 and action of re-vesting of the properties in the Custodian, has been challenged by Shri M.A.M. Khan before Delhi High Court in W.P. No.5288/2010. The matter is sub-judice.”

2.3.5 When the Ministry was asked about the impact of the proposed amendments on the cases, the Ministry stated that in the past a number of enemy properties were divested by Central Government in terms of the orders of the Supreme Court/High Courts and by virtue of the Enemy Property (Amendment and Validation) Ordinance, 2010, which is proposed to be replaced by the Bill in question, all these properties stand re-vested in the Custodian. The Ministry has further stated that a provision is being made in the Bill that claims of owner or their legal heirs may be considered by the Government by virtue of the proviso made under Section 26(1) (b).

2.3.6 The Ministry also mentioned that a number of cases are on-going before various courts and issues raised are regarding the status of the property or divestment of the property on the analogy of the Supreme Court judgement in Shri M.A.M. Khan case and the proposed amendments will have impact on these cases as they may become infructuous to the extent law has been amended. Besides, a number of claims have been made before the Central Government or the Custodian for release of the properties based on the court judgements. Such requests will be dealt with in accordance with the amended provisions.

2.3.7 The Ministry was also asked whether the Bill is an outcome of the Supreme Court judgement in Raja Mehmoodabad case and how many people are going to be affected by its enactment, the Ministry replied as follows:-

“The properties of Shri M.A.M. Khan had been divested back in 2005 pursuant to the orders of the Supreme Court. The Bill is an outcome of various complexities created over a period of time including the judgements of various courts including that of the Supreme Court. The role of the Custodian had been diluted considerably and it defeated the very purpose, for which the properties were vested in him in 1965. The amendment to the Enemy Property Act, 1968 is necessitated to overcome these difficulties as also to enable and empower the Central Government to divest properties in certain cases and order for disposal where there are no claimants.”

2.4 Effect Of Proposed Amendments On Tenants/Occupants

2.4.1 The Ministry was asked about the protection of the rights of tenants/occupants in case the properties are divested and returned to the owners or legal heirs, the Ministry drew the attention of the Committee to the following Specific provisions to this effect Section 26 (2) proposed to be inserted in the Enemy Property (Amendment & Validation) Second Bill, 2010:-

“Nothing contained in this Act shall affect any claim made by any person before any court or other authority against the owner or his lawful heir to whom the property was or may be returned under this Act and such claim shall be decided in accordance with law by the court or other authority, as the case may be.”

2.4.2 The Ministry further stated that the Supreme Court had appointed Justice D.P. Wadhwa, retired Judge of the Supreme Court to consider the claims of the tenants out of the properties, which were earlier divested in favour of Shri

M.A.M. Khan. Justice Wadhwa submitted his report in the Supreme Court upholding the claim of the tenants except in two cases. Shri M.A.M. Khan has challenged the report in the Supreme Court and the matter is sub-judice.

2.4.3 The Ministry was also asked about the legal remedies in case the property, which is to be divested is under adverse possession, the Ministry opined as under:-

“In the Bill under consideration, powers of Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are proposed to be delegated to the Custodian, Deputy Custodian and Assistant Custodian to remove unauthorised encroachments.”

2.5 Double Compensation

2.5.1 Late Raja MA Ahmad Khan, father of MAM Khan, migrated to Pakistan after partition. In 1965, war with Pakistan made all such properties left by the migrants declared as “Enemy Property”. It was also mentioned that the erstwhile Raja of Mehmoodabad was reported to be made High Commissioner in London, where he died in 1973.

2.5.2 The Ministry was asked to furnish information regarding whether father of Shri MAM Khan was compensated by Pakistani Government in return for the properties he left in India. The Ministry replied as under:-

“If a person has got compensation from the Government of enemy country, for the properties vested in the Custodian of Enemy Property for India, no divestment and return of the properties vested in the Custodian may be permissible. However, it is submitted that the Government of India has no information or communication regarding any compensation paid by the enemy country to erstwhile Raja of Mehmoodabad his wife and Shri M.A.M. Khan. Ministry of External Affairs has been requested to confirm this fact from Government of Pakistan through Diplomatic channels also.”

2.5.3 The Ministry earlier informed that Ministry of External Affairs has responded back that no report has been received in this regard.

2.6 Definition of Successor

2.6.1 The Ministry was asked whether it is only son or daughter or it is upto grandson and grand daughter or is it includes generations also as successors, the

Ministry stated that for the purposes of a claim by legal heir, following provision has been made in the Section 18 in the Enemy Property (Amendment and Validation) Second Bill, 2010:-

*“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, **if the owner is dead, to any lawful heir of the owner in accordance with the law of succession applicable to that owner, as may be specified in the direction, and thereupon such property shall cease to vest in the Custodian and shall re-vest in such owner or heir.**”*

“Provided that any person, claiming to be the lawful heir of the owner, shall obtain a succession certificate or a declaration to the effect that he is the lawful heir of the owner from a court of competent jurisdiction in a civil proceeding instituted for that purpose and the Central Government shall ordinarily accept such certificate or declaration, as the case may be.”

2.7 Jurisdiction of Courts

2.7.1 The judicial review is the basic feature of the constitution which has been entrusted to the constitutional courts, namely, the Supreme Court and the High Courts under Art. 32 and Arts. 226 and 227 of the Constitution respectively. It is the constitutional duty and responsibility of the constitutional courts, as assigned under the Constitution, to maintain the balance of power between the legislative, the executive and the judiciary.

2.7.2 By inserting new section, Section 18B, Government desires to put bar on the jurisdiction of courts in the matter of divesting to the effect that no court shall have jurisdiction to order divestment from the CEP. The Committee in this background asked whether this would not be against the basic structure of the Constitution.

2.7.3 The Ministry maintained that the insertion of new section in the Act is within the constitutional framework and is in consonance with the objects of the Enemy Property Act 1968. In The Enemy Property (Amendment and Validation) Second Bill, 2010 it has been provided that the courts shall have jurisdiction to adjudicate whether the property claimed to be vested in the Custodian is an enemy property or not. However, the courts shall have no jurisdiction to order

divestment from the Custodian of enemy property vested in him or direct the Central Government to divest such property from the Custodian.

2.7.4 The opinion of Law Ministry was sought on the issue, they furnished their comments as under:-

*“The Supreme Court in the case of L. Chandra Kumar Vs. UoI , AIR 1997 SC 1125, held that the power of judicial review over legislative action vested in the High Court under article 226 and in Supreme Court under Article 32 and the power vested in the High Court to exercise judicial superintendence over the decision of all courts and tribunals within their jurisdiction form an integral and essential feature and basic structure of the Constitution. Ordinarily, the power of Supreme Court and High Court to test the constitutional validity cannot be ousted. The Court held “we hold that clause 2(d) of Art. 323-A & Clause 3 (d) of Art. 323-B, to the extent they exclude the jurisdiction of the high courts and the Supreme Court under Arts. 226, 227 and 32 of the Constitution, are **unconstitutional**”.*

2.7.5 The Law Ministry further added that though Art. 227 is identified as a part of basic structure of the Constitution. The subordinate judiciary or Tribunals created under ordinary legislations cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental- as opposed to a substitutional role in this respect. That such a situation is contemplated within the constitutional scheme becomes evident when one analyses clause (3) of Article 32 of the Constitution which reads as under:-

“Without prejudice to the powers conferred on the Supreme Court by clause 1&2, Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)”

2.7.6 After giving abovementioned explanations, the Law Ministry maintained that judicial review is an essential feature of the Constitution and cannot be restricted by constitutional amendment.

CHAPTER- III

VIEWS OF THE STATE GOVERNMENTS ON THE BILL

3.1 Background

3.1.1 The sub-Committee on the Enemy Property (Amendment & Validation) Second Bill, 2010 at its first sitting held on 11th May, 2011 decided to seek written comments of all the State Governments, wherever enemy properties are situated in the first instance and also, if felt necessary to hear the Chief Secretaries, Home Secretaries and other concerned officials of the concerned State Governments on the Bill.

3.1.2 The Chief Secretaries concerned were accordingly requested to send comments on the provisions of the Bill latest by 10th June, 2011, and also reminded on 22nd June, 2011 to send their comments latest by 30th June, 2011. Only five States sent their views on the Bill. Thereafter the sub-Committee in its sitting held on 19th July, 2011 heard the Chief Secretary, Goa and on 27th July, 2011, the Chief Secretaries of Delhi, West Bengal and Uttar Pradesh. The Chief Secretary, NCT of Delhi was again heard on 10th October, 2011. The views of the State/UT Governments are as follows:-

3.2 Views of Government of UT of Daman & Diu

3.2.1 The Government of UT of Daman and Diu in its written comments stated that it had no objection to the proposed amendments in the Bill.

3.3 Views of Government of UT of Andaman and Nicobar Islands

3.3.1 The UT Government in its written comments stated that there is one case pertaining to House Property No. 83 at Aberdeen Bazar, Port Blair which is being contested by the interested person in the District Court. The UT Government expressed its agreement with the proposed amendments in the Bill and stated that the Administration initiated action to adopt instructions issued by the Government of India and the Deputy Secretary (Rev.), A&N Administration has been appointed Liaison Officer for all matters related to Enemy Property.

3.4 Views of Government of Meghalaya

3.4.1 The State Government stated that it has no objection to the proposed amendment of the Enemy Property Act, 1968 and the Central Public Premises (Eviction of unauthorized occupants) Act, 1971 proposed in the Enemy Property (Amendment & Validation) Second Bill, 2010.

3.5 Views of Government of West Bengal

3.5.1 The State Government in its written comments stated that it is in agreement with the proposed amendments to the Enemy Property Act, 1968 and the Public Premises (Eviction of unauthorized occupants) Act, 1971 proposed in the Enemy Property (Amendment & Validation) Second Bill, 2010.

3.5.2 The Sub-Committee in its sitting held on 27th July, 2011, heard the Chief Secretary, West Bengal on the Bill.

3.5.3 The Chief Secretary, West Bengal while endorsing the major provisions of the proposed Bill, made the following submissions:-

- West Bengal has 377 enemy properties spread over 13 districts and Kolkata. In Kolkata, the number of enemy properties is 121 and in 13 districts taking together, the number of enemy properties is 256. Out of these, the income receiving properties are 165; the number of declared cases is 19; the number of processed cases is 119 and the number of court cases is 74.
- The District Magistrates are the Deputy Custodians of Enemy Properties and they work under the supervision of the Custodian of Enemy Property.
- Not much attention has been paid to this subject of Enemy Property by the State Government, but now the matter is being reviewed with the District Magistrates. The State Government has formed a Committee comprising Home Secretary, Land Commissioner and Inspector General of Registration to review the issue.
- In many cases rents are in arrears. The District Magistrates have been instructed to act in accordance with the guidelines issued by the Custodian of Enemy Property as well as the Ministry of Home Affairs, that there should not be any registration in respect of the enemy properties. The records must be in the name of the Custodian of Enemy Property.
- The State Government requires a little more time to make a detailed survey of the enemy properties in the State, their present status, the present occupants and the condition of the properties, etc.
- The State Government is in agreement with various provisions of the Bill. However, in Sections 20 (1) and 20 (2) of the original Act, there is no

mention of the quantum of fine that can be imposed. Therefore the quantum of punishment and fine that may be imposed for violation may be specified in the proposed legislation.

- Regarding explanation to Section 6 dealing with transfers there is no need for putting this explanatory clause because in Section 3, there is already an explanatory clause saying, “It shall not include transfers through oral will or oral gift.” This will alone render all the transfers invalid.

3.6 Views of Government of Uttar Pradesh

3.6.1 In its sitting held on 27th July, 2011, the sub-Committee heard the Chief Secretary, UP on the Bill. The Chief Secretary, Uttar Pradesh suggested some modifications and made following submissions before the sub-Committee:-

- The amendments proposed in the Bill in Section 18 and 26 by insertion of Section 26(1) and provisos in Section 18, lay down that if the owner of the enemy property had been a citizen of this country since birth or his heir had been a citizen by birth and the heir establishes through the due process that he is the successor to the enemy property, then, in these two cases, the property would automatically re-vest with the owner or the heir, as the case may be.
- The Government of Pakistan in 1971 had sold all enemy properties and they had not followed any of these procedures. If we were to follow the principle of reciprocity, then, there should be no such provision being incorporated here. In 1965 Pakistan declared Emergency and issued orders for temporary take-over of all enemy properties. But in 1971 when Emergency was again declared on account of the war between India and Pakistan, they reintroduced that provision, but it was a permanent take-over of all enemy properties and subsequently they actually sold them out.
- By virtue of the Town Improvement Act, which came into existence in 1919, a lot of properties were given on grant, there were tenancies and not leases, to Talukdars. The tenancies were asked to build houses in those areas for purposes of residences of British officers, who used to live in European style on a payment of nominal rent. These are the residences which are now the residences of the DM, SP and such officers. These properties were never under their ownership; these properties were only under tenancies.
- A lot of land which is claimed as land belonging to Shri M. A. M. Khan is non-occupancy tenancy for which they have no title. A lot of this land was acquired under Land Acquisition Act, 1894, and there was a challenge before the Civil Judge on amount of compensation about these lands. There is no proprietorship that goes with it.

- Raja of Mahmoodabad filed a case before the Civil Judge in 1984 primarily for getting the succession certificate.
- The provisions of Oudh Estate Act are different from the provisions of Personal Law applicable to Raja Mehmoodabad as a member of a particular community. In Shariat, all the members of the family, including girls, are successors, while in the Oudh Estate Act, the principle of primogeniture was applicable. The eldest son succeeded to preclusion of all others. So, he specifically mentioned in his plaint that this case was being presented before the Civil Court under the Oudh Estate Act to which the provisions of CrPC did not apply.
- Oudh Estate Act is in existence. It has not been repealed.
- In 1980, the Union Cabinet decided that 25% of all enemy properties will be returned to the owners or the heirs. This could not be actually implemented. Therefore, the parties filed a case before the Civil Judge, Lucknow, in which only the Custodian of Enemy Property was made a party. Three other parties were the mother, the other plaintiff and two sisters. On that basis, for a list of properties, the Civil Court declared succession. The Government of U.P. was not made a party to that. Subsequently, when this matter came up before the Supreme Court, on the basis of that succession, the custodian was not in a position to transfer 25% of the land.
- Based on that, a case was filed in the Supreme Court and an affidavit was filed wherein a long list of the property was attached. It transpires that the list attached in the Supreme Court was different from the list for which the succession had been granted by the Civil Court. Therefore, it was not covered under the dispensation of succession. However, in that case, the Supreme Court passed certain orders, but those orders are now under review and the Supreme Court is reviewing.
- The State Government recommended amendments in Section 18 and the amendments in Section 26(1), especially with respect to the second proviso which comes after sub-clause 26(1)(b), as this amendment is not in the interest of the State, and it takes away the properties which are vested in the Custodian and not validly re-vestible in the owners or the heirs.
- The State Government is of the view that the provisions of the Enemy Property (Amendment and Validation) Ordinance, 2010 are valid provisions and they protect the interests of both the State and the nation.
- The proposed Bill seeks to take away the jurisdiction of all courts completely and then it says that in respect of an enemy property which has been vested in the Custodian, a owner or his heir can demonstrate that he is a citizen by birth, and that he is a successor to the owner. Then, nothing else should be done and all these properties would be restored to the owner.

- This Act will make many Acts like ceiling Act, Tenancy Act, Provision and Manuals of Land Revenue ineffective. Zamindari except in urban areas has been abolished in UP. In urban area, Tenancy Act is in vogue.

3.6.2 The State Government of Uttar Pradesh also furnished its written comments on the various provisions of the Bill, which are discussed below:-

3.7 Clause No. 1 (Retrospective Effect of the Enactment)

3.7.1 The State Government of Uttar Pradesh proposed that the Bill should not have retrospective effect.

3.7.2 The Ministry of Home Affairs replied that giving retrospective effect to the Act is necessary to give validity and continuity to the actions taken under the Enemy Property (Amendment and Validation) Ordinance, 2010.

3.8 Clause No. 2 (3)

3.8.1 The State Government suggested that inclusion of the word "till it is divested by the Central Government," in the proposed sub-section 3 of section 5, in the Act would result in a lot of administrative problems.

3.8.2 The MHA has commented that the divesting of the property from the Custodian is to be decided by the Central Government only and hence the above said provision is needed to provide for clarity in the matter.

3.9 Clause No. 9

3.9.1 The State Government of Uttar Pradesh felt that insertion of new Sec.18 is against the interest of the State of UP and public at large.

3.9.2 According to the State Government of Uttar Pradesh, in Enemy Property (Amendment and Validation) Ordinance, 2010, a new Section 18B was added with the intention to prevent unnecessary interference of Courts, who of and on passed orders to the Custodian to divest even the State properties, without considering or analyzing revenue records and brushing aside the provisions of Para A-124 of UP Land Record Manual as well as UP Tenancy Act 1939. However, in the Enemy Property (Amendment and Validation) Second Bill, 2010, a new section 18 has been added with a specific facility to the heir of the enemy property by introducing an addition in Section 18.

3.9.3 The U.P. Government vehemently opposed this new addition due to reasons given below:-

- It frustrates the basic soul of the Principal Act.
- It latently confers the right of ownership on the enemy and sidelines the interest of the State.
- It also fails to protect the interest of the Nation as it does not put any rider that if the enemy's heir has also enjoyed and inherited the fruits and benefits of the property situated in enemy country, then he should not be allowed to take benefit in this country.
- Principles laid down in Tashkant Peace Treaty 1966, are being violated in this newly substituted section 18 of Bill. The Government of U.P. suggested deletion of modified Section 18 of the Enemy Property Act as mentioned in Clause 9 of the Bill.

3.9.4 The Ministry of Home Affairs in its comment on the suggestions stated that the Standing Committee may consider this suggestion of the State Government. The Ministry also stated that if the Standing Committee is inclined to accept this suggestion, then the following words may be added in clause 9 of the Bill in line 22, after the words, "in such manner": "and in such cases or in such classes of cases"

3.10 Insertion of Section 18A and 18B to the Act (Clause 11)

3.10.1 In lieu of section 18 of the Enemy Property Act, 1968, the State Government has suggested insertion of the following as Section **18A** and **18B** to the Act.

"18A- Any income received in respect of any property whether vested or managed by the Custodian shall not be divested to any individual person or any claimant rather heir, successor or legal representative in any manner and shall not be returned unless directed by the Central Govt."

"18B- No court shall have jurisdiction to order divestment from the Custodian of Enemy property vested in him under this Act. No court shall have right to entertain any suit proceedings whatsoever in respect of any property vested in the Custodian in respect of any person, representative claimant on the basis that he be declared to obtain ownership right in the property as heir and successor of enemy."

3.10.2 Ministry of Home Affairs in its comments was not agreed to the suggestion of the Government of Uttar Pradesh because, according to the

Ministry, what is sought for by the Government of U.P. is already adequately provided for in Section 18A & Section 18B.

3.11 Insertion of New Section 26 (Clause No. 14)

3.11.1 According to the State Government of Uttar Pradesh proposed provisions to new section 26(1) (b) in the Enemy Property (Amendment and Validation) Second Bill, 2010 are against the interest of the nation as well as the State because it has been added for giving special facility to the heir of the enemy. The State Government, therefore, suggested deletion of the two provisos to Section 26(1) (b) of the Bill.

3.11.2 The State Government of Uttar Pradesh made the following submissions:-

- The spirit of Tashkent Peace Treaty 1966 is being violated and is not being kept under consideration.
- If an heir of Enemy is allowed to re-occupy the property, then at least he must not be given rights superior to what was originally given to his ancestor as mentioned in revenue record which are according to U.P. Land Record Manual.
- There are many enemy properties where Government Institutes, Government Industries, Government Colleges, Government Offices, Officer's and Staff residence are situated. Such buildings or public utilities should not be allowed to be disturbed.
- During partition of India a large number of refugees (persons displaced from Pakistan) were given land for rehabilitation. This land was duly acquired to establish and rehabilitate the refugees, who are living at that place for more than six decades. Unfortunately, the land validly acquired and land which was validly disposed off by the ancestor of the heir of enemy will again be given to the heir of enemy who has no right or title over the land.
- Introduction of the Enemy Property (Amendment and Validation) Second Bill, 2010 may result in giving undue benefits to some individuals. In 1984 Raja Mahmudabad obtained decree by misleading the Civil Court in a case in which even the State was not made a party. The Ancestor of Raja Mahmudabad acquired Taluqdari in 1869 from British Government besides title of Knight Commander of Imperial Empire.

3.12 The State Government of Uttar Pradesh has also enumerated historical background of Taluqdari rights of Raja of Mahmudabad as under:-

“In 1857 struggle for freedom which was named by Britishers as “Mutiny” took place. This struggle was ruthlessly suppressed by East India Company with the help of some individuals. The British confiscated the entire land and proposed that Taluqa should be given to the men who have actively aided the British. The Indians loyal to the British executed a Bond known as “Sanad Kabooliyat” in which the persons who had actively aided the British against the Indian freedom fighters and were desirous of enjoying British patronage and to become Taluqdar. Those persons took vow which meant that they shall be called upon to perform and of showing constant good faith, loyalty, zeal and attachment to the British Government and breach of any one of which at any time shall be held to annul the right and title now conferred on the person and his heirs. Ancestor of Raja Mohd. Amir Mohd. Khan, namely Raja Mohd. Amir Hasan Khan executed this sanad and acquired Taluqdari Rights. His name is mentioned at serial No. 86 of List No. 1 of Taluqdars. As father of Raja Mohd. Amir Mohd. Migrated to Pakistan and became citizen of Pakistan so much so he acquired property in the enemy country and committed inimical acts towards Union of India. It is pertinent to mention that by virtue of Independence of India Act, 1947, the word “British Government” where ever occur in the Statute is substituted by the word “Union of India or State”. Thus when father of Raja Mohd. Amir Mohd. Khan became enemy to the country, all rights in the Taluqdari property vested in him automatically annulled and his son Raja Mohd. Amir Mohd. Khan cannot get any property in the Taluqdari property. Thus, Bill No. 124/2010 is ultra vires and against the provision of law. The other important thing which has to be pointed out is that most of the properties proposed to be handed over to Raja Mohd. Amir Mohd Khan is recorded in the name of State of U.P. or Union of India as owner and Raja Mohmudabad is mere non-occupancy tenant whose rights have already extinguished long back. If provisions of U.P. Land Record Manual especially Para A-124 are ignored then thousands of acres of State land will slip away from the ownership of the State and thousands people will claim ownership over State land, thus State of U.P. will suffer irreparable loss. Raja Mahmudabad is recorded as lessee and non-occupancy tenant in most of the land which was given to him for development of township for providing residential facilities to civil servants living in European Style. Thus, no right or ownership can be conferred upon him by way of provision of Section 18 & 26(i)(b) (i) (ii) of Bill No. 124 of 2010. An apologue preposterous and incongruous story arose from a Civil Suit No. 219 of 1984 instituted by Raja Mohd. Amir Khan without arraying State Govt. of U.P. as party.

Raja Mohd. Amir Mohd. Prayed for declaration over certain properties mentioned in the list attached with plaint. This suit was decreed by the Court of Civil Judge Lucknow. Later on Raja Mohd. Amir Mohd. Filed a writ petition No. 1524 of 1997 giving list of different properties. Raja Mohd. Amir Mohd. furnished a wrong affidavit in the Supreme Court in contempt petition No. 87 of 2006 settling to mislead the court and stated in para 3 of the affidavit that “Ex. A or Writ Petition is identical to the list filed in regular suit No. 219 of 1984. It is clear that Raja Mohd. Amir Mohd. gave false affidavit in the Supreme Court in order to grab the property so much so leading devious route made all attempts to prove that he is owner of the properties which actually belong to the State of U.P. Raja Mohd. Amir Mohd. raised claim over those properties too which were acquired by the State for rehabilitation of refugees during partition of the country.”

3.12.1 In the light of above mentioned historical background by the virtue of effect of Oudh Estate Act all the properties of person and his heirs who become enemy and disloyal to the Government have been vested in the State/Union of India, hence the proposed Bill is totally *ultra vires* and unconstitutional. The State of U.P. strongly opposed this Bill, especially insertion of new section 5(3), 18 & 26(1) (b) (i) (ii) and suggested that the Enemy Property (Amendment and Validation) Ordinance, 2010 be restored.

3.12.2 Comments of the Ministry of Home Affairs on the views/objections of the state Government of Uttar Pradesh were sought by the Committee Secretariat. The Ministry in its written comment has stated that the second proviso in the new Section 26 is intended to deal with cases where the enemy property had been otherwise divested from the Custodian

- (a) by an order of a court; or
- (b) without any direction under Section 18

and returned to the owner or his heir before 2nd July, 2010. The Ministry further added as under:-

“This assumes that the order of the court is a valid order and remains valid when the present Bill becomes a law. It appears that the Government of U.P. has a particular case in mind. In that case, according to the Government of U.P., they have already filed a petition for review in the Supreme Court of its earlier judgement. If the earlier judgement is reviewed, then the order of the court would cease to remain a valid order. Consequently, any divestment, pursuant to that order even for a few days, would cease to be valid

divestment, and in such cases, the second proviso to the new section will not be attracted. After a fresh claim is made by the owner or by his heir, the Government of U.P. is entitled to examine it on its merits. Hence, it does not appear necessary to make any further modifications to Section 26 as introduced. Government of U.P. may obtain appropriate relief from the Supreme Court in the petition filed by them for review of the earlier court order in that case.”

3.13 Views of Government of Goa

3.13.1 In its sitting held on 19th July, 2011, the Sub-Committee heard the Chief Secretary, Government of Goa on the Bill. The Chief Secretary, Goa while endorsing the provisions of the proposed Bill made following submissions:-

- There are 122 enemy properties located in the state of Goa. Out of which, 112 properties are situated in North Goa District and the remaining 10 properties are in South Goa District.
- Out of 122 enemy properties, 120 properties have been vested in the Custodian and the State Government is verifying remaining 2 properties.
- Out of 120 vested properties, 117 properties have been put under mutation.

3.13.2 During the discussion a specific query cropped up as to which law would prevail on a property vested in custodian which falls under the State Agriculture Land Tenancy Act. The Legislative Secretary who was asked to comment made following submission:-

“Under the scheme of the Constitution, as the hon. Members are aware, there are List I, List II and List III -- whenever a State legislation comes in conflict with the Central legislation, the State legislation, to that effect, is deemed to be revoked, and the Central law prevails there. Now, even in the case of Goa, my feeling is that the same situation should apply because I do not find any special provision as such. I remember, about a few years ago, we amended the Income Tax Act relating to Goa. There is a particular system of Goa family, just like we have the Hindu Undivided Family, and we amended the law and gave effect to local traditions of taxation. If that had been possible, they would have done it by themselves. Taking cue from that, I am of the view that the Central law should prevail.”

3.14 Views of Government of NCT of Delhi

3.14.1 The Sub-Committee heard the Chief Secretary, Government of NCT of Delhi, in its sitting held on 27th July and 10th October, 2011 on the Bill.

3.14.2 The Chief Secretary, Government of NCT of Delhi at the sitting held on 27th July 2011 endorsed the major provisions of the proposed Bill. He also suggested some minor modifications along with the following submissions:-

- The State Government of Delhi is following the directions of the Custodian of Enemy Property and registration of properties, declared as Enemy Property by the Custodian, had been banned because there were some cases where registration had taken place.
- In Delhi, there are nine districts and ADMs have been declared as Deputy Custodian.
- Out of the nine districts, only one district has all the enemy properties.
- As regards the total number of properties in Delhi, the owners are 74 and there are 12 income dispute cases and 14 declared court cases.
- The NCT of Delhi is facing many problems in the implementation of the Act. One is that there are no rules at the moment and there is a need to frame rules. Section-3 of the Delhi Rent Control Act provides that this will not apply to the Government properties. But the courts are entertaining cases. So, there should be a provision that the properties which were declared Enemy Properties should be treated at par with Government properties. Otherwise, there will be a lot of litigations in the courts and a lot of time and energy is getting wasted in this process. The NCT of Delhi appreciates the empowerment of the Deputy Custodian.
- In Clause 5 of the Bill, the word “periodically” may be added before the word “and collect the rent” so that the rent could be revised after every five years. The Supreme Court had also in various judgments accepted that the rent could be revised periodically.
- With regard to Clause 6, the properties which are sold must be registered. Only sale certificate is not enough. There could be a provision that they should be registered within ninety days and, for reasons to be recorded, the Custodian may extend the period for 180 days.
- Under section 20(3) of the Act, the proposed fine of Rs. 500/- should be increased to Rs.5,000/-.

3.14.3 As the Chief Secretary and his officials were not having updated information. He was again heard on 10th October 2011. In the said sitting, he made some suggestions which are discussed below.

3.14.4 The word “receipt” in Section 10A (1) of the Bill may be substituted in place of word “certificate”. The Chief Secretary of Delhi stated that the word “receipt” may be substituted for the word “certificate” to avoid the loss of revenue. A period of 90 days must be given to get the property registered in the office of Sub-registrar and the purchaser must pay the stamp duty and get the property registered in his/her own name. If the property does not get registered within that period, an extension of another 90 days should be given. If he fails to register within this period of 180 days, he/she must again go to the Custodian of Property to get permission. The whole idea is that the stamp duty, which is one of the revenues of the State, should not be lost.

3.14.5 The MHA in its reply has clarified that the word “receipt” has been used with reference to the “receipt of sale proceeds”. On receipt of sale proceeds it would be necessary to issue a certificate of sale.

3.14.6 The Legislative Secretary during the meeting held on 10th October 2011 stated that under Article 285 of the Constitution of India, all the properties of the Union are exempted and the issue whether stamp duty can be levied on a property which is vested with the Custodian needs to be examined. In response, the Chief Secretary, NCT of Delhi stated that Stamp duty should be levied in case the Custodian has arrived at a decision that the property will be given to private person, who in turn wants to register that property in his/her own name.

3.14.7 On the issue of levying stamp duty or the municipal taxes on the properties during the period in which the properties were vested in the Custodian and which is now being transferred to the claimant or the purchaser. The Legislative Secretary opined that once it was in the custody of the Custodian, *prima facie* it would appear that it was in the custody of the Government and the Government was the owner and no taxes can be imposed on the property of the Union. However, the matter needs to be examined.

3.14.8 **Clause 3 of the Bill-** After Section 5 of the principal Act, the following section shall be inserted and shall be deemed to have been inserted, namely:-

“5A. The Custodian may, after making such inquiry as he deems necessary, by an order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him

under this Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein.”

3.14.9 The Chief Secretary, NCT of Delhi during his oral evidence before the Committee suggested that the idea of a certificate is already there in Section 5. However, a revised format needs to be devised for issuing such certificate.

3.14.10 The Ministry of Home Affairs has commented that format of certificate to be issued by the Custodian would be worked out while framing Rules under the Enemy Property Act after the Bill is passed.

3.14.11 **Clause 5 of the Bill-** The State Government has suggested that Section 8(2) (ia) of the Act may be modified as under:

“Periodically fix and collect the rent, standard rent, lease rent, license fee or usage charges, as the case may be, in respect of enemy property.”

3.14.12 The Ministry of Home Affairs in its reply has stated that it is not felt necessary to amend the Bill at this stage as suggested by the Government of NCT of Delhi. However, the suggestion of the State Government would be kept in view while framing Rules under the Act.

3.14.13 **Clause 6 of the Bill-** The State Government has proposed insertion of following additional sub-section under Section 10(1) of the Enemy Property Act, 1968:

“Pursuant to the issue of such certificate as mentioned at Sub-section (1) above, the purchaser shall, within 90 days of the date of issue of the certificate, get such immovable property registered in his name in the office of Competent Registering Authority after paying the requisite stamp duty. The aforesaid period of 90 days shall be extendable by the Custodian of enemy property by another 90 days on submission of reasonable cause to the satisfaction of the Custodian of Enemy Property. On the expiry of the period of 180 days from the date of the issue of certificate, in case the property has not been registered before the Competent Registering Authority, the certificate shall lapse and a fresh application will have to be4 moved by the Purchaser before Custodian of Enemy Property for issue of a fresh certificate in accordance with the procedure laid down in Sub-section 1.”

3.14.14 The MHA in its written comments has stated that a new Sub-section proposed by State Government relates to procedure of registration of properties

by the purchaser of the enemy property after the same is sold by the Custodian and the appropriate procedure in this regard would be incorporated in the Rules relating to disposal of immovable properties by the Custodian after the Bill is passed by the Parliament.

3.14.15 **Clause 8-** In Section 17(1) of the Principal Act the word “*Ten per centum*” may be substituted in place of “*Five per centum*”.

3.14.16 The Ministry feels that “*Five per cent*” provided for contribution to the consolidated fund for running the office and administrative expenses of the Custodian is adequate.

3.14.17 **Clause 11 of the Bill-** 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 of in such manner as may be prescribed.

3.14.18 The Chief Secretary, NCT of Delhi suggested that the “procedure and manner” should be defined so that there is no discretion and there can be no debate on this issue.

3.14.19 **Clause 12 of the Bill-** Section 20 of the Principal Act may be amended by substituting the word “*Five Hundred Rupees*” with the word “*Ten Thousand Rupees*”.

3.14.20 According to the Ministry of Home Affairs, the amendment proposed by the State Government has already been incorporated in the Bill.

CHAPTER- IV

VIEWS OF OTHER STAKEHOLDERS AND EXPERTS AND REPLIES OF THE GOVERNMENT THEREON

4.1 Decision for inviting memoranda from public/stakeholders

4.1.1 As stated earlier, the Committee in its sitting held on 2nd February, 2011, decided to seek written memoranda from public/stakeholders interested in the subject matter of the Bill. Following this decision, a Press Release was issued seeking written Memoranda from public/stakeholders, latest by 15th March, 2011 which was subsequently extended upto 15th April, 2011 so that a large cross-section of the society, affected parties and the general public, could get an opportunity to submit their views/comments on the said Bill. In response, several memoranda were received by the Committee. On scrutiny, some memoranda were found to be of individual case, which were forwarded to the Ministry for necessary action. However, the memoranda, wherein, several issues/suggestions/comments that had been raised/made by the individuals/organizations/stakeholders were sent for written comments of the Ministry of Home Affairs. On perusal, the Committee noted that some issues such as jurisdiction of courts and arbitrary powers to Central Government were also raised by Members of the Committee and State Governments. Those issues have been dealt with in earlier chapters and mere repetition of the same will not serve any purpose. However, following some of the additional major issues raised and the responses of the Ministry of Home Affairs thereon, are enumerated as below.

4.2 Retrospective effect of the Bill

Views/Suggestions

4.2.1 Section 1(2) of the Bill provides “Save as otherwise provided in the Act, it shall be deemed to have come into effect on the 2nd July, 2010.” Thus, provisions of the Bill would have retrospective effect. The Bill should not have retrospective effect.

Comments of the Ministry of Home Affairs

4.2.2 Section 1(2) of the Bill provides “Save as otherwise provided in the Act, it shall be deemed to have come into effect on the 2nd July, 2010.” Therefore, provisions of the Bill relating to procedural aspects would have prospective effect and others would have retrospective effect. There have been a number of

judgements of various courts that have adversely affected the powers of the Custodian/Central Government provided in the Act. Because of such interpretation of the Act by various courts, the Custodian has been finding it difficult to sustain his action under the Act. Therefore, some of the amendments to the Act mentioned in the Bill, as specified therein, have been given retrospective effect to clarify the legislative intention of the Act.

4.2.3 The Bill provides, inter alia, that if the enemy property had been divested from the Custodian by a valid order under Section 18 of the Act prior to 2nd July, 2010 or where the property had been returned to the owner or his lawful heir by an order of a Court and the Government is satisfied that the property was returned to the owner or the lawful heir, such enemy property would continue to remain with such persons. In the Statement of Objects and Reasons of the Bill, it has also been clarified that the provisions of the Bill shall not affect the claim made by any person before any court or other authority against the owner or his lawful heir to whom the property was or may be returned under the Act and such claim shall be decided in accordance with law by the court or other authority as the case may be.

4.3 Limited Powers of Custodian

Views/Suggestions

4.3.1 The Enemy Property Act, 1968 does not confer the title of Enemy Properties on the Custodian/Central Government as the Act provides for preservation and management of enemy properties by the Custodian.

Comments of the Ministry of Home Affairs

4.3.2 While Section 8(1) of the Enemy Property Act, 1968 empowers the Custodian to preserve enemy property, the Section 8(2)(vii) of the Act empowers the Custodian to transfer by way of sale or disposal of any of the enemy properties. Since powers to sell enemy properties vested in him is already available to the Custodian under the Act, insertion of sub-Section 5(3) and its Explanation provided in Enemy Property (Amendment and Validation) Second Bill, 2010 clarifies that any property vested in Custodian includes all titles, rights and interest in such properties.

4.4 Wider powers to Custodian are not justified

Views/Suggestions

4.4.1 The principal act empowers the Custodian to preserve enemy property and to transfer by way of sale or disposal of any of the enemy properties. The proposed Enemy Property (Amendment and Validation) Second Bill, 2010 states that any property vested in Custodian includes all titles, rights and interests in such properties.

Comments of the Ministry of Home Affairs

4.4.2 The powers similar to those being conferred on Custodian under sub-Section 11(3) of the Enemy Property (Amendment and Validation) Second Bill, 2010 are available to many functionaries dealing with matters of enquiry/investigation/inspection etc. Such powers need to be conferred on Custodian so as to enable him to function more effectively.

4.5 Bill is unfair to Indian Muslims

Views/Suggestions

4.5.1 The Bill is unfair and may create problems for the people of Muslim community. The Bill would take away the properties of Muslims, which is unfair.

4.5.2 Indian Muslims would be deprived of their legal rights to seek judicial redressal and claim their properties vested in the Custodian.

4.5.3 The Bill does not take into consideration Muslim Personal Law where oral gift or Hiba is acceptable.

Comments of the Ministry of Home Affairs

4.5.4 Under the Enemy Property Act, 1968, only the properties of Chinese and Pakistani nationals are vested in the Custodian. Vesting of enemy properties with the Custodian is not linked to persons belonging to any particular community.

4.5.5 The properties of Indian nationals belonging to Muslim community are not vested with the Custodian and will not be vested with the Custodian even after the amendments to the Act.

4.5.6 The applicability of Muslim Personal Law with regard to transfer of enemy property or any claim of transfer of enemy property through oral will or oral gift would be examined in consultation with Ministry of Law.

4.6 Rights of Legal Heirs

Views/suggestions

4.6.1 Legal heirs should not be dispossessed of properties and they should be allowed to approach courts for redressal of their grievances.

Comments of the Ministry of Home Affairs

4.6.2 Section 18 of the Enemy Property (Amendment and Validation) Second Bill, 2010 provides that the enemy property vested in the Custodian could be divested from him and returned to the owner or their legal heirs. It is further clarified that the provisions of the Bill shall not affect the claim made by any person before any court or other authority against the owner or his lawful heir to whom the property was or may be returned under the Act and such claim shall be decided in accordance with the law by the court or the authority as the case may be. It is also clarified that the courts shall continue to have jurisdiction to adjudicate whether the property to be vested in the Custodian in an enemy property or not.

4.7 The Bill nullifies the judgement of Supreme Court

Views/Suggestions

4.7.1 The Bill nullifies the judgement of Supreme Court delivered in 2005.

Comments of the Ministry of Home Affairs

4.7.2 The Bill provides, inter alia, that if the enemy property had been divested from the Custodian by a valid order under Section 18 of the Act prior to 2nd July, 2010 or where the property had been returned to the owner or his lawful heir by an order of a Court and the Government is satisfied that the property was returned to the owner or the lawful heir, such enemy property would continue to remain with such persons. In the Statement of Objects and Reasons of the Bill, it has also been clarified that the provisions of the Bill shall not affect the claim made by any person before any court or other authority against the owner or his lawful heir to whom the property was or may be returned under the Act and such claim

shall be decided in accordance with law by the court or other authority as the case may be.

4.8 Compensation to persons who migrated to India leaving behind their properties in Pakistan

Views/Suggestions

4.8.1 The 3/4th claim for compensation of persons left, who left behind their properties in Pakistan, have not yet been settled.

Comments of the Ministry of Home Affairs

4.8.2 The ex-gratia scheme of 1971 was to provide for ad-hoc compensation to Indian nationals who lost their properties in Pakistan. Government may take a decision in the matter at appropriate time for final settlement of the issue.

4.9 Change in Section 26 of the Bill

View/Suggestions

4.9.1 Delete the words ‘and returned to the owner or to his lawful heir’ from sub-section (i) of second proviso to Section 26(b) of the Bill for denying the enjoyment of rights accrued to the beneficiaries of the Supreme Court decision in the Raja of Mahmoodabad case.

4.9.2 Replace the words ‘in any other case’ in sub-section (ii) of second proviso to Section 26(b) of the Bill with the words “in cases where the owner or the lawful heir, as the case may be, is not a citizen of India.”

4.9.3 Section 26 (b) of the Bill be suitably modified to ensure that no difference is made in relation to the method of divestment of the property.

Comments of the Ministry of Home Affairs

4.9.4 Second proviso to Section 26 (b) of the Bill need not be amended as existing provisions have been incorporated so as to ensure that where the enemy property had been divested by an order of the court or without any direction under Section 18 of the Act and returned to the owner or his lawful heir who are citizen of India by birth, such properties may continue to vest in such owner or the lawful heir subject to the owner or his lawful heir meeting the condition stipulated in sub-Section (i) of Section 26(b). As this amendment is proposed to honour court order and is not intended either to deny or confer any rights on the

properties of any particular individual, the amendments suggested may not be agreed to.

4.10 Office of CEP in Delhi

Views/Suggestions

4.10.1 The office location of Custodian of Enemy Property for India should be at New Delhi instead of Bombay.

Comments of the Ministry of Home Affairs

4.10.2 There is no proposal to shift the office of Custodian from Mumbai to Delhi. A branch office of the Custodian is functioning at Kolkata and a proposal to set up a branch office of the Custodian at Lucknow is under consideration.

4.11 Sale of Property to the Kith and Kins of Migrated Persons

Views/Suggestions

4.11.1 Suitable provisions should be inserted to enable the Custodian to sell the property to the co-sharer or the kith and kin of the person, who migrated to Pakistan.

Comments of the Ministry of Home Affairs

4.11.2 As and when rules for disposal of enemy properties are framed, the suggestion of the petitioner may be considered.

4.12 Return of properties to Hindus and Sikhs who migrated from Pakistan

Views/Suggestions

4.12.1 In the Bill provision may be made for return of properties of Hindus and Sikhs, who had migrated from Pakistan to India after independence.

Comments of the Ministry of Home Affairs

4.12.2 The Bill is not intended to settle issues on religious/communal lines. Its object is to settle the issues of enemy properties vested in the Custodian.

4.13 Disposal of Enemy Properties

Views/Suggestions

4.13.1 The preservation and management of enemy property does not serve national interest.

Comments of the Ministry of Home Affairs

4.13.2 The properties vested in Custodian must be preserved by the Custodian till such properties are divested from him and either returned to eligible persons or disposed off by the Custodian.

4.14 Oudh Estates Act, 1869

Views/Suggestions

4.14.1 Provisions of Oudh Estates Act, 1869 have not been considered in the Bill.

Comments of the Ministry of Home Affairs

4.14.2 The matters relating to the Oudh Estates Act, 1869 are within the purview of Government of UP and cannot be part of the Enemy Property (Amendment and Validation) Second Bill, 2010.

4.15 Bill Intended to Favour a Particular Individual

Views/Suggestions

4.15.1 The Second Bill favours a particular individual from UP. Therefore, the Bill should be identical to Ordinance promulgated in the 2nd July, 2011.

Comments of the Ministry of Home Affairs

4.15.2 The Bill is not intended either to deny or confer rights to property of any particular individual. The Enemy Property (Amendment and Validation) Bill, 2010 to replace the Ordinance was not passed and has since been withdrawn.

4.16 Change in Section 18

Views/Suggestions

4.16.1 Explanation to Section 18 B of the Bill is confusing.

Comments of the Ministry of Home Affairs

4.16.2 Explanation to Section 18B of the Bill is to clarify that courts would continue to have jurisdiction to adjudicate whether the property claimed to be vested in the Custodian in an enemy property or not. Hence, there is no question of confusion on this issue.

4.17 Change in Section 18C of the Bill

Views/Suggestions

4.17.1 Modify Section 18 C of the Bill as it provides excessive powers to Central Government.

Comments of the Ministry of Home Affairs

4.17.2 Section 18 C of the Bill need not be amended as rules for disposal of enemy properties vested in the Custodian would be framed after the Bill is passed.

4.18 Change in Section 26

Views/Suggestions

4.18.1 Sub-section (i) of the second proviso to Section 26(1)(b) is intended to benefit persons like M.A.M. Khan.

Comments of the Ministry of Home Affairs

4.18.2 Subsection (i) of second proviso to Subsection 26(1)(b) is intended to honour court orders following which enemy properties have been divested from the Custodian and returned to the owner or his lawful heir before promulgation of the Ordinance on 02.07.2010 subject to the owner or his lawful heir meeting the condition stipulated in sub-Section (i) of second proviso to Section 26(1)(b) of the Bill.

4.19 Oral Evidence of Individuals/Stakeholders

4.19.1 The Committee had the benefit of the views of Shri Lal Ji Tandon, MP, Lok Sabha from Lucknow, UP, Shri Ram Jethmalani, MP, Rajya Sabha & an eminent lawyer. The Committee also heard the stakeholders, including Shri Mohammad Amir Mohammad Khan, the erstwhile Raja of Mehmoodabad on the Bill. These witnesses gave valuable suggestions/comments on the provisions of the proposed Bill, which are discussed below.

4.20 Suggestions/views of Shri Lal Ji Tandon, MP, Lok Sabha from Lucknow, UP

4.20.1 Shri Tandon came alongwith representatives from his constituency of Lucknow, who were said to be affected by the provisions of the Bill in the sitting of the Sub-Committee held on 10th August, 2011. Shri Tandon made the following points:-

- Out of the total Enemy Properties located in Uttar Pradesh, roughly 80% is claimed by one individual and the proposed Bill has been drafted in order to favour that particular individual.
- There were several inconsistencies in the judgments given by the Courts in the context of settlement of disputes of enemy properties and the Government promulgated an ordinance to correct the same. The above ordinance was tabled in the Lok Sabha in the form of a Bill, but was opposed.
- A present Cabinet Minister who had represented the Raja of Mahmoodabad in the courts is behind the present Bill in order to favour the Raja so that the earlier ordinance could be made defunct.
- The Bill is a fraud on the Parliament as it tries to favour an individual claiming properties worth Rs. 20,000 crore.
- When, according to the treaty, the Raja had lost his claim on the property, how his successors can lay claim to the same. Moreover, after partition, properties of Migrants were declared as evacuee properties and were settled by the Custodian. Migrants got equivalent property in the country they have migrated. Since the previous Raja had migrated to Pakistan and took active part in formation of Pakistan, he lost his claim on the property and therefore claims of his successors cannot stand.
- Such enemy properties have been used for setting up of refugee colonies like those in Sitapur District in Uttar Pradesh. Similarly Government offices, sugar mills, schools and colleges,

administrative buildings have been opened in such properties which are now being claimed by a single individual.

- Tenants on such properties also have rights which will be violated if the properties are evacuated.
- The provisions of the Bill will make Urban Land Ceiling Act and other State Laws ineffective.
- UP Government which is the main affected party has not been made a party in the case.
- If the enemy property claimed by Raja Mahmoodabad is returned to him which amounts to roughly 80% of the enemy property, there is no point in keeping a Custodian for the rest of the 20% and same should also be returned to the remaining poor claimants.
- The issue is not an issue of minority vs. majority as the affected people are poor people belonging to all the communities. Moreover, there are properties like Imambadas, Mosques and natural water bodies which belong to communities and not to individuals.
- The Government has invested crores of rupees in properties which are now being claimed by the Raja. Five Districts of UP Lucknow, Sitapur, Hardoi, Barabanki and Pilibheet and Nainital in Uttarakhand are affected by the provisions of the Bill.
- The change of ownership will severely affect people who have migrated from Pakistan, and after a long struggle, have been able to establish themselves.
- The earlier ordinance was more in consonance with principle of justice rather than the present Bill which is before the Committee.

4.20.2 The other members of the delegation expressed the following views/points:-

- The provisions of earlier ordinance dated 2 July 2010 which was drafted after careful consideration in national interest, should be incorporated in the Bill.
- All the facts relevant to the case were not presented to the courts like the description of the properties and the number of the families likely to be displaced.
- The ordinance dated 2 July, 2010 was promulgated in order to meet the extra ordinary situation created by the order passed by the Supreme Court in October, 2006 whereby a spate of cases were filed in the courts claiming enemy properties.

- Before 1965 the tenants were paying the rent to the Raja or his representative. However, after 11 September 1965, declaring properties as enemy properties under the Defence of India rules, the rent is being paid to Custodian of Enemy Property.
- There are 54 tenancies in Lucknow, 3-4 bungalows in Sitapur, a refugee colony known as Sindhi Colony in which the properties had been sold by the late Raja to those people who were staying there under registered deeds. Such properties are also affected by the Supreme Court order and such owners are also being asked to vacate.
- The tenants enjoy protection under the Rent Control Act. They pay rent decided by the Custodian which is increased by 10 % every three years.
- The tenants were asked to vacate the properties on the basis of contempt proceedings. The tenants then approached the courts and got a stay order on the basis of the record and rent receipts of the past years. The Justice Goswami Committee appointed by the Supreme Court then declared that 99% of people in possession of property were unauthorized.
- The tenants then approached the Supreme Court contending that an ex-parte order has been passed. Thereafter, the Supreme Court constituted another Committee by the name Justice Wadhwa Committee which gave its orders on the basis of the documents. The Committee said that whoever was in possession of properties prior to 1965 will not be evicted and whoever was in possession of properties post-1965 had to be evicted.
- 95% of the people who were affected are below the poverty line and cannot approach the courts and the legislature.

4.21 Suggestions/Views Of Shri Ram Jethmalani MP, Rajya Sabha

4.21.1 The Committee in its sitting held on 30th September, 2011 had the benefit of the expert views of Shri Ram Jethmalani, MP, Rajya Sabha and an eminent Lawyer on the provisions of the Bill.

4.21.2 The gist of the views/suggestions of Shri Jethmalani is as under:-

- A heir can only get what the propositus had. When a person is dead, his heir gets what he owned.

- Raja of Mahmoodabad, who was an Indian citizen, owning vast properties, mainly in Uttar Pradesh, migrated to Pakistan alongwith his minor son, soon after the partition of India and acquired the citizenship of Pakistan. After a long stay in Pakistan, he was also an ambassador of Pakistan in London. He settled in London and died there in 1973. He died as citizen of Pakistan.
- All his properties naturally came to vest in the Custodian of Enemy Property, under the provisions of the Enemy Property Act, 1968. It is a well known piece of legislation, which comes into operation at a time whenever there is a war between the two countries. All enemy properties vest in the Government. His property which runs into thousands of crores, became the property of the Indian Nation.
- After he became a major, he managed to obtain passports, first in Lucknow, the second in Teheran, the third in Baghdad and the later one from London.
- His mother, knowing fully well that the property had ceased to be the property of the family, applied for a job to the Custodian for taking care of the property.
- Then, after many years, the son in India contested elections in UP and became a Member of the Legislative Assembly. A question was raised in the Assembly that he is not an Indian citizen.
- After many years, he started a litigation in India saying that he was an Indian national, the property now belonged to him and that he had inherited it.
- The result was that a decree was passed, which was sustained by the Supreme Court. Even the ruling Congress Government realized that all this was wholly wrong. They then issued an ordinance under our compulsion.
- That ordinance displays the honesty of the Government of India for the first time. That ordinance records that there is a Supreme Court judgement but we wish to prevent the property from getting into the hands of those who are not entitled to it.
- This Ordinance was intended to nullify the Supreme Court decision and to prevent the property from getting into the hands of those who are not entitled to it, which is the right of the Parliament to do. This was the most polite way of saying that the Supreme Court has delivered a fraudulent judgement.
- It was, therefore, proposed to bring about amendments to the Enemy Property Act 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 these properties.
- That ordinance was to be replaced by a Bill. The Enemy Property (Amendment & Validation) Bill, 2010 was brought before the Parliament.

- This Bill, when presented, would have passed in both the Houses of Parliament. However, it didn't happen.
- I wrote a big article in which I attacked the amendment which is sought to be made in the Bill. I regret to say that the amendment proposed in the Enemy Property (Amendment & Validation) Second Bill, 2010 was made by the same Mr. Chidambaram who had moved the original Bill with the original preamble.
 - He quoted from his article published in a newspaper "*The ordinance is a belated act of justice to the Indian people. The entire Congress party saw the wisdom of it. All the law officers of the Government and the entire Cabinet must have approved of the Ordinance before the hon. President promulgated it. Certainly, it brought jubilation to the occupants of the property and the nation became richer by thousands of crores, even Mr. Chidambaram's statement modestly mentions hundreds of crores. Now, starts another scam*".
 - The same Chidambaram in the company of advocate and Minister Salman Khursheed have persuaded the Prime Minister to abandon the Bill and thereby ensure the lapsing of the wholesome Ordinance. Shri Khursheed was the advocate for the junior Raja supporting the eviction of tenants, a clear case of conflict of interest. Shri Chidambaram is a signatory to the explanatory statement justifying the Ordinance.
 - The Prime Minister owes an explanation to the nation. How does he propose to justify this kind of plain immorality and betrayal of the people's trust? I hope he will not permanently damage his reputation for fiscal integrity. The same Mr. Chidambaram has moved an amendment to the Bill completely going back upon his earlier statement to Parliament.
 - The latest amendment that Shri Chidambaram has moved means that a custodian has the power to return the property to the heirs and all that the heir has to do is to produce a succession certificate. If he proves that he is an heir, he gets the property. It is a plain fraud.

4.22 Suggestions/Views Of Shri M.A.M. Khan

4.22.1 The Committee in its sitting held on 10th October, 2011 heard the views of Shri Mohammad Amir Mohammad Khan, the erstwhile Raja of Mehmoodabad, who is the main party in the case of enemy properties, which was dealt by Hon'ble Supreme Court of India. Initially, he gave background of his case which is as follows:-

- I was born in India. Both my parents were born in India. My mother was opposed to the idea of partition. She translated this opposition by never

- even contemplating going to Pakistan. She remained a citizen of India to her dying days in April 1991.
- My father, in a very honourable and amicable way, lived a separate life from my mother. My mother brought me up in India. I travelled on my mother's passport which was an Indian passport. I got my own passport in 1959 as an Indian citizen in Lucknow where I was resident.
 - My father died in London in 1973. He was not the ambassador of Pakistan as people have said. He was the Director-General of Islamic Centre in London, of which all the ambassadors of the Muslim countries – Saudi Arabia, Egypt, Iran and others – were members.
 - My father did not get any property against the property left in India. Property in Pakistan was purchased by my mother before partition, which was also declared as evacuee property.
 - I have always been domiciled in Lucknow and have been a resident of India. Since that point of time till date, I have never applied nor contemplated nor taken any nationality.
 - On the basis of this, I applied to the Custodian of Enemy Property to release my late father's properties because I was an Indian citizen. In 1980, the late Mrs. Indira Gandhi took a decision to release the properties of my late father to his legal heirs and successors who are Indians. Then, I was given an opportunity to prove that I was the Indian heir of my father. In 1986, the Civil Court of Lucknow in which I had impleaded the Custodian of Enemy Property and the Union of India as one party, gave its judgment that I was the sole heir of my father under the Oudh Estate Act of 1869. That judgment became final because it was not challenged and, therefore, it became *res judicata*. I again pleaded with the Government of India to release the properties with no effect. I got letters from various Prime Ministers.
 - Mr. Rajiv Gandhi nominated me as the Congress (I) candidate and I won the election with a historic majority. All kinds of charges were levelled against me that I was not an Indian, etc. But, those didn't hold water. In 1989, I was re-nominated by Mr. Rajiv Gandhi and I won again although during the scrutiny of the papers, objections were made that I was not an Indian citizen. But, they were rejected.
 - The State Government of UP did not appoint any Committee on my citizenship. It sent the matter to the Governor and the Governor sent it to the Election Commission, which did not dispute my citizenship.
 - In 1995, Mr. P. Chidambaram met me and my wife. He was then the Minister of Commerce. The enemy property at that time came under the purview of the Commerce Ministry. We were assured that a decision would be taken. The general view was that this property should be released or a part of it should be released. That was the Government's decision.

- There were two reasons behind filing case in Bombay High Court. Number one, because we felt that there were so many cross currents in U.P. that there could be an attempt at some kind of convolution. The other reason was the large number of correspondence between the Custodian and my mother, my family and I. We felt that it would be easier for us to obviate the position where the Custodian would make an excuse to say, "I have not got papers and I have to go back to Bombay and get them.", and this would lead to unnecessary prolonged delay because litigation takes huge amount of time.
- Property came through the *sanad* or *talukdari*. I don't have the copy of the *sanad*. I have the Lord Canning's Proclamation. But, as far as *sanad* is concerned, I doubt if anyone has that. The *kabooliyat*, as it is called, is vanished. In my grand-father's will, it was accepted as *talukdari* property. In the Oudh Estates Act, there are schedules. In this schedule, the names, both of my father's and of my mother's family are there. The 1869 Oudh Estates Act was studied by the civil court in Lucknow and all this property was deemed to be *talukdari* property.
- I impleaded my mother, my two sisters, my uncle, my two aunts -- my father's real sisters; and, none of them contested -- and, the custodian. I won the case in 2001 from the Bombay High Court. The judgment goes in detail. In para 8 and in other paras, the court categorically says that the Government admitted that I was an Indian citizen. After winning this case, an appeal was filed by the Union of India in the Supreme Court. When this appeal was admitted before Justice Lahoti, there was an intervention application and an order was given that it should be taken up at the final disposal of the case. At the final hearing, it was dismissed as withdrawn by the Bench of the Supreme Court. Shri Chidambaram appeared initially on behalf of other party.
- The State Government of UP made every attempt to become a party in the Supreme Court. They filed half a dozen applications. I never made them a party because the properties were under the Custodian of the Government of India, not of the State. They had themselves sought to be made a party, which was good enough. The Supreme Court heard them, but did not accept them.
- The 1869 Oudh Estates Act was studied by the civil court in Lucknow and all this property was deemed to be *talukdari* property. The succession certificate was got through the Civil Procedure Code. The permission for maintenance was given by the Custodian of Enemy Property with the permission of the Ministry of Commerce.
- I have not mentioned about displacement of tenants in my appeal in Supreme Court. The Supreme Court divided the occupied property in two parts. One part was in which Government officers were living at a

- pittance. The rent was Rs.160 for 19 acres. 873 properties are wakf-alallah. The cases are going on in the court. These wakfs do not benefit me; they benefit the community. There are three wakfs. Out of these three wakfs, two are major wakfs. I am mutawalli of that. In all these years, my mother and I sold whatever we could to maintain and keep the tradition of the wakf alive. Out of 873 properties, 400 will go in ceiling. It can happen today or tomorrow or any other day.
- There are some urban properties. In the urban properties, there are two categories. One pertains to Government officials. The Supreme Court gave its order on that. Its order was implemented through the contempt of court proceedings. As far as the rest of occupants, non-government people, are concerned, the Supreme Court ordered that two categories should be made. This is the judgement of the Supreme Court. Those who were staying there since 1965 as tenants of my father will continue to be tenants. To do this, they appointed a commission called the Goswami Commission. He gave a report. That report was not acceptable to about ten tenants. There are five properties involved in that. Out of those five, two are in Hazratganj and three are in old Lucknow.
 - As far as poor tenants are concerned, they are those people who cannot afford to have top lawyers such as Mr. Ram Jethmalani, or, Mr. Arun Jaitley, or, Mr. Harish Salve, or, Mr. Rohtagi, or, Mr. Venugopal, or, Mr. Shanti Bhushan as their advocates. As far as rest of the occupants are concerned, I have given them an undertaking and I can give an undertaking to this Committee or to any other forum that I cannot in good conscience dislodge them because I will be answerable not just to you but to the God as well.

4.22.2 Then, he gave his suggestions/comments on the Bill. The gist of the views/suggestions of Shri Khan is as follows:-

- The Enemy Property Act was enacted in 1968. Since then till 2010, this Act has served well its purpose. There have been various Governments. They have looked at enemy property and all its problems in great details. None of them found any reason for bringing in an amendment or a Bill.
- The Bill is based on the ordinance which was promulgated on the 2nd July, 2010. This ordinance was brought a few weeks before the Parliament was to convene. The reason that was given by the Government for bringing in this ordinance does not make much sense.
- A question arises why this Bill was brought about. The reason given by the Ministry was that there was a spate of legislations which made it difficult for the Custodian to manage properties.
- This proposed Bill is an unfair and unjust Bill. The provisions of this Bill will or may be deemed as *ultra vires* by the courts.

- One of the things, which are very alarming, in this Bill is that it, to some extent, bypasses the judiciary and, in fact, limits the judiciary, or, in fact, overturns or tries to overturn and nullify some very important decisions that were taken in the past by the High Courts.
- Giving a retrospective effect to this Bill is a very draconian and unfair decision. Retrospective effect can be given in certain circumstances when the need and urgency is there. For nearly over 40 years, there was no need to give any kind of retrospective effect to this Bill to nullify the judgments of courts. There should be no retrospective action.
- If the Parliament so chooses, it can ensure and strengthen the rights of those whose rights ought to be protected under the Civil Procedure Code.
- Sanctity of the judgements which have become final, should be upheld. The judiciary should not be diminished and belittled.
- Powers that have been given to the Custodian are judicial powers and are beyond the purview of courts. This is unthinkable in our country. Parliament is the main pillar and the Executive and the Judiciary are the supporting pillars of our democracy.

CHAPTER V
OBSERVATIONS OF THE COMMITTEE AND
CLAUSE-BY-CLAUSE CONSIDERATION OF THE BILL

5.0 The Committee has noted that the Enemy Property (Amendment & Validation) Ordinance, 2010 was promulgated on 2 July, 2010 to amend the Enemy Property Act, 1968 in view of the several court judgements, which, according to the Ministry of Home Affairs, have impacted the functioning of Custodian of Enemy Property and defeated the purpose for which the Act was established. Thereafter, the Enemy Property (Amendment & Validation) Bill, 2010 was introduced in Lok Sabha on 2 August, 2010 to replace the Ordinance. However, the Bill could not be passed and, consequently, the Ordinance lapsed. Thereafter, the Bill was withdrawn on 15 November, 2010 and a new Bill, i.e., the Enemy Property (Amendment & Validation) Second Bill, 2010 (hereinafter called 'Second Bill') was introduced on the same day, which is now before the Committee.

5.1 The Committee has also noted that in the Second Bill, certain major changes have been made by the Government as compared to the Ordinance and the First Bill. These changes are contrary to the aims and objectives of the ordinance and the first Bill. In view of the far-reaching consequences of the Second Bill referred to it, the Committee has taken the views of the public, State Governments and other stakeholders, including the expert opinion of Shri Ram Jethmalani.

5.2 The Committee has also noted from the material available on record before it that the Second Bill before it, take away the jurisdiction of all the Courts completely and then in the matter of divesting of enemy property, the enemy property will be divested only to the owner or, if the owner is dead, to any lawful heir and that the claimant shall have to establish, in accordance with the law, that he is the lawful heir. According to the Chief Secretary, Uttar Pradesh, the Bill is not in the interest of the State and it takes away the properties, which are vested in the Custodian and which are not validly reversible in the owner or the heirs. According to the Uttar Pradesh Government, this Bill may result in giving undue benefit to some individuals. The Committee, in this connection, would like to mention that the majority of the enemy properties are situated in Uttar Pradesh and out of them, majority of the properties pertain to one single case. The Chief Secretary, Uttar Pradesh is on record to say that the '*Sanad Kabooliyat*' under which many of the enemy properties were given by the British Government, after First War of Independence in 1857, says that as long as they had showed constantly good faith, loyalty, zeal and attachment to the British Government, the *Sanad Kabooliyat* would remain in force; otherwise, it will annul the right and

title conferred upon such person and his heirs. The Chief Secretary was also on record to say that with the India Independence Act, 1947, the British Government came to be replaced by the Government of India and, therefore, the act of good faith and allegiance was to the Government of India and if any one breaches that or join the enemy, all the land would revert to the Government as per the *Sanad Kabooliyat*.

5.3 In regard to the Sanad Taluqdari, the Committee sought the comments of Ministry of Law & Justice on the issue of applicability of the Sanad Taluqdari in view of the enforcement of the provisions of the Constitution of India.

5.4 According to the Department of Legal Affairs, Articles 294 and 295 of the Constitution of India deal with succession to property, assets, rights and obligations. As per Articles 294 and 295, properties and assets which vested in His Majesty for the purposes of the Government of the Dominion of India shall, under this Constitution, vest in the Union. Properties and assets which vested in His Majesty for the purposes of the Government of each Governor's province shall vest in the corresponding State. These Articles make provision for succession by the present Government of the Union and the States to property, rights, liabilities and obligations vested in the former Governments.

5.5 The Department of Legal Affairs further opined that Article 363 (1) bars all courts from having any jurisdiction in any dispute arising of a pre-constitution treaty, agreement, covenant, engagement or *sanad* executed between a Ruler of an Indian State and the Government of India, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any such treaty etc. However, there are two conditions for the application of the Article 363 (1). Number one, the covenant with the Ruler must have been entered into before the coming into force of the Constitution, and second, the covenant must continue in force after the commencement of the Indian Constitution.

5.6 Summing up the above opinion, the Department of Legal Affairs maintained that in general *sanad* is valid as per the provision under Article 363 of the Constitution of India. However, while examining the status of "sanad taluqdari" in any particular individual case, the provisions of Articles 294 & 295 of the Constitution may also be kept in view.

5.7 In this connection, the Committee also would like to note that Legislative Department of the Ministry of Law had furnished extracts of the debates of the Constituent Assembly which is at *Annexure 'VI'*.

5.8 The Committee also feels that the opinion of both the Departments of the Ministry of Law and Justice also need to be considered.

5.9 The Committee also takes note of the opinion of State Government of Uttar Pradesh that Bill is ultra virus and unconstitutional. The opinion expressed by Uttar Pradesh Government is as under:-

"The view of the State Government is that in the light of above mentioned historical background by the virtue of effect of Oudh Estate Act all the properties of person and his heirs who become enemy and disloyal to the Government have been vested in the State/Union of India hence the proposed Bill is totally ultra virus and unconstitutional. The State of U.P. strongly opposes this Bill, especially insertion of new section 5(3), 18 & 26(1) (b) (i) (ii) and is in favor of restoring the Enemy Property (Amendment and Validation) Ordinance, 2010 to its original shape. State Government has, therefore, suggested deletion of two proviso to Section 26(1)(b) of the Bill."

The Committee feels that this is a serious observation and needs to be thoroughly looked into.

5.10 The Committee also flagged the issue with the then Home Secretary whether the revised Second Bill has been brought to favour some individuals. He informed the Committee that it is not to give the benefit to any specific individual or otherwise but this is not convincing to the Committee. It is with reference to a particular Supreme Court judgement, which had been made earlier. However, on repeated questions put by the Committee to the Home Secretary as to the specific reasons due to which the revised Second Bill has been brought in the Parliament, the Committee could not get convincing answer. In fact, the Home Secretary could not answer as to what happened after the lapse of the Ordinance and before bringing the Second Bill.

5.11 The Committee, in this connection, also would like to refer to the remarks made by Shri Ram Jethmalani on both the Ordinance and the Second Bill. He felt that the Ordinance displayed the honesty of the Government of India. He also referred to Para 4 of the Statement made by the Minister of Home Affairs in Lok Sabha explaining the circumstances, which necessitated the immediate legislation by proclamation of the Ordinance. The relevant extract is as under:

"The Government decided that if immediate remedial measures are not taken, the prime objective of the Act would be defeated and

immovable enemy properties worth hundreds of crore of rupees would fall in the hands of the persons, who do not have any legitimate claim over these enemy properties. It was, therefore, proposed to bring about amendments to the Enemy Property Act, 1968 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."

5.12 The Committee also notes that the noted jurist Shri Ram Jethmalani has also stated that this was the finding of the Government itself, which was presented in the Ordinance to clarify the legislative intent and strengthen the hands of the Custodian and the Central Government to prevent the Courts from issuing any orders for divestment of these properties.

5.13 The Committee also takes note of the opinion expressed by Shri Ram Jethmalani that an heir can only get what the propositus had. When a person is dead, his heir gets what he owned. Even if he is an Indian national and the heir of his father, he gets what the father had, but if the father did not have the property, the property belonged to the Indian nation, he gets zero.

5.14 The Committee therefore strongly feels that the enemy properties worth crores of rupees in any case, should not go in the hands of those, who do not have any legitimate claim over these enemy properties. The Committee would like to stress that an heir should get only what the propositus had.

5.15 The Committee also takes note of the submissions made by the Chief Secretary, State Government of Uttar Pradesh that the list attached in the Supreme Court was different from the list for which the succession had been granted by the civil court, and, therefore, not covered under the disposition of succession. **The Committee does not understand why the Custodian of Enemy Property did not take cognizance of this and act accordingly. This matter needs to be thoroughly examined.**

5.16 The Committee also takes cognizance of the matter, as stated by the officers of the Uttar Pradesh Government that he applied for succession in his plaint before the civil court, Lucknow under the Oudh Estate Act instead of under Personal Law. It was later on confirmed by Shri M.A.M. Khan that he sought declaration of succession under Oudh Estate Act instead of Cr.PC Act. The Committee also takes note of the fact that in the succession case, Uttar Pradesh

Government was not made a party. Subsequently, the matter was mysteriously taken up in Mumbai High Court, instead of the High Court in Uttar Pradesh, though the properties are situated in Uttar Pradesh. When asked, Shri M.A.M. Khan replied as under:-

"Yes, I am telling the exact truth to you. There were two reasons. Number one, because we felt that there were so many cross currents in U.P. that there could be an attempt at some kind of convolution..... The other reason was the large number of correspondence between the Custodian and my mother, my family and I. My real uncle was acting as attorney. I have only one real uncle. Somehow, an impression has been given that I have three real uncles. I have one real uncle and two step-uncles. My real uncle was a Barrister and he died in 1991. But, I filed this because all the correspondence, all the papers were with the Custodian and we felt that it would be easier for us to obviate the position where the Custodian would make an excuse to say, "I have not got papers and I have to go back to Bombay and get them.", and this would lead to unnecessary prolonged delay because litigation takes huge amount of time. The matter was argued about jurisdiction. The matter was admitted".

5.17 Besides, these arguments, the Committee notes a peculiar situation, wherein, it appears, that the whole issue has been messed up. The Ordinance and the First Bill, at least, met the expectation and satisfaction of some interested people and even the Government strongly felt it the right course at one time. However, the Second Bill fails on all counts so far as satisfaction and expectations of interested people is concerned. Disagreement from the group, which supported Ordinance and the First Bill, is understandable, but strangely, the Bill has also disapproval, in strong words, by the very individual, who was the main party in the Supreme Court. The Committee, therefore, fails to understand what the Government wants to achieve by bringing this Second Bill.

5.18 The Committee, in its meeting held on 24 October, 2011, had a detailed discussion on the report circulated and on the question of considering the Bill, clause by clause. The Members of the Committee unanimously felt that it was not convinced by the spirit behind the provisions of the Enemy Property (Amendment & Validation) Second Bill, 2010. The Members also felt constrained to note that the Home Secretary could not explain the reasons as to why the Second Bill was brought before the Parliament replacing the earlier Bill. The Home Secretary could not give a convincing reply to the Committee on some provisions of the Second Bill. The Committee could not get a convincing reply as to what necessitated the Government to go back on the statement and what

prompted to bring the second Bill, which is contrary to the objective of the First Bill and Ordinance. The Members of the Committee unanimously felt that there is a need on the part of the Government to bring forward a fresh Bill in the Parliament in place of the Enemy Property (Amendment & Validation) Second Bill, 2010. The Members also unanimously felt and agreed that there was no need to go ahead with the clause-by-clause consideration of the Bill and decided that the Committee should recommend to the Government to bring forward a fresh Bill incorporating the views of the Members, observations of the Committee made in the preceding paragraphs. The Members, however, unanimously decided that the Committee may make recommendations for improvement of the office of the Custodian of Enemy Property and also to complete the process and verification of enemy properties at the earliest.

5.19 The Committee, accordingly, recommends that the Government may withdraw the present Bill, i.e., Enemy Property (Amendment & Validation) Second Bill, 2010 and bring forward a fresh Bill before the Parliament incorporating the views and observations of the Committee. The Committee makes the following recommendations for improvement of the office of Custodian of Enemy Property:

- (i) The Committee has been given to understand that the Office of the Custodian of Enemy Property is facing severe staff crunch. Practically, there are very few officers manning the Office due to which the process of verification, etc., of enemy properties could not be completed till now. Even though the Central Government has issued a notification requesting all the State Governments to nominate District Magistrate/District Collector as the Deputy Custodian, the Committee has been given to understand that there is not much progress in the matter and States have not taken much action. The Committee is also constrained to note, and the then Home Secretary himself admitted before the Committee, that the Office of the Custodian of Enemy Property has so far been given least priority. He further went on to say that there is a vaccum in the entire system in which the Custodian works. The staffing pattern in the Custodian's office is abysmally low. Similarly, the Chief Secretary, West Bengal also stated likewise. The same situation prevails in other States also. This is a very sorry state of affairs and the Committee takes it very seriously. The Committee takes note of the assurance given by the Home Secretary that immediate action would be taken to appoint the staff for the Office of Custodian of Enemy Property instead of depending upon the State**

Government. On the query made to the Ministry of Home Affairs as to whether workload was assessed before appointing District Magistrates/District Collectors as Deputy Custodian of Enemy Properties, the Ministry stated that the assessment of additional work load on account of appointment of District Magistrates/District Collectors as ex-officio Deputy Custodian was not made as they were already carrying out similar work in the past. The Committee fails to understand as to why the workload assessment was not made. The Ministry further informed that District Magistrates/District Collectors are free to engage retired District Revenue officials; or deploy other staff from other sections from time to time depending on the workload for assisting him in verification/identification of enemy properties in the area falling within their respective districts. The Custodian of Enemy Property would consider requests from State Government/UT Administrations for meeting expenditure on hiring of such additional manpower by the concerned DMs/DCs. The Committee however feels that this is all ad hoc arrangement. Now that fresh vacancies are being created, the Committee hopes that the proposal made to Ministry of Finance would have been accepted by now and the process of recruitment would have started. The Committee desires that the recruitment process may be completed at the earliest and the staff be in place soon. The Committee would like to review the progress of recruitment of staff and the process of enemy properties without having any regard to this Bill. The Committee desires to be informed of the progress periodically.

- (ii) The Committee was informed that it would take three or four years to complete the verification and disposal and for winding up of the office of Custodian of Enemy Property. The Committee, however, feels that if the things move at the current pace, it may take even more than four or five years. The Committee takes note of the fact that Pakistan had long back seized properties of Indians and disposed them off in breach of the mutual agreement. It, however, does not mean that the enemy properties and the Office of the Custodian of Enemy Property should remain in perpetuity. The Committee, therefore, desires that a time-bound plan may be drawn and the entire process of identification of enemy properties and disposal may be completed within a stipulated time.**



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PARLIAMENT OF INDIA RAJYA SABHA

**DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON HOME AFFAIRS**

ONE HUNDRED AND FIFTY FIFTH REPORT

ON

**THE ENEMY PROPERTY (AMENDMENT & VALIDATION)
SECOND BILL, 2010**

EVIDENCE

**(PRESENTED TO THE CHAIRMAN, RAJYA SABHA ON 3rd NOVEMBER 2011)
(FORWARDED TO THE SPEAKER, LOK SABHA ON 3rd NOVEMBER 2011)**

**(PRESENTED TO RAJYA SABHA ONNOVEMBER, 2011)
(LAID ON THE TABLE OF LOK SABHA ONNOVEMBER, 2011)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
NOVEMBER, 2011/ KARTIKA, 1933 (SAKA)**

PARLIAMENT OF INDIA

RAJYA SABHA

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

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**RAJYA SABHA SECRETARIAT
NEW DELHI
NOVEMBER, 2011/ KARTIKA, 1933 (SAKA)**

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**Composition of the
Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2010)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri Rishang Keishing
3. Dr. N. Janardhana Reddy
4. Shri S.S. Ahluwalia
5. Shri Naresh Chandra Agrawal
6. Shri Prasanta Chatterjee
7. Shri Javed Akhtar*
8. Shri Tariq Anwar
9. Dr. V. Maitreyan
10. Shri D. Raja

Lok Sabha

11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Dr. Kakoli Ghosh Dastidar
14. Shri Ramen Deka
15. Shri L. Raja Gopal
16. Shri Mohd. Maulana Asrarul Haque
17. Shri Naveen Jindal
18. Shri Jitender Singh Malik
19. Shri Lalubhai Babubhai Patel
20. Shri Natubhai Gomanbhai Patel
21. Dr. Nilesh N. Rane
22. Shri Bishnu Pada Ray
23. Adv. A. Sampath
24. Shri Hamdullah Sayeed
25. Shri Neeraj Shekhar
26. Dr. Raghuvansh Prasad Singh
27. Shri Ravneet Singh
28. Shrimati Seema Upadhyay
29. Shri Harsh Vardhan
30. Shri Bhausahab Rajaram Wakchaure
31. Shri Dinesh Chandra Yadav

* Shri Javed Akhtar nominated w.e.f. 21 September 2011 *vice* Shri Tiruchi Siva, who resigned from the Membership of the DRSC on Home Affairs w.e.r. the 13 September, 2010.

**Composition of the Sub-Committee of
Department-related Parliamentary Standing
Committee on Home Affairs on the Bill
(As constituted on 27th April, 2011)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri S.S. Ahluwalia - Convenor
3. Shri Naresh Chandra Agrawal
4. Shri D. Raja
5. Dr. V. Maitreyan

Lok Sabha

6. Dr. Rattan Singh Ajnala
7. Shri Mohd. Maulana Asrarul Haque
8. Shri Harsh Vardhan
9. Shri Neeraj Shekhar

**Composition of the
Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2011)**

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1. Shri M. Venkaiah Naidu - Chairman
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5. Shri Naresh Chandra Agrawal
6. Shri Prasanta Chatterjee
7. Shri Tariq Anwar
8. Dr. V. Maitreyan
9. Shri D. Raja
10. Shri Javed Akhtar

Lok Sabha

11. Shri L.K. Advani
12. Shri Sansuma Khunggur Bwiswmuthiary
13. Shri Khagen Das
14. Dr. Kakali Ghosh Dastidar
15. Shri Ramen Deka
16. Shri Lagadapati Raja Gopal
17. Shri Mohammad Asrarul Haque
18. Shri Naveen Jindal
19. Shri Jitender Singh Malik
20. Shri Babulal Marandi
21. Shri Baijayant Panda
22. Shri Lalubhai B. Patel
23. Shri Natubhai Gomanbhai Patel
24. Dr. Nilesh N. Rane
25. Shri Bishnu Pada Ray
26. Shri Adhi Sankar
27. Shri Hamdullah Sayeed
28. Shri Neeraj Shekhar
29. Shri Ravneet Singh
30. Shri Harsh Vardhan
31. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri P.P.K. Ramacharyulu, Joint Secretary
Shri D.K. Mishra, Joint Director
Shri Bhupendra Bhaskar, Assistant Director
Shri Sanjeev Khokhar, Committee Officer

**LIST OF WITNESSES WHO APPEARED BEFORE THE DRSC ON HOME AFFAIRS
ON 2ND FEBRUARY, 25TH APRIL, 30TH SEPTMEBER, 10TH OCTOBER, 14TH
OCTOBER AND 24TH OCTOBER, 2011 AND BEFORE THE SUB-COMMITTEE OF
DRSC ON HOME AFFAIRS ON THE ENEMY PROPERTY (AMENDMENT &
VALIDATION) SECOND BILL, 2010, 11TH MAY, 20TH MAY, 19TH JULY, 27TH JULY
AND 10TH AUGUST, 2011 IN CONNECTION WITH THE ENEMY PROPERTY
(AMENDMENT & VALIDATION) SECOND BILL, 2010**

Representatives of Ministry of Home Affairs

1. Shri Gopal K. Pillai, Home Secretary
2. Shri R.K. Singh, Secretary
3. Shri Anil Goswami, Additional Secretary
4. Shri A.K. Goyal, Joint Secretary
5. Shri Dinesh Singh, Custodian of Enemy Property, Mumbai
6. Shri D.B. Sahu, Additional Custodian, Enemy Property
7. Shri J.P.N. Singh, Director
8. Shri R.R. Jha, Joint Secretary
9. Smt. Sarita Puri, Deputy Secretary

Representative of Ministry of External Affairs

1. Shri Y.K. Sinha, Joint Secretary

Representatives of Legislative Department, Ministry of Law and Justice

1. Shri V.K. Bhasin, Secretary
2. Shri N.K. Nampoothiry, Additional Secretary
3. Shri Diwakar Singh, Deputy Legislative Counsel
4. DR. G. Narayana Raju, JS & LC
5. Dr. S.D. Singh, Joint Secretary & Legislative Counsel
6. Shri K.V. Kumar, Assistant Legislative Counsel
7. Smt. Veena Kothavale, Deputy Legislative Counsel

Representatives of Department of Legal Affairs, Ministry of Law and Justice

1. Shri D.R. Meena, Law Secretary
2. Shri R.L. Koli, Additional Secretary
3. Shri Sudhir Ranjan Mishra, Deputy Legal Advisor
4. Shri Satish Chandra, Joint Secretary & Legal Adviser

Representatives of Government of Goa

1. Shri Sanjay Kumar, Chief Secretary
2. Shri Rajeev Verma, Special Secretary
3. Shri R. Mihir Vardhan, District Collector

Representatives of Government of NCT of Delhi

1. Shri P.K. Tripathi, Chief Secretary

(iv)

2. Shri Dharmendra, Secretary (Revenue)
3. Shri Akash Mohapatra, D.C., Central Delhi
4. Shri V.P. Singh, A.D.M., Central Delhi
5. Shri R.S. Mehra, O.S.D., Central Delhi

Representatives of Government of West Bengal

Shri Samar Ghosh, Chief Secretary

Special Invitees

1. Shri Lal Ji Tandon, MP, Lok Sabha
2. Shri Ram Jethmalani, M.P. Rajya Sabha

Others

1. Shri Sandeep Kohli
2. Shri Kishin-chand Bhambhwani
3. Shri Murlidhar Ahuja
4. Shri Jyoti Behl
5. Shri Mohammad Amir Mohammad Khan

(v)
**THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON
HOME AFFAIRS MET AT 12.30 P.M. ON 02ND FEBRUARY, 2011, IN COMMITTEE
ROOM-B, PARLIAMENT HOUSE ANNEXE,
NEW DELHI.**

(Chairman: Shri M. Venkaiah Naidu)

Witness

Representatives of Ministry of Home Affairs

1. Shri Gopal K. Pillai, Home Secretary
2. Shri Anil Goswami, Additional Secretary
3. Shri A.K. Goyal, Joint Secretary
4. Shri Dinesh Singh, Custodian of Enemy Property, Mumbai
5. Shri J.P.N. Singh, Director

Representative of Ministry of External Affairs

1. Shri Y.K. Sinha, Joint Secretary

Representatives of Legislative Department, Ministry of Law and Justice

1. Shri V.K. Bhasin, Secretary
2. Shri N.K. Nampoothiry, Additional Secretary
3. Shri Diwakar Singh, Deputy Legislative Counsel

Representatives of Department of Legal Affairs, Ministry of Law and Justice

1. Shri D.R. Meena, Law Secretary
2. Shri R.L. Koli, Additional Secretary

Chairman: Friends, I am sorry that I came late. I thought I will be able to reach in time, but I could not.

I welcome you to this meeting of the Committee. Today, we will have a presentation by the Home Secretary on the Enemy Property (Amendment and Validation) Second Bill, 2010, and clarifications may be sought for him.

As you are aware, this Bill was referred to the Committee on 30th December, 2010, for examination and the hon. Chairman, Rajya Sabha, wanted us to report it back by 15th February, 2011.

You may recall that the Committee had decided to seek extension of time from hon. Chairman up to the last week of Part II of the Budget Session of 2011 for presentation of the

report on this Bill and, accordingly, I, on behalf of the Committee, had requested the hon. Chairman. However, I may inform the Members that hon. Chairman has granted extension up to 6th April, 2011 only for presentation of report on this Bill.

Friends, the Enemy Property Act, 1968, as amended in 1977, provides for the continued vesting of enemy property in the Custodian of Enemy Property (CEP) for India under the Defence of India Rules 1962 and the Defence of India Rules 1971. However, due to a number of judgements by various courts, including the judgement of the Supreme Court in Union of India Vs. Raja Mohd. Amir Mohd. Khan (Civil Appeal No. 2501 of 2001) the powers of the Custodian and the Government of India, as provided under the Enemy Property Act, 1968, have been affected because of the judgement. In the said case, the Supreme Court held that on the death of an enemy, the property devolves in succession and ceases to be 'Enemy Property', if the successor is a citizen of India. This was a very significant judgement.

Under these circumstances, the Enemy Property (Amendment and Validation) Ordinance, 2010, was promulgated on the 2nd day of July, 2010, to amend the Enemy Property Act, 1968, with retrospective effect. The Enemy Property (Amendment and Validation) Bill, 2010, was introduced in the Lok Sabha on 2nd August, 2010, to replace the Ordinance. However, the Bill was not passed by the Lok Sabha, and, consequently, the Ordinance lapsed on 6th September, 2010. The Bill was withdrawn on 15.11.2010 with the leave of the House and a new Bill was introduced on the same day which is, now, before the Committee.

The Bill provides for inserting suitable provisions to enable the CEP and the Central Government to preserve and manage the properties more effectively.

Papers, related to this Bill, as received from the Ministry of Home Affairs, have been circulated to the hon. Members. I hope the Members would have gone through these papers.

Now, we will be inviting Home Secretary for making a presentation about the Bill. After that, we can seek clarifications from him.

CHAIRMAN: I, on my own behalf and on behalf of the Committee, welcome the Home Secretary and other officials of the Ministry of Home Affairs to this sitting of the Committee. I also welcome the Secretaries of the Department of Legal Affairs and the Legislative Department. Mr. Pillai, as you are aware, the Enemy Property Bill 2010 has been referred to this Committee for examination and Report before 6th April, 2011. Today, you have been invited to make a presentation on the Bill. You may, in your presentation, touch upon the necessities that led to the promulgation of the Enemy Property (Amendment and Validation) Ordinance, 2010, and subsequently introduction of the Enemy Property (Amendment and Validation) Bill, 2010, reasons for its withdrawal, necessity for the fresh Bill and the legislative intent of the provisions of the Bill. You are aware that the proceedings of the Committee are treated as confidential and it shall not be permissible for any Member of the Committee or any other present here, who has access to the proceedings, to communicate, directly or indirectly, to media any information regarding its proceedings, including its Report and any conclusions arrived at, finally or tentatively. Mr. Pillai, while making the presentation kindly explain what was the role of the Ministry of Home Affairs and why this National Institute of Financial Management was brought in in-between. What is the infrastructure they have? After the Chinese aggression in 1962, they have been making studies after studies. What is the role of

that Institute and what is the infrastructure they have? Now I request you to take the floor and then go ahead with the presentation.

SHRI GOPAL K. PILLAI: Sir, with your permission, I would request the Custodian of Enemy Property, Shri Dinesh Singh to make a small presentation. Thereafter, I will take up the issues that have been raised .

CHAIRMAN: Pillaiji, there is no need to read all this. We have a copy of this with us and also the presentation. What I would suggest is, you may just explain the reasons for the withdrawal of the Bill and the promulgation of the Ordinance at that time as well as the need for a fresh Bill now. The second one is a new Bill. So, simply explain what was the need of an amendment?

SHRI GOPAL K. PILLAI: Sir, you have seen the presentation made on the Enemy Property Bill and the changes that we have brought out. It was noticed that there were a large number of lacunae in the original Energy Property Bill because it didn't have various provisions which would enable the Custodian of Enemy Property to have title and to dispose of the properties. Subsequently to that, we had the Supreme Court judgment which also held – to put it very bluntly – that even though the property is vested in the Government, as soon the enemy died, the enemy's son is no longer an enemy. That is, in one sense, the basic provision which came about and the Supreme Court said that the enemy's son cannot be treated as an enemy and he has his own legal rights under the Constitution. I would just read the salient features of the Supreme Court judgment.

1. On the death of an 'Enemy', the property devolves in succession and ceases to be "Enemy Property" if the successor is a citizen of India.
2. The Enemy subject has the power to sell the property by virtue of Section 6 of the Act.
3. The Custodian has no right or title in the property and the Enemy continues to have the right, title and interest in the property.
4. Natural legal heirs and successors who are "Citizens of India" would be entitled to the property under the "Law of Succession".
5. The Central Government does not have absolute power for divesting under Section 18 of the Act and the power of the Court is not taken away to pass an appropriate order in a case where the property which vested in the Custodian ceases to be Enemy Property.
6. On divestment of the property, the divestee would be entitled to the actual mesne profits by filing a suit, if so advised.
7. And, lastly, the Custodian's power is limited to managing, preservation and Control of Enemy Property for a limited purpose and for a temporary period only.

So, it was in view of this and the related High Court judgment which also said that there is no provision in the Act or the Defence of India Rules which empowers the Custodian of Enemy Property in a case where someone disputes that a particular property is an enemy property or not, to adjudicate or give a determined finding on that issue. And, Sir, likewise, there is no provision in the Act or Rules which empowers the Custodian to take forcible possession of any property which he claims to have vested in him as an Enemy Property.

So, some of these issues are the reasons why, in one sense, the Ordinance is brought. Sir, just see the provisions which we have brought. Section 5(3) says that it should take care of the position regarding the court judgments where on the death of the enemy, the Enemy property dissolves in succession and ceases to be 'Enemy Property'. So, we have brought that in to show that. "Vesting" includes the vesting of right of titles, title and interest. Section 5A is an issue of vesting certificates by the Custodian. Then, there is 'Explanation to Section 6,' which said that, to amplify Section 6, '... to enable the Custodian to filter the cases which need to be referred by the Custodian to Central Government for re-vesting and to neutralize claims of fraudulent transfers.' Section 8(2) 1A is the powers to fix the standard rates, user charges. Section 8(2) 4A is the power to remove trespass, encroachment, etc. Section 10A is the transfer and issue of sales certificate for immovable properties. Under earlier Section 10, only cases of movable properties and securities are covered. The new Section takes care of the issue of transfer of immovable properties. Section 11(3) deals with the power of civil courts to be conferred on the Custodian for conducting enquires and dealing with the Enemy properties. Section 17 is the increase of levy so as to meet the administrative cost. Section 18 is on the income collected by Custodian not liable to be returned. Section 18B is barring of courts in matter of divestment of Enemy properties. Section 18C is regarding the powers of the Central Government to order disposal of Enemy properties.

SHRI GOPAL K. PILLAI (Contd.): Section 26 (1)(a) and (b) which, in a sense, bring out the difference between the earlier Ordinance and the subsequent Amendments, is a validation of certain actions to take care of court decisions. The new provisions are to provide for re-vesting of the properties in the Custodian, free from all encumbrances, in the same manner as if it was vested before such divestment. Then, in the Act, we brought the proviso to section 26 (1)(b) which says that in the case where the owner or the legal heir is a citizen of India by birth, such property shall continue to vest in such owner if he furnishes, within six months from the date of the Bill, that he is a citizen of India by birth and, in any other case, where the Central Government is satisfied. Sections 26 (1)(c) and (d) are just attachments and there is no suit or proceedings.

CHAIRMAN: Please explain section 6(a) and (b). There seems to be some contradiction between para (a) and (b) in the Statement of Objects and Reasons of the Bill. It reads, "It is proposed to withdraw, with the leave of the House, the aforesaid Bill..." etc. and "(b) any enemy property divested from the Custodian to any person under the provisions of the Enemy Property Act, 1968, as it stood immediately before 2nd July, 2010, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the Custodian". Agreed. Then, it further says, "If, however, the enemy property had been 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 a court and the Government is satisfied that the property was returned to the owner or the lawful heir, such enemy property would continue to remain with such persons." This means you are taking it back to *status quo ante*.

SHRI GOPAL K. PILLAI: Sir, my understanding is that Government has to take a call on that.

CHAIRMAN: Are you encouraging further litigation or trying to reduce litigation and settle the issue? I am not able to understand it. If you read Clause 6(c), it says, "Nothing contained in this Act shall affect the claim made by any person before any court or other authority against the owner or his lawful heir to whom the property was or may be returned under this Act and

such claim shall be decided in accordance with law by the court of other authority, as the case be.” The courts are already doing it. You are now again saying that courts have got the right to do it. Then what is the amendment for? What is its purpose? Amendment is meant to curtail litigation.

SHRI GOPAL K. PILLAI: Sir, the Law Secretary may clarify this. What section (c) is dealing with is not a person; it is any other person who is not claiming it under enemy property or his successor. It is somebody else who says, this is not an enemy property or property got by succession but I am actually the owner of the property. It is for that person that it says that “nothing contained in this Act shall affect the claim made by any person..” etc. It is a person other than who is claiming as enemy owner or successor to the enemy owner; it could be anybody else because Government could state that this is an enemy property. There are two persons; one could be the owner of the property or his successor can come; there is another person, the third party, who is not the enemy or his successor who says that property is actually my property. Therefore, this section is to take care of that. But this explanation is subject to what the Law Secretary may clarify.

CHAIRMAN: If a third party approaches the Court and says, “The property in dispute is not the enemy property or his successor’s property. It is my property. Unnecessarily, the Custodian and legal heirs of the enemy are litigating on this, whereas I am the owner”. That is the purpose of 6(c). (बी) का rationale क्या है और (सी) के पीछे तर्क क्या है, थोड़ा explain करें। लॉ सेक्रेटरी या होम सेक्रेटरी explain करें।

SHRI S.S. AHLUWALIA: On pages 11, 12 and 13 of the background note that you have given to us, you have talked about the provisions of the Act which are proposed to be amended, supplemented or added through the Enemy Property (Second) Bill, 2010 introduced on 15th November, 2010. On page 12, at (A) you have said 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 an 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 the country which is not an enemy”. Then, (b) reads, “The enemy property will be divested only to the owner or his lawful heir and that the claimant shall establish that he is the lawful heir.” Then, (g) reads, “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.” Now the point is very simple. You are taking us here and there. You simply answer, first, what the old law says. If you give us a comparison, it would be better if you tell us what the old law says.

CHAIRMAN: Also tell us what the court’s comment on that is.

SHRI S.S. AHLUWALIA: What did the court’s judgement say? How was it contradicting the previous law? Then, you brought the amendment through Ordinance and, then, withdrew the Bill. Now, you have brought another Bill. Earlier we had raised this issue. These properties were with the Custodian since 1965. But after 1965, when the first DIR came, the Land Ceiling Act came into existence in Uttar Pradesh. These properties that were lying with the Custodian were not taken into consideration in the land ceiling law. Till today, it is not applicable. So, how can you decide on this? Now, the Land Ceiling Act is in force there.

SHRI S.S. AHLUWALIA (CONTD.): There was a time-frame and within that time-frame, they have done it. What is the situation there? Now, a person, Mr. X who was having 1000 acres at the time of 1965. Now according to land ceiling he could not have 1000 acres. What the Bill says about that? Whether this property lying with the custodian was valid? Now, that person, Mr. X, died as a foreign national and Mr. Y was an Indian national who was the son of Mr. X. Now if he becomes legal heir, will he get 1000 acres?

SHRI GOPAL K. PILLAI: Sir, I presume that that land would have been exempted from the Land Ceiling Act.

SHRI S.S. AHLUWALIA: Because that was in the custody of the Government.

SHRI GOPAL K. PILLAI: As and when from the custody of the Government, it goes to the custody of the individual, that individual would then be subject to the UP Land Reforms laws and adjudicating authority under the Land Ceiling Laws would then initiate proceedings.

SHRI S.S. AHLUWALIA: If those laws are repealed?

श्री नरेश चन्द्र अग्रवाल: ऐसा नहीं हो रहा है। पूरी की पूरी property उनको दी जा रही है और उस property पर सीलिंग लागू नहीं हो रही है। माननीय सर्वोच्च न्यायालय का जो आदेश है, उस आदेश के तहत अगर आप amend करके दे रहे हैं, तो उस प्रॉपर्टी पर सीलिंग लागू ही नहीं हो रही है।

श्री गोपाल के. पिल्लै: सर, उस प्रॉपर्टी पर सीलिंग लागू होगी।

श्री एस.एस.अहलुवालिया: उस प्रॉपर्टी पर सीलिंग लागू नहीं होगी, क्योंकि वह Land Ceiling Act आज exist नहीं करती है।

श्री नरेश चन्द्र अग्रवाल: यह बिल्कुल नहीं हो रहा है। चेयरमैन सर, इन्होंने जो presentation दिया है, उसमें दिया हुआ है कि 1200 properties में से 900 properties राजा मोहम्मद अमीर मोहम्मद खान की हैं और इनमें से अधिकतर उत्तर प्रदेश में हैं। मैं चाहूंगा कि कमेटी notify करके एक बार लखनऊ का दौरा करे और वहां के लोगों की बातों को सुनने के बाद कोई निर्णय ले, तो यह ज्यादा अच्छा होगा। वहां जाने से हम लोग चीजों को अपनी आंखों से देख लेंगे और समझ लेंगे तो ज्यादा अच्छा निर्णय ले सकते हैं।

अध्यक्ष: अगर हम उन लोगों को ही यहां बुलाएं, तो बेहतर होगा।

श्री नरेश चन्द्र अग्रवाल: हां सर, उन लोगों को ही यहां बुला लीजिए।

अध्यक्ष: अहलुवालिया जी ने पहले जो सवाल उठाया और उसके बारे में मैंने भी जो टिप्पणी की, उसके बारे में मेरा सुझाव यह है कि उसका तुरंत जवाब देना इतना आसान नहीं है। कोर्ट ने exactly क्या कहा, पहले एक्ट में क्या था, Ordinance में क्या amendment किया, amendment के बाद उस एक्ट को क्यों

withdraw किया, इसका कारण क्या है और अभी जो नया amendment में आया है, इन सबका एक comparative statement बना कर आप कमेटी को भेज दीजिए। इससे कमेटी को समझने में आसानी होगी।

राजा मोहम्मद अमीर मोहम्मद खान के केस में सुप्रीम कोर्ट ने जो जजमेंट दिया और आप वर्तमान में जो नया बिल ला रहे हैं, उससे इस पर क्या प्रभाव पड़ेगा? जैसा अभी नरेश जी ने कहा कि वहां के संबंधित लोगों को यहां बुलाने में क्या दिक्कत है। वहां जो tenants हैं, यह एक समस्या है। एक लैंड सीलिंग एक्ट और दूसरा tenants की भी समस्या है। उससे इस पर क्या प्रभाव पड़ेगा, इसके बारे में भी सोचने की जरूरत है।

SHRI S.S. AHLUWALIA: After certain years whether they are entitled to have the property or not?

अध्यक्ष: वह भी स्टडी करना पड़ेगा।

SHRI GOPAL K. PILLAI: We will examine that and come to you. I remember, in my State Kerala Land Reforms Act exempts plantation from the purview of the land ceiling. If you have tea, rubber or coffee estate, they can keep unlimited acres of land, but the moment they shift to another crop the Kerala Land Reforms Act would apply and that land would be taken over by the Government. That is the practice. But in UP I will have to check as to what is happening.

SHRI D. RAJA: My first concern is regarding the title of the Bill. Considering the existing geo-political equations and relations, can you go on calling it as enemy property? Can we think of naming it differently because you name Chinese, Pakistanis, Bangladeshis as enemy? So, considering our geo-political relations, can we go on calling it enemy property? We will have to reconsider that title itself. Secondly, how to ensure the right of successors? Father may be Pakistani national or Chinese national or Bangladeshi national, but son or daughter can be Indian national? Do they have right? How to guarantee that right? Once they get the property, all the existing laws will apply to them also as Indian citizens. Whether it is Land Ceiling Act or any other Act, it will apply to the person who inherits the property. This Kerala example is in a different context; it applies in normal circumstances. Here this Bill talks about the properties concerning the citizens or parents or relatives who have become Pakistani or Chinese nationals, but their successors continue to live here as Indian citizens. This must be kept in mind. That is what I understand because it is not very clear. It is not forthrightly coming in the Bill.

श्री नरेश चन्द्र अग्रवाल: सर, मैं यह जानना चाहूंगा कि अगर हिन्दुस्तान में किसी व्यक्ति की प्रॉपर्टी गई हो और वह व्यक्ति दूसरे देश में जाकर वहां की नागरिकता हासिल करके वहां compensation में उसने प्रॉपर्टी पा ली, तो ऐसी स्थिति में उस व्यक्ति की हिन्दुस्तान में जो प्रॉपर्टी है, उसके लिए वह लीगल अधिकारी होगा या नहीं होगा?

1966 में ताशकंद समझौता हुआ था, उसमें प्रॉपर्टी के संबंध में जो भी बातें तय हुईं, उनके अंतर्गत पाकिस्तान ने हिन्दुस्तान की सारी प्रॉपर्टी बेच दी, जो कि चार गुनी ज्यादा थी। अगर उन्होंने बेच दी, तो यहां की प्रॉपर्टी वापस करने का क्या तरीका है? अगर यह ताशकंद समझौता को लागू करके किया गया था, तो हम उसको क्यों लौटाएंगे?

SHRI NAVEEN JINDAL: As hon. Member Shri Ahluwalia has asked, they can give a comparative statement as to what is the existing law and then what is the repercussion of the judgement, and what do we want to achieve by this amendment. Then it would make the whole thing very clear. Also if they can give example in that as to what will happen to important cases and what is the impact of these amendments, then we will be able to better appreciate the changes. Secondly, while making the presentation he mentioned that the value of movable property is about Rs.1500 crores. What is the estimated value of immovable property? Mr. Raja said that this term 'enemy property' sounds quite odd. What is the relevant word which is used internationally? You have mentioned that there has been no talk with the Government of China nor any claim on enemy properties from Chinese nationals has been received. If there were any Chinese nationals whose property was taken on, what has been done regarding that?

SHRI ANIRUDHAN SAMPATH: My first point is regarding the title of this Bill. With your permission, may I suggest another name? Can it be named as 'alien property'? If that can be considered, that would be nice. It is just a suggestion because this word 'enemy' does not sound good.

Then, on page 5 of the hard copy, regarding immovable property in the form of land, building etc., do we have any estimate regarding the value of the property? Even if we have some approximate estimates, the Secretary inform the Committee about that.

Then, Sir, in these properties, there is every chance of adverse occupation by some other people or something like that. Even while the property is under the custody, there may be chances of adverse occupation by some people. What is the legal remedy? If we are going for more complications in that, the legal heirs will have to spend money on that also.

Another thing is that it has been mentioned that there have been some judgments by some courts and it has created some problems. Regarding that also, we would like to know if there are any contradictions among the judgements of different courts also.

श्री मोहम्मद असरारुल हक : मुझे पहली बात वही कहनी है, जो और लोगों ने कही है कि इसमें जो enemy property है, यह लफ्ज़ अच्छा नहीं है, इसलिए इस लफ्ज़ को बदलकर कोई और नाम दिया जाए, तो बेहतर है। दूसरी बात यह है कि बहुत अच्छा फैसला आया है कि इस मुल्क के किसी आदमी का अगर कोई वारिस होता है, तो वह अब दुश्मन नहीं होगा। दुश्मन तो वह था, जो चला गया। तो अब यहां जो भारतीय है, जो उसकी जायदाद का हिस्सेदार होगा, उसको अपने आपको भारतीय साबित करने के लिए जो प्रोविज़न दिया गया है, उसको बहुत सख्त नहीं होना चाहिए। कहीं ऐसा न हो कि उस आदमी को अपने को भारतीय साबित करने में ही सारा वक्त लग जाए और वह यहां का होते हुए भी उस प्रॉपर्टी का मालिक न हो, इसलिए उसको भी देखना चाहिए।

MUHAMMED HAMDULLA A.B. SAYEED: Sir, I would like to know from Secretary that with regard to the successor, what is the list of successors, whether it is only son and daughter, or it is up to grandson and grand-daughter. Is it up to the second generation also?

Number two, under the Enemy Property Act, the Custodian does not have the authority and the right to take over the possession of the property, the title of the property. So, if he cannot take the title of the property and the possession of the property, then what is the role of Custodian under the Enemy Property act? Now, according to the latest notification of June, 2010, NOC has to be received from Custodian. That is only for alienating the property or disposing of the property. My question is and my concern is regarding the role of Custodian. If the custodian does not have the right to sell the property, or, or he cannot dispose of the property, then what is his role under the Enemy Property Act?

डा. रतन सिंह अजनाला : चेयरमैन सर, हम भी पाकिस्तान से माइग्रेट होकर आए थे। हमारी प्रॉपर्टी पर 40 परसेंट कट लगा था, in some case, 50 per cent. What about that compensation? हमें यहां पर जो कट लगाकर ज़मीन दी, उसका compensation क्या इस बिल में आ सकता है? क्या यह हो सकता है कि हमारा compensation, जब हम पाकिस्तान से माइग्रेट होकर आए थे और हमारी प्रॉपर्टी पर कट लगा था, तो वह कौन compensate करेगा? क्या वह इस बिल में आ सकता है?

अध्यक्ष : अजनाला जी, इसमें लिखा है, “Pakistan has reportedly sold out all properties belonging to Indian nationals vested in its Custodians in 1980s.”

श्री एस.एस. अहलुवालिया : उनका कहना है कि हमको 100 परसेंट compensation नहीं दिया गया। Suppose, we were having hundred acres, we got 40 acres here. Similarly, in this case, will that be applicable or not?

Sir, basically, ‘enemy property’ is an international terminology. This terminology came when the Enemy Act in 1960 was passed. It was outcome of Tashkent Declaration between India and Pakistan. So, it was declared ‘enemy property’. Internationally also, same terminology is used.

CHAIRMAN: This present one may be due to that, but the word ‘enemy property’ comes out of international law, not because of Tashkent Declaration alone.

SHRI GOPAL K. PILLAI: Sir, if you look at Defence of India Act and Rules, the expression ‘enemy’ means, any person or country committing external aggression against India and so on. And, Act itself says, ‘enemy subject means any individual who possesses the nationality of a State which has committed external aggression against India, or, having possessed such nationality has lost it without acquiring another nationality.’ So, that comes again from the Defence of India Rules, and ‘enemy property’ is also defined under the Defence of India Rules. Even the Custodian of enemy property itself was there originally in the Defence of India Rules, ‘Central Government may appoint a Custodian of enemy property’. I mean, that is the history under which the word ‘enemy’ has come. If you want to change something on the word ‘enemy’, then you have to change everything before because the ‘enemy property’ and ‘enemy’ is where we get the basis for taking the property. Otherwise, you cannot seize a

property. But, there is a point and I think for those Indian nationals who lost their property in Pakistan and have come here, some element of this money, which is available with the Custodian, can also go to them because they have not got the full property. So, some of the properties which got sold, this could be given as *ex gratia* to those Indian nationals who have lost the property in Pakistan.

SHRI S.S. AHLUWALIA: Two points were raised - one by Shri Naresh Agrawal, and the other by Dr. Ajnala. Shri Naresh Agrawal said that first you check up whether Raja Amir Khan has taken any compensation in Pakistan or not. If he has taken compensation in lieu of this property, then he is not entitled, or, his dependants are also not entitled to get anything from India. And, second point was that suppose he has not taken, but the procedure adopted at the time of giving land to people who migrated from Western Punjab or Western part of India to India, that they were given 40 per cent of their land holding, so whether that will be applicable to the legal son or not. That is the point.

CHAIRMAN: You take down all these questions and also some of the comments made. In addition to this, I would also like to know whether this Bill is the outcome of the Supreme Court judgement keeping in view only one person, or, many people are going to be affected by this. Do you have any study made in this regard, or, do you have any information available with you? Is it only because of Amir Alam Khan's case and its subsequent effect, or, is there similar number of cases also? For the sake of one individual, making legislation by Indian Parliament, to what extent it can be justified?

SHRI S.S. AHLUWALIA: Sir, we would like to know the details about the Abolition of Zamindari and Land Reforms Act of U.P. and Tenancy Act of UP. How is it going to affect this Act?

SHRI L.K. ADVANI: I am told that the bulk of property in Uttar Pradesh is based in Lucknow, Sitapur and Lakhimpur. So, I think, we can call the people from there who are likely to be affected by this law and listen to them.

SHRI S.S. AHLUWALIA: We should also advertise in this regard.

SHRI D. RAJA: Yes, we should give an advertisement.

CHAIRMAN: Mr. Ahluwalia, whether we are entitled to call witness with regard to a legislation pending before us about the interest of individuals.

SHRI S.S. AHLUWALIA: Yes, why not. A dispute is there. There is a section here which says that the court can adjudicate on that. Suppose a tenant is there for the last fifty years. Rather he is there since 1948. Your law came into existence only in 1968.

श्री नरेश चन्द्र अग्रवाल : यह जब लागू किया गया तो सारे डीएम और एसपीज़ की कोठियां तुरंत खाली करा दी गयीं और उनको पोजेशन दे दिया गया।

SHRI S.S. AHLUWALIA: Even many Government offices are running under that.

CHAIRMAN: Instead of calling them directly, it is better to hear the Government of Uttar Pradesh.

SHRI S.S. AHLUWALIA: We can call the U.P. Government, and, we should also give it publicity so that we can give a public hearing also.

CHAIRMAN: We should know as to who are the stakeholders and what is their interest. Apart from the views of the U.P. Government, we should know the views of stakeholders who are in enjoyment of that property, whether they are legal heirs or not, that is a different matter, because they also get rights over the land.

SHRI S.S. AHLUWALIA: Sir, there are 2,400 properties, out of which, 2,000 are in Uttar Pradesh. Some other States are also there. We can call the respective States.

अध्यक्ष : हम लोग एक प्रेस रिलीज़ देंगे कि जो affected लोग हैं, जिनका इंटरस्ट है, वे लोग अपने व्यूज़ लिखित में यहां भेज सकते हैं और बाद में यूपी गवर्नमेंट को सुनने के बाद हम लोग उन्हें बुला भी सकते हैं। सेक्रेटरी साहब, जैसा मैंने बताया, एक analytical comparative statement बनाकर secretariat को भेज दीजिए और वे लोग उसे हम सबको circulate करेंगे।

With this, the meeting comes to an end. I would request all the officers and the hon. Members to join us for lunch. Thank you.

**SUB-COMMITTEE OF THE DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS ON THE ENEMY PROPERTY
(AMENDMENT & VALIDATION) SECOND BILL, 2010 MET AT 11.00 A.M. ON 20TH
MAY, 2011 IN COMMITTEE ROOM “B”, PHA, NEW DELHI**

(Convenor: Shri S. S. Ahluwalia)

Witness

Representatives of Ministry of Home Affairs

1. Shri Gopal K. Pillai, Home Secretary
2. Shri Anil Goswami, Additional Secretary
3. Shri R.R. Jha, Joint Secretary
4. Shri Dinesh Singh, Custodian, Enemy Property
5. Smt. Sarita Puri, Deputy Secretary

Representatives of Legislative Department, Ministry of Law and Justice

1. Shri V.K. Bhasin, Secretary
2. Shri N.K. Nampoothiry, Additional Secretary
3. DR. G. Narayana Raju, JS & LC
4. Shri Diwakar Singh, Deputy Legislative Counsel

Representatives of Department of Legal Affairs, Ministry of Law and Justice

Shri R.L. Koli, Additional Secretary

CONVENOR: I welcome hon. Members to the meeting of this Sub-Committee which has been constituted to examine the Enemy Property (Amendment and Validation) Second Bill, 2010 in detail and submit a report on the same to the Department-Related Standing Committee on Home Affairs.

Friends, as you are aware, the Bill was referred to the main Committee on 30th December, 2010 for examination and Report by 15th February, 2011. However, the Committee sought extension of time from hon. Chairman, Rajya Sabha for presentation of the Report on the Bill, the last extension being granted up to 15th July, 2011.

Friends, you may recall that in the last meeting of the Sub-Committee, we had decided to invite the Home Secretary to the Government of India, Custodian of the Enemy Property in India in today's meeting. We had also decided to invite written comments of all the State Governments wherever enemy properties are there and also hear Chief Secretaries and Home Secretaries of some of the States. You may also recall that the Home Secretary had made a presentation before the main Committee on the said Bill on 2nd February, 2011. The MHA has sent the written replies to the queries/issues raised by the Members in that sitting which has already been circulated to you. I hope the Members have gone through the replies.

Today, again we are going to hear the Home Secretary and the Custodian of the Enemy Property in India on the Bill. Besides the Home Secretary, we had also invited the Law Secretary and Legislative Secretary to appear before the Committee to clarify legal and legislative queries of the Members. The Law Secretary has sought exemption from appearing before the Committee from me as he is accompanying Law Minister on a foreign tour which I acceded to. Additional Secretary, Department of Legal Affairs, Ministry of Law and Justice will represent the Department.

Now, we may invite the Home Secretary, Legislative Secretary, Additional Secretary, Department of Legal Affairs and the Custodian of the Enemy Property in India.

Last time we decided and we were planning to visit the places. Later on we decided that visiting the place will not be fruitful because all the litigants are sitting on the property and then ultimately, we have to hear their problems. Our job is not that. Our job is something else.

Moreover, properties are scattered in different States. So, instead of going there and meeting the officials and others there, it is always better to call the officials here उन्हीं को यहां पार्लियामेंट में बुलाकर सुनना बेहतर है, इसलिए हम लोगों ने यह निर्णय लिया था कि समाचार पत्रों में दिए गए इशतिहार के आधार पर जो representations हमारे पास आए हैं, उनकी लिस्ट final कर लेंगे कि उनमें से किसको-किसको बुलाना है और राज्य के Chief Secretary, Home Secretary और जो उनके संबंधित अधिकारी हैं, उनको यहां बुला कर सुन लेंगे। सुनने के बाद हम लोग अपनी रिपोर्ट बना लेंगे। उसमें जो litigants हैं, अगर उन्होंने भी representation दिया है, तो उनको भी यहां बुलाएंगे। अगर उनका कोई association होगा, तो वह आएगा या उनकी तरफ से जो भी आएंगे, हम उनकी बात सुनेंगे।

CONVENOR: I, on my own behalf and on behalf of the Sub-Committee, welcome the Home Secretary, the Custodian of the Enemy Property in India and other officers of the Ministry of Home Affairs to this sitting of the Sub-Committee. I also welcome the Legislative Secretary and Additional Secretary of Department of Legal Affairs.

Mr. Home Secretary, as you are aware, the main Committee has constituted this Sub-Committee on the Enemy Property (Amendment and Validation) Second Bill, 2010, to examine it in detail. You may give a brief presentation on the Bill and clarify the issues raised in the previous meeting of the main Committee. You may also enlighten us on the following:

According to the Ministry, the purpose of the proposed amendment is to limit the scope of judicial review by courts, including the Supreme Court. In view of this, whether enactment of this amendment Bill will stand judicial review?

After your presentation, hon. Members may seek some clarifications.

Finally, I wish to say that the proceedings of the Committee shall be treated as confidential and it shall not be permissible for a Member of the Committee or anyone who has access to its proceedings, to communicate, directly or indirectly, to the media any information regarding its proceedings, including its report or any conclusions arrived at, finally or tentatively.

With these words, I request you to take the floor.

SHRI GOPAL K. PILLAI: Sir, at the last meeting of the Committee, a detailed presentation on the Act, its provisions and the changes proposed was made. Subsequently, we have received a series of questions and clarifications from the Committee. We have received a gamut of questions. I think, literally, for the first time, we had to, in the Ministry, look at the issue in one sense right from the very beginning. It would be no exaggeration to say that this subject of enemy property has been given a low priority in the Ministry. One of the questions asked was: Why was this earlier with the Ministry of Commerce and how come it was transferred in 2007 to the Ministry of Home Affairs? Unfortunately or fortunately, when the subject was transferred, I was the Secretary of Commerce. Then, I was posted in the Home Ministry and the subject was also transferred to the Home Ministry. So, I am saddled with this issue again.

CONVENOR: Files are following you or are you following the files?

SHRI GOPAL K. PILLAI: Basically, we will come back to you with some historical details, because some of the old records we are unable to trace at the moment. But, we will get them. We were told that there was a custodian of Enemy Firms. There was also a Custodian of Enemy Trading. Therefore, in the earlier orders, it was not only the Custodian of Enemy Property but also he had an additional charge of Custodian of Enemy Firms and the Custodian of Enemy Trading. Today, of course, with the enactment of the Act and the Defence of India Rules not being in force, he is the Custodian of Enemy Property.

When I was in the Commerce Ministry, I know very clearly that we were unable to find anything in it to be dealt by the Commerce Ministry, because Commerce Ministry was dealing with trade. Here, we found that we have a large number of properties all over India and we, in the Commerce Ministry, felt that the Home Ministry deals with the State Governments. So, Home Ministry would be much more competent to deal with this issue. That is why the proposal was made and discussed in the Committee of Secretaries. The Committee of Secretaries agreed and then the Rules of Business were amended in the Government of India transferring the Custodian of Enemy Property Act from the Commerce Ministry to the Home Ministry and then the files were transferred in 2007. Subsequent to the files being transferred here, we found, in the larger context of the Ministry of Home Affairs where people are dealing with law and order, naxalism, J & K, North East and so on and so forth, this Custodian of Enemy Property was still getting a very low priority. It was partly because the office was located in Mumbai. It is an office where you have just one officer and one Assistant Custodian of Enemy Property based at Kolkata and the rest consisting of two Superintendents and clerks. So, basically, it is a two-officer establishment. One officer is in Mumbai and one is in Kolkata.

Looking at all issues and the information that has come out as a result -- partly of Committee's questions -- we are extremely, in one sense, grateful and found that there is a vacuum in the entire system in which the Custodian of Enemy Property acts.

SHRI G. GOPAL K. PILLAI: One, of course, is the staffing pattern, which is abysmally low. We are taking steps to fill up the vacancies, create posts, and take the prolonged contract appointments. I think, for getting the details of the properties, writing to the State Governments, is not going to work. We will have to appoint, perhaps, Tehsildars, Revenue Inspectors, village officers and constitute special teams in each of the State. They will look at the concerned revenue records, etc. and will come back with the details because in the districts all the officers are busy doing their routine work; and, asking them to give some information

about what was done years ago, is not, again, the State Government's priority. So, we are seeing that these appointments are done as soon as possible so that the teams are able to come back with authentic information.

I will give you an example. The properties, taken from the Chinese in the 1962 wars, were just a list of the properties, and the notification was issued. After that nobody bothered to see whether those properties were there, whose properties were these, and so on and so forth. There was no income from any of the properties. Today, as we are starting to get properties verified -- most of the properties are not in the hands of the Chinese -- they have gone, possibly transferred to number of hands. The details are being verified. Related question, which comes in, with reference to especially the Chinese properties, is the fact that unlike with reference to Pakistan, where Pakistan seized properties of Indians there and sold them, China never seized any property of any Indian in China; and, a policy decision will have to be taken whether in the light of the fact that post-1962, they did not seize any property of Indians whether we need to seize the properties of Chinese. Those are policy issues that we will, now, have to examine here. So, these are some of the issues. The other issue, which has also come as a result of the questions that have been raised, is whether the Custodian of the enemy property be there in perpetuity; and, whether the Custodian of the enemy property should not have a finite existence that it takes into account the properties, decides where the properties have to be given to somebody, and rest of the properties are sold, the money is put into a Trust, decide that 75 per cent of what was due to those came from Pakistan were given only 25 per cent of their losses, subject to ceiling, look at it and pay them 75 per cent; then, the balance, which is there, maybe, goes back into the Consolidated Fund and, then, close this office once and for all. These are major fundamental issues that have come up as a result of the questions that have been raised by the Committee and the fact that Ministry has, now, been forced to look at this whole issue in a much more detailed and comprehensive manner. This is something that we are doing and we are trying to come back to you at the earliest with some key policy issues and on some of the matters. I stop here.

SHRI DINESH SINGH: Sir, I am there for the last five years. But ever since I joined because of the court decisions and follow up, most of the time I have to run around and have to be present everywhere where I am asked to be present. The manpower problem has, now, been brought to the notice of the Ministry that because of the lack of sufficient number of officers the decision-making is being restricted. With these new initiatives, I think, something concrete can take place in this regard. Based on my experience, when I highlighted the issues to the Ministry, the amendments were proposed and, now, the Bill is pending and it is under consideration. Hopefully, something concrete will come out of all these activities. Thank you, Sir.

CONVENOR: Mr. Bhasin, I hope you have gone through the Bill. The apprehension of the Committee is whether this Bill will withstand the judicial review or not.

SHRI V.K. BHASIN: Sir, since I am concerned only with the drafting, my learned colleague Mr. Koli, who is here from the Department of Legal Affairs, will be able to tell something with authority. But I would like to assist the Committee. I would like to draw the attention of the hon. Chairman to proposed section 18(b) and the explanation below that at page No. 3 of the Bill. The jurisdictions of the High Courts and the Supreme Court are of two types -- the ordinary jurisdiction and the writ jurisdiction. I will give you an example of the ordinary jurisdiction. Under the Company's Act, High Court has been given certain functions, maybe, regarding the amalgamation or winding up. So, the ordinary jurisdictions can be ousted by a

law. But the writ jurisdiction or the judicial review, being the basic feature of the Constitution under article 226 or 227, cannot be ousted. So, the power whether a property is enemy property or not remains with the courts. Now, I give the floor to my learned colleague, Mr. Koli.

SHRI R.L. KOLI: Sir, in principle, I agree with Mr. Bhasin that all the orders passed by the administrative authorities are subject to judicial review. The power of the High Courts and the Supreme Court cannot be taken away by any statute. Therefore, every order passed by any authority, whether in the Central Government or the State Government, are subject to judicial review. Therefore, in my view, whatever orders are passed, all of them can be scrutinized by the court in exercising the powers under articles 226 and 227, and sometimes wherever the Fundamental Rights are infringed, the Supreme Court can also take cognizance under article 32 of the Constitution. But, so far as appeal is concerned, it is a statutory remedy. Unless a statute provides for an appeal, appeal cannot lie to the higher court. But for writ jurisdiction or the power of court to take judicial review under articles 226 and 227, this cannot be taken away. This is the basic structure of the Constitution. Therefore, it cannot be infringed.

CHAIRMAN: That means there is a scope for judicial review. Mr. Home Secretary, as far as the identification of the enemy properties is concerned, as I understand from the papers available with us, we are still identifying the properties. We have still not identified all the properties, or, we do not have proof to prove that those are enemy properties. When did you start this work of identifying enemy properties? By what time you will be able to complete this whole exercise? How many properties have been identified? How many properties are yet to be identified? How much more time is required for this because that is a lacuna in the legislation.

SHRI DINESH SINGH: Sir, as far as properties of enemy nationals relating to Pakistan is concerned, the notifications dated 10.09.1965 and 11.09.1965 were general and for automatic vesting. So, they did not specify the properties to be vested, names of the enemy nationals and other particulars. Then, Custodian was expected to identify those properties and take them over as enemy properties. Whenever we receive a complaint that certain property is an enemy property, as per the procedure being followed, the Custodian Office forwards the complaint to the District Authorities requesting identification of the property in revenue records as to who is the owner of that property, what is the nationality of that person, whether he is a citizen of India or he has gone to Pakistan, etc.

SHRI GOPAL K. PILLAI: Sir, let me clarify that it is part of the Annexure that was in reply to a question -- "the summary of immovable properties." There are 62 properties that are Chinese vested. There are 2,049 Pakistan vested properties and there are 1,230 properties which are under process. We have given a detailed break up, State-wise and also District-wise.

CONVENOR: My concern is, how long will you take to complete it?

SHRI DINESH SINGH: Sir, 1,230 are pending as process cases, which are under inquiry. As has already been explained, infrastructure and manpower problems are there. So, presently, no designated officer is in place in Mumbai Office of Custodian, who can give an opportunity of hearing to the concerned people. We had expected that the District officials would work for us but, unfortunately, the result was not that encouraging. So, now, in principle, a post of Deputy Custodian has been created who is expected to pursue these matters and by appointing

detainers, we will quickly get the desired reports from the District Authorities and take a decision on this.

CONVENOR: How long will it take?

SHRI DINESH SINGH: Sir, if everything is in position, this process may take three to four years.

CONVENOR: It is a very long time.

SHRI DINESH SINGH: This is because we have to provide opportunities to the concerned persons. For one property, there are tenants, there are occupants and there are claimants who claim that property was bought by them, either by sale or by transfer. So, we have to give them quasi-judicial hearing to decide these cases.

CONVENOR: Moreover, you do not have manpower.

SHRI DINESH SINGH: Judicially, only Assistant Custodian.....

CONVENOR: Otherwise also, there is lack of manpower.

SHRI DINESH SINGH: Yes, Sir.

CONVENOR: Mr. Pillai, are you going to increase the manpower strength or are you going to depute the District level Custodians or Enemy Property Custodians or Caretakers?

SHRI GOPAL K. PILLAI: Sir, we are going to increase the manpower strength of the Custodian, Enemy Property.

CONVENOR: By when will it be done?

SHRI GOPAL K. PILLAI: The proposal is with the Ministry of Finance. For the time being, we have asked them that they can take some people on contract basis, but we hope that the post will be sanctioned within the next 30 days, before the end of June. Then, of course, it will take about a few months for recruitments and filling up the posts. Most probably, they will take them on deputation. By September, we hope to have all the people in position and thereafter they would begin the process of issuing notices, hearing the parties, etc.

SHRI DINESH SINGH: Sir, I would like to add that whether it is to be vested in the Custodian or not, order to this effect has to be passed by a statutory authority. So, hearing has to be given by a statutory authority, who is appointed by the Government of India. Only he will be helpful in getting the desired information.

SHRI D. RAJA: I have two, three questions. In one of the last meetings of the Standing Committee, I had raised one fundamental question: Whether, even today, can we call it 'enemy property' or 'enemy nationals'? Maybe, the properties belong to Pakistani nationals, Chinese nationals and for that matter, some other neighbouring countries. Can we call 'enemy

nationals' or 'enemy properties' at this point of time because it has a political dimension also? Our country has moved far away from 1947 onwards. So, I raised that question. Can we find out some other phrase or some other legal term? That is one issue and I am raising it again, because, it has a political dimension. So, whether we can use 'enemy national', 'enemy property'; we will have to think about this seriously. This is number one.

Number two, I think the Ministry of Home Affairs has brought this Bill for a simple reason and that is this. It is the understanding of the Home Ministry that there have been judgements by various High Courts and the Supreme Court that have adversely affected the powers of the Custodians or the CEP, Government of India. This is what I understand. The whole exercise has been done because you think some of the judgements are adversely affecting the powers of the Custodians. Once you went to court for a review petition and that was dismissed. After that, I understand the Ministry of Home Affairs implemented the judgement of the Supreme Court. But the Government promulgated an Ordinance on 2nd July, 2010. Is it not a fact that that Ordinance has undone the implementation of the judgement in letter and spirit? How do you look at it? If you can throw some light to explain this in detail, the Committee will have the benefit of what the thinking of the Ministry of Home Affairs is.

Then, lastly, you were talking about some fundamental issues. How long can this Custodian continue? Can this whole thing be brought to an end? So, what is the thinking of the Home Ministry?

SHRI GOPAL K. PILLAI: In so far as the term 'Enemy property' is concerned, I agree with you that in a sense, calling it 'enemy property' meant at a particular point of time, when there was a war on – 1965 war and 1975 war. I think historical and international provisions are there that if there is a war on, properties of the enemy nationals can be confiscated. There is a type of provision which is there all over the world. Internationally, everybody does it. When there is a war on, most countries have done it. I think during the Second World War and so on, people had the powers to take over the properties of enemy nationals, companies, firms, etc.

As regards the other question, I think, for us, it is important to bring this to a finality. You cannot keep on managing these enemy properties for ever, because the war is over now. There is a timeframe by which we have to take a decision. In case of India and Pakistan, there are Indian nationals who have suffered and who have to be compensated. You compensate them and the rest of the money goes to the Treasury and then you close the chapter so that you no longer have anything like the 'enemy property available', which is what in one sense Pakistan has done. Pakistan just sold off the properties and closed the matter. So, there is no enemy property in Pakistan, but we are still continuing with it because we have not been able to find a closure to this. I think we have to find a closure to this at the earliest.

SHRI GOPAL K. PILLAI (CONTD.): I think, one of the reasons why in one sense the Ordinance and the Act has come is because we are finding that the courts' are interpreting it differently, and that is why the words come 'custodian of enemy property'. They have taken the word 'custodian' to mean that you are only keeping custody and the property belongs to somebody else. I think we are saying that once it is an enemy property, it belongs to the Central Government. The Central Government will then auction it off and distribute it to the people who have otherwise suffered by the enemy action and the rest goes into this thing. I think that is where the fundamental difference comes. We are not using the word 'custodian'. It is actually the owner of the enemy property and therefore we don't want the enemy property

to be given back to other people, because, then, there is no way you can compensate the people who have otherwise suffered, the Indians who have suffered as enemy, whose properties have been taken over. That is one of the fundamental reasons. The courts have taken that view and the Government's view was that that is not so.

श्री नरेश चन्द्र अग्रवाल : सर, हम इनसे एक दो बातें पूछना चाहते हैं। मिस्टर पिल्लई आप काफी समय से होम सेक्रेटरी हैं। माननीय सर्वोच्च न्यायालय के डिजीजन के बाद गवर्नमेंट ऑफ इंडिया एक आर्डिनेंस लायी थी। उसके बाद एक बिल पार्लियामेंट के सामने रखा गया, उस पर डिसप्यूट पैदा हुआ और उसके बाद उस बिल को पार्लियामेंट में पेश नहीं किया गया और अमेंड करके एक नया बिल लाया गया। इसमें एक रेस्ट्रिक्शन लगायी गयी कि 2-7-2010 के बाद जो डिजीजन हुए हैं, वे लागू किए जायेंगे। कहीं इसका परपज किसी एक व्यक्ति को या कुछ व्यक्तियों को बेनिफिट पहुंचाने का तो नहीं है ? आप पहले भी आर्डिनेंस लाए, पहला बिल भी आपकी सहमति से आया और फिर उसको अमेंड करके लाए, वह भी आपकी सहमति से आया। हम आपसे जानना चाहते हैं कि पहले बिल में क्या कमियां रहीं या क्या कारण रहे, जिसकी वजह से आप इसको अमेंड करके लाए? क्या अमेंड बिल से किसी एक व्यक्ति को या कुछ व्यक्तियों को लाभ पहुंचाने की मंशा तो नहीं है?

SHRI GOPAL K. PILLAI: I think the Legal Secretary could clarify this aspect. But, I think, primarily, where a Supreme Court decision was already in place, we didn't want to overturn that by the Ordinance. We didn't want to make a retrospective legislation but a prospective legislation. That was primarily the reason.

SHRI V.K. BHASIN: Sir, the procedural aspects usually are given the prospective effect and others are given the retrospective effect. Therefore, it has been said, '...same as otherwise provided..', because there are in-built clauses which will come into effect from the prospective date. So it was provided for that. That was the reason.

श्री नरेश चन्द्र अग्रवाल : हमने आपसे बिल्कुल स्पष्ट पूछा है कि आप पहले आर्डिनेंस लाए। उस आर्डिनेंस के बाद आपने बिल पार्लियामेंट में पेश किया। पार्लियामेंट में पेश होने के बाद वह रुका रहा, वह दोनों हाउस के सामने नहीं आया और उसको आपने वापिस लिया तथा बाद में एक अमेंड करके बिल लाए। इसमें एक स्पेसिफिक डेट आपने 2-7-2010 दी है। उसके बाद के जो डिजीजन हुए हैं, वे लागू किए जायेंगे। आपने इसके पहले का पीरिएड छोड़ दिया है। यह अमेंडमेंट करने की आपको क्यों जरूरत पड़ी, आप इसको पहले क्यों नहीं लाए? आखिर एक बिल आप पहले लाए और उस बिल को वापिस किया, फिर वही बिल कुछ अमेंडमेंट करके दूसरी बार लाए। हम जानना चाहते हैं कि वह पहले क्यों छूट गया था, उसका कारण तो हमें पता लगना चाहिए? मीडिया में जो खबरें आयी हैं, उसके अनुसार कुछ लोगों ने इसका विरोध किया और उसके बाद कुछ मीटिंग्स हुयीं और फिर अमेंड करके इसको लाया गया। इससे ऐसा लगता है कि स्पेसिफिक किसी को लाभ पहुंचाने के लिए इसको लाया गया।

SHRI GOPAL K. PILLAI: Sir, it is not to give benefit to any specific individual or otherwise. It is with reference to a particular Supreme Court Judgment which had been made earlier. So, where I have already returned the properties to somebody, I didn't want to have that opened retrospectively. Where something had already been done, then I will have to go

back and again take back the properties from them. That is why they are saying that we wanted this Ordinance. It was brought to the notice of Government that by giving it retrospective effect, you would have a situation where you will have to reopen and take back property which has already been returned as per the Supreme Court judgment and that creates far more complications. Therefore it was suggested to make this Act prospective and not affect those where you have already complied with the decision of the Supreme Court. That was the primary purpose.

DR. V. MAITREYAN: You spoke about the recruitment of manpower. You said that there is a proposal which the Finance Ministry is expected to clear by June. What is the exact number of recruitment you are talking about? Is it spread across all the States? Whether the enemy properties are scattered all over or are they restricted to some States? If they are restricted to only some States, then your recruitment is going to be with reference to only those States.

Secondly, after the enactment of this Act in 1968, have you handed over any property to anybody? Do you have any details on that?

SHRI GOPAL K. PILLAI: Subject to final verification, the Custodian says that wherever they have taken a decision that the property is not an enemy property, those properties have been returned; but wherever they have taken a decision that it is an enemy property, those properties continue to remain with them.

DR. V. MAITREYAN: There are two aspects. How many properties have now been classified as not belonging to the enemy jurisdiction and have been handed over? The second is, even if you have classified them as enemy property -- from 1968 we are now in 2011 -- why is it taking such a long time to take a decision on that? It is 50 long years.

SHRI GOPAL K. PILLAI: Sir, some decision has been taken. A total of 1113 properties have been decided as 'enemy property' and we have got 1230 properties which are still under process of examination and that process has got very slow because there is not enough staff.

DR. V. MAITREYAN: What have you done with these one thousand and odd properties which have been classified as enemy properties?

श्री नीरज शेखर : उनको अभी तक वापिस तो नहीं किया गया है।

DR. V. MAITREYAN: You have not even sold them.

SHRI DINESH SINGH: Sir, we are receiving rents/income from some of the properties and a number of properties are before the court, challenging the vesting certificate and all that. In certain cases, status has to be ascertained by physically verifying them and taking control in a physical way certifying that we have taken control and then we have to give it on rent, etc.

श्री नीरज शेखर : रेंट तो वहीं से आ रहा होगा, जहां पर लीगली लोग रह रहे हैं। इसका मतलब यह है कि वहां पर लोग रह रहे हैं?

SHRI DINESH SINGH: Sir, the factual situation is that the properties are immovable properties. Particularly, in immovable properties, there must have been some resident even

before the vesting took place. So most of the premises are tenanted even before the vesting took place, and, as such, the tenants and occupants are only paying at the old rates of rentals. However, where it could have been possible, nominal increases have been made in rents.

SHRI GOPAL K. PILLAI: They continue to pay to the custodians as the owner, not to the original person.

DR. V. MAITREYAN: What is the number of exact recruitments and how are they distributed? The reason why I want to know about it is because you said that the proposal is with the Finance Ministry.

SHRI GOPAL K. PILLAI: Sir, we will give you the details.

श्री मोहम्मद असरारुल हक : मैं कस्टोडियन साहब से यह जानना चाहता हूँ कि आप यह बताइए कि यह जो एक्ट 1968 का है उसके लिहाज से आपको सिर्फ तीन अख्तियार हैं, इस प्रॉपर्टी को कंट्रोल करने का, इसको मैनेज करने का और इसकी देखभाल करने का, इसके अलावा आपका कोई अख्तियार नहीं है। इस 42 साल के अंदर जो 1968 का एक्ट आया, उसके हिसाब से प्रॉपर्टी का मालिक अब भी वही है, जो कल Enemy था और आज Enemy नहीं है। कल वह पाकिस्तान में था, वह Enemy था, वह मर गया। उसके बाद उसकी औलाद है, जो इंडिया में है, वह Enemy नहीं हो सकता है। अब उसके लिए आपने रजिस्टर मेनटेन किया हुआ है, उसको आपने किराये पर दिया है, आपको उससे जो आमदनी आ रही है, उसको आप रजिस्टर में उसी के नाम से enter करते हैं।

श्री मोहम्मद असरारुल हक (क्रमागत): उसके अन्दर आप अपने administration के लिए भी कुछ न कुछ हिस्सा रखते हैं। क्या यह रजिस्टर आपके पास है? क्या उन तमाम जायदादों के बारे में, जो आपने किराए पर दिए, कहाँ दिए, इसकी जानकारी है? जैसा अभी आपसे मालूम हुआ कि आपको यह भी पता नहीं है कि उन तमाम जायदादों पर कौन काबिज़ है और कौन नहीं है। यह आपकी जिम्मेदारी थी कि उससे होने वाली तमाम आमदनी को आप हिफाज़त से रखते और उसकी जिम्मेदारी निभाते। अब जो यह amendment bill लाया जा रहा है, मैं ऐसा समझता हूँ कि 1968 का जो एक्ट है, अब उसकी ही कोई जरूरत बाकी नहीं रही। उसमें amendment लाने की इसलिए कोई जरूरत नहीं है, क्योंकि उसके लिहाज से अब जो जायदादें मुल्क में हैं, वे तीन तरह की हैं। एक वैसी जायदादें हैं, जिनका अदालत के जरिए फैसला हो चुका, जिनके लिए यह तय कर दिया गया कि उनके वारिस यहाँ पर हैं और उन वारिसों को ये जायदादें मिलेंगी। जिन जायदादों के बारे में अदालत ने तय कर दिया, वे जायदाद अदालत के फैसले के मुताबिक उन लोगों को मिलनी चाहिए। दूसरी वैसी जायदादें हैं, जिनकी अब तक आपने पहचान नहीं की है और उनके मामले कोर्ट में चल रहे हैं। मैं देख रहा हूँ कि amendment bill के अंदर कोर्ट के अख्तियारात को घटाया जा रहा है और यह अख्तियारात custodian को दिया जा रहा है। इसका यह हश्र है कि उसके पास स्टाफ नहीं है, सारी जायदादें उत्तर प्रदेश और इधर फैली हुई हैं और वह मुंबई में बैठा हुआ है। आज तक 42 साल के अन्दर वह जायदाद को जमा भी नहीं कर पाया और वह कह रहा है कि उसके पास स्टाफ नहीं है। अगर इसके अन्दर हम उसको सेल करने का अख्तियार दे दें, तो जिन्होंने इन

42 सालों में जायदादों का सत्यानाश किया है, वह और तबाह हो जाएगा, इसलिए मैं समझता हूँ कि जिन जायदादों पर अब तक फैसला नहीं हुआ है और इसके लिए जो लोग अदालत में लड़ रहे हैं, उनको मौका दिया जाए और अदालत यह फैसला करे कि उनको वह जायदाद मिलेगी या नहीं मिलेगी। तीसरी वैसी जायदादें हैं, जिन्हें अब तक कोई claim करने वाला नहीं है। आप ऐसी जायदादों के लिए एक period मुकर्रर कीजिए कि ये जिनकी भी जायदादें हैं, वे छः महीने या तीन महीने के अंदर claim करें। अगर ऐसी जायदादों के लिए कोई claim नहीं करता है, तो सरकार उनको अपने अख्तियार में ले ले। इसलिए मेरे खयाल से अब इस एक्ट की कोई जरूरत नहीं है और न ही इसमें कोई amendment की जरूरत है। जैसे पहले एक एक्ट आया था, जिसको 1955 में खत्म कर दिया गया। उसके बाद फिर notification के जरिए चला। फिर Enemy Property आया और 1962 तक उसी से चला। 1962 के बाद Defence of India Rule एक्ट आया। आपने 1965 और 1971 की जंग की रोशनी में इस बिल को लाया था। इन 42 सालों में जब कुछ नहीं हुआ, तो मैं ऐसा समझता हूँ कि आज इसको लाकर नई उलझन पैदा करने की कोई जरूरत नहीं है।

श्री दिनेश सिंह : सर, Custodian के पास जो properties vest हुई थीं, वे mainly पाकिस्तान की थीं। 10.9.1965 को पहला नोटिफिकेशन आया था। जहाँ तक मैं समझता हूँ, यह Government of India का reprisal action था। पाकिस्तान ने Indian Nationals की जो properties ली थीं, उसके reprisal में Government of India ने नोटिफिकेशन जारी किया और properties को control में लेने के लिए आदेश पारित किया। जब Defence of India Rule expire हो गया, तो Enemy Property Act बना, जिसमें पहले जो custodian appoint हुआ था, उसमें कहा गया कि properties custodian के पास vest रहेंगी और custodian की powers सेक्शन (8) में define की गईं, जो काफी extensive powers थीं। उसको अधिकार दिया गया था कि वह property को manage और preserve करने के लिए कोई भी फैसला ले सकता है और इसमें सेल की भी पावर दी गई थी। सेक्शन 8.2.7 में clearly कहा गया था कि “transfer by way of sale or mortgage or lease or otherwise dispose of any of the properties.” लेकिन जब गवर्नमेंट को पता चला कि 1986 में पाकिस्तान में सेल कर दिया गया है, उसके बाद गवर्नमेंट लेवल पर कुछ complications हुई होंगी। चूँकि मैं custodian हूँ, इसलिए एक्ट में जो powers हैं, मुझे उनके अंदर ही काम करना है और policy decisions गवर्नमेंट को लेना है। जब पाकिस्तान ने सेल किया, उसके बाद बंगलादेश बना और किसी वजह से बंगलादेश की properties और यह समझौता, जो ताशकंद एग्रीमेंट के तहत होना था, वह हो नहीं पाया। इन properties का क्या हो? Custodian के लिए शायद यह आसान होता कि वह बेचता रहता, लेकिन ताशकंद एग्रीमेंट में या कोई bilateral settlement इंटरनेशनल लेवल पर होगा, इसकी उम्मीद करते हुए disposal का by and large policy decision नहीं लिया गया, इसलिए अभी भी properties पड़ी हुई हैं।

जहाँ तक किराएदारों और रेंटल्स की बात है, इस संबंध में आपका कहना सही है कि properties पूरे देश में फैली हुई हैं, जिन्हें हम जिलाधिकारी के माध्यम से control करने की कोशिश करते रहे हैं,

क्योंकि हर जिले में इसकी देखभाल करने के लिए अलग से अधिकारी को तैनात करना शायद बहुत सुविधाजनक बात नहीं होगी। इसके तहत जो process properties हैं, जब हमको man power मिल जाएगी और अगर एक dedicated officer, Deputy Custodian की बात की गई है, मिल जाएगा, तो हम इसको जल्दी से जल्दी खत्म करने की कोशिश करेंगे।

सर, एक्ट में जो amendment लाने की बात की गई है, इसमें उन properties को divest करने की बात कही गई है, जिनके लिए उनके legal heirs and successors कोर्ट से succession certificate लाकर देंगे। जो divest नहीं होती हैं या जहाँ पर कोई claim करने वाला नहीं होगा, वैसी properties को सरकार बेचने का फैसला ले सकती है। इसके लिए भी एक अलग provision बनाया गया है। वह इस प्रकार है, “Central Government may by general or special order direct for the disposal of any or all of the enemy properties.” हमारा अपना मानना है कि ये चीजें धीरे-धीरे phase out करने में सहायक होंगी और जैसा सर ने कहा कि हम इसको dispose of करके पैसा इकट्ठा कर लेंगे। फिर हमने उन लोगों को ex gratia दिया था, जो 1965 और 1971 में पाकिस्तान और बंगलादेश में अपनी property को loss करके आए थे। वह ex gratia देने का आधार यही था कि पाकिस्तान में हमारी जो properties loss हुई थीं, वे four times थीं और इंडिया में जो properties हैं, वे one-fourth हैं। इसलिए उनको कहा गया कि हम अभी 25 परसेंट दे देंगे। वह पैसा Consolidated Fund of India से गया, इन properties से नहीं गया, जिन properties की इनकम हमारे पास इकट्ठा हो रही हैं। ये सब issues हैं। चूँकि properties हैं, इसलिए इनका कुछ न कुछ तो हश्र होना है और वह हश्र कानून के माध्यम से ही हो सकता है। सरकार की जो executive powers हैं, उनके तहत वह divest करने का फैसला ले या बेचने का फैसला ले, यह फैसला सरकार को करना है। कानून के मुताबिक जो फैसला आएगा, मुझे उसका पालन करना होगा।

श्री नीरज शेखर: संयोजक महोदय, मुझे यह लग रहा है कि गृह मंत्रालय इस पर चल रहा है कि जिस तरह 1965 या 1968 में पाकिस्तान ने जमीनें बेच दीं, तो हमको भी वही करना चाहिए। जो पाकिस्तान कर रहा है, अगर वही हम भी करने लगेंगे, तो हमारे और पाकिस्तान में क्या फर्क रह जाएगा। अगर पाकिस्तान ने बेच दिया, तो यह जरूरी नहीं है कि हम लोग भी जमीनें बेच दें। इसका custodian इसलिए बनाया गया था कि अगर लोग वहाँ से वापस आते हैं और हम लोग चाहते हैं कि लोग वापस आएँ या उनके जो लोग यहाँ पर रह गए हैं, वह जमीन उन लोगों को मिले। अगर कोर्ट ने आदेश दिया है, तो कोर्ट ने ऐसे ही आदेश नहीं दिया होगा! मैं यह भी जानना चाहता हूँ कि कोर्ट ने जिन cases में आदेश दे दिए हैं, उनमें क्या हो रहा है? कई मामलों में कोर्ट के फैसले आ चुके हैं, सुप्रीम कोर्ट के फैसले आ चुके हैं। अगर फैसले आ चुके हैं, तो उन properties का अभी क्या हाल है? मैं यह बात Custodian साहब और गृह सचिव साहब, दोनों से जानना चाहता हूँ कि उन properties का क्या हो रहा है, जिनका फैसला हो चुका है? क्या आपने उन properties को उनके मालिक या heirs को वापस कर दिए हैं या वे अभी भी आपके पास ही हैं?

श्री दिनेश सिंह : सर, जहाँ तक यह सवाल है कि सरकार उस जमीन को बेचना चाहती है, इस संबंध में मेरा यह कहना है कि सरकार सिर्फ बेचना नहीं चाहती है, वह divest करने के लिए भी provision डाल रही है।

श्री नीरज शेखर : जब पार्लियामेंट का सत्र खत्म हो गया, उसके बाद यह हुआ। पहले तो आप लोग चाहते थे कि सब बिक जाए। पहले का फैसला तो यही था।

श्री दिनेश सिंह : सर, हमने second bill में 18(b) और 18(c) डाला है।

श्री नीरज शेखर : यह तो आपने second bill में डाला है, लेकिन यह तो पहले वाले बिल में नहीं था। क्या पहले वाले बिल में भी यह provision था कि इनके जो भी legal heirs होंगे, उनको यह दे दिया जाएगा?

श्री दिनेश सिंह : सर, second bill में सेक्शन 18 को specify किया गया है।

श्री नीरज शेखर : कोर्ट ने जिनके बारे में आदेश दे दिया है, उनके बारे में आपको क्या कहना है?

श्री दिनेश सिंह : कोर्ट का पहला आदेश आया था कि सेन्ट्रल गवर्नमेंट के पास ही divest करने की पावर नहीं है, कोर्ट divest कर सकती है। उस situation में सरकार को लगा कि divest करने की power केन्द्र सरकार को है, क्योंकि यह स्टेट का executive function है। Ordinance लाकर उन properties को, जो कोर्ट के आदेश पर release की गई थीं, उनको with immediate effect custodian के पास re-vest कर दिया गया। उसके परिपालन में उन सारी properties को, जो कोर्ट के आदेश से वापस दे दी गई थीं, हमने उन्हें अपने कब्जे में ले लिया। उसके बाद 06 सितंबर को ordinance lapse हो गया है। अब जो affected parties हैं, वे लोग कोर्ट में हैं।

श्री नीरज शेखर : क्या आपके ऊपर कोई contempt of court नहीं हुआ?

श्री दिनेश सिंह : हमने यह कानून के अंतर्गत किया है। अब मुद्दा यह है कि अगर कोई कार्य कानून के परिपालन में किया गया है, तो वह कार्य विधिपूर्ण होता है और उसकी वापसी कानून के तहत ही हो सकती है। यह हम लोगों का मानना है, जिसके लिए विधिक राय ली गई।

श्री नीरज शेखर : यहां पर लॉ मिनिस्ट्री के लोग भी हैं, अगर यह नया बिल पास हो गया तो सुप्रीम कोर्ट फिर से कोई अंगुली नहीं उठा सकता है? क्या आपको लगता है कि वे लोग करेंगे? अभी जो विधेयक आया है, अगर यह पास हो गया तो फिर उसमें क्या होगा?

श्री दिनेश सिंह : सर, मैं अभी इस मुद्दे पर तो शायद कोई जवाब नहीं दे पाऊंगा, क्योंकि अपील तो उन्होंने अभी भी की हुई है।

श्री नीरज शेखर : हम लोग यही कहना चाहते हैं कि 42 साल हो गए हैं और अभी हम अगले 42 सालों की तैयारी करके चल रहे हैं कि कोर्ट में केस चलता रहे और जो पीड़ित लोग हैं, वे हमेशा वैसे ही रहें। एक साहब ने ठीक कहा है, मैंने पढ़ा है कि हमें इतना मिला था कि सबसे ज्यादा जमीन और उसके केसेज उत्तर प्रदेश में हैं। अब आप मुम्बई में कैसे चले गए?

श्री दिनेश सिंह : सर, मेरे आफिस से जो बैक ग्राउंड मिला है, उसके हिसाब से यह कॉमर्स मिनिस्ट्री का पार्ट था।

श्री नीरज शेखर : अब तो आप होम मिनिस्ट्री में हैं।

श्री दिनेश सिंह : जी सर। World War II के बाद Controller of Enemy Funds का ऑफिस होता था। 1962 में इंडो-चाइना वॉर हुआ तो Enemy Property का कॉन्सेप्ट आया और Custodian of Enemy Property को appoint करके मुम्बई आफिस में ही रखा गया। उसके बाद एक ऑफिस कोलकाता में खोला गया।

श्री नीरज शेखर : क्या आपको ऐसा नहीं लगता कि उत्तर प्रदेश में खोलना चाहिए?

श्री दिनेश सिंह : एक असिस्टेंट कस्टोडियन के आफिस के लिए सरकार ने लखनऊ में ऑलरेडी स्वीकृति दे है। हमने इसकी प्रक्रिया चालू कर दी है और आदेश मिलते ही वह चालू हो जाएगा।

श्री नरेश चन्द्र अग्रवाल : जो Enemy Property Act बना था, उसमें शायद यह क्लियर है कि जो भी व्यक्ति जिस कंट्री में चला गया यानी जो पाकिस्तान में चला गया या वहां से इंडिया में आ गया, उसने वहां की राष्ट्रीयता ले ली, compensation ले लिया, उसको उस प्रॉपर्टी के राइट के लिए बार कर दिया गया था। जिन लोगों ने वहां की राष्ट्रीयता ले ली और उसी ग्राउंड पर उस कंट्री से compensation भी ले लिया, क्या वह इंडिया में दोबारा प्रॉपर्टी पाने का हकदार है? मैं दूसरी बात यह जानना चाहता हूँ कि UP में जितनी प्रॉपर्टीज़ हैं, वे उनको लौटा दी जाएंगी तो कितने व्यक्तियों को फायदा होगा तथा उनके मालिक कौन-कौन हैं? इसके साथ ही यह भी बताया जाए कि UP में दो हजार से ऊपर कितनी प्रॉपर्टीज हैं? हमें इसकी जानकारी मिल जाती तो अच्छा होता।

श्री नीरज शेखर : नरेश जी, आप पिछली मीटिंग में नहीं थे, सभी को इसकी जानकारी दी गई थी।

श्री नरेश चन्द्र अग्रवाल : अगर ये प्रॉपर्टीज माननीय न्यायालय के आदेश से किसी को लौटा दी गईं और सन् 65 से आज तक उन प्रॉपर्टीज पर जो टैक्सेशन पड़ता, क्या वह टैक्स फिर से उन प्रॉपर्टीज पर पड़ेगा या वे उससे वंचित होकर नए मालिक हो जाएंगे? उन पर जो पिछला टैक्स लगना चाहिए, वह टैक्स लगेगा या नहीं लगेगा? मैं यही जानकारी चाहता हूँ।

श्री नीरज शेखर : गृह सचिव जी, पिछली बार आपने बता दिया, शायद मैं जानता नहीं हूँ। क्या उन पर सीलिंग एक्ट लागू होगा या नहीं?

श्री गोपाल के. पिल्लई : ऑन्सर दिया है कि जब आप वापस देंगे तो सीलिंग एक्ट will be applicable.

CONVENOR: I was going through the background note and under the heading Proposed Amendment of the Act you mentioned 'till a decision is taken for extinguishment of the Act.' Do you foresee a time-frame of extinguishment of this Act?

SHRI GOPAL K. PILLAI: It may take five years' time. If it is done in three or four years' time when all the properties are disposed of and nothing is left, then the office should be abolished.

CONVENOR: But he is saying that it may take two to four years just to identify whether it is an enemy property or not. Suppose they identify that 1200-odd properties are not enemy properties, automatically the office will be closed. But if they identify that the properties are enemy properties, then what?

SHRI GOPAL K. PILLAI: Then a policy decision will be taken as to what is to be done with this. Today, we have not taken that decision whether you are going to dispose of the properties or whether you are going to put them into a trust fund or going to give 75 per cent compensation to those who did not get ex gratia of what they lost in Pakistan or Bangladesh and then the balance would go into the Consolidated Fund of India and then the matter will be closed. There will be residual court cases which will continue for which we can keep skeleton staff. The disposal of entire property may take five years, but it depends on how much staff we get.

CONVENOR: Is there any cash in the custody?

SHRI DINESH SINGH: Presently, approximately Rs.270 crore have been collected by way of income and it is cash.

CONVENOR: Is there any proposal to make a corpus fund and to invest in the Government security?

SHRI DINESH SINGH: We are already doing this. As per the provisions in the Act, we are investing it in Treasury Bills and we are in the process of identifying Government securities where we can invest it.

CONVENOR: How much money have you invested in the Treasury Bills?

SHRI DINESH SINGH: That is done on rotational basis. For example, for one year we invest it and then again we reinvest it.

CONVENOR: So, the whole amount you have put in Treasury Bills. Thank you Home Secretary, Legislative Secretary, Additional Secretary and Custodian. We will call you again after meeting respective officers of different States. We will hear them and again call you before finalizing our report.

**THE SUB-COMMITTEE OF THE DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS ON THE ENEMY PROPERTY
(AMENDMENT & VALIDATION) SECOND BILL, 2010 MET AT 3.00 P.M. ON 19TH
JULY, 2011 IN COMMITTEE ROOM “B”, PHA, NEW DELHI**

—————
(Convenor -- Shri S.S. Ahluwalia)

Representatives of Legislative Department, Ministry of Law and Justice

1. Shri V.K. Bhasin, Secretary
2. Shri N.K. Nampoothiry, Additional Secretary
3. Dr. G. Narayana Raju, Joint Secretary and Legislative counsel

Representatives of Department of Legal Affairs, Ministry of Law and Justice

Shri Sudhir Ranjan Mishra, Deputy Legal Advisor

Representative of Ministry of Home Affairs

Shri R.R. Jha, Joint Secretary

Representatives of Government of Goa

1. Shri Sanjay Kumar, Chief Secretary
2. Shri Rajeev Verma, Special Secretary
3. Shri R. Mihir Vardhan, District Collector

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CONVENOR: I welcome Hon. Members to this sitting of the Sub-Committee. Today we are going to hear the Chief Secretary of the State Government of Goa.

Friends, I would like to inform you that pursuant to the decision taken in the meeting of the main Committee held on 30th June, 2011, the Chairman, DRSC on Home Affairs requested the hon. Chairman, Rajya Sabha for extension of time up to the first week of Winter Session of Parliament, 2011, for presentation of the report on the Enemy Property (Amendment and Validation) Second Bill, 2010. However, hon. Chairman, Rajya Sabha has granted extension only up to 31st August, 2011 for the same.

Since, we have very little time at our disposal, we have to work at a fast pace.

You may recall that the Sub-Committee at its first sitting held on 11th May, 2011 had decided to seek written comments of all the State Governments wherever enemy properties are situated in the first instance and also if felt necessary to hear Chief Secretaries of some State Governments. Permission of hon. Chairman, Rajya Sabha was sought which was accorded. The Secretariat accordingly had written to respective Chief Secretaries on 2nd June, 2011 for comments.

The Secretariat, while reminding the Chief Secretaries of concerned States in its written communication dated 22nd June, 2011, had already mentioned that if the comments of the State

Government were not received by 30th June, 2011, it would be presumed that the State Government has no comments to offer on the Bill.

I may also inform you that in response to our communication, only four States have responded so far. Out of these four, two States/UTs, namely, West Bengal, and Daman & Diu have sent their comments and other two States namely Karnataka and Bihar have only forwarded their communication to concerned Departments of the State Governments. The Secretariat had prepared a questionnaire on the subject and sent to the Ministry of Home Affairs, and written replies received have already been circulated to you. The Secretariat had also sent all the relevant memoranda received from the public/stakeholders on the Bill to the MHA for its comments. The comments so received from the Ministry have been circulated to you. Besides this, the Secretariat has also circulated various other papers received from the Ministry of Home Affairs.

I hope the Members have gone through the papers.

For today's meeting, Chief Secretaries of West Bengal and Goa have been invited. West Bengal Chief Secretary has expressed his inability to come today due to his prior engagement due to a Tripartite Agreement proposed to be signed among the Government of India, Government of West Bengal and the Gorkha Janamukti Morcha in Darjeeling on 18th July, 2011 where he is required to attend. We have given permission to him for being absent. He will be called in the meeting of the Sub-Committee on the 27th July, 2011.

Today, the Chief Secretary of the Government of Goa has come for the meeting. Besides Chief Secretary, we have also invited Law Secretary, Legislative Secretary of the Government of India and a Joint Secretary level officer from the Home Ministry to assist the Sub-Committee in case of any clarification. All the officials have arrived.

Now, if you permit me, we may invite the Chief Secretary, State Government of Goa and other officers.

CONVENOR: I, on my own behalf and on behalf of the Sub-Committee, welcome the Law Secretary, officials of the Legislative Department, the Chief Secretary, Government of Goa and the Joint Secretary, Ministry of Home Affairs to this sitting of the Sub-Committee. Mr. Chief Secretary, as you are aware, the Enemy Property (Amendment and Validation) Second Bill, 2010 has been referred to the Department-related Standing Committee on Home Affairs.

The Committee has constituted this Sub-Committee on the Enemy Property (Amendment and Validation) Second Bill, 2010 for making a detailed study of the Bill. As your State has several enemy properties, the Sub-Committee has decided to hear your views on the provisions of the Bill, particularly the management of enemy properties in your State. You may give the comments of your State briefly on the Bill containing the description of enemy properties situated in Goa.

After your presentation, Members may seek clarifications.

The proceedings of the Committee shall be treated as confidential and it shall not be permissible for a Member of the Committee or anyone who has access to its proceedings to communicate, directly or indirectly, to the media any information regarding its proceedings,

including its Report or any conclusions arrived at, finally or tentatively, till its Report is laid on the Table of both the Houses of Parliament.

With these words, I request you to take the floor.

श्री संजय कुमार: आदरणीय संयोजक महोदय एवं सदस्यगण, मैं आप लोगों का अभिनन्दन करता हूँ। सर, हम लोगों के पास अमेंडमेंट के जो प्रपोज़ल्स आये थे, उनको सरकार के स्तर पर इग्ज़ैमिन किया गया है और इस अमेंडमेंट पर विचार करने के बाद हम लोगों ने इससे सहमति जतायी है। हमारे गोवा में जो डिटैल्ड एनमी प्रॉपर्टीज़ हैं, उनको हमने enumerate किया है। गोवा स्टेट में 122 एनमी प्रॉपर्टीज़ identify हुई हैं, जिनमें से 112 प्रॉपर्टीज़ नॉर्थ गोवा डिस्ट्रिक्ट और 10 प्रॉपर्टीज़ साउथ गोवा डिस्ट्रिक्ट में हैं। सर, 122 एनमी प्रॉपर्टीज़ में से 120 में custodian appointed है और properties vested है। केवल दो ऐसे केसिज़ हैं, जिनकी verification चल रही है और जैसे ही यह verification complete हो जाएगी, हम सब-कमिटी को इससे अवगत करा देंगे। इन 120 प्रॉपर्टीज़ में से 117 प्रॉपर्टीज़ का नाम हमने रूल 14 के तहत म्यूटेशन में कर दिया है।

श्री नरेश चन्द्र अग्रवाल: किसके नाम पर कर दिया है?

श्री संजय कुमार: सर, हमने यह कस्टोडियन के नाम पर कर दिया है। हमारे यहाँ रूल 14 बोलते हैं, जिसके तहत हमने उन प्रॉपर्टीज़ को दर्ज करा दिया है। उनमें से दो केसिज़ में हम लोगों के पास इनकम भी आती है और एक केस में इनकम के लिए कोर्ट में मामला चल रहा है। इस प्रकार, ये 120 प्रॉपर्टीज़ की डिटैल्स हैं और दो प्रॉपर्टीज़ की verification चल रही है। अगर सब-कमिटी कोई और जानकारी चाहेगी, तो वह हम बताने के लिए यहाँ मौजूद हैं।

श्री नरेश चन्द्र अग्रवाल: हम यह जानना चाहेंगे कि इन प्रॉपर्टीज़ के संबंध में सुप्रीम कोर्ट की जो जजमेंट हुई थी, उसका effect आपकी इन 120 प्रॉपर्टीज़ पर क्या पड़ा?

संयोजक: सुप्रीम कोर्ट की जजमेंट, जो महमूदाबाद के राजा के फेवर में गयी, जो कि उनकी प्रॉपर्टीज़ के बारे में थी, क्या उस जजमेंट का असर आपकी किसी प्रॉपर्टी पर पड़ता है?

श्री संजय कुमार: नहीं सर, महमूदाबाद वाले केस के बारे में हम लोग..

संयोजक: नहीं, वह तो specific है, लेकिन जजमेंट का जो ऑर्डर है, उसके तहत आपके यहाँ जितनी प्रॉपर्टीज़ हैं, एक तो वे पुर्तगीज़ नेशनल्स की है, इसलिए उन्हें पाकिस्तान वाले इश्यूज़ के साथ नहीं जोड़ा जा सकता, किन्तु जो ऑर्डर का एक पार्ट है, जहाँ पर यह क्वालिफाई किया गया कि इस आदमी को प्रॉपर्टी दी जा सकती है, वैसे क्वालिफिकेशन को मद्देनजर रखते हुए आपके यहाँ क्या ऐसी कोई प्रॉपर्टी पर असर पड़ रहा है? क्या आपने उसकी assessment करायी या आपने जजमेंट पढ़ी? क्या आपके डिपार्टमेंट ने उसको देखा कि वह जजमेंट, इग्ज़ैमिन करने के बाद, आपके यहाँ इस-इस प्रॉपर्टी पर लागू होती है?

श्री संजय कुमार: सर, मैं दो बातें बताना चाहता हूँ। एक तो यह है कि उसमें पाकिस्तानी नेशनल्स के भी केसिज़ हैं, क्योंकि बहुत-से गोवनीज़, जो पुर्तगीज़ regime में थे, वे कराची वगैरह शिफ्ट हुये और वहाँ से काफी लोग मुम्बई भी गये। इस तरह से इसमें दोनों बातें हैं। सर, जहाँ तक महमूदाबाद वाले केस का सवाल है, शायद ऐसा कोई केस नहीं होगा, जिसे हमने पूरा इग्ज़ैमिन न किया हो।

श्री नरेश चन्द्र अग्रवाल: आपके यहाँ क्या ऐसा कोई केस है कि उत्तराधिकारी बन कर उस प्रॉपर्टी को मांगने के लिए आपके पास कोई आया हो?

श्री संजय कुमार: जी नहीं, सर।

श्री नरेश चन्द्र अग्रवाल: क्या सारी प्रॉपर्टीज़ गवर्नमेंट में vest हो गयीं?

श्री संजय कुमार: जी हाँ, सर।

संयोजक: एक प्रॉपर्टी, जो disputed है और जिसमें केस चल रहा है, उसमें क्या विवाद है?

श्री संजय कुमार: नहीं सर, अभी दो केसिज़ में verification चल रही है। साउथ गोवा में दो प्रॉपर्टीज़ हैं, उनके बारे में verification चल रही है।

संयोजक: नहीं, नहीं। आपने कहा कि एक का रेंट कोर्ट में जमा हो रहा है?

श्री संजय कुमार: सर, यह केस सिविल कोर्ट में चल रहा है।

संयोजक: जब केस कोर्ट में चल रहा है, तो उसका dispute क्या है?

श्री संजय कुमार: सर, वह पेमेंट ऑफ रेंट के बारे में है। कस्टोडियन को जो इनकम पे करनी है, उस इनकम को लेकर dispute है और यह मामला सिविल कोर्ट में गया हुआ है।

संयोजक: कौन क्लेम करना चाहता है? क्योंकि प्रॉपर्टी को जो क्लेम कर रहा होगा, वही तो पेमेंट भी मांग रहा होगा!

श्री संजय कुमार: वहाँ का जो टेनेंट है, वह सिविल कोर्ट में गया है, क्योंकि उसके रेंट को हमको पे करना चाहिए। उसकी इनकम को लेकर उत्पन्न विवाद का मसला सिविल कोर्ट में गया हुआ है।

संयोजक: कोर्ट में आप गये हैं या वह गया है?

श्री संजय कुमार: सर, वह गया है।

संयोजक: क्या अभी यह मामला लोअर कोर्ट पर ही है?

श्री संजय कुमार: जी हाँ, सर।

श्री नीरज शेखर: आपने अभी तक कोई प्रॉपर्टी किसी owner को वापस नहीं की है या उसे मांगने के लिए आपके पास अभी तक कोई आया ही नहीं है?

श्री संजय कुमार: किसी भी प्रॉपर्टी को वापस नहीं किया गया है।

श्री नीरज शेखर: क्या आपके पास कोई आया है या कहीं कोई केस चल रहा हो कि प्रॉपर्टी मुझे चाहिए? क्योंकि आप कह रहे हैं कि वह पाकिस्तानी नेशनल्स का भी है और आपके पास अभी तक कोई आया नहीं है। जो 120 प्रॉपर्टीज़ कस्टोडियन के पास हैं, उनमें से किसी के बारे में कोर्ट में कोई केस नहीं चल रहा है।

श्री संजय कुमार: सर, हमने यहाँ आने के पहले हर केस को चेक किया था। ऐसा कोई केस नहीं है जिसमें किसी ने divestment के लिए रिक्वेस्ट की हो।

श्री नीरज शेखर: इसका मतलब यह है कि पुर्तगीज़ या पाकिस्तान, कहीं से कोई भी नहीं आया है।

श्री संजय कुमार: नहीं सर, कोई नहीं आया है।

श्री नीरज शेखर: तब तो फिर ठीक है।

संयोजक: यह जो सेक्शन 18 (ए) है, जिसके तहत कहा गया है, the Government desires to put a bar on the jurisdiction of courts in the matter of divesting to the effect that no court shall have jurisdiction to order divestment of such property from the CEP. What are the views of your State Government?

श्री संजय कुमार: सर, इसे हम लोगों ने अपने लॉ डिपार्टमेंट को राय देने के लिए भेजा था और कन्सर्न मिनिस्टर के पास भी फाइल गयी थी। हमारे यहाँ से इस पर सहमति बतायी गयी है।

संयोजक: क्या आप इससे सहमत हैं?

श्री संजय कुमार: जी हाँ, सर।

संयोजक: आपने 18(ए) से सहमति जतायी है?

श्री संजय कुमार: जी, सर।

संयोजक: क्या आपने लिख कर भेज दिया है?

श्री संजय कुमार: जी सर, भेज दिया है।

संयोजक: गवर्नमेंट ऑफ इंडिया, मिनिस्ट्री ऑफ होम अफेयर्स ने 7 जून 2010 को एक नोटिफिकेशन निकाला।

श्री संजय कुमार: सर, जो अमेंडमेंट proposed है, उसको हमने सपोर्ट किया है।

संयोजक: आपने सपोर्ट तो किया है, लेकिन क्या आपने लिख कर भेज दिया है?

श्री संजय कुमार: सर, हमने लिख कर भेज दिया है और हम उसकी कॉपी भी लेकर आए हैं।

संयोजक: आप जरा इसको चेक कर लीजिएगा और अपनी कॉपी की प्रतिलिपि सचिवालय को दे दीजिएगा।

संयोजक (क्रमागत) : दूसरा, 7 जून 2010 को डिस्ट्रिक्ट मजिस्ट्रेट को कहा गया था कि उस को Ex-officio Deputy Custodian बना दिया जाए। आप के यहां कितने डिस्ट्रिक्ट मजिस्ट्रेट्स हैं?

श्री संजय कुमार : दो हैं।

संयोजक : दो हैं - नार्थ गोवा और साउथ गोवा। तो दोनों को आप ने डिप्टी कस्टोडियन बना दिया?

श्री संजय कुमार : बना दिया है।

संयोजक : अभी आप का मेन कस्टोडियन स्टेट में है या मुम्बई से कंट्रोल होता है?

श्री संजय कुमार : मुम्बई में है।

संयोजक : तो अभी जितनी भी प्रॉपर्टीज हैं, वे डायवेस्टेड हैं अंडर द डिस्ट्रिक्ट मजिस्ट्रेट ऑफ नार्थ गोवा एंड साउथ गोवा। अभी इन प्रॉपर्टीज में से कितनी गवर्नमेंट की कस्टडी में हैं? कस्टोडियन के पास हैं या कस्टोडियन ने आगे रेंट आउट किया होगा। अगर एग्रीकल्चर लैंड है तो वह खेती करने के लिए दी होगी। ऐसी भी कोई प्रॉपर्टी है जहां पर माइनिंग ओर के लिए माइनिंग हो रही हो या कोई फैक्ट्री हो?

श्री संजय कुमार : सर, हम जिन 20 प्रॉपर्टीज की बात कर रहे हैं, उन में से कोई भी गवर्नमेंट के यूटिलाइजेशन में नहीं है।

संयोजक : सारी प्राइवेट occupation में हैं।

श्री संजय कुमार : जी, सर।

संयोजक : और वे रेटेड हैं।

श्री संजय कुमार : जी, सर।

संयोजक : कुछ प्रॉपर्टीज में आप ने पर्चेजर कोट किया है कि those are under the control of purchaser. तो उन को किसने बेचा था?

श्री संजय कुमार : सर, जो केस आप बता रहे हैं, उस में कुछ पाकिस्तानी नेशनल्स थे जिन्होंने उन के जो natural heirs थे, उन्होंने उस को sold किया है, purchaser को दिया है। कुछ प्रॉपर्टीज ऐसी हैं जो पाकिस्तानी नेशनल्स की थीं, उस को बेचा गया है।

संयोजक : पाकिस्तानी नेशनल वे बाद में हुए। When they shifted from Goa, जब गोवा आजाद हुआ तो -- even prior to that -- instead of going to Portugal, they went to Karanchi, क्योंकि जब करांची भी भारत का हिस्सा था तब भी वहीं sea-shore पर बिजनेस करने वाले लोग ...

श्री संजय कुमार : सर, 1947 और 1961 के बीच भी लोग गए। 1961 में गोवा liberate हुआ और 1947 में भारत आजाद हुआ तो उस दौरान भी लोग गए। 1947 और 1961 के बीच में भी गए।

संयोजक : इस में कई जगह हम ने देखा है कि हुहहह आप ने लिखा है कि, cultivated by various tenants of the Pak owner, Mundkar. What do you mean by Mundkar?

श्री संजय कुमार : सर, जिन 18 केसेज की हम बात कर रहे हैं जिस में कि गोवा में Tenancy Act 1994 है, उस एक्ट के मुताबिक जो tenant होता है, जोकि प्रॉपर्टी पर काबिज़ है, उस को adverse possession दिया जाता है। हम लोग इस बारे में भी बहुत क्लिअर नहीं हैं कि जो 18 केसेज हैं, उस के साथ क्या किया जाय क्योंकि गोवा के कानून के मुताबिक तो They are the deemed owner, because they are the tenant लेकिन जो एक्ट है, Evacuee Act है, उस के मुताबिक they cannot be the owner. तो यह पॉइंट भी हम ने अपने पत्र में रेज किया है कि जो tenants हैं, उन के साथ कैसा व्यवहार किया जाए? Ownership is in our hand.

संयोजक : आप का जो 1964 का एक्ट है, उस का क्या नाम है?

श्री संजय कुमार : एग्रीकल्चर लैंड टेनेंसी एक्ट।

संयोजक : और वह स्टेट गवर्नमेंट का एक्ट है, उस के तहत आप के यहां कोई Land Ceiling Act भी था क्या?

श्री संजय कुमार : नहीं सर, हमारे यहां Land Ceiling Act लागू नहीं हुआ।

संयोजक : तो आप के यहां जो Agriculture Land Tenancy Act है और Enemies Property Act है, उस से कैसे आप उस को मैच कराएंगे? अगर वह प्रॉपर्टी इस के तहत पड़ती है तो कौन supersede करेगा और किस को? वहां स्टेट लॉ prevail करेगा या सेंट्रल लॉ prevail करेगा - यह explanation लेने की जरूरत है। तो इस बारे में लॉ सेक्रेटरी कुछ बता सकेंगे?

CONVENOR: Mr. Bhasin, can you throw some light on it? These are cases where the property is falling under the State Agriculture Land Tenancy Act. But that land belongs to the custodian who is the controller as per the Enemy Property Act, 1968. Which law will prevail over that property?

SHRI V.K. BHASIN: Though I am not officially competent, I can give you the legal position, with whatever little knowledge I have got. Under the scheme of the Constitution, as the hon. Members are aware, there are List I, List II and List III -- whenever a State legislation comes in conflict with the Central legislation, the State legislation, to that effect, is deemed to be revoked, and the Central law prevails there. Now, even in the case of Goa, my feeling is that the same situation should apply because I do not find any special provision as such. I remember, about a few years ago, we amended the Income Tax Act relating to Goa. There is a particular system of Goa family, just like we have the Hindu Undivided Family, and we amended the law and gave effect to local traditions of taxation. If that had been possible, they would have done it by themselves. Taking cue from that, I am of the view that the Central law should prevail.

SHRI S.R. MISHRA: In case of overriding effect of this Act, I think there is a provision in the old Act, 1968, which says, "Notwithstanding anything contained in the existing Act, this Act will prevail."

SHRI SANJAY KUMAR: Taking this opportunity, I would like to put across a point. An amendment was made in the Goa Land Tenancy Act in 1978 where they made them 'deemed owner'. Now, in this case, we do not know whether we should ask for rent from the custodian who is the legal owner of the property. People, these 18 people, who are using this land, should we ask them to pay rent? Otherwise, they will claim that they are the deemed owners. We are not able to understand this point and we do not know what to do.

SHRI V.K. BHASIN: Sir, as per Section 22 of the Enemy Property Act, 1968, the provision of this Act shall have effect, notwithstanding anything inconsistent with any other law for the time being in force. I would also like to submit to the hon. Committee that if we see the special provisions in the Constitution with respect to Goa, I do not find any such special provisions or privilege being given to Goa. So, the normal scheme of allocation of subjects between the Centre, States and Union Territories should prevail.

CONVENOR: The point is that you must address this issue, do an introspection on the basis of the present legislation and see whether the deemed ownership right will go away or it will remain. So, you have to take legal opinion, not only from the State Government but also from the Government of India, in respect of these 18 cases giving description of the property. All these properties have been identified and called as Enemy Properties. But, under the State law,

you have given them the ownership. But as per the Central law, it cannot continue as a deemed owner of the property, as it has the status of enemy property.

CONVENOR (contd.): So, it should go to the custodian. The custodian can give a patta or rent agreement, etc. On that, you need to take a legal opinion from the Government of India and your State Government can also give an opinion and ultimately come for a settlement. But, give this reply to us within 15 days' time.

SHRI D. RAJA: Out of 120 properties, how many buildings and open lands are there? Give us that detail.

SHRI SANJAY KUMAR: Sir, mostly they are lands only. These details we can furnish it. We will segregate from the list we have already given to you and we can furnish the list.

श्री नीरज शेखर: सर, एक छोटा सा सवाल करना चाहूंगा। मेरी समझ में एक चीज क्लीयर नहीं हो पाई कि कितनी प्रोपर्टी से आपको रेंट मिलता है? आपने बोला कि दो से मिलता है, बाकी प्रापर्टीज किन-किन लोगों के पास हैं और क्या वे कोई रेंट नहीं देते हैं?

SHRI SANJAY KUMAR: Sir, actually in other cases we have not finalised the revenue lease deeds with them. The lease deeds are not finalised because in the Revenue Department we have only now shown them.

CONVENOR: It is because the concerned authorities were not aware of the existence of such legislation till the Supreme Court judgment. The State Governments were not aware of the legislation or the power of custodians. They have come to know only recently after the Supreme Court issued orders; then directions were issued. Then the District Magistrates were made deputy custodians.

श्री नीरज शेखर: सर, दो तो रेंट दे रहे हैं।

संयोजक: जो दो रहे हैं, उन्होंने भी अभी शुरू किया होगा। ये दो कब से दे रहे हैं?

श्री संजय कुमार: सर, दो केस जो हैं, पुराने हैं, 1992 से वे रेंट दे रहे हैं। सर, वे डिक्लेयर केसेस थे।

संयोजक: डिक्लेयर केसेस तो सारे ही हैं।

श्री संजय कुमार: लेकिन, सर, बाकी केसेस में उन्होंने ...

संयोजक: जांच-पड़ताल नहीं की होगी।

श्री संजय कुमार: सर, लास्ट ईयर ही हुए हैं बाकी केस।

श्री नीरज शेखर: आपको क्या लगता है, कब तक कर लेंगे? कुछ तो मिलना चाहिए, स्टेट को कुछ तो रेवेन्यू आनी चाहिए।

SHRI SANJAY KUMAR: Sir, I request you to allow us six months' time.

संयोजक: 6 मंथस तो नहीं हो सकता। देखिए, आप कहते हैं कि डिक्लेयर केसेस पहले के थे, किन्तु मेरे पास जो लिस्ट है, जो गवर्नमेंट ऑफ इंडिया ने भेजी है, नॉर्थ गोवा the first case is of Michael Disoza, occupied by an Indian co-owner.

SHRI SANJAY KUMAR: Sir, up to 2004 were only 50 cases.

संयोजक: यह डिक्लेयर हुआ 10-01-2009 को।

श्री संजय कुमार: जी, सर।

संयोजक : फिर आपने जो डेट लिखी हुई है, जिनके साथ एग्रीमेंट हुआ है, वह किसी के साथ 2009 तक है, किसी के साथ 2011 तक है, किसी के साथ 2015 तक है, किसी के साथ 2014 तक है। यह इसमें ऐसा करके भी दिया हुआ है।

SHRI SANJAY KUMAR: Sir, give us whatever time you feel appropriate. We will come back with the information you ask.

श्री नीरज शेखर: इनमें कुछ प्रोपर्टीज तो ऐसी होंगी, जिनसे काफी रेंट आना चाहिए। यह तो आपको भी लगता होगा, क्योंकि आप जानते हैं कि आजकल गोवा एक प्राइम लोकेशन है, टूरिस्ट स्पोट है।

श्री संजय कुमार: जी, और जहां माइन्स होंगी, वहां से थोड़ा ज्यादा पैसा आना चाहिए। I agree with you.

संयोजक: जैसा आपने कहा, माइन्स ऑनर्स के पास भी इनकी प्रोपर्टीज हैं।

SHRI SANJAY KUMAR: Sir, I am just saying, अगर माइन्स ऑनर होगा, तो पैसा ज्यादा मिलेगा। But, we will come back with an exact information.

CONVENOR: But, we need to submit the report by 31st August.

SHRI SANJAY KUMAR: Sir, we will try to come back even before that.

संयोजक: मैंने इसीलिए कहा कि हमें 15 दिन के अंदर जवाब भेजें। आपके दो डिस्ट्रिक्ट मजिस्ट्रेट हैं, 122 प्रोपर्टीज हैं दोनों डिस्ट्रिक्ट के पास, इनमें ज्यादा नॉर्थ गोवा में हैं, साउथ गोवा में कम हैं। नॉर्थ गोवा में जो आपके अंचल अधिकारी हैं, एसडीओ हैं, बीडीओ हैं, उनको उस इलाके की लिस्ट दे दें और वे पता करके बताएं as quickly as possible. तो within 15 days we expect a reply from the Goa Government.

SHRI SANJAY KUMAR: Yes, Sir.

संयोजक: आपको और कुछ कहना है।

श्री संजय कुमार: सर, हमारी जो प्रोब्लम थी, you asked us to go to the Law Department. We thank you for the suggestion.

संयोजक: लॉ डिपार्टमेंट से पता करने के लिए, पहले आप अपनी स्टेट गवर्नमेंट के डिपार्टमेंट से भी पूछिए, स्टेट डिपार्टमेंट का जो लोजिक है, वह सेंट्रल गवर्नमेंट के लॉ डिपार्टमेंट को भेजिए, उसकी प्रतिलिपि हमें भी भेजिए। हम परस्यू करेंगे कि जल्दी से जल्दी उसकी रिपोर्ट आ सके, एक ओपिनियन हो सके। अगर आपने उनको डीमंड ऑनर डिक्लेयर किया हुआ है अंडर द स्टेट लॉ, तो फिर आपको उसे नोटिफाइ करना पड़ेगा, गजट करना पड़ेगा, हो सकता है असेम्बली में लाना पड़ेगा।

SHRI D. RAJA: You said that the Portuguese nationals migrated to Pakistan. How many of them?

SHRI SANJAY KUMAR: Sir, I am not very sure. When I said that what I meant was that they all migrated from India when it was under the Portuguese occupation. Many went when India was not even independent. Some went after India got Independence. But, Portuguese went under the subjugation of Portuguese. If you want a detailed note, we can send it after working out.

CONVENOR: Yes, you can send us. Why I am saying this is that there are other problems also. Recently some people came to me from Goa. Their relatives migrated from Goa to Pakistan. Then, from Pakistan to Canada. Some families are still in Pakistan. So, some children have passport mentioning their birthplace in Pakistan. So, they are not getting visa to come to India although their half-family stays here in Goa and quarter-family stays in Karachi and another quarter-family stays in Canada. They are facing such problems. I discussed with the RPO and got the problem solved. But, this problem is being faced by the common man. If we can get details, we can take it up.

You can take an opinion from the Advocate General of your State or from the Attorney General of India.

I thank you very much for coming all the way from Panjim to Delhi to depose before the Committee. As asked, please submit the required papers within 15 days' time and pursue the cases. In the meantime, examine the Supreme Court judgment too whether the spirit of the judgment is applicable into the cases. See if you can give justice to the people. The main purpose is that. Thank you once again.

Join us over a cup of tea.

श्री संजय कुमार: सर, मैं अपने साथियों की तरफ से और अपनी तरफ से आपका तथा सभी माननीय सदस्यों का धन्यवाद करता हूँ। आपने जो सुझाव दिया, उस पर हम तुरन्त एक्शन लेंगे और जो रिपोर्ट का कहा गया है, उसको भी हम समय पर सबमिट करने की कोशिश करेंगे। Thank you, Sir.

**THE SUB-COMMITTEE ON ENEMY PROPERTY OF DEPARTMENT RELATED
PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS MET AT 3.30
P.M. ON 27TH JULY, 2011 IN COMMITTEE ROOM 'A', PARLIAMENT HOUSE
ANNEXE, NEW DELHI - 110 001.**

(SHRI M. VENKAIAH NAIDU in the Chair)

Witness

Representative of Ministry of Home Affairs

Shri R.R. Jha, Joint Secretary

Representatives of Legislative Department, Ministry of Law and Justice

1. Shri V.K. Bhasin, Secretary
2. Shri N.K. Nampoothiry, Additional Secretary
3. Dr. G. Narayana Raju, Joint Secretary and Legislative counsel

Representative of Department of Legal Affairs, Ministry of Law and Justice

Shri S. R. Mishra, Deputy Legal Advisor

Representatives of Government of NCT of Delhi

1. Shri P.K. Tripathi, Chief Secretary
2. Shri Dharmendra, Secretary (Revenue)
3. Shri Akash Mohapatra, D.C., Central Delhi
4. Shri V.P. Singh, A.D.M., Central Delhi
5. Shri R.S. Mehra, O.S.D., Central Delhi

Representatives of Government of West Bengal

Shri Samar Ghosh, Chief Secretary

Representatives of Government of Uttar Pradesh

1. Shri Anoop Mishra, Chief Secretary
 2. Shri Rajeev Kumar, Commissioner/ Secretary, Revenue
 3. Shri R.K. Goyal, Commissioner, Basti
 4. Shri Ajay Sukla, District Magistrate, Sitapur
 5. Shri Ajit Chandra, Special Pleader, Sitapur
-

CONVENOR: Hon. Members, I welcome you to this sitting of the Sub-Committee.

You may recall that the Sub-Committee, at its last sitting, held on 19th July, 2011, had heard the Chief Secretary of Government of Goa on the Enemy Property (Amendment and Validation) Second Bill.

Today, we are going to hear the Chief Secretaries of National Capital of Delhi, West Bengal and Uttar Pradesh on the Bill.

Besides the Chief Secretaries, we have also invited the Law Secretary, Legislative Secretary of the Government of India and a Joint Secretary level officer from the Home Ministry to assist the Sub-Committee. All the above-mentioned officials have arrived, except the Law Secretary who has deputed one Sudhir Ranjan Mishra, Deputy Legal Advisor.

Now, we may invite the Chief Secretary of Government of Delhi first.

CONVENOR: I, on my own behalf and on behalf of the Sub-Committee, welcome Law Secretary, Legislative Secretary of the Government of India, Chief Secretary, Government of Delhi and Joint Secretary, Ministry of Home Affairs to this sitting of the Sub-Committee.

Mr. Chief Secretary, as you are aware, the Enemy Property (Amendment & Validation) Second Bill, 2010 has been referred to the Standing Committee on Home Affairs.

The Committee has constituted this Sub-Committee on the Enemy Property (Amendment & Validation) Second Bill, 2010 for making a detailed study of the Bill. As your State has several enemy properties, the Sub-Committee has decided to hear your views on the provisions of the Bill, particularly on the management of enemy properties situated in the NCT of Delhi. You may give your comments briefly on the Bill containing the description of enemy properties situated in Delhi.

After your presentation, Members may seek some clarifications. But I would like to inform you that the proceedings of the Committee shall be treated as confidential till we submit our Report to the Parliament and nobody, including Members or Officers, is supposed to divulge anything outside, directly or indirectly.

I request you to make your views before the Sub-Committee about the enemy properties that are situated in Delhi.

SHRI P. K. TRIPATHI: Good afternoon, Sir. In Delhi, we have been very meticulously following the directions of the Custodian of Enemy Properties and we have even banned registration of properties which have been declared as enemy property by the Custodian because there are cases where some registration had taken place.

Now, we welcome the proposed Bill, namely, the Enemy Property (Amendment and Validation) Second Bill, 2010. We have gone through the contents and we are fully in agreement with it with some minor modifications.

The first modification which we are suggesting is that, as far as rent fixation is concerned, we want the word “periodically” to be added so that the rent can be revised after every five years. The Supreme Court has also in various judgements accepted that the rent can be revised periodically. This is clause 5, amendment of Section 8.

The second suggestion relates to clause 6. The properties which are sold should also be registered. Mere sale certificate is not enough. There should be a provision that they should be registered within ninety days and, for reasons to be recorded, the Custodian may extend the period for 180 days. But there must be registration of these properties on sale. One is that our record is updated and the other is that we also get some revenue. We don't get stamp duty if it is not registered.

The third suggestion that we are making is in relation to section 15(2) of the Act, where we want the proposed fine of Rs.500 to be increased to Rs.5,000. These are the only suggestions which we have on the Bill. We agree with all the other provisions of the Bill.

There are some problems which we are facing in the implementation of the current system. One is that there are no rules at the moment. There is a need to frame rules which is very important. Now section 3 of the Delhi Rent Control Act provides that this will not apply to the Government properties. But the courts are entertaining cases. So, there should be a provision in the amendment that the properties which were declared enemy properties should be treated on a par with Government properties. Otherwise, there will be a lot of litigations in the courts because the courts are immediately entertaining such cases and a lot of time and energy is getting wasted in this process. Of course, we welcome the empowerment of the Deputy Custodian and we have only one district which is affected in Delhi. Out of the nine districts only one district has all the enemy properties.

CONVENOR: How many disputes are there?

SHRI P. K. TRIPATHI: There are disputes. As regards the total number of properties in Delhi, the owners are 74 and at the moment there are 12 income dispute cases and there are 14 declared court cases.

CONVENOR: You don't have much problem in maintaining the enemy properties.

SHRI P. K. TRIPATHI: All the properties are already in the occupation of somebody.

CONVENOR: So, there is no problem. Is there any property which has already been taken over by the Custodian in Delhi?

SHRI P. K. TRIPATHI: There are 11 properties which are taken over by the Custodian.

श्री नीरज शेखर : आपने कहा है कि 74 enemy properties हैं, तो फिर बाकी का क्या है?

श्री के.के. त्रिपाठी : सर, 74 हैं और उनमें से 36 में प्रोसेस चल रहा है। एक चाइनीज है और 37 नेशनल की हैं। उनमें से 11 तो हमारी डिक्लेयरड प्रॉपर्टीज हैं, बाकी में लोग बैठे हुए हैं।

श्री नीरज शेखर : आपको उनसे रेंट तो मिलता होगा?

श्री के.के. त्रिपाठी : हमारा 12 केसेज में रेंट आ रहा है और 12 केसेज में रेंट डिस्प्यूटेड है। टोटल 36 की बात है, तो 36 में तो प्रोसेस चल रहा है। अभी उनमें Custodian का ही प्रासेस चल रहा है।

श्री एस.एस. अहलुवालिया : उसका प्रोसेस कम्पलीट नहीं हुआ है?

श्री के.के. त्रिपाठी : जी, उसका प्रोसेस कम्पलीट नहीं हुआ है। .

श्री नीरज शेखर : वह Custodian को करना है?

श्री के.के. त्रिपाठी : जी, वह Custodian को करना है। अब उन्होंने डिक्लेयर किया है। जो हमारे Central Delhi के जो ADM headquarters, हैं, उनको उन्होंने empower कर दिया है कि he will be ex-officio. सर, दिल्ली में 9 डिस्ट्रिक्ट्स हैं, लेकिन अभी भी टेक्नीकल DM एक है, जो कि डिविज़नल कमिश्नर है। उसमें इन्होंने ADM को ही डिक्लेयर किया है।

श्री नीरज शेखर : यह सब कब से चला रहा है और इसका जल्दी से उपाय ढूंढा जाए, क्योंकि मैं समझता हूँ कि इससे तो revenue loss लॉस हो रहा है?

श्री के.के. त्रिपाठी : सर, यह 1968 से चल रहा है। हमारा सजेशन है कि अगर यह Delhi Rent Control Act के प्रोविजन को डिबार कर दिया जाए, तो इनकम वाले केसेज तो सारे खत्म हो जाएंगे। गवर्नमेंट प्रॉपर्टीज बाहर हैं, लेकिन वे इसको गवर्नमेंट प्रॉपर्टी नहीं मान रहे हैं, even though it is vested in the custodian, वे इसको गवर्नमेंट प्रॉपर्टी नहीं मान रहे हैं।

श्री एस.एस. अहलुवालिया : त्रिपाठी जी, आपने कमेटी को आज ही जवाब दिया है। आपको सचिवालय से जो डेट दी गई थी, आप उसमें फेल हो गए और आज आप जवाब साथ लेकर आए हैं। अब आप यह बताइए कि आप अपने अधिकारियों की बैठक ले रहे हों और उसी टाइम एजेंडा पेपर सर्कुलेट हुआ हो तथा जवाब सर्कुलेट हुआ हो तो आप मीटिंग करते हैं या एडजोर्न करते हैं?

श्री के.के. त्रिपाठी : सर, जवाब पहले आना चाहिए था, लेकिन वह हमने प्रोसेस में लॉ डिपार्टमेंट आदि सभी को दिखाकर, we got it on 14th July. We should have been able to give it.

श्री एस.एस. अहलुवालिया : आपने जो enemy properties in Delhi कोर्ट केसेज के बारे में रिपोर्ट दी है और कहा है कि सब कुछ ठीक-ठाक चल रहा है। मैं इसमें देख रहा हूँ कि 17 प्रॉपर्टीज का उल्लेख है। इनमें भी एक-एक प्रॉपर्टी में पांच-सात करके हैं, उनमें मैं देख रहा हूँ कि there are 17 cases. उनमें आपको पता नहीं है, date of filing of the suit. आप खाली लिख रहे हैं कि suit No. so and so चल रहा है। फिर कहते हैं कि date of submission का भी पता नहीं है, date of hearing का भी पता नहीं है और

suit के बारे में कोई और जानकारी नहीं है। आपने “not known”, “not known” करके लिखा है। क्या आपको जानकारी है? आपको किसी ने कागज पर लिखकर दे दिया कि यह प्रॉपर्टी डिस्प्यूटेड है, suit No. इतना लिख दिया, उसी पर आप अपना स्टेटमेंट बना रहे हैं। आपने जब इन कोर्ट केसेज की लिस्ट बनाई थी, इसको देखने से पहले क्या आपने अपने अधिकारियों की बैठक ली थी? आप पार्लियामेंट में जा रहे हो तो क्या उस वक्त आपने उनसे यह सवाल किया था कि not known का मतलब क्या है? You have mentioned, date of submission, not known; date of hearing, not known. इसका मतलब क्या हुआ?

SHRI P. K. TRIPATHI: We will update the information. We don't want to give anything wrong to the Parliament. Whatever information that we have, we have given.

SHRI S. S. AHLUWALIA: That means you are not updated.

श्री नीरज शेखर : अध्यक्ष जी, इसका क्या मतलब हुआ है कि इनकी तरफ से केस में कोई जाता ही नहीं है?

श्री एस.एस. अहलुवालिया : जाता है, नहीं जाता है, हाजिर नहीं होता है, यही तो केस हुआ है। आज तक enemy properties का जो केस हम हार रहे हैं, उसका मुख्य कारण यही है कि वकील जाता ही नहीं है। इसमें किसी को कोई रुचि ही नहीं है। आप जो मुख्य एनेक्चर लगाकर लाए हैं, उसमें लिख रहे हैं कि not known.

अध्यक्ष : त्रिपाठी जी, नार्मली मीटिंग के एक हफ्ते पहले या चार-पांच दिन से पहले आप नोट भेज दें, तो कम से कम सदस्यों को उसको पढ़ने तथा समझने का समय मिल सकता है।

अध्यक्ष (क्रमागत) : और बाद में वे कुछ सवाल पूछ सकते हैं और आप भी कुछ जवाब दे सकते हैं। यहां दोनों तरह से है। एक तो आपके पास अपडेटेड रिप्लाइ नहीं है। दूसरा, आप सही तरह से पूरी जानकारी भी नहीं दे पाए हैं इसलिए हमें आपको दुबारा बुलाना पड़ेगा। मेरा सुझाव यह है कि इन सभी आइटम्स के बारे में आप एक-दो बार रिव्यू मीटिंग करिए, उस प्रक्रिया को पूरा करके फिर से आप अपडेटेड रिपोर्ट भेज दीजिए। उसके बाद हम आपको एक बार और बुलाएंगे हालांकि हम आपको बार-बार तकलीफ नहीं देना चाहते लेकिन हमें भी हमारा काम करना है। चेयरमैन साहब ने कहा है कि 30 अगस्त तक यह काम पूरा करके पार्लियामेंट को रिपोर्ट देनी है। अगर स्टेट्स मदद करें तो हम यह काम कर पाएंगे। इसलिए आप इसमें रुचि लीजिए, कन्सर्न्ड अधिकारियों को बुलाइए और सरकार से, वकीलों से बात करके कौन सा केस कहां है, कहां तक पहुंच गया है, कब से हियरिंग चल रही है, यह सब डिलेट्स लेकर दुबारा समिति को भेज दीजिए।

श्री एस.एस.अहलुवालिया : आपने सब जगह लिखा, "ओके, नो कमेंट्स"। जो आपकी Existing clause proposed and comments है, उसमें आपने सीरियल नम्बर 12 पर क्लॉज़ 4 पर "नॉट प्रपोज़्ड" लिखा

हुआ है, उसके सामने आपने लिखा, the words 'five hundred rupees' shall be substituted by the words 'ten thousand rupees'.

CHAIRMAN: The Government has not proposed anything.

SHRI S.S. AHLUWALIA: Yes, the Government has not proposed anything, but he is suggesting. The words 'five hundred rupees' actually existing rupees five hundred है। लिखा हुआ है कि "On and from the date of which the Enemy Property (Amendment and Validation) Second Bill, 2010 receives the assent of the President, in Section 20, sub-section 3 of the Principle Act, for the words 'five hundred rupees' the words 'ten thousand rupees' shall be substituted. ऊपर लिखा हुआ है। नीचे आपने फिर क्लॉज़ 4 में लिखा कि सेक्शन यह है कि If any person fails to submit the return under Section 15 (2) 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.

अध्यक्ष : ऐसा लगता है कि आपने उसको पूरा पढ़ा भी नहीं है।

श्री एस.एस.अहलुवालिया : आपने 5000 कहा। मैं यह कह रहा हूँ कि आपने जब सबमिशन किया, तब आपने कहा कि पांच सौ से पांच हजार कर दिया जाए लेकिन यहां दस हजार लिखा हुआ है। लगता है कि आप पूरी तैयारी करके नहीं आए।

CHAIRMAN: We don't want to trouble you. Please prepare yourself and come back again. Meanwhile, within seven days, please send an updated report.

SHRI P.K. TRIPATHI: Yes, Sir.

CHAIRMAN: I, on my own behalf and on behalf of the Sub-Committee, welcome the Chief Secretary of West Bengal to this sitting. As you are aware, the Enemy Property Bill has been referred to the Department-related Parliamentary Standing Committee on Home Affairs. The Committee has constituted a Sub-Committee on The Enemy Property Bill, 2010 for making detailed study of the Bill. As your State has several enemy properties, the Sub-Committee has decided to hear your views on the provisions of the Bill, particularly on the management of enemy properties situated in your State. You may give the comments of your State briefly on the Bill containing the description of enemy properties situated in West Bengal. I would like to remind you that the proceedings of the Committee are confidential and have not to be divulged to anybody. Now you can make your presentation.

WITNESS: Sir, in West Bengal, we have 377 enemy properties spread over 13 districts and Kolkata. In Kolkata, the number of enemy properties is 121 and in 13 districts taking together, the number of enemy properties is 256. Out of these, the income receiving properties are 165; the number of declared cases is 19; the number of processed cases is 119 and the number of court cases is 74.

The District Magistrates are the Deputy Custodian of enemy properties and they work under the supervision of the Custodian of enemy properties. As far as the State Government is

concerned, I must admit that not much attention has been paid to this subject. But now we are reviewing the matter with the District Magistrates. We have found that in many cases rents are in arrears. Of course, the details are available and the records are being maintained. We have instructed the District Magistrates, in accordance with the guidelines issued by the Custodian of enemy properties as well as the Ministry of Home Affairs, that there should not be any registration in respect of the enemy properties; the records must be in the name of the Custodian of enemy properties. All these instructions, we have issued. Just to monitor the things centrally at the State Headquarters, we have formed a Committee comprising the Home Secretary, the Land Reforms Commissioner and the Inspector General of Registration so that these fraudulent transfers, etc. do not take place. This is what we have done so far.

As far as the Bill is concerned, we have intimated that we are in agreement with various provisions of the Bill. Only there is one minor point because this is not there in the Second Amendment Bill. In the original Act, in Sections 20 (1) and 20 (2), there is no mention of the quantum of fine that can be imposed. In all other cases, the quantum of fine and the period of imprisonment have been mentioned. I think in the legislation, both the quantum of punishment and the quantum of fine that may be imposed for violation need to be mentioned. We have made this suggestion that these two Sections may also be amended mentioning the quantum of fine.

SHRI S.S. AHLUWALIA: Is it not there in the amendment?

WITNESS: It is not there in the amendment. Of course, in sub-sections 3 and 4, this quantum of fine has been mentioned and this has been amended also. The other thing that I would like to draw your attention to is regarding explanation to Section 6 regarding transfers.

WITNESS (contd.): In Section 3, there is an explanatory clause saying, "It shall not include transfers through oral will or oral gift." The point is that all the transfers are then invalid. Is there any need for putting this explanatory clause?

These are the two submissions which I wanted to make. We would require a little more time to make a detailed survey of the enemy properties in the State, their present status, the present occupants who are, actually, occupying these properties, the condition of the properties, etc. As I said in the beginning, not much attention has been paid from the State Headquarters. But now that we have formed a Committee comprising Home Secretary, Land Commissioner and Inspector General of Registration, we will do it within a reasonable time.

CHAIRMAN: By how much time?

WITNESS: Three months maximum.

CONVENOR: The Home Ministry, through its Notification, has said that you should designate your District Magistrate as your Deputy Custodian. So, if they become the Deputy Custodian, and under the command of the District Magistrate, huge machinery is there, then, why would you need three months?

WITNESS: Sir, we would, certainly, try to do it in less time. But three months is the maximum limit.

CONVENOR: I can understand the complex case of West Bengal where the Chinese properties are also there, in addition to the Pakistani properties. What we have got in our record, which we got from the Home Ministry, is that there are 397 properties; out of these, Chinese-vested properties are 27 and Pakistani-vested properties are 205, and the process is on for ascertaining the remaining 165 properties. As you have said, you need to have a proper inquiry as to whom these have been rented out or vested the properties to, the condition of the properties, etc. We also want the details of the 205 properties vested with the Pakistani nationals, and the 165 properties, on which the process is on.

CHAIRMAN: So, you said that you will take some time to collect all the information and then send it to us. You have only given the list of enemy properties in Kolkata, but not in the entire State.

WITNESS: We will send it.

CHAIRMAN: And the position of each property, how many properties are there before the Courts, etc.

CONVENOR: Also how many properties are in possession of the Government, where there are Government offices? Is the Nizam Palace an enemy property?

WITNESS: I will have to find out. Of course, the Government Guest Houses are located.

CONVENOR: That we know. I want to know whether it is an enemy property or not.

CHAIRMAN: You have asked for three months' time. Try to send the information as early as possible. I may give you time. But our Chairman, Rajya Sabha, may not give time. That is the problem.

CONVENOR: You have a huge task before the Government. I can understand that with the new popular Government in the State, you want to revisit the whole issues. But we are on a limited point. Parliament is on a limited point. This Amendment Bill is there. We want to know the present position. In the confessional statement, you said that it was not taken care of properly, and that you want to enquire into it. Simultaneously, we want to know the status of the properties. You may give that information as early as possible, because we want to submit our Report by 30th August. Thank you.

CHAIRMAN: I, on my own behalf and on behalf of the Sub-Committee, welcome the Chief Secretary of Uttar Pradesh to the sitting of the Sub-Committee. Mr. Anoop Mishra, as you are aware, the Enemy Property (Amendment and Validation) Second Bill has been referred to the Department-related Parliamentary Standing Committee on Home Affairs. The Committee had constituted the Sub-Committee on the Enemy Property Bill to make a detailed study of the Bill. This Sub-Committee has felt that since a large number of enemy properties are located in Uttar Pradesh, particularly, at Lucknow, Sitapur, Lakhimpur and other areas, we should hear the Chief Secretary, the Government of Uttar Pradesh. Firstly, you may give your brief comment on the Bill and later give description of enemy properties situated in the State and management of the enemy properties.

CHAIRMAN (contd.): After your presentation, hon'ble Members may seek some clarifications. The proceedings of the Committee should be treated as confidential and are not supposed to be divulged outside till we submit our report to Parliament. Please recall that last time we could not hold our meeting because of your inability to send the note and also to attend the meeting. The Chairman, Rajya Sabha has given time to the Committee only up to 30th of August. That being the case, we need all the information from the States, particularly from the State of Uttar Pradesh, because a large number of properties are located in that State. Now, please make your presentation and afterwards we will seek clarifications if there are any.

SHRI ANOOP MISHRA: Mr. Chairman, Sir, we have circulated our comments. I will briefly go through the comments of our State Government and, then, explain the status of enemy properties situate in the State of U.P.

Sir, our submission with regard to the Bill is that it seeks to introduce amendments in Section 18 and 26 by insertion of Section 26(1) and provisos in Section 18. Essentially, these amendments lay down that if the owner of the enemy property has been a citizen of this country since birth or his heir has been a citizen by birth and the heir establishes through the due process that he is the successor to the enemy property, then, in these two cases, in all cases where the divestiture has been done other than Section 18, they would automatically re-vest with the owner or the heir as the case may be. The submission of the State Government is three-fold.

Firstly, these provisions are made on principles of reciprocity. The status of enemy properties as situate in Pakistan is that in 1971 the Government of Pakistan had sold all enemy properties and they had not followed any of these procedures.

So, our first submission is that if we were to follow the principle of reciprocity, then, there should be no such provision being incorporated here. Our second submission is that before this Bill, which is a replacement Bill for Ordinance 124 -- for that effect we have circulated with our comments a letter from our Counselor in Islamabad written in 1986 -- was introduced, earlier Ordinance 4 of 2010 was promulgated which was allowed to lapse. Our submission is that the provisions of Ordinance 4 of 2010 are valid provisions and they protect the interests of both the State and the nation. Having said that, Sir, here is a letter from Shri A.K. Doval who was then the Counselor in our Mission in Islamabad and, as the Sub-Committee may be aware, he retired as the Director of the Intelligence Bureau. Sir, what Pakistan did was that, in 1965, they had declared Emergency and, then, they had issued orders for temporary take-over of all enemy property. When that Emergency was lifted, that lapsed. But when Emergency was again declared in 1971 on account of the war between India and Pakistan, they had reintroduced that provision and this time it was not a temporary take-over, it was a permanent take-over of all enemy property and subsequently not only did they permanently took over these properties, they actually sold them out. So, our submission is that on principles of reciprocity, there is no occasion for introducing a provision like this. The second point was that our lapsed Ordinance 4 of 2010 contains provisions which are in the interests of the State and which protect the interests of the State.

Having said that, let me, with your permission, Sir, briefly explain what the status is of the enemy property in Uttar Pradesh. I will take you back to Lord Caning's Proclamation of 13th March, 1858 which is responsible for the Taluqdari system in the State of U.P. It reads:-

"The Army of His Excellency the Commander-in-Chief is in possession of Lucknow and the city lies at the mercy of the British Government whose authority it has for nine months rebelliously defied and resisted. This resistance began by a mutinous soldiery has found support from the inhabitants of the city and of the Province of Oudh at large. Many who owed their prosperity to the British Government as well as those who believed themselves aggrieved by it have joined that cause and have raised themselves with the enemies of the State. They have been guilty of a great crime and have subjected themselves to a just retribution. The Capital of the country is now once more in the hands of the British troops. From this day, it will be held by force which nothing can withstand and the authority of the Government will be carried into every corner of the Province. The time, then, has come at which the Rt. Hon. the Governor-General of India deems it right to make known the mood in which the British Government will deal with taluqdars, chiefs, landholders of Oudh and their followers. The first care of the Governor-General will be to reward those who have been steadfast in their allegiance at a time when the authority of the Government was partially overborne and who have proved this by their support and assistance which they have given to British officers. Therefore, the Rt. Hon. Governor-General hereby declare that Vijay Singh, Raja of Balrampur, Kulwant Singh, Raja of Putnahar, Rao Hardev Baksh Singh of Katiari, Kashi Prashad, Taluqdar of Sisandi, Jhhaba Singh, Zamindar of Gopalshera and Chandi Lal, Zamindar of Morwan, Bhainswada, are, when Awadh came under the British rule, subject only to such, henceforward the sole hereditary proprietors of the land which they held, moderate assessment as may be imposed upon them and that these loyal men would be further rewarded in such manner and to such extent upon consideration of their merits and their position which the Governor-General shall determine. A proportionate measure of reward and honour will be conferred upon others in whose favour like claims will be established to the satisfaction of the Government.

The Governor-General further proclaims to the people of Oudh that abovementioned exceptions to the proprietary right of soil of Province is confiscated to the British Government which will dispose of in such right and in such manner as it may deem fit" -- Sir, I am only underlining that all the lands were assumed by the British and then, they were settled as per this proclamation -- "to those Taluqdars, Chiefs and landholders with their followers who shall make immediate submission to the Chief Commissioner of Oudh, surrendering their arms and obeying his orders, the Rt. Hon. the Governor-General promises that their lives and honour shall be safe provided their hands are not stained with the English blood murderously shed. But as regards any further indulgence which may be extended to them and the condition in which they may hereafter be placed they must throw themselves upon the justice and mercy of the British Government. To those amongst them who shall promptly come forward and give to the Chief Commissioner their support in the restoration of peace and order, the indulgence will be large and the Governor-General will be ready to view liberally the claims which they may thus acquire to the restitution of their former rights, as participation in the murder of Englishmen or English women will exclude those who are guilty of it from all mercy. So, those who have protected English lives will be specially entitled to consideration and leniency".

SHRI ANOOP MISHRA (contd.): This was the proclamation. What this proclamation did was that the British called the event in 1857 as a mutiny and we call it the War of Independence. Those who fought against the British, all those lands were resumed by the

British; those who supported the British were rewarded by the Talukdari. For this benefit, they had to accept what is known as the Sanat Kabuliyat. If you permit, Sir, I will read what this Sanat Kabuliyat said: "Know all men that whereas by proclamation of March 1858, His Excellency, Honourable the Viceroy and the Governor General of India, all lands in the soil of Oudh, with a few special exceptions, were confiscated and passed on to the British Government which became free to dispose of them as it pleased. I, Charls John Wingfield, Chief Commissioner of Oudh, under the authority of His Excellency, the Governor General of India and the Council, do hereby confer on you full right, title and possession of estate of such and such of the village as per the list attached to Kabuliyat as you may have executed of which the present Government revenue is so much. Therefore, this Sanat is given to you in order that it may be known to all whom it may concern that the above estate, which is known as the Talukdari, has been conferred upon you and your heirs subject to payment of such annual revenue as from time to time be imposed and to the conditions of surrendering all arms, destroying all force preventing and reporting crime, rendering any services, you may be called upon to perform and of showing constant good faith, loyalty, zeal and attachment to the British Government, according to the provisions of engagement which you have executed. The breach of any of these, at any time, shall be held to annul the right and title now conferred on you and your heirs. It is also a condition of grant that you will, so far as in your power, promote agricultural prosperity of your state and that all holding under you shall be secured in the possession of all subordinate rights there formally enjoyed. As long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors of the above mentioned state. In confirmation of which I hereby attach my seal and signature."

Sir, this Sanat Kabuliyat said that as long as they have showed constantly good faith, loyalty, zeal and attachment to the British Government. This Sanat Kabuliyat would remain in force. Otherwise, it will all lapse.

Our submission is that with the Independence of India Act, 1947, the British Government came to be replaced by the Government of India and, therefore, the act of good faith and allegiance was to the Government of India and should anyone have breached that and parted with or joined the enemy, that faith would have been breached and, therefore, all this land would revert to Government of India as per this Sanat. Our first contention is that this Sanat Kabuliyat, by virtue of the fact that the British Government got replaced by the Government of India, by the Independence of India Act, the enemy acted against the interest of the Government of India; therefore, all the lands which were vested by the Sanat Kabuliyat automatically got re-vested in the State. The question of transferring it does not arise.

Sir, in addition, I would also say that as per the Sanat Kabuliyat, there is a long list, and we circulated it, where areas were given to different Talukdars. This started from 1858 and it went on. The Town Improvement Act came into existence in 1919. By virtue of the Town Improvement Act, a lot of properties were given on grant, there were tenancies and not leases, to these Talukdars. The tenancies were asked to build houses in those areas for purposes of residences of officers who used to live in, as per the European style, on a payment of nominal rent. These are the residences which are the residences of the DM, SP and such like officers. These properties were never their ownership; these properties were only under tenancies. Under para 124 of our Land Revenue Manual, section 5(d), classifies what are known as non-occupancy tenants--tenants of land acquired by Town Improvement Trust, etc.

Our second contention is that a lot of land which is claimed as land belonging to them is non-occupancy tenancy for which they have no title. I would also submit that a lot of this land was acquired under Land Acquisition Act, 1894, and there was a challenge before the Civil Judge on the amount of compensation about these lands. I would read the operative portion, the findings of the Civil Judge in this matter: "On a discussion of above, two facts stand proved beyond any doubt. The first is that the plaintiff's predecessor is entitled—which is quantum of compensation on these lands—to build a house for purpose of providing residence to the Government servants, the site of bungalow was made rent-free; the erector of the building was entitled to the rent of the bungalow. For this site, the plaintiff and his predecessor are entitled the licence fee; and, for the rest of the land that formed the compound, the plaintiff and his predecessor entitled were tenants at will." So, there is no proprietorship that goes with it, Sir.

The background of this case, again to clarify further, is that in 1980, the Union Cabinet decided that 25% of all enemy properties will be returned to the owners or the heirs. This could not be actually implemented. Therefore, Sir, in the case in question, the parties filed a case before the Civil Judge, Lucknow, in which only the custodian of the enemy property was made a party. Three other parties were the mother, the other plaintiff and two sisters. On that basis, for a list of properties, the Civil Court declared succession. The Government of U.P. was not made a party to that. Subsequently, when this matter came up before the Supreme Court, on the basis of that succession, the custodian was not in a position to transfer 25% of the land.

Based on that, a case was filed in the Supreme Court and an affidavit was filed wherein a list was attached which was a long list of the property. It transpires that the list attached in the Supreme Court was different from the list for which the succession had been granted by the Civil Court. Therefore, it was not covered under the dispensation of succession. However, in that case, the Supreme Court passed certain orders, but those orders are now under review and the Supreme Court is reviewing.

Our contention, therefore is, giving the whole background of the case, that what the proposed Bill seeks to do is that it takes away the jurisdiction of all courts completely and then it says that in respect of an enemy property which has been vested in the custodian, a owner or his heir can demonstrate that he is a citizen by birth, and that he is a successor to the owner. Then, nothing else should be done and all these properties would be restored to the owner.

Our respectful submission is that given the circumstances of the case as placed before you, that it would turn the whole thing upside down.

SHRI ANOOP MISHRA (CONTD.): And the properties over which the claimant may have no rights, have no proprietary rights, properties which could not be transferred to him would get transferred to him. Because of that, Sir, our submission, and this is the submission of the State of Uttar Pradesh is that we would recommend the amendments in Section 18 which bring in the definition of heir and the amendments in Section 26(1), especially with respect to the second proviso which comes after sub-clause 26(1)(b), which reads, "Provided further that if any enemy property had been otherwise divested from the Custodian (by an order of the court or without any direction under Section 18) and returned to the owner, where the owner is the lawful heir or in any case where the Central Government is satisfied upon conduct of such enquiry, it shall be returned to the owner." Sir, this amendment, we feel, is not in the interest

of the State, and it takes away the properties which are vested in the Custodian, and which are, in our humble submission, not validly re-vestible in the owners or the heirs.

CHAIRMAN: It was a good presentation that way. You have enlightened us about the viewpoint of Uttar Pradesh. Now, I ask my Members to seek clarifications from you.

अध्यक्ष: क्या आपने total number of property दिया है?

SHRI ANOOP MISHRA: Sir, it is a very long list.

श्री नरेश चन्द्र अग्रवाल: इनकी संख्या लगभग 1500 है।

श्री अनूप मिश्रा: सर, इसकी बहुत लंबी लिस्ट है और यह लिस्ट हमने attachment के रूप में दी है।

श्री नरेश चन्द्र अग्रवाल: इसमें 1519 है, लेकिन आप यह बता दें कि चूंकि सुप्रीम कोर्ट के जजमेंट के आधार पर यह लाया जा रहा है, इसलिए इससे कितनी प्रॉपर्टीज़ effected होंगी और इससे कितने लोग लाभप्रद होंगे? इससे एक आदमी लाभप्रद होगा या बहुत से लोग लाभप्रद होंगे?

श्री आर.के. गोयल: सर, जैसा कि अभी सेक्रेटरी साहब ने बताया कि Cabinet of India ने decision लिया था कि इनको 25 प्रतिशत enemy property लौटा दी जाए। इस संबंध में इन्होंने 1984 में जो सिविल सूट किया था, उसमें इन्होंने जो लिस्ट लगाई थी, वह केवल इसलिए लगाई थी, क्योंकि ये राजा महमूदाबाद से succession चाहते थे। उसमें इन्होंने पार्टी नंबर वन Custodian of Enemy Property of India को, पार्टी नंबर दो अपनी मदर को, पार्टी नंबर तीन अपनी पहली सिस्टर को और पार्टी नंबर चार अपनी दूसरी सिस्टर को बनाया था। पार्टी नंबर दो, तीन और चार यानी इनकी मदर और दोनों सिस्टर, उस समय इंग्लैंड में रहते थे और उसमें इंग्लैंड का address दिया गया था। उसके बाद इनको succession certificate मिल गया कि हां, आप अपने पिता जी के successor हैं और you are the sole successor.

इसमें यह भी देखना पड़ेगा कि इन्होंने अवध स्टेट एक्ट के अंतर्गत सनद कबूलियत की थी। यह 1869 का एक्ट है, that is the Act No.1 of U.P. अवध स्टेट एक्ट में rule of primogeniture होता है, जिसमें eldest son succeed करता है। उस rule of primogeniture के अंतर्गत इन्होंने अपना क्लेम किया और यह माना गया कि ये इनके successor हैं। उसके बाद इन्होंने उस सर्तीफिकेट को Custodian of Enemy Property के सामने प्रस्तुत किया और कहा कि हमें 25 प्रतिशत प्रॉपर्टी दे दी जाए, लेकिन Custodian of Enemy Property को उसमें कुछ शंकाएं थीं, इसलिए उन्होंने इनको प्रॉपर्टी नहीं दी।

इसके बाद ये बम्बई हाई कोर्ट में गए, क्योंकि Custodian of Enemy Property का ऑफिस बम्बई हाई कोर्ट में located है और इन्होंने कहा कि cabinet का जो ऑर्डर है, उसका अनुपालन नहीं हो रहा है। हमें succession certificate मिल गया है, लेकिन उसका भी अनुपालन नहीं हो रहा है। बम्बई हाई कोर्ट ने इनके फेवर में ऑर्डर दे दिया। इन्होंने बम्बई हाई कोर्ट में दूसरी लिस्ट लगाई, जिसमें

इन्होंने अपनी सारी प्रॉपर्टीज़ दे दी। पहले सिविल कोर्ट में जो लिस्ट लगी थी, वह दूसरी लिस्ट थी और बम्बई हाई कोर्ट में इन्होंने जो लिस्ट लगाई, उसमें इन्होंने गवर्नमेंट की प्रॉपर्टीज़ भी दे दी, जिन्हें गवर्नमेंट ने acquire की थीं। उन पर partition के बाद 5-6 कालनीज़ बन चुकी थीं और रेफ्युजीज़ को वहां पर rehabilitate किया गया था। जिन lands के government ने पैसा दिए थे, उन सारी प्रॉपर्टीज़ को भी इन्होंने उस लिस्ट में दे दी।

उसके बाद सुप्रीम कोर्ट ने कहा कि इनकी सारी प्रॉपर्टीज़ इनको वापस कर दी जाए। जब कि Cabinet of India का मूल निर्णय यह था कि खाली enemy property का 25 प्रतिशत प्रॉपर्टीज़ इनको दी जाए, परंतु सुप्रीम कोर्ट ने दिनांक 21 अक्टूबर 2005 के अपने निर्णय में इनकी दूसरी लिस्ट के आधार पर यह ऑर्डर दिया कि इनकी सारी प्रॉपर्टीज़ इन्हें आठ सप्ताह के अंदर वापस कर दी जाए। साथ ही यह भी कहा गया कि यदि आठ सप्ताह के अंदर वापस नहीं की जाती है, तो ये contempt of court में फिर आ सकते हैं। उस जजमेंट के आधार पर इन्होंने सारी प्रॉपर्टीज़ के लिए क्लेम की, चूंकि सुप्रीम कोर्ट ने contempt of court का नोटिस जारी कर दिया था, इसलिए there was no option before the Government officers. They were acting under tremendous pressure, इसलिए सारी प्रॉपर्टीज़ इनको वापस कर दी गई। This is the background of it.

श्री अनूप मिश्रा: सर, आपने जो प्रश्न पूछा है, इसके दो बिन्दु हैं। पहला बिन्दु तो यह है कि यह मामला अभी भी सुप्रीम कोर्ट में चल रहा है और इस पर अभी फैसला नहीं हुआ है। अगर हम यह बिल ले आते हैं, तो सुप्रीम कोर्ट में इस समय इस पर जो कार्यवाही चल रही है, वह अपने आप समाप्त हो जाएगी।

जैसा कि मैंने अर्ज़ किया कि सुप्रीम कोर्ट में जो मामला चल रहा है, उसमें सुप्रीम कोर्ट के पहले निर्णय को काफी सीमा तक संशोधित किए जाने का पर्याप्त आधार है। इस आधार पर हमारा सबमिशन है कि अगर हम कोर्ट के अधिकार क्षेत्र को इस संशोधन से पूर्णतः हटा देंगे, तो अभी जो मामला सुप्रीम कोर्ट में चल रहा है, वह पूरी तरह से निष्प्रभावी हो जाएगा।

दूसरी बात आपने यह कही कि वहां पर बहुत सारी कालनीज़ बन गई हैं और वहां पर करीब 7-8 हजार लोग रह रहे हैं। इससे उन सबकी बेदखली की स्थिति पैदा हो जाएगी। वे लोग आज से वहां नहीं रह रहे हैं, बल्कि वे लोग 1948 से रह रहे हैं। यह एक स्थिति है।

सर, इसमें 1965 के पहले और 1965 के बाद की स्थिति भी अलग है। 1965 के बाद के जो प्रॉपर्टीज़ हैं, उनके बारे में सुप्रीम कोर्ट ने अलग से फैसला दिया है। इस संबंध में हमारा यह निवेदन है कि अगर हम इस संशोधन से कोर्ट का पूरा अधिकार क्षेत्र हटा लेंगे, तो इससे पर्याप्त आधार पर सुप्रीम कोर्ट में जो मामला विचाराधीन है, जिसमें फैसला हो सकता है, वह अलग हो जाएगा और वे सारी संपत्ति इनको वापस मिल जाएगी।

श्री नरेश चन्द्र अग्रवाल: मैं इसमें दो-तीन बातें जानना चाहता हूँ। पहला तो यह है कि क्या ये प्रॉपर्टीज़ urban ceiling से exempted हैं? क्या ये urban ceiling के अंतर्गत आएंगी? दूसरी बात यह है कि जैसे हम लोग रहते हैं, तो हम लोग प्रॉपर्टी पर नगरपालिका टैक्स, wealth tax, आदि देते हैं। क्या ये प्रॉपर्टीज़ इन टैक्सों के अंतर्गत आती हैं? मेरा अंतिम प्रश्न यह है कि जो प्रॉपर्टीज़ माननीय सर्वोच्च न्यायालय के आदेश पर खाली हुई थीं, जैसे डीएम, सीतापुर का मकान, एसपी, सीतापुर का मकान, लखनऊ में बटलर पैलेस लाइब्रेरी, आदि खाली हुई थीं, वे सब अब किस position में हैं? अब वे गवर्नमेंट के पास हैं या राजा के पास हैं?

श्री अनूप मिश्रा: सर, पहली चीज़ यह है कि अगर हम यह अधिनियम लाएँगे, तो बहुत सारे जो अन्य अधिनियम हैं, वे निष्प्रभावी हो जाएँगे। जैसा कि आपने कहा कि सीलिंग अधिनियम निष्प्रभावी हो जाएगा। ये सारी सम्पत्तियाँ सीलिंग अधिनियम में आएँगी। इसी तरह यू.पी. टेनेन्सी एक्ट, 1939 है। सर, उत्तर प्रदेश में जमींदारी उन्मूलन हो गया है, लेकिन शहरी क्षेत्र में जमींदारी उन्मूलन नहीं हुआ है और वे अभी भी 1939 के यू.पी. टेनेन्सी एक्ट से ही govern होते हैं, तो इससे हमारा यू.पी. टेनेन्सी एक्ट भी निष्प्रभावी हो जाएगा। इसी प्रकार, हमारे जो लैंड रेवेन्यू के प्रावधान और मैनुअल्स हैं, वे भी निष्प्रभावी हो जाएँगे। सर, आपने जो दूसरा प्रश्न किया, उसमें स्थिति यह है कि इन सभी सम्पत्तियों के संबंध में जो टैक्सेज़ थे, वे देय थे। यह भी उल्लेखनीय है कि इन परिसम्पत्तियों के संबंध में टैक्सेज़ का भुगतान नहीं हुआ है।

आपने जो तीसरी चीज़ पूछी है कि अभी ये परिसम्पत्तियाँ किनके पास हैं, तो इसमें यह कहना है कि सुप्रीम कोर्ट के 2009 के निर्णय के मुताबिक, वर्तमान में ये परिसम्पत्तियाँ उत्तर प्रदेश शासन के पजेशन में हैं।

संयोजक: अनूप मिश्रा जी, आपने जो अपना प्रेजेंटेशन दिया, उससे मेरी समझ के हिसाब से एनमी प्रॉपर्टी के रूप में तीन तरह की प्रॉपर्टीज़ चिन्हित होती हैं। एक, जो एनमी प्रॉपर्टी बतायी जा रही है, उसका ऐक्विज़िशन सनद के माध्यम से हुआ था, यानी वह तालुकदारी के माध्यम से मिली थी। दूसरी, टाउन इम्प्रूवमेंट ट्रस्ट के माध्यम से मिली थी और तीसरी, किसी की अपनी पर्सनल जायदाद थी, चाहे वह रूरल या अर्बन एरियाज़ में खरीदी हुई जमीन थी। इस प्रकार, इससे ये तीन तरह की प्रॉपर्टीज़ चिन्हित होती हैं।

आपने अपने मेमोरेण्डम में जो लिख कर दिया है और अभी गजेटियर में से जो पढ़ कर सुनाया तथा हमने डोभाल साहब की जो चिट्ठी पढ़ी, उनसे ऐसा महसूस होता है कि यह सब सरकार की जानकारी में था। यह प्रॉपर्टी सनद के माध्यम से फलां के नाम पर गयी है और यह सनद के माध्यम से उनके पास रहनी चाहिए या नहीं रहनी चाहिए, इस चीज़ को किसी ने कहीं invoke नहीं किया। जब सिविल कोर्ट से लेकर सुप्रीम कोर्ट तक केस चल रहे थे, तो क्या उसमें कहीं राज्य सरकार पार्टी बनी थी? अगर वह पार्टी बनी थी, तो उसने ये तीनों मुद्दे उठाये थे या नहीं? समिति यह जानना चाहेगी कि आज जो वहाँ रिव्यू

पिटिशन चल रहा है, क्या उसमें राज्य सरकार intervener या पार्टी है? सनद के द्वारा हासिल की हुई प्रॉपर्टी अथवा जो प्रॉपर्टी टाउन इम्प्रूवमेंट एक्ट, 1919 या आपके टेनेंसी एक्ट के माध्यम से ली गयी थी, क्या उन प्रॉपर्टीज को चिन्हित करके यह पता लगाया गया कि इसका लीगल मालिक कौन है? सबसे पहले तो वह प्रॉपर्टी, जो सनद के माध्यम से ली गयी, उसका मालिक कौन है? आपने जो लॉजिक दिया और आपने जो पढ़ा कि “यह प्रॉपर्टी तभी तक उसके पास रह सकती है, जब तक कि वह called upon to perform and showing good faith, loyalty, zeal and attachment to the British Government.” So, that is gone. जब वह चला गया, तो क्या उसके साथ प्रॉपर्टी भी गयी या जब देश आज़ाद हुआ, तो इन प्रॉपर्टीज का राष्ट्रीयकरण हुआ अथवा इसको अपने एक्ट में ले लिया गया? आपने अपने मेमोरेण्डम में बार-बार एक बात कही है कि Awadh State Act 1869 को भी इस बिल का हिस्सा बनाया जाना चाहिए। उसमें गृह मंत्रालय का कहना है, the matter relating to Awadh State Act 1869 are within the purview of the Government of U.P. and cannot be part of the Enemies Properties Amendment and Validation Second Bill, 2010. जो प्रॉपर्टी उत्तर प्रदेश में है और अगर आपको उसे invoke करना है, तो आप वहाँ कीजिए, लेकिन वह सेंट्रल एक्ट में नहीं आएगी, ऐसा गृह मंत्रालय कह रहा है। उसके बारे में आपके जो विचार हैं, उन्हें समिति को बताने की कृपा करें।

श्री अनूप मिश्रा: सर, आपने जो प्रश्न पूछे हैं, उनके जवाब मैं एक-एक करके देता हूँ। पहला, सिविल जज, लखनऊ के समक्ष succession के संबंध में जो मुकदमा दायर हुआ था, उसमें राज्य सरकार को पार्टी नहीं बनाया गया था। जैसा मैंने निवेदन किया, उसमें केवल कस्टोडियन और फैमिली मैम्बर्स को ही पार्टी बनाया गया था। जैसा मेरे सहयोगी ने स्पष्ट किया, चूंकि succession के समय अवध में primogeniture का सिद्धांत था, इसलिए उस सिद्धांत के हिसाब से सिविल जज ने यह फैसला कर दिया।

संयोजक: आपमें से यहाँ कोई lawyer भी तो होंगे?

श्री अनूप मिश्रा: सर, हम लोगों को यह बताया गया कि आप lawyer को नहीं ला सकते हैं।

संयोजक: ऐसी कोई बात नहीं है, आप lawyer को ला सकते हैं। आपके लॉ डिपार्टमेंट के अधिकारी या आपके ऐडवोकेट यहाँ आ सकते हैं, इसमें कोई दिक्कत नहीं है।

यह बात हमारे और इस समिति के ज्ञानवर्धन के लिए जानना जरूरी है। मेरे ख्याल से जब succession का केस चलता है, तो एक नोटिस निकाला जाता है कि यह succession केस चल रहा है। वह नोटिस या तो कोर्ट के परिसर में लगाया जाता है या अखबारों में छपवाया जाता है कि इस प्रॉपर्टी के संबंध में succession suit फाइल हुआ है और अगर इस प्रॉपर्टी पर किसी और का हक है, तो वह अपना निवेदन दे सकता है। क्या उस वक्त ऐसा कोई नोटिस जारी हुआ था? अगर ऐसा कुछ जारी हुआ था, तो उसमें राज्य सरकार ने intervene किया था या नहीं?

श्री आर.के. गोयल: सर, मैं इसके संबंध में यह निवेदन करना चाहूँगा कि the Cabinet had taken the decision in 1982 and he had to provide the succession certificate before the Custodian, Sir. He

filed a case before the Civil Judge in 1984 primarily for getting the succession certificate. And he specifically mentioned in his plaint that this case is being filed under Awadh State Act, 1869 to which the provisions of CPC do not apply but still ..

SHRI S.S. AHLUWALIA: You are talking of Awadh State Act.

SHRI R.K. GOYAL: The provisions of Awadh State Act are different from the provisions of Personal Law of Raja Mehmoodabad, Sir. Two main difference between the Awadh State Act and the Personal Law applicable to Raja Mehmoodabad as a member of a particular community are that, Sir, in Shariat all the members of the family are successors including girls, while in the Awadh State Act the principle of primogeniture was applicable. The eldest son succeeded to preclusion of all others. The second is that in Awadh State Act, Sir, adoption was allowed while in Shariat it is probably not allowed. These were two basic differences, Sir. So, he specifically mentioned in his plaint that this case is being presented before the civil court because Custodian Enemy Property is pressing for the succession certificate and the case is being presented under the Awadh State Act to which the provisions of CPC do not apply, 'but still I have served notice under CPC upon my mother, both the sisters and custodian.

SHRI S.S. AHLUWALIA: He has not taken through Personal Law.

SHRI R.K. GOYAL: It is through Awadh State Act. Repeatedly he has mentioned in his plea, Sir, in the case. That case is an enclosure.

श्री नरेश चन्द्र अग्रवाल: क्या अवध एक्ट अब भी चल रहा है या वह खत्म हो गया?

श्री आर.के. गोयल: सर, यह अब भी चल रहा है।

SHRI R. K. GOYAL (CONTD.): It is in existence. It has not been repealed.

SHRI AJIT CHANDRA: Sir, if you peruse Annexure 4, it is plain and it is a simple suit for declaration. He has not filed a suit for obtaining succession certificate but he filed a suit for declaration that 'I be declared a successor'. It is a twisted version of succession suit. PIB declared us successor of such property. So, in suit for declaration there is no publication or no proclamation in newspaper. It is not required and he claimed that since his father obtained properties under Awadh State Act and he attached a list. So he said, 'I be declared successor of this property' and this list is very short.

SHRI S. S. AHLUWALIA: That means the civil judge, with due respect to his position, has not applied his mind and he has not seen the Act thoroughly. Otherwise, the property acquired through the *Talukdaris* whether it should continue with him or not is a big question.

SHRI AJIT CHANDRA: Sir, there was no one to agitate it because the State of UP was not arrayed as a party to the case.

श्री अनूप मिश्रा : सर, आप ने जो दूसरा बिंदु रखा था, यह सारी जमीन हमारे रिकॉर्ड्स में "जमीन केसरे हिंद" रिकॉर्ड है।

श्री हर्ष वर्धन : क्या मतलब हुआ?

श्री अनूप मिश्रा : गवर्नमेंट ऑफ इंडिया।

SHRI ANOOP MISHRA: That is how it is recorded. It is not recorded as a property.

संयोजक : ये Enemies property जितनी हैं, ये सारी ऐसी हैं या सिर्फ यही जमीन है?

श्री अनूप मिश्रा : सर, अधिकांश में केसरे हिंद ही रिकॉर्डेड है। सर, इस में आप ने जो बात कही, उस पर भी मैं अर्ज़ करना चाहूंगा। इस में बहुत सारे तालाब हैं जोकि अब हमारे Land record में तालाब रिकॉर्डेड हैं और तालाब का राइट किसी भी तरह से गांव को ही है, वह नहीं जा सकता। सर, आप ने एक बात और रखी कि क्या ये अलग-अलग distinctions किए गए? सर, हमारा निवेदन यह है कि सिविल कोर्ट में हम पक्षकार नहीं थे, मुंबई हाईकोर्ट में हम पक्षकार नहीं थे और सुप्रीम कोर्ट में भी हम पक्ष नहीं थे। जब तक पहले तीन आदेश हुए, राज्य सरकार को इस में पक्षकार नहीं रखा गया। जब यह आदेश हो गया कि आप सारी परिसंपत्तियां वापिस कर दें और जब स्थानीय रूप से यह बात उठी तब राज्य सरकार उस में पक्ष बनी और तब यह रिव्यू फाइल किया गया। अब जो सुप्रीम कोर्ट में मामला चल रहा है, उस में राज्य सरकार पक्ष है और जो अलग-अलग श्रेणियां हैं वे सुप्रीम कोर्ट के सामने रखी गयी हैं। सर, मैं यह भी गुजारिश करना चाहूंगा कि सन 82 जब तक केन्द्र सरकार द्वारा यह निर्णय नहीं लिया गया कि 25 फीसदी जमीन लौटा दी जाएगी तब तक इस में कोई बात थी ही नहीं। सारी परिसंपत्तियां कस्टोडियन में निहित थीं और उस को वापिस करने का कोई प्रश्न नहीं था। सर, यह बात तो तब शुरू हुई जब यह निर्णय लिया गया सन 82 के बाद कि अब हम 25 फीसदी जमीन लौटा देंगे।

संयोजक : आप हमें एक स्टेटमेंट बनाकर दें कि सिविल कोर्ट से लेकर मुंबई हाईकोर्ट और सुप्रीम कोर्ट में कस्टोडियन के वकील कौन थे और Appellant के वकील कौन थे? इस की लिस्ट दें। क्या उस में ऐसे वकील भी थे जो आज किसी राज्य या राष्ट्र की सरकारों के मंत्री हैं? उन के नाम लिखकर दें।

श्री नीरज शेखर : अध्यक्ष जी, पहले तो मैं गृह सचिव जी को बधाई देना चाहूंगा कि वह एक महीने बाद आ, लेकिन पूरी तैयारी से आए। यह बहुत अच्छी बात है। दूसरा, यह कि इन्होंने जो comment किया कि पाकिस्तान में जो हो रहा है, हिंदुस्तान में भी वही होना चाहिए। इस से मैं इतफाक नहीं रखता हूं। पाकिस्तान क्या कर रहा है, यह उन का internal मामला है। उस से मतलब नहीं कि हम अपनी प्रॉपर्टी का क्या करें? वह decision ले रहे हैं कि बेच दें या किसी को दे दें, लेकिन जो भारत का मामला है वह हमारी पार्लियामेंट डिसाइड करेगी या कोर्ट डिसाइड करेगी। यह उस पर depend करता है। अभी इतनी देर जो बातचीत हुई, उस में मैं यह नहीं समझ पाया कि जब तीन बार केस चल रहा था तो आप लोगों को पता तो होगा?

श्री अनूप मिश्रा : सर, हमें कोई जानकारी नहीं थी।

संयोजक : आप को जानकारी होने से क्या फायदा? When you are not a party, you cannot enter into it.

श्री अनूप मिश्रा : सर, इस का राज्य सरकार को इल्म नहीं था।

संयोजक : Locus standi क्या है?

श्री नीरज शेखर : अभी केस थोड़े ही चल रहा है, अभी भी रिव्यू ही चल रहा है न?

संयोजक : रिव्यू किस ने फाइल किया?

श्री अजीत चन्द्रा : सर, Interlocutory petition चल रही है। यह स्टेट ऑफ यू0पी0 ने फाइल की है कि Since we are affected, so we must be given an opportunity.

श्री नीरज शेखर : जब पहली बार केस आप के against गया तब आप ने क्यों नहीं फाइल किया?

श्री अजीत चन्द्रा : सर, हम को तब पता चला जब contempt हमारे ऊपर आयी।
We were not aware of it.

श्री नीरज शेखर : सुप्रीम कोर्ट ने आप के खिलाफ जजमेंट कर दिया ।

श्री अनूप मिश्रा : सर, सुप्रीम कोर्ट ने कस्टोडियन को ही आदेश दिया। हम तो उस में पक्षकार नहीं थे। जब वह हुआ तब हम ने रिव्यू फाइल किया।

श्री नीरज शेखर : जब पहली बार सिविल कोर्ट में हुआ था तब भी आप के against हुआ था।

श्री अनूप मिश्रा : सर सिविल कोर्ट की हमें कोई जानकारी ही नहीं थी।

संयोजक : यह जो मैंने आप से वकीलों का स्टेटमेंट मांगा है, उस में जो उनकी तीनों जजमेंट्स हैं, उस में उन के नाम लिखे होंगे, पर on record कई लोग नहीं रहते हैं, लेकिन बहस करने के लिए जाते हैं। वैसे नाम भी आप अपनी सरकारी जानकारी के हिसाब से यह सारी जानकारी समिति को दें। दूसरा, आप ने अपने मेमोरेण्डम के पेज 10 के लास्ट 2 पैराग्राफ में दिया है, “When by virtue of effect of Awadh State Act, all the properties of the person and his heirs who became enemy and disloyal to the Government have vested in the State/Union of India the proposed Bill No. 1242010 is totally ultra vires and unconstitutional. फिर आप ने लिखा है, State of UP strongly opposed Bill No. 124 of 2010 specially insertion of new Section 5, sub-clause 3, 18 and 26, sub-clause 1(b)(1)(II) and again emphasis to restore ordinance No. 4 of 2010 to its original shape.” यह आप ने अपना व्यु दिया है। आप ने इन चार सेक्शंस के बारे में कहा है कि अगर बिल पार्लियामेंट ने कंसीडर करना हो तो ये चार सेक्शंस जिन के बारे में आप कह रहे हैं, इस की शब्दावली क्या होनी चाहिए? उस के बारे में

सुझाव दें। दूसरा, आप ने कहा कि restore ordinance No. 4 of 2010 जो लैप्स कर गया तो उस में और इस में क्या फर्क है? अगर वह implement नहीं होता और यह implement होता तो violation क्या-क्या हो रहा है, उसे चिह्नित कर के अपनी शब्दावली के माध्यम से हमें दें तो वह समिति के लिए फायदेमंद होगा।

श्री नीरज शेखर : मैं यह भी जानना चाहता था कि जैसे अभी माननीय नरेश जी ने पूछा कि 1500 लोगों में से कितने लोगों को फायदा होगा? मैं कहना चाहूंगा कि लाभ होने की बात नहीं है। वह तो सुप्रीम कोर्ट ने भी देखा होगा तभी उस ने जजमेंट किया है। उस में एक आदमी को फायदा हो रहा हो या सौ आदमियों को फायदा हो रहा हो, उस से हम को concern नहीं है। क्या लॉ कहता है? और मेरे खयाल से रिव्यू तो जिन्होंने जजमेंट दिया होगा, उन्हीं के पास गयी होगी? मेरी समझ के अनुसार जिस जज ने लास्ट जजमेंट दिया होगा, रिव्यू तो उन्हीं के पास जाता है।

श्री अनूप मिश्रा: रिव्यू सामान्यतया उसी न्यायालय में जाता है। यहां जिन माननीय जजों ने ऑर्डर दिया था, उनमें एक रिटायर हो गए हैं। तो सर, वह अलग-अलग न्यायालय में जाएगा।

श्री नीरज शेखर: मैंने यह भी जानना चाहा था कि आज की स्थिति क्या है? अभी तो यह जमीन स्टेट गवर्नमेंट के पास ही है और जो लोग उससे बनेफिट मांग रहे हैं, उनको तो कोई बनेफिट नहीं है।

श्री अनूप मिश्रा : सर, अभी फिलहाल नहीं है, लेकिन यह बिल जिस रूप में रखा गया है, इस रूप में अगर पारित हो जाता है, तो सुप्रीम कोर्ट में जो मामला विचाराधीन है, वह इस बिल के ...

श्री नीरज शेखर: जो रिव्यू है, आपके पैरा में बार-बार कन्फ्यूज हुए जा रहा हूँ।

श्री अनूप मिश्रा : जी, सर। जो रिव्यू है, वह निष्प्रभावी हो जाएगा।

श्री नीरज शेखर: मैं यह जानना चाह रहा था कि जितने केस थे, मतलब जो 1500 कुछ हैं, उसमें एक आदमी को कितना फायदा हो रहा है? जो प्रश्न इन्होंने पूछा था, कितने लोग इन्वोल्व हैं? मैं सीधे से पूछता हूँ राजा महमूदाबाद का।

श्री अनूप मिश्रा: सर, जो 1529 कहा गया, यह सारी इस मामले में इन्वोल्व परिसंपत्तियां हैं। इसमें जो लोग इन्वोल्व हैं, वे करीब 7000-8000 लोग हैं।

श्री नीरज शेखर: लेकिन, जब कोर्ट ने ऑर्डर किया था, तो आप खाली करा रहे थे, न? जब सुप्रीम कोर्ट का ऑर्डर हुआ, तो आपने बताया कि कुछ दिनों के लिए खाली हो गया था।

श्री अनूप मिश्रा: सर, सुप्रीम कोर्ट ने ऑर्डर किया कि यह उनको वापस कर दिया जाए। सुप्रीम कोर्ट ने यह भी साफ-साफ कहा कि अगर आठ हफ्ते में वापस नहीं होता है, तो आप कंटेंट ऑफ प्रोसिडिंग ला सकते

हैं। जब कंटैक्ट ऑफ प्रोसिडिंग्स आई, तो राज्य सरकार ने वापस करने की कार्रवाई शुरू की और साथ ही साथ रिट्यू भी दाखिल किया। जब रिट्यू दाखिल किया, तो उससे अंतरिम राहत राज्य सरकार को मिली।

श्री नीरज शेखर: यह राहत आपको ऑर्डिनेन्स से मिली, कोर्ट ने नहीं दी।

श्री अनूप मिश्रा: सर, कोर्ट से मिली, ऑर्डिनेन्स ने नहीं मिली।

श्री नरेश चन्द्र अग्रवाल: जब रिट्यू दाखिल हुआ, तो सरकार किसके नेतृत्व में थी?

श्री नीरज शेखर : यह यहां का विषय नहीं है।

श्री अनूप मिश्रा : सर, मुलायम सिंह जी यादव की सरकार थी।

श्री नीरज शेखर : सरकार कोई भी रहे, उससे हमें मतलब नहीं है।

श्री अनूप मिश्रा : सर, मैं तो प्रश्न का जवाब दे रहा था।

श्री नीरज शेखर: अगर उस सरकार ने भी गलती की है, तो गलती की है, मेरा तो ऐसा मानना है। उसको हमें सुधारना है। ऐसा नहीं है कि यह वाली सरकार फिर वह गलती करे।

अध्यक्ष : इस पर हम लोग आपस में चर्चा करेंगे। इनसे जो सवाल पूछना है, आप वह सवाल पूछ लें।

श्री नीरज शेखर: सर, मैं यही सवाल पूछना चाहता हूँ। क्या कह रहा था, दिमाग से निकल गया।

अध्यक्ष : ठीक है, पहले आप सोच लो।

श्री हर्ष वर्धन: आपने यह जो परिसंपत्तियां बताईं, यह 7000-8000 लोगों के कब्जे में रही होंगी। यह क्या लखनऊ में ही हैं, या सीतापुर में जो जमीन है उसको इन्क्ल्यूड करके उससे यह प्रभावित हो रहे हैं?

श्री अनूप मिश्रा : सीतापुर में है।

श्री हर्ष वर्धन: नंबर दो, यह जो जितनी संपत्ति वापस करने की बात हो रही है, आज की तारीख में उसका बाजारू मूल्य कितना होगा?

श्री अनूप मिश्रा: सर, यह तो अनुमान लगाना पड़ेगा।

श्री हर्ष वर्धन: हम वही जानना चाहते हैं कि अनुमानित मूल्य कितना होगा?

श्री अजीत चन्द्रा: सर, एक अनुमान लगाया गया है कि करीब 30 हजार करोड़ रुपए।

श्री मोहम्मद अरारुल हक: इन जायदादों में क्या कोई जायदाद ऐसी भी हैं, जो वक्फ हैं?

श्री अनूप मिश्रा: साहब, वक्फ कोई नहीं है।

श्री नीरज शेखर: प्रमुख सचिव जी, जो आपने कहा था कि उस पर टैक्स लगाना चाहिए था, तो क्या उस पर कुछ टैक्स लगा? नहीं, तो कितना टैक्स होना चाहिए था?

श्री अनूप मिश्रा: जो भी इनको सनद दी गई थी, टेनेन्सी दी गई थी, उसका रेंट दिया जाना था, मगर रेंट का भुगतान नहीं हो रहा है।

श्री नीरज शेखर: आपने बताया था कि 1947 में 'who owe their allegiance to the British Government' उसके बाद आपने बताया कि वह चेंज हुआ 1947 में, अब भारत सरकार के साथ जो एलीजेन्स है, तो उन लोगों का एलीजेन्स तो अभी भी भारत सरकार के साथ ही है। अभी जो लोग क्लेमेंट हैं, वे लोग तो सिटीजन ऑफ इंडिया हैं।

श्री अनूप मिश्रा: सर, जो ऑनर हैं, उनकी एलीजेन्स का प्रश्न था।

श्री नीरज शेखर: ऑनर तो मर गए।

श्री अनूप मिश्रा: सर, जिसके पक्ष में जब सनद दी गई, 1947 में जो स्थिति थी।

श्री नीरज शेखर: ऑनर, हमारे कानून से तो यही है कि जो मर गए, उनके बाद तो लीगल हाइर ही तो उनके होंगे।

श्री अनूप मिश्रा: जी बिल्कुल, सर, लेकिन 1947 में क्या स्थिति थी, उसके हिसाब से होगा, आज की स्थिति से नहीं।

श्री हर्ष वर्धन: 1947 में जो स्थिति थी, इनके पिताजी पाकिस्तान में चले गए थे, जो वर्तमान में है, और यह तय था कि जो पाकिस्तान चले गए हों, वे जब बालिग होंगे, जहां ओप्ट करेंगे, वही माना जाएगा। उस हिसाब से तो यह भारतीय मूल के हैं।

SHRI ANUP MISHRA: It is very clear under *sanat kabooliyat* that had he been citizen of India or loyal to India...(Interruptions) He said that right of your heir shall be annulled. It is given in *sanat kabooliyat* itself that right of your heir shall be annulled. When he has accepted *sanat kabooliyat* under certain conditions, he cannot go beyond that, especially when he says that he claims this property under the provisions of the Awadh Estate Act. Then, he will have to follow the provisions under which it was granted.

श्री नीरज शेखर: There must be some lawyer. जैसा कि कन्वीनर साहब ने पूछा कि कौनसे लॉयर थे, वह तो पता ही चल जाएगा।

श्री अनूप मिश्रा: वह मैं बता दूंगा।

श्री हर्ष वर्धन: आपके कहेनुसार जो राजा महमूदाबाद पाकिस्तान चले गए, उन्होंने वायोलेट किया, इसलिए प्रभावित होगा।

श्री अजीत चन्द्रा: सर, क्योंकि एक्ट में दिया है। यह हमारा एक्ट कह रहा है।

श्री अनूप मिश्रा: सर, सनद यही कहती है।

संयोजक: नहीं, सनद यही कहती है, किन्तु जैसा कि नीरज जी कह रहे हैं कि इस इश्यू को किसी ने आर्गुमेंट के माध्यम से उठाया था या नहीं?

श्री अनूप मिश्रा: नहीं उठा, सर।

संयोजक: कोर्ट ने भी यह सवाल पूछा था या नहीं पूछा था?

श्री अनूप मिश्रा: नहीं पूछा था, सर।

संयोजक: जजमेंट की आर्गुमेंट में कहीं नहीं है?

श्री अनूप मिश्रा: नहीं है, सर। तीनों कोर्ट में, सुप्रीम कोर्ट में भी नहीं आया।

संयोजक: अब आप लोगों ने रिव्यू में उठाया है?

श्री अनूप मिश्रा: जी, उठाया है। यह सारी बातें रिव्यू में उठाई गई हैं, तभी हमें वह अंतरिम राहत सुप्रीम कोर्ट से मिली है।

श्री नीरज शेखर: मैं आपको बताना चाहूंगा कि उत्तर प्रदेश के अलावा जहां भी ऐसा है, वहां के गृह सचिव इसका सपोर्ट कर रहे हैं। यह समस्या वहां भी है, कहीं 350, 390, कहीं 200 ऐसी हर जगह प्रोपर्टीज हैं। फिर उत्तर प्रदेश ही इसकी खिलाफत क्यों कर रहा है?

श्री अनूप मिश्रा: सर, अधिकांश यहीं हैं और सबसे ज्यादा प्रभावित हम ही हो रहे हैं। फिर हमारे कई मुख्य अधिनियम जो हैं, इसके आने से पूर्णतया निष्प्रभावी हो जाएंगे।

श्री हर्ष वर्धन: जो अवध एक्ट है, वह उत्तर प्रदेश में है।

संयोजक: खाली अवध एक्ट का ही नहीं था, ताल्लुकेदारी सिस्टम भी यहीं पर था।

श्री हर्ष वर्धन: मैं वही कह रहा हूँ।

श्री अनूप मिश्रा: सर, अगर मैं गुजारिश करूं, तो जो हमारी फर्स्ट वार ऑफ इंडिपेंडेंस हुई, वह भी पूरी तरह से उत्तर प्रदेश में ही हुई और यह सारी चीजें जो पैदा हुईं, यह मुख्य रूप से उत्तर प्रदेश में ही हुईं। इसीलिए हमारा जो निवेदन है, उस हिसाब से है।

श्री नीरज शेखर: मंगल पांडे जी बलिया के थे।

अध्यक्ष: अनूप मिश्रा जी और अन्य अधिकारीगण, आपको बहुत बहुत धन्यवाद। आप लोगों ने एक नया पक्ष हमारे सामने रखा है। हम लोग बाकी कन्सर्न लोगों को बुलाकर उनसे भी चर्चा करेंगे। आपको क्या अभी कुछ और जानकारी देना है?

संयोजक: जो जानकारी हमने मांगी है।

श्री अनूप मिश्रा: सर, अगर अनुमति हो, तो मैं बता दूँ कि आपने हमें क्या-क्या देने का निर्देश दिया है।

अध्यक्ष: ठीक है, वह बता कर आप वह जानकारी 15 दिन के अंदर भेज दीजिएगा।

संयोजक: 15 दिन के अंदर भेज दीजिए, क्योंकि हमें एक महीने के अंदर रिपोर्ट फाइनल करनी है।

श्री अनूप मिश्रा: सर। निवेदन यह है कि आपने पहली जानकारी यह चाही है कि सिविल जज के सामने, हाई कोर्ट मुंबई के सामने और सुप्रीम कोर्ट के सामने दोनों पक्षों के कौन-कौन वकील थे, उसका विवरण आपको दे दें। दूसरा, आपने यह चाहा था कि जिस शब्दावली में हम संशोधन प्रस्तावित कर रहे हैं, वह शब्दावली आपको दें।

संयोजक: और जो 1500 कुछ प्रोपर्टीज हैं आपके यहां पर, उसमें सनद के माध्यम से कितनी प्रोपर्टीज एफेक्टेड हैं, टेनेन्सी एक्ट 1919 के तहत कितनी एफेक्टेड हैं और ऐसे लोगों की, जो साधारण लोग थे, उनकी जमीनें कितनी हैं?

श्री अनूप मिश्र: उसका वर्गीकरण भी हम आपको दे देंगे।

श्री एस.एस. अहलुवालिया : क्योंकि उसका वर्गीकरण पता होने से ही हमें पूरी जानकारी मिलेगी। अगर कल को कानून पास हो गया, कल को ऐसा हो गया कि सनद के माध्यम से जो ज़मीन मिली है, वह उसका लीगल अधिकारी नहीं बन सकता। ऐसा कोई सुप्रीम कोर्ट का जजमेंट आ गया या कुछ और आ गया, तब तो उस वर्गीकरण के हिसाब से ज़मीन अलग हो जाती है। केसर-ए-हिन्द का जो मेंशन है, वह कितनी प्रापर्टी के बारे में है या वह सारी 1509 प्रापर्टी पर लिखा हुआ है। आप उसका भी पूरा वर्गीकरण

करके दें। केसर-ए-हिन्द का असली तर्जुमा करके दें और यह बतायें कि उसको आपके यहां क्या माना जाता है? मिश्र जी, आपने जिस पुस्तक से पहले पढ़ा था, उसकी एक कापी भी भेजिएगा।

CHAIRMAN: From time to time we would be sending this evidence to you. You can send back your comments on that.

SHRI S.S. AHLUWALIA: We have asked them to send their suggestions. Whenever we get them, we will send them to you. **CHAIRMAN:** Thank you. The meeting is adjourned now.

**THE SUB-COMMITTEE ON THE ENEMY PROPERTY (AMENDMENT ND
VALIDATION) SECOND BILL, 2010 OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS MET AT 3.00
P.M. ON 10TH AUGUST, 2011 IN COMMITTEE ROOM 'A', PARLIAMENT HOUSE
ANNEXE, NEW DELHI.**

(Shri S.S. Ahluwalia in the Chair)

Witness

1. Shri Lal Ji Tandon, MP, Lok Sabha
2. Shri Sandeep Kohli
3. Shri Kishin-chand Bhambhwani
4. Shri Murlidhar Ahuja
5. Shri Jyoti Behl

CONVENOR: I welcome hon. Members to this sitting of the Sub-Committee.

Friends, today we are going to have the benefit of the views of Shri Lal Ji Tandon, MP, Lok Sabha and others on the provisions of the Enemy Property (Amendment and Validation) Second Bill. Before this, there are some issues, which need deliberation by the Sub-Committee.

As you are aware, hon. Chairman, Rajya Sabha has granted extension up to 31st August, 2011 for presentation of the report on the Enemy Property (Amendment and Validation) Second Bill, 2010.

However, a lot of work is still needed to be done for proper examination of Bill. The Sub-Committee has to hear individuals/organizations/stakeholders who can give the real picture and ground reality before us. Besides, the comments received from the States/UTs on the Bill have been forwarded to the Ministry of Home Affairs for their comments. The Sub-Committee also needs, at least, three sittings for clause-by-clause consideration of Bill, internal discussion and consideration and adoption of draft report on the Bill. Thereafter, the report would be forwarded to the main Committee for its consideration and adoption. In view of the amount of work required to be done on the Bill, it would not be possible for us to complete all stages of consideration of the Bill in the time given for presentation of report on the Bill by the Committee, which is up to 31st August, 2011 and if you all agree, extension of time may be sought from the hon. Chairman, Rajya Sabha up; to last day of the first week of the Winter Session, 2011.

SOME HON. MEMBERS: Yes.

CONVENOR: Friends, you may also recall that we invited Chief Secretary, NCT Government of Delhi for oral evidence on the Bill. However, the Chief Secretary unfortunately came without proper home work on the subject. In view of this, we decided to hear him next time. We also need to hear other private stakeholders. Therefore, a meeting for this purpose also needs to be fixed. We may hold two or three meetings during the Session time.

शीतकालीन सत्र में फर्स्ट वीक में will take up that way. उसके बाद हम लोगों को लगता है कि we have to call the Raja Mehboobaad. जो कुबूलनामा बनाया है, उसके बारे में बात करने के लिए बुलाना पड़ेगा। सुप्रीम कोर्ट में स्टेटस क्या है, उसके बारे में भी पूरी जानकारी लेनी पड़ेगी। लालजी टंडन जी लोक सभा के माननीय सदस्य हैं। आज उनको यहां पर बुलाया है। आज हमारे लिए सौभाग्य का विषय है कि यहां पर तारिक अनवर जी भी विशिष्ट अतिथि के रूप में उपस्थित हैं। आप स्पेशल इन्वाइटी में इस सब्जेक्ट के लिए एक चिट्ठी लिखकर अटेंड कर सकते हैं। आप मेन कमेटी में तो हैं हीं, इसलिए आप इसमें नोमिनेट हो सकते हैं। आप इसमें आ जाएंगे, तो आपकी जानकारी से हमें कुछ लाभ ही होगा, कुछ नुकसान नहीं होने वाला है।

संयोजक : लाल जी टंडन जी, आपके साथ जो लोग आए हैं, उनको भी अंदर बुला लीजिए। मैं अपनी तरफ से और अपनी समिति की तरफ से आपका स्वागत करता हूँ। आप अवगत होंगे कि the Enemy Property (Amendment & Validation) Second Bill, 2010, जो Department-related Parliamentary Standing Committee on Home Affairs को संसद की तरफ से भेजा गया है, की detailed study के लिए एक छोटी समिति बनाई गई है। उसकी detailed study के लिए ही आपको भी आमंत्रित किया गया है। हम विभिन्न संस्थाओं से और जो लोग उसमें प्रभावित हैं, वैसे लोगों को और वैसे संस्थाओं को बुलाकर उनसे पूछ रहे हैं। चूंकि आप लखनऊ के जनप्रतिनिधि भी हैं और आपके साथ वहां की संस्थाओं के लोग भी आए हैं, इसलिए हम लोग आपके विचार सुनना चाहेंगे और ऐक्ट में जो अमेंडमेंट्स लाए गए हैं, उनके बारे में आपसे जानना चाहेंगे। आपकी जानकारी के लिए मैं बताना चाहूंगा कि आप यहां पर जो कुछ भी कहेंगे, उसे तब तक किसी अखबार, टेलीविजन या कहीं और भी डिसक्लोज नहीं करेंगे, जब तक कि समिति की रिपोर्ट सदन में प्रस्तुत नहीं हो जाती है। अब मैं माननीय लाल जी टंडन जी से कहूंगा कि अपने साथ आए साथियों का परिचय कराएं और हमें बताएं कि इस विधेयक में जो संशोधन लाया गया है, उसके बारे में क्या कहना चाहते हैं।

श्री लालजी टंडन : सर, मेरे साथ लखनऊ के वे प्रतिष्ठित लोग, जो इस विधेयक से प्रभावित होने वाले हैं, उनका एक प्रतिनिधिमंडल है। उन्हीं की प्रॉपर्टी में कुछ किरायेदार हैं, कोहली साहब हैं, ज्योति बहल जी, किशन चंद भम्भवानी जी हैं, ये हजरतगंज व्यापार मंडल के अध्यक्ष हैं। मुरली धर आहूजा जी हैं, ये भी उनकी प्रॉपर्टी में टेनेंट हैं।

श्री लालजी टंडन (क्रमागत) : मैं समझ रहा हूँ कि आप जिस विधेयक पर विचार कर रहे हैं, इसके पीछे भारत का इतिहास छिपा है। इसे बड़ी गम्भीरता के साथ लेना चाहिए। 1857 में जब अवध की हुकूमत खत्म हुई, तो अंग्रेजों ने कुछ लोगों को ताल्लुकेदार बना कर उनको प्रॉपर्टी दे दी और किसी को राजा और किसी को नवाब का टाइटल दे दिया। ये सब ताल्लुकेदार थे। यह प्रॉपर्टी अवध के original नवाब की थी, जो इनकी देखरेख में दी गई थी और एक संधि भी हुई थी। उत्तर प्रदेश में इस समय जितनी शत्रु सम्पत्ति है, अगर इसे कभी धनराशि में जोड़ा जाए, तो उसकी 80 फीसदी से ज्यादा सम्पत्ति केवल एक व्यक्ति को

मिल गई। हम आपको बताएँगे कि यह शत्रु सम्पत्ति किस प्रकार से अदालत के पास पहुँची। मैं भूमिका के रूप में बताना चाहता हूँ कि जो संधि अंग्रेजों और नवाब या राजा के बीच हुई थी, उस संधि के अनुसार जैसे ही वे पाकिस्तान गए, वह संधि स्वतः समाप्त हो गई अर्थात् वे उस सम्पत्ति के मालिक नहीं रहे। इस समय जो विधेयक आपके सामने है, उसमें बिना इसे शामिल किए हुए, बिना इस पर विचार किए हुए, यह केवल एक व्यक्ति को बचाने के लिए लाया गया है, क्योंकि न्यायालय से जो फैसले हुए थे, उनमें बहुत अनियमितता पाई गई थीं और गवर्नमेंट ने उसे सही करने के लिए एक ऑर्डिनेंस जारी किया। वह ऑर्डिनेंस जब विधेयक के रूप में लोक सभा में पेश करने की बात आई, तो उसके बाद कुछ लोगों ने इसे कम्युनल शकल दे दी, जबकि हकीकत यह है कि अगर इसमें सौ हिन्दू प्रभावित हो रहे हैं, तो हजार मुसलमान प्रभावित हो रहे हैं। मुसलमानों के नाम पर एक मुसलमान को फायदा पहुँचाने की कोशिश की जा रही है और गुमराह किया जा रहा है। उनके जो वकील थे, जो इस सारी jugglery में शामिल थे, संयोग से वे मंत्री हो गए हैं और उन्होंने ही एक दबाव बना कर उस ऑर्डिनेंस को defunct करने की कोशिश की। लोक सभा में इसके ऊपर काफी चर्चा हुई और आखिर में उन्होंने कहा कि हम दूसरा विधेयक ला रहे हैं। इसका मतलब यह था कि अगर इस विधेयक में उस राजा को शामिल नहीं किया गया, तो यह शत्रु सम्पत्ति विधेयक समाप्त करना ज्यादा उचित होगा, बनिस्बत इस पर विचार करने के, क्योंकि सारी सम्पत्ति एक गलत आदमी के हाथ में चली जा रही है। उसी को बचाने के लिए जो गवर्नमेंट ऑर्डिनेंस लाई, वही गवर्नमेंट अब उसको बचाने के लिए दूसरा विधेयक पेश कर रही है। आज बहुत से घोटालों का जिक्र हो रहा है। यह तो संसद के अन्दर घोटाला हो रहा है, हम लोगों की आँखों के सामने घोटाला हो रहा है। यह लगभग 20 हजार करोड़ रुपए की प्रॉपर्टी है। मैंने पहले बताया कि इस संधि के अनुसार राजा उसके मालिक नहीं थे। जब वे मालिक नहीं थे, तो उस सम्पत्ति पर उनका successor कहाँ से पैदा हो गया? यह एक बिन्दु है।

अगर उस संधि को छोड़ दीजिए, तो जब partition हुआ, तो जो भारत आए थे, उनकी सम्पत्ति पाकिस्तान में छूट गई और जो यहाँ से गए थे, उनकी सम्पत्ति यहाँ रह गई। ऐसी सम्पत्तियाँ, जो यहाँ रह गई थीं, वे सब evacuee property कहलाई और custodian के अधीन उनका settlement होना शुरू हो गया, ताकि जो वहाँ जितनी सम्पत्ति छोड़ कर आया है, उसे यहाँ उतने मूल्य की सम्पत्ति मिल जाए।

श्री लालजी टंडन(क्रमागत): तो वह सब एप्रोप्रिएशन होता रहा। जो सम्पत्ति बची, वह कस्टोडियन के पास रही, यानी शत्रु सम्पत्ति बनने से पहले उस संधि के अनुसार वह खत्म हो गई। दूसरा, वह एवेक्यू प्रॉपर्टी हो गई, यानी वह गवर्नमेंट की प्रॉपर्टी में निहित हो गई और उसके मालिक वह नहीं रहे।

जो वर्तमान राजा महमूदाबाद हैं, उनके फादर जिन्ना के फाइनांसर थे, मुस्लिम लीग के ट्रेज़रर थे और पार्टीशन के बाद पाकिस्तान चले गए। बाद में वह इंग्लैंड जाकर रहने लगे और वहाँ जाकर वह पाकिस्तान के अम्बैसडर हो गए। उनके साथ उनका पूरा परिवार भी इंग्लैंड चला गया। उस समय यह वर्तमान राजा नाबालिग थे, इसलिए किसी ने इस प्रॉपर्टी के ऊपर क्लेम नहीं किया। बाद में राजा की मृत्यु हो गई। जैसा मैंने पहले बताया कि इवैक्यू प्रॉपर्टी के अंतर्गत जिसकी यहां पर प्रॉपर्टी थी, उसके

बदले में उसको वहां प्रॉपर्टी मिल गई और जिसकी वहां पर प्रॉपर्टी थी, उसके बदले में यहां मिली। राजा के बच्चों को यहां की प्रॉपर्टी के बदले में पाकिस्तान में प्रॉपर्टी मिल गई, यानी उनको वहां भी प्रॉपर्टी मिल गई और यहां की प्रॉपर्टी भी अब उन्हें वापस मिल रही है। यह कैसा मज़ाक हो रहा है?

जब 1965 में लड़ाई हुई, तब यहां के तत्कालीन प्रधानमंत्री शास्त्री जी ताशकंद गए। उस समय का उनका ज्वाइंट स्टेटमेंट आपके रिकॉर्ड में भी होगा, आप उसे देखिएगा। उस स्टेटमेंट में यह बात उल्लिखित है कि जो सम्पत्ति इस देश में या उस देश में लड़ाई के वक़््त जब्त की गई है, वह सबको वापस कर दी जाएगी, लेकिन इसके बदले पाकिस्तान ने शत्रु सम्पत्ति ऐक्ट बनाकर भारतीयों की सारी सम्पत्ति को अपने कब्ज़े में ले लिया और उसे बेच दिया।

जब श्रीमती इन्दिरा गाँधी प्रधान मंत्री बनीं, तो यहां भी उन्होंने उसी आधार पर शत्रु सम्पत्ति विधेयक बनाया कि जो कस्टोडियन के पास सम्पत्ति थी और जो बाद में शामिल हुई, वह सब एक जगह कलैक्ट करके, उसे शत्रु सम्पत्ति घोषित कर दिया जाए। इस तरह वह सारी सम्पत्ति सरकार के अधीन आ गई। 1947 के बाद सरकार ने इस सम्पत्ति का अपनी तरह से उपयोग करना शुरू भी कर दिया। यह तथ्य इस बात को साबित करता है कि उस समय वह सम्पत्ति पूरी तरह से सरकार की सम्पत्ति में निहित हो चुकी थी। उस समय जो रेफ्यूजी आए थे, उनके लिए मकान बनाने के लिए इसी में से जमीनें दी गईं। सीतापुर और कई अन्य जगह बड़ी-बड़ी रेफ्यूजी कालोनियां बनी हुई हैं, जहां पर बिडिंग बनाने के लिए सरकार ने स्वयं पैसा दिया। चूंकि ये जमीनें गवर्नमेंट की ही थीं, इसलिए गवर्नमेंट ने पैसा दिया। लेकिन जो जजमेंट हुआ, उसके तहत वह उस प्रॉपर्टी के क्लेममेंट भी वह हो गए कि वह भी उन्हीं की प्रॉपर्टी है।

इसी तरह से बहुत से ऑफिसिज़, शुगर मिल्स, कॉलेजिज़, स्कूल्स या जहां तमाम तरह की सोशल एक्टिविटीज़ चल रही हैं अथवा जिस जगह को प्रशासनिक काम के लिए इस्तेमाल किया जाता है, वह सब सम्पत्ति सरकार ने उन्हें दे दी। भारत में जितने भी कानून हैं, उन सबको किनारे करके एक आदमी को कैसे फायदा पहुंचाया जा सकता है, अपने आप में शायद यह इतिहास का एक बहुत बड़ा उदाहरण होगा। इसमें कितने ही कानूनों का हनन हुआ है।

लखनऊ में एक सुरक्षित मान्युमेंट के रूप में बटलर पैलेस है। Harcourt Butler अवध का गवर्नर था और उसे इस राजा के दादा ने एक महल बनवाकर गिफ्ट किया था। यदि एक साधारण आदमी भी कोई चीज़ किसी को गिफ्ट में दे देता है, तो वह उसका मालिक नहीं रहता है। जब अंग्रेज चले गए, तो वह बटलर पैलेस एक मैमोरियल के रूप में सरकार की कस्टडी में आ गया। उसमें एक लाइब्रेरी चलती थी, वह भी उस राजा को दे दी गई।

मान लिया कि यह प्रॉपर्टी उनकी ही थी, तब भी जो दुकानदार या टेनेंट्स हैं, जिनके ऊपर Rent Control Act लागू होता है, उनका वह फैसला भी खरीद लिया गया और कहा गया कि उनसे ये ज़मीनें

खाली करवा दो। ये वे लोग हैं, जो पाकिस्तान बनने के बाद वहां से अपना सब कुछ छोड़ कर यहां आए थे।

श्री लालजी टंडन (क्रमागत): यहाँ आने के बाद आज ये फिर से उसी स्थिति में पहुँच रहे हैं कि जिसके कारण इन्हें अपना घर छोड़ना पड़ा था। आज फिर उसी वजह से ये फिर से displaced होने जा रहे हैं। इसे समाज कैसे सहन करेगा? हमारी कोई अपनी आज़ादी है या नहीं है? जब evacuee property हो गई, उस वक्त वे नाबालिग थे और पाकिस्तान चले गए थे। जब उस वक्त वे राजा प्रॉपर्टी के मालिक ही नहीं थे, तो उनका यह बेटा उनका वारिस कैसे हुआ? इन्होंने कभी क्लेम भी नहीं किया। वे इंग्लैंड में रहते रहे और वहीं पढ़ते रहे। एक बार इनकी माता ने सरकार को यह दख्वास्त दी कि महमूदाबाद का जो महल है, उससे हमारे sentiments जुड़े हुए हैं। अगर उसकी हालत बुरी हो रही है, तो हम चाहते हैं कि उसकी रिपेयरिंग वगैरह कराने की इजाजत हमें दे दी जाए। उन्हें इसकी इजाजत मालिक की हैसियत से नहीं दी गई। उस समय बेगम साहिबा को इस बात की इजाजत दी गई कि आप उसकी रिपेयरिंग वगैरह कराएँ, देखभाल करें, उसके बदले में आपको नाममात्र के लिए इतनी तनख्वाह दी जाएगी। यानी, उनको as a servant or caretaker बनाया गया, उनको उसका मालिक स्वीकार नहीं किया गया। यह सिलसिला चला आ रहा है। गिफ्ट की हुई सम्पत्ति का कोई मालिक नहीं हो सकता, लेकिन वह भी उन्हें दे दी गई, रेंट कंट्रोल एक्ट में जो आते हैं, उनके अधिकारों को छीन लिया गया, urban ceiling थी और सरकार के possession में थी, अगर इसे इनकी property मान भी ली जाए तो ये हजारों हेक्टेयर जमीन जो इस समय दी जा रही है, यह जब Urban Ceiling Act था, उस समय तो उसे स्वतः ही चली जानी चाहिए थी, उससे भी ये मुक्ति पा गए। अगर यह इनके पास रही होती तो उस समय यह चली गई होती, लेकिन सरकार के संरक्षण में इतनी बड़ी लैंड के मामले में उस कानून से उनको मुक्ति मिल गई। कृषि सीलिंग भी लागू नहीं है। हजारों एकड़ जमीन जो आज वापस मिल रही है, सब के लिए वहाँ 12 एकड़ की सीलिंग है, अगर उनके पास 12 हजार हेक्टेयर जमीन है तो वह भी उन्हें मिल जाएगी। आखिर कितने कानूनों का हनन होगा? इसके अलावा उस पर जो Wealth Tax देना चाहिए, अगर आप उसके मालिक थे तो देते रहते। एक बात सरकार के रिकॉर्ड में होगी, वह आप जरूर दिखवाएँ कि एक बार स्वयं इन्होंने सरकार से यह request की थी कि केवल 25 प्रतिशत जायदाद मुझे दे दी जाए। यह इनकी माँग थी। उसको भी उस समय सरकार ने स्वीकार नहीं किया।

उत्तर प्रदेश के मामले पर उत्तर प्रदेश के कोर्ट में कहीं कोई मुकदमा दायर नहीं हुआ। जो लोग उससे प्रभावित होने वाले हैं, उनको कहीं पार्टी नहीं बनाया गया, किसी स्टेट या सेंट्रल गवर्नमेंट को कहीं पार्टी नहीं बनाया गया। मुम्बई हाई कोर्ट में जाकर वहाँ से जजमेंट खरीदा गया। मामला उत्तर प्रदेश का है और महाराष्ट्र का हाई कोर्ट उसमें फैसला कर रहा है। सारी चीज़ें जब आप साथ में मिलाकर देखें तो बात बिल्कुल आइने की तरह साफ है कि एक आदमी ने अपने प्रभाव और अपने धन के बल पर इस देश की 20 हजार करोड़ रुपए की सम्पत्ति को हड़प लिया और जब उसे सुधारने की बात आई तब उसके ऊपर पोलिटिकल दबाव डाल कर इसे बदल दिया गया, जो आपके सामने यह विधेयक प्रस्तुत है। इसमें जब

तक उस ordinance को शामिल नहीं किया जाता है, जो सुधार किया गया था, तब तक आप विचार क्या करेंगे?

श्री लालजी टंडन (क्रमागत): फिर तो मेरा सुझाव यह होगा कि ए! इससे बड़ा घोटाला और क्या हो सकता है? मैं समझता हूँ कि जितने घोटाले हुए हैं, वे पर्दे के पीछे हुए हैं। यह विधेयक जिस रूप में प्रस्तुत किया गया है, अगर यह वैसा ही रहा और उसमें राजा के केस को review नहीं किया गया, तो मैं समझता हूँ कि इससे बड़ा घोटाला, जो संसद में हम सबकी आंखों के सामने हो रहा है और अगर हम उसे न रोक पाएँ, तो हम सबका सांसद बनना भी निरर्थक होगा। इसलिए, मैं बड़े मार्मिक शब्दों में आपसे कहना चाहता हूँ, उस समय यह डिबेट हो रही थी, मैंने एक दिन यह सुना कि एक सज्जन ने कहा कि इंदिरा गांधी ने जब यह एक्ट बनाया, तो यह communal action था और पाकिस्तान ने जो एक्ट बनाया, वह secular था। लेकिन यहां बना, तो वह communal action था और इंदिरा गांधी communal थीं। मैं नहीं समझता हूँ कि लोग उसको किस रूप में लेते हैं, लेकिन इस तरह के प्रायोजित discussion मीडिया में हुए हैं और तरह-तरह से बातें छपवाई गई हैं, जिनसे भ्रमित होकर लोग यह कहें कि यह एक minority का मामला है। इसका minority से क्या लेना देना है? इसमें इमामबाड़े हैं, मस्जिदें हैं। सुप्रीम कोर्ट के भी फैसले हैं और कानून भी यह कहता है कि जो जलाशय हैं, वे किसी की संपत्ति नहीं हैं। इसमें कितने ही झील और तालाब हैं। आज देश के सामने water recharging का संकट खड़ा हो रहा है। वे सब की सब उनकी संपत्ति हो गई। लखनऊ में “बटलर पैलेस” के सामने एक बहुत बड़ी झील है। जब उसको कब्जा मिला, तो उसने इसको पाट कर इसकी प्लॉटिंग की योजना शुरू कर दी। वहां पर उत्तर प्रदेश सरकार के एक हजार करोड़ रुपए लगे होंगे और वहां पर कुछ मंत्री रहते हैं, कुछ विधायक रहते हैं, कुछ सीनियर ऑफिसर्स रहते हैं, उनके बंगले और कोठियां बनी हुई हैं। ये सब सरकारी पैसे से बनी हुई हैं। ये सब उनको मिल गई। कहने का मतलब यह है कि वह जिसके मालिक नहीं थे, वह तो उसको मिला ही मिला और साथ ही सरकार की हजारों करोड़ रुपए की संपत्ति भी उसको दी जा रही है। मैं समझता हूँ कि अगर वह क्लेम करे, तो पार्लियामेंट के किसी कोने के ऊपर भी उसका हक बन जाएगा और वह भी उसको दिया जा सकता है। हम कहां तक जा सकते हैं?

श्रीमन्, मैं आपसे निवेदन करने आया हूँ, मैं उस क्षेत्र से आता हूँ, वैसे तो उत्तर प्रदेश के पांच जिले – लखनऊ, सीतापुर, हरदोई, बाराबंकी और उत्तराखंड में नैनीताल तथा पीलीभीत, उससे प्रभावित हो रहे हैं। यहां पर इतनी बड़ी-बड़ी संपत्तियां हैं, जिन पर उसका कोई हक नहीं है, लेकिन उसको वे सब मिल रही हैं। मैं लखनऊ से प्रतिनिधि हूँ और मैं यह बर्दाश्त नहीं कर सकता हूँ कि उस समय मेरे सामने जो लोग इतने कष्ट में आए थे, इनको बसाने के लिए हम लोगों ने जगह-जगह भीख मांग-मांग कर किसी तरह इनकी सहायता की थी। आज हमारे सामने ये एक संपन्न और खुशहाल जिंदगी जी रहे हैं और पिछली बातों को भूल गए हैं। अगर आज फिर इनको सड़क के ऊपर आना होगा और यह संसद, यह समिति, यह सरकार, यह व्यवस्था, यह संविधान, अगर इनके हकों की रक्षा नहीं कर सकता, तो फिर कौन इनके हकों की रक्षा करेगा? ये कहां पर जाकर अपनी बात कहेंगे? जो Ordinance आया था, उसमें जो judicial

फैसला आया था, उसको review करने की बात शामिल थी। वह प्रॉपर्टी जो उसको custodian के द्वारा दी गई थी, वह फिर सरकार ने वापस ले ली थी। अब अगर उसको अलग कर दिया जाएगा, तो इसका कोई अर्थ नहीं रहेगा। इसलिए, उसको इसमें शामिल करके, जो कि ordinance की मंशा थी, उसका हम पूरी तरह से समर्थन करते हैं, इसको लागू करें। उसको इसमें शामिल करें। इसमें कोई ज्यादा मतभेद नहीं है, लेकिन जो मूल बात है, वह यह है कि अगर सबसे बड़ी संपत्ति बाहर करने के बाद इस पर विचार करेंगे, तो इससे शत्रु संपत्ति की रक्षा नहीं होगी।

श्री लालजी टंडन (क्रमागत): यदि इस संपत्ति की रक्षा करनी है, तो उसको शामिल करके सारे cases को review करना होगा और फिर से देखना होगा कि क्या वाकई उनका हक बनता है, गिफ्ट की हुई संपत्ति उनको मिल सकती है, नजूल की संपत्ति, जिसके लिए उनको केयरटेकर बनाया गया था, वह भी उनको मिल सकती है, जो refugee colonies बनाई गई हैं, वह संपत्ति भी उनको मिल सकती है, वहां के कलैक्टर, एसएसपी, सीएमओ, आदि के जो ऑफिसेज़ आधी शताब्दी से चल रहे हैं, वे भी उनको दिए जा सकते हैं? अगर ये सारी चीजें हैं और आप यह मान लेते हैं कि वे वारिस हैं तथा ये संपत्ति उनको मिलनी चाहिए, तो एक आम नागरिक को भी वे सारी सुविधाएं मिलनी चाहिए कि अगर उसकी संपत्ति होती और ये सारे एक्ट उसके लिए बाधक थे, जिससे उसको पूरी संपत्ति नहीं मिल सकती थी, तो सरकार के संरक्षण में ये सब उनको वापस मिल जाए। मैं आपके सामने यह अनुरोध करने आया था कि आप इस दृष्टि से इस पर विचार करें और ordinance के उस भाग को इसमें शामिल करें तथा एक बार सारी शत्रु संपत्ति के बारे में विचार करें।

मैं आपको एक और सुझाव देना चाहता हूँ। ये मेरे निजी विचार हैं कि इस बात को minority से जोड़ा जाए और सारी शत्रु संपत्ति को बेच कर minority education के लिए उस पैसे का एक corpus fund बनाया जाए तथा उसे उन्हीं के ऊपर खर्च किया जाए, मैं इसका समर्थन करूंगा। लेकिन, एक आदमी को minority के नाम पर ब्लैकमेल किया जाए और सारी minorities के सिर के ऊपर यह ठीकरा फोड़ा जाए तथा एक राजा को, जिसका कि कोई हक नहीं है, उसको सारी दौलत दे दी जाए और जो गरीब minority के लोग हैं, वे सड़क पर आ जाएँ, तो ऐसा सामाजिक न्याय अन्याय है। इसलिए मैं आज आपके सामने उपस्थित हुआ हूँ। मैं इसके लिए आपका आभारी हूँ कि आपने मुझे यहां पर अपनी बात कहने का अवसर दिया। धन्यवाद।

संयोजक: धन्यवाद, टंडन जी। किशनचंद भम्भवानी जी, आप इस विधेयक के बारे में कुछ कहना चाहेंगे?

श्री किशनचंद भम्भवानी : जी हां, सर।

संयोजक: क्या आपने विधेयक पढ़ा है?

श्री किशनचंद भम्भवानी : जी हां, सर।

संयोजक: उसके बारे में, उसके संशोधन के बारे में, उसमें कहां त्रुटि है या आप उसमें कुछ और संशोधन करना चाहते हैं अथवा उसको निरस्त करना चाहते हैं, क्या इसके बारे में आप कुछ कहना चाहेंगे?

श्री किशनचंद भम्भवानी : सर, मुझे इस मंच के माध्यम से मौका दिया गया है। मेरी उम्र 70 साल है। मैंने जिंदगी में इतनी बेइंसाफी कहीं नहीं देखी, जो इस देश के इस particular विधेयक के मातहत हो रही है। 1947 में जब माइग्रेशन हुआ था और हितों का बंटवारा हुआ था, तो जो लोग वहां का हिस्सा छोड़ कर यहां आए थे, उस समय उनका वतन वही था और मैं भी उनका एक हिस्सा हूँ। हम लोगों में देशभक्ति की भावना थी, हम अपना सब कुछ छोड़कर हिन्दुस्तान के इस हिस्से में चले आए। हम जिन हालात में आए, जिस उम्र में आए, किस तरह अपनी जान बचा कर आए, इस संबंध में मैं ज्यादा कुछ बताने के मूड में नहीं हूँ। उस समय हालात बड़े नाजुक थे, मगर हम लोग मुश्किल हालात में यहां पहुंचे और काफी struggle करके 50-60 साल के बाद बड़ी मुश्किल से अपने पांव को कहीं पुख्ता कर पाए। जैसा अभी टंडन जी ने बताया, मैं उस बात से सहमत हूँ कि अभी जब हम लोगों ने अपने पांव ही नहीं सम्भाले हैं, ऐसी हालत पैदा की जा रही है कि इस देश में आने के बाद भी हमारे पांव उखाड़े जा रहे हैं। कानून को तोड़-मरोड़कर एक individual अपना benefit ले रहा है, इससे हजारों families बेघर हो जाएंगी। इसको जो minority या communal रूप दिया जा रहा है, यह बिल्कुल baseless है। इसमें communal वाली कोई बात नहीं है। इसमें किसी community को कोई individual benefit मिल रहा हो, ऐसी कोई बात नहीं है। इससे सिर्फ एक individual को benefit मिल रहा है। मेरे हिसाब से ordinance की जो language थी, उसको बहुत सोच-समझ कर ड्राफ्ट किया गया था और यह देश-हित में था। उसके कई वर्षों बाद हमने यह महसूस किया कि सरकार अर्से के बाद इस विधेयक के माध्यम से सही कदम उठा रही है। जब पार्लियामेंट में वह विधेयक निरस्त कर दिया गया या lapse हो गया तथा वह जिस ड्रामे के साथ हुआ, उससे हम लोगों को बहुत आघात लगा और हम महसूस करने लगे कि उस समय हम लोग जिस पीड़ा को भुगत कर इस देश में आए थे, 60 साल के बाद शायद हमको फिर वही हालत याद दिलाई जा रही है कि हम फिर refugee बनने जा रहे हैं। ऐसी प्रॉपर्टी में अगर हमारे भाई बसे हुए हैं या colonies में जो refugees बसे हुए हैं, उनको फिर हटाया जा रहा है।

श्री किशन चंद भम्भवानी (क्रमागत) : मेरी as a citizen, as a Representative of Traders यह दरखवास्त है कि विधेयक का जो रूप था, जो इसी गवर्नमेंट की होम मिनिस्ट्री के माध्यम से promulgate हुआ था, वह बिल्कुल सही था, देश हित में था और न्यूट्रल था। उसे मेंटेन किया जाए, ऐसी मेरी गुजारिश है, मेरी अपील में बस, मैं इसी बात को कहना चाहता हूँ। धन्यवाद।

श्री संदीप कोहली : महोदय, मैं आप सब का बहुत-बहुत आभारी हूँ कि मुझे यहां बुलाकर अपनी बात रखने का मौका दिया गया। माननीय टंडन जी और भम्भवानी जी ने बड़े स्पष्ट शब्दों में अपनी बात रखी है। उस के अलावा कोई चीज रह नहीं जाती है। हरेक चीज सफेद पर्दे की तरह सामने आ जाती है कि किस तरह से लॉ का घुमा-फिराकर अपने मन-मुताबिक ऑर्डिस कराकर, जो affected parties हैं, उन को कभी

भी तलब न कराकर और एक दूसरे स्टेट में ऑर्डस पास कराए जाएं। महोदय, कोर्ट के माध्यम से इसे कराया गया और शायद कोर्ट को भी यह बताया गया या नहीं बताया गया कि इन में हजारों फेमिलीज और लोग रहते हैं, उन पर किसी भी प्रॉपर्टीज पर description नहीं डाला गया, उन को यह दिखाया गया कि ये सारी बंजर जमीनें हैं। It is very unfortunate that today a situation like, may be, I have not seen it, but I have heard it from my fore-fathers, the difficult times that they passed when they came to this country, perhaps, not to see their children going through the same thing once again. That is all, Sir. We want that the original Ordinance should come into force.

CONVENOR: Original Ordinance or the Act?

SHRI SANDEEP KOHLI: The original Ordinance, Sir.

CONVENOR: You mean the first Ordinance.

SHRI SANDEEP KOHLI: Yes, Sir, the Ordinance dated 2nd July, 2010.

श्री लालजी टंडन : जो Original Act था, उसी में यह घोटाला हुआ और इसी को सुधारने के लिए यह Ordinance लाया गया। इसलिए Ordinance को latest रूप में देखा जाना चाहिए।

संयोजक : पहले जो Ordinance लाया गया था, उसी को रखा जाए।

SHRI JYOTI BEHL: Sir, I would like to know one thing as to why this Ordinance was promulgated. There must be some reasons for the Government of India to promulgate that Ordinance.

CONVENOR: They have given that in the Statement of Objects and Reasons.

SHRI JYOTI BEHL: Sir, when the Order was passed by the Supreme Court in October, 2006, subsequently, there were lot of legal proceedings going on. Before this Ordinance was passed, there was spate of cases all over India in which people, on the basis of the Order issued by the Supreme Court, were claiming properties. The reason was only that. That is why this Ordinance was promulgated by the Ministry of Home Affairs. Previously, this Custodian of Enemy Property was handled by the Ministry of Commerce. The main reason was that the Government came to know about the very fact that lot of people are going to claim, and the gates would open. Tomorrow, somebody would stand up and say that he is the heir-apparent to the old Indian kings of Delhi. The Ordinance was issued just to put that blanket cover so that nobody claims adversely to the Government of India. Thank you, Sir.

श्री मुरलीधर आहूजा : सर, मैं आपके प्रति आभार व्यक्त करता हूँ कि आज हमें अपनी बात रखने का मौका दिया गया है। यह जो subject matter है, यह उत्तर प्रदेश के कई जिलों में हजारों-करोड़ों रुपए की संपत्तियां हैं, जिनके अंतर्गत DM बंगले, रोडवेज़ ... (व्यवधान)

संयोजक : वह तो हमें पता है, माननीय लालजी टंडन ने हमें बताया है। आप इस विधेयक के संदर्भ में बताएं।

श्री मुरलीधर आहूजा : सर, यह जो हज़ारों-करोड़ों रुपए की संपत्तियां हैं, जिनके ऊपर गवर्नमेंट ऑफ इंडिया ने प्रिवी पर्स, सीलिंग आदि दुनिया भर के ऐक्ट लगाए थे, अब फिर से इन्हें राजा बना दिया जाएगा, आज ये करोड़ों को पार करके फिर से राजा बन जाएंगे। हुआ यह कि सुप्रीम कोर्ट में जो ऑर्डर्स पास हुए, ये एक तरह से Ex-parte हो गए, किसी ने इनको oppose नहीं किया। हम लोग वहां पर tenants हैं, हम लोगों को पता ही नहीं चला कि कहां क्या हो गया? हमें यह पता लगा कि मुम्बई में कोई ऑर्डर पास हुआ है कि शत्रु संपत्ति, गवर्नमेंट से हटाकर राजा को 25 परसेंट दी गई है। हमने सोचा कि ठीक है, चाहे राजा को प्रॉपर्टी मिले या गवर्नमेंट को प्रॉपर्टी मिले, हम लोग तो किराएदार हैं, हमें कोई दिक्कत नहीं है, इसलिए हम लोग आराम से बैठे रहे। उसके बाद यह मैटर सुप्रीम कोर्ट में चला गया। सुप्रीम कोर्ट का ऑर्डर हुआ कि सबको खाली करा दो और रातों-रात पुलिस आकर खड़ी हो गई कि खाली करिए। हम लोगों ने कहा कि कैसे खाली करें? उन्होंने कहा कि यह सुप्रीम कोर्ट का ऑर्डर है। हम लोग टंडन जी के पास गए कि हमको बचाइए, वरना हम तो मर जाएंगे। वहां भीड़ लग गई, हम सब सड़कों पर आ गए, अब कहां जाएं रातों-रात? उन्होंने कहा कि सुप्रीम कोर्ट का ऑर्डर है कि खाली कर दीजिए। तब हम में से कुछ लोग सुप्रीम कोर्ट भागे, लेकिन वहां पर सुनवाई नहीं हो रही थी। आखिरकार हम लोगों पर एक बड़े वकील, श्री राम जेठमलानी साहब मेहरबान हो गए, जिन्होंने बिना फीस लिए हमारा नेतृत्व किया और वे सुप्रीम कोर्ट में जाकर खड़े हो गए। जब उन्होंने जोर से सुप्रीम कोर्ट में हमारी गुहार लगाई कि मैं अपनी जिंदगी में पहली बार देख रहा हूँ कि इस तरह से, बिना सुने, इनको खाली कराया जा रहा है, तब आधी कोर्ट तो सुनने को तैयार नहीं थी, लेकिन एक जज साहब ने सुनना शुरू कर दिया। तब जाकर फिर से सुनवाई शुरू हुई और हम लोगों को तुरन्त स्टे मिला, तब जाकर हम लोग बचे, वरना उसी हफ्ते के अंदर हज़रतगंज के कम से कम 400 दुकानदार सड़क पर आ जाते। इसकी आड़ में DM बंगले खाली हो गए, रोडवेज़ खाली हो गई। इसी कारण जब उन्होंने देखा कि बिना सुने, कोर्ट को घुमाकर किस तरह से ऑर्डर पास किए जा रहे हैं, तब जाकर महामहिम राष्ट्रपति जी द्वारा एक ऑर्डर पास किया गया जिसके तहत हम सब बच गए। अब एकाध आदमी को फायदा पहुंचाने के लिए उसी ordinance को चेंज किया जा रहा है, यह अनर्थ है। जो ordinance गवर्नमेंट ऑफ इंडिया ने बहुत सोच-समझकर बनाया है, जनता के हक में बनाया है, उसे उसी रूप में पास हो जाना चाहिए। हम चाहते हैं कि सभी माननीय सांसद लोग इसमें हमारी मदद करें, ताकि आम जनता चैन से सो पाए। धन्यवाद।

संयोजक : आपका धन्यवाद कि आपने अपनी बात यहां रखी। इससे पहले कि मैं अपने सांसदों से आग्रह करूं कि वे आपसे सवाल पूछें, मैं आपसे एक-दो सवाल पूछ लेता हूँ। जब देश का विभाजन हुआ, तो ये संपत्तियां 1947 में वहां थीं और अभी जैसे व्यापार मंडल के अध्यक्ष ने कहा कि आप सब लोग tenants हैं, तो मैं जानना चाहता हूँ कि यह tenancy आपको कब और किसने दी? यह tenancy आपको 1947 से 1968 के बीच में मिली थी, लेकिन वह किसने दी थी, क्योंकि 1947 से 1968 तक यह कानून नहीं था, 1968 के बाद यह कानून बना है। तो नेचुरली जो विस्थापित लोग थे, जो रावी के उस पार से आए थे, उनसे ब्योरा लिया गया था कि उनके पास कितनी बड़ी प्रॉपर्टी थी, क्या था, तो उसके मुआवज़े के रूप में

प्रॉपर्टीज़ दी गई थीं और विस्थापितों को बसाने के लिए और काराबोर करने के लिए किराए पर भी प्रॉपर्टीज़ दी गई थीं। तो आपको ये जो प्रॉपर्टीज़ मिलीं, ये कब मिलीं, 1968 से पहले मिलीं या उसके बाद मिलीं?

संयोजक (क्रमागत) : अगर 1968 से पहले मिली तो किसने दी? 1968 के बाद मिली तो नैचुरली कस्टोडियन ने दी होगी, तो उसकी वस्तुस्थिति क्या है? चूंकि आप व्यापार मण्डल के अध्यक्ष हैं और आपके यहां हिंदू-मुसलमान सब तरह के लोग हैं और वे लोग tenants हैं। एक तो होता है कि कोई एनक्रोचमेंट करके बैठा है, अनधिकृत रूप में बैठा है और दूसरा tenant के रूप में बैठा है। तो जो लोग बैठे हुए हैं, क्या वे tenant हैं या वे एनक्रोच करके बैठे हुए हैं? अगर एनक्रोच करके बैठे हैं, तो ऐसे लोगों की संख्या क्या है, यह बताने की कृपा करें।

श्री मुरलीधर आहूजा : सर, मैं इसमें स्पष्ट करूँ कि हज़रतगंज में कई प्रॉपर्टीज़ हैं, इसके अंदर कई बड़े-बड़े कॉम्प्लेक्स हैं, जिनमें कई दुकानदार हैं। इसमें कई प्रॉपर्टीज़ तो राजाओं ने originally दीं, जब वहां पर राजा थे।

संयोजक : यानी 1947 से पहले?

श्री मुरलीधर आहूजा : जी, कुछ वैसे हैं और कुछ को राजा ने सन् 60 में दी हैं tenant बनाकर। फिर हमारा मामला है जो सन् 60 में मिला, कुछ को सन् 47 में मिला है, तो इस तरह से अलग-अलग टाइम पर

संयोजक : यानी इसका मतलब है कि 1968 में कानून आने के पहले तक, 1947 से 1968 के बीच में राजा का कोई अधिकारी या राजा, प्रत्यक्ष और अप्रत्यक्ष रूप से वहां पर केयरटेकर के रूप में काम कर रहा था या एस्टेट मैनेजर के रूप में काम कर रहा था, जो tenant बैठा रहा था। क्या ऐसा है?

श्री मुरलीधर आहूजा : जी सर।

संयोजक : और कानून आने के बाद, तब तक तो यह शत्रु सम्पत्ति घोषित नहीं हुई थी, कानून आने के बाद शत्रु सम्पत्ति घोषित हुई। उसके बाद उस प्रॉपर्टी का या उस tenancy का स्टेटस क्या हुआ, इस पर कोई कानूनी कार्यवाही हुई या नहीं हुई? क्या आप लोगों के पास उसका कोई पर्चा या कागज़ है कि किसको आप किराया देते रहे, कस्टोडियन को या राजा के आदमी को?

श्री मुरलीधर आहूजा : सर, 1965 से पहले हम लोग राजा को किराया देते थे, लेकिन जब से शत्रु सम्पत्ति घोषित हो गई, तब से हमने कस्टोडियन ऑफ एनिमी प्रॉपर्टी को देना शुरू कर दिया और तब से उनको देते चले आ रहे हैं।

SHRI JYOTI BEHL: There is a point in it, Sir. In fact, iT was not 1968, but it is, basically, 11th September, 1965, under the Defence of India Rules, the Ordinance was promulgated.

From that date, the details were taken by the Custodian from the District Magistrates of all the districts of such properties with names of tenants, rent which they are paying and if there are any arrears.

CONVENOR: So, whatever was there at that time was regularized by the Custodian. So, tenancies were regularized by the Custodian and you are continuing there. Earlier you were depositing rent to the representative of the State Officer and after that, you started depositing your money with the Custodian. And, all are up to date and there is no defaulter. I would like to know how many such people are there in Uttar Pradesh.

SHRI JYOTI BEHL: Sir, there are 54 tenancies in Lucknow itself. If you talk of Sitapur, there are 3-4 main bungalows which are housing the District Magistrate, SSP, CMO and there is a refugee colony known as Sindhi Colony in which the properties were sold by the late Raja to those people who were staying there under registered deeds. Unfortunately, these are also covered by the Supreme Court order and they were also asked to vacate. It was between 1947 and 1965. The Raja sold those lands to people under registered sale deeds. Sir, registries are with them.

श्री मुरलीधर आहूजा : उसको भी सुप्रीम कोर्ट कहता है कि खाली कर दो।

संयोजक : किशनचन्द जी, आप उस रजिस्ट्री की कोई कॉपी हमें दिला सकते हैं?

श्री किशनचन्द भम्भवानी : हां, मिल जाएगी सर।

संयोजक : वह सब अगर आप भिजवा सकें या वहां पर, सीतापुर में कोई संस्था होगी, तो उनको हम यहां बुलवा सकते हैं।

श्री ज्योति बहल : सर, अगर डी.एम., सीतापुर को आप कह देंगे तो everything will come to you.

CONVENOR: We will call the DM, Sitapur.

संयोजक: यह बात अभी खुली कि उन्होंने जमीन बेची और उसका पंजीकरण भी हो रखा है। उनको भी कहा जा रहा है कि तुम कोर्ट के आदेश के तहत खाली करो।

श्री लालजी टंडन : सर, जैसा मैंने शुरू में कहा था कि जैसे ही पार्टिशन हुआ, उस समय जो लोग चले गए थे, उनकी प्रॉपर्टी कस्टोडियन में अपने आप निहित हो गयी, शत्रु सम्पत्ति तो 1965 की लड़ाई के बाद बना। पहले से ही वह सम्पत्तियां सरकार के कब्जे में थीं।

संयोजक: वह डिस्ट्रिक्ट मजिस्ट्रेट के कंट्रोल में आ गयीं।

श्री लालजी टंडन : वह तो उनके कंट्रोल में आ गयीं। इस प्रकार ये तो पाकिस्तान बनाने वालों में थे, जाने वालों में नहीं थे। He was a treasurer of the Muslim League. He was a financier of Mr. Jinnah. इनके बारे में तो किसी सबूत की जरूरत ही नहीं है। ब्रिटिश गवर्नमेंट के वक्त जो इनकी संधि हुई थी, उस

संधि से ये उसके मालिक नहीं रहे। उसके बाद 1947 में यह सारी प्रॉपर्टी अपने आप गवर्नमेंट के कब्जे में आ गयी थी। एक और बात की ओर मैं आपका ध्यान दिलाना चाहता हूँ कि एक व्यक्ति अपने को इनका भाई कहता है। यह सारी सम्पत्ति, जितनी मिल गयी, इसके अलावा तमाम नक्शे बनाकर वह घूम रहा है और कहता है मुसिबला में एक मैरिज मुताई होती है, उनकी मुताई बेगम हैं, मैं उनकी संतान हूँ इसलिए मैं उसका हकदार हूँ। ऐसी प्रॉपर्टी, जो कहीं शत्रु सम्पत्ति के बीच में भी नहीं आती क्योंकि वह पहले का मामला है। जो उन्होंने उनको हिबा करके दे दिया था, उसके अलावा कोई नहीं है। अब वह उसके ऊपर क्लेम कर रहा है। सर, मैंने उसको इस बात के लिए चार बार जेल भिजवाया है। जहां देखो, जो मकान बना रहा है, वह उसके पास पहुंच जाता है कि यह तो हमारी सम्पत्ति है, यह देखो कागज़ हैं।

संयोजक : यह क्या महाराज कुमार मोहम्मद अमीर अली खान हैं?

श्री लालजी टंडन : यह तो यही हैं, जिनको यह सम्पत्ति मिलेगी।

श्री संदीप कोहली : ये जो भाई बता रहा है।

संयोजक : एक मोहम्मद खान, एक्स एमएलए हैं।

श्री लालजी टंडन : मोहम्मद अबीर खान ही प्रेज़ेंट राजा हैं।

अध्यक्ष : ये अमीर साहब फारूखी कौन हैं?

श्री लाल जी टंडन : ये भी अपने को वारिस बताते हैं। इसके अलावा एक और है, जो अपने को उनकी नाजायज़ संतान कहता है।

श्री नीरज शेखर : सर, आप लोग, जो वहां रह रहे हैं, मैं आपकी वेदना समझ सकता हूँ। मैं कहना चाहता हूँ कि सभी लोगों का रजिस्ट्रेशन तो नहीं हुआ होगा। कुछ लोगों को जो पहले प्रॉपर्टी मिली होगी, उन्हीं का होगा। जिन लोगों का रजिस्ट्रेशन नहीं हुआ होगा...

संयोजक : मैंने जो सवाल किया था, वही सवाल ये पूछ रहे हैं कि क्या वहां पर कोई अनआथोरिज़ली भी कई रह रहा है या सारे टेनेंट हैं?

श्री नीरज शेखर : आप कह रहे हैं कि कई लोग वहां पर रह रहे हैं। क्या सारे लोग कस्टोडियन को रेंट दे रहे हैं? मैं उन लोगों की बात नहीं कर रहा, जिनकी दुकानें हैं। रेज़िडेंशियल जगहें भी वहां पर होंगी, जहां पर लोग रह रहे हैं। हमें तो यह बताया गया था कि ऐसी कोई कालोनी है जहां आठ-दस हजार लोग रह रहे हैं।

संयोजक : वह सीतापुर में है।

श्री ज्योति बहल : सर, लखनऊ में भी the properties are in commercial places.

संयोजक: रेज़िडेंशियल में कहां हैं?

श्री ज्योति बहल : रेज़िडेंशियल में मल्लिका जमानिया है, गोलागंज में फैमिलीज़ रहती हैं, इसी तरह से हस्तबल चारबाग करके जगह है, वहां पर रहती हैं।

श्री नीरज शेखर : आप लोग जो रेंट दे रहे हैं, वह कितना दे रहे हैं? जो अभी का रेंट है, वही दे रहे हैं या पुराना वाला दे रहे हैं?

श्री ज्योति बहल : सर, वह रिवाइज़ होता है। Every three years the rent is revised by 10 per cent, if I am not incorrect. वह बढ़ता जाता है।

श्री नीरज शेखर : फिर भी कितना होता है? हज़रतगंज में आपकी प्रॉपर्टी है, उस पर कितना रेंट देते हैं?

श्री ज्योति बहल : उसके हिसाब से तो कम है, वह पुराने वाले पर चल रहा है।

अध्यक्ष : वह कह रहे हैं कि कानून के हिसाब से जिस रेंट पर फिक्स हुआ था, हर तीन साल में वह दस परसेंट बढ़ाया जाता है।

श्री लालजी टंडन : माननीय सदस्यों को मैंने पहले बताया कि रेंट कंट्रोल एक्ट में इनको प्रोटेक्शन मिला हुआ था कि उसका किराया नहीं बढ़ाया जा सकता था। जो उस समय सरकार ने, कस्टोडियन ने तय किया उतना किराया वे दे रहे हैं। 10 प्रतिशत वृद्धि का जो नियम है, वे उसका पालन कर रहे हैं।

श्री नीरज शेखर : मैं इसीलिए पूछ रहा था कि अगर कोर्ट आगे कहीं यह फैसला करता है कि इनको प्रापर्टी दे दी जाए, इनको निकाला न जाए, तब तो बाद में केस हो सकता है कि हम इन लोगों से खाली कराना चाहते हैं। ऐसा न किया जाए कि इनको निकाला जाए।

श्री ज्योति बहल : सर, कोर्ट उनको प्रापर्टी दे चुका है।

श्री नीरज शेखर : वह आर्डिनेंस की वजह से रूक गया है। अभी स्टे भी है।

श्री ज्योति बहल : सर, वह आर्डिनेंस नहीं है। There is a lot of time gap between the Ordinance and the order. The order was passed in 2006.

SHRI NEERAJ SHEKHAR: So, you are paying your rent to the custodian.

SHRI JYOTI BEHL: I will just clarify your question. When the order was passed, then, a time-period was given for vacating the properties and handing them over to the Raja. It was

applicable to each and everyone. The Government properties, as per the order, were not evicted by the District Magistrate and the people of Sitapur. So, on this, a contempt was filed. During the process of contempt, an order was passed in the Supreme Court, which was a verbal order. It was not even a written order. There were two different orders on that day. The original order said that notices have not been received. The factual order, that is, whatever was spoken by the Court, was put in inverted commas and sent to the District Magistrate the same day. And, we were asked to vacate on the basis of contempt proceedings. On that we went to the Supreme Court, and said that throughout the proceedings, right from the very beginning till date, we have not been heard. We are tenants; we are not claiming property rights.

श्री नीरज शेखर : इन लोगों का स्टे हुआ है..।

CONVENOR: Did you get the stay? स्टे हुआ है और आपकी पेटिशन फाइल हुई है। You should be heard.

SHRI SANDEEP KOHLI: Sir, when we were served notices to evict the premises, we got a stay on the basis of the eviction notice and on the basis of the record and rent receipts which we were holding from 50-60 years.

CONVENOR: Is there any plea pending in the Supreme Court from your side?

SHRI SANDEEP KOHLI: No; there is nothing pending from our side. But even after we got the stay, the Raja went to the Supreme Court and said, “The stay granted by you is incorrect. Please appoint a committee to look into this and see if those documents are correct or not.” That person again passes an ex-parte order. He says that 99 per cent of the people are unauthorised.

CONVENOR: Who said this?

SHRI SANDEEP KOHLI: Justice Goswami; the ex-High Court Judge of Delhi.

CONVENOR: That means, the Supreme Court appointed a committee and they gave their report to the Court.

SHRI SANDEEP KOHLI: Sir, let me complete it. After Justice Goswami gave the report, we again went to the Supreme Court. We complained that last time also an ex-parte order was passed and this time also an ex-parte order is being passed. Then, in 2009, a second committee was constituted which was the Justice Wadhwa Committee. He gave his order during the end of 2009. The order was based on the documents we were all holding. He came and stationed himself in Lucknow for two days. He held meetings of tenants and occupants in the District Magistrate’s Office. After detailed discussions, he gave his report to the Supreme Court. He said that the Supreme Court had given him clear-cut directions that whoever was in possession of properties prior to 1965 will not be evicted and whoever was in possession of properties post-1965 had to be evicted. So, he found out that two or three tenants were post-1965 though they were legally appointed by the custodian.

SHRI SANDEEP KOHLI (CONTD.): He submitted his report to the Supreme Court. The order of the Supreme Court, appointing Justice Wadhwa, said, “Now, if anybody is aggrieved by the order of Justice Wadhwa, he will have remedy only in the civil court.” Raja again goes back to the Supreme Court and says, “ My Lord, the tenants may go to the civil court, but because I am a *Raja* I should be heard by the Supreme Court. “

CONVENOR: Then.

SHRI SANDEEP KOHLI: The proceedings are still on, on that, Sir. The order of the Supreme Court, while appointing Justice Wadhwa, said that anybody now aggrieved with this order will go to the civil court. Again, it is being asked by Justice Wadhwa to clarify how this report has been given. So, somehow, the courts are being mannered. I am very sorry to say this.

SHRI NEERAJ SHEKHAR: Please don't say this.

CHAIRMAN: Can you give the copies of the proceedings of the court to the Committee?

SHRI SANDEEP KOHLI: Yes, Sir. I will also give you a copy of the final order. Both the cases, pending with the Supreme Court, have been disposed of. How can an application be heard on a disposed of matter?

CONVENOR: Okay. Send the copies of the order available with you.

श्री नीरज शेखर : संयोजक साहब, मैं एक चीज और पूछना चाहता हूँ कि इन लोगों से जानकारी लेकर, हमें उन लोगों की एक लिस्ट भिजवा दें, जो tenant 1965 से पहले के हैं और जो 1965 के बाद के हैं। आपने अभी बताया है कि 54 लोग हैं। मुझे तो यह लग रहा था कि सैकड़ों लोग हैं। मैं सीतापुर की बात नहीं कर रहा हूँ, मैं लखनऊ की बात कर रहा हूँ।

श्री लालजी टंडन : सीतापुर में सैकड़ों हैं।

श्री संदीप कोहली : सर, इसमें भी एक पेंच है कि बार-बार सिर्फ लखनऊ की प्रॉपर्टीज की सर्वे के बारे में इन्क्वारी कराई जा रही है और बाकी प्रॉपर्टीज को इसके purview से बाहर रखा जा रहा है, क्योंकि वह प्रॉपर्टी सरकार के पास है, ये लोग सरकार को इन्वाइट ही नहीं करते हैं।

संयोजक : हमने सरकार को बुलाया है।

श्री संदीप कोहली : सर, मैं सुप्रीम कोर्ट की बात कर रहा हूँ।

श्री नीरज शेखर : हम सुप्रीम कोर्ट के काम में दखल नहीं दे सकते, कोई भी नहीं दे सकता है। जैसा सुप्रीम कोर्ट का कार्य होगा, वह करेगी। हम उनको यह नहीं बोल सकते कि आप वहां करिए, वहां मत करिए।

संयोजक : स्टेट गवर्नमेंट ने IA file किया है और उस पर सुनवाई हो रही है।

SHRI SANDEEP KOHLI: Sir, that IA was filed in 2006. Till now, nothing has been heard and, actually, the cases have been disposed of.

CONVENOR: Last month, the Chief Secretary appeared before this Committee. He submitted the details also. The stand that has been taken by Shri Lal ji Tandon is the same as that of the Government. So, they are looking into that. Actually, the Members are eager to know why the impression was given that there are thousands of tenants in Lucknow. You, I think, represent only the commercial properties. There is some other delegation. Perhaps, they were not called or they did not approach us. The residential properties may be in thousands. They may be in thousands in the whole of UP. So, we would like to meet some of the representatives of

SHRI SANDEEP KOHLI: Sir, it will be very kind of you if you call them because 95 per cent of these people are Below Poverty Line. They have not been able to approach any court of law. Every time, in the Supreme Court, it is said for them that they have nothing to say; so, please, at least, evict them.

CONVENOR: Mr. Kohli, I understand that but the point is that we have given advertisement in the newspapers. But they might be reading Hindi or Urdu only. They may not be in a position even to buy a newspaper. They may not be aware of the facts. So, I will request the hon. Member of Parliament from Lucknow to approach those Associations. If those Associations come and appear before the Committee, it will be welcome. We do not want to leave anybody unheard. We want to give them an opportunity. If, you, within seven day's time, give us a date, time or persons who wish to appear before the Committee, we will invite them.

श्री नीरज शेखर : सर, यह जरूरी होगा, क्योंकि उन लोगों की आवाज सुनना जरूरी है।

संयोजक : माननीय टंडन जी, जो भी ऐसी संस्थाएं हैं, आप उनके बारे में हमें बताएं। हम उनको यहां पर बुलाएंगे और उनकी बात सुनेंगे। सीतापुर की जो संस्था है, जो रिफ्युजी कॉलोनी है, उनकी संस्था के जो अध्यक्ष हैं, उनको भी बुलाएंगे और उनकी बात भी सुनेंगे।

श्री लालजी टंडन : मैं सीतापुर की बताऊं, मैं उस समय लीडर ऑफ अपोजिशन था, मैंने यह विषय असेम्बली में तब उठाया था, जब यह फैसला आया था। उस समय, उसमें कुछ तेजी दिखाई थी, लेकिन बाकी उसी रफ्तार से, जो उस वक्त डोमेन थी, उत्तर प्रदेश में, उसने उनको प्रॉपर्टी भी सौंपना शुरू कर दिया। वह तब से रुका पड़ा है। इस वक्त यह पोजीशन है कि जो प्रॉपर्टी कोर्ट के ऑर्डर से उनको दी गई थी, इस ऑर्डिनेंस के बाद वह सब वापस ले ली गई, वह फिर कस्टोडियन के पास आ गई। अब कौन वहां वैलिड है, कौन वैलिड नहीं है, यह बात ज्यादा महत्वपूर्ण नहीं है। जो संपत्ति इस समय कस्टोडियन के पास है, क्या यह कमेटी उसको कंसीडर करेगी कि उसको *status quo* बना रहेगा, जब तक सारे पक्ष उसकी समझ में नहीं आ जाएंगे, क्योंकि लीगल लड़ाई लड़ने से बचने के लिए ही गवर्नमेंट यह ऑर्डिनेंस लाई थी कि ज्यादा दखल न हो। जगह-जगह उसमें यह कहा भी गया है कि कई जगह यह हो रहा है।

इससे एक और रास्ता आगे खुलता है कि बहुत सी जमीनें, कहीं कोई किराएदार वैलिड है कि नहीं वैलिड है, पहले तो यही फैसला होगा कि जिस जमीन पर वह काबिज है, वह उसकी है कि नहीं है। कई नजूल की जमीनें हैं, जिसका वह केयर टेकर है। जब कभी वे राजा था, वे नजूल की थी। उस नजूल की जमीन के ऊपर लोग बसे हुए हैं, जिनका आज भी कोई मतलब नहीं है और वह जमीन भी उनको दे दी गई।

संयोजक : टंडन जी, आपने यह बात स्पष्ट रूप से कही है और वह हमारे ध्यान में है।

श्री नीरज शेखर : टंडन जी ने एक बात कही कि उस समय की सरकार ने देना शुरू कर दिया। सुप्रीम कोर्ट का ऑर्डर होगा तो सरकार देगी ही।

संयोजक : वह तो ठीक है। यहां पर, समिति के सामने मुख्य सचिव उपस्थित हुए थे और उन्होंने बताया है कि जो U.P. Tenancy Act था, अवध का ऐक्ट था, वह सब लागू होता है। फिर उसके बाद आजाद भारत में, क्योंकि उस सनद लिखा हुआ है, उस सनद में, जो British Empire ने दिया था, लिखा हुआ है कि, “This property will continue to be in your possession till you show loyalty towards British Empire.” देश आजाद होने के बाद उसकी स्थिति क्या है, उसके बारे में है। दूसरी बात आई है कि अपने ये सनद, अपने affidavit में उन्होंने origin of property declare नहीं किया है। एक तो यह है कि हमारी पुश्तैनी जमीन है और एक हमें गिफ्ट में मिली है। हमको किसी चीज के लिए मिली है, हम उसका प्रयोग कैसे कर सकते हैं और वह हमारे पास कब तक रहेगी। जैसे भारत में किसी को भारत रत्न का अवार्ड दिया जाए, उस भारत रत्न के साथ उसको पेंशन भी मिलती है, किंतु उसके बाद वह देशद्रोही हो जाए तो उसका अवार्ड वापस ले लिया जाएगा, उसकी पेंशन बंद हो जाएगी। इसलिए, इस जमीन के बारे में उत्तर प्रदेश सरकार दे रही है, हमारी तरफ से भी सवाल करके उनको कहा गया है कि आप हमारे सामने क्लियर कट लिखकर भेजिए। उसके बाद हमारी समिति सारे पक्षों को सुनकर, विधेयक के जो संशोधन हैं, उसी के आधार पर अपनी रिपोर्ट बना सकती है। जो लोग उसके साथ, मतलब उसमें उत्तर प्रदेश सरकार जो बोलेगी, गोवा सरकार जो बोलेगी, दिल्ली की सरकार, चीफ सेक्रेट्री जो बोलेंगे या मध्य प्रदेश के चीफ सेक्रेट्री जो बोलेंगे, उनके विचारों या पश्चिम बंगाल के चीफ सेक्रेट्री जो बोलेंगे, उसके आधार पर ही हम अपनी रिपोर्ट बनाएंगे। हम लोगों ने उनसे कहा है। उन लोगों ने कुछ लिखकर भेजा है और अभी कुछ लिखकर और भेजना है। आपसे जैसा निवेदन किया है कि आपके कोर्ट में जितने केसेज़ हुए हैं और जितने कागज आपके पास हैं, आप समझते हैं कि आपके साथ अन्याय हुआ है तो आप वे सभी चीजें लिखकर प्रमाणतः समिति के सामने प्रस्तुत करें। माननीय टंडन जी का और आपके साथ आए साथियों का बहुत-बहुत धन्यवाद।

श्री लालजी टंडन : सर, वे भी राजा थे। आजादी की लड़ाई में उनके सारे राज्य को ब्रिटिश गवर्नमेंट ने जब्त कर लिया था। आज तक उनको वापस नहीं किया गया। देश को तोड़ने वाले को अगर इतनी बड़ी संपत्ति दी जा रही है, तो कम से कम आप लोग उनके बारे में भी, जिनके हम पर अहसान हैं, जिनकी वजह से हम आजाद हुए हैं, उनकी संपत्ति वापस करने के लिए ही कभी सोच लीजिए।

श्री एस.एस.अहलुवालिया : धन्यवाद। आप चाय के लिए आमंत्रित हैं।

THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS MET AT 3.00 P.M. ON FRIDAY, THE 30TH SEPTEMBER, 2011, IN COMMITTEE ROOM 'B', PARLIAMENT HOUSE ANNEXE, NEW DELHI.

(Shri M. Venkaiah Naidu – in the Chair)

Witnesses

Member, Rajya Sabha and Eminent Lawyer

Shri Ram Jethmalani,

Representatives of Ministry of Home Affairs

Shri R.R. Jha, Joint Secretary

Representatives of Legislative Department, Ministry of Law and Justice

1. Dr. S.D. Singh, Joint Secretary & Legislative Counsel
2. Shri K.V. Kumar, Assistant Legislative Counsel
3. Dr. G. Raju, JS & LC

Representative of Department of Legal Affairs, Ministry of Law and Justice

1. Shri Satish Chandra, Joint Secretary & Legal Adviser
2. Shri S.R. Mishra, Deputy Legal Advisor

CHAIRMAN: Shri Ram Jethmalani, Member of Rajya Sabha, I, on my own behalf and on behalf of the Committee on Home Affairs, welcome you to the meeting of this Committee. As you are aware, the Enemy Property (Amendment and Validation) Second Bill, 2010, has been referred to the Department-related Standing Committee on Home Affairs. The Bill has far-reaching legal implications as well as consequence in the settlement of disputes concerning enemy properties in the country. In view of this, the Committee has decided to have the benefit of your views on the provisions and implications of the proposed amendments in the Act. Your suggestions on the provisions of the Bill will help the Committee in formulating its views on the Bill. You are also very well aware that the proceedings of the Committee shall be treated as confidential and it shall not be permissible for any Member of the Committee or any one who has access to the proceedings to communicate, directly or indirectly, to the media, any information regarding its proceedings including, its Report or any conclusion arrived at, finally or tentatively. With these words, I, once again, welcome you and request you to share your views and suggestions on this Bill with the Committee.

WITNESS: Sir, this Bill has a very unfortunate history. It is a very sordid story of corruption. Every layman, every lawyer and every judge knows a very simple proposition of law that when a person is dead, his heirs get what he owned. It is amazing that in this case, and I regret to say that, at the Supreme Court level, two judges of the Supreme Court acted contrary to this simple principle, which LLB student knows that an heir can only get what the propositus had. The facts are that the Raja of Mahmudabad, who was an Indian citizen, owning vast

properties, mainly in Uttar Pradesh, migrated to Pakistan alongwith his minor son, soon after the partition of India. He ceased to be an Indian citizen and had acquired the citizenship of Pakistan. After a long stay in Pakistan, he settled in London and died there in 1973. He died as citizen of Pakistan. After a long stay in Pakistan, by which time he had become the Ambassador, at large, for the country of Pakistan, all his properties in India, naturally came to vest in the Custodian of Enemy Property, under the provisions of the Enemy Properties Act, 1968. It is a well known piece of legislation, which comes into operation at a time whenever there is a war between the two countries. All enemies, their properties vests in the Government. Then, of course, if there is a peace, then there is a Peace Treaty, then, in accordance with the Peace Treaty, the property is distributed. But in this case, nothing of the kind happened. Now, this property, which runs into thousands of crores, became the property of the Indian Nation. His son had become major at the time of his father's death. Otherwise, he had gone with his father, when he was a minor, to Pakistan and continued to travel on his mother's passport because he was a minor.

SHRI RAM JETHMALANI (contd.): But, even after he became a major, he managed to obtain passports, first in Lucknow, the second in Teheran, the third in Baghdad and the later ones from London. This itself is an act of corruption people who issued these Indian passports to this gentleman, from all these countries. However, Sir, it is unfortunate that I am prepared now to assume that he was an Indian citizen when he returned to India, because the finding of law does not hurt me, does not hurt the Indian nation, does not hurt the case. Even if he is an Indian national and the heir of his father, he gets what the father had, but if the father did not have the property, the property belonged to the Indian nation, he gets zero.

Now, I want to tell you two more facts. His mother, knowing fully well that the property had ceased to be the property of the family, applied for a job to be the custodian. She applied for the job of a caretaker. She said that she loved her husband's palace, she had some emotional attachment and that she would like to look after it till her death. So, the custodian appointed her as an employee, a servant, on some meager salary and she was looking after the property. The family, on competent legal advice, must have known that this property does not belong to the father, does not belong to her husband and does not belong to the son. They all knew it. Then, after many, many years, the son in India contested elections in UP and became a Member of the Legislative Assembly. A question was raised in the Assembly that he is not an Indian citizen. The matter was referred to some body. I do not know what happened to that. There is no indication in the record; at least, I do not have it. This Committee will find out what happened to that inquiry. But, after many, many years, he started a litigation in India saying that he was an Indian national, the property now belonged to him and that he had inherited it. I am ashamed of the fact that neither the Judges who dealt with it, nor the lawyers of the Government, nor the lawyers of the custodian, ever advanced the simple proposition that the heir cannot get what the father did not have. The result was that a decree was passed, which was sustained by the Supreme Court.

Mr. Chairman, I would now like to inform you how I got interested in this matter. Some refugees from Pakistan had taken a tenancy of this property and now they were running their small business of a restaurant and things like that. They were paying the rent to the custodian after this man went away. The Supreme Court issued orders that even they should be evicted. Officers went to dispossess those people. Those people said, 'show us the orders under which you want to throw us out'. They said, 'we are throwing you out under the oral orders of the Supreme Court. We have no order in our possession'. You will be amazed that

these people went to the Allahabad High Court. The Allahabad High Court asked those people 'under what authority or order are you throwing out these occupants?' They said, 'we are doing it under the oral orders of the Supreme Court'. The Judges of the Allahabad High Court have recorded that 'we are told that they are being evicted under oral orders of the Supreme Court of India'. It is at this stage that I appeared for one of the occupants, a tenant who is running a hotel in one of the premises which are a part of this estate *The matter then came before another Bench. I succeeded there. The occupants are safe. The occupants are safe, but what happens to the Indian nation? The occupants will pay the rent to the nation but the nation is the owner of those thousands of crores worth property. I created a serious agitation. I talked to the politicians. I talked to the members of the Ministry. I talked to the Government, which does not like me, but still I persisted. I am almost proud of this fact that even the ruling Congress Government realized that all this was wholly wrong. They then issued an ordinance under our compulsion. I do not wish to take the whole credit; there were others too who joined in this campaign. That ordinance displays the honesty of the Government of India for the first time. That ordinance records that there is a Supreme Court judgement but we wish to prevent the property from getting into the hands of those who are not entitled to it. This was the most polite way of saying that the Supreme Court has delivered a fraudulent judgement. That ordinance was translated into an Act. The Act was brought before the Parliament, and I want you only to see the Statement of Objects and Reasons which was with the ordinance as well as the new Act. I would like to read some part of clause 4: "In view of the above findings of the courts, the Government decided that if immediate remedial measures are not taken the prime object of the Act would be defeated and innumerable properties worth hundreds of crores of rupees would fall in the hands of persons who do not have any legitimate claim."

WITNESS (CONTD.): This is the finding of the Government itself and it is the finding which was presented in an Ordinance and that Ordinance was presented to Parliament. It was, therefore, proposed to bring about amendments to the Enemy Property Act 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 these properties. This Ordinance was intended to nullify the Supreme Court decision, which is the right of the Parliament to do. This Bill, when presented, would have passed in both the Houses of Parliament without the slightest difficulty. But some people can't give up corruption. I wrote a big article in which I attacked the amendment which is sought to be made in the Bill. I regret to say that the amendment is made by the same Mr. Chidambaram who had moved the original Bill with the original preamble. This is the article which I wrote. Even my editor cut out the last two pages of my article. Even that published article ends up with reference to that clause 4 in which the object of the Ordinance, according to them, was to prevent the property from getting into hands which do not deserve to have it and to which they have no legitimate title despite the judgement of the court. The article's last paragraph is, "The ordinance is a belated act of justice to the Indian people. The entire Congress party saw the wisdom of it. All the law officers of the Government and the entire Cabinet must have approved of the Ordinance before the hon. President promulgated it. Certainly, it brought jubilation to the occupants of the property and the nation became richer by thousands of crores, even Mr. Chidambaram's statement modestly mentions hundreds of crores. Now, starts another scam". After these words, my editor cut out the rest. Now, let me continue with those missing two pages. "The earlier one had the fig leaf protection of a Supreme Court Judgement. Now, the fig leaf is

* Expunged on the direction of the Chairman of the Committee.

gone. What remains is naked bribery, corruption, dirty vote-bank politics and sordid communalism. The Ordinance had to be confirmed by an Act of Parliament for which a Bill had to be introduced. The Bill was prepared and becomes Bill no. 75 of 2010. The Bill is a replica of the Ordinance. It contains the key provision that no court has jurisdiction to divest the property from the custodian and the property will continue to vest in him notwithstanding any judgement of the Supreme Court to the contrary. This provision has given retrospective operation as it always existed in the Act from the year 1968. The Statement of Objects and Reasons attached with the Bill repeats the contents of Chidambaram's explanatory statement which I have quoted *in extenso*. The Bill would have unanimously become an Act of Parliament. Every honest citizen was waiting for this to happen. We were shocked to read in the newspapers", and this is a newspaper report, "early this month that the same Chidambaram in the company of advocate and Minister Salman Khursheed have persuaded the Prime Minister to abandon the Bill and thereby ensure the lapsing of the wholesome Ordinance. In other words, the two have persuaded the Prime Minister to allow persons without any claim to swallow the nation's property. After a couple of days, the Press reported that they called on the Prime Minister to thank him for accepting their nefarious, anti-national advice. Hon. Khursheed was the advocate for the junior Raja supporting the eviction of tenants, a clear case conflict of interest. Chidambaram is a signatory to the explanatory statement justifying the Ordinance. A quick change artist he is, he now helps the junior Raja to grab property which belongs to the nation. I wonder why some MPs join this unholy venture. The Raja is not creating a Wakf or the property for the upkeep and amelioration of destitute Muslims". Some Muslim MPs, who join this, happen to be my friends. I told them if Raja is creating a Wakf of this property for poor Muslims, I would not oppose it. "The Prime Minister owes an explanation to the nation. How does he propose to justify this kind of plain immorality and betrayal of the people's trust? I hope he will not permanently damage his reputation for fiscal integrity. The Bill has been introduced in the Lok Sabha in its original form. The same Mr. Chidambaram has moved an amendment to the Bill completely going back upon his earlier statement to Parliament. An honest Minister in his position should resign and go into penance and oblivion. The Parliament must pass the Bill without Mr. Chidambaram's amendment of his own Bill being amendment dated the 19th of August 2010. Many people already suspect, and with perfect justification, that the booty has been shared".*

CHAIRMAN: I will not take on the record this last line which you have read out from your article.

WITNESS: Don't take them, Sir. You can also tear them up like my editor has done.

CHAIRMAN: We want to be benefited by your wisdom about the background of the Bill and the subsequent u-turn by the Government. My query to you is, Sir, please enlighten us, what is going to be the effect of the latest amendment moved by the Minister?

WITNESS: The latest amendment that he has moved means that a custodian has the power to return the property to the heirs and all that the heir has to do is to produce a succession certificate which means that he is proving that he is an heir. If he proves that he is an heir, he gets the property. It is a plain fraud.

CHAIRMAN: All the courts will have to jurisdiction.

* Expunged on the direction of the Chairman of the Committee.

WITNESS: Yes.

SHRI D. RAJA: Sir, just for my clarification, these two Judges who gave contradictory judgement, you mean Justice Goswami and Justice Bhan?

WITNESS: Justice Ashok Bhan. He was the senior Judge.

SHRI D. RAJA: The other thing is, you mentioned that somebody raised the question about the son's citizenship in Uttar Pradesh.

SHRI D. RAJA (CONTD.): You can find it out because he said that some Committee was set up. He was an MLA for two terms in the Uttar Pradesh Assembly.

WITNESS: The fact that he is a citizen is irrelevant.

SHRI D. RAJA: If he's not a citizen, how could he contest an election and get elected?

CHAIRMAN: He may be a citizen. But if there is no property, where is the question of inheritance?

SHRI D. RAJA: I want to know whether any of his property belongs to wakf.

WITNESS: No. Most of them are palaces and things like that. They are huge properties. Most of them are leased out to tenants from whom the custodian has been collecting rent.

SHRI NAVEEN JINDAL: Sir, there is a sub-Committee also. I am not a Member of that. So I am not well aware of this case. I just heard the learned colleague, Mr. Ram Jethmalani, on this issue. He may be correct on technical ground. The person was a minor when he left India with his father during partition. Partition, in my view, was a very unfortunate and unfair thing to happen to millions of people on both sides of the border. Under those circumstances, he had to, like many families, leave India. But then he decided to come back. On technical grounds, what Mr. Jethmalani is saying may be correct that it was not owned by them. But in all fairness, in my view, it was their property and he is the legal heir. These are my personal views and I do not see anything wrong in that. Mr. Jethmalani kept on making the statement that this would have been the property of the Indian nation. We are all private citizens. Even our property belongs to the nation. Nation is not separate from its own citizens. Our property put together makes up national property. Whether this property remains with the custodian or with the legal heir or with someone else, this is in India and it remains an Indian property. These are my views which I wanted to share with you.

CHAIRMAN: The property is going to be in India only. But the point is that the moment a person gives up his Indian citizenship and takes the citizenship of Pakistan, his property is vested with the custodian, the Government of India. The property of the people who left Pakistan to come to India was taken by Pakistan Government and vice versa. Once you lose the property, the question of getting it back does not arise at all. You are saying it on a philosophical note.

SHRI NAVEEN JINDAL: On technical grounds, he may be perfectly correct. I am just saying it as a logical thing.

WITNESS: He became the ambassador of Pakistan.

श्री मोहम्मद असरारूल हक : मैं सिर्फ एक गुजारिश करना चाहता हूँ। अभी हमारे जेठमलानी जी ने भी उनके बारे में बहुत सी बातें बताई हैं, इससे पहले हम लोग जिंदल जी से भी सुन चुके हैं, मेरी आपसे यह गुजारिश है, मैं यह समझता हूँ कि हमें राजा साहब को मदद करनी चाहिए और उनसे भी सुनना चाहिए कि उनका क्या दर्द है।

CHAIRMAN: We have to see because he is an interested party; he is the beneficiary.

SHRI NAVEEN JINDAL: Mr. Jethmalani also appeared for tenants or occupants.

CHAIRMAN: Advocate is different.

SHRI D. RAJA: This is a very complicated case. Mr. Jethmalani appeared on behalf of occupants. Mr. Salman Khursheed also appeared for a party. It is a very complicate case. We have to hear the other version as well.

CHAIRMAN: I take note of the suggestion. We will decide it.

SHRI S.S. AHLUWALIA: Just now our learned senior colleague has thrown some light on the Enemy Property Bill. As far as my understanding goes, there are three ways of acquiring the property. In Uttar Pradesh, one was through execution of Sanad, that is, taluqdary. Another was through town improvement trust or lease. And third was if it was ancestral property. When this case was referred to different courts about re-acquiring the property from the custodian, the case was filed under Oudh Act.

When the Chief Secretary, Uttar Pradesh, appeared before us, he gave us some documents. We asked him about Sanad which is through taluqdary. It was about those who got the property and we wanted to know what exactly the agreement was.

It says, "Therefore this Sanad is given you in order that it may be known to all whom it may concern, that the above estate ___ has been conferred upon you and your heirs for ever, subject to the payment of such annual revenue as may from time to time be imposed and to the conditions of surrendering all arms, destroying all forts, preventing and reporting crime, rendering any service you may be called upon to perform and of showing constant good faith, loyalty, zeal and attachment to the British Government, according to the provisions of the engagement which you have executed, the breach of any one of which at any time shall be held to annul the right and title now conferred on you and your heirs."

WITNESS: During that time, we had a war with Pakistan and that is why the Enemy Property Act was applied.

SHRI S.S. AHLUWALIA: I agree with you on this. But this was done during the first freedom movement in 1857.

WITNESS: These were rewards for those who were loyal to the British and those who did not share the aspiration of the Indian people for freedom.

SHRI S.S. AHLUWALIA: That is my point. Should it continue now? During partition, the person left India and went to Pakistan. Under the terms of Sanad, will that continue to be their property or not?

WITNESS: No, it doesn't.

SHRI S.S. AHLUWALIA: Can you just give a note on this for the benefit of the Committee?

WITNESS: Sure.

SHRI S.S. AHLUWALIA: Do you have a copy of the Sanad? Or do you want to have it?

WITNESS: I will like to have a copy of the Sanad.

CHAIRMAN: We will send you a copy of the Sanad. Ram Jethmalaniji, thank you very much. So nice of you. You have spared your valuable time and have come before the Committee and, then, enlightened us. Please send an extensive note to us.

WITNESS: I will send a note. Thank you.

CHAIRMAN: The meeting is adjourned now.

**The Department-related Parliamentary Standing Committee on Home
Affairs met at 11.00 a.m. on 10th October, 2011 in Main Committee
Room, Parliament House Annexe, New Delhi - 110 001.**

(SHRI S.S. AHLUWALIA in the Chair)

Witnesses

Representatives of Government of NCT of Delhi

1. Shri P.K. Tripathi, Chief Secretary
2. Shri Dharmendra, Secretary (Revenue)-cum-Divisional Commissioner
3. Shri Akash Mohapatra, D.C., Central Delhi
4. Shri V.P. Singh, A.D.M., Central Delhi
5. Shri R.K. Mehra, O.S.D., Central Delhi

Representatives of Ministry of Home Affairs

Shri R.R. Jha, Joint Secretary

Representatives of Legislative Department, Ministry of Law and Justice

1. Shri V.K. Bhasin, Secretary
2. Shri N.K. Nampoothiry, Additional Secretary

Representative of Department of Legal Affairs, Ministry of Law and Justice

1. Shri Satish Chandra, Joint Secretary & Legal Adviser
2. Shri S.R. Mishra, Deputy Legal Advisor

Raja of Mahmoodabad

Shri Mohammad Amir Mohammad Khan

CHAIRMAN: The Secretariat will convey to the members of the bereaved family our sense of profound sorrow and deep sympathy.

I welcome you, hon. Members, to this sitting of the Committee. In today's meeting, we are going to further hear the views of Chief Secretary, Government of NCT of Delhi, on the Enemy Property (Amendment & Validation) Second Bill, 2010, and we will also hear Shri Mohammad Amir Mohammad Khan, the erstwhile Raja of Mehmoodabad, on the Enemy Property (Amendment & Validation) Second Bill, 2010.

Friends, as you are aware, Hon. Chairman, Rajya Sabha, has referred the Border Security Force (Amendment) Second Bill, 2010, on 19th August, 2011, for examination and report by 30th September, 2011.

CHAIRMAN (CONTD.): However, on our request, hon. Chairman, Rajya Sabha has granted extension of time to the Committee up to 30th October, 2011 for presentation of Report on the Bill. Since we have very little time at our disposal, we have to work at a fast pace and present our Report on the Bill by that date.

Friends, as you know, we have to present our Report on the Enemy Property (Amendment & Validation) Second Bill, 2010 latest by 30th October, 2011. Since we have very little time at our disposal, we have to work at a fast pace.

The provisions of the Enemy Property (Amendment & Validation) Second Bill, 2010 has far-reaching consequences in terms of settlement of disputes of enemy properties in our country.

I would like to inform you that the erstwhile Sub-Committee heard the Chief Secretary, Government of NCT of Delhi on the Bill. However, he was not having updated information and, therefore, he was directed to come again well prepared. Today, he has been invited to tender his evidence before the Committee.

In the last sitting of the Committee held on 30th September, 2011 we had heard Shri Ram Jethmalani, Member, Rajya Sabha and an eminent lawyer on the Bill. In the last sitting, some Members felt that Shri Mohammad Amir Mohammad Khan, the erstwhile Raja of Mehmoodabad, who is the main party in the case of enemy properties, which was dealt by the hon. Supreme Court of India, may also be heard. Therefore, the Chairman of the Committee decided to call him before the Committee. He will come at 12 noon. Papers received from the Government of NCT of Delhi and Shri Khan have been circulated to you and I hope you had found time to go through them.

Besides Shri Mohammed Amir Mohammad Khan and Chief Secretary, Government of NCT of Delhi, we have also invited the Law Secretary and the Legislative Secretary of the Government of India and an officer from the Home Ministry to assist the Committee.

Mr. D.R. Meena, the Law Secretary has asked for exemption from being present today. He has sent his senior officer to attend the meeting and the Chairman has allowed that.

Now, we may invite the Chief Secretary, Government of NCT of Delhi first.

CHAIRMAN: I, on my own behalf and on behalf of the Committee, welcome the Law Secretary of the Government of India, the Chief Secretary, Government of NCT of Delhi, the Joint Secretary of the Ministry of Home Affairs and the Joint Secretary and Legal Advisor, Department of Legal Affairs to this sitting of the Committee.

Mr. Chief Secretary, as you are aware, the erstwhile Sub-Committee, in its sitting held on 27th July, 2011 heard you on the Bill. Since you were not having updated information at that time, it was decided to hear you again on the Bill.

As your State has several enemy properties, the Committee would like to hear your views on the provisions of the Bill, particularly on the management of enemy properties situated in the NCT of Delhi. You may give your comments briefly on the Bill containing the description of enemy properties situated in Delhi.

After your presentation, Members may seek clarifications.

The proceedings of the Committee shall be treated as confidential and it shall not be permissible for a Member of the Committee or anyone who has access to its proceedings to communicate, directly or indirectly, to the media any information regarding its proceedings, including its Report or any conclusions arrived at, finally or tentatively.

With these words, I request you to take the floor.

SHRI P. K. TRIPATHI: Respected Chairman and distinguished Members, we have studied the Bill and the Government of NCT of Delhi has basically six observations to offer. The first observation is in respect of insertion of new section 5A. We agree with the suggestion. This idea of a certificate is already there in section 12. What we are suggesting is that a revised format needs to be devised for issuing such certificate. While supporting the idea of a certificate, we say that there must be a format and a format must be devised for this. This is suggestion number one.

The second suggestion relates to section 8. Now a very good suggestion is made that the rent may be fixed and collected. It was not specifically mentioned earlier. Our suggestion is that the word “periodically” must precede the words “fix and collect the rent”. Though fixing the rent implies that it will be revised, it would be better to make it clear and insert the word “periodically” which means that the rent can be revised from time to time. Under every rent agreement the rent gets revised over a period of time. Therefore, we make this suggestion.

The third suggestion relates to section 10. It has been suggested that the custodian may issue a certificate. What we are saying is that this might result in loss of revenue if we accept the certificate as it is and do not prescribe something more than that. One of our suggestions, of course, is that the word “receipt” may be substituted for the word “certificate”. The more important thing which we have suggested later is that a period of ninety days must be given, whether you call it a receipt or a certificate.

SHRI P.K. TRIPATHI (contd.): Then, it should be obligatory on the part of the person to whom a certificate or receipt has been issued that he must pay the stamp duty and get his property registered. And, we have suggested that a period of 90 days should be given to them. If they do not register within that period, an extension of another 90 days should be given. After that also, if he fails to register, then he must again apply to the Custodian to get permission again. So, the whole idea is that the stamp duty, which is one of the important revenues of the State, should not be lost. Then, suggestion No.4 relates to Section 17. Instead of two per cent levy of fee for management and proceed of sale, it is now proposed to increase to five per cent. Our suggestion is that it should be ten per cent, instead of five per cent, because the value of the properties and the rents are very low. Therefore, we are suggesting that instead of five per cent, it should be ten per cent. Then, the fifth suggestion relates to Section No.18C, where it has been suggested that the Central Government may, by general or special order, direct that any or of all of enemy properties vested with the custodian under this Act shall be sold or disposed off in such a manner as may be prescribed. Here, we are only suggesting that the procedure and manner should be defined so that there is no discretion and there can be no debate on this issue. To avoid discretion, the procedure and manner should also be specified. Then, our last suggestion is this. In Section 10, what we are proposing is this. One is, which we have already suggested, the word ‘receipt’ instead of ‘certificate’, and

the second is that since we want to protect the stamp revenue, supposing somebody gets a certificate or a receipt, whatever is finalized, if he does not go and register that property, then, he can avoid the stamp duty. We are saying that he should be given time; it should be mandatory that he must get the property registered in the Sub Registrar Office in his own name and pay the required stamp duty. And, in that, we have suggested that ninety days' time should be given to him, after which another 90 days can be given by the C.P. And, if he fails to register within this period of 180 days, we are not saying that he should be debarred, but he must again go to the C.P. to get permission. The whole idea is that the stamp revenue which comes, that must come to the State Government. And he should not presume that the certificate is final and that he does not have to do anything more. Finally, my sixth suggestion relates to Section 24, where we are proposing that while there has been a penalty of Rs.10,000 proposed for persons who do not give information when they are called for, now, for those who even give a false return, the fine is only Rs.500. That is less because if a person does not file his return or even give a wrong return, the fine should be the same as that of Rs.10,000. That is all, Sir.

CHAIRMAN: I would like to know if the representatives from the Home Ministry have any comment on what he has suggested.

SHRI ANIL GOSWAMI: These six suggestions were made earlier and we have furnished our comments to the Committee.

CHAIRMAN: You seem to have more or less agreed on all. Was this seen by the Chief Secretary of Delhi?

SHRI ANIL GOSWAMI: No; he has not seen it. We have approved it in the Ministry. What we have said is that when we frame the rules, most of the suggestions of the Government of Delhi will be taken care of.

CHAIRMAN: We would like to hear the views of the Law Ministry.

SHRI V.K. BHASIN: Sir, on the point of exemption of stamp duty, I would like to draw the attention of the Committee to article 285. As per article 285, all the properties of the Union are exempt. So, this needs to be examined as to whether stamp duty can be levied on a property which is vested with the Custodian. If it is construed as a property of the Union, can that be property be levied stamp duty? I can read out article 285. It says: Exemption of property of the Union from State taxation (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State; (2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State." So, I humbly suggest that this legal issue needs to be examined, and we must be very sure as to whether the taxes on such a property can be imposed not. And would that come within the scope of article 285?

SHRI P.K. TRIPATHI: I would like to clarify what I said. When it is the property of the Central Government, there is no question of any levy. Once you are divesting it and giving it to somebody else, to a private person, it is only at that stage when the private person wants to register that property in his own name, then, we are suggesting that it should be levied. We are

not suggesting that all properties with the Custodian should be levied the stamp duty. It is only that when it goes into the hands of the private person, then, he should first register that property so that our record is correct, and at that stage, he should pay the duty. This is our limited suggestion. In fact, if he has lost all other papers, this certificate is the ultimate proof of his ownership. So, what we are saying is that once the property is in a private hand, he must register that property and he should pay stamp duty. Otherwise, the certificate itself can be sold to various people, and it would become something like a Power of Attorney, that the property will get transferred. That is our suggestion, and not when it is with the Central Government.

श्री नीरज शेखर: सर, मैं इनसे पूछना चाहता हूँ कि जब कस्टोडियन किसी को property देगा, तो उसकी पहली मांग यही है कि मेरी property मुझे वापिस की जाए, इसका मतलब तो यही है कि वह property पहले से ही उसकी है। जब आप उसको दे रहे हैं, तो आप यह मान रहे हैं कि property उसकी है। क्या वह फिर से property को रजिस्टर्ड कराएगा, क्योंकि पहले तो वह उसी की property थी ?

श्री पी.के.त्रिपाठी : सर, ईशु है कि सेल के द्वारा भी divest की जा सकती है। इसमें प्रोविज़न है कि जो प्रॉपर्टी कस्टोडियन की आ गयी, उसमें से कुछ तो वह होंगी जिसमें वह कहेगा कि मेरी प्रॉपर्टी है। अगर वह एनिमी प्रॉपर्टी डिक्लेयर ही नहीं है, ऐसी स्थिति में यह डिक्लेयर हो जाता है that it is no more an enemy property. हम उसकी बात नहीं कर रहे हैं, हम यह कह रहे हैं कि जहां पर सेल वह करेगा। Suppose, the Custodian has also arrived at a decision to sell the property, ...

श्री नीरज शेखर : ऑक्शन करेगा।

श्री पी.के.त्रिपाठी : जी, सर।

श्री नीरज शेखर : जब उसका कोई क्लेमेंट ही नहीं होगा, तब आप ऑक्शन करेंगे। आप उस समय की बात कह रहे हैं। लेकिन अगर कोई अपनी प्रॉपर्टी वापस लेगा तो उसको तो फिर से रजिस्टर कराएंगे।

श्री पी.के.त्रिपाठी : सर, उसमें वह डिलीट हो जाती है। उसमें प्रोविज़न यह है कि that it is no more an enemy property. उसको वापिस तभी होगी, जब वह कहेगा कि मैं तो एनिमी प्रॉपर्टी था ही नहीं, आपने डिक्लेयर कर दी, मैं तो यहीं रह रहा हूँ। वह तो डिलीशन में आ जाएगा। Once it is deleted from the list of enemy property, तो वापस उसके नाम से चली गयी, लेकिन where he auctions it,

SHRI NEERAJ SHEKHAR: When 'you' auction it?

SHRI P. K. TRIPATHI: When the C.P. auctions it -- because he only has the right to auction it -- it is proposed that he will issue a certificate and that certificate will be a proof of ownership. At that stage, we are saying that he must also register it.

श्री नरेश चन्द्र अग्रवाल : मैं यह जानना चाहता हूँ कि अगर उसको वापस हो गयी तो आप उतने साल का टैक्स लेंगे या नहीं? अभी तक अगर वह कस्टोडियन के पास है तो आप कोई टैक्स वगैरह नहीं

ले रहे। अगर वह उसको वापस चली गयी तो जितने साल तक वह कस्टोडियन के पास रही, उतने साल का टैक्स उस पर पड़ेगा या नहीं?

श्री पी.के.त्रिपाठी : सर, स्टैप ड्यूटी तो उस पर ही पड़ती है, जब ऑनरशिप ट्रांसफर होता है। अगर म्युनिपल ड्यूज वगैरह उस पीरियड के हैं...

श्री नरेश चन्द्र अग्रवाल : जैसे आया था कि अर्बन सीलिंग लगेगी या नहीं लगेगी, उस पर म्युनिसिपल टैक्सेज़ लगेगे या नहीं लगेगे, यह चीज़ें भी तो हैं। यह होगा या नहीं होगा? क्या ऐसा कोई प्रोविज़न आपके यहां है?

श्री पी.के.त्रिपाठी : सर, ऐसा कोई प्रोविज़न हमारे यहां नहीं है।

श्री नरेश चन्द्र अग्रवाल : अगर नहीं रखोगे तो फिर कैसे बनेगा? इस पर भी आप कंसीडर कीजिए कि यह होगा या नहीं होगा। यूपी में यह बात आयी थी, जहां सबसे ज्वलंत मामला है कि अगर वह प्रॉपर्टी वापस जाएगी तो इतने साल में सारे टैक्स, सीलिंग लगेगे या नहीं लगेगे। इसी तरह से अगर दिल्ली के सामने यह सवाल आ जाए तो क्या होगा?

श्री पी.के. त्रिपाठी : सर, यह महत्वपूर्ण ईशु है कि अगर उस समय सीलिंग लॉज़ अट्रेक्टेड थे और अगर कोई प्रॉपर्टी वापस आती है, ऐसे में जो भी लॉज़ नॉर्मली अट्रैक्ट होते, अगर वह गवर्नमेंट प्रॉपर्टी डिक्लेयर नहीं होती, तो वे सारे लॉज़ लगने चाहिए।

CHAIRMAN: What do you have to say on this, Mr. Bhasin?

SHRI V. K. BHASIN: Thank you very much, Sir, for finding me worthy of making a submission. This issue of certificate, if we see, is to the heirs of the owner of an enemy property. What he is talking about the issue of a certificate, according to my understanding, is to the heirs. Now, since the stamp duty has been abolished on the succession certificate, I think, this needs to be examined. In that case, obviously the issue of stamp duty should not arise. First, it is the municipal taxes. Once it was in the custody of the Custodian, *prima facie* it would appear that it was in the custody of the Government and the Government was the owner and no taxes can be imposed on the property of the Union; so, therefore, it should not attract taxes during that period.

अध्यक्ष : अग्रवाल जी ने जो सवाल किया, वह सवाल यह था कि अगर आपके अंडर जमीन है, उसी बीच अर्बन सीलिंग ऐक्ट आता है तो वह सरकारी जमीन पर लग नहीं सकता है। जिस तरह आप कह रहे हैं कि चूंकि वह यूनियन के पास है इसलिए उस पर स्टैप ड्यूटी नहीं लगेगी। इस प्रकार सरकारी जमीन पर अर्बन सीलिंग ऐक्ट लागू नहीं होता, लेकिन वह individual की प्रॉपर्टी है। जब आप रिटर्न देने जा रहे हैं, तब उसका क्या होगा?

SHRI V. K. BHASIN: This is a complicated issue, Sir, and it needs to be examined.

CHAIRMAN: If it is beyond the limit, then, what happens?

श्री वी.के.भसीन : सर, इसे examine करना पड़ेगा।

अध्यक्ष : इस पर लॉ मिनिस्टरी क्या कहती है?

SHRI SATISH CHANDRA: This is a very complicated issue, Sir. We have to examine it. We will submit our opinion to the Committee, Sir.

श्री.वी.के.भसीन : सर, अगर हज़ार एकड़ लैंड सीलिंग में आता है और उसके बाद वह हज़ार एकड़ क्योंकि कस्टोडियन के पास था, वह जब वापस किया गया तो अल्टीमेटली जब वापस करेगा तो वह अर्बन सीलिंग लैंड को हिट करेगा।

अध्यक्ष : जिस तरह से स्टैंप ड्यूटी हिट कर रही है, उसी तरह से लैंड सीलिंग है।

श्री वी.के.भसीन : आज मुझे हज़ार एकड़ वापस कर दिया..

अध्यक्ष : इसी बीच कई सीलिंग ऐक्ट रिपील हो गए - किसी टाइम पीरियड के अंदर वह लागू हुए थे, लेकिन जिस टाइम वह हैंडओवर की जा रही है, वह ऐक्ट रिपील हो गया, तब क्या होगा? इसको आप examine करके इस बारे में रिपोर्ट दें।

SHRI D. RAJA: In the Note given by the Government of NCR of Delhi, on page 2, as per the D.O. letter number such and such of the Ministry of Home Affairs, Government of India, New Delhi, there are a total of 74 enemy properties. Out of these, 37 properties reportedly belong to Pakistani nationals. One property reportedly belongs to a Chinese national. Out of 37 properties of Pakistani nationals which have been vested with the Custodian, 11 are Declared Cases, 2 are Declared Court Cases, 12 are Income Cases, 12 are Income-Court cases. The fate of the remaining 36 properties of Pakistani nationals, the process of verification to determine whether these are enemy properties or not, is in progress. These cases have been categorized as 'Process Cases'. How long will this verification go on with regard to the Pakistani nationals? And what happened to the Chinese national? And also, what do you mean by 'income cases' and the other categories of cases?

SHRI P. K. TRIPATHI: Sir, this classification has been done by C.P. What we have understood is that there were 74 files and each file contained a number of properties. So, when we said 74 cases, the revised list that has come to us...

SHRI D. RAJA: Just a minute. You have mentioned that there are 74 enemy properties, not files or cases.

SHRI P. K. TRIPATHI: Sir, I am trying to explain this. This letter is from the Home Ministry and it is based on a system where within the Custodian records, there were 74 lists of cases. It was a set of properties. I have now furnished a list, Sir, for Delhi. Now, the number of these cases, instead of 74, is 67, of which, four have been settled. Sir, we do not want to

change the number again and again because otherwise it will cause confusion. The total number of properties involved are 803. We have made a whole list of each property because last time the Committee wanted to know this and the Committee was not happy that in certain cases we had indicated that the court in which the case was going on was not known. We have made a complete list giving details of each property, the courts in which cases are in process, who is the owner and who is maintaining it. So, now we have furnished this list which gives details of each property. Sir, we also got a bit confused in the beginning with this number in the sense that this number is being maintained by the Custodian. But let me just read out the list of individual property, Sir.

SHRI P. K. TRIPATHI (contd.): At serial number 2, it is Mohd. Yusuf Pasim Unnissa, Pari Unnissa, Sabi Unnissa. When you go to property details, property no.5 to 7, 5 to 20, 3823 to 3826 are situated in Gali Barna, Sadar Bazar, Delhi. Therefore, if you start counting each of these, then the number will come to 803.

Similarly, under the same case, property no. 3814, it is at Gali Barna, Sadar Bazar, Delhi. We have furnished this list where we have now named each property. For example, there are 10 shops. Whether we treat it as 1 or 10, is mentioned. We have listed each property separately. In our count, the properties which have come are 803. But they relate to 67 list of cases. That is true. That is the method of keeping the account. The total number of properties which we have found in Delhi today are 803.

SHRI D. RAJA: Are you still in the process of verification?

SHRI P. K. TRIPATHI: Sir, in 2010, the power of Deputy Custodian was vested all over the country. Otherwise, we were getting the list from CP. Now, since the power has come here, we have gone in detail; gone to each property and listed out the number, the person who is in occupation and also whether he is paying rent or not. Everything has been listed out. The delegation came only last year.

SHRI D. RAJA: My simple question is, has the process of verification over or not?

SHRI P. K. TRIPATHI: As far as the process of cases is concerned, the 36 which you mentioned, that is being done. But, the declared income cases is all over; but the listing also has been done. On the processed cases, the custodian has to take a call. For example, the Chinese property, now the SDM has passed an order saying that it is not a Chinese property, but it is an Indian who is the owner of it; there was never a Chinese person in-charge. Now, we have sent our report to the custodian. It is for him to take a decision. We have carried out our procedure and we have submitted our report. He alone has the power to declare to divest the property. That is not delegated.

SHRI ANIL GOSWAMI: We agree that we have asked all the concerned State Governments wherever the processed cases are pending to expedite verification. In Delhi, there are 36 properties where the verification is in progress. We need to expedite. On a question how much time will it take, I would say that the State Government only has to do it.

CHAIRMAN: For the whole of the country, how much time would it take? One month, 2 months, 12 months, 24 months? Are there litigations also in courts?

SHRI ANIL GOSWAMI: If you see the speed with which the State Governments are doing, it will take time. I cannot give you a time-frame. Sir, some times, court cases too come during verification. Once they are in the process of notifying the properties, somebody can go to a court. The verification has still not been completed in 36 cases in Delhi.

SHRI P. K. TRIPATHI: Sir, in the list of enemy properties, at serial number 8, Mohd. Ateef, s/o Mohd. Illyas Khan, this has been deleted vide CP's order dated 10.5.2011. They have made a deletion of this property. In two cases there has been a deletion. It has been accepted that they are not enemy properties.

CHAIRMAN: You have raised certain other questions also, Mr. Chief Secretary. You said that in the amendments there is a lack of rules in defending anomalies in the Act which has not yet been overcome. In spite of section 3 of Delhi Rent Control Act which states that the Act shall not apply to any premises belonging to the Government, the courts continue to take cognizance of rent control cases relating to enemy properties. How many such properties are there where courts are intervening?

SHRI P. K. TRIPATHI: Here, we have a problem. The total list of number of cases is 19 involving 31 properties out of 803. 45 were in the court, but in that, one related to Kolkata; so, 14 have been settled and the remaining are 31 now.

CHAIRMAN: What is the opinion of the Law Ministry in this?

SHRI SATISH CHANDRA: Sir, we will examine and let you know. We have to see all the provisions of the Rent Control Act and other provisions.

CHAIRMAN: The Law Ministry should have examined it. Have you written to the Law Ministry?

SHRI P. K. TRIPATHI: We have taken the opinion of our State Government. We found that all properties as per the Rent Control Act only if your rent is above Rs.3500. They concurred that once it is a Government property, it should not come under the purview of the Rent Control Act. We have not sent it to the Central Government's Law Ministry.

CHAIRMAN: You may send it to us and we will forward it to respective Departments for their opinion.

Then, you said that there is a shortage of staff available with the DC for independent verification and action thereon...

SHRI P. K. TRIPATHI: Yes, Sir, we had said it. But, now what we have done is, since the Custodian has given now a full time officer, who is here with us. We have engaged Mr. Mehra as a full time officer in Delhi. He is a retired officer. Now, we are also trying to take the help of all the 9 SDMs and we are monitoring it rigorously. We are trying to computerize the whole system. Now, we have the entire list. The amount of money which they get as rent till 2010 was collected by the Custodian. Now, we are collecting it and we are remitting it too; the amount of rent is very less; it is Rs.2.87 lakhs which is collected from May 2010 to March 2011. This we have remitted. I think, they are paying more money for the salary than the rent they are getting.

CHAIRMAN: Home Ministry, whether at the time of notifying this that the Deputy Custodian will be deputed in respective area, has analysed that you are giving another job do although they are already overburdened and whether it will serve the purpose or not. Have you given any grant?

SHRI ANIL GOSWAMI: Sir, on 7th June, 2010, we have issued a notification which says that the Additional District Magistrate Revenue, Central District of NCT of Delhi would act as ex officio Deputy Custodian for Enemy Property for the area falling within the NCT of Delhi.

CHAIRMAN: My point is this. You are talking only about Delhi. You have just designated a person who is already working in NCT of Delhi as ADM. You have issued a similar notification on 7th June appointing the District Magistrates in various States and in the Union Territories as ex officio Deputy Custodians of enemy property under the Act. While issuing such a notification whether you have analysed the fact that they are already overburdened and, who will bear the expenditure.

SHRI ANIL GOSWAMI: Custodian is not giving any grant. Home Ministry is also not giving any grant.

CHAIRMAN: You are increasing their workload. You are asking them to go and inspect the properties while you are giving no infrastructure. That is why I think you are telling that you cannot give a timeframe for completion of job. The other day the Chief Secretary of West Bengal while appearing before the Committee also raised the same issue. What do you want to say on this? Anyhow, they are managing with one person. With one person, they cannot manage 800 properties. Moreover, there are 31 properties under litigation. They have to take care of every case. Who fights the cases on behalf of the Deputy Custodian and who bears the cost?

SHRI ANIL GOSWAMI: Court cases are handled by the Custodian in Bombay only.

CHAIRMAN: Sitting in Bombay, he deals with cases in Delhi, Darjeeling, West Bengal and all cases scattered throughout the country. That is why we are losing our cases. One can understand it. The point is that District Magistrates are already overburdened. Before issuing such a notification had any assessment been done by the Home Ministry? You are a senior official in the Ministry. You are aware that the Department of Personnel from time to time assess the workload of a particular job. You could have discussed it as to how it could be dealt with. As you know, Central Delhi is the most loaded place. Anyhow, give us a detailed reply. We want your reply in writing to know whether you had assessed this issue. Please send your reply before 14th of this month. Please give us a detailed note on staff requirement, etc. because all these things are to be incorporated in our Report. Mr. Chief Secretary, you want amendment in clause 5, section 8 and you want to put (i) (a) 'periodical'. You want to insert the word 'periodical'. In Section 10A you want in place of 'certificate' the word 'receipt'. Then in clause 8, section 17 you want in place of '5 per centum' it should be '10 per centum'. Then you said in clause 12, section 20 the words 'Rs.5000' be replaced by 'Rs.10000'. Here the Ministry says that it is already there in the Bill, in sub-section 3. You said that it should be in Section 4 also. Representative, Home Ministry, you see the original Act. It says that any person fails to submit return under sub-section 2 of section 14 or furnishes such returns 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 Rs.500. The Delhi Government is asking that it should be Rs.10000/-. Do you have any objection on this? Okay, you can examine it. Please send your report on this. These are your amendment apart from the Rent Control and staff problem. Mr. Bhasin, you also please analyse on this issue.

श्री नीरज शेखर: अध्यक्ष जी, मैं एक चीज़ पूछना चाहता हूँ, जो 803 प्रॉपर्टीज़ हैं, उनमें से कितनी प्रॉपर्टीज़ का रेंट आ रहा है?

SHRI SATISH CHANDRA: Sir, I beg to submit one thing. With regard to proposal of giving opinion on this Rent Control Act, we would like to know whether a reference would come from NCT of Delhi.

CHAIRMAN: Delhi Government will send a reference through Home Ministry. We will send you. The Committee will send you. They will send it to us; we will send it to you. We want reply by 14th. So, by tomorrow will get the letter from you? Tomorrow being holiday, you can make it today. This afternoon you can send your communication to us that this is the opinion of our Law Department and this is our opinion and if required then we can take opinion of the Government of India.

CHAIRMAN (CONTD.): This is our opinion and if required you can take the opinion from the Government of India. So, we will send it to the Government of India.

SHRI P. K. TRIPATHI: Sir, the properties from which income is coming is 371.

श्री नीरज शेखर: बाकी प्रॉपर्टीज़ की क्या स्थिति है?

श्री पी.के. त्रिपाठी: सर, बाकी प्रॉपर्टीज़ disputed हैं।

श्री नीरज शेखर: क्या उन पर कोर्ट केसेज नहीं चल रहे हैं?

श्री पी.के. त्रिपाठी: सर, कोर्ट केसेज सभी के ऊपर नहीं चल रहे हैं। जो process cases हैं, उनसे इनकम तो वैसे भी नहीं आती है। ये जो declared and income cases हैं, उनसे इनकम आती है। इस समय हमारे पास 371 इनकम प्रॉपर्टीज़ हैं।

श्री नरेश चन्द्र अग्रवाल: क्या बाकी के केसेज में इनकम कोर्ट में जमा नहीं हो रही है?

श्री पी.के. त्रिपाठी: सर, जो process cases हैं, उनमें अभी तक यह decide ही नहीं हुआ है कि वह enemy property है या नहीं है।

श्री नीरज शेखर: यह किसको decide करना है?

श्री पी.के. त्रिपाठी: सर, यह CEP को decide करना है। Custodian has to pass orders.

श्री नरेश चन्द्र अग्रवाल: इसको custodian decide क्यों नहीं करता है?

श्री पी.के. त्रिपाठी: सर, जैसा राजा साहब ने बताया था कि 36 process cases हैं यानी जो list of cases हैं, They are still in the process. लोग उनको proof दे रहे हैं कि हम enemy हैं या नहीं हैं। इस पर जब तक वे अपना फैसला नहीं देते हैं, तब तक यह process case ही बना रहता है। 24 list of cases इनकम cases हैं और 11 declared cases हैं। जो income cases हैं, जिनमें 371 प्रॉपर्टीज हैं, उनसे तो इनकम आ रही है और 12 केसेज कोर्ट में चल रहे हैं।

श्री नीरज शेखर: आप तो कह रहे हैं कि बाकी जो प्रॉपर्टीज हैं, वे custodian के पास हैं और उन्हें यह बताना है कि यह enemy property है या नहीं है।

श्री पी.के. त्रिपाठी: सर, इनकम केसेज 24 हैं, इनके बारे में उन्होंने declared कर दिया है कि ये सब enemy property हैं, लेकिन जो 36 list of process cases हैं, जिनमें से अभी 2 delete हो गए हैं, उनमें अभी उनको decide करना है।

श्री नरेश चन्द्र अग्रवाल: त्रिपाठी जी, आप तो कह रहे हैं कि 803 प्रॉपर्टीज में से केवल 371 प्रॉपर्टीज से इनकम आ रही है और बाकी प्रॉपर्टीज disputed हैं।

श्री पी.के. त्रिपाठी: सर, इनमें दो तरह के dispute हैं, एक तो जो कोर्ट में disputed हैं और दूसरा process cases हैं, जो CEP के पास ही हैं और इन पर custodian को decide करना है।

श्री नरेश चन्द्र अग्रवाल: चेयरमैन साहब, यह बहुत interesting चीज है कि custodian के पास तमाम ऐसे केसेज हैं, जिन पर उनको decision देना है और यह करीब-करीब 10-10 साल से custodian के पास pending है। मेरा कहना यह है कि custodian को बुला कर इस संबंध में पूछ लिया जाए कि इस पर कब तक decision होगा और इसके लिए एक time bound होना चाहिए। ऐसे कब तक litigation चलेगा, कोर्ट का तो चल ही रहा है।

श्री नीरज शेखर: ये कह रहे हैं कि 400 ऐसे cases हैं, जिन पर custodian को decide करना है कि वह enemy property है या नहीं है।

अध्यक्ष: ऐसा है कि जब 14 तारीख को clause by clause consideration करेंगे, उस दिन होम सेक्रेटरी भी रहेंगे, इसलिए उसी दिन custodian को भी बुला लेंगे। अब हम लोग चाय के लिए मीटिंग को स्थगित करते हैं और चाय के बाद महमूदाबाद के राजा को बुलाएंगे।

...

CHAIRMAN: Shri Mohammad Amir Mohammad Khan, I on my own behalf and on behalf of Committee on Home Affairs welcome you to today's meeting of the Committee.

As you are aware, the Enemy Property (Amendment & Validation) Second Bill, 2010 has been referred to the Department-related Standing Committee on Home Affairs.

The Bill has far reaching consequences in the settlement of disputes concerning enemy properties in the country. In view of this, the Committee has decided to have the benefit of your views on the provisions and implications of proposed amendments in the Act. Your suggestions on the provisions of the Bill will help the Committee in formulating its views on the Bill.

I may inform you that the proceedings of the Committee shall be treated as confidential and it shall not be permissible for a Member of the Committee or anyone who has access to its proceedings, to communicate, directly or indirectly, to the media any information regarding its proceedings including its report or any conclusions arrived at, finally or tentatively.

With these words, I once again welcome you and request you to share your views and suggestions on this Bill.

WITNESS: Hon'ble Members of the Committee, I am deeply grateful to you for having considered to call me and seek my views. It is an honour to appear before you as I am appearing as it were before the people of India whom you represent. In regard to the Bill which is being referred to, I would like to place very humbly my, at the outset, certain points and comments which I would urge the Members of the Committee to consider. The first thing is that this Bill is actually based on the ordinance which was promulgated on the 2nd July, 2010. This ordinance, as you know, very briefly was brought in a few weeks before the Parliament was to convene. The reason that was given for bringing in this ordinance, to my very humble and limited mind, does not make much sense. But I have already qualified the fact that I am a humble person with limited mind. But if you look at the reasons for bringing in it, there is no real answer that arises. Since 1968 up to 2010, when the Enemy Property Act was promulgated first in 1968 right up to 2010, it is roughly 46 years and in these years this Act has served well. There have been various Governments. They have looked at enemy property and all its problems in great details. None of them found any reason for bringing in an amendment or a Bill. A question arises why was this Bill brought in. The reason given by the Ministry was that there was a spate of legislations which made it difficult for the custodian to manage properties. Sir, I would very humbly submit to all the Members that in all these years there has been no problem in managing these properties or mismanaging them. I would say 'mismanaging' because there have been many instances where there have been grave violations of the law of the land. But such is the condition in our country that not everything can be attended to by Parliament or Ministers and so forth. Now I come back to the Bill. In one sentence, I would like to submit that in my opinion this Bill is an unfair and unjust Bill because of the reasons that I have just said. If you go into the contents of the Bill, it would take a very long time to discuss it point by point, but it could be done. The provisions of this Bill will or may be deemed as *ultra vires* by the courts. One of the things which is very alarming in this Bill is that it, to some extent, bypasses the judiciary and, in fact, limits the judiciary, or, in fact, overturns or tries to overturn and nullify some very important decisions that were taken in the past by the High Court. Only one case was in the Supreme Court and that was my case. But in many cases which were decided and which were decided in favour of people seeking redress and benefit and were seeking to prove themselves heirs to properties were successful.

WITNESS (CONTD.): Some were in 1976, some in 1979, some in 1986 and so on. Details of these are available. Now, these decisions became final. These people have dealt with those

properties. Giving a retrospective effect to this Bill is a very draconian and unfair decision. Retrospective effect can be given in certain circumstances when the need and urgency is there. For nearly over 40 years, there was no need to give any kind of retrospective effect to this Bill to nullify the judgments of courts.

श्री नरेश चन्द्र अग्रवाल: मैं समझता हूँ कि यह ज्यादा अच्छा होगा कि आप पार्लियामेंट की पावर को चैलेंज न करें और इस बिल पर न जाएँ। आप अपनी बात सीधे-सीधे कह दीजिए कि हमारे लिए क्या है, क्योंकि पार्लियामेंट में तो हम कोर्ट के किसी भी जजमेंट पर बिल बना सकते हैं।

WITNESS: Parliament is supreme. There is no question on that. Anyone who thinks otherwise is wrong.

श्री नरेश चन्द्र अग्रवाल: आप सीधे-सीधे अपनी बात कह दीजिए।

WITNESS: Sir, the first thing I would like to say is that I was born in India. Both my parents were born in India. I wish to save time of the hon. Committee. Your time is very precious. You have other important things to do. My mother was opposed to the idea of partition. She translated this opposition by never even contemplating going to Pakistan. She remained a citizen of India to her dying days in April 1991. My father, in a very honourable and amicable way, lived a separate life from my mother. He travelled all over the world. My mother brought me up in India. I went to La Martiniere College in Lucknow. I travelled on my mother's passport which was an Indian passport. I got my own passport in 1959 as an Indian citizen in Lucknow where I was resident. I have always been domiciled in Lucknow and have been a resident of India. Since that point of time till date, I have never applied nor contemplated nor taken any nationality. As far as being an Indian is concerned, it is a matter which is not under consideration of the Committee. I have just put this as a background because it is on the basis of this that I applied to the Custodian of Enemy Property to release my late father's properties because I was an Indian citizen. He died in London in 1973. He was not the ambassador of Pakistan as people have said. He was the Director-General of Islamic Centre of London, of which all the ambassadors of the Muslim countries – Saudi Arabia, Egypt, Iran and others – were members. He was an employee of that trust. As far as he was concerned, he lived his own life. He died in 1973 at the age of 59. After his death, I made my many efforts under Section 18 of the Enemy Property Act which is still a part of the Bill for the Government to consider releasing the properties. In 1980, the late Mrs. Indira Gandhi took a decision to release the properties of my late father to his legal heirs and successors who are Indians. Then, I was given an opportunity to prove that I was the Indian heir of my father. In 1986, the Civil Court of Lucknow in which I had impleaded the Custodian of Enemy Property and the Union of India as one party gave its judgment that I was the sole heir of my father under the Oudh Estate Act of 1869. That judgment became final because it was not challenged and, therefore, it became *res judicata*. I again pleaded with the Government of India to release the properties with no effect. I got letters from various Prime Ministers.

Sir, here, I would like to submit that in 1985, the late Mr. Rajiv Gandhi nominated me as the Congress (I) candidate from Ahmedabad and I won the election with a historic majority. All kinds of charges were levelled against me that I was not an Indian, etc. But, those didn't hold water. In 1989, I was re-nominated by Mr. Rajiv Gandhi and I won again although during the scrutiny of the papers, objections were made that I was not an Indian citizen. But, they

were rejected. So, I won the election again. In 1991, I was re-nominated but I rejected the nomination very humbly because I had felt at that time that the party had taken a direction and the politics had taken a direction which was not something which I could deal with in terms of certain changes. Out of respect to his memory and to all the people sitting here in this hon. Committee, I would much rather not say it. But, it is something that the people talk about everyday now on television and everywhere. I was deeply hurt. I offered my resignation to Mrs. Sheila Dikshit. She did not accept it and she said that I were an emotional man and did not know the ABC of politics. She assured me that my voice will be heard. But, in 1991, I decided that I had enough of it and I sort of withdrew. In the meanwhile, I kept on asking the Government under Section 18 to release my property. But, there was no answer. In 1995, Mr. P. Chidambaram met me and my wife. He was very kind and considerate, and I am deeply grateful to him. He was then the Minister of Commerce. I would like to submit to you that the enemy property came under the purview of the Commerce Ministry and not the Home Ministry. It came under the purview of the Home Ministry in 2007. I may be slightly wrong about the dates. Please forgive me for that. In 2007, it became a part of the Home Ministry. Before that, it was under the Commerce Ministry. Mr. P. Chidambaram was Minister of State for Commerce in 1995. In 1996, elections were called. We were assured that a decision would be taken. Even the person dealing with the matter – I don't know whether you would like me to name her, Director (Vigilance) in the Commerce Ministry – was from the police cadre of the rank of DIG. She was asked by Mr. Chidambaram to let us know the general view. Obviously, I couldn't be party to confidential matters. But, me and my wife were told that the general view was that this property should be released or a part of it should be released. That was the Government's decision. Whether I accepted it or not is a different matter.

SHRI S.S. AHLUWALIA: Was that an oral conversation or was it written?

WITNESS: Yes, Sir, it was oral. Meetings between us and Mr. Chidambaram took place because old registers were called in and I had to sign on the registers.

SHRI S.S. AHLUWALIA: Was it in Udyog Bhavan?

WITNESS: Right, Sir, it was in Udyog Bhavan. I can't remember the floor. It was in Udyog Bhavan which was under the Commerce Ministry. After this, we took the legal opinion. We had initially taken the legal opinion of the late Justice K.B. Asthana, former Chief Justice of Allahabad High Court. That was in 1979. He had asked me to seek release of the property from the Government. Then, in 1994, I got an opinion from Justice Bhagwati as well. He also urged me to go on seeking release of the property. I briefed him about my entire life. Then, we were advised to go to court because the period from which the judgment of 1986 was given by the Civil Court of Lucknow to 1998, would be 12 years.

WITNESS (CONTD): And, many people were afraid that laches would apply, which means a time-bar would apply and I would not get a hearing from the High Court. So, I filed a Writ Petition in the Bombay High Court in 1997. I have got the details here. It is a published document.

CHAIRMAN: Why did you file the Writ Petition in the Bombay High Court?

WITNESS: Because the Custodian is in Bombay and all the papers are there.

CHAIRMAN: Is it necessary, or, is it mandatory that all the enemy property cases should be filed in Bombay only?

WITNESS: Not at all, Sir.

CHAIRMAN: The property is in U.P. You have got the order from Lucknow Court.

WITNESS: I filed it in Bombay High Court because...

CHAIRMAN: No, you got the order in 1986 from Lucknow Court and you could not file another case due to time bar.

WITNESS: No, time bar was not the reason. I filed it in 1997, one year before the time bar.

CHAIRMAN: But, you filed it in Bombay.

WITNESS: Yes, in Bombay, and the argument before the Judges was that of jurisdiction.

CHAIRMAN: But, in the argument, in the preface, you are resident of U.P. Then, why did you file it in Bombay High Court?

WITNESS: I will be very honest. I will tell you about it. There were two reasons. I may not be under oath, but I feel as if I am under oath.

CHAIRMAN: You are.

WITNESS: Yes, I am telling the exact truth to you. There were two reasons. Number one, because we felt that there were so many cross currents in U.P. that there could be an attempt at some kind of convolution. We did not, obviously, voice this. The other reason was the large number of correspondence between the Custodian and my mother, my family and I. My real uncle was acting as attorney. I have only one real uncle. Somehow, an impression has been given that I have three real uncles. I have one real uncle and two step-uncles. My real uncle was a Barrister and he died in 1991. But, I filed this because all the correspondence, all the papers were with the Custodian and we felt that it would be easier for us to obviate the position where the Custodian would make an excuse to say, "I have not got papers and I have to go back to Bombay and get them.", and this would lead to unnecessary prolonged delay because litigation takes huge amount of time. The matter was argued about jurisdiction. The matter was admitted. The matter was argued in 2001. If I make a mistake, I will ask the Committee to forgive me because I would not like to refer to the papers. It will waste time. The judgment of the Bombay High Court has been published. It was a Division Bench of Justice Lodha -- He is now a member of the Supreme Court. He was then a senior Judge in the Division Bench. -- and Justice Nishita Matre.

CHAIRMAN: Mr. Khan, you said that you went to Bombay because there were many cross currents in the State and you apprehended that due to these cross currents, you might not get justice or you might face certain objections or litigations in the Court.

WITNESS: I would beg to differ there, Sir. The only thing was that there were many cross currents.

CHAIRMAN: So, you have not trusted the Judiciary that you will not get justice. Why?

WITNESS: No, Sir. I did so because there could be some people who would intervene, who would prolong the procedure to such an extent that I would be in my grave and my children would still be fighting the case.

CHAIRMAN: So, your apprehension was that there would be further litigation. Some other interested parties may intervene.

WITNESS: Right, Sir. But, that did happen, if I may say so. That did happen in Bombay.

श्री नरेश चन्द्र अग्रवाल : क्या आप उन लोगों से डरे हुए थे कि यू0पी0 में कुछ हो सकता है तथा वे यहां पर इसको लिंगर ऑन कर देंगे। क्या तब भी उनको लिंगर ऑन करने के लिए राइट नहीं था?

साक्षी : सर, बिल्कुल था, उनको राइट था और वे आए। मगर अब मैंने एक डिसीजन लिया और उसको कोर्ट ने मान लिया। मैं सिर्फ कमेटी से यह अनुरोध कर सकता हूं कि जो मैंने उस वक्त किया उसको कोर्ट ने स्वीकार कर लिया और मेरी जो याचिका थी उसके ऊपर उन्होंने उसको एडमिट कर लिया। यह कोई बैड फेथ में नहीं थी। मैंने कभी भी किसी जुडिशियरी के ऊपर यह खयाल नहीं किया है, चूंकि मुझे जो कुछ मिला है वह यहां के पहले कांस्टीट्यूशन और जाहिर है कि कांस्टीट्यूशन के तहत पार्लियामेंट और पार्लियामेंट के तहत जुडिशियरी, उसके अलावा मुझे और कौन दे सकता है। जुडिशियरी में उस वक्त कुछ लोग आए। चूंकि बहुत सी जो चीजें थीं वे पिन-प्वाइंट नहीं की जा सकती हैं, वे कही नहीं जा सकती हैं, वे केवल महसूस होती हैं। हमारे फेमिली के एक मेंबर हैं, चेयरमैन साहब से भी मैं यह अनुरोध करूंगा कि वे मेरी बात पर जरा सा तवोज़्जह कर लें कि in 1997, when I filed this writ petition, which was admitted too, a person, who is the younger step-brother of my father, appeared with a deed which he claimed was of 1955, when my father was an Indian. And, it claimed that he had given all the property to three people. One, his real brother, that is, my real uncle, who was a Barrister and who was like my father to me and who looked after me like my father after my father's death. Second was this gentleman who had filed the intervention application; his older brother who had died in 1993. My real uncle died in 1991. This is very important to note. In 1993, my step older uncle died. The younger uncle is still, apparently, alive although he is very old. Now, this application was considered by the hon. High Court, and they did not accept this application of intervention. They gave them liberty to inform the Court and go elsewhere. Now, if I may so submit, without admitting, but assuming for one second that this so-called deed was given to these three brothers, who were all Indian, ten years later, it became enemy property. I would beg to submit, Sir, that from 1965 to 1997, nobody hears anything about this deed. In 1997, for the first time, this gentleman appears when two of the beneficiaries, the first one being my real uncle and the second his older brother who has died. And, neither his older uncle nor my uncle ever claimed this property. In fact, in 1986, I would like to submit and I would like this to go on record, my real uncle, who was a Barrister at Law from Lincoln's Inn had given a written statement in the Civil Court of Lucknow categorically acknowledging me as the sole heir of these properties to my father.

श्री नरेश चन्द्र अग्रवाल : हम आपके फेमिली के डिस्पुट में नहीं पड़ना चाहते हैं। उसको बतलाने से कोई फायदा भी नहीं है।

साक्षी : लेकिन मैंने इसलिए बताया.....

CHAIRMAN: Mr. Khan, who were the parties in your Lucknow case?

WITNESS: My mother, my real uncle and other people who had been living together. My grand-father married twice. His second wife and their children had been given, through a registered will, completely separate properties. They had nothing to do with us. My grand-father died in May, 1931. So, from 1931 to 1955, in any case, nobody disputed this property. His claim was that it was a gift, if I may so.

CHAIRMAN: How many sisters you have?

WITNESS: I have two sisters. They were both been impleaded in the 1986 case and they both gave written statements not challenging me as the heir under the Act.

CHAIRMAN: Did they appear and give the written statements?

WITNESS: They have given their written statements in '*parda*'.

CHAIRMAN: Did they appear or not?

WITNESS: I did not appear in court but the statements were given.

CHAIRMAN: Statements were given through the Advocate.

WITNESS: Yes, Sir. These are on record. I impleaded my mother, my two sisters, my uncle, my two aunts -- my father's real sisters; and, none of them contested -- and, the custodian. So, this judgement was there, and, on the basis of that, I won the case in 2001 from the Bombay High Court. The judgement goes in detail. In para 8 and in other paras, the court categorically says that the Government admitted that I was an Indian citizen. After winning this case, Sir, an appeal was filed by the Union of India in the Supreme Court. In that appeal, the Government of India was represented by Mr. Soli Sorabjee and Mr. Harish Salve. I was represented by Dr. Fali S. Nariman and later by Mr. Iqbal Chagla son of late M.C. Chagla, a very famous man. He fought my case in Bombay.

When this appeal was admitted before Justice Lahoti, I hesitate to say here something, and, I may be excused from saying it. There was an intervention application and let me just say that an order was given that it should be taken up at the final disposal of the case, my so-called 'Gift Deed'. It was ordered by Justice Lahoti, who was the senior Judge, that this should be dealt with at the time of the final hearing. Now, at the final hearing, these gentlemen were not there, and, then, they appeared asking to be heard. The court said, "you had ample time and opportunity to appear; you did not appear, and, therefore, we will dismiss this, at which point, they said, can we have your permission to withdraw the application". So, it was dismissed as withdrawn by the Bench of the Supreme Court. And, the person who appeared initially, I would not rather give his name.

CHAIRMAN: What is his name?

WITNESS: With all respect, is that an order, or...

CHAIRMAN: The point is when you are appearing before a Parliamentary Committee, you must speak the truth.

WITNESS: I am speaking the truth.

CHAIRMAN: You must tell the facts of the case.

WITNESS: At the time of admission, the lawyer, who appeared for the step-uncle of mine was...

AN HON. MEMBER: Mr. Chidambaram.

WITNESS: Yes, Sir.

CHAIRMAN: Who was that? आप नाम बताएँगे?

साक्षी: आप में से किसी ने जो कहा है, वे सही कह रहे हैं।

अध्यक्ष: नहीं, आप हमारी आवाज़ मत सुनिए, आप अपनी बात बताइए।

साक्षी: सर, मैं आपसे एक दस्तबस्ता गुज़ारिश कर रहा हूँ। एक तो आप people of India के representatives हैं और आपके साथ बहुत-से privileges हैं। मैं एक बहुत छोटा और मामूली आदमी हूँ।

अध्यक्ष: आप जो फैक्ट्स सामने रख रहे हैं, उसको वेरिफाई करने के लिए हमें यह जानना जरूरी है। आप यह बताइये कि उस समय कोर्ट में कौन अपीयर हुआ था?

साक्षी: मिस्टर पी. चिदम्बरम।

श्री नरेश चन्द्र अग्रवाल: सलमान साहब किसकी तरफ से अपीयर हुए थे?

साक्षी: सलमान साहब अपीयर नहीं हुए।

अध्यक्ष: इसकी तारीख क्या थी?

साक्षी: इसकी तारीख 4 थी या 6 थी, मुझे याद नहीं, लेकिन वह तारीख वर्ष 2002 के अप्रैल की तारीख थी।

अध्यक्ष: ओ.के.।

साक्षी: मैं पेपर्स देख कर यह बता सकता हूँ, लेकिन उसमें देर लगेगी। आप अप्रैल लिख लें।

अध्यक्ष: आपके पास पेपर्स हैं?

साक्षी: जी हाँ, सर। मेरे पास सारे पेपर्स हैं। मेरे पास वे पेपर्स भी हैं, जिनमें उन सब के नाम हैं, जो उस समय अपीयर हुए थे। सर, वह पब्लिक प्रॉपर्टी है, मेरी प्रॉपर्टी नहीं है। वह सुप्रीम कोर्ट से बहुत आसानी से हासिल हो सकती है।

CHAIRMAN: It is 5th April, 2002. The Union of India appeals against High Court order. Appeal Admitted in April 2002.

साक्षी: सर, मेरे पास ये पेपर्स हैं।

CHAIRMAN: We will take a copy of that.

साक्षी: ये मेरे अंकल का written statement है। मैं सारे पेपर्स लाया हूँ, मैं आपका वक्त बर्बाद नहीं करना चाहता हूँ। मैं समाँखराशी के लिए आपसे माफी चाहता हूँ कि मैं * रहा हूँ और आप मेरी * सुन रहे हैं। Sir, I would like to say that I had filed...

अध्यक्ष: * और *, ये दोनों शब्द रिकॉर्ड से निकाल दिए जाएँ, क्योंकि ये दोनों unparliamentary हैं।

साक्षी: सर, यह मैंने अपने लिए कहा है।

अध्यक्ष: नहीं, आप ऐसा अपने लिए भी नहीं कह सकते।

साक्षी: ठीक है, सर। बेहतर है कि इन्हें निकाल दीजिए।

श्री नरेश चन्द्र अग्रवाल: हम लोगों ने काफी कुछ सुना है। आप जो सत्य बता रहे हैं, उसमें आप यह भी बता दीजिए कि यह बात कमिटी के सामने आयी कि आपके पिताजी जब हिन्दुस्तान छोड़ कर गये, तो उन्होंने इस प्रॉपर्टी की एवज़ में पाकिस्तान में प्रॉपर्टी ली।

साक्षी: उन्होंने बिल्कुल नहीं ली, सर।

श्री नरेश चन्द्र अग्रवाल: उन्होंने उसकी एवज़ में लंदन में भी एक बंगला लिया।

साक्षी: नहीं सर, ऐसा बिल्कुल नहीं है। इसका कोई प्रूफ नहीं है। एक प्रॉपर्टी पाकिस्तान में, जिसमें वे रहते थे, वह 1945 या 1946 में मेरी माँ के पैसे से खरीदी गई और वह evacuee property declare हो गयी।

श्री नरेश चन्द्र अग्रवाल: लेकिन, आप तो कह रहे थे कि आपकी माँ वहाँ गयीं नहीं, वे आपके साथ यहीं रहती थीं?

साक्षी: सर, मैं यह अर्ज कर रहा हूँ कि 1945 में उन्होंने वह प्रॉपर्टी इसलिए खरीदी, क्योंकि उसकी एक वजह थी और मैं वह बताता हूँ। ऐसा ख्याल हुआ कि मेरे पैरों पर पोलियो के एक किस्म का असर है, जोकि नहीं था। डा. ए.जे. फरीदी, जो लखनऊ के एक बहुत बड़े डॉक्टर थे और एक बहुत बड़े पॉलिटिशियन भी थे और वे प्रजा सोशलिस्ट पार्टी के बड़े लीडर्स में से एक थे। उन्होंने मेरी माँ को यह राय दी अपने बेटे को वहाँ ले जाओ, वह ओजोन होगी। यह 1945 की बात है। वह प्रॉपर्टी 1945 में मेरी माँ के नाम से खरीदी गई। जब पाकिस्तान बन गया तो वह प्रॉपर्टी खटाई में पड़ गई और तब बड़ी मुसीबत हुई। फिर, मेरी बहनें वगैरह, जो वहाँ चली गई थीं, उन्होंने और मेरे वालिद ने उसमें रहना शुरू किया। वही एक प्रॉपर्टी है और वहाँ उनको किसी enemy property की एवज़ में कोई property नहीं मिली।

श्री नरेश चन्द्र अग्रवाल: लंदन का मकान?

साक्षी: सर, लंदन में हमारा कोई मकान नहीं था। मैंने वहाँ अपने पैसे से खरीदा। मैं जो कुछ भी legally ले जा सकता था, मैं वहाँ इंडियन पासपोर्ट पर पढ़ता था और मैंने उसे किशतों पर खरीदा।

श्री नरेश चन्द्र अग्रवाल: पासपोर्ट के मामले में एक allegation यह भी लगा है कि आपके पास चार पासपोर्ट्स हैं?

साक्षी: सर, उसके बारे में मैं सिर्फ यही कह सकता हूँ कि मेरा एक ही पासपोर्ट है और वह इंडियन पासपोर्ट है। I say on oath. I have no other passport. Neither I have had any other passport nor I would not like to have any other passport.

श्री हर्षवर्द्धन: मुझे यहाँ की पिछली बैठकों में यह पता चला कि आपकी जो सम्पत्ति है, इनमें से 1857-58 में जब प्रथम स्वतंत्रता संग्राम हुआ, उसके बाद अंग्रेजों ने कुछ लोगों को सम्पत्ति अता की, यानी कुछ लोगों को संपत्ति दी। उनमें से इस तरह की कितनी सम्पत्ति हैं, जिनकी आज हम बात कर रहे हैं? इसके अलावा आपके पास पैतृक सम्पत्ति कितनी हैं? इनमें से ऐसी कितनी सम्पत्ति हैं, जिन्हें आपके पिताजी ने खरीद कर अर्जित की? इस तरह से तीन तरह की सम्पत्ति हो गयी। इनमें से एक तो वह है जो अंग्रेजों ने आपको 1858 में अता की।

WITNESS :

*During 1947, my father was an India. Right up to December, 1957, he was an Indian. We have proved that. In 1957, he became a Pakistani. My mother and I were in Lucknow when he became a Pakistani. My mother fell seriously ill. She was a remarkable lady. She had been orphaned, that is, both her father and her mother, Raja Abul Hasan and Rani Bilera, had died when she was nine years old. She knew the trauma. She grew up being looked after by her grandparents. In spite of that, she had a very clear mind. She stayed on in India. We were in

* Expunged on the direction of the Chairman of the Committee.

India when my father took Pakistani nationality. She got shocked. I will be very honest, I didn't understand what this was about and I didn't understand why he had taken the Pakistani nationality when everything that the family wanted to do, the Wakf that he created, all of them are in India.

CHAIRMAN: In response to the question asked by Mr. Harsh Vardhan, you are saying that your property does not come through the *sanad*.

WITNESS: It comes through the *sanad* or *talukdari*.

CHAIRMAN: It comes through the *sanad* or *talukdari* in 1958.

WITNESS: No, Sir, in 1861 or later because my great-grandfather was a minor. He was only eight years old when his father died.

CHAIRMAN: It is because the Lord Canning's Proclamation came on 15th March, 1858.

WITNESS: Right, Sir. But his matter was not decided until later. He was a minor and they were considering confiscating that property because his father had fought against the British.

CHAIRMAN: But he got the *talukdari*.

WITNESS: He got the *talukdari* because Mr. Tomson said that we should show "Christian Charity" and sent him first to Queen's College, Banaras and then to St. Xaviers College, Calcutta.

CHAIRMAN: Do you have the copy of the *sanad*?

WITNESS: I don't have the copy of the *sanad*. I have the Lord Canning's Proclamation. But, as far as *sanad* is concerned, I doubt if anyone has that. The *kabooliyat*, as it is called, is vanished. The point is, if I may submit to you very humbly, that in my grand-father's will, it was accepted as *talukdari* property. In the Oudh Estates Act, there are schedules. In this schedule, the names, both of my father's and of my mother's family are there. So, that constitutes a *sanad*, and it is on the basis of that, Sir, that the 1869 Oudh Estates Act was studied by the civil court in Lucknow and all this property was deemed to be *talukdari* property. Therefore, I was being considered the sole heir.

CHAIRMAN: All the cases are centered on one thing, that is, succession certificate. Have you got the succession certificate?

WITNESS: From 1986, Sir.

CHAIRMAN: From 1986, from the Lucknow court?

WITNESS: Right, Sir.

CHAIRMAN: The case was filed under the CPC.

WITNESS: Yes, Sir, it was filed under the Civil Procedure Code.

CHAIRMAN: But you said that it was done under the Oudh Act.

WITNESS: Claiming this property has to be under some Succession Act.

CHAIRMAN: So, the Act is Oudh Act and the succession certificate you got through the Civil Procedure Code?

WITNESS: Right, Sir.

CHAIRMAN: So, whatever procedure is required is maintained properly.

WITNESS: Right, Sir.

CHAIRMAN: Who were the party?

WITNESS: I just said, Sir, that the party were my mother, my real uncle, who was a barrister, my two sisters, my two aunts and the children of my second aunt because one of my aunts was deceased. She died in 1974.

श्री नीरज शेखर : मैं खान साहब को धन्यवाद देना चाहता हूँ कि उन्होंने बड़े डिटेल्स में अपना इतिहास बताया। मैं एक चीज पूछना चाहता हूँ कि आप के पिताजी इंग्लैंड कब गए थे?

साक्षी : उन्होंने 1963 में जाना शुरू किया था ..

श्री नीरज शेखर : वह पहले पाकिस्तान में थे?

साक्षी : नहीं, वह पाकिस्तान में बहुत कम रहे। उन्होंने नेशनलिटी ले ली थी, मगर रहे नहीं। मैं आप को बता भी दूँ, उन्होंने लिखा है ..

श्री नीरज शेखर : वह ठीक है। पिताजी से मतलब नहीं है, आप इंग्लैंड कब गए?

साक्षी : सर, मैं 1961 में गया हूँ।

श्री नीरज शेखर : आप वहाँ उनके साथ ही रहे?

साक्षी : वहाँ एक जगह है एल्स्ट्री और वहाँ एक स्कूल ओल्डन्हम में मैं पढ़ा और एक अंग्रेज साहब थे, मिस्टर फ्लेडलिक इंग्लिश, उनका देहांत हो गया, वह मेरे गार्डियन थे। मैं उनके साथ रहा। वहाँ से मैं कैम्ब्रिज यूनिवर्सिटी गया और कैम्ब्रिज में तो किसी के साथ रहने का कोई सवाल ही नहीं था।

श्री नीरज शेखर : फिर भी आप के पिता से आप की बात ..

साक्षी : नहीं, जाहिर है कि मैं उन से मिलता न! मैं मिलता तो था मगर साथ नहीं रहता था।

श्री नीरज शेखर : अभी आप लखनऊ में कहां रह रहे हैं?

साक्षी : मैं मेहमूदाबाद हाउस, केसरबाग में ..

श्री नीरज शेखर : यह भी "एनिमिटी प्रॉपर्टी" में है?

साक्षी : नहीं, यह नहीं है। चूंकि यह बात शुरू में हुई थी। यह exclude किया गया है।

श्री नीरज शेखर : यह "एनिमिटी प्रॉपर्टी" में नहीं है?

साक्षी : नहीं, मगर जो हमारा आबाई घर मेहमूदाबाद में है, जिसका बहुत हिस्सा वक्फ है, वक्फ अलाअल्लाह, "Charitable, Public and Religious" क्योंकि उस में मैं कहता चलूं कि हमारा खानदान "शिया" खानदान है। We are Shia family and during Muharram, which is observed for two months, lakhs of people come from all over India.

श्री नीरज शेखर: उस बिल्डिंग की, जिसका हमें पहले पता चला, क्या उसकी मेंटेनेन्स वगैरह की परमिशन आपकी मदर को थी?

साक्षी : जी, थी।

श्री नीरज शेखर: यह परमिशन किससे मिली थी?

साक्षी: वह ऑर्डर तो चीफ कमिश्नर अवध से मिला था, जब ब्रतानिया के लोग थे। वह केसरबाग था, मगर जो हमारा घर महमूदाबाद में है वह हमारी अपनी ताल्लुकदारी प्रोपर्टी थी, हमारा पुराना घर था । हम लोगों की फैमिली 1348 ईसवी में यहां महमूदाबाद में आई थी।

श्री नीरज शेखर: मैं बात कर रहा हूँ, जो एनिमि प्रोपर्टी घोषित हो गई थी, उसकी मेंटेनेंस की परमिशन आपको किसने दी थी?

साक्षी: जी, अब मैं समझ गया हूँ। वह जो मेंटेनेंस की परमिशन थी , उसके लिए एक एमाल्युमेंट देकर, एक मंथली रकम देकर, my real uncle, my father's only real brother, who was a barrister, was appointed by the custodian to maintain the kila of Mahmoodabad. After his death my wife was given the same responsibility.

श्री नीरज शेखर: वह परमिशन अभी भी आपके पास है?

साक्षी: हां, सब पेपर्स हैं, सर।

श्री नीरज शेखर: अभी उसे आप मेंटेन कर रहे हैं?

साक्षी: जी, मैं मेंटेन कर रहा हूँ। यह उन्होंने जितना रुपया दिया, उतना हमने उस पर खर्च किया। आज भी अगर आप वहाँ पधारें to grace my house, you would be more than welcome.

CHAIRMAN: When did your uncle get the permission and by whom?

WITNESS: It was given by the custodian of enemy property with the permission, obviously, of the Ministry of Commerce. I may get this slightly wrong; I think it was in 1968.

श्री नीरज शेखर: एक आखिरी सवाल, खान साहब। आपसे मैं यह पूछना चाहता हूँ, आप अपनी सारी प्रोपर्टी वापस चाहते हैं।

साक्षी : जी, सर।

श्री नीरज शेखर: आज आपको यह तो पता है कि हजारों लोग उस प्रोपर्टी पर रह रहे हैं। इससे कितने लोगों को नुकसान होगा, कितने लोग बेघर होंगे? क्या इस बारे में आपने कभी सोचा है?

साक्षी : मैं बहुत खुशी से इस बात का जवाब दूंगा। अगर इजाजत हो, तो मैं हिंदी में बोलूँ, और इंग्लिश में भी मैं उसको बोल दूंगा।

श्री नीरज शेखर: जिसमें आपको सुविधा हो।

साक्षी : नहीं-नहीं, मैं दोनों में बोल दूंगा, बहुत मुख्तसर। पहली बात तो यह है कि जो जजमेंट है सुप्रीम कोर्ट का, उसमें मैंने अपनी एप्लीकेशन में, चूंकि यह अपील थी गवर्नमेंट ऑफ इंडिया की, जो डिसाइड की है सुप्रीम कोर्ट ने, हमारा जो जवाब गया था मेरा उस दावे का, उसमें कहीं किसी को डिसलॉज करने या हटाने की कोई बात नहीं थी। यह मैं रिकॉर्ड पर लाना चाहता हूँ।

श्री नीरज शेखर: लेकिन आपको मिल जाएगी, तो आप डिसलॉज कर देंगे।

साक्षी: नहीं, मैं आपसे अर्ज कर दूँ, एक तो जो लॉ ऑफ द लैंड है, सर, उसका मैं बाउंड हूँ।

श्री नीरज शेखर: 2006 में जब एक बार सुप्रीम कोर्ट का ऑर्डर आया, तो आपको पता है कि सुल्तानपुर के, अगर मैं गलत नहीं हूँ तो, डीएम का घर खाली होने लगा था।

साक्षी : नहीं, सुल्तानपुर का नहीं।

श्री नीरज शेखर : सौरी, सीतापुर।

साक्षी: सर, सुप्रीम कोर्ट के ऑर्डर के हिसाब से दो कैटेगरी बनीं। The Supreme Court divided the occupied property in two parts. One part was in which Government officers were living at a pittance. The rent was Rs.160 for 19 acres.

I studied mathematics at Cambridge. My dream was to become a scientist and serve India as a scientist. I did research for Ph.D. in mathematical astrophysics. My teachers are still alive. They visit India and I play host to them. I devoted 40 years of my life to retrieving my heritage. That is why I could not pursue my dream. Out of these properties, Sir, 873 properties are wakf-alallalah. The cases are going on in the court. These wakfs do not benefit me; they benefit the community. There are three wakfs. Out of these three wakfs, two are major wakfs. I am mutawalli of that. In all these years, my mother and I sold whatever we could to maintain and keep the tradition of the wakf alive. Out of 873 properties, 400 will go in ceiling. I know that. It can happen today or tomorrow or any other day.

There are some urban properties. In the urban properties, there are two categories. One pertains to Government officials. The Supreme Court gave its order on that. Its order was implemented through the contempt of court proceedings. As far as the rest of occupants, non-government people, are concerned, the Supreme Court ordered that two categories should be made. This is the judgement of the Supreme Court. I had no hand in it. Those who were staying there since 1965 as tenants of my father will continue to be tenants. To do this, they appointed a commission called the Goswami Commission. A retired judge of the Delhi High Court was made in charge of it. He gave a report. That report was not acceptable to about ten tenants. There are five properties involved in that. Out of those five, two are in Hazratganj and three are in old Lucknow.

CHAIRMAN: We don't want to go into the details of these things. The hon. Member asked you as to what you would do with the tenants if you get back the property. You said that you did not ask to dislodge them. But you have not written to rehabilitate them either. You are silent on that point.

WITNESS: There is only one point in question. The matter is still sub judice as we speak. It is before Justice Altamas Kabir.

CHAIRMAN: So you mean to say that nobody asked you this question.

WITNESS: Today, if Parliament asks me this question, I would like to say this.

CHAIRMAN: Parliament is not asking you this question. This Committee is only considering the Bill which is before it. We are taking views of different stakeholders.

WITNESS: As far as poor tenants are concerned, let me categorically state what I feel. I will tell you what poor means to me. They are those people who cannot afford to have Mr. Ram Jethmalani, or, Mr. Arun Jaitley, or, Mr. Harish Salve, or, Mr. Rohtagi, or, Mr. Venugopal, or, Mr. Shanti Bhushan as their advocates.

CHAIRMAN: You are taking names of eminent lawyers. I want to know whether at any point in time they appeared on behalf of any of the clients in the matter.

WITNESS: Yes, Sir. They appeared before the Supreme Court for seven or eight people. But I am prepared to talk to them. As far as rest of the occupants are concerned, I have given them an undertaking and I can give an undertaking to this Committee or to any other forum that I

cannot in good conscience dislodge them because I will be answerable not just to you but to the god as well.

SHRI D. RAJA: I have only three questions. One, you were elected twice to the Uttar Pradesh Assembly. There was an issue with regard to your citizenship. Was any Committee appointed by the Uttar Pradesh Assembly to go into that issue? Are you aware of that?

WITNESS: Sir, it did not appoint any Committee. It sent the matter to the Governor and the Governor sent it to the Election Commission.

SHRI D. RAJA: What was the outcome, if any, of that exercise?

WITNESS: Nothing. They did not dispute my citizenship.

SHRI D. RAJA: Okay, that is one. Secondly, you met Mr. P. Chidambaram when he was MoS for Commerce. Did you meet him again when he became Home Minister?

WITNESS: No, Sir. I didn't meet him after he became Home Minister.

SHRI D. RAJA: Did you find any shift in the position of the Government of India at that point of time and now?

WITNESS: Shift in what sense, Sir?

SHRI D. RAJA: Is there any shift in the position of Government of India on this issue?

WITNESS: I only find that out of the blue in 2010 an Ordinance was brought in. A variety of reasons were given. One of the unofficial reasons, I must say this before the Committee, was the so-called tenants. I am perfectly amenable and I have been talking, by the way, to these people that they can stay. The point is that I can't challenge the law.

CHAIRMAN: The question is that when you met Mr. Chidambaram, the then MoS for Commerce, for relief you had the impression that he was interested in doing justice.

WITNESS: Right, Sir.

CHAIRMAN: But after the judgement the same person piloted a Bill in the Parliament. He is asking: Do you find any shift in his position as MoS for Commerce then and as Home Minister now?

WITNESS: I have not met him. He is my Home Minister. That is it. What else can I say?

SHRI D. RAJA: Okay. My final question is this. At the time of partition, was your father a member of any political party?

WITNESS: No. He resigned his membership in 1946.

CHAIRMAN: From which party did he resign?

WITNESS: He resigned from the Muslim League. He resigned from the Presidentship of the All India Muslim Students Federation. I must say one sentence. He was in a deep depression because he saw what was coming. He went for a pilgrimage to Iraq. He didn't go to Pakistan. He did not meet Jinnah and those people. He met them, maybe, once in passing. He was very disillusioned and disappointed. He has written about this and it is available in the proceedings which were published in England. A conference was called by Lord Mountbatten. A lot of people from Pakistan, Britain and everywhere had participated in that conference. He died at the age of 58 and he died of a very broken heart.

SHRI D. RAJA: In which year did he die?

WITNESS: He died in 1973. He was born in 1914. He died in October, 1973. He would have been 59 in November. But he died in October. So, he was 58 and some months at the time of his death.

SHRI D. RAJA: Was he offered any position in Pakistan?

WITNESS: He was offered a position which he refused. He was offered the Presidentship of the Muslim League by Ayub Khan, but he refused in writing and he said, "There is no place for me in Pakistan". This is also on record.

CHAIRMAN: Mr. Khan, you have given all the inputs that you thought the right inputs required by the Committee. I will ask you a specific question. Now, we are on the Bill. Do you require any amendments to be made to the Enemy Property (Amendment & Validation) Second Bill, 2010?

WITNESS: I would very briefly submit that, one, there should be no retrospective action, as far as the Government is concerned. Number two, if the Parliament so chooses, it can ensure and strengthen the rights of those whose rights ought to be protected under the Civil Procedure Code. I can't go beyond that. Number three, those cases in which the judgements have received finality -- a review petition was also filed by the Government of India and Mr. Gopal Subramaniam referred to this forgery because the step-uncle of mine --if I may submit here, I do not want to mention it here but I have to mention it here -- has a non-bailable warrant against him.

CHAIRMAN: Against whom?

WITNESS: This person who appeared for the first time in 1997 in Bombay.

CHAIRMAN: What is his name?

WITNESS: Maharaj Kumar Amir Ali Khan. He is my step-uncle. This paper that I have immediately contradicts that so-called gift deed. It is not a gift deed. It acknowledges me as heir. That is number one. Number two, a non-bailable warrant was issued against him. He has got powerful people with him. I don't wish to say anything more than that. You know how our country is operating. I don't wish to go beyond that. You have much greater knowledge than me.

CHAIRMAN: Don't pass any comments on the functioning of the Government.

WITNESS: I don't pass any comment. I am just saying that the High Court had ordered his arrest. I don't want him to be arrested. What will I get out of his arrest?

CHAIRMAN: He is not arrested.

WITNESS: I don't want him to be arrested. Let me tell you that. He is an old man.

CHAIRMAN: Where does he live?

WITNESS: He lives in Lucknow. His son is actually the culprit. He is a youngish man. The fact is that a non-bailable warrant is issued against him. He did interpolation. I have proof. The index has one thing and the deed has another thing. The index shows the Rastogi house has been sold to another Rastogi, but the register shows this so-called deed. On the basis of this, there is a non-bailable warrant. What I am saying is that this is the matter and this is the person for whom he appeared in 1997 and again in 2002. I would like to say that with respect to the judgements that have become final their sanctity should be upheld. The judiciary should not be diminished and belittled. Powers have been given to the Custodian and they are judicial powers, which are beyond the purview of courts. This is scandalous. This is unthinkable in our country. Parliament is the main pillar and the Executive and the Judiciary are the supporting pillars of our democracy.

CHAIRMAN: We have received your memorandum wherein you have stated many things. We will go through it. The last question is this. Most of your properties are in the State of Uttar Pradesh.

WITNESS: One of them is in Uttarakhand. It is a major property.

CHAIRMAN: That is part of the united Uttar Pradesh. After 2000 November it was separated. Some of the properties are occupied by the Government Departments. Major properties are occupied by the Government Departments.

WITNESS: One is a sugar mill and another is the Fakhruddin Ali Ahmed Degree College.

CHAIRMAN: Certain bungalows are under District Magistrates.

WITNESS: They are now vacated.

CHAIRMAN: At any point of time, have you made the State Government a party?

WITNESS: The State Government made every attempt to become a party in the Supreme Court. They have filed half a dozen applications.

CHAIRMAN: Have you made them a party?

WITNESS: No. They had themselves sought to be made a party, which was good enough. The Supreme Court heard them, but did not accept them.

CHAIRMAN: You have never made them a party.

WITNESS: I have never made them a party because, if I may humbly submit, Sir, the properties were under the custodian of the Government of India, not of the State. That is the reason. Under this Enemy Property Act of 1968 the custodian had an absolute right for betterment, maintenance and preservation which he did not do.

CHAIRMAN: Thank you very much.

WITNESS: I am deeply grateful to you and to the Members of the Committee that I have been heard so patiently and I now seek justice from you and your Committee.

CHAIRMAN: Now this is not only meant for Uttar Pradesh or Uttarakhand but also for the whole of India. We have collected information from different people, and we have heard their views. We will consider them. In the meantime, we are also taking certain legal opinions.

WITNESS: Recently, Sir, as you may have heard, -- this was published in the Hindustan Times – a very valuable property in Delhi was sold by the Custodian for a very small amount of money. Actually, the property was worth crores of rupees, but it was sold for Rs.5 lakhs. This has come out in the newspapers...

CHAIRMAN: Normally, we do not take cognizance of the media reports. And about what you have mentioned, we have not heard about that. If you have any specific document or something related to that is available, you can furnish it to the Committee.

WITNESS: I will try and send it.

CHAIRMAN: I would request you to spend a little time with the Secretariat staff. He will show you the Appendix of the Kabuliyat; we have a copy. If you just identify the property which is in your ancestor's name, he will take note of it.

Thank you very much. If there is any opinion or any comment from the Home Ministry or the Legislative Department or the Law Ministry, in response to his deposition, you please send your comments in writing by 14th of this month.
