

Bill No. 124 of 2010

THE ENEMY PROPERTY (AMENDMENT AND VALIDATION)
SECOND BILL, 2010

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BILL

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

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

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

(2) Save as otherwise provided in this Act, it shall be deemed to have come into force on the 2nd day of July, 2010.

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

'(3) The enemy property vested in the Custodian shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue to remain vested in the Custodian till it is divested by the Central Government. 5

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

Insertion of new section 5A.

3. After section 5 of the principal Act, the following section shall be inserted and shall be deemed to have been inserted, namely:— 10

Issue of certificate by Custodian.

"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."

Amendment of section 6.

4. On and from the date of commencement of the principal Act, in section 6, the following *Explanation* shall be inserted and shall be deemed to have been inserted, namely:— 15

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

(a) through oral will or oral gift; or 20

(b) by concealment of enemy nationality; or

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

(d) without the permission of the Custodian."

Amendment of section 8.

5. In section 8 of the principal Act, in sub-section (2),— 25

(a) after clause (i), the following clause shall be inserted and shall be deemed to have been inserted, namely:—

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

(b) after clause (iv), the following clause shall be inserted and shall be deemed to have been inserted, namely:— 30

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

Insertion of new section 10A.

6. After section 10 of the principal Act, the following section shall be inserted and shall be deemed to have been inserted, namely:— 35

Transfer of immovable property belonging to enemy.

"10A. (1) Where the Custodian proposes to sell any enemy immovable property vested in him, as referred to in section 8, to any person, he may, on receipt of the sale proceeds of such property, issue a certificate of sale in favour of such person and such certificate of sale shall, notwithstanding the fact that the original title deeds of the property have not been handed over to the transferee, be valid and conclusive proof of ownership of such property by such person. 40

(2) Notwithstanding anything contained in any law for the time being in force, the certificate of sale, referred to in sub-section (1), issued by the Custodian shall be a valid instrument for the registration of the property in favour of the transferee and the registration in respect of enemy property for which such certificate of sale had been issued by the Custodian, shall not be refused on the ground of lack of original title deeds in respect of such property or for any such other reason." 45

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

Amendment
of section 11.

5 of 1908. 5

“(3) The Custodian, Deputy Custodian or Assistant Custodian shall have, for the purposes of exercising powers or discharging his functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while dealing with any case under this Act, in respect of the following matters, namely:—

(a) requiring the discovery and inspection of documents;

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

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

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

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

Amendment
of section 17.

9. For section 18 of the principal Act, the following section shall be substituted and shall be deemed to have been substituted, namely:—

Substitution
of new section
for section
18.

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

Divesting of
enemy
property
vested in
Custodian to
owner or his
legal heir in
certain cases.

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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.”.

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

Insertion of
new section
18A.

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

Income not
liable to be
returned.

11. After section 18A of the principal Act, [as so inserted by section 10], the following sections shall be inserted and shall be deemed to have been inserted, namely:—

Insertion of
new sections
18B and 18C.

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

Bar of
jurisdiction of
courts in
matters of
divesting.

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

Disposal of enemy property vested in custodian by Central Government.

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

Amendment of section 20.

12. On and from the date on which the Enemy Property (Amendment and Validation) Second Bill, 2010 receives the assent of the President, in section 20 of the principal Act, in sub-section (3), for the words “five hundred rupees”, the words “ten thousand rupees” shall be substituted.

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Amendment of section 23.

13. In section 23 of the principal Act, in sub-section (2), after clause (d), the following clause shall be inserted and shall be deemed to have been inserted, namely:—

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

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Insertion of new section 26.

14. After section 25 of the principal Act, the following section shall be inserted and shall be deemed to have been inserted, namely:—

Validation.

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

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

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

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Provided that if the Central Government had, before the commencement of the Enemy Property (Amendment and Validation) Second Act, 2010, made any order under section 18, as it stood before such commencement, and the property had been returned to the owner or such other person, such property shall, notwithstanding anything contained in this clause, continue to vest in the owner or such other person, as the case may be:

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Provided further that if any enemy property had been otherwise divested from the Custodian (by an order of a court or without any direction under section 18) and returned to the owner or his lawful heir before the commencement of the Enemy Property (Amendment and Validation) Second Act, 2010,—

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(i) in a case where the owner or the lawful heir, as the case may be, is a citizen of India by birth, such property shall, notwithstanding anything contained in this clause, continue to vest in such owner or the lawful heir, if the owner or the lawful heir, as the case may be, furnishes, within six months from the day on which the Enemy Property (Amendment and Validation) Second Bill, 2010 receives the assent of the President, evidence to the satisfaction of the Central Government that he is a citizen of India by birth and, in the case of lawful heir, he is the lawful heir of the owner in accordance with the law of succession applicable to the owner; or

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(ii) in any other case, if the Central Government is satisfied, after causing to be held such inquiry as it deems fit, that the property had been

returned to the owner or his lawful heir, it shall, notwithstanding anything contained in this clause, issue a direction under section 18 to the effect that such property shall revert in the owner or his lawful heir, as the case may be;

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

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

(2) 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
25 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.”.

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

Amendment
of sections 2
and 3 of Act
40 of 1971.

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

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

(b) in section 3, in clause (a),—

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

35 (ii) after the second proviso, the following proviso shall be inserted and shall be deemed to have been inserted, namely:—

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

45 16. (1) If any difficulty arises in giving effect to the provisions of this 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, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of the Enemy Property Act, 1968, or

Power of
Central
Government
to make
transitional
provisions.

Ord. 4 of
2010.

34 of 1968.

the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as amended by this Act, as may appear to be necessary for removing the difficulty during the said period: 4 of 1971.

Provided that no such order shall be made under this section after the expiry of six months from the date on which the Enemy Property (Amendment and Validation) Second Bill, 2010 receives the assent of the President. 5

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Savings.

17. Notwithstanding the cessation of the operation of the Enemy Property (Amendment and Validation) Ordinance, 2010, 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 this Act, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act. Ord. 4 of 2010. 10 34 of 1968. 40 of 1971.

STATEMENT OF OBJECTS AND REASONS

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

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

3. In the above circumstances, it had become necessary to amend the Enemy Property Act, 1968, with retrospective effect to, *inter alia*, clarify the legislative intention. Accordingly, the Enemy Property (Amendment and Validation) Ordinance, 2010 was promulgated on the 2nd day of July, 2010, providing—

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

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

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

(d) that no court shall have jurisdiction to order divestment from the Custodian of 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;

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

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

4. In order to have speedy and effective eviction of unauthorised occupants from the enemy property under the Custodian, 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.

5. Further, 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 of the People. Consequently, the Enemy Property (Amendment and Validation) Ordinance, 2010 lapsed on 6th September, 2010.

6. It is proposed to withdraw, with the leave of the House, the aforesaid Bill and to introduce a fresh Bill titled as "the Enemy Property (Amendment and Validation) Second Bill, 2010" which, *inter alia*, provides for the following, in addition to the provisions mentioned in paragraphs 3 and 4 above, namely:—

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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.

7. The amendments will come into force from the 2nd day of July, 2010 unless otherwise provided.

8. The Bill seeks to achieve the aforesaid objects.

NEW DELHI;
The 3rd November, 2010.

P. CHIDAMBARAM.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill seeks to insert a new section 18C which empowers the Central Government to make rules relating to the manner in which the enemy property shall be sold or disposed.

2. The matters in respect of which rules may be made are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE ENEMY PROPERTY ACT, 1968

(34 OF 1968)

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

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

Levy of fees.

17. (1) There shall be levied by the Custodian fees equal to two per centum of—

(a) the amount of moneys paid to him;

(b) the proceeds of the sale or transfer of any property which has been vested in him under this Act; and

(c) the value of the residual property, if any, at the time of its transfer to the original owner or other person specified by the Central Government under section 18:

Provided that in the case of an enemy whose property is allowed by the Custodian to be managed by some person specially authorised in that behalf, there shall be levied a fee of two per centum of the gross income of the enemy or such less fee as may be specifically fixed by the Central Government after taking into consideration the cost of direct management incurred by that Government, the cost of superior supervision and any risks that may be incurred by that Government in respect of the management:

Provided further that the Central Government may, for reasons to be recorded in writing, reduce or remit the fees leviable under this sub-section in any special case or class of cases.

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

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Divesting of enemy property vested in the Custodian.

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

Penalty.

20. (1) * * * * *

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

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

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

Appointment
of estate
officers.

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

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

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

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

(Shri P. Chidanbaram, Minister of Home Affairs)