

Ordinance Summary

Enemy Property (Amendment & Validation) Second Ordinance, 2016

- The Enemy Property (Amendment and Validation) *Second* Ordinance was promulgated on April 2, 2016. The Ordinance amends the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It replaces the Enemy Property (Amendment and Validation) Ordinance, 2016, which was scheduled to lapse in April 2016.
- The central government had designated some properties belonging to nationals of Pakistan and China as ‘enemy properties’ during the 1962, 1965 and 1971 conflicts. It vested these properties in the ‘Custodian of Enemy Property for India’, an office instituted under the central government. The 1968 Act regulates these enemy properties, and lists the powers of the Custodian.
- **Retrospective application:** The Ordinance is deemed to come into force on January 7, 2016, the date of promulgation of the first Ordinance. However, several of its provisions will have effect from *the date of commencement of the 1968 Act*. Consequently, divestments (i.e., returning of property from the Custodian to the owner) and transfers of enemy property, which had taken place before January 7, 2016 and are in contravention of the Ordinance, will be void.
- **Definition of enemy:** The 1968 Act defined an ‘enemy’ as a country (and its citizens) that committed external aggression against India (i.e., Pakistan and China). The Ordinance expands this definition to include: (i) legal heirs of enemies even if they are citizens of India or of another country which is not an enemy, (ii) nationals of an enemy country who subsequently changed their nationality to that of another country, etc.
- **Vesting of enemy property:** The 1968 Act allowed for vesting of enemy properties with the Custodian, after the conflicts with Pakistan and China. The Ordinance amends the Act to clarify that even in the following cases these properties will continue to vest with the Custodian: (i) the enemy’s death, (ii) if the legal heir is an Indian, (iii) enemy changes his nationality to that of another country, etc. The Ordinance further provides that vesting of enemy property with the Custodian will mean that all rights, titles and interests in the property will vest with the Custodian. No laws governing succession will be applicable to these enemy properties.
- **Divestment:** The 1968 Act provided that the central government may order for an enemy property to be divested from the Custodian and returned to the owner or other person. The Ordinance replaces this provision, and allows enemy property to be returned to the owner only if an aggrieved person applies to the government, and the property is found not to be an enemy property.
- **Power of sale:** The 1968 Act permitted sale of enemy property by the Custodian only if it was in the interest of preserving the property, or to secure maintenance of the enemy or his family in India. The Ordinance expands this power, and allows the Custodian to sell or dispose of enemy property. The Custodian may do this within a time period specified by the central government, irrespective of any court judgements to the contrary.
- **Transfers by enemies:** The 1968 Act prohibited transfer of enemy property by an enemy if: (i) it was against public interest, or (ii) to evade vesting of property in the Custodian. The Ordinance removes this provision, and prohibits all transfers by enemies. Further, it renders transfers that had taken place before or after the commencement of the 1968 Act as void.
- **Bar of jurisdiction:** The Ordinance bars civil courts and other authorities from entertaining cases against enemy properties, or against actions of the central government or the Custodian under the Act.
- **Powers of the Custodian:** The 1968 Act authorised the Custodian to take measures to preserve enemy property, and maintain the enemy and his family if they are in India, from the income derived from the property. The Ordinance removes the duty to maintain the enemy and his family. Further, for the aforementioned purposes, the Act permitted the Custodian to carry out some measures (including selling, mortgaging or leasing enemy property). The Ordinance adds to the list of permissible measures: (i) fixing and collecting rent, license fee, etc. from enemy property, and (ii) evicting unauthorised occupants and removing unauthorised construction from such properties. The Public Premises Act, 1971 regulates removal of unauthorised occupants and construction from public premises. The Ordinance amends this Act to include enemy properties within the definition of public premises.

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