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GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

MINISTRY OF LAW AND PARLIAMENTARY AFFAIRS

(Law Division)

NOTIFICATION

No. 157-Pub.—28th February, 1972—The following Order made by the President, on the advice of the Prime Minister, of the People's Republic of Bangladesh on the 26th February, 1972, is hereby published for general information :—

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

MINISTRY OF LAW AND PARLIAMENTARY AFFAIRS

(Law Division)

President's Order No. 16 of 1972.

**THE BANGLADESH ABANDONED PROPERTY (CONTROL,
MANAGEMENT AND DISPOSAL) ORDER, 1972**

WHEREAS it is expedient to make provisions for the control, management and disposal of certain property abandoned by certain persons who are not present in Bangladesh or whose whereabouts are not known or who have ceased to occupy or supervise or manage in person their property, or who are enemy aliens;

NOW, THEREFORE, in pursuance of the Proclamation of Independence of Bangladesh, 1971, read with the Provisional Constitution of Bangladesh Order, 1972, and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order :—

1. (I) This Order may be called the Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

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

(1) “abandoned property” means any property owned by any person who is not present in Bangladesh or whose whereabouts are not known or who has ceased to occupy, supervise or manage in person his property, including—

(i) any property owned by any person who is a citizen of a State which at any time after the 25th day of March, 1971, was at war with or engaged in military operations against the People’s Republic of Bangladesh;

(ii) any property taken over under the Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (Acting President’s Order No. 1 of 1972), but does not include—

(a) any property the owner of which is residing outside Bangladesh for any purpose which, in the opinion of the Government, is not prejudicial to the interest of Bangladesh;

(b) any property which is in the possession or under the control of the Government under any law for the time being in force.

Explanation: “Person who is not present in Bangladesh” includes any body of persons or company constituted or incorporated in the territory or under the laws of a State which at any time after the 25th day of March, 1971, was at war with or engaged in military operations against the People’s Republic of Bangladesh;

(2) “Company” includes a banking company and insurance company;

(3) “Government” means the Government of the People’s Republic of Bangladesh;

(4) “prescribed” means prescribed by any rule, order or direction made or given in pursuance of any of the provisions of this Order;

(5) “property” means property of any kind, movable or immovable and includes any right or interest in such property and any debt or actionable claim, any security or negotiable instrument, any right under a contract and any industrial or commercial undertaking.

Explanation: “Security” includes share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of any body corporate and Government security.

3. The provisions of this Order and any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

4. On the commencement of this Order, all abandoned properties in Bangladesh shall vest in the Government and shall be administered, controlled, managed and disposed of, by transfer or otherwise, in accordance with the provisions of this Order.

5. (1) For the purpose of carrying the provisions of this Order into effect, and in particular for the purpose of securing, administration, control, management and disposal, by transfer or otherwise of abandoned property, the Government may take such measures as it considers necessary or expedient and do all acts and incur all expenses necessary or incidental thereto.

(2) Without prejudice to the generality of the foregoing provisions, the Government may, for the said purposes, —

- (a) constitute one or more Boards for such area or areas or for such abandoned property or such class or classes of abandoned properties and in such manner as may be prescribed;
- (b) appoint an administrator for any abandoned property on such term and conditions as may be prescribed;
- (c) carry on the business in respect of any abandoned property;
- (d) take action for recovering any money in respect of any abandoned property;
- (e) make any contract and execute any document in respect of any abandoned property;
- (f) institute, defend or continue any suit or other legal proceeding, refer any dispute to arbitration and compromise any debts, claims or liabilities arising out of or in connection with any abandoned property;
- (g) raise on the security of any abandoned property such loans as may be necessary;
- (h) pay taxes, duties, cesses and rates to the Government or to any local authority in respect of abandoned property; and
- (i) transfer by way of sale, mortgage or lease, or otherwise dispose of, any abandoned property or any easement, interest, profit or right, present or future, arising therefrom or incidental thereto.

6. No person shall, except in accordance with the provisions of this Order or any rules made thereunder, transfer any abandoned property in any manner or create any charge or encumbrance on such property, and any transfer made nor charge or encumbrance created in contravention of this Order shall be null and void.

7. (1) Where any abandoned property is not in possession of any person, the Deputy Commissioner or the Subdivisional Magistrate shall take possession of the property in such manner as may be prescribed.

(2) Where any abandoned property is in possession of any person, such person shall, within seven days of the commencement of this Order, surrender such property to the Deputy Commissioner or the Subdivisional Magistrate.

(3) Where the person in possession of any abandoned property fails to surrender such property as he is required to do under clause (2), the Deputy Commissioner or the Subdivisional Magistrate shall serve a notice on him in the prescribed manner requiring him to surrender possession of the property, within seven days of the service of the notice, to the person mentioned in the notice or to show-cause against such surrender within the said period and, if he fails to do so, the Deputy Commissioner or the Subdivisional Magistrate shall take possession of the property in such manner as may be prescribed.

(4) Where the person on whom a notice is served under clause (3) shows cause, within the period specified in that clause, against the surrender of the abandoned property, the Deputy Commissioner or the Subdivisional Magistrate, as the case may be, shall, after making such local enquiry as he may consider necessary and after giving the person an opportunity of being heard, pass such order as he deems fit.

8. (1) Where any abandoned property consists of shares in any company,—

(a) the Government shall be deemed to be the registered holder of such shares and, notwithstanding anything in the memorandum or articles of association of the company or in any agreement or instrument, shall have the same rights in the matter of making a requisition for the convening of a meeting or of presenting a petition to the Court under the provisions of the Companies Act, 1913 (Act VII of 1913) or under any other law or under the articles of association or in any other matter as the person whose shares have vested in the Government had immediately before such vesting; and

(b) the Government shall have the power to acquire, at its option, all or a portion of the remaining shares in such company in the prescribed manner on such terms as deems fit.

(2) Where under clause (1) the Government becomes the holder of more than fifty per cent. of the total number of shares in the company, the Government may, by order in writing,—

(a) dissolve the Board of Directors of the company;

(b) remove its Managing Director or any other Director;

(c) dissolve its Managing Committee, Executive Committee, Advisory Committee or any other Committee or Board;

(d) remove its General Manager or other Manager;

(e) terminate any Managing Agency Agreement;

(f) remove any of its officers or employees;

(g) constitute any Board or Committee or appoint any person for its administration and management; and

(h) give such directions in respect of its administration and management as it may deem fit.

(3) Notwithstanding anything contained in the memorandum or articles of association of a company, the Government may, in respect of a company mentioned in clause (2), by notification in the official Gazette, do all such things which, but for the power conferred by this clause, would have required the passing of a special or extraordinary resolution by the share-holders.

9. When any property is vested in the Government under this Order, only such liabilities in respect of such property shall be deemed to be the liabilities in respect of the property as may be determined by such authority and in such manner as may be prescribed.

10. (1) The Government may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any abandoned property is held occupied or managed by a person where such allotment, lease or agreement has been granted or entered into after the 25th day of March, 1971.

(2) Where by reason of any action taken under clause (1) any person is ceased to be entitled to possession of any abandoned property he shall, on demand by the Government, surrender possession of such property to the Government or to any person authorised by it in this behalf.

(3) If any person fails to surrender possession of any property on demand under clause (2), the Government may eject such person and take possession of such property in such manner as may be prescribed.

11. (1) Any amount payable in respect of any abandoned property shall be paid to the Government by the person liable to pay the same.

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

(3) Any payment made otherwise than in accordance with clause (1) shall not discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Government to enforce such obligation against any such person.

12. Where any abandoned property is property in trust for a public purpose of a religious or charitable nature or is a waqf, the property shall remain vested in the Government only until such time as fresh trustees or mutwallis are appointed by the Government, and pending the appointment of fresh trustees or mutwallis the property and the income thereof shall be applied by the Government for fulfilling, as far as possible, a charitable purpose.

13. (1) Where any abandoned property consists of shares in a joint property, business or firm, and if the shares vested in the Government constitute the greater part of such joint property, business or firm, reckoned according to the value of the whole, the Government may take possession and assume control and management of the whole of such property, business or firm.

(2) Notwithstanding the provision of clause (1), the Government shall, on an application being made in this behalf by all or any of the persons whose shares have not vested in the Government, partition such property, if capable of being partitioned, and determine the share or shares of such person or persons.

14. (1) Any property vested in the Government under this Order shall be exempt from all legal process, including seizure, distress, ejectment, attachment or sale by any officer of a Court or any other authority, and no injunction or other order of whatever kind in respect of such property shall be granted or made by any Court or any other authority, and the Government shall not be divested or dispossessed of such property by operation of any law for the time being in force.

(2) Any such legal process as aforesaid subsisting immediately before the commencement of this Order shall cease to have effect on such commencement and all abandoned properties in custody of any Court, receiver, guardian or other person or persons appointed by it, shall upon delivery of the same being called for by the Government, be delivered to the Government.

15. (1) Any person claiming any right or interest in any property treated by Government as abandoned property may make an application to the prescribed authority on the ground that—

(a) the property is not abandoned property; or

(b) his interest in the property has not been affected by the provisions of this Order.

(2) An application under clause (1) shall be made within three months of the date of the commencement of this Order.

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

16. (1) Any person aggrieved by an order passed under Article 7 or Article 15 of this Order may, within one month of such order, file an appeal before such authority as may be prescribed.

(2) The Government may, either of its own motion or on application, at any time, revise any order passed under Article 7 or Article 15 or clause (1) of this Article.

17. (1) Any person who has been in unauthorised possession of any abandoned property shall be liable to pay such compensation for such unauthorised possession as may be assessed by such authority and in such manner as may be prescribed.

(2) Any person who has caused damage to or disposed of the whole or a part of any abandoned property shall be liable to pay such compensation as may be assessed by such authority and in such manner as may be prescribed.

18. (1) The Government shall maintain a separate account of each abandoned property in such manner as may be prescribed and shall cause to be made entries therein of all receipts and expenditures in respect thereof.

(2) The Government shall cause the accounts of the abandoned properties to be inspected and audited in the prescribed manner.

19. Without prejudice to the provisions of Article 17, any person who wilfully cause damage to, or disposes of the whole or a part of, any abandoned property or, allows damage to be caused to, or disposal of the whole or a part of, any abandoned property shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

20. Any person who fails to surrender any abandoned property as required under clause (2) or clause (3) of Article 7 or Article 10 shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

21. No provision of law relating to the winding up of companies or banks or business or dissolution of firms shall apply to any company, bank, business or firm vested in the Government as abandoned property under this Order, and such company, bank, business or firm shall not be wound up or dissolved save by order of the Government and in such manner as it may direct.

22. The Government may, by order published in the official Gazette, direct that any power or duty which is conferred or imposed by this Order upon the Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority subordinate to it.

23. No suit, prosecution or other legal proceeding shall lie against the Government or any person for anything which is in good faith done or intended to be done under this Order or the rules made thereunder.

24. Anything done, any action taken or any order passed under this Order shall not be called in question in any court.

25. The Government may make rules for carrying out the purposes of this Order.

DACCA :

The 26th February, 1972.

A. S. CHOWDHURY

*President of the People's Republic
of Bangladesh.*

AZIMUDDIN AHMAD

Deputy Secretary.