

EVACUEE PROPERTIES

1. Our opinion has been required whether evacuee properties can be accepted as security and as to what measures should be adopted by a bank to protect its interests.

2. We have carefully considered the matter and our opinion is as follows:

Without going into too many details regarding evacuee laws, the overall position can be broadly summarized as follows:

- (a) Due to widespread disturbances that took place at the time of partition of India in 1947, a great many people were dislocated and had to move across the new borders. They were forced to leave behind their properties. Those who left without any intention of going back were classified as “evacuees”. Immovable properties of evacuees were expropriated by the governments of India and Pakistan, and their management and disposal was taken over by the respective governments.
- (b) The persons who came to Pakistan from India were treated as “Displaced Persons”.
- (c) Series of laws were prepared for settlement of the Displaced Persons on evacuee properties. The major statutes under which evacuee properties were finally disposed of were:
 - (i) The Displaced Persons (Compensation and Rehabilitation) Act, 1958.
 - (ii) The Displaced Persons (Land Settlement) Act, 1958.

The former law dealt with mainly urban properties and the latter law dealt with agricultural properties. Various schemes were prepared under these laws for transfer of the properties to eligible Displaced Persons.

- (d) As regards urban properties, in the first instance the property used to transferred provisionally to the eligible claimants under section 37 of the Act, and a

“Provisional Transfer Order” (**PTO**) would be issued. Subject to fulfillment of the conditions mentioned in the PTO, the property would be permanently transferred through a formal “Permanent Transfer Deed” (**PTD**).

- (e) Once the PTD had been issued the transferee became an absolute owner, and could deal with the property in whatever manner he chose. The PTD itself was a title document. However, a person who held a property only under a PTO, he was not free to sell or mortgage the property but could do so, only subject to such conditions as might be laid down by the Chief Settlement Commissioner. In all cases where PTD had been issued for urban properties or permanent transfer had been made for rural properties, the transferees became competent to deal with their properties as full owners.
- (f) In case of urban buildings, changes were made by the urban property tax department, in the PT-I Form to reflect transfer of the property from the Central Government to the PTO holder. As regards agricultural land the procedure was that after an allotment had been made to an eligible evacuee his name was entered in a register called, Register in Form RL/II. Once a permanent transfer had been made, a mutation would be entered for deletion of the name of the Federal Government as an owner and making an entry in favour of the transferee Displaced Persons. Thereafter the transferee would be reflected in the revenue Record of Rights.
- (g) Both the evacuee property laws mentioned above, were repealed by the Evacuee Property Laws (Repeal) Act 1975, and the powers that were earlier being exercised by the Settlement Department were thereafter to be exercised by the “Notified Officers” under the repealing Act. All properties that had not been disposed of were transferred from the name of the Federal Government into the name of the Provincial Governments. All pending proceedings were to be disposed of by the “Notified Officers”. The functions of the Settlement Department were also transferred to Board of Revenue of the relevant provinces.

After repeal of the settlement laws, the practice of issuance of PTD for urban properties was replaced by issuance of a Transfer Order.

We now address certain specific questions regarding evacuee properties.

3. Is there any special law for evacuee properties?

As discussed earlier, the settlement laws under which properties were transferred to Pakistani citizens were the Displaced Persons (Compensation & Rehabilitation) Act, 1958 and Displaced Persons (Land Settlement) Act, 1958. Both these laws have been repealed and matters relating to evacuee properties are being currently handled under the Evacuee Property and Displaced Persons Laws (Repealed) Act, 1975. As far as evacuee properties attached with any charitable trust are concerned, they are being administered under a different law. Prior to the Acts of 1958, settlement matters were being governed under the Pakistani Rehabilitation Act, 1956 and Pakistan (Administration of Evacuee Property) Act, 1957 and a number of laws that had been enacted from time to time, earlier.

4. Can a mortgage be created over property that was originally evacuee property and was subsequently transferred to local individual?

Wherever, the current holder of the property holds it under a title deed, equitable mortgage can be created by its deposit. If a person holds the original PTD, mortgage can be created by deposit of that document also. However, in case of rural properties, not acquired under a registered deed, only a registered mortgage can be created. Where rights are held only under a PTO, the PTO itself could not be taken to be a title deed by whose deposit a mortgage can be created. In such cases only a registered mortgage should be created after permission has been obtained from the "Notified Officer" working under the Board of Revenue.

5. In case, history of an evacuee property is not given in the title documents and Permanent Transfer Order/Deed is also not available, then how can we verify the property? Who maintains record of evacuee properties?

In all cases where a person claims to be current owner of evacuee property, one has to examine the chain of title documents that should ultimately lead to a PTD

or a transfer order. In case of an urban property the change of title from the name of the evacuee owner or the central government (or the provincial government in certain cases) should be reflected in the property tax record that would have originated in the name of the evacuee owner. As regards rural land, there has to be an original mutation from the name of the central government etc. as above. If a clear chain of title is not established then information should be sought through the office where the settlement record is being maintained under the administrative control of the Secretary Settlement, as well as the Board of Revenue.

6. Whether original Permanent Transfer Order/Deed is to be obtained compulsorily especially when it is more than 20 years old? What if it is not available?

It should not be necessary to demand the original PTD, especially where it had not been issued in the name of the current owner but had been issued in the name of some predecessor. However, a bank would need to seek satisfactory answer about the whereabouts of the original PTD. In fact the risk that is involved in all cases where the current proprietor might have bought the property recently, is that the title document of some predecessor (whether a private transfer deed or a PTD) might be lying deposited with some other bank by way of security. Of course it is possible that the current owner might not be in a position to produce the title document of a previous owner in a situation where the previous owner or some other purchaser had sold only a part of the land acquired by him e.g. a person having purchased four kanals of land under a sale deed would not hand it over to a buyer of 10 marlas. The critical question in all such situations is that such document should be traced back at least in the hands of whoever might be retaining it. As mentioned above, the only risk that attaches is that some equitable mortgage having been created by some predecessor.

7. Is the mere noting of a bank's encumbrance in PT-1 sufficient or an Encumbrance Certificate from a Sub Registrar is required?

Noting of bank's encumbrance in the PT-I form or the Revenue Record would only serve the purpose of possibly keeping other persons away from buying the secured property. Even if no entry in PT-I form or the Revenue Record had been made, but a proper mortgage had been created, the bank would still be secured. An encumbrance certificate from the Sub-Registrar would only be a confirmation that a mortgage stood recorded with him. Such certificate would be possible only where there is a mortgage under a registered deed being maintained by the Sub-Registrar. No encumbrance certificate would be available in the case of an equitable mortgage.

8. What steps a bank should take to secure its interest in such cases?

In case of evacuee properties, the following precautions should be taken (which to an extent have been discussed above, already):

- i) The bank should examine the chain of title up to issuance of the PTD or transfer orders in case of urban properties, and confirmation of allotment by a final transfer order in case of rural properties.
- ii) The current proprietor should stand recorded as an owner in the property tax record or the revenue record, depending on the nature of the property.
- iii) Whereabouts of any chain title documents should be established to the satisfaction of the Bank.
- iv) In case of evacuee properties transferred after enactment of the Evacuee Property and Displaced Persons Laws (Repealed) Act, 1975, confirmation of ownership status should be sought from the relevant office working under the Board of Revenue dealing with Evacuee Property. The reason for further scrutiny in such cases is that there have been quite a few serious frauds regarding transfers made after the Act of 1975.

- v) While creating an equitable mortgage all documents, whatsoever, connected with the title of the owner should also be taken by the bank into its custody, in addition to the title deeds.
- vi) Where the current owners does not hold a title deed but had acquired rights under some transfer orders or by inheritance from an owner the security should be created through a registered mortgage.
- vii) Before accepting any evacuee property, the bank should confirm that the current claimant to ownership is in actual possession of the relevant property.

We hope that the above opinion proves helpful. However, if there are any further questions, please let us know.