

[AS PASSED BY THE SENATE]

A

Bill

to establish special courts for adjudication of petitions in respect of immovable properties of overseas Pakistanis

WHEREAS it is expedient to establish special courts in order to secure and provide for protection of rights of ownership and possession in respect of immovable properties of overseas Pakistanis and for matters connected therewith and incidental thereto;

It is hereby enacted as follows:

1. **Short title, extent and commencement.** - (1) This Act shall be called the Establishment of Special Court (Overseas Pakistanis Property) Act, 2024

(2) It shall extend to the whole of the Islamabad Capital Territory.

(3) It shall come into force at once.

2. **Definitions.**- In this Act, unless the context or subject otherwise requires,-

(a) 'Code' means the Code of Civil Procedure, 1908 (Act No.V of 1908);

(b) Overseas Pakistani means any person holding a Pakistani passport, computerized national identity card (CNIC), national identity card for overseas Pakistanis (NICOP), Pakistan origin card (POC) or Overseas Pakistanis Foundation (OPF) membership card proving his nationality and is living, working or studying abroad permanently or temporarily for more than one hundred and eighty two (182) days in a tax year;

- (c) 'petitioner' for the purpose of filing petition before a special court, means the overseas Pakistani or anyone authorized by him in his behalf;
- (d) 'prescribed' means prescribed by rules;
- (e) 'property' means immoveable property as defined in the Registration Act, 1908 (Act XVI of 1908);
- (f) 'rules' means rules made under this Act; and
- (g) 'special court' means the special court established or designated as such this Act.

3. **Establishment of special court, etc.—** (1) The Federal Government may, in consultation with the Chief Justice of the Islamabad High Court and by notification in the official Gazette, establish as many special courts in the Islamabad Capital Territory as it may deem necessary to try petitions filed by overseas Pakistanis in relation to their immovable properties and where more than one special court are established, the notification shall specify jurisdiction of each such special court.

(2) The Federal Government may, in consultation with the Chief Justice of the Islamabad High Court, appoint any person as a judge of the special court who is or has been a district judge or an additional district judge or who is or has been an advocate of the High Court for a period of not less than ten years and is not more than sixty-five years of age at the time of appointment as such judge.

(3) In addition to or in lieu of establishment of the special court under subsection (1), the Federal Government may, in consultation with the Chief Justice

of the Islamabad High Court and by notification in the official Gazette, designate in the Islamabad Capital Territory as many courts of district judge or additional district judges as special court as it may deem fit and where more than one special court are designated, the notification shall specify jurisdiction of each special court.

(4) A judge of the special court shall have the same powers and jurisdiction as vested in the court of district judge under the Code.

(5) A judge of the special court shall be appointed for a period of three years on such terms and conditions as may be determined by the Chief Justice of the Islamabad High Court.

(6) A judge of the special court shall only be removable before the expiry of his tenure if he is found guilty of misconduct.

(7) The disciplinary proceedings against a judge of a special court shall be conducted in the same manner and under the same legal provisions and rules as prescribed for a district and sessions judge in the Islamabad Capital Territory.

(8) During his tenure, a judge of a special court may be transferred to another special court within Islamabad Capital Territory by the Chief Justice of the Islamabad High Court.

4. **Filing of petition.**— (1) A petition under this Act shall be filed in special courts having the jurisdiction, in the manner as may be prescribed.

(2) A petition under sub-section (1) shall contain a concise statement of facts which shall include status of ownership and unlawful possession or control of property, estimated market value of property, details of rent or profits received by person in unlawful possession or control of property, if any, and the relief claimed and such other information or documents as may be prescribed.

(3) Notwithstanding anything contained in the Code or any other law for the time being in force, all actions, disputes, petitions, suits, proceedings and matters connected therewith in which one or more of the parties are overseas Pakistanis, shall be heard and adjudicated exclusively by a special court.

5. E-filing of petitions, etc.— (1) The Islamabad High Court shall make rules to enable filing of petitions, responses, applications, hearing of parties including recording of evidence under this Act and all matters connected therewith or incidental thereto through electronic means.

(2) Subject to the Public Finance Management Act, 2019 and to carry out purposes of this Act, there shall be maintained by designated officer of the special court in the prescribed manner, bank account for deposit of court fee and other charges manually or through modern devices including e-filing, etc.

(3) There shall be maintained physical and electronic record of all the cases filed and pending before the special courts alongwith the details of the proceedings that have taken place therein.

6. Notice to appear and consequences of non-appearance. — (1) The special court shall issue notice to the respondents in the form as given in the

schedule to this Act for appearance on a date fixed not later than ten days through process server, registered post acknowledgement due and courier service.

(2) In addition to the service under sub-section (1), the special court shall order for effecting service by-

- (a) affixing a copy of the notice at some conspicuous part of the dispossessed property or residence of the respondent in which he is known to have last resided or carries on business or personally works for gain;
- (b) any modern device including electronic device of communication which may include mobile phone, telephone, telegram, phonogram, telex, fax, radio, television etc. in a prescribed manner;
- (c) urgent mail service or public courier services;
- (d) announcement through mosque, temple, community center, etc.;
- (e) publication in the press in the prescribed manner; or
- (f) any other manner or mode as it may think fit:

Provided that the Special Court may order the use of all or any of the aforesaid modes of service simultaneously.

(3) If the respondent fails to appear, the special court may direct service again by any of the modes mentioned in sub-section (2) to appear on a date not later than seven days.

(4) If the respondent fails to appear again, the special court may proceed *ex-parte* against the respondent and may pass any order under the law applicable thereto.

(5) If an *ex-parte* order is passed against a respondent, the respondent may, within ten days from the date of knowledge thereof, apply to the special court for setting aside the *ex-parte* order along with an application for leave to appear and defend.

(6) If the respondent shows a sufficient cause for his non-appearance, the special court may set aside the *ex-parte* order on such terms as it may deem fit.

7. Leave to defend. — (1) A special court shall not allow respondent to defend the application unless he obtains from this special court leave to defend.

(2) Subject to other provisions of this Act, a respondent shall file an application for leave to defend, in default of which, the allegations of fact in the petition shall be deemed to have been admitted and the special court may pass the judgment and decree in favour of the petitioner.

(3) The application for leave to defend shall be in the form of a written statement containing a summary of substantial questions of law as well as facts

in respect of which, in the opinion of the respondent, evidence needs to be recorded.

(4) The application for leave to defend shall be accompanied by an affidavit of the respondent, copy of all relevant documents in his possession or power and affidavits of not more than two witnesses which, in the opinion of the respondent, support the question of law and facts raised by him.

(5) An application for leave to defend which does not comply with the requirements of sub-section (4) shall be rejected, unless the respondent discloses sufficient cause for his inability to comply with any such requirement.

(6) The petitioner may file a reply to the application for leave to defend.

(7) The special court shall grant the respondent leave to defend if on consideration of contents of the petition, application for leave to defend and its reply thereto it is of the view that substantial questions of law or facts have been raised in respect of which evidence needs recording.

(8) The special court shall decide the application for leave to defend within a period of fifteen days from the date of its filing.

(9) In granting leave under sub-section (7), the special court may impose such conditions as it may deem appropriate in circumstances of the case, including furnishing of security which shall not be less than ten percent of estimated market value of property of overseas Pakistani prevailing at that time.

(10) If leave to defend is granted, the special court shall treat the application for leave to defend as a defence of respondent and in its order granting leave it shall frame issues relating to substantial questions of law or facts and, subject to fulfillment of any conditions attached to grant of leave, fix a date for recording of evidence thereon and disposal of the proceedings.

(11) Where the application for leave to defend is rejected or where a respondent fails to fulfill conditions attached to the grant of leave to defend, the special court shall proceed to pass judgment and decree against the respondent.

8. Recording of evidence.- (1) The special court shall direct the party concerned to produce its evidence on a date fixed.

(2) The special court shall treat an affidavit filed by a party as examination-in-chief and-

(a) may, of its own motion, order attendance of the deponent for cross examination; and

(b) shall, if so requested by a party, direct production of the deponent for cross-examination.

(3) The special court shall not grant more than two opportunities to a party for production of the evidence.

(4) The special court shall not grant an adjournment for cross examination of a witness except for a sufficient cause and on payment of the costs to the witness as it may deem fit.

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(5) A special court, on request of an overseas Pakistani litigant, shall make arrangements to enable the litigant to participate in the court proceedings through video link.

(6) A special court shall allow evidence of an overseas/litigant or a witness through the concerned high commission, embassy or consulate of Pakistan, as the case may be, by use of video link or any other legally acceptable mode:

Provided that such evidence shall be recorded under supervision of an official of the concerned high commission, etc. especially notified for this purpose.

(7) A special court shall enable that cause list and short orders of such cases to be uploaded on the web portal especially established for this purpose.

(8) After recording evidence of the parties, if any, and hearing the arguments, the special court shall pass the judgment and decree.

9. Period for disposal of petition.—(1) The special court shall pass a judgment as expeditiously as possible but not later than ninety days from the date of grant of application for leave to defend.

(2) In case the proceedings are not completed within ninety days, the respondent may be required to furnish security in such amount as the special court deems fit, and on failure of the respondent to furnish security the special court shall pass judgment.

(3) The requirement of furnishing security under sub-section (2) shall be dispensed with, if in opinion of the special court on appreciation of material available on record, the delay is not attributable to conduct of the respondent.

(4) At any time during the course of proceedings, the special court shall not allow adjournment for more than seven days.

(5) The special court if it deems necessary for expeditious disposal of the suit or petition, for reasons to be recorded in writing, shall on its own motion have the power to summon official record maintained by the public authorities in respect of any matter connected with or arising from the subject matter of the suit or petition.

10. Appeal.— (1) Any person aggrieved by a judgment, decree or final order of the special court may, within fifteen days, prefer an appeal to the High Court.

(2) The admission of appeal shall not be deemed to suspend operation of judgment, decree or final order unless a notice has been served on the decree holder.

(3) The High Court shall decide an appeal within a period of ninety days from the date of its filing.

(4) An appeal may be preferred under this section from a decree passed *ex-parte*.

(5) No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend or any interlocutory order of the special court which does not dispose of the entire proceedings before the special court.

(6) Any order for stay of execution of decree in appeal shall automatically lapse on expiry of two months from date of such order.

11. Execution of decree.— (1) Notwithstanding anything contained in any other law for the time being in force, upon issuance of decree by a special court, the suit shall automatically stand converted into execution proceedings without the need to file separate application and the case shall be heard by the special court for execution of its decree on the expiry of fifteen days from the date of issuance of decree or order.

(2) The decree of the special court shall be executed in accordance with the provisions of the Code or any other law for the time being in force or in such manner as the special court may at request of the decree-holder may consider appropriate.

(3) The special court shall be entitled to seek services and assistance of the police or any law enforcement agency in exercise of powers conferred by this section.

(4) Notwithstanding anything contained in the Code or any other law, for the time being in force, if the claim or objections are found by the special court to

be malafide or filed merely to delay the execution process, the special court shall impose such penalty as it deems fit in facts and circumstances of the case.

12. Attachment before judgment, injunction or appointment of receivers.— (1) The special court may, on its own or on an application by the petitioner, with a view to preventing property from being transferred, alienated encumbered, wasted or otherwise dealt with in a manner which is likely to impair or prejudice the rights of overseas Pakistanis, or otherwise in the interest of justice,-

- (a) restrain the respondent or others from transferring, alienating, parting with possession or otherwise encumbering, charging, disposing of or dealing with the property in any manner;
- (b) attach such property;
- (c) transfer possession of such property to the aggrieved person;
or
- (d) appoint one or more receivers of such property on such terms and conditions as it may deem fit.

(2) An order under sub-section (1) may also be passed by the special court against any third party to whom the property is sold in contravention of provisions of this Act or held *benami* by respondent in the name of an ostensible owner.

13. Transfer of pending cases. — (1) On commencement of this Act,-

- (a) all petitions, suits, execution petitions and all other proceedings pending in any other court, in which overseas Pakistani is a party, shall stand transferred to the special court and on transfer of the cases, the special court may proceed with the cases from the stage at which it was pending; and
- (b) all appeals, revisions, in which any or all the parties are overseas Pakistanis, pending before any court after the commencement of this Act, shall stand transferred to special bench or benches of the concerned High Court for adjudication.

14. Application of fines and costs.— (1) A special court may direct that the whole or part of any fine or costs imposed under this Act shall be applied in or towards-

- (a) payment of costs of all or any proceedings under this Act to the aggrieved person; and
- (b) payment of compensation to overseas Pakistanis.

(2) An order under sub-section (1) shall be deemed to be a decree passed under this Act for purposes of execution.

15. Restriction on transfer of property.— After publication of notices under sub-section (1) of section 6, no respondent shall transfer, alienate,

encumber, remove or part with possession of property pending final decision of the suit or petition filed by the petitioner under this Act and any such transfer, alienation, encumbrance or other disposition by the respondent in violation of this sub-section shall be void and of no legal effect.

16. Application of the Limitation Act, 1908 (Act IX of 1908).— Save as otherwise provided in this Act, the provisions of the Limitation Act, 1908 (Act IX of 1908) shall apply to all cases instituted or filed in special court after coming into force of this Act.

17. Powers of special court.— (1) Subject to the provisions of this Act, the special court shall in exercise of its civil jurisdiction have all the powers vested in a civil court under the Code.

(2) The special court in all matters with respect to which the procedure has not been provided for in this Act, follow the procedure laid down in the Code.

(3) All proceedings before a special court shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, (Act XLV of 1860) and sections 476 and 480 of the Code of Criminal Procedure, 1898 (Act No. V of 1898).

18. Finality of order. — Subject to the provisions of section 10, no court or other authority shall revise or review or call or permit to be called into question any proceeding, judgment, decree or order of a special court or the legality or propriety of anything done or intended to be done by the special court in exercise of its jurisdiction under this Act:

Provided that the special court may on its own accord or on application of any party and with notice to the other party or, as the case may be, to both the parties, correct any clerical or typographical mistake in any judgment, decree or order passed by it.

19. Registrar.—(1) A senior civil judge or any other officer so designated shall be posted as registrar of the special court.

(2) The registrar shall be responsible for performance of functions that may be assigned to him by the Federal Government in consultation with the Chief Justice of the Islamabad High Court.

20. Report. — (1) The registrar shall prepare and present an annual report of the implementation of this Act to the committee which shall consist of-

- (a) a judge of the High Court to be nominated by the Chief Justice of the Islamabad High Court;
- (b) Federal secretary of the division to which business of the special courts stands allocated or his nominee not below the rank of a joint secretary or equivalent;
- (c) Federal secretary of the division to which business of overseas Pakistanis stands allocated or his nominee not below the rank of a joint secretary or equivalent; and
- (d) managing director, Overseas Pakistanis Foundation or his nominee;

(2) The committee constituted under sub-section (1) may from time to time propose amendments in this Act.

21. Power to make rules.— The Islamabad High Court may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

22. Removal of difficulties.— If a difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may, by notification in official Gazette, make such provisions not inconsistent in with the provisions of this Act as it thinks fit for removing such difficulty.

23. Act to override other laws.— The provisions of this Act or any order or rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

STATEMENT OF OBJECT AND REASONS.

Overseas Pakistanis are valuable asset of the country. They play a vital role in socio-economic development of the country by sending remittances. However, they face issues relating to protection of their property. In order to provide them with immediate relief, draft Bill titled "Establishment of Special Court (Overseas Pakistanis Property) Act, 2023" has been proposed by Ministry of Overseas Pakistanis & Human Resource Development. The same has been considered by CCLC, Cabinet Division has also ratified the proposal.

2. In view of above, "Establishment of Special Court (Overseas Pakistanis Property) Act, 2023" requires to be promulgated.



(Federal Minister for Overseas Pakistanis
& Human Resource Development)

