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THE WAQF ACT, 1995

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THE WAKF (AMENDMENT) ACT, 2013*

(27 OF 2013)

[20th September, 2013]

An Act to amend the Wakf Act, 1995.

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

1. Short title and commencement—(1) This Act may be called THE WAKF (AMENDMENT) ACT, 2013.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of long title.—In the long title to the Wakf Act, 1995 (43 of 1995) (hereinafter referred to as the principal Act), for the word "Wakfs", the word "Auqaf" shall be substituted.

3. Amendment of section 1.—In section 1 of the principal Act, in sub-section (1), for the word "Wakf", the word "Waqf" shall be substituted.

4. Substitution of references to certain expressions by certain other expressions.—Throughout the principal Act, for the words "wakf", "wakfs" and "wakif", wherever they occur, the words "waqf", "auqaf" and "waqif" shall, respectively, be substituted, and such other consequential amendments as the rules of grammar may require shall also be made.

5. Amendment of section 3.—In section 3 of the principal Act,—

(i) after clause (e), the following clause shall be inserted, namely:—

“(ee) “encroacher” means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by *mutawalli* or the Board;”;

(ii) for clause (g), the following clause shall be substituted, namely:—

“(g) “list of auqaf” means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37;”;

(iii) in clause (i), after the proviso, the following provisos shall be inserted, namely:—

“Provided further that the *Mutawalli* shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:

Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government;”;

(iv) in clause (k), in sub-clause (i), for the words “worship” and “khangah”, the words “offer prayer” and “khanqah, peerkhana and karbala” shall, respectively, be substituted;

*Received the assent of the President on 20-9-2013 and published in the Gazette of India, Ext., Pt. II, S. 1, dated 23-9-2013.

(v) for clause (r), the following clause shall be substituted, namely:—

“(r) “waqf” means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

(iii) “grants”, including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law, and “waqif” means any person making such dedication;’.

6. Amendment of section 4.—In section 4 of the principal Act,—

(a) in sub-section (1), for the words “wakfs existing in the State at the date of the commencement of this Act”, the words “auqaf in the State” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1-A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:

Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.”;

(c) in sub-section (6),—

(i) in the proviso, for the words “twenty years”, the words “ten years” shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.”.

7. Amendment of section 5.—In section 5 of the principal Act,—

(a) in sub-section (2), for the words “publish in the Official Gazette”, the words “forward it back to the Government within a period of six months for publication in the Official Gazette” shall be substituted;

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.”.

8. Amendment of section 6.—In section 6 of the principal Act, in sub-section (1),—

(a) for the words “any person interested therein”, the words “any person aggrieved” shall be substituted;

(b) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.”;

(c) the *Explanation* shall be omitted.

9. Amendment of section 7.—In section 7 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “any question”, the words “any question or dispute” shall be substituted;

(ii) for the words “or any person interested”, the words and figure “or any person aggrieved by the publication of the list of auqaf under section 5” shall be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.”.

10. Substitution of new section for section 8.—For section 8 of the principal Act, the following section shall be substituted, namely:—

“8. *State Government to bear cost of survey.*—The total cost of making a survey including the cost of publication of the list or lists of auqaf under this Chapter shall be borne by the State Government.”.

11. Amendment of section 9.—In section 9 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the

purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.

(1-A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).";

(b) in sub-section (2), in clause (b),—

(i) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

"(ii) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;";

(ii) after sub-clause (viii), the following proviso shall be inserted, namely:—

"Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.";

(c) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may suo motu call for information on specific issues from the Board, if it is satisfied that there was *prima facie* evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government."

12. Amendment of section 13.—In section 13 of the principal Act,—

(a) after sub-section (1), the following proviso shall be inserted, namely:—

"Provided that in case where a Board of Waqf has not been established, as required under this sub-section, a Board of Waqf shall, without prejudice to the provisions of this Act or any other law for the time being in force, be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013.";

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2-A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of *Shia* waqf, the Members shall belong to the *Shia* Muslim and in the case of *Sunni* waqf, the Members shall belong to the *Sunni* Muslim."

13. Amendment of section 14.—In section 14 of the principal Act,—

(I) in sub-section (1),—

(i) for the words “the Union territory of Delhi”, wherever they occur, the words “the National Capital Territory of Delhi” shall be substituted;

(ii) in clause (b),—

(a) for sub-clause (iii), the following sub-clause shall be substituted, namely:—

“(iii) Muslim members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and”;

(b) after sub-clause (iv), the following *Explanations* shall be inserted, namely:—

“*Explanation* I.—For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

Explanation II.—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;”;

(iii) for clauses (c) to (e), the following clauses shall be substituted, namely:—

“(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;

(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in *Shia* and *Sunni* Islamic Theology;

(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;”;

(II) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1-A) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of *mutawalli* exists, there shall be one *mutawalli* as the member of the Board.”;

(III) sub-section (5) shall be omitted.

(IV) sub-section (7) shall be omitted.

14. Amendment of section 15.—In section 15 of the principal Act, the words, brackets and figures “from the date of notification referred to in sub-section (9) of section 14” shall be inserted at the end.

15. Amendment of section 16.—In section 16 of the principal Act, after clause (d), the following clause shall be inserted, namely:—

“(da) he has been held guilty of encroachment on any waqf property;”.

16. Insertion of new section 20-A.—After section 20 of the principal Act, the following section shall be inserted, namely:—

“20-A. *Removal of Chairperson by vote of no confidence.*—Without prejudice to the provisions of section 20, the Chairperson of a Board may be removed by vote of no confidence in the following manner, namely:—

(a) no resolution expressing a vote of confidence or no confidence in any person elected as Chairperson of a Board shall be moved except in the manner prescribed and twelve months have not elapsed after the date of his election as a Chairperson and be removed except with the prior permission of the State Government;

(b) notice for no confidence shall be addressed to the State Government stating clearly the grounds on which such motion is proposed to be moved and shall be signed by at least half the total members of the Board;

(c) at least three members of the Board signing the notice of no confidence shall personally present to the State Government, the notice together with an affidavit signed by them to the effect that the signatures on no confidence motion are genuine and have been made by the signatories after hearing or reading the contents of the notice;

(d) on receipt of the notice of no confidence, as provided hereinabove, the State Government shall fix such time, date and place as may be considered suitable for holding a meeting for the purpose of the proposed no confidence motion:

Provided that at least fifteen days notice shall be given for such a meeting;

(e) notice for meeting under clause (d) shall also provide that in the event of no confidence motion being duly carried on or, election of the new Chairperson, as the case may be, shall also be held in the same meeting;

(f) the State Government shall also nominate a Gazetted Officer (other than an officer of the department which is concerned with the supervision and administration of the Board) to act as presiding officer of the meeting in which the resolution for no confidence shall be considered;

(g) the quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;

(h) the resolution for no confidence shall be deemed to be carried out, if passed by a simple majority of the members present;

(i) if a resolution for no confidence is carried out, the Chairperson shall cease to hold office forthwith and shall be succeeded by his successor who shall be elected by another resolution in the same meeting;

(j) election of the new Chairperson shall be conducted under clause (i), in the meeting under the chairmanship of the said presiding officer referred to in clause (f), in the following manner, namely:—

(A) Chairperson shall be elected from amongst the elected members of the Board;

(B) nomination of candidates shall be proposed and seconded in the meeting itself and election after withdrawal, if any, shall be held by method of secret ballot;

(C) election shall be held by simple majority of the members present in the meeting and in case of equality of votes, the matter shall be decided by drawing of lots; and

(D) proceedings of the meeting shall be signed by the presiding officer;

(k) new Chairperson elected under clause (h) shall hold the office only up to the remainder of the term of the Chairperson removed by the resolution of no confidence; and

(l) if the motion for passing the resolution of no confidence fails for want of quorum or lack of requisite majority at the meeting, no subsequent meeting for considering the motion of no confidence shall be held within six months of the date of the previous meeting.”

17. Amendment of section 23.—In section 23 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government, and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.”

18. Substitution of new section for section 27.—For section 27 of the principal Act, the following section shall be substituted, namely:—

“27. *Delegation of powers by Board.*—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it

may deem necessary, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110."

19. Substitution of new section for section 28.—For section 28 of the principal Act, the following section shall be substituted, namely:—

"28. Power of District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate to implement the directions of the Board.—Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub-Divisional Magistrate of a District in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considers necessary, seek directions from the Tribunal for the implementation of its decisions."

20. Amendment of section 29.—Section 29 of the principal Act shall be numbered as sub-section (1) thereof, and—

(a) in sub-section (1) as so numbered, for the words "subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force", the words "subject to such conditions as may be prescribed" shall be substituted;

(b) after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

"(2) The *mutawalli* or any other person having the custody of any document related to waqf properties shall produce the same, within the prescribed period, before the Chief Executive Officer on being called upon to do so in writing.

(3) Subject to such conditions as may be prescribed, an agency of the Government or any other organisation shall supply, within ten working days, copies of the records, registers of properties or other documents relating to waqf properties or claimed to be waqf properties, to the Chief Executive Officer on a written request to this effect from him:

Provided that before taking any course of action as mentioned in sub-sections (2) and (3), the Chief Executive Officer shall obtain approval of the Board."

21. Amendment of section 31.—In section 31 of the principal Act, the following shall be inserted at the end, namely:—

"or a Member of Union territory Legislature or a Member of a State Legislature if so declared under a law made by the appropriate State Legislature"

22. Amendment of section 32.—In section 32 of the principal Act, —

(I) in sub-section (2), —

(a) for clause (j), the following clause, shall be substituted, namely:—

"(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.”;

(b) after clause (n), the following clause shall be inserted, namely:—

“(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;”;

(II) in sub-section (4), for the words “offers a feasible potential for development as a shopping centre”, the words “has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like” shall be substituted;

(III) in sub-section (5), the words “with the prior approval of the Government,” shall be omitted.

23. Amendment of section 33.—In section 33 of the principal Act, in sub-section (1),—

(a) after the words “the Chief Executive Officer”, the words “or any other person authorised by him in writing” shall be inserted;

(b) the words “either himself or any other person authorised by him in writing in this behalf” shall be omitted.

24. Amendment of section 36.—In section 36 of the principal Act, in sub-section (2), in the proviso, for the words “made by the wakf”, the words “made by the waqf” shall be substituted.

25. Amendment of section 37.—Section 37 of the principal Act shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

“(2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.

(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.”.

26. Amendment of section 44.—In section 44 of the principal Act,—

(a) in sub-section (2), for the words “ninety days”, the words “thirty days” shall be substituted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) In case the Board considers any item in the budget being contrary to the objects of the waqf and the provisions of this Act, it may give such direction for addition or deletion of such item as it may deem fit.”.

27. Amendment of section 46.—In section 46 of the principal Act, in sub-section (2), for the figure, letters and words “1st day of May”, at both

the places where they occur, the figure, letters and words "1st day of July" shall be substituted.

28. Amendment of section 47.—In section 47 of the principal Act,—

(I) in sub-section (1),—

(i) in clause (a), for the words "ten thousand rupees", the words "fifty thousand rupees" shall be substituted;

(ii) in clause (b), for the words "ten thousand rupees", the words "fifty thousand rupees" shall be substituted;

(iii) in clause (c), after the words "the State Government may," the words "under intimation to the Board," shall be inserted;

(II) in sub-section (3), in the first proviso, for the words "more than ten thousand rupees but less than fifteen thousand rupees", the words "more than fifty thousand rupees" shall be substituted.

29. Amendment of section 51.—In section 51 of the principal Act,—

(i) for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013.

(1-A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void *ab initio*:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that—

(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 (42 of 1991);

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium *in lieu* of the acquired property.”;

(ii) sub-sections (2), (3), (4) and (5) shall be omitted.

30. Amendment of section 52.—In section 52 of the principal Act, in sub-section (1), after the words and figures “provisions of section 51”, the words and figures “or section 56” shall be inserted.

31. Insertion of new section 52-A.—After section 52 of the principal Act, the following section shall be inserted, namely:—

“52-A. *Penalty for alienation of waqf property without sanction of Board.*—(1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.

(3) No Court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

(4) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.”.

32. Amendment of section 54.—In section 54 of the principal Act,—

(a) in sub-section (3), for the words “he may, by an order, require the encroacher to remove”, the words “he may, make an application to the Tribunal for grant of order of eviction for removing” shall be substituted;

(b) for sub-section (4), the following sub-sections shall be substituted, namely:—

“(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.”.

33. Amendment of section 55.—In section 55 of the principal Act,—

(a) for the word, brackets and figure “sub-section (3)”, the word, brackets and figure “sub-section (4)” shall be substituted;

(b) for the words “apply to the Sub-Divisional Magistrate”, the words “refer the order of the Tribunal to the Executive Magistrate” shall be substituted.

34. Insertion of new section 55-A.—After section 55 of the principal Act, the following section shall be inserted, namely:—

“55-A. Disposal of property left on waqf property by unauthorised occupants.—(1) Where any person has been evicted from any waqf property under sub-section (4) of section 54, the Chief Executive Officer may, after giving fourteen days’ notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality and after proclaiming the contents of the notice by placing it on conspicuous part of the waqf property, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1), the sale proceeds shall, after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to the State Government or a local authority or a corporate authority on account of arrears of rent, damages or costs, be paid to such person, as may appear to the Chief Executive Officer to be entitled to the same:

Provided that where the Chief Executive Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the appointment of the same, he may refer such dispute to the Tribunal and the decision of the Tribunal thereon shall be final.”.

35. Amendment of section 56.—In section 56 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “A lease or sub-lease for any period exceeding three years”, the words “A lease for any period exceeding thirty years” shall be substituted;

(ii) the following provisos shall be inserted at the end, namely:—

“Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government:

Provided further that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided also that before making lease of any waqf property, the Board shall publish the details of lease and invite bids in at least one leading national and regional news papers.”;

(b) in sub-section (2), for the words "A lease or sub-lease for any period exceeding one year and not exceeding three years", the words "A lease for a period of one year but not exceeding thirty years" shall be substituted;

(c) in sub-section (3),—

(i) the words "or sub-lease", at both the places where they occur, shall be omitted;

(ii) the following proviso shall be inserted at the end, namely:—

"Provided that the Board shall immediately intimate the State Government regarding a lease for any period exceeding three years of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.";

(d) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

36. Amendment of section 61.—In section 61 of the principal Act, in sub-section (1), for the words "eight thousand rupees", the words, brackets and letters "ten thousand rupees for non-compliance of clauses (a) to (d) and in case of non-compliance of clauses (e) to (h), he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to ten thousand rupees" shall be substituted.

37. Amendment of section 65.—In section 65 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act."

38. Amendment of section 68.—In section 68 of the principal Act,—

(i) in sub-section (2), for the words "Magistrate of the first class" and "Magistrate", the words "District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent" shall be substituted;

(ii) in sub-sections (3), (4), (5) and sub-section (6), for the words "the Magistrate" the words "any Magistrate" shall be substituted.

39. Amendment of section 69.—In section 69 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the *mutawalli* or others in the prescribed manner.”.

40. Amendment of section 71.—In section 71 of the principal Act, in sub-section (1), for the figures “73”, the figures “70” shall be substituted.

41. Amendment of section 72.—In section 72 of the principal Act, in sub-section (1), in *Explanation I*, in clause (iii),—

(i) after the words “following purposes”, the words “in respect of lands directly under cultivation by the *mutawalli* for the benefit of the waqf” shall be inserted;

(ii) in sub-clause (f), in the proviso, for the words “ten per cent.”, the words “twenty per cent.” shall be substituted;

(iii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that no such deduction shall be permitted in respect of waqf land given on lease, by whatever name called, whether batai or share cropping or any other name.”.

42. Amendment of section 77.—In section 77 of the principal Act, in sub-section (4), after clause (f), the following clause shall be inserted, namely:—

“(g) payment of maintenance to Muslim women as ordered by a Court of competent jurisdiction under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986).”.

43. Amendment of section 81.—In section 81 of the principal Act, after the words “as it thinks fit”, the following shall be inserted at the end, namely:—

“and a copy of the said auditor’s report, along with orders shall be forwarded by the State Government to the Council within a period of thirty days of laying of such report before each House of the State Legislature where it consists of two Houses or where such Legislatures consist of one House, before that House.”.

44. Amendment of section 83.—In section 83 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;”;

(b) for sub-section (4), the following sub-sections shall be substituted, namely:—

“(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;
and the appointment of every such person shall be made either by name or by designation.

(4-A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members shall be such as may be prescribed."

45. Amendment of section 85.—In section 85 of the principal Act, for the words "Civil Court", the words "Civil Court, revenue Court and any other authority" shall be substituted.

46. Amendment of section 86.—In section 86 of the principal Act, in clause (b), after the words "a previous *mutawalli*", the words "or by any other person" shall be inserted.

47. Omission of section 87.—Section 87 of the principal Act shall be omitted.

48. Amendment of section 90.—In section 90 of the principal Act, in sub-section (3), for the words "one month", the words "six months" shall be substituted.

49. Amendment of section 91.—In section 91 of the principal Act, in sub-section (1), for the words "it appears to the collector before an award is made that any property", the words "and before an award is made, in case the property" shall be substituted.

50. Amendment of section 97.—In section 97 of the principal Act, the following proviso shall be inserted at the end, namely:—

"Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf."

51. Amendment of section 99.—In section 99 of the principal Act,—

(a) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that the power of the State Government under this section shall not be exercised unless there is a *prima facie* evidence of financial irregularity, misconduct or violation of the provisions of this Act.";

(b) in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

"(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or"

52. Amendment of section 102.—In section 102 of the principal Act, in sub-section (2), for the words "after consulting the State Governments", the words "after consulting the Council and the State Governments" shall be substituted.

53. Insertion of new section 104-A.—After section 104 of the principal Act, the following section shall be inserted, namely:—

"104-A. *Prohibition of sale, gift, exchange, mortgage or transfer of waqf property.*—(1) Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift,

exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.

(2) Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be *void ab initio*."

54. Insertion of new section 104-B.—After section 104-A of the principal Act, the following section shall be inserted, namely:—

"104-B. *Restoration of waqf properties in occupation of Government agencies to waqf Board.*—(1) If any waqf property has been occupied by the Government agencies it shall be returned to the Board or the *mutawalli* within a period of six months from the date of the order of the Tribunal.

(2) The Government agency may, if the property is required for a public purpose, make an application for determination of the rent, or as the case may be, the compensation, by the Tribunal at the prevailing market value."

55. Amendment of section 106.—In section 106 of the principal Act, in sub-section (1), for the words "after consultation with the Government", the words "after consultation with the Council and the Government" shall be substituted.

56. Amendment of section 108.—After section 108 of the principal Act, the following section shall be inserted, namely:—

"108-A. *Act to have overriding effect.*—The provisions of this Act shall have overriding 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 law other than this Act."

57. Amendment of section 109.—In section 109 of the principal Act, in sub-section (2),—

(a) for clause (i), the following clauses shall be substituted, namely:—

"(i) the qualifications required to be fulfilled by a person to be appointed as a *mutawalli* under clause (i) of section 3;

(ia) other particulars which the report of the Survey Commissioner may contain under clause (f) of sub-section (3) of section 4;"

(b) in clause (vi), for the word "under", the words, brackets and figure "under sub-section (1) of " shall be substituted;

(c) after clause (vi), the following clauses shall be inserted, namely:—

"(via) the period within which the *mutawalli* or any other person may produce documents related to waqf properties under sub-section (2) of section 31;

(vib) the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 31;"

(d) clause (xi) shall be omitted;

(e) after clause (xxii), the following clause shall be inserted, namely:—

"(xxiia) the terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members under sub-section (4-A) of section 8.3;"

THE ¹[WAQF] ACT, 1995

(43 OF 1995)

[22nd November, 1995]

An Act to provide for the better administration of ²[Auqaf] and for matters connected therewith or incidental thereto.

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

Statement of Objects and Reasons.—The actual working of the Wakf Act, 1954 had brought out many deficiencies in it as also in the set up of the Wakf Boards, especially, their powers of superintendence and control over the management of individual Wakfs. To clarify some of these matters—the Act had to be amended three times—in 1959, in 1964 and in 1969—within a period of 15 years.

2. Comprehensive amendments to the Wakf Act were made by the Wakf (Amendment) Act, 1984 which were based largely on the recommendations of the Wakf Inquiry Committee set up in December, 1970 to enquire into administration of wakfs at all levels and in response to a demand made in Parliament by the Members during a discussion on the Wakf (Amendment) Bill, 1969.

3. Only two provisions of 1984 Act could, however, be enforced because of strong opposition to its various provisions from the Muslim Community. The two provisions related to:—

(i) increasing the period of limitation for filing suits in respect of Wakf properties in adverse possession from 12 years to 30 years; and

(ii) application of the provisions of Wakf Act, 1954, to the evacuee properties.

4. The main criticism related to provisions concerning the powers of the Wakf Commissioner. It was stated that the Wakf Commissioner has been given overriding powers and the Wakf Board had been made subordinate to him. The other criticisms were that the Amendment Act, 1984 is a gross interference by the State and the Central Government in the day to day management and administration of the Wakfs by the Trustees and Mutawallis of Wakfs.

5. After a careful consideration of the objections to the various provisions of the 1984 Act, and after holding wide ranging discussions with the leaders of the Muslim community, it has been decided to bring in a new comprehensive Bill on wakf matters incorporating the features of 1954 Act and such provisions of the 1984 Act in respect of which there was a near consensus.

6. Now, the new Wakf Law will have, *inter alia*, the following features:—

(a) Wakf Boards for the States and for the Union Territory of Delhi shall have not less than 7 and not more than 13 members of which the majority will comprise such persons as are elected from amongst Muslim Members of Parliament, Muslim Members of State Legislatures, Muslim Members of the Bar Council in a State and Mutawallis of Wakfs having an annual income of Rs. 1 lakh or more. The nominated members will be from Muslim organisations of State eminence, recognised scholars in Muslim theology and a representative of the State Government not below the rank of Deputy Secretary. In a State where there are Shia Wakfs but no separate Shia Wakf Board, at least one of the Members shall be a Shia Muslim. A smaller Wakf Board is envisaged for Union Territories other than Delhi.

(b) The other important feature is about distribution of powers between the Wakf Board and the Wakf Commissioner which would now be re-designated as the Chief Executive Officer and would be subordinate to the Wakf Board.

(c) Provisions are also being made for appointment of the Executive Officer in respect of wakfs whose performance is not satisfactory and whose annual income is Rs. 5 lakhs or more.

1. Substituted by Act 27 of 2013, S. 3, for "Wakf".

2. Substituted by Act 27 of 2013, S. 2, for "Wakfs".

(d) To strengthen the finances of the Wakf Board, one of the measures being contemplated is to raise the rate of the contribution by a Wakf to the Wakf Board from 6 per cent. of its annual income to 7 per cent.

(e) It is also intended to put certain restrictions on the powers of Mutawallis in the interest of better management of wakf properties.

(f) An important provision in the proposed Bill relates to setting up of Wakf Tribunals to consider questions and disputes pertaining to wakfs.

(g) There are instances of misuse of wakf properties either with or without the connivance of the Mutawallis. It is now proposed to incorporate in the Bill a provision so that the alienation of wakf properties will not be easy.

(h) At present, the Wakf Act, 1954 is not applicable to Uttar Pradesh, West Bengal, parts of Gujarat, parts of Maharashtra and some of the North-Eastern States. With the enforcement of this legislation, there will be uniformity in respect of wakf administration throughout the country except in Jammu and Kashmir State.

7. The present Bill seeks to achieve the above objectives.

Amendment Act 27 of 2013 – Statement of Objects and Reasons.—The Wakf Act, 1995, [which repealed and replaced the Wakf Act, 1954 and the Wakf (Amendment) Act, 1984] came into force on the 1st day of January, 1996. The Act provides for the better administration of auqaf and for matters connected therewith or incidental thereto. However, over the years of the working of the Act, there has been a widespread feeling that the Act has not proved effective enough in improving the administration of auqaf.

2. The Prime Minister's High Level Committee for Preparation of Report on Social, Economic and Educational Status of the Muslim Community of India (also known as Sachar Committee) in its Report submitted to the Prime Minister on the 17th November, 2006 considered the aforementioned issue and suggested certain amendments to the Act relating to women's representation, review of the composition of the Central Waqf Council and the State Waqf Boards, a stringent and more effective approach to countering encroachments of Waqf properties and other matters. The Committee stressed the need for setting up of a National Waqf Development Corporation and State Waqf Development Corporations so as to facilitate proper utilisation of valuable waqf properties for the objectives intended. The Committee recommended that the Act should be amended so that the State Waqf Boards become effective and are empowered to properly deal with the removal of encroachments of waqf properties. It also recommended to amend the Act so that the Waqf Tribunal will be manned by a full time Presiding Officer appointed exclusively for waqf properties. The Joint Parliamentary Committee on Waqf in its Third Report presented to the Rajya Sabha on the 4th March, 2008 made recommendations for a wide range of amendments relating to time bound survey of waqf properties, prevention and removal of encroachments, making the Central Waqf Council a more effective and meaningful body, provisions for development of waqf properties, etc. In its Ninth Report presented to the Rajya Sabha on the 23rd October, 2008, the Joint Parliamentary Committee reconsidered certain issues. The recommendations of the Joint Parliamentary Committee on Waqf were considered by the Central Waqf Council. The various issues and the need for amendments to the Act have also been considered in consultation with other stakeholders such as the All India Muslim Personal Law Board, representatives of the State Governments and the Chairmen and the Chief Executive Officers of State Waqf Boards.

3. The major issues which required to be addressed urgently are as mentioned below:—

(i) *Inadequacy of data on waqf properties:* The Wakf Act, 1995 provides for survey of waqf properties for which the State Governments are required to appoint Survey Commissioners. There is no time limit fixed in the Act for completion of such surveys. So far only one State has completed the survey. Thus, even after a decade, the data about the number of waqf properties in the country is not complete.

(ii) *Encroachments on waqf properties:* Many waqf properties are on prime urban lands. With the fast pace of urban growth, such waqf properties are consistently getting

encroached, depriving the benefits to the community and thus contrary to the object of such auqaf. In some cases, such alienation takes place owing to acts of commission or omission by *mutuwallis* and concerned State Waqf Boards. The procedure prescribed for the removal of encroachments is long drawn and generally ineffective. Therefore, the provisions of the Act are required to be strengthened to deal effectively with the issues of encroachment and alienation of waqf properties.

(iii) *Development of waqf properties*: Since many waqf properties are on prime urban land, there is potential for generating considerable returns for fulfilling the objective of the auqaf. The Act restricts the period of lease of waqf properties to three years. While it has been decided in principle to set up National Waqf Development Corporation and State Waqf Development Corporations for developing such auqaf, it is essential that the law should permit such properties to be leased for sufficiently long periods to make such development feasible and viable.

(iv) *Absence of statutory obligation to ensure flow of information from the State Waqf Boards and State Governments to the Central Waqf Council*: The role of the Central Waqf Council as provided in the Act does not, in the absence of a statutory obligation, ensure proper and adequate flow of information from the State Waqf Boards and State Governments to the Central Waqf Council. Lack of adequate communication and lack of timely access to required data are serious impediments in the Council's ability to render effective and useful advice. The Joint Parliamentary Committee recommended for conferring statutory powers upon the Central Waqf Council for monitoring. There is also a generally accepted view that the Council, in order to be effective, should have some powers to intervene, if a *prima facie* case of irregularity is established or if there is gross violation of the provisions of the Act. After a wide range of consultations with all the stakeholders, it has been possible to work out a consensus that the Central Waqf Council ought to have some powers of intervention, but in the event of a difference of opinion between the State Government and the Waqf Board or the Board and the Central Waqf Council arising out of such advice or directive, as the case may be, there should be an appropriate and independent adjudicatory machinery for resolution of such disputes.

4. In view of above, it is proposed to amend the Wakf Act, 1995, *inter alia*, to provide, —

(i) a specific time period for completion of survey of auqaf and to ensure that the list of auqaf based on the survey data is appropriately reflected while updating the land records by the revenue authorities;

(ii) for change in composition of the Central Waqf Council and State Waqf Boards so as to provide for representation of women, professionals and experts in the Council or Boards, as the case may be;

(iii) for reducing the scope of alienation of waqf properties by prohibiting the sale and gift of waqf properties;

(iv) stringent penal provisions to prevent encroachments and to streamline the process of removal of encroachments;

(v) for increasing the maximum permissible period of lease or sub-lease of waqf properties from three years, as at present, to thirty years;

(vi) statutory power of monitoring to the Central Waqf Council and to authorise it to issue directives and advice in specific cases, along with the provision for independent dispute resolution machinery in the shape of a Board of adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court;

(vii) for constituting the Tribunals, for the determination of all disputes, questions and other matters relating to waqf or waqf properties, as a three member body consisting of a person not below the rank of District, Session or Civil Judge Class I as the Chairman and two other members, namely, an officer from the State Civil Service equivalent in rank to that of Additional District Magistrate and another person having knowledge of Muslim law and jurisprudence; and

(viii) to change the short title of the Act from "the Wakf Act, 1995" to "the Waqf Act, 1995" and to make certain other verbal changes.

5. The notes on clauses explain the various provisions of the Bill.

6. This Bill seeks to achieve the above objectives.

COMMENTS

The very purpose of the Act is to provide for better administration and supervision of wakfs as stated in the preamble to the Act: *Karnataka Board of Wakfs v. B.C. Nagaraja Rao* A.I.R. 1991 Karn. 400 (D.B.).

It is not right to say that in absence of any statutory provision in the Wakf Act, the Imams who look after the religious activities of mosques, are not entitled to any remuneration: *All India Imam Organization v. Union of India* A.I.R. 1993 S.C. 2086.

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement—(1) This Act may be called THE ¹[WAQF] ACT, 1995.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in a State on such date* as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area.

COMMENTS

The provisions of the 1954 Act have been made applicable to the State of Bihar since 12-4-1973 and not before that date. Thus, where the appeal and second appeal were dismissed after coming into effect of the 1954 Act in the State of Bihar, an application under S. 57(3) challenging the decree would lie before the High Court: *Secretary, Bihar State Sunni Waqf Board v. Leela Devi* A.I.R. 1980 Pat. 141.

Since the 1995 Act as a whole has been brought into operation in all States by the Notification No. S. O. 1007(E), dated 27-12-1995, w.e.f. 1-1-1996, no separate notification for each State is necessary: *Ghulam Mohsin Jafri v. State of Bihar* A.I.R. 1999 Pat. 115.

2. Application of the Act.—Save as otherwise expressly provided under this Act, this Act shall apply to all ²[Auqafs] whether created before, or after the commencement of this Act:

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 (36 of 1955) applies.

COMMENTS

A Masjid or Mosque is a place of worship or God and it is not capable of human ownership or possession. It belongs to God and is dedicated to this worship. Thus, a Masjid or Mosque is wakf as defined in the Act whether it is registered or not: *Mohammed Ghouse v. Secretary, Karnataka Board of Wakfs* A.I.R. 1986 Karn. 12.

*Brought into force on 1-1-1996.

1. Substituted by Act 27 of 2013, S. 3, for "Wakf".

2. Substituted by Act 27 of 2013, S. 4, for "Wakfs".

3. Definitions.—In this Act, unless the context otherwise requires,—

(a) “beneficiary” means a person or object for whose benefit a ¹[waqf] is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law;

(b) “benefit” does not include any benefit which a *mutawalli* is entitled to claim solely by reason of his being such *mutawalli*;

(c) “Board” means a Board of ¹[Waqf] established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common ¹[Waqf] Board established under section 106;

(d) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 23;

(e) “Council” means the Central ¹[Waqf] Council established under section 9;

²[(e) “encroacher” means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by *mutawalli* or the Board;]

(f) “Executive Officer” means the Executive Officer appointed by the Board under sub-section (1) of section 38;

³[(g) “list of auqaf” means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37;]

(h) “member” means a member of the Board and includes the Chairperson;

(i) “*mutawalli*” means any person appointed, either verbally or under any deed or instrument by which a ¹[waqf] has been created, or by a competent authority, to be the *mutawalli* of a ¹[waqf] and includes any person who is a *mutawalli* of a ¹[waqf] by virtue of any custom or who is a *naib-mutawalli*, *khadim*, *mujawar*, *sajjadanashin*, *amin* or other person appointed by a *mutawalli* to perform the duties of a *mutawalli* and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any ¹[waqf] or ¹[waqf] property:

Provided that no member of a committee or corporation shall be deemed to be a *mutawalli* unless such member is an Office bearer of such committee or corporation;

⁴[Provided further that the *mutawalli* shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:

Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government;]

1. Substituted by Act 27 of 2013, S. 4, for “wakf”.

2. Inserted by Act 27 of 2013, S. 5(i).

3. Substituted by Act 27 of 2013, S. 5(ii), for Cl. (g). Prior to its substitution, Cl. (g) read as under:—“(g) “list of wakfs” means the list of wakfs, published under sub-section (2) of section 5;”

4. Inserted by Act 27 of 2013, S. 5(iii).

(j) "net annual income" in relation to a ¹[waqf], means net annual income determined in accordance with the provisions of the *Explanations* to sub-section (1) of section 72;

(k) "person interested in a ¹[waqf]" means any person who is entitled to receive any pecuniary or other benefits from the ¹[waqf] and includes—

(i) any person who has a right to ²[offer prayer] or to perform any religious rite in a mosque, idgah, imambarah, dargah, ²[khanqah, peerkhana and karbala], maqbara, graveyard or any other religious institution connected with the ¹[waqf] or to participate in any religious or charitable institution under the ¹[waqf];

(ii) the ¹[waqif] and any descendant of the ¹[waqif] and the *mutawalli*;

(l) "prescribed", except in Chapter III, means, prescribed by rules made by the State Government;

(m) "regulations" means the regulations made by the Board under this Act;

(n) "*Shia* ¹[waqf]" means a ¹[waqf] governed by *Shia* law;

(o) "*Sunni* ¹[waqf]" means a ¹[waqf] governed by *Sunni* law;

(p) "Survey Commissioner" means the Survey Commissioner of ¹[Waqf] appointed under sub-section (1) of section 4 and includes any Additional or Assistant Survey Commissioners of ¹[Auqafs] under sub-section (2) of section 4;

(q) "Tribunal", in relation to any area, means the Tribunal constituted under sub-section (1) of section 83 having jurisdiction in relation to that area;

³[(r) "waqf" means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

(iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable,

1. Substituted by Act 27 of 2013, S. 4, for "wakf", "wakfs" and "wakif" respectively.

2. Substituted by Act 27 of 2013, S. 5(iv), for "worship" and "khangah", respectively.

3. Substituted by Act 27 of 2013, S. 5(v), for Cl. (r). Prior to its substitution, Cl. (r) read as under:— "(r) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) "grants", including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, and "wakf" means any person making such dedication;"

provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law,

and "waqif" means any person making such dedication;]

6) "[waqf] deed" means any deed or instrument by which a ¹[waqf] has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied:

(t) "¹[Waqf] Fund" means a ¹[Waqf] Fund formed under sub-section (1) of section 77.

COMMENTS

The definition of a "member" is exhaustive and not restrictive and the member of the Board includes the chairperson. Thus, the term of the chairperson also will be 5 years: *Amir Alam Khan v. State of U.P.* A.I.R. 2002 All. 215 (D.B.).

A person acting as "mutawalli" is entitled to sue for recovery of possession of wakf property: *Bodagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummerkutty Haji* A.I.R. 2002 Ker. 56 (D.B.).

A mujawar is also a *mutawalli* and can co-exist with the trustees appointed by Wakf Board: *Syed Moinuddin v. Tamil Nadu Wakf Board* A.I.R. 1998 Mad. 129 (D.B.).

As per the law, there cannot be any transfer of *mutawalliship*: *Bodagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummerkutty Haji* A.I.R. 2002 Ker. 56 (D.B.).

The necessary ingredients of the purpose of deciding an issue, whether a property is a wakf property or not, is to examine with reference to any particular property whether there is a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable or not: *Karnataka Board of Wakf v. Anjuman E. Ismail* (1999) 6 S.C.C. 343.

CHAPTER II

SURVEY OF ¹[AUQAFS]

4. Preliminary survey of ¹[auqafs].—(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of ¹[Auqafs] and as many Additional or Assistant Survey Commissioners of ¹[Auqafs] as may be necessary for the purpose of making a survey of ²[auqaf in the State].

³[(1-A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:

Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.]

(2) All Additional and Assistant Survey Commissioners of ¹[Auqafs] shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of ¹[Auqafs].

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

2. Substituted by Act 27 of 2013, S. 6(a), for "wakfs existing in the State at the date of the commencement of this Act.".

3. Inserted by Act 27 of 2013, S. 6(b).

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of ¹[auqafs] existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

(a) the number of ¹[auqafs] in the State showing the Shia ¹[auqafs] and *Sunni* ¹[auqafs] separately;

(b) the nature and objects of each ¹[waqf];

(c) the gross income of the property comprised in each ¹[waqf];

(d) the amount of land revenue, cesses, rates and taxes payable in respect of each ¹[waqf];

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the *mutawalli* of each ¹[waqf]; and

(f) such other particulars relating to each ¹[waqf] as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

(a) summoning and examining any witness;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any Court or office;

(d) issuing commissions for the examination of any witness or accounts;

(e) making any local inspection or local investigation;

(f) such other matters as may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular ¹[waqf] is a *Shia* ¹[waqf] or *Sunni* ¹[waqf] and there are clear indications in the deed of ¹[waqf] as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of ¹[waqf] properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of ²[ten years] from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3):

³[Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.]

5. Publication of list of ¹[auqafs].—(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

2. Substituted by Act 27 of 2013, S. 6(c)(i), for "twenty years".

3. Inserted by Act 27 of 2013, S. 6(c)(ii).

(2) The Board shall examine the report forwarded to it under sub-section (1) and ¹[forward it back to the Government within a period of six months for publication in the Official Gazette] a list of *Sunni* ²[auqafs] or *Shia* ²[auqafs] in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates and containing such other particulars as may be prescribed.

³[(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.]

COMMENTS

If any property is not published as wakf property as required under S. 5(2) of the 1954 Act or the Board has not invoked the special power under S. 27 of the 1954 Act, the wakf Board cannot file a suit for declaration and possession: *Tamil Nadu Wakf Board v. Hathija Ammal* A.I.R. 2002 S.C. 402.

6. Disputes regarding ²[auqafs].—(1) If any question arises whether a particular property specified as ²[waqf] property in the list of ²[auqafs] is ²[waqf] property or not or whether a ²[waqf] specified in such list is a *Shia* ²[waqf] or *Sunni* ²[waqf], the Board or the *mutawalli* of the ²[waqf] or ⁴[any person aggrieved] may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of ²[auqafs]:

⁵[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.]

⁶[* * *]

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any ²[waqf] shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

1. Substituted by Act 27 of 2013, S. 7(a), for "publish in the Official Gazette".

2. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

3. Inserted by Act 27 of 2013, S. 7(b).

4. Substituted by Act 27 of 2013, S. 8(a), for "any person interested therein".

5. Inserted by Act 27 of 2013, S. 8(b).

6. Explanation omitted by Act 27 of 2013, S. 8(c). Prior to its omission, the Explanation read as under:—"Explanation.—For the purposes of this section and section 7, the expression "any person interested therein," shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4."

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of ¹[auqafs] shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that State in relation to any question referred to in sub-section (1).

7. Power of Tribunal to determine disputes regarding ¹[auqafs].—(1) If, after the commencement of this Act, ²[any question or dispute] arises, whether a particular property specified as ¹[waqf] property in a list of ¹[auqafs] is ¹[waqf] property or not, or whether a ¹[waqf] specified in such list is a *Shia* ¹[waqf] or a *Sunni* ¹[waqf], the Board or the *mutawalli* of the ¹[waqf], ³[or any person aggrieved by the publication of the list of auqaf under section 5] therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that—

(a) in the case of the list of ¹[auqafs] relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of ¹[auqafs]; and

(b) in the case of the list of ¹[auqafs] relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any ¹[waqf] shall be stayed by any Court, Tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of ¹[auqafs] and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under sub-section (1) of section 6, before the

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

2. Substituted by Act 27 of 2013, S. 9(a)(i), for "any question".

3. Substituted by Act 27 of 2013, S. 9(a)(ii), for "or any person interested".

commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

¹[(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.]

COMMENTS

The coming into force of the Wakf Act, 1995 does not in any way prevent the High Court from considering the question whether the judgment in appeal was correct or not in spite of the fact that the question to be decided was whether the plaint schedule property was Wakf property or not. S. 7(5) merely says that the Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil Court under sub-S. (1) of S. 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement. S. 7(5) of the Act clearly exempts appeal from the bar of jurisdiction. Hence, the High Court is perfectly competent to decide the question regarding Wakf in appeal: *Bodagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummerkutty Haji* A.I.R. 2002 Ker. 56 (D.B.).

²[8. **State Government to bear cost of survey.**—The total cost of making a survey including the cost of publication of the list or lists of auqaf under this Chapter shall be borne by the State Government.]

CHAPTER III

CENTRAL ³[WAQF] COUNCIL

9. Establishment and constitution of Central ³[Waqf] Council.—⁴[(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising

1. Inserted by Act 27 of 2013, S. 9(b).

2. Substituted by Act 27 of 2013, S. 10, for S. 8. Prior to its substitution, S. 8 read as under:—“8. *Recovery of costs of survey.*—(1) The total cost of making a survey including the cost of publication of the list or lists of wakfs under this Chapter shall be borne by all the *mutawalli* of the wakfs the net annual income whereof exceeds five hundred rupees, in proportion to the net annual income accruing in the State to such wakfs, such proportion being assessed by the Survey Commissioner.

(2) Notwithstanding anything contained in the deed or instrument by which the wakfs was created, any *mutawalli* may pay from the income of the wakf any sum due from him under sub-section (1).

(3) Any sum due from a *mutawalli* under sub-section (1) may, on a certificate issued by the State Government, be recovered from the property comprised in the wakf in the same manner as an arrear of land revenue.”

3. Substituted by Act 27 of 2013, S. 4, for “wakf”.

4. Substituted by Act 27 of 2013, S. 11(a), for sub-S. (1). Prior to its substitution, sub-S. (1) read as under:—“(1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of Wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.”

the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.

(1-A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).]

(2) The Council shall consist of—

(a) the Union Minister in charge of ¹[auqafs]—*ex officio* Chairperson;

(b) the following members to be appointed by the Central Government from amongst Muslims, namely:—

(i) three persons to represent Muslim organisations having all India character and national importance;

²[(ii) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;]

(iii) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;

(iv) Chairpersons of three Boards by rotation;

(v) two persons who have been Judges of the Supreme Court or a High Court;

(vi) one advocate of national eminence;

(vii) one person to represent the *mutawallis* of the ¹[waqf] having a gross annual income of rupees five lakhs and above;

(viii) three persons who are eminent scholars in Muslim Law:

• ³[Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.]

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

⁴[(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may suo motu call for information on specific issues from the Board, if it is satisfied that there was *prima facie* evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

2. Substituted by Act 27 of 2013, S. 11(b)(i), for sub-Cl. (ii). Prior to its substitution, sub-Cl. (ii) read as under:— "(ii) four persons of national eminence of whom two shall be from amongst persons having administrative and financial expertise;".

3. Inserted by Act 27 of 2013, S. 11(b)(ii).

4. Inserted by Act 27 of 2013, S. 11(c).

(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.]

10. Finance of Council.—(1) Every Board shall pay from its ¹[waqf] Fund annually to the Council such contribution as is equivalent to one per cent. of the aggregate of the net annual income of the ¹[auqafs] in respect of which contribution is payable under sub-section (1) of section 72:

Provided that where the Board, in the case of any particular ¹[waqf] has remitted under sub-section (2) of section 72 the whole of the contribution payable to it under sub-section (1) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the ¹[waqf] in respect of which such remission has been granted shall not be taken into account.

(2) All monies received by the Council under sub-section (1) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central ¹[Waqf] Fund.

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central ¹[Waqf] Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit.

11. Accounts and audit.—(1) The Council shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be prescribed by rules made by the Central Government.

(2) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Central Government.

(3) The costs of the audit shall be paid from the Central ¹[Waqf] Fund.

12. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council;

(b) control over and application of the Central ¹[Waqf] Fund;

(c) the form and manner in which accounts of the Council may be maintained.

(3) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if,

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule shall not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

CHAPTER IV

ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

13. Incorporation.—(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of ¹[Auqafs] under such name as may be specified in the notification:

²[Provided that in case where a Board of Waqf has not been established, as required under this sub-section, a Board of Waqf shall, without prejudice to the provisions of this Act or any other law for the time being in force, be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013.]

(2) Notwithstanding anything contained in sub-section (1), if the *Shia* ¹[auqafs] in any State constitute in number more than fifteen per cent. of all the ¹[auqafs] in the State or if the income of the properties of the *Shia* ¹[auqafs] in the State constitutes more than fifteen per cent., of the total income of properties of all the ¹[auqafs] in the State, the State Government may, by notification in the Official Gazette, establish a Board of ¹[auqafs] each for *Sunni* ¹[auqafs] and for *Shia* ¹[auqafs] under such names as may be specified in the notification.

³[(2-A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of *Shia* waqf, the Members shall belong to the *Shia* Muslim and in the case of *Sunni* waqf, the Members shall belong to the *Sunni* Muslim.]

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

14. Composition of Board.—(1) The Board for a State and the ⁴[the National Capital Territory of Delhi] shall consist of—

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—

(i) Muslim Members of Parliament from the State or, as the case may be, ⁴[the National Capital Territory of Delhi],

(ii) Muslim Members of the State Legislature,

1. Substituted by Act 27 of 2013, S. 4, for "wakfs".

2. Inserted by Act 27 of 2013, S. 12(a).

3. Inserted by Act 27 of 2013, S. 12(b).

4. Substituted by Act 27 of 2013, S. 13(I)(i), for "the Union territory of Delhi".

¹[(iii) Muslim members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and;]

(iv) *mutawallis* of the ²[auqafs] having an annual income of rupees one lakh and above.

³[*Explanation I.*—For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

Explanation II.—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;]

⁴[(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;

(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in *Shia* and *Sunni* Islamic Theology;

(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;]

⁵[(1-A) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the

1. Substituted by Act 27 of 2013, S. 13(I)(ii)(a), for sub-Cl. (iii). Prior to its substitution, sub-Cl. (iii) read as under:—“(iii) Muslim Members of the Bar Council of the State, and”.

2. Substituted by Act 27 of 2013, S. 4, for “wakfs”.

3. Inserted by Act 27 of 2013, S. 13(I)(ii)(b).

4. Substituted by Act 27 of 2013, S. 13(I)(iii), for Cls. (c) to (e). Prior to their substitution, Cls. (c) to (e) read as under:—“(c) one and not more than two members to be nominated by the State Government representing eminent Muslim organisations;

(d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;

(e) an officer of the State Government not below the rank of Deputy Secretary.”.

5. Inserted by Act 27 of 2013, S. 13(II).

Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of *mutawalli* exists, there shall be one *mutawalli* as the member of the Board.]

(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under sub-section (3).

¹[* * *]

(6) In determining the number of *Shia* members or *Sunni* members of the Board, the State Government shall have regard to the number and value of *Shia* ²[auqafs] and *Sunni* ²[auqafs] to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

³[* * *]

(8) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.

1. Sub-S. (5) omitted by Act 27 of 2013, S. 13(III). Prior to its omission, sub-S. (5) read as under:—“(5) Where there are *Shia* wakfs but no separate *Shia* wakfs Board exists, at least one of the members from the categories listed in sub-section (1), shall be a *Shia* Muslim.”.

2. Substituted by Act 27 of 2013, S. 4, for “wakfs”.

3. Sub-S. (7) omitted by Act 27 of 2013, S. 13(IV). Prior to its omission, sub-S. (7) read as under:—“(7) In the case of the Union territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (1):

Provided that there shall be one *mutawalli* as the member of the Board.”.

15. Term of office.—The members of the Board shall hold office for a term of five years ¹[from the date of notification referred to in sub-section (9) of section 14].

16. Disqualification for being appointed, or for continuing as, a member of the Board.—A person shall be disqualified for being appointed, or for continuing as, a member of the Board if—

(a) he is not a Muslim and is less than twenty-one years of age;

(b) he is found to be a person of unsound mind;

(c) he is an undischarged insolvent;

(d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

²[(da) he has been held guilty of encroachment on any waqf property;]

(e) he has been on a previous occasion—

(i) removed from his office as a member or as a *mutawalli*, or

(ii) removed by an order of a competent Court or tribunal from any position of trust either for mismanagement or for corruption.

17. Meetings of the Board.—(1) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.

(2) The Chairperson, or in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.

(3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote.

18. Committees of the Board.—(1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of ³[auqafs].

(2) The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

19. Resignation of Chairperson and members.—The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairperson or the member shall continue in office until the appointment of his successor is notified in the Official Gazette.

20. Removal of Chairperson and member.—(1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he—

(a) is or becomes subject to any disqualifications specified in section 16; or

1. Inserted by Act 27 of 2013, S. 14.

2. Inserted by Act 27 of 2013, S. 15.

3. Substituted by Act 27 of 2013, S. 4, for "wakfs".

(b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the ¹[auqafs]; or

(c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

(2) Where the Chairperson of the Board is removed under sub-section (1), he shall also cease to be a member of the Board.

²[20-A. Removal of Chairperson by vote of no confidence.—Without prejudice to the provisions of section 20, the Chairperson of a Board may be removed by vote of no confidence in the following manner, namely:—

(a) no resolution expressing a vote of confidence or no confidence in any person elected as Chairperson of a Board shall be moved except in the manner prescribed and twelve months have not elapsed after the date of his election as a Chairperson and be removed except with the prior permission of the State Government;

(b) notice for no confidence shall be addressed to the State Government stating clearly the grounds on which such motion is proposed to be moved and shall be signed by at least half the total members of the Board;

(c) at least three members of the Board signing the notice of no confidence shall personally present to the State Government, the notice together with an affidavit signed by them to the effect that the signatures on no confidence motion are genuine and have been made by the signatories after hearing or reading the contents of the notice;

(d) on receipt of the notice of no confidence, as provided hereinabove, the State Government shall fix such time, date and place as may be considered suitable for holding a meeting for the purpose of the proposed no confidence motion:

Provided that at least fifteen days notice shall be given for such a meeting;

(e) notice for meeting under clause (d) shall also provide that in the event of no confidence motion being duly carried on or, election of the new Chairperson, as the case may be, shall also be held in the same meeting;

(f) the State Government shall also nominate a Gazetted Officer (other than an officer of the department which is concerned with the supervision and administration of the Board) to act as presiding officer of the meeting in which the resolution for no confidence shall be considered;

(g) the quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;

(h) the resolution for no confidence shall be deemed to be carried out, if passed by a simple majority of the members present;

(i) if a resolution for no confidence is carried out, the Chairperson shall cease to hold office forthwith and shall be succeeded by his successor who shall be elected by another resolution in the same meeting;

1. Substituted by Act 27 of 2013, S. 4, for "wakfs".

2. Inserted by Act 27 of 2013, S. 16.

(j) election of the new Chairperson shall be conducted under clause (i), in the meeting under the chairmanship of the said presiding officer referred to in clause (f), in the following manner, namely:—

(A) Chairperson shall be elected from amongst the elected members of the Board;

(B) nomination of candidates shall be proposed and seconded in the meeting itself and election after withdrawal, if any, shall be held by method of secret ballot;

(C) election shall be held by simple majority of the members present in the meeting and in case of equality of votes, the matter shall be decided by drawing of lots; and

(D) proceedings of the meeting shall be signed by the presiding officer;

(k) new Chairperson elected under clause (h) shall hold the office only up to the remainder of the term of the Chairperson removed by the resolution of no confidence; and

(l) if the motion for passing the resolution of no confidence fails for want of quorum or lack of requisite majority at the meeting, no subsequent meeting for considering the motion of no confidence shall be held within six months of the date of the previous meeting.]

21. Filling of a vacancy.—When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred.

22. Vacancies, etc., not to invalidate proceedings of the Board.—No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

23. Appointment of Chief Executive Officer and his term of office and other conditions of service.—¹[(1) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government, and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.]

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.

24. Officers and other employees of the Board.—(1) The Board shall have the assistance of such number of officers and other employees as may be

1. Substituted by Act 27 of 2013, S. 17, for sub-S. (1). Prior to its substitution, sub-S. (1) read as under:—“(1) There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the board, by notification in the Official Gazette.”

necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.

(2) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations.

25. Duties and powers of Chief Executive Officer.—(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include—

(a) investigating the nature and extent of '[auqafs]' and '[waqf]' properties and calling whenever necessary, an inventory of '[waqf]' properties and calling, from time to time, for accounts, returns and information from *mutawallis*;

(b) inspecting or causing inspection of '[waqf]' properties and account, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of '[auqafs]'.

(2) In exercising the powers of giving directions under sub-section (1) in respect of any '[waqf]', the Board shall act in conformity with the directions by the '[waqf]' in the deed of the '[waqf]', the purpose of '[waqf]' and such usage and customs of the '[waqf]' as are sanctioned by the school of Muslim law to which the '[waqf]' belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

COMMENTS

Where a Dargah Committee known as Majlis-a-Milla was in full control of the affairs of the Dargah and its properties and always maintained a private and distinct identity and at no point of time the ownership and possession of the Dargah Committee over the Dargah area had been disputed by anybody including the State Government. In order to improve the property the Committee formed a trust and registered it under the provisions of the Indian Trust Act. Thereafter the appellant trust was in full control of the affairs of the Dargah. At no point of time the Dargah and its properties were dedicated to the wakf or treated as wakf by the Wakf Board. The ex-secretary of the Wakf Board submitted an application to the Wakf Board for registering the properties as wakf properties. Public notice was also issued by the Wakf Board. In response to the same the appellant had filed objections. No representation could be made before the Wakf Board as its representative could not come over to Bangalore on the same day of the receipt of the notice. Consequentially, the Wakf Board proceeded to pass an *ex parte* order recording that the objector appellant did not appear. Further, the Wakf Board rejected the objections of the appellant without assigning any reasons whatsoever and passed an order registering appellant's property as wakf property. *Held*, the operative portion of the impugned order without assigning any reason stated that the case of the appellant stood rejected and disputed property was ordered to be registered as wakf property under Ss. 25 and 26 of the Act. A Statutory Authority must give valid reasons and pass a speaking order once objections are called for from the public. It was not open for the Court to go behind the order particularly in a case where there were disputed questions of fact and more particularly when the appellant was not heard. Thus, impugned order was set aside and matter was remanded back for fresh disposal: *Majlis-e-Millia v. State of Karnataka* A.I.R. 2003 Karn. 81 (D.B.).

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

26. Powers of Chief Executive Officer in respect of orders or resolutions of Board.—Where the Chief Executive Officer considers that an order or resolution passed by the Board—

- (a) has not been passed in accordance with the law; or
 - (b) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or
 - (c) if implemented, is likely to—
 - (i) cause financial loss to the Board or to the concerned ¹[waqf] or to the ¹[auqafs] generally; or
 - (ii) lead to a riot or breach of peace; or
 - (iii) cause danger to human life, health or safety; or
 - (d) is not beneficial to the Board or to any ¹[waqf] or to ¹[auqafs] generally,
- he may, before implementing such order or resolution place the matter before the Board for its reconsideration and, if such order or resolution is not confirmed by a majority of vote of the members present and voting after such reconsideration, refer the matter to the State Government alongwith his objections to the order or resolution, and the decision of the State Government thereon shall be final.

²[**27. Delegation of powers by Board.**—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110.]

³[**28. Power of District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate to implement the directions of the Board.**—Subject to the provisions of this Act and the rules made thereunder, the

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

2. Substituted by Act 27 of 2013, S. 18, for S. 27. Prior to its substitution, S. 27 read as under:—"27. *Delegation of powers by the Board.*—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary."

3. Substituted by Act 27 of 2013, S. 19, for S. 28. Prior to its substitution, S. 28 read as under:—"28. *Chief Executive Officer to exercise powers through Collectors, etc.*—(1) Subject to the provisions of this Act and of the rules made thereunder, the Chief Executive Officer may exercise all or any of the powers conferred on him by or under this Act with the previous approval of the Board through the Commissioner of the division or the Collector of the district in which the concerned wakf property is situated or through any other Gazetted Officer whom he may appoint for such purpose and may, from time to time, delegate any of his powers to any such Commissioner of the division or Collector or any other Gazetted Officer and may, at any time revoke the delegations so made by him.

(2) Where any delegation of powers is made by the Chief Executive Officer under sub-section (1), the person to whom such delegation is made may exercise those powers in the same manner and to the same extent as if they have been conferred on him directly by this Act and not by way of delegation."

District Magistrate or in his absence an Additional District Magistrate or Sub-Divisional Magistrate of a District in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considers necessary, seek directions from the Tribunal for the implementation of its decisions.]

29. Powers of Chief Executive Officer to inspect records, registers, etc. —

¹[(1)] The Chief Executive Officer or any officer of the Board duly authorised by him in this behalf shall, ²[subject to such conditions as may be prescribed], be entitled to all reasonable time to inspect, in any public office, any records, registers or other documents relating to a ³[waqf] or movable or immovable properties which are ³[waqf] properties or are claimed to be ³[waqf] properties.

⁴[(2)] The *mutawalli* or any other person having the custody of any document related to waqf properties shall produce the same, within the prescribed period, before the Chief Executive Officer on being called upon to do so in writing.

(3) Subject to such conditions as may be prescribed, an agency of the Government or any other organisation shall supply, within ten working days, copies of the records, registers of properties or other documents relating to waqf properties or claimed to be waqf properties, to the Chief Executive Officer on a written request to this effect from him:

Provided that before taking any course of action as mentioned in sub-sections (2) and (3), the Chief Executive Officer shall obtain approval of the Board.]

30. Inspection of records.—(1) The Board may allow inspection of its proceedings of other records in its custody and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.

(2) All copies issued under this section shall be certified by the Chief Executive Officer of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872).

(3) The powers conferred on the Chief Executive Officer by sub-section (2) may be exercised by such other officer or officers of the Board as may either generally or specially be authorised in this behalf by the Board.

31. Prevention of disqualification for membership of Parliament.—It is hereby declared that the offices of the Chairperson or members of a Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a Member of Parliament ⁵[or a Member of Union territory Legislature or a Member of a State Legislature if so declared under a law made by the appropriate State Legislature].

1. S. 29 renumbered as sub-S. (1) thereof by Act 27 of 2013, S. 20.

2. Substituted by Act 27 of 2013, S. 20(a), for "subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force".

3. Substituted by Act 27 of 2013, S. 4, for "wakf".

4. Inserted by Act 27 of 2013, S. 20(b).

5. Inserted by Act 27 of 2013, S. 21.

32. Powers and functions of the Board.—(1) Subject to any rules that may be made under this Act, the general superintendence of all ¹[auqafs] in a State shall vest in the board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the ¹[auqafs] under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such ¹[auqafs] were created or intended:

Provided that in exercising its powers under this Act in respect of any ¹[waqf], the Board shall act in conformity with the directions of the ¹[waqf], the purposes of the ¹[waqf] and any usage or custom of the ¹[waqf] sanctioned by the school of Muslim law to which the ¹[waqf] belongs.

Explanation.—For the removal of doubts, it is hereby declared that in this sub-section, "¹[waqf]" includes a ¹[waqf] in relation to which any scheme has been made by any Court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be—

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every ¹[waqf];

(b) to ensure that the income and other property of ¹[auqafs] are applied to the objects and for the purposes for which such ¹[auqafs] were intended or created;

(c) to give directions for the administration of ¹[auqafs];

(d) to settle schemes of management for a ¹[waqf];

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct—

(i) the utilisation of the surplus income of a ¹[waqf] consistent with the object of a ¹[waqf];

(ii) in what manner the income of a ¹[waqf], the objects of which are not evident from any written instrument, shall be utilized.

(iii) in any case where any object of ¹[waqf] has ceased to exist or has become incapable of achievement, that so much of the income of the ¹[waqf] as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation.—For the purposes of this clause, the powers of the Board shall be exercised—

(i) in the case of a *Sunni* ¹[waqf], by the *Sunni* members of the Board only; and

(ii) in the case of a *Shia* ¹[waqf], by the *Shia* members of the Board only:

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

Provided that where having regard to the number of the *Sunni* or *Shia* members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being *Sunnis* or *Shias*, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

(f) to scrutinise and approve the budgets submitted by *mutawallis* and to arrange for the auditing of account of ¹[auqafs];

(g) to appoint and remove *mutawallis* in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any ¹[waqf];

(i) to institute and defend suits and proceedings relating to ¹[auqafs];

²[(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doingso shall be recorded in writing;

(k) to administer the ¹[waqf] Fund;

(l) to call for such returns, statistics, accounts and other information from the *mutawallis* with respect to the ¹[waqf] property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, ¹[waqf] properties, accounts, records or deeds and documents relating thereto;

(n) to investigate and determine the nature and the extent of ¹[waqf] and ¹[waqf] property, and to cause whenever necessary, a survey of such ¹[waqf] property;

³[(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building];

(o) generally do all such acts as may be necessary for the control, maintenance and administration of ¹[auqafs].

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the ¹[waqf] or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any ¹[waqf] land, which is a ¹[waqf] property, ⁴[has the potential for development as an educational institution,

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

2. Substituted by Act 27 of 2013, S. 22(I)(a), for Cl. (j). Prior to its substitution, Cl. (j) read as under: — "(j) to sanction any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act:

Provided that no such sanction shall be given unless at least two-thirds of the members of the Board vote in favour of such transaction;"

3. Inserted by Act 27 of 2013, S. 22(I)(b).

4. Substituted by Act 27 of 2013, S. 22(II), for "offers a feasible potential for development as a shopping centre".

shopping centre, market, housing or residential flats and the like], market, housing flats and the like, it may serve upon the *mutawalli* of the concerned ¹[waqf] a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the *mutawalli* is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, ²[* * *] take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from ¹[Waqf] Funds or from the finances which may be raised on the security of the properties of the ¹[waqf] concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate changes incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the *mutawalli* of the concerned ¹[waqf] to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to *mutawalli* of the concerned ¹[waqf].

State Amendment—[West Bengal].—In its application to the State of West Bengal, in sub-S. (5) of S. 32, after the words “and control and manage the properties”, insert “in such manner as may be prescribed”.—West Bengal Act 33 of 1997, S. 3.

33. Powers of inspection by Chief Executive Officer or persons authorised by him.—(1) With a view to examining whether, by reason of any failure or negligence on the part of a *mutawalli* in the performance of his executive or administrative duties, any loss or damage has been caused to any ¹[waqf] or ¹[waqf] property, the Chief Executive Officer ³[or any other person authorised by him in writing] with the prior approval of the Board, ⁴[* * *], may inspect all movable and immovable properties, which are ¹[waqf] properties, and all records, correspondence, plans, accounts and other documents relating thereto.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned *mutawalli* and all officers and either employees working under him and every person connected with the administration of the ¹[waqf], shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents relating to the ¹[waqf] as may be called for

1. Substituted by Act 27 of 2013, S. 4, for “wakf”.

2. The words “with the prior approval of the Government,” omitted by Act 27 of 2013, S. 22(III).

3. Inserted by Act 27 of 2013, S. 23(a).

4. The words “either himself or any other person authorised by him in writing in this behalf” omitted by Act 27 of 2013, S. 23(b).

by the person making the inspection and furnish to him such information relating to the '[waqf]' as may be required by him.

(3) Where, after any such inspection, it appears that the concerned *mutawalli* or any officer or other employee who is or was working under him had misappropriated, misapplied or fraudulently retained, any money or other '[waqf]' property, or had incurred irregular, unauthorised or improper expenditure from the funds of the '[waqf]', the Chief Executive Officer may, after giving the *mutawalli* or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property, should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property, which has been misappropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the '[waqf]', within such time as may be specified in the order.

(4) A *mutawalli* or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

(5) The Tribunal may, after taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.

34. Recovery of the amount determined under section 33.—Where any *mutawalli* or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 33, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer, with the prior approval of the Board shall, take such steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such *mutawalli* or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under section 33, as being payable by such *mutawalli* or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Chief Executive Officer, who shall, on receipt thereof, credit the amount to the funds of the concerned '[waqf]'.

35. Conditional attachment by Tribunal.—(1) Where the Chief Executive Officer is satisfied that the *mutawalli* or any other person who has been

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

ordered under sub-section (3) or sub-section (5) of section 33 to make any payment, with intent to defeat or delay the execution of the said order, —

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Chief Executive Officer,

he may, with the prior approval of the Board, apply to the Tribunal for the conditional attachment of the said property or such part thereof, as he may think necessary.

(2) The Chief Executive Officer shall, unless the Tribunal otherwise directs, specify in the application the property required to be attached and the estimated value thereof.

(3) The Tribunal may direct the *mutawalli* or the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in section 34, or to appear and show cause why he should not furnish such security.

(4) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(5) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as if it were an order for attachment made under the provision of the said Code.

CHAPTER V

REGISTRATION OF ¹[AUQAFS]

36. Registration. — (1) Every ¹[waqf], whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the *mutawalli*:

Provided that such applications may be ²[made by the waqf] or his descendants or a beneficiary of the ¹[waqf] or any Muslim belonging to the sect to which the ¹[waqf] belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars: —

(a) a description of the ¹[waqf] properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the ¹[waqf] properties;

(d) an estimate of the expenses annually incurred in the realisation to the income of the ¹[waqf] properties;

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

2. Substituted by Act 27 of 2013, S. 24, for "made by the wakf".

(e) the amount set apart under the ¹[waqf] for—

- (i) the salary of the *mutawalli* and allowances to the individuals;
- (ii) purely religious purposes;
- (iii) charitable purposes; and
- (iv) any other purposes;

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the ¹[waqf] deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the ¹[waqf].

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the ¹[waqf] make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the ¹[waqf] property, the Board shall, before registering the ¹[waqf], give notice of the application to the person administering the ¹[waqf] property and shall hear him if he desires to be heard.

(8) In the case of ¹[auqafs] created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of ¹[auqafs] created after such commencement, within three months from the date of the creation of the ¹[waqf]:

Provided that where there is no Board at the time of creation of a ¹[waqf], such application will be made within three months from the date of establishment of the Board.

37. Register of ¹[auqafs].—²[(1)] The Board shall maintain a register of ¹[auqafs] which shall contain in respect of each ¹[waqf] copies of the ¹[waqf] deeds, when available and the following particulars, namely:—

- (a) the class of the ¹[waqf];
- (b) the name of the *mutawalli*;
- (c) the rule of succession to the office of *mutawalli* under the ¹[waqf] deed or by custom or by usage;
- (d) particulars of all ¹[waqf] properties and all title deeds and documents relating thereto;
- (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;
- (f) such other particulars as may be provided by regulations.

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

2. S. 37 renumbered as sub-S. (1) thereof by Act 27 of 2013, S. 25.

¹[(2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.]

(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.]

38. Powers of Board to appoint Executive Officer.—(1) Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interests of the ²[waqf], appoint on whole-time or part-time basis or in an honorary capacity, subject to such conditions as may be provided by regulations, an Executive Officer with such supporting staff as it considers necessary for any ²[waqf] having a gross annual income of not less than five lakhs rupees:

Provided that the person chosen for appointment should be a person professing Islam.

(2) Every Executive Officer appointed under sub-section (1) shall exercise such powers and discharge such duties as pertain only to the administration of the property of the ²[waqf] for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Board:

Provided that the Executive Officer who is appointed for a ²[waqf] having a gross annual income of not less than five lakhs rupees shall ensure that the budget of the ²[waqf] is submitted, the accounts of the ²[waqf] are regularly maintained, and the yearly statement of accounts are submitted within such time as the Board may specify.

(3) While exercising his powers and discharging his functions under sub-section (2), the Executive Officer shall not interfere with any religious duties or any usage or custom of the ²[waqf] sanctioned by the Muslim law.

(4) The salaries and allowances of the Executive Officer and his staff shall be fixed by the Board and in fixing the quantum of such salary the Board shall have due regard to the income of the ²[waqf], the extent and nature of the duties of the Executive Officer and shall also ensure that the amounts of such salaries and allowances are not disproportionate to the income of the ²[waqf] and do not operate as an unnecessary financial burden on it.

(5) The salaries and allowances of the Executive Officer and his staff shall be paid by the Board from the ²[Waqf] Fund and, if the ²[waqf] generates any additional income as a result of appointment of the Executive Officer, the Board may claim reimbursement of amounts spent on the salaries and allowances from the fund of the ²[waqf] concerned.

(6) The Board may, for sufficient reasons, and after giving to the Executive Officer or a member of his staff, a reasonable opportunity of being heard, suspend, remove or dismiss the Executive Officer or a member of his staff from his post.

1. Inserted by Act 27 of 2013, S. 25.

2. Substituted by Act 27 of 2013, S. 4, for "wakf".

(7) Any Executive Officer or a member of his staff who is aggrieved by any order of removal or dismissal made under sub-section (6) may within thirty days from the date of communication of the order, prefer an appeal against the order to the Tribunal and the Tribunal may, after considering such representation as the Board may make in the matter and after giving a reasonable opportunity to the Executive Officer or a member of his staff of being heard, confirm, modify or reverse the order.

39. Powers of Board in relation to ¹[auqafs] which have ceased to exist. —

(1) The Board shall, if it is satisfied that the objects or any part thereof of a ¹[waqf] have ceased to exist, whether such cessation took place before or after the commencement of this Act, cause an inquiry to be held by the Chief Executive Officer, in the prescribed manner, to ascertain the properties and funds pertaining to such ¹[waqf].

(2) On the receipt of the report of inquiry of the Chief Executive Officer, the Board shall pass an order—

(a) specifying the property and funds of such ¹[waqf];

(b) directing that any property or funds pertaining to such ¹[waqf] which have been recovered shall be applied or utilised for the renovation of any ¹[waqf] property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, to any of the purposes specific in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

(3) The Board may, if it has reason to believe that any building or other place which was being used for religious purpose or instruction or for charity has, whether before or after the commencement of this Act, ceased to be used for that purpose, make an application to the Tribunal for an order directing the recovery of possession of such building or other place.

(4) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place—

(a) is ¹[waqf] property;

(b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and

(c) is not in the occupation of any person who has been authorised by or under any law for the time being in force to occupy such building or other place, make an order—

(i) directing the recovery of such building or place from any person who may be in unauthorised possession thereof; and

(ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilised for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

40. Decision if a property is ¹[waqf] property. —(1) The Board may itself collect information regarding any property which it has reason to believe to

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

be ¹[waqf] property and if any question arises whether a particular property is ¹[waqf] property or not or whether a ¹[waqf] is a *Sunni* ¹[waqf] or a *Shia* ¹[waqf] it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is ¹[waqf] property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is ¹[waqf] property, call upon the trust or society, as the case may be, either to register such property under this Act as ¹[waqf] property or show cause why such property should not be so registered:

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3) pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

COMMENTS

If any property is not published as wakf property as required under S. 5(2) of the 1954 Act or the Board has not invoked the special power under S. 27 of the 1954 Act, the Wakf Board cannot file a suit for declaration and possession: *Tamil Nadu Wakf Board v. Hathija Ammal* A.I.R. 2002 S.C. 402.

41. Power to cause registration of ¹[waqf] and to amend register.—The Board may direct a *mutawalli* to apply for the registration of a ¹[waqf], or to supply any information regarding a ¹[waqf] or may itself cause the ¹[waqf] to be registered or may at any time amend the register of ¹[auqafs].

42. Change in the management of ¹[auqafs] to be notified.—(1) In the case of any change in the management of a registered ¹[waqf] due to the death or retirement or removal of the *mutawalli*, the incoming *mutawalli* shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in section 36, the *mutawalli* shall, within three months from the occurrence of the change, notify such change to the Board.

COMMENTS

The power of the Board to appoint *mutawalli* is only where there is no one to be appointed under the terms of the deed of the wakf or where the right of any person to act as *mutawalli* is disputed. When the method is prescribed under a scheme, the same can be equated to the terms of a deed. At any rate, as long as it is in operation, and proceedings are initiated thereunder, the right of any one to act as *mutawalli*, till appointed by the Court, has to be treated as disputed: *Radhakrishna Rice Mill Co. v. Jumma Maseed* A.I.R. 2003 Andh. Pra. 70.

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

Even after the 1954 Act came to be enacted, Ss. 92 and 93 of C.P.Code continued to be available for the aggrieved persons to get schemes framed in relation to religious institutions including wakfs: *Radhakrishna Rice Mill Co. v. Jumma Maseed* A.I.R. 2003 Andh. Pra. 70.

43. ¹[Auqafs] registered before the commencement of this Act deemed to be registered.—Notwithstanding anything contained in this Chapter, where any ¹[waqf] has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the ¹[waqf] under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

CHAPTER VI

MAINTENANCE OF ACCOUNTS OF ¹[AUQAFS]

44. Budget.—(1) Every *mutawalli* of a ¹[waqf] shall, in every year prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure during that financial year.

(2) Every such budget shall be submitted by the *mutawalli* atleast ²[thirty days] before the beginning of the financial year to the Board and shall make adequate provision for the following:—

- (i) for carrying out the objects of the ¹[waqf];
- (ii) for the maintenance and preservation of the ¹[waqf] property;
- (iii) for the discharge of all liabilities and subsisting commitments binding on the ¹[waqf] under this Act or any other law for the time being in force.

³[(3) In case the Board considers any item in the budget being contrary to the objects of the waqf and the provisions of this Act, it may give such direction for addition or deletion of such item as it may deem fit.]

(4) If in the course of the financial year the *mutawalli* finds it necessary to modify the provisions made in the budget in regard to the receipt or to the distribution of the amounts to be expended under the different heads, he may submit to the Board a supplementary or a revised budget and the provisions of sub-section (3) shall, as far as may be, apply to such supplementary or revised budget.

45. Preparation of budget of ¹[auqafs] under direct management of the Board.—(1) The Chief Executive Officer shall prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure for each of the ¹[auqafs] under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

2. Substituted by Act 27 of 2013, S. 26(a), for "ninety days".

3. Substituted by Act 27 of 2013, S. 26(b), for sub-S. (3). Prior to its substitution, sub-S. (3) read as under:— "(3) The Board may give such directions for making alterations, omissions or additions in the budget as it may deem fit, consistent with the objects of the wakf and the provisions of this Act."

(2) While submitting the budget under sub-section (1), the Chief Executive Officer shall also prepare statement giving details of the increase, if any, in the income of each ¹[waqf] under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.

(3) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every ¹[waqf] under the direct management of the Board.

(4) Every budget submitted by the Chief Executive Officer under sub-section (1) shall comply with the requirements of section 46 and, for this purpose, references therein to the *mutawalli* of the ¹[waqf] shall be construed as pre-references to the Chief Executive Officer.

(5) The audit of accounts of every ¹[waqf] under the direct management of the Board shall be undertaken by the State Examiner of Local Funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the ¹[waqf].

(6) The provisions of sub-sections (2) and (3) of section 47 and the provisions of sections 48 and 49 shall, insofar as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) Where any ¹[waqf] is under the direct management of the Board, such administrative charges as may be specified by the Chief Executive Officer shall be payable by the ¹[waqf] to the Board:

Provided that the Chief Executive Officer shall not collect more than ten per cent. of the gross annual income of the ¹[waqf] under the direct management of the Board as administrative charges.

46. Submission of accounts of ¹[auqafs].—(1) Every *mutawalli* shall keep regular accounts.

(2) Before the ²[1st day of July] next, following the date on which the application referred to in section 36 has been made and thereafter before the ²[1st day of July] in every year, every *mutawalli* of a ¹[waqf] shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the *mutawalli* on behalf of the ¹[waqf] during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the ¹[waqf]:

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

47. Audit of accounts of ¹[auqafs].—(1) The accounts of ¹[auqafs] submitted to the Board under section 46 shall be audited and examined in the following manner, namely:—

(a) in the case of a ¹[waqf] having no income or a net annual income not exceeding ³[fifty thousand rupees], the submission of a statement of

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

2. Substituted by Act 27 of 2013, S. 27, for "1st day of May".

3. Substituted by Act 27 of 2013, S. 28(I)(i), for "ten thousand rupees".

accounts shall be a sufficient compliance with the provisions of section 46 and the accounts of two per cent. of such ¹[auqafs] shall be audited annually by an auditor appointed by the Board;

(b) the accounts of the ¹[waqf] having net annual income exceeding ²[fifty thousand rupees] shall be audited annually, or at such other intervals as may be prescribed, by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of auditors;

(c) the State Government may, ³[under intimation to the Board,] at any time cause the account of any ¹[waqf] audited by the State Examiner of Local Funds or by any other Officer designated for that purpose by that State Government.

(2) The auditor shall submit his report to the Board and the report of the auditor shall among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit of the accounts of a ¹[waqf] shall be met from the funds of that ¹[waqf]:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to ¹[auqafs] having a net annual income of ⁴[more than fifty thousand rupees] shall be paid in accordance with the scale of remuneration specified by the State Government under clause (c) of sub-section (1):

Provided further that where the audit of the accounts of any ¹[waqf] is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent. of the net annual income of such ¹[waqf] and such costs shall be met from the funds of the ¹[auqafs] concerned.

48. Board to pass orders on auditor's report.—(1) The Board shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (2) of section 47.

(2) The *mutawalli* or any other person aggrieved by any order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

2. Substituted by Act 27 of 2013, S. 28(I)(ii), for "ten thousand rupees".

3. Inserted by Act 27 of 2013, S. 28(I)(iii).

4. Substituted by Act 27 of 2013, S. 28(II), for "more than ten thousand rupees but less than fifteen thousand rupees",

or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1).

(4) The order made by the Tribunal under sub-section (2) shall be final.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of section 35.

49. Sums certified to be due recoverable as arrears of land revenue.—

(1) Every sum certified to be due from any person by an auditor in his report under section 47 unless such certificate is modified or cancelled by an order of the Board or of the Tribunal made under section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

50. Duties of *mutawalli*.—It shall be the duty of every *mutawalli*,—

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(c) to allow inspection of ¹[waqf] properties, accounts or records or deeds and documents relating thereto;

(d) to discharge all public dues; and

(e) to do any other act which he is lawfully required to do by or under this Act.

51. Alienation of ¹[waqf] property without sanction of Board to be void.—²[(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

2. Substituted by Act 27 of 2013, S. 29(i), for sub-S. (1). Prior to its substitution, sub-S. (1) read as under:— "(1) Notwithstanding anything contained in the wakf deed, any gift, sale or exchange mortgage of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board:

Provided that no mosque, dargah or khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force."

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013.

(1-A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void *ab initio*:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that—

(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 (42 of 1991);

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.]

1[* * *]

1. Sub-S. (2) omitted by Act 27 of 2013, S. 29(ii). Prior to its omission, sub-S. (2) read as under:—“(2) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned *mutawalli* or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is—

(i) necessary or beneficial to the wakf;

(ii) consistent with the objects of the wakf;

(iii) the consideration thereof is reasonable and adequate:

Provided that the sale of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed:

Provided further that the Tribunal may, on the application of the aggrieved *mutawalli* or other person, for reasons to be recorded by it in writing, permit such sale to be made otherwise than by public auction, if it is of opinion that it is necessary so to do in the interest of the wakf.”.

¹[* * *]

¹[* * *]

¹[* * *]

52. Recovery of ²[waqf] property transferred in contravention of section 51.—(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a ²[waqf] entered as such in the register of ²[waqf] maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51 ³[or section 56], it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served—

(a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

1. Sub-Ss. (3), (4) and (5) omitted by Act 27 of 2013, S. 29(ii). Prior to their omission, sub-Ss. (3), (4) and (5) read as under:—“(3) The utilisation or investment of the amount realised by the sale or exchange mortgage of any property shall be made by the *mutawalli* subject to the approval of the Board, and where any amount has been raised by mortgage of any such property, the *mutawalli* or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.

(4) Every approval given by the Board under sub-section (3) shall be communicated to the *mutawalli* and shall also be published in the manner prescribed.

(5) The *mutawalli* or any other person having an interest in the wakf who is aggrieved by the decision given under sub-section (3), may, within ninety days from the date of communication to him of such decision or the publication of the decision, as the case may be, prefer an appeal to the Tribunal against such decision, and thereupon, the Tribunal may, after giving the appellant and the Board, a reasonable opportunity of being heard, confirm, modify or set aside such decision.”.

2. Substituted by Act 27 of 2013, S. 4, for “wakf”.

3. Inserted by Act 27 of 2013, S. 30.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

¹[52-A. Penalty for alienation of waqf property without sanction of Board.—(1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.

(3) No Court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

(4) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.]

53. Restriction on purchase of property on behalf of ²[waqf].—Notwithstanding anything contained in a ²[waqf] deed, no immovable property shall be purchased for or on behalf of any ²[waqf] from the funds of any ²[waqf] except with the prior sanction of the Board, and the Board shall not accord such sanction unless it considers that the acquisition of such property is necessary or beneficial to the ²[waqf] and that the price proposed to be paid therefor is adequate and reasonable:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto and, the Board shall, after considering the objections and suggestions that may be received by it from *mutawallis* or other persons interested in the ²[waqf], make such orders as it may think fit.

54. Removal of encroachment from ²[waqf] property.—(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is ²[waqf] property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and

1. Inserted by Act 27 of 2013, S. 31.

2. Substituted by Act 27 of 2013, S. 4, for "wakf".

calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned *mutawalli*.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is ¹[waqf] property and that there has been an encroachment on any such ¹[waqf] property, ²[he may, make an application to the Tribunal for grant of order of eviction for removing] such encroachment and deliver possession of the land, building, space or other property encroached upon to the *mutawalli* of the ¹[waqf].

³[(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.]

55. Enforcement of orders made under section 54.—Where the person, ordered under ⁴[sub-section (4)] of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may ⁵[refer the order of the Tribunal to the Executive Magistrate] within the local limits of whose jurisdiction the land, building,

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

2. Substituted by Act 27 of 2013, S. 32(a), for "he may, by an order, require the encroacher to remove".

3. Substituted by Act 27 of 2013, S. 32(b), for sub-S. (4). Prior to its substitution, sub-S. (4) read as under:— "(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the *mutawalli* of the wakf or by any other person authorised by him in this behalf."

4. Substituted by Act 27 of 2013, S. 33(a), for "sub-section (3)".

5. Substituted by Act 27 of 2013, S. 33(b), for "apply to the Sub-Divisional Magistrate".

space or other property is situated for evicting the encroacher, and thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned *mutawalli* and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

¹[55-A. Disposal of property left on waqf property by unauthorised occupants.]—(1) Where any person has been evicted from any waqf property under sub-section (4) of section 54, the Chief Executive Officer may, after giving fourteen days' notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality and after proclaiming the contents of the notice by placing it on conspicuous part of the waqf property, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1), the sale proceeds shall, after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to the State Government or a local authority or a corporate authority on account of arrears of rent, damages or costs, be paid to such person, as may appear to the Chief Executive Officer to be entitled to the same:

Provided that where the Chief Executive Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the appointment of the same, he may refer such dispute to the Tribunal and the decision of the Tribunal thereon shall be final.]

State Amendment—[West Bengal].—In its application to the State of West Bengal, —

(1) After S. 55, insert the following section, namely:—

“55-A. Penalty for encroachment on wakf property.—(1) Whoever encroaches on any land, building space or other property which is wakf property, and which has been registered as such under this Act, shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(2) Any offence punishable under this section shall be cognizable.

(3) No Court shall take cognizance of any offence punishable under this section save on complaint made by the Board or by an officer of the Board duly authorized by it in this behalf.

(4) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.

(5) Any fine imposed under this section shall, when realised, be credited to the Wakf Fund.”—West Bengal Act 33 of 1997, S. 4 [This State Amendment were made prior to the enactment of Wakf (Amendment) Act, 2013 (Central Act 27 of 2013).]

(2) In S. 55-A of the principal Act as inserted by the Wakf (West Bengal Amendment) Act, 1997 (West Bengal Act 33 of 1997),—

(i) in sub-S. (1), the words “or with fine which may extend to five thousand rupees, or with both” shall be omitted;

1. Inserted by Act 27 of 2013, S. 34.

(ii) in sub-S. (2), after the word "cognizable", insert "and non-bailable";

(iii) sub-S. (5) shall be omitted.—West Bengal Act 16 of 1998, S. 3 [This State Amendment were made prior to the enactment of Wakf (Amendment) Act, 2013 (Central Act 27 of 2013).]

56. Restriction on power to grant lease of ¹[waqf] property.—(1) ²[A lease for any period exceeding thirty years] of any immovable property which is ¹[waqf] property shall, notwithstanding anything contained in the deed or instrument of ¹[waqf] or in any other law for the time being in force, be void and of no effect:

³[Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government:

Provided further that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided also that before making lease of any waqf property, the Board shall publish the details of lease and invite bids in at least one leading national and regional news papers.]

(2) ⁴[A lease for a period of one year but not exceeding thirty years] of immovable property which is ¹[waqf] property shall, notwithstanding anything contained in the deed or instrument of ¹[waqf] or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease ⁵[* * *] or renewal thereof under this section review the terms and conditions on which the lease ⁵[* * *] is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct:

⁶[Provided that the Board shall immediately intimate the State Government regarding a lease for any period exceeding three years of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.]

⁷[(4) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

2. Substituted by Act 27 of 2013, S. 35(a)(i), for "A lease or sub-lease for any period exceeding three years".

3. Inserted by Act 27 of 2013, S. 35(a)(ii).

4. Substituted by Act 27 of 2013, S. 35(b), for "A lease or sub-lease for any period exceeding one year and not exceeding three years".

5. The words "or sub-lease" omitted by Act 27 of 2013, S. 35(c)(i).

6. Inserted by Act 27 of 2013, S. 35(c)(ii).

7. Inserted by Act 27 of 2013, S. 35(d).

in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

57. Mutawalli entitled to pay certain costs from income of '[waqf] property.—Notwithstanding anything contained in the '[waqf] deed, every *mutawalli* may pay from the income of the '[waqf] property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 36 or any accounts under section 46 or any information or documents, required by the Board or for the purpose of enabling him to carry out the directions of the Board.

58. Power of Board to pay dues in case of default by *mutawalli*.—
(1) Where a *mutawalli* refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board may discharge dues from the '[Waqf] Fund and may recover the amount so paid from the '[waqf] property and may also recover damages not exceeding twelve and a half per cent. of the amount so paid.

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the Board after giving the *mutawalli* concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

59. Creation of reserve fund.—For the purpose of making provisions for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the '[waqf] property and for the preservation of the '[waqf] property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a '[waqf].

60. Extension of time.—The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the *mutawalli* under this Act.

61. Penalties.—(1) If a *mutawalli* fails to—

- (a) apply for the registration of a '[auqaf];
- (b) furnish statements of particulars or accounts or returns as required under this Act;
- (c) supply information or particulars as required by the Board;
- (d) allow inspection of '[waqf] properties, accounts, records or deeds and documents relating thereto;
- (e) deliver possession of any '[waqf] property, if ordered by the Board or Tribunal;
- (f) carry out the directions of the Board;
- (g) discharge any public dues; or
- (h) do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the Court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

¹[ten thousand rupees for non-compliance of clauses (a) to (d) and in case of non-compliance of clauses (e) to (h), he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to ten thousand rupees].

(2) Notwithstanding anything contained in sub-section (1), if—

(a) a *mutawalli* omits or fails, with a view to concealing the existence of a [waqf], to apply for its registration under this Act, —

(i) in the case of a ²[waqf] created before the commencement of this Act, within the period specified therefor in sub-section (8) of section 36;

(ii) in the case of any ²[waqf] created after such commencement, within three months from the date of the creation of the ²[waqf]; or

(b) a *mutawalli* furnishes any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular,

he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(3) No Court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf.

(4) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the fine imposed under sub-section (1), when realised, shall be credited to the ²[Waqf] Fund.

(6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the Court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default.

62. Mutawalli not to spend any money belonging to ²[waqf] for self-defence.—No *mutawalli* shall spend any money out of the funds of the ²[waqf], of which he is the *mutawalli*, for meeting any costs, charges, or expenses which are or may be, incurred by him, in relation to any suit, appeal or any other proceeding for, or incidental to, his removal from office or for taking any disciplinary action against himself.

63. Power to appoint mutawallis in certain cases.—When there is a vacancy in the office of the *mutawalli* of a ²[waqf] and there is no one to be appointed under the terms of the deed of the ²[waqf], or where the right of any person to act as *mutawalli* is disputed, the Board may appoint any person to act as *mutawalli* for such period and on such conditions as it may think fit.

COMMENTS

A reading of the provisions of S. 63 of the Act would amply demonstrate that a person can be appointed as *mutawalli*, in the circumstances stated therein but while making such appointment by the Wakf Board in favour of any person to act as *mutawalli*, the period for which the said person is appointed should be specified in the order. Thus, where the

1. Substituted by Act 27 of 2013, S. 36, for "eight thousand rupees".

2. Substituted by Act 27 of 2013, S. 4, for "wakf".

appointment order appointing the petitioner, as *mutawalli* of the Dargha, does not specify the period for which the petitioner was appointed, *held*, the appointment order so made appointing the petitioner as *mutawalli* was not in tune with the provisions of S. 63: *Shaik Ghouse Mohiuddin v. A.P. State Wakf Board* A.I.R. 2002 Andh. Pra. 344: (2002) 1 An.W.R. 307.

In the matter relating to the appointment of a trustee/*mutawalli*, that too, under a scheme framed by the trial Court the tenant has absolutely no locus either to participate in the adjudication in such proceedings or to challenge the outcome of the same: *Radhakrishna Rice Mill Co. v. Jumma Maseed* A.I.R. 2003 Andh. Pra. 70.

Compromises recorded where the property of a public trust is involved stand on a different footing. The parties representing their individual interest are at liberty to enter into compromise in legal proceedings, even if such compromise may work out to their detriment. However, the same is not the case where the individuals representing institutions, especially public trusts or similar institutions. The Courts will be keen to scrutinise whether such compromise has resulted in sacrifice of the interest of the trust: *Radhakrishna Rice Mill Co. v. Jumma Maseed* A.I.R. 2003 Andh. Pra. 70.

64. Removal of *mutawalli*.—(1) Notwithstanding anything contained in any other law or the deed of ¹[waqf], the Board may remove a *mutawalli* from his office if such *mutawalli*—

(a) has been convicted more than once of an offence punishable under section 61; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a *mutawalli*; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as a paid legal practitioner on behalf of, or against, the ¹[waqf]; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any ¹[waqf] property, or in any contract made with, or any work being done for the ¹[waqf] or is in arrears in respect of any sum due by him to such ¹[waqf]; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the ¹[waqf] or in respect of any money or other ¹[waqf] property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

(k) misappropriates or fraudulently deals with the property of the 'waqf].

(2) The removal of a person from the office of the *mutawalli* shall not affect his personal rights, if any, in respect of the 'waqf] property either as a beneficiary or in any other capacity or his right, if any, as a *sajjadanashin*.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A *mutawalli* who is aggrieved by an order passed under any of the clauses (c) to (j) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any *mutawalli*, the Board may, if it is of opinion that it is necessary so to do in the interest of the 'waqf], by an order suspend such *mutawalli* until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the *mutawalli* a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the *mutawalli* to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the 'waqf] pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the 'waqf] and direct the receiver so appointed to ensure that the customary or religious rights of the *mutawalli* and of the 'waqf] are safeguarded.

(7) Where a *mutawalli* has been removed from his office under sub-section (1), the Board may, by order, direct the *mutawalli* to deliver possession of the 'waqf] property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the *mutawalli* of the 'waqf] property.

(8) A *mutawalli* of a 'waqf] removed from his office under this section shall not be eligible for re-appointment as a *mutawalli* of that 'waqf] for a period of five years from the date of such removal.

65. Assumption of direct management of certain 'auqafs] by the Board.—(1) Where no suitable person is available for appointment as a *mutawalli* of a 'waqf], or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a *mutawalli* is prejudicial to the interests of the 'waqf], the Board may, by notification in the Official Gazette, assume direct management of the 'waqf] for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

(2) The State Government may, on its own motion or on the application of any person interested in the 'waqf], call for the records of any case for the

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after the close of every financial year, the Board shall send to the State Government a detailed report in regard to every ¹[waqf] under its direct management, giving therein—

(a) the details of the income of the ¹[waqf] for the year immediately preceding the year under report;

(b) the steps taken to improve the management and income of the ¹[waqf];

(c) the period during which the ¹[waqf] has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the ¹[waqf] to the *mutawalli* or any committee of management during the year; and

(d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3), and after such examination issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

²[(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act.]

66. Powers of appointment and removal of *mutawalli* when to be exercised by the State Government.—Whenever a deed of ¹[waqf] or any decree or order of a Court or any scheme of management of any ¹[waqf] provides that a Court or any authority other than a Board may appoint or remove a *mutawalli* or settle or modify such scheme of management or otherwise exercise superintendence over the ¹[waqf], then notwithstanding anything contained in such deed of ¹[waqf], decree, order or scheme, such powers aforesaid shall be exercisable by the State Government:

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.

67. Supervision and supersession of committee of management.—(1) Whenever the supervision or management of a ¹[waqf] is vested in any committee appointed by the ¹[waqf], then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the ¹[waqf], whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

2. Inserted by Act 27 of 2013, S. 37.

Provided further that if the Board is satisfied that any scheme for the management of a ¹[waqf] by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the ¹[waqf], it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the ¹[waqf] or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the ¹[waqf], the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the ¹[waqf] is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the ¹[waqf], insofar as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the *mutawalli* and all persons having any interest in the ¹[waqf].

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the ¹[waqf], and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal and the Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

68. Duty of *mutawalli* or committee to deliver possession of records, etc.—(1) Where any *mutawalli* or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the *mutawalli* or the committee so removed from the office (hereinafter in this section referred to as the removed *mutawalli* or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the ¹[waqf] (including cash) to the successor *mutawalli* or the successor committee, within one month from the date specified in the order.

(2) Where any removed *mutawalli* or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor *mutawalli* or committee within the time specified in sub-section (1), or prevents or obstructs such *mutawalli* or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor *mutawalli* or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor *mutawalli* or committee, to any ²[District Magistrate, Additional District Magistrate, Sub- Divisional Magistrate or their equivalent] within the local limits of whose jurisdiction any part of the ¹[waqf] property is situated and, thereupon, such ²[District Magistrate, Additional District Magistrate, Sub- Divisional Magistrate or their equivalent] may, after giving notice to the removed *mutawalli* or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the ¹[waqf] to the successor *mutawalli* or the committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed *mutawalli* or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by ³[any Magistrate] under sub-section (2), the removed *mutawalli* or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(4) Whenever any removed *mutawalli* or any member of the removed committee omits or fails to comply with the orders made by ³[any Magistrate] under sub-section (2), ³[any Magistrate] may authorise the successor *mutawalli* or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.

(5) No order of appointment of the successor *mutawalli* or committee, shall be called in question in the proceedings before ³[any Magistrate] under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent Civil Court by any person aggrieved by any order made

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

2. Substituted by Act 27 of 2013, S. 38(i), for "Magistrate of the first class" and "Magistrate", respectively.

3. Substituted by Act 27 of 2013, S. 38(ii), for "the Magistrate".

under this section, to establish that he has right, title and interest in the properties specified in the order made by ¹[any Magistrate] under sub-section (2).

69. Power of Board to frame scheme for administration of ²[waqf].—³(1) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the *mutawalli* or others in the prescribed manner.]

(2) A scheme framed under sub-section (1) may provide for the removal of the *mutawalli* of the ²[waqf] holding office as such immediately before the date on which the scheme comes into force:

Provided that where any such scheme provides for the removal of any hereditary *mutawalli*, the scheme shall also provide for the appointment of the person next in hereditary succession of the *mutawalli* so removed, as one of the members of the committee appointed for the proper administration of the ²[waqf].

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the *mutawalli* and all persons interested in the ²[waqf]:

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the ²[waqf], the Board may appoint a suitable person to perform all or any of the functions of the *mutawalli* thereof and to exercise the powers, and perform the duties, of such *mutawalli*.

70. Inquiry relating to administration of ²[waqf].—Any person interested in a ²[waqf] may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the ²[waqf] and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the ²[waqf] are being mismanaged, it shall take such action thereon as it thinks fit.

1. Substituted by Act 27 of 2013, S. 38(ii), for "the Magistrate".

2. Substituted by Act 27 of 2013, S. 4, for "wakf".

3. Substituted by Act 27 of 2013, S. 39, for sub-S. (1). Prior to its substitution, sub-S. (1) read as under:— "(1) Whenever the Board is satisfied, whether on its own motion or on the application of not less than five persons interested in any wakf, that it is necessary or desirable to frame a scheme for the proper administration of the wakf, it may by an order frame such scheme for the administration of the wakf, after consultation with the *mutawalli* or the applicant in the prescribed manner."

71. Manner of holding inquiry.—(1) The Board may, either on an application received under section ¹[70] or on its own motion,—

- (a) hold an inquiry in such manner as may be prescribed; or
- (b) authorise any person in this behalf to hold an inquiry into any matter relating to a ²[waqf] and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

CHAPTER VII

FINANCE OF THE BOARD

72. Annual contribution payable to Board.—(1) The *mutawalli* of every ²[waqf], the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the ²[waqf], such contributions, not exceeding seven per cent. of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the ²[waqf].

Explanation I.—For the purposes of this Act, “net annual income” shall mean the gross income of the ²[waqf] from all sources, including nazars and offerings which do not amount to contributions to the corpus of the ²[auqafs], in a year after deducting therefrom the following, namely:—

- (i) the land revenue paid by it to the Government;
- (ii) the rates, cesses, taxes and licence fees, paid by it to the Government or any local authority;
- (iii) expenditure incurred for all or any of the following purposes ³[in respect of lands directly under cultivation by the *mutawalli* for the benefit of the waqf], namely:—

- (a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;
- (b) seeds or seedlings;
- (c) manure;
- (d) purchase and maintenance of agricultural implements;
- (e) purchase and maintenance of cattle for cultivation;
- (f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed ⁴[twenty per cent.] of the income derived from lands belonging to the ²[waqf]:

⁵[Provided further that no such deduction shall be permitted in respect of waqf land given on lease, by whatever name called, whether *batai* or share cropping or any other name;]

1. Substituted by Act 27 of 2013, S. 40, for “73”.

2. Substituted by Act 27 of 2013, S. 4, for “wakf” and “wakfs”, respectively.

3. Inserted by Act 27 of 2013, S. 41(i).

4. Substituted by Act 27 of 2013, S. 41(ii), for “ten per cent.”.

5. Inserted by Act 27 of 2013, S. 41(iii).

(iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent. of the annual rent derived therefrom, or the actual expenditure, whichever is less;

(v) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are re-invested to earn income for the ¹[waqf]:

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely:—

- (a) advances and deposits recovered and loans taken or recovered;
 - (b) deposits made as security by employees, lessees or contractors and other deposits, if any;
 - (c) withdrawals from banks or of investments;
 - (d) amounts recovered towards costs awarded by Courts;
 - (e) sale proceeds of religious books and publications where such sales are undertaken as an un-remunerative enterprise with a view to propagating religion;
 - (f) donations in cash or kind or offerings made by the donors as contribution to the corpus of the ¹[waqf]:
- Provided that the interest or income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;
- (g) voluntary contributions received in cash or kind for a specific service to be performed by the ¹[waqf] and expended on such service;
 - (h) audit recoveries.

Explanation II.—In determining, the net annual income for the purposes of this section, only the net profit derived by any ¹[waqf] from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income.

(2) The Board may in the case of any mosque or orphanage or any particular ¹[waqf] reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of the ¹[waqf] may realise the contributions payable by him under sub-section (1) from the various persons entitled to receive any pecuniary or other material benefit from the ¹[waqf], but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the ¹[waqf]:

Provided that if there is any income of the ¹[waqf] available in excess of the amount payable as dues under this Act, other than as the contribution under

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

sub-section (1), and in excess of the amount payable under the '[waqf] deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a '[waqf] shall, subject to the prior payment of any dues to the Government or any local authority or of any other statutory first charge on the '[waqf] property or the income thereof, be a first charge on the income of the '[waqf] and shall be recoverable, on a certificate issued by the Board after giving the *mutawalli* concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a *mutawalli* realises the income of the '[waqf] and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

(6) Where, after the commencement of this Act, the *mutawalli* of a '[waqf] fails to submit a return of the net annual income of the '[waqf] within the time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the '[waqf] to the best of his judgment or revise the net annual income as shown in the return submitted by the *mutawalli* and the net annual income as so assessed or revised shall be deemed to be the net annual income of the '[waqf] for the purposes of this section:

Provided that no assessment of the net annual income or revision of return submitted by *mutawalli* shall be made except after giving a notice to the *mutawalli* calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revision shall be made after considering the reply, if any, given by the *mutawalli*.

(7) Any *mutawalli* who is aggrieved by the assessment or revision made by the Chief Executive Officer, under sub-section (6), may prefer an appeal to the Board within thirty days from the date of the receipt of the assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision or the return and the decision of the Board thereon shall be final.

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates serve upon the *mutawalli* a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act, in the first instance.

73. Power of Chief Executive Officer to direct banks or other person to make payments.—(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a ¹[waqf] is deposited, to pay the contribution, leviable under section 72, out of such money, as may be standing to the credit of the ¹[waqf] in such bank or may be deposited with such person, or out of the moneys which may, from time to time, be received by bank or other person for or on behalf of the ¹[waqf] by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall, when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

(2) Every payment made by a bank or other person in pursuance of any order made under sub-section (1), shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.

(3) Any bank or other person who is ordered under sub-section (1) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(4) Every officer of the bank or other person who fails, without any reasonable excuse to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

74. Deduction of contribution from perpetual annuity payable to the ¹[waqf].—(1) Every authority empowered to disburse any perpetual annuity payable to a ¹[waqf] under any law relating to the abolition of zamindaries or jagirs, or laying down land ceilings, shall, on receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the ¹[waqf] under section 72 which remains unpaid, deduct before making payment of the perpetual annuity to the ¹[waqf], the amount specified in such certificate and remit the amount so deducted to the Chief Executive Officer.

(2) Every amount remitted under sub-section (1) to the Chief Executive Officer shall be deemed to be a payment made by the ¹[waqf] and shall, to the extent of the amount so remitted, operate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.

75. Power of Board to borrow.—(1) For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

(2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

76. Mutawalli not to lend or borrow moneys without sanction.—(1) No *mutawalli*, Executive Officer or other person in charge of the administration of a ¹[waqf] shall lend any money belonging to the ¹[waqf] or any ¹[waqf]

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

property or borrow any money for the purposes of the ¹[waqf] except with the previous sanction of the Board:

Provided that no such sanction is necessary if there is an express provision in the deed of ¹[waqf] for such borrowing or lending, as the case may be.

(2) The Board may, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (1) is authorised by him to lend or borrow any money or lend any other ¹[waqf] property.

(3) Where any money is lent or borrowed, or other ¹[waqf] property is lent in contravention of the provisions of this section, it shall be lawful for the Chief Executive Officer, —

(a) to recover an amount equal to the amount which has been so lent or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;

(b) to recover the possession of the ¹[waqf] property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.

77. ¹[Waqf] Fund. — (1) All moneys received or realised by the Board under this Act and all other moneys received as donation, benefactions or grants by the Board shall form a fund to be called the ¹[Waqf] Fund.

(2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(3) Subject to any rules that may be made by the State Government in this behalf, the ¹[Waqf] Fund shall be under the control of the Board, so, however, that the ¹[Waqf] Fund under the control of common ¹[Waqf] Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The ¹[Waqf] Fund shall be applied to —

(a) repayment of any loan incurred under section 75 and payment of interest thereon;

(b) payment of the cost of audit of the ¹[Waqf] Fund and the accounts of ¹[auqafs];

(c) payment of the salary and allowances to the officers and staff of the Board;

(d) payment of travelling allowances to the Chairperson and members of the Board;

(e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;

(f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

¹[(g) payment of maintenance to Muslim women as ordered by a Court of competent jurisdiction under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986).]

(5) If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of ²[waqf] properties or for such other purposes as it may deem fit.

78. Budget of Board.—(1) The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

(2) On receipt of the budget forwarded to it under sub-section (1), the State Government shall examine the same and suggest such alterations, corrections, or modifications to be made therein as it may think fit and forward such suggestions to the Board for its consideration.

(3) On receipt of the suggestions from the State Government, the Board may make written representations to that Government with regard to the alterations, corrections or modifications suggested by that Government and the State Government shall, after considering such representations, communicate, within a period of three weeks from the date of receipt, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

(4) On receipt of the decision of the State Government under sub-section (3), the Board shall incorporate in its budget all the alterations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board.

79. Accounts of Board.—The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be provided by regulations.

80. Audit of accounts of Board.—(1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every ²[waqf] under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit shall be paid from the ²[waqf] Fund.

1. Inserted by Act 27 of 2013, S. 42.

2. Substituted by Act 27 of 2013, S. 4, for "wakf".

81. State Government to pass orders on auditor's report.—The State Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit ¹[and a copy of the said auditor's report, along with orders shall be forwarded by the State Government to the Council within a period of thirty days of laying of such report before each House of the State Legislature where it consists of two Houses or where such Legislatures consist of one House, before that House.]

82. Dues of Board to be recovered as arrears of land revenue.—(1) Every sum certified to be due from any person by an auditor in his report under section 80, be paid by such person within sixty days after the service of a demand notice by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board, after giving the person concerned an opportunity of being heard, be recovered as an arrear of land revenue.

CHAPTER VIII JUDICIAL PROCEEDINGS

83. Constitution of Tribunals, etc.—²[(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;]

(2) Any *mutawalli*, person interested in a ³[waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the ³[waqf].

(3) Where any application made under sub-section (1) relates to any ³[waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the *mutawalli* or any one of the *mutawallis* of the ³[waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

1. Inserted by Act 27 of 2013, S. 43.

2. Substituted by Act 27 of 2013, S. 44(a), for sub-S. (1). Prior to its substitution, sub-S. (1) read as under:—“(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.”.

3. Substituted by Act 27 of 2013, S. 4, for “wakf”.

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the ¹[waqf] or any other person interested in the ¹[waqf] or the ¹[waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such ¹[waqf] or ¹[waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

²[(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4-A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members shall be such as may be prescribed.]

(5) The Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil Court.

(8) The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

2. Substituted by Act 27 of 2013, S. 44(b), for sub-S. (4). Prior to its substitution, sub-S. (4) read as under:— "(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation."

by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

State Amendment—[West Bengal].—In its application to the State of West Bengal, in S. 83, for sub-S. (4), substitute the following sub-section, namely:—

“(4)(a) Every Tribunal shall consist of one person, who is or has been a member of the State Judicial Service holding a rank, not below the rank of a District and Sessions Judge, and the appointment of every such person may be made either by name or by designation.

(b) On such appointment, such person shall be designated as Judge, wakf Tribunal, bearing the name of the State and shall hold office for a term of three years from the date of such appointment or till he attains the age of sixty-two years, whichever is earlier.”—West Bengal Act 20 of 2001, S. 3. [This State Amendment were made prior to the enactment of Wakf (Amendment) Act, 2013 (Central Act 27 of 2013).]

COMMENTS

Where before notifying the property as wakf property, neither any notice was issued to the occupants of the property nor any enquiry was conducted by Survey Commissioner as required by S. 4(3) as to whether the property in question was wakf property or not, held, writ challenging the notification notifying the property in question as wakf property, was maintainable: *B. Gowra Reddy v. Government of Andhra Pradesh* A.I.R. 2002 Andh. Pra. 313: (2002) 3 An.L.T. 439.

84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.—Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a ¹[wakf] or ¹[wakf] property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute.

85. Bar of jurisdiction of ²[Civil Court, revenue Court and any other authority].—No suit or other legal proceeding shall lie in any ²[Civil Court, revenue Court and any other authority] in respect of any dispute, question or other matter relating to any ¹[wakf], ¹[wakf] property or other matter which is required by or under this Act to be determined by a Tribunal.

COMMENTS

The coming into force of the wakf Act, 1995 does not in any way prevent the High Court from considering the question whether the judgment in appeal was correct or not in spite of the fact that the question to be decided was whether the plaint schedule property was wakf property or not. S. 7(5) merely says that the Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil Court under sub-S. (1) of S. 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement. S. 7(5) of the Act clearly exempts appeal from the bar of jurisdiction. Hence, the High Court is perfectly competent to decide the question regarding wakf in appeal: *Bodagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummerkutty Haji* A.I.R. 2002 Ker. 56 (D.B.).

Wakf Tribunals are constituted to try the suit and other proceedings relating to the wakf. Naturally, the bar of jurisdiction provided for under S. 85 will be in respect of such suits and proceedings which are pending. It cannot have any effect on the appellate jurisdiction

1. Substituted by Act 27 of 2013, S. 4, for “wakf”.

2. Substituted by Act 27 of 2013, S. 45, for “Civil Court”.

exercised by the District Court in terms of the Code of Civil Procedure. Wakf Act does not in any way affect the appellate jurisdiction exercised by the District Court: *Abdul Majeed Musliyar v. M.I. Mammad Koya* A.I.R. 2002 Ker. 71.

86. Appointment of a receiver in certain cases.—Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced—

(a) by or on behalf of a Board—

(i) to set aside the sale of any immovable property, which is ¹[waqf] property in execution of a decree or order of a Civil Court;

(ii) to set aside the transfer of any immovable property, which is ¹[waqf] property, made by the *mutawalli* thereof, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board;

(iii) to recover possession of the property referred to in clause (a) or clause (b) or to restore possession of such property to the *mutawalli* of the concerned ¹[waqf]; or

(b) by a *mutawalli* to recover possession of immovable property, which is ¹[waqf] property, which has been transferred by a previous *mutawalli*, ²[or by any other person] whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant,

the Court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the Court may consider to be necessary for further prosecution of the suit.

387. Bar to the enforcement of right on behalf of unregistered wakfs.—
[Omitted by the Wakfs Amendment Act, 2013 (27 of 2013), section 47.]

88. Bar to challenge the validity of any notification, etc.—Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any Civil Court.

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

2. Inserted by Act 27 of 2013, S. 46.

3. Prior to its omission, S. 87 read as under:—"87. Bar to the enforcement of right on behalf of unregistered wakfs.—(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any Court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any Court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

89. Notice of suits by parties against Board.—No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

90. Notice of suits, etc., by Courts.—(1) In every suit or proceeding relating to a title to or possession of a '[waqf] property or the right of a mutawalli or beneficiary, the Court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any '[waqf] property is notified for sale in execution of a decree of a Civil Court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, notice shall be given to the Board by the Court, Collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within ²[six months] of its coming to know of such suit or proceeding, applies to the Court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the Court or other authority under whose order the sale was held.

91. Proceedings under Act 1 of 1894.—(1) If, in the course of proceedings under the Land Acquisition Act, 1894 (1 of 1894) or under any law for the time being in force relating to the acquisition of land or other property, ³[and before an award is made, in case the property] under acquisition is '[waqf] property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

Explanation.—The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as a reference to the authority under such other law competent to make such award.

(2) Where the Board has reason to believe that any property under acquisition is '[waqf] property, it may at any time before the award is made appear and plead as a party to the proceeding.

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under section 31 or section 32

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

2. Substituted by Act 27 of 2013, S. 48, for "one month".

3. Substituted by Act 27 of 2013, S. 49, for "it appears to the collector before an award is made that any property".

of the Land Acquisition Act, 1894 (1 of 1894) or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 (1 of 1894) or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard, shall be declared void if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

92. Board to be party to suit or proceeding.—In any suit or proceeding in respect of a '[waqf] or any '[waqf] property the Board may appear and plead as a party to the suit or proceeding.

93. Bar to compromise of suits by or against mutawallis.—No suit or proceeding in any Court by or against the *mutawalli* of a '[waqf] relating to title to '[waqf] property or the rights of the *mutawalli* shall be compromised without the sanction of the Board.

94. Power to make application to the Tribunal in case of failure of mutawalli to discharge his duties.—(1) Where a *mutawalli* is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the *mutawalli* fails to perform such act, the Board may apply to the Tribunal for an order directing the *mutawalli* to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of such act.

(2) Where a *mutawalli* is under an obligation to discharge any other duties imposed on him under the '[waqf] and the *mutawalli* wilfully fails to discharge such duties, the Board or any person interested in the '[waqf] may make an application to the Tribunal and the Tribunal may pass such order thereon as it thinks fit.

95. Power of appellate authority to entertain appeal after expiry of specified period.—Where under this Act any period has been specified for the filing of any appeal, the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period so specified, entertain the appeal after the expiry of the said period.

CHAPTER IX MISCELLANEOUS

96. Power of Central Government to regulate secular activities of '[auqafs].—(1) For the purpose of regulating the secular activities of '[auqafs], the Central Government shall have the following powers and functions, namely:—

(a) to lay down general principles, and policies of '[waqf] administration insofar as they relate to the secular activities of the '[auqafs];

(b) to co-ordinate the functions of the Central '[Waqf] Council and the Board, insofar as they relate to their secular functions;

(c) to review administration of the secular activities of '[auqafs] generally and to suggest improvements, if any.

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

(2) In exercising its powers and functions under sub-section (1), the Central Government may call for any periodic or other reports from any Board and may issue to the Board such directions as it may think fit and the Board shall comply with such directions.

Explanation.—For the purposes of this section “secular activities” shall include social, economic, educational and other welfare activities.

97. Directions by State Government.—Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time, give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions:

¹[Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf.]

98. Annual report by State Government.—As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State ²[Waqf] Board and the administration of ²[auqafs] in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.

99. Power to supersede Board.—(1) If the State Government is of opinion that the Board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under section 96 or the State Government under section 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board’s continuance is likely to be injurious to the interests of the ²[auqafs] in the State, the State Government may, by notification in the Official Gazette, supersede the Board for a period not exceeding six months:

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board:

³[Provided further that the power of the State Government under this section shall not be exercised unless there is a *prima facie* evidence of financial irregularity, misconduct or violation of the provisions of this Act.]

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall,

1. Inserted by Act 27 of 2013, S. 50.

2. Substituted by Act 27 of 2013, S. 4, for “wakf” and “wakfs”, respectively.

3. Inserted by Act 27 of 2013, S. 51(a).

during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all property vested in the Board shall, during the period of supersession vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may—

¹[(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or]

(b) reconstitute the Board in the manner provided in section 14.

100. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

101. Survey Commissioner, members and officers of the Board deemed to be public servants.—(1) The Survey Commissioner, members of the Board, every officer, every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(2) Every *mutawalli* of a ²[waqf], every member of managing committee, whether constituted by the Board or under any deed of ²[waqf], every Executive Officer and every person holding any office in a ²[waqf] shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

102. Special provision for reorganisation of certain Boards.—(1) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was, immediately before the day of such reorganisation, functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted as an Infra-State Board for the whole or any part of that State, the State Government may frame a scheme or such dissolution or such reconstitution, including proposals regarding the transfer of all assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward that scheme to the Central Government.

(2) On receipt of a scheme forwarded to it under sub-section (1), the Central Government may, ³[after consulting the Council and the State Governments] concerned, approve the scheme with or without modifications and give effect to the scheme so approved by making such order as it thinks fit.

1. Substituted by Act 27 of 2013, S. 51(d), for Cl. (a). Prior to its substitution, Cl. (a) read as under:—“(a) extend the period of supersession for such further period as it may consider necessary; or”.

2. Substituted by Act 27 of 2013, S. 4, for “wakf”.

3. Substituted by Act 27 of 2013, S. 52, for “after consulting the State Governments”.

(3) An order under sub-section (2) may provide for all or any of the following matters, namely:—

- (a) the dissolution of the Board;
- (b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board;
- (c) the area in respect of which the reconstituted Board or new Board shall function and operate;
- (d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer;
- (e) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;
- (f) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and
- (g) such incidental, consequential and supplemental matters as may be necessary to give effect to the approved scheme.

(4) Where an order is made under this section transferring the assets, rights and liabilities of any Board, then, by virtue of that order, such assets, rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.

(5) Every order made under this section shall be published in the Official Gazette.

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

103. Special provision for establishment of Board for part of a State.—Where on account of the territorial changes brought about by any law providing for the reorganisation of any State, this Act is as from the date on which that law comes into force applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act is in force and in such a case any reference in this Act to the word "State" in relation of a Board shall be construed as a reference to that part of the State for which the Board is established.

(2) Where any such Board has been established and it appears to the Government of the State that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette, dissolve the Board established for the part of the State or reconstitute and reorganise such Board or establish a new Board for the whole of the State and thereupon, the assets, rights and liabilities of the Board for the part of the State shall vest in and be in the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.

104. Application of Act to properties given or donated by persons not professing Islam for support of certain ¹[waqf].—Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a ¹[waqf] being—

- (a) a mosque, idgah, imambara, dargah, khangah or a maqbara;
- (b) a Muslim graveyard;
- (c) a choultry or musafarkhana,

then such property shall be deemed to be comprised in that ¹[waqf] and be dealt in the same manner as the ¹[waqf] in which it is so comprised.

²[104-A. Prohibition of sale, gift, exchange, mortgage or transfer of waqf property.]—(1) Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift, exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.

(2) Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be void *ab initio*.]

³[104-B. Restoration of waqf properties in occupation of Government agencies to waqf Board.]—(1) If any waqf property has been occupied by the Government agencies it shall be returned to the Board or the *mutawalli* within a period of six months from the date of the order of the Tribunal.

(2) The Government agency may, if the property is required for a public purpose, make an application for determination of the rent, or as the case may be, the compensation, by the Tribunal at the prevailing market value.]

105. Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished.—Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a ¹[waqf] or any immovable property, which is ¹[waqf] property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

106. Powers of Central Government to constitute common Boards.—(1) Where the Central Government is satisfied that by reasons of—

- (i) the smallness of the Muslim population in two or more States,
- (ii) the slender resources of the ¹[auqafs] in such States, and
- (iii) the disproportion between the number and income of the ¹[auqafs] and the Muslim population in such States,

it is expedient in the interests of the ¹[auqafs] in the States and the Muslim population of such States, to have, instead of separate Boards for each of

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

2. Inserted by Act 27 of 2013, S. 53.

3. Inserted by Act 27 of 2013, S. 54.

such States, a common Board, it may, ¹[after consultation with the Council and the Government] of each of the concerned States, establish, by notification in the Official Gazette, a common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

(2) Every common Board established under sub-section (1) shall, as far as practicable, consist of the persons specified in sub-section (1) or, as the case may be, sub-section (7) of section 14.

(3) Whenever any common Board is established under sub-section (1),—

(a) all powers vested in the State Government under any deed of ²[waqf] or any provision of law for the time being in force relating to ²[auqafs], shall stand transferred to, and vested in, the Central Government and, thereupon, references in such deed of ²[waqf] or law to the State Governments shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure that at least one representative of each of the concerned States is included as a member of the Board;

(b) references in this Act to a State shall be construed as references to each of the States for which the common Board has been established;

(c) the Central Government may, without prejudice to any rule applicable to a Board in a State, make, by notification in the Official Gazette, rules regulating the conduct of business by, and affairs of, the common Board.

(4) The common Board shall be a body corporate, with objects not confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.

107. Act 36 of 1963 not to apply for recovery of ²[waqf] properties.— Nothing contained in the Limitation Act, 1963 (36 of 1963) shall apply to any suit for possession of immovable property comprised in any ²[waqf] or for possession of any interest in such property.

COMMENTS

As Ss. 66-D to 66-H were brought the statute of Wakf Act, 1954 by Amending Act 69 of 1984, where the suit was filed in 1973, the said provision was not available to the appellant for getting the extension of period of limitation: *Wakf Board, A.P. v. Biradavolu Ramana Reddy* A.I.R. 1999 S.C. 3374.

108. Special provision as to evacuee ²[waqf] properties.— The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950), which immediately before it became such evacuee property within the said meaning was property comprised in any ²[waqf] and, in particular any

1. Substituted by Act 27 of 2013, S. 55, for "after consultation with the Government".

2. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 (31 of 1950) shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to—

(a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of section 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of such entrustment, and

(b) authorise such Board to assume direct management of the ¹[waqf] concerned for so long as it might deem necessary.

²[108-A. Act to have overriding effect.—The provisions of this Act shall have overriding 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 law other than this Act.]

109. Power to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, other than those of Chapter III.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

³[(i) the qualifications required to be fulfilled by a person to be appointed as a *mutawalli* under clause (i) of section 3;

(ia) other particulars which the report of the Survey Commissioner may contain under clause (f) of sub-section (3) of section 4;]

(ii) any other matter under clause (f) of sub-section (4) of section 4;

(iii) the particulars which a list of ¹[auqafs] published under sub-section (2) of section 5, may contain;

(iv) the manner of election of members of the Board by means of a single transferable vote, under sub-section (2) of section 14;

(v) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 23;

(vi) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers ⁴[under sub-section (1) of] section 29;

⁵[(via) the period within which the *mutawalli* or any other person may produce documents related to waqf properties under sub-section (2) of section 31;

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively.

2. Inserted by Act 27 of 2013, S. 56.

3. Substituted by Act 27 of 2013, S. 57(a), for Cl. (i). Prior to its substitution, Cl. (i) read as under:— "(i) other particulars which the report of the Survey Commissioner may contain, under clause (f) of sub-section (3) of section (4);"

4. Substituted by Act 27 of 2013, S. 57(b), for "under".

5. Inserted by Act 27 of 2013, S. 57(c).

(vib) the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 31;

(vii) the conditions subject to which an Executive Officer and supporting staff may be appointed under sub-section (1) of section 38;

(viii) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (1) of section 39;

(ix) the form in which, and the time within which, a separate budget for ¹[auqafs] under the direct management of the Board shall be prepared under sub-section (1) of section 45;

(x) the interval at which accounts of ¹[auqafs] may be audited in pursuance of the provisions of sub-section (1) of section 47;

²[* * *]

(xii) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under section 52;

(xiii) the manner of service of notice issued under sub-section (1) of section 54 and the manner in which any inquiry is to be made under sub-section (3) of that section;

(xiv) the manner in which any inquiry may be held under section 64 or section 71;

(xv) the other matters which may be specified in the report submitted under sub-section (3) of section 65;

(xvi) the manner of publication of order made under sub-section (2) of section 67;

(xvii) the manner in which consultation may be made with mutawalli under sub-section (1) of section 69;

(xviii) the manner of publication of order made under sub-section (3) of section 69;

(xix) the rate at which contribution is to be made by a *mutawalli* under section 72;

(xx) the payment of moneys into the ¹[waqf] Fund, the investment, the custody and disbursement of such moneys under section 77;

(xxi) the form in which, and the time within which, the budget of the Board may be prepared and submitted under section 78;

(xxii) the time within which application is to be made to the Tribunal under sub-section (2) of section 83;

³[(xxiia) the terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members under sub-section (4-A) of section 83;]

1. Substituted by Act 27 of 2013, S. 4, for "wakfs" and "wakf", respectively.

2. Cl. (xi) omitted by Act 27 of 2013, S. 57(d). Prior to its omission, Cl. (xi) read as under:— "(xi) the time within which, the sale of any property is to be informed under the first proviso to sub-section (2) of section 51 and the manner in which the approval given under sub-section (3) of that section shall be published;".

3. Inserted by Act 27 of 2013, S. 57(e).

(xxiii) the procedure which the Tribunal shall follow under sub-section (6) of section 83;

(xxiv) the form in which the annual report is to be submitted and the matters which such report shall contain under section 98; and

(xxv) any other matter which is required to be, or may be, prescribed.

State Amendment—[West Bengal].—In its application to the State of West Bengal, in sub-S. (2) of S. 109, after Cl. (vi), insert the following clause, namely:—

"(via) the manner of control and management of the properties of the [waqf] under sub-section (5) of section 32;" — West Bengal Act 33 of 1997, S. 5. [This State Amendment were made prior to the enactment of Wakf (Amendment) Act, 2013 (Central Act 27 of 2013).]

110. Powers to make regulations by the Board.—(1) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:—

(a) the time and places of the meetings of the Board under sub-section (1) of section 17;

(b) the procedure and conduct of business at the meetings of the Board;

(c) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees;

(d) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees;

(e) the terms and conditions of service of the officers and other employees of the Board under sub-section (2) of section 24;

(f) the forms of application for registration of ¹[auqafs] further particulars to be contained therein and the manner and place of registration of ¹[auqafs] under sub-section (3) of section 36;

(g) further particulars to be contained in the register of ¹[auqafs] under section 37;

(h) the form in which, and the time within which, the budgets of ¹[auqafs] may be prepared and submitted by the mutawalli and approved by the Board under sub-section (1) of section 44;

(i) the books of accounts and other books to be maintained by the Board under section 79;

(j) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;

(k) persons by whom any order or decision of the Board may be authenticated; and

(l) any other matter which has to be, or may be, provided by regulations.

1. Substituted by Act 27 of 2013, S. 4, for "wakfs".

(3) All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication.

111. Laying of rules and regulations before State Legislature.—Every rule made under section 109 and every regulation made under section 110 shall be laid, as soon as may be after it is made, before the State Legislature.

112. Repeal and savings.—(1) The '[Waqf] Act, 1954 (29 of 1954) and the [Waqf] (Amendment) Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act, that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

113. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

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

1. Substituted by Act 27 of 2013, S. 4, for "wakf".

THE CENTRAL WAKF COUNCIL RULES, 1998*

In exercise of the powers conferred by sub-sections (1) and (2) of section 12 of the Wakf Act, 1995 (43 of 1995), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called THE CENTRAL WAKF COUNCIL RULES, 1998.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition.—In these rules, unless the context otherwise requires,—

(a) "Act" means the Wakf Act, 1995 (43 of 1995);

(b) "Chairperson" means the Chairperson of the Council;

(c) "Council" means the Central Wakf Council established under section 9 of the Act;

¹[(ca) "employee" means an employee of the Council;]

(d) "Fund" means the Central Wakf Fund formed under sub-section (2) of section 10 of the Act;

(e) "Member" means a member of the Council;

(f) "Secretary" means the Secretary of the Council.

3. Register of members.—(1) The Council shall maintain a roll of members indicating their name, occupation and address and every member shall sign the same.

(2) The member of the Council shall intimate the change of his address, if any, to the Secretary of the Council who shall cause to make the entry in the roll of members.

4. Term of office, resignation and removal of members.—(1) Save as otherwise provided in these rules, every member shall hold office for a term of five years from the date on which he assumed such office and shall be eligible for re-appointment.

(2) A member may resign his office by writing under his hand addressed to the Central Government and such resignation shall take effect from the date on which it is accepted by the Central Government or on the expiry of thirty days from the date of resignation, whichever is earlier.

(3) The Central Government may remove a member from the Council if he—

(a) becomes an undischarged insolvent;

(b) is, in the opinion of the Central Government, unfit to continue in office by reason of infirmity of mind or body;

(c) gets convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude;

(d) is without obtaining leave of absence from the Chairperson of the Council, absent from three consecutive meetings of the Council;

*Vide G.S.R. 593(E), dated 30-9-1998, published in the Gazette of India, Ext., Pt. II, S. 3(i), dated 30-9-1998.

1. Inserted by G.S.R. 240(E), dated 22-3-2012 (w.e.f. 22-3-2012).

(e) in the opinion of the Central Government, has so abused the position of member as to render that person's continuance in the office detrimental to the purposes of the Act.

5. Filling of casual vacancies.—In the event of occurrence of any vacancy in the office of a member by reason of his death, resignation, removal or otherwise, the Central Government may appoint another person in his place and the person appointed to fill the vacancy shall hold office only for the remainder of the term for which the member in whose place he was so appointed.

6. Committees of the Council.—(1) The Council may appoint, from amongst its members, such number of Committees as the Council deems necessary but not exceeding four, and assign to them such functions, duties and powers as it may consider necessary for the purpose.

(2) The members of the Committee shall hold office for such period as may be specified by the Council.

(3) A member shall cease to be a member of a Committee if he ceases to be a member of the Council.

(4) The Committee of the Council may meet frequently depending upon the exigencies of work.

(5) The recommendations or decisions of the Committee shall be placed before the Council for its approval:

Provided that when the Council is not holding its meetings the recommendations or decisions shall be placed before the Chairperson by the Secretary of the Council and the Chairperson shall inform the Council of the recommendations or decisions taken in view thereof to the Council as soon as the Council meets:

Provided further that if the Committee is unable to meet for reasons beyond its control, the Secretary of the Council may submit the matter falling within purview of such Committee directly to the Chairperson for directions:

Provided also that all decisions taken by the Chairperson either on the recommendations of a Committee or otherwise shall be ratified forthwith by the Council.

7. Secretary to the Council.—¹[(1) There shall be a Secretary to the Council, who shall be a Muslim.

(1-A) The Chairperson shall make appointment to the post of Secretary, which shall be equivalent to a Group A post of the Central Government, on such terms and conditions as may be determined by the Central Government.]

(2) The Secretary shall be the Chief Executive Officer of the Council and shall exercise powers of control, supervision and management over the office and ¹[employees] of the Council.

(3) The Secretary shall give effect to the decisions of, and carry out the instructions that may, from time to time, be given by the Council or the Chairperson:

1. Substituted by G.S.R. 240(E), dated 22-3-2012 (w.e.f. 22-3-2012).

Provided that when the Council is in the process of reconstitution or unable to meet for reasons beyond its control, the Secretary may seek the orders or approval of the Chairperson on an urgent matter:

Provided further that all such orders or approval of the Chairperson shall be placed before the Council for its decision, as soon as the Council meets.

(4) The Secretary shall ensure that all the records of the Council are properly maintained and kept in safe custody.

(5) The Secretary shall be responsible for the presentation of the annual statement of accounts of the Council duly authenticated in the proper form to the auditor appointed by the Central Government for this purpose.

8. Meeting of the Council. – (1) There shall ordinarily be two meetings of the Council every year which may be increased to five, if necessary.

(2) An extraordinary meeting of the Council may be convened by the Secretary, if the Chairperson so desires, or if a requisition in that behalf is presented to the Chairperson by at least one-third members of the Council and such requisition shall set out matters for consideration in the meeting.

(3) The date and venue of the meeting shall be such as may be decided by the Chairperson.

(4) An ordinary meeting of the Council may be called by giving not less than one month's notice in writing and an extraordinary meeting by giving not less than one week's notice in writing:

Provided that an extraordinary meeting may be called by giving shorter notice if the urgency of the business to be transacted, so requires.

9. Procedure at meeting. – (1) An agenda for every meeting of the Council shall be prepared by the Secretary with the approval of the Chairperson and shall be circulated to the members ¹[at least ten days in advance].

(2) The quorum necessary for the transaction of business at a meeting of the Council shall be one-third of the total number of members.

(3) Where a meeting has been adjourned for lack of quorum, the business which would have been brought before the original meeting if there had been a quorum present thereat, shall be brought before, and may be transacted at an adjourned meeting whether ²[a quorum exists] or not.

²[(4) The Chairperson or in his absence, any member of the Council present, as is decided by the Council, shall preside over the meeting of the Council.]

(5) All matters brought before any meeting of the Council shall be decided by the majority of the votes of the members present and voting.

(6) The Chairperson or the ²[member] presiding over a meeting shall have and exercise a second or a casting vote in all cases of equality of votes.

(7) It shall be open to any member to raise any matter not included in the agenda with the permission of the Chairperson.

²[(8) The minutes of the meeting shall be recorded by the Secretary and circulated to the members, within a period of ten days after the approval of the Chairperson.]

1. Inserted by G.S.R. 240(E), dated 22-3-2012 (w.e.f. 22-3-2012).

2. Substituted by G.S.R. 240(E), dated 22-3-2012 (w.e.f. 22-3-2012).

(9) At the next meeting of the Council, the approved minutes of the previous meeting shall be read and confirmed.

10. Invitees to the Council meeting. — The Chairperson of the Council may invite any person or persons to attend any meeting of the Council but such persons shall have no right to vote.

11. Travelling and daily allowances. — (1) Every member, not being an officer of the Government, performing journeys to attend meeting of the Council or in connection with any work relating to the Council shall be entitled to travel, at his discretion, by air or by rail in first class or in second class AC coach wherever available.

(2) Every such member shall be entitled to the following travelling and daily allowances, namely: —

Travelling Allowance:

(a) By Air

(i) One standard air fare;

(ii) Incidental expenses subject to a maximum of rupees fifty.

(b) By Rail

(i) First Class/II AC coach rail fare, as the case may be;

(ii) Incidental expenses subject to a maximum of rupees fifty.

Note. — I. In case of air journeys involving overnight halt (either due to non-availability of connective service or due to the cancellation of connective service) at intermediary stations, for which the Airlines does not provide, at its expense, any facility for boarding or lodging to the touring member, he shall be entitled in respect of such overnight halt, one-half of the daily allowance admissible to him in addition to the incidental expenses.

II. While performing journeys by air, he shall purchase return ticket, wherever it is available, when it is expected that the return journey can be performed before the expiry of the period for which the return ticket is available.

III. In respect of journeys by road from residence to the air booking office or railway station and from these points to the place where a meeting of the Council is being held, he shall also be entitled to a road mileage at rupees eight per kilometre.

Daily Allowance:

(a) For each day of the meeting, he shall be entitled to a daily allowance of rupees five hundred per day.

(b) In addition to the daily allowance for the days of the meeting, he shall be entitled to full day allowance for the day preceding and the day following the day of the meeting if —

(i) he arrives in the forenoon of the day immediately preceding the day of the meeting or on an earlier day;

(ii) he departs in the afternoon of the day following the day of the meeting or on a later day:

Provided that he shall be entitled to only one-half of the daily allowance for the day preceding the day of the meeting and the day following the day of the meeting if —

(i) he arrives in the afternoon of the day preceding the day of the meeting; or

(ii) he departs in the forenoon of the day following the day of the meeting.

(3) When a person attends any meeting of the Council or its Committee as an invitee, he may be paid travelling allowance and daily allowance at the rates admissible to a member of the Council.

(4) A claim of the member travelling by his own transport shall be restricted to rail fare by II Class AC coach by the shortest route.

(5) Notwithstanding anything contained in sub-rules (1), (2) and (3), if a member of the Council, is a Member of Parliament, or a State Legislature, he shall not be entitled to any remuneration other than the allowances, defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959), or, as the case may be, other than the allowances, if any, which a member of the Legislature of the State may, under any law for the time being in force in the State relating to the prevention of disqualification for Membership of the State Legislature, receive without incurring such disqualification.

12. Travelling and daily allowances to members who are officers of Government.—(1) Every member, being an officer of the Government, shall be entitled to such travelling allowance and daily allowance as are admissible under the rules applicable to him for journeys performed on official duty.

(2) Where any travelling or daily allowance is paid to a member being an officer of the Government, the Council shall make necessary arrangements for the reimbursement of the amount so paid to the authority employing such officer.

[13. Recruitment and service conditions of Secretary and employees of the Council.—(1) The Council shall, from time to time, recommend for the creation of such posts to the Central Government for approval as are necessary for the efficient performance of the functions of the Council.

(2) The Chairperson shall make appointments to the posts of the Council, which shall be equivalent to Group A and Group B posts of the Central Government, on such terms and conditions as may be determined by the Central Government.

(3) The Secretary shall make appointments to the posts of the Council, which shall be equivalent to Group C posts of the Central Government, on such terms and conditions as may be determined by the Central Government.

(4) The appointing authority of the employees of the Council shall be the disciplinary authority and shall be competent to impose all kinds of punishments including dismissal as per the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended from time to time.

(5) In case of disciplinary proceedings against the employees of the Council, where the disciplinary authority is the Chairperson, the Council shall be the appellate authority and where the disciplinary authority is the Secretary, the Chairperson shall be the appellate authority.

(6) Except as otherwise provided by the Central Government, the scales of pay and terms and conditions of service of the various posts of the Council

1. Substituted by G.S.R. 240(E), dated 22-3-2012 (w.e.f. 22-3-2012).

shall be the same as are applicable to the officers and other employees of the equivalent rank holding posts with corresponding scales of pay under the Central Government.]

14. Control of the Fund.—(1) The Secretary shall receive all payments to the fund and pass receipts on behalf of the Council.

(2) All monies received by the Council shall be deposited in the name and with the approval of the Council in the State Bank of India or any other nationalised bank as per instructions and guidelines of the Ministry of Finance issued in this regard from time to time:

Provided that for the purpose of disbursement of salary to the staff of the Council, an account of the Council shall also be opened in a branch of a nationalised bank in the vicinity of the Council's office.

15. Power to sanction expenditure by Chairperson and Secretary.—

(1) Subject to the provisions made in the budget in this regard —

(a) The Chairperson may sanction a recurring expenditure up to Rs. 10,000 (Rupees ten thousand only) and a non-recurring expenditure of Rs. 50,000 (Rupees fifty thousand only) on an item per annum.

(b) The secretary may sanction a recurring expenditure up to Rs. 4,000 (Four thousand rupees only) and a non-recurring expenditure up to Rs. 8,000 (Eight thousand rupees only) on an item per annum.

(2) The Secretary or in his absence an officer subordinate to him, if so authorised, may draw cheques for the sanctioned expenditure.

(3) The officer, so authorised by the Secretary, may supervise the maintenance of all registers in the Council's office and certify the entries made therein.

16. Annual Statement of Accounts.—The Council shall maintain accounts and other records and cause its books of accounts to be balanced on the last working day of the month of March in each financial year and the annual statement of accounts shall be as set out in the Form appended to these rules.

17. Powers of the Secretary in respect of staff and contingent expenditure.—(1) The Secretary shall, in respect of all the staff of the Council under his control and supervision, have the power to sanction,—

(i) Increment;

(ii) Leave;

(iii) Allowances and advances as admissible to the Government employees.

(2) The Secretary shall have the power to sanction,—

(i) expenditure up to Rs. 2,000 (two thousand rupees only) for repairs of furniture, typewriter, bicycle, clock, water-cooler, electric heater, which are on the stock register of the Council office and an expenditure up to Rs. 500 (five hundred rupees only) if any of the aforesaid article needs servicing;

(ii) expenditure up to Rs. 2,000 (two thousand rupees only) for arranging, entertainment such as dinner, lunch or at home for members and invitees of the Council or its Committees.

1[**]

1. Rr. 18 and 19 omitted by G.S.R. 240(E), dated 22-3-2012 (w.e.f. 22-3-2012).

APPENDIX

FORM

[See rule 6]

CENTRAL WAKF COUNCIL
NEW DELHI

Receipt and Payment Account for the Year ending on 31st March.....

Receipts	Amount (Rs.)	Payments	Amount (Rs.)
(1)	(2)	(3)	(4)
PART I—WAKF ACCOUNT:		ESTABLISHMENT EXPENDITURE	
Opening Balance		Salary and Allowances	
Cash in hand			
Cash in Bank		Travelling Allowance	
Cash in Bank (General Investment Account).		Leave Travel Concession	
Grants-in-aid from Government of India		Overtime Allowance	
Loans from Government of India		Honorarium	
Loans and Advances from other sources		Bonus	
Donations		Contributory Provident Fund (Employer's Contribution and Interest thereon)	
Benefactions		TRAVELLING ALLOWANCE AND DAILY ALLOWANCE TO MEMBERS:	
Contribution (1%) from State Wakf Boards		(a) Central Wakf Council	
		(b) Planning and Advisory Committee	
		(c) Wakf Development Committee	
		(d) Monitoring Committee	
		(e) Education and Women Welfare Committee	
Dividend on Investment (including interest on Savings Bank Account)		RENT, RATES AND TAXES:	
		Rent of Office	
Encashment of Fixed Deposit Receipts		Rent of Secretary's Residence	
RECOVERIES OF ADVANCES:			
Festival Advance		OTHER CONTINGENCIES AND OFFICE EXPENSES:	
House Building Advance			

(1)	(2)	(3)	(4)
Motor Car/Scooter Advance		Printing and Stationery	
Cycle Advance		Postage and Telegram	
		Telephone	
Leave Travel Concession/ Travelling Allowance Advance			
Temporary Advances (to be specified)		Books and periodicals	
Other Receipts:		Conveyance Charges	
		Liveries	
Central Government Health Scheme Contribution		Bank Charges	
Recovery of Rent		Maintenance and Repairs	
Miscellaneous Receipts		Entertainment/Hospitality	
Sale proceeds of obsolete assets		Legal Expenses	
		Audit Fee	
		Advertisement	
		Other Miscellaneous Expenditure	
OTHER RECOVERIES:		NON-RECURRING:	
Recovery of Contributory Provident Fund subscription			
Recovery of Contributory Provident Fund Advance			
Income Tax		Furniture and Fixture	
		Office Machinery and Equipment (Including typewriters, duplicators, computer, etc.)	
General Provident Fund		Land and Building	
Central Government Employees Group Insurance Scheme (CGEGIS)		Vehicles	
Security Deposits			
		LOANS AND ADVANCES:	
		House Building Advance	
		Festival Advance	
		Scooter Advance	
		Cycle Advance	
		Travelling Allowance/Leave Travel Concession	
		Advance to staff	
		Travelling Allowance/Daily Allowance to Secretary and Staff	
		Temporary Advances	
		INVESTMENT:	
		Loans to State Wakf Boards	
		Amount of repaid loans	

(1)	(2)	(3)	(4)
		Transferred to Revolving Fund	
		Donations	
		OTHER PAYMENTS:	
		Contributory Provident Fund subscription	
		Contributory Provident Fund – Refund of loans	
		Income Tax	
		General Provident Fund recoveries	
		Security Deposits	
		CLOSING BALANCE:	
		Cash in Hand	
		Cash at Bank	
		Cash at Bank (General Investment Account)	
Total (Part I)			
PART II – REVOLVING FUND:			
OPENING BALANCE:		Loans to State Wakf Boards for development and other schemes	
Cash in Hand		Investment in Fixed Deposits	
Cash at Bank		Other Payments	
Repayment of loans transferred to Revolving Fund		CLOSING BALANCE:	
Encashment of Fixed Deposit Receipts		Cash in Hand	
Other Receipts		Cash at Bank	
Total (Part II)			
PART III – EDUCATION FUND:			
OPENING BALANCE:		Payment of scholarship for Technical Education	
Cash in Hand		Ad hoc assistance to students	
Cash in Bank		50% matching grant to vocational institutions	
6% donation from Loanee Wakfs		Grants for Reading Room/ Library Scheme	
Other donations for educational schemes		Expenditure on other educational schemes	
Dividend on investments (Interest on Fixed Deposit Receipts)		Investment in Fixed Deposits	
Encashment of Fixed Deposit Receipts			

(1)	(2)	(3)	(4)
Refund by students		Other Payments	
Refund of scholarship by State Wakf Boards		CLOSING BALANCE:	
Refund of grants given under Career		Cash in Hand	
Guidance Scheme/ Reading Rooms/Library		Cash at Bank	
Recovery of <i>ad hoc</i> grants from students			
Miscellaneous Receipts			
Total (Part III)			
Total Part I			
Total Part II			
Total Part III			
Grand TOTAL			

CENTRAL WAKF COUNCIL

Receipt and Payment Account for the Year ending on 31st March.....

CONTRIBUTORY PROVIDENT FUND

Receipts	Amount (Rs.)	Payments	Amount (Rs.)
(1)	(2)	(3)	(4)
Opening Balance			
Cash in Hand			
Cash at Bank			
Employees subscription to Contributory Provident Fund		Advances to Staff	
Refund of Advances		Final Withdrawals	
Employer's contribution and interest thereon		Final payment	
Interest received on investment		Investment	
Deficient to interest account on Provident Fund Account met by Council		Surplus interest transferred to Council's Account	
Investment matured		CLOSING BALANCE:	
		Cash in Hand	
		Cash at Bank	
TOTAL			

CENTRAL WAKF COUNCIL
NEW DELHI

Income and Expenditure Account for the Year ending on 31st March.....

Expenditure	Amount (Rs.)	Income	Amount (Rs.)
(1)	(2)	(3)	(4)
ESTABLISHMENT:			
Salary and Allowances		1% contribution from State Wakf Boards	
Travelling Allowances			
Leave Travel Concession		Government Grant/Loan	
Over Time Allowance			
Bonus		Donations	
Contributory Provident Fund –		Benefaction	
Employer's Contribution and interest thereon			
Honorarium to Staff			
TRAVELLING ALLOWANCE/ DAILY ALLOWANCE TO COUNCIL'S MEMBERS, ETC.			
Central Wakf Council			
Planning and Advisory Committee			
Wakf Development Committee			
Education and Women Welfare Committee		Dividend on investments	
Monitoring Committee		Part I	
Office Contingencies:		Part II	
Printing and Stationery		Part III	
Rent, Rates and Taxes		Recovery of Central Government Health Scheme Contribution	
Telephone			
Postage and Telegram			
Liveries		Recovery of Rent	
Wages		Miscellaneous Income	
Conveyance charges		Less: Non-recurring expenses (Capital nature)	
Maintenance and Repairs:		Furniture and Fixture	
(a) Building		Office Machinery and Equipment (including typewriters, duplicators and computers)	
(b) Office Equipments		Library Books	
Journals and Periodicals		Vehicles	
Bank Charges			
Entertainment Expenses			
Legal Charges			

(1)	(2)	(3)	(4)
Audit Fee			
Advertisements			
Other Expenditure			Excess of expenditure over income
Part I			
Part II			
Part III			
SURPLUS TRANSFERRED TO WAKF FUND			
Excess of Income over Expenditure)			
TOTAL			

CENTRAL WAKF COUNCIL
NEW DELHI
Balance Sheet as on 31st March.....

Liability	Amount (Rs.)	Assets	Amount (Rs.)
(1)	(2)	(3)	(4)
PART I-WAKF FUND			
Capital Fund – As per last Balance Sheet (Equal to Assets)		Fixed Assets:	
Addition during the yearLand		and Building –	
Written off during the year		As per last Balance Sheet	
Reserve and Surplus:		Addition during the year	
Excess of Income over Expenditure		Furniture and Fixture –	
As per last Balance Sheet		As per last Balance Sheet	
Add during the year		Addition during one year	
		Machinery and Equipments	
		– As per last Balance Sheet	
Less deficit during the year		Adding during the year	
		Less: Written of	
		Vehicles: As per last Balance Sheet Addition during the year	
		Less: Written off	
		Loans and Advances	
		to State Wakf Boards:	
Grants utilised for Development Loan:			
As per last Balance Sheet		As per last Balance Sheet	
Paid during the year		Paid during the year	
Less recovered during the year		Recovered during the year	

(1)	(2)	(3)	(4)
Security/Earnest Money Deposit		Investment Wakf Fund Account:	
Current Liabilities:		As per Balance Sheet	
Contributory Provident Fund (contra)		Deposit during the year	
Balance as per last Balance Sheet		Encashed during the year	
Add Subscription during the year			
Add Employer's Contribution			
Add Dividend (interest) allowed during the year		Loans and Advances:	
		Travelling Allowance/Leave Travel Concession	
		— As per last Balance Sheet	
		Addition	
		Adjusted	
		House Building Advance	
		Motor Car/Scooter Advance	
		Cycle Advance	
		Festival Advance	
		Flood Advance	
		Other Advances	
		Security paid	
		Sundry Debtors:	
		Advance to Suppliers	
		Advance to Central Public Works Department, etc.	
		Contributory Provident Fund Investment	
		Advance to staff	
		Closing Balance	
		Closing Balance:	
		Cash in hand/Bank (General Investment Account	
		Cash at Bank	
		Cash in Hand	
TOTAL			

PART II—REVOLVING FUND

Balance as per last Balance Sheet
 Add during the year
 Less loans paid during the year
 Add Dividend on investment

Investment as per last Balance Sheet
 Add during the year
 Less Encashment
 Loans and Advances to Wakf Board, etc.
 Closing Balance:
 Cash in Hand
 Cash at Bank

(1)	(2)	(3)	(4)
PART III – EDUCATION FUND			
Balance as per Last Balance Sheet		Investments:	
Add 6% Donation		As per last Balance Sheet	
Add other Donation		Add during the year	
Add Dividend on Investments		Less encashed during the year	
Less payments made during the year		Advance to Students	
		Advance to Others	
		Closing Balance:	
		Cash in Hand	
		Cash at Bank	
TOTAL			

MODEL SPECIMEN FORMS*

DRAFT NOTICE UNDER WAKF ACT, 1995

From,

.....

.....

.....

To,

The Board of Wakf

for State of.....

Re: Notice Under Wakf Act, 1995

Dear Sir,

A legal notice under instruction and on behalf of my client Shri.....S/o.....R/o.....to you the Board of Wakf, is under—

1. that at(name of place) there is a Khanqah known as..... and my client is the Sajjadanashin of the Khanqah and he possesses every right to hold the office as the spiritual head of the said;
2. that since long my client is holding the said office through his ancestors and he is rendering all relies services;
3. that my client's Khandan was granted the agricultural land in the village;
(Give description)
4. that on.....you have declared the said land as wakf property, while this land has never been dedicated to the shrine;
5. that you have drawn conclusion without giving any opportunity of hearing to my client;
6. that your said decision is barred by limitation prescribed under the Act.

Under circumstances and call upon you to withdraw the said declaration of the wakf property in respect of the land within the prescribed period of two months, failing which my client shall be compelled to file a suit against you in a Court of competent jurisdiction and you shall be liable for the costs and consequences of the same.

Yours faithfully

Advocate

* The Specimen form are for guidance only.

MODEL SPECIMEN
DRAFT WAKF DEED
Deed of Wakf

To all to whom these presents shall come I.....wife of a Mahomedan by faith and religion governed by *sunni/shia* school of Mahomedan Law etc. send greeting whereas I am of my free will and own accord desirous of permanently dedicating my properties, movable and immovable, full mentioned and described in the schedule hereunder written for purposes recognised by the Mahomedan Law as religious, pious and/or charitable now know ye and I hereby declare as follows:

1. I dedicate all the properties mentioned and described in the schedule hereunder written with all appurtenances and the rents, issues and profits thereof absolutely and permanently by way of wakf for the purposes as aforesaid with intent to extinguish all my rights and claim therein and vest the same in God and complete the same by delivery of possession to the *mutawalli* in the manner hereinafter mentioned.
2. The ultimate benefit under this wakf is reserved for purposes and objects recognised by the Hanafi of Sunni School of Mahomedan Law as religious, pious and/or charitable and indicated in the paragraph next succeeding.
3. The purposes and objects referred to in the last preceding paragraph are *inter alia* as follows:
 - (i) The payment of my just debts.
 - (ii) The maintenance and support of myself and my.....
 - (iii) The distribution of *alms* to poor and indigent persons on every Thursday in the week the amount or value of such weekly alms not to be less than Rupees.....
 - (iv) The observance of the tenth day of Mohurram by distribution of milk and other food.
 - (v) The celebration of ceremonies known as Mound Shariff.
 - (vi) To help poor and meritorious students professing Islam faith and reading in any recognised institution.
 - (vii) The performance of the annual fateha of myself after my death and of my husband after his death and the members of.....
 - (viii) Other religious, pious and/or charitable purposes any may be thought fit by the *mutawalli* from time to time or a Court of Law including pecuniary reliefs or assistance to indigent members of my family and the family of my.....
4. The moneys which may be realized by execution of the decrees in the suits mentioned in the said Schedule hereto shall, after payment therefrom of my debts, be invested in landed properties and such landed properties shall form a part of the estate hereby mode wakf estate.
5. Out of the income of the said wakf estate the said.....shall each receive a monthly sum of not more than Rs.....only for the benefit of themselves and their respective families and descendants. As regards the respective amounts to be spent for the other purposes aforesaid, the *mutawalli* or *mutawallis* for the time being shall have absolute discretion.

6. For the appointment of mutawalli, the following rules are laid down:

(i) I shall be the *mutawalli* for my life.

(ii) After my death Sri.....and.....son of..... shall be joint mutawallis and each of them shall be at liberty to appoint one of his or her lineal male descendants as his or her successor failing which each shall be succeeded by his or her eldest lineal male descendant. All the mutawallis for the time being and each of them shall have the power of appointing their, his or her successors or successor.

7. The *mutawalli* or *mutawallis* for the time being (jointly if there are more than one) shall, as and by way of remuneration, be entitled to receive jointly one-fourth part of the net income of the wakf estate and to retain all expenses of management including the costs of all necessary litigation.

8. Notwithstanding anything herein contained, no *mutawalli* will directly or indirectly grant or extent any benefit out of the wakf estate to my.....or any descendants of theirs.

9. In cases of necessity and for the benefit of the wakf estate, the *mutawalli* or *mutawallis* for the time being shall after obtaining sanction of the Wakf Board Constituted under the Wakf Act, 1995 and in accordance with its directions, be at liberty, to sell, mortgage, transfer, alienate, partition and/or demise the wakf properties mentioned in the said schedule hereto or any part thereof and to invest the moneys thereby raised and in the event of such sale, mortgage, transfer, alienation, partition and/or lease the proceeds thereof as well as such investments shall form part of the wakf estate but no purchaser, mortgagee, transferee, alienee, co-sharer or lessee of the said properties shall be concerned to enquire whether the respective sales, mortgages, transfers, alienations, partition or leases are necessary for or beneficial to the wakf estate or to see to the application of the proceeds thereof.

10. The dedication hereby made will bind my heirs, executors and representatives.

11. The properties hereby dedicated are valued at Rs.....

The Schedule above referred to:

Part I

Part II

In witness whereof the said.....has executed these presents on thisday of.....20..... at.....

In presence of:

(1).....

Signature

and

(2).....

Seal
