रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—13 REGISTERED NO. DL—(N)04/0007/2003—13

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II — खण्ड 1
PART II — Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 37] नई दिल्ली, सोमवार, सितम्बर 23, 2013/ आश्विन 1, 1935 (शक)
No. 37] NEW DELHI, MONDAY, SEPTEMBER 23, 2013/ ASVINA 1, 1935 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

Indiacode

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 23*rd September*, 2013/*Asvina* 1, 1935 (*Saka*)

The following Act of Parliament received the assent of the President on the 20th September, 2013, and is hereby published for general information:—

THE WAKF (AMENDMENT) ACT, 2013

No. 27 of 2013

[20*th 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:—

Short title and commencement.

1. (*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.

Amendment of long title.

43 of 1995.

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

Amendment of section 1.

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

Substitution of references to certain expressions by certain other expressions.

4. 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.

Amendment of section 3.

5. 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;

(*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;'.

Amendment of section 4.

6. 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;

IndiaCode

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

"(*1A*) 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. In section 5 of the principal Act,— Amendment of section 5.

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

(*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. In section 7 of the principal Act,— Amendment of section 7.

(*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 (*5*), 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.".

Substitution of new section for section 8.

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

State Government to bear cost of survey.

"8. 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.".

Amendment of section 9.

11. 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.

(*1A*) 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.".

Amendment of section 13.

12. 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:—

"(*2A*) 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.".

Amendment of section 14.

13. 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

IndiaCode

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:—

"(*1A*) 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.

Amendment of section 15.

14. 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.

Amendment of section 16.

15. 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;".

Insertion of new section 20A.

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

Removal of Chairperson by vote of no confidence.

"20A. 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.".

Amendment of section 23.

17. 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.".

Substitution of new section for section 27.

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

Delegation of powers by Board.

"27. 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.".

Substitution of new section for section 28.

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

Power of District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate to implement the directions of the Board.

"28. 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.".

Amendment of section 29.

20. 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.".

Amendment of section 31.

21. 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".

Amendment of section 32.

22. 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.

Amendment of section 33.

23. 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.

Amendment of section 36.

24. 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.

Amendment of section 37.

25. 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.".

Amendment of section 44.

26. In section 44 of the principal Act,—

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

IndiaCode

(*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.".

Amendment of section 46.

27. 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.

Amendment of section 47.

28. 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.

IndiaCode

Amendment of section 51.

29. 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.

(*1A*) 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 or any other law relating to acquisition of land if such acquisition is made in consultation with the Board: 1 of 1894.

Provided also that—

(*a*) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991; 42 of 1951.

(*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.

Amendment of section 52.

30. 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.

Insertion of new section 52A.

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

Penalty for alienation of waqf property without sanction of Board.

"52A. (*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 any offence punishable under this section shall be cognizable and non-bailable.

2 of 1974.

(*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.".

Amendment of section 54.

32. 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.".

Amendment of section 55.

33. 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 Triubnal to the Executive Magistrate" shall be substituted.

Insertion of new section 55A.

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

Disposal of property left on waqf property by unauthorised occupants.

"55A. (*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.".

Introduced

Amendment of section 56.

35. 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.".

Amendment of section 61.

36. 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.

Amendment of section 65.

37. 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.".

Amendment of section 68.

38. 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.

Amendment of section 69.

39. 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.".

Amendment of section 71.

40. In section 71 of the principal Act, in sub-section (*1*), for the figures "73", the figures "70" shall be substituted.

Amendment of section 72.

41. 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.".

Amendment of section 77.

42. 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.

Amendment of section 81.

43. 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.".

Amendment of section 83.

44. 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.

(*4A*) 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.".

Amendment of section 85.

45. 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.

Amendment of section 86.

46. 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.

Omission of section 87.

47. Section 87 of the principal Act shall be omitted.

Amendment of section 90.

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

Amendment of section 91.

49. 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.

Amendment of section 97.

50. 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.".

Amendment of section 99.

51. 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".

IndiaCode

Amendment of section 102.

52. 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.

Insertion of new section 104A.

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

Prohibition of sale, gift, exchange, mortgage or transfer of waqf property.

"104A. (*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*.".

Insertion of new section 104B.

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

Restoration of waqf properties in occupation of Government agencies to waqf Board.

"104B. (*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.".

Amendment of section 106.

55. 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.

Insertion of new section 108A.

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

Act to have overriding effect.

"108A. 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.".

Amendment of section 109.

57. 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 (*4A*) of section 83;''.

———

P.K. MALHOTRA,
Secy. to the Govt. of India.

PRINTED BY DIRECTORATE OF PRINTING AT GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2013.

GMGIPMRND—2826GI(S4)—23-09-2013.

IndiaCode