

The Mussalman Wakf Act, 1923

ACT No.42 OF 1923

[5th August, 1923.]

WHEREAS it is expedient to make provision for the better management of wakf property and for ensuring the keeping and publication of wakf property accounts in respect of such properties; It is hereby enacted as follows:—

An Act to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties.

2. Definitions. In this Act, unless there is anything repugnant in the subject or context,-

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

(b) “Court” means the Court of the District Judge or, within the limits of the ordinary original civil jurisdiction of a High Court, such Court, subordinate to the High Court, as the 1[State Government] may, by notification in the 2[Official Gazette], designate in this behalf;

(c) “Mutwalli” means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be the mutwalli of a wakf, and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property;

(d) “Prescribed” means prescribed by rules made under this Act; and

(e) “Wakf” means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable, but does not include any wakf, such as is described in section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time 6 being claimable for himself by the person by whom the wakf was created or by any of his family or descendants.

3. Obligation to furnish particulars relating to wakf. (1) Within six months from the commencement of this Act every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the Mutwalli is situated or to any one of two more such Courts, a statement containing the following particulars, namely:-

(a) A description of the wakf property sufficient for the identification thereof;

- (b) The gross annual income from such property;
- (c) The gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter;
- (d) The amount of the Government revenue and cesses, and of all rents, annually payable in respect of the wakf property;
- (e) An estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate;
- (f) The amount set apart under the wakf for-
 - (i) The salary of the mutwalli and allowances to individuals;
 - (ii) Purely religious purposes;
 - (iii) Charitable purposes;
 - (iv) Any other purposes; and
- (g) Any other particulars which may be prescribed.

(2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been executed or a copy thereof cannot be obtained shall contain full particulars, as far as they are known to the mutwalli, of the origin, nature and objects of the wakf.

(3) Where-

- (a) A wakf is created after the commencement of this Act, or
- (b) In the case of a wakf such as is described in section 3 of the Wakf Validating Act, 1913, the person creating the wakf or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder,

The statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid' or of the last survivor of any such persons, as the case may be.

4. Publication of particulars and requisition of further particulars. (1) When any statement has been furnished under section the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter an' person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.

(2) On such application being made, the Court may, after making; such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin' nature or objects of the wakf] or the condition or management of the wakf property, cause to be served on the mutwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order

5. Statement of accounts. Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished, and thereafter within three months of the thirty first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and containing such particulars as may be prescribed, of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during the period of twelve months ending on such thirty-first 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 wakf:

Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

6. Audit of account. Every statement of accounts shall, before it is furnished to the Court under section 5, be audited-

(a) In the case of a wakf the gross income of which during the year in question, after deduction of the land-revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the 1[Central Government] under section 144 of the Indian Companies Act, 1913, or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout the 2[territories to which this Act applies].or

(b) In the case of any other wakf, by any person authorised in this behalf by general or special order of the said court.

PART III

Powers of the Court to Call for Particulars and Statement of Accounts

6A. Power of Court to call upon the mutwalli to submit statement. (1) Notwithstanding anything contained in section 3, it shall be competent to the Court on failure of a mutwalli to furnish a statement as required under the said section to require the mutwalli to furnish, within such time as the Court shall fix, a statement containing all or any of the particulars referred to in the said section, including a copy of the deed or instrument, if any, creating the wakf.

(2) The provision of section 4 shall apply to a statement furnished under this section as if such statement had been furnished under section 3.

6B. Power of Court to require statement of accounts at any time. (1) Notwithstanding anything contained in section 5, it shall be competent to the Court, on failure of a mutwalli to furnish a statement of accounts as required under the said section, to require the mutwalli to prepare and furnish, within such time as the Court may fix, a statement of accounts of the nature described in the said section and for such period as the Court may think fit.

(2) The provisions of section 6 shall apply to any statement of accounts required to be furnished under this section as if such statement of accounts were a statement of accounts furnished under section 5.

PART IV

Powers of the Court to Enquire

6C. Power of Court to Enquire. (1) The Court may, either on its own motion or upon the application of any person claiming to have an interest in a wakf, hold an inquiry in the prescribed manner at any time to ascertain-

(i) whether a wakf exists;

(ia) whether such wakf is a wakf to which this Act applies;

(ii) whether any property is the property of such wakf and whether the whole or any substantial portion of the subject-matter of such wakf is situate within the local limits of the jurisdiction of the Court; and

(iii) who is the mutwalli of such wakf.:

(2) If it comes to the knowledge of the Court that a suit has been instituted in any Civil Court in regard to any of the matters mentioned in sub-section (1), it shall stay the inquiry so far as it relates to, or is likely to be affected by, the Court's findings or order in regard to such matters, until the suit is finally decided in that Court.

(3) The Court shall from time to time ascertain whether such suit has been finally decided and after the final decision of the suit, it shall proceed with the enquiry in regard to such matters, if any, as may not have been decided in such suit.

(4) On completion of the enquiry provided for in sub-sections (1) and (3) the Court shall record its findings as to the matters mentioned in the said subsections, except such matters as may have been decided in the aforesaid suit.

(5) Save as provided in this section, the Court shall not, when acting under this section, try or determine any question of the title of any person claiming adversely to the wakf.

PART V

Registration of Wakfs, Wakf Accounts and Wakf Administration Funds

6D. Registration of Wakfs. (1) The Court shall, after the submission of a statement under section 3 or section 4 or section 6A and an enquiry, if necessary, held under section 6C, or merely after an enquiry held under section 6C, record, in such forms as may be prescribed in a register called the Register of Wakfs, the following particulars:-

- (a) a description of the wakf property sufficient for the identification thereof;
- (b) the gross annual income from such property;
- (c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or during the period which has elapsed since the creation of the wakf, whichever period is shorter;
- (d) the amount of the Government revenue and cesses and of all rents annually payable in respect of the wakf property;
- (e) an estimate of the expenses annually incurred in the realisation of the income, of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate;

(f) the amount set apart under the wakf for-

(i) the salary of the mutwalli and allowances to individuals,

(ii) purely religious purposes;

(iii) charitable purposes;

(iv) any other purposes;

(g) the name of the mutwalli; and

(h) such other particulars as may be prescribed.

(2) Statements, if any, furnished under sections 3, 4 and 6A shall be filed with the Register of Wakfs.

6E. Amendment of entries in Register of Wakfs. (1) When any change occurs in any of the particulars recorded in the Register of Wakfs, the mutwalli shall, within three months of the occurrence of such change, report to the Court such, change in the prescribed form, accompanied by the prescribed fee. The provisions of sections 3 and 4 shall, so far as may be, apply to any such statement.

(2) For the purpose of verifying the correctness of the entries in the Register of Wakfs or ascertaining any change which may have occurred in such register, the Court may hold an enquiry in the prescribed manner. The provisions of section 6C shall, so far as may be, apply to any such inquiry.

(3) If the Court, after receiving a report under sub-section (1) and holding an enquiry, if necessary, under sub-section (2), or merely after an enquiry held under sub-section (2), is satisfied that a change has occurred in any of the particulars recorded in the Register of Wakfs with regard to wakf, it shall amend in the prescribed manner the entry or entries affected by such change and shall file the report furnished under sub-section (1) along with the statement, if any, relating to the said wakf filed under section 3.

6F. Entries in the Register of Wakfs and findings recorded under section 6C to be final subject to section 6G. The entries made by the Court in the Register of Wakfs and the findings recorded under section 6C shall, subject to the provision of section 6G, be final for the purposes of this Act.

6G. Making or amendment of entries in Register of Wakfs by order of Court. A Civil Court of competent jurisdiction deciding any question relating to any wakf may direct that the Court shall make such entries or amendments of entries in the Register of Wakfs relating to the said wakf as are consequential upon its decision, and the Court shall make such entries or amendments of such entries accordingly.

6H. Maintenance of account and their audit. (1) Every murwalli of a wakf in respect of which an entry has been recorded in the Register of Wakfs shall keep regular accounts of all movable and immovable property received, and of all payments and alienations made and incumbrances created by him on behalf of the wakf of which he is the mutwalli. Such accounts shall be kept in such form and shall contain such particulars as may be prescribed.

(2) The account shall be balanced on the thirty-first day of March in each year and shall be examined and audited annually or at such other intervals, and in such manner as may be prescribed and by the persons referred to in section 6.

(3) Every auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers and other documents and records in the possession and under the control of the mutwalli:

Provided that, if it is proved to the satisfaction of the Court that the gross annual income of any particular wakf is less than two hundred rupees, the Court may by order in writing exempt such wakf from the provisions of this section.

6-I. Annual contribution from wakfs. Every wakf shall, for the purpose of meeting the charges and expenses incidental to the registration, superintendence, administration and control of wakfs, the maintenance of the Registers of Wakfs, the scrutiny and audit of accounts of wakfs, the institution and defence of suits and proceedings relating to wakfs, and generally carrying into effect the purposes of this Act, be liable to pay to the Wakf Administration Fund of the district concerned annually such contribution, on such date and in such manner as may be prescribed:

Provided that the (Provincial Government) may, by rules made in this behalf, exempt from the provisions of this section any particular wakf or class of wakfs.

6-J. Wakf Administration Fund. For each district there shall be created a fund to be called the Wakf Administration Fund of the district concerned, and there shall be placed to the credit thereof the following sums, namely:-

(a) any fee which may be levied under this Act;

(b) contributions under section 6-I;

(c) any sums received by the Wakf Administration Fund from private sources;

(d) any sums allotted by (any Government) or by any local authority to the Wakf Administration Fund

6K. Application of Wakf Administration Fund. The Wakf Administration Fund of a district shall be under the control and management of the Court and shall be applicable to the payment of charges for and expenses incidental to the registration, superintendence, administration and control of wakfs, the

maintenance of the Register of Wakfs, the scrutiny and audit of accounts of wakfs, the institution and defence of suits and proceedings relating to wakfs, and generally carrying into effect the purposes of this Act.

PART VI

Supervision and Control

6L. Constitution and appointment of Wakf Committee. (1) There shall be constituted in each district a Wakf Committee to advise and assist the Court in all matters relating to the registration, superintendence, administration and control of wakfs.

(2) The Committee shall consist of:-

(a) the members of the Indian and State Legislatures.

(b) two members elected in the prescribed manner by the mutwallis of all wakfs in the district registered under the Act,

(c) two members elected in the prescribed manner by the members of each District Local Board in the district professing the Mussalman faith from among their number,

(d) one member elected in the prescribed manner by the members professing Mussalman faith of each municipality in the district constituted under the Bombay District Municipal Act, 1991,

(e) two members elected in the prescribed manner by the members professing Mussalman faith of each municipality in the district constituted under the City of Bombay Municipal Act, 1888, the City of Karachi Municipal Act, 1933, or the Bombay Municipal Boroughs Act, 1925, and

(f) such other members not exceeding one-fourth of the total number of the members of the Committee as the State Government may nominate:

Provided that no person who does not ordinarily reside in the district or does not profess the Mussalman faith shall be eligible to be a member of the Committee.

6M. Functions of Wakf Committee. (1) It shall be competent to the Court to refer at any time to the Wakf Committee or any three or more members thereof, for advice, opinion, enquiry report or recommendation, within such time as the Court may direct, any matter relating to the registration, superintendence, administration, and control of wakfs, and in particular any matter relating to-

(a) the conduct of a mutwalli or a trustee in the administration of a wakf or his fitness to continue as a mutwalli or a trustee.

(b) the settlement, cancellation or alteration of a scheme for the administration of a wakf, or

(c) the application of the funds of a wakf or any surplus thereof.

(2) When the Court has referred any of the matters mentioned in sub-section (1) to a Wakf Committee or any members thereof for advice, opinion, enquiry report or recommendation, and the Committee or the members thereof, as the case may be, have, either unanimously or by a majority, made their recommendation in relation to the matter referred to them, the Court may pass orders as it thinks fit after giving due consideration to such recommendation-

(i) suspending, removing or dismissing a mutwalli or trustee;

(ii) appointing a new mutwalli or trustee;

(iii) settling, cancelling or altering a scheme for the administration of wakf;

(iv) directing the application, investment or deposit of the funds of a wakf for any surplus thereof in a particular manner or to a particular purpose;

(v) generally for carrying out the purposes of the Act:

Provided that nothing in this section shall be deemed to authorise the Court to pass any order which is inconsistent with the objects and purposes of the wakf:

Provided further that no order under this section shall be passed to the prejudice of any mutwalli or trustee without giving such mutwalli or trustee an opportunity to be heard.

(3) For the performance of any of the duties under sub-section (2) the Wakf Committee or any members thereof to whom the Court has referred any matter for advice, opinion, enquiry, report, or recommendation, the Committee or such members thereof may by order in writing require-

(a) the production of any document necessary for the purpose;

(b) the attendance of any person for the purpose of giving evidence or for the production of any document referred to in clause (a).

(4) The provisions of sub-sections (2) and (3) of section 6C shall, so far as may be, apply to any inquiry under sub-section (1) or (2).

6N. Court's power to authorise members of Wakf Committee to institute suits, etc. Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908, it shall be competent to the Court, after such inquiry as it may think fit, (a) - : to authorise any one or more of the members of a Wakf Committee to institute or defend any suit or proceeding for the purposes of the protection or recovery of the property of a wakf or for the application of the property of a wakf to any public, charitable or religious purpose and (b) to allocate from the Wakf Administration Fund such sums as may, in the opinion of the Court, be necessary for the aforesaid purpose.

6-O. Inspection of wakf property, records and accounts. (1) It shall be competent to the Court to direct one or more members of the Wakf Committee to undertake the inspection, in the prescribed manner, of the property, records and accounts of any wakf and to report to the Court, within such time as the Court may direct, the result of such inspection.

(2) It shall be competent to the Court to employ upon such terms and conditions as may be prescribed such persons as may in the opinion of the Court be necessary for carrying out the purposes of this Act and to pay them such remuneration from the Wakf Administration Fund as may be prescribed.

6P. Court's power to order special audit. It shall be competent to the Court at any time to order a special audit of the accounts of a wakf by an accountant possessing the prescribed qualifications and to order the cost of such audit to be paid by the mutwalli from the income of property of the wakf or out of the Wakf Administration Fund.

6Q. Publication of lists of wakfs. There shall be published annually on such date as the State Government may determine in the (Official Gazette) and if the State Government so directs in the principle vernacular of the district in a newspaper circulating therein a list of wakf and a statement of the sums standing to the credit of the Wakf Administration Fund under the signature of the Court and in such form as the State Government may prescribe.

7. Mutwalli entitled to pay cost of audit, etc., from wakf funds. Notwithstanding anything contained in the deed or instrument creating any wakf, every Mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 3 or section 4 or in respect of the preparation or audit of the annual accounts for the purposes of this Act.

8. Verification. Every statement of particulars furnished under section 3 or section 4 and every statement of accounts furnished under section 5, shall be written in the language of the Court to which it is furnished, and shall be verified in the manner provided in the Code of Civil Procedure, 1908, for the signing and verification of pleadings.

9. Inspection and copies. Any person shall, with the permission of the Court and on payment of the prescribed fee, at any time at which the Court is open, may be entitled to inspect in the prescribed

manner, or to obtain a copy of, any statement of particulars or any document furnished to the Court under section 3 or section 4, or any statement of accounts furnished to it under section 5, or any audit report made on an audit under section 6

10. Penalties. Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by section 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall lie upon him fails to furnish such statement or document, as the case may be, in due time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of accounts furnishes a statement which has not been audited in the manner required by section 6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees.

11. Power to make rules. (1) The State Government may, after previous publication, by notification in the Official Gazette, make rules to carry into effect the purposes of this Act.

(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 additional particulars to be furnished by mutwallis under clause (g) of sub-section (1) of section 3;

(b) The fees to be charged upon applications made to a Court under sub-section (1) of section 4;

(c) The form in which the statement of accounts referred to in section 5 shall be furnished, and the particulars which shall be contained therein;

(d) The powers which may be exercised by auditors for the purpose of any audit referred to in section 6, and the particulars to be contained in the reports of such auditors;

(e) The fees respectively chargeable on account of the allowing of inspections and of the supply of copies under section 9;

(f) The safe custody of statements, audit reports and copies of deeds or instruments furnished to Courts under this Act; and

(g) Any other matter which is to be or may be prescribed.

12. Saving. Nothing in this Act shall-

(a) Affect any other enactment for the time being in force in the 1[territories to which this Act applies] providing for the control or supervision of religious or charitable endowments; or

(b) Apply in the case of any wakf the property of which

- (i) Is being administered by the Treasurer of Charitable Endowments, the Administrator General, or the Official Trustee; or
- (ii) Is being administered either by a receiver appointed by any Court of competent jurisdiction, or under a scheme for the administration of the wakf which has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment.

13. Exemption. The State Government may, by notification in the Official Gazette, exempt from the operation of this Act or of any specified provision thereof any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community.