

The Mussalman Wakf Act, 1923

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Act 42 of 1923

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The Mussalman Wakf Act, 1923(42 OF 1923)

17.

/773Statement of Objects and Reasons.-The object of the press-Tit Bill is sufficiently indicated by the Preamble to the Bill. For several years past, there has been a growing feeling amongst the Mahomedan community, throughout the country that the numerous endowments which have been made or are being made daily by pious and public-spirited Mahomedans are being wasted or systematically misappropriated by those into whose hands the trusts may have come in the course of time. Instances of such misuse of trust property are unfortunately so very common that a wakf endowment has now come to be regarded by the public as only a clever device to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty. In some cases the mutawallis are persons who are utterly unfit to carry on the administration of wakf and who, by their moral delinquencies bring discredit not merely on the endowment but on the community itself. It is believed that the feeling is unanimous that some step should be taken in order that incompetent and unscrupulous mutawallis may be checked in their career of waste and mismanagement, and that the endowments themselves maybe appropriated to the purposes for which they had been originally dedicated. In some cases difficulties have arisen in finding out whether any particular properties are really subject to wakf or not. There are numerous wakf properties all over the country unknown to the public which the mutawallis are treating as their own private property and dealing with in any way they think fit or necessary. It, therefore, seems that there should be a system of compulsory registration requiring a mutawalli to notify to some responsible officer not merely about the fact of the wakf, of which he is the mutawalli, but also the nature and extent and other incidents of the endowment. Further, even where a wakf is well-known and mutawalli is obviously thoroughly incompetent to carry on his duties, the public find a difficulty in instituting suits to remove him from his post by reason of the cumbrous procedure laid down in the Code of Civil Procedure. It is with a view to facilitate the institution of such suits that a provision has been made in the Bill. Lastly, there appears to be a general consensus

of opinion amongst the Mahomedans throughout the country that there should be some responsible officer, who may go about and find for himself whether the various wakf properties scattered throughout the country are being properly managed or not. It is not intended that Government should be called upon to bear the burden of appointing such an officer or his staff, and a provision has, therefore, been made in the Bill authorising the Central Committee (to be appointed in pursuance of the provisions of the Bill) to levy a rateable contribution from the mutawallis for the purpose of meeting the cost on entertaining such an officer and his staff.[5th August, 1923]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. Whereas it is expedient 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; It is hereby enacted as follows:-

This Act does not apply to any wakf to which the Wakf Act 29 of 1954 applies. See Section 69 of the latter Act. [This has been repealed by the Wakf Act, 1995 (43 of 1995).]This Act has been repealed in its application to Bengal by the Bengal Wakf Act, 1934. It has been repealed in part in the United Provinces by the U.P. Muslim Wakf Act, 1936. This Act does not apply to wakfs to which the Bihar Wakf Act 8 of 1948 applies. This Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act 59 of 1949 and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act 30 of 1950. Manipur and Tripura are full-fledged States now, see Act 81 of 1971. Vindhya Pradesh is a part of the State of Madhya Pradesh now, see Act 2. Sections 2 to 5 and 7 to 13 were brought into force in the Punjab with effect from the 14th May, 1924, see Punjab Gazette, 1924, Part I, p. 418. Sections 2 to 13 were brought into force in the Presidency of Bombay from the 1st June, 1925, see Bombay Government Gazette, 1925, Part I, p. 1414. All provisions of the Act were brought into force in Bihar and Orissa from the 3rd September, 1925, see Bihar and Orissa Gazette, 1925, Part II, p. 1192. Sections 2 to 13 were brought into force in the Presidency of Bengal with certain modifications from the 1st June, 1927, see Calcutta Gazette, Part I, p. 1008. Sections 2 to 13 were brought into force in Ajmer-Merwara from the 1st February, 1928, see Gazette of India, 1928, Part II-A, p. 20. Sections 2 to 13 came into force in the Madras Presidency on 1st July, 1931.

Preliminary

1. Short title, extent and commencement .-(1) This Act may be called The Mussalman Wakf Act, 1923.

(2)[It extends to the whole of India, except][the territories which, immediately before the 1st November, 1956, were comprised in Part B States] [Substituted by the Adaptation of Laws (No. 3) Order, 1956.].(3)This section shall come into force at once.(4)The State Government may, by notification in the Official Gazette, direct that the remaining provisions of this Act, or any of them which it may specify, shall come into force in the State, or any specified part thereof, on such date as it may appoint in this behalf.

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

(a)"benefit" does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;(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 State Government may, by notification in the Official Gazette, designate in this behalf;(c)"mutawalli" 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 mutawalli of a wakf, and includes a naib-mutawalli or other person appointed by a mutawalli to perform the duties of the mutawalli, 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 (6 of 1913), under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants.Statement Of Particulars

3. Obligation to furnish particulars relating to wakf .-(1) Within six months from the commencement of this Act every mutawalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutawalli is situated or to any one of two or 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 mutawalli 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 mutawalli, 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 (6 of 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 3, 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 any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutawalli 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 mutawalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order.

Statement Of Accounts And Audit

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 mutawalli 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 mutawalli 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 the section.]

6. [Audit of accounts

.-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 Central Government under section 144 of the [Indian Companies Act, 1913 (6 of 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 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.]

General Provisions

7. [Mutawalli entitled to pay cost of audit, etc., from wakf funds

.-Notwithstanding anything contained in the deed or instrument creating any wakf, every mutawalli 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 (5 of 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, 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.]Penalty

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.]Rules

11. Power to make rules .-(1) The [State Government] may, after previous publication, by notification in the [Official Gazette] [Substituted by A.O. 1937, for " Gazette of India" .], 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 mutawallis 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 purposes 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.[Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.] [Inserted by Act 4 of 2005, Section 2 and Schedule (w.e.f. 11.1.2005).]

12. Savings .-Nothing in this Act shall-

(a)affect any other enactment for the time being in force in [the 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.