

The Charitable Endowments Act, 1890

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Act 6 of 1890

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The Charitable Endowments Act, 1890(6 of 1890)Last Updated 30th December, 2019Statement of Objects and Reasons.-On many occasions the want has been felt in India of an official capable of discharging the functions which are discharged in England by the Official Trustee of Charity Lands and the Official Trustees of Charitable Funds. The object of this Bill is to meet that want.2. Much property has from time to time in different parts of India been vested by founders in public servants, such as the Collector, Director of Public Instruction, Accountant-General and Divisional Commissioner. With respect to a case in which an Accountant-General and a Divisional Commissioner had been named as trustees, the Officiating Advocate-General of Bengal and the Officiating Standing Counsel stated in a joint opinion in 1885 that persons cannot as holders of certain posts, be appointed trustees "unless these posts are corporate ones". Neither the "office of the Accountant-General nor that of the Commissioner" they observed, "is a corporate office; and even if appointed by the designation of their office only, and not by name, the trust-fund would vest in them as individuals, and they would remain trustees until they themselves appointed others to succeed them or until they died".3. There is a difficulty in India in finding any corporation capable of acting as a trustee in such cases as this Bill is designed to meet. The Secretary of State for India in Council and the Governor-General in Council are incapable of being trustees (L.R. 15 Ch. D. 9). It has also been held that Anglican Bishops and Archdeacons in India, who have been constituted by Letters Patent to the perpetual corporations, with power to take and hold property under grant or licence from the Crown, are not capable of acting as trustees in some of the cases for which this Bill is intended to provide. To the question whether the Lord Bishop of Calcutta in his corporate capacity might not, under the Letters Patent for the Bishopric of Calcutta, bearing date the 14th May, 1814, hold land upon trust for a Diocesan School so that, upon ceasing to be Bishop, it would devolve without a deed upon his successor in the Bishopric, an eminent counsel in England, to whom the question was referred, has replied in the negative. "It is quite true", he remarks, "that the Bishop is a corporation sole, and in that capacity can hold the lands belonging to his See. He may, however, only hold such lands as by grant or licence from the Company (now Her Majesty) he is authorised to take, hold and enjoy. I think it is clear that the Letters Patent only refer to land belonging to, or purchased out of moneys belonging to, the Bishopric..... on the whole. I am of opinion that, if the land in question was conveyed to the Bishop as a trustee, it would pass on his death not to his

successor but to his executors".4. The Bill, it will be observed, is of a purely permissive character. The Government will be unable to make a vesting order or frame a scheme except on application for that purpose, and may, if it sees fit, refuse to act. The corporation sole in whom as Treasurer of Charitable Endowments property may be vested is, except as regards the disposal of any property by direction of the Government, to have nothing to do with the administration of the property. He is to be a bare trustee, the object of vesting the property in him by his name of office as a corporation sole being to secure the holding of the property by some one always present, and to avoid the difficulty and expense of appointing a new trustee on the retirement or death of any incumbent of the trust".Act 56 of 1982.- Section 13 of the Charitable Endowments Act, 1890 empowers the appropriate Government to make rules consistent with the Act. The Act does not requires the rules so made by the appropriate Government to be published in the official gazette or laid before Parliament or the State Legislatures, as the case may be.2. With a view to implementing the recommendations made by the Committees on Subordinate Legislation with respect to the publication and lying of rules and regulations, the Bill seeks to amend the said section to provide for the publication of the rules made thereunder in the official gazette and for the laying of such rules. Rules made by a State Government will have to be laid before the State Legislature, while rules made by the Central Government will have to be laid before Parliament.[7th March, 1890]An Act to provide for the vesting and administration of property held in trust for charitable purposes.Whereas it is expedient to provide for the vesting and administration of property held in trust for charitable purposes; It is hereby enacted as follows:

1. Title, extent and commencement

(1)This Act may be called [The Charitable Endowments Act [For Statement of Objects and Reasons, see Gazette of India, 1898, Pt.V, p. 137; for Report of the Select Committee, see ibid, 1890, Pt. VI,p.37.], 1890.(2)It extends to the whole of India [***], [* * *] [The words " inclusive of British Baluchistan" omitted by A.O.1948.];and(3)It shall come into force on the first day of October, 1890.

2. Definition

.In this Act, charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

3. Appointment and incorporation of Treasurer of Charitable Endowments

.[(1) The Central Government may appoint an officer of the Government by the name of his office to be Treasurer of Charitable Endowments for India, and the Government of any [State] [Substituted by A.O.1937, for the original sub-section.] may appoint an officer of the Government by the name of his office to be Treasurer of Charitable Endowments for the [State.] [Substituted by A.O.1950.]](2)Such Treasurer shall, for the purposes of taking, holding and transferring movable or immovable property under the authority of this Act, be a corporation sole by the name of the Treasurer of Charitable Endowments for [India or, as the case may be, the [State] [Substituted by A.O.1937,for " the territories subject to the Local Government" .]] , and, as such Treasurer, shall

have perpetual succession and a corporate seal, and may sue and be sued in his corporate name.

3.

-A. Definition of appropriate Government, etc. In the subsequent provisions of this Act the appropriate Government means, as respects a charitable endowment, the objects of which do not extend beyond a single [State] [Substituted by A.O.1950.] and are not objects to which the executive authority of the Central Government extends, the Government of the [State] [Substituted by A.O.1950.], and as respects any other charitable endowment the Central Government.

4. Orders vesting property in Treasurer

(1) Where any property is held or is to be applied in trust for a charitable purpose, the [appropriate Government] [Substituted by A.O.1937, for " Local Government" .], if it thinks fit, may, on application made as hereinafter mentioned, and subject to the other provisions of this section, order, by notification in the Official Gazette, that the property be vested in the treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the [appropriate Government] [Substituted by A.O.1937, for " Local Government" .] and the person or persons making the application, and the property shall thereupon so vest accordingly. (2) When any property has vested under this section in a Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto. [* * *] [Sub-Section (3) omitted by A.O.1937.] (4) An order under this section vesting property in a treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof.

5. Schemes for administration of property vested in the Treasurer

(1) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the [appropriate Government] [Substituted by A.O.1937, for " Local Government" .], if it thinks fit, may settle a scheme for the administration of any property which has been or is to be vested in the Treasurer of Charitable Endowments, and may in such scheme appoint, by name or office, a person or persons, not being or including such Treasurer, to administer the property. (2) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the [appropriate Government] [[Substituted by A.O.1937, for " Local Government" .]] may, if it thinks fit, modify any scheme settled under this section or substitute another scheme in its stead. (3) A scheme settled, modified or substituted under this section shall, subject to the other provisions of this section, come into operation on a day to be appointed by the [appropriate Government] [Substituted by A.O.1937, for " Local Government" .] in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until it has been modified or another such scheme has been substituted in its stead. (4) Such a scheme, when it comes into operation, shall supersede any decree or direction relating to the subject-matter thereof insofar as such decree or direction is in any way repugnant thereto, and its validity shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme or in any way contrary or in

addition thereto, a decree or direction regarding the administration of the property to which the scheme relates:[Provided that nothing in this sub-section shall be construed as precluding a Court from inquiring whether the Government by which a scheme was made was the appropriate Government.] [Inserted by A.O. 1937.](5)In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they can be ascertained, and, in the opinion of the [appropriate Government] [Substituted by A.O.1937, for " Local Government" .], effect can reasonably be given to them.(6)[Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested.] [Proviso to Section 5, applicable only to Bengal, has been added by the Bengal Wakf Act, 1934(Bengal Act 13 of 1934), Section 79.]

6. Mode of applying for vesting orders and schemes

(1)The application referred to in the two last foregoing sections must be made,(a)if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or, where there are more persons than one so acting, then by those persons or a majority of them; and(b)if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.(2)[For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust.] [A new sub-Section (3), application only to Bengal, has been added by the Bengal Wakf Act, 1934 (Bengal Act 13 of 1934), Section 80.]

7. Exercise by Governor-General in Council of powers of Local Government

.[Repealed by A.O. 1937.]

8. Bare trusteeship of treasurer

(1)Subject to the provisions of this Act, a treasurer of Charitable Endowments shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.(2)Such Treasurer shall keep a separate account of each property for the time being so vested insofar as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the provision made in that behalf in the vesting order under section 4 or in the scheme, if any, under section 5, or in both those documents.(3)In the case of any property so vested other than securities for money, such Treasurer shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, management and control of the property, and the application of the income thereof, as if the property had been vested in them.

9. Annual publication of list of properties vested in Treasurer

.A Treasurer of Charitable Endowments shall cause to be published annually in the Official Gazette,

at such time as the [appropriate Government] [Substituted by A.O. 1937, for " Local Government" .] may direct, a list of all properties for the time being vested in him under this Act and an abstract of all accounts kept by him under sub-section (2) of the last foregoing section.

10. Limitation of functions and powers of Treasurer

(1)a Treasurer of Charitable Endowments shall always be a sole trustee, and shall not, as such Treasurer, take or hold any property otherwise than under the provisions of this Act, or, subject to those provisions, transfer any property vested in him except in obedience to a decree divesting him of the property, or in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him.(2)Such a direction may require the treasurer to sell or otherwise dispose of any property vested in him, and, with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security for money as is [specified in the direction] [Substituted by A.O. 1937, for [mentioned in section 4, sub-section (3), clause (a),(b),(c),(d) or (e)" .], or in the purchase of immovable property.(3)When a Treasurer of Charitable Endowments is divested, by a direction of [the appropriate Government] [Substituted by A.O. 1937, for " the Local Government or the Governor-General in Council" .] under this section, of any property, it shall vest in the person or persons acting in the administration thereof and be held by him or them on the same trusts as those on which it was held by such Treasurer.

11. Provision for continuance of office of Treasurer in certain contingencies

.If the office held by an officer of the Government who has been appointed to be Treasurer of Charitable Endowments is abolished or its name is changed, the [appropriate Government] [Substituted by A.O. 1937, for " Local Government" .] may appoint the same or another officer of the Government by the name of his office to be such Treasurer, and thereupon the holder of the latter office shall be deemed for the purposes of this Act to be the successor-in-office of the holder of the former office.

12. [Transfer of property from one Treasurer to another [Substituted by A.O. 1937,for the original section.]

.If by reason of any alteration of areas or by reason of the appointment of a Treasurer of Charitable Endowments for India or for any State for which such a treasurer has not previously been appointed or for any other reason it appears to the Central Government that any property vested in a Treasurer of Charitable Endowments should be vested in another such treasurer, that Government may direct that the property shall be so vested and thereupon it shall vest in that other treasurer and his successors as fully and effectually for the purposes of this Act, as if it had been originally vested in him under this Act.]

13. [Power to make rules [Substituted by Act 38 of 1920, Section 2 and Sch.I.]

.[(1)] The [appropriate Government] [Substituted by A.O.1937,for " Local Government" .] may, [by notification in the Official Gazette] [Inserted by the Act 56 of 1982, Section 2.], make rules consistent with this Act for,(a)prescribing the fees to be paid to the Government in respect of any property vested under this Act in a Treasurer of Charitable Endowments;(b)regulating the cases and the mode in which schemes or any modification thereof are to be published before they are settled or made under section 5;(c)prescribing the forms in which accounts are to be kept by Treasurers of Charitable Endowments and the mode in which such accounts are to be audited; and(d)generally carrying into effect the purposes of this Act.](2)[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 the Act 56 of 1982, Section 2.](3)Every rule made by the Central Government under this Act 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 session 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.]

14. Indemnity to Government and Treasurer

.No suit shall be instituted against the Government in respect of anything done or purporting to be done under this Act, or in respect of any alleged neglect or omission to perform any duty devolving on the Government under this Act, or in respect of the exercise of, or the failure to exercise, any power conferred by this Act on the Government, nor shall any suit be instituted against a Treasurer of Charitable Endowments except for divesting him of property on the ground of its not being subject to a trust for a charitable purpose, or for making him chargeable with or accountable for the loss or misapplication of any property vested in him, or the income thereof, where the loss or misapplication has been occasioned by or through his wilful neglect or default.

15. Saving with respect to Advocate General and Official Trustee

.Nothing in this Act shall be construed to impair the operation [of any enactment] [Substituted by Act 58 of 1960, Section 3, Sch.II.] for the time being in force, respecting the authority of an Advocate-General [* * *] [The words " at a presidency" omitted by Act 58 of 1960, Section 3.] to act with respect to any charity [or of the Official Trustees Act, 1913] [Substituted by Act 58 of 1960, Section 3, Sch.II.] respecting the vesting of property in trust for a charitable purpose in an Official Trustee.

16. General controlling authority of Governor-General in Council

.[Repealed by the Devolution Act, 1920 (38 of 1920), section 2 and Schedule I, Part I.]