



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड I

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.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23rd 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

[20th September, 2013.]

An Act to amend the Wakf Act, 1995.

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

1. (1) This Act may be called the Wakf (Amendment) Act, 2013.

Short title and commencement.

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

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 long title.

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

Amendment of section 1.

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;

(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.”

12. In section 13 of the principal Act,—

Amendment
of section 13.

(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.”.

13. In section 14 of the principal Act,—

Amendment
of section 14.

(1) in sub-section (1),—

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

(ii) in clause (b),—

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

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

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

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

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

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

or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;”;

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

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

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

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

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

“(IA) 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 (I):

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:—

“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;

Removal of Chairperson by vote of no confidence.

(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:—

“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.”.

Delegation of
powers by
Board.

Substitution of
new section
for section 28.

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

“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.”.

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

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.”.

