

Wakf Act, 1995

Chapter II - Survey of Wakfs

(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many Additional or Assistant Survey Commissioners of Wakfs as may be necessary for the purpose of making a survey of wakfs existing in the State at the date of the commencement of this Act.

(2) All Additional and Assistant Survey Commissioners of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of wakfs existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:

- (a) the number of wakfs in the State showing the Shia wakfs and Sunni wakfs separately;
- (b) the nature and objects of each wakf;
- (c) the gross income of the property comprised in each wakf;
- (d) the amount of land revenue, cesses, rates and taxes payable in respect of each wakf;
- (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and
- (f) such other particulars relating to each wakf as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:

- (a) summoning and examining any witness;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record from any court or office;
- (d) issuing commissions for the examination of any witness or accounts;
- (e) making any local inspection or local investigation;
- (f) such other matters as may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was

submitted under sub-section (3).

Section 5 - Publication of list of wakf

- (1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.
- (2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni wakfs or Shia wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

Section 6 - Disputes regarding wakfs

- (1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

Explanation. For the purposes of this section and section 7, the expression "any person interested therein", shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.

- (2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit
- (3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.
- (4) The list of wakfs shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.
- (5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

Section 7 - Power of Tribunal to determine disputes regarding wakfs

- (1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that

- (a) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and

(b) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under subsection (1).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

Section 8 - Recovery of costs of survey

(1) The total cost of making a survey including the cost of publication of the list or lists of wakfs under this Chapter shall be borne by all the mutawalli of the wakfs the net annual income whereof exceeds five hundred rupees, in proportion to the net annual income accruing in the State to such wakfs, such proportion being assessed by the Survey Commissioner.

(2) Notwithstanding anything contained in the deed or instrument by which the wakf was created, any mutawalli may pay from the income of the wakf any sum due from him under sub-section (1).

(3) Any sum due from a mutawalli under sub-section (1) may, on a certificate issued by the State Government, be recovered from the property comprised in the wakf in the same manner as an arrear of land revenue.