

Wakf Act, 1954

Section 43 - REMOVAL OF MUTAWALLIS

1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli- (a) has been convicted more than once of an offence punishable under section 41-; or 125 [(b) has been convicted of an offence of criminal breach of trust or any other offence involving 126[moral turpitude and such conviction has not been reversed and he has not been granted full pardon with respect to such offence] 127 [(c) * * * *] (d) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or 127 [(e) * * * * *] 128 [(f) is an undischarged insolvent; or (g) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or (h) is employed as a paid legal practitioner on behalf of or against the wakf; or (i) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 32; or (j) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or (k) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the wakf, or in respect of any money or other wakf property; or (l) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board or Wakf Commissioner under any provision of this Act or rule or order made thereunder.] 129 [(2) * * * * *], (3) For the removal of doubts it is hereby declared that the removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the wakf property either as a beneficiary or in any other capacity or his rights, if any, as a sajjadanishin. (4) No action shall be taken by the Board under sub-section (1)130[* * * *], unless it has held an inquiry into the matter in the prescribed manner and the decision has been taken by a majority of not less than131[two-thirds] of the members of the Board. 132 [(4A) A mutawalli who is aggrieved by an order passed under any of the Clauses (d) to (1) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.] 133 [(4B) Where any inquiry under sub-section (4) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interests of the wakf, by an order suspend such mutawalli until the conclusion of the inquiry: Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action. (4C) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4A), the Wakf Commissioner may make an application to the Tribunal for the appointment of a receiver to manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908-, appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the wakf are safeguarded.] (5) Where a mutawalli has been removed from his office under sub-section (i)130[* * * *] the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer thereof duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property; and the order of the Board shall be deemed to be a decree of a civil court and shall be executed by the civil court as if it had passed the decree. 134 [(6) A mutawalli of a wakf removed from his office under this section shall not be eligible for appointment as a mutawalli of that wakf for a period of five years from the date of such removal.] OBJECTS AND REASONS "It is open to a Board to institute a civil suit for the removal of a mutawalli. Apart from this, the Committee feel that the powers of a Board to remove a mutawalli by an executive order, should be restricted. This power should be exercised only when some Court has found the mutawalli guilty of an offence. It has, therefore, been suggested that a mutawalli may be removed by an executive order of the Board only if such mutawalli has been convicted more than once of an

offence punishable under section 41 or has been convicted of an offence Of criminal breach of trust or any other offence involving moral turpitude. Where a committee of management has been appointed by the Board for performing the functions of a mutawalli, the Board has been empowered to supersede the committee, if the committee does not properly perform its functions. Before taking any action for the removal of a mutawalli the Board must hold an inquiry into the matter and the decision should be taken by a majority of not less than three-fourths of the members of the Board. The Committee also consider that when a mutawalli is removed from office, the Board should be empowered to direct the mutawalli to deliver possession of the wakf property to the Board or to any authorised person. If the mutawalli fails to deliver possession under the orders of the Board, the order of the Board should be executable as a decree of civil Court. It should also be made clear that the removal of a mutawalli from his office should not affect his personal rights, if any. Provision has accordingly been made."-S.C.R. (1954).

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