

RELIGIOUS ENDOWMENTS ACT, 1863

20 of 1863

[10th March, 1863]

CONTENTS

1. Repeal of parts of Bengal Regulation 19 of 1810 and Madras Regulation 7 of 1817
2. Interpretation-clause
3. Government to make special provision respecting mosques, etc
4. Transfer to trustees, etc. of trust
5. Procedure in case of dispute as to right of succession to vacated trusteeship
6. Rights, etc., of trustees to whom property is transferred under section 4
7. Appointment of committees
8. Qualifications of member of committee
9. Tenure of office
10. Vacancies to be filled
11. No member of committee to be also trustee, etc., of mosque, etc
12. On appointment of committee, Board and local agents to transfer property
13. Duty of trustee, etc., as to accounts
14. Persons interested may singly sue in case of breach of trust, etc
15. Nature of interest entitling person to sue
16. Reference to arbitrators
17. Reference under Act 10 of 1940
18. Application for leave to institute suits
19. Court may require accounts of trust to be filed
20. Proceedings for criminal breach of trust
21. Cases in which endowments are partly for religious and partly for secular purposes
22. Government not to hold charge henceforth of property for support of any mosque, temple, etc
23. Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity, etc
24. India

RELIGIOUS ENDOWMENTS ACT, 1863

20 of 1863

[10th March, 1863]

STATEMENT OF OBJECTS AND REASONS "It has long been the avowed policy of the Government of India to divest itself of all the direct concern with the management of religious endowments, but the obligations imposed on its Officers by law in the Presidencies of Bengal and Madras present difficulties which have hitherto as far as regards those Presidencies prevented the full accomplishment of this purpose. The subject has given rise to much correspondence to which it is not necessary more particularly to advert. It may suffice to state that the Secretary of State in his Despatch dated the 16th July, 1860, reviewing the more recent proceedings of the Government of India relative to "the repeal of those provisions of the Bengal and Madras Codes by which the general superintendence of the endowments for the support of Mosques and Temples is vested in the Revenue Officers of Government, expressed an opinion "that all that is requisite is an Act on the principle of Act No. X of 1840 in regard to the Temple of Juggernath, repealing the existing enactments on the subject, and transferring (the entire superintendence of the institutions to their respective Trustees, provision being made for an appeal by suit in the ordinary way to the established Courts of Justice in all disputes relating to the appointment and succession to the management of Hindu and Mahomedan [The] Religious Endowments Act, 1863 [Pre] 1173 religious institutions, and to the control and application of their funds." Previous to this expression of opinion by the Secretary of State, a Bill had been brought into the Legislative Council early in 1860, simply repealing Regulation XIX, 1810 of the Bengal Code. and Regulation VII, 1817 of the Madras Code, and reserving the jurisdiction now exercised or which but for those Regulations might have been exercised by Courts of Justice, in enforcing the due execution or administration of any trust or endowment, and in securing the due appointment or succession to the management thereof. To this proposed measure two objections have been made. First, that by repeal of the Regulations above cited, the Government is relieved of all concern in the management, not only of all religious endowments, but also of other trusts not of a religious character, which those Regulations impose on it. and which is not desirable that it should be relieved of. Second, that a sudden and abrupt relinquishment by Government of the guardianship of the property of religious and charitable endowments which it has so long managed on behalf of the public, without making due provision for their future

management, would be unjust. Concurring in these objections I have endeavoured to frame this Bill so as to carry out the object proposed by the Secretary of State, without interfering with the provisions of the existing law so far as they define the duty of Government and its officers in respect to public property not connected with religious endowments, and at the same time to provide for the due supervision of religious endowments which are now managed by the Government and its officers, but from which they will henceforth be disconnected."-Calcutta Gazette, 1862. p. 753.

1. Repeal of parts of Bengal Regulation 19 of 1810 and Madras Regulation 7 of 1817 :-

Repealed by the Repealing Act, 1870 (14 of 1870), S. 1 and Sch.

2. Interpretation-clause :-

In this Act,- ¹[* * * *] ¹[* * * *] "Civil Court" and "Court". the words "Civil Court" and "Court" shall ³[save as provided in section 10] mean the principal Court of original civil jurisdiction in the district in which ²[or any other Court empowered in that behalf by the ⁵[State Government] within the local limits of the jurisdiction of which] the mosque, temple or religious establishment is situate, ⁶ relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

1. The clause relating to "number" and "gender" were repealed by the Repealing and Amending Act, 1914(10 of 1914), section 3 and Sch. II.

3. Inserted by the Religious Endowments (Amendment) Act, 1925 (21 of 1925), section 2.

5. Substituted for the words "Provincial Government" by A.L.O., 1950.

6. Courts of subordinate Judges in the Malabar district of the State have been so empowered by Kerala Govern- ment-See Ker. Gaz., 1-11-1966, Pt. I, p. 528: and all Courts of Principal Subordinate Judges in Orissa have been so empowered-See Ori. Gaz., 2-3-1964, Ext. (No. 388).

3. Government to make special provision respecting mosques, etc :-

In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in ¹[the preamble to this Act] are applicable, and nomination of the trustee, manager or super- intendent thereof, at any time of the passing of this Act, is vested in, or may be

exercised by, the Govern- ment or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the ² [State Government] shall, as soon as possible after the passing of this Act. make special provision as hereinafter provided.

1. Substituted for the word and figure "section 1" by the Repealing and Amending Act, 1891 (12 of 1891).

2. Substituted for the words "Provincial Government" by A.L.O., 1950.

4. Transfer to trustees, etc. of trust :-

property in charge of Revenue Board.- In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act. shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest, in, nor be exercised by, nor be subject to the confirmation of, the Government, or any public officer, the ¹ [State Government] shall, as soon as possible after the passing of this Act, transfer to such. trustee, manager or superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided: Cessation of Board's powers as to such property. and the powers and responsibilities of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

1. Substituted for the words "Provincial Government" by A.L.O., 1950.

5. Procedure in case of dispute as to right of succession to vacated trusteeship :-

Wheneve from any cause a vacancy shall occur in the office of any trustee, manager or superintendent, to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment to which such property shall belong, or in the performance of the worship or of the service thereof, or the

trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple or other religious establishment, and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office. Powers of managers appointed by Court. The manager so appointed by the Civil Court shall have and shall exercise all the powers which, under this or any other Act, the former trustee, manager or superintendent, in whose place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple or religious establishment, or the property belonging thereto.

6. Rights, etc., of trustees to whom property is transferred under section 4 :-

The rights, powers and responsibilities of every trustee, manager or superintendent, to whom the land and other property of any mosque, temple or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple or religious establishment, and over such trustee, manager or superintendent, which authority is hereby determined and repealed. All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager or superintendent to whom such transfer is made.

7. Appointment of committees :-

In all cases described in section 3 of this Act the ¹ [State Government] shall once for all appoint one or more committees in every division or district to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed. Constitution and duties of committees. Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

1. Substituted for the words "Provincial Government" by A.L.O.,

1950.

8. Qualifications of member of committee :-

The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment. The appointment of the Committee shall be notified in the Official Gazette. Ascertaining wishes of persons interested. In order to ascertain the general wishes of such persons in respect of such appointment, the ¹[State Government] may cause an election to be held, under such rules ²[by notification in the Official Gazette,] (not inconsistent with the provisions of this Act) as shall be framed by such ¹[State Government]. ² [Every rule framed under this section shall be laid, as soon as it is framed, before the State Legislature.]

1. Substituted for the words "Provincial Government" by A.L.O., 1950.

2. Inserted by the Delegated Legislation Provisions (Amendment) Act, 1983 (20 of 1983), section 2 and the Schedule (15-3-84).

9. Tenure of office :-

Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness; Removal. and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Vacancies to be filled :-

Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided. Procedure. The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided under rules for elections which shall be framed by the ¹[State Government]; and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy. When Court may fill vacancy. If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on, the

application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy. ² [Explanation.- In this section "Civil Court" means the principal Court of original civil jurisdiction in the district in which the mosques, temples or establishments for which the committee has been appointed or any of them are situate.]

1. Substituted for the words "Provincial Government" by A.L.O., 1950.
2. Inserted by the Religious Endowment (Amendment) Act, 1925 (21 of 1925), section 3.

11. No member of committee to be also trustee, etc., of mosque, etc :-

No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager, or superintendent of the mosque, temple or other religious establishment for the management of which such committee shall have been appointed.

12. On appointment of committee, Board and local agents to transfer property :-

Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple or religious establishment, and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession of the said Board or local agents, and belonging to the said religious establishment, except as is herein- after provided for. Termination of powers and responsibilities of Board and agents. and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple or religious establishment, and to all land and other property so transferred except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine. Commencement of powers of committee. All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer be exercised by such committee

to whom such transfer is made.

13. Duty of trustee, etc., as to accounts :-

It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple or other religious establishment: and of committee. and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof.

14. Persons interested may singly sue in case of breach of trust, etc :-

Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of [S 14 - N 1-2] 1185 the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to, them respectively : Powers of Civil Court. and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee, and may decree damages and costs against such trustee, manager, superintendent or member of a committee, and may also direct the removal of such trustee, manager, superintendent or member of a committee.

15. Nature of interest entitling person to sue :-

The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts. Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or

service of any mosque, temple or religious establishment, or partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

16. Reference to arbitrators :-

In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators. Act 10 of 1940 applied. Whenever any such order shall be made, the provisions of ¹[Arbitration Act, 1940] shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under ² [section 21 of the said Act].

1. Substituted for "Chapter VI of the Code of Civil Procedure" by the Arbitration Act, 1940 (10 of 1940), section 49 and Sch. IV (1-7-1940).

2. Substituted for the words and figure "Section 312 of the said Code", the Arbitration Act, 1940 (10 of 1940).

17. Reference under Act 10 of 1940 :-

Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order of reference, under the said ¹ [Section 21 of the Arbitration Act, 1940].

1. Substituted for the words and figure "Section 312 of the said Code of Civil Procedure" by the Arbitration Act. 1940 (10 of 1940), section 49 and Sch. IV (1-7-1940).

18. Application for leave to institute suits :-

No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit, ¹[* * *]. The Court, on the perusal of the application, shall determine whether there are sufficient prima facie grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds. leave shall be given for its institution. Costs. ² [* * *] If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

1. The words "The application may be made upon unstamped paper", were omitted by the Court-fees Act, 1870 (4 of 1870), section 2 and Sch. III.

2. The words "in calculating the costs at the termination of the suit, the stamp duty on the preliminary application shall be estimated, and shall be added to the costs of the suit" were omitted, the Court-fees Act, 1870 .

19. Court may require accounts of trust to be filed :-

Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary.

20. Proceedings for criminal breach of trust :-

No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

21. Cases in which endowments are partly for religious and partly for secular purposes :-

In any case in which any land or other property has been granted for the support of an establishment partly of religious and partly of a secular character, or in which the endowment made for the support of an establishment is, appropriated partly to religious and partly to secular uses, the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses, and what portion shall be transferred to the superintendence of the trustee, manager or superintendent, or of the committee, and also what annual amount, if any, shall be charged, on the land or other property which may be so transferred to the superintendence of the said trustee, manager or superintendent, or of the committee. and made payable to the said Board or to the local agents, for secular uses as aforesaid. In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

22. Government not to hold charge henceforth of property for support of any mosque, temple, etc :-

Except as provided in this Act, it shall not be lawful ¹[* * *] for ²[the Central Government or any State Government], or for any officer of any Government in his official character, to undertake or

resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith.

1. The words "after the passing of this Act" were omitted by the Repealing Act, 1874 (16 of 1874), section 1 and Sch.
2. Substituted for the words "any Government in India" by A.C.A.O., 1948 (23-3-1948).

23. Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity, etc :-

Nothing in this Act shall be held to affect the provisions of the ¹ Regulations mentioned in this Act. except insofar as they relate to mosques. Hindu temples and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.

1. Namely, the Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1870 (Ben. Regn. 19 of 1810), and Madras Endowments and Escheats Regulation, 1817 (Mad. Regn. 7 of 1817).

24. India :-

"".- [Repealed by A.C.A.O., 1948.]