

## **Waqf Act, 1995**

**43 of 1995**

**[22 November 1995]**

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## **Waqf Act, 1995**

**43 of 1995**

**[22 November 1995]**

An Act to provide for the better administration of

1

[Auqaf] and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:-

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013

## **CHAPTER 1 PRELIMINARY**

### **1. Short title, extent and commencement :-**

(1) This Act may be called the <sup>2</sup>[Waqf] Act, 1995.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force<sup>3</sup> in a State on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area.

#### COMMENTS

Commencement of new Act. - A comparative study of the provisions of 1954 Act and 1995 Act amply demonstrates that after the 1995 Act has come into force, the constitution of the Board has to be under this Act only and not at all under the provisions of the 1954 Act. So the impugned constitution of the Board under 1954 Act read with 1995 Act is wholly misconceived and without jurisdiction.

The Court has compared the provisions of Section 10 of the 1954 Act, since repealed, with the provisions of Section 14 of the 1995 Act in so far as the composition of the Board is concerned and this Court finds that the provisions are substantially different and it is not a case of using the same power by referring to a wrong provision. A legal and valid constitution of the Board under Section 14 of the 1995 Act calls for a completely different statutory exercise which are not contemplated under Section 10 of the 1954 Act. Here the exercise for composition of the impugned Board has been shown under Section 10 of the 1954 Act which is (no) longer in existence so the entire exercise is wholly without jurisdiction and is an exercise by ignoring the law of the land. Therefore, the impugned notification purporting to constitute a Board under the provisions of 1954 Act is void in law and without jurisdiction and cannot be but be quashed by a Court of law.<sup>4</sup>

It was held that a Court has no power to make an order postponing the coming into effect of a Statute which has already commenced.<sup>5</sup>

2 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Enforced on 1.1.1996 vide S.O.1007 (E), dt. 27.12.1995.

4 Ghulam Mohsin Jafri v. State of Bihar, AIR 1999 Patna 115.

5 Factortame Limited v. Secretary of State for Transport, 1989 (2) WLR 997.

## **2. Application of Act :-**

— . .  
Save as otherwise expressly provided under this Act, this Act shall apply to all <sup>1</sup> [Auqaf] whether created before or after the commencement of this Act:

Provided that nothing in this Act shall apply to Durgah Khwaja Saheb, Ajmer to which the Durgah Khwaja Saheb Act, 1955 (36 of 1955) applies.

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

### **3. Definitions :-**

In this Act, unless the contents otherwise requires,-

(a) "beneficiary" means a person or object for whose benefit a <sup>2</sup>[waqf] is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law;

(b) "benefit" does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;

(c) "Board" means a Board of <sup>3</sup>[waqf] established under sub-section (1), or as the case may be, under sub-section (2) of Section 13 and shall include a common <sup>4</sup>[waqf] Board established under Section 106;

(d) "Chief Executive Officer" means the Chief Executive Officer appointed under sub-section (1) of Section 23;

(e) "Council" means the Central <sup>5</sup>[Waqf] Council established under Section 9;

<sup>6</sup>[(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;]

(f) "Executive Officer" means the Executive Officer appointed by the Board under sub-section (1) of Section 38;

<sup>7</sup>[(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;]

(h) "member" means a member of the Board and includes the Chairperson;

(i) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a <sup>8</sup>[waqf] has been created, or by a competent authority, to be the mutawalli of a

**9**[waqf] and includes any person who is a mutawalli of a **10**[waqf] by virtue of any custom or who is naib-mutawalli, Khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any **11**[waqf] or **12**[waqf] property:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office-bearer of such committee or corporation:

**13**[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;]

(j) "net annual income", in relation to a **14**[waqf], means net annual income determined in accordance with the provisions of the Explanations to sub-section (1) of Section 72;

(k) "person interested in a wakf" means any person who is entitled to receive any pecuniary or other benefits from the **15**[waqf] and includes-

(i) any person who has a right to **16**[offer prayer] or to perform any religious rite in a mosque, idgah, imambara, dargah, **17**[khanqah, peerkhana and karbala], maqbara, graveyard or any other religious institution connected with the **18**[waqf] or to participate in any religious or charitable institution under the **19**[waqf];

(ii) the **20**[waqf] and any descendant of the **21**[waqf] and the mutawalli;

(l) "prescribed" except in Chapter III, means prescribed by rules made by the State Government;

(m) "regulations" means the regulations made by a Board under this Act;

(n) "Shia wakf" means a **22**[waqf] governed by Shia law;

(o) "Sunni wakf" means a **23**[waqf] governed by Sunni law;

(p) "Survey Commissioner" means the Survey Commissioner of **24**[Waqf] appointed under sub-section (1) of Section 4 and includes any Additional or Assistant Survey Commissioners of **25**[Auqaf] under sub-section (2) of Section 4;

(q) "Tribunal" in relation to any area, means the Tribunal constituted under sub-section (1) of Section 83, having jurisdiction

in relation to that area;

**26**[(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;]

(s) **27** [waqf] deed" means any deed or instrument by which a **28**[waqf] has been created and includes any valid subsequent deed or instrument by which any of the terms of original dedication have been varied;

(t) "**29**[Waqf] Fund" means a **30**[waqf] fund formed under subsection (1) of Section 77.

#### COMMENTS

Member includes the Chairperson of Wakf Board.-Section 3(h) of the Waqf Act clearly lays down that "member" means a member of the Board and includes the Chairperson. Sections 19 and 20 of the Act places the "member" and "Chairperson" on the same footing or at the same place. There is no provision in the Act, from where a contrary intention of the legislature can be inferred. The Definition Clause does not begin with the words "notwithstanding anything contained in any Section of this Act". If the Parliament, while enacting Section 3(h) intended to attach different meanings of the words "member" and the "Chairperson" it would have been mentioned in Section 3(h) of the Waqf Act.

The definition of a "member" is exhaustive and not restrictive and the member of the Board includes the Chairperson. As the term of the member, which is co-terminus with the term of the Board the term of the Chairperson in accordance with the aforesaid Section, will be 5 years.**31**

Member - Definition of. - Section 3(h) defines member, which

means a member of the Board and includes the Chairperson.<sup>32</sup>

Mutawalliship.- A person acting as mutawalli is entitled to the rights and duties of the mutawalli. Hence, the Committee is entitled to sue for recovery of possession.<sup>33</sup>

Wakf-Definition of. - The definition of "wakf" in Section 3 (r) of the Wakf Act, 1995, supports such a view and also indicates that the Legislature with deliberate intent kept private wakfs out of the ambit of the said Act and the administrative control of the authorities appointed or constituted under the Act, except to the extent that provision was made therein for religious and charitable purposes.<sup>34</sup>

If the primary object of the wakf was the aggrandizement of the family and the gift to charity was illusory, whether from the smallness of the amount or from its uncertainty or remoteness, such wakf was invalid and no effect could be given to it<sup>35</sup>

Word "includes" - Meaning of. - The word "includes" as used in Section 3(h) of the Waqf Act is also often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the "Statute".<sup>36</sup>

It has been held that when the word "includes" is so used these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things, which the interpretation clause declares that they shall include. The word "include" is also susceptible of other constructions, which is unnecessary to go into.<sup>37</sup>

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9,2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Inserted by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted by Act No. 27 of 2013, dated 20.9.2013.

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10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

- 12 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 13 Inserted by Act No. 27 of 2013, dated 20.9.2013.
- 14 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 15 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 16 Substituted for "worship" by Act No. 27 of 2013, dated 20.9.2013.
- 17 Substituted for "khangah" by Act No. 27 of 2013, dated 20.9.2013.
- 18 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 19 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 20 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 21 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 22 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 23 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 24 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 25 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.
- 26 Substituted by Act No. 27 of 2013, dated 20.9.2013.
- 27 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 28 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 29 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 30 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 31 Amir Alam Khan v. State of U.P., AIR 2002 Alld 215.
- 32 Amir Alam Khan v. State of U.P., AIR 2002 Alld 215.
- 33 Badagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummerkutty Haji, AIR 2002 Ker 56.
- 34 Anis Fatma Begum v. Board of Wakf, W.B., AIR 2004 Cal 91.
- 35 Abul Fata Mahomed Ishak v. Russomoy, (1894) 22 Ind App 76 (PC).
- 36 Amir Alam Khan v. State of U.P., AIR 2002 Alld 215.

37 Commissioner, Income-tax v. M/s. Taj Mahal Hotel, AIR 1972 SC 168.

## **CHAPTER 2 SURVEY OF AUQAF**

### **4. Preliminary survey of Auqaf :-**

#### 4. Preliminary survey of <sup>6</sup>[Auqaf]

(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of <sup>7</sup>[Auqaf] and as many Additional or Assistant Survey Commissioners of <sup>8</sup>[Auqaf] as may be necessary for the purpose of making a survey of <sup>9</sup>[auqaf in the State].

<sup>10</sup>[(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.]

(2) All Additional and Assistant Survey Commissioners of <sup>11</sup>[Auqaf] shall perform their functions under this Act under the general supervision and control of the Survey Commissioners of <sup>12</sup>[Auqaf].

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of <sup>13</sup>[Auqaf] 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 <sup>14</sup>[Auqaf] in the State showing the Shia <sup>15</sup>[Auqaf] and Sunni <sup>16</sup>[Auqaf] separately;

(b) the nature and objects of each <sup>17</sup>[waqf];

(c) the gross income of the property comprised in each <sup>18</sup>[waqf];

(d) the amount of the land revenue, cesses, rates and taxes payable in respect of each <sup>19</sup>[waqf];

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each <sup>20</sup>[waqf]; and

(f) such other particulars relating to each <sup>21</sup>[waqf] 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 Commissioners 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 <sup>22</sup>[waqf] is a Shia <sup>23</sup>[Waqf] or Sunni <sup>24</sup>[Waqf] and there are clear indications in the deed of <sup>25</sup>[waqf] 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 or make a second or subsequent survey of <sup>26</sup>[waqf] 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 <sup>27</sup>[ten years] from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3):

<sup>28</sup>[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.]

#### COMMENTS

Dispute as to Wakf property. - When a Competent Authority has decided the issue under the provisions of the Act, it is only to be challenged under the provisions of the Act and resort cannot be taken to Article 226 of the Constitution of India. But, however, in case when the order passed is wholly without jurisdiction or the authority lacks the competence or there is infraction of statutory provisions, it cannot be said that the Writ Petition is not available to the aggrieved party. Whether the notification issued under Section 5 of the Act was preceded by the statutory compliance as stipulated under Section 4 of the Act.

The petitioner have to approach the Tribunal or the Civil Court, as the case may be, even after the expiry of one year period after the

publication of Gazette notification is not applicable to the present cases, as that situation would not arise inasmuch as when the notice itself is lacking and no purpose will be served by approaching the Tribunal or Civil Court. The report of the Survey Commissioner sent by the Government to the Wakf Board has no automatic acceptance. It is required to examine such report before publishing the list. This statutory obligation is also totally lacking in this case. When the violation of statutory provisions is made out, it is always open to the parties to approach this Court under Article 226 of the Constitution of India. Admittedly, as can be seen from various documents filed by both the parties in these matters, nothing has been established to sustain the contention that the enquiry was conducted as required under Section 4 (3) of the Act.<sup>29</sup>

The notification, as such, is not sustainable in law as it is in gross violation of the provisions contained in Section 4 to 6 of the Act.<sup>30</sup>

In Board of Muslim Wakfs, Rajasthan v. Radha Kishan<sup>31</sup>, a similar matter came up for consideration before the Supreme Court. The effect of Sections 4 and 5 was considered by the Supreme Court in paragraph 25 of its Judgment, which reads:-

"The very heading of Chapter II and the caption to Section 4 no doubt suggest that the Commissioner makes only a preliminary survey regarding existing Wakfs and the list of Wakfs prepared by him is published by the Board and neither the Commissioner nor the Board is required to make any enquiry regarding the character of the property. That is to say, the making of survey is only an administrative act and not a quasi-judicial act. While making a survey of the existing Wakfs in a State, under sub-section (1) of Section 4, the Commissioner is required by sub-section (3) to submit a report to the State Government in regard to the several matters referred to in clauses (a) to (f) thereof. There may be a dispute as between the Board the mutawalli or a person interested in the Wakf, as regards (a) the existence of Wakf, i.e. whether a particular property is Wakf properly, (b) whether it is a Shia Wakf or a Sunni Wakf, (c) the extent of the property attached to the Wakf, (d) the nature and object of the Wakf, etc. While making such an enquiry, the Commissioner is invested by sub-section (4) with the powers vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the summoning and examining of any witness, requiring the discovery and production of any document, requisitioning any public record from any court or office, issuing commissions for the examination of any witness or accounts, making any local inspection or local investigation, etc.

The enquiry that the Commissioner makes for the purpose of submission of his report under sub-section (3), while making a survey of existing Wakfs in the State under sub-section (1), is not purely of an administrative nature but partakes of a quasi-judicial character in respect of the persons falling within the scope of sub-section (1) of Section 6."

5 Substituted for "WAKFS" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakfs existing in the State at the date of the commencement of this Act" by Act No. 27 of 2013, dated 20.9.2013.

10 Inserted by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

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- 25 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 26 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 27 Substituted for "twenty years" by Act No. 27 of 2013, dated 20.9.2013.
- 28 Inserted by Act No. 27 of 2013, dated 20.9.2013.
- 29 B. Gowra Reddy v. Govt, of A.P., AIR 2002 AP 313.
- 30 Board of Muslim Wakfs Board, Rajasthan v. Radha Kishan AIR 1979 SC 289; Punjab Wakf Board v. Gram Panchayat (2000) 2 SCC 121.
- 31 Board of Muslim Wakfs, Rajasthan v. Radha Kishan, AIR 1979 SC 289

## **5. Publication of list of Auqaf :-**

Publication of list of [<sup>1</sup>]Auqaf

(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 <sup>2</sup>[forward it back to the Government within a period of six months for publication in the Official Gazette] a list of Sunni <sup>3</sup>[Auqaf] or Shia <sup>4</sup>[Auqaf] 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.

<sup>5</sup>[(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.]

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "publish in the Official Gazette" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

5 Inserted by Act No. 27 of 2013, dated 20.9.2013.

## **6. Disputes regarding Auqaf :-**

6. Disputes regarding <sup>6</sup>[Auqaf]

(1) If any question arises whether a particular property specified as <sup>7</sup>[waqf] property in the list of <sup>8</sup>[Auqaf] is <sup>9</sup>[waqf] property or not or whether a wakf-specified in such list a Shia <sup>10</sup>[waqf] or Sunni <sup>11</sup>[waqf], the Board or the mutawalli of the <sup>12</sup>[waqf] or <sup>13</sup>[any person aggrieved] 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 <sup>14</sup>[Auqaf]:

<sup>15</sup>[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.]

<sup>16</sup>[\* \* \*]

(2) Notwithstanding anything contained in sub-section (1), proceeding under this Act in respect of any <sup>17</sup>[waqf] shall be stayed by reason only of the pendency of any such suit or 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 <sup>18</sup>[Auqaf] 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).

COMMENTS

Wakf Property. - Once if it is a Wakf property and dedicated as a

property, the same will always continue as a Wakf property, it can never be reverted as a private property or sold.<sup>19</sup> In *Radhakishan v. State of Rajasthan*<sup>20</sup>, has observed as under at page 7:-

"The purpose of Section 6 is to confine the dispute between the Wakf Board, the mutawalli and a person interested in the wakf. In other words, if there is a dispute whether a particular property is a wakf property or not, or whether a wakf is a Shia wakf or a Sunni wakf, then the Board or the mutawalli of the wakf or a person interested in the wakf as defined in Section 3 may institute suit in a Civil Court of competent jurisdiction for the decision of the question. They can file such a suit within one year of the date of the publication of the list of wakfs and if no such suit is filed, the list would be final and conclusive between them.

The very object of the Wakf Act is to provide for better administration and supervision of wakfs and the Board has been given powers of superintendence over all wakfs which vest in the Board. This provision seems to have been made in order to avoid prolongation of triangular disputes between the Wakf Board, the mutawalli and a person interested in the wakf who would be a person of the same community. It could never have been the intention of the legislature to cast a cloud on the right, title or interest of persons who are not Muslims. That is, if a person who is non-Muslim whether he be a Christian, a Hindu, a Sikh, a Parsi or of any other religious denomination and if he is in possession of a certain property his right, title and interest cannot be put in jeopardy simply because

that property is included in the list published under sub Section (2) of Section 5.

The Legislature could not have meant that he should be driven to file a suit in a Civil Court for declaration of his title simply because the property in his possession is included in the list. Similarly, the legislature could not have meant to curtail the period of limitation available to him under the Limitation Act and to provide that he must file a suit within a year or the list would be final and conclusive against him. Sub-section (4) makes the list final and conclusive only between the Wakf Board, the mutawalli and the person interested in the wakf as defined in Section 3 and to no other person."

The Honble Supreme Court, in para 39, has very categorically held that it follows where a stranger who is a non-Muslim and is in possession of a certain property, his right, title and interest therein cannot be put in jeopardy merely because the property is included

in the list. In fact, such a person is not required to file a suit for a declaration of his title within a period of one year and that the special rule of limitation as laid down in Section 6(1) will not be applicable to him. The Honble Supreme Court in para 39 has held as under at page 299;-

"39. It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to sub-section (1) of Section 6 is not applicable to him. In other words, the list published by the Board of Wakfs under sub-section (2) of Section 5 can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises."**21**

6 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

13 Substituted for "any person interested therein" by Act No. 27 of 2013, dated 20.9.2013.

14 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

15 Inserted by Act No. 27 of 2013, dated 20.9.2013.

16 Explanation omitted by Act No. 27 of 2013, dated 20.9.2013.

17 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

18 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

19 Marawthwada Wakf Board v. Rajaram Ramjivan Manthri, AIR 2002 Bom. 144.

20 Radhakishan v. State of Rajasthan, AIR 1967 Rajasthan 1

21 Marawthwada Wakf Board v. Rajaram Ramjivan Manthri, AIR 2002 Bom. 144.

## **7. Power of Tribunal to determine disputes regarding Auqaf**

:-

7. Power of Tribunal to determine disputes regarding <sup>2</sup>[Auqaf]

(1) If, after the commencement of this Act, <sup>3</sup>[any question or dispute] arises, whether a particular property specified as <sup>4</sup>[waqf] property in a list of <sup>5</sup>[Auqaf] is <sup>6</sup>[waqf] property or not, or whether a <sup>7</sup>[waqf] specified in such list is a Shia <sup>8</sup>[waqf] or a Sunni <sup>9</sup>[waqf], the Board or the mutawalli of the <sup>10</sup>[waqf], <sup>11</sup>[or any person aggrieved by the publication of the list of auqaf under section 5], 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 be final:

Provided that-

(a) in the case of the list of <sup>12</sup>[Auqaf] 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 <sup>13</sup>[Auqaf]; and

(b) in the case of the list of <sup>14</sup>[Auqaf] 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 a civil Court in a suit instituted before such commencement, the Tribunal shall not reopen such question.

(2) Except whether the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any <sup>15</sup>[waqf] 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 sub-section (1).

(4) The list of <sup>16</sup>[Auqaf] 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 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 the 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.

**17**[(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.]

#### COMMENTS

Applicability of. - If a dispute arises in respect of Wakf Property which is required by or under the Wakf Act, to be determined by a Tribunal, then only a jurisdiction of Civil Court has been barred under Section 85 of the Act. The case of plaintiffs is that the disputed property was taken by them from the Board and it was let out to defendants, meaning thereby, the plaintiffs are landlord and defendants are tenant in disputed property. The defendants may be sub-tenant for the purpose of Wakf Board but it is a dispute in between the landlord and tenant and no relief has been sought in the Civil suit against Board nor any question is required to be determined in the present suit under any provisions of the Wakf Act. The present suit is a simple suit relating to relationship of landlord and tenant. The plaintiffs were landlord and defendants are their tenant and there is a prayer about eviction of tenant in the suit on the grounds mentioned in the plaint. The Civil Court has already framed the issues and both the parties have also led their evidence. The Wakf Board is not claiming the disputed property as its own property in the present case. The issues formulated in the suit are not covered by Sections 6 and 7 of the Act and in these circumstances the bar created under Section 85 of the Act for jurisdiction of the Civil Court is not attracted in the facts and circumstances of the present case. The learned trial Court committed an illegality in returning the plaint to plaintiffs. The appellate Court has rightly set aside the order of the trial Court and

the same does not call for any interference by this Court.<sup>18</sup>

Dispute relating to wakf property. - The dispute is not relating to interference with the affairs of wakf property simpliciter, but the injunction itself is claimed on the basis of fact that according to the plaintiff the defendant has claimed ownership and possession over the suit property and is undertaking construction thereon. Therefore, the dispute essentially pertains to title of wakf property itself between the two parties and the claim of injunction is merely consequential. The very purpose of creating the Tribunal under the law, namely, Wakf Act would be defeated if the jurisdiction of the Tribunal is construed in narrow sense or in a watertight compartment. The jurisdiction of the Tribunal should be widened to decide the dispute relating to wakf property including the matter in the nature of suit for injunction by the Tribunal itself. Therefore, Sections 6 and 7 of the Act which deal with the question relating to property falling within the ambit of wakf property or not or whether wakf is Shia wakf or Sunni wakf etc cannot curtail or limit the jurisdiction of the Tribunal only to such issues. The language of Sections 83 and 85 of the Act confers such wider jurisdiction upon the Tribunal and, therefore, in the opinion of this Court, the Court below erred in rejecting the application under Order 7, Rule 11, C.P.C. filed by the defendant-petitioner. The present controversy falls within the domain and jurisdiction of the Wakf Tribunal and the Civil Court had no jurisdiction in the matter of Section 85 of the Act.<sup>19</sup>

In the case of Syed Inamul Haq Shah v. State of Rajasthan<sup>20</sup>, the coordinate Bench of this Court has held as under:-

"The words "no suit or other legal proceedings shall lie" would mean that no suit or other legal proceedings shall be maintainable or sustainable which means no suit or other legal proceedings shall be carried on or continued to be entertained. If this is the plain meaning of the words, the bar would apply to pending proceedings also. It cannot, therefore, be said that the trial Court committed any error in holding that the continuance of the suit was barred by Section 85 of the Act.

On coming into force of the Act, the bar under Section 85 of the Act applied to the continuation of the suit also and thus, the Court had no jurisdiction to pass any order in the suit except that of return of it for presentation to proper Court. The impugned order is, therefore, ex facie without jurisdiction and has to be set aside without going into the merits of the order. It is, therefore, set aside. The question decided by the impugned order shall obviously

remain open for being raised in any other proceedings which are taken in accordance with law."

In the case of Rajasthan Board of Muslim Wakf v. Om Prakash Boob<sup>21</sup>, another coordinate Bench of this Court dealing with the provisions of Section 85 of the Act held as under:-

"Section 85 of the Act of 1995 creates a bar of the civil Court's jurisdiction but that is in relation to those persons who are interested in wakf. The person interested would be one as defined in Section 3 (k) of the Act of 1995. A bare reading of the definition demonstrates that the plaintiff cannot be treated to be a person interested in terms of the definition.

The application has tried to create a bar for the plaintiff in view of the explanation contained in Section 6 of the Act of 1995. The Bar which can be enforced against a person in view of the Explanation is that if the person is interested in relation to any property specified as wakfs property in the list of wakf published after commencement of this Act. This is not the case of anybody that no list has been published after the commencement of the Act of 1995. Therefore, the expression "any person interested" as mentioned in Explanation to Section 6 of the Act of 1995 cannot be applied to the petitioner. Further provision in the Explanation is in relation to every such person who though not interested in such property, to whom a reasonable opportunity has been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under Section 4 of the Act of 1995 after giving notice to the plaintiff. No such enquiry after notice is alleged in the application under Order 7, Rule 11, CPC. Thus, in none of the clauses of Explanation, the case of the plaintiff can be covered. Therefore, the order passed by the trial Court is not liable to be interfered with. That being the position, the order of dismissal of the application under Order 7, Rule 11, CPC is not liable to be interfered as it is considered to be in accordance with law."

Jurisdiction of Civil Court. - The coming into force of the Wakf Act, 1995 does not in any way prevent this Court from considering the question whether the judgment in appeal is correct or not in spite of the fact that the question to be decided is whether the plaint schedule property is wakf property or not. Section 7(5) of the Act merely says that 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 subsection (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. Section 7(5) of the Act clearly exempts appeal from the bar of jurisdiction. Hence, this Court is perfectly competent to decide the question regarding wakf in this appeal.<sup>22</sup>

Jurisdiction of Civil Court - Exclusion of. - The jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf rests entirely with the Tribunal and no suit or other proceeding can be instituted or commenced in a Civil Court in relation to any such question after the commencement of the Act. What is noteworthy is that under Section 6 read with Section 7 the institution of the Civil Court is barred only in regard to questions that are specifically enumerated therein. The bar is not complete so as to extend to other questions that may arise in relation to the wakf property.<sup>23</sup>

Jurisdiction of Wakf Tribunal. - The Tribunal shall not have jurisdiction to determine any matter which is subject-matter of any suit or proceeding instituted or commenced in a civil Court before commencement of the Act and if any suit has been instituted in any civil Court prior to coming into force of the Wakf Act, 1995, then the Tribunal will have no jurisdiction to decide such matter and to continue and conclude as if Act has not come into force.<sup>24</sup>

Wakf property. - Since 1945 there was a Chabutara to perform Muslim prayer and at the relevant point of time it is also not disputed by the parties that they have raised the construction nearby the Chabutara and also constructed the shops. The property, which has been used by the Intazamia Committee can be included in the wakf property. The petitioner should restrain themselves upto the limit of wakf property. In any case if any construction has been raised beyond the limits of wakf property, it is within the jurisdiction of the Estate Officer.<sup>25</sup>

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "any question" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

- 9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 10 Substituted for "wakf" by Act No. 27 of 2013, dated 20,9.2013.
- 11 Substituted for "or any person interested" by Act No. 27 of 2013, dated 20.9.2013.
- 12 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.
- 13 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.
- 14 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.
- 15 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 16 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.
- 17 Inserted by Act No. 27 of 2013, dated 20.9.2013.
- 18 Rajendra Kumar Sharma v. Rakesh, AIR 2009 Raj 13.
- 19 Anjuman A. Burhani v. Daudi Bohra Jamaet, AIR 2009 Raj 150.
- 20 Syed Inamul Haq Shah v. State of Rajasthan, 2000 (4) WLC (Raj) 528 : AIR 2001 Raj 19
- 21 Rajasthan Board of Muslim Wakf v. Om Prakash Boob, 2006 (5) RDD 2434 (Raj)
- 22 Badagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummerkutty Haji, AIR 2002 Ker 56.
- 23 Ramesh Gobindram v. Sugra Humayun Mirza Wakf, AIR 2010 SC 2897.
- 24 Sardar Khan v. Syed Najmul Hasan (Seth), AIR 2007 SC 1447; Md. Moinuddin v. Md. Mustafa, AIR 2010 Pat 24.
- 25 Mohammad Islam v. Union of India, AIR 2005 Raj 93.

**8. State Government to bear cost of survey :-**

(2)[8. State Government to bear cost of survey

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.]

## COMMENTS

Election to Wakf Institution.-Whether the Tribunal has power to review its own order or not is a matter which is required to be gone into when an order is passed on the said application. At the inception the question whether the Tribunal has got the power to review cannot be gone into in this writ petition. Apparently the third respondent has found that in view of the review application filed before the Tribunal, the question of entertaining the representation/application of the petitioners does not arise and is being deferred. No fault could be found with the endorsement at Annexure-E. It is only after the conclusion of the review proceedings, the application filed by the petitioners to conduct elections under the old bye-laws could be considered. But however, the Tribunal is directed to dispose of the review application itself within a period of four months from the date of receipt of this order.<sup>(3)</sup>

2 Substituted by Act No. 27 of 2013, dated 20.9.2013,

3 Janab Dada Khalandar Lathif Sab Hongaland Ors. v. State of Karnataka, AIR 2006 Kar 225.

## **CHAPTER 3 CENTRAL WAQF COUNCIL**

### **9. Establishment and constitution of Central Waqf Council :-**

9. Establishment and constitution of Central <sup>5</sup>[Waqf] Council

<sup>6</sup>[(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).]

(2) The Council shall consist of-

(a) the Union Minister in charge of <sup>7</sup>[Auqaf]-ex officio Chairperson;  
(b) the following members to be appointed by the Central Government from amongst Muslims, namely:-

(i) three persons to represent Muslim organisations having all India character and national importance;

<sup>8</sup>[(ii) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;]

- (iii) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;
- (iv) Chairpersons of three Boards by rotation;
- (v) two persons who have been Judges of the Supreme Court or a High Court;
- (vi) one advocate of national eminence;
- (vii) one person to represent the mutawallis of the <sup>9</sup>[waqf] having a gross annual income of rupees five lakhs and above;
- (viii) three persons who are eminent scholars in Muslim Law:

<sup>10</sup>[Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.]

(3) The term of office, the procedure to be followed in the discharge of their sanctions by, and the manner of filling caused vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

<sup>11</sup>[(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.]

4 Substituted for "WAKF" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for " Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Inserted by Act No. 27 of 2013, dated 20.9.2013.

11 Inserted by Act No. 27 of 2013, dated 20.9.2013.

## **10. Finance of Council :-**

(1) Every Board shall pay from its <sup>4</sup>[Waqf] Fund annually to the Council such contribution as is equivalent to one per cent of the aggregate of the net annual income of the <sup>5</sup>[Auqaf] in respect of which contribution is payable under sub-section (1) of Section 72: Provided that where the Board, in the case of any particular <sup>6</sup>[Auqaf] has remitted under sub-section (2) of Section 72 the whole of the contribution payable to it under sub-section (1) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the <sup>7</sup>[waqf] in respect of which such remission has been granted shall not be taken into account.

(2) All monies received by the Council under sub-section (1) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central <sup>8</sup>[Waqf] Fund.

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central <sup>9</sup>[Waqf] Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

## **11. Accounts and audit :-**

(1) The Council shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be prescribed by rules made by the Central

Government.

(2) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Central Government.

(3) The costs of the audit shall be paid from the Central <sup>3</sup>[Waqf] Fund.

3 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9,2013.

## **12. Power to Central Government to make rules :-**

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council;

(b) control over and application of the Central <sup>4</sup>[Waqf] Fund;

(c) the form and manner in which accounts of the Council may be maintained.

(3) Every rule made by the Central Government under this Chapter 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 sessions 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.

FOOTNOTE : 4 Substituted for "Wakf" by ActNo. 27 of 2013, dated 20.9.2013.

## **CHAPTER 4 ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS**

### **13. Incorporation :-**

(1) With effect from such date as the State Government may, by

notification in the Official Gazette, appoint in this behalf, there shall be established a Board of

<sup>1</sup>[Auqaf] under such name as may be specified in the notification:

<sup>2</sup>[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.]

(2) Notwithstanding anything contained in sub-section (1), if the Shia <sup>3</sup>[Auqaf] in any State constitute in number more than fifteen per cent of all the <sup>4</sup>[Auqaf] in the State or if the income of the properties of the Shia <sup>5</sup>[Auqaf] in the State constitutes more than fifteen per cent of the total income of properties of all the <sup>6</sup>[Auqaf] in the State, the State Government may, by notification in the Official Gazette, establish a Board of <sup>7</sup>[Auqaf] each for Sunni <sup>8</sup>[Auqaf] and for Shia <sup>9</sup>[Auqaf] under such names as may be specified in the notification.

<sup>10</sup>[(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.]

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

#### COMMENTS

Wakf Act does not give representation on Board to Sufies or to Wahabis'.-Both these sects are included in the broad categorisation of Muslims in Sunnis and Shias. In the presence of Shias and Sunnis in the Wakf Board, there is no apprehension even remotest that observance of practices and rituals of Sufies in their wakfs, would get disturbed or there would be no protection to them merely because Sufies have not been given representation on the Wakf Board. As we have found from the sociological survey contained in Muslim religious literature, Shia and Sunni Muslims, both have faith and equal reverence for Sufi religious establishments. In any event, they are not at all opposed to any of the rituals and practices of the Sufies. Only orthodox sects of Wahabis are said to be strong opponents of Sufies. But, Wahabis

are also included in broad categories of Muslims, Shias and Sunnis under the Act. Wahabis also have not independently been given any recognition or right of representation on Wakf Board. Mere likelihood of their presence in Wakf Board can have no such delirious effect as to enable them to interfere with internal religious affairs of the Sufies. The Act itself aims at only regulating the "Secular affairs" of the Wakfs and religious affairs are to be left untouched by the various authorities of the Act. The presence of Shia and Sunni Muslims not belonging to Wahabi sect together with various elected and nominated members ex-officio on the Wakf Board would have greater controlling effect on the deliberations and resolutions of the Board to dispel all doubts of alleged infringement of any religious rights of Sufies.<sup>11</sup>

It is for the Central or State Legislature to consider and decide whether representation on the Wakf Board should be given to Sufies and Wahabis or not. Mere non-recognition of a sect of Muslim in the provisions of the Wakf Act does not constitute any infringement or threat to the fundamental rights guaranteed to all sects of Muslims under Arts. 25 and 26 of the Constitution. The composition of Wakf Board as provided under Section 14 of the Act is that it comprises elected members from both Houses of Parliament and State Legislature, Bar Council, Private Muslim Organisations, nominees of the State Government and recognised scholars in Islamic theology. The composition of the Board is such that there is hardly any possibility of few Wahabis, who are likely to be there on the Board from amongst Muslim community, to be able to dominate the Board or in any manner act against the interest of Sufi Wakfs.<sup>12</sup>

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Inserted by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

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8 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013-

10 Inserted by Act No. 27 of 2013, dated 20.9.2013.

11 Maulana Kureshi Gulam Mustafa v. Union of India, AIR 2002 Guj 252.

12 Maulana Kureshi Gulam Mustafa v. Union of India, AIR 2002 Guj 252.

#### **14. Composition of Board :-**

(1) The Board for a State and <sup>3</sup>[the National Capital Territory of Delhi] shall consist of-

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of-

(i) Muslim Members of Parliament from the State or, as the case may be, the Union territory of Delhi;

(ii) Muslim Members of the State Legislature;

<sup>4</sup>[(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

(iv) mutawallis of the <sup>5</sup>[Auqaf] having an annual income of rupees one lakh and above;

<sup>6</sup>[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.]

**7**[(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;]

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

**9**[(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.]

**10**[(1A) 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 (1):

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.]

(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the ex-Muslim Members of Parliament, the State Legislature or ex-Member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may

nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under sub-section (3).

**11**[\* \* \*]

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia **12**[Auqaf] and Sunni **13**[Auqaf] to be administered by the Board and appointment of the members shall be made so far as may be, in accordance with such determination.

**14**[\* \* \*]

(8) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.

#### COMMENTS

Commencement of new Act. - A comparative study of the provisions of 1954 Act and 1995 Act amply demonstrates that after the 1995 Act has come into force, the constitution of the Board has to be under this Act only and not at all under the provisions of the 1954 Act. So the impugned constitution of the Board under 1954 Act read with 1995 Act is wholly misconceived and without jurisdiction. The Court has compared the provisions of Section 10 of the 1954 Act, since repealed, with the provisions of Section 14 of the 1995 Act in so far as the composition of the Board is concerned and this Court finds that the provisions are substantially different and it is not a case of using the same power by referring to a wrong provision. A legal and valid constitution of the Board under Section 14 of the 1995 Act calls for a completely different statutory exercise which are not contemplated under Section 10 of the 1954 Act. Here the exercise for composition of the impugned Board has been shown under Section 10 of the 1954 Act which is (no) longer in existence so the entire exercise is wholly without jurisdiction and is an exercise by ignoring the law of the land. Therefore, the impugned notification purporting to constitute a Board under the provisions of 1954 Act is void in law and without jurisdiction and cannot be but be quashed by a Court of law.<sup>15</sup>

It was held that a Court has no power to make an order postponing

the coming into effect of a Statute which has already commenced.<sup>16</sup>

Constitution of Board - Validity of. - As a Member of Parliament, Member of State Legislature and of the Bar Council is elected by the whole section of the society including non-Muslims, such an elected person cannot really represent the interests of the Muslims or protect the community or preaching of Islam. The argument though apparently looks glittering, but when examined in depth drowns at the bottom of the well requiring no consideration worth the name. The intention of the composition of the Board and the purpose of the Act is to administer the property and not to give representation to the Muslim jurists or theologians. The elected Muslim Members have been sought to be included in the Board upon consideration of their obligation and responsibility to the people in general and Muslims in particular. Responsible elected Members of the Parliament, State Legislature and Bar Council are rightly intended and expected to come to the expectation of the law-makers and contribute positively for providing better administration of wakfs and for matters connected therewith or incidental thereto.

As Mutawallis of the wakf having an annual income of Rupees one lakh or above are only held eligible to be members of the Board, the provision to that effect is discriminatory and violative of Article 14 of the Constitution. When the purpose of the Board is to provide better administration to the wakf property, it has rightly thought to afford only such mutawallis an opportunity of being the Member of the Board, who have some experience in the Management of the wakf property, which has been tried to be ascertained and measured on the yardstick of income of the wakfs.

The principle of equality does not mean the universal application of laws for all persons who are not by nature, attainment or circumstances in the same position. The Muthawallis of wakfs having an annual income of more than Rs. one lakh constitute a class in themselves and cannot be equated with such muthawallis, who do not have any annual income from the wakf or any experience of dealing with the management of the property. If a law is shown to be dealing equally with the members of a well defined class, it cannot be held to be discriminatory on the ground of not providing equal protection being allegedly not applicable to the other persons. It cannot be forgotten that the presumption is in favour of constitutionality of a law since it is presumed that the legislature understands and correctly appreciates the needs of the

people and its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds- The burden to prove the discrimination is always upon the person who alleges it. In *Ajoy Kumar Mukherjee v. Local Board of Barpeta*<sup>17</sup> held (para 7):-

"As to that it is well settled that it is for the person who alleges that equality before law has been infringed to show that such really is the case. It was therefore for the appellant to produce facts and figures from which it can be inferred that the tax imposed in the present case is hit by Art. 14 of the Constitution".<sup>18</sup>

In *Ratilal Punamchand Gandhi v. State of Bombay*<sup>19</sup> held (at p. 391):-

"Article 25 of the Constitution guarantees to every person and not merely to the citizens of India the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the Article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the States power to make laws providing for special reform and social welfare even though they might interfere with religious practices.

Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people.

What sub-clause (a) of Clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices".

Mutawalli of wakf. - The object of the very registration itself is with reference to the value of movable or immovable property dedicated

for pious, religious and charitable purposes, which is nothing to do with educational qualification. In that view of the matter, prescribing a qualification based on annual income of rupees one lakh and above cannot be an arbitrary and irrational consideration while selecting mutawalli, who could be a member of the Board.<sup>20</sup>

Selection of mutawalli. - Under Section 14(1)(c) and (d) of the Wakf Act, the power to select a representative from eminent Muslim Organisation was given to the State Government. Therefore, it is for the subjective satisfaction of the State Government to consider the representative from the eminent Muslim Organisation after taking into relevant consideration that prevails in a particular State.<sup>21</sup>

Wakf Board. - By way of an interim arrangement, the term of the members of the Board and its Chairman is continued till the new Board is constituted but that does not mean that the Govt. is not empowered to make the appointment of an Administrator. No doubt, their appointment was extended till further orders, was not specifically mentioned but on completion of their term, it has to be presumed that their term was extended till further orders. It is not necessary that till the new Wakf Board is constituted, they should be continued. There is no provision for appointing an Administrator in the new Act. However at the same time, there is no such clear-cut provision for not making any appointment of an Administrator. Suppose if all members of the Board resign, then what would be the position? Under such circumstances, till the new appointment is made, the Govt, has to appoint someone as an Administrator.<sup>22</sup>

Wakf Board - Composition of. - Non-recognition of any religious faith or doctrine and omission to give them representation does not directly deny freedom of conscience/ or right to profess, practise and propagate religion guaranteed by Article 25. It also does not deny freedom to manage and administer its religious property guaranteed under Article 26. The provisions of Wakf Act nowhere make any attempt to interfere with the religious activities of any faith or religion. There is, therefore, no violation of Art. 25 of the Constitution. Mere non-recognition of the sect of Sufies in composition of Wakf Board, and omission to give representation to them in any other manner under the provisions of the Act, do not directly or indirectly infringe any right of Sufi Wakfs under Art. 26 of the Constitution to establish and maintain institution for religious and charitable purposes or to manage their own affairs in the matter of religion.<sup>23</sup>

Word "elect" - Meaning of. - If the tenure of a person appointed had been fixed, then under common law rule the holder of office can be removed for a cause even if he has a fixed tenure of office. The word cause which has occurred in both the judgments has a great significance, meaning thereby, that if a person has committed an act of misconduct of gross nature, then for that cause such a person can be removed even when he has a fixed tenure of office. No doubt the petitioner could be removed for a cause as provided under Section 20 of the Wakf Act but he cannot be ousted by means of a motion of no confidence particularly when the Wakf Act does not provide to remove the Chairperson by passing a vote of no confidence.

There is an implied powers to remove the Chairperson by the body which elected him, without making a reference to any provision of the Act, is untenable. The body, which elected the Chairperson cannot remove the Chairperson through motion of no confidence. Dictionary meanings, reference of Maxims and quotation from Jurists cannot be pressed into service when the Parliament itself used the word "elect" under Section 14(8) of the Wakf Act and hence it cannot mean "appoint". The Chairperson under the Wakf Act is not appointed by the members of the Board like any Officer, who can be removed or dismissed under Section 16 of the General Clauses Act. He held an elective post. The vague concept of democracy, in the absence of any statutory provision, cannot arm the electors either to recall the person so elected for a fixed term or remove him by passing a vote of no confidence. The provisions of Section 16 of the General Clauses Act are applicable to the appointment, and cannot be made applicable to the case of election.<sup>24</sup>

3 Substituted for "the Union Territory of Delhi" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

6 Inserted by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted by Act No. 27 of 2013, dated 20.9.2013.

10 Inserted by Act No. 27 of 2013, dated 20.9.2013.

11 Sub-section (5) omitted by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

13 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

14 Sub-section (7) omitted by Act No. 27 of 2013, dated 20.9.2013.

15 Ghulam Mohsin Jafri v. State of Bihar, AIR 1999 Patna 115.

16 Factortame Limited v. Secretary of State for Transport, 1989 (2) WLR 997.

17 Ajoy Kumar Mukherjee v. Local Board of Barpeta, AIR 1965 SC 1561

18 Syed Shah Muhammad Al Hussaini v. Union of India, AIR 1999 Kar 112.

19 Ratilal Punamchand Gandhi v. State of Bombay, AIR 1954 SC 388

20 P.A.G. Hussain Moulana v. Union of India, AIR 2005 Mad 111

21 P.A.G. Hussain Moulana v. Union of India, AIR 2005 Mad 111.

22 Shokat Ali Ansari v. State of Rajasthan, AIR 1999 Raj 175.

23 Maulana Kureshi Gulam Mustafa v. Union of India, AIR 2002 Guj 252.

24 Amir Alam Khan v. State of U.P., AIR 2002 Alld 215.

### **15. Term of office :-**

The members of the Board shall hold office for a term of five years<sup>1</sup>[from the date of notification referred to in sub-section (9) of section 14].

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

### **16. Disqualification for being appointed, or for continuing as, a member of the Board :-**

A person shall be disqualified for the being appointed, or for

continuing as, a member of the Board if-

- (a) he is not a Muslim and is less than twenty-one years of age;
- (b) he is found to be a person of unsound mind;
- (c) he is an undischarged insolvent;
- (d) he has been convicted of the offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
- <sup>1</sup>[(da) he has been held guilty of encroachment on any waqf property;]
- (e) he has been on a previous occasion-
  - (i) removed from his office as a member or as a mutawalli, or (ii) removed by an order of a competent Court or tribunal from any position of trust either for mismanagement or for corruption.

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

### **17. Meetings of the Board :-**

- (1) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.
- (2) The Chairperson, or in this absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.
- (3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the member present, and in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote.

### **18. Committees of the Board :-**

- (1) The Board may, whenever it consider necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of <sup>1</sup>[Auqaf].
- (2) The constitution, functions and duties and the terms of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

COMMENTS

Delegation of powers - Wakf Board, - Even though the provision does not contemplate the constitution of the Committee by the

Chairman, the learned Advocates for the respondents have pointed out that such powers have been delegated to the Chairman, regarding which a statement has been made in the counter-affidavit, but no copy of the delegation is produced. According to Section 18(2) of the 1995 Act also, the constitution, functions and duties and the term of such Committees shall be determined from time to time by the Board and not the Chairman.

Section 27 of the 1995 Act contemplated total delegation of powers of the Board to other persons to sit by itself quiet and watch the fun of the consequences. Therefore it is difficult to think that specific power under Section 18 to constitute any such Committee is delegated to the Chairman from among several delegations. Moreover, the resolution shown has been the delegation of the existing powers, which is very vague, too ambiguous and too general in nature, which is beyond the true meaning of delegation of power of a statutory authority. The Board is a statutory authority constituted in law to function within its powers or to delegate any or more of the powers in accordance with law and not to totally disassociate itself from the management of the Committee by delegating all its powers. Therefore, the nature of such a resolution, which is said to have been passed earlier under the Wakf Act, 1954, to have bearing effect on the 1995 Act for the purpose of delegation under Section 27 to think that the Chairman is vested with such power to act under Section 18 of the Act. The constitution of the Committee under the impugned proceedings cannot have a legal basis as it is not constituted by the Board and is constituted by the Chairman without even mentioning in the impugned proceedings that it is being exercised by virtue of the powers under the delegation.<sup>2</sup>

1 .Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 MA. Aziz v. A.P. State Wakf Board, AIR 1998 AP 61.

### **19. Resignation of Chairperson and members :-**

The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairperson or the member shall continue in office until the appointment of his successor is notified in the Official Gazette.

### **20. Removal of Chairperson and members :-**

(1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he-

(a) is or becomes subject to any disqualifications specified in Section 16; or

(b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interest of the <sup>1</sup>[Auqaf]; or

(c) fails in the opinion of the Board, to attend three consecutive meetings of Board, without sufficient excuse.

(2) Where the Chairperson of the Board is removed under subsection (1), he shall also cease to be a members of the Board.

#### COMMENTS

Powers of the Board. - There is well marked distinction between a body created by a statute and a body which after coming into existence, is governed, in accordance with the provisions of the statute, the corporations or the companies, which are governed in accordance with the provisions of the statute having no statutory and legislative functions cannot be said to be statutory bodies, because it is not created by the statute. There are bodies created by an Act or group of individuals in accordance with the provisions of the statute.

A corporation or a body incorporated, which comes into existence and is governed, in accordance with the provisions of the statute can exercise the power of amotion against any member or the officer appointed by it, because power of amotion is incident to such corporation, unless it has taken away by the statute, but such implied power of amotion cannot be exercised by a body or corporation created by a statute, which discharges statutory and legislative functions, because there is a distinction between a body created by a statute and a body, which after coming into its existence is governed, in accordance with the provisions of the statute.

The powers, which the Board enjoys is distinct from a corporation, which after coming into existence, is governed in accordance with provisions of an Act and incorporated under the Act. The Board is not like a society or company incorporated in accordance with the provisions of any Act like joint stock companies or corporation or society. The Board after coming into existence is governed in accordance with the provisions of the statute. The power of amotion, which is vested to a non-statutory body incorporated

under an Act, under common law cannot be made applicable to a corporation created by an Act of Parliament.<sup>2</sup>

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Amir Alam Khan v. State of U.P., AIR 2002 All 215.

### **20A. Removal of Chairperson by vote of no confidence :-**

(<sup>3</sup>)[20A. Removal of Chairperson by vote of no confidence  
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;

(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

(1) 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.]

3 Inserted by Act No. 27 of 2013, dated 20.9.2013.

## **21. Filling of a vacancy :-**

When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred.

## **22. Vacancies etc., not to invalidate proceedings of the Board :-**

No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

**23. Appointment of Chief Executive Officer and his term of office and other conditions of service :-**

<sup>1</sup>[(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.]

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be ex officio Secretary of the Board and shall be under the administrative control of the Board.

1 Substituted by Act No. 27 of 2013, dated 20.9.2013.

**24. Officers and other employees of the Board :-**

(1) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.

(2) The appointment of officers and other employees, their terms of office and conditions of service shall be such as may be provided by regulations.

**25. Duties and powers of Chief Executive Officer :-**

(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include-

(a) investigating the nature and extent of <sup>2</sup>[Auqaf] and <sup>3</sup>[waqf] properties and calling whenever necessary, an inventory of <sup>4</sup>[waqf] properties and calling, from time to time, for accounts, returns and information from mutawallis;

(b) inspecting or causing inspection of <sup>5</sup>[waqf] properties and

account, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of <sup>6</sup>[Auqaf].

(2) In exercising the powers of giving directions under sub-section (1) in respect of any <sup>7</sup>[waqf], the Board shall act in conformity with the directions by the <sup>8</sup>[waqf] in the deed of the <sup>9</sup>[waqf], the purpose of <sup>10</sup>[waqf] and such usage and customs of the <sup>11</sup>[waqf] as are sanctioned by the school of Muslim law to which the <sup>12</sup>[waqf] belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

2 Substituted for " Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

## **26. Powers of Chief Executive Officer in respect of orders or resolutions of Board :-**

Where the Chief Executive Officer considers that an order or resolution passed by the Board-

(a) has not been passed in accordance with the law; or

(b) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or

(c) if implemented, is likely to-

(i) cause financial loss to the Board or to the concerned <sup>1</sup>[waqf] or

to the <sup>2</sup>[Auqaf] generally; or

(ii) lead to a riot or breach of peace; or

(iii) cause danger to human life, health or safety; or

(d) is not beneficial to the Board or to any <sup>3</sup>[waqf] or to <sup>4</sup>[Auqaf] generally,

he may, before implementing such order or resolution place the matter before the Board for its reconsideration and, if such order or resolution is not confirmed by a majority of vote of the members present and voting after such reconsideration, refer the matter to the State Government along with his objections to the order or resolution, and the decision of the State Government thereof shall be final.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

## **27. Delegation of powers by Board :-**

(<sup>1</sup>)[27. Delegation of powers by Board

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.]

### **COMMENTS**

Delegation of powers - Wakf Board. - Even though the provision does not contemplate the constitution of the Committee by the Chairman, the learned Advocates for the respondents have pointed out that such powers have been delegated to the Chairman, regarding which a statement has been made in the counter-affidavit, but no copy of the delegation is produced. According to Section 18(2) of the 1995 Act also, the constitution, functions and duties and the term of such Committees shall be determined from time to time by the Board and not the Chairman.

Section 27 of the 1995 Act contemplated total delegation of powers

of the Board to other persons to sit by itself quiet and watch the fun of the consequences. Therefore it is difficult to think that specific power under Section 18 to constitute any such Committee is delegated to the Chairman from among several delegations. Moreover, the resolution shown has been the delegation of the existing powers, which is very vague, too ambiguous and too general in nature, which is beyond the true meaning of delegation of power of a statutory authority. The Board is a statutory authority constituted in law to function within its powers or to delegate any or more of the powers in accordance with law and not to totally disassociate itself from the management of the Committee by delegating all its powers. Therefore, the nature of such a resolution, which is said to have been passed earlier under the Wakf Act, 1954, to have bearing effect on the 1995 Act for the purpose of delegation under Section 27 to think that the Chairman is vested with such power to act under Section 18 of the Act. The constitution of the Committee under the impugned proceedings cannot have a legal basis as it is not constituted by the Board and is constituted by the Chairman without even mentioning in the impugned proceedings that it is being exercised by virtue of the powers under the delegation.<sup>2</sup>

Interpretation of. - Section 27, any power which although required to be performed by two-thirds members of the Board can be delegated, the requirement for specific majority under Section 64 (3) shall become redundant. It is well established rule of interpretation that no words in a statute are used without any purpose nor any words are wasted by legislature. The specific majority of two-thirds as provided under Section 64 (3) has to be given effect to and both the provisions Sections 27 and 64 has to be given a harmonious construction so both may survive without doing violence to any part of any of the provisions. When the statute require a particular thing to be done in a particular manner the said thing is required to be done in a said manner alone.<sup>3</sup>

Removal from post of Mutawalli. - Delegation will indicate the conditions and limitations, while exercising such delegation. Thus, unless there is a resolution of the Board in writing with regard to the delegation of the power on the Chairperson, the Chairperson cannot take a decision on behalf of the Board, that is to say that the delegation of power in the manner provided in the section is a must. This matter is being heard ex parte against them and since they have not come with any resolution to show that delegation was made on the Chairperson, it has to be taken as admitted that

no such delegation was made upon the Chairperson. If the Chairperson had not been delegated, then the question of passing the order under Section 64 of the Act did not arise. Section 64 is an exclusive power given to the Board and not to any other person. In absence of delegation of power, the order impugned is without jurisdiction.<sup>4</sup>

Removal of mutawalli.-When under Section 64(3) a specific mode of exercise of power i.e. by a special majority is provided said power cannot be delegated to one member of the Board. The exercise of such powers by a special mode the power is not capable of delegation. Any other interpretation shall make the requirement provided in Section 64(3) redundant and meaningless. Special majority has been provided for specific object i.e. to make the removal only when 2/3rd of members of Board agree, permitting one member to do it is to permit a thing to be done in a manner which is not permissible under the Act.<sup>5</sup>

1 Substituted by Act No. 27 of 2013, dated 20.9.2013.

2 M.A. Aziz v. A.P. State Wakf Board, AIR 1998 AP 61.

3 Syed Mohammad Ahmad Hasan v. Shia Central Board of Waqf, U. P., AIR 2009 Alld 38.

4 Ali Akhtar Quadri v. State of Bihar, AIR 2003 Jhar 74.

5 Syed Mohammad Ahmad Hasan v. Shia Central Board of Waqf, U. P., AIR 2009 Alld 38.

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

<sup>1</sup>[28. Power of District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate to implement the directions of the Board 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.]

1 Substituted by Act No. 27 of 2013, dated 20.9.2013.

**29. Powers of Chief Executive Officer to inspect records**

## **29. Powers of Chief Executive Officer to inspect records, registers, etc :-**

<sup>1</sup>[(1)] The Chief Executive Officer or any officer of the Board duly authorised by him in this behalf shall, <sup>2</sup>[subject to such conditions as may be prescribed], be entitled at all reasonable times to inspect, in any public office, any records, registers or other documents relating to a <sup>3</sup>[waqf] or movable or immovable properties which are <sup>4</sup>[waqf] properties or are claimed to be <sup>5</sup>[waqf] properties.

<sup>6</sup>[(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.]

the payment of such fees as may be leviable under any law for the time being in force" by Act No. 27 of 2013, dated 20.9.2013.

1 Original paragraph numbered by Act No.27 of 2013, dated 20.9.2013.

2 Substituted for "subject to such conditions and restrictions as may be prescribed and subject to

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf by Act No. 27 of 2013, dated 20.9.2013.

6 Inserted by Act No. 27 of 2013, dated 20.9.2013.

## **30. Inspection of records :-**

(1) The Board may allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.

(2) All copies issued under this section shall be certified by the Chief Executive Officer of the Board in the manner provided in Section 76 of the Indian Evidence Act, 1872 (1 of 1872).

(3) The powers conferred on the Chief Executive Officer by sub-section (2) may be exercised by such other officer or officers of the Board as may either generally or specially be authorised in this behalf by the Board.

### **31. Prevention of disqualification for membership of Parliament :-**

It is hereby declared that the offices of the Chairperson or members of a Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, for being, a Member of Parliament <sup>1</sup>[or a Member of Union territory Legislature or a Member of a State Legislature if so declared under a law made by the appropriate State Legislature].

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

### **32. Powers and functions of the Board :-**

(1) Subject to any rules that may be made under this Act, the general superintendence of all <sup>2</sup>[Auqaf] in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the <sup>3</sup>[Auqaf] under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such <sup>4</sup>[Auqaf] were created or intended:

Provided that in exercising its powers under this Act in respect of any <sup>5</sup>[waqf], the Board shall act in conformity with the directions of the <sup>6</sup>[waqf], the purposes of the <sup>7</sup>[waqf] and any usage or custom of the <sup>8</sup>[waqf] sanctioned by the school of Muslim law which the <sup>9</sup>[waqf] belongs.

Explanation. - For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a <sup>10</sup>[waqf] in relation to which any scheme has been made by any Court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be-

(a) to maintain a record containing information relating to the

origin, income, object and beneficiaries of every **11**[waqf];  
(b) to ensure that the income and other property of **12**[Auqaf] are applied to the objects and for the purposes for which such **13**[Auqaf] were intended or created; (c) to give directions for the administration of **14**[Auqaf],

(d) to settle schemes of management for a **15**[waqf]:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct-

(i) the utilization of the surplus income of a **16**[waqf] consistent with the objects of a **17**[waqf];

(ii) in what manner the income of a **18**[waqf], the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of **19**[waqf] has ceased to exist or has become incapable of achievement, that so much of the income of the **20**[waqf] as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation.-For the purposes of this clause, the powers of the Board shall be exercised-

(i) in the case of a Sunni **21**[waqf], by the Sunni members of the Board only; and

(ii) in the case of a Shia **22**[waqf], by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunni or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause:

(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of **23**[Auqaf];

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any **24**[waqf];

(i) to institute and defend suits and proceedings relating to **25**[Auqaf];

**26**(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder: Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.]

(k) to administer the **27**[Waqf] Fund;

(1) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the **28**[waqf] property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, **29**[waqf] properties, accounts, records or deeds and documents relating thereof;

(n) to investigate and determine the nature and extent of **30**[waqf] and **31**[waqf] property, and to cause, whenever necessary, a survey of such **32**[waqf] property;

**33**[(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;]

(o) generally do all such acts as may be necessary for the control, maintenance and administration of **34**[Auqaf].

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the **35**[waqf] or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any **36**[waqf] land, which" is **37**[Auqaf] property, **38**[has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like], market, housing flats and the like, it may serve upon the mutawalli of the concerned **39**[waqf] a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to executive the development works specified the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, if may,

**40**[\*\*\*] take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the work and execute such works from **41**[Auqaf ] funds or from the finances which may be raised on the security of the properties of the **42**[waqf] concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section together with interest thereon, the expenditure on maintenance of such works and other legitimate changes incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawalli of the concerned **43**[waqf] to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned **44**[waqf].

#### COMMENTS

Appointment of Mutawalli.-While exercising the power of superintendence including the appointment of Mutawalli the Board has no absolute power, instead thereof the Board is under duty to follow directions of the wakf as contained in the wakf-deed and if the wakf is not created by any wakf-deed, it shall be governed by the customs and usage of the wakf, which have sanction of School of Muslim law to which it belongs. Therefore, the power of superintendence and control of the Board over the wakf including to the appointment of Mutawalli to a wakf is not absolute, as such while exercising such power of superintendence in respect of a wakf, the Board cannot act according to its sweet will, rather it has to act in conformity with the directions of the concerned wakf but where the wakf is not created by any wakf-deed or where the wakf is created by user and there exist no such wakf-deed like in present case, in such situation, Section 37(c) of the Act, the rule of succession to the office of Mutawalli shall be governed by the customs or usage and/or scheme of the administration of said wakf by virtue of the provision of Section 37(e) of the Act.**45**

Board is empowered to appoint and remove the Mutawalli. - Section 32 (2) (g) of the Act the Board is empowered to appoint and remove the Mutawalli in accordance with the provisions of the

Act, but this power of appointment and removal of the Mutawalli is without any prejudice to the general power of superintendence of the Board over a wakf. Besides, Section 37 (c) of the Act also indicates that the rule of succession to the office of Mutawalli is governed by the wakf deed and if the wakf is not created by the wakf deed, the same is governed by the custom or usage. However the power to appoint Mutawalli under Section 63 of the Act can be exercised by the Board only when there is no one to be appointed under the terms of wakf-deed or where the right of any person to act as Mutawalli is disputed, in that situations alone the Board may appoint any person to act as Mutawalli for such period and on such conditions as it may think fit and not in other situations.<sup>46</sup>

Powers and functions of Board. - Even if the explanation added to sub-section (1) of Section 15 and Section 69 of 1984 is to be ignored, it is evident from the proviso to sub-section (1) of Section 15 that exercise of the power by the Board was to be in conformity with the directions of the wakf and usage and custom of the concerned wakf. Since the wakf did not provide for any mode of administration or appointment of trustees, the devotees approached the Court and got a Scheme framed. There is nothing in that Section which excluded the application of the Scheme. Further, the Scheme, which was framed in the year 1915 and which was strictly followed by the devotees can be said to have given rise to usage and established the custom. It is evident that the power of the Board to appoint Mutawalli is only where there is no one to be appointed under the terms of the deed of the wakf or where the right of any person to act as Mutawalli is disputed. When the method is prescribed under a Scheme, the same can be equated to the terms of a deed; At any rate, as long as it is in operation, and proceedings are initiated there under, the right of any one to act as Mutawalli, till appointed by the Court, has to be treated as disputed. Even after the 1954 Act came to be enacted. Sections 92 and 93 of CPC continued to be available for the aggrieved persons to get Schemes framed in relation to religious institutions including wakfs.<sup>47</sup>

Powers of Wakf Tribunal. - There is no provision in the Wakf Act for framing any scheme of management to the Mujawaris and Khidmatgars rendering services on "Majars". In fact this question is part of management scheme of "Majars" which is a Wakf. The definition of Mutawalli also includes Khadim, Mujawar, Sajjadanashin. The order passed by the Tribunal appears to be just and proper and has been passed within its jurisdiction by the

Tribunal, under sub-section (3) of Section 32 the Tribunal can settle schemes of management for a Wakf, give a direction for the utilisation of income of Wakf consistent with the object of the Wakf and as per its object and have rightly held that the plaintiffs are also entitled for Wajifa and have rightly and legally framed a scheme for the distributions of the offerings and Wajifa amongst them.<sup>48</sup>

Scope of Section 32. - Chapter IV of the Act deals with the establishment of Boards and their functions. Section 32 lays down the powers and functions of the Board. The Superintendence of all wakfs vests in the Board. The Board is duty-bound to exercise its powers under the Act to ensure that the Wakfs are properly maintained, controlled and administered. The Board is duty-bound to ensure that the property of the Wakfs is applied to the objects and the purposes for which the Wakfs were intended or created and also to take measures for the recovery of loss (sic) properties of any Wakf; sanction any transfer of immovable property of a Wakf by way of lease in accordance with the provisions of the Act. Section 32(3) provides for a legal remedy before the Tribunal against any order passed by the Board with regard to the settlement of Scheme. Subhan Shah through L.Rs.<sup>49</sup>

Section 32 (1) of the Act, it is clear that subject to any rule made under the Act, the general superintendence of all the wakfs in State is vested in the Board established or the State and it shall be the duty of the Board to ensure that wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended. The proviso added to this Section 32 (1) is of controlling in nature, which postulates in clearest terms that while exercising its power under the Act in respect of any wakf, the Board shall act in conformity with the directions of the Wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the School of Muslim Law to which the wakf belongs.<sup>50</sup>

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

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21 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

22 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

23 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

24 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

25 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

26 Substituted by Act No. 27 of 2013, dated 20.9.2013.

27 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

28 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

29 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

30 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

31 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

- 32 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 33 Inserted by Act No. 27 of 2013, dated 20.9.2013.
- 34 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.
- 35 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 36 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 37 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.
- 38 Substituted for "offers a feasible potential for development as a shopping centre" by Act No. 27 of 2013, dated 20.9.2013.
- 39 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 40 Words "with the prior approval of the Government," omitted by Act No. 27 of 2013, dated 20.9.2013.
- 41 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.
- 42 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 43 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 44 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 45 Maulvi Abdul Rahman Siyai v. Sardar Maqbool Hasan, AIR 2009 AllD 62.
- 46 Maulvi Abdul Rahman Siyai v. Sardar Maqbool Hasan, AIR 2009 AllD 62.
- 47 Sri Radhakrishna Rice Mill Co v. Jumma Maseed, AIR 2003 AP 70.
- 48 Subhan Shah v. M.P. Wakf Board, AIR 2004 MP 22.
- 49 Ramjan Khan v. M. P. Wakf Board, AIR 1997 MP 8.
- 50 Maulvi Abdul Rahman Siyai v. Sardar Maqbool Hasan, AIR 2009 AHd 62.

**33. Powers of inspection by Chief Executive Officer or persons authorised by him :-**

- (1) With a view to examining whether, by reason of any failure or

negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any <sup>2</sup>[waqf] or <sup>3</sup>[waqf] property, the Chief Executive Officer <sup>4</sup>[or any other person authorised by him in writing] with the prior approval of the Board, <sup>5</sup>[\*\*\*] may inspect all movable and immovable properties, which are <sup>6</sup>[waqf] properties, and all records, correspondences, plans, accounts and other documents relating thereto.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned mutawalli and all officers and other employees working under him and every person connected with the administration of the <sup>7</sup>[waqf], shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents to the <sup>8</sup>[waqf] as may be called for by the person making the inspection and furnish to him such information relating to the <sup>9</sup>[waqf] as may be required by him.

(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is or was working under him had misappropriated, misapplied or fraudulently retained, any money or other <sup>10</sup>[waqf] property, or had incurred irregular, unauthorised or improper expenditure from the funds of the <sup>11</sup>[waqf], the Chief Executive Officer may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property, should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property, which has been misappropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the <sup>12</sup>[waqf], within such time as may be specified in the order.

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no

power no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

(5) The Tribunal may, taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.

#### COMMENTS

Scope of Section 33. - Under Section 33 inspection of wakf properties can be done and also action can be taken against the erring officials. Sub-section (4) of this Section itself provides for a remedy to the aggrieved persons by way of an appeal to the Tribunal. Subhan Shah through L.Rs.<sup>13</sup>

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Inserted by Act No. 27 of 2013, dated 20.9.2013.

5 Words "either himself or any other person authorised by him in writing in this behalf," omitted by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

13 Ramjan Khan v. M. P. Wakf Board, AIR 1997 MP 8.

#### **34. Recovery of the amount determined under Section 33 :-**

Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of Section 33, to

make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer, with the prior approval of the Board shall, take such steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under Section 33, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Chief Executive Officer, who shall, on receipt thereof, credit the amount to the funds of the concerned <sup>1</sup>[waqf].

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **35. Conditional attachment by Tribunal :-**

(1) Where the Chief Executive Officer is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of Section 33 to make any payment, with intent to defeat or delay the execution of the said order,-

(a) is about to dispose of the whole or any part of his property; or  
(b) is about to remove the whole or any part of his property from the jurisdiction of the Chief Executive Officer;

he may, with the prior approval of the Board, apply to the Tribunal for the conditional attachment of the said property or such part thereof, as he may think necessary.

(2) The Chief Executive Officer shall, unless the Tribunal otherwise directs, specify in the application the property required to be attached and the estimated value thereof.

(3) The Tribunal may direct the mutawalli or the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in Section 34, or to appear and show cause why he should not furnish such security.

(4) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(5) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as if it were an order for attachment made under the provision of the said Code.

## **CHAPTER 5 REGISTRATION OF AUQAF**

### **36. Registration :-**

(i) Every <sup>2</sup>[waqf] whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli: Provided that such applications may be <sup>3</sup>[made by the waqf] or his descendants or a beneficiary of the <sup>4</sup>[waqf] or any Muslim belonging to the sect to which the <sup>5</sup>[waqf] belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:-

(a) a description of the <sup>6</sup>[waqf] properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the <sup>7</sup>[waqf] properties;

(d) an estimate of the expenses annually incurred in the realisation of income of the <sup>8</sup>[waqf] properties;

(e) the amount set apart under the <sup>9</sup>[waqf] for-

(i) the salary of the mutawalli and allowance to the individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the <sup>10</sup>[waqf] deed or if such deed has been executed or a copy thereof cannot be obtained, shall contain the particulars as far as they are known to the applicant, of the origin, nature and objects the <sup>11</sup>[waqf].

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further

particulars/ information that it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the <sup>12</sup>[waqf], make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the <sup>13</sup>[waqf] property, the Board shall, before registering the <sup>14</sup>[waqf], give notice of the application to the person administering the <sup>15</sup>[waqf] property and shall hear him if he desires to be heard.

(8) In the case of <sup>16</sup>[waqf] created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of <sup>17</sup>[Auqaf] created after such commencement, within three months from the date of the creation of the <sup>18</sup>[waqf]:

Provided that where there is no Board at the time of creation of a <sup>19</sup>[waqf], such application will be made within three months from the date of establishment of the Board.

#### COMMENTS

Sale of wakf property. - Publication of the order of sanction in the Gazette is not mandatory but only directory. We are unable to agree. By reason of the provisions of Section 36-A of the Act, a prior sanction is imperative for effecting a sale transaction. Furthermore, Rule 12 specifies the manner in which such sanction is to be granted. The nature and purport for which the said provisions have been made, clearly goes to show that the Rules are imperative in character.

A Mutawalli is a manager or trustee of the property. Mujavars were not even that. Mujavars, prior to the amendment of the Act, were not even authorized to enter into the agreement for sale. That was not the purpose for which they were appointed.

The functions of the Mutwalli and/or Mujavars in the light of the provisions of the Wakf Act and the Rules framed thereunder must be viewed in the context of the statute and on the basis of the common concept. Mutwallis have no ownership right or estate in the Wakf property unless the deed of wakf says so.<sup>20</sup>

When a procedure is laid down for performance of a statutory function, the same must be done in the manner laid down therein. Sub-rule (3) of Rule 12 lays down that minimum 30 days time should be given for receipt of objection.<sup>21</sup>

1 Substituted for "WAKFS" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "made by the wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf by Act No- 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

13 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

14 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

15 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

16 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

17 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

18 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

19 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

20 Bibi Saddiqa Fatima v. Saiyed Mohammad Mahmood Hasan (1978) 3 SCC 299 and Nawab Zain Yar Jung v. Director of Endowments, AIR 1963 SC 985.

21 Mohammedia Co-op. Building Society Ltd. v. Lakshmi S. Co-op. Building Society Ltd, AIR 2009 SC (Supp) 590.

### **37. Register of Auqaf :-**

<sup>4</sup>(1)] The Board shall maintain a register of <sup>5</sup>[Auqaf] which shall contain in respect of each <sup>6</sup>[waqf] copies of the <sup>7</sup>[waqf] deeds,

when available and the following particulars, namely:-

- (a) the class of the <sup>8</sup>[waqf];
- (b) the name of the mutawalli;
- (c) the rule of succession to the office of mutawalli under the <sup>9</sup>[waqf] deed or by custom or by usage;
- (d) particulars of all <sup>10</sup>[waqf] properties and all title deeds and documents relating thereto;
- (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;
- (f) such other particulars as may be provided by regulations.

<sup>11</sup>[(2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.]

<sup>12</sup>[(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.]

3 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

4 Original paragraph numbered by Act No.27 of 2013, dated 20.9.2013.

5 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Inserted by Act No. 27 of 2013, dated 20.9.2013.

12 Inserted by Act No. 27 of 2013, dated 20.9.2013.

### **38. Powers of Board to appoint Executive Officer :-**

(1) Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interest of the <sup>1</sup>[waqf], appoint on whole-time or part-time basis or in an honorary capacity, subject to such conditions as may be provided

by regulations, an Executive Officer with such supporting staff as it considers necessary for any <sup>2</sup>[waqf] having a gross annual income of not less than five lakhs rupees:

Provided that the person chosen for appointment should be a person professing Islam.

(2) Every Executive Officer appointed under sub-section (1) shall exercise such powers and discharge such duties as pertain only to the administration of the property of the <sup>3</sup>[waqf] for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervisions of the Board:

Provided that the Executive Officer who is appointed for a <sup>4</sup>[waqf] having a gross annual income of not less than five lakhs rupees shall ensure that the budget of the <sup>5</sup>[waqf] is submitted, the accounts of the <sup>6</sup>[waqf] are regularly maintained, and the yearly statement of accounts are submitted within such time as the Board may specify.

(3) While exercising his powers and discharging his functions under sub-section (2), the Executive Officer shall not interfere with any religious duties or any usage or custom of the <sup>7</sup>[waqf] sanctioned by the Muslim law.

(4) The salaries and allowances of the Executive Officer and his staff shall be fixed by the Board and in fixing the quantum of such salary the Board shall have due regard to the income of the <sup>8</sup>[waqf], the extent and nature of the duties of the Executive Officer and shall also ensure that the amounts of such salaries and allowances are not disproportionate to the income of the <sup>9</sup>[waqf] and do not operate as an unnecessary financial burden on it.

(5) The salaries and allowances of the Executive Officer and his staff shall be paid by the Board from the <sup>10</sup>[Waqf] Fund and, if the <sup>11</sup>[Waqf] generates any additional income as a result of appointment of the Executive Officer, the Board may claim reimbursement of amounts spent on the salaries and allowance from the fund of the <sup>12</sup>[Waqf] concerned.

(6) The Board may, for sufficient reasons, and after giving to the Executive Officer or a member of his staff, a reasonable opportunity of being heard, suspend, remove or dismiss the Executive Officer or a member of his staff from his post.

(7) Any Executive Officer or a member of his staff who is aggrieved by any order of removal or dismissal made under sub-section (6) may, within thirty days from date of communication of the order,

prefer an appeal against the order to the Tribunal and the Tribunal may, after considering such representation as the Board may make in the matter and after giving a reasonable opportunity to the Executive Officer or a member of his staff of being heard, confirm, modify or reverse the order.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **39. Powers of Board in relation to Auqaf which have ceased to exist :-**

39. Powers of Board in relation to <sup>1</sup>[Auqaf] which have ceased to exist

(1) The Board shall, if it is satisfied that the objects or any part thereof, of a <sup>2</sup>[waqf] have ceased to exist, whether such cesser took place before or after the commencement of this Act cause an inquiry to be held by the Chief Executive Officer, in the prescribed manner to ascertain the properties and funds pertaining to such <sup>3</sup>[waqf].

(2) On the receipt of the report of inquiry of the Chief Executive Officer, the Board shall pass an order-

(a) specifying the property and funds of such <sup>4</sup>[waqf];

(b) directing that any property or funds pertaining to such <sup>5</sup>[waqf] which have been recovered shall be applied or utilized for the renovation of any <sup>6</sup>[waqf] property and where there is no need for

making any such renovation or where utilization of the funds for such renovation is not possible, be appropriated, to any of the purposes specified in sub-clause (iii) of clause (e) of sub-section (2) of Section 32.

(3) The Board may, if it has reason to believe that any building or other place which was being used for religious purpose or instruction or for charity has, whether before or after the commencement of this Act, ceased to be used for that purpose, make an application to the Tribunal for an order directing the recovery of possession of such building or other place.

(4) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place-

(a) is <sup>7</sup>[waqf] property;

(b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and

(c) is not in the occupation of any person who has been authorised by or under any law for the time being in force to occupy such building or other place, make an order-

(i) directing the recovery of such building or place from any person who may be in unauthorized possession thereof, and

(ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilized for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of Section 32.

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

#### **40. Decision if a property is waqf property :-**

40. Decision if a property is <sup>1</sup>[waqf] property

(1) The Board may itself collect information regarding any property which it has reason to believe to be <sup>2</sup>[waqf] property and if any question arises whether a particular property is <sup>3</sup>[waqf] property or not or whether a <sup>4</sup>[waqf] is a Sunni <sup>5</sup>[waqf] or a Shia <sup>6</sup>[waqf] it may after making such inquiry as it may deem fit, decided the question

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trust Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is <sup>7</sup>[waqf] property, the Board may notwithstanding anything contained in such Act hold an inquiry in regard to such property and if after such inquiry the Board is satisfied and the property is <sup>8</sup>[waqf] property, call upon the trust or society, as the case may be, either to register such property under this Act as <sup>9</sup>[waqf] property or show cause why such property should not be so registered:

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust society had been registered.

(4) The Board shall, after considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

1 Substituted for "wakf" by Act No, 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

#### **41. Power to cause registration of waqf and to amend**

## **register :-**

41. Power to cause registration of **10**[waqf] and to amend register  
The Board may direct a mutawalli to apply for the registration of a **11**[waqf], or to supply any information regarding a **12**[waqf] or may itself cause the **13**[waqf] to be registered or may at any time amend the register of **14**[Auqafj].

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

13 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

14 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

## **42. Change in the management of Auqaf to be notified :-**

42. Change in the management of **15**[Auqaf] to be notified

(1) In the case of any change in the management of a registered **16**[waqf] due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in Section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

15 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

16 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

## **43. Auqaf registered before the commencement of this Act deemed to be registered :-**

43. **1**[Auqaf] registered before the commencement of this Act deemed to be registered

Notwithstanding anything in this Chapter, where any **2**[waqf] has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the **3**[waqf] under the provisions of this Act and any such registration made before such commencement shall be deemed to

be a registration made under this Act.

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

## **CHAPTER 6 MAINTENANCE OF ACCOUNTS OF AUQAF**

### **44. Budget :-**

(1) Every mutawalli of a <sup>5</sup>[waqf] shall, in every year prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure during that financial year.

(2) Every such budget shall be submitted by the mutawalli atleast <sup>6</sup>[thirty days] before the beginning of the financial year to the Board and shall make adequate provision for the following:-

(i) for carrying out the objects of the <sup>7</sup>[Auqaf];

(ii) for the maintenance and preservation of the <sup>8</sup>[waqf] property;

(iii) for the discharge of all liabilities and subsisting commitments binding on the <sup>9</sup>[waqf] under this Act or any other law for the time being in force.

<sup>10</sup>[(3) In case the Board considers any item in the budget being contrary to the objects of the waqf and the provisions of this Act, it may give such direction for addition or deletion of such item as it may deem fit.]

(4) If in the course of the financial year the mutawalli finds it necessary to modify the provisions made in the budget in regard to the receipt or to the distribution of the amounts to be expended under the different heads, he may submit to the Board a supplementary or a revised budget and the provisions of sub-section (3) shall, as far as may be, apply to such supplementary or revised budget.

4 Substituted for "WAKFS" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "ninety days" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Inserted by Act No. 27 of 2013, dated 20.9.2013.

**45. Preparation of budget of Auqaf under direct management of the Board :-**

45. Preparation of budget of <sup>11</sup>[Auqaf] under direct management of the Board

(1) The Chief Executive Officer shall prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure for each of the <sup>12</sup>[Auqaf] under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

(2) While submitting the budget under sub-section (1), the Chief Executive Officer shall also prepare statement giving details of the increase, if any, in the income of each <sup>1</sup>[waqf] under the direct management of the Board and the steps which have been taken for its better management and the results accruing there from during the year.

(3) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every <sup>2</sup>[waqf] under the direct management of the Board.

(4) Every budget submitted by the Chief Executive Officer under sub-section (1) shall comply with the requirements of Section 46 and, for this purpose, references therein to the mutawalli of the <sup>3</sup>[waqf] shall be construed as pre-reference to the Chief Executive Officer.

(5) The audit of accounts of every <sup>4</sup>[waqf] under the direct management of the Board shall be undertaken by the State Examiner of Local Funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the <sup>5</sup>[waqf].

(6) The provisions of the sub-sections (2) and (3) of Section 47 and the provisions of Sections 48 and 49 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) Where any <sup>6</sup>[waqf] is under the direct management of the Board, such administrative charges as may be specified by the

Chief Executive Officer shall be payable by the <sup>7</sup>[waqf] to the Board:

Provided that the Chief Executive Officer shall not collect more than ten per cent of the gross annual income of the <sup>8</sup>[waqf] under the direct management of the Board as administrative charges.

11 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20,9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

**46. Submission of accounts of Auqaf :-**

46. Submission of accounts of <sup>10</sup>[Auqaf]

(1) Every mutawalli shall keep regular accounts.

(2) Before the <sup>11</sup>[1st day of July] next, following the date on which the application referred to in Section 36 has been made and thereafter before the <sup>12</sup>[1st day of July] in every year, every mutawalli of a <sup>13</sup>[waqf] shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the [waqf] during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period which the provisions of this Act, have been applicable to the [waqf],:

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

10 Substituted for "1st day of May" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "1st day of May" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

13 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

#### **47. Audit accounts of Auqaf :-**

47. Audit accounts of <sup>1</sup>[Auqaf]

(1) The accounts of <sup>2</sup>[Auqaf] submitted to the Board under Section 46 shall be audited and examined in the following manner, namely:-

(a) in the case of a <sup>3</sup>[waqf] having no income or a net annual income not exceeding <sup>4</sup>[fifty thousand rupees], the submission of a statement of accounts shall be a sufficient compliance with the provisions of Section 46 and the accounts of two per cent of such <sup>5</sup>[Auqaf] audited annually by a auditor appointed by the Board;

(b) the accounts of the <sup>6</sup>[waqf] having net annual income exceeding <sup>7</sup>[fifty thousand rupees] shall be audited annually, or at such other intervals as may be prescribed, by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of auditors;

(c) the State Government may, <sup>8</sup>[under intimation to the Board,] at any time cause the account of any <sup>9</sup>[waqf] audited by the State Examiner of Local Funds or by any other officer designated for that purpose of that State Government.

(2) The auditor shall submit his report to the Board and the report of the auditor shall among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person

(3) The cost of the audit of the accounts of a <sup>10</sup>[waqf] shall be met

from the funds of that **11**[waqf],:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to **12**[Auqaf] having a net annual income of **13**[more than fifty thousand rupees] but less than fifteen thousand rupees shall be paid in accordance with the scale of remuneration specified by the State Government under clause (c) of sub-section (1):

Provided further that where the audit of the accounts of any **14**[waqf] is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent of the net annual income of such **15**[waqf] and such costs shall be met from the funds of the **16**[Auqaf] concerned.

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "ten thousand rupees" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "ten thousand rupees" by Act No. 27 of 2013, dated 20.9.2013.

8 Inserted by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

13 Substituted for "more than ten thousand rupees" by Act No. 27 of 2013, dated 20.9.2013.

14 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

15 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

16 Substituted for "Wakfs" by Act No. 27 of 2013, dated

20.9.2013.

**48. Board to pass orders on auditors report :-**

(1) The Board shall examine the auditors report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders as it thinks fit including order for the recovery of the amount certified by the auditor under sub-section (2) of Section 47.

(2) The mutawalli or any other person aggrieved by the order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of Section 47 has first been deposited in the Tribunal and the Tribunal shall not have nay power to stay the operation of the order made by the Board under sub-section (1).

(4) The order made by the Tribunal under sub-section (2) shall be final.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in Section 34 or Section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of Section 35.

**49. Sums certified to be due recoverable as arrears of land revenue :-**

(1) Every sum certified to be due from any person by an auditor in his report under Section 47 unless such certificate is modified or cancelled by an order of the Board or of the Tribunal made under Section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land

revenue.

## **50. Duties of mutawalli :-**

It shall be the duty of every mutawalli-

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(c) to allow inspection of <sup>1</sup>[waqf] properties, accounts or records or deed and documents relating thereto;

(d) to discharge all public dues; and

(e) to do any other act which he is lawfully required to do by or under this Act.

### **COMMENTS**

Claim for Occupancy right. - The person managing and administering the property of the wakf cannot be construed as a tenant in respect of the said property. It is not open for the mutawalli to claim occupancy right as he cannot be construed as tenant within the definition of Sec. 4 of the Land Reforms Act. The specific provisions of the Wakf Act, the provisions of the Mysore Religious and Charitable Inams Abolition Act, 1955 cannot be made applicable to the facts of this case.<sup>2</sup>

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Karnataka Board of Wakf v. Land Tribunal, Sira AIR 2000 Kar 141.

## **51. Alienation of waqf property without sanction of Board to be void :-**

51. Alienation of <sup>1</sup>[waqf] property without sanction of Board to be void

<sup>2</sup>[(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement

of the Wakf (Amendment) Act, 2013.

(1A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void ab initio:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:]

Provided also that-

(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991;

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.]

<sup>3</sup>[\*\*\*]

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted by Act No. 27 of 2013, dated 20.9.2013.

3 Sub-sections (2), (3), (4) and (5) omitted by Act No. 27 of 2013, dated 20.9.2013.

## **52. Recovery of waqf property transferred in contravention of Section 51 :-**

52. Recovery of <sup>1</sup>[waqf] property transferred in contravention of Section 51

(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a <sup>2</sup>[waqf] entered as such in the register of <sup>3</sup>[waqf] maintained

under Section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of Section 51 <sup>4</sup>[or section 56], it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served-

(a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served is minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

(5) Where an order passed under sub-section (2) has been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

#### COMMENTS

Scope of Section 52. - Chapter VI deals with the maintenance of accounts of wakfs. Section 52 empowers the Board to recover the transferred properties of the wakf and provides for a legal remedy by way of an appeal to the Tribunal. Section 54 specifically empowers the Chief Executive Officer appointed, under the Act, to remove encroachment on wakf property and deliver possession.

Under Section 64(7) the Board has power to direct the Mutawali who has been removed from the office to hand over the possession of the wakf property. Subhan Shah through L.Rs.<sup>5</sup>

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013

4 Inserted by Act No. 27 of 2013, dated 20.9.2013.

5 Ramjan Khan v. M. P. Wakf Board, AIR 1997 MP 8.

### **52A. Penalty for alienation of waqf property sanction of Board :-**

<sup>1</sup>(1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefore.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this section shall be cognizable and non-bailable.

(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.]

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

### **53. Restriction on purchase of property on behalf of wakf :-**

Notwithstanding anything contained in a <sup>1</sup>[waqf] deed, no immovable property shall be purchased for or on behalf of any <sup>2</sup>[waqf] from the funds of any <sup>3</sup>[waqf] except with the prior sanction of the Board, and the Board shall not accord such sanction unless it considers that the acquisition of such property is necessary

or beneficial to the <sup>4</sup>[waqf] and that the price proposed to be paid therefor is adequate and reasonable:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto and, the Board shall, after considering the objections and suggestions that may be received by it from mutawallis or other persons interested in the <sup>5</sup>[waqf], make such orders as it may think fit.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

#### **54. Removal of encroachment from waqf property :-**

54. Removal of encroachment from <sup>1</sup>[waqf] property

(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is <sup>2</sup>[waqf] property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is <sup>3</sup>[waqf] property and that there has been an encroachment on any such <sup>4</sup>[waqf] property, <sup>5</sup>[he may, make an application to the Tribunal for grant of order of eviction for removing] such encroachment and deliver possession of the land, building, space or other property encroached upon to the

mutawalli of the <sup>6</sup>[waqf].

<sup>7</sup>[(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.]

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20-9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "he may, by an order, require the encroacher to remove" by Act 27 of 2013, dt. 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted by Act No. 27 of 2013, dated 20.9.2013.

#### **55. Enforcement of orders made under Section 54 :-**

Where the person, ordered under <sup>1</sup>[sub-section (4)] of Section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within time aforesaid, the Chief Executive Officer may <sup>2</sup>[refer the order of the Tribunal to the Executive Magistrate] within the local limits of whose jurisdiction the land, building, space or other property is situated for evicting the encroacher, and thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property

and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take police assistance as may be necessary.

1 Substituted for "sub-section (3)" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "apply to the Sub-divisional Magistrate" by Act No. 27 of 2013, dated 20.9.2013.

**55A. Disposal of property left on waqf property by unauthorised occupants :-**

<sup>1</sup>[55A. Disposal of property left on waqf property by unauthorised occupants

(1) Where any person has been evicted from any waqf property under sub-section (4) of section 54, the Chief Executive Officer may, after giving fourteen days notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality and after proclaiming the contents of the notice by placing it on conspicuous part of the waqf property, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1), the sale proceeds shall, after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to the State Government or a local authority or a corporate authority on account of arrears of rent, damages or costs, be paid to such person, as may appear to the Chief Executive Officer to be entitled to the same:

Provided that where the Chief Executive Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the appointment of the same, he may refer such dispute to the Tribunal and the decision of the Tribunal thereon shall be final.]

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

**56. Restriction on power to grant lease of waqf property :-**

56. Restriction on power to grant lease of <sup>1</sup>[waqf] property

(1) <sup>2</sup>[A lease for any period exceeding thirty years] of any

immovable property which is <sup>3</sup>[w a q f] property shall, notwithstanding anything contained in the deed or instrument of <sup>4</sup>[waqf] or in any other law for the time being in force, be void and of no effect:

<sup>5</sup>[Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government:

Provided further that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided also that before making lease of any waqf property, the Board shall publish the details of lease and invite bids in at least one leading national and regional news papers.]

(2) <sup>6</sup>[A lease for a period of one year but not exceeding thirty years] of immovable property which is <sup>7</sup>[waqf] property shall, notwithstanding anything contained in the deed or instrument of <sup>8</sup>[waqf] or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease <sup>9</sup>[\*\*\*] or renewal thereof under this section review the terms and conditions on which the lease <sup>10</sup>[\*\*\*] is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct:

<sup>11</sup>[Provided that the Board shall immediately intimate the State Government regarding a lease for any period exceeding three years of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.]

<sup>12</sup>[(4) Every rule made by the Central Government under this section 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 sessions 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.]

#### COMMENTS

Conditions of lease.-The relationship of lessor and lessee between the Mosque and the tenant is not at all in dispute. It is no doubt true that the possession of the tenant over the premises is spread over several decades. But it should not be forgotten that the tenant suffered a decree for eviction way back in 1949. Possession for a long period by itself does not render the tenancy permanent. It should be evident from the conditions of lease that the tenant will be entitled to continue in the premises as long as the business for which the premises is leased, subsists. The tenant did not raise the plea of permanent tenancy. On the other hand, the tenant agreed to vacate the premises and a consent decree came to be passed. The orders that came to be passed in the successive EPs filed by the Mosque have the effect of only permitting the tenant to continue for specified periods indicated therein. Therefore, even if there existed any semblance of permanency in the tenancy, the same is deemed to have obliterated when the tenant agreed to vacate the premises and suffered a compromise decree.

Therefore, the administration of the property of the Mosque is to be in accordance with the provisions of both the Acts. Under Section 36(f) of 1954 Act, lease or sub-lease of any Wakf property for any period exceeding three years shall be void and of no effect, notwithstanding anything contained in the Deed or Instrument of Wakf, or in any other law for the time being in force. The corresponding provision under 1995 Act is Section 56. Under both the Acts, grant of lease for a period exceeding one year is prohibited. While under the 1954 Act, grant of lease is for a period exceeding one year, but not exceeding three years is permissible with the previous sanction of the Board, such a provision does not exist under the 1995 Act. **13**

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "A lease or sub-lease for any period exceeding three years" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Inserted by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "A lease or sub-lease for a period exceeding one year and not exceeding three years" by Act No. 27 of 2013, dated 20-9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Words "or sub-lease" omitted by Act No.27 of 2013, dated 20.9.2013.

10 Words "or sub-lease" omitted by Act No.27 of 2013, dated 20.9.2013.

11 Inserted by Act No. 27 of 2013, dated 20.9.2013.

12 Inserted by Act No. 27 of 2013, dated 20.9.2013.

13 Sri Radhakrishna Rice Mill Co v. Jumma Maseed, AIR 2003 AP 70.

**57. Mutawalli entitled to pay certain costs from income of waqf property :-**

57. Mutawalli entitled to pay certain costs from income of <sup>1</sup>[waqf] property

Notwithstanding anything contained in the <sup>2</sup>[waqf] deed, every mutawalli may pay from the income of the <sup>3</sup>[waqf] property any expenses properly incurred by him for the purpose of the enabling him to furnish any particulars, documents or copies under Section 36 or any accounts under Section 46 or any information or documents required by the Board or for the purpose of enabling him to carry out the directions of the Board.

1 Substituted for "wakf by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**58. Power to Board to pay dues in case of default by mutawalli :-**

(1) Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board may discharge dues from the <sup>1</sup>[Waqf] Fund and may

recover the amount so paid from the <sup>2</sup>[waqf] property and may also recover damages not exceeding twelve and a half per cent of the amount so paid.

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **59. Creation of reserve fund :-**

For the purpose of making provisions for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the <sup>1</sup>[waqf] property and for the preservation of the <sup>2</sup>[waqf] property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a <sup>3</sup>[waqf].

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **60. Extension of time :-**

The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

### **61. Penalties :-**

(1) If a mutawalli fails to-

(a) apply for the registration of a <sup>1</sup>[waqf];

(b) furnish statements of particulars or accounts or returns as required under this Act;

(c) supply information or particulars as required by the Board;

(d) allow inspection of <sup>2</sup>[waqf] properties, accounts, records or deeds and documents relating thereto;

(e) deliver possession of any <sup>3</sup>[waqf] property, if ordered by the

Board or Tribunal;

(f) carry out the directions of the Board;

(g) discharge any public dues; or

(h) do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the Court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to <sup>4</sup>[ten thousand rupees for non-compliance of clauses (a) to (d) and in case of non-compliance of clauses (e) to (h), he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to ten thousand rupees].

(2) Notwithstanding anything contained in sub-section (1), if-

(a) a mutawalli omits or fails, with a view to concealing the existence of a <sup>5</sup>[waqf], to apply for its registration under this Act,-

(i) in the case of a <sup>6</sup>[waqf] created before the commencement of this Act, within the period specified therefor in sub-section (8) of Section 36;

(ii) in the case of any <sup>7</sup>[waqf] created after such commencement, within three months from the date of the creation of the <sup>8</sup>[waqf]; or

(b) a mutawalli furnishes any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular, he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(3) No Court shall take cognizance of an offence punishable under this act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf.

(4) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the fine imposed under sub-section (1), when realised, shall be credited to the <sup>9</sup>[Waqf] Fund.

(6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the Court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default.

- 1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 4 Substituted for "eight thousand rupees" by Act No. 27 of 2013, dated 20.9.2013.
- 5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**62. Mutawalli not to spend any money belonging to Waqf for self defence :-**

62. Mutawalli not to spend any money belonging to <sup>1</sup>[Waqf] for self defence

No mutawalli shall spend any money out of the funds of the <sup>2</sup>[waqf], of which he is the mutawalli, for meeting any costs, charges, or expenses which are or may be, incurred by him, in relation to any suit, appeal or any other proceeding for, or incidental to, his removal from office or for taking any disciplinary action against himself.

- 1 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.
- 2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**63. Power to appoint mutawallis in certain cases :-**

When there is a vacancy in the office of the mutawalli of a <sup>1</sup>[waqf] and there is no one to be appointed under the terms of the deed of the <sup>2</sup>[waqf], or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

**COMMENTS**

Appointment of Mutawalli. - Compromises recorded where the property of a public trust is involved stand on a different footing. The parties representing their individual interest are at liberty to enter into compromise in legal proceedings, even if such

compromise may work out to their detriment. However, the same is not the case where the individuals representing institutions, especially public trusts or similar institutions. The Courts will be keen to scrutinise whether such compromise has resulted in sacrifice of the interest of the trust.<sup>3</sup>

Section 63 of the Act would amply demonstrate that a person can be appointed as Muthawalli in the above circumstances, but while making such appointment by the Wakf Board in favour of any person to act as Muthawalli, the period for which the said person is appointed should be specified in the order. A reading of the appointment order dated 31-3-1998 appointing the petitioner, as Muthawalli of the Dargha, does not specify the period for which the petitioner was appointed. Though it is indicated in the order of appointment in the penultimate paras of the proceedings that the Board has got right to re vise/alter/change the proceedings at any time without assigning any reasons, it cannot be understood to say that the Board has specified the period for which the petitioner was appointed to the office of Muthawalli.<sup>4</sup>

In Mohan Kumar Singhania v. Union of India<sup>5</sup>, the Supreme Court laid down the parameters for interpreting a Statute, as under (para 67):-

"While interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of Statutes/Rules/Regulations relating to the subject-matter. Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation."

Appointment of Trustee. - In the matter relating to the appointment of a Trustee/Mutawalli, that too, under a Scheme framed by the trial Court the tenant has absolutely no locus either to participate in the adjudication in such proceedings or to challenge the outcome of the same.<sup>6</sup>

Powers of Wakf Board. - While exercising the power of superintendence including the appointment of Mutawalli the Board

has no absolute power, instead thereof the Board is under duty to follow directions of the wakf as contained in the wakf-deed and if the wakf is not created by any wakf-deed, it shall be governed by the customs and usage of the wakf, which have sanction of School of Muslim law to which it belongs. Therefore, in my opinion, the power of superintendence and control of the Board over the wakf including to the appointment of Mutawalli to a wakf is not absolute, as such while exercising such power of superintendence in respect of a wakf, the Board cannot act according to its sweet will, rather it has to act in conformity with the directions of the concerned wakf but where the wakf is not created by any wakf-deed or where the wakf is created by user and there exist no such wakf-deed like in present case, in such situation, Section 37(c) of the Act, the rule of succession to the office of Mutawalli shall be governed by the customs or usage and/or scheme of the administration of said wakf by virtue of the provision of Section 37(e) of the Act.<sup>7</sup>

Alternate remedy. - The writ petition can be maintainable if there is an inherent lack of jurisdiction in passing the impugned order. As there has been inherent lack of jurisdiction in passing the impugned order, the writ petition can be maintained even if an alternative remedy was not availed by the petitioner.<sup>8</sup>

Mismanagement of wakf-Removal of Mutawalli. - Admittedly, the non-applicant-Board issued the notice dated 22-8-02 to the applicant asking him to submit reply on details stated therein. Thereafter as ordered by the Chairman the enquiry contemplated under Section 64 (3) of the Act was conducted by the O.S.D. and on the basis of report the Board in its meeting dated 12-4-03 resolved to remove the applicant from the office of Mutawalli. Under Section 83 (9) against the order of Tribunal the revision lies for purpose of satisfying this Court as to the correctness, legality or propriety of such determination. The Tribunal order of removal of applicant from the post of Mutawalli is perfectly legal.<sup>9</sup>

Removal of mutawalli. - Section 64 of the Act provides for removal of Mutawalli. Sub-section (1) provides for the ground for removal of the Mutawalli. Sub-section (3) provides that no action shall be taken by the Board under sub-section (1), unless it has held an enquiry into the matter in the prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board. The question is when sub-section (3) of Section 64 specifically provides for two-thirds of the majority of members of the Board can by exercising the power of delegation under Section 27 the power can be vested in one member which

otherwise could have been exercised only by two-thirds members of the Board, as noticed above. The words in Section 27 that "such of its powers and duties under this Act, as it may deem necessary" indicate that delegation is not permissible for all powers of the Board and the Board has to take a decision as to which of powers or duties, it is necessary to delegate. While giving meaningful interpretation of the said words, it is to be assumed that by exercising the power of delegation other provisions of the Act have to be looked into. The delegation cannot be contemplated under Section 27 which may violate other provisions of the Act nor delegation can be substituted in place of specific requirement of a majority.<sup>10</sup>

The immediate effect of the report of the Lok Ayukta would have been to place the petitioner under suspension and order of suspension deemed to have been issued by the appointing authority, the Wakf Board. In fact the Government also had called upon the Board to take further action as per law under the provisions of the Wakf Act. If any action is contemplated against the Mutawalli particularly for his removal, procedure as contemplated in Section 64 of the Wakf Act will have to be followed. The compliance of requirement of sub-section (3) of Section 64 of the Wakf Act is mandatory. There is absolutely no indication that either an enquiry was held as against the petitioner by giving an opportunity to the petitioner to participate in such an enquiry or that there is any resolution for removal of the petitioner from the post of Mutawalli passed by a majority of not less than 2/3rd members of the Board.<sup>11</sup>

The conduct of the first petitioner will show that there is no waiver of his statutory right to receive the notice. The action of the respondents in passing the impugned order without proper notice to the first petitioner is in violation of principles of natural justice and therefore, the impugned order is liable to be quashed on the sole ground and accordingly the impugned order is quashed.<sup>12</sup>

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Sri Radhakrishna Rice Mill Co v. Jumma Maseed, AIR 2003 AP 70.

4 Shaik Ghouse Mohiuddin v. A.P. State Wakf Board, AIR 2002 AP 344.

5 Mohan Kumar Singhania v. Union of India, (1992) 1 SLR 77: AIR

1991 SC 1150

6 Sri Radhakrishna Rice Mil) Co v. Jumma Maseed, AIR 2003 AP 70.

7 Maulvi Abdul Rahman Siyai v. Sardar Maqbool Hasan, AIR 2009 Alld 62.

8 Ali Akhtar Quadri v. State of Bihar, AIR 2003 Jhar 74.

9 Alhaj Iftekhar Ahmad v. M.P. Wakf Board, AIR 2005 MP 220.

10 Syed Mohammad Ahmad Hasan v. Shia Central Board of Waqf, U. P., AIR 2009 Alld 38.

11 Syed Enayathulla v. State of Karnataka, AIR 2004 Kar 295.

12 Hajee Dr. Syed Latheefuddin Shah v. Tamil Nadu Wakf Board, AIR 2000 Mad 412.

#### **64. Removal of mutawalli :-**

(1) Notwithstanding anything contained in any other law or the deed of <sup>1</sup>[waqf], 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 61; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(c) 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 mutawalli; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as a paid legal practitioner on behalf of, or against, the <sup>2</sup>[waqf]; or

(g) 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 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any <sup>3</sup>[waqf] property, or in any contract made with, or any work being done for, the <sup>4</sup>[waqf] or is in arrears in respect of any sum due by him to such <sup>5</sup>[waqf]; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the <sup>6</sup>[waqf] or in respect of any money or other <sup>7</sup>[waqf] property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the <sup>8</sup>[waqf].

(2) The removal of a person from the office of the mutawalli shall not affect his personal right, if any, in respect of the <sup>9</sup>[waqf] property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) 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.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the <sup>10</sup>[waqf], 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.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the <sup>11</sup>[waqf] 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 (5 of 1908), appoint a suitable person as receiver to manage the <sup>12</sup>[waqf] and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the <sup>13</sup>[waqf] are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver

possession of the <sup>14</sup>[waqf] property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the <sup>15</sup>[waqf] property.

(8) A mutawalli of a <sup>16</sup>[waqf] removed from his office under this section shall not be eligible for re-appointment as a mutawalli of the <sup>17</sup>[waqf] for a period of five years from the date of such removal.

1 Substitutedjor "wakf by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 ot 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" bv Act No, 27 of 2013, dated 20.9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for " wakf" by Act No. 27 of 2013, dated 20.9.2013.

13 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

14 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

15 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

16 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

17 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

## **65. Assumption of direct management of certain Auqaf by the Board :-**

65. Assumption of direct management of certain <sup>1</sup>[Auqaf] by the Board

(1) Where no suitable person is available for appointment as a mutawalli of a <sup>2</sup>[waqf], or where the Board is satisfied, for reasons

to be recorded by it in writing, that the filing up of the vacancy in the office of a mutawalli is prejudicial to the interest of the <sup>3</sup>[waqf], the Board may, by notification in the Official Gazette, assume direct management of the <sup>4</sup>[waqf] for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

(2) The State Government, may, on its own motion or on the application of any person interested in the <sup>5</sup>[waqf], call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after close of every financial year, the Board shall send to the State Government a detailed report in regard to every <sup>6</sup>[waqf] under its direct management, giving therein-

(a) the details of the income of the <sup>7</sup>[waqf] for the year immediately proceeding the year under report;

(b) the steps taken to improve the management and income of the <sup>8</sup>[Auqaf];

(c) the period during which the <sup>9</sup>[waqf] has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the <sup>10</sup>[waqf] to the mutawalli or any committee of management during the year; and

(d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3), and after such examination issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instruction on receipt thereof.

<sup>11</sup>[(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act.]

#### COMMENTS

Wakf - Administration of. - The necessity for recording the reasons is relatable only to the stage when the Board first decides to assume the management of the Wakf. That requirement does not extend to subsequent stages where the Board may by order relieve or replace the existing Administrator and appoint another person in

that position. That apart the order appointing the petitioner as administrator did not carry with it any security of tenure for him. It is not disputed that the appointment was purely honorary and no emoluments or other financial gains accrued to him as the Administrator. The appointment was therefore only in the nature of nominating the petitioner as an Agent of the Board, to look-after the affairs of the Masjid. If the petitioner was doing so it was not for the sake of any monetary gain or other advantage, but only in the spirit of service to the Masjid. Now that the Board has in its wisdom, considered it proper to terminate the said appointment and appoint another person in his place, the petitioner can make no grievance.<sup>12</sup>

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Inserted by Act No. 27 of 2013, dated 20.9.2013.

12 P. Mohamad Dastagir v. Karnataka Board of Wakfs, AIR 1998 Kar 297.

**66. Power of appointment and removal of mutawalli when to be exercised by the State Government :-**

Whenever a deed of <sup>1</sup>[waqf] or any decree or order of a Court of any scheme of management of any <sup>2</sup>[waqf] provides that a Court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the <sup>3</sup>[waqf], then notwithstanding anything contained in such deed of <sup>4</sup>[waqf], decree, order or scheme, such powers aforesaid shall be exercisable

by the State Government:

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**67. Supervision and supersession of committee of management :-**

(1) Whenever the supervision or management of a <sup>1</sup>[waqf] is vested in any committee appointed by the <sup>2</sup>[waqf], then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the <sup>3</sup>[waqf], whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the Board is satisfied that any scheme for the management of a <sup>4</sup>[waqf] by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the <sup>5</sup>[waqf], it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the <sup>6</sup>[waqf] or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the <sup>7</sup>[waqf], the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the <sup>8</sup>[waqf] is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the <sup>9</sup>[waqf], in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the committee to show cause

within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the **10**[waqf]-

(4) Any order made by the Board under sub-section (2) shall be final: Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interest of the **11**[waqf], and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal and the Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made the Tribunal in such appeal shall be final.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

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9 Substituted for "wakf" by Act No. 27 of 2013, dated 20,9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**68. Duty of mutawalli or committee to deliver possession of records, etc :-**

(1) Where any mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee so removed from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the <sup>1</sup>[waqf] (including cash) to the successor mutawalli or the successor committee, within one month from the date specified in the order.

(2) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-section (1), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any <sup>2</sup>[District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] within the local limits of whose jurisdiction any part of the <sup>3</sup>[waqf] property is situate and, thereupon, such <sup>4</sup>[District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] may, after giving notice of the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the <sup>5</sup>[waqf] to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed mutawalli or any member of the removed

committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by <sup>6</sup>[any Magistrate] under sub-section (2), the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by <sup>7</sup>[any Magistrate] under sub-section (2), <sup>8</sup>[any Magistrate] may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.

(5) No order of appointment of the successor mutawalli or committee, shall be called in question in the proceedings before <sup>9</sup>[any Magistrate] under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent civil Court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by <sup>10</sup>[any Magistrate] under sub-section (2).

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "Magistrate of the First Class" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "Magistrate" by Act No.27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "the Magistrate" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "the Magistrate" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "the Magistrate" by Act No. 27 of 2013, dated 20.9.2013.

9 Substituted for "the Magistrate" by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "the Magistrate" by Act No. 27 of 2013, dated 20.9.2013.

**69. Power of Board to frame scheme for administration of wakf :-**

<sup>1</sup>[(1) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others in the prescribed manner.]

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the <sup>2</sup>[waqf] holding office as such immediately before the date on which the scheme comes into force: Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the mutawalli so removed as one of the members of the committee appointed for the proper administration of the <sup>3</sup>[waqf].

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli and all persons interest in the <sup>4</sup>[waqf]: Provided that any person aggrieved by an order made under this section may, with sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the <sup>5</sup>[waqf], the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

1 Substituted by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **70. Inquiry relating to administration of wakf :-**

Any person interested in a <sup>1</sup>[waqf] may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the <sup>2</sup>[waqf] and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the <sup>3</sup>[waqf] are being mismanaged, it shall take such action thereon as it thinks fit.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **71. Manner of holding inquiry :-**

(1) The Board may, either on an application received under Section <sup>1</sup>[70] or on its own motion,-

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a <sup>2</sup>[waqf] and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

1 Substituted for "73" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

## **CHAPTER 7 FINANCE OF THE BOARD**

### **72. Annual contribution payable to Board :-**

(1) The mutawalli of every <sup>1</sup>[waqf], the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the <sup>2</sup>[waqf], such contributions, not exceeding seven per cent of such annual income, as may be prescribed, to the Board for the services referred to by such Board to

the <sup>3</sup>[waqf].

Explanation I. - For the purpose of this Act, "net annual income" shall mean the gross income of the <sup>4</sup>[waqf] from all sources, including nazars and offerings which do not amount to contributions to the corpus of the <sup>5</sup>[Auqaf], in a years after deducting therefrom the following, namely:-

(i) the land revenue paid by it to the Government;

(ii) the rates, cessers, taxes and licence fees, paid by it to the Government or any local authority;

(iii) expenditure incurred for all or any of the following purposes, namely <sup>6</sup>[in respect of lands directly under cultivation by the mutawalli for the benefit of the waqf]:-

(a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;

(b) seeds or seedlings;

(c) manure;

(d) purchase and maintenance of agricultural implements;

(e) purchase and maintenance of cattle for cultivation;

(f) wages for ploughing, watering, sowing, transplanting harvesting, threshing and other agricultural operations;

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed <sup>7</sup>[twenty per cent] of the income derived from lands belonging to the <sup>8</sup>[waqf]:

<sup>9</sup>[Provided further that no such deduction shall be permitted in respect of waqf land given on lease, by whatever name called, whether batai or share cropping or any other name.]

(iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent of the annual rent derived therefrom, or the actual expenditure, whichever is less;

(v) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are reinvested to earn income for the <sup>10</sup>[waqf]:

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely:-

(a) advances and deposits recovered and loans taken or recovered;

(b) deposits made as security by employees, lessees or contractors and other deposits, if any;

(c) withdrawal from banks or of investments;

(d) amounts recovered towards costs awarded by Courts;

(e) sale proceeds of religious books and publications where such sales are undertaken as an unremunerative enterprise with a view

to propagating religion;

(f) donations in cash or kind or offerings made by the donors as contribution to the corpus of the **11**[waqf]:

Provided that the interest on income, if any, accruing from such donations or offering shall be taken into account in calculating the gross annual income;

(g) voluntary contributions received in cash or kind for a specific service to be performed by the **12**[waqf] and expended on such service;

(h) audit recoveries.

Explanation II. In determining, the net annual income for the purposes of this section, only the net profit derived by any **13**[waqf] from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income.

(2) The Board may in the case of any mosque or orphanage or any particular **14**[waqf] reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of a **15**[waqf] may realise the contributions payable by him under sub-section (1) from the various persons entitled to receive any pecuniary or other material benefit from the **16**[waqf], but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the **17**[waqf]:

Provided that if there is any income of the **18**[waqf] available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (1), and in excess of the amount payable under the **19**[waqf] deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a **20**[waqf] shall, subject to the prior payment of any dues to the Government or any local authority or of any other statutory first charge on the **21**[waqf] property or the income thereof, be a first charge on the income of the **22**[waqf] and shall be recoverable, on a certificate issued by the Board after giving the mutawalli

concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a mutawalli realises the income of the <sup>23</sup>[waqf] and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

(6) Where, after the commencement of this Act, the mutawalli of a <sup>24</sup>[waqf] fails to submit a return of the net annual income of the <sup>25</sup>[waqf] within the time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the <sup>26</sup>[waqf] to the best of his judgment or revise the net annual as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the <sup>27</sup>[waqf] for the purposes of this section:

Provided that no assessment of net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revisions shall be made after considering the reply if any, given by the mutawalli.

(7) Any mutawalli who is aggrieved by the assessment or revision made by the Chief Executive Officer, under sub-section (6), may prefer an appeal to the Board within thirty days from the date of the receipt of the assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision or the return and the decision of the Board thereon shall be final.

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this

Act, in the first instance.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

6 Inserted by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "ten per cent" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Inserted by Act No. 27 of 2013, dated 20.9.2013.

10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

12 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

13 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

14 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

15 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

16 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

17 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

18 Substituted for "wakf" by Act No. 27 of 2013, dated 20,9.2013.

19 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

20 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

21 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

22 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

23 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

24 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

25 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

26 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

27 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**73. Power of Chief Executive Officer to direct banks or other persons to make payments :-**

(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a <sup>1</sup>[waqf] is deposited, to pay the contribution, leviable under Section 72, out of such money as may be standing to the credit of the <sup>2</sup>[waqf] in such bank or may be deposited with such person, or out of the money which may, from time to time, be received by bank or other person for or on behalf of the <sup>3</sup>[waqf] by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

(2) Every payment made by a bank or other person in pursuance of any order made under sub-section (1), shall operate as a full discharge of the liability- of such bank or other person in relation to the sum so paid.

(3) Any bank or other person who is ordered under sub-section (1) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**74. Deduction of contribution from perpetual annuity payable to the wakf :-**

(1) Every authority empowered to disburse any perpetual annuity payable to a <sup>1</sup>[waqf] under any law relating to the abolition of zamindaries or jagirs, or laying down land ceilings, shall, on receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the <sup>2</sup>[waqf] under Section 72 which remains unpaid, deduct before making payment of the perpetual annuity to the <sup>3</sup>[waqf], the amount specified in such certificate and remit the amount so deducted to the Chief Executive Officer.

(2) Every amount remitted under sub-section (1) to the Chief Executive Officer shall be deemed to be a payment made by the <sup>4</sup>[waqf] and shall, to the extent of the amount so remitted, operate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

#### **75. Power of Board to borrow :-**

(1) For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

(2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

#### **76. Murawalli not to lend or borrow moneys without sanction :-**

(1) No mutawalli, Chief Executive Officer or other person in charge of the administration of a <sup>1</sup>[waqf] shall lend any money belonging to the <sup>2</sup>[waqf] or any <sup>3</sup>[waqf] property or borrow any money for the purposes of the <sup>4</sup>[waqf] except with the previous sanction of the Board:

Provided that no such sanction is necessary if there is an express

provision in the deed of <sup>5</sup>[waqf] for such borrowing or lending, as the case may be.

(2) The Board may, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (1) is authorised by him to lend or borrow any money or lend any other <sup>6</sup>[waqf] property.

(3) Where any money is lent or borrowed, or other <sup>7</sup>[waqf] property is lent in contravention of the provisions of this section, it shall be lawful for the Chief Executive Officer,-

(a) to recover an amount equal to the amount which has been so lent or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;

(b) to recover the possession of the <sup>8</sup>[waqf] property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No- 27 of 2013, dated 20.9.2013.

6 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

## **77. Waqf Fund :-**

### **77. <sup>6</sup>[Waqf]Fund**

(1) All money received or realised by the Board under this Act and all other money received as donation, benefaction or grants by the Board shall form a fund to be called the <sup>6</sup>[Waqf] Fund.

(2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(3) Subject to any rules that may be made by the State Government in this behalf, the <sup>1</sup>[Waqf] Fund shall be under the

control of the Board, so, however, that the <sup>2</sup>[Waqf] Fund under the control of common <sup>3</sup>[Waqf] Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The <sup>4</sup>[Waqf] Fund shall be applied to-

(a) repayment of any loan incurred under Section 75 and payment of interest thereon;

(b) payment of the cost of audit of the <sup>5</sup>[Waqf] Fund and the accounts of <sup>6</sup>[Auqaf];

(c) payment of the salary and allowances to the officers and staff of the Board;

(d) payment of the travelling allowance to the Chairperson, members, of the Board;

(e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;

(f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.

<sup>7</sup>[(g) payment of maintenance to Muslim women as ordered by a court of competent jurisdiction under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.]

(5) If any balance remains after meeting the expenditure referred to in subsection (4), the Board may use any portion of such balance for the preservation and protection of <sup>8</sup>[waqf] properties or for such other purposes as it may deem fit.

1 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "Wakf" by Act No- 27 of 2013, dated 20.9.2013.

3 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

7 Inserted by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

## **78. Budget of Board :-**

(1) The Board shall in every year prepare, in such form and at such

time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

(2) On receipt of the budget forwarded to it under sub-section (1), the State Government shall examine the same and suggest such alterations, corrections, or modifications to be made therein as it may think fit and forward such suggestion to the Board for its consideration.

(3) One receipt of the suggestions from the State Government the Board may make written representations to that Government with regard to the alteration, corrections or modifications suggested by that Government and the State Government shall, after considering such representations, communicate, within a period of three weeks from the date of receipt thereof, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

(4) On receipt of the decision of the State Government under sub-section (3), the Board shall incorporate in its budget all the alternations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board.

### **79. Accounts of Board :-**

The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be provided by regulations.

### **80. Audit of accounts of Board :-**

(1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every <sup>1</sup>[waqf] under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report

shall also contain the name of any person who, in the opinion of the auditor is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person. (3) The cost of the audit shall be paid from the <sup>2</sup>[Waqf] Fund.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **81. State Government to pass orders on auditors report :-**

The State Government shall examine the auditors report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit <sup>1</sup>[and a copy of the said auditors report, along with orders shall be forwarded by the State Government to the Council within a period of thirty days of laying of such report before each House of the State Legislature where it consists of two Houses or where such Legislatures consist of one House, before that House].

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

### **82. Dues of Board to be recovered as arrears of land revenue :-**

(1) Every sum certified to be due from any person by an auditor in this report under Section 80, be paid by such person within sixty days after the service of a demand notice by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board, after giving the person concerned an opportunity of being heard, be recovered as an arrear of land revenue.

## **CHAPTER 8 JUDICIAL PROCEEDINGS**

### **83. Constitution of Tribunals, etc :-**

<sup>1</sup>[(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such

Tribunals.]

(2) Any mutawalli person interested in a <sup>2</sup>[waqf] or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the <sup>3</sup>[waqf].

(3) Where any application made under sub-section (1) relates to any <sup>4</sup>[waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli, or any one of the mutawallis of the <sup>5</sup>[waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the <sup>6</sup>[waqf] or any other person interested in the <sup>7</sup>[waqf] or the

<sup>8</sup>[waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such

<sup>9</sup>[waqf] or <sup>10</sup>[waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is to transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

<sup>11</sup>[(4) Every Tribunal shall consist of-

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.]

(5) The Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, or executing a decree or order:

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil Court.

(8) The Execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that the High Court may, on its own motion or on the applications of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

#### COMMENTS

Alienation of wakf property. - Any person who professes Islam is a person interested in the management of the wakf board. He can raise dispute(s) before the Wakf Tribunal that such property is being frittered away or are being sold against the intention of the creator of the wakf. The petitioner had no locus standi to challenge the alienation of the wakf property by respondent in favour of respondent. In fact, it was the duty of the tribunal to ensure that the property of the wakf which is in the nature of trust property is not squandered away and fetches the best price. It was also the duty of the Tribunal to ascertain whether the land which was transferred" by defendant to defendant No. 1 is a part of Kabristan or not. If it was part of the grave-yard, whether this alienation was legal or was it against the purpose for which the wakf was created. If a person dedicates his property and creates a wakf for the

purpose of grave-yard, the wakf board cannot alienate the said property for some other commercial use except for certain compelling reasons.<sup>12</sup>

Claim for Occupancy right. - The person managing and administering the property of the wakf cannot be construed as a tenant in respect of the said property. It is not open for the mutawalli to claim occupancy right as he cannot be construed as tenant within the definition of Sec. 4 of the Land Reforms Act. The specific provisions of the Wakf Act, the provisions of the Mysore Religious and Charitable Inams Abolition Act, 1955 cannot be made applicable to the facts of this case.<sup>13</sup>

Dispute relating to Wakf property. - The very fact that provision under Section 85 barring the jurisdiction of the Civil Court in respect of the disputes enumerated thereunder would indicate that the Tribunal would have the jurisdiction only in respect of the dispute, question and other matters relating to Wakf or Wakf property or other matter which are required by or under the Act to be determined by the Tribunal under the provisions of the Act and the said Section does not bar the jurisdiction of the Civil Court to entertain a suit for permanent injunction of the nature that has been made in the petition before the Tribunal by the 1st respondent. However, the submission of the learned counsel for the respondents is that by virtue of Section 83(1) of the Act, the Tribunal has got exhaustive powers to entertain any dispute, question or other matter relating to the Wakf or Wakf property including a dispute relating to the managing committee.

The powers of the Tribunal are restricted only to the disputes specifically referred in Section 83(1) of the Act to be adjudicated. Under Section 83(1) of the Act, the Tribunal is empowered to determine the dispute, question or other matters relating to Wakf or Wakf property and not in respect of an application for permanent injunction as has been filed by the 1st respondent. The words "or other matter which is required by or under the Act to be determined by the Tribunal" shall be referable only to Sections 6,7,67 (4), 70 (1) and (2) and Section 94. None of the provisions of the Act either expressly or impliedly empowers the Tribunal to entertain, adjudicate upon and decide a petition for permanent injunction. Section 85 of the Act also does not specifically bar the jurisdiction of civil Court to entertain a suit for injunction. Section 94 of the Act also empowers the Tribunal to issue direction to mutawalli to pay to the Board or to any person authorised by the Board the amount necessary for the performance of such act where

mutawalli who is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act. Therefore, the submission of the learned counsel for the respondents that the word used "any dispute" shall also mean a dispute relating to the managing committee of the Jamath and the word "any" used in Section 83(1) of the Act shall mean every and whatever the dispute relating to a Wakf and the said word "Wakf does relate to the managing committee cannot be accepted. The power to order injunction shall vest with the civil Court by virtue of Sections 39 and 41 of the Specific Relief Act. However, the learned counsel for the respondents contended that the Tribunal had inherent power to grant temporary injunction while entertaining an application for permanent injunction.

The Tribunal would have no jurisdiction to entertain a petition for grant of permanent injunction, as the power of the Tribunal to adjudicate upon the dispute is specifically enumerated under the Act. The provisions of the Act and in the absence of any power for the Tribunal to determine the dispute as to the constitution of managing committee or the conduct of election to the managing committee, the petitions for permanent injunction and temporary injunction filed by the respondent are not entertainable by the Tribunal. In *Koil Kandadai Channamarutham Vedanthachariswamy v. Raja Sir Muthiah Chettiar*,<sup>14</sup>, a Division Bench of this Court while considering the powers of the Tribunal constituted under the Madras Estates (Abolition and conversion with Rayatwari) Act 1948 in entertaining an application for cross objection has held that in the absence of any provision under the Act attracting the entire procedure laid down in the Civil Procedure Code including the right to file objections does not arise and the right of the aggrieved person is restricted to an appeal under Section 51. In *Re; State Transport Authority*, (1992) 2 CPJ 677, it has been held as follows:- "Next comes the question of passing ad interim order by a Tribunal. It is well settled, that unless a Tribunal, set up under a Special Statute is vested with such power under the statute itself, it cannot pass such an order, nor can a Tribunal exercise the inherent power as prescribed under the Code of Civil Procedure, if such a Tribunal is not a Court. So far as the Consumer Protection Act, 1986 is concerned, the procedure to be adopted by a District Forum on receipt of a complaint, is laid down in Section 13 of the said Act and Sub-Section (4) of the Section 13 states that for the purpose of the said Section, the Forum shall enjoy the same powers as are

vested in a Civil Court under the Code of Civil Procedure, while trying a suit, in respect of the following matters, -

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source; (v) issuing of any commission for the examination of any witness; and (vi) any other matter which may be prescribed, and

same powers have been vested with the State Commission also as per the provisions of Section 18 of the Act.

Neither a District Forum nor the State Commission has been vested with any power under the Consumer Protection Act, 1986, to grant and/or pass any ad interim order, not any of those Tribunals is a Civil Court so as to be deemed as such to enjoy the inherent powers as embodied in the Code of Civil Procedure. Those Tribunals have been vested with only some limited powers of a Civil Court as specifically stated in Sections 13 and 18 of the said Act and as such, the said Tribunals cannot travel beyond their such limited powers. Hence, the interim orders passed both by the President, Calcutta District Forum and the Chairman, State Commission, are wholly without jurisdiction."

In *M.S. Ramachandra Sastrigal v. Kuppaswami Vanniar*<sup>15</sup>, the power of Revenue Court in granting injunction has held that a Revenue Court has no jurisdiction to grant an order of injunction in the absence of specific power under the Act. In the judgment reported in *Ramaswami Raja v. Elappa Gounder*<sup>16</sup>, it has been held thus:-

"An injunction which is a preventive remedy, is granted by Courts under the specific provisions of the Civil Procedure Code. There is no inherent power in any Tribunal to grant an injunction unless the jurisdiction to grant it is expressly conferred by statute and such a power cannot be assumed by implication..... Hence a Revenue Divisional Officer would have no jurisdiction to grant an injunction restraining a landlord from entering his property. The tenant has always got his remedy in such cases to approach the civil Courts for relief by way of injunction."

In *Ramaswamy Raja v. Ellappa Gounder*<sup>17</sup>, it has been held thus:-

"An injunction is a specific relief and the jurisdiction to grant it should be conferred by statute. Now the question in the present

case is whether the Revenue Court acting under Act XXV of 1955 will have power to grant an injunction. The Civil Procedure Code does not wholly apply to that Court. It has therefore to be seen whether, on the terms of the provisions contained in Act XXV of 1955, such a power exists in that Court. It is needless to point out that a power to grant an injunction cannot be assumed to exist by any implication of law. The reason is that ordinarily it is the civil Court that will have the jurisdiction to grant an injunction. When a statutory Tribunal ousts the jurisdiction of the civil Court in regard to certain matters, it has got to be seen whether the powers of the civil Court in regard to injunction etc., have been abrogated and those powers have been expressly conferred on the Special Tribunal."**18**

Jurisdiction of tribunal. - Under Section 83(2) of the Act, any Mutawalli person interested in a Wakf or any other person aggrieved by an order made under this Act or Rules made thereunder can also approach the Tribunal for the determination of any dispute, question or other matter relating to the Wakf. Thus under sub-section (2) of Section 83, the legality of an order passed by the Wakf Board under the Act is liable to be challenged by any Mutawalli or any other aggrieved person. Thus it cannot be contended that the Tribunal is clothed with the jurisdiction only when an order is passed by the Wakf Board under the Act. Sub-section (1) of Section 83 makes it abundantly clear that the jurisdiction of the Tribunal is wide enough to determine any dispute or question or other matter relating to the Wakf or Wakf property.**19**

Section 83 contained in Section 55 of the Wakf (M.P. Amendment) Act was considered. It was held that any question with regard to any dispute relating to a Wakf or Wakf property can be decided by the Tribunal.**20**

Jurisdiction of Wakf Tribunal. - No doubt section 83 (2) refers to the orders passed under the Act, but, in our opinion, Sections 83(1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. Even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a wakf or wakf property, as the plain language of Sections 83 (1) and 84

indicate.<sup>21</sup>

Powers of Wakf tribunal. - Under Section 83 (5) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2A of the Code of Civil Procedure to grant temporary injunctions and enforce such injunctions. A full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a wakf or wakf property.<sup>22</sup>

Scope of. - The provisions of sub-section (2) of Section 83 of the Act it is clear that any mutawalli or person interested in a Wakf or any other person aggrieved by an order under this Act, or Rules made thereunder, may make an application within time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matters relating to the Wakf. It implies that any mutawalli or person interested in a Wakf may make an application to the Tribunal within time specified in this Act or where no such time has been specified, within such time as may be prescribed for determination of any dispute, question or other matter relating to the Wakf. Such an application can also be made by any other person aggrieved by an order made under this Act or Rules made there under but such other person cannot make any such application to the Tribunal unless and until he is aggrieved by an order made under this Act or Rules framed thereunder but this condition is not precedent or prior condition for any Mutwalli or any person interested in a wakf to approach the Tribunal.<sup>23</sup>

The Wakf Act is complete code by itself and the intention of the legislature is not provide for better administration of Wakf and for matters connected therewith and incidental thereto. The Act has created the post of Chief Executive Officer to be appointed under Section 23(1) of the Act. Considerable statutory powers have been conferred on the Chief Executive Officer as well. Act has also constituted a Board by name Wakf Board under Section 13 of the Act. Powers have also been conferred on the mutawalli. Section 83(2) of the Act empowers any mutawalli or person interested in a Wakf or any other person aggrieved by an order made under this Act or rules made thereunder may make an application within the time specified in the Act or where no such time has been specified, within such time as may be prescribed to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf. Words "person interested" also defined in the Act under

Section 3(k) of the Act.<sup>24</sup>

Statutory enactments - Effect of. - The Act came into force with effect from 1-1-1996 and for about a period of one and half year, no Tribunal as envisaged under Section 83 of the Act, was constituted and the Tribunal was constituted only on 1-1-1997. Therefore, even if the provisions of the Act is taken to have prospective effect, after the commencement of the Act also, no forum as envisaged under the Act is created. Where statutory enactments only create right or liability without providing forum for remedy, any person having a grievance that he has been wronged, or his right is being affected, can approach a Civil Court on the principle that wherever there is right, there is remedy (ubi jus ibi remedium). In the intervening period i.e., after the commencement of the Act and before the Constitution of Tribunal, the Civil Court will definitely have jurisdiction, since the aggrieved party in the absence of forum, will be rendered remediless and this is not object of the Act. When all the litigants under common law and also under special enactments are having forums to ventilate their grievances and only the litigants of wakf property are left with no forum, it amounts to violation of their fundamental rights and Section 85, which bars the jurisdiction of Civil Courts, will be vulnerable to attack.<sup>25</sup>

Suit for ejectment of tenant.-The Legislative intention is clear from reading of Sections 83 and 85 the Tribunal is deemed to be a Civil Court and exercises similar powers as may be exercised by the Civil Court under the C.P.C. while trying a suit, execute a decree or order.. The word any qualifies the dispute which would include suit for ejectment of a tenant from Wakf premises. In any view of the matter such a suit for ejectment would be covered under the phrase "other matter relating to Wakf property". Even if status of the tenant is admitted one Section 85 first part ousts the jurisdiction of Civil Court to entertain such a suit for ejectment to tenant, if it is held that in such a suit personal relationship of landlord and tenant is severed and relief for ejectment is held to be incidental the phrase other matter with respect to Wakf property would cover suit for ejectment from Wakf property. Such a proceeding for ejectment of the tenant to be filed before the Tribunal.<sup>26</sup>, considering Section 55 of Wakf Act, 1954 which is pari materia to Section 83 of Wakf Act, 1995, it has been held that:-  
"18. In other words, the validity of orders made under the provisions of the Act or any rule or order made thereunder can be challenged by aggrieved persons before the Tribunal for

determination of the dispute relating to Wakf. However, the Mutawalli of a Wakf, or persons interested in a wakf are competent under Section 55(2) of the Act to approach the (sic) other matters relating to the Wakf. According to me Section 55(2) of the Act confers discretion to aggrieved person to file an application to the Tribunal only in case he is aggrieved by any order made under this Act or any rule or other made thereunder. However, any Mutawali of a Wakf and person interested in a Wakf can file application to the Tribunal for determination of any disputed question or other matters relating to the Wakf. Even in case of persons aggrieved, he can file an application to the Tribunal only in case the order passed under the Act, rule or order made thereunder is in relation to the Wakf Property. In my opinion, in case the power of the Tribunal is confined for determination of only those disputes which are required to be determined under the specific provision of the Act, Rule or Order, it will lead to rendering the provision of Section 55(2) of the Act superfluous.

The relief sought for by them in the Civil Courts cannot be adjudicated by the Tribunal and in that view of the matter even if the Tribunal has got the power u/S. 5(1) and (2) of the Act the suits and the proceedings cannot be transferred. In the submission of the learned counsels when the Tribunal is not competent to grant relief sought for in the Civil Court the necessary corollary of the same in their submission shall be that the Tribunal shall have no power. The whole premises on which the learned counsels have proceeded is unfounded and they totally ignore the provisions of Section 55(5) of the Act as amended. Under Section 55(5) of the Act the Tribunal is deemed to be a Civil Court and has the same power as that of a Civil Court under the Code of Civil Procedure, while trying the suit or executing the decree or order."<sup>27</sup>

In *Dhula Bhai v. State o/M.P.*<sup>28</sup>, the Apex Court has laid down that, where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or liability and provides for the determination of the right or liability and further lays down that all question about the said right and liability shall be determined by the tribunals so

constituted, and whether remedies normally associate with actions in Civil Court are prescribed by the said statute or not.

In Firm I.S. Chetry and Sons v. State of AP<sup>29</sup>, it has been laid down that there has to be express provision for exclusion of the jurisdiction of Civil Court to entertain civil causes. There is express provision in the instant case contained in Section 85 when read with Section 83 and other provisions it is apparent that there is ouster of the jurisdiction of the Civil Court with respect to matters covered under the sections.

In Raja Ram Kumar v. Union of India<sup>30</sup>, guiding considerations for determining whether Civil Court jurisdiction is excluded are that wherever a right, not pre-existing in common law is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy, having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the Civil Courts jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognized by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Courts jurisdiction, then both the common law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence. In the Wakf Act, 1995 remedies of Civil Court as well as Tribunal cannot be said to be concurrent in view of the express provision creating bar contained in Section 85 of the Act.

In Darshan Singh v. State of Punjab<sup>31</sup>, the language by the Legislature is the true depository of the legislative intent, and that words and phrases occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself.

In Ishzoar Singh v. State of U.P.<sup>32</sup>, it has been laid down that "And" has generally a cumulative sense, requiring the fulfillment of all the conditions that it joins together and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a context, read as or. Sometimes to carry out the intention of the legislature it is found necessary to read the conjunctions or and and one for the other. The word used in Section 85 of Wakf Act is or and that separates the two parts of section. Second part cannot restrict the operation of first part of Section 85.

In *M. Satyanarayana v. State of Karnataka*<sup>33</sup>, it has been laid down that a statute cannot be construed merely with reference to grammar. Statute whenever the language permits must be construed reasonably and rationally to give effect to the intention and purpose of the legislature. For giving effect to the intention and purpose of the Legislature the interpretation of ouster of Civil Court jurisdiction is a reasonable consideration as that is expressly provided by the statute.

Tribunal. - Sub-section (1) above that the State Government is empowered to establish as many Tribunals as it may deem fit for the determination of any dispute, question or other matter relating to a wakf or wakf property under the Act and define the local limits of their jurisdiction. Sub-section (2) of Section 83 permits any mutawalli or other person interested in a wakf or any person aggrieved of an order made under the Act or the rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to the wakf. What is important is that the Tribunal can be approached only if the person doing so is a mutawalli or a person interested in a wakf or aggrieved by an order made under the Act or the rules. The remaining provisions of Section 83 provide for the procedure that the Tribunal shall follow and the manner in which the decision of a Tribunal shall be executed.

Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the Civil Courts stands completely excluded by reasons of such establishment. The expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules

required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.<sup>34</sup>

Wakf property - Dispute for protection and preservation of. - Thus, no other interpretation can be given to the expression any dispute under the Act. The dispute for protection and preservation of the property is certainly a dispute falling under the Act. The recovery of possession and use and occupation charges is definitely a dispute relating to the wakf under the Act. Simply because an Imam inducted into the wakf property, ceases to be one, it cannot be said that it is a dispute pertaining to the said property would be a dispute against a third person having nothing to do with the wakf. Subhan Shah through L.Rs.<sup>35</sup>

Wakf Property-Powers of.-The words any dispute, question or other matters relating to Wakf or Wakf property under Section 85 are wide enough to take in within its sweep not only matters which are specifically conferred on the Tribunal by the various provisions of the Act but also any dispute, question or any other matter relating to any Wakf or Wakf property since those powers have also been conferred on the Tribunal by the Wakf Act itself. On examining the scheme of the Act and various provisions, the intention of the legislature is to resolve all disputes by one machinery and forum provided in the Act itself, that is, the Wakf Tribunal and not by the civil Courts in the State.<sup>36</sup>

The Tribunal has no power to determine the dispute as to the constitution of Managing Committee or the conduct of election to the Managing Committee and that the petition for permanent injunction and temporary injunction filed by the members of Jamath cannot be entertained by the Tribunal. A ,M. Ali Akbars case, AIR 2001 Madras 431.

#### STATE AMENDMENT

West Bengal.-In its application to the State of West Bengal, in section 83, for sub-section (4), substitute the following sub-section, namely,-

(4) (a) Every Tribunal shall consist of one person, who is or has been a member of the State Judicial Service holding a rank, not below the rank of a District and Sessions Judge, and the appointment of every such person may be made either by name or by designation.

(b) On such appointment, such person shall be designated as Judge, Wakf Tribunal, bearing the name of the State and shall hold

office for a term of three years from the date of such appointment or till he attains the age of sixty-two years, whichever is earlier." [West Bengal Act 20 of 2001}

1 Substituted by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

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10 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

11 Substituted by Act No. 27 of 2013, dated 20.9.2013.

12 Jeet Mohammed v. Jatinder Kaur, AIR 2009 HP 44.

13 Karnataka Board of Wakf v. Land Tribunal, Sira AIR 2000 Kar 141.

14 Koil Kandadai Chaunamarutham v. Raja Sir Muthiah Chettiar, (1955) 1 Mad LJ 229

15 M.S. Ramachandra Sastrigal v. Kuppuswami Vanniar, (1961) 74 Mad LW167

16 Ramaswami Raj a v. Elappa Gounder, (1960) 2 Mad LJ 26 (SN)

17 Ramaswamy Raja v. Ellappa Gounder, (1960) 73 Mad LW 747

18 A.M. Ali Akbar v. Keelakarai South Street Jamath Masjid Paripalana Committee, AIR 2001 Mad 43L

19 Aliyathammada Beethathebiyyapura Pookoya Haji v. Pattakal Cheriya koya, AIR 1999 Ker 289.

20 Subhan Shah v. M.P. Wakf Board, AIR 1997 MP 8.

21 Salam Khan v. T.N. Wakf Board, AIR 2005 Mad 241.

22 Salam Khan v. T.N. Wakf Board, AIR 2005 Mad 241.

- 23 Maulvi Abdul Rahman Siyai v. Sardar Maqbool Hasan, AIR 2009 All 62.
- 24 Aliyathammada Beethathabiyapur Pookoya Haji v. Pattakkal Cheriya, AIR 2003 Ker 366.
- 25 Badarla Suryafcamari v. Badarla Vamana Murthy, AIR 2010 AP 209
- 26 Subhan Singh v. MP Wakf Board, AIR 1997 MP 8
- 27 Wakf Imambara Imlipura v. Smt. Khursheeda Bi, AIR 2009 MP 238.
- 28 Dhula Bhai v. State of M.P., AIR 1969 SC 78
- 29 Firm I.S. Cherry and Sons v. State of AP, AIR 1964 SC 322
- 30 Raja Ram Kumar v. Union of India, AIR 1958 SC 752
- 31 Darshan Singh v. State of Punjab, AIR 1953 SC 83
- 32 Ishwar Singh v. State of U.P., AIR 1968 SC 1450
- 33 M. Satyanarayana v. State of Karnataka, AIR 1986 SC 1162
- 34 Ramesh Gobindram v. Sugra Humayun Mirza Wakf, AIR 2010 SC 2897.
- 35 Ramjan Khan v. M. P. Wakf Board, AIR 1997 MP 8.
- 36 Aliyathammada Beethathabiyapur Pookoya Haji v. Pattakkal Cheriya, AIR 2003 Ker 366.

**84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision :-**

Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a <sup>1</sup>[waqf] or <sup>2</sup>[waqf] property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute.

**COMMENTS**

Dispute relating to wakfs. - The Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, words of very wide

connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word Wakf has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal. It is not proper for this Court to straightway entertain writ petitions relating to a Wakf or Wakf property when there, is a special Tribunal constituted for this purpose.<sup>3</sup>

Jurisdiction of civil Court-Bar of.-Wakf Tribunals are constituted to try the suit and other proceedings relating to the Wakf. Naturally, the bar of jurisdiction provided for under Section 84 will be in respect of such suits and proceedings which are pending. It cannot have any effect on the appellate jurisdiction exercised by the District Court in terms of the Code of Civil Procedure. Wakf Act does not in any way affect the appellate jurisdiction exercised by the District Court.<sup>4</sup>

Jurisdiction of Wakf Tribunal. - No doubt section 83(2) refers to the orders passed under the Act, but, in our opinion, Sections 83(1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. Even if no order has been passed under the Act, the party can approach the Wakf Tribunal or the determination of any dispute, question or other matters relating to a wakf or wakf property, as the plain language of Sections 83 (1) and 84 indicate.<sup>5</sup>

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Salam Khan v. T.N. Wakf Board, AIR 2005 Mad 241.

4 Abdul Majeed Musliyar v. M.T. Mammad Koya, AIR 2002 Ker 71.

5 Salam Khan v. T.N. Wakf Board, AIR 2005 Mad 241.

### **85. Bar of jurisdiction of Civil Courts :-**

No suit or other legal proceeding shall lie in any <sup>1</sup>[civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any <sup>2</sup>[waqf], <sup>3</sup>[waqf] property

or other matter which is required by or under this Act to be determined by a Tribunal.

#### COMMENTS

Applicability of. - If a dispute arises in respect of Wakf Property which is required by or under the Wakf Act, to be determined by a Tribunal, then only a jurisdiction of Civil Court has been barred under Section 85 of the Act. The case of plaintiffs is that the disputed property was taken by them from the Board and it was let out to defendants, meaning thereby, the plaintiffs are landlord and defendants are tenant in disputed property. The defendants may be sub-tenant for the purpose of Wakf Board but it is a dispute in between the landlord and tenant and no relief has been sought in the Civil suit against Board nor any question is required to be determined in the present suit under any provisions of the Wakf Act. The present suit is a simple suit relating to relationship of landlord and tenant. The plaintiffs were landlord and defendants are their tenant and there is a prayer about eviction of tenant in the suit on the grounds mentioned in the plaint. The Civil Court has already framed the issues and both the parties have also led their evidence. The Wakf Board is not claiming the disputed property as its own property in the present case. The issues formulated in the suit are not covered by Sections 6 and 7 of the Act and in these circumstances the bar created under Section 85 of the Act for jurisdiction of the Civil Court is not attracted in the facts and circumstances of the present case. The learned trial Court committed an illegality in returning the plaint to plaintiffs. The appellate Court has rightly set aside the order of the trial Court and the same does not call for any interference by this Court.<sup>4</sup>

Section 85 of the Act uses the words "no suit or other legal proceedings shall lie" which will therefore, depend on the meaning of the words "shall lie". Thus, the phrase "an action will not lie" means that an action cannot be sustained, or that there is no ground upon which to found the action." Thus, the meaning of the words "no action shall lie" would also be that no action shall be maintainable or shall be sustainable. The word "maintain" has been defined in Black's Law Dictionary as follows:-

"To maintain an action is to uphold, continue on foot, and keep from collapse a suit already begun, or to prosecute a suit with effect. To maintain an action or suit may mean to commence or institute it; the term imports the existence of a cause of action maintain however, is applied to actions already brought but not yet reduced to judgment. In this connection it means to continue or

preserve in or with; to carry on."

The word sustain has also been defined in the Blacks Law Dictionary as follows:-To carry on; to maintain. To affirm or approve, as when an appellate Court sustains the decision of a lower Court. To grant, as when a Judge sustains an objection to testimony or evidence, he or she agrees with the objection and gives it effect. To Support, to warrant, said of evidence in connection with a verdict, decision etc. To suffer, bear, undergo, To endure or undergo without failing or yielding; to bear up under."

The words no suit or other legal proceedings shall lie would mean that no suit or other legal proceedings shall be maintainable or sustainable which means no suit or other legal proceedings shall be carried on or continued to be entertained. If this is the plain meaning of the words, the bar would apply to pending proceedings also. It cannot, be said that the trial Court committed any error in holding that the continuance of the suit was barred by Section 85 of the Act.<sup>5</sup>

The present Suit is a Suit for eviction of the tenant from the disputed shop after determination of the tenancy/lease. Such a Suit is not a Suit "in respect of any dispute, question or other matter relating to" any wakf or wakf property in the context in which the, said words have been used in Section 85 of the Wakf Act, 1995. The bar created by Section 85 of the Wakf Act, 1995 does not apply in the present case, which pertains to a Suit for eviction of the tenant from the disputed shop after determination of the tenancy/lease.<sup>6</sup>

Bar of Jurisdiction of Civil Court. - In Mathura Frasad Sarjoo Jaiswal v. Dossibai<sup>7</sup>, it was held that a question regarding jurisdiction cannot be deemed to have been finally decided by an erroneous decision of that Court and the question would not operate as res judicata.<sup>8</sup>

It was held that there cannot be an estoppel on a pure question of law and that a question of jurisdiction in the case is a pure question of law. Thus, the admission made regarding a jurisdictional aspect having been challenged on the first occasion itself in these proceedings and being a question of law the parties cannot be bound by such admission and the question is liable to be considered on merits.<sup>9</sup>

While returning the plaint has held that when a Tribunal is constituted by the express provision contained in Section 85 the Court has no jurisdiction to proceed with the case and the bar

applies to pending proceedings as well. In *Inacio Martins v. Narayan Hari Naik*<sup>10</sup>, where it was held that if the new law which is enacted during the pendency of a suit, contains the provision that "no Civil Court shall have jurisdiction to settle, decide or deal with certain questions which are committed to the jurisdiction of the new Court or tribunal and the pending suit relates to those questions the jurisdiction of the Civil Court would be ousted."<sup>11</sup>

In *Syed Inamul Haq v. State of Rajasthan*<sup>12</sup>, it was held that while interpreting Section 85 of the Wakf Act held that the expression "no suit or other legal proceedings shall lie" would mean no suit or legal proceedings shall be carried on or continued to be entertained and hence the bar of jurisdiction apply to pending proceedings also".

The plaintiff has no right of management of the Wakf and that he is not the Mutawalli entitled to manage the affairs of the Wakf. The defendants also dispute the averment of the plaint that it is a private Wakf. According to them, it is a public Wakf. So much so, the right of management of the Wakf is the main question that arise for consideration in the suit. If that does not fall within the powers of the Tribunal for adjudication as per the provisions of the Act, needless to say that such a question cannot arise for consideration before the Tribunal and so it cannot be said that the Civil Court has no jurisdiction. The Court below, however, did not proceed to determine this question because of the admission made by the parties. As per Section 85 of the Act no suit or other legal proceedings shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf. Wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

Only such of the matters which are required to be decided specifically by the Tribunal are taken out from the jurisdiction of the civil Court. Even a matter which may otherwise fall under the purview of any authority other than the Tribunal is not taken away from the jurisdiction of the civil Court. A dispute which relates to the management of the affairs of the Mosque is not specifically dealt with in any of the provisions of the Act to be adjudicated upon by the Tribunal.<sup>13</sup>

Interpretation of Section 85. - Even by literary interpretation of Section 85 of the Act, the Tribunal will get jurisdiction on and from 1-7-1997, the date on which it is constituted and no matter pertaining to wakf and wakf property shall be filed before Civil

Court on and from that date. There is no provision under the Act regarding transfer of wakf matters pending before the Civil Courts to the special Tribunal. Till the Tribunal is constituted, the Civil Court necessarily has to exercise the jurisdiction and the Civil Courts jurisdiction cannot easily be presumed to have been ousted, in the absence of any clear language to that effect. The matters filed and pending before the competent Civil Court, which has jurisdiction to entertain the same, in the absence of the Tribunal, need not be transferred. However, such matters, which are filed on and from 1-7-1997 requires to be transferred to the Tribunal, as the special Tribunal was constituted for the specific purpose and, therefore, the Civil Court cannot exercise a parallel jurisdiction from that date. Accordingly, the circular issued by the High Court directing transfer of pending matters filed subsequent to 1-7-1997, is valid and is in accordance with the provisions of the Act.<sup>14</sup>

Section 85 of the Act expressly bars the jurisdiction of the civil Court and the language employed in the section is clear and unambiguous and, therefore, even the pending cases also have to be transferred to the Wakf Tribunal, though there is no specific provision for transfer and by doing so, the avowed object envisaged by the Legislature, in enacting this special enactment, would be fulfilled. When the jurisdiction of the civil Court is barred, again directing the civil Court to deal with the pending cases filed prior to the constitution of the Tribunal, is nothing but defeating the very object of creating the special Tribunal under the Act. The words "after the constitution of the Tribunal" after the words "should lie" occurring in Section 85 of the Act and the casus omissus in the present circumstances by the Court, is not warranted, as the language employed in the section is clear and unambiguous.<sup>15</sup>

When the language used in the Section is clear and unambiguous, literal meaning has to be given irrespective of its consequences and the Courts cannot legislate and the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation and the other rules of interpretation viz., reading down the statute, purposive interpretation etc., can be resorted to, when the plain words of a statute are ambiguous or lead to no intelligible results and if read literally, would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than literal rule.<sup>16</sup>

Jurisdiction of Civil Court. - The coming into force of the Wakf Act, 1995 does not in any way prevent this Court from considering the

question whether the judgment in appeal is correct or not in spite of the fact that the question to be decided is whether the plaint schedule property is wakf property or not. Section 7(5) of the Act merely says that 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. Section 7(5) of the Act clearly exempts appeal from the bar of jurisdiction. Hence, this Court is perfectly competent to decide the question regarding wakf in this appeal.<sup>17</sup>

**Jurisdiction of Wakf Tribunal.** - The Tribunal shall not have jurisdiction to determine any matter which is subject-matter of any suit or proceeding instituted or commenced in a civil Court before commencement of the Act and if any suit has been instituted in any civil Court prior to coming into force of the Wakf Act, 1995, then the Tribunal will have no jurisdiction to decide such matter and to continue and conclude as if Act has not come into force.<sup>18</sup>

**Powers of Wakf Tribunal.** - The expression other matter relating to a wakf or wakf property is very comprehensive and is of wide import or amplitude which may embrace in its sweep any matter relating to the management of wakf and wakf property, therefore, the appointment of the Mutawalli or the Committee for management of the wakf in my considered opinion, would fall within the ambit of expression other matter relating to a wakf or wakf property and can be decided by the Wakf Tribunals.<sup>19</sup>

The Wakf Tribunal has jurisdiction to entertain the case, even if no order is passed under the Wakf Act, 1995, as the scope of Section 83 is very wide, the Court has held that the Wakf Tribunal has power to grant interim order also.<sup>20</sup>

**Scope of.** - A joint reading of the provisions of sub-section (1) and (5) of Section 83 and Section 85 of the Act, it is clear that the Wakf Tribunals constituted by State Government are empowered to determine any dispute, question or other matters relating to a Wakf or Wakf property under this Act within their local limits as defined under the notifications constituting such Tribunal and they shall be deemed to be civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure while trying a suit or executing a decree or order and further by virtue of the provisions of Section 85 of the Act, the jurisdiction of civil court

is barred for entertaining or trying any suit or other legal proceedings in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter, which is required by or under this Act to be determined by a Tribunal. It implies that civil court shall have no jurisdiction to entertain and try any suit or other legal proceeding in respect of which Wakf Tribunal has such jurisdiction.<sup>21</sup>

Suit in relation to wakf property. - It is not in dispute that notification ousting the jurisdiction of the Civil Court was issued after institution of the suit and therefore, the plaint as filed was not presented in the Court having no jurisdiction which could have entitled it to return the same for presentation in the proper Court. Therefore, the order passed by the learned lower appellate Court is in accordance with law. The learned lower Appellate Court, thus, was right in ordering the transfer of the case to the Court of competent jurisdiction of the notification dated 25-9-2001- After the matter was brought to the notice of the Court that the constitution of Tribunal, the jurisdiction of the civil Court has been ousted, the case has been ordered to be transferred to the Court of competent jurisdiction. No material right of the parties has been decided after issuance of the notification and only evidence has been recorded and therefore, there was no question of holding any proceeding to be without jurisdiction as contended by the learned counsel for the petitioner.<sup>22</sup>

Wakf Tribunal - Constitution of. - Section 85 envisages that no suit or other legal proceeding shall lie in any Civil Court in respect of matters, which have to be dealt with under the Act by the Tribunal. If the intention of the Legislature is to effect that the bar under Section 85 applies even to pending cases or that it shall have a retrospective effect, the language ought to have been couched in the manner like no Civil Court shall dispose of or settle the dispute or exercise the jurisdiction in respect of wakf property. Then obviously even the pending suits also will come under the sweep of bar contained under Section 85. But there is no such indication. In *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd.*<sup>23</sup>, it was held as under:-

"21. In some statutes the legislature no doubt says that no suit shall be entertained or instituted in regard to a particular subject-matter. Such a law will not affect pending actions and the law is only prospective. But, the position is different if the law states that after its commencement, no suit shall be "disposed of or "no decree shall be passed" or "no Court shall exercise power or jurisdiction."

In this class of cases, the Act applies even to pending proceedings and has to take judicial notice of by the Civil Courts."

Section 85 of the Act, the bar operates only to fresh suits and it will not affect the pending suits. If there is any special enactment creating a new forum or Tribunal to deal with matters under that special enactment and which bars the jurisdiction of the Civil Court, in the absence of any clear indication that such enactment is retrospective and in the absence of any provision for transferring of the pending proceedings on the file of Civil Court to such new forum or Tribunal, the pending cases need not be transferred and they shall have to be dealt with by the Civil Court. In case if the new law bringing a change in the forum intends to affect even the pending matters, the statute must enact an express provision to that effect.<sup>24</sup>

Wakf Tribunal - Jurisdiction of. - The Tribunal held that it has got jurisdiction and granted a decree to the plaintiff to evict the defendant from the schedule property. Tribunal-is justified that it has got jurisdiction since the dispute is regarding a Wakf property.<sup>25</sup>

1 Substituted for "Civil Court" by Act No.27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Rajendra Kumar Sharma v. Rakesh, AIR 2009 Raj 13.

5 Syed Inamul Haq Shah v. State of Rajasthan, AIR 2001 Raj 19.

6 Yashpal Lala Shiv Narain v. Allatala Tala Malik, AIR 2006 Alld 115.

7 Mathura Prasad Sarjoo Jaiswal v. Dossibai, AIR 1971 SC 2355

8 Abdul Rahiman Musaliar v. T. K. Muhammed Sahib, AIR 2003 Ker 84.

9 Isabella Johnson v. Susai (1990) 2 Ker LT 968 : AIR 1991 SC 993.

10 Inacio Martins v. Narayan Hari Naik, AIR 1993 SC 1756

11 Abdul Rahiman Musaliar v. T. K. Muhammed Sahib, AIR 2003 Ker 84.

12 Sved Inamul Haq v. State of Rajasthan, AIR 2001 Rajasthan 19

13 Abdul Rahiman Musaliar v. T. K. Muhammed Sahib, AIR 2003 Ker 84.

14 Badarla Suryakumari v. Badarla Vamana Murthy, AIR 2010 AP 209.

15 Union of India v. Hansoli Devi (2002) 7 SCC 273; AIR 2002 SC 3240, Union of India v. Filip Tiago De Gama (1990) 1 SCC 277; AIR 1990 SC 981, Raghunath Rai Bareja v. Punjab National Bank (2007) 2 SCC 230, Shiv Shakti Co-op. Housing Society v. Swaraj Developers (2003) 6 SCC 659 ; AIR 2003 SC 2434; Union of India v. Rajiv Kumar (2003) 6 SCC 516 : AIR 2003 SC 2917

16 Badarla Suryakumari v. Badarla Vamana Murthy, AIR 2010 AP 209.

17 Badagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummerkutty Haji, AIR 2002 Ker 56.

18 Sardar Khan v. Syed Najmul Hasan (Seth), AIR 2007 SC 1447; Md. Moinuddin v. Md. Mustafa, AIR 2010 Pat 24.

19 Maulvi Abdul Rahman Siyai v. Sardar Maqbool Hasan, AIR 2009 AUd 62.

20 Wakf Dargah Shah Mohd. v. U. P. Sunni Central Board of Wakf Lucknow, 2003 (52) AIR 57.

21 Maulvi Abdul Rahman Siyai v. Sardar Maqbool Hasan, AIR 2009 Alld 62.

22 Punjab Wakf Board v. Satish Kumar, AIR 2007 P&H 141.

23 United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd., AIR 2000 SC 2957

24 Badarla Suryakumari v. Badarla Vamana Murthy, AIR 2010 AP 209.

25 Aliyathammada Beethathabiyyapura Pookoya Haji v. Pattakkal Cheriya koya, AIR 2003 Ker 366.

### **86. Appointment of a Receiver in certain cases :-**

Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced-

(a) by or on behalf of a Board-

(i) to set aside the sale of any immovable property, which is

<sup>1</sup>[waqf] property, in execution of a decree or order of a Civil Court;  
(ii) to set aside the transfer or any immovable property, which is <sup>2</sup>[waqf] property, made by the mutawalli thereof, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board;  
(iii) to recover possession of the property referred to in clause (a) or clause (b) or to restore possession of such property to the mutawalli of the concerned <sup>3</sup>[waqf]; or  
(b) by a mutawalli to recover possession of immovable property, which is <sup>4</sup>[waqf] property, which has been transferred by a previous mutawalli <sup>5</sup>[or by any other person], whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant,  
the Court may, on the application of the plaintiff, appoint a Receiver of such property and direct such Receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the Court may consider to be necessary for further prosecution of the suit.

1 Substituted for "wakf" by Act No. 17 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Inserted by Act No. 27 of 2013, dated 20.9.2013.

## **87. Bar to the enforcement of right on behalf of unregistered Auqaf :-**

<sup>1</sup>[87. Bar to the enforcement of right on behalf of unregistered <sup>2</sup>[Auqaf]

(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any <sup>3</sup>[waqf] which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any Court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding

shall be continued, heard, tried or decided by any Court after such commencement unless such <sup>4</sup>[waqf] has been registered, in accordance with the provisions this Act.

(2) The provisions of sub-section (1) shall apply as may be, to the claim for set-off or any other claim made on behalf of any <sup>5</sup>[waqf] which has not been registered in accordance with the provisions of this Act.]

#### COMMENTS

Applicability of. - The bar under the said provision will apply to a Wakf only if the present second appeal had been filed at the instance of the Wakf Board. In other words, only the suits and appeals filed by the plaintiff alone can be the subject matter of the bar under Section 87 of the Act. The fact remains that the suit was filed by the Wakf. An appeal is a continuation of the original proceeding and until final decision is rendered in proceeding, the suit is presumed to be pending. Acceptance of such interpretation by the learned counsel for the appellant on Section 87 of the Act, will only lead to a glaring discrimination namely that Section 87 would apply only in cases where the Wakf Board had lost the suit and not in cases where the Wakf Board had succeeded in the suit. Such a construction is neither rational nor warranted and hence not acceptable. The suit filed by the Wakf Board cannot be continued in view of the bar under Section 87 of the Wakf Act, 1995.<sup>6</sup>

1 Section 87 omitted by Act No. 27 of 2013, dated 20.9.2013. Reproduced here for pending reference.

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Shanmugham v. Tamil Nadu State Wakf Board, AIR 1999 Mad 96.

#### **88. Bar to challenge the validity of any notification, etc :-**

Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any Civil Court.

#### **89. Notice of suits by parties against Board :-**

No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

#### COMMENTS

Notice under Section 89.-The tenor and temper of the language employed in the Section leaves no room for any misinterpretation to the effect of dispensing with the notice under Section 89 and therefore so far as the warranting Section 89 is concerned, the only conclusion that the Court could arrive at is that no suit shall lie without compliance of Section 89 and in fact such a suit, as it has been instituted in the form of Wakf O.P., should not have been entertained and taken on file by the Tribunal.<sup>1</sup>

It is open to a defendant for whose benefit a notice is prescribed by law to waive it. Thus where the plea of defect in or want of notice was not pressed in trial Court, nor was it raised in the memorandum of first appeal and of second appeal, the High Court, in the circumstances of the case held that the right based on the ground of notice was waived.<sup>2</sup>

Section 80 of the Civil Procedure Code according to its plain meaning requires that there should be identity of the person who issues the notice with the person who brings the suit. Hence, where a notice as required by the section is given on behalf of only one person, a suit cannot be instituted by that person and another on the strength of such notice. To hold otherwise would be to admit an implication or exception for which there is no justification.<sup>3</sup>

It is true that the terms of Section 80, Civil Procedure Code, should be strictly construed. But the terms of the notice should not be scrutinised in a pedantic manner or in a manner completely divorced from common sense. Where in the written statement filed by the defendant no objection was taken with regard to the validity of the notice, there is justification for the inference that the defendant had waived the objection, even if there was any defect in the notice.<sup>4</sup>

Powers of tribunal.-The mandatory provision of law under Section 89 of the Wakf Act would apply only to Civil Courts and not to the

Tribunals. <sup>5</sup>

1 M.S. Abdul Hameed v, S.M. Sheik Mohammed, AIR 2003 Mad 179.

2 District Board, Banaras v. Churhu Rai, AIR 1956 Allahabad 680.

3 Vellayan Chettiar v. Province of Madras, AIR 1947 PC 197

4 Coimbatore District Central Co-operative Supply and Marketing Society Ltd. v. Union of India, 1969 (2) M.L.J. 602.

5 M.S. Abdul Hameed v. S.M. Sheik Mohammed, AIR 2003 Mad 179.

### **90. Notice of suits, etc., by Courts :-**

(1) In every suit or proceeding relating to a title to or possession of a <sup>1</sup>[waqf] property or the right of a mutawalli or beneficiary, the Court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any <sup>2</sup>[waqf] property is notified for sale in execution of a decree of a Civil Court or for the recovery of any revenue, cess, rates of taxes due to the Government or any local authority, notice shall be given to the Board by the Court, Collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within <sup>3</sup>[six months] of its coming to know of such suit or proceeding, applies to the Court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the Court or other authority under whose order the sale was held.

#### **COMMENTS**

Suit for eviction. - Such a Suit for eviction is not a suit or proceeding regarding any dispute in respect of title to a wakf property or regarding any dispute in respect of possession of a wakf property or regarding any dispute in respect of the right of a mutawalli or beneficiary. No dispute of title to a wakf property or possession of a wakf property or the right of a mutawalli or beneficiary is involved in such a Suit for eviction of tenant/lessee after determination of tenancy/lease. The dispute involved in such a Suit for eviction is in regard to eviction of the tenant/lessee from the wakf property in view of the determination of his tenancy /

lease. Section 90, sub-section (1) of the Wakf Act, 1995 is not applicable to the present case.

Even if a suit for eviction of a tenant/lessee after determination of the tenancy/lease were to be treated as being covered under sub-section (1) of Section 90 of the Wakf Act, 1995, and the notice to the Wakf Board were necessary, still the decree or order passed in such a suit would continue to remain valid till the Wakf Board applies to the Court for declaration of the decree or order as void. This has to be done by the Waqf Board within one month of its coming to know of such suit or proceeding.<sup>4</sup>

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "one month" by Act No.27 of 2013, dated 20.9.2013.

4 Yashpal Lala Shiv Narain v. Ailatala Tala Malik, AIR 2006 AllD 115.

### **91. Proceedings under Act 1 of 1894 :-**

(1) If, in the course of proceedings under the Land Acquisition Act, 1894 or under any law for the time being in force relating to the acquisition of land or other property, <sup>1</sup>[and before an award is made, in case the property] under acquisition is <sup>2</sup>[waqf] property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

Explanation.-The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as reference to the authority under such other law competent to make such award.

(2) Where the Board has reason to believe that any property under acquisition is <sup>3</sup>[waqf] property, it may at any time before the award is made appear and plead as a party to the proceeding.

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under Section 31 or Section 32 of the Land Acquisition Act, 1894 or under

the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard.  
(4) Any order passed under Section 31 or Section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard, shall be declared void if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

1 Substituted for "it appears to the Collector before an award is made that any property" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **92. Board to be party to suit or proceeding :-**

In any suit or proceeding in respect of a <sup>1</sup>[waqf] or any <sup>2</sup>[waqf] property the Board may appear and plead as a party to the suit or proceeding.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **93. Bar to compromise of suits by or against mutawallis :-**

No suit or proceeding in any Court by or against the mutawalli of a <sup>1</sup>[waqf] relating to title to <sup>2</sup>[waqf] property or the right of the mutawalli shall be compromised without the sanction of the Board.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **94. Power to make application to the Tribunal in case of failure of mutawalli to discharge his duties :-**

(1) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, the Board may apply to the Tribunal for an order directing the mutawalli to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of such act.

(2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the <sup>1</sup>[waqf] and the mutawalli wilfully fails to discharge such duties, the Board or any person interested in the <sup>2</sup>[waqf] may make an application to the Tribunal and the Tribunal may pass such order thereon as it thinks fit.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

### **95. Power of appellate authority to entertain appeal after expiry of specified period :-**

Where, under this Act any period has been specified for the filing of any appeal, the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period so specified, entertain the appeal after the expiry of the said period.

## **CHAPTER 9 MISCELLANEOUS**

### **96. Power of Central Government to regulate secular activities of Auqaf :-**

96. Power of Central Government to regulate secular activities of <sup>1</sup>[Auqaf]

(1) For the purpose of regulating the secular activities of <sup>2</sup>[Auqaf], the Central Government shall have the following powers and functions, namely:-

(a) to lay down general principles, and policies of <sup>3</sup>[waqf] administration in so far as they relate to the secular activities of the <sup>4</sup>[Auqaf];

(b) to co-ordinate the functions of the Central <sup>5</sup>[Waqf] Council and the Board, in so far as they relate to their secular functions;

(c) to review administration of the secular activities of <sup>6</sup>[Auqaf] generally and to suggest improvements, if any.

(2) In exercising its powers and functions under sub-section (1), the Central Government may call for any periodic or other reports from any Board and may issue to the Board such directions as it may think fit and the Board shall comply with such directions.

Explanation. - For the purposes of this section "secular activities" shall include social, economic, educational and other welfare activities.

## COMMENTS

Wakf properties. - The Wakf Act, 1995, will have application to wakfs-alal-aulad or wakfs created for private and secular purposes to the extent of the provisions made therein for religious and charitable purposes. The wakf character of the remaining portion of the wakf properties will not be affected or altered merely because they would no longer be governed by the provisions of the Act. They would continue to retain their wakf character and would be governed by Mohammedan Law and enactments enacted in respect thereof, such as the Mussalman Wakf Validating Acts of 1913 and 1930; the Religious Endowments Act, 1863 and the Shariat Law Application Act, 1937.

As an extension of the alteration of the circumstances contemplated under the 1934 Act and those contemplated under the 1995 Act. Section 96 of the 1995 Act, empowers the Central Government to regulate the secular activities of wakfs. If the definition of wakf in the 1995 Act excludes private wakfs. Section 96 brings within the ambit of the 1995 Act wakfs which are created for secular activities which would include social, economic, educational and other welfare activities. In order to give a harmonious construction between the definition of wakf in Section 3 (r) of the 1995 Act and the provisions of Section 96 thereof, one will have to construe certain social activities for which wakfs are created in relation to activities which are of a charitable nature extending to persons who are not members of the wakfs family. To that extent, wakfs for secular purposes have also been included within the scope and ambit of the 1995 Act.<sup>7</sup>

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "Wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

7 Anis Fatma Begum v. Board of Wakf, W.B., AIR 2004 Cal 91.

### **97. Directions by State Government :-**

Subject to any directions issued by the Central Government under Section 96, the State Government may, from time to time give to

the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions:

<sup>1</sup>[Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf.]

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

### **98. Annual report by State Government :-**

As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State <sup>1</sup>[Waqf] Board and the Administration of <sup>2</sup>[Auqaf] in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.

1 Substituted for "Wakf" by Act No- 27 of 2013, dated 20.9.2013.

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

### **99. Power to supersede Board :-**

(1) If the State Government is of opinion that the Board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under Section 96 or the State Government under Section 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Boards continuance is likely to be injurious to the interest of the <sup>1</sup>[Auqaf] in the State, the State Government may, by notification in the Official Gazette, supersede by the Board for a period not exceeding six months:

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board:

<sup>2</sup>[Provided further that the power of the State Government under

this section shall not be exercised unless there is a prima facie evidence of financial irregularity, misconduct or violation of the provisions of this Act,]

(2) Upon the publication of a notification under sub-section (1) superseding the Board,-

(a) all the members of the Board, shall as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all property vested in the Board shall, during the period of supersession vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issue under sub-section (1) the State Government may-

<sup>3</sup>[(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or]

(b) reconstitute the Board in the manner provided in Section 14.

1 Substituted for " Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Inserted by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted by Act No. 27 of 2013, dated 20.9.2013.

#### **100. Protection of action taken in good faith :-**

No suit or other legal proceeding shall lie against the Board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

#### **101. Survey Commissioner, members and officers of the Board deemed to be public servants :-**

(1) The Survey Commissioner, members of the Board, every officer, every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

(2) Every mutawalli of a <sup>1</sup>[waqf]/ every member of managing

committee, whether constituted by the Board or under any deed of <sup>2</sup>[waqf], every Executive Officer and every person holding any office in a <sup>3</sup>[waqf] shall also be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013-

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

## **102. Special provision for reorganisation of certain Boards**

:-

(1) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was, immediately before the day of such reorganisation, functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted as an Intra-State Board for the whole or any part of that State, the State Government may frame a scheme or such dissolution or such reconstitution, including proposals regarding the transfer of the assets, rights and liability of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.

(2) On receipt of a scheme forwarded to it under sub-section (1), the Central Government may, <sup>1</sup>[after consulting the Council and the State Governments] concerned, approve the scheme with or without modifications and give effect to the scheme so approved by making such order as it thinks fit.

(3) An order under sub-section (2) may provide for all or any of the following matters, namely:-

(a) the dissolution of the Board;

(b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board;

(c) the area in respect of which the reconstituted Board or new Board shall function and operate;

(d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and

the terms and conditions of such transfer;

(e) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;

(f) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and

(g) such incidental, consequential and supplemental matter as may be necessary to give effect to the approved scheme.

(4) Where an order is made under this section transferring the assets, rights and liabilities of any Board, then, by virtue of that order, such assets rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of the transferee.

(5) Every order made under this section shall be published in the Official Gazette.

(6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

1 Substituted for "after consulting the State Governments" by Act No. 27 of 2013, dated 20.9.2013.

### **103. Special provision for establishment of Board for part of a State :-**

(1) Where on account of the territorial changes brought about by any law-providing for the reorganisation of any State this Act is as from the date on which that law comes into force applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act is in force and in such a case any reference in this Act to the word "State" in relation of a Board shall be construed as a reference to that of the State for which the Board is established.

(2) Where any such Board has been established and it appears to the Government of the State that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette dissolve the Board established for the part of the State or reconstitute and reorganise such Board or establish a new Board for the whole of the State and thereupon,

the assets, right and liabilities of the Board for the part of the State shall vest in and be the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.

**104. Application of Act to properties given or donated by persons not professing Islam for support of certain wakf :-**

Notwithstanding anything contained in this Act where any .movable or immovable property has been given or donated by any person not professing Islam for the support of a <sup>1</sup>[waqf] being-

(a) a mosque, idgah, imambara, dargah, khangah or a maqbara;

(b) a Muslim graveyard;

(c) a choultry or a musafarkhana,

then such property shall be deemed to be comprised in that <sup>2</sup>[waqf] and be dealt in the same manner as the <sup>3</sup>[waqf] in which it is so comprised.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**104A. Prohibition of sale, gift, exchange mortgage or transfer of waqf property :-**

<sup>1</sup>[104A. Prohibition of sale, gift, exchange mortgage or transfer of waqf property

(1) Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift, exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.

(2) Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be void ab initio.]

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

**104B. Restoration of waqf properties in occupation of Government agencies to waqf Board :-**

<sup>1</sup>[104B. Restoration of waqf properties in occupation of Government agencies to waqf Board

(1) If any waqf property has been occupied by the Government agencies it shall be returned to the Board or the mutawalli within a

period of six months from the date of the order of the Tribunal.

(2) The Government agency may, if the property is required for a public purpose, make an application for determination of the rent, or as the case may be, the compensation, by the Tribunal at the prevailing market value.]

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

**105. Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished :-**

Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, or other document relating to a <sup>1</sup>[waqf] or any immovable property, which is <sup>2</sup>[waqf] property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**106. Powers of Central Government to constitute common Boards :-**

(1) Where the Central Government is satisfied that by reasons of-  
(i) the smallness of the Muslim population in two or more States,  
(ii) the slender resources of the <sup>1</sup>[Auqaf] in such State, and  
(iii) the disproportion between the number and income of the <sup>2</sup>[Auqaf] and the Muslim population in such State,  
it is expedient in the interest of the <sup>3</sup>[Auqaf] in the State and the Muslim population of such States, to have, instead of separate Boards for each of such State, a common Board, it may, <sup>4</sup>[after consultation with the Council and the Government] of each of the concerned States establish, by notification in the Official Gazette, a common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

(2) Every common Board established under sub-section (1) shall, as far as practicable, consist of the person specified in sub-section (1), or as the case may be, sub-section (7) of Section 14.

(3) Whenever any common Board is established under sub-section (1),-

(a) all powers vested in the State Government under any deed of <sup>5</sup>[waqf] or any provision of law for the time being in force relating to <sup>6</sup>[Auqaf], shall stand transferred to, and vested in, the Central Government and, thereupon, references in such deed of <sup>7</sup>[waqf] or law to the State Governments shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure that at least one representative or each of the concerned States is included as a member of the Board;

(b) references in this Act to a State shall be construed as references to each of the States for which the common Board has been established;

(c) the Central Government may, without prejudice to any rule applicable to a Board in a State, make, by notification in the Official Gazette, rules regulating the conduct of business by and affairs of, the common Board.

(4) The common Board shall be a body corporate with objects not confined to one State, have perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "after consultation with the Government" by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

7 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**107. Act 36 of 1963 not to apply for recovery of <sup>1</sup>[waqf]**

## **properties :-**

Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any <sup>2</sup>[waqf] or for possession of any interest in such property.

### **COMMENTS**

Recovery of possession - Wakf property. - The application of the Limitation Act in relation to recovery of Wakf properties by way of any suit for possession of immovable property comprised in any Wakf or for possession of any interest in such property, is only barred. Section 107 was incorporated in the Wakf Act, 1995 which replaced the Wakfs Act, 1953. No provision similar or analogous to Section 107 of the Wakfs Act, 1995 is found in the Wakfs Act, 1953. Section 6(1) of the Wakf Act, 1953 provides limitation of one year from the date of publication of notification in the Official Gazette as required under sub-section (2) of Section 5, for filing civil suit. This provision has no relevance, the suit was already filed and it ended in a decree. As per Article 136 of the Limitation Act, 1963, the decree shall have to be executed within a period of 12 years. Though the petitioner-plaintiff obtained decree, they did not execute it within a period of 12 years, and filed the E.P. after lapse of 25 years.<sup>3</sup>

Article 136 of the Limitation Act, 1963 prescribed the period of limitation for executing the decree, other than a decree of injunction, as 12 years, but the provisions of Section 107 of the Wakf Act, 1995 which barred the application of the provisions of the Limitation Act, in relation to recovery of Wakf properties, the E.P. filed by the petitioner-plaintiff to execute the decree, beyond the period of twelve years, is maintainable *moreso* when the Wakf Act, which is a beneficial legislation is silent about the period of limitation with respect to filing execution petitions for executing the decrees obtained prior to its enactment.<sup>4</sup>

The provisions of Section 107 of the Wakf Act the respondent-defendant is prevented from taking the plea of adverse possession.<sup>5</sup>

Scope of Section 107. - There is now no bar of limitation for recovery of possession of any immovable property comprised in a Wakf or any interest therein. In this background, let us now see whether this section has any retrospective effect. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The

exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right. At this juncture, we may again note Section 6 of the General Clauses Act, as reproduced herein earlier. Section 6 of the General Clauses Act clearly provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect, or affects the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed.

Section 112(2) of the Act is a saving clause and saves the actions already done or taken under the repealed enactment. This cannot lead to the conclusion that the Act has been given a retrospective effect. Rather, if seen properly, this saving clause in the absence of any specific provision providing retrospective effect to the Act, reinforces the suggestion that Act has no retrospective effect. This is because it saves actions already taken under the repealed enactment, i.e., it provides that the new provisions will not affect the validity of the actions already taken or in other words, it says that there will not be a retrospective effect. From a saving clause, the retrospectivity or no retrospectivity can be judged but the reliance placed by the High Court on Section 112, which is a saving clause, the Act has a retrospective effect is not proper. In our view, Section 112 is in conformity with Section 6 of the Act which also provides that a repeal shall not affect any right, privilege, obligation or liability acquired or incurred under the repealed enactment unless a contrary intention appears. Thus under Section 6 of the General Clauses Act and Section 112 of the Wakf Act, prior operation of the repealed enactment or the legal proceedings or remedies instituted, continued or enforced etc. are saved. The High Court was not justified in relying on Section 112 of the Wakf Act to hold that the Act has retrospective effect.<sup>6</sup>

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Managing Committee, Masjid-e-Ibrahimia v. Hyderabad AlJwyn Metal Works Ltd, AIR 2006 AP330.

4 Managing Committee, Masjid-e-Ibrahimia v. Hyderabad Allwyn Metal Works Ltd, AIR 2006 AP330.

5 Patel Naranbhai Marghabhai v. Deceased Dhulabhai Galbabhai, AIR 1992 SC 2009 and Amrendra Pratap Singh v. Tej Bahadur Prajapati, (2004) 10 SCC 65.

6 T. Kalamurthi v. Five Gori Thaikal Wakf, AIR 2009 SC 840-

### **108. Special piovision as to evacuee waqf properties :-**

108. Special piovision as to evacuee <sup>1</sup>[waqf] properties

The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of Section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950) which immediately before it became such evacuee property within the said meaning was property comprised in any <sup>2</sup>[waqf] and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to-

(a) vest such property in such Board in the same manner and with the same effect as in a Trustee of such property for the purposes of sub-section (1) of Section 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of such entrustment, and

(b) authorise such Board to assume direct management of the <sup>3</sup>[waqf] concerned for so long as it might deem necessary.

1 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

**108A. Act to have overriding effect :-**

<sup>1</sup>[108A. Act to have overriding effect

The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act]

1 Inserted by Act No. 27 of 2013, dated 20.9.2013.

**109. Power to make rules :-**

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purpose of this Act, other than those of Chapter III.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

<sup>1</sup>[(i) the qualifications required to be fulfilled by a person to be appointed as a mutawalli under clause (i) of section 3;

(ia) other particulars which the report of the Survey Commissioner may contain under clause (f) of sub-section (3) of section 4;]

(ii) any other matter under clause (f) of sub-section (4) of Section 4;

(iii) the particulars which a list of <sup>2</sup>[Auqaf] published under sub-section (2) of Section 5, may contain;

(iv) the manner of election of members of the Board by means of a single transferable vote, under sub-section (2) of Section 14;

(v) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of Section 23;

(vi) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers <sup>3</sup>[under sub-section (1) of] Section 29;

STATE AMENDMENT

West Bengal.-In its application to the State of West Bengal, in sub-section (2) of section 109, after clause (vi), insert the following clause, namely,-

"(via) the manner of control and management of the properties of the wakf under sub-section (5) of section 32;" [West Bengal Act 33 of 1997]

<sup>4</sup>[(via) the period within which the mutawalli or any other person may produce documents related to waqf properties under sub-

section (2) of section 31;

(vib) the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 31;]

(vii) the conditions subject to which an Chief Executive Officer and supporting staff may be appointed under sub-section (1) of Section 38;

(viii) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (1) of Section 39;

(ix) the form in which, and the time within which, a separate budget for <sup>5</sup>[Auqaf] under the direct management of the Board shall be prepared under sub-section (1) of Section 45;

(x) the intervals at which accounts of <sup>6</sup>[Auqaf] may be audited in pursuance of the provisions of sub-section (1) of Section 47;

<sup>7</sup>[\*\*\*]

(xii) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under Section 52;

(xiii) the manner of service of notice issued under sub-section (1) of Section 54 and the manner in which any inquiry is to be made under sub-section (3) of that section;

(xiv) the manner in which any inquiry may be held under Section 64 or Section 71;

(xv) the other matters which may be specified in the report submitted under sub-section (3) of Section 65;

(xvi) the manner of publication of order made under sub-section (2) of Section 67;

(xvii) the manner in which consultation may be made with mutawalli under sub-section (1) of Section 69;

(xviii) the manner of publication of order made under sub-section (3) of Section 69;

(xix) the rate at which contribution is to be made by a mutawalli under Section 72;

(xx) the payment of moneys into the <sup>8</sup>[Waqf] Fund, the investment, the custody and disbursement of such moneys under Section 77;

(xxi) the form in which, and the time within which, the budget of the Board may be prepared and submitted under Section 78;

(xxii) the time within which application is to be made to the Tribunal under sub-section (2) of Section 83;

<sup>9</sup>[{xxiia) the terms and conditions of appointment including the

salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members under sub-section (4A) of section 83;]

(xxiii) the procedure which the Tribunal shall follow under sub-section (6) of Section 83;

(xxiv) the form in which the annual report is to be submitted and the matter which such report shall contain under Section 98; and

(xxv) any other matter which is required to be, or may be, prescribed.

1 Substituted by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9-2013.

3 Substituted for "under" by Act No. 27 of 2013, dated 20.9.2013.

4 Inserted by Act No. 27 of 2013, dated 20.9.2013.

5 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

6 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

7 Clause (xi) omitted by Act No. 27 of 2013, dated 20.9.2013.

8 Substituted for "wakf" by Act No. 27 of 2013, dated 20.9.2013.

9 Inserted by Act No. 27 of 2013, dated 20.9.2013.

### **110. Powers to make regulations by the Board :-**

(1) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:

(a) the time and places of the meetings of the Board under sub-section (1) of Section 17;

(b) the procedure and conduct of business at the meetings of the Board;

(c) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees;

(d) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees;

(e) the terms and conditions of service of the officers and other

employees of the Board under sub-section (2) of Section 24;  
(f) the forms of application for registration of <sup>1</sup>[Auqaf] further particulars to be contained therein and the manner and place of registration of <sup>2</sup>[Auqaf] under sub-section (3) of Section 36;  
(g) further particulars to be contained in the register of <sup>3</sup>[Auqaf] under Section 37;  
(h) the form in which, and the time within which, the budgets of <sup>4</sup>[Auqaf] may be prepared and submitted by the mutawalli and approved by the Board under sub-section (1) of Section 44;  
(i) the books of accounts and other books to be maintained by the Board under Section 79;  
(j) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;  
(k) persons by whom any order or decision of the Board may be authenticated; and  
(l) any other matter which has to be, or may be, provided by regulations.

(3) All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication.

1 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

2 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

3 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

4 Substituted for "Wakfs" by Act No. 27 of 2013, dated 20.9.2013.

### **111. Laying of rules and regulations before State Legislature :-**

Every rule made under Section 109 and every regulation made under Section 110 shall be laid, as soon as may be after it is made, before the State Legislature.

### **112. Repeal and savings :-**

(1) The Wakf Act, 1954 (29 of 1954), and the Wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, immediately before the commencement of this Act, in any

State, there is in force in that State any law which corresponds to his Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

#### COMMENTS

Effect of Repealing section. - The Mutawalli would be entitled to unilaterally partition the wakf properties and decide which portion of the wakf properties are to be utilised for religious and charitable purposes and which portions are to be utilised for purely private purposes. While the usufruct from the properties may be divided for the aforesaid purposes in accordance with the directions of the wakf, the properties, in our view, have to be maintained as they are until proper directions are obtained from the Court in that regard. Such division which may ultimately be effected, would not destroy the wakf character of any portion of the dedicated properties, but some portions thereof would be under the administrative control of the authorities under the Wakf Act, 1995, whereas the other portions would be governed by the provisions of the Mussalman Wakf Validating Acts of 1913 and 1930; the Religious Endowments Act, 1863 and the Shariat Law Application Act, 1937 and other similar enactments.<sup>1</sup>

Recovery of mesne profits. - The Mutawalli who is the person in-charge of the affairs of the Wakf in relation to supervision and management and who is normally interested in the Maintenance and management of the Wakf and the Wakf properties, in the interest of the Institution, can definitely maintain a suit for eviction, recovery of mesne profits or damages for use and occupation. A Mutawalli is a person who will manage and supervise the Wakf properties. It cannot be said that a Mutawalli cannot maintain a suit in relation to Wakf property at all and the Wakf Board alone should institute the suit. A Mutawalli can definitely institute a suit for recovery of possession of the Wakf property from tenants and also for appropriate reliefs.<sup>2</sup>

1 Anis Fatma Begum v. Board of Wakf, W.B., AIR 2004 Cal 91.

2 A.S. Abdul Khader Wakf for Deeni Talim v. Saber Mian, AIR 2003 AP 528,

**113. Power to remove difficulties :-**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.