



The Jammu and Kashmir Wakafs Act, 1978

Act 11 of 1978

Keyword(s):

Beneficiary, Tehsil Committee, Wakaf, Wakif, Mutawalli, Wakaf Deed

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THE JAMMU AND KASHMIR WAKAFS ACT, 1978

(Act No. XI of 1978)

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THE JAMMU AND KASHMIR WAKAFS ACT, 1978

(Act No. XI of 1978)

[Received the assent of the Governor on 9th May, 1978 and is published for General information]

An Act to provide for the better administration and supervision of Wakafs in the State.

Be it enacted by the Jammu and Kashmir State Legislature in the Twenty-nine Year of the Republic of India as follows :—

CHAPTER I.

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Jammu and Kashmir Wakafs Act, 1978.

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

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

2. *Application of the Act.*—Save as otherwise expressly provided, this Act shall apply to all Wakafs whether created before or after the commencement of this Act :

Provided that nothing in this Act shall apply to any Shia Wakaf.

3. *Definitions.*—In this Act, unless the context otherwise requires,—

- (a) “beneficiary” means a person or object for whose benefit Wakaf is created and includes religious, pious and charitable object and any other object of the public utility sanctioned by the Muslim Law or usage ;
- (b) “Tehsil Committee” means a Committee established under section 7 of this Act ;
- (c) “prescribed” means prescribed by rules made under this Act ;
- (d) “Wakaf” means the permanent dedication by a person professing Islam of any property movable or immovable for any purpose recognized by Muslim Law or usage as religious, pious or charitable and includes—
 - (i) a Wakaf by user such as Masjid, Idgah, Dargah, Khankah, Maqbara, Graveyard, Grave, Rauza, Mausoleum, Takiya, Sarai, Yatim Khana, Madrasa and Shafakhana ; and

(ii) a Wakaf-ul-Aulad--

- (a) for the maintenance and support, wholly or partially of his family, children or decedents ; or
- (b) for the maintenance of the Wakaf or for the payments of his debts out of the rents and profits of the property dedicated ;

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognized by the Muslim law as a religious, pious or charitable purpose of a permanent character ;

- (iii) a grant, endowment or dedication of any property movable or immovable, made by the Government or any person or ruler for any of the aforesaid purposes ;
- (e) "Wakif" means any person making such dedications ;
- (f) "Mutawalli" means any person appointed verbally by Wakif or under any deed or instrument by which a Wakaf has been created or by a competent authority to be the Mutawalli of the Wakaf ; and
- (g) "Wakaf deed" means any deed or instrument by which a Wakaf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied.

CHAPTER II.

Survey of Wakafs.

4. *Preliminary Survey of Wakafs.*--(1) The Government may, by notification in the Government Gazette, appoint one or more special officers, as may be necessary, for the purpose of making a survey of Wakafs in any area in which this Act is in force.

(2) Such appointment may be terminated by the Government at any time for reasons to be recorded.

(3) The Special Officer shall, after making such inquiry as he may consider necessary, submit his report to the Government containing the following particulars in respect of Wakafs, namely :--

- (a) the number of Wakafs in the area ;
- (b) the nature and object of each Wakaf ;
- (c) the gross income of the property comprised in each Wakaf ;
- (d) the amount of land revenue cesses, rates and taxes payable in respect of such property ;

(c) the expenses incurred in the realization of the income and the pay or other remuneration of the Mutawalli of each Wakaf; and

(f) such other particulars relating to each Wakaf as may be prescribed.

(4) The Special Officer in making such inquiries shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, Samvat 1977 (Act X of Svt. 1977) in respect of the following matters, namely:—

(a) summoning and examining witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any court or office;

(d) issuing commissions for the examination of witnesses and accounts;

(e) making any local inspection or local investigation; and

(f) any other matter which may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular Wakaf is a wakaf within the meaning of this Act and there are clear indications in the deed of wakaf as to its nature, the dispute shall be decided on the basis of such deed.

5. *Decision of the Special Officer.*—(1) The decision of the Special Officer whether a particular property is or is not Wakaf property shall, subject to any order made by the Government on appeal, be final.

(2) Any person aggrieved by an order of the Special Officer may prefer an appeal to the Government within 60 days from the date of the order and there shall be no further appeal.

(3) Notwithstanding anything contained in any law for the time being in force and save as otherwise provided in this Act, no Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by Special Officer.

6. *Publication of the list of the Wakafs.*—(1) On receipt of a report under sub-section (3) of section 4, the Government shall after consulting the concerned committee publish the list of Wakafs in the Government Gazette.

(2) The list of Wakafs published under sub-section (1) shall, unless it is modified in pursuance of a decision of the Government in appeal, be final and conclusive.

CHAPTER III.

Wakaf Committees.

7. *Wakaf Committee and its incorporation.*—(1) The Government may, by notification in the Government Gazette, establish one or more Wakaf Committees in each Tehsil for purposes of this Act :

Provided that any Committee appointed under any law in force immediately before the commencement of this Act for any area or for one or more Wakafs in an area shall continue to function as such till a new Tehsil Committee is constituted under this Act :

Provided further that the Government may at any time before a Tehsil Committee is constituted under this Act, dissolve the Committee referred to in the preceding proviso and thereupon—

- (a) all powers and duties of the Committee, so dissolved shall until the Tehsil Committee is constituted be exercised and performed by such person as the Government may appoint in that behalf and the person so appointed shall be called the Administrator of the Wakaf Committee ; and
- (b) all property managed by the Committee shall, until the Tehsil Committee is constituted, be managed by the Administrator ; and
- (c) the Administrator so appointed may at any time be removed by the Government who shall also have the power to appoint another person in his place :

[Provided also that if on the date of commencement of this Act there is no committee or an Administrator in respect of any Wakaf, the Government may appoint any person as an Administrator who shall exercise all the powers and perform all the duties of a Tehsil Committee with respect to the said Wakaf and the appointment so made shall be subject to clause (c) of the preceding proviso].

(2) Notwithstanding anything contained in sub-section (1) if before the commencement of this Act any Wakaf is governed, managed or administered by any trust deed created in respect of that Wakaf in any area, the Managing Body by whatever name called of each such Wakaf shall be deemed to be a Tehsil Committee for such Wakaf for purposes of this Act.

(3) Notwithstanding anything contained in this Act, it shall be lawful for a Tehsil Committee to affiliate any Wakaf with the All Jammu and Kashmir Muslim Auqaf Trust and thereupon the provisions of this Act shall apply to such Wakaf in the same manner as they apply to any other Wakaf covered by such Trust.

(4) The Tehsil Committee shall be a body corporate having perpetual succession and common seal with power to acquire and hold property notwithstanding

anything contained to the contrary in any law for the time being in force and shall by the said name sue and be sued.

8. *Constitution of a Tehsil Committee.*—(1) Subject to the provisions of sub-section (2) of section 7, the Tehsil Committee shall consist of nine members, two-third of who shall be elected and one-third nominated in accordance with the provisions of this Act and the rules made thereunder.

(2) The members required to be elected for Tehsil Committee shall be elected in the prescribed manner by the members of the electoral college which shall consist of the elected Muslim members of—

- (i) Municipal Council ;
- (ii) Notified Area Committee ;
- (iii) Town Area Committee ;
- (iv) Panchayats ; and
- (v) The State Legislature ;

hailing from the Tehsil for which a Committee or Committees are to be constituted.

(3) The names of the members elected and/or nominated for a Tehsil Committee shall be notified by the Government in the Government Gazette.

(4) Notwithstanding anything contained in this Chapter, where the Government is satisfied that for some reasons to be recorded in writing, it is not reasonably practicable to constitute an electoral college provided for in sub-section (2), the Government may nominate all the members of a Tehsil Committee or Committees as the case may be.

(5) There shall be a Chairman and a Vice-Chairman of each Tehsil Committee who shall be elected by the members thereof from amongst themselves.

9. *Term of office.*—The members of a Tehsil Committee shall hold office for five years :

Provided that a member shall, notwithstanding the expiration of the term of his office, continue to hold office until the election or nomination as the case may be, of his successor is notified in the Government Gazette.

10. *Provisions not applicable to trust.*—(1) The provisions of sections 4, 9, 11, 12, 13, 14, 15, 17, 18, 20, 21 and 54 shall not apply to a Committee or members of Managing Body of any Wakaf referred to in sub-section (2) of section 7.

(2) The terms and conditions of office, procedure of election, nomination, appointment or removal of members and the functions of the Committee or

members of any Managing Body or the method or manner of achieving the objects of any Wakaf shall be regulated in accordance with the provisions of the Trust Deed under which it is created and or the rules and the Constitution if any, thereof notwithstanding anything to the contrary contained in this Act.

11. *Disqualification.*--A person shall not be qualified to be elected or nominated or the continue as a member of a Tehsil Committee--

- (a) if he is not a Muslim ;
- (b) if he is less than 21 years of age ;
- (c) if he is found to be a person of unsound mind ;
- (d) if he is an undischarged insolvent ;
- (e) if he has on any previous occasion been removed from the office of a member or has been removed by the order of the Competent Court from any position of trust either for mismanagement or other misconduct ; or
- (f) if he has been convicted of any offence under this Act or under any other law for the time being in force for an offence involving moral turpitude.

12. *Meeting of the Tehsil Committees.*--(1) A Tehsil Committee shall meet for the transaction of business at such time and places as it may determine.

(2) The Chairman or the Vice-Chairman when the former is not present, or in case of absence of both, any member chosen by the members from amongst themselves, shall preside at a meeting of the Tehsil Committee.

(3) Subject to the provisions of this Act, all questions which may come before any meeting of a Tehsil Committee shall be decided by a majority of votes of the members of the Committee and in the case of equality of votes, the Chairman or in his absence any other person presiding, shall have a second or casting vote.

13. *Functions of the Committee.*--(1) Subject to superintendence and control of the Board a Tehsil Committee shall--

- (a) ensure that Wakafs under it are properly maintained and administered in accordance with the provisions of this Act and may for that purpose, if it considers necessary, appoint a Sub-Committee for any local area in such manner and for carrying out such functions as may be prescribed ;
- (b) maintain a record containing information relating to the origin, income, object and beneficiaries of every Wakaf ;
- (c) ensure that the income and other properties of the Wakafs are applied to the objects and for the purposes for which such Wakafs were created or intended ;

- (d) propose to the Board schemes of the management for a Wakaf ;
- (e) prepare its own budget and budgets of all Wakafs within its jurisdiction and to submit the same to the Board for its approval ;
- (f) propose to the Board appointment and removal of Mutawallies in accordance with the provisions of this Act ;
- (g) take measures for the recovery of the lost properties of any Wakaf ;
- (h) institute and defend suits and proceedings in a Court of law relating to Wakafs ;
- (i) sanction leases of properties for a term not exceeding '[five years at a time] ;
- (j) call for such returns, statistics accounts and other information from the Mutawallies with respect to Wakaf property as it may from time to time, require ;
- (k) inspect or cause inspection of Wakaf properties, accounts or records of deeds and documents relating thereto ;
- (l) investigate and determine the nature and extent of Wakafs and Wakaf properties and to cause, wherever necessary, a survey of the Wakaf properties ; and
- (m) generally do all such acts as may be necessary for the maintenance and administration of Wakafs.

14. *Resignation of the Chairman and the members.*--The Chairman or any other member may resign his office by writing under his hand addressed to the Board.

15. *Removal of the Chairman and the members.*--(1) The Government may remove the Chairman or Vice-Chairman of a Committee or any member thereof, if he--

- (a) is or becomes subject to any disqualification specified in section 11 ; or
- (b) fails without excuse, to attend three consecutive meetings of the Tehsil Committee ; or
- (c) refuses to act or is incapable of acting or acts in a manner which the Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the Wakafs.

(2) Where, the Chairman of the Tehsil Committee is removed under subsection (1) he shall also cease to be a member of that Committee.

16. *Filling of a vacancy.*--When the seat of a member becomes vacant by his removal, resignation, death or otherwise a new member shall be elected or nominated, as the case may be, in his place in accordance with the provisions of this Act and in the case of a Committee or Managing Body under a trust, by that body 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.

17. *Vacancies amongst members or defect in the Constitution not to invalidate acts or proceedings of the Committee.*--No act or proceeding of Tehsil Committee shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the Constitution thereof.

18. *Appointment of staff.*--(1) The Chairman may appoint such staff for the efficient administration of the Wakaf and the Wakaf property on such salaries and allowances as may be provided in the Budget.

(2) The Chairman may fine, suspend, dismiss or remove any person appointed by him under sub-section (1) of this section.

(3) An appeal against any order made under sub-section (2) shall lie to the Board within sixty days from the date of order. The orders passed by the Board on an appeal shall be final.

19. *Public servants.*--The Chairman, Vice-Chairman, Secretary and the members of a Tehsil Committee and all persons appointed under section 18 shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code, Samvat 1989.

20. *Secretary of the Committee.*--(1) There shall be a Secretary to a Tehsil Committee, who shall be a muslim and shall be appointed by the Board with the consultation of Tehsil Committee.

(2) The Secretary shall be the Chief Executive Officer of a Tehsil Committee and shall be under its administrative control.

21. *Delegation of powers.*--A Tehsil Committee may by a general or special order in writing, delegate to the Chairman or any other member or to the Secretary or any other officer or servant of the Committee, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.

22. *Prevention of disqualification of membership of Legislature.*--It is hereby declared that the office of Chairman or Vice-Chairman, Member or Secretary or any other official of a Tehsil Committee, a Board, Board of Trustees or managing body referred to in sub-section (2) of section 7 shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of the State Legislature.

23. *Register of the Wakafs.*--A Tehsil Committee shall maintain a register of the Wakafs which shall contain in respect of each Wakaf, copies of the deeds when available and the following particulars, namely :--

- (a) the nature of the Wakafs ;
- (b) the name of the Mutawalli ;
- (c) particulars of Wakaf properties and title deeds and documents relating thereto ;
- (d) particulars of the scheme of administration ; and
- (e) such other particulars as may be prescribed.

24. *Decision of a property is Wakaf property.*--A Tehsil Committee may on its own motion or on an application made to it, collect information regarding any property which it has reason to believe to be a Wakaf property and if any question arises whether a particular property is Wakaf property or not it may after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Tehsil Committee on any question under sub-section (1) shall unless revoked or modified by the Government in appeal within sixty days of the date of decision, be final.

CHAPTER IV.

Wakaf Board.

25. *Establishment of Board of Wakafs.*--(1) There shall be established a Board of Wakafs for each province of the State which shall consist of eighteen members, two-thirds of whom shall be elected by the members of Tehsil Committee in a province from amongst themselves or from others, in such manner as may be prescribed and one-third of whom shall be nominated by the Government :

Provided that in case of Wakafs governed, managed or administered by or under any Trust Deed referred to in sub-section (2) of section 7, the Board of Trustees or the Managing body of such trust shall be deemed to be the Board for such Wakafs, within the meaning of this section notwithstanding anything contained to the contrary in this Act, and every such Board or Managing Body shall continue and function according to the provisions of the Trust Deed.

(2) The provisions of sections 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20 and 21 shall apply mutatis mutandis to the Board other than the Board referred to in the proviso to sub-section (1).

26. *Powers and duties of the Board.*--It shall be the duty of the Board to ensure that every Wakaf property within its jurisdiction deals with the

Wakaf properties and income thereof in accordance with the provisions of this Act and the rules made thereunder and for the fulfilment of this duty, the general administration, control and superintendence over all Tehsil Committees shall vest in the Board.

CHAPTER V.

Mutawallies.

27. *Mutawalli to carry out directions.*--(1) Every Mutawalli shall carry out all directions which may, from time to time, be issued to him by the Tehsil Committee or the Board in respect of the Wakaf of which he is the Mutawalli.

(2) The Mutawalli of every Wakaf shall offer every reasonable facility for the inspection of the documents and the property of such Wakaf and shall render every assistance in inquiries, when called upon to do so by the Board, the Tehsil Committee, the Chairman or the Secretary of the Board or the Tehsil Committee or any officer appointed by the Board or the Committee to make inquiries.

28. *Disqualification for appointment of a Mutawalli.*--Notwithstanding anything contained in any law, decree, order or deed, no person shall be qualified to be appointed or to continue as Mutawalli--

- (i) if he is not a muslim ;
- (ii) if he is under 21 years of age ;
- (iii) if he is a person of unsound mind ;
- (iv) if he has been convicted of an offence involving moral turpitude ;
- (v) if he is addicted to liquor, charas, opium, chandoo, bhang or any other intoxicant ;
- (vi) if he carries on a trade which is prejudicial to or inconsistent with sunna or shariat ;
- (vii) if he habitually indulges in activities which are against shariat ;
- (viii) if he is otherwise ill-reputed or of a bad character ;
- (ix) if he is unable to perform or has persistently made default in the performance of any duty imposed upon him by or under this Act or has exceeded or abused his powers under the provisions of this Act.

29. *Power to appoint Mutawallies.*--(1) When there is a vacancy in the office of the Mutawalli of a Wakaf or where any Mutawalli has incurred any of the disqualification under section 28 or where the right of any person to act as Mutawalli is disputed, the Tehsil Committee may after giving him an opportunity of being

heard appoint any person to act as Mutawalli for such period and on such conditions as it may think fit ; provided that every such removal and appointment shall be notified in the prescribed manner.

(2) For removal of doubts it is hereby declared that the removal of a person from the office of the Mutawalli shall not affect his personal rights, if any, in respect of the Wakaf property either as a beneficiary or in any other capacity if specifically provided in any document, deed or sanad creating the Wakaf.

(3) Where a Mutawalli has been removed from his office under sub-section (1) or sub-section (2), the Tehsil Committee may, by order, direct the Mutawalli to deliver possession of the Wakaf property to the Committee or any officer thereof duly authorised in his behalf or to any person appointed as Mutawalli of the Wakaf property and the order of the Tehsil Committee shall be deemed to be a decree of a Civil Court of competent jurisdiction and shall be executed by the Civil Court as if it had passed the decree.

CHAPTER VI.

Finance

30. *Finance.*—(1) The Board shall be incharge of all income of the Wakaf properties within its jurisdiction. All sums received by any Tehsil Committee shall be transferred to the Board and shall form a fund to be called ‘the Wakaf Fund’

(2) The Wakaf Fund shall be applied to—

- (a) improvement, repair and maintenance of Wakaf property including purchase of immovable property or construction of new buildings, shops and other structures whether for commercial or other purposes and expenditure both of recurring and non-recurring character necessary to be incurred in connection with such Wakaf properties ;
- (b) repayment of any loan incurred by the Board or Tehsil Committee ;
- (c) payment of the cost of audit of the Wakaf Fund and the accounts of the Wakaf Fund ;
- (d) payment of the salaries and the allowances of the Secretary and the staff of the Board and the Tehsil Committees ;
- (e) payment of the travelling allowances to the Chairman, Members, Secretary and the staff of the Board and the staff of the Committees ;
- (f) payment of all expenses incurred by the Board or Tehsil Committees in the performance of the duties imposed and in exercise of the powers conferred by or under this Act ;
- (g) propagation of knowledge particulars Islamic Law or for rendering pecuniary assistance to indigent muslim students who are unable to pursue

their studies without such assistance or for the establishment of Madressatul-Quran, Dar-ul-Alum, or for any other purpose which the Board may declare to be a religious, pious or charitable purpose; and

(h) payment of other charges as may be prescribed.

(3) The Board shall pay annually to each Tehsil Committee under its jurisdiction for the purposes of meeting lawful expenses of the Tehsil Committee a contribution in money out of the income of Wakaf property under its management.

(4) The proportion which such contribution shall bear in respect of each Tehsil Committee shall be determined by the Board.

31. *Budget of the Board.*--The Board shall prepare and pass an annual budget in the month of January showing the estimated receipts and expenditure of the Board and of each Tehsil Committee for every financial year commencing from the 1st April.

32. *Accounts.*--The Board and the Tehsil Committee shall cause to be maintained such books of accounts and other books in relation to its accounts in such form and in such manner as may be prescribed.

CHAPTER VII.

Audit

33. *Audit of accounts.*--(1) The accounts of the Board and of the Tehsil Committees shall be audited and examined annually by such auditor as may be appointed by the Government.

(2) The auditor shall submit his report to the Government and the report of the auditor shall among other things, specify all cases of irregular, illegal, improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers necessary to report and the report shall also contain the name of the 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 Wakafs Fund.

34. *The Government to pass order on auditor's report.*--The Government shall examine auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the reports as it thinks fit.

35. *Sums certified 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 33 shall,

if so decided by the Government, be paid by such person within 60 days after the service of demand for the same is issued by the Government.

(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.

36. *Money to be deposited in a Bank*.—All moneys of the Wakaf Fund shall be deposited under the name of the Board in the Jammu and Kashmir Bank Limited, or in any other nationalised or Scheduled Bank.

CHAPTER VIII

Judicial Proceedings.

37. *Institution of suits under section 2 of the Religious Endowments Act, Samvat 1977 and section 92 of the Code of Civil Procedure, Samvat 1977*.—A suit to obtain any of the reliefs mentioned in section 2 of the Religious Endowments Act, Samvat 1977 (L of Samvat 1977) and in section 92 of the Code of Civil Procedure, Samvat 1977 (X of Samvat 1977), relating to any Wakaf may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Tehsil Committee without obtaining the leave or consent referred to in those Acts.

38. *Notice by Courts*.—If in any event Wakaf property is notified for sale in execution of a decree of a Civil Court or for the recovery of any revenue, cesses rates or taxes due to the Government or any local authority, notices shall be given to the Tehsil Committee by the Court, Collector or other authority under whose order the sale is notified.

39. *Absence of notice*.—In the absence of notice under section 38, any decree or order passed or proceeding taken by any Civil Court, Collector or any other authority shall be void.

40. *Proceedings under the Land Acquisition Act, 1990*.—(1) If in the course of proceedings under the Land Acquisition Act, 1990 (X of 1990) or otherwise it appears to the Collector before an award is made that any property under acquisition is Wakaf property, a notice of such acquisition shall be served by the Collector on the Tehsil Committee and further proceedings shall be stayed to enable the Committee to appear and plead as a party to the proceedings.

(2) Where the Tehsil Committee has reason to believe that any property under acquisition is Wakaf property, it may at any time before the award is made appear and plead as a party to the proceedings.

(3) When the Tehsil Committee has appeared under the provisions of sub-section (1) or sub-section (2) no order shall be passed under section 32 or section 33 of the Land Acquisition Act, 1990 without giving an opportunity to the Committee of being heard.

(4) Any order passed under section 32 or section 33 of the Land Acquisition Act, 1990 without giving an opportunity to the Tehsil Committee to be heard, may be declared void, if the Tehsil Committee within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

41. *Committee to be made a party to a suit or proceeding regarding Wakaf on its application.*--In any suit or proceeding in respect of Wakaf or any Wakaf property by or against a stranger to the Wakaf or any other person, the Tehsil Committee may appear and plead as a party to the suit or proceeding.

CHAPTER IX

Unauthorised occupation.

42. *Unauthorised occupation.*--In this Chapter "Unauthorised occupation" in relation to a Wakaf property means the occupation by any person of the Wakaf property without authority for such occupation and includes the continuance in occupation by any person of the Wakaf property--

- (a) after the authority (whether by way of lease, mortgage or otherwise) under which he was allowed to occupy such property, has expired; or
- (b) in contravention of the provisions of sub-section (1) of section 52 of this Act.

43. *Notice of eviction.*--(1) If the Tehsil Committee is of opinion that any person is in unauthorised occupation of any Wakaf property and that he should be evicted, the Committee may make a reference to an officer appointed by the Government in this behalf (hereinafter referred to as the Authority) and that authority shall issue in the manner hereinafter, provided, a notice in writing calling upon that person to show cause why an order of eviction should not be made.

(2) The notice shall--

- (a) specify the grounds on which the order of eviction is proposed to be made; and
- (b) require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in the Wakaf property, to show cause, if any, against the proposed order on or before such date as it specified in the notice being a date not earlier than ten days from the date of issue thereof.

(3) The authority shall cause the notice to be served either personally or by having it, affixed on the outer door, or some other conspicuous part of the Wakaf property and in such other manner as may be prescribed whereupon the notice shall be deemed to have been duly given to all persons concerned.

44. *Order of eviction.*--(1) If after considering the cause, if any, shown by any person in pursuance of a notice under section 43 and any evidence he may produce

in support of the same and after giving him a reasonable opportunity of being heard, the Authority is satisfied that the Wakaf property is in unauthorised occupation, the Authority may, on a date to be fixed for the purpose, make an order of eviction for reasons to be recorded therein, directing that the Wakaf 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 Wakaf property.

(2) If any person refuses or fails to comply with the order of eviction within 15 days of the date of its service under sub-section (1), the Authority or any officer duly authorised by the Authority in this behalf, may move the Collector of the District to evict such person and thereupon the Collector shall evict that person from the Wakaf property and take possession thereof and may for that purpose, call upon the Officer-in-Charge of Police Station of the area to render assistance in evicting that person.

(3) The Collector shall, after evicting the person, deliver the possession of the property to the Tehsil Committee.

45. *Removal of movable property.*--Where any person has been evicted from any Wakaf property, under section 44, the Collector may remove or cause to be removed after having prepared an inventory thereof in presence of two respectable witnesses any movable property found therein. The Collector shall thereafter inform the person evicted about removal of the movable property and arrange to deliver it to him under receipt.

46. *Recovery of sums due.*--(1) Where any person is in arrears of any sum payable in respect of any Wakaf property, the Tehsil Committee, may by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) If any person refuses or fails to pay arrears of sum or any instalment thereof payable under sub-section (1) within the time specified in the order relating thereto, the Tehsil Committee may issue a certificate for the amount due, to the Collector who shall proceed to recovery the same as an area of land revenue.

47. *Powers of a Committee.*--A Tehsil Committee shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, Samvat 1977 in respect of the following matters, namely :--

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of documents ; and
- (c) any other matter which may be prescribed.

48. *Appeals.*--(1) An appeal shall lie from every order of the Tehsil Committee or the Collector or the Authority made in respect of any Wakaf property under

section 44 or section 45 to the Government and the period of limitation in respect of such appeal shall be 60 days.

(2) Where an appeal is preferred from an order of the Tehsil Committee or Collector or the Authority, the Government may stay the enforcement of that order for such period and on such conditions as it deems fit.

49. *Orders of Government to be final.*--Every order made by the Government under section 48 shall be final and shall not be called in question by or in any suit, application or execution proceeding.

CHAPTER X

Miscellaneous

50. *Directions of the Board.*--The Board of Wakafs may, from time to time, give to the Tehsil Committee such general or special directions as it thinks fit and in performance of its functions the Tehsil Committee shall comply with any such directions.

51. *Power to supersede Tehsil Committee.*--(1) If the Government is of opinion that a Tehsil Committee is unable to perform or has persistently made default in the performances of the duties imposed on it by or under this Act or has exceeded or abused its powers, the Government may, by notification in the Government Gazette, supersede the Committee for such period as may be specified in the notification :

Provided that before issuing a notification under this sub-section, the Government shall give a reasonable time to the Tehsil Committee to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Committee.

(2) Upon the publication of notification under sub-section (1) superseding the Tehsil Committee,--

- (a) all the members of the Tehsil Committee 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 Tehsil Committee shall, during the period of supersession be exercised and performed by such person as the Government may appoint in that behalf and the person so appointed shall be called the Administrator of the Tehsil Committee ; and
- (c) all property held by the Tehsil Committee shall, during the period of supersession be held by the Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government may reconstitute the Committee in the manner provided in Chapter III.

52. *Transfer of Wakaf property.*--¹“(1) Save as otherwise provided in this Act, no transfer of any immovable property of Wakaf by way of sale, gift or mortgage shall be made or shall be valid.

(1-a) No transfer of any immovable property by way of exchange shall be valid without the previous permission in writing of the Government”.]

(2) Any Wakaf property such as agriculture lands, orchards, ahtas, houses, shops, vacant plots, Hujaras, apartments attached to Khankahs and Sarais, ²[may be leased out by the Board with the previous approval of the Government, upto 40 years subject to such conditions including those relating to transfer of lease hold rights, as the Government may, in each individual case, impose.]

(3) The Board may transfer in the form of simple mortgage any immovable property of Wakaf other than a Wakaf by user as defined in sub-clause (i) of clause (d) of section 3 in favour of any Bank having an office for transacting the business of banking in the State, for securing loans, subject to the condition that in any suit based on such mortgage, the mortgaged property shall be sold only to a permanent resident of the State.

53. *Contracts.*--All contracts made under section 52 shall be executed by such person as the Board may authorise.

54. *Act to override other laws.*--The provisions of this Act and of the rules and orders made thereunder shall have 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 such law.

55. *Certain Acts not to apply.*--Nothing in the Jammu and Kashmir Houses and Shops Rent Control Act, 1996 shall apply to any Wakaf property to which this Act applies.

56. *Free entry of a Muslim to Wakaf property.*--Notwithstanding any custom, usage or direction of any Wakaf in respect of any use or management of any Wakaf property exclusively by any sect or school, no Muslim shall be prevented from entering any musjid, idgha, dargah, Khanakah, graveyard or rouza and performing therein his devotions according to the rituals of his own sect or school.

57. *Public servants not debarred.*--(1) Nothing in this Act shall prevent or bar any public servant from being a member of a Board or of a Tehsil Committee.

58. *Power to make rules.*--The Government may, by notifications in the Government Gazette, make rules to carry about the purposes of this Act.

1. Sub-section (1) of section 52 substituted by Act XVI of 1984, s.3.

2. Substituted *ibid* s.2.

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

- (a) the particulars which a list of Wakafs published under section 5 may contain ;
- (b) the regulation of the function of the Tehsil Committees and the Board ;
- (c) the terms and conditions of service of the Secretary and other employees of the Tehsil Committees and the Board ;
- (d) the forms in which a register of Wakafs may be maintained and the further particulars which it may contain ;
- (e) the manner in which the accounts of the Wakaf Fund may be kept and audited and the contents of the auditors report ;
- (f) the payment of money into the Wakaf Fund, the investment, custody and the disbursement of such money ;
- (g) the circumstances under which and the terms and conditions on which the Board may be allowed to borrow ;
- (h) the procedure, manner and the conditions in accordance with which the Board may obtain loans from Banks in lieu of mortgage of Wakaf property under this Act ;
- (i) person by whom orders and decisions of the Board or the Tehsil Committee may be authenticated ;
- (j) regulating the procedure for election of Chairman and Vice-Chairman, members of the Tehsil Committees, members of the Board and the members of the electoral college including the mode of recording votes and methods of setting disputed or questions arising from such elections ; and
- (k) any other matter which has to be or may be prescribed.

59. *Penalty.*--Any person contravening the provisions of this Act shall be punished with imprisonment of either description for a term which may extend to three months and with fine, not less than three hundred rupees.

60. *Powers to remove difficulty.*-- ¹[(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may by order give such direction not inconsistent with the provisions of this Act as appears to it to be necessary or expedient for removing the difficulty.

¹[(2) If any difficulty arises as to the constitution of the Board after the commencement of this Act, the Government may, notwithstanding anything

1. Section 60 renumbered as sub-section (1) as so remembered sub-section (2) inserted by Act XVI of 1984, S. 4.

contained in this Act, exercise the powers and perform the duties of the Board under this Act until the Board is constituted].

61. *Repeal and saving.*—The Jammu and Kashmir Muslim Wakafs Act, 1959 is hereby repealed:

Provided that such repeal shall not affect the previous operation of the said law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the law so repealed, shall be deemed to have been done or taken under this Act as if this Act were in force on the day on which such thing was done or action was taken.
