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PART I

GOVERNMENT OF SIND

LAW DEPARTMENT

NOTIFICATION

Karachi, the 12th April, 1979.

No. S.Legis.-1(9)/79.—The following Ordinance by the Governor of Sind is hereby published for general information:—

THE SIND WAQF PROPERTIES ORDINANCE, 1979.

SIND ORDINANCE NO. IX OF 1979

AN

ORDINANCE

to provide for the proper management and administration of Waqf Properties in the Province of Sind.

WHEREAS it is expedient to provide for the proper management and administration of waqf properties in the Province of Sind, in the manner hereinafter appearing; Preamble.

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977 and the Laws (Continuance in Force) Order, 1977, the Governor of Sind is pleased to make and promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Sind Waqf Properties Ordinance, 1979.

(2) It extends to the whole of the Province of Sind.

(3) It shall come into force from such date as may be notified by Government.

Short title.
and
commen-
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Definitions.

2. In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a) "Administrator" means an Administrator of Auqaf appointed under section 4;
- (b) "Chief Administrator" means the Chief Administrator of Auqaf appointed under section 3;
- (c) "Government" means the Government of Sind;
- (d) "prescribed" means prescribed by rules made under this Ordinance;
- (e) "waqf property" means property of any kind permanently dedicated by a person professing Islam for any purpose recognised by Islam as religious, pious or charitable, but does not include property of any waqf such as is described in section 3 of the Musalman Wakf Validating Act, 1913 (VI of 1913), under which any benefit is for the time being claimable for himself by the person by whom the waqf was created or by any member of his family or descendants.

Explanation 1.—If a property has been used from time immemorial for any purpose recognised by Islam as religious, pious or charitable, then in spite of there being no evidence of express dedication, such property shall be deemed to be waqf property.

Explanation 2.—Any property allotted in lieu or in exchange of waqf property left in India shall be deemed to be waqf property.

Explanation 3.—Any property acquired with the sale proceeds or in exchange of or from the income arising out of waqf property or from subscriptions raised for any purpose recognised by Islam as religious, pious or charitable shall be deemed to be waqf property.

Explanation 4.—The income from boxes placed at a shrine and offerings, subscriptions or articles of any kind, description or use presented to a shrine or to any person at the premises of a shrine, shall be deemed to be waqf property.

Explanation 5.—Property permanently dedicated for the purposes of a mosque, takia, khankha, dargah, or other shrine shall be deemed to be waqf property.

Explanation 6.—Relief of the poor and the orphan, education, worship, medical relief, maintenance of shrines or the advancement of any other object of charitable, religious or pious nature or of general public utility shall be deemed to be charitable purposes.

Appointment
of Chief
Administra-
tor of Auqaf.

3. (1) Government shall appoint a Chief Administrator of Auqaf for Sind and may by order, vest in him, the waqf properties situated in the Province including all rights, assets, debts liabilities and obligations relating thereto.

(2) No person shall be appointed as Chief Administrator unless he is a Muslim and possesses such qualifications as may be prescribed.

(3) The Chief Administrator shall be a corporation sole by the name of the Chief Administrator of Auqaf, Sind, and shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

(4) The Chief Administrator shall be subject to the general control of Government.

4. (1) Government may appoint an Administrator for any area and a Deputy Administrator for any district as may be specified in the notification to assist the Chief Administrator, and any Administrator or Deputy Administrator so appointed shall, subject to the general or special orders of the Chief Administrator, be competent to discharge such duties and exercise such powers of the Chief Administrator as may be assigned to him, and, while discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Chief Administrator.

Appointment of Administrator and Deputy Administrators.

(2) The Administrator or Deputy Administrator appointed under sub-section (1) shall be under the administrative control of the Chief Administrator.

5. (1) The Chief Administrator may, from time to time, with the previous sanction of Government determine the number, designation and grade of the officers and servants whom he considers necessary to employ for the purposes of this Ordinance and the amount and nature of salary, fees and allowances to be paid to each such officer and servant.

General appointments.

(2) All persons employed for the purposes of this Ordinance shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (XLV of 1860).

New section 5A inserted see slip-1

6. Every person incharge of, or exercising control over the management of, any waqf property, and every person creating a waqf after the commencement of this Ordinance, shall get such waqf property registered in such manner, within such time, and with such authority, as may be prescribed.

Registration of waqf property.

7. (1) Notwithstanding anything to the contrary contained in section 22 of the Religious Endowments Act, 1863 (XX of 1863), or any other law for the time being in force, or in any custom or usage, or in any decree, judgement or order of any court or other authority, or in any proceedings pending before any court or other authority, the Chief Administrator may, by notification, take over and assume the administrative control, management and maintenance of a waqf property:

Chief Administrator may take over waqf property by notification.

Provided that, during the life time of a person dedicating a waqf, the Chief Administrator shall not take over and assume the administration, control, management and maintenance of the waqf property, except with the consent of such person and on such terms and conditions as may be agreed upon between such person and the Chief Administrator.

Explanation.—For the purposes of this section, “control” and management” shall include control over the performance and management of religious, spiritual, cultural and other services and ceremonies (Rasoomat) at or in a waqf property.

New section 5A inserted by Ordinance of 1984, S. 2.

(2) No person shall perform services or ceremonies (Rasoomat) referred to in sub-section (1), except with the prior permission of the Chief Administrator and in accordance with such directions as may be given by him.

*Sub-Section (3) added see slip-1
Sub-Section (3) inserted see slip-2*

Eviction of persons wrongfully in possession of waqf properties.

8. If any person is in occupation of, or enters upon, or is using any immovable waqf property to the occupation or use of which, he is not entitled, or has ceased to be entitled by virtue of any provision of this Ordinance or rules made thereunder may, after being given a reasonable opportunity of showing cause against the action proposed to be taken, be summarily evicted by the Administrator with the use of such force as may be necessary, and any crop raised in such property shall be liable to forfeiture, and any building or other construction erected thereon shall, if not removed by such person after service on him of a notice by the Administrator requiring him to remove such building or construction within a period of not less than thirty days of the service on him of such notice, be liable to summary removal after the expiry of the period specified in the notice.

Power to terminate a lease or resume a tenancy for breach of conditions.

9. (1) If the Administrator is satisfied that a lessee or tenant of any immovable waqf property has committed a breach of the conditions of the lease or tenancy, the Administrator may, after giving such lessee or tenant an opportunity to appear and state his objections order the termination of lease or resumption of tenancy:

Provided that if the breach is capable of rectification, the Administrator shall not order the termination of the lease or resumption of the tenancy unless he has issued a written notice requiring the lessee or tenant to rectify the breach within a reasonable time, not being less than thirty days or more than ninety days, to be stated in the notice, and the lessee or tenant has failed to comply with such notice.

(2) Where an order terminating the lease or resuming the tenancy has been passed under the provisions of sub-section (1), the Administrator may forthwith re-enter upon the waqf property and resume possession of it, subject to the payment of compensation to be fixed by the Administrator for un-cut and ungathered crops or for the improvements, if any, that may have been made by the lessee or tenant under the terms of the lease or tenancy or with the permission of the Chief Administrator:

Provided that if the lease or tenancy be allotted to any other person, the amount of the compensation, if any, paid to the out-going lessee or tenant may be recovered from the new lessee or tenant.

Appeal and finality.

10. (1) Any person evicted under the provisions of section 8 or aggrieved by an order of termination of lease or resumption of tenancy made under section 9 may, within sixty days of such eviction or within thirty days of the order of termination of the lease or resumption of tenancy, prefer an appeal to the Chief Administrator, who may, after giving such person an opportunity of being heard, confirm, modify or vacate the order made by the Administrator under section 8 or 9.

(2) If there is no appeal against an eviction under section 8 or an order of termination of lease or resumption of tenancy made by the Administrator under section 9, the eviction, termination of lease or resumption of tenancy, as the case may be, shall be final, and when there is an appeal, the decision of the Chief Administrator in appeal shall be final.

*1. Sub-Section (3) added by Ord. IX of 1981, S.2.
2. Sub-Section (3) inserted by Ord. LIII of 1984, S.3.*

11. (1) Any person claiming any interest in any waqf property in respect of which a notification has been issued under section 7 may, within thirty days of the publication of such notification, petition to the District Court within whose jurisdiction the waqf property or any part thereof is situated, for a declaration—

Petition to District Court against notification.

(a) that the property is not waqf property;

(b) that the property is waqf property within limits stated in the petition:

Provided that, notwithstanding anything contained in any law for the time being in force, or in any custom or usage, or in any decree, judgement, or order of any court or other authority, or in any proceeding pending before any court or other authority, no such petition shall lie in respect of any interest in the income, offerings, subscriptions or articles referred to in Explanation 4 to clause (e) of section 2, or the services or ceremonies (Rasoomat) mentioned in section 7.

(2) The District Court may, for reasons to be recorded, refuse to issue any process for compelling the attendance of any witness for the purpose of examination or the production of any document or other thing if it considers that it has been made for the purpose of vexation or delay.

12. Any person aggrieved by a decision of the District Court under sub-section (1) of section 11 may, within sixty days of the order, appeal to the High Court.

Appeal against the decision of District Court.

13. Notwithstanding anything to the contrary contained in any other enactment for the time being in force, the District Court or the High Court shall not, pending disposal of a petition filed under section 11 or an appeal filed under section 12 have the power to issue temporary injunction or order restraining the Chief Administrator from taking over or assuming the administration, control, management and maintenance of property in respect of which a notification has been issued under section 7.

District Court and High Court not to issue temporary injunction or order.

14. If there is no appeal, the decision of the District Court, or when there is an appeal, the decision in appeal shall be final.

Decision of the District court under section 11 or the High Court under section 12 to be final.

15. (1) The Chief Administrator shall in respect of the waqf property for which a notification under section 7 has been issued and the gross annual income from which exceeds five thousand rupees and in other cases may, frame a scheme for the administration and development of such waqf property.

Chief Administrator to prepare scheme for the administration and development of waqf property.

(2) While framing a scheme under this section the Chief Administrator shall give effect to such wishes of the person dedicating the property as can be ascertained, and to which effect can reasonably be given.

[Subject to the provision of sub-section 2 of section (15)]

16. Government may, where it is satisfied that circumstances exist which make it necessary to sell or otherwise dispose of any waqf property in order—

Sale of waqf property by Chief Administrator and application of proceeds.

(a) to secure maximum economic benefits out of such property and to avoid loss or damage to such property; or

1. The words deleted by Sind Ord. LIII of 1984, s. 4 (i).

- (b) to serve the best public interest and public purpose for which such property was dedicated; or
- (c) to give effect to such wishes of the person dedicating the property as can be ascertained; or
- (d) in the absence of evidence of express dedication, to enable the property to be used for the purpose for which it has been used or for any purpose recognised by Islam as religious, pious or charitable; or
- (e) to provide maintenance to those who, on account of unemployment, sickness, infirmity or old age are unable to maintain themselves; or
- (f) to provide education, medical aid, housing, public facilities and services such as roads, sewerage, gas and electric power; or
- (g) to prevent danger to life, property or public health;

permit the Chief Administrator to do so and to invest the proceeds in accordance with its directions;

Proviso added see slip-1

Use of waqf property and application of income therefrom.

Chief Administrator to maintain accounts.

17. Subject to the provisions of this Ordinance, a waqf property shall be used for the purpose for which it was dedicated or has been used or for any purpose recognised by Islam as religious, pious or charitable, as the Chief Administrator may deem fit.

18. (1) The Chief Administrator shall maintain a complete record of all properties under his control and management, and shall keep accounts of income and expenditure of such properties, including expenditure on the Chief Administrator and his establishment, in such manner as may prescribed.

(2) All moneys received or realised by the Chief Administrator in respect of properties under his control and management shall form and be credited to, a fund to be called Auqaf Fund, which shall be under the control of, and operated upon by, the Chief Administrator, subject to the general supervision of Government, and shall be kept in such custody as may be prescribed.

(3) At the end of each financial year, the accounts maintained by the Chief Administrator shall be audited by such authority as may be prescribed and the Audit Report with the comments of the Chief Administrator shall be laid before Government.

Rents and lease moneys in respect of waqf property may be recovered as arrears of land revenue.

19. Any sum due as rent or lease money in respect of waqf property, the administration whereof has been taken over and assumed by the Chief Administrator, if not paid within thirty days of its having become due, may be recovered as arrears of land revenue.

Chief Administrator may call for returns, etc., and may issue instruction and direction in respect of waqf property.

20. (1) The Chief Administrator may require any person in charge of or exercising control over the management of any waqf property, the administration whereof has not been taken over or assumed by him under

1. Proviso added by Sindh Ord. LIII of 1984, S. 4(ii).

section 7 to furnish him with any return, statement, statistics or other information regarding such waqf property, or a copy of any document relating to such property, and such person shall comply with such order or direction without any delay.

(2) The Chief Administrator may issue to any person in charge of or exercising control over the management of any waqf property, the administration whereof has not been taken over or assumed by the Chief Administrator under section 7, such instructions or directions for the proper administration, control, management and maintenance of such waqf property as he may deem necessary, including directions prohibiting delivery of sermon, khutba or lecture which may contain any matter prejudicial to the sovereignty or integrity of Pakistan or calculated to arouse feelings of hatred or disaffection amongst various religious sects or groups in the country and directions prohibiting such person from indulging in party politics through sermons or lectures and the person having charge or exercising control over the management of such property shall comply with such instructions and directions.

21. Save as expressly provided in this Ordinance, no civil or revenue court or any other authority, shall have jurisdiction— Bar of jurisdiction.

- (a) to question the legality of anything done under this Ordinance by or at the instance of the Chief Administrator; or
- (b) in respect of any matter which the Chief Administrator is empowered by or under this Ordinance to determine or settle; or
- (c) to grant an injunction or other order in relation to any proceeding before the Chief Administrator under this Ordinance or anything done or intended to be done by or at the instance of the Chief Administrator under this Ordinance.

22. Every order made and every action taken under this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any document, decree or order of any court, deed, enactment or any instrument having effect by virtue of any such enactment other than this Ordinance. Effect of orders, etc., inconsistent with this Ordinance.

23. No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Ordinance or the rules made thereunder. Protection of action taken under this Ordinance.

24. (1) Whoever obstructs, or offers any resistance to, or impedes or otherwise interferes with— Offences.

- (a) any authority, officer or person exercising any power or performing any duty conferred or imposed upon it or him by or in pursuance of this Ordinance or otherwise discharging any lawful function under this Ordinance; or
- (b) any person who is carrying out the orders of any such authority, officer or person as aforesaid or who is otherwise acting in accordance with his duty in pursuance of this Ordinance;

shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

(2) Whoever disobeys or wilfully fails to comply with any requisition, instruction or direction issued by the Chief Administrator under section 20 shall be punished with fine which may extend to five hundred rupees, and with further fine which may extend to fifty rupees for every day on which the said disobedience or failure continues after the date of the first conviction.

Power to
frame rules.

25. (1) Government may frame rules for the purpose of carrying into effect the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, Government may frame rules for all or any of the following purposes, namely:—

- (a) prescribing the powers and duties of the officers appointed under this Ordinance;
- (b) regulating the delegation of any powers by the Chief Administrator to an Administrator or a Deputy Administrator;
- (c) prescribing the terms and conditions on which waqf property may be leased or let out;
- (d) regulating the manner in which schemes for administration and development of waqf properties shall be prepared;
- (e) regulating the conditions of service and conduct of the persons employed under this Ordinance;
- (f) regulating the conduct of litigation by or against the Chief Administrator;
- (g) prescribing the manner in which the accounts shall be kept;
- (h) prescribing the authority for auditing the accounts maintained by the Chief Administrator;
- (i) prescribing the syllabus and curricula for the proper education and training of Imams and Khatibs and of other employees of the Auqaf institution;
- (j) prescribing and regulating the standards, syllabi and curricula of institutions providing Islamic religious education, by whatever name called, and, where considered necessary in the public interest, the scrutiny of the accounts of such institutions; and
- (k) to appoint Advisory Committees consisting of the public representatives, Ulema and other experts.

26. Everything done or purported to have been done, action taken, liability or penalty incurred or proceeding commenced, officer appointed or person authorized, jurisdiction or power conferred, rule made or notification or order issued under the Auqaf (Federal Control) Act, 1976 (LVI of 1976), shall, on repeal of the said Act, and so far as it is not inconsistent with the provisions of this Ordinance, continue in force, and so far as may be, be deemed to have been done, taken, incurred, commenced, appointed, authorized, conferred, made or issued under this Ordinance.

Continuance
of actions,
ect., taken
under Act
LVI of 1976.

KARACHI:]

LIEUTENANT GENERAL S. M. ABBASI

Dated the 11th April,
1979.

Governor of Sind.

G. M. KOUREJO

Secretary to the Government of Sind,
Law Department.

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