

THE PUNJAB WAQF PROPERTIES ORDINANCE, 1979
(IV OF 1979)

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TEXT

¹THE PUNJAB WAQF PROPERTIES ORDINANCE, 1979

(IV of 1979)

[14th April, 1979]

An

Ordinance

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

Preamble.— WHEREAS it is expedient to provide for the proper management and administration of waqf properties in the Province of the Punjab;

NOW THEREFORE, in pursuance of the Proclamation of fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A Order I of 1977), the Governor of the Punjab is pleased to make and promulgate the following Ordinance: —

1. Short title, extent and commencement.— (1) This Ordinance may be called the Punjab Waqf Properties Ordinance, 1979.

- (2) It extends to the Province of the Punjab.
- (3) It shall come into force from the date as may be notified by the Government in the official Gazette.

2. Definitions.— 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 the provisions of section 4;
- (b) “Chief Administrator” means the Chief Administrator of Auqaf, Punjab;
- (c) “Government” means the Government of the Punjab;
- (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 includes property of any such waqf as is described in section 3 of the Mussalman Waqf 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.

¹ This Ordinance was promulgated by the Governor of the Punjab on 11th April, 1979; and, published in the Punjab Gazette (Extraordinary), dated 14th April, 1979, pages 521-A to 521-K.

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

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

Explanation 3— Property of any kind 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, khankah, 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.

3. Appointment of Chief Administrator of Auqaf.— (1) Government shall appoint a Chief Administrator of Auqaf for the Province of the Punjab 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 Muslim and possesses such qualifications as may be prescribed by Government.

(3) The Chief Administrator shall be a corporation sole by the name of the Chief Administrator of Auqaf, Punjab, 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. Appointment of Administrators and Deputy Administrators.— (1) Government may appoint an Administrator or Administrators for such area or areas and Deputy Administrators for such districts 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 when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Chief Administrator.

²[Provided that no person shall be appointed as Deputy Administrator unless he is a Muslim.]

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

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

³[Provided that no person shall be appointed as an Officer unless he is a Muslim].

(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).

6. Registration of Waqf Property.— Every person in charge, 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.

7. Chief Administrator may take over waqf property by notification.— (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 administration, control, management and maintenance of a waqf property ⁴[:]

Provided that, during the life time of a person dedicating a waqf property, the Chief Administrator shall not take over and assume the administration, control, management and maintenance of such 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.

⁵[Provided that the notification shall be served upon the management or the mutawalli and also affixed on some prominent part of the property which is sought to be taken over.]

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.

²Added by the Punjab Waqf Properties (Amendment) Ordinance, 1984 (XIII of 1984); and published in the Punjab Gazette (Extraordinary), dated 16.12.1984, s.2.

³*Ibid.*

⁴ Misprinted in the original Gazette as semi colon.

⁵Added by the Punjab Waqf Properties (Amendment) Ordinance, 1984 (XIII of 1984); and published in the Punjab Gazette (Extraordinary), dated 16.12.1984, 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.

8. Eviction of persons wrongfully in possession of waqf properties.— (1) Any person unauthorisedly entering upon occupation of any immovable waqf property or using or occupying any such property to the use or occupation whereof, by reason of any provisions of this Ordinance or any rule made thereunder, he is not entitled or has ceased to be entitled may, after being given a reasonable opportunity of showing cause against such action be summarily evicted by the Administrator, with the use of such force as may be necessary and crop raised in such property shall be liable to forfeiture, and any building or other construction erected thereon shall also, 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.

9. Power to terminate a lease or resume a tenancy for breach of conditions.— (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 uncut 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 ⁶[:]

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.

10. Appeal and finality.— (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 and the Chief Administrator 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.

11. Petition to District Court against notification.— (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 the District court within whose jurisdiction the waqf property or any part thereof is situated for a declaration—

- (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 (c) 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. Appeal against the decision of District Court.— 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.

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

14. Decision of the District Court under section 11 or the High Court under section 12 to be final.— If there is no appeal, the decision of the District Court, or when there is an appeal the decision in appeal shall be final.

15. Chief Administrator to prepare the scheme for administration of waqf property.— (1) The Chief Administrator shall, as respects the waqf property in respect of 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, settle a scheme for the administration and development of such waqf property.

(2) In the settlement of a scheme the Chief Administrator shall give effect to such wishes of the person dedicating as can be ascertained, and to which effect can be reasonably given.

16. Sale of waqf property by Chief ⁷[Administrator] and application of proceeds.— Government may ⁸[subject to the provisions of subsection (2) of Section 15,] where it is satisfied that circumstances exist which make it necessary to sell or otherwise dispose of any waqf property in order:—

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

⁹[Provided that the sale-proceeds shall first be applied for satisfying the main purpose of the waqf.]

17. Use of waqf property and application of income therefrom.— 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. Chief Administrator to maintain accounts.— (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 be 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 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

⁷ Misprinted in the original Gazette as "Administration"

⁸Added by the Punjab Waqf Properties (Amendment) Ordinance, 1984 (XIII of 1984); and published in the Punjab Gazette (Extraordinary), dated 16.12.1984, s.2.

⁹Added by the Punjab Waqf Properties (Amendment) Ordinance, 1984 (XIII of 1984); and published in the Punjab Gazette (Extraordinary), dated 16.12.1984, s.2.

Report with the comments of the Chief Administrator shall be laid before the Government.

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

20. Chief Administrator may call for returns, etc., and may issue instructions and directions in respect of waqf property.— (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 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 sermons, Khutbas or lectures which may contain any matter prejudicial to the sovereignty and integrity of Pakistan or calculated to arouse feeling 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. Bar of Jurisdiction.— Save as expressly provided in this Ordinance, no Civil Or Revenue Court or any other authority, shall have 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 for anything done or intended to be done by or at the instance of the Chief Administrator under this Ordinance.

22. Effect of orders, etc., inconsistent with this Ordinance.— 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.

23. Protection of action taken under this Ordinance.— 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.

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

- (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.

25. Power to frame rules.— (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 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 institutions in Punjab;
- (j) prescribing and regulating the standards, syllabus 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 Committee consisting of public representatives, Ulema and other experts.

26. Continuance of actions, etc., taken under Act LVI of 1976.— Everything done or purporting 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) since repealed, shall, so far as it is not inconsistent with the provisions of this Ordinance, continue in force, and so far as may be, deemed to have been done, taken, incurred, commenced, appointed, authorised, conferred, made or issued under this Ordinance.