

THE WAQFS ORDINANCE, 1962
(EAST PAKISTAN ORDINANCE NO.I OF 1962)

[19th January, 1962]

An Ordinance to consolidate and amend the law relating to the administration and management of *Waqf* properties in Bangladesh.¹

WHEREAS it is expedient to consolidate and amend the law relating to the administration and management of *Waqf* properties in Bangladesh;

NOW, THEREFORE, in pursuance of the Presidential Proclamation of the seventh day of October, 1958, and having received the previous instructions of the President, the Governor is pleased, in exercise of all powers enabling him in that behalf, to make and promulgate the following Ordinance, namely:-

CHAPTER I

Short title, extent and commencement

1. (1) This Ordinance may be called the ²[* * *] *Waqfs* Ordinance, 1962.
- (2) It extends to the whole of Bangladesh.
- (3) It shall come into force at once.

Definitions

2. In this Ordinance, unless there is anything repugnant in the subject or context,-

- (1) "Administrator" means the Administrator of *Waqfs* appointed under section 7;
 - (2) "beneficiary" means any person entitled to receive any pecuniary or other material benefits from a *waqf* and includes any institution, such as mosque, shrine, *dargah*, *khanquah*, school, *madrasah*, *idgah* or graveyard entitled to receive any such benefits;
 - (3) "benefit" does not include any benefit which a *mutawalli* is entitled to claim solely by reason of his being such *mutawalli*;
 - (4) "Committee" means the *Waqfs* Committee established under section 19;
 - ³[(4A) "Deputy Commissioner" shall include Additional Deputy Commissioner]
 - (5) "enrolment" means the enrolment of a *waqf* under section 47;
 - (6) "mutawalli" means any person appointed either orally or under any deed or instrument by which a *waqf* has been created or by a competent authority to be the *mutawalli* of a *waqf*, and includes a *naib mutawalli*, any other person appointed or entrusted by a *mutawalli* to perform the duties of a *mutawalli*, the guardian of a *mutawalli* who is a minor or of unsound mind and any person or committee for the time being managing or administering any *waqf* property as such.
- Explanation. A Receiver appointed under the provisions of the Code of Civil Procedure, 1908, or under section 145 or 146 of the Code of Criminal Procedure, 1898, to manage or administer a *waqf* property, or a Common Manager managing any *waqf* property under the provisions of any law for the time being in force, shall be deemed to be a *mutawalli* for the purposes of this Ordinance;
- (7) "net available income" of a *waqf* means the income as determined from time to time, in the manner prescribed by the rules;
 - (8) "person interested in a *waqf* " includes a beneficiary and any person who has a right to worship or to perform any religious rite in a mosque, *idgah*, *imambarah*, *dargah*, *maqbara* or other religious institution and establishment connected with the *waqf* or to participate in any religious or charitable institutions under the *waqf*;
 - (9) "stranger to *waqf* " means a person other than a person interested within the meaning of clause (8);
 - (10) "*waqf*" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by Muslim Law as pious, religious or charitable, and includes any other endowment or grant for the aforesaid purposes, a *waqf* by user, and a *waqf* created by a non Muslim.

Explanation. When more than fifty per cent of the net available income of a *waqf* is exclusively applied for religious and charitable purposes, such a *waqf* shall be deemed to be a public *waqf* within the meaning of clause (e) of sub-section (1) of section 85 of the ⁴[* * *] Non-Agricultural Tenancy Act, 1949 and shall be deemed to be a trust for public purposes

of a charitable or religious nature within the meaning of section 92 of the Code of Civil Procedure, 1908, ⁵[* * *];

(11) "*waqf deed*" means any deed or instrument by which a *waqf* has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication has been varied;

⁶[(11a) "*waqf estate*" means the totality of immovable properties, as well as movable properties, in respect of which the *waqf* is made by a deed; and no *waqf* property shall be designated as *waqf estate* if it consists of only movable properties;]

(12) "*waqf property*" includes property of any kind acquired with the sale proceeds of, or in exchange of, or from the income arising out of, *waqf* property, and all offerings made, or charities consecrated or contributed, on or to *waqf* property; and

(13) "*waqif*" means any person creating a *waqf*.

Application

3. This Ordinance shall apply to all *waqfs*, whether created before or after the commencement of this Ordinance, and to any part of the property which is situated in Bangladesh.

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4. [Exemption of certain *waqf* property.- Omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No.VIII of 1973).]

Power to exempt *waqfs* from the operation of this Ordinance

5. The Administrator may, with the previous sanction of the Government, and subject to rules made by the Government in this behalf, exempt any *waqf* from all or any of the provisions of this Ordinance.

Survey of *waqf* properties

6. (1) The Administrator shall cause a survey to be made of all *waqf* properties existing at the date of the commencement of this Ordinance in such manner as may be prescribed by the rules, and, for this purpose, may appoint such persons as may be necessary, who shall, on completion of the survey, submit to the Administrator a report containing such particulars as may be prescribed by the rules.

(2) On receipt of the report under sub section (1), the Administrator shall take such action as he may deem necessary under Chapter IV of this Ordinance for the enrolment of the *waqfs*.

Record-of-Rights, separate *khatian*, etc

⁷[6A. (1) Any immovable property belonging to any *waqf* estate shall be recorded in the record-of-rights in the name the *waqf*, and shall be represented by the designation of *mutawalli*, Receiver or Administrator, as the case may be.

(2) The personal name of any *mutawalli*, Receiver or Administrator shall not be stated in the record-of-rights.

(3) Notwithstanding anything contained in any other law for the time being in force, the Revenue Officer shall record the *waqf* estate in a separate *khatian*.

Explanation.- Revenue-officer as referred to in this sub-section means the Revenue-officer as defined in section 2(24) of the State Acquisition and Tenancy, Act 1950 (Act No.XXVIII of 1951).

(4) If any immovable property belonging to any *waqf* estate is not recorded in accordance with the provisions of this section, the Administrator shall take immediate steps for correction of the record-of-rights.]

CHAPTER II

APPOINTMENT OF ADMINISTRATOR OF WAQFS, OFFICERS AND STAFF, AND CONSTITUTION OF COMMITTEE

The Administrator of *Waqfs*

Appointment of the Administrator

7. (1) The Government shall appoint an Administrator of *Waqfs* ⁸[for Bangladesh].

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

(3) The Administrator shall ordinarily be appointed for five years, and shall be eligible for re appointment.

Terms and conditions of service of the Administrator

8. Subject to the provisions of this Ordinance, the salary and the terms and conditions of service of the Administrator shall be such as may be prescribed by the rules.

Removal of the Administrator

9. If at any time it appears to the Government that the Administrator has shown himself to be unsuitable for his office, or has been guilty of misconduct or neglect which renders his removal expedient, it may, by notification in the official Gazette, declare that the Administrator shall cease to hold such office.

Administrator to be a public officer

10. The Administrator shall be deemed to be a public officer within the meaning of the Code of Civil Procedure, 1908.

Administrator to be a Corporation sole

11. The Administrator shall be a corporation sole by name of "the Administrator of *Waqfs*, Bangladesh" and shall have perpetual succession and an official seal and shall by the said name sue and be sued.

Office of the Administrator

12. The office of the Administrator shall be situated at Dacca.

Appointment of Deputy and Assistant Administrators

13. The Government may, in consultation with the Administrator, appoint such number of Deputy Administrators and Assistant Administrators as may be deemed necessary.

Remuneration of the Deputy Administrators and Assistant Administrators

14. The salaries, and the terms and conditions of service, of the Deputy Administrators and Assistant Administrators shall be such as may be prescribed by the rules.

Other Officers and Servants

Strength and remuneration of staff

15. The Administrator, with the previous sanction of the Government, may, from time to time, determine the number, designations and grades of other officers and servants whom he considers necessary to employ for the purposes of this Ordinance and the amount and nature of the salary, fees and allowances to be paid to each such officer and servant.

Service condition of the officers and servants

16. The conditions of service of the officers and servants mentioned in section 15 shall be such as may be prescribed by the rules.

Power of appointment, etc, vested in the Administrator

17. The power of appointing, promoting and granting leave to officers and servants mentioned in section 15 and reducing, suspending or dismissing them for misconduct, shall be vested in the Administrator:

Provided that any such officer or servant in receipt of a monthly salary exceeding one hundred and fifty taka, who is reduced, suspended or dismissed by the Administrator, may appeal to the Government whose decision shall be final.

Travelling allowances

18. There shall be paid to Administrator, Deputy Administrators, Assistant Administrators and other officers and servants allowances for journeys undertaken in the discharge of their duties under this Ordinance at such reasonable rates as may, from time to time, be determined by the Government.

The Committee

Establishment of the *Waqf* Committee

19. The Government shall establish a Committee to be called the *Waqfs* Committee for assisting and advising the Administrator in administering the *waqfs* and their funds and in the exercise and performance of his powers and duties in accordance with the provisions of this Ordinance.

Constitution of Committee

20. (1) The Committee shall consist of the Administrator as Chairman and ten members to be appointed by the Government of whom one shall be a *mutawalli* of Shia sect, and three shall be *mutawallis* of the Sunni sect, and the remaining six shall be from among the prominent, respectable and benevolent citizens of the Muslim community, well versed in Muslim Law.

(2) The names of the members of the Committee, when appointed, shall be published by the Government in the official Gazette.

Term of Office of Members

21. (1) Every member of the Committee shall hold office for a term of five years, and shall, if otherwise qualified, be eligible for reappointment on the expiry of his term of office.

(2) A member of the Committee, notwithstanding the expiry of his term of office, shall continue to hold office until the vacancy caused by the expiry of the said term has been filled.

(3) If any *mutawalli*, who is, as such, a member of the Committee, ceases to be a *mutawalli*, the Government shall, by notification in the official Gazette, declare his place to be vacant.

Removal of Members

22. (1) The Government may, by notification in the official Gazette, remove any member of the Committee, if he-

(a) refuses to act or becomes incapable of acting as a member of the Committee;

(b) is declared insolvent;

(c) has been or is convicted of any such offence or has been or is subjected by a criminal Court to any such order which, in the opinion of the Government, renders him unfit to continue as a member of the Committee; or

(d) is absent without the permission of the Committee from more than three consecutive meetings of the Committee.

(2) The Government may fix a period during which any person so removed shall not be eligible for reappointment.

Resignation of Members

23. A member of the Committee may resign his office by giving notice in writing to the Government, and, on such resignation being accepted, shall be deemed to have vacated his office.

Casual vacancies

24. When the place of a member of the Committee is declared vacant under sub section (3) of section 21 or becomes vacant by his removal under section 22 or resignation under section 23, or by death, a new member shall be appointed in the manner provided in section 20 and 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:

Provided that no act of the Committee shall be deemed to be invalid by reason only that the number of members of the Committee at the time of the performance of such act was less than the number provided in section 20.

Quorum and President at meetings of the Committee

25. (1) The presence of at least four members of the Committee shall be necessary to form a quorum at a meeting of the Committee.

(2) The Administrator, or, in his absence, a member elected by the members present at a meeting of the Committee, shall preside at every meeting of the Committee, and shall have a second or casting vote in all cases of equality of votes.

Allowance to Members for journeys

26. There shall be paid to each member of the Committee, allowances for journeys undertaken in the discharge of their duties under this Ordinance at such reasonable rates as may, from time to time, be determined by the Government.

CHAPTER III

POWERS AND FUNCTIONS OF THE ADMINISTRATOR AND THE COMMITTEE

General powers and functions of the Administrator

27. Subject to the provisions of this Ordinance and the rules made thereunder the powers and functions of the Administrator shall include-

- (a) investigating and determining the nature and extent of *waqfs* and *waqf* properties, and calling, from time to time, for accounts, returns and information from *mutawallis*;
- (b) ensuring that the *waqf* properties and income arising therefrom are applied to the objects, and for the purposes and for the benefit of any class of persons for which such *waqfs* were created or intended;
- (c) giving directions for the proper administration of *waqfs*;
- (d) managing himself, or through the officers and servants employed under this Ordinance or persons authorised by him, any *waqf* of which he may take or retain charge under this Ordinance and doing all such acts as may be necessary for the proper control, administration and management of any such property;
- (e) fixing the remuneration of a *mutawalli*, where there is no provision for such remuneration in the *waqf* deed;
- (f) investing any money received as compensation for the acquisition of *waqf* properties under any law for the time being in force, by himself or by issuing directions for proper investment by the *mutawalli*; and
- (g) generally doing all such acts as may be necessary for the due control, maintenance and administration of *waqfs*.

General powers and functions of the Committee

28. Subject to the provisions of this Ordinance and the rules made thereunder, the powers and functions of the Committee shall include-

- (i) in the absence of any directions by the waqif or any lawful authority, declaring what proportion of the income or other property of the *waqf* shall be allocated to any particular object of the *waqf*;
- (ii) declaring in what manner any surplus income of a *waqf* shall be utilised;
- (iii) settling, altering or revising schemes for the proper administration of a *waqf* in a manner not inconsistent with the terms and conditions of the *waqf* deed or the wishes of the waqif; and
- (iv) exercising and performing such other powers and duties as are expressly conferred or imposed on the Committee by or under this Ordinance.

The Administrator and the Committee to carry out purposes of *waqfs* but Administrator may revise inoperative provisions

29. The Administrator and the Committee, in exercising their powers and functions under this Ordinance in respect of the *waqf*, shall act in conformity with the directions of the waqif, the purposes of the *waqf*, and any custom or usage relating to *waqfs* under the Muslim Law: Provided that, in furtherance of the objects of the *waqf* or in the interest of the beneficiaries, the Committee may revise any provision in the *waqf* deed which has become inoperative or impossible of execution owing to the efflux of time or changed conditions.

Exercise of Committee's powers by Administrator

30. (1) All decisions and actions of the Committee shall be given effect to by orders passed by the Administrator.

(2) The Committee may, from time to time, authorise the Administrator to exercise and perform any of the powers and duties conferred or imposed on the Committee by or under this Ordinance.

(3) The powers vested in the Committee under this Ordinance, shall, when there is no Committee or when the Committee cannot function for any reason, be exercisable by the Administrator.

Powers and duties of the Deputy Administrators and Assistant Administrators

31. The Deputy Administrator and the Assistant Administrator shall, subject to the control of the Government and of the Administrator, be competent to discharge such duties and exercise such powers of the Administrator under this Ordinance or the rules made thereunder as may be assigned and delegated to him by the Administrator by notification in the official Gazette with the prior approval of the Government.

Magistral powers of Administrator and others

⁹[31A. (1). The Administrator shall have such powers of an Executive Magistrate as may be necessary for due administration, management, maintenance and protection of properties of a *waqf* estate.

(2) The Administrator may, with prior approval of the government, by notification in the official Gazette, delegate to any Deputy Administrator and Assistant Administrator such of his powers of an Executive Magistrate as he may deem necessary for due administration, management, maintenance and protection of properties of *waqf* estate.

(3) The magistral powers of the Administrator, Deputy Administrator and Assistant Administrator may extend all over the country, and while exercising the powers of an Executive Magistrate under this section within the territorial jurisdiction of a particular district, the Administrator shall be deemed to be a District Magistrate of that District and a Deputy Administrator or Assistant Administrator shall be deemed to be an Executive Magistrate of that District.

(4) While exercising the powers of Executive Magistrate under this section within the territorial jurisdiction of a particular district or metropolitan area the Administrator, Deputy Administrator and Assistant Administrator, may, if necessary, ask for assistance of police and district Administration of that district or metropolitan area, as the case may be, and, if so asked for, such assistance shall be provided.]

Removal of *mutawalli* in certain cases and his liability for breach of trust

32. (1) Notwithstanding anything contained elsewhere in this Ordinance or in any other law for the time being in force, the Administrator may, on his own motion or on an application of any ¹⁰[beneficiary], remove a *mutawalli*-

(i) for breach of trust, mismanagement, malfeasance or misappropriation; or

(ii) for any act of the *mutawalli* causing loss of *waqf* property or affecting the proper administration, control or preservation of the *waqf*; or

(iii) if the *mutawalli* has been convicted more than once under section 61 of this Ordinance; or

(iv) if the existing *mutawalli* is found unsuitable, incompetent, negligent or otherwise undesirable:

Provided that no such order for removal of a *mutawalli* shall be made without giving him an opportunity of being heard.

(2) A *mutawalli* aggrieved by an order under sub-section (1) may, within three months from the date of communication of such order, appeal to the District Judge against such order of removal:

Provided that no appeal shall lie against an order under sub section (1) unless the *mutawalli* has made over charge of the *waqf* to the new *mutawalli* appointed under sub-section (4).

(3) A revision from every order passed in appeal by the District Judge under sub section (2), if presented within ninety days from the date of such order, shall lie to the ¹¹[High Court Division], whose decision shall be final.

(4) When a *mutawalli* has been removed, or when a *mutawalli* has resigned and his resignation has been accepted, the Administrator may appoint a new *mutawalli* to whom the outgoing *mutawalli* shall make over possession and charge of management of the *waqf* property together with the cash and all papers relating thereto by such date as may be specified by the Administrator.

(5) If an outgoing *mutawalli* fails or refuses to make over possession and charge of management of the *waqf* property together with the cash and all papers relating thereto to the succeeding *mutawalli* under sub section (4), the succeeding *mutawalli* or the Administrator may apply to the Deputy Commissioner who shall evict the outgoing *mutawalli* and make over possession of the *waqf* property together with the cash and all papers relating thereto to the succeeding *mutawalli* or the Administrator, as the case may be.

(6) When a *mutawalli* commits a breach of trust or does any wrongful act causing loss to the *waqf* property, he shall be liable to make good the loss sustained by the *waqf* property or its beneficiaries.

Power of the Administrator to transfer *waqf* property

33. Notwithstanding anything contained elsewhere in this Ordinance or in any other law for the time being in force or in any *waqf* deed or in any contract, the Administrator may, with the previous sanction of the Government, transfer any part of a *waqf* property by sale, mortgage, exchange or lease if he considers it necessary for the improvement and benefit of the *waqf*.

Administrator may take over *waqf* property by notification

34. (1) Notwithstanding anything contained elsewhere in this Ordinance, or in any other law for the time being in force, or in any decree or order of any Court, or in any deed or instrument, the Administrator may, by notification in the official Gazette, take over and assume the administration, control, management and maintenance of any *waqf* property, including any *Shrine*, *dargah*, *imambara* or other religious institution appertaining to such *waqf* property.

(2) As soon as may be after the publication of the notification under sub section (1), the Administrator shall cause a notice to be served on the *mutawalli* of the *waqf* property specified in such notification requiring him to make over, by a specified date, the possession of the *waqf* property together with all papers relating thereto; and if the *mutawalli* fails to make over possession by the specified date, the Administrator may apply to the Deputy Commissioner who shall evict the *mutawalli* and make over the possession of the *waqf* property to the Administrator.

(3) The Administrator may manage the *waqf* property taken over by him under sub section (1) through any officer subordinate to him or by an agent or official *mutawalli* or, if he considers necessary, by appointing a managing committee in the case of a shrine, *dargah*, *imambara* or other religious institutions.

(4) If a managing committee is appointed under the provisions of sub section (3), the *mutawalli* of the *waqf* property concerned, the manager or *Sajjada nashin*, if there be one, and the Deputy Commissioner or his representative, shall be among the members thereof; and the President and the Secretary of each such committee shall be appointed by the Administrator from among the members of the committee.

(5) The officer or agent or official *mutawalli* or the managing committee appointed under sub section (3) for the management of any *waqf* property taken over by the Administrator under sub section (1), shall frame a scheme for the administration of such *waqf* property as nearly as possible in conformity with the wishes of the *waqif* and the terms and conditions of the *waqf* and in accordance with the provisions of this Ordinance subject to the approval of the Administrator who may make such modifications in the scheme as he considers necessary.

(6) The Administrator shall maintain a complete record of all *waqf* properties taken over by him under sub section (1), and shall keep accounts of income and expenditure of such property including the expenditures on the administration and his establishment for such purpose, in such manner as may be prescribed; and all moneys received or realised by the Administrator in respect of such properties under his control and management shall be credited to the *Waqf* Fund.

Petition and appeal against notification or order by Administrator

35. (1) The *mutawalli*, or any person claiming any interest in the property in respect of which a notification has been issued under sub section (1) of section 34, may, if aggrieved by such notification, submit a petition within three months of the publication of such notification or of the passing of such order, to the District Judge within whose jurisdiction such *waqf* property or a part thereof is situated, for a declaration,-

(a) that the property is not a *waqf* property; or

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

(2) The District Judge may pass such order as he thinks fit after hearing the parties, or he may, for reasons to be recorded in writing, refuse to issue any process for compelling the attendance of any witness or the production of any document, if he considers that the petition has been made for the purpose of vexation and delay, and dismiss the petition summarily.

(3) Any person aggrieved by the decision of the District Judge under sub section (2) may, within sixty days of the order, appeal to the ¹²[High Court Division].

(4) The decision of the District Judge, or when there is an appeal, the decision of the ¹³[High Court Division], shall be final.

Exercise of powers through Deputy Commissioners, or others

36. Subject to any rules made in this behalf, the Administrator may exercise any of the powers conferred on him by this Ordinance through the Deputy Commissioners of the districts in which the *waqf* property concerned is situated or through any other person whom he may appoint for such purpose and may, from time to time, delegate any of his powers to such Deputy Commissioners or other persons as aforesaid and may, at any time, revoke such delegation.

Application for enquiry or audit of accounts

37. Any person interested in a *waqf* may make an application, supported by an affidavit, to the Administrator to institute an enquiry relating to the administration of a *waqf* or for examination and audit of the accounts of a *waqf*; and the Administrator, on receipt of such application and on being satisfied from facts set forth in the affidavit that there are reasonable grounds for believing that the affairs of the *waqf* are being mismanaged, shall take such action thereon as he thinks fit:

Provided that an application for the examination and audit of accounts shall not be made in respect of accounts relating to a period more than three years prior to the date of such application.

Power of the Administrator for the purpose of an enquiry under this Ordinance

38. (1) For the purpose of any enquiry under this Ordinance, the Administrator shall have the power to summon and enforce the attendance of persons and witnesses including the parties interested, to examine them, to compel the production of documents, and to issue commissions for the examination of witnesses, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

(2) The Administrator shall be deemed to be a public servant for the purposes of section 188 of the ¹⁴[* * *] Penal Code and Civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

Protection of *waqfs* from mismanagement

39. If after making an enquiry under section 37 the Administrator is of opinion that the affairs of any *waqf* have been mismanaged to such an extent as to make it desirable, for the protection of the *waqf* property or in the interest of the beneficiaries, that the *waqf* should be subjected to greater control and supervision, he may take over and assume the administration, control, management and maintenance of such *waqf* property under the provisions of section 34, or he may subject the *waqf* property to such provisions of this Ordinance for such specified period as he deems fit.

Power of *mutawalli* to apply for directions

40. (1) Any *mutawalli* may apply to the Administrator for the opinion, advice or direction of the Administrator on any question affecting the management or administration of the *waqf* property or on any point in a deed of *waqf* requiring clarification and the Administrator shall give his opinion, advice or direction, as the case may be, thereon:

Provided that, if the Administrator cannot suitably dispose of the question, he may refer the *mutawalli* to the Court of the District Judge having local jurisdiction over the place where the *waqf* property or any part thereof is situated; and if the *mutawalli* thereafter applies by petition to such Court, the Court shall give its opinion, advice and direction in the manner provided in sub sections (2) and (3).

(2) The Administrator on receiving a petition under sub section (1) may either give his opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed to be served on such of the persons interested in the *waqf*, or to be published for information, in such manner as he thinks fit.

(3) On any date fixed under sub section (2) or on any subsequent date to which the hearing may be adjourned, the Administrator, before giving any opinion, advice or direction, shall offer a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) Every *mutawalli* acting upon or in accordance with the opinion, advice or direction given by the Administrator or the Court, as the case may be, shall be deemed, so far as his own responsibility is concerned, to have discharged his duties as a *mutawalli* in the matter in respect of which the petition was made:

Provided that nothing herein contained shall indemnify any *mutawalli* for any act done in accordance with such opinion, advice or direction if such *mutawalli* has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

Creation of Reserve Fund

41. For the purpose of making provision for the payment of rent, rates and taxes due to Government or to any local authority and for the discharge of the expenses of repairs of the *waqf* property and for the preservation of the *waqf* property, Administrator may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a *waqf*.

Power to pay dues in case of default by *mutawalli*

42. (1) Where a *mutawalli* refuses to pay or does not pay any rates and taxes due to the Government or any local authority, the Administrator may discharge the dues from the "Waqf Fund", and then proceed to recover the same from the *waqf* property and may also recover damages at twelve and a half per cent of the dues from the *mutawalli*.

(2) Any sum of money due under sub section (1) shall be recoverable as a public demand under the ¹⁵[* * *] Public Demands Recovery Act, 1913.

Power to appoint a *mutawalli* in certain cases

43. In the case of any *waqf* of which there is no *mutawalli* or where there appears to the Administrator to be an impediment to the appointment of a *mutawalli* in terms of the deed of *waqf* or where the successor to the office of *mutawalli* is a minor, a person of unsound mind or a person adjudged insolvent by a competent Court of law, the Administrator may, for such period as he deems fit, appoint a person to act as *mutawalli* with notice to all the persons interested in the *waqf*. Any person aggrieved by such an appointment may, within three months from the date of the receipt of the notice, appeal to the District Judge; and the decision of the District Judge shall be final.

Appointment of official *mutawalli*

44. Notwithstanding anything contained in this Ordinance or in any other law for the time being in force or in any deed or instrument, the Administrator may, where considered necessary, appoint an official *mutawalli* on such terms and conditions as to remuneration and other matters as the Administrator thinks fit for the Administration and management of a *waqf* property and institution attached thereto.

Inspection of records and granting of copies

45. (1) The Administrator may grant inspection and copies of proceedings or other records of his office on payment of such fees as may be prescribed by him and subject to such conditions as he may determine. Copies shall be certified by the Administrator or by such officer as may be authorised in that behalf by the Administrator in the manner provided in section 76 of the Evidence Act, 1872.

(2) Any beneficiary or other person interested in a *waqf* shall be entitled, with the permission of the Administrator, to inspect and obtain copies of such proceedings or other records relating to the *waqf*.

(3) The Administrator at his discretion may allow a stranger to a *waqf* to inspect and obtain copies of such proceedings or other records relating to the *waqf*.

Extension of time for performance of an act

46. The Administrator may, from time to time, extend the time within which any act is required or ordered to be done by or under this Ordinance.

CHAPTER IV

ENROLMENT OF WAQFS

Enrolment of *waqfs*

47. (1) All *waqfs* existing at or created after the commencement of this Ordinance shall be enrolled at the office of the Administrator.

(2) An application for enrolment shall be made by the *mutawalli*:

Provided that any person interested in a *waqf* may apply for such enrolment.

(3) An application for enrolment shall be made in such form and manner and at such place as the Administrator may prescribe and shall obtain the following particulars as far as possible:

(a) a description of the *waqf* properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of rents, rates and taxes annually payable in respect of the *waqf* properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the *waqf* properties based on such details as are available;

(e) the amount set apart under the *waqf* for-

(i) the salary of the *mutawalli* and allowances to individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes; and

(f) any other particulars prescribed by the Administrator.

(4) Every such application shall be accompanied by a true copy of the *waqf* deed or, if no such deed has been executed, or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the *waqf*.

(5) The Administrator shall, on receipt of every application for enrolment and before enrolling any property therein as *waqf* property, send a copy of the application to the Deputy Commissioner of the district in which the property is situated and ascertain from him whether such property is the *khas* property of the Government. If the Deputy Commissioner objects to the enrolment on the ground that the said property belongs to the Central or the Government, the applicant shall be informed accordingly and, unless the applicant can produce a decision of the Civil Court to the contrary, the application for enrolment shall be rejected.

(6) Where an application for enrolment has not been rejected under sub section (5), the Administrator may, before enrolling the *waqf*, make such further enquiries as he thinks fit in respect of the genuineness and validity of the application, and the correctness of any particulars therein; and when the application is made by any person other than the person administering the *waqf* property the Administrator shall, before enrolling the *waqf*, give notice of the application to the person administering the *waqf* property and shall hear him if he desires to be heard.

(7) In the case of *waqfs* created before the date on which this Ordinance comes into force, the application for enrolment shall be made within three months from that date, and in case of *waqfs* created after that date within three months from the date of the creation of the *waqf*:

Provided that, in the case of a testamentary *waqf*, the application for enrolment shall be made within three months from the date on which this Ordinance comes into force or from the date of the death of the testator, whichever event happens later.

(8) Every application made under sub section (2) shall be written in the English or Bengali language and shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908, for the signing and verification of pleadings.

(9) If the applicant omits or refuses on notice to sign or verify the application, a note to that effect shall be made in the register maintained under section 48.

Register of waqfs

48. The Administrator shall maintain a register of *waqfs* which shall contain in respect of each *waqf* copies of the *waqf* deeds and the following particulars:-

(a) the name of the *mutawalli*;

(b) the rules of succession to the office of *mutawalli* under the *waqf* deed or by custom or usage;

(c) particulars of all *waqf* properties, and all title deeds and documents relating thereto;

(d) particulars of the scheme of administration and the scale of expenditure at the time of enrolment; and

(e) such other particulars as the Administrator may prescribe.

Power to cause enrolment of waqf and to amend register

49. The Administrator, on his own motion or on the petition of any person interested, verified in the manner referred to in sub section (8) of section 47, may direct a *mutawalli* to apply for the enrolment of a *waqf* or to supply any information regarding a *waqf*, or may himself collect such information, and may cause any *waqf* to be enrolled, or may at any time amend the register of *waqfs*.

Decision if a property is waqf property

50. Any question whether a particular property is *waqf* property or not shall be decided by the Administrator:

Provided that the *mutawalli* or any person aggrieved by any decision or order of the Administrator in this behalf may, within three months from the date of such decision or order, submit a petition to the District Judge in accordance with the provision of sub section (1) of section 35; and if such a petition is filed, the provisions of section 35 shall apply.

Notification of changes in enrolled waqfs

51. (1) In the case of any change in the management of an enrolled *waqf* due to the death, retirement or removal of the *mutawalli*, the prospective *mutawalli* who is eligible or who considers himself to be eligible to succeed to the office of *mutawalli* in terms of the *waqf* deed or according to the custom or usage of the *waqf*, shall forthwith, and any other person may, notify the change to the Administrator.

(2) In the case of any other change in any of the particulars mentioned in section 47, the *mutawalli* shall, within six months from the occurrence of the change, notify such change to the Administrator.

CHAPTER V

WAQFS ACCOUNTS

Submission of accounts of waqfs

52. (a) Before the fifteenth day of September next following the date on which the application referred to in section 47 has been made and thereafter before the fifteenth day of July in every year, every *mutawalli* of a *waqf* shall prepare and furnish to the Administrator a full and true statement of accounts, in such form and language and containing such particulars as may be prescribed by the Administrator, of all moneys received or expended by the *mutawalli* on behalf of the *waqf* during the period of twelve months ending on the thirtieth day of June or on the last day of the Bengali year, or, as the case may be, during that portion of the said period during which the provisions of this Ordinance have been applicable to the *waqf*.

(b) Such statement shall also contain the following particulars-

(i) any change which may have taken place since the application for enrolment or since the submission of the last annual statement, as the case may be, in the extent, nature or quality of the *waqf* properties including transfer, acquisition or transaction affecting such properties;

(ii) the amount of the liabilities, if any, of the *waqf* on account of outgoings such as rent, rates, taxes, salaries and allowances and on account of all other matters; and
(iii) any other particulars which the Administrator may require.

(c) In the case of a Receiver appointed by any Court in any suit or proceeding in respect of a *waqf* property he shall submit a statement of accounts to the Administrator under the provisions of this section in addition to the statements that may be submitted by him to the Court.

Audit of accounts of *waqfs*

53. (1) The accounts of *waqfs* submitted to the Administrator under section 52 shall be audited and examined annually or at such other intervals as the Administrator may determine by an auditor appointed by the Administrator.

(2) The auditor may, by written notice, require the production before him of any document, or require the attendance before him of any person responsible for the preparation of the account, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of his audit.

(3) After completing the audit, the auditor shall submit a report to the Administrator: Provided that the auditor may submit an interim report at any time if he thinks fit.

(4) The report of the auditor shall, among other things, specify the cases of irregular, illegal or improper expenditure or of failure to recover money or other property lost by neglect or misconduct, loss of any property or money, and any other matter which the auditor considers it necessary to report. 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 case, certify the amount of such expenditure or loss as due from such person.

(5) The cost of the audit of the accounts of a *waqf* including the travelling allowance of the auditor shall be paid from the *Waqf* Fund.

Explanation.- For the purposes of this section and sections 54 and 55, an "auditor" shall include an Inspector and any other person or officer authorised by the Administrator to audit and examine the accounts of a *waqf*.

Administrator to pass orders on auditor's report

54. The Administrator shall examine the 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 report as he thinks fit.

Sums certified due recoverable as public demand

55. (1) Every sum certified to be due from any person by an auditor in his report under section 53, unless such certificate is modified or cancelled by the Administrator by an order made under section 54, 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 Administrator.

(2) If such payment is not made in accordance with the provisions of sub section (1), the sum payable shall be recoverable as a public demand under the ¹⁶[* * *] Public Demands Recovery Act, 1913.

CHAPTER VI

TRANSFER OF *WAQF* PROPERTIES

Bar to transfer of immovable property of a *waqf*

56. (1) No transfer by a *mutawalli* of any immovable property of a *waqf* by way of sale, gift, mortgage or exchange, or by way of lease for a term exceeding 5 years shall be valid without the previous sanction of the Administrator:

Provided that the sanction by the Administrator shall not validate any transfer which is in contravention of any other law for the time being in force or is otherwise invalid.

(2) No Court shall grant permission to any Receiver appointed by the Court for the transfer of any *waqf* property unless the prior sanction of the Administrator has been obtained.

(3) In the absence of the sanction required by sub-section (1), any transfer made by a *mutawalli* shall be declared void, if the Administrator, within 4 months of his coming to

know of such transfer, or within 3 years from the date of such transfer, whichever is later, applies to the Civil Court in this behalf.

(4) Where a *mutawalli* transfers a *waqf* property in contravention of sub section (1) and afterwards himself becomes the owner of the property, the *mutawalli* shall, on the direction of the Administrator, re convey the property to the *waqf*.

(5) Any transfer made in contravention of the provisions of sub section (1) shall be deemed to be an act of malfeasance and breach of trust for the purpose of sub-section (1) of section 32.

Power of Administrator to grant sanction to transfer

57. A *mutawalli* or a Receiver may apply to the Administrator for sanction to transfer *waqf* property under sub section (1) of section 56, and the Administrator, after making such enquiry and giving notice to such persons in such manner as he thinks fit and hearing them, if they desire to be heard, may accord sanction to such transfer on such terms and conditions as he may, in his discretion, impose:

Provided that where such transfer is to be made under an express power conferred by the *waqf* deed, the Administrator shall not refuse to accord sanction.

Sub-registrar not to register deeds

¹⁷[57A. (1) Notwithstanding anything contained to the contrary in the Registration Act, 1908 (Act No.XVI of 1908), no Sub-registrar shall register any deed of transfer of any immovable property belonging to a *waqf*, without the previous sanction of the Administrator or the Government, as the case may be.

(2) If a Sub-registrar, knowingly and intentionally, registers a deed in violation of the prohibition under sub-section (1), he shall be liable for commission of the offence of abetment of criminal breach of trust.]

Bar to any debt, compromise and other transactions by *mutawalli*

58. (1) No debt incurred by a *mutawalli* shall be binding on a *waqf* property unless it is for the benefit of the *waqf* and previous written permission has been obtained from the Administrator authorising the incurring of such debt.

(2) No *mutawalli* shall compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account or claim relating to a *waqf* or for any of these purposes enter into and execute any agreement or instrument of compromise or arrangement, without the previous permission of the Administrator.

CHAPTER VII

MUTAWALLIS

Mutawalli to convert property and invest money in certain cases

59. Every *mutawalli*, unless there is anything to the contrary in the *waqf* deed, shall invest, in such manner as may be approved by the Administrator, any of the *waqf* property which consists of money which cannot be applied immediately or at an early date to the purpose of the *waqf* and shall, with the sanction of the Administrator, convert any of the *waqf* property which is of wasting nature and invest the proceeds in such manner as may be approved by the Administrator.

Mutawalli entitled to pay certain costs from *waqf* property fund

60. Notwithstanding anything contained in the *waqf*-deed, every *mutawalli* may pay from the income of the *waqf* property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 47, or any accounts under section 52, or any information or documents required by the Administrator or a person authorised by the Administrator, and for the preservation or benefit of the *waqf* property.

Penalties

61. (1) If a *mutawalli* fails-

(a) to apply for enrolment; or

(b) to maintain clear and accurate accounts and furnish statements of particulars or of accounts or returns as required by this Ordinance; or

- (c) to supply information or particulars as required by the Administrator or a person authorised by him; or
- (d) to allow inspection of *waqf* properties accounts, or records, or deeds and documents relating thereto, or assist enquiries and investigations, if called upon to do so by the Administrator or a person authorised by him; or
- (e) to deliver possession of any *waqf* property if ordered by the Administrator or the Court; or
- (f) to carry out the directions of the Administrator or a person authorised by him; or
- (g) to pay the contribution payable under section 71; or
- (h) to pay the dues of any individual beneficiary of a *waqf* payable to him in terms of the *waqf*-deed; or
- (i) to furnish accounts and other full and accurate information as to the position and affairs of the *waqf* to the beneficiary or any person interested in a *waqf* in terms of the *waqf*-deed; or
- (j) to pay towards and look after, the proper maintenance and preservation of any mosque or other religious, charitable and educational institution or establishment, in terms of the *waqf* deed; or
- (k) to discharge any public dues; or
- (l) to co operate with the Committee and carry out its directions in the performance of its functions; or
- (m) to protect title to the *waqf* property and look after its preservation and safety; or
- (n) to do any other act which he is lawfully required to do by or under this Ordinance; he shall, unless he satisfies the Court that there was reasonable cause for his failure, be punishable with fine which may extend to ¹⁸[twenty thousand] taka and, in default with simple imprisonment which may extend to six months:

Provided that when a *mutawalli* has been prosecuted for failure to pay the contribution payable under section 71 of this Ordinance, the amount of fine shall not be less than double the amount of the contribution due and unpaid, subject to the maximum of ¹⁹[twenty thousand] taka.

(2) If a *mutawalli* furnishes any statement, return or information referred to in clause (b) or clause (c) of sub-section (1) which he knows or has reason to believe to be false, misleading, inaccurate or untrue in any material particular, he shall be punishable with fine which may extend to ²⁰[twenty thousand] taka and in default with simple imprisonment which may extend to six months.

(3) The fine imposed by the Court under sub section (1) or (2) and under section 63 shall, if realised, be paid and credited to the *Waqf* Fund.

Purchase of property by *mutawalli* under certain conditions to be act of malfeasance and directions upon him to reconvey the same

62. If a *mutawalli* intentionally and dishonestly allows a *waqf* property to be sold for arrears of rent, rates or taxes, and purchases the said property in the name of himself or any other person, such a purchase by the *mutawalli* shall be deemed to be an act of malfeasance and breach of trust for the purpose of sub section (1) of section 32; and the Administrator shall issue directions upon him to re-convey the property to the *waqf* or adequately compensate the *waqf* within the specified date.

Penalties against outgoing *mutawallis*

63. If an outgoing *mutawalli* fails or refuses to make over charge of management of the *waqf*, and of the accounts, documents, records, papers and cash of the *waqf* and to surrender possession of the property and produce of the land, if any, to the succeeding *mutawalli*, on being required to do so under any of the provisions of this Ordinance, he shall be punishable with fine which may extend to ²¹[twenty thousand] taka and in default with imprisonment which may extend to six months.

Action against trespassers and miscreants

64. (1) If a co sharer in a *waqf* property or an individual beneficiary or any other person interested in a *waqf*, or a stranger, creates disturbances or obstruction in the peaceful

management of the *waqf* or any institution attached thereto in any way, or disturbs the possession of a *waqf* property by the *mutawalli* or any person or a managing committee appointed by the Administrator for managing the said property, or commits trespass on any such property, the Administrator shall apply to the Deputy Commissioner, who shall evict the trespasser, or take such steps for preventing such disturbance or obstruction as he deems fit.

(2) Any person evicted by the Deputy Commissioner under sub section (1) may, within three months from the date of his eviction, appeal to the District Judge against such order of eviction; and the decision of the District Judge on such appeal shall be final.

Resignation, retirement or discharge of a *mutawalli*

65. (1) A *mutawalli* shall not resign or retire from his service except with the permission of the Administrator.

(2) If a *mutawalli* proposes to retire or tenders resignation or applies for discharge from the office of the *mutawalli*, he shall not be permitted to retire or his resignation shall not be accepted and he shall not be discharged unless he has submitted the statement of accounts up to the date of his retirement, resignation or discharge and the same has been audited and unless he has paid the contribution payable under section 71 up to the said date.

Mutawalli cannot delegate except with the permission of the Administrator

66. A *mutawalli* shall not delegate his office or any of his duties to any one except with the permission of the Administrator:

Provided that the appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion shall not be a delegation within the meaning of this section.

Co *mutawallis* cannot act singly

67. Where there are more than one *mutawallis* to a *waqf*, all of them shall act jointly in the exercise of their functions and performance of their duties unless the *waqf* deed otherwise provides.

Control of discretionary power

68. Where a discretionary power conferred on a *mutawalli* is not exercised reasonably and in good faith such power may be revoked by the Administrator.

Remuneration of *mutawalli*

69. Where no remuneration has been provided by a *waqf* deed for the office of *mutawalli*, or where the amount provided is inadequate, the Administrator may, on the application of the *mutawalli*, fix a sum not exceeding one tenth of the net available income of the *waqf* as his remuneration.

Redetermination of monetary amounts

²²[69A. (1) If the *waqif* in his *waqf* deed directs for payment, out of income of the *waqf* estate or *waqf* property, of any amount of money on monthly or yearly basis, the *mutawalli* or beneficiary of any *waqf* estate or *waqf* property may every after ten years, apply to the Administrator for re-determination of the amount mentioned in the *waqf* deed.

(2) The Administrator shall, upon application made under sub-section (1), if he considers the application reasonable and appropriate, re-determine the amount so as to make that consistent with prevalent market price.]

Fixation of Imam's pay and his appointment and removal by Administrator

70. (1) The Administrator may, by a general or special order, fix the minimum qualification and remuneration of the Imam of a mosque under the *waqf*; and every *mutawalli* or any person or a managing committee appointed by the Administrator to manage the *waqf* property, shall abide by his directions in this behalf.

(2) The Administrator may, if he considers it necessary, himself appoint the Imam of a mosque under the *waqf* by removing an existing Imam if he is considered unfit, unqualified or unsuitable.

CHAPTER VIII

FINANCE

Annual contributions payable to the office of the Administrator

71. (1) The *mutawalli* of every *waqf* shall pay annually to the office of the Administrator contribution at the rate of five per cent of the net available income of the *waqf*.

(2) The Administrator may, in the case of any particular *waqf* and in the interest thereof, reduce or remit any such contribution for such time as it thinks fit if the income of the *waqf* concerned so deteriorates for any reason as would justify such reduction or remission.

(3) Subject to any provisions in the *waqf* deed, the *mutawalli* may realise the contributions payable by him under sub section (1) from the various persons entitled to receive any pecuniary or other material benefits from the *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 benefits receivable by such person bears to the entire net available income of the *waqf*:

Provided that, if there is any income of the *waqf* available in excess of the amount payable as dues under this Ordinance, other than as the contribution, and in excess of the amount payable under the *waqf* deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub section (1) in respect of a *waqf* shall, subject to the prior payment of any dues to the Government or to any local authority, and of any other statutory first charge on the *waqf* property or the income thereof, be a first charge on the income of the *waqf* and shall be recoverable as a public demand, under the ²³[* * *] Public Demands Recovery Act, 1913.

(5) If a *mutawalli* realises the income of the *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 a *mutawalli* dies or retires without paying the arrears of contribution due, the next succeeding *mutawalli* shall be liable to pay such arrears out of the income of the *waqf*.

(7) All mosques which have no landed property for their maintenance or which have such property with an income of less than Tk. ²⁴[10,000] per annum, shall be exempted from the levy of any contribution under sub section (1).

Administrator may borrow money

72. (1) The Administrator, with the previous sanction of the Government, may, for the purpose of giving effect to the provisions of this Ordinance, borrow such sums of money and on such terms and conditions as the Government may fix; and the Administrator shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

(2) The Administrator shall not borrow money upon the security of the *Waqf* Fund.

Waqf Fund

73. (1) All monies received by the Administrator in respect of properties under his control and management and for the purposes of this Ordinance and all other monies realised under this Ordinance shall form a fund to be called the "*Waqf* Fund".

(2) The Government may make rules regulating the payment of monies into the *Waqf* Fund, the investment by the Administrator of monies received into that fund and the custody and disbursement of such monies.

(3) The *Waqf* Fund shall, subject to the provisions of sub section (2), be under the control of the Administrator.

Application of Waqf Fund

74. (1) The *Waqf* Fund shall be applied to-

- (a) payment of the cost of survey of *waqf* properties under section 6;
- (b) repayment of any loan incurred under section 72 and payment of interest thereon;
- (c) payment of cost of audit of the *Waqf* Fund;
- (d) payment of the salaries and allowances of the Administrator, Deputy Administrator and Assistant Administrator;
- (e) payment of the salaries and allowances of the officers and servants appointed by the Administrator under section 17;

(f) payment of travelling allowances to the Administrator, Deputy Administrator, Assistant Administrator, other officers and servants of the office of the Administrator and to the members of the Committee;

(g) payment of the cost of the establishment employed by the Administrator;

(h) payment of all expenses incurred by the Administrator in the performance of the duties imposed and the exercise of the powers conferred by this Ordinance; and

(i) payment for the reconstruction and repairs of mosques.

(2) If any balance remains after meeting the expenditure referred to in sub section (1), the Administrator may use any portion of such balance of the fund for the improvement, preservation and protection of *waqf* property and also other religious and charitable works consistent with the purposes of the *waqf*.

(3) (a) All monies received by the Administrator under the provisions of section 85 shall be invested by the Administrator in the purchase of house properties, lands and other properties for the *waqf*; and

(b) If such purchase cannot be readily effected, such monies shall be invested in such Government or other approved securities as the Administrator thinks fit until such monies can be applied in the purchase of properties as aforesaid; and the Administrator shall direct the payment of the interest or other proceeds arising from such investment to persons interested in the *waqf* in fulfilment of the objects specified in the *waqf* deed.

Accounts of *Waqf* Fund

75. The Administrator shall keep such accounts of the receipts and disbursements of the *Waqf* Fund as may be prescribed by the rules and shall submit the same for examination from time to time by auditors.

Audit of accounts of *Waqf* Fund

76. (1) The Accounts of the *Waqf* Fund shall be audited and examined annually by such auditor as may be appointed by the Government.

(2) The auditor may, by written notice, require the production before him of any document, or require the attendance before him of any person responsible for the preparation of the account, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of his audit.

(3) After completing the audit, the auditor shall submit a report to the Government: Provided that the auditor may submit an interim report at any time if he thinks fit.

(4) The report of the auditor shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover monies or other property due or of loss or waste of money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report. 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.

Government to pass orders on auditor's report

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

Sums certified due recoverable as public demand

78. (1) Every sum certified to be due from any person by an auditor in his report under section 76, unless such certificate is modified or cancelled by the Government by an order made under section 77, 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 Government.

(2) If such payment is not made in accordance with the provisions of sub section (1), the sum payable shall be recoverable as a public demand under the ²⁵[* * *] Public Demands Recovery Act, 1913.

CHAPTER IX

JUDICIAL PROCEEDINGS

Deposits of decretal amount in Court in certain waqf cases

79. Where a decree for rent or any other relief claimed under or on behalf of a *waqf* is passed or such decree is executed by any Court, the decretal amount, if any, shall, unless an application for enrolment of the *waqf* has been made under section 47, be paid into the Court passing or executing the decree, as the case may be, and shall be kept in deposit by the Court until an application for enrolment of the *waqf* has been made under section 47 or the *waqf* has been exempted under section 5.

Bar to compromise of suits, etc, without sanction of the Administrator

80. No suit, proceeding or appeal by or against a *mutawalli* as such in any Court shall be compromised without the prior approval of the Administrator and the sanction of the trying Court.

Notice of suits, etc, to be given to the Administrator

81. (1) In every suit or proceeding in respect of any *waqf* property, or of a *mutawalli* as such, except a suit or proceeding for the recovery of rent by or on behalf of a *mutawalli*, the Court in which, or the Deputy Commissioner or other authority before whom, such suit or proceeding is instituted, shall issue notice to the Administrator along with a copy of the plaint or application, as the case may be, at the cost of the party instituting such suit or proceeding.

(2) Before any *waqf* property is notified for sale in execution of a decree or order for the recovery of any dues other than a public demand under the ²⁶[* * *] Public Demands Recovery Act, 1913, notice shall be given to the Administrator by the Court or other authority concerned under whose decree or 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 irrespective of the description of the property as *waqf* property or otherwise in such suit or proceeding, if the Administrator, within four months of his coming to know of such suit or proceeding, applies in this behalf to the Court, Deputy Commissioner or other Authority concerned.

(4) In the absence of a notice under sub section (2) the sale shall be declared void, irrespective of the description of the property as *waqf* property or otherwise in the proceedings for sale, if the Administrator, within four months of his coming to know of the sale, applies in this behalf to the Court or other authority under whose order the sale was held.

Administrator may be made a party to a suit or proceeding regarding a waqf on his application

82. In any suit or proceeding in respect of a *waqf* or any *waqf* property, whether instituted or preferred before or after the commencement of this Ordinance, the Administrator may intervene and shall, on his application, be added as a party and shall be entitled to conduct or defend such suit or proceeding on behalf of and in the interest of the *waqf*.

Administrator may institute suit or proceeding regarding a waqf

83. If there is no *mutawalli* or the *mutawalli* refuses or neglects to act in the matter, within a reasonable time, the Administrator may, in his own name, institute a suit or proceeding in a Court against a stranger to the *waqf* or any other person-

- (a) for the establishment of right, title and interest in a *waqf* property, or
- (b) for confirmation of possession in a *waqf* property, or
- (c) for the recovery of any *waqf* property wrongfully possessed, alienated or leased, or
- (d) for having any *waqf* property discharged of an encumbrance or obligation wrongfully created, or
- (e) for the recovery of any money belonging to *waqf*, or
- (f) for any other relief in the interest of a *waqf* he may consider necessary.

Breach of trust by a beneficiary

84. Where one of several beneficiaries-

- (a) joins with the *mutawalli* in committing a breach of trust, or
 - (b) knowingly gains any advantage therefrom without the consent of the other beneficiaries,
- or

(c) becomes aware of a breach of trust committed or intended to be committed and either actually conceals it or does not, within a reasonable time, take proper steps to protect the interest of the other beneficiaries, or

(d) has deceived the *mutawalli* and thereby induced him to commit a breach of trust, he shall be liable to compensate the other beneficiaries for any loss caused to them by such breach.

Compensation for acquisition of *waqf* property to be paid to the Administrator

85. Where any *waqf* property is acquired under the ²⁷[Acquisition and Requisition of Immovable Property Ordinance, 1982 (Ord. No.II of 1982)], or any other law for the time being in force, the compensation money payable for such property shall be paid to the Administrator and shall be kept in deposit in the *Waqf* Fund till it is invested for the purposes stated in sub section (3) of section 74.

Cost in suits or proceedings

86. All costs and expenses incurred by the Administrator in connection with any suit or proceedings in respect of any *waqf* or any *waqf* property to which the Administrator is a party and all costs decreed against the Administrator by the Court, shall be payable out of the funds of such *waqf*.

CHAPTER X

AMENDMENT AND REPEAL

[XIII of 1966]

[Sections 87 to 94 were repealed by the Second Schedule of the East Pakistan Laws Repealing and Amending Ordinance, 1966 (East Pakistan Ordinance No.XIII of 1966).]

CHAPTER XI

MISCELLANEOUS

Certain functions under East Bengal Act XXVIII of 1951 to be performed by the Administrator

95. Notwithstanding anything contained in sections 58 and 59 of the ²⁸[* * *] State Acquisition and Tenancy Act, 1950, the functions of the Commissioner of *Waqfs* under sub section (4) of section 58 and sub section (4) of section 59 of that Act and the functions of the Deputy Commissioner under sub section (3) of section 58 and sub-sections (1), (2) and (3) of section 59 of that Act, in respect of compensation for *waqfs al al aulad* properties, shall, with effect from the date of coming into force of this Ordinance, be performed by the Administrator; and the cost referred to in sub section (3) of section 59 of that Act, shall be met from the *Waqf* Fund.

Method of recovery of sums realisable as public demand

96. (1) Any sum of money payable by a *mutawalli* from the funds of a *waqf* to the Administrator under this Ordinance including any damage chargeable thereon and costs, if any, incurred, shall be recoverable as a public demand.

(2) The Administrator shall forward to the Deputy Commissioner a requisition in the form prescribed under the ²⁹[* * *] Public Demands Recovery Act, 1913, under his signature specifying the sum recoverable under this Ordinance as a public demand, and the Deputy Commissioner, on receipt of such requisition, shall proceed to recover the sum under the ³⁰[* * *] Public Demands Recovery Act, 1913.

Administrator and every officer and servant to maintain secrecy about particulars of *waqfs*

97. Subject to the provisions of this Ordinance, the Administrator and every officer and servant of his office shall maintain secrecy about the particulars and all other information relating to a *waqf* which comes into his possession in his capacity as Administrator or as an officer or servant of his office.

Administrator, Auditor, etc, to be deemed public servants

98. The Administrator, Deputy Administrator, Assistant Administrator, Inspector, Auditor and any other person appointed or authorised by the Administrator to do any act by or under this Ordinance shall be deemed to be a public servant within the meaning of section 21 of the ³¹[* * *] Penal Code, 1860.

Service of notice or requisition

99. A notice or requisition under this Ordinance may be served on the persons named in the notice or requisition either by post or as a summons issued by a Court under the Code of Civil Procedure, 1908, or in such manner as may be prescribed by the rules.

Attendance before Administrator may be either in person or by an agent

100. Any *mutawalli* or other person who is entitled to attend before the Administrator or any other officer subordinate to him in connection with any proceedings under this Ordinance may, with the permission of the Administrator or such other officer, as the case may be, attend either in person or through any person authorised by him in writing in that behalf.

Trial of offences

101. No Court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Ordinance.

Bar to suits

102. Except as otherwise expressly provided in this Ordinance, no decision or order of the Administrator shall be questioned in any suit or other proceeding in any Court.

Effect of orders, etc, inconsistent with this Ordinance

103. Except as otherwise expressly provided in 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.

CHAPTER XII

RULES AND BY LAWS

Power to Government to make rules

104. (1) The Government may make rules for carrying out the purposes of this Ordinance.
- (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 exemptions of *waqfs* under section 4;
 - (b) the manner in which the net available income of a *waqf* shall be determined;
 - (c) the delegation of powers by the Administrator to Commissioners of Divisions, to Deputy Commissioners and to other persons;
 - (d) the preparation of schemes for administration of *waqf* property;
 - (e) the budgets, reports, accounts, returns or other information to be submitted by the Administrator;
 - (f) the appointment and remuneration of auditors for auditing the accounts of the *Waqf* Fund;
 - (g) the manner in which the accounts of the *Waqf* Fund shall be kept, audited and published and the form and contents of the auditors report;
 - (h) the payment of monies into the *Waqf* Fund and the investment, custody and disbursement of such monies;
 - (i) the regulation of functions of the Administrator and of the Committee referred to in sections 27 and 28;
 - (j) the preparation of schemes of management and the allocation of incomes of shrines and dargahs and other religious institutions taken over by the Administrator under section 34; and
 - (k) the services of notices and requisitions under section 99.
- (3) All rules made under this section shall be published in the official Gazette.

Power to the Administrator to make by laws

105. (1) The administrator may, with previous sanction of the Government from time to time, make by laws as to-
- (a) the time and place of meetings of the Committee;
 - (b) the business to be transacted at meetings;
 - (c) the period of notice of meetings and the manner in which such notice shall be given;
 - (d) the procedure and conduct of business at meetings;
 - (e) the books to be kept at the office of the Administrator;

- (f) the manner in which the accounts of *waqfs* shall be kept and audited, the time and place of audit of accounts of *waqfs* and the form and contents of the auditor's report;
 - (g) the fees for inspection of proceedings and records of the Administrator and for copies of the same under section 45;
 - (h) the form of application for enrolment, the particulars to be contained therein, and the manner and place of enrolment of *waqfs* under section 47;
 - (i) the further particulars to be contained in the register of *waqfs* maintained under section 48; and
 - (j) the form of, and the further particulars to be contained in, the statement of accounts under section 52.
- (2) All by laws made under this section shall be published in the official Gazette.

Annotations:

¹ Throughout this Ordinance, the words "Bangladesh", "Government" and "taka" or "Tk" were substituted for the words "East Pakistan", "Provincial Government" and "rupees" or "Rs" respectively by the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No.VIII of 1973), section 3 and the Second Schedule.

² The words "East Pakistan" were omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

³ Clause (4A) was inserted by the *Waqfs* (Amendment) Ordinance, 1967 (East Pakistan Ordinance No.II of 1967), section 3.

⁴ The words "East Bengal" were omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

⁵ The words, figures, comma and brackets "and section 14 of the Religious Endowments Act, 1863 (XX of 1863)" were omitted by the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No.VIII of 1973), section 3 and the Second Schedule.

⁶ Clause (11a) was inserted by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 2.

⁷ Section 6A was inserted by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 3.

⁸ The words "for Bangladesh" were substituted for the words "for the Province of East Pakistan" by the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No.VIII of 1973), section 3 and the Second Schedule.

⁹ Section 31A was inserted by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 4.

¹⁰ The word "beneficiary" was substituted for the word "person" by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 5.

¹¹ The words "High Court Division" were substituted for the words "High Court" by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972) as amended by the Bangladesh Adaptation of Existing Laws (Amendment) Order, 1972 (President's Order No.150 of 1972), Article 7(1)(a).

¹² The words "High Court Division" were substituted for the words "High Court" by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972) as amended by the Bangladesh Adaptation of Existing Laws (Amendment) Order, 1972 (President's Order No.150 of 1972), Article 7(1)(a).

¹³ The words "High Court Division" were substituted for the words "High Court" by the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No.VIII of 1973), section 3 and the Second Schedule.

¹⁴ The word "Pakistan" was omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

¹⁵ The word "Bengal" was omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

¹⁶ The word "Bengal" was omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

¹⁷ Section 57A was inserted by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 6.

¹⁸ The words "twenty thousand" were substituted for the words "two thousand" by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 7(a).

¹⁹ The words "twenty thousand" were substituted for the words "two thousand" by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 7(a).

²⁰ The words "twenty thousand" were substituted for the words "two thousand" by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 7(b).

²¹ The words "twenty thousand" were substituted for the words "two thousand" by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 8.

²² Section 69A was inserted by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013),

²³ The word "Bengal" was omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), section 9.

²⁴ The figure and comma "10,000" was substituted for the figure "300" by the *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013), section 10.

²⁵ The word "Bengal" was omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

²⁶ The word "Bengal" was omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

²⁷ The words, comma, figures and brackets "Acquisition and Requisition of Immovable Property Ordinance, 1982 (Ord. No.II of 1982)" were substituted for the words, comma, figures and brackets "Land Acquisition Act, 1894 (I of 1894)" by the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No.VIII of 1973), section 3 and the Second Schedule.

²⁸ The words "East Pakistan" were omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

²⁹ The word "Bengal" was omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

³⁰ The word "Bengal" was omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

³¹ The word "Pakistan" was omitted by the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972), Article 6.

Amending Law(s)

The *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013).

The Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No.VIII of 1973).

The Bangladesh Adaptation of Existing Laws (Amendment) Order, 1972 (President's Order No.150 of 1972).

The Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No.48 of 1972).

The *Waqfs* (Amendment) Ordinance, 1967 (East Pakistan Ordinance No.II of 1967).

Provision(s) Repealed/Omitted by

The East Pakistan Laws Repealing and Amending Ordinance, 1966 (East Pakistan Ordinance No.XIII of 1966).

Law(s) Referred

The Acquisition and Requisition of Immovable Property Ordinance, 1982 (Ord. No.II of 1982).

The State Acquisition and Tenancy, Act 1950 (Act No.XXVIII of 1951), sections 2(24), 58 and 59.

The Non-Agricultural Tenancy Act, 1949, clause (e) of sub-section (1) of section 85.

The Public Demands Recovery Act, 1913.

The Registration Act, 1908 (Act No.XVI of 1908).

The Code of Civil Procedure, 1908, section 92.

The Code of Criminal Procedure, 1898, sections 145, 146, 195 and Chapter XXXV.

The Penal Code 1860, sections 21 and 188.
The Evidence Act, 1872, section 76.

Translation

No Translation Available.

Associated Subordinate Legislation(s)

No Subordinate Legislation Available.

Related Law(s)

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Related Judgment Categories

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This law has been updated upto (last amending law):

The *Waqfs* (Amendment) Act, 2013 (Act No.XVIII of 2013).