

**THE KHYBER PAKHTUNKHWA WAQF PROPERTIES ORDINANCE, 1979.**  
**ORDINANCE NO. 1. OF 1979.**

11th April, 1979.

**AN**  
**ORDINANCE**

*to provide for the proper management and administration of waqf properties in the Khyber Pakhtunkhwa Province.*

No. Legis. 1(3)/70... The following Ordinance by the Governor of the Khyber Pakhtunkhwa Province is hereby published for general information: -

**Preamble:**

WHEREAS it is expedient to provide for the proper management and administration of waqf properties in the Khyber Pakhtunkhwa Province;

AND WHEREAS the Governor of the Khyber Pakhtunkhwa Province, is satisfied that circumstances exist which render it necessary to take immediate action; NOW. THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C. M. L. A., Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the Governor of the Khyber Pakhtunkhwa Province is pleased to make and promulgate the following Ordinance;

1. Short title, extent and commencement.

(1) This Ordinance may be called the Khyber Pakhtunkhwa Province, Waqf Properties Ordinance, 1979.

2. It extends to whole of the Khyber Pakhtunkhwa Province.

3. It shall come into force from such date as may be notified by Government in the official Gazette.

**2. Definitions.** In this Ordinance, unless the context otherwise requires,

- (a) "Administrator" means an Administrator of Auqaf appointed under section 4;
- (b) "Chief Administrator" means the Chief Administrator of Auqaf appointed under Section 3;
- (c) "Government" means the Government of the Khyber Pakhtunkhwa Province.
- (d) "prescribed" means prescribed by rules made under this Ordinance; and
- (e) "Waqf property" means property of any kind permanently dedicated by a person professing Islam for any purpose recognized by Islam as religious, pious or charitable, but does not include property of any waqf such as described in section 3 of the Musalman 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.

*Explanation:—*1. If a property has been used from time immemorial for any purpose recognized 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 recognized by Islam as religious, pious or charitable shall be deemed to be waqf property.

*Explanation—IV.—*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—V.* Property permanently dedicated for the purposes of a Mosque, Takia, Khankah, Dargah, or other shrine shall be deemed to be waqf property.

*Explanation—VI—*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 Khyber Pakhtunkhwa Province and may, by order, vest in him, the waqf properties situated in the Province including all rights, assets, debts, liabilities and obligations relating thereto

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

(3) The Chief Administrator shall be a corporation sole by the name of the Chief Administrator of Auqaf, Khyber Pakhtunkhwa Province, 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) The Administrator or Deputy Administrator appointed under sub-section (1) shall be under the administrative control of the Chief Administrator.

(3) No person shall be appointed as Administrator or Deputy Administrator unless he is a muslim).

## **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 purposes of this Ordinance and the amount and nature of salary, fees and allowances to be paid to each such officer and servant;

(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 (V of 1860).

## **6. Registration of Waqf property:**

Every person incharge of, or exercise control over the management of, any waqf property, and every person creating a waqf after the commencement of this Ordinance, shall get 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 any other law for the time being in force, or in any custom or usage, or any decree, judgment or order of any court or other authority, or in any proceeding pending before any other authority, the Chief Administrator may, by notification, take over and assume the administrative control, management and maintenance of waqf property.

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 each person and on such terms and conditions as may be agreed upon between such person and the Chief Administrator.

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

(2) No person shall perform services or ceremonies (Rasoomat) referred to in subsection (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.**

Any person unauthorized 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 forces may be necessary, and any 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 of 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 un-cut and ungathered crops or for the improvements, if any, that may have been made by the lessee or tenant under the terms of the lease or tenancy or with the permission of the Chief Administrator: Provided that if the lease or tenancy be allotted to any other person, the amount of the compensation, if any, paid to the out-going lessee or tenant may be recovered from the new lessee or tenant.

## **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 is in respect of which a notification has been issued under section 7 may, within thirty days of the publication of such notification, petition to the District Court within whose jurisdiction the waqf property or any part thereof is situated, for a declaration—

a) that the property is not waqf property

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

Provided that, notwithstanding any thing contained in any law for the time being in force, or in any custom or usage, or in any decree, judgment 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 IV to clause (e) of section 2, or the services or ceremonies (Rasoomat) mentioned in section 7.

(2) The District Court may, for reasons to be recorded, refuse to issue any process for compelling the attendance of any witness for the purpose of examination or the production of any document or other thing if it considers that it has been made for the purpose of vacation 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 orders, 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 II 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 scheme for the Administration and Development 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 Administrator and application of proceeds.**

Government may, where it is satisfied that circumstances exist which 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 waqf property was dedicated;
- (c) to give effect to such wishes of the person dedicating the property as can be ascertained; or
- (d) to enable the property to be used, in the absence of evidence of express dedication, for the purpose for which it has been used or for any purpose recognized 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.

**17. Use of waqf property and application of income there form:**

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

**19. Rent and lease money 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 or integrity of Pakistan or calculated to arouse feelings of hatred or disaffection amongst various religious sects or group in the country and directions prohibiting such person from indulging in party politics through sermons or lecturers 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 the instance of the Chief Administrator; or
- b. in respect of any matter which the Chief Administrator is empowered by or under this Ordinance to determine or settle; or
- c. to grant an injunction or other order in relation to any proceeding before the Chief Administrator under this Ordinance or anything done or intended to be done by or at the instance of the Chief Administrator under this Ordinance.

### *COMMENTARY*

Bar of jurisdiction of Civil Courts u/s. 21. Filing of written statement and recording of evidence would be a sine qua non for determination of allegations as to whether orders under Ordinance were in accordance with or are even mala fide. Remand order passed by High Court in exercise of its revisional jurisdiction u/s. 115, CPC in revision filed to challenge concurrent orders of lower Courts which dismissed suit by applying bar or jurisdiction u/s. 21, would be perfectly valid and would warrant no interference by Supreme Court.

## **22. Effect of orders etc in consistent with this Ordinance:**

Every order made and every action taken under this Ordinance shall have effect notwithstanding anything in consistent 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 willfully 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 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, such rules may provide for all or any of the following matters, 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 person 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 the Khyber Pakhtunkhwa Province;
- (j) prescribing and regulating the standards, syllabi and curricula of institutions providing Islamic religious education, by whatever name called, and, where considered necessary in the public interest, the scrutiny of the accounts of such institutions; and
- (k) to appoint Advisory Committees consisting of public representative, 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 persons 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 in consistence with the provisions of this Ordinance, continue in force, and so far as may be, be deemed to have been done, taken, incurred, commenced, appointed, authorized, conferred, made or issued under this Ordinance.