

THE BALOCHISTAN WAQF PROPERTIES
ORDINANCE, 1979

(Baln. Ordinance IV of 1979)

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'THE *BALOCHISTAN WAQF PROPERTIES

Preamble.

Short title, extent
and
commencemen
t.

Definitions.

ORDINANCE, 1979

(Balochistan Ordinance IV of 1979)

[15 April, 1979]

An Ordinance to provide for the proper management
and administration of waqf properties in the Province of
Balochistan.

WHEREAS it is expedient to provide for the
management of waqf properties and for matters connected
therewith or ancillary thereto;

AND WHEREAS the Governor of the Balochistan 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 (CMLA Order No. 1 of 1977)*, and in
exercise of all powers enabling him in that behalf, the Governor
of the Balochistan is pleased to make and promulgate the
following Ordinance: —

1. (1) This Ordinance may be called the Balochistan
Waaf Properties Ordinance, 1979.

(2) It extends to the Province of Balochistan.

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

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

(a) "Administrator" means an Administrator of Augaf
appointed under the provisions of section 4;

This Ordinance was promulgated by the Governor of Balochistan on 23rd March 1979; published in the Balochistan Gazette (Extraordinary) No. 32, dated 15th April, 1979. Saved and validated by Article 270-A of the Constitution of the Islamic Republic of Pakistan (1973).

2 Spelling of the word "Baluchistan", wherever it appears in this ordinance, is corrected by insertion of letter "o" instead of "u";

per Government of Balochistan, S&GAD's Notification No. SORI (4) 6/ S&GAD-89, dated 18th June, 1989.

8 Proclamation of Martial Law, published in the Gazette of Pakistan, Extraordinary, Part I, dated 5th July, 1977.

4 Chief Martial Law Administrator Order I of 1977, published in the Gazette of Pakistan, Extraordinary, Part I, dated 5th July, 1977.

5 Came into force with effect from 15th April, 1979; see Balochistan Gazette (Extraordinary) No. 36, dated 15th April, 1979.

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(b) "Chief Administrator". means the Chief

Administrator of Auqaf;

(c) "Government" means the Government of

Balochistan;

(d) "Prescribed" means prescribed by rules made

under this Ordinance;

(e) "Waqf property" means property of any kind permanently dedicated by a person professing Islam for any purpose recognised by Islam as religious, pious or charitable, but does not include property of any waqf such as is described in section 3 of the Musalman 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 recognised by Islam as religious, pious or charitable, then inspite of there being no evidence of express dedication, such property shall be deemed to be waqf property.

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

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

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

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

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

Appointment of
Chief
Administrator
of Augaf.

Appointment of
Administrator
and Deputy

Administrators.

General
Appointments.

charitable purposes.

3. (1) Government shall appoint a Chief Administrator of Auqaf for the Province of Balochistan 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 Wadfs, Balochistan, and shall have perpetual succession and an official seal, and may sue be sued in his corporate name.

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

4. (1) Government may appoint an Administrator 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.

5. (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

1 For appointment see Balochistan Gazette (Extraordinary) No. 36, dated 15th April, 1979.

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meaning of section 21 of the Pakistan Penal Code (V of 1860).

'Administrator, 5-A. No person shall be appointed as an Administrator, Deputy Deputy Administrator or Officer under this Ordinance unless he Administrator jg 4 Muslim and possesses such qualifications as may be and Officer to :
be Muslim. prescribed.]

Registration of 6. Every person Incharge of, or exercising control over the

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

Chief Administrator 7. (1) Notwithstanding anything to the contrary

may take over —_ contained in section 22 of the Religious Endowments Act, 1863 waqf property

1 : (XX of 1863), or any other law for the time being in force, or in notification.

any custom or usage, or in any decree, judgement or order of any court or other authority, or in any proceedings pending before any court or other authority, the Chief Administrator may, by notification, take over and assume the administrative control, management and maintenance of a waqf property:

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

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 waaf property.

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

*[(3) The notification issued under sub-section (1), shall be served upon the management or the Mutawali, as the case may be, and a copy thereof shall be affixed on some

Balochistan Gazette (Extraordinary) No. 274, dated 6" November, 1985.

2 Inserted by Balochistan Act IX of 1985 (shall be deemed to have taken effect on 1" December, 1984); and published in the

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Balochistan Gazette (Extraordinary) No. 274, dated 6" November, 1985.

conspicuous place of the property referred to in the notification.]

Eviction of persons, 8. Any person unauthorised by entering upon occupation wrongfully in of any immovable waqf property or using or occupying any possession of uch property to the use or occupation whereof, by reason of

wat ti any provisions of this Ordinance or any rule made thereunder,

Propernics he is not entitled or has ceased to be entitled may, after being given a reasonable opportunity of showing cause against such action be summarily evicted by the Administrator, with the use of such force as may be necessary, and 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.

Power to terminate 9. (1) If the Administrator is satisfied that a lessee or a lease or tenant of any immovable waqf property has committed a breach resume a of the conditions of the lease or tenancy, the Administrator pnaney en may, after giving such lessee or tenant an opportunity to appear conditions. 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 forth-with 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,

Appeal and finality.

Petition to District Court against notification.

Appeal against the

paid to the out-going lessee or tenant may be recovered from the new lessee or tenant.

10. (1) Any person evicted under the provisions of section 8 or aggrieved by an order of termination of lease or resumption of tenancy made under section 9 may, within sixty days of such eviction or within thirty days of the order of termination of the lease or resumption of tenancy, prefer an appeal to the Chief Administrator, 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. (1) Any person claiming any interest in any waqf property in respect of which a notification has been issued under section 7 may, within thirty days of the publication of such notification, petition the District Court within whose jurisdiction the waqf property or any part thereof is situated, for a declaration: —

(a) that the property is not waqf property;

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

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

(2) The District Court may, for reason to be recorded, refuse to issue any process for compelling the

attendance of any witness for the purpose of examination or the production of any document or other thing if it considers that it has been made for the purpose of vexation or delay.

12. Any person aggrieved by a decision of the District Court

decision of
District Court.

District Court and

High Court not
to issue
temporary
Injunction or
order.

Decision of the

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

Chief Administrator

to prepare
scheme for the
administration
and
development of
waaf property.

Sale of waqf

property by
Chief
Administrator
and application
of proceeds.

under sub-section (1) of section 11 may, within sixty days of
the orders, appeal to the High Court.

Explanation: — The term District Court used in
sections, 11, 12 and 13 shall be deemed to include the Majlis-e-
Shooras of Kalat and Khuzdar Civil Districts.

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

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

15. (1) The Chief Administrator shall as respects the waqf property in respect to which a notification under section 7 has been issued and the gross annual income from which exceeds five thousand rupees and in other case may, settle 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 give.

16. (1) [Subject to the provision of sub-section (2) of Section 15,] Government may, where it is satisfied that circumstances exist which make it necessary to sell or otherwise dispose of any waqf property in order: —

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

1 Added by Balochistan Act IX of 1985; shall be deemed to have taken effect on 1st December, 1984. See also footnote under section 7 (3).

- (b) to serve the best public interest and public purpose for which such property was dedicated; or
- (c) to give effect to such wishes of the person dedicating the property as can be ascertained; or
- (d) in the absence of evidence of express dedication, to enable the property to be used for the purpose for which it has been used or for any purpose recognised by Islam as religious, pious or charitable; or
- (e) to provide maintenance to those who, on account of unemployment, sickness, infirmity or old age are unable to maintain themselves; or

(f) to provide education, medical aid, housing, public facilities and services such as roads, sewerage, gas and electric power; or

(g) to prevent danger to life, property or public health,

Permit the Chief Administrator to do so and to invest the proceeds in accordance with its directions [:]!

[Provided that the sale proceeds of the property shall not be used for any purpose unless the main purpose of the waqf is served and satisfied.]

Use of waqf 17. Subject to the provisions of this Ordinance, a waqf property and property shall be used for the purpose for which it was application of income therefrom.

dedicated or has been used or for any purpose recognised by Islam as religious, pious or charitable, as the Chief Administrator may deem fit.

Chief Administrator 18. (1) The Chief Administrator shall maintain a to maintain complete record of all properties under his control and accounts. 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.

1 Full-stop substituted by a colon and proviso added by Act IX of 1985; shall be deemed to have taken effect on 1st December,
See also footnote under section 7 (3).

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Rents and lease

monies in respect of waqf property may be recovered as arrears of land revenue.

Chief Administrator

may call for returns, etc; and may issue instruction and direction in respect of waqf

property.

(2) All monies 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 Augqaf 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 the Government.

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

20. (1)

Incharge 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

The Chief Administrator may require any person

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 sovereignty or integrity of Pakistan or calculated to arouse feelings of hatred or disaffection amongst various religious sects or groups in the country and directions prohibiting such person from indulging in party politics through sermons or lectures and the person having charge or exercising control over the management of such property shall comply with such instructions and directions.

Bar of jurisdiction.

Effect of orders
etc.,
inconsistent
with this
Ordinance.

Protection of action
taken under
this Ordinance.

Offences.

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

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

22. Every order made and every action taken under this Ordinance © shall 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

have

Ordinance.

23. No suit, prosecution or other legal proceedings 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. (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

function under this Ordinance; or

lawful

(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.

Power to frame
rules.

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

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

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

(a) prescribing the powers and duties of the officers appointed under this Ordinance;

(b) regulating the delegation of any powers by the Chief Administrator to an Administrator or a Deputy Administrator;

(c) prescribing the terms and conditions on which waqf property may be leased or let out;

(d) regulating the manner in which schemes for administration and development of waqf properties shall be prepared;

(e) regulating the conditions of service and conduct of the persons employed under this Ordinance;

(f) regulating the conduct of litigation by or against the Chief Administrator;

(g) prescribing the manner in which the accounts shall be kept;

(h) prescribing the authority for auditing the accounts maintained by the Chief Administrator;

(i) prescribing the syllabus and curricula for the proper education and training of Imams and Khatibs and of other employees of the Augaf institutions in

Balochistan;

Continuance of
actions, etc;
taken under
Act LVI of
1976.

Saving.

G) 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 institution; and

(k) to appoint Advisory Committees
consisting the public representatives,
Ulema and other experts.

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

[Saving given vide section 5 of the Balochistan Act IX of
1985; See the Balochistan Gazette No. 274, dated 6"
November, 1985.]

Anything done, action taken, order passed, or any
decision made after the lapse of the "Balochistan Waqf
Property (Amendment) Ordinance, 1985! (XV of 1985), under
the provision of the said Ordinance shall be deemed to have
been validly done, taken, passed or made, as if this Act was in
force on the day on which such thing was done, action taken,
order passed or direction made.

1 Balochistan Ordinance XV of 1985, promulgated by Governor Balochistan, effective from 1st December, 1984; and published