

THE ISLAMABAD CAPITAL TERRITORY WAQF PROPERTIES

ACT, 2020

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THE ISLAMABAD CAPITAL TERRITORY WAQEF PROPERTIES ACT, 2020

[23rd September, 2020]
ACT NO. XXIX OF 2020

for proper management and administration of waqf properties

WHEREAS it is expedient to provide for proper management, supervision and administration of waqf properties in the territorial limits of the Islamabad Capital Territory and for matters ancillary thereto,

It is hereby enacted as follows:—

1. Short title, extent and commencement:— (1) This Act shall be called the Islamabad Capital Territory Waqf Properties Act, 2020.

(2) It extends to the Islamabad Capital Territory.

(3) It shall come into force at once.

2. Definitions:— In this Act, unless there is anything repugnant' in the subject or context,

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(i)

"administrator means an administrator of auqaf appointed under section 4;

"beneficiary" means any person who gets benefits from the waqf property or whose name is listed in the waqf document as benefiting from the waqf property;

"beneficial owner" means a natural person who ultimately owns or controls a waqf, whether directly or indirectly or exercises effective control of that waqf through other means as prescribed;

"chief administrator" means the chief administrator of auqaf appointed under section 3;

"competent authorities" mean the 'regulators', the "investigating or prosecuting agency" and the "Financial Monitoring Unit". as specified in the Anti-Money Laundering Act, 2010 (VII of 2010);

"district courts" means the district judiciary subordinate to Islamabad High Court;

"High Court" means the Islamabad High Court;

"investigation or prosecuting agency" means the "investigating or prosecuting agency" as specified in the Anti-Money Laundering Act, 2010 (VII of 2010);

"legal person" means any person or entity, other than a natural person, that can do the things that any person can usually do in law, such as entering into contracts, sue or can be sued, own property and so on;

(Gj) "natural person means an individual or individuals;
(k) "person" means a natural person or a legal person;
(l) "prescribed" means prescribed by rules made under this Act; [PART I]

(m) "reporting entity" means any person as defined in the Anti-Money Laundering Act, 2010 (VII of 2010);

(n) "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 is described in section 3 of the Mussalman Waqf Validating Act, 1913 (VI of 1913), under which any benefit is for the time being claimable for himself by the person by whom the waqf was created or by any member of his family or descendants:

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

Explanation 2.— Property allotted in lieu of 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 subscription raised for any purpose recognized by Islam as religious, pious or charitable, shall be deemed to be waqf

property.

Explanation 4.— The income from boxes placed at shrines 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 a waqf property.

Explanation 5.— Property permanently dedicated for the purpose s of a mosque, Takia, Khan kah, Dargah or other shrines shall be deemed to be a waqf property.

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

(o) "waqf means any person who dedicates the waqf property; and

(p) "waqf manager means any person or persons who are in charge of the day-to-day management and operations of the waqf property

3. Appointment of chief administrator of auqaf:— (1) The Chief Commissioner, Islamabad Capital Territory (ICT) shall appoint a chief administrator auqaf for ICT and may by order, vest in him, the waqf properties situated in the territorial limits of ICT 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 serving Government servant of BPS-19.

(3) The chief administrator shall be a corporation sole by the name of the chief administrator ofauqaf, ICT and shall have perpetual succession and an official seal and may sue and can be sued in his corporate name.

(4) The chief administrator shall perform his duties subject to administrative control of the Federal Government.

4. Appointment of administrator and deputy administrators (1) The Chief Commissioner, ICT may appoint administrator and deputy administrators for waqf properties as may be specified in the appointment notification to assist the chief administrator and any administrator or deputy administrators 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 same liabilities as the chief administrator.

(2) The administrator or deputy administrators appointed under sub-section (1) shall be under the administrative control of the chief administrator.

5. General appointments.—(1) The chief administrator with the previous sanction of Chief Commissioner, ICT may, from time to time, determine the number, designation and grade of the officers and servants whom he considers necessary to employ for the purpose of this Act 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 purpose of this Act shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

6. Registration of waqf property— (1) Any waqf manager, whether a creator of the waqf or otherwise, or any authorized representative nominated by him, shall register such waqf property with the chief administrator in the prescribed circumstances and manner.

(2) The information to be contained in the registration of any waqf shall be prescribed. .

(3) Any waqf property not registered with the chief administrator as required under sub-section (1) shall be deemed to have been notified under section 8.

(4) The district collector, ICT being custodian of land record and the supervisory officer of the registration branch where all deeds, agreements and documents are registered under the Registration Act, 1908 (XVI of 1908), shall furnish, in the prescribed circumstances and manner, a consolidated annual report of all waqf properties recorded as waqf during the year in respect of revenue limits of ICT to the chief administrator for information and further necessary action, or as deemed appropriate by the chief administrator, under the provisions of law for the time being in force.

(5) Any change in the waqf property information shall be updated by the waqf manager to the district collector, ICT in a timely manner as prescribed.

7. Waqf manager to obtain and hold information.— (1) Any waqf manager shall also obtain and hold the information as required under sub-section (2) of section 6, and shall ensure that: the information is updated in a timely manner as prescribed,

(2) Any waqf manager shall provide, upon request, any of the information held in accordance with sub-section (1) to the chief administrator in a timely manner as prescribed.

8. Take over waqf property.— (1) Notwithstanding anything to the contrary contained in section 22 of the Religious Endowments Act, 1863 (XX of 1863) or any other law for the time being in force or in any custom or usage or in any decree, judgment or order of any court or any other authority or in any proceedings pending before any court or any other authority, the chief administrator may, by notification, take over and assume the administration, control, management and maintenance of waqf property:

Provided that during the lifetime of a waqf, the chief administrator shall not take over and assume the administrative 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:

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

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

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

(3) The chief administrator shall maintain a centralized record in such a manner, design and structure, as prescribed or notified in the official Gazette, of all properties registered with him under section 6 or the administration thereof has been taken over or assumed under sub-section (1).

(4) At the end of each financial year, the chief administrator shall prepare and submit report of the waqf properties registered under section 6 or the administration whereof has been taken over or assumed under sub-section (1) to the Federal Government. -

9. Provision of miscellaneous information.— (1) Prior to entering into a business relationship or carrying out an occasional transaction with a reporting entity, any waqf manager, whether a creator of the waqf or otherwise, shall disclose their status such to the reporting entity defined in the Anti-Money Laundering Act, 2010 (VII of 2010).

(2) With respect to any waqf in existence, at the time this provision comes into force, any waqf manager, whether a creator of the waqf or otherwise, shall disclose his status as such to any reporting entity with whom they have a business relationship.

10. Eviction of persons wrongfully in possession of waqf properties Any unauthorized person 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 Act or any rule made thereunder, he is not: entitled or has ceased to be entitled may, after being provided a reasonable opportunity of showing cause against such action be summarily evicted from such waqf property 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 unauthorized 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.

11. Termination of tenancy. —(1) If the administrator is satisfied that 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 of hearing, 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 sixty 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 un-gathered 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.

12. Appeal.— (1) Any person evicted under the provisions of section 10 or aggrieved by an order of termination of lease or resumption of tenancy made under section 11 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 hearing, shall confirm, modify or vacate the order made by the administrator under section 10 or 11.

(2) If there is no appeal preferred against an order of eviction made under section 10 or an order of termination of lease or resumption of tenancy made under section 11, the eviction, termination of lease or resumption of tenancy, as the case may be, shall attain finality, and when there an appeal has been preferred, the decision of the chief administrator in appeal shall be considered final.

13. Petition to High Court.— (1) Any person claiming any interest, in any waqf property in respect of which a notification has been issued under section 8 may, within thirty days of the publication of such notification in the official Gazette , file a petition in the High Court for a declaration-

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

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

14. No temporary injunction or order without prior notice — No court including District Court or a High Court and any other forum established under any law shall issue an injunctive order without hearing the Government at the first instance and in no case the injunction shall extend for a period beyond six months.

15. Decision of the High Court shall be final.— If no appeal is preferred within thirty days, the decision of the High Court, or when there is an appeal, the decision in appeal shall be final. '

16. Scheme for administration of waqf property.— (1) The chief administrator shall in respect of a waqf property regarding which a notification under section 8 has been issued and the gross annual income from which exceeds one hundred thousand rupees and on 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 waqf as can be ascertained, and to which effect can be reasonable given.

17. Sale process of waqf property.— (1) The Chief Commissioner, ICT may, where he is satisfied that circumstances exist, sell or otherwise dispose of any waqf property in order-

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

(b) to serve the best public interest and public purpose for which such property was dedicated; or

(c) to give effect to such wishes of the person dedicating the property as can be ascertained; or

(d) 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.

(2) The Chief Commissioner, ICT may permit the chief administrator to invest the proceeds in accordance with his directions.

(3) For carrying out the purpose mentioned in sub-section (1) and (2), the Chief Commissioner, ICT shall seek permission from Federal Government.

18. Use of waqf property and application of income therefrom.— Subject to the provisions of this Act, 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.

19. 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 realized by the chief administrator in respect of properties under his control and management shall form and be credited to a fund to be called augaf fund which shall be under the control of and operated upon by the chief administrator subject to general supervision of the Federal 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 by the Chief Commissioner, ICT and the audit report with the comments of the Chief Commissioner, ICT shall be laid before the Federal Government.

20. Rents and lease moneys in respect of waqf property.— 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 as provided in the West Pakistan Land Revenue Act, 1967 (W.P Act No. XVII of 1967).

21. Power of chief administrator to issue instructions.— (1) The chief administrator may require any waqf manager in respect of a waqf property the administration whereof has not been taken over or assumed by him under section 8 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 waqf manager in respect of a waqf property, the administration whereof has not been taken over or assumed by the chief administrator under section 8, such instructions or directions for the proper administration, control, management and maintenance of such waqf property as he may deem necessary including directions prohibiting delivery of sermons, khutbas or lectures which may contain any matter prejudicial to the sovereignty and integrity of Pakistan or calculated to arouse 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 waqf manager shall comply with such instructions and directions.

(3) The chief administrator shall require any waqf manager of waqf property registered under section 6 or of any waqf property administered by the chief administrator under section 8 to follow all or any of the instructions given below in order to prevent the money laundering and terrorist financing.

(a) the person properly entered into lease deed shall deposit the lease and rent amount online through his bank account to the designated account of the chief administrator or administrator, while the waqf manager shall provide a computerized bill to the leaseholder;

(b) after execution of proper lease deed with the successful bidder and occupant of a waqf property by chief administrator, the same shall be displayed on official website for information and awareness of the general public or any authority;

(c) the leaseholder at the time of execution of agreement shall provide an affidavit to the effect that the property allotted to him and income there-from shall not be used for any illegal purposes including but not limited to money laundering or terrorist financing. The leaseholder shall annually submit verified bank account statement showing details of credited and debited amount to the chief administrator; and

(d) to preserve complete record of the waqf property including auditable accounts statement, number of employees or advisers or investors or managers or accountants and their complete bio-data etc. for the last five years.

22. Provision of information to competent authorities.— (1) The chief administrator shall provide prescribed information about the waqf to competent authority in the prescribed manner and circumstances.

(2) The waqf manager shall provide to competent authorities, for domestic and international cooperation purposes at any time in the manner prescribed, any information regarding the waqf property, including but not limited to beneficial ownership of waqf property, the residences of the staff who have control over the waqf properties, any assets held or managed by a reporting entity in relation to waqf property or any other information relating to the waqf specified in the Anti-Money Laundering Act, 2010 (VII of 2010).

23. Provision of information to reporting entities— (1) The chief administrator shall provide and upon request to the reporting entity information about the beneficial ownership and assets of the waqf in the prescribed circumstances and manner.

(2) The reporting entity may also obtain the information from the waqf manager about the beneficial owner, details of waqf assets, residential addresses of waqf manager and details of beneficiaries in the: prescribed circumstances and manner.

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

(a) to question the legality of anything done under this Act 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 Act to detuning or settle; or

(c) to grant an injunction or other order in relation to any proceeding before the chief administrator under this Act or anything done or intended to be done by

or at the instance of the chief administrator under this Act.

25. 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 Act or otherwise discharging lawful function under this Act; 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 Act | shall be punished with imprisonment for a term which may extend to five years or with fine up to twenty-five million rupees or with both.

(2) Any person who willfully fails to comply with any requirement under section 21 shall be punished with imprisonment which shall not be less than one year but which may extend to five years and shall be liable to fine which shall not be less than the benefits derived from the waqf property but may extend to three times of the amount of income derived from the property.

(3) Any person who intentionally fails to comply with the provisions of section 7 or intentionally conceals any information or provide incomplete or incorrect information to the chief administrator as required under this Act, shall be liable to pay such amount calculated by the concerned district collector or any other authority duly authorized by the chief administrator to do so, for the period of factum of waqf property or an imprisonment of up to five years, or with both.

(4) The offences punishable under this Act shall be triable by the court of sessions.

26. Administrative sanctions.— Any person who fails to comply with any provision of this Act for any other reason shall be penalized with an amount up to twenty-five million rupees.

27. Power to make rules.— (1) Subject to approval by the Federal Government, the Chief Commissioner, ICT shall make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of their 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 Act;

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

(e) regulate the conditions of services and conduct of the persons employed under this Act;

(f) regulate the conduct of litigation by or against the chief administrator;

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

(h) prescribe the authority for auditing the accounts maintained by the Chief administrator;

(i) prescribe the syllabus and curricula for the proper education and training of Imams and Khatibs and of other employees of the augaf institutions in ICT;

Gj) prescribe and regulate the standards of syllabus and curricula of institutions providing Islamic religious education, by whatever name called and, where considered necessary in the public interest, the scrutiny of the accounts of such institution; and

() to appoint advisory committee consisting of public representatives, ulema and other experts.

28. Repeal.— On commencement of this Act, the Auqaf (Federal Control) Act, 1976 (LVI of 1976) is hereby repealed.

29. Continence of actions done under the Auqaf (Federal Control) Act, 1976—

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