

Bengal Wakf Act, 1934

13 of 1934

[19 July 1934]

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Bengal Wakf Act, 1934

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PREAMBLE

An Act to make provision for the proper administration of wakf property in Bengal.

Whereas it is expedient to make provision for the proper administration of wakf property in Bengal;

² And whereas it is expedient to create a fund for the education of poor and meritorious students professing Islam and reading in any recognised institution;

And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:-

1. For Statement of Objects and Reasons, see the Calcutta Gazette, dated the 1st September, 1932, Part IV, pages 417-418; for Preliminary Report of the Select Committee, see the Calcutta Gazette. dated the 2nd March, 1933, Pt. IV, page 58; for Report of the Sir Zahid Suhrawardy Committee on the Bill, see ibid. dated the 1st June, 1933, Pt. IV, pages 81 -99 and for Report of the Select Committee, see ibid. dated the 24th August, T933, Pt.IV, pages 186-258; and for Proceedings in Council, see the Bengal Legislative Council Proceedings, 1932, Vol. XXXIX, No. 1, pages 269-285, ibid. 1933, Vol. XLI, No. 1, page 132, and Vol. XLII, No. 1, page 230, and also ibid. 1934, Vol. XLIII, No. 4, pages 36-74, 79-118, 135-170, 179-224 and 237-250.

2. This second paragraph to the 'Preamble' was inserted by Section 2 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

(1) This Act may be called the Bengal Wakf Act, 1934.

(2) It extends to the whole of ¹[West Bengal].

(3) It shall come into force², in whole or in part, on such date as the ³[State Government] may, by notification, appoint, and for this purpose different dates may be appointed for different provisions of this Act.

1. The words within square brackets were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

2. (a) Sections 1, 2, 6, 33, 43 and 57 [except clauses (e) to (h) of sub-section (1)], 89, 91, 92 and 93 and Chapter IV of the Act came into force on the 15th December, 1934, vide notification No. 2579 Misc., dated the 14th December, 1934, published in the Calcutta Gazette of the 20th December, 1934, Part I, page 1960.

(b) Chapter IV of the Act came into force on the 15th December, 1934 for the purpose of making a survey of wakf properties, vide notification No. 2580 Misc., dated 14.12.34, published in the Calcutta Gazette of 1934, Part 1, page 1960.

(c) Sections 8 and 9, sub-section (1), clause (h) of sub-section (2) and sub-section (3) of section 84 of the Act came into force on the 7th February, 1936, vide notification No. 131 Misc., dated the 16th January, 1936, published in the Calcutta Gazette of the 23rd January,

(d) The whole of the Act (except those sections which have already been brought into force) on the 1st March, 1936, vide notification No. 276 Mis., dated the 10th February, 1936, published in the Calcutta Gazette of the 13th February, 1936, Part I, page 357.

(e) The whole of the Act came into force in the district of Darjeeling on the 20th July,

3. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. Preliminary survey of wakf property :-

(1) For the purpose of making a survey of wakf properties existing at the date of the commencement of this Act the ¹[State Government] may, by notification, bring Chapter IV into force on such date as may be specified in the notification, and thereupon, notwithstanding anything contained in this Act, the ¹[State Government] may appoint persons, either by name or by their official designation, to perform the duties imposed and exercise the powers conferred by that Chapter on the Commissioner and the Board.

(2) The cost of survey under sub-section (1) shall be paid to the ¹[State Government] from the Wakf Fund when that fund is formed under section 61.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

3. Application :-

Save as herein otherwise specifically stated this Act shall apply to all wakfs, whether created before or after the commencement of this Act, any part of the property of which is situated in ¹[West Bengal]:

² XXX XXX XXX

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The proviso to section 3 was omitted by Section 3 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

4. Power to exclude wakfs from the operation of this Act :-

The Board may, with the previous sanction of the ¹[State Government], and subject to rules made by the ¹[State Government] in this behalf, exempt any wakf from all or any of the provisions of this Act.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter

the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

5. Exemption of certain wakf properties :-

The ¹[State Government] may, by notification in the ²[Official Gazette], exempt any wakf property, which has been retained under the superintendence of the Board of Revenue in accordance with the provisions of section 21 of the Religious Endowments Act, 1863, (XX of 1863) from all or any of the provisions of this Act, for so long as the property remains under such superintendence.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were substituted for the words "Calcutta Gazette" by para. 4() of the Government of India (Adaptation of Indian Laws) Order, 1937.

6. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,-

(1) "beneficiary" used with reference to a wakf-al-al-aulad means a wakif, any member of his family or descendants entitled to receive any pecuniary or other material benefits from such wakf;

(2) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reasons of his being such mutwalli;

(3) "Board" means the Board of Wakfs constituted under section 7;

(4) "Commissioner" means the Commissioner of Wakfs appointed under section 16;

¹(4A) "Deputy Commissioner" means the Deputy Commissioner of Wakfs appointed under section 16A;

(5) "enrolment" means the enrolment of a wakf under section 44;

(6) "mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a competent authority to be the mutwalli of a wakf and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of a mutwalli and, save as otherwise provided in this Act, any person or committee for the time being managing or administering any wakf property as such:

²Provided the notwithstanding anything to the contrary contained

in any law, contract, custom or usage or in any deed or instrument, a person in order to be eligible to be appointed as a mutwalli must be a citizen of India and must fulfil such other qualifications as may be prescribed by the State Government by rules made under this Act.

(7) "net available income" of a wakf means the income as determined, from time to time, in the manner prescribed by the³[State Government];

(8) "person interested in a wakf means a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has a right to worship or to perform any religious rite in a mosque, idgah, imambarah, darga, maqbara or other religious institution connected with the wakf or to participate in any religious or charitable ministrations under the wakf;

(9) "stranger to a wakf" means a person other than a person interested within the meaning of clause (8);

(10) "wakf means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Islamic law as pious, religious or charitable and includes a wakf by user; and "wakif" means any person making such dedication;

(11) "wakf-al-al-aulad" means a wakf under which not less than seventy-five per cent. of the net available income is for the time being payable to the wakif for himself or any member of his family or descendants;

(12) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied.

1. Clause (4A) was inserted by Section 4 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

2. This proviso was added to clause (6) by Section 2 of the Bengal Wakf (Amendment) Act, 1975 (West Ben. Act XXII of 1975).

3. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

Section 7 to 15 - The Board of Wakfs

CHAPTER 2 CONSTITUTION OF BOARD AND APPOINTMENT OF COMMISSIONER

7. Establishment of Board of Wakfs :-

The ¹[State Government] shall, as soon as possible after the commencement of this Act ²establish a Board to be called "the Board of Wakfs," and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. For establishment of a Board called "the Board of Wakfs", see notification No. 1100 Mis., dated 2.4.36, published in the Calcutta Gazette of 1936, Part 1, page 920.

8. Constitution of the Board :-

(1) For the first three years after the establishment of the Board under section 7, the Board shall consist of the Commissioner as President and the following members, namely:-

- (a) five members to be appointed by the ¹[State Government] of whom only one shall be a Shia and only one shall be a mutwalli;
- (b) two members to be elected, in the manner prescribed by the ¹[State Government], by the ²[West Bengal] Legislative ³[Assembly] from among the Members of the ³[Assembly];
- (c) three Shia members to be appointed by the ¹[State Government]:

Provided that the members referred to in clause (c) shall be members of the Board solely in respect of wakfs created by a Shia.

(2) After the said period of three years the Board shall consist of the Commissioner as President and the following members, namely:-

- ⁴(a) five members to be appointed by the State Government of whom one shall be a Shia and two shall be mutwallis;
- ⁵(b) three members to be elected by the West Bengal Legislative Assembly from among the Members of the Assembly in accordance with the system of proportional representation by means of the single transferable vote, in the manner prescribed by the State

Government;

⁶ XXX XXX XXX

(d) three Shia members to be appointed by t h e ¹[State Government] ⁷[of whom one shall be of the Dawoodi Bhora Community]:

Provided that the members referred to in clause (d) shall be members of the Board solely in respect of wakfs created by a Shia.

(3) If by such date as the ¹[State Government] may fix, any electoral body referred to in sub-section (1) or sub-section (2) fails to elect a person to be a member of the Board, the ¹[State Government] shall appoint a suitable person in his place and any person so appointed shall be deemed to be a member as if he had been duly elected by such body.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

3. This word was substituted for the word "Council" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

4. Clause (a) was substituted for the original clause by Section 5(a) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

5. Clause (b) was substituted for the original clause by Section 5(b) of the West Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

6. Clause (c) was omitted by Section 5(c), *ibid*.

7. The words within square brackets were inserted by Section 5(d) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973)

9. Members of the Board to be Muslims :-

Every member of the Board shall be a person professing Islam.

10. Term of office :-

(1) Every member of the Board shall hold office for a term of five years:

Provided that the term of office of a member of the Board referred to in sub-section (1) of section 8 shall be three years.

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

(3) A person ceasing to be a member by reason of the expiration of his term of office, shall, if otherwise qualified, be eligible for re appointment or re-election.

(4) If any mutwalli as such appointed, or any member of the ¹[West Bengal] Legislative ²[Assembly] as such elected, to be a member of the Board ceases to be a mutwalli or a Member of the ¹[West Bengal] Legislative ²[Assembly], as the case may be, the ³[State Government] shall by notification in the ⁴[Official Gazette], declare his place to be vacant:

Provided that an elected member of the Board whose place is declared vacant under this sub-section shall continue as a member of the Board until his successor is elected.

1. The words within square brackets were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

2. This word was substituted for the word "Council" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

3. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

4. The words within square brackets were substituted for the words "Calcutta Gazette" by para. 4() of the Government of India (Adaptation of Indian Laws) Order, 1937.

11. Appointments and elections to be notified in the Official Gazette :-

The names of the members of the Board shall be published by the ¹[State Government] in the ²[Official Gazette].

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government

of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were substituted for the words "Calcutta Gazette" by para. 4() of the Government of India (Adaptation of Indian Laws) Order, 1937.

12. Removal of members :-

(1) The ¹[State Government] may, by notification in the ²[Official Gazette], remove any member of the Board if he-

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

(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 as in the opinion of the ¹[State Government], implies that he is unfitted to continue to be a member of the Board;

(d) without excuse sufficient in the opinion of the ¹[State Government], is absent without the consent of the Board from more than ³[three] consecutive meetings of the Board.

(2) The ¹[State Government] may fix a period during which any person so removed shall not be eligible for re-appointment or re-election.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were substituted for the words "Calcutta Gazette" by para. 4() of the Government of India (Adaptation of Indian Laws) Order, 1937.

3. The word within the square brackets was substituted for the word "six" by Section 6 of the Bengal Wakf (Amendment) Act. 1973 (West Ben. Act XIV of 1973).

13. Resignation of members :-

A member of the Board may resign his office by giving notice in writing to the ¹[State Government]; and, on such resignation being accepted, shall be deemed to have vacated his office.

1. The words "Provincial Government" were originally substituted

for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

14. Casual vacancies :-

When the place of an appointed or elected member of the Board is declared vacant under sub-section (4) of section 10 or becomes vacant by his removal, resignation or death, a new member shall be appointed or elected as the case may be in the manner provided in section 8, 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 Board, or of its officers, shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the number provided in section 8.

15. President of meetings of the Board :-

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

(2) The presence of at least three members shall be necessary to form a quorum at a meeting of the Board.

Section 16 to 22 - The Commissioner of Wakfs

16. Appointment of the Commissioner :-

The Commissioner of Wakfs shall be a person professing Islam, and shall be appointed by the ¹[State Government] by notification in the ²[Official Gazette] ³[for such period, not exceeding five years from the date of appointment, as may be specified in the notification, and shall be eligible for re-appointment.] ⁴* * *

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were substituted for the words "Calcutta Gazette" by para. 4() of the Government of India (Adaptation of Indian Laws) Order, 1937.

3. The words within square brackets were inserted by Section 7(a) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

4. The words "He shall ordinarily be appointed for five years, and shall be eligible for re-appointment." were omitted by Section 7(b).
ibid.

16A. Appointment of Deputy Commissioner :-

¹[(1) The State Government may, by notification in the Official Gazette, appoint, for such period not exceeding five years from the date of appointment, as may be specified in the notification, a person professing Islam to be the Deputy Commissioner of Wakfs and may, from time to time, by like notification, extend, by such period as it may consider necessary, the period of appointment of the Deputy Commissioner.

(2) Save as otherwise provided in this Act. the Deputy Commissioner shall exercise, perform and discharge such powers, functions and duties of the Commissioner as may be delegated to him by the Commissioner under section 16B.]

1. Sections 16A and 16B were added by Section 8, ibid.

16B. Delegation of powers, etc., by the Commissioner to the Deputy Commissioner :-

¹[Subject to the other provisions of this Act and to such rules as may be made in this behalf by the State Government, the Commissioner may, by order in writing, delegate any of the powers, functions or duties under this Act to the Deputy Commissioner, and in respect of his powers, functions or duties so delegated to the Deputy Commissioner references in this Act to the Commissioner shall be deemed to include references to the Deputy Commissioner.]

1. Sections 16A and 16B were added by Section 8, ibid.

17. The Commissioner to be a whole-time officer :-

The Commissioner ²[or the Deputy Commissioner], during his term of office, shall not hold any other salaried post or the office of a

mutwalli, and, subject to any exceptions permitted by the ¹[State Government] shall devote his whole time and attention to his duties under this Act.

1. Sections 16A and 16B were added by Section 8, *ibid*.

2. The words within square brackets were inserted by Section 17 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

18. Remuneration of Commissioner and Deputy Commissioner :-

¹[The Commissioner and the Deputy Commissioner shall receive such monthly salary as may be fixed by the State Government: Provided that if an officer in the service of the State Government is appointed Commissioner or Deputy Commissioner, he may receive such allowances in addition to the monthly salary as the State Government may fix, and all contributions towards his leave salary and pension required to be paid by him or for him under the conditions of his service under the State Government regulating his transfer to foreign service shall be payable out of the Wakf Fund.]

1. Section 18 was substituted for the original section by Section 10 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

19. Leave of absence or deputation of the Commissioner :-

(1) The ¹[State Government] may, after consultation with the Board, grant leave of absence ²[to the Commissioner or the Deputy Commissioner or depute the Commissioner or the Deputy Commissioner] to other duties for such period as it thinks fit.

(2) The allowance (if any) to be paid to the Commissioner ³[or the Deputy Commissioner] while absent on leave or deputation shall be such amount as may be fixed by the ¹[State Government].

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within the square brackets were substituted for the words "to the Commissioner or depute him" by Section 11(a) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

3. The words within the square brackets were inserted by Section 11 (b), *ibid*.

20. Acting Commissioner :-

¹[(1) Whenever the Commissioner is granted leave of absence or is deputed to other duties, the Deputy Commissioner, or, if there is no Deputy Commissioner or if the Deputy Commissioner also is granted leave of absence or is deputed to other duties, a person professing Islam appointed by the State Government in this behalf, shall act as the Commissioner until the Commissioner, or the Deputy Commissioner, as the case may be, resumes his duties.

(2) The salary of the person appointed under sub-section (1) to act as the Commissioner shall be fixed by the State Government.]

1. Section 20 was substituted for the original section by Section 12 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

21. Removal of the Commissioner :-

If at any time it appears to the ¹[State Government] that ²[the Commissioner or the Deputy Commissioner 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 ³[Official Gazette], declare that ⁴[the Commissioner or the Deputy Commissioner, as the case may be, shall cease] to hold such office.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within the square brackets were substituted for the words "the Commissioner has shown" by Section 13(a) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

3. The words within square brackets were substituted for the words "Calcutta Gazette" by para. 4() of the Government of India (Adaptation of Indian Laws) Order, 1937.

4. The words within the square brackets were substituted for the words "the Commissioner shall cease" by Section 13(b), *ibid*.

22. Commissioner to be a corporation sole :-

The Commissioner shall be a corporation sole by the name of "the Commissioner of Wakfs" and shall have perpetual succession and an official seal and shall by the said name sue and be sued.

Section 23 to 24 - Officers and Servants

23. Strength and remuneration of staff :-

The Board, with the previous sanction of the ²[State Government], may from time to time determine the number, designations and grades of the officers and servants (other than employees who are paid by the day) whom the Board considers it necessary to employ for the purposes of this Act and the amount and nature of the salary, ¹[fees, allowances, gratuity and other pecuniary benefits] to be paid to each such officer and servant.

1. The words within square brackets were substituted for the words "fees and allowances" by Section 14, *ibid*.

2. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

24. Powers of appointment, etc., vested in the Commissioner :-

The power of appointing, promoting, and granting leave to officers and servants of the Board and reducing, suspending or dismissing them for misconduct, shall be vested in the Commissioner:

Provided that the Commissioner shall not appoint any person to a post the maximum monthly pay of which exceeds one hundred rupees except with the approval of the Board:

Provided further that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended or dismissed by the Commissioner may appeal to the Board, whose decision shall be final.

Section 25 to 26 - Officer

25. Office of the Commissioner and the Board :-

The Office of the Commissioner and the Board shall be situated in

Calcutta.

26. Travelling allowance :-

There shall be paid to ¹[the Commissioner, the Deputy Commissioner,] members, officers and servants of the Board allowances for attendance at meetings of the Board and for journeys undertaken in the discharge of their duties under this Act at such reasonable rates as may, from time to time, be allowed by the Board with the previous sanction of the ²[State Government].

1. The words within the square brackets were substituted for the words "the Commissioner" by Section 15 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

2. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

CHAPTER 3 FUNCTIONS OF THE COMMISSIONER AND THE BOARD

27. General powers and duties :-

Subject to the provisions of this Act and the rules made by the ¹[State Government] thereunder-

(1) the functions of the Commissioner shall include-

(a) investigating ²[and determining] the nature and extent of wakfs and wakf property, ³[causing, whenever necessary, a survey of the wakf property] and calling from time to time for accounts, returns and information from mutwallis;

(b) ensuring that the income and other property of wakfs are applied to the objects and for the purposes and for the benefit of any class of persons for which such wakfs are created or intended;

(c) giving directions for the proper administration of wakfs;

(d) keeping in his custody the particulars and all other information relating to ⁴[every wakf];

(e) generally, doing all such acts as may be necessary for the due control, maintenance and administration of wakfs;

⁵(f) creation of an Education Fund for the education of poor and meritorious boys and girls professing Islam reading in schools, colleges and vocational institutions recognised by the State Government; (2) the functions of the Board shall include-

(i) in the absence of any directions by the wakif or any lawful

authority, declaring what proportion of the income or other property of the wakf shall be allocated to any particular object of the wakf;

(ii) declaring in what manner any surplus income of a wakf shall be utilised;

(iii) constituting committees, where necessary, for the administration of wakfs;

(iv) exercising and performing such other powers and duties as are expressly conferred or imposed on the Board or under this Act;

(v) generally, advising the Commissioner in the exercise and the performance of his powers and duties under this Act:

⁶Provided that no declaration under sub-clause (i) or sub-clause (ii) shall be made without giving the parties affected an opportunity of being heard.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were inserted by Section 2 of the Bengal Wakf (Amendment) Act, 1935 (Ben. Act IV of 1936).

3. The words within square brackets were inserted by Section 16(a)(i) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

4. The words within square brackets were substituted for the words "Wakfs-al-al-aulad" by Section 16(a)(ii), *ibid*.

5. Sub-clause (f) was added by Section 16(a)(iii) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

6. This proviso was added by Section 16(b), *ibid*.

28. The Commissioner and the Board to carry out purposes of wakfs but may revise inoperative provisions :-

¹[The Commissioner, the Deputy Commissioner and the Board] in exercising their powers under this Act in respect of any wakf shall act in conformity with the directions of the wakif, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Islamic law ²[and in general with the provisions of Muhammedan law relating to wakf]:

Provided that in furtherance of the object of the wakf or in the

interest of the beneficiaries of the Board may revise any provision in the wakf deed which has become inoperative or impossible of execution owing to efflux of time or changed conditions³[so, however, that no such revision shall be made without giving the parties affected an opportunity of being heard].

1. The words within square brackets were substituted for the words "The Commissioner and the Board" by Section 17(a), *ibid*.

2. The words within square brackets were inserted by Section 17(b), *ibid*.

3. The words within square brackets were inserted by Section 17(c), *ibid*.

29. Commissioner to perform certain functions authorized by the Board :-

The Board may, from time to time, authorize the Commissioner to exercise and perform, subject to the control of the Board, any of the powers and duties conferred or imposed on the Board by or under this Act.

30. Exercise of powers through Commissioners of Divisions and Collectors :-

Subject to any rules made by the¹[State Government] in this behalf, the Commissioner, with the approval of the Board, may exercise all or any of the powers conferred on him by this Act through the Commissioners of the Divisions or the Collectors of the districts in which the wakf 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 Commissioners, Collectors or other persons as aforesaid and may at any time revoke such delegation.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

31. Power of Commissioner to consult the Board :-

The Commissioner may at any time consult the Board in regard to any matter connected with the discharge of his functions under this

Act.

32. Application for inquiry or audit of accounts :-

In the case of a wakf-al-al-aulad, a beneficiary or any person entitled under the wakf deed to receive pecuniary or other material benefits either on his own account or on behalf of a religious or charitable institution, and in the case of any other wakf, any person interested may make an application to the Commissioner supported by an affidavit to institute an inquiry relating to the administration of a wakf or for the examination and audit of the account, of a wakf, and the Commissioner, on receipt of such application and the prescribed fee, and on being satisfied from facts set forth in the affidavit that there are reasonable grounds for believing that the affairs of the wakf 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.

33. Power to summon witnesses and compel the production of documents :-

For the purposes of any inquiry under this Act the Commissioner or any person authorized by him in this behalf shall have the power to summon and enforce the attendance of witnesses including the parties interested and to compel the production of documents by the same means, and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908).

34. Protection of wakfs-al-al-aulad if mismanaged :-

(1) If after an inquiry under section 32 the Commissioner is of opinion that the affairs of any wakf-al-al-aulad have been mismanaged to such an extent as to make it desirable for the protection of the wakf property or in the interest of the beneficiaries that the wakf should be subjected to greater control and supervision, he may recommend to the ¹[State Government] that such wakf shall for a specified period be subject to the provisions of this Act which are applicable to wakfs other than wakfs-al-al-aulad.

(2) After considering any recommendation of the Commissioner

under sub-section (1), the ¹[State Government] may, if it thinks fit, by notification in the ²[Official Gazette], direct that for such period as may be specified therein the provisions of this Act which are applicable to wakfs other than wakfs-al-al-aulad shall so far as possible apply to the wakf to which the recommendation relates and thereupon, notwithstanding anything contained in this Act, these provisions shall apply accordingly.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were substituted for the words "Calcutta Gazette" by para. 4() of the Government of India (Adaptation of Indian Laws) Order, 1937.

35. Information required by the Board :-

The Commissioner shall be bound to comply, as far as possible, with any request made by the Board for the supply of any information or the production of any document relating to a wakf or for the summoning of any witness whose attendance may be required:

Provided that in the case of a wakf-al-al-aulad the information or document or the attendance of the witness is required for the due performance of any duty of the Board under this Act in relation to such wakf-al-al-aulad.

36. Bar to requisition of information to documents from a stranger to the wakf :-

Notwithstanding anything contained in this Act the Commissioner shall have no power to require any information or documents in respect of a wakf from any stranger to the wakf.

37. Power of mutwalli to apply for directions :-

(1) Any mutwalli may apply by petition to the Commissioner for the opinion, advice or direction of the Commissioner on any question affecting the management or administration on any question affecting the management or administration of the wakf property and the Commissioner shall give his opinion, advice or direction, as the case may be, thereon:

Provided that the Commissioner, if he cannot suitably dispose of the question, may refer the mutwalli to the Court of the District Judge having local jurisdiction over the place where the wakf property or any part thereof is situated or to any other Court empowered in this behalf by the ¹[State Government] and if the mutwalli thereafter applies by petition to such Court, the Court shall give its opinion, advice or direction in the manner provided in sub-sections (2) and (3).

(2) The Commissioner 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 wakf, 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 Commissioner, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) Every mutwalli acting upon or in accordance with the opinion, advice or direction given by the Commissioner 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 mutwalli in the matter in respect of which the petition was made:

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

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

38. Creation of reserve fund :-

(1) For the purpose of making provision for the payment of rent and of revenue, cess, rates and taxes due to the Government or to any local authority, for the discharge of the expenses of repairs of the wakf property and for the preservation of the wakf property the Board may direct the creation and maintenance, in such manner as

it may think fit, of a reserve fund from the income of a wakf other than a wakf-al-al-aulad.

(2) The Commissioner may, for the purposes referred to in sub-section (1), at the request of the majority of the beneficiaries of a wakf-al-al-aulad, direct the creation and maintenance, in such manner as he may think fit, of a reserve fund from the income of such wakf.

39. Power to pay dues in case of default by mutwalli :-

(1) Where a mutwalli refuses to pay or does not pay any revenue, cess, rates and taxes due to the Government or any local authority, the Commissioner may discharge the dues from the Wakf Fund and then proceed to recover the same from the wakf property and may also recover damages at twelve and a half per cent. of the dues from the mutwalli.

(2) Any sum of money due under sub-section (1) shall be recoverable as a public demand.

40. Power to appoint a mutwalli in certain cases :-

¹[In the case of any wakf of which there is no mutwalli or where the mutwalli is not available, ²[or the mutwalli appointed under any deed or instrument is not a citizen of India] or the mutwalli is, in the opinion of the Board, not capable of acting as such or where there appears to the Board to be an impediment to the appointment of a mutwalli, the Board may appoint for such period and on such conditions as it thinks fit a person to act as mutwalli:

³Provided that where the mutwalli appointed under any deed or instrument is not a citizen of India, the Board may appoint his nominee, if any, to act as mutwalli.]

1. Section 40 was substituted for the original section by Section 18 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

2. The words within square brackets were inserted by Section 3(a) of the Bengal Wakf (Amendment) Act, 1975 (West Ben. Act XXII of 1975).

3. This proviso was added by Section 3(b), *ibid*.

41. Appointment of official mutwalli :-

(1) The Board may appoint ¹[one or more official mutwallis on such

terms and conditions as the State Government may prescribe].

(2) Any intending wakf may, with the permission of the Commissioner and subject to such conditions as to remuneration and other matters as the Commissioner may fix, ²[appoint an official mutwalli as the mutwalli of his wakf, and such official mutwalli] shall thereafter accept the office.

1. The words within square brackets were substituted for the words "an official mutwalli" by Section 4(a), *ibid*.

2. The words within square brackets were substituted for the words "appoint the official mutwalli as the mutwalli of his wakf, and the official mutwalli" by Section 4(b), *ibid*.

42. Inspection of records and grant of copies :-

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

(2) Any person interested in a wakf other than a wakf-al-al-aulad shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf.

(3) In the case of a wakf-al-al-aulad a beneficiary shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf.

(4) In the case of any other wakf, a stranger to the wakf shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf:

Provided that the Commissioner shall not grant such permission without consulting the mutwalli of the wakf.

43. Extension of time for performance of act :-

The Commissioner may, from time to time, extend the time within which any act is required or ordered to be done by or under this Act:

Provided that the Board may, from time to time, extend the time

for the doing of any act which is required or ordered to be done by the Board.

43A. Application of section 36 of Act XVIII of 1879 to touts in Office of the Commissioner :-

¹[(1) The provision of section 36 of the Legal Practitioners Act, 1879, (XVIII of 1879) shall, subject to the provisions of this section, be applicable, so far as may be, to the framing and publication of a list of touts, to the exclusion of touts included in the list from the precincts of the office of the Commissioner and to the arrest, detention, trial and punishment of such touts.

(2) The Commissioner shall, for the purposes of the said section 36, be deemed to be a Civil Court and an authority referred to in sub-section (1) of that section.

(3) For the purposes of this section "tout" has the same meaning as in section 3 of the Legal Practitioners Act, 1879.]

1. Section 43 A was inserted by Section 16 of the Bengal Touts Act, 1942 (Ben. Act V of 1942).

CHAPTER 4 ENROLMENT OF WAKFS

44. Enrolment of wakfs :-

(1) All wakfs existing at or created after the commencement of this Act shall be enrolled at the office of the Commissioner.

(2) Application for enrolment shall be made by the mutwalli:

Provided that any person interested may apply for such enrolment.

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

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

(b) the gross annual income from such properties;

(c) the amount of the Government revenue and cesses, and of all rents and taxes annually payable in respect of the wakf properties;

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

(e) the amount set apart under the wakf for-

(i) the salary of the mutwalli and allowances to individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars prescribed by the Commissioner.

(4) Every such application shall be accompanied by a copy of the wakf 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 wakf.

(5) On receipt of an application for enrolment, the Commissioner may before enrolling the wakf make such inquiries 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 wakf property the Commissioner shall, before enrolling the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(6) In the case of wakfs created before the date on which this section comes into force application for enrolment shall be made within six months from that date and in the case of wakfs created after that date within six months from the date of the creation of the wakf:

Provided that in the case of a testamentary wakf application for enrolment shall be made within six months from the date on which this section comes into force or from the date of the death of the testator, whichever event happens last.

(7) 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, (Act V of 1908) for the signing and verification of pleadings.

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 45.

45. Register of wakfs :-

The Commissioner shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds and the following particulars:-

(a) the class of the wakf;

(b) the name of the mutwalli;

(c) the rule of succession to the office of mutwalli under the wakf deed or by custom and usage;

(d) particulars of all wakf properties and all title deeds and

documents relating thereto;

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

(f) such other particulars as the Commissioner may prescribe.

46. Power to cause enrolment of wakf and to amend register :-

The Commissioner on his own motion or on the petition of any person interested verified in the manner referred to in sub-section (7) of section 44 may direct a mutwalli to apply for the enrolment of a wakf or to supply any information regarding a wakf or may himself collect such information and may cause any wakf to be enrolled or may at any time amend the register of wakfs.

46A. Decision if a property is wakf prpperty or a wakf is wakf-al-al-aulad :-

¹[Any question whether a particular property is wakf property or not or whether a wakf is wakf-al-al-aulad or not shall be decided by the Commissioner whose decision, unless revoked or modified by a competent Court, shall be final, and any decision of any such question made before or after the commencement of the Bengal Wakf (Amendment) Act, 1935, (Ben. Act VI of 1936) by a person appointed by the ²[State Government] under sub-section (1) of section 2 of this Act shall be deemed to have been made by the Commissioner under this section.]

1. Section 46A was inserted by section 3 of the Bengal Wakf (Amendment) Act, 1935 (Ben. Act IV of 1936).

2. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

47. Notification of changes in enrolled wakfs :-

(1) In the case of any change in the management of an enrolled wakf due to the death or retirement or removal of the mutwalli, the incoming mutwalli shall forthwith, and any other person may, notify the change to the Commissioner.

(2) In the case of any other change in any of the particulars mentioned in section 44, the mutwalli shall within ¹[three months]

from the occurrence of the change notify such change to the Commissioner.

1. The words within square brackets were substituted for the words "six months" by Section 19 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1975.)

CHAPTER 5 WAKF ACCOUNTS

48. Submission of accounts of wakfs :-

(a) Before the fifteenth day of July next following the date on which the application referred to in section 44 has been made and thereafter before the fifteenth day of July in every year, every mutwalli of a wakf other than a wakf-al-al-aulad shall prepare and furnish to the Commissioner a full and true statement of accounts, in such form and language and containing such particulars as may be prescribed by the Board of all monies received or expended by the mutwalli on behalf of the wakf during the period of twelve months ending on the thirty-first day of March or on the last day of the Bengali year, or, as the case maybe, during that portion of the said period during which the provisions of this Act have been applicable to the wakf.

(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 wakf properties, including any transfer or transaction affecting such properties;

(ii) the amount of liabilities, if any, of the wakf on account of outgoings such as rent, revenue, cesses, rates, taxes, salaries, and allowances, and on account of all other matters;

(iii) any other particulars which the Board may require.

49. Audit of account of wakfs :-

(1) The accounts of wakfs submitted to the Commissioner under section 48 shall be audited and examined annually or at such other intervals as the Board may determine by an auditor appointed by the Board.

¹Provided that the accounts of wakfs of which the annual income exceeds five thousand rupees shall be audited by auditors appointed by the State 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 Commissioner:

Provided that the auditor may submit in 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 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.

(5) The cost of the audit of the accounts of a wakf shall be paid from the Wakf Fund ²[and the cost of audit of the accounts of a wakf by auditors appointed by the State Government shall be paid by the Estate concerned].

1. This proviso was added to sub-section (1) of section 49 by Section 20(a) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

2. The words within square brackets were added by Section 20(b), *ibid*.

50. Commissioner to pass orders on auditors report :-

The Commissioner shall examine the auditors 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.

51. Sums certified due recoverable as public demands :-

(1) Every sum certified to be due from any person by an auditor in his report under section 49 unless such certificate is modified or cancelled by the Commissioner by an order made under section 50, 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 Commissioner.

(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.

CHAPTER 6 STATEMENTS OF WAKFS-AL-AL-AULAD

52. Statements of wakfs-al-al-aulad :-

(1) Before the 15th day of July next following the day on which the application referred to under section 44 has been made and thereafter before the 15th day of July every year, every mutwalli of a wakf-al-al-aulad shall prepare and furnish to the Commissioner a true statement in respect of the period of twelve months ending on the thirty-first day of March or on the last day of the Bengali year, or, as the case may be, in respect of that portion of the said period during which the provisions of this Act have been applicable to the wakf, containing the following particulars:-

- (i) the gross income from the wakf properties;
- (ii) the amount of the Government revenue and cesses and of all rents and taxes paid in respect of the wakf properties;
- (iii) the expenses incurred in the realization of the income of the wakf properties;
- (iv) the amount paid under the wakf for-
 - (a) the salary of the mutwalli and allowances to individuals;
 - (b) purely religious purposes;
 - (c) charitable purposes; and
 - (d) any other purposes.

(2) If the Commissioner has reason to doubt the accuracy of the statement submitted under sub-section (1) he may after examining the statement call for the explanation of any person in regard to such statement and shall pass such orders on such statement as he thinks fit.

CHAPTER 7 TRANSFER OF WAKF PROPERTY

53. Bar to transfer immovable property of wakf :-

¹[(1) Except as provided in sub-section (2), no transfer or agreement for transfer of any immovable property of a wakf by way of sale, gift, mortgage or exchange or by way of lease or tenancy of any kind shall be made without the previous sanction of the Board and any such transfer or agreement for such transfer, if effected without the prior sanction of the Board, shall be void and the Board shall, while according such sanction, satisfy itself that such transfer or agreement for transfer is for legal necessity.

(2) Where such transfer or agreement for transfer is made under an express power conferred by the wakf deed, the previous sanction of the Board shall not be necessary, but a notice of the proposed transfer in such form and containing such particulars as may be prescribed by the Board shall be sent by the mutwalli to the Commissioner one month before the transfer is made.

(3) If a mutwalli or a member of a committee constituted for the administration of wakf or a person interested in a wakf or any other person contravenes the provisions of sub-section (1) either as a transferor or as a transferee or as a party to an agreement for transfer, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) the fine imposed under sub-section (3), when realised, shall be credited to the Wakf Fund.]

1. Firstly, sections 53,54 and 54A were substituted for original sections 53 and 54 by Section 21 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973). Thereafter, the words "lease or tenancy of any kind" were substituted for the words "lease for a term exceeding three years", in section 53, by Section 5 of the Bengal Wakf (Amendment) Act, 1975 (West Ben. Act XXII of 1975). Finally, the present section 53 was substituted for its previous section 53 by Section 2 of the Bengal Wakf (Amendment) Act, 1985 (West Ben. Act XXXI of 1985).

53A. Enquiry into certain transfer :-

¹[(1) The Board may enquire into any case of transfer made before the commencement of the Bengal Wakf (Amendment) Act, 1975, by a mutwalli of any immovable property of a wakf by way of lease or tenancy of any kind, where previous sanction to such transfer either of the Commissioner or of the Board was not necessary, if it appears to the Board that there are prima facie reasons for believing that such transfer was not bona fide:

Provided that no such enquiry shall be made in respect of a transfer made under an express power conferred by the wakf deed.

(2) If after such enquiry the Board finds that such transfer was not bona fide, it shall make an order to that effect and thereupon the transfer shall, notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, deed or instrument, stand cancelled as from the date on which such transfer was made or purported to have been made:

Provided that subject to such cancellation nothing in this sub-section shall be deemed to affect any rights which the transferor or the transferee may otherwise have against each other.

(3) In case of cancellation of transfer under sub-section (2), the Board may, by order, direct the transferee or any other person in actual possession of the wakf property to deliver possession of the said property to the Board or to any officer thereof duly authorised by the Board in this behalf or to any person or committee appointed by the Board and such order of the Board shall be deemed to be a decree of a Civil Court and shall be executed by the competent Civil Court as if it had passed the decree:

Provided that the mutwalli may, after such cancellation of the lease or tenancy, as the case may be, be permitted by the Board to grant fresh lease or tenancy on such terms and conditions as may be settled by the Board.

(4) If after such enquiry the Board finds that the transfer was bona fide, it shall make an order to that effect and thereupon the consequences ensuing from such transfer shall remain undisturbed, if otherwise valid.

(5) The procedure to be followed in such enquiry shall be such as may be prescribed by the State Government by rules made under this Act:

Provided that-

(a) no order shall be made in an enquiry under this section except after giving the transferor and the transferee an opportunity of being heard;

(b) in conducting such enquiry the Board shall have all the powers of a Civil Court for the purposes of taking evidence, administering oaths, enforcing the attendance of witnesses and compelling the production, of documents and shall be deemed to be a Civil Court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Any person aggrieved by the order of the Board under sub-section (2) or sub-section (3) may prefer an appeal within sixty days from the date of the order before such officer of the State Government and in such manner as may be prescribed by the State Government by rules made under this Act, and the decision of such officer on such appeal shall be final and shall not be questioned in any court of law.

(7) In this section a transfer shall be deemed to be not bona fide if it is found to have been made against the interests of the wakf estate by reason of the consideration of such transfer having been

settled at a value less than the market value prevailing at the time of such transfer by more than twenty per cent.]

1. Section 53A was inserted by Section 6 of the Bengal Wakf (Amendment) Act, 1975 (West Ben. Act XXII of 1975).

54. Boards power to grant sanction to transfer :-

¹[A mutwalli may apply to the Board for its sanction referred to in section 53 to transfer any immovable property of a wakf, and the Board may, after making such inquiry and giving notice to such persons in such manner as it thinks fit and hearing them if they desire to be heard, accord the sanction applied for on such terms and conditions as it may, in its discretion, impose:

Provided that no such sanction shall be accorded unless it is supported by a majority of not less than two-thirds of the members of the Board present and when the Board has been superseded, by both the Administrator and the Commissioner.]

1. Firstly, sections 53,54 and 54A were substituted for original sections 53 and 54 by Section 21 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973). Thereafter, the words "lease or tenancy of any kind" were substituted for the words "lease for a term exceeding three years", in section 53, by Section 5 of the Bengal Wakf (Amendment) Act, 1975 (West Ben. Act XXII of 1975). Finally, the present section 53 was substituted for its previous section 53 by Section 2 of the Bengal Wakf (Amendment) Act, 1985 (West Ben. Act XXXI of 1985).

54A. Recovery of wakf property transferred in contravention of section 53 :-

¹[(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, if any immovable property of a wakf entered as such in the register of wakfs maintained under section 45 is transferred after the commencement of the Bengal Wakf (Amendment) Act, 1973, without the previous sanction of the Board in contravention of the provisions of section 53, the Board may, on the application of any person interested in the wakf or of its own motion, after holding an inquiry in such manner as may be prescribed, make an order against the person in possession of such property directing him to deliver possession of such property to the Board, and send the order for execution to the Collector within whose jurisdiction such property is situated:

Provided that no order shall be made under this sub-section-

- (a) except after giving the transferor and the transferee, and any other person in possession of such property, an opportunity of being heard, or
- (b) after more than twelve years from ²[the date of the Board's knowledge of the transfer].
- (2) As soon as may be after an order is made under sub-section (1), the Board shall cause a copy of the order to be served on every person referred to in clause (a) of the proviso to that sub-section in such manner as may be prescribed.
- (3) On receipt of an order under sub-section (1), the Collector shall issue a notice requiring the person against whom the order has been made to deliver the property to which the order relates to the Board within a period of thirty days from the date of the service of the notice.
- (4) Every notice issued under sub-section (3) shall be served-
- (a) by giving or tendering the notice or by sending it by registered post to the person for whom it is intended; or
- (b) if such person cannot be found, by affixing the notice on some conspicuous part of his last-known place of abode or business, or by giving or tendering the notice to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:
- Provided that where the person on whom the notice is to be served is a minor, service upon his guardian shall be deemed to be service upon the minor.
- (5) Any person aggrieved by an order of the Board under sub-section (1) may prefer an appeal within sixty days from the date of service of a copy of the order under sub-section (2).
- (6) The provisions of section 58A shall apply mutatis mutandis to an appeal under sub-section (5).
- (7) Where an order made under sub-section (1) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.
- (8) The Board shall deal with any property of which it has recovered possession under this section in such manner as may be prescribed.]

1. Firstly, sections 53,54 and 54A were substituted for original

sections 53 and 54 by Section 21 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973). Thereafter, the words "lease or tenancy of any kind" were substituted for the words "lease for a term exceeding three years", in section 53, by Section 5 of the Bengal Wakf (Amendment) Act, 1975 (West Ben. Act XXII of 1975). Finally, the present section 53 was substituted for its previous section 53 by Section 2 of the Bengal Wakf (Amendment) Act, 1985 (West Ben. Act XXXI of 1985).

2. The words within square brackets were substituted for the words "the date of the transfer" by Section 7 of the Bengal Wakf (Amendment) Act, 1975 (West Ben. Act XXII of 1975).

CHAPTER 8 MUTWALLIS

55. Mutwalli to convert property and invest money in certain cases :-

Every mutwalli, unless there is anything to the contrary in the wakf deed, shall invest in such manner as may be approved by the Board any of the wakf property which consists of money which cannot be applied immediately or at an early date to the purposes of the wakf and shall, with the sanction of the Board, convert any of the wakf property which is of a wasting nature and invest the proceeds in such manner as may be approved by the Board.

56. Mutwalli entitled to pay certain costs from Wakf Fund :-

Notwithstanding anything contained in the wakf deed every mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 44 or any accounts under section 48 or any statements under section 52 or any information or documents required by the Commissioner or a person authorised by the Commissioner.

57. Penalties :-

(1) If a mutwalli fails-

(a) to apply for enrolment;

(b) to furnish statements of particulars or of accounts, or returns as required by this Act;

(c) to supply information or particulars as required by the Board or the Commissioner or a person authorised by the Board or the Commissioner;

(d) to allow inspection of wakf properties, accounts, or records, or

deeds and documents relating thereto, or assist inquiries and investigations, if called upon to do so by the Board or the Commissioner or a person authorized by the Board or the Commissioner;

(e) to deliver possession of any wakf property if ordered by the Board or the Court;

(f) to carry out the directions of the Board or the Commissioner or a person authorized by the Board or the Commissioner;

(g) to pay the contribution payable under section 59;

(h) to discharge any public dues, or

(i) to do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the Court that there was reasonable cause for his failure, be punishable with fine which may extend to Tone thousand rupees].

(2) If a mutwalli 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 or untrue in any material particular ¹[he shall be punishable with imprisonment either simple or rigorous for a term which may extend to six months or with fine which may extend to one thousand rupees or with both],

²(3) The fines imposed under sub-sections (1) and (2), when realised, shall be credited to the Wakf Fund.

²(4) In every case where an offender is convicted of an offence punishable under sub-section (1) or sub-section (2) and sentenced to a fine, the Court shall also award by its sentence such term of imprisonment in default of payment of the fine as is authorised by law in case of such default.

1. The words within square brackets were substituted for the words "he shall be punishable with fine which may extend to five hundred rupees" by Section 22(b), *ibid*.

2. Sub-sections (3) and (4) were added by Section 22(c), *ibid*.

58. Removal of mutwalli :-

¹[(1) Notwithstanding anything contained in any other law for the time being in force, the Board, after giving a mutwalli an opportunity to show cause against the action proposed to be taken, may, if a decision in this behalf is taken by a majority of the total number of members of the Board, by order, remove him from office

if such mutwalli-

(a) has been fined or convicted more than once under section 57;
or

(b) has been convicted of an offence of criminal breach of trust or
of any other offence involving moral turpitude; or

(c) has applied for being adjudged or has been adjudged an
insolvent; or

(d) is of unsound mind or is suffering from any other mental defect
or infirmity which would render him unfit for discharging the
functions of a mutwalli; or

²(e) has migrated from India; or

²(f) has ceased to be a citizen of India; or

²(g) has illegally transferred wakf property; or

²(h) has misappropriated, or dealt improperly with, wakf property.

(2) Where a mutwalli has been removed from office under sub-section (1) the Board may, by order, direct the mutwalli to deliver possession of the wakf property to the Board or to any officer thereof duly authorised by the Board in this behalf or to any person or committee appointed by the Board or other competent authority to act as the mutwalli of the wakf property and such order of the Board shall be deemed to be a decree of a Civil Court and shall be executed by the competent Civil Court as if it had passed the decree.]

1. Sections 58 and 58 A were substituted for the original section 58 by Section 23, *ibid*.

2. Clauses (e), (f), (g) and (h) were substituted for original clause (e) by Section 8 of the Bengal Wakf (Amendment) Act, 1975 (West Ben. Act XX11 of 1975).

58A. Appeal :-

¹[An appeal from an order of the Board under sub-section (1) of section 58 shall be made within thirty days from the date of the order, before such authority and in such manner as may be prescribed.]

1. Sections 58 and 58 A were substituted for the original section 58 by Section 23, *ibid*.

CHAPTER 9 FINANCE

59. Annual contributions payable to the Board :-

¹(1) The mutwalli of every wakf shall pay annually to the Board a contribution at the rate of six per centum of the net available income of the wakf and the mutwalli of every wakf estate having an annual income of five thousand rupees and above shall, in addition to such contribution at six per centum, contribute at the rate of two per centum per annum of the net available income towards the Education Fund referred to in sub-clause (0 of clause (1) of section 27.

(2) The Board may in the case of any particular wakf and in the interest thereof reduce or remit such contribution, with the sanction of the ²[State Government], for such time as it thinks fit.

(3) Subject to any provisions in the wakf deed the mutwalli may realize the contributions payable by him under sub-section (1) from the various persons entitled to receive any pecuniary or other material benefits from the wakf, but the sum realizable 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 wakf:

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

(4) The contribution payable under sub-section (1) in respect of wakf shall, subject to the prior payment of any dues to ³[the Government], and of any other statutory first charge on the wakf property or the income thereof, be a first charge on the income of the wakf and shall be recoverable as a public demand.

(5) If a mutwalli realizes the income of the wakf and refuses to pay or does not pay such contribution he shall also be personally liable for such contribution which may be realized from his person or property in the manner aforesaid.

1. Sub-section (1) was substituted for original sub-section with the proviso by Section 24 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

2. The words within the square brackets were substituted for the words "the Commissioner has shown" by Section 13(a) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

3. The words "the Crown" were originally substituted for the words "the Government" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the

word "Government" was substituted for the word "Crown" by para. 4(J) of the Adaptation of Laws Order, 1950.

60. Commissioner may borrow money :-

(1) The Commissioner, with the approval of the Board and the previous sanction of the ¹[State Government] may, for the purpose of giving effect to the provisions of this Act ²[and for undertaking development projects], borrow such sum of money and on such terms and conditions as the ²[State Government] may fix and the Commissioner 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) Neither the Board nor, except as provided in sub-section (1), the Commissioner shall borrow money upon the security of the Wakf Fund.

1. The words within the square brackets were substituted for the words "the Commissioner has shown" by Section 13(a) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

2. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

61. Wakf Fund :-

(1) All monies received by the Board or the Commissioner for the purposes of this Act and all other monies realised under this Act shall form a fund to be called the "Wakf Fund".

(2) The ¹[State Government] may make rules regulating the payment of monies into the Wakf Fund, the investment by the Board of monies received into that fund and the custody and disbursement of such monies.

(3) The Wakf Fund shall, subject to the provisions of sub-section (2), be under the control of the Board.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

62. Application of Wakf Act Fund :-

- (1) The Wakf Fund shall be applied to-
- (a) payment to the ¹[State Government] of cost of survey of wakf properties under section 2;
 - (b) repayment of any loan incurred under section 60 and payment of the interest thereon;
 - (c) payment of the cost of audit of the Wakf Fund;
 - (d) payment of the salary and allowances of the Commissioner ²[, the Deputy Commissioner] and or any person appointed under section 20 to act as Commissioner;
 - (e) payment of travelling allowances ³[to the Commissioner and the Deputy Commissioner and] members, officers and servants of the Board under section 26;
 - (f) payment of the cost of the establishment employed by the Board; and
 - (g) payment of all expenses incurred by the Commissioner and the Board in the performance of the duties imposed, and the exercise of the powers conferred, by this Act.
- (2) If any balance remains after meeting the expenditure referred to in sub-section (1), the Board may use any portion of such balance for the preservation and protection of wakf property ⁴[and for granting financial aid for constructing or repairing mosque, or for such other purposes as it may deem fit].

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were inserted by Section 26(I) (a) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

3. The words within square brackets were substituted for the words "to the Commissioner," by Section 26(1)(b), *ibid*.

4. The words within square brackets were inserted by Section 26(2), *ibid*.

63. Accounts of Wakf Fund :-

The Board shall keep such accounts of the receipts and disbursements of the Wakf Act Fund as the ¹[State Government] may prescribe and shall submit the same for examination from time

to time by auditors.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

64. Audit of accounts of Wakf Fund :-

(1) The accounts of the Wakf Fund shall be audited and examined annually by such auditor as may be appointed by the ¹[State 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 ¹[State 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.

(5) The cost of audit shall be paid from the Wakf Fund.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

65. State Government to pass orders on auditors report :-

The ¹[State Government] shall examine the auditors 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.

1. The words "Provincial Government" were originally substituted

for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

66. Sums certified due recoverable as public demands :-

(1) Every sum certified to be due from any person by an auditor in his report under section 64 unless such certificate is modified or cancelled by the ¹[State Government] by an order made under section 65 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 ¹[State Government].

(2) If such payment is not made in accordance with the provisions of sub-section (1) the same payable shall be recoverable as a public demand.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

CHAPTER 10 JUDICIAL PROCEEDINGS

67. Procedure for trial of certain wakf cases :-

Notwithstanding anything contained in the Code of Civil Procedure, 1908, (Act V of 1908) the ¹[State Government] may make rules for the procedure to be followed in all suits or proceedings relating to any wakf or to any wakf property and not involving any claim by or against a stranger to the wakf.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

68. Deposit of decretal amount in Court in certain wakf cases :-

Where a decree for rent or any other relief claimed under or on behalf of a wakf is passed or such decree is executed by any court the decretal amount, if any, shall, unless an application for enrolment of the wakf has been made under section 44, or the

wakf has been exempted from enrolment under section 4, 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 wakf has been made under section 44 or the wakf has been exempted from enrolment under section 4.

69. Bar to compromise without sanction of Court and Board

:-

¹[No suit or proceeding by or against a mutwalli as such in any Court shall be compromised without the sanction of such Court and the Board.]

1. Section 69 was substituted for the original. section by Section 27 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

70. Notice of suits, etc., to be given to the Commissioner :-

(1) In every suit or proceeding in respect of any wakf property or of a mutwalli as such except a suit or proceeding for the recovery of rent by or on behalf of the mutwalli the Court shall issue notice to the Commissioner at the cost of the party instituting such suit or proceeding.

(2) Before any wakf property is notified for sale in execution of a decree, notice shall be given by the Court to the Commissioner.

(3) Before any wakf property is notified for sale for the recovery of any revenue, cess, rates or taxes due to ¹[the Government] or to local authority notice shall be given to the Commissioner by the Court, Collector or other person under whose order the sale is notified.

(4) In the absence of a notice under sub-section (1) any decree or order passed in the suit or proceeding shall be declared void, if the Commissioner, within one month of his coming to know of such suit or proceeding, applies to the Court in this behalf.

(5) In the absence of a notice under sub-section (2) or sub-section (3) the sale shall be declared void, if the Commissioner, within one month 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.

1. The words within the square brackets were substituted for the words "the Commissioner has shown" by Section 13(a) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

71. Commissioner may be made a party to a suit or

proceeding regarding a wakf on his application :-

In any suit or proceeding in respect of a wakf or any wakf property by or against a stranger to the wakf or any other person the Commissioner 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 wakf.

72. Commissioner may institute suit or proceeding regarding a wakf in certain cases :-

¹(1) If there is no mutwalli or the mutwalli refuses or neglects to act in the matter within a reasonable time, the Commissioner may in his own name institute a suit or proceeding in Court against a stranger to the wakf or any other person for the recovery of any wakf property wrongfully possessed, alienated or leased, to have any wakf property discharged of an encumbrance or obligation wrongfully created or to recover any money belonging to a wakf.

¹(2) Notwithstanding anything contained in any law of limitation for the time being in force, a suit or proceeding referred to in sub-section (1), other than a suit or proceeding to recover any money belonging to a wakf, shall not be deemed to have become barred by limitation if such suit or proceeding was not so barred before the 15th day of August, 1947.

1. Section 72 was renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, sub-section (2) was added by Section 28 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

73. Institution of suits under section 14 of the Religious Endowments Act, 1863 and section 92 of the Code of Civil Procedure, 1908 :-

(1) A suit to obtain any of the reliefs mentioned in section 14 of the Religious Endowments Act, 1863, (XX of 1863) and in section 92 of the Code of Civil Procedure, 1908, (Act V of 1908) relating to any wakf may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Commissioner without obtaining the leave or consent referred to in those Acts.

(2) No suit to obtain any of the reliefs referred to in sub-section (1) relating to a wakf shall be instituted by any person or authority other than the Commissioner without the consent in writing of the Commissioner ¹[and for the institution of any such suit, it shall not

be necessary to obtain the leave or consent referred to in the Acts mentioned in sub-section (1)].

1. The words and figure within square brackets were inserted by Section 29 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

74. Proceedings under the Land Acquisition Act, 1894 :-

(1) If, in the course of proceedings under the Land Acquisition Act, 1894, (I of 1894) it appears to the Collector before an award is made that any property under acquisition is wakf property a notice of such acquisition shall be served by the Collector on the Commissioner and further proceedings shall be stayed to enable the Commissioner to appear and plead as a party to the proceedings at any time within three months from the date of the receipt of such notice.

(2) Where the Commissioner has reason to believe that any property under acquisition is wakf property he may at any time before an award is made appear and plead as a party to the proceedings.

(3) When the Commissioner has appeared under the provisions of sub-section (1) or sub-section (2) no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894, without giving an opportunity to the Commissioner to be heard.

75. Costs in suits or proceedings :-

All costs and expenses incurred by the Commissioner in connection with any suit or proceeding in respect of any wakf or wakf property to which the Commissioner is a party and all costs decreed against the Commissioner by the Court shall be payable out of the funds of such wakf:

Provided that the Commissioner may, if he thinks fit, meet such costs and expenses from the Wakf Fund and thereafter recover the same from the funds of the wakf concerned.

75A. Costs in suits or proceedings for removal of a mutwalli :-

¹[A mutwalli shall not be entitled to spend funds of the wakf estate of which he is a mutwalli for meeting any costs, charges or expenses incurred by him in any suit, appeal or application or other proceedings for, or incidental to, his removal from office or the

taking of any disciplinary action against him:

Provided that the mutwalli may reimburse himself in respect of such costs, charges or expenses if he is specifically permitted to do so by an order of the court.]

1. Section 75A was inserted by Section 30 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

CHAPTER 11 AMENDMENTS AND REPEAL

76. [Repealed] :-

[Insertion of new section 16A in Regulation XIX of 1810.]-Repealed by Section 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

77. Amendment of section 22 of Act XX of 1863 :-

To section 22 of the Religious Endowments Act, 1863, the following proviso shall be added, namely:-

"Provided that this section shall not, so far as it is inconsistent with the provisions of the Bengal Wakf Act, 1934, (XX of 1863) apply to any wakf property in ¹[West Bengal]".

1. The words within square brackets were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

78. Insertion of new section 23A in Act XX of 1863 :-

After section 23 of the Religious Endowments Act, 1863, the following section shall be inserted, namely:-

"23 A. Powers of Civil Court to be exercised by the boards of Wakfs in ¹[West Bengal]

Notwithstanding anything contained in this Act, the powers of the Civil Court under sections 5 and 10 shall by the Board be exercised in respect of any wakf property in ¹[West Bengal] ¹[West by the Board of Wakfs appointed under the Bengal Wakf Act. 1934.""]

1. The words within square brackets were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

79. Amendment of section 5 of Act VI of 1890 :-

To section 5 of the Charitable Endowments Act, 1890, (VI of 1890)

the following proviso shall be added, namely:-

"Provided that the powers of the ¹[State Government] under this section for the settlement, modification or substitution of a scheme for the administration of any property shall, in respect of any wakf property in ²[West Bengal] be exercised, subject to the approval of the ¹[State Government] by the Board of Wakfs appointed under the Bengal Wakf Act, 1934."

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

80. Amendment of section 6 of Act VI of 1890 :-

After section 6 of the Charitable Endowments Act, 1890, the following sub-section shall be added, namely:-

"(3) An application for the vesting of any property of the nature specified in sub-section (3) of section 4 may, notwithstanding anything contained in this section, be made by the Commissioner of Wakfs appointed under the Bengal Wakf Act, 1934, where such property is under the administration of an official mutwalli or of a mutwalli appointed under section 40 of that Act."

81. Insertion of new section 13 in Act XIV of 1920 :-

After section 12 of the Charitable and Religious Trusts Act, 1920, (XIV of 1920) the following section shall be added, namely:-

"13. This Act not to apply to wakf property in ¹[West Bengal]
The provisions of this Act shall not, so far as they are inconsistent with the provisions of the Bengal Wakf Act, 1934 apply to any wakf Property in ¹[West Bengal]."

1. The words within square brackets were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

82. [Repealed] :-

[Repeal of Act XLII of 1923.]-Repealed by Section 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946

(Ben. Act XVI of 1946).

83. Savings :-

Nothing in this Act or in any repeal effected thereby shall affect-

- (a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act; or
- (b) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability; or
- (c) anything done or suffered before the commencement of this Act; or
- (d) any enactment relating to wakfs or their administration which is not expressly repealed by this Act; or
- (e) any law not inconsistent with this Act.

CHAPTER 12 RULES AND BY-LAWS

84. Rules :-

(1) The ¹[State Government] may make rules² for carrying out the purposes of this Act.

(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 exemption of wakfs under section 4;
- (b) the manner in which the net available income of a wakf shall be determined;
- (c) the delegation of powers by the Commissioner to Commissioners of Divisions, to Collectors and to other person;
- ³(cc) the delegation of powers, functions and duties by the Commissioner to the Deputy Commissioner;
- (d) the budgets, reports, accounts, returns or other information to be submitted by the Board and the Commissioner;
- (e) the appointment and remuneration of auditors for auditing the accounts of the Wakf Fund;
- (f) the manner in which the accounts of the Wakf Fund shall be kept, audited and published and the form and contents of the auditors report;
- (g) the payment of monies into the Wakf Fund, the investment, custody and disbursement of such monies;
- (h) the method of elections of members under clause (b) of sub-section (1) and clauses (b) and (c) of sub-section (2) of section 8;
- (i) the regulation of functions of the Board and the Commissioner

referred to in section 27;

(j) the fees payable under section 32;

(k) the procedure in suits and proceedings referred to in section 67;

⁴(kk) the manner in which any property referred to in sub-section (8) of section 54A shall be dealt with;

⁴(kkk) the authority before which and the manner in which an appeal shall be made under section 58A;

(l) the service of notices and requisition under section 89; and

⁵(m) any other matter which may be or is required to be prescribed.

(3) All rules made under this section shall be published in the ⁶[Official Gazette].

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. (a) For Rules for the purpose of carrying out the purposes of the Act, see notification No. 2727 Mis., dated 28.11.36. published in the Calcutta Gazette of 1936. Part I, page 2690.

(b) For the Bengal Wakf Fund Account Rules, see notification No. 2926 Mis., dated 23.8.38. published in the Calcutta Gazette of 1938. Part I. page 236.), as amended by subsequent notifications.

3. Clause (cc) was inserted by Section 31(1) of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

4. Clauses (kk) and (kkk) were inserted by Section 31(2), *ibid.*

5. Clause (11) was inserted by Section 31(3), *ibid.*

6. The words within square brackets were substituted for the words "Calcutta Gazette" by para. 4() of the Government of India (Adaptation of Indian Laws) Order, 1937.

85. By-laws :-

(1) The Board may, with the previous sanction of the ¹[State Government], from time to time, make by-laws as to-

(a) the time and place of meetings;

(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 method of ascertaining the opinion of the Board on any matter without convening a meeting;
 - (f) the books to be kept at the office of the Board;
 - ²(ff) the terms and conditions of service of the officers and employees of the Board including the grounds on which and the extent to which any such officer or employee may be punished;
 - ²(fff) the payment of gratuity and other pecuniary benefits to the officers and employees of the Board;
 - (g) the manner in which the accounts of wakfs shall be kept and audited, the time and place of audit of accounts of wakfs and the form and contents of the auditors report;
 - (h) the fees for inspection of proceedings and records of the Board and for copies of the same under section 42;
 - (i) the form of application for enrolment, the further particulars to be contained therein, and the manner and place of enrolment of wakfs under section 44;
 - (j) the further particulars to be contained in the register of wakfs maintained under section 45;
 - (k) the form of and the further particulars to be contained in a statement of accounts under section 48;
 - (l) the form of and particulars to be contained in notices of proposed transfer of immovable property of a wakf under sub-section (2) of section 53.
- (2) All by-laws made under this section shall be published in the ³[Official Gazette].

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. Clauses (ff) and (fff) were added by Section 32 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

3. The words within square brackets were substituted for the words "Calcutta Gazette" by para. 4() of the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER 13 MISCELLANEOUS

86. Method of recovery of sums realisable as public demands :-

- (1) Any sum of money payable by a mutwalli from the funds of a

wakf to the Board or to the Commissioner under this Act including any damages chargeable thereon and costs, if any, incurred shall be recoverable, subject to such rules as may be prescribed by the ¹[State Government], as a public demand.

(2) The Commissioner shall forward to the Collector a requisition in the form prescribed under the Bengal Public Demands Recovery Act, 1913, (Ben. Act III of 1913) under his signature specifying the sum recoverable under this Act as a public demand, and the Collector, on receipt of such requisition, shall proceed to recover the sum under the Bengal Public Demands Recovery Act, 1913.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

87. Commissioner and officers and servants to maintain secrecy about particulars of wakfs :-

Subject to the provisions of this Act the Commissioner ¹[, the Deputy Commissioner] and every officer and servant of the Board shall maintain secrecy about the particulars and all other information relating to a wakf which comes into his possession in his capacity as Commissioner ²[or, as the case may be, a Deputy Commissioner] or as an officer or servant of the Board.

1. The words within square brackets were inserted by Section 33(1) of the Bengal Wakf (Amendment) Act. 1973 (West Ben. Act XIV of 1973).

2. The words within square brackets were inserted by Section 33(2), *ibid*.

88. The Commissioner, auditor, etc., to be deemed public servants :-

¹[The Commissioner, the Deputy Commissioner, every auditor], and every officer and servant of the Board authorized by the Commissioner or by the Board to do any act by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

1. The words within square brackets were substituted for the words "The Commissioner, every auditor" by Section 34, *ibid*.

89. Service of notice or requisition :-

A notice or requisition under this Act may be served on the person named in the notice or requisition either by post or as a summons issued by a Court under the Code of Civil Procedure, 1908, (Act V of 1908) or in such manner as the ¹[State Government] may prescribe.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

90. Attendance before the Board or the Commissioner may be either in person or by an agent :-

Any mutwalli or other person who is entitled to attend before the Board or the Commissioner, in connection with any proceedings under this Act, may with the permission of the Board or the Commissioner, as the case may be, attend either in person or through any person authorized by him in writing in that behalf.

91. Trial of offence :-

¹[(1) No Court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer authorised by the Board in this behalf or upon a complaint made by a person interested in the wakf.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.]

1. Firstly, section 91 was renumbered as sub-section (1) of that section and after sub-section (1), as was so renumbered, sub-section (2) was added by Section 35 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973). Finally, the present section was substituted by Section 3 of the Bengal Wakf (Amendment) Act. 1985 (West Ben. Act XXXI of 1985).

92. Indemnity :-

No suit shall be brought in any Civil or Revenue Court to set aside or modify any order made under this Act and no suit, prosecution or legal proceeding shall lie against the Board or the Commissioner or any other person appointed under this Act for anything which is

in good faith done or intended to be done under this Act.

93. Powers of State Government to remove unforeseen difficulties :-

If any difficulty arises as to the first constitution of the Board after the commencement of this Act or otherwise in first giving effect to the provisions of the Act, the ¹[State Government], as occasion may require, may, notwithstanding anything contained else- where in this Act, within ²[two years] from the date on which this Act in whole or in part first comes into force by order do anything which appears to it to be necessary for the purpose of removing the difficulty.

1. The words "Provincial Government" were originally substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. The words within square brackets were substituted for the words "twelve months" by Section 4 of the Bengal Wakf (Amendment) Act, 1935 (Ben. Act IV 1936).

94. Directions by the State Government :-

¹[The State Government may from time to time give to the Board such general or special directions as the State Government may think fit and the Board shall, in the performance of its functions, comply with such directions.]

1. Sections 94, 95 and 96 were added by Section 36 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

95. Powers of State Government to supersede the Board :-

¹[(1) If, in the opinion of the State Government, the Board-
(a) has shown its incompetence to perform, or has unreasonably made default in the performance of, the duties or exercise of the functions imposed on it by or under this Act or by any other law, or
(b) has exceeded or abused its powers,
the State Government may, by an order to be published in the Official Gazette stating the reasons therefor, supersede the Board for such period, not exceeding the maximum period of two years, as may be specified in the order:
Provided that the State Government shall, before taking any action

under this sub-section, give the Board an opportunity of making any representation against the proposed order.

(2) The State Government may, by order to be published in the Official Gazette, subject to the maximum period of two years mentioned in sub-section (1) extend or modify the period of supersession if it considers it necessary so to do.]

1. Sections 94, 95 and 96 were added by Section 36 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).

96. Consequences of supersession :-

¹[(1) When an order of supersession has been passed under section 95 then with effect from the date of the order-

(a) the Commissioner shall cease to be the President of the Board and all members of the Board shall vacate their offices as such members;

(b) all the powers, duties and functions which, under the provisions of this Act or any rule made thereunder, may be exercised, discharged or performed by the Board, shall be exercised, discharged or performed by such person to be called the Administrator, as may be appointed by the State Government in this behalf.

(2) The State Government shall fix the remuneration of the Administrator and may direct that such remuneration may be paid from the Wakf Act Fund.

(3) The Administrator shall be a person professing Islam and the Commissioner shall function under the guidance and instruction of the Administrator.

(4) All properties vested in the Board shall vest in the State Government during the period of supersession.

(5) The State Government may, by order to be published in the Official Gazette, re-establish the Board.

(6) On the expiry of the period of supersession, the Administrator shall cease to exercise his functions.]

1. Sections 94, 95 and 96 were added by Section 36 of the Bengal Wakf (Amendment) Act, 1973 (West Ben. Act XIV of 1973).