

Orissa Hindu Religious Endowments Act, 1951

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SCHEDULE 1 :- SCHEDULE I

Orissa Hindu Religious Endowments Act, 1951

An Act to provide for the better administration and governance of Hindu religious institutions and endowments in the State of Orissa Whereas it is expedient to amend and consolidate the law relating the administration and governance of Hindu religious institutions and endowments in the State of Orissa; It is hereby enacted as follows : Published vide Orissa Act 11 of 1952. For Statement of Objects and Reasons, see Orissa Gazette Ext./10-3-1951, p. 49; and for Report of Select Committee, see *ibid*, 17-9-1951, pp. 1-10, and for proceedings in the Assembly, see Proceedings of the Orissa Legislative Assembly, Vol. XIV, No. 23, pp. 8-11.

CHAPTER 1 PRELIMINARY

1. Short Title, Extent, Application And Commencement :-

(1) This Act may be called the Orissa Hindu Religious Endowments Act, 1951.

(2) It extends to the whole of the State of Orissa and applies to all Hindu public religious institutions and endowments.

Explanation I-In this sub-section Hindu public religious institutions and endowments do not include Jain or Buddhist public religious institutions and endowments but include Sikh public religious institutions and endowments.

Explanation II-1[* * *].

(3) It shall come into force on such date² as the State Government may, by notification, direct.

1. Omitted vide O.H.R.E. (Amendment) Act, 1954 (O.A. No. 18 of 1954).

2. The Act came into force with effect from the 1st January, 1955, vide Notification No. 7631 -End./22-12-1955-published vide Orissa Gazette, Part-III/31-12-1955.

2. Power To Extend Act To Jain Or Buddhist Institutions And Endowments :-

The State Government may, by notification, extend to any Jain or Buddhist public religious institution and endowment or to any public endowment of a charitable and religious institution all or any of the provisions of this Act and of any rules made thereunder and

may declare such extension to be subject to such restrictions and modifications as they think fit :

Provided that before issuing such notification, the State Government shall, publish in the Gazette a notice of their intention to do so, fix a period not exceeding three months from the date of publication of the notice for the persons interested in the institution and endowment concerned to show-cause against the issue of such notification and consider their objections, if any.

3. Definitions :-

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

(i) "Assistant Commissioner" means an Assistant Commissioner appointed under Section 5;

(ii) "Commissioner" means the Commissioner appointed under 1[Section 4];

(iii) "Collector" in any provision under this Act includes (a) any Deputy Collector who is specially empowered by the State Government to discharge any of the functions of a Collector under that provision; and (b) any Deputy Collector to whom the Collector may, by general or special order, transfer any of his functions under that provision;

2[* * *]

3(iv) "Deputy Commissioner" means the Deputy Commissioner appointed under Section 5 ;]

4[(v) "Endowment Fund" means the Orissa Hindu Religious Endowments Administration Fund constituted under Section 63;)

(vi) "hereditary trustee" means the trustee of a religious institution succession to whose office devolves by hereditary right since the time of the founder or is regulated by custom or is specifically provided for by the founder, so long as such scheme of succession is in force;

2[* * *]

(vii) "math" means an institution for the promotion of the Hindu religion presided over by a person whose duty is to engage himself in spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose office devolves in accordance with the directions of the founder of the institution or is regulated by custom and includes places of religious worship other than a temple and also places of instruction or places for the maintenance of Vidyarthi or places for rendering charitable

or religious services in general which are or may be appurtenant to such institution;

(viii) "non-hereditary trustee" means a trustee who is not a hereditary trustee;

(ix) 5[***]:

(x) "person having interest" means-

(a) in the case of a math a disciple of the math or a person 1[at the religious persuasion] to which the math belongs;

(b) in the case of a temple, a person who visits or who is entitled to visit the temple for darsan of the deity or attend at the performance of worship or service in the temple or who is in the habit of attending such performance or of partaking in the benefit of the distribution of gifts thereat, and in the case of a specific endowment, a person who visits or who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;

(xi) "prescribed" means prescribed by rules made by the State Government under this Act;

(xii) "religious endowment" or "endowment", means all property belonging to or given or endowed for the support of maths or temples or given or endowed for the performance of any service or charity connected therewith or of any other religious charity, and includes the institution concerned and the premises thereof and also all properties used for the purposes or benefit of the institution and includes all properties acquired from the income of the endowed property :

Provided that gifts of immovable properties made as personal gifts to hereditary trustee of a math or temple or the archaka, sevaka, service-holder or other employee of a religious institution shall not be so included, if the donee has been possessing and enjoying the same as a separate and distinct identity all along;

Explanation I-Any jagir or inam granted to an archaka, sevaka, service-holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the said archaka, service-holder or employee but shall be deemed to be a religious endowment;

Explanation II-All property which belonged to or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity

shall be deemed to be a "religious endowment" or "endowment" within the meaning of this definition, notwithstanding that, before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction, or the service or charity has ceased to be performed :

6[Provided that this Explanation shall not be deemed to apply in respect of any property which is vested in any person before the commencement of this Act by the operation of the law of limitation;]

Explanation III-Where an endowment has been made or property given for the support of an institution which is partly of religious and partly of a secular character or where an endowment made or property given is appropriated partly religious and partly to secular uses, such endowment or property or the income therefrom shall be deemed to be a religious endowment and its administration shall be governed by the provisions of this Act.

Explanation IV-7[* * *]

(xiii) "religious institution" means a math, a temple and endowment attached thereto or a specific endowment and includes an institution under direct management of the State Government;

(xiv) "specific endowment" means any property or money endowed-

(a) for the performance of any specific service or charity in a math or temple, or

(b) for the performance of any other religious charity, but does not include any jagir or inam of the nature described in Explanation I to Clause (xii);

(xv) "temple" means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community, or 8[any class or section thereof,] as a place of public religious worship and also includes any cultural institution or mandap or library connected with such a place of public religious worship;

(xvi) "trustee" means a person by whatever designation known, in whom the administration of a religious institution and endowment are vested, and includes any person or body who or which is liable as if such person or body were a trustee;

(xvii)"year" means the financial year.

1. Substituted vide Orissa Gazette Ext./7-10-1978-O.A. No. 29 of 1978.

2. Omitted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of

1954.

3. Inserted vide Orissa Gazette Ext./7-10-1978-O.A. No. 29 of 1978.

4.. Substituted vide O.A. No. 18 of 1954.

5. Omitted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

6. Inserted vide O.H.R.E. (Amendment) Act, 1954-O. A. No. 18 of 1954.

7. Omitted *ibid*.

8. Substituted vide O.H.R.E. (Amendment) Act, 1954-O. A. No. 18 of 1954.

CHAPTER 2

POWERS AND DUTIES OF COMMISSIONER AND OTHERS

4. Appointment Of Commissioner :-

1[The State Government may, by notification, appoint a person who professes the Hindu religion 2[and who is a member of the Orissa Superior Judicial Service, Senior Branch] to be the Commissioner of Endowments and he shall cease to hold office as such when he ceases to process that religion.

1. Section. 4, 5, 5-A and 6 substituted for original Section 4, 5 and 6 vide O.H.R E, (Amendment) Act, 1954-O.A. No. 18 of 1954.

2. Substituted vide O.A.No. 29 of 1978.

5. Appointment Of Deputy And Assistant Commissioners :-

1[Deputy and]

(1) The State Government may appoint a 2[Deputy Commissioner] and such number of Assistant Commissioners as they deem necessary.

(2) Appointment of the said officers shall be from among persons who prefers the Hindu religion and who are members of the State Judicial Service-

(a) in the case of the 2[Deputy Commissioner,] not below rank of a Subordinate Judge ; and

(b) in the case of an Assistant Commissioner, of the rank of a Munsif or above, and they shall cease to hold office as such when they cease to profess that religion.

1. Section. 4, 5, 5-A and 6 substituted for original Section 4, 5 and 6 vide O.H.R E, (Amendment) Act, 1954-O.A. No. 18 of 1954.

2. Inserted vide O.A. No. 29 of 1978-w.e.f. 7-6-1978.

5A. Officers And Servants To Be Appointed By The Commissioner :-

The Commissioner of Endowments may, subject to the control of the State Government, from time to time, appoint such subordinate officers and staff, as may be deemed necessary for the purpose of this Act and they shall, subject to the control of the Commissioner, discharge such functions and perform such duties as may be assigned to them by the Commissioner 1[Deputy Commissioner] or the Assistant Commissioners.

1. Inserted vide O.A. No. 29 of 1978-w.e.f. 7-6-1978.

6. Conditions Of Services Of Commissioner, Deputy Commissioner, Etc :-

2[Conditions of services of Commissioner, Deputy Commissioner, etc.]

(1) The Commissioner, the Deputy Commissioner, the Assistant Commissioners, the subordinate officers and staff appointed under this Act shall be the servants of the State Government and they shall draw their pay, pension, leave and other allowances from the Consolidated Fund of the State. The conditions of service of such officers shall be such as may be prescribed from time to time.

(2) There shall be paid out of the Endowment Fund and the State Government shall have power to direct the payment of, at such time as they may deem fit, such cost as the State Government may from time to time incur from out of the Consolidated Fund on account of pay, pension, leave and other allowances of the Commissioner, the 1[Deputy Commissioner] Assistant Commissioners, other subordinate officers and staff appointed under this Act.]

1. Inserted vide O.A, No. 29 of 1978-w.e.f. 7-6-1978.

2. Inserted vide O.A, No. 29 of 1973-w.e.f. 7-6-1978.

7. Powers And Duties Of Commissioner :-

(1) Subject to the provisions of this Act, the general superintendence of all religious institutions and endowments shall vest in the Commissioner.

1[***]

2[(2)] The Commissioner may do all things which are reasonable and necessary to ensure that the religious institutions and endowments are properly administered and that their income is duly appropriated for the purposes which they were founded or exist.

Explanation-The Commissioner shall have power to pass such interim orders as he deems necessary for the proper maintenance of a religious institution, or the proper administration of a religious endowment including the power to pass such orders if and when necessary for the proper management of any institution when a dispute concerning the same is pending in a Court.

1. Omitted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

2. Re-numbered *ibid*.

8. Powers And Duties Of The Deputy And Assistant Commissioners :-

1[(1)] 2[The Deputy Commissioner] and the Assistant Commissioners shall exercise such powers and discharge such duties as are assigned to them by or under this Act, either generally or in respect of any particular area :

Provided that the Commissioner, may, subject to the other provisions of this Act, by order in writing, declare that the exercise of all or any of such powers and discharge of all or any of such duties shall be subject to such exceptions, limitations and conditions as may be specified in the order and he may himself exercise or discharge any power or duties so excepted.

3[(2)] 3[The Deputy Commissioner] and the Assistant Commissioners shall, for the proper management of the institution, have power to pass such interim orders as they deem necessary in the course of proceedings pending before them.]

1. Re-numbered vide O.A. No. 29 of 1978.

2. Inserted *ibid*.

3. Inserted vide O.A. No. 29 of 1978.

8A. Delegation Of Power By The Commissioner :-

1[The Commissioner may transfer any appeal filed before him to 1[the Deputy Commissioner] for hearing and disposal and any appeal so transferred and disposed of by 1[the Deputy Commissioner] shall, for the purposes of this Act, be deemed to have been disposed of by the Commissioner.

1. Inserted vide O.A. No. 29 of 1978.

8B. Power Of Authorities To Act Without Initiating Proceedings Under Section 41 :-

(1) Notwithstanding anything contained in any other provision of this Act the Commissioner, 1[the Deputy Commissioner] and the Assistant Commissioners shall have power to take action under any of the provisions of this Act in respect of any

institution, if on information received or otherwise, they are satisfied that such institution is a religious institution within the meaning of this Act.

(2) For the removal of doubts, it is hereby declared that where any person disputes such action on the ground that the institution is not a religious institution within the meaning of this Act, he may raise a dispute as provided in Section 41.]

1. Inserted vide O.A. No. 29 of 1978.

9. Power Of Commissioner To Call For Records And Pass Orders :-

(1) The Commissioner may call for and examine 1[the record of any proceeding under this Act before the Deputy Commissioner 2[or before an Assistant Commissioner except under Sub-section (1) of Section 27] to satisfy himself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed thereon; and if in any case it appears to the Commissioner that any such decision or order shall be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly :

Provided that the Commissioner shall not pass any order prejudicial to any party without hearing him or giving him a reasonable opportunity of being heard :

3[Provided further that in cases where an appeal lies under this Act, no proceedings by way of revision shall be entertained by the Commissioner at the instance of a person who could have appealed :

Provided also that nothing in this sub-section shall apply to the proceedings in an appeal transferred by the Commissioner to the Deputy Commissioner for hearing and disposal.

(2) The Commissioner may stay the execution of any such decision or order, pending the exercise of his power under Sub-section (1) in respect thereof.

1. Substituted vide O.A.No. 29 of 1978.

2. Substituted vide O.A. No. 13 of 2003 (O.G.E. No 825 dated 31.5.2003).

3. Inserted vide O.A.No. 29 of 1978.

10. Omitted :-

1[* * *]

1. Omitted vide O.A.No. 29 of 1978.

11. Omitted :-

1[* * *]

1. Omitted vide O.A.No. 29 of 1978.

12. Power To Enter Religious Institutions :-

(1) The Commissioner, 1[the Deputy Commissioner] and Assistant Commissioners and such other officers professing Hindu religion as may be authorised by the Commissioner in this behalf shall have power to enter 2[subject to the local practice, customs or usages] 2[the premises of any religious institution or] any place of worship at any reasonable hour for the purpose of exercising any power conferred, or discharging any duty imposed, by or under this Act.

3[* * *]

(2) If any such officer is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer, direct any Police Officer not being below the rank of Sub-inspector to render such help as may be necessary to enable the officer to exercise such power or discharge such duty.

(3) Nothing in this section shall be deemed to authorise any person who is not a Hindu to enter the premises or place referred to in Sub-section (1) or any part thereof.

1. Inserted vide O.A.No. 29 of 1978.

2. Inserted vide O.A. No. 18 of 1954.

3. Omitted ibid.

13. Trustee Bound To Obey Orders Issued Under The Act :-

The trustee of a religious institution shall be bound to obey all orders issued under the provisions of this Act by the State Government, the Commissioner, 1[the Deputy Commissioner] or 2[an] Assistant Commissioner.

1. Inserted vide O.A.No. 29 of 1978.

2. Substituted ibid.

14. Care Required Of Trustee And His Powers :-

(1) The trustee of every religious institution is bound to administer its affairs and to apply its funds and properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties as if they were his own.

(2) A trustee shall, subject to the provisions of this Act, be entitled

to exercise all powers incidental to the provident and beneficial administration of the religious institution and to do all things necessary for the due performance of the duties imposed on him.

(3) A trustee shall not be entitled to spend the funds of the religious institution for meeting any costs, charges or expenses incurred by him in any suit, appeal or application or other proceeding for, or incidental to, his removal from office or the taking or any disciplinary action against him :

Provided that the trustee may reimburse himself in respect of such costs, charges or expenses if he is specifically permitted to do so by an order passed under Section 69.

15. Preparation Of Register For All Institutions :-

(1) For every religious institution, there shall be prepared and maintained a register showing-

(a) the names of past and present trustees and particulars as to the custom, or the direction of the founder, if any, regarding succession to the office of trustee;

(b) particulars of all endowments of the institution and all title deeds and other documents including the properties standing in the name of the hereditary trustees relating thereto;

(c) particulars of the scheme of administration and of the scale of expenditure;

(d) the names of all officers to which any salary, emolument or perquisite is attached and the nature, time and conditions of service in each case;

(e) the jewels, gold, silver, precious stones, all vessels and other movables belonging to the institution with their estimated value;

(f) particulars of the idols and other images in or connected with the institution, whether intended for worship or for being carried in processions;

(g) such other particulars as may be required by 1[the Commissioners].

(2) The register shall be prepared, signed and verified by the trustee of the institutions concerned or by his authorised agent and submitted by him to 1[the Commissioner,] in duplicate through the Assistant Commissioner, within one year from the commencement of this Act or from the founding of the institution, as the case may be, or within such further period not exceeding one year as may be allowed by 1[the Commissioner] :

Provided that each trustee shall be required to swear an affidavit

that the list of properties, both movable or immovable, owned by the institution and furnished, is exhaustive :

Provided further that this sub-section shall not apply where a register so signed and verified has been submitted to 2[the Commissioner] before the commencement of this Act.

(3) The Assistant Commissioner may, after such enquiry as he may consider necessary, recommend such alterations, omissions or additions in the register as he may think fit.

(4) 2[The Commissioner] may, after receiving the register and the recommendations of the Assistant Commissioner with respect thereto and making such further inquiry, as he may consider necessary, direct the trustee to make such alterations, omissions or additions in the register as he may deem fit.

(5) The trustee shall carry out the orders of 2[the Commissioner] and then submit the register to 2[the Commissioner] for approval.

(6) A copy of the register as approved by 2[the Commissioner] shall be furnished to the trustee and to the Assistant Commissioner concerned.

1. Substituted vide Orissa Act No. 18 of 1954.

2. Substituted vide O.H.R.E. (Amendment) Act, 1954-0. A. No. 18 of 1954.

16. Annual Verification Of The Register :-

(1) The trustee or his authorised agent shall scrutinise the entries in the register every year, or after such interval, as may be prescribed, and submit to the Commissioner for his approval, through the Assistant Commissioner, a verified statement showing the alterations, omissions or additions required in the register.

(2) The Commissioner may, thereupon, after such inquiry as he may consider necessary, direct what alterations, omissions or additions, if any, should be made in the register.

(3) A copy of the order made under Sub-section (2) shall be furnished to the trustee and to the Assistant Commissioner concerned.

(4) The trustee shall carry out the alterations, omissions or additions ordered by the Commissioner in the copy of the register kept by him.

17. Trustee To Furnish Accounts, Returns, Etc :-

The trustee of every religious institution shall furnish to the Commissioner, 1[the Deputy Commissioner] or the Assistant

Commissioner such accounts, returns, reports or other informations relating to the administration of the institution in his charge, its funds, property or income or moneys connected therewith, or the appropriation thereof, as the Commissioner, 1[the Deputy Commissioner] or the Assistant Commissioner may require, and at such time and in such form as he may direct.

1. Inserted vide O.A. No. 29 of 1978.

18. Inspection Of Property And Documents :-

The Commissioner, 1[the Deputy Commissioner] or Assistant Commissioner, or any officer or other person deputed by the Commissioner, 1[the Deputy Commissioner] or Assistant Commissioner in this behalf, may inspect all movable and immovable property belonging to all records, correspondence, plans, accounts and other documents relating to any religious institution ; and it shall be the duty of the trustee of such institution and all officers and servants working under him, his agent and any person having concern in the administration thereof, to afford all such assistance and facilities as may be necessary or reasonably required in regard to such inspection, and also produce any such movable property or document for inspection if so required.

1. Inserted vide O.A. No. 29 of 1978.

19. Alienation Of Immovable Trust Property :-

1[(1) Notwithstanding anything contained in any law for the time being in force no transfer by exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be made unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution and no such transfer shall be valid or operative unless it is so sanctioned.

2[Explanation-A lease for a term not exceeding five years but with a condition of renewal permitting continuance of the lease beyond five years shall, for the purposes of this sub-section, be deemed to be a lease for a term exceeding five years.

(1 -a) The fact of execution of a lease deed with a condition for renewal or renewal of such a deed shall be communicated to the Commissioner by the Trustee not later than fifteen days from the date of execution.

(1-b) After expiry of the term of the lease the lessee shall deliver possession of the leasehold land to the lessor, failing which, the Commissioner may take action in accordance with the provision of Section 68 :

Provided that all structures, permanent or temporary, if any, constructed plants and machineries and other things installed and kept on the leasehold land, which is a subject-matter of a lease executed after commencement of the Orissa Hindu Religious Endowments (Amendment) Act 22 of 1989 by the lessee, his servants or agents, shall become the property of the religious institution unless removed from the land within such period, as may be prescribed, after expiry of the term of lease, in respect of which the Commissioner shall take action under the provision of Section 68.

(1 -c) Notwithstanding anything contained in the proviso to Sub-section (1-b), no property belonging to a person other than the lessee shall be subjected to confiscation under the said proviso, unless such person fails to remove his property within a period of thirty days from the date of publication of a notice which shall be issued by the Trustee within such period as may be prescribed after the expiry of the term of lease :

Provided that any person whose property is affected under Sub-section (1-c), may file an application to the Commissioner claiming the property whose decision shall, subject to the decision of the Civil Court, be final.]

(2) In according such sanction, the Commissioner may declare it to be subject to such conditions and directions as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period,

(3) A copy of the order made by the Commissioner under this section shall be communicated to the State Government and to the trustee and shall be published in such manner as may be prescribed.

3[(4) The trustee may, within thirty days from the date of receipt of a copy of the order and any person having interest may, within thirty days from the date of publication of the order, appeal to the State Government to modify the order or set it aside :

Provided that appeals from the orders communicated or published prior to the date of commencement of the Orissa Hindu Religious Endowment (Amendment) Act, 1980 shall lie within a period of three months from the date of communication or, as the case may

be, publication of the order or within a period of thirty days from the commencement of the said Act whichever period expires earlier.

(5) In any case where appeal has not been made to the State Government it appears to the State Government 2[that the alienation is not necessary or beneficial to the institution, or] that the consideration fixed in respect of the transfer by exchange, sale, mortgage or lease for a term exceeding five years of any immovable property is inadequate, they may, within ninety days from the date of the receipt of the order communicated to them under Sub-section (3) or the date of the publication of the order whichever date is later, call for the record of the case from the Commissioner and after giving an opportunity of hearing to the parties concerned, revise the order of the Commissioner :

Provided that in any case where the transfer has not been effected in pursuance of the order of the Commissioner under Sub-section (1), the State Government may exercise the aforesaid power even after the expiry of ninety days from the date of such order.

(6) The State Government may, by order, stay execution of the deed of transfer in respect of the immovable property which form the subject-matter of an appeal or revision till the disposal of the appeal, or as the case may be, the revision.

(7) The order of the Commissioner made under this section shall, subject to orders, if any, passed in an appeal or revision, be final.]

1. Substituted vide O.H.R.E. (Amendment) Act, 1954-0. A. No. 18 of 1954.

2. Inserted vide O.A. No. 22 of 1989.

3. Substituted vide O.A. No. 29 of 1978.

19A. Regulation Of Registration Of Documents :-

1[Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under Section 17 of the Registration Act, 16 of 1908, purports to evidence a transfer, by exchange, sale, mortgage or by lease for a term exceeding five years, of any immovable property belonging to or given or endowed for the purpose of any public religious institution, no Registering Officer, appointed under that Act, shall register any such document unless the transfer or produces before such Registering Officer, the sanction order passed by the Commissioner under Section 19, or, as the case may be, no objection certificate in the prescribed form granted by the Commissioner or any Officer authorised by him in that behalf:

Provided that a no objection certificate granted under this sub-section shall not be a bar to a dispute or abate any dispute, if pending under Section 41:

Provided further that a no objection certificate shall be deemed to have been granted, if the Registering Officer is satisfied that the transfer or having applied for grant of no objection certificate to the Commissioner or the authorised officer, as the case may be, has not received the same within three months from the date of the application under Section 19 is moved before the Commissioner and that the

application has not been rejected before expiry of that period.

1. Inserted vide O.A. No. 22 of 1989.

19B. Restriction Against Money-Lending :-

Notwithstanding anything contained in any other law for the time being in force, no religious institution shall lend or borrow money without the prior sanction of the Commissioner:

Provided that no such sanction shall be necessary for borrowing such amount as may be prescribed for meeting the urgent expenses to carry on the daily rituals of a religious institution.]

20. Authority Of Trustee To Incur Expenditure For Securing The Health, Safety Or Convenience Of Pilgrims And Worshippers :-

(1) The trustee of a religious institution may out of the funds in his charge, after satisfying adequately the purposes of the institution, incur expenditure on arrangements for securing the health, safety or convenience of disciples, training of Vidyarthi or for securing the health and safety of pilgrims or worshippers resorting to the institution.

1[(2) * * *]

1. Omitted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

21. Enforcement Of Service Or Charity In Certain Cases :-

(1) Where a specific endowment attached to a math or temple consists merely of a charge on property and there is failure in the due performance of the service or charity, the trustee of the math or temple concerned may require the person in possession of the property on which the endowment is a charge to pay the expenses incurred or likely to be incurred in causing the service or charity to be performed otherwise. In default of such person making payment as required, Assistant Commissioner may, on the application of the trustee and after giving the person in possession a reasonable opportunity of stating his objections in regard thereto, by order, determine the amount payable to the trustee.

(2) Where the person in possession of the property on which the endowment is a charge is not the person responsible in law for the performance of the service or charity and any amount is paid by or recovered from the person in possession, the Assistant Commissioner may, on the application of the person in possession and after giving the person responsible in law a reasonable

opportunity of stating his objections in regard thereto, by order, require the person responsible in law to pay to the person in possession the amount so paid or recovered.

(3) Against an order of the Assistant Commissioner under Sub-section (1) or Sub-section (2), the trustee or the person affected may, within one month of the date of the receipt of the order by him, appeal to the Commissioner who may modify or cancel the same.

(4) On application by the trustee to the Collector of the district in which the property referred to in Sub-section (1) is situated, or an application by the person in possession to the Collector of the district in which is situated any property of the person responsible in law, as the case may be, the Collector shall recover from the person in possession, or the person responsible in law, as the case may be, the amount specified in the order of the Assistant Commissioner as modified by the order of the Commissioner, if any, and the expenses of such recovery, as if they were arrears of land revenue, and pay to the trustee or, as the case may be, to the person in possession, the amount due to him.

22. Power Of Trustee Of Math Or Temple Over Trustees Of Specific Endowments :-

The trustee of a specific endowment made for the performance of any service or charity connected with a math or temple shall perform such service or charity subject to the general superintendence of the trustee of the math or temple and shall obey all lawful orders issued by him.

23. Omitted :-

1[* * *]

1. Omitted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

24. Resumption And Re-Grant Of Inam Granted For The Performance Of Any Charity Or Service Connected With A Math Or Temple In Case Of Alienation Of The Inam Or Of Failure To Perform The Charity Or Service :-

(1) Any exchange, gift, sale or mortgage and any lease for a term exceeding five years, of the whole or any portion of any inam or jagir granted for the support or maintenance of a religious

institution or for the performance of a charity or service connected therewith or of any other religious charity made, confirmed or recognised by the State Government shall be null and void.

(2) (a) The Collector may, on his own motion, or on the application of the trustee of the religious institution or of the Commissioner or the Assistant Commissioner or of any person having interest in the institution who has obtained the consent of such trustee or the Commissioner, by order, resume the whole or any part of any such inam or jagir on one or more of the following grounds, namely :

(i) that the trustee of the institution or the holder of such inam or jagir or part, as the case may be; has made an exchange, gift, sale or mortgage of such inam or part or any portion thereof or has granted a lease of the same or any portion thereof for a term exceeding five years ; or

(ii) that the religious institution has ceased to exist or the charity or service in question has in any way become impossible or incapable of performance ; or

(iii) that the holder of such inam or jagir or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage, the charity or service for performing which the inam had been made, confirmed or recognized as aforesaid, or any part of the said charity or service, as the case may be; or

(iv) that such service is no longer required.

When passing an order under this clause, the Collector shall determine whether such inam or jagir or the inam comprising such part, as the case may be, is a grant of both the landlords interest and the ryots interest or only of the landlords interest :

Provided that in the absence of evidence to the contrary, the Collector shall presume that any minor inam is a grant of both the landlords interest and the ryots interest.

(b) Before passing an order under Clause (a), the Collector shall give notice to the trustee, to the Commissioner, to the Assistant Commissioner, to the inamdar concerned or where only a part of the inam is affected, to the holder of such part as well as to holders of the other part or parts and to the aliene, if any, of the inam, hear their objections, if any, and hold such inquiry as may be prescribed.

(c) A copy of every order passed under Clause (a) shall be communicated to each of the persons mentioned in Clause (b) and shall also be published in the manner prescribed.

(d) (i) Any party aggrieved by an order of the Collector under

Clause (a) may appeal to the Collector of the district within such time as may be prescribed and on such appeal the Collector of the district may, after giving notice to the Commissioner and each of the persons mentioned in Clause (b) and after holding such inquiry as may be prescribed, pass an order confirming, modifying or cancelling the order of the Collector.

(ii) The order of the Collector of the district on such appeal, or the order of the Collector under Clause (a) where no appeal is preferred under Sub-clause (i) to the district Collector within the time prescribed, shall be final:

Provided that where there has been an appeal under Sub-clause (i) and it has been decided by the Collector of the district or where there has been no appeal to the Collector of the district and the time for preferring an appeal has expired, any party aggrieved by the final order of the Collector of the district or the Collector, as the case may be, may file a suit in the Civil Court for determining whether that inam comprises both landlords interest and the ryots interest or only the landlords interest. Such a suit shall be instituted within one year from the date of the order of the Collector of the district on appeal where there has been an appeal under Sub-clause (i) or from the date of the expiry of the period prescribed under Sub-clause (i) for an appeal to the Collector of the district in a case where there has been no appeal.

(e) Except as otherwise provided in Clause (d), an order of resumption passed under this section shall not be liable to be questioned in any Court of law.

(f) Where any inam or part of any inam is resumed under this section, the Collector or the Collector of the district, as the case may be, shall by order, regrant such inam or part-

(i) as an endowment to the religious institution concerned, or

(ii) in case of a resumption on the ground that the religious institution has ceased to exist or that the charity of service in question has in any way become impossible or incapable of performance, as an endowment for appropriation to such religious, educational or charitable institution as the Commissioner may recommend.

(g) The order of regrant made under Clause (f) shall, on application made to the Collector within the time prescribed, be executed by him in the manner prescribed.

(h) Nothing in this section shall affect the operation of Section 23.

25. Recovery Of Immovable Trust Property Unlawfully

Alienated :-

1[(1) In case of any alienation, in contravention of Section 19 of this Act or Section 51 of the Orissa Hindu Religious Endowments Act, 1939, or in case of unauthorised occupation of any immovable property belonging to or given or endowed for the purpose of any religious institution, the Commissioner may, after summary enquiry as may be prescribed and on being satisfied that any such property has been so alienated or unauthorisedly occupied send requisition to the Collector of the district to deliver possession of the same to the trustee of the institution or a person discharging the function of the said trustee.

(2) The Collector in exercising his powers under Sub-section (1), shall be guided by rules made under this Act.

(3) Any person aggrieved by the action of the Collector may institute a suit in the Civil Court to establish his rights.]

1. Substituted vide O.A. No. 2 of 1981.

26. Omitted :-

1[* * *]

1. Omitted vide O.A. No. 18 of 1954.

CHAPTER 3

RELIGIOUS INSTITUTIONS OTHER THAN MATHS AND SPECIFIC ENDOWMENTS ATTACHED THERETO

27. Non-Hereditary Trustees, Their Number And Appointment :-

(1) The Assistant Commissioner shall, in cases where there is no hereditary trustee, 1[with the prior approval of the State Government] appoint non-hereditary trustee in respect of each religious institution other than maths and specific endowments attached thereto and in making such appointments, the Assistant Commissioner shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the said institution is chiefly maintained.

2[Provided that the Assistant Commissioner shall, before sending any proposal to the State Government for such prior approval, publish a notice in the Notice Board of the concerned religious institution and intimate the general public of the locality by beat of drum, inviting suggestions and objections on the proposal from all persons affected, to be made within a period of thirty days from

the date of such publication, and forward to the State Government the suggestions and objections, if any, received, alongwith such proposal.

(1-a) On receipt of a proposal made under Sub-section (1) for the appointment of a Non-hereditary Trustee, the State Government may either accord the required approval or reject or modify the proposal of the Assistant Commissioner as it may deem fit in the interest of the persons belonging to the religious denomination for whose benefit, the concerned religious institution is chiefly maintained.]

3[(2) A non-hereditary trustee shall, unless he is sooner removed or dismissed or otherwise ceases to be a trustee, hold office for a period of two years form the date of his appointment :

Provided that the Assistant Commissioner may, for sufficient reasons to be recorded by him, from time to time, extend the aforesaid term of a trustee, so, however, that the total extension so granted shall in no case exceed six months in the aggregate.

(3) Every non-hereditary trustee holding office immediately prior to the date of commencement of the Orissa Hindu Religious Endowments (Amendment) Act, 1978 shall cease to hold office as such on the completion of a period of two years from the date of this appointment or on the expiration of three months from the date of commencement of the said Act, whichever is later.]

1. Inserted vide O.A. No. 4 of 1992.

2. Inserted vide O.A. No. 13 of 2003 (O.G.E. No. 825 dated 31.5.2003).

3. -Substituted vide O.A. No. 29 of 1978.

28. Power To Suspend, Remove Or Dismiss Trustees :-

(1) 1[The Commissioner, in the case of a hereditary trustee, and the Assistant Commissioner, in the case of a non-hereditary trustee, may suspend, remove or dismiss the trustee of a religious institution referred to in Section 27]-

(a) for persistent default in the submission of budgets, accounts, reports or returns or in payment of contribution or other dues payable to Government;

(b) for wilful disobedience of any order issued under the provisions of this Act by the State Government or the Commissioner, 2[the Deputy Commissioner] or Assistant Commissioner;

(c) for any malfeasance, misfeasance, breach of trust or neglect of duty in respect of the trust or alienation of the trust property in

contravention of this Act, or the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939);

(d) for any misappropriation of, or improper dealing with, the properties of the institution of which he is trustee;

(e) for unsoundness of mind or other mental or physical defect or infirmity which makes him unfit for discharging the functions of a trustee ; or

(f) 3[* * *].

(2) When it is proposed to take action under Sub-section (1), the Commissioner or the Assistant Commissioner, as the case may be, shall frame charges against the trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced against him and of adducing evidence in his favour ; and the order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with the reasons therefor.

(3) Pending the disposal of the charges framed against the trustee, the Commissioner or the Assistant Commissioner may place the trustee under suspension and appoint a fit person to discharge the functions of the trustee.

(4) A trustee, who is suspended, removed or dismissed by an Assistant Commissioner under Sub-section (1), may within one month from the date of the receipt of the order of suspension, removal or dismissal, appeal to the Commissioner against such order in the prescribed manner and the Commissioner shall pass such orders on the appeal as he may thinks fit :

Provided that no appeal shall be entertained unless the person affected by the order complies with it and makes over charges of his office or unless such a condition is waived by the Commissioner at his discretion.

4[(5) Any hereditary trustee aggrieved by an order passed by the Commissioner under Sub-section (1) 3[* * *] may within thirty days from the date of receipt of the order, appeal to the High Court and the Court may either summarily dismiss the appeal or after hearing the parties pass such orders as the Court may deem fit.

(6) A hereditary trustee so suspended, removed or dismissed may be allowed such maintenance allowance as may be fixed by the Commissioner considering the financial condition of the institution and the rules made in this behalf.]

1. Substituted vide O.A. No. 29 of 1978.

2. Inserted vide O.A. No. 29 of 1978.

3. Omitted vide O.A. No. 29 of 1978.

4. Inserted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

29. Section 29 :-

1[(1) A person shall be disqualified for appointment as a trustee, if he-

- (a) is a minor;
- (b) has been convicted by a Criminal Court of any offence involving moral turpitude;
- (c) is of unsound mind and is so declared by a competent Court;
- (d) is an undischarged insolvent;
- (e) has directly or indirectly any interest in a lease or any other transaction relating to the property of the institution;
- (f) is a paid employee of the institution or has any share or interest in a contract for the supply of goods to, or the execution of any works or the performance of any service undertaken by the institution;
- (g) has been found to be guilty of misconduct; or
- (h) does not profess the religion or does not belong to the religious persuasion or denomination to which the institution belongs.

(2) A trustee shall be disqualified to continue and shall cease to hold office as such if he incurs any of the disqualifications specified in Clauses (b) to (h) of Sub-section (1).]

1. Substituted vide O.A. No. 29 of 1978.

30. Filling Up Of Vacancies In The Office Of Hereditary Trustee :-

When a permanent vacancy occurs in the office of the hereditary trustee of such religious institution the next in the line of succession shall be entitled to succeed to the office.

(2) When a temporary vacancy occurs in such an office by reason of the suspension of the hereditary trustee under Sub-section (1) of Section 28 or by reason of his ceasing to hold office under the provisions of Section 29, the next in the line of succession shall be appointed to discharge the functions of the trustee until his disability ceases.

(3) When a permanent or temporary vacancy occurs in such an office and there is a dispute respecting the right of succession to the office, or when such vacancy cannot be filled up immediately or when a hereditary trustee is minor and has no legally constituted guardian fit and willing to act as such or there is a dispute

respecting the person who is entitled to act as such guardian, the 1[* * *] Commissioner may, 1[* * *] appoint a fit person to discharge the functions of the trustee of the institution until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office or for such shorter term as the 1[* * *] Commissioner may direct. The Commissioner 1[* * *] shall have power to remove such interim trustee for the reasons specified in Section 28.

Explanation-In making any appointment under this sub-section 1[* * *] the Commissioner, shall have due regard to the claims of members of the family, if any, entitled to the succession.

2[(4) Nothing in this section shall affect the right of any person aggrieved by an order of the Commissioner under Sub-section (3) to establish the right to hold office of the hereditary trustee in a Court of law :

Provided that such Court shall have no power to stay the operation of the Commissioner, pending the disposal of the suit or other proceedings arising in relation thereto.]

1. Omitted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

2. Substituted *ibid*.

31. Appointment Of Office-Holders And Servants In Religious Institutions :-

(1) Vacancies, whether permanent or temporary, amongst the office-holders or servants of a religious institution shall be filled up by the trustee in cases where the office or service is not hereditary.

(2) In cases where the office or service is hereditary the next in the line of succession shall be entitled to succeed.

(3) Where however there is a dispute respecting the right of succession, or where such vacancy cannot be filled up immediately, or where the person entitled to succeed is a minor without a legally constituted guardian fit and willing to act as such, or where the hereditary office-holder or servant is suspended from his office under Sub-section (1) of Section 32;

the trustee may appoint a fit person to discharge the functions of the office or perform the service, until the disability of the office-holder or servant ceases or another person succeeds to the office or service, as the case may be.

Explanation-in making any appointment under this sub-section, the trustee shall have due regard to the claims of members of the

family, if any, entitled to the succession.

(4) Any person affected by an order of the trustee under Sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Assistant Commissioner whose order shall be final:

Provided that no appeal shall be entertained unless the person affected by the order complies with it and makes over charge of his office or unless such a condition is waved by the Commissioner at his discretion.

32. Punishment Of Office-Holders And Servants In Religious Institutions :-

(1) All office-holders and servants attached to a religious institution or in receipt of any emolument to perquisite from the institution shall, whether the office or service is hereditary or not, be controlled by the trustee ; and the trustee may fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

(2) Any office-holder or servant punished by a trustee under Subsection (1) may, within one month from the date of the communication of the order to him, appeal to the Assistant Commissioner whose order shall be final.

(3) If any such office-holder or servant against whom an order, fine, suspension, removal or dismissal has been made by the trustee or the Assistant Commissioner, as the case may be, disobeys such order, he shall, unless he shows reasonable cause to the satisfaction of the Commissioner to the contrary, be liable to pay to the 1[Endowment Fund] within such date as may be specified in the order such penalty not exceeding 1[two] hundred rupees and in case of default a daily fine not exceeding twenty rupees. The penalty to be paid by such person shall in no case be paid from the fund of the institution concerned.

(4) If such penalty is not paid within the time fixed or within such further time as may be granted by the Commissioner, the Collector of the district, in which any property of the person against whom an order is made under Sub-section (3) is situated, shall, on a requisition made to him by the Commissioner, recover the amount as if it were an arrear of land revenue.

1. Substituted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

33. Office-Holders And Servants Of Temples, Not To Be In Possession Of Jewels Or Other Valuable Articles Except Under Conditions :-

1[Without prejudice to the generality of the provisions of this Act no office-holder or servant of a temple shall have the right to be in possession of the jewels or other valuable belongings to the temple except under such conditions and safeguards as the Commissioner may by general or special order direct.]

1. Substituted vide O.H.R.E. (Amendment) Act, 1954-O.A. No. 18 of 1954.

34. Fixing Of Standard Scales Of Expenditure :-

(1) The trustee of a religious institution may, from time to time, submit to the Assistant Commissioner proposals fixing the scale of expenditure in the institution, and the amounts which should be allotted to the various objects or ceremonies connected with such institution or the proportion in which the income or other property of the institution may be applied to such objects or ceremonies.

(2) The trustee shall publish such proposals at the premises of the institution and in such other manner as the Assistant Commissioner may direct, together with a notice stating that, within one month from the date of such publication, any person having interest might submit his objections or suggestions to the Assistant Commissioner.

(3) After the expiry of the said period, the Assistant Commissioner shall, after considering any objections or suggestions received by him, pass such order as he thinks fit on such proposals having regard to the established usage of the institution and its financial position and communicate a copy of the order to the trustee.

(4) The trustee or any person having interest may, within one month from the date of the receipt of the order by the trustee, appeal against it to the Commissioner.

(5) The scale of expenditure for the time being in force in an institution shall not be altered by the trustee except in accordance with the procedure laid down in this section :

Provided that the Assistant Commissioner may at any time on his own motion, for sufficient cause, direct the trustee to modify the scale of expenditure.

(6) The trustee or any person having interest may within one month from the date of the receipt by the trustee of any direction issued under the proviso to Sub-section (5) appeal against such

direction to the Commissioner. The order of the Commissioner shall be final.

CHAPTER 4

MATHS

35. Disqualification Of Hereditary Trustees :-

(1) A hereditary trustee of a math shall be declared disqualified and shall consequently cease to hold his office if he-

(a) is of unsound mind ; or

(b) is suffering from any physical or mental disease or defect or infirmity which renders him unfit to be a trustee ; or

(c) has ceased to profess and practise Hindu religion or tenets of the math ; or

(d) is convicted for any offence involving moral turpitude 1[* * *]; or

(e) has committed breach of trust in respect of any of the properties of the religious institution ; or

(f) persistently and wilfully defaults in discharging his duties or functions under this Act or any other law for the time being in force or in payment of contribution or other dues payable to Endowment Fund.

(2) The Commissioner shall, after enquiry in accordance with the provisions of the Act and so far as may be, of the Code of Civil Procedure, 1908 (V of 1908) relating to trial of suits and with the prior approval of the State Government, declare by an order in writing whether a trustee is disqualified either temporarily or for the life-time under this section.

(3) Any person affected by the order of the Commissioner under Sub-section (2) may within sixty days from the date of the receipt of the order by him appeal to the High Court.

(4) The hereditary trustee so disqualified may be allowed such maintenance as may be fixed by the Commissioner considering the financial condition of the institution and rules made in this behalf.

(5) If a trustee is declared disqualified under this section, it shall be the duty of the Commissioner to appoint one or more persons to discharge the functions of the trustee of the institution. In making any appointment under this sub-section the Commissioner shall have due regard to the claims of the next in line of succession and failing this of the disciples of the math:

Provided that in case of disqualifications falling under Clauses (a) and (b) of Sub-section (1) the appointment shall be until such

period when the disqualification ceases.

1. Omitted vide O.A. No. 18 of 1954.

36. Filling Up Of Vacancies :-

(1) When a vacancy occurs in the office of the trustee of a math or specific endowment attached to a math except as provided in the preceding section and there is a dispute respecting the right of succession to such office, or when such office cannot be filled up immediately or when the trustee is a minor and there is no recognised guardian willing to act as such or when there is a dispute respecting the person who is entitled to act as such guardian,

1[the Commissioner] after being satisfied that an arrangement for the administration of the math and its endowment or of the specific endowment, as the case may be, is necessary shall make such appointment and arrangements as he thinks fit until the dispute is settled or another trustee succeeds to the office, as the case may be. 1[The Commissioner] may also remove such interim trustee for the reasons specified in Section 28.

(2) In making any appointment under Sub-section (1) 1[the Commissioner] shall have due regard to the claims of the disciples of the math, if any, or in the absence of any such disciples of the math claims of one of the allied or as far as possible closely connected maths shall be taken into consideration.

2[(3) Nothing in this section shall affect the right of any person aggrieved by the order of 1[the Commissioner] under Sub-section (1) to establish his right of succession to the office of the trustee in a Court of law :

Provided that such Court shall have no power to stay the operation of the order of 1[the Commissioner] pending disposal of the suit or other proceedings arising in relation thereto.]

1. Substituted vide Orissa Act No. 18 of 1954.

2. Inserted *ibid*.

37. Fixing Of Standard Scales Of Expenditure :-

(1) The trustee of every math or specific endowment attached to a math may, from time to time, submit to 1[the Commissioner] proposals for fixing the scale of expenditure in the institution, and the amounts which should be allotted to the various objects or ceremonies connected with the institution or the proportions in which the income or other property of the institution may be

applied to such objects or ceremonies.

(2) The trustee shall publish such proposals at the premises of the math and in such other manner as 1[the Commissioner] may direct, together with a notice stating that, within one month from the date of such publication, any person having interest may submit suggestions to him.

(3) If, on a scrutiny of such proposals and any suggestions made by persons having interest, 1[the Commissioner] is of opinion that the scale of expenditure or any item in the scale of expenditure is at variance with the established usages of the institution or for sufficient reasons needs modification, 1[the Commissioner] may call for an explanation from the trustee and after considering the same, may pass such order as he thinks fit on such proposals and communicate a copy of the order to the trustee.

(4) The trustee or any person having interest may, within one month from the date of receipt by the trustee of any order under the foregoing provision, appeal [to the State Government and their decision shall be final].

1. Substituted vide Orissa Act No. 18 of 1954.

38. Section 38 :-

1[* * *]

1. Omitted ibid.

39. Appointment Of Successors By Hereditary Trustees :-

When the hereditary trustee of a math nominates his successor he shall give intimation in writing to 1[the Commissioner]. Subsequent changes in the nomination may also be intimated within three months of the nomination. For purpose of succession the last nominee so intimated shall be recognised by 1[the Commissioner]. If no appointment is made during life-time of the trustee, 1[the Commissioner] shall have full power to appoint an Executive Officer and the trust shall be brought under the direct control of 1[the Commissioner] and shall be treated as an institution under Chapter VII. In making this appointment 1[the Commissioner] shall have due regard to the custom and usage and tenets of the math. Any person aggrieved by the decision may within ninety days from the date of the decision institute a suit in a competent Court of law to establish his right to the office of the hereditary trustee but pending the result of such suit, if any, the order of 1[the Commissioner] shall be final.

1. Substituted vide Orissa Act No. 18 of 1954.

40. Section 40 :-

1[* * *]

1. Omitted ibid.

CHAPTER 5

INQUIRIES

41. Assistant Commissioner To Decide Certain Disputes And Matters :-

(1) In case of a dispute the Assistant Commissioner shall have power to enquire into and decide the following disputes and matters -

- (a) whether an institution is a public or religious institution;
- (b) whether an institution is a temple or a math;
- (c) whether a trustee holds or held office as a hereditary trustee;
- (d) whether any property or money is of a religious endowment or specific endowment;
- (e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution and what the established usage of a religious institution is in regard to any other matter;
- (f) whether any institution or endowment is wholly or partly of a religious or secular character, and whether any property or money has been given wholly or partly for religious or secular uses; and
- (g) where property or money has been given for the support of an institution or the performance of a charity, which is partly of religious and partly of a secular character or when any property or money given is appropriated partly to religious and partly to secular uses, as to what portion thereof shall be allocated to religious uses :

Provided that the burden of proof in all disputes or matters covered by Clauses (a) and (d) shall lie on the person claiming the institution to be private or the property or money to be other than that of a religious endowment or specific endowment, as the case may be.

1[(2)***]

1. Omitted vide Orissa Act No. 18 of 1954.

42. Power To Frame Schemes :-

1[(1) 2[Whenever there is reason to believe that in the interest of the proper administration of a religious institution a scheme may be settled for it, or when not less than five persons having Interest make an application in writing stating that in the interests of the proper administration of a religious institution a scheme should be settled for it, the Assistant Commissioner] or 1[the Deputy Commissioner], as the case may be, shall proceed to frame a scheme in the manner hereinafter provided-

(a) in the case of a religious institution managed by a non-hereditary trustee the Assistant Commissioner shall consult in the prescribed manner the trustee and the persons having interest, and if after such consultation he is satisfied that it is necessary or desirable to do so, he shall after recording his reasons therefor by order frame a scheme for the administration of the institution;

(b) in the case of a religious institution presided over or managed by a hereditary trustee, the Assistant Commissioner shall make such enquiry as he thinks fit and submit his report to the Deputy Commissioner who shall hold an enquiry in the manner prescribed and so far as may be, in accordance with the provisions of the Code of the Civil Procedure, 1908 (V of 1908) relating to the trial of suits and if he is satisfied that in the interests of the proper administration of such institution a scheme of administration should be settled, he shall consult in the prescribed manner the trustee and the persons having interest and by order settle a scheme of administration for the institution.

(2) A scheme settled under Sub-section (1) for a temple or its specific endowment may contain provision for-

(a) fixing the number of non-hereditary trustees;

(b) removing any existing trustee, whether hereditary or non-hereditary anything in Section 28 to the contrary notwithstanding :
Provided that where provision is made in the scheme for the removal of a hereditary trustee, provision shall also be made therein for the appointment as trustee of the person next in succession who is qualified;

(c) appointing a new trustee or trustees in addition to, or in the place of, any existing trustee or trustees;

(d) defining the powers and duties of the trustee or trustees;

(e) the appointment of a paid Executive Officer, who shall be a person professing the Hindu religion, on such salary as may be fixed to be paid out of the funds of the institution; and defining the powers and duties of such trustee or officer :

Provided that the Executive Officer so appointed shall, for purposes

of Section 68 be deemed to be a person appointed to discharge the functions of a trustee under this Act;

(f) appointing an Advisory Board where necessary in respect of institution where an Executive Officer is appointed as may be prescribed.

(3) A scheme settled under Sub-section (1) for a math may contain provision for-

(a) 3[* * *] the appointment of a paid Executive Officer, who shall be a person professing the Hindu religion, on such salary as may be fixed to be paid out of the trust funds, and defining the powers and duties of such officer :

Provided that the Executive Officer shall, for purposes of Section 68, be deemed to be a person appointed to discharge the functions of a trustee under this Act:

4[* * *]

(b) defining the powers and duties of the trustee;

5[(c) associating one or more person with the trustee or constituting a separate body for the purpose of participating or assisting in the whole or any part of the administration of the endowment of such math or of the specific endowment ; provided that such person or persons or the members of such body shall be chosen from persons having interest in such math or endowment.]

(4) The Assistant Commissioner 2[or the Commissioner], as the case may be, may determine what the properties of the religious institution are and append to the scheme a schedule containing a list of such properties:

Provided that the absence of such a schedule shall not invalidate the scheme :

Provided further that such determination shall not affect the rights of persons who are in hostile possession of any of the said properties.

(5) 1[The Deputy Commissioner] or the Assistant Commissioner, as the case may be, may, pending the framing of a scheme for a temple or a specific endowment 6[suspend the trustee] appoint a fit person to discharge all or any of the functions of the trustee thereof and define his powers and duties.

(6) The authority framing a scheme may, at any time, after consulting the trustee and the persons having interest, by order, modify or cancel any scheme settled under Sub-section (1) or under Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939).

(7) Every order of the Assistant Commissioner 1[or the Deputy

Commissioner] settling, modifying or cancelling a scheme under this section shall, subject to the provisions of Section 44, be binding on the trustee, the Executive Officer and all persons having interest.

6[(8) An Executive Officer appointed in pursuance of a Scheme framed under this section may be removed by the appointing authority for all or any or any of the reasons specified in Section 28 and an appeal against the order of removal, if passed by the Assistant Commissioner or 1[the Deputy Commissioner], shall lie to 2[the Commissioner] if preferred within thirty days, from the date of order.]

1. Substituted vide Orissa Act No. 29 of 1978-w.e.f. 7.6.1978.

2. Substituted vide Orissa Act No. 18 of 1954.

3. Omitted vide Orissa Act. No. 18 of 1954.

4. Omitted vide Orissa Act. No. 29 of 1978.

5. Inserted vide Orissa Act No. 18 of 1954.

6. Inserted *ibid*.

43. Cypres Application For Funds :-

(1) The Assistant Commissioner may, on being satisfied that the purpose of a religious institution has, from the beginning, been or has subsequently become, impossible or incapable of realisation, or that the machinery for effecting such purpose has failed or no longer exists, or that after providing adequately for the purposes of the institution and after setting apart a sufficient sum for the repair and renovation of the buildings connected therewith, there is a surplus which is not required for such purposes, by order direct that the endowments of the institution or such surplus as is declared to be available, as the case may be, be appropriated to religious educational or charitable purposes not inconsistent with the objects of the institution :

Provided that, in the case of a temple founded and maintained by a community or a specific endowment attached to such a temple, the endowments or surplus shall, as far as possible, be utilised for the benefit of the community for the purposes mentioned above.

(2) It shall be competent to the Assistant Commissioner when giving a direction under Sub-section (1) to determine what portion of such endowments or surplus shall be retained as a reserve fund for the religious institution and to direct the remainder to be appropriated to the purposes specified in that sub-section.

(3) The Assistant Commissioner may at any time by order modify or

cancel any order passed under Sub-section (1) or under the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939).

(4) The order of the Assistant Commissioner under this section shall be published in the prescribed manner and on such publication shall, subject to the provisions of Section 44, be binding on the trustee, the Executive Officer and all persons having interest.

44. Section 44 :-

1[(1) Any person aggrieved by an order passed under Section 41, or Sub-section (1) or (6) of Section 42, or Section 43 may, within thirty days from the date of receipt of the order under Section 41 or Section 43 nor from the date of publication of the order under Section 42, as the case may be, prefer an appeal to 2[the Commissioner].

(2) Any party aggrieved by the order of 2[the Commissioner] passed under Sub-section (1), may, within thirty days from the date of the order, prefer an appeal to the High Court.]

1. Substituted vide Orissa Act No. 29 of 1978-w.e.f. 7.6.1978.

2. Substituted vide Orissa Act No. 18 of 1954.

45. Section 45 :-

46. Section 46 :-

47. Section 47 :-

48. Section 48 :-

49. Section 49 :-

50. Section 50 :-

51. Section 51 :-

[Omitted]

1[* * *]

1. Omitted vide Orissa Act No. 18 of 1954.

CHAPTER 6

Chapter 6

CHAPTER 7

RELIGIOUS INSTITUTIONS UNDER DIRECT CONTROL

52. Appointment Of Salaried Executive Officer :-

(a) For every institution or a group of institutions under the direct

control of the State Government the Commissioner shall, as soon as may be, appoint a salaried Executive Officer who shall be a person professing the Hindu religion.

(b) The salary and allowance of the Executive Officer as determined by the Commissioner shall be paid from the fund of the religious institutions concerned.

53. Term Of Office And Duties Of Executive Officer :-

(a) The Executive Officer shall hold office for such period as may be fixed by 1[the Commissioner] and he shall exercise such powers and perform such duties as may be assigned to him by 1[the Commissioner].

(b) 1[The Commissioner] shall define the powers and duties which may be exercised and performed by the Executive Officer.

(c) The Executive Officer shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (XLV of 1860).

1. Substituted vide Orissa Act No. 18 of 1954.

54. Removal Of Executive Officer :-

1[The Commissioner] may, for good and sufficient causes, suspend, remove or dismiss the Executive Officer in the prescribed manner.

1. Substituted vide Orissa Act No. 18 of 1954.

55. Fixing Of Standard Scale Of Expenditure :-

(a) The Executive Officer shall after due inquiry submit proposals for fixing the scale of expenditure in the institution and the amounts which shall be allotted to the various objects or ceremonies connected with the institution or the proportions in which the income or other property of the institution may be applied to such objects and ceremonies.

(b) The Executive Officer shall publish the proposal at the premises of the institution and in any other manner as the Assistant Commissioner may direct together with the notice stating that within one month from the date of publication any person having interest may submit suggestion to the Commissioner.

(c) After expiry of the said period 1[the Commissioner] shall after considering the objections and suggestions received by him pass such order as he thinks fit on such proposals and communicate a copy of the order to the Executive Officer.

(d) The Collector may, for the purpose of control and supervision of the institution under direct control exercise the powers of 2[* * *] 1[the Commissioner] if 1[the Collector] is specially empowered in this behalf by the Commissioner.

1. Substituted vide Orissa Act No. 18 of 1954.

2. Omitted ibid.

56. Control Of Collector, Assistant Commissioner And Endowment Commissioner :-

(1) In exercising his powers the Executive Officer shall act under the supervision of the Collector who shall be under general control of the Commissioner.

(2) The Executive Officer appointed under Section 52 shall be deemed to be a trustee for purposes of Sections 32 and 34 and Chapters VIII, IX and X.

CHAPTER 8

BUDGETS, ACCOUNTS AND AUDIT

57. Budget Of Religious Institutions :-

(1) The trustee of every religious institution shall, before the end of December in each year, submit to the Assistant Commissioner in such form as may be fixed by 1[the Commissioner] a budget showing the probable receipts and disbursements of the institution during the following financial year.

(2) Every such budget shall make adequate provision for-

(a) the scale of expenditure for the time being in force and in the case of a math, its other customary expenses;

(b) the due discharge of all liabilities binding on the institution;

(c) the repair and renovation of the buildings connected with institution;

(d) expenditure on religious, educational and charitable purposes not inconsistent with the object of the institution not more than ten per centum of the gross income unless 1[the Commissioner] otherwise directs;

(e) the maintenance of a working balance;

(f) the amount of expenditure that may be incurred by the trustee under Section 20.

(3) (a) The Assistant Commissioner may, on receipt of the budget, make such alterations, omissions or additions therein as may be prescribed.

(b) Notwithstanding anything contained in any other law for the

time being in force or any custom or practice obtaining to the contrary, the provisions made for remuneration of the office-holder or any other item of expenditure of any institution may be increased, decreased or modified by the Assistant Commissioner if such increase, decrease or modification is considered necessary in the interest of the financial condition of the institution whether hereditary or not.

(4) A trustee may, within one month of the date of the receipt by him of the order passed by the Assistant Commissioner under Sub-section (3), appeal against such order to 1[the Commissioner].

1. Substituted vide Orissa Act No. 18 of 1954.

58. Accounts And Audit :-

(1) The trustee of every religious institution shall keep regular accounts of all receipts and disbursements.

1[(2) The accounts of every religious institution the annual income of which is calculated for the purpose of assessment of contribution for the year immediately preceding is two thousand rupees or more, shall be subject to annual audit. The accounts of every other religious institution shall be audited in alternative years or if the Commissioner so directs in any case or classes of cases, at a shorter interval.]

1[(3) The accounts of such religious institutions, as may be notified from time to time by the State Government, shall be audited by Auditors appointed by them in consultation with the Accountant-General and the accounts of other religious institutions shall be audited by the Special Audit Staff appointed by 2[the Commissioner].]

1. Substituted vide Orissa Act No. 2 of 1981.

2. Substituted vide Orissa Act No. 18 of 1954.

59. Authority To Whom Audit Report Is To Be Submitted :-

After completing the audit for any year or shorter period, or for any transaction or series of transactions, as the case may be, the auditor shall send a report to 1[the Commissioner] sending a copy thereof to the Assistant Commissioner.

1. Substituted vide Orissa Act No. 18 of 1954.

60. Contents Of Audit Report :-

(1) The auditor shall specify in his report all cases of irregular,

illegal or improper expenditure or of failure to recover moneys or other property due to the religious institution, or of loss or waste of money or other property thereof, caused by neglect or misconduct.

(2) The Auditor shall also report on any other matter relating to the accounts as may be prescribed, or on which 1[the Commissioner] or the Assistant Commissioner concerned, may require him to report.

1. Substituted vide Orissa Act No. 18 of 1954.

61. Rectification Of Defects Disclosed In Audit And Order Of Surcharge Against Trustee :-

(1) 1[The Commissioner] shall send a copy of every audit report relating to the accounts of a religious institution to the trustee thereof, and it shall be the duty of such trustee to remedy any defects or irregularities pointed out by the auditor and report the same to Assistant Commissioner.

(2) The Assistant Commissioner shall forward to 1[the Commissioner] a copy of every audit report received by him under Section 59 and the report, if any, of the trustee made under Sub-section (1), together with such remarks as the Assistant Commissioner may wish to make thereon.

(3) If, on a consideration of the report of the auditor alongwith the report, if any, of the trustee the Assistant Commissioner thinks that the trustee or any employee of the institution concerned with the management of the trust property was guilty of misappropriation or wilful waste of the funds of the institution or of gross neglect resulting in a loss to the institution, he may, after giving notice to the trustee to show-cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by order, certify the amount so lost and direct the trustee or employee concerned to pay such amount personally, within a specified time.

(4) The Assistant Commissioner shall forward a copy of the order under Sub-section (3) with the reasons for the same, by registered post, to the trustee concerned.

(5) The trustee aggrieved by such order may, within one month of the receipt of the order, appeal to the Commissioner to modify or set aside the order, and 1[the Commissioner] after taking such evidence as is necessary may pass such orders thereon as he may deem fit.

(6) The sum specified in the order of surcharge shall be paid within time specified in such order, unless the trustee has appealed to 1[the Commissioner] to modify or set aside the order and has

obtained an order for stay.

(7) An order of surcharge under this section against a trustee shall not bar a suit for accounts against him except in respect of the matter finally dealt with by such order.

(8) The Collector of the district, in which any property of the trustee or the employee is situated from whom an amount by way of surcharge is recoverable, shall, on a requisition made by 1[the Commissioner] recover, such amount as if it were an arrear of land revenue and pay the same to the religious institution concerned.

1. Substituted vide Orissa Act No. 18 of 1954.

62. Application Of The Provisions Of This Chapter :-

The provisions of this Chapter shall apply to every religious institution, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act.

CHAPTER 9

FINANCE

63. Constitution Of The Endowment Fund :-

1[(1) There shall be established a fund to be called the Orissa Hindu Religious Endowments Administration Fund. The fund shall be vested in and be administered by 1[the Commissioner] of Endowments who shall be a corporation sole with perpetual succession and common seal and may sue and be sued by this corporate name.

(2) The following sums shall be credited to the said fund, namely :

(a) fees levied under Section 77;

(b) contribution levied under Sub-section (4);

(c) fines and penalties realised in pursuance of Sections 32 and 70;

(d) any grant or contribution by the State Government, any local authority or any individual whether corporate or not;

(e) all sums to the credit of the fund constituted under Section 50 of the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939);

(f) any other sum which may be credited by or under any of the other provisions of this Act.

(3) All fees levied under Section 71 shall be deemed to be a part of the Endowment Fund for all purposes of maintenance of its accounts under, this Act.

(4) Every religious institution having an annual income exceeding two hundred and fifty rupees shall, from the income derived by it,

pay to the fund annually such contribution not exceeding seven per centum of its income as may be prescribed.

(5) Every religious institution, the annual income of which for the financial year immediately preceding, as calculated for the purpose of levy of contribution under Sub-section (4) is not less than two thousand rupees, shall pay to the fund annually for meeting the cost of auditing its accounts such further sum not exceeding one and a half per centum of its income as 1[the Commissioner] may determine.

(6) The annual payments referred to in Sub-Sections (3) and (4) shall be made, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the religious institution concerned.

(7) The said fund shall be utilised for the payments provided for in Section 6 and for the other expenses incidental to the purposes of this Act including the cost of auditing the accounts of religious institutions and the cost of any staff maintained for conducting the said audit.]

1. Substituted vide Orissa Act No. 18 of 1954.

64. Section 64 :-

1[All costs, charges and expenses incurred by the State Government, 2[the Commissioner] 1[the Deputy Commissioner] or an Assistant Commissioner in connection with legal proceedings in respect of any religious institution to which any of them is a party, shall be payable out of the funds of such religious institution.]

1. Substituted vide Orissa Act No. 29 of 1978- w.e.f. 7.6.1978.

2. Substituted vide Orissa Act No. 18 of 1954.

65. Assessment And Recovery Of Contribution And Costs And Expenses :-

(1) The contributions, costs and expenses payable under Sections 63 and 64 shall be assessed on and notified to trustee of the religions institution concerned in the prescribed manner. The assessment shall be made by the Commissioner on the basis of average income of the preceding three years for the following three years. 1[The Commissioner] if he considers necessary may call for reports from Assistant Commissioners in this behalf.

(2) (a) Such trustee may, within fifteen days from the date of the receipt of such notice or within such further time as may be granted by 1[the Commissioner] prefer his objection thereto, if

any, to 1[the Commissioner] in writing. Such objection may relate either to his liability to pay or to the amount specified in the notice. 1[The Commissioner] shall consider such objection and give his decision confirming withdrawing or modifying his original notice.

(b) Within one month from the date of receipt of the notice of assessment, or when objection has been preferred, within one month from the date of the decision of 1[the Commissioner] or within such further time as may be granted by him, such trustee shall pay the amount specified in the original notice or the amount as fixed by 1[the Commissioner] on objection.

(3) If the trustee fails to pay the amount aforesaid within the time allowed, the Collector of the district in which any property of religious institution is situated shall, on a requisition made to him in prescribed manner by 1[the Commissioner] and subject to the provisions of this section, recover such amount as if it were an arrear of land revenue.

(4) The Collector of the district shall, on receipt of a requisition under Sub-section (3), withhold the amount mentioned therein out of the Tasdik or any other allowance payable by the State Government to the religious institution concerned, but where the Tasdik or any other allowance is insufficient for the purpose the said Collector shall withhold the amount available and recover the balance as if it were an arrear of land revenue.

(5) Places of worship, including temples and tanks, and places where Utsavams performed, idols, Vahanams, jewels and such vessels and other articles of the religious institution as may be necessary in accordance with the usage of the institution for purposes of worship or ceremonial processions shall not be liable to be proceeded against in pursuance of Sub-sections (3) and (4).

(6) Instead of selling the property after attachment thereof under the provisions of the Madras Revenue Recovery Act, 1864 (Madras Act II of 1864) or the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914) as the case may be, it shall be open to the said Collector at the instance of 1[the Commissioner] to appoint a Receiver to take possession of the property or such portion thereof as may be necessary and collect the income thereof until the amount sought to be recovered is realized. The remuneration, if any, paid to the Receiver, and the other expenses incurred by him, shall be paid out of the income of the institution concerned.

(7) Any objection which could be preferred or which was preferred and rejected by 1[the Commissioner] under Sub-section (2) shall

not be entertained under Section 9 of the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act IV of 1914) and the said section shall be deemed to be amended accordingly for the purpose of this Act in the matter of issue of certificate under that Act.

(8) No suit, prosecution or other legal proceeding shall be entertained in any Court of law against the State Government or any officer or servant of the State Government for anything done or intended to be done in good faith in pursuance of this section 2[* * *].

1. Substituted vide Orissa Act No. 18 of 1954.

2. Deleted vide Orissa Act No. 29 of 1978- w.e.f. 7.6.1978.

66. Contribution Not To Be Levied For More Than Six Years Immediately Preceding The Year In Which Notice Of Assessment Is Issued :-

(1) It shall not be competent for 1[the Commissioner] to levy any contribution for more than six years immediately preceding the year in which a notice of assessment is issued under Section 65.

(2) Nothing in this section shall affect any levy of contribution made or moneys collected by 1[the Commissioner] under the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939).

1. Substituted vide Orissa Act No. 18 of 1954.

CHAPTER 10

MISCELLANEOUS

67. Public Officer To Furnish Copies Of Or Extracts From Certain Documents :-

All public officers having custody of any record, register, report or other document relating to a religious institution or any movable or immovable property thereof shall furnish such copies or extracts from the same as may be required by 1[the Commissioner], 2[the Deputy Commissioner] or an Assistant Commissioner.

1. Substituted vide Orissa Act No. 18 of 1954.

2. Inserted vide Orissa Act No. 29 of 1978 - w.e.f. 7.6.1978.

68. Putting Trustee Or Executive Officer In Possession :-

(1) Where a person has been appointed-

(a) as trustee or Executive Officer of a religious institution; or

(b) to discharge the functions of a trustee of a religious institution

in accordance with the provisions of this Act; or

(c) as the Executive Officer in any scheme settled under the provisions of the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939) and such person is resisted in, or prevented from, obtaining possession of the religious institution or of the record, accounts and properties thereof, by a trustee, office-holder or servant of the religious institution who has dismissed or suspended from his office or is otherwise not entitled to be in possession, or by any person claiming or deriving title from such trustee, office-holder or servant, other than a person claiming in good faith to be in possession of his own account or on account of some person not being such trustee, office-holder or servant, the Assistant Commissioner concerned shall, on application by the person so appointed, direct delivery of possession of the religious institution and its endowments or the records, accounts and properties thereof, as the case may be, to him in the prescribed manner.

Explanation-A person claiming under an alienation contrary to Sub section (1) of Section 19 and Section 24 shall not be regarded as a person claiming in good faith within the meaning of this section.

(2) The Assistant Commissioner and any person authorised by him or acting under his written instructions in the prescribed form, may, for the purpose of delivery of possession under Sub-section (1), take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be reasonably necessary and may also enter upon any land or other property whatsoever and in the event of any apprehension of breach of peace in the course of such delivery of possession, the Superintendent of Police shall, on a requisition from the Assistant Commissioner in the prescribed manner, provide such police aid as may be necessary for the purposes.

(3) (a) [The Commissioner] may also make a requisition to the Collector of the district in which the property of the math or temple or endowment is situated, in the prescribed form to deliver its possession to the trustee.

(b) On receipt of a requisition under Clause (a) the Collector shall serve a notice on the person reported to be in occupation or his agent to vacate the said property within such time as the Collector may specify in the said notice. If such notice is not obeyed, the Collector shall remove him or depute a subordinate officer to remove such person or agent. In the case of any resistance or obstruction the Collector shall hold a summary enquiry into the

facts of the case and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance may send him with a warrant in such form as may be prescribed for imprisonment in the civil jail of the district for a period not exceeding thirty days as may be necessary to prevent the continuance of such resistance or obstruction.

(4) No suit, prosecution or other legal proceedings shall lie against the Assistant Commissioner or any person acting under his instruction or authorised by him for anything done in good faith under Sub-sections (1) and (2).

(5) Every person authorized by 1[the Commissioner] or acting under his instructions in pursuance of this section shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (XLV of 1860).

2[(6) The provisions contained in this section shall mutatis mutandis apply to cases-

(a) for delivery of possession of a religious institution alongwith its endowments or records, accounts and properties thereof to a succeeding hereditary trustee ; and

(b) for recovery of pension of leasehold land belonging to a religious institution after expiry of the term of the lease.]

1. Substituted vide Orissa Act No. 18 of 1954.

2. Inserted vide Orissa Act No. 22 of 1989.

69. Notice By Court And Cost Of Proceedings :-

(1) Whenever the trustee or any religious institution is sued in any Civil or Revenue Court in respect of any property belonging to or given or endowed for the purpose of any religious institution notice of such Suit shall be given by the Court concerned to 1[the Commissioner] at least a month before commencement of the hearing.

(2) The costs, charges and expenses incidental to all proceedings before 1[the Commissioner], 2[the Deputy Commissioner] or Assistant Commissioner shall be in his discretion and he shall have full power to determine by whom or out of what funds and to what extent such costs, charges and expenses are to be paid ; and the order passed in this regard may be transferred to the Collector for execution and recovery as arrears of land revenue.

1. Substituted vide Orissa Act No. 18 of 1954.

2. Inserted vide Orissa Act No. 9 of 1978 - w.e.f. 7.6.1978.

70. Penalty For Refusal By Trustee To Comply With Provisions Of The Act :-

(1) If any trustee, Executive Officer or other person 1[* **] in whom the administration of a religious institution is vested-

(a) refuses, neglects or fails to comply with the provisions of Sections 13, 15, 16, 17, or 18 or fails to make over charge of the institution when so ordered ; or

(b) refuses, neglects or fails to furnish such accounts, returns, reports or other information relating to the institution or its funds, property or income or the application thereof; at such time and in such manner as 2[the Commissioner, 3[the Deputy Commissioner] or the Assistant Commissioner may require; or

(c) refuses or causes obstruction to the inspection by 2[the Commissioner], 3[the Deputy Commissioner] or Assistant Commissioner of the movable and immovable property belonging to, and all records, correspondence, plans, accounts and other documents relating to the religious institution or fails to produce them for inspection, he shall, unless he shows reasonable cause to the satisfaction of 2[the Commissioner], 3[the Deputy Commissioner], be liable to pay to the State Government such penalty not exceeding five hundred rupees and in case of persistent default in compliance with the order a daily fine not exceeding fifty rupees.

4[(1-a) If any person exercises any deed of transfer of immovable property belonging to any religious institution in contravention of the provisions contained in Section 19, such person shall, unless he shows reasonable cause to the satisfaction of the Commissioner, the liable to pay such penalty, not exceeding an amount equal to the value of the property, as the Commissioner may impose.

(1-b) Any person aggrieved by an order of the Commissioner imposing any penalty under this section may, within one month from the date of intimation of the order to him by the Commissioner, prefer an appeal before the State Government.]

(2) The penalty shall be paid within the time fixed by 2[the Commissioner] by the person against whom the order is made from his own funds and not from the funds of the religious institution concerned.

(3) If the penalty is not paid within the time fixed or within such further time as may be granted by 2[the Commissioner], the Collector of the district in which any property of the person against whom an order has been made is situated shall, on requisition

made to him by 2[the Commissioner] recover the amount, as if it were an arrear of land revenue and pay the same to the Endowment Fund.

1. Omitted vide Orissa Act No. 18 of 1954.
2. Substituted vide Orissa Act No. 18 of 1954.
3. Inserted vide Orissa Act No. 9 of 1978 - w.e.f. 7.6.1978.
4. Inserted vide Orissa Act No. 22 of 1989.

70A. Failure To Deliver Possession In Contravention Of Direction And Filing Of Prosecution :-

1[(1) Any trustee other than a hereditary trustee, Executive Officer, or other person who fails to deliver possession of the religious institution, any money, record, accounts or property thereof without any reasonable or sufficient cause, in contravention of any direction of the Commissioner, Deputy Commissioner or Assistant Commissioner shall, on conviction, be punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

(2) In respect of an offence committed under Sub-section (1) the Officer authorised in this behalf, by the Commissioner by general or special order, shall institute the prosecution with the written consent of the authority whose direction has been contravened.]

1. Inserted vide Orissa Act No. 22 of 1989.

71. Court-Fees To Be Paid As Prescribed In Schedules And Altered From Time To Time :-

Notwithstanding anything contained in the First or Second Schedule to the Court-fee Act, 1870 (Act VII of 1870) proper fees for the documents described in Columns (1) and (2) of the Schedule shall be its fees indicated in Column (3) thereof.

72. Saving Of Established Usage :-

1[Nothing contained in this Act shall-

(a) save as otherwise expressly provided in or under this Act, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution or its established usage in regard to any other matter; or

(b) authorise any interference with the religious and spiritual functions of the head of a math including those relating to imparting of religious institution or the rendering of spiritual service.]

1. Substituted vide Orissa Act No. 18 of 1954.

72A. Act Not To Affect Rights Under Article 26, Clauses (A) To (C) Of The Constitution :-

1[Nothing contained in this Act shall be deemed to confer any power or impose any duty in contravention of the rights conferred or any religious denomination or any section thereof by Clauses (a), (b) and (c) of Article 26 of the Constitution.]

1. Substituted vide Orissa Act No. 18 of 1954.

73. Bar Of Suits In Respect Of Administration Of Religious Institutions :-

(1) No suit or other legal proceeding in respect of the administration of a religious institution or in respect of any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of law, except under, and in conformity with, the provisions of this Act.

(2) Nothing contained in this section shall affect the right of the trustee appointed under the Act of a religious institution to institute a suit to enforce the pecuniary or property rights of the institution or the rights of such institution as a beneficiary.

74. Procedure At Enquiries And Appeals And Service Of Notice :-

1[(1) In relation to all proceedings before 1[the Commissioner], 2[the Deputy Commissioner] or the Assistant Commissioner, the orders in pursuance of which are under the provisions of this Act appealable to the High Court, 1[the Commissioner], 2[the Deputy Commissioner] or the Assistant Commissioner, as the case may be, shall have the powers vested in a Court under the Code of Civil Procedure, 1908 (V of 1908) when trying a suit in respect of the following matters :

(a) discovery and inspection;

(b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;

(c) compelling the production of documents;

(d) examining witnesses on oath;

(e) granting adjournments;

(f) reception of evidence taken on affidavit; and

(g) issuing commissions for the examination of witnesses;

and may summon and examine suo motu any person whose evidence appears to him to be material ; and shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898 (V of 1898).

(2) 1[The Commissioner], 2[the Deputy Commissioner] and the Assistant Commissioner shall, with respect to all such proceedings

be deemed to be persons acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (XVIII of 1850).

(3) The Court hearing an appeal from the order of 1[the Commissioner] may direct further enquiry or modify or set aside such order as the Court may deem fit; and unless the appeal is summarily dismissed, 1[the Commissioner] shall be given an opportunity of being heard before the order passed by him is interfered with in any manner; provided that the operation of the order of 1[the Commissioner] shall not be stayed pending the disposal of the appeal.

(4) The service of all processes and notices issued by the Assistant Commissioner, 2[the Deputy Commissioner] or 1[Commissioner] by or under any of the provisions of this Act shall be on requisition from the Assistant Commissioner, 2[the Deputy Commissioner] or 1[Commissioner], as the case may be, effected by the Sub-divisional Magistrate, having jurisdiction.]

1. Substituted vide Orissa Act No. 18 of 1954.

2. Inserted vide Orissa Act No. 29 of 1978-w.e.f. 7-6-1978.

75. Notifications, Orders, Etc., Under Act Not To Be Questioned In Court Of Law :-

Save as otherwise expressly provided in this Act, no notification issued, order passed, decision made, proceedings or action taken, scheme settled, or other thing done under the provisions of this Act by the State Government or 1[the Commissioner] or an Assistant Commissioner shall be liable to be questioned in any Court of law.

1. Substituted vide Orissa Act No. 18 of 1954.

76. Power To Make Rules :-

(1) The State Government may make rules to carry out all or any of the purposes of this Act not inconsistent therewith,

(2) In particular and without prejudice to the generality of the foregoing power, they shall have power to make rules with reference to the following matters:

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) the effectual exercise of the powers of superintendence vested in the State Government;

(c) the form and manner in which applications and appeals should be submitted to the State Government, 1[the Commissioner], 2[the Deputy Commissioner] or an Assistant Commissioner;

- (d) the powers of the State Government, 1[the Commissioner], 2[the Deputy Commissioner] or an Assistant Commissioner to hold enquiries, to summon and examine witnesses and to compel the production of documents;
- (e) the inspection of documents and the fees to be levied for such inspection;
- (f) the fees to be levied for the issue and service for processes and notices;
- (g) the grant of certified copies and the fees to be levied therefor;
- (h) the budgets, reports, accounts, returns or other information to be submitted by trustees;.
- (i) the custody and investment of the funds of religious institutions;
- (j) the manner in which the accounts of religious institutions shall be audited and published, the time and place of audit and the form and contents of the auditors report;
- (k) the method of calculating the income of a religious institution for the purpose of levying contribution and the rate at which it should be levied;
- (l) the security, if any, to be furnished by officers and servants employed for the purposes of this Act;
- (m) the preservation, maintenance, management and improvement of the properties and buildings of religious institutions;
- (n) the inspection and supervision of the properties and buildings of religious institutions by such persons as the State Government may direct, the reports to be submitted by such persons and the fees leviable for such inspection, supervision and report;
- (o) the preservation of the images in temples;
- (p) the methods by which religious institutions should promote the interests of such institution;
- (q) the qualifications to be possessed by the officers and servants for appointment to non-hereditary offices in religious, institutions, the qualifications to be possessed by hereditary servants for succession to office and the conditions of service of all such officers and servants;
- (r) the qualifications, method of recruitment, pay, grant of leave allowance and travelling allowance, personal conduct and punishment of Executive Officer appointed for any religious institution or institutions under direct management and paid officers appointed under schemes settled or deemed to be settled under the Act, and generally their conditions of service;
- (s) the qualifications, method of recruitment, grant of leave, leave allowances and travelling allowances of subordinate officers and

staff appointed for the purpose of this Act;

(t) the custody and investments of the Endowment Fund by 1[the Commissioner];

(u) the manner in which the accounts of the Endowment Fund shall be maintained and audited and the audit report published;

(v) all matters which under the provisions of this Act are required to be or may be prescribed.

(3) The power to make rules under this section shall be subject to the condition of previous publication.

1. Substituted vide Orissa Act No. 18 of 1954.

2. Inserted vide Orissa Act No. 29 of 1978-w.e.f. 7-6-1978.

77. Granting Of Copies :-

1[The Commissioner] shall grant copies of proceedings or other records of his office on payment of such fees and subject to such conditions as may be prescribed. Copies shall be certified by 1[the commissioner] or such officer as may be authorised by him in this behalf in the manner provided under Section 76 of the Indian Evidence Act, 1872 (1 of 1872).

1. Substituted vide Orissa Act No. 18 of 1954.

78. Suits Pending In Courts :-

(1) Notwithstanding anything in any other law for the time being in force all suits instituted under the provisions of the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939) and pending on the date of commencement of this Act shall stand transferred to the Courts of the subordinate Judges having jurisdiction and be heard by them :

Provided that-

(a) while trying a suit any one or more suits relating to the same religious institution may be heard together;

(b) an appeal shall lie to the High Court against the decision of the subordinate Judge irrespective of the value of such suits :

Provided further that the operation of the order of 1[the Commissioner] under Sub-section (1) of Section 64 of the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939) shall not be stayed pending the disposal of such suit.

(2) All proceedings other than suits which have been stayed in pursuance of the Orissa Hindu Religious Endowments (Amendment) Act, 1947 (Orissa Act XXXI of 1947) and pending on the date of the commencement of this Act shall be proceeded with in the

Courts where they are so pending.

1. Substituted vide Orissa Act No. 18 of 1954.

79. Repeal And Affect Of Repeal Of The Orissa Hindu Religious Endowments Act, 1939 :-

(1) The Orissa Hindu Religious Endowments Act, 1939, (Orissa Act IV of 1939) is hereby repealed.

(2) Notwithstanding the repeal of the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939)-

(a) all rules made, notifications issued, orders passed, decisions made, proceedings or action taken, schemes settled and things done by the State Government or 1[the Commissioner] under the said Act, shall in so far as they are not inconsistent with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act and shall have effect accordingly;

(b) all schemes settled or modified by a Court of law under the said Act or under Section 92 of the Code of Civil Procedure, 1908 (V of 1908) shall be deemed to have been settled or modified under this Act;

(c) all proceedings pending before the State Government or 1[the Commissioner] under the provisions of the said Act and the rules made thereunder at the commencement of this Act, may, in so far as they are not inconsistent with the provisions of this Act, or the rules made thereunder be continued by the appropriate authority under this Act;

(d) all costs, expenses, penalties and contributions payable to the fund of the endowments under the said Act immediately before the commencement of this Act, shall be payable to the State Government instead ; and any assessment, levy or demand of such sums made before the commencement of this Act shall be deemed to be valid and may be continued and shall be enforceable under this Act;

(e) any remedy by way of application, suit, or appeal which is provided by this Act shall be available in respect of proceedings under the said Act pending at the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act.

1. Substituted vide Orissa Act No. 18 of 1954.

79A. Saving Of Schemes :-

Notwithstanding anything contained in any of the other provisions of this Act or any judgment, decree or order of any Court all schemes purporting to have been settled in pursuance of Sections 38 and 39 of the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act IV of 1939) after the commencement of the Orissa Hindu Religious Endowments (Amendment) Ordinance, 1953 (Orissa Ordinance II of 1953) and before the commencement of this Act shall be deemed to have been settled under the provisions of this Act and any person aggrieved by any such scheme may within sixty days from the date of commencement of this Act prefer an appeal to the High Court and such appeal shall be dealt with and disposed of in the same manner as appeals provided for under Sub-section (2) of Section 44.

80. Order To Remove Difficulties :-

if any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion may require, by order anything which appears to them necessary for the purpose of removing the difficulty.

SCHEDULE 1

SCHEDULE I

[See Section 71]

Section 1	Description of document 2	Proper fee3
		Rs.
9.	Application to [Commissioner] for revision	10
19.	Appeal to the State Government against order of [Commissioner] regarding alienation of properties	15
21.	(i). Application to the Assistant Commissioner for payment of expenses	2
	(ii) Appeal to [the Commissioner]	5
	(iii) Application to the Collector of the district for recovery of money	2
25.	Application to the Collector for resumption	2
28.	(i) Appeal to [the Commissioner] against the order of the Assistant Commissioner under Sub-section (1)	25
	(ii) Appeal to the High Court against the order of [the Commissioner] under Sub-section (5)	50
31.	Appeal to the Assistant Commissioner against the order of the trustee under Sub-section (3)	2
32.	Appeal to the Assistant Commissioner against the order of the trustee	2
34.	(i) Appeal to [Commissioner] against the order of the Assistant Commissioner regarding scale of expenditure	20
	(ii) Appeal to [Commissioner] against the order of the Assistant Commissioner regarding scale of expenditure	20
35.	Appeal to High Court against order of [the	50

36.	Appeal to High Court against order of [Commissioner] under Sub-section (2)	20
37.	Appeal to State Government against order of [Commissioner] under Sub-section (3)	15
41.	Application for decision of dispute or matter under the section	15
42.	(i) Application to Assistant Commissioner or [Commissioner] for settling a scheme	10
	(ii) Application to Assistant Commissioner for modification of scheme	10

1. Substituted vide Orissa Act No. 18 of 1954.