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**Waqf Act 1995 Chapter II - Survey of Waqf**

**4. Preliminary survey of auqaf:**

**(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Auqaf and as many Additional or Assistant Survey Commissioners of Auqaf as may be necessary for the purpose of making a survey of auqaf in the State.**

**(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013), in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:**

**Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.**

**(2) All Additional and Assistant Survey Commissioner of Auqaf shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Auqaf.**

**(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of auqaf existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—**

**(a) the number of auqaf in the State showing the Shia auqaf and Sunni auqaf separately;**

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- (b) the nature and objects of each waqf;
  - (c) the gross income of the property comprised in each waqf;
  - (d) the amount of land revenue, cesses, rates and taxes payable in respect of each waqf;
  - (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each waqf; and
  - (f) such other particulars relating to each waqf as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

- (a) summoning and examining any witness;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record from any court or office;
- (d) issuing commissions for the examination of any witness or accounts;
- (e) making any local inspection or local investigation;
- (f) such other matters as may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular waqf is a Shia waqf or Sunni waqf and there are clear indications in the deed of waqf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or

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subsequent survey of waqf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of ten years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3):

Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.

5. Publication of list of auqaf:

(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and forward it back to the Government within a period of six months for publication in the Official Gazette a list of Sunni auqaf or Shia auqaf in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

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**(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.**

**6. Disputes regarding auqaf:**

**(1) If any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or the mutawalli of the waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:**

**Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of auqaf:**

**Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.**

**(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.**

**(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.**

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**(4) The list of auqaf shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.**

**(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).**

**7. Power of Tribunal to determine disputes regarding auqaf:**

**(1) If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as waqf property in a list of auqaf is waqf property or not, or whether a waqf specified in such list is a Shia waqf or a Sunni waqf, the Board or the mutawalli of the waqf, or any person aggrieved by the publication of the list of auqaf under section 5 therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:**

**Provided that—**

**(a) in the case of the list of auqaf relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of auqaf; and**

**(b) in the case of the list of auqaf relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:**

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**Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.**

**(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any waqf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.**

**(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).**

**(4) The list of auqaf and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.**

**(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.**

**(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:**

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Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.

8. State Government to bear cost of survey:

The total cost of making a survey including the cost of publication of the list or lists of auqaf under this Chapter shall be borne by the State Government.

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