



BIHAR STATE SUNNI WAQF BOARD

(Constituted by Govt. of Bihar Under Wakf Act 1995)
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Letter No. 2373 /Date:- 10/08/2018

From:-

Chief Executive Officer
Bihar State Sunni Waqf Board, Patna

To,

- (1) **All the District Magistrate**
- (2) **All the Additional District Magistrate**
- (3) **All the Sub-Divisional Magistrate**

Sub:- Information with regard to the vested power of implementation of direction of the Board, Recovery of alienated Waqf properties, enforcement of encroachment order, direction for handing over the charge to the appointed Mutawalli etc by the District Magistrate, Additional District Magistrate and Sub-Divisional Magistrate under relevant provisions of Waqf Act 1995.

Sir,

With regard to aforesaid subject you are kindly informed that Bihar State Sunni Waqf Board is statutory body constituted under the provisions of the Waqf Act 1995 and the provisions of this Act fix some responsibilities to the authority of District Administration. The relevant sections are as follows:-

(1) **Section 28, Power of District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate to implement the directions of the Board:-**

Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub-Divisional Magistrate of a District in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considers necessary, seek directions from the Tribunal for the implementation of its decisions.

(2) **Section 51, Alienation of the Waqf property without sanction of the Board to be void:-**

(1) Notwithstanding anything contained in the Waqf Deed, any lease of any immovable property which is Waqf property, shall be void unless such lease is effected with the prior sanction of the Board.

(1-A) Any sale, gift, exchange, mortgage or transfer of Waqf property shall be void ab initio."

(3) **Alienation of the Waqf property and the recovery thereof:-**

(1) **Section 52, Reconvey of Waqf property transferred in contravention of section 51:-**

if the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a Waqf entered as such in the register of Waqf maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51 or Section 56, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served:-

- (a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or
- (b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

[Signature]

Provided that where the person on whom the order is to be served is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situated and the decision of the Tribunal on such appeal shall be final.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

(4) **Section 55, Enforcement of orders made under section 54:-** Where the person ordered under [Sub-Section(4)] of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may [refer the order of the Tribunal to the Executive Magistrate] within the local limits of whose jurisdiction the land, building, space or other property is situated for evicting the encroacher and thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or as the case may be, vacate the land, building space or other property and to deliver possession thereof to the concerned Mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

(5) **Section 68, Duty of Mutawalli or committee to deliver possession of records, etc**

(1) Where any Mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee so removed from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the [Waqf] (including cash) to the successor mutawalli or the successor committee, within one month from the date specified in the order.

(2) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-section (1), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any [District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] within the local limits of whose jurisdiction any part of the [Waqf] property is situated and thereupon, such [District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the [Waqf] to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(3) Where is the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by [any Magistrate] under sub-section (2), the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by [any Magistrate] under sub-section (2), [any Magistrate] may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such Police assistance as may be necessary for the purpose.

(5) No order of appointment of the successor mutawalli or committee shall be called in question in the proceedings before [any Magistrate] under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent Civil Court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by [any Magistrate] under sub-section (2).

(6) **Besides these provisions of the Act your attention is drawn towards the following facts and provisions of the Act.**

(1) The properties permanently dedicated in the name of almighty God for the welfare of the Society as well as for the religious and charitable purpose are the Waqf properties which has been defined U/S 3(r) of the Waqf Act 1995 (Amended Act 2013) and which includes the orphanage, Madarsa, Mosque, Qabristan, Dargah, Mazar, Khanquah, Karbala etc.

In this effect it is relevant to mention that some land grabbers have greedy eyes over the Waqf properties and they by making fraud and by misleading the officials, get enter their name in the survey khatiyani and other relevant government revenue records and they are engaged in sale and purchase of Waqf properties and all such illegal acts can be stopped at level of District Administration itself.

It is therefore, requested to you kindly to take notice of the provisions of this Act and do the compliance accordingly.

Your's faithfully

[Signature]
31/8/18

Chief Executive Officer,
Bihar State Sunni Waqf Board, Patna