

Powers of D.M, A.D.M, S.D.M to implement directives of the Waqf Board, certified sums recoverable as arrears of land revenue, recovery of Waqf property @ recovery u/s 33, central govt. to make Rules/secular activities- Waqf Act 1995 under

In order to run a family, district, state or a country, discipline has got the first place to streamline activities. Processes are adopted from the first step to the last delivery. The whole mechanism work together to yield the expected results. As per the nature of work Acts, Rules and Regulations are framed to deal with. All departments work independently with their defined activities but the general administration has got some hegemony over others, as it deals with the common problems pervading to all. With powers of ~~and~~ maintenance of law and order and enforcement of law with physical force, D.M, A.D.M and S.D.M are officers who are on the fore front to deal with.

Section 28 of the Waqf Act, 1995 as amended in 2013, gets mention of responsibility of the District Magistrate, Additional District Magistrate and Sub-Divisional Magistrate. Subject to the provisions of the Act and 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 of the Board.

Function under section 28 of the Waqf Act, starts from the decision of the Board which need implementation. It has to be

seen as to what decisions of the Board can be, which need the help of the D.M for the sake of the Waqf problems. Definitely it may be the subject which require help of general administration. The most important problem is encroachment on Waqf land which have become so cancerous that it has engulfed major portion of Waqf properties.

Section 54 of the Waqf Act deals with removal of encroachment from Waqf property. Whenever the Chief Executive Officer considers, whether on receiving any complaint or on his own motion, that there has been an encroachment on any land, building, space or other Waqf property and which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment. He will call upon him to show cause on a date, to be specified in such notice, as to why an order requiring him to remove the incroachment before the date, so specified, should not be made and shall also send a copy of such notice to the concerned mutawalli.

The Chief Executive Officer will consider the pleading of the said encroacher, go through his documents, if submitted any, and will conduct an enquiry into the matter. After observing all such legal steps as prescribed, if the Chief Executive Officer is satisfied that the property in question is Waqf property and encroached, he will make an application to the Tribunal for grant of order of eviction or removing such encroachment and deliver possession of land, building, space or other property encroached upon to the mutawalli of the Waqf.

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On receipt of the application from the Chief Executive Officer the Tribunal will give an opportunity of being heard to the person against whom the application for eviction has been made by the C.E.O. Then the Tribunal after recording the reasons and after being satisfied will make an order of eviction. Notices containing such order will be served upon the encroacher and his not being available, one copy of it will be affixed on the outer door of his house or at some conspicuous part of the property. If encroachment is not removed within 45 days the Chief Executive Officer himself or by a person duly authorised by him undertakes to cause its removal. If he fails in doing so, the Chief Executive Officer refers the order of the Tribunal to Executive Magistrate (D.M, A.D.M or S.D.M) to vacate it. On receipt of such order of the Tribunal the Magistrate issues notice to the encroacher to vacate. Even after issuance of notice encroachment is not removed, the Magistrate takes help of the police and get the encroachment vacated or evacuate the object as ordered.

Recovery of certified sums or property—Sec. 33

Sometimes due to failure or negligence on the part of the mutawalli or in a witting manner in the performance of his executive or administrative duties, some loss or damage is caused to the Waqf properties, the Chief Executive Officer himself inspects the Waqf. He may authorise anybody to inspect the Waqf property, records plans or other documents and report to him. If it is found that the concerned mutawalli or any other person working under him has misappropriated misapplied, or fraudulently retained Waqf property or has incurred irregular, unauthorised or improper expenditure

(4)

from the funds of the Waqf the Chief Executive Officer will make an order directing the concerned person to make payment of the said amount and restore the property, as the case may be, of the Waqf within a specified period.

Under section 34, the aggrieved person may appeal to the Tribunal. If action taken by the Chief Executive Officer is approved by the Tribunal, the C.E.O seeks the approval of the Board and thereafter he may take such step as he thinks fit for recovery of possession of the property and shall also send a certificate to the collector of the district where the property is situated, stating therein the amount that has been determined by him or by the Tribunal under sub-section-3 and 5 of section 33, respectively of the Act. The Collector shall recover the amount specified in such certificate as an arrear of land revenue and pay to the Chief Executive Officer.

Accounts maintained at the level of mutawalli is subject to audit and the Board causes accounts of the Waqf audited. It will examine the auditors report and if any discrepancy is found, it will call for an explanation from the person concerned. If the Board is not satisfied with the explanation, it will order for recovery of the amount certified by the auditor. The aggrieved person may move to the Tribunal. If the Tribunal approves or modifies the amount it becomes payable by the erring person. If the person does not pay the amount so ordered, the Board will u/s 49 refer to the collector of the district to recover it as an arrear of land revenue. U/s 81, the state government also can examine the auditors report and order u/s 82 for recovery of amount, if any.

It may be concluded that whether it may be a case of Waqf property or some sums, the matter generally goes to the collector of the district for recovery or taking of the possession. The collector normally sends it to the Additional Collector or the S.D.M to accomplish the work.

Section 68 of the Act provides handing over charge to the newly appointed mutawalli and other members by the ex-office bearers. If the removed motawalli fails to hand over charge and possession, the newly appointed mutawalli is to makes an application alongwith a certified copy of the appointment letter to any of the District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate and thereupon the said Magistrate issues an order to the ousted mutawalli to handover charge, papers and possession of the Waqf property. A forceful action follows if the order is not complied within the specified period.

Power of Central Government to regulate secular activities of Auqaf- Section 96 of the Act -

Secular activities of a Waqf includes its social, economic, educational and social welfre activities. For the purpose of regulating the secular activities of auqaf the central government may lay down general principles and policies. They have power to coordinate the function of the central Waqf Council and the Board in so far as they relate to their secular activities.

They also may review administration of auqaf generally and suggest improvements. The central government may call for any

periodic or other reports from any Board and may issue to the board such directions, as it may think fit and the Board shall comply with such directions.

Power of Central Government to make rules–Sec. 12

Chapter III of the Waqf Act 1995 actually make a bridge between the Central Waqf Council and the Boards of states. The Central Waqf Council keeps an eye on the functioning of the Boards. The Boards are required to furnish information to the Council on the performance of Waqf Boards particularly on their financial performance, survey, maintenance of Waqf deeds, revenue, records, encroachment of Waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council. The Council may suo moto call for reports on the above subjects. If any irregularity is found the Council may ask, for correction and set anomaly right.

The central government u/s 12 has got power to make rules regarding the subjects which are dealt with under chapter III. This way rules may be made regarding functional relation between the central Waqf Council and State Boards. The constitution of the Central Waqf Council and its all internal and and external functions are under full scanner of the central government and this way powers to make rules, regarding.

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