

PARLIAMENT OF CEYLON

2nd Session 1961-62



Muslim Mosques and Charitable Trusts or Wakfs (Amendment) Act, No. 21 of 1962

Date of Assent: June 16, 1962

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AN ACT TO AMEND THE MUSLIM MOSQUES AND CHARITABLE TRUSTS OR WAKFS ACT, NO. 51 OF 1956.

[Date of Assent: June 16, 1962]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Muslim Mosques and Charitable Trusts or Wakfs (Amendment) Act, No. 21 of 1962.

Short title.

2. The following new section is hereby inserted immediately after section 9 of the Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956, hereinafter referred to as the "principal Act", and shall have effect as section 9A of that Act:—

Insertion of new section 9A in Act No. 51 of 1956.

"Delegation of powers, duties or functions of the Board to the Commissioner.

9A. The Board may by resolution delegate to the Commissioner any of the powers, duties or functions conferred or imposed upon, or vested in, the Board by or under this Act.

Any act done by the Commissioner in pursuance of any power, duty or function delegated to him under this section shall be reported by the Commissioner to the Board."

3. Section 13 of the principal Act is hereby amended by the substitution, for all the words from "and, if the Board" to "shall cause that mosque", of the following:—

Amendment of section 13 of the principal Act.

"the Board, after making such inquiries as it may deem necessary for verifying—

(a) the particulars contained in such application, and

(b) if any information and documents had been received by it in accordance with any notice served under section 11 on the applicant for registration, such information and the particulars contained in such documents,

shall cause that mosque".

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Insertion of new sections 13A, 13B and 13C in the principal Act.

4. The following new sections are hereby inserted immediately after section 13 of the principal Act, and shall have effect as sections 13A, 13B and 13C, of that Act:—

“Registration of mosques on applications made after period specified in section 10.

13A. Notwithstanding anything in section 10, where an application for the registration of a mosque is made at any time after the expiry of the period specified in that section, such application shall be received by the Board and the provisions of sections 11 and 13 shall apply in relation to such application as if such application were made within the period specified in section 10.

Power of Board to register a mosque when no applications for registration is made.

13B. (1) Where the Board determines that a mosque in respect of which no application for registration has been made should be registered, the Board shall for the purposes of such registration collect all such information as it may consider necessary regarding that mosque, and publish a notice of such determination in the Sinhala, Tamil and English languages in the *Gazette* and in one or more newspapers circulating in the area in which such mosque is situated.

(2) Every notice under sub-section (1) shall specify a date (such date being not later than one month after the date of that notice) on or before which objections to the proposed registration will be received by the Board.

(3) Every objection preferred in consequence of a notice under sub-section (2) shall be in writing and shall contain a statement of the grounds upon which the objection is made.

(4) After the expiry of the date referred to in sub-section (2), the Board shall, if it is of the opinion that the mosque should be registered after considering the objections, if any, to the registration of the mosque, cause the mosque to be registered in the Register

of Mosques by the entry therein of such particulars relating to the mosque as are available to the Board.

Power of Board to cancel the registration of a mosque which had been registered by reason of a mistake of law or of fact.

13C. If at any time the Board is satisfied that it has caused a mosque to be registered by reason of a mistake of law or of fact, it shall be lawful for the Board to cause the entry relating to that mosque to be deleted from the Register of Mosques, and such mosque shall be deemed to be not registered with effect from the date of such deletion."

5. Section 14 of the principal Act is hereby amended as follows:—

Amendment of section 14 of the principal Act.

(a) in sub-section (1) of that section—

(i) by the substitution, for the words "persons to be", of the words "persons from among Muslims to be", and

(ii) by the substitution, for the words "that mosque.", of the words "that mosque and issue to every person so appointed as a trustee an instrument of appointment.";

(b) by the insertion, immediately after sub-section (1) of that section, of the following new sub-section (1A):—

"(1A) The Board may at any time after the appointment of a person as trustee of a mosque revoke his appointment if it is satisfied that such appointment was made by reason of a mistake of law or of fact.

Where the Board decides to revoke the appointment of any person as a trustee it shall by notice in writing addressed to such person—

(i) inform him of the revocation of his appointment as trustee, and

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(ii) require him to return to the Board the instrument of appointment issued to him,

and upon receipt of such notice such person shall comply with such requirement.”;

(c) in sub-section (2) of that section—

(i) by the substitution, for the words “shall officiate”, of the words “shall, subject to such general or special directions as the Board may from time to time issue, officiate”, and

(ii) by the substitution, for the word and figures “section 15.”, of the following:—

“section 15 or his appointment as trustee is revoked by the Board under sub-section (1A).”; and

(d) by the substitution, for sub-section (4) of that section, of the following sub-section:—

“(4) The Board may, by notice in writing addressed to a trustee, require him to return to the Board the instrument of his appointment as trustee for the insertion therein of such condition or conditions as it may deem necessary and upon receipt of the notice the trustee shall return such instrument to the Board.

Every condition inserted in an instrument of appointment shall take effect from the date on which such condition is inserted.”.

Amendment of section 15 of the principal Act.

6. Section 15 of the principal Act is hereby amended in sub-section (1) of that section by the substitution, for paragraph (f) of that sub-section, of the following new paragraph:—

“(f) if the Board removes him from office under section 29.”.

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7. The following new sections are hereby inserted immediately after section 15, and shall have effect as sections 15A and 15B, of the principal Act:—

Insertion of
new sections
15A and 15B in
the principal
Act.

“Duty of person or persons in charge of any property belonging to a mosque to hand over or deliver possession of such property to the duly appointed trustee or trustees of that mosque.

15A. (1) Upon the appointment of a trustee or trustees of a mosque by the Board, the person or persons who immediately prior to the date of such appointment had in any capacity whatsoever the possession, custody or control of any property which—

- (a) belonged to that mosque, or
- (b) in any way appertained to that mosque, or
- (c) was appropriated to the use of that mosque,

shall, upon a request being made in writing therefor by such trustee or trustees, hand over, or deliver possession of, such property, together with any documents relating to such property, to such trustee or trustees.

(2) Where any person fails to comply with the requirements of a request made under sub-section (1) within thirty days of the date of receipt of such request, the Board may, if it decides so to do, cause a notice in writing to be served on such person. Every such notice shall direct such person to hand over, or deliver possession of, within a period not exceeding one month as may be specified in such notice, such property as may be specified in the notice together with any documents relating thereto to the trustee or trustees of the mosque appointed by the Board.

(3) Where any person fails to deliver possession of, or to hand over, to the trustee or trustees of a mosque any property other than money specified in a notice served on him under sub-section

(2) within the period specified in that notice, the Commissioner, if directed so to do by the Board, shall, on making an application in that behalf to the Magistrate's Court having jurisdiction over the place where the land is situated, if such property is land, or where such person resides, if such property is property other than land, be entitled to an order of that Court directing the Fiscal to deliver possession of or hand over such property to the trustee or trustees of the mosque.

(4) Where any person fails to hand over to the trustee or trustees of a mosque any sum of money specified in a notice served on him under sub-section (2) within the period specified in that notice, the Commissioner may issue a certificate setting out the sum of money and the name and last known place of abode of such person to a Magistrate having jurisdiction over the place in which such person resides and such sum may be recovered in like manner as a fine imposed by that Court, notwithstanding that the amount of the money may exceed the amount of the fine which that Court may in the exercise of its ordinary jurisdiction impose.

Nothing in the preceding provisions of this sub-section shall authorise or require the Magistrate in any proceeding thereunder to consider, examine or decide the correctness of any statement in the certificate of the Commissioner.

(5) (a) Where an order under sub-section (3) is issued to the Fiscal by a Magistrate's Court, he shall forthwith execute that order and shall in writing report to that Court the manner in which that order was executed.

(b) For the purpose of executing an order relating to land issued by a Magistrate's Court under sub-section (3), the Fiscal or any person acting

under his directions may use such force as may be necessary to enter the land to which that order relates and to eject any person in occupation thereof and to deliver possession of that land to the trustee or trustees of the mosque.

(6) (a) A request referred to in sub-section (1), or a notice referred to in sub-section (2), to any person, shall be made or given by letter despatched to him by registered post and addressed to his last known place of abode.

(b) A request or notice made or given to any person by letter as provided in this sub-section shall be deemed to have been made to, or served on, him at the time at which the letter would have been delivered in the ordinary course of post.

(7) A decision of the Board under sub-section (2) shall be final and conclusive and shall not be called in question in any court:

Provided, however, that any person who claims to have any interest in any property which has been handed over, or the possession of which has been delivered to, the trustee or trustees of a registered mosque under the preceding provisions of this section may, not later than six months after the date on which such property has been handed over or possession thereof has been delivered to such trustee or trustees, institute an action in a court of competent jurisdiction to recover possession of such property, and the decision in such action shall be binding on such trustee or trustees and the Board, but so however that no costs or damages shall be awarded against the Board or any member thereof or such trustee or trustees.

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Powers of trustees to appoint, exercise disciplinary control over, and dismiss Katheeb, etc.

15B. The trustee or trustees of a registered mosque shall have the power to appoint any person as a Katheeb, Pesh Imam, Lebbe, Muezzin, teacher in Arabic, labourer, or other employee in that mosque, and to exercise disciplinary control over, and dismiss, any person carrying on the duties of a Katheeb, Pesh Imam, Lebbe, Muezzin, teacher in Arabic or labourer, or carrying on duties in any other capacity whatsoever in that mosque. ”.

insertion of new section 22A in the principal Act.

8. The following new section is hereby inserted immediately after section 22, and shall have effect as section 22A, of the principal Act:—

“ Duty of trustee or trustees of a registered mosque to maintain tills in accordance with directions of the Board.

22A. It shall be the duty of a trustee or trustees of a registered mosque to maintain in the mosque such number of tills, and in such manner, as the Board may direct for the reception of contributions in money made by worshippers and others who desire to make a contribution to that mosque: ”.

Repeal of sections 23 and 24 of the principal Act.

9. Sections 23 and 24 of the principal Act are hereby repealed.

Amendment of section 29 of the principal Act.

10. Section 29 of the principal Act is hereby amended as follows:—

(a) by the repeal of sub-sections (1) and (2) of that section and the substitution therefor of the following new sub-sections:—

“ (1) The Board may, of its own motion or upon a complaint made by any five members of the jama'ath of any registered mosque, either inquire, or direct the Commissioner or any person authorised in that behalf by the Board to hold an inquiry, into any alleged misfeasance, breach of trust or neglect of duty committed by a trustee of that mosque in respect of any property vested in that trustee or into any failure on the part of a trustee of that mosque to comply with the provisions of this Act,

or into the inability of a trustee of that mosque to perform the duties imposed by or under this Act or to administer efficiently the general affairs of that mosque.

(2) Where an inquiry under sub-section (1) has been held by the Board, the Board may, if it is satisfied that the allegations against the trustee have been proved, remove such trustee from office.”;

(b) by the renumbering of sub-sections (3), (4), (5) and (6) respectively as sub-sections (6), (7), (8) and (9) of the principal Act ;

(c) by the insertion, immediately after sub-section (2), of the following new sub-sections:—

“ (3) Where an inquiry under sub-section (1) has been held by the Commissioner, the Commissioner may, if he is satisfied that the allegations against the trustee have been proved suspend such trustee and appoint an interim trustee and thereupon shall submit a report in writing on the inquiry held by him to the Board who shall after considering such report remove the trustee, in respect of whom such inquiry was held, from office or reinstate such trustee.

(4) Where an inquiry under sub-section (1) has been held by a person other than the Commissioner, such person shall submit a report on the inquiry held by him to the Board who may if it is satisfied that the allegations against the trustee have been proved, remove the trustee from office.

(5) Where any person has been appointed as an interim trustee of a registered mosque under sub-section (3), such person shall hold office until the Board either reinstates the trustee who was suspended or appoints a new trustee,

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and shall exercise, perform and discharge the powers, duties or functions conferred or imposed upon, or vested in, a trustee of a mosque by or under this Act. ”; and

(d) in renumbered sub-section (6) of that section—

(i) by the substitution, for the expression “sub-section (4)”, of the expression “sub-section (7) ”;

(ii) by the omission of paragraph (d) of that sub-section, and

(iii) by the relettering of paragraph (e) of that sub-section as paragraph (d).

Amendment of section 32 of the principal Act.

11. Section 32 of the principal Act is hereby amended as follows:—

(1) in sub-section (1) of that section—

(a) in paragraph (d) of that sub-section by the substitution, for the words “mosque, shrine or place; and ”, of the words “mosque, shrine or place or in any other place whatsoever;”;

(b) in paragraph (e) of that sub-section—

(i) by the omission of the word “other ”, and

(ii) by the substitution, for the word “thereof.”, of the words “thereof; and ”; and

(c) by the insertion, immediately after paragraph (e) of that sub-section, of the following new paragraph:—

“ (f) any other purpose recognised by Muslim law as religious, pious or charitable.”; and

(2) by the repeal of sub-section (2) of that section.

12. Section 43 of the principal Act is hereby amended in sub-section (2) of that section, by the substitution for the words "appropriate to the case:", of the following:—

Amendment of section 43 of the principal Act.

"appropriate to the case, and, where such trustee or trustees has or have failed to furnish such statement, a contribution out of such amount as is determined by the Board to be income of that mosque, shrine, place, trust or wakf less any sums paid out of such income as rates or taxes, during the period of twelve months immediately preceding the thirty-first day of March in the year in which such failure has occurred, calculated at such of the rates specified in that Schedule as is appropriate to the case: "

13. Section 54 of the principal Act is hereby amended in sub-section (2) of that section by the substitution, in paragraph (c) of that sub-section, for the word "Board.", of the words "Board or of trustees of a mosque."

Amendment of section 54 of the principal Act.

14. (1) Section 57 of the principal Act is hereby repealed.

Repeal of section 57 of the principal Act.

(2) The amendment made to the principal Act by sub-section (1) shall be deemed for all purposes to have come into operation on the first day of May, 1957.

15. The following new sections are hereby inserted immediately after section 57, and shall have effect as sections 57A and 57B, of the principal Act:—

Insertion of new sections 57A and 57B in the principal Act.

"No action against Board, etc., for things done in good faith under the Act.

57A. No action or other legal proceeding shall lie against the Board or any member thereof, or the Commissioner or any other person duly appointed or authorised under this Act, in respect of anything which is in good faith done or purported to be done under this Act.

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Application
of the Act.

57B. The provisions of this Act shall apply to every mosque, Muslim shrine and place of religious resort notwithstanding anything in any other written law, and where there is a conflict between this Act and any other written law, the provisions of this Act shall prevail."

Amendment of
section 58 of
the principal
Act.

16. Section 58 of the principal Act is hereby amended by the insertion, immediately after the definition of "member", of the following definition:—

"Muslim shrines and places of religious resort" include a Muslim shrine or a place of religious resort situated in land which is wakf or in land in private ownership.

Amendment of
Second Schedule
to the principal
Act.

17. The Second Schedule to the principal Act is hereby amended as follows:—

(1) by the insertion, immediately after item 3 of that Schedule, of the following new item:—

"3A. In sub-section (4) of section 13B and section 13C, there shall be substituted for the word "Mosques", the words "Shrines and Places of Religious Resort"; and

(2) in item 5 of that Schedule—

(a) in paragraph (b) of that item, by the substitution, for the number "(5)", wherever that number occurs in that paragraph, of the number "(8)", and

(b) in paragraph (c) of that item, by the substitution—

(i) for the number "(6)", of the number "(9)", and

(ii) for the number "(7)", of the number "(10)".

18. (1) Where, by reason of the repeal of sub-section (2) of section 32 of the principal Act by this Act, the provisions of Part V of the principal Act become applicable to any Muslim charitable trust or wakf of the description specified in that sub-section, the trustee or trustees of any such trust or wakf shall, notwithstanding anything in the principal Act, furnish to the Board within six months after the date of commencement of this Act, a statement setting out the particulars specified in section 34 of the principal Act in respect of such trust or wakf.

(2) Any person who contravenes the provisions of sub-section (1) of this section shall be guilty of an offence under the principal Act and shall, on conviction after summary trial before a Magistrate, be liable to the same penalty as is specified in section 53 (3) of that Act.

Duty of trustee or trustees of a Muslim charitable trust or wakf, to which the provisions of Part V of the principal Act apply upon the repeal of section 32 (2) of that Act, to furnish to the Board, a statement of particulars in respect of that trust or wakf.