

Bill No. VIII of 2014

**THE WAQF PROPERTIES (EVICTION OF UNAUTHORISED
OCCUPANTS), BILL, 2014**

A

BILL

*to provide for the eviction of unauthorised occupants from waqf properties and for
matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-fifth year of the Republic of India as follows:—

1. (1) This Act may be called the Waqf Properties (Eviction of Unauthorised Occupants) Act, 2014.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

5 36 of 1955. (3) This Act shall apply to waqf properties under all auqaf and waqf properties administered under the Durgah Khawaja Saheb Act, 1955.

24 of 1958. 10 (4) Nothing in this Act shall apply to any ancient monuments, archaeological sites and remains which is preserved, regulated or protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the rules made thereunder, or any other law for the time being in force.

Short title,
extent,
application
and com-
mencement.

(5) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area. 5

Definitions.

2. (1) In this Act unless the context otherwise requires,—

(a) “prescribed” means prescribed by the rules made under this Act;

(b) “rent”, in relation to any waqf property means, the consideration payable periodically for the authorised occupation of the property, and includes—

(i) any charge for electricity, water or any other services in connection with the occupation of the waqf property; 10

(ii) any tax (by whatever name called) payable in respect of the waqf property,

where such charge or tax is payable by the waqf or the Board;

(c) “statutory authority” in relation to waqf property means any waqf Board or waqf or anyone acting on its behalf including mutawallis; 15

(d) “temporary occupation”, in relation to any waqf property means occupation by any person on the basis of permission granted by the waqf or the Board for a total period (including the extended period, if any) which is less than thirty days;

(e) “Tribunal” means the Tribunal constituted under sub-section (1) of section 83 of the Waqf Act, 1995; 20 43 of 1995.

(f) “unauthorised occupation”, in relation to any waqf property means, the occupation by any person of the waqf property without authority for such occupation, and includes the continuance in occupation by any person of the waqf property after the statutory authority, (whether by way of lease or any other mode of transfer), under which the person was allowed to occupy the property has expired or has been determined for any reason whatsoever; 25

(g) “waqf” means any of the following waqf properties, namely: —

(i) any movable or immovable property referred to in clause (r) of section 3 of the Waqf Act, 1995 which includes any land or any building or part of building and includes— 30 43 of 1995.

(ii) the garden, water bodies, grounds, if any, appertaining to such building or part of a building, and

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof; 35

(h) “Waqf Estate Officer” means the Chief Executive Officer appointed under section 23 of the Waqf Act, 1995; 43 of 1995.

(2) The words and expressions used herein and not defined but defined in the Waqf Act, 1995 shall have the meanings respectively assigned to them under the said Act. 43 of 1995.

Eviction from temporary occupation.

3. Notwithstanding anything contained in section 4 or section 5, if the Waqf Estate Officer, after making such inquiry as he deems expedient in the circumstances of the case, is satisfied that any person who was allowed temporary occupation of any waqf property or is in unauthorised occupation of the said property, he may, for reasons to be recorded in writing, make an order for the eviction of such person forthwith and thereupon, if such person refuses or fails to comply with the said order of eviction, he may evict him from the waqf property and take possession thereof and may, for that purpose, use such force as may be necessary. 40 45

4. (1) If the Waqf Estate Officer is of the opinion that any person is in unauthorised occupation of any waqf property and that he should be evicted, the Waqf Estate Officer shall issue, in the manner hereinafter provided, a notice in writing calling upon such person to show cause why an order of eviction should not be made.

Issue of notice to show cause against order of eviction.

5 (2) The notice referred to in sub-section (1) shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require such person who is, or may be in occupation of, or claims interest, in the waqf property,

10 (i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

15 (ii) to appear before the Waqf Estate Officer on the date specified in the notice along with evidence which he intends to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

(3) The Waqf Estate Officer shall cause the notice to be served by registered post or by having it affixed on the outer door or some other conspicuous part of the waqf property, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to the person concerned.

20 5. (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of the sub-section (2) of section 4, the Waqf Estate Officer is satisfied that the waqf property is in unauthorised occupation, the Waqf Estate Officer may make an order of eviction, for reasons to be recorded therein, directing that the waqf property shall be vacated, on such date as may be specified in the order, by the person who may be in occupation thereof or any part thereof, and cause a copy of the order to be served by registered post or to be affixed on the outer door or some other conspicuous part of the waqf property.

Eviction of unauthorised occupants.

30 (2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later, the Waqf Estate Officer or any other officer duly authorised by the Waqf Estate Officer in this behalf may, after the date so specified or after the expiring of the period aforesaid, whichever is later, evict that person from, and take possession of the waqf property and may, for that purpose, use such force as may be necessary.

35 6. (1) No person shall—

(a) erect or place or raise any building or any movable or immovable structure or fixture;

(b) display or spread any goods; or

(c) bring or keep any cattle or other animal,

40 on or against, or in front of any waqf property except in accordance with the permission, whether by way of lease or any other mode of transfer, under which he was allowed to occupy such property.

Power to remove unauthorised construction, etc.

45 (2) Where any building or other immovable structure or fixture has been erected, placed or raised on any waqf property in contravention of the provisions of sub-section (1), the Waqf Estate Officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the waqf property within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause or to remove such building or other structure or fixture from the waqf property, or where the cause shown is not, in the opinion of the Waqf Estate Officer, sufficient, the Waqf Estate Officer may by order, remove or cause to be removed the

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building or other structure or fixture from the waqf property and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any waqf property, in contravention of the provision of sub-section (1) by any person, the Waqf Estate Officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal as the case may be, from the waqf property and recover the cost of such removal from such person as an arrear of land revenue.

Order of
demolition of
unauthorised
construction.

7. (1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed on any waqf property by any person in occupation of such waqf property under the permission, whether by way of lease or any other mode of transfer, and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the Waqf Estate Officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the permission aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order:

Provided that no order under this sub-section shall be made unless the person concerned has been served by means of a notice of not less than seven days in the prescribed manner, a reasonable opportunity of showing cause as to why such order should not be made.

(2) Where the erection or work has not been completed, the Waqf Estate Officer may, by the same order or by a separate order, whether made at the time of issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under section 12.

(3) The Waqf Estate Officer shall cause every order made under sub-section (1), or, as the case may be, under sub-section (2) to be served, by registered post or affixed on the outer door, or some other conspicuous part, of the waqf property.

(4) Where no appeal has been preferred against the order of demolition made by the Waqf Estate Officer under sub-section (1) or where an order of demolition made by the Waqf Estate Officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the Tribunal on appeal, and, on the failure of the person to comply with the order within such period, the Waqf Estate Officer or any other Officer duly authorised by the Waqf Estate Officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(5) Where an erection or work has been demolished, the Waqf Estate Officer may, by order, require the person concerned to pay the expenses of such demolition within such time and in such number of instalments, as may be specified in the order.

Power to seal
unauthorised
construction.

8. (1) It shall be lawful for the Waqf Estate Officer, at any time, before or after making an order of demolition under section 7, to make an order directing the sealing of such erection or work or of the waqf property in which such erection or work has been commenced or is being carried on or has been completed in such manner as may be prescribed, for the purpose of carrying out the provision of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work on any waqf property in which any erection or work is being carried on has, or have been sealed, the Waqf Estate Officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except—

(a) under an order made by the Waqf Estate Officer under sub-section (2); or

(b) under an order of the Tribunal made in an appeal under this Act.

5 **9.** (1) Where any person has been evicted from any waqf property under section 5, or where any building or other work has been demolished under section 7, the Waqf Estate Officer may, after giving fourteen days notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or dispose of by public auction any property remaining on such property.

Disposal of property left on waqf property by unauthorised occupants.

10 (2) Where any goods, materials, cattle or other animals have been removed from any waqf property under section 6, the Waqf Estate Officer may, after giving fourteen days notice to the person owning such goods, materials, cattle or other animals and after publishing the notice in at least one newspaper having circulation in the locality, dispose of, by public auction, such goods, materials cattle or other animals.

15 (3) Notwithstanding anything contained in sub-section (1) and sub-section (2), the giving or publication of any notice referred to therein shall not be necessary in respect of any property which is subject to speedy and natural decay, and the Waqf Estate Officer may, after recording such evidence as he may think fit, cause such property to be sold or otherwise disposed of in such manner as he may think fit.

20 (4) Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the Waqf or Waqf Board on account of arrears of rent or damages or costs, be paid to such person as may appear to the Waqf Estate Officer to be entitled to the same:

25 Provided that where the Waqf Estate Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the civil court of the competent jurisdiction and the decision of the court thereon shall be final.

30 (5) The expression “cost” referred to in sub-section (4), shall include the cost, of removal or recoverable under section 6 and the cost of demolition recoverable under section 7.

10. (1) Where any person is in arrears of rent payable in respect of any waqf property, the Waqf Estate Officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

Power to require payment of rent or damages in respect of waqf properties.

35 (2) Where any person is, or has at any time been, in unauthorised occupation of any waqf property, the Waqf Estate Officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use or occupation of such property and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

40 (3) While making an order under sub-section (1) or sub-section (2), the Waqf Estate Officer may direct that the arrears of rent or, as the case may be, damages or costs shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of Interest Act, 1978.

14 of 1978

45 (4) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Waqf Estate Officer.

5 of 1908

50 **11.** A Waqf Estate Officer shall, for the purpose of holding an inquiry under this Act, have the same powers as are vested in civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

Power of Waqf Estate Officer.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

Appeals.

12. (1) An appeal shall lie, from every order of the Waqf Estate Officer made in respect of any waqf property under section 5 or section 7 or section 8 or section 10, to the Tribunal having jurisdiction in the area where such property is situated. 5

(2) An appeal under sub-section (1) shall be preferred,—

(a) in the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section (1) of that section; 10

(b) in the case of an appeal from an order under section 7 or section 10, within twelve days from the date on which the order is communicated to the appellant; and

(c) in the case of an appeal from an order under section 8, within twelve days from the date of such order:

Provided that the Tribunal may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. 15

(3) Where an appeal is preferred from an order of the Waqf Estate Officer, the Tribunal may stay the enforcement of that order for such period and on such conditions as it deems fit: 20

Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 7 for the demolition or removal of such building or other structure or fixture, the Tribunal shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the Tribunal, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal. 25

(4) Every appeal under this section shall be disposed of by the Tribunal as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the Tribunal. 30

Finality of orders.

13. Save as otherwise expressly provided in this Act, every order made by a Waqf Estate Officer or Tribunal under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. 35

Offences and penalty.

14. (1) If any person unlawfully occupies any waqf property, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both:

Provided that a person who, having been lawfully in occupation of any waqf property, by virtue of any permission (whether by way of lease or by any other mode of transfer continues to be in occupation of such property after such permission has ceased to be valid, shall not be guilty of such offence. 40

(2) If any person who has been evicted from any waqf property under this Act again occupies the property without permission for such occupation, he shall be punishable with imprisonment for a term, which may extend to one year or with fine which may extend to five thousand rupees, or with both. 45

(3) Any magistrate convicting a person under sub-section (2) may make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

2 of 1974.

5 **15.** The Code of Criminal Procedure, 1973 shall apply to an offence under section 14 as if it were a cognizable offence—

Offences under section 14 to be cognizable.

(a) for the purposes of investigation of such offence, and

(b) for the purposes of matters other than—

(i) matters referred to in section 42 of that Code, and

10 (ii) arrest of a person except on the complaint of, or upon information received from, an officer of the Board equivalent to the rank of a Group A officer of the Central Government or where it is not possible to specify an officer of such equivalent rank, such executive officer as may be appointed by the Board.

15 **16.** If the Waqf Estate Officer has reason to believe that any person is in unauthorised occupation of any waqf property, the Waqf Estate Officer or any officer authorised by him in this behalf may require that person or any other person to furnish information relating to the names and other particulars of the person in occupation of the waqf property and every person so required shall be bound to furnish the information in his possession.

Power to obtain information.

20 **17.** (1) Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages or for the determination of the amount payable by way of interest on such arrears of rent or damages is to be or has been taken dies before the proceeding is taken or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

Liability of heirs and legal representatives.

25 (2) Where any person from whom any cost of removal of any building or other structure or fixture, or, as the case may be, any goods, cattle or other animal is to be recovered under sub-section (2) or sub-section (3) of section 6, or any expenses of demolition are to be recovered under sub-section (5) of section 7, dies before any proceeding is taken for the recovery of such cost or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

30 (3) Any amount due to a waqf or Board from any person whether by way of arrears of rent or damages or costs of removal referred to in section 6 or expenses of demolition referred to in section 7 or interest referred to in sub-section (3) of section 10 or any other cost shall, after the death of the person, be payable by his heirs or legal representatives but their liability shall be limited to the extent of the assets of the deceased in their hands.

35 **18.** If any person refuses or fails to pay the expenses of demolition payable under sub-section (5) of section 7 or the arrears of rent payable under sub-section (1) of section 10 or the damages payable under sub-section (2) or the interest determined under sub-section (3) of that section or the costs awarded to the waqf or the Board under sub-section (5) of section 12 or any portion of such rent, damages, expenses, interest or costs, within the time, if any, specified therefor in the order relating thereto, the Waqf Estate Officer may issue a certificate
40 for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue.

Recovery of rent, etc., as an arrear of land revenue.

19. No court shall have jurisdiction to entertain any suit or proceeding in respect of—

Bar of jurisdiction.

(a) the eviction of any person who is in unauthorised occupation of any waqf property, or

45 (b) the removal of any building, structure or fixture or goods, cattle or other animal from any waqf property under section 6, or

(c) the demolition of any building or other structure made, or ordered to be made, under section 7, or

(d) the sealing of any erection or work or of any waqf property under section 8,
or

(e) the arrears of rent payable under sub-section (1) of section 10 or damages payable under sub-section (2), or interest payable under sub-section (3) of that section,
or

(f) the recovery of—

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 6, or

(ii) expenses of demolition under section 7, or

(iii) costs awarded to a waqf or Board under sub-section (5) of section 12,
or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to a waqf or Board.

Protection of
action taken
in good faith.

20. No suit, prosecution or other legal proceeding shall lie against a waqf or Board or Waqf Estate Officer or any officer authorised by him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

Delegation of
Powers.

21. The Board may, by notification, published in three newspapers in the State, direct that any power exercisable by it under this Act shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer of the Board as may be specified in the notification.

Power to
make rules.

22. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following, matters, namely:—

(a) the form of any notice required or authorised to be given under this Act and the manner in which it may be served;

(b) the holding of inquiries under this Act;

(c) the procedure to be followed in taking possession of waqf properties;

(d) the manner in which damages for unauthorised occupation may be assessed and the principles which may be taken into account in assessing such damages;

(e) the manner in which the sealing of any erection or work or of any waqf property shall be made under sub-section (1) of section 8;

(f) the rate at which interest shall be payable on arrears of rent specified in any order made under sub-section (1) of section 10, or damages assessed under sub-section (2) of that section;

(g) the manner in which appeals may be preferred and the procedure to be followed in appeals;

(h) any other matter which has to be or may be prescribed.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of

no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

23. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law, for the time being in force.

Act not in
derogation of
any other law.

STATEMENT OF OBJECTS AND REASONS

The Waqf Act, 1995 has been amended by the Wakf (Amendment) Act, 2013 which has come into force w.e.f. 1st November, 2013. Section 54 of the Waqf Act, 1995 makes provision for removal of encroachment from the waqf properties; however, the provision is not stringent enough to deal with the encroachment or illegal occupation of waqf properties.

2. The Sachar Committee recommended that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 should be applied to waqf properties as these properties are for the benefit of the public and not for any individual. The Joint Parliamentary Committee on Waqf in its Third Report also stated that all the State Governments may bring the waqf properties under the State Public Premises (Eviction of Unauthorised Occupant) Act. However, only the State Governments of Karnataka, Rajasthan and Tripura have included Waqf in their respective States' Public Premises Acts. The Select Committee of Rajya Sabha reiterated the recommendations of the Sachar Committee and the Joint Parliamentary Committee on Waqf.

3. The Ministry of Urban Development stated that the waqf properties are not owned or hired by the Government; therefore, these cannot be covered under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Ministry of Law and Justice had also advised that it is not legally feasible to include Waqf in the said Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

4. Therefore, Government of India proposes to bring the Waqf Properties (Eviction of Unauthorised Occupants) Bill, 2014 which would bring uniformity throughout the country and would provide for a speedy mechanism for eviction of unauthorised occupants from the waqf properties. The Bill is intended to bar the jurisdiction of the Civil Court in entertaining any suit or proceeding in this regard.

5. This Bill seeks to achieve the above objectives.

NEW DELHI;
The 11th February, 2014.

K. RAHMAN KHAN

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 22 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matter, *inter alia*, include matters: (a) the form of any notice required or authorised to be given under the proposed legislation and the manner in which it may be served; (b) the holding of inquiries under the proposed legislation; (c) the procedure to be followed in taking possession of waqf properties; (d) the manner in which damages for unauthorised occupation is to be assessed and the principles which are to be taken into account in assessing such damages; (e) the manner in which the sealing of any erection or work or of any waqf property shall be made under sub-clause (1) of clause 8; (f) the rate at which interest shall be payable on arrears of rent specified in any order made under sub-clause (1) of clause 10, or damages assessed under sub-clause (2) of that clause; (g) the manner in which appeals are to be preferred and the procedure to be followed in appeals; (h) any other matter which is to be, or may be, prescribed. Sub-clause (3) of that clause provides that every rule made by the Central Government is required to be laid, as soon as it is made, before each House of Parliament.

2. The matters in respect of which rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

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to provide for the eviction of unauthorised occupants from waqf properties and for matters connected therewith or incidental thereto.

(Shri K. Rahman Khan, Minister of Minority Affairs)