

**Bill No. XXVII of 2022**

THE WAQF (AMENDMENT) BILL, 2022

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BILL

*further to amend the Waqf Act, 1995.*

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

1. (1) This Act may be called the Waqf (Amendment) Act, 2022.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification  
5 in the Official Gazette, appoint.

43 of 1995.

2. For section 54 of the Waqf Act, 1995, (hereinafter referred to as the principal Act),  
the following section shall be substituted, namely—

Substitution of section 54.

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“54. (1) In the event of any encroachment being made on any land, building,  
space or other property which is waqf property and if such encroachment was done  
without the sanction of the competent authority, it shall be lawful for the Chief Executive

Removal of encroachment from waqf property.

Officer to summarily abate or remove any such encroachment or cause any article whatsoever hawked or exposed for sale to be removed and the expenses incurred therein shall be leviable from the person in occupation of the waqf property encroached upon or used as aforesaid.

(2) The person responsible for such encroachment or who is in unauthorised occupation of the waqf property so encroached upon shall pay, if the waqf property encroached upon forms part of an assessed survey number, assessment for the entire survey number for the whole period of the encroachment, and if the waqf property has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar waqf property used for the same purpose.

(3) Such person as referred to in sub-section (2) shall pay in addition to the amount under sub-section (2), a fine which shall be not less than one thousand rupees but not more than ten thousand rupees if the encroached waqf property is used for an agricultural purpose, and if used for a purpose other than agriculture a fine not exceeding fifty thousand rupees:

Provided that if such person is caught hawking or selling any articles on the encroached waqf property, he shall be liable to pay fine of a sum not exceeding one thousand rupees as the Chief Executive Officer may determine.

(4) The Chief Executive Officer may, by notice duly served to the person responsible for encroachment, specifying the particulars of the encroachment, prohibit or require the abatement or removal of encroachments on any such waqf property, and shall fix in such notice a date, which shall be a reasonable time after such notice, on which the same shall take effect.

(5) Every person who makes, causes, permits or continues any encroachment on any waqf property referred to in a notice issued under sub-section (4), shall in addition to the penalties specified in sub-section (3), be liable at the discretion of the Chief Executive Officer to a fine not exceeding five hundred rupees in the case of encroachment for agricultural purposes and one thousand rupees in other cases for every day during any portion of which the encroachment continues after the date fixed for the notice to take effect.

(6) An order passed by the Chief Executive Officer under this section shall be subject to appeal before waqf Tribunal and revision before the State Government in accordance with the provisions of this Act.

(7) Nothing contained in sub-sections (1) to (5) shall prevent any person from establishing his rights in a Waqf Tribunal within a period of six months from the date of the final order under this Act.

(8) Nothing in this section shall prevent the Chief Executive Officer, if the person making the encroachment so desires, to charge the said person a sum not exceeding five percent of the value of the waqf property so encroached upon and to fix a rent not exceeding five times of the ordinary rent as per lease rules thereon and to allow the person on lease to the encroacher on such terms and conditions as the Chief Executive Officer may impose subject to rules made in this behalf.

(9) For the purposes of this section, the value of waqf property that has been encroached upon shall be fixed by the Chief Executive Officer according to the market value of similar land in the same neighbourhood at the time of such valuation and the annual revenue of such property shall be assessed at the same rate as the land revenue of similar property in the vicinity.

(10) The Chief Executive Officer's decision as to the value of waqf property shall be conclusive."

3. For section 55 of the principal Act, the following shall be substituted:

Substitution of section 55.

5 "55. (1) If in the opinion of the Chief Executive Officer, any person is unauthorisedly occupying or wrongfully in possession of any waqf property or is not entitled or has ceased to be entitled to continue the use, occupation or possession of any such property by reason of the expiry of the period of lease or termination of the lease or breach of any of the conditions annexed to the tenure, it shall be lawful for the Chief Executive Officer to evict such person.

Enforcement of orders made under section 54.

10 (2) Before evicting any such person, the Chief Executive Officer shall give him a reasonable opportunity or being heard and the Chief Executive Officer Waqf Board may make a summary enquiry, if necessary:

Provided that the Chief Executive Officer shall record his reasons, for arriving at any opinion.

15 (3) The Chief Executive Officer shall, on their finding as aforesaid, serve a notice on such person requiring them within such time as may appear reasonable after receipt of the said notice to vacate the waqf property and if such notice is not complied with, the Chief Executive Officer may remove them from such property.

20 (4) A person unauthorisedly occupying or wrongfully in possession of waqf property after they have ceased to be entitled to continue the use, occupation or possession by virtue of any of the reasons specified in sub-section (1), shall also be liable at the discretion of the Chief Executive Officer to pay a penalty not exceeding ten times the rent for the property, for the period of such unauthorised use or occupation.

25 (5) After summary eviction of any person under this section, any building or other construction erected on the waqf property or any crop raised in the property shall, if not removed by such person after such written notice as the Chief Executive Officer may deem reasonable, be liable to forfeiture or to summary removal.

(6) Forfeitures under this section shall be adjudged by the Chief Executive Officer and any property so forfeited shall be disposed of as the Chief Executive Officer may direct and the cost of the removal of any property under this section shall be recoverable as an arrear of land revenue."

30 4. Section 55A of the principal Act shall be omitted.

Omission of section 55A.

## STATEMENT OF OBJECTS AND REASONS

In the last few decades, encroachments on Waqf properties has increased exponentially. This has created an undue obstruction of such properties through unauthorized means. It creates a barrier for easementary rights and goes against the right to unobstructed use of such land. While the Waqf Act, 1995 does have provisions to deal with such encroachments, it has been observed that provisions that deal with such removal of encroachments entail a multiplicity in the proceedings required, before such encroachments can be legally removed. Chapter II of the Act deals notification of properties listed as Waqf properties and includes a dispute resolution mechanism. Hence, it becomes pertinent to amend Sections 54 and 55, while omitting Section 55A, in order to remove multiplicity of proceedings. Additionally, the Supreme Court has time and again directed authorities to rigorously remove such encroachments. To enable this, the powers of the Chief Executive Officer of the Waqf Board need enhancement for summarily removing such obstructions. There is a need to improve the procedure for the removal of unauthorized encroachments upon such Waqf properties and safeguard the rights of the Waqf.

Hence this Bill.

DR. FAUZIA KHAN

ANNEXURE

EXTRACTS FROM THE WAQF ACT, 1995

(43 OF 1995)

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**54.** (1) 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 property which is 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 and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

Removal of encroachment from waqf property.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is waqf property and that there has been an encroachment on any such waqf property, he may, make an application to the Tribunal for grant of order of eviction for removing such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the waqf.

(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.

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**55.** 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 situate 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.

Enforcement of orders made under section 54.

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Disposal of property left on waqf property by unauthorised occupants.

**55A.** (1) Where any person has been evicted from any waqf property under sub-section (4) of section 54, the Chief Executive 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 and after proclaiming the contents of the notice by placing it on conspicuous part of the waqf property, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1), the sale proceeds shall, after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to the State

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RAJYA SABHA

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further to amend the Waqf Act, 1995.

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*(Dr. Fauzia Khan, M.P.)*