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WAKF

Ch,9.1 Wakf:

Ameei¹ Ali opines that Wakf is the most important branch of Muslim law as it is interwoven with the entire religious life and social economy of Muslims.

Wakf means 'detention'. According to Muslim law it means (i) inalienable lands used for charitable purposes and (ij) pious endowments.

The origin of Wakf can be traced to the impulse of Muslims to do charitable deeds i.e., to endow property 'in the way of God'. The objects were to pay the mosque staffs and to endow schools and hospitals; to better the lot of the poor etc.

Wakf defined: Wakf is the tying-up of the substance of the property in the ownership of the founder (Wakif) and the usufruct (use) for a charitable purpose. The Wakf Act 1913 defines wakf. According to it, it means the permanent dedication by a Muslim, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable.

Essentials of Wakf:

(a) The motive is always religious. It is a temporal trust. (b) It is endowment made in perpetuity, In the eye of law after endowment the property belongs to God. i.e., the property becomes immobilised and hence further transfer cannot be made. Dedication should be complete and permanent.

(c) The Wakif (the founder of the particular wakf) is not entitled to take any benefit in the wakf property. A wakf may be created in favour of the settler's family, children and descendants.

(d) Any property capable of being endowed in perpetuity to the wakf can be the subject matter. It may be movable or immovable.²⁷ (e) **The Mutawalii is a mere manager.** The Wakf property is not vested in him. (In trust the property vests in the trustee). (f) The Wakf cannot be contingent or

conditional. It is not revocable. It cannot be for a limited period, or temporary in nature.

(g) Making of a wakf: Any Muslim, who has attained majority and is of sound mind can make a Wakf. It cannot be made for an illegal purpose, or to defeat the creditors.

(h) Object: According to the Mussalman Wakf Validating Act 1913 the ultimate object must be reserved for the poor. This overrules the decision of the Privy Council: *Abu I Fata Mohamad Ishak Vs. Rusomy Chowdhry*, In this case, two Muslims made a Wakf and they themselves became the first Mutawallis. The entire benefit was to go to their children and then from generation to generation until the total extinction of the family. Then it would go to the poor.

The Privy Council had held this wakf was invalid, as the object was family aggrandisement. This decision was negated in India by the Act of 1913. Hence, a family wakf can be created, and the benefit to the poor can be postponed (Sn. 4 of the Act).

Other objects'

(i) Burning lamps at the mosque, (ii) The maintenance of Khankah. (iii) Repairs to imambaras. (iv) Colleges, schools etc.

Wakf is invalid if the object is to maintain a church or a temple or utter strangers. Wakf is void for uncertainty. Hence, a Wakf for 'Dttaram' was void.

Registration : Every Wakf should be in writing and registered at the office of the Wakfs Board. The Mutawalii should make an application to the Board, with a copy of the Wakf deed, furnishing details of the Wakf; it should be duly signed by the Mutawalii. The Board may register the Wakf.

Mutawalii: He is the manager. The Wakf property is not vested in him. His appointment, powers and functions are governed by the Wakf Act 1954.

Ch. 9.2 Mutawalii

According to the Wakf Act 1954, a Mutawalii is a person appointed either verbally or under any Wakf deed or instrument or by the State Wakf Board. Any person or committee managing or administering any Wakf property is also a Mutawalii as per the Act. Mutawalii is a manager. The Wakf property will not vest in him. It vests in Allah.

All matters relating to the appointment, powers, functions etc. of the Mutawalii are governed by the Wakf Act 1954.

Scheme: The Central Govt. has constituted a Central Wakf Council to., advise the State Wakf Boards on the working and administration of the Wakfs. The State Wakf Board is formed in each State in India. Its composition powers and functions are defined. The Mutawalii, exercises his powers as per the directions of the Board, which controls him.

Powers and Functions:

(i) To register the Wakf with the State Wakf Board, furnishing the required details. (ii) *Budget:* The Mutawalii should prepare the budget and submit to the Board. He shall maintain regular accounts of the financial year as per the directions of the Board. These shall be audited, and the Board may examine the Audit report.

(iii) *Duties :* (a) To carry out the directions of the Board.

(b) To furnish information and file return as required by the Board.

(c) He has no right to transfer any immovable property by way of sale, gift, mortgage or exchange. He may lease out subject to Board's directives.

(d) To pay from Wakf property certain expenses properly incurred. *Removal:* The Board may remove a Mutawalii (a) If he is convicted by a criminal court

(b) If he misappropriates the Wakf property or (c) If he is of unsound mind or is infirm etc. .

Penalties:

If the Mutawalii fails to perform his duties in respect of registration, furnishing accounts, discharging public dues etc., he may be punished by the court with a penalty upto Rs. 1,000.

Ch. 9.3 Sajjadanashan:

"Sajjada" means the carpet used for prayer by the Muslims, 'Nashin' means "sitting". Hence, the Sajjadanashin takes precedence on the carpet during prayers. The office is spiritual and he has certain spiritual functions to perform.

He has a special status as a spiritual preceptor, and is higher than a Mutawalli.

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He is the head of a *Khankah*. He teaches religious doctrines and rules of life, he is the manager with administrative powers.

There are many Khankahs in various places in India.

A Khankha develops like this ; A Sufi or dervish settles down in a place, he attains sufficient importance. His life teachings attract disciples who construct lodgements. This takia grows into Khankah. After the sufi dies, his grave becomes a shrine and a place of pilgrimage.

Generally the founder is the first Sajjadanashin and on his death, the spiritual line is continued by succession. The 'court has powers to remove him for proved misconduct: He has a right, to receive a share of the offerings.

Ch. 9.4 Takia (Tomb) Dargah :

Takia literally means a resting place at a burial ground or a tomb. It may be a platform, in the graveyard, where prayers are offered,

A fakir who has abandoned worldly life, may reside in a place, leading a saintly life and teaching the gospel of Muslim religion to his disciples. On his death, he is buried and a tomb is built. Prayers are offered at the tomb.

Takia is recognised by law as a religious institution. An endowment to takia is valid (Mohiuddin Vs. Sayid Uddin). In India, this institution is called Dargah and when it assumes importance it becomes a Takia or Kankhah,

Ch, 9.5 Imambara

This is a private place of worship set apart by a Muslim belonging to the Ithna Asrri Shiite faith. It is a place for the performance of certain religious ceremonies like Muharram and others. This may be the subject of a Wakf, It is a private Wakf.

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This is exclusively used by the owner and the members of his family. The public are not allowed except with the permission of the owner. 'A Hindu cannot create imambara under a private endowment.

(Mundaria Vs. Shyam Sunder).