

## LEGAL CONSEQUENCES OF WAKF

Once a wakf is complete, the following are the consequences –

1. Dedication to God – The property vests in God in the sense that nobody can claim ownership of it. In *Md. Ismail vs Thakur Sabir Ali*, SC held that even in wakf alal aulad, the property is dedicated to God and only the usufructs are used by the descendants.
2. Irrevocable – In Pakistan, a wakf once declared and complete, cannot be revoked. The wakif cannot get his property back in his name or in any other's name.
3. Permanent or Perpetual – Perpetuity is an essential element of wakf. Once the property is given to wakf, it remains for the wakf forever. Wakf cannot be of a specified time duration. In *Mst Peeran vs Hafiz Mohammad*, it was held by Allahabad HC that the wakf of a house built on land leased for a fixed term was invalid.
4. Inalienable – Since Wakf property belongs to God, no human being can alienate it for himself or any other person. It cannot be sold or given away to anybody.
5. Pious or charitable use – The usufructs of the wakf property can only be used for pious and charitable purpose. It can also be used for descendants in case of a private wakf.
6. Extinction of the right of wakif – The wakif loses all rights, even to the usufructs, of the property. He cannot claim any benefits from that property.
7. Power of court's inspection – The courts have the power to inspect the functioning or management of the wakf property. Misuse of the property of usufructs is a criminal offense as per **Wakf Act.1995**.

## OFFICE OF MUTAWALLI

Mutawalli is nothing but the manager of a wakf. He is not the owner or even a trustee of the property. He is only a superintendent whose job is to see that the usufructs of the property are being utilized for valid purpose as desired by the wakif. He has to see that the intended

beneficiaries are indeed getting the benefits. Thus, he only has limited control over the usufructs. In *Ahmad Arif vs Wealth Tax Commissioner*, SC held that a mutawalli has no power to sell, mortgage, or lease wakf property without prior permission of the Court or unless that power is explicitly provided to the mutawalli in wakfnama.

Who can be a mutawalli – A person who is a major, of sound mind, and who is capable of performing the functions of the wakf as desired by the wakif can be appointed as a mutawalli. A male or female of any religion can be appointed. If religious duties are a part of the wakf, then a female or a non-muslim cannot be appointed. In *Shahar Bano vs Aga Mohammad*, Privy Council held that there is no legal restriction on a woman becoming a mutawalli if the duties of the wakf do not involve religious activities.

Who can appoint a mutawalli – Generally, the wakif appoints a mutawalli. He can also appoint himself as a mutawalli. If a wakf is created without appointing a mutawalli, in Pakistan, the wakf is considered valid and the wakif becomes the first mutawalli in Sunni law but according to Shia law, even though the wakf remains valid, it has to be administered by the beneficiaries. The wakif also has the power to lay down the rules to appoint a mutawalli. The following is the order in which the power to nominate the mutawalli transfers if the earlier one fails –

1. founder,
2. executor of the founder, &
3. mutawalli on his death bed.
4. the Court, which should follow the guidelines –
  1. It should not disregard the directions of the settler but public interest must be given more importance.
  2. Preference should be given to the family member of the wakif instead of an utter stranger.

Powers of a mutawalli –

Being the manager of the wakf, he is in charge of the usufructs of the property. He has the following rights –

1. He has the power to utilize the usufructs as he may deem fit in the best interest of the purpose of the wakf. He can take all reasonable actions in good faith to ensure that the intended beneficiaries are benefited by the wakf. Unlike a trustee, he is not an owner of the property so he cannot sell the property. However, the wakif may give such rights to the mutawalli by explicitly mentioning them in wakfnama.
2. He can get a right to sell or borrow money by taking permission from the court upon appropriate grounds or if there is an urgent necessity.
3. He is competent to file a suit to protect the interests of the wakf.
4. He can lease the property for the agricultural purpose for less than three years and for the non-agricultural purpose for less than one year. He can exceed the term by permission of the court.
5. He is entitled to remuneration as provided by the wakif. If the remuneration is too small, he can apply to the court to get an increase.

#### Removal of a mutawalli –

Generally, once a mutawalli is duly appointed, he cannot be removed by the wakif. However, a mutawalli can be removed in the following situations –

1. By Court –
  1. if he misappropriates wakf property.
  2. Even after having sufficient funds, does not repair wakf premises and wakf falls into disrepair.
  3. Knowingly or intentionally causes damage or loss to wakf property. In *Bibi Sadique Fatima vs Mahmood Hasan*, SC held that using wakf money to buy property in wife's name is such breach of trust as is sufficient ground for removal of mutawalli.
  4. he becomes insolvent.
2. By wakf board – Under section 64 of Wakf Act 1995, the Wakf board can remove mutawalli from his office under the conditions mentioned therein.

3. By the wakif – As per Abu Yusuf, whose view is followed in Pakistan, even if the wakif has not reserved the right to remove the mutawalli in wakf deed, he can still remove the mutawalli.

#### DIFFERENCE BETWEEN WAQF AND TRUST

Both, in waqf as well as in trusts, the property is detained and its usufruct is utilized for religious or charitable purposes. But, a waqf under Muslim personal law may be distinguished from a trust at least on the following matters:

- (1) A waqf may be constituted only for those purposes which are recognized as religious, pious or charitable in Islam whereas, a trust may be constituted for any lawful object.
- (2) Except under Hanafi law, the founder of a waqf cannot reserve any benefit for himself, but the founder of a trust may himself be a beneficiary.
- (3) The powers of a mutawalli (manager of the waqf-property) are very limited as compared to the powers of a trustee.
- (4) A waqf is generally perpetual and irrevocable, whereas, a trust need not be perpetual and may also be revoked under certain conditions.

Because of the above-mentioned differences between waqf and trust, the Trust, Act, 1882, is not applicable to Muslim waqf sin so far as the nature and operation of waqfs are concerned. But, for purposes of instituting any suit in the cases of irregularities and mismanagement of waqf property, a waqf has been regarded as a ‘trust’ within the meaning of Section 92 of the Civil Procedure Code, 1908.

However, it must be noted that the India Trusts Act is applicable also to Muslims. Therefore, if a Muslim wants to settle his properties in a trust he may do so under this Act instead of creating waqf under Muslim personal law.