

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

Present:

Mr. Justice Sheikh Abdul Awal

And

Mr. Justice Md. Mansur Alam

WRIT PETITION NO. 11478 OF 2019

In the matter of:

Application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

-and-

In the matter of:

Mohammad Azizul Hoque and others

.....Petitioners

Versus

Administrator of Waqfs, Bangladesh “Waqf
Bhaban”, 4, New eskaton Road and others

....Respondents

Mr. Rafiqul Islmal (Hiru), Advocate

.....for the petitioners

Mr. Shahadat Hossain, Advocates

.....for the respondent No. 06.

Heard on: 24.08.2025

Judgment on: 26.08.2025

Md. Mansur Alam, J

The petitioner Mhammed Azizul Hoque preferred this writ petition under Article 102 of the Constitution challenging the impugned Order being Memo no 16.02.0000.036.31.000.36/143 dated 31.12.2018 issued by Md. Shahidul Islam (Additional Secretary), Administrator of Waqf, Bangladesh containing an order under section 47 of the Waqf Ordinance, 1962 (hereinafter referred as Ordinance) for supplementary enlistment of

the property of the petitioners situated at District Chattogram police station-Bandor, Mouja Moddo Hali Shahar under B S khatian No 3109, under B S plot no 5165, 5166, 5167, 5170, 5171, 5177, 5179, 5180, 5181, 5182, 5183, 5184 total land 1.8650 acres in the Ali Hossain Sawdagor Waqf Estate under E. C No 771 (Annexure J) should not be declared to have passed without lawful authority and is of no legal effect and/or such other or further order or orders as to this Court may seem fit and proper and the direction to maintain status quo in respect of the possession and position of the property in question for a period of 6 (six) months from date.

The petitioner stated in short that their predecessor Abdus Samad Sawdagor was the owner and possessor of the entire land by way of purchase through four kabals from Mosammat Hajera Khatun, Saleha Khatun, Fatema Khatun and Asia Khatun. On the death of their predecessor Abdus Samad Sawdagor died leaving behind his son Monir Ahmed and a daughter and amicably only Munir Ahmed got the disputed land and in B S operation his name was recorded under khatian no 3109 measuring an area of 1.8650 acres of land. Munir Ahmed while was owning and possessing the land in question he died leaving his wife, three sons, 4 daughters including the petitioner no's 1-6. In this background the respondent no 6 Md. Mujibul Haque, the Mutwalli of Ali Asgor Sawdagor Waqf Estate filed an application for inclusion of the disputed land for supplementary enlistment on 02.02.2017 before the Administrator of Waqf. This petitioner against that supplementary

enlistment petition submitted written objection for the reason that there is a case being other Suit no 552 of 2016 is pending in the Court of Joint District Judge, 3rd Court, Chattogram and the Administrator of Waqf in this circumstances stayed the proceeding of enlistment till disposal of the suit. Several civil cases are pending in different Court regarding the land in question but in the meantime during pending of the suits, Misc case, and F M A the Administrator of Waqf most illegally passed the order and issued the impugned Memo dated on 31.12.2018 enlisting the property of the petitioners in the Ali Hossain Sawdagor Waqf Estate under E. C no 771 under the provision of section 47 of Waqf Ordinance, 1962 which is challenged in this writ petition. The petitioners have not been given opportunity of being heard before the impugned enlistment. The petitioners predecessor had purchased the suit land by valid consideration but the Waqf Administrator most illegally treated the property of Ali Hossain Sawdagor Waqf Estate which is totally infringement of the proprietary right of the petitioners and in violation of the fundamental right of the petitioners as well. So these petitioners have every right to challenge the impugned Memo in present form of writ jurisdiction.

Reversely, the Respondent submitting counter affidavit contended that the Mutwalli Mr. Md. Mujibul Hadue was appointed as official Mutwalli by the Administrator of Waqf and thereafter filed an application to the office of the Waqf Administrator, Bangladesh to get enlisted the suit property on

02.02.2017 and 03.04.2018. Thereafter the office of the Waqf Administrator investigated the matter and on the basis of that report the Waqf Administrator by his impugned Memo no. ۱۵.۰۲.۰۰۰۰.۰۳۵.۳۱.۰۰۰.۳۵/۱۸۷ dated 31.12.2018 passed the supplementary order enlisting the scheduled property in Ali Asgor Waqf Estate. The Waqf Administrator has got empowered to enlist the property in question as Waqf property under the provision of section 50 of the Ordinance. The petitioner had efficacious remedy under section 50 of the Ordinance. Since the Waqf Administrator passed the impugned order under section 50 of the ordinance, So he must have challenged that order preferring petition before the District judge within three months in accordance with the provision of section (1) of section 35 of the Ordinance. But the petitioner did not go for that efficacious remedy though the same was available to him. So the instant writ petition before the Honorable high Court is beyond the law of Waqf Ordinance and as such the rule is not maintainable in the eye of law. The facts and circumstances of the present case also led the Waqf Administrator to enlist the suit property in Ali Asgor Waqf estate. hence the present writ petition is liable to be discharged.

Learned Advocate for the petitioner argues that the owner of the disputed land Asia, Saleha, Fatema, and Hajera sold through different four kabala deeds to the petitioner's predecessor Abdus Samad. Abdus Samad owned and possessed the suit Property and died leaving the petitioners. The petitioners have been possessed

the same and their names have been recorded in B S khatian no 3109. Learned Counsel further stated that the respondent could not show any reasonable cause to enlist the property in Ali Hossain Sawdagor Waqf Estate, the property in question never acquired by the Ali Asgor Waqf Estate under E C no 771, a civil suit is pending being other suit no 552 of 2016 in which all the matters relating to ownership and share will be finally decided in that suit, during pendency of such suit the Waqf Administrator passed the impugned Memo without any legal authority and is of no legal effect.

Learned counsel on the other hand standing up for the impugned Memo asserted that the present writ petition is not maintainable as it is brought without exhausting the mandatory provisions of section 50 read with section 35 of the Ordinance. Learned Counsel referred before us the proceeding of E C no 771 and draws our attention to the fact that Mutwalli Abdus Samad purchased the suit property measuring 1.97 acres by way of four Kabala deeds being no's 3939, 3940, 3941 and 3942 from the money that the estate has achieved as compensation of some of its land which acquired by the Government. Those four kabala's disclose that there is an instruction to enlist the property in the schedule in Waqf estate but the former mutwalli or their successor had taken no initiative to that effect. So the present Mutwalli Mujibul Haque, respondent 6 brought the application for enlisting the suit property in Waqf estate and the Waqf Administrator rightly

passed the impugned Memo which is within the purview of section 50 of the Ordinance. The impugned order of the Waqf Administrator, as such is not an infringement of the proprietary right of the petitioners or not a violation of the fundamental right of the petitioners. Learned Counsel concluded that the petitioner's have no leg to stand by this writ petition, so the same is liable to be discharged.

Having heard the argument, perused the writ petition, the Affidavit in opposition and the annexure available in the case record and the facts and circumstances of the case, we found that the impugned order in Memo no ১৬.০২.০০০০.০৩৬.৩১.০০০.৩৬/১৪৩ passed by the Respondent no 1, the Administrator of Waqf, suffers from no illegality. Section 29 of the Ordinance directs how the Administrator and the Committee of the Waqf estate exercise their power and functions. This section oblige the Administrator and Committee to act in conformity with the directions of the waqif, the purpose of the Waqf, etc. In this case the Waqif Abdus Samad directed to enlist the suit property in Ali Asgor Waqf Estate but former Mutwalli or his successor and his heirs, the petitioner did not comply that directions. In that situation the respondent no 6 Mutwalli Mujibul Haque applied for the enlistment of the suit property and the Waqf Administrator by the impugned Memo discharged his responsibility properly. Also it is agitated that since some civil suit is pending before the Joint district Judge Court, Chattogram, so pending those case the Waqf Administrator passed

the impugned order illegally. This agitation of the petitioner proves that a bundle of facts are to be determined by the civil Court and keeping unsettled of those facts, the writ petition is not maintainable in the eye of law. The petitioner claimed that the B S khatian no 3109 for the suit property is prepared in the name of the petitioners, so the suit property cannot be treated as waqf property and the same must not be enlisted in the Ali Asgor Waqf Estate. But it reveals from the alleged four deeds that Waqif treated the suit property in four deeds as Waqf property and gave directions in those deeds to enlist the property in the alleged Waqf Estate. Despite that B.S. Khatian no. 3019 was prepared before the impugned order of enlistment of the suit property. So that B.S. khatian has no any implication in passing the impugned order by the respondent no. 1. Therefore the petitioner will get no benefit by the aforesaid B S khatian. The respondents rightly pointed out that the writ petitioner without exhausting the provisions of section 50 read with section 35, brought this writ petition. We can refer here the sections 50 and 35 which read as follows:

50 "Any question whether a particular property is waqf property or not shall be decided by the administrator. Provided that the mutawalli or a person aggrieved by any decision or order of the Administrator in this behalf may, within three months from the date of such decision or order, submit a petition to the district Judge in accordance with the provision of Sub-section (1) of section 35; and if such

a petition is filed, the provision of section 35 shall apply.”

Section 35 of the Waqfs Ordinance is reproduce below:

“ 35. (1) The mutawalli, or any person claiming any interest in the property in respect of which a notification has been issued under sub-section (1) of section 34, may, if aggrieved by such notification submit a petition within three months of the publication of such notification or of passing of such order to the District Judge within whose jurisdiction such waqf property or a part thereof is situated, for a declaration-

(a) that the property is not a waqf property; or

(b) that the property is waqf property withn the limits stated in the petition.

(2) The District Judge may pass such order as he thinks fit after hearing the parties, or he may, for reasons to be recorded in writing, refuse to issue any process for compelling the attendance of any witness or the production of any document, if he considers that the petition has been made for the purpose of vexation and delay, and dismiss the petition summarily.

(3) Any person aggrieved by the decision of the District Judge under sub-section (2) may, within sixty days of the order, appeal to the High Court Division.

(4) The decision of the District Judge, or when there 2 is an appeal, the decision of the [High Court Division], shall be final. ”

It appears that the petitioner did not comply the aforesaid mandatory provisions of the Waqf Ordinance. In this context the

Learned Counsel for the petitioner argued that as the term of filing appeal before the District Judge is already expired, so they could not seek remedy before the District Judge and finding no efficacious way, they came before High court jurisdiction. Learned Counsel referred the case of Bangladesh Vs Tariq Sultan cited in 25 B L C (AD) at page 2020 which reads as follows:

“The waqf ordinance is a special law and specifically provides that an appeal is to be filed before the High Court Division must be within the specified period. Had the petitioner in the civil revision filed the appeal 9 days after the expiry of the period of limitation such appeal could not have been entertained. There is no scope to extend the period of limitation which is provided by any special law. Allowing respondent No. 1 to file an appeal which would otherwise have been beyond the period of limitation is tantamount to condoning the delay in filing the appeal the appeal.”

The aforesaid argument of the Learned Counsel is considered appropriate to us. The petitioner cannot rely on this only ground to get his relief here in this case. The prime responsibility of the petitioner is how he became aggrieved by the impugned Memo by the Respondent 1, Waqf Administrator. The Waqf Administrator passed the impugned order in performing his responsibility according to the provision of section 50 of the Ordinance. The version of the aforementioned four deeds is very much pertinent to consider here. The Waqif Abdus Samad clearly gave directions in those deeds to enlist the property in the Ali

Asgor Waqf Estate but his heirs, the petitioners did nothing in this regard. The respondent no. 6, Mutwalli Mujibul Haque thus rightly applied to the Administrator of the Waqf estate under E C no 771 and the Waqf Administrator validly passed the impugned Memo no. ১৬.০২.০০০০.০৩৬.৩১.০০০.৩৬/১৪৩ on 31.12.2018.

In the light of discussion made here above, this court is led to find that the waqf Administrator did no wrong in enlisting the property in question in Ali Asgor waqf estate as waqf property. So the alleged Memo No. ১৬.০২.০০০০.০৩৬.৩১.০০০.৩৬/১৪৩ on 31.12.2018 is not liable to be interfered with. There is nothing in the writ petition to declare the impugned order of the waqf Administrator to be illegal or without lawful authority.

In the result, the Rule is discharged without any order as to costs.

Communicate this order at once.

Sheikh Abdul Awal, J

I agree