

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)**

**First Miscellaneous Appeal No. 379 of 2021**

**With**

**Civil Rule No. 24 (F) of 2022**

**In the matter of:**

Md. Idris Dewan, son of late Al-haj Sultan Ahmed Dewan of 315, Dewan Building, Village-Dewan Bari, Post Office- Bandar-4100, Police Station- Doublemooring, District-Chattoqram and others.

... Appellants

-Versus-

Mrs. Nur Nahar Begum, daughter of late Lal Mia Sawdagar of Village- 1 no. Supariwala Para, Post Office- Pathantuli, Police Station- Doublemooring, District- Chattoqram and others.

...Respondents.

Mr. Md. Majharul Islam with  
Mr. Md. Moshir Rahman, Advocates

...For the appellants-petitioners

Ms. Nusrat Jahan, Advocate

....For the respondent-opposite-party no. 1

**Heard on 10.11.2024.**

**Judgment on 12.11.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J.**

Since the point of law and fact so figured in the appeal and that of the rule are intertwined, they have been heard together and are being disposed of by this single judgment.

At the instance of the 3<sup>rd</sup> parties, this appeal is directed against the judgment and order dated 23.09.2021 passed by the learned Additional District Judge, 5<sup>th</sup> Court, Chattogram in Waqf Miscellaneous Case No. 136 of 2018 filed under section 35(1) of the Waqfs Ordinance, 1962 allowing the case and setting aside the order dated 24.06.2018 passed by the Administrator of Waqfs, Dhaka in E.C. No. 17783 of 2017.

In a nutshell, the case of the 3<sup>rd</sup> parties herein the appellants is:

The present respondent no. 1 namely, Mrs. Nur Nahar Begum on 25.01.2018 filed an application under section 50 of the Waqfs Ordinance, 1962 before the Administrator of Waqfs, Dhaka stating *inter alia* that, she got the property from the two sons of her uncle Sultan Ahammed Dewan, namely, Idris Mia and Amin Mia with the consent of her father Lal Mia vide a registered sale deed dated 17.09.1945 bearing No. 2297 measuring an area of 8812 decimals of land and after the demise of her father, she started enjoying title and possession over that land and accordingly P.S and B.S. record was prepared in her name. She also got her name mutated in the khatian through Mutation Case No. 3-0685/2006 dated 15.06.2006 preparing BS Mutation Khatian No. 1025 and has since been paying land development tax (খাজনা) and thereby enjoying title and possession over the

said purchased land all along. Lately, she came to learn that her uncle namely, Al-haj Sultan Ahmmed Dewan by declaring 29.37 decimals of her owned property as waqf property executed a deed bearing no. 12048 dated 11.07.1980 and thereby created a Waqf Estate under the name and style “Al-haj Sultan Ahmmed Dewan T.K Waqf Estate” bearing No. E.C. 17783. Since the said property was illegally incorporated as waqf property, she then prayed to the Administrator for releasing the same. In view of filing the said petition, the Administrator of Wafqs undersigned by one, Md. Mosharaf Hossain, Assistant Administrator of Waqfs, Dhaka, Bangladesh by office order dated 24.06.2018 refused to entertain the application of the petitioner herein respondent no. 1 holding that, two writ petitions bearing Writ Petition Nos. 1633 of 2016 and 2725 of 2016 had been pending.

Feeling aggrieved by and dissatisfied with the said order passed by the Administrator of Waqfs, the respondent no. 1 as petitioner then preferred a Miscellaneous Case under section 35(1) of the Waqfs Ordinance, 1962 before the learned District Judge, Chattogram being Waqf Miscellaneous Case No. 136 of 2018 narrating similar averments so made in the application before Administrator of Waqfs under section 50 of the Waqfs Ordinance, 1962 and finally prayed for allowing the same. However, the said Miscellaneous Case was heard by the learned Additional District Judge, 5<sup>th</sup> Court, Chattogram.

It is worthwhile to mention here that, in the said Waqfs Miscellaneous Case, the *Mutawalli* as well as the Administrator of Waqfs and the government were made opposite-parties and the learned Additional District Judge in order to dispose of the said Case, framed three different

issues and took testimony of one witness adduced on behalf of the petitioner herein the respondent no. 1. Since the opposite-parties to the said case herein the respondent nos. 2-4 did not turn up to oppose the case, the said witness could not be cross-examined. Eventually, the learned Additional District Judge after considering the materials and evidence on record allowed the said Miscellaneous Case on setting aside the order dated 24.06.2018 passed in E.C. No. 17783 of 2017 and thereby released 29.37 decimals of land from the waqf estate namely, “Al-haj Sultan Ahmmed Dewan T.K Waqf Estate”.

It is at that stage, the descendents of the *waqif* named, Al-haj Sultan Ahmmed Dewan as appellants preferred this appeal.

After preferring the appeal, the appellants as petitioners also filed an application for staying operation of the impugned judgment and order dated 23.09.2021 passed in the said Waqf Miscellaneous Case and this court vide order dated 06.01.2022 stayed the operation of the impugned Judgment and order for a period of 6(six) months but thereafter no extension was taken by the petitioners which gave rise to Civil Rule No. 24 (F) of 2022.

Mr. Md. Majharul Islam, the learned counsel appearing for the appellants-petitioners upon taking us to the impugned judgment and order at the very outset submits that, the learned District Judge erred in law innot taking into consideration of the vital facts that though the property was alleged to have owned by the respondent no. 1 but it was actually in the possession of the wakif, Al-haj Sultan Ahmmed Dewan and the property in question that is, 29.37 decimals of land has rightly been transferred by the predecessor of the appellants in favour of the waqf estate on 11.07.1980

having no scope to claim title and ownership over the said property by the respondent no. 1.

The learned counsel by referring to the order so passed by the Administrator of Waqfs dated 24.06.2018 against which the Waqf Miscellaneous Case No. 136 of 2018 was preferred by the respondent no. 1 also contends, the said Administrator of Waqfs had no authority to pass the said order (though on his behalf an Assistant Administrator of Waqfs passed the order) because at that point of time, the Deputy Commissioner, Chattagram had been performing the authority of Administrator of Waqfs.

The learned counsel by referring to the provision of section 50 of the Waqfs Ordinance, 1962 also contends that, there has been no authority of the Administrator to examine any title and ownership of a waqf property and for that obvious reason, the Administrator has rightly evaded in taking into consideration of the claim of the petitioner, respondent no. 1 about the claim of title over the suit property and therefore, the order dated 24.06.2018 so passed by him is liable to be sustained.

On the contrary, Ms. Nusrat Jahan, the learned counsel appearing for the respondent-opposite-party no. 1 submits that, the learned District Judge has rightly passed the impugned order which is liable to be sustained.

Be that as it may, we have considered the submissions so advanced by the learned counsel for the appellants-petitioners and that of the respondent-opposite-party no. 1 and perused the memorandum of appeal and that of the application for stay and all the documents appended therewith vis-à-vis the application filed by the respondent no. 1 under section 50 of the Waqfs Ordinance, 1962 and the order passed by the

Administrator of Waqfs dated 24.06.2018 (Annexure-‘6’ to the application for vacating the order of stay).

Together, we have also very meticulously gone through the provision provided in section 50 of the said Ordinance and the decision so placed by the learned counsel for the appellants-petitioners.

To begin with, we would like to confine our discussion followed by observation keeping ourselves within the ambit of the provision provided in section 50 of the Waqfs Ordinance, 1962 to find whether the claim of the appellants-petitioners at this stage can be sustained. For ready reference, we thus feel it expedient to reproduce section 50 of the Waqfs Ordinance, 1962 which runs 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 any 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 provisions of section 35 shall apply. ”*

On going through the first part of section 50, we find that, an Administrator has been mandated to decide any property to be a waqf property or not. And in the *proviso* to that section, it has also been spelt out

that, if any person becomes aggrieved with any order passed by the Administrator be it *Mutawalli* or any persons aggrieved may file a petition to the District Judge under section 35(1) of the Waqfs Ordinance. In view of the said provision, the respondent no. 1 since became aggrieved on rejection of her application, then she filed Waqf Miscellaneous Case No. 136 of 2018 where the *Mutawalli*, Administrator of Waqfs as well as the government were made parties. But since against the order passed by the Administrator under section 50 of the Ordinance, the present appellants-petitioners did not prefer any petition under section 35(1) of the Ordinance before the District Judge so as a third parties they have no *locus standi* to prefer the instant appeal as respective laws does not provide any avenue for them to prefer the instant appeal even if they claim to be descendents of the *Wakif*. So in view of the above, the instant Miscellaneous Appeal filed by the appellants is untenable in law.

Further, the provision of section 50 of the Waqfs Ordinance, 1962 in an unambiguous term vested authority upon the Administrator of Waqfs to decide title and ownership of a property to be waqf property like an ordinary civil court with the help of evidence or other materials on record while releasing the same from the waqf estate but without doing so, the Administrator of Waqfs undersigned by the Assistant Administrator in a very cursory and slipshod manner in a single line refused to entertain the application of the respondent no. 1 holding that, two writ petitions had been pending before this court which is beyond the express provision of section 50 of the Ordinance and a classic case of non-application of judicial mind by the Administrator. Because, it has been admitted even by the learned

counsel for the appellants-petitioners that, those two writ petitions were pending challenging the propriety of the appointment of the *Mutawalli* of the said waqf estate having no nexus in determining title and ownership of the property the respondent no. 1 prayed for release.

By contrast, on going through the impugned judgment and order, we find that, after acquiring the property by the respondent no. 1 on the demise of her father, two consecutive records that is, P.S and B.S records were prepared in her name and even she mutated her name in the khatian back in the year 2006 and kept on paying rent (খাজনা) which manifestly clear that, by virtue of the sale deed dated 17.09.1945, the respondent no. 1 acquired indefeasible title and possession over the suit land. In that regard, the learned counsel for the appellants-petitioners contends that, long after 37 years of making the suit property as waqf property, she prayed for its release which cannot sustain. But given the said consecutive records followed by mutation and rent paid by the respondent no. 1, the said contention does not stand. However, all these points have correctly been addressed by the learned Additional District Judge while passing the impugned judgment and order.

Regard being had to the above facts and circumstances, we don't find any shred of illegality in the impugned judgment and order which is liable to be sustained.

Accordingly, the appeal is dismissed however without any order as to cost.

Since the appeal is dismissed, the connected rule being Civil Rule No. 24 (F) of 2022 is hereby discharged.



The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment along with the lower court records be transmitted to the court concerned forthwith.

**Md. Bashir Ullah, J.**

I agree.