

Present:

**Mr. Justice Sheikh Abdul Awal
And
Mr. Justice Md. Mansur Alam**

First Miscellaneous Appeal No. 247 of 2017

In the matter of:

An appeal under section 35(3) of the Waqf Ordinance, 1962 against the order
-and-

In the matter of:

Most. Samena Bewa and others
Plaintiffs-Appellants
Versus

Md. Asgar Ali being dead his heirs
Md. Sharifat Ali and others
Defendants-Respondents

No one appears
for the plaintiffs-appellants

Mr.Md. Sheikh Atiar Rahman, Advocate
for the defendants-respondents

Heard on: 04.03.2025

Judgment on: 05.03.2025

Md.Mansur Alam, J

The brief facts of this miscellaneous appeal are that this appeal being aggrieved and dissatisfied is preferred by the plaintiff appellant against the order dated 10.07.2017 passed by the Learned Senior District Judge, Dinajpur in Miscellaneous Case No.11 of 2008 dismissing the miscellaneous case and affirming rejection order dated 01.07.2008 passed by Bangladesh Waqf Administrator in E. C. No. 17339 under section 50 of the Waqf Ordinance, 1962.

The plaintiff appellant brought Miscellaneous Case No.11 of 2008 under section 35 and 50 of Waqf Ordinance, 1962 stating that

the suit land Asgor Ali falsely claiming that the property under C.S. khatian No.91 and S. A. khatian 132 are the property of posthumous and Waqf property and on that ground they got those property to have been listed in Waqf property list. On being aware this petitioner submitted the impugned petition to the Waqf Administrator praying for the release of the aforementioned property from the list of the Waqf property. The petitioner stated that the property under C. S. Khatian No. 91 originally belonged to Sohor Mondol who possessed the land as Chakran property and on his death his heirs inherited that property. Samiruddin Mondol son of Sohor Mondol maintained the suit property by lighting candles and incense sticks, arranging milad mahfil, offering shirni etc and Samiruddin's name is recorded in C. S. khatian as jimnader. The trees on the suit land are planted by these petitioner and they meet the necessary expenditure by cutting and setting those trees. The Waqf administrator without considering this aspect arbitrarily rejected the petition of these petitioners on 01.07.2008 which is liable to be set aside.

Defendant-respondent entered in the case filing written objection denying all material allegations made in the petition under section 35 and 50 of Waqf Ordinance, 1962 contending inter alia that the suit land under C. S. khatian No.91 was never the paternal land of Sohor Mondol, rather was a Chakran land and that was cited in C. S. khatian accordingly, Sohoruddin as Chakran used to lighting candles and incense sticks, Samiruddin when his

father Sohor Mondol reached at old age, became jimmader of the suit property and accordingly his name is recorded in khatian as 'jimmader' and thereafter on the death of Samiruddin his son Asgor Ali was made jimmader and maintained the suit property. This opposite party was not known as to the existence of Partition Suit No. 122/80 since they were not made party to that suit. No one could be the owner of the suit property as the same is a property of posthumous. Hence the present first miscellaneous appeal is liable to be dismissed.

The learned Senior District Judge upon considering the petition and written objection framed the following point for determination:-

“Whether the order passed by the Waqf Administrator on 01.07.08 in E. C. No. 17399 is proper or not ?”

In the petition of the First Miscellaneous Appeal the plaintiff appellant contended that the learned Senior District judge as well as Waqf Administrator committed error of law and fact in arriving at a wrong decision occasioning failure of justice, that they failed to consider the documents and other connected papers, that learned Senior District Judge and Waqf Administrator erroneously did not consider the decree and final decree of the Partition Suit No. 122/80 which is still in existence, that learned District judge did not peruse the Enquiry report where it has been disclosed that the heirs of Sohor Mondol have been possessing the suit land by an amicable settlement as per final decree of the alleged partition suit.

The land in question is not Waqf property. So the impugned judgement and order is liable to be set aside.

No one appears for the plaintiffs-appellants at the time of hearing although this matter appeared in the list for hearing on several dates. But in view of the fact that the first miscellaneous appeal arising out of an old interlocutory petty matter, we are inclined to taken up this appeal for disposal as per materials on record.

On the other hand Mr. Shaikh Atiar Rahman the learned Advocate for the respondents argued that the suit land under C. S. khatian No. 91 is Chakran property and the same is recorded by the name of Sohor Mondol. During Bangladesh Survey the suit property is recorded as posthumous property.

He further argued that the suit property is recorded as Waqf property in 1992 and Asgor Ali is appointed as Motwali for the same. The suit property was never the personal property of Sohor Mondol. So the impugned order is just and proper and that is not liable to be set aside.

On meticulous and close perusal of the impugned order and materials on record it appears to be admitted that the suit land under C. S. khatian No.91 corresponding to Plot No.246 measuring 6.57 acre and Plot Nos. $\frac{252}{401}$ measuring 4.45 acre in total 11.02 acre of land was recorded as Chakran property in the name of Sohor Mondol. It also appears from the record of right that Sohor

Mondol as Chakran used to lighting candles and incense sticks. So learned Senior District Judge was quite right to hold the view that suit property is a Chakran property. A Chakran property never be treated as personal property. The opposite party on the basis of word of 'Jimmader' claimed that the suit property is owned by the Sohor Mondol thereafter by the Samiruddin. But on perusal of the alleged khatian it discloses that he was Jimmader in favour of the Muslim community just to maintain the posthumous.

We find no terms like rayot or under tenant in the alleged khatian that could be considered as the term of owner. So learned Senior District Judge is quite right to observe that there is no opportunity to get the property by way of inheritance on the part of anybody. As it is proved that the suit property is posthumous property, so the same would be maintained under the supervision of Waqf Estate. The plaintiff appellants have been failed to prove that they inherited the suit property from their predecessor Sohor Mondol and thereafter from Samiruddin as Sohor Mondol and Samiruddin was not the owner of the suit property.

From the forgoing discussion it is well proved that the suit property is property of posthumous property and that is in no way a personal property of Sohor Mondol or Samiruddin. The suit property is now well managed and maintained by Waqf Estate. A "waqf" property, once dedicated as such, cannot be released from its status as property; meaning it cannot be sold, gifted, or inherited as it is considered permanently dedicated to a religious or

charitable purpose under Islamic law, essentially belonging to Allah, and therefore cannot be alienated or transferred by anyone, including the original owner. So there is no opportunity to release the property from the list of Waqf property. Therefore, we are constrained to hold that the impugned order of the learned trial Court does not deserve to be interfered.

In view of our discussion made in above by now it is clear that the instant First Miscellaneous Appeal must failed.

In the result, the Miscellaneous Appeal No.247 of 2017 is dismissed without any order as to costs.

The impugned order dated 10.07.17 passed by the learned Senior District Judge, Dinajpur in Miscellaneous Case No.11 of 2008 (waqf) dismissing the prayer for releasing the property from Waqf property list is hereby upheld.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.

Sheikh Abdul Awal, J

I agree