

IN THE SUPREME COURT OF BANGLADESH  
APPELLATE DIVISION

**PRESENT:**

*Mr. Justice Md. Nuruzzaman*

*Mr. Justice Obaidul Hassan*

*Mr. Justice Borhanuddin*

*Mr. Justice M. Enayetur Rahim*

*Ms. Justice Krishna Debnath*

**CIVIL APPEAL NO.30 OF 2006**

(From the order dated the 13<sup>th</sup> June, 2004 passed by a Division Bench of the High Court Division in Writ Petition No.2716 of 2004 against the order dated 17.04.2004)

Ahsan Shorfun Nur : . . . Appellant

-Versus-

The Administrator of Waqfs and : . . . Respondents  
others

For the Appellant : Mr. Abdul Wadud Bhuiya, Senior  
Advocate instructed by Mr. Md. Zahirul  
Islam, Advocate-on-Record

For the Respondents : Not represented

**Date of Hearing and Judgment** : **The 19<sup>th</sup> day of May, 2022**

**J U D G M E N T**

**M. Enayetur Rahim, J:** This appeal, by leave, is directed against the judgment and order dated 13.06.2004 passed by the High Court Division in Writ Petition No.2716 of 2004 rejected the writ petition summarily.

The facts giving rise to this appeal, in short, that the appellant, as writ petitioner, filed before the High Court Division impugning the order of the Administrator of Waqfs dated 17.04.2004 appointing respondent No.3 as the Joint Mutawalli of the Sakina Banu Waqf Estate, Laxmipur (E.C. No.1441) along with him.

The case of the appellant as made out in the writ petition is that he being the eldest son of the past Mutwalli was appointed Mutwalli of Sakina Banu Waqf Estate and while he was acting as Mutawalli of the aforementioned Waqf Estate the Administrator of Waqfs on the representation of the Respondent No.3 by an order dated 17.04.2004 appointed him Joint Mutwalli of the said Waqf Estate in disregard of the wish of the Waqif as reflected in the waqf deed.

A Division Bench of the High Court Division upon the said writ petition observing the writ-petitioner is the son of the past Mutwalli through his first wife and the respondent no.3 is the son of past Mutwalli through his second wife and that being the position no illegality was committed by the Administrator of Waqfs in appointing 2 sons of the past Mutwalli as Mutwalli of the Waqf Estate or in other words 2 Mutwallis in place of one Mutwalli and thereupon rejected the writ petitioner summarily by a judgment and order dated 13.06.2004.

Mr. Abdul Wadud Bhuiyan, learned Senior Advocate, appearing for the appellant submits that the High Court Division did not consider that the waqf deed does not provide for joint Mutwalliship and it has been specifically stipulated in the waqf deed that the eldest son of the past Mutwalli would succeed to the office of Mutwalli and the order of the Administrator of Waqfs being contrary to the terms relating to the appointment to the office of Mutwalli as contained in the Waqf deed and thus the order of the High Court Division refusing to interfere with the order of the Administrator appointing joint Mutwalli is not sustainable in law.

Mr. Bhuiyan further submits that Waqfs Ordinance empowers the Administrator of Waqfs to remove Mutwalli on the ground laid down in section 32(1) of the Waqfs Ordinance and to appoint someone else in place of the removed Mutwalli yet does not empower the Administrator of Waqfs to appoint some one as joint Mutwalli with the appellant and hence, the High Court Division committed an error of law in not setting aside the order dated 17.04.2004 of the Administrator of

Waqfs appointing respondent No.3 as joint Mutwalli while the appellant is already a Mutwalli of the said Waqf Estate.

No one appears for the respondents.

Heard the learned Advocate for the appellant, perused the impugned order and other materials as placed before us.

The moot question in this appeal is that whether-

- i) in a proceeding under section 32 of the Waqf Ordinance i.e. the proceeding of removal of existing Mutwalli the Administrator of Waqfs has got any authority to appoint Joint Mutawalli, and
- ii) Mutawalli can be appointed beyond the terms of the deed of Waqfs.

We have meticulously examined the provision of section 32 of the Waqfs Ordinance along with other provisions as contemplated in said Ordinance as well as the deed of Waqf.

We have no hesitation to hold that the Administrator of Waqf has got no jurisdiction to appoint a Mutawalli in a proceeding under section 32 of the Waqfs Ordinance, in particular appointing Joint Mutawalli along with the existing Mutawalli beyond the terms of deed of Waqf. Section 32(4), 43 and 44 of the Waqfs Ordinance has empowered the Administrator of Waqfs to appoint Mutwalli in certain cases mentioned in the said sections. The appointment of Joint Mutawalli as in the present case does not fall within the ambit of the above provisions of law. Having considered the relevant provision of law coupled with the facts and circumstances of the present case we are of the opinion that the Administrator of Waqf has exceeded his jurisdiction in passing the impugned order and the High Court Division acted illegally in not interfering with the same and thus, committed serious error which is liable to be interfered.

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

The order dated 13.06.2004 passed by the High Court Division in Writ Petition No.2716 of 2004 and the order dated 17.04.2004 issued under the signature of Respondent No.2 on behalf of Respondent No.1 containing in Memo No. O: Pra/Shu: Sha-1/197-99 dated 29.04.2004 arising out of E C No.1441 are hereby set aside.

J.

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