

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr Justice Abdur Rahman

Civil Revision No. 252 of 2022

In the matter of:

Soyedur Rahman Shaodagor Waqf Estate
and another

... Plaintiffs-Appellants

Petitioners

-Versus-

Mosammot Jesmin Akter and others

... Defendants-Respondents

Opposite parties

Mr Maqbul Ahmed, Senior Advocate, with

Mr Saiful Kader Chowdhury, Advocate

... *For the Petitioners*

Mr Liton Ranjan Das, Advocate

... *For the opposite parties*

Date of Hearing: 07.07.2026, 15.07.2026 and 20.07.2026
A.D.

Date of Judgment: 26.07.2026 A.D.,

Sunday, 11 Shrabon, 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This revisional application, at the instance of the petitioners, has been filed under section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

"Let a Rule be issued calling upon the opposite parties to show cause as to why the judgment and decree dated 28.10.2021, passed by the learned Additional District Judge, 5th Court, Chattogram, in Other Appeal No. 85 of 2018, affirming those dated 17.09.2017, passed by the Senior Assistant Judge, First Court, Chattogram, in Other Suit No. 236 of 2009, should not be set aside and/or such other or further order or orders should not be passed as to this Court may seem fit and proper."

Concomitantly, this Court, by way of an ad-interim order, directed both parties to maintain the ***status quo*** with respect to possession of the suit land till hearing of the Rule.

The **material facts**, shorn of unnecessary details, are that the petitioners, as plaintiffs, instituted the instant suit for seeking a declaration of title in respect of the suit land. The plaintiffs asserted, *inter alia*, that one Begum Jan was the original owner of 92 decimals of land belonging to R.S. Khatian 682, of which Plot 42 was correctly prepared and published in her name. She transferred her land, R.S. Plot 42, to Soyedur Rahman Sawdagar vide sale deed 1070 dated 08.04.1931. Thereafter, Soyedur Rahman Sawdagar created a Waqf Estate in the name & style of "Soyedur Rahman Shawdagar Waqf Estate" with the scheduled land, along with some undisputed land, on 01.08.1935, and enlisted it with the Bangladesh Waqf Administration, obtaining EC number 5575. Soyedur Rahman Sawdagar became the first Motwalli of "Soyedur Rahman Shawdagar Waqf Estate. After his death, his only son, Nurul Elahi, alias Nurul Islam, became the Motwalli of the Soyedur Rahman Shawdagar Waqf Estate. After his death, Plaintiff 2 became the Motwalli of Soyedur Rahman Shaodagar Waqf Estate.

The plaintiffs further averred that the entire land of 92 decimals of R.S. Plot 42 was owned by Soyedur Rahman

Shaodagor Waqf Estate; R.S. and P.S. khatian had been recorded accordingly in the name of the then Mutwalli, Nurul Elahi. But during the B.S. operation, the record of a portion of land was prepared in the name of the predecessor of defendants 2-17. On 01.05.2009, one Mohammed Abdul Awal claimed the schedule property by virtue of a decree passed in Other Suit 16 of 2005 and Execution Case 07 of 2008, of which came into the knowledge of the plaintiff 2, and on 12.05.2009, he learnt, for the first time in entirety, about the wrong insertion of B.S. Khatian 120. Consequently, according to the plaintiffs, a cloud was cast over the title of the Waqf Estate, compelling them to institute the present suit.

The opposite party 1, as defendant, contested the suit by filing a written statement denying the material allegations made in the plaint. She contended, *inter alia*, that the suit is not maintainable, barred by law, there is no cause of action, the plaintiffs have no title over the case property, and the plaintiffs have no *prima facie* arguable case in their favour; as a result, the suit itself is liable to be dismissed. Furthermore, the defendant 1 stated that Abdul Wadud Shaodagor was the

original owner of B.S Plot no 120 of B.S. Khatian 32, which corresponds to R.S. Plot 41 under R.S. Khatian 680. Abdul Wadud Shaodagor died, leaving one wife, Mallika Khatun, and 3 sons, namely Mohammed Abdul Azim, Mohammed Abdul Hamid, and Mohammed Abdul Doiyan. Mohammed Abdul Hamid and Mohammed Abdul Doiyan died issueless. So, after Mallika Khatun's death, Mohammed Abdul Azim became the owner of the entire property of Abdul Wadud Shaodagor. Thereafter, on 16/11/2000, Mohammed Abdul Azim made an agreement for sale with defendant 1. But as he did not deliver his property to defendant 1 within the stipulated time, defendant filed a suit for Specific Performance of Contract being numbered as Other Suit 16 of 2005. On 28/07/2005, the suit was decreed vide a solenama. Then, to execute the decree, the defendant 1 also filed execution case 07 of 2008. On 01/12/2008, defendant 1 got the suit land vide registered sale deed 18408 through the learned Court. Accordingly, she prayed for dismissal of the suit.

Upon framing the necessary issues and after recording oral and documentary evidence adduced by both parties, the

learned Senior Assistant Judge, 1st Court, Chattogram, by judgment and decree dated 17.09.2017, dismissed the suit mainly on the ground of maintainability.

Being aggrieved thereby, the plaintiffs preferred Other Appeal 85 of 2018 before the learned District Judge, Chattogram, which was subsequently transferred to the Court of the learned Additional District Judge, 5th Court, Chattogram for hearing and disposal. Upon hearing the parties, the learned Additional District Judge, by its judgment and decree dated 28.10.2021 (decree drawn up thereunder and signed on 04.11.2021), disallowed the appeal, affirmed the judgment and decree passed by the trial Court, and also confirmed the dismissal of the suit.

Being dissatisfied with the concurrent judgments and decrees of the Subordinate Courts, the plaintiffs have preferred the present revisional application.

Mr Saiful Kader Chowdhury, learned Advocate, appearing on behalf of the petitioners, submitted that both the Subordinate Courts committed a concurrent illegality and

serious error of law in travelling beyond the pleadings and deciding the appeal on an issue which was neither pleaded by the defendants nor an issue framed by the trial Court, and thereby caused miscarriage of justice.

Learned Advocate further submitted that both the Subordinate Courts, in passing the impugned judgments and decrees, failed to appreciate the facts of the case that the instant petitioners proved their case both orally and documentarily, which caused error in the decision, resulting in an error in the decision occasioning failure of justice.

He further submitted that both the Subordinate Courts, in passing the impugned judgments and decrees, failed to understand the spirit of Section 50 of the Waqfs Ordinance, 1962, and passed the erroneous judgments, which caused an error in the decision, resulting in an error in the decision occasioning failure of justice.

Learned Advocate also submitted that both the Subordinate Courts, in passing the impugned judgment and decree, failed to understand the prayer of the plaintiffs, as in this very suit nobody is challenging the insertion of schedule

property as waqf property, and the plaintiffs filed the suit challenging wrong insertion of B.S. Khatiyani by not recording the property in the name of Syedur Rahman Sawdagar Waqf Estate, whereas both the learned Subordinate Courts take the suit in some other direction which causes error in the decision resulting in an error in the decision occasioning failure of justice.

Mr Chowdhury finally posited that the P.S. record of the suit property was rightly published in the name of Mutwalli and the plaintiffs' only case is that the B.S. record wrongly prepared and published in respect of some portion of land of the P.S. record, which was not connected with the decision of the Waqf Administration, and thus the matter did not fall within the purview of the provisions of Section 50 of the Waqfs Ordinance, 1962, rather the Mutwalli has ample power to file the suit as per the provisions of Sections 6A(4) and 83 of the said Ordinance, and accordingly, the Rule is liable to be made absolute.

Conversely, Mr Liton Ranjan Das, learned Advocate appearing on behalf of the opposite party 1, filed a counter

affidavit to controvert the statements made in the revisional application, and at the time of hearing, he supported the concurrent decisions of the learned Subordinate Courts.

Learned Advocate submitted that on 16.11.2000, one of the co-sharers of the suit properties, namely Mohammed Abdul Azim, made an agreement for sale with defendant 1. But as he did not deliver possession and execute a registered deed in respect of his property to defendant 1 within the stipulated time of the agreement, the defendant filed a suit for Specific Performance of Contract, being numbered as Other Suit 16 of 2005, and on 28.07.2005, the suit was decreed by dint of a Solenama. On 01.12.2008, defendant 1 got the suit land vide registered sale deed 18408 through the Court. Thereafter, the B.S. record of the suit property was rightly published in the name of the defendant 1.

Mr Das further submitted that both the Subordinate Courts rightly decided that, without invoking the jurisdiction prescribed under Section 50 of the Waqfs Ordinance, 1962, the instant suit was not maintainable, and thereby no errors of

law were occasioned to interfere with the said concurrent decisions of the learned Subordinate Courts.

Learned Advocate for the opposite party 1 further submitted that a concurrent finding of fact cannot be interfered with if no misreading or non-consideration of the evidence on record and misconstruction of documents has occurred. In the present suit, the petitioner could not specify which evidence was misread and not considered, and, as such, the Rule should be discharged with costs.

He further argued that the plaintiffs sought a declaration of title along with some other reliefs in respect of the properties described in 1(Ka) to 1 (Kha) schedule of the plaint, including B.S Plot No.85 and 120 corresponding to R.S Plot No. 42. The said claim is factually incorrect and contrary to the record. In fact, B.S. Plot No. 120 does not correspond to R.S. Plot No. 42; rather, it originated from and corresponds to R.S. Plot No. 41. On the other hand, R.S. Plot No. 42 corresponds only to B.S. Plot No. 85. Therefore, the plaintiffs' claim in respect of B.S. Plot No. 120 is based on an erroneous description of the property and is wholly misconceived.

Mr Das further submitted that the plaintiffs admittedly claimed title in respect of R.S. Plot No. 42 only, which corresponds exclusively to B.S. Plot No. 85. They neither claimed nor established any right, title or interest in respect of R.S. Plot No. 41, from which B.S. Plot No. 120 originated. Consequently, the inclusion of B.S. Plot No. 120 in the schedule of the plaint is legally unsustainable and renders the suit defective and not maintainable in its present form. Therefore, the learned Courts below committed no error in dismissing the suit, and the instant Rule is liable to be discharged.

Learned Advocate finally posited that applying the wrong forum to get remedies cannot be cured under the revisional jurisdiction of the Court, and for the overall conditions of the case, he referred to the decisions as contained in 39 DLR (1987) 451, 57 DLR (2005) 739, and 2017 BLD (HCD) 37 in respect of application of provisions of Section 50 of the Waqfs Ordinance, 1962.

I have perused the revisional application, counter affidavit, the judgments and decrees of both the Subordinate

Courts, the oral and documentary evidence available on record and have considered the submissions advanced by the learned Counsel for both parties.

It appears from the record that there is no controversy that Begum Jan was the original owner of 92 decimals of land belonging to R.S. Khatian 682, of which Plot 42 was correctly prepared and published in her name. She transferred the said land to Soyedur Rahman Sawdagar vide sale deed 1070 dated 08.04.1931, and Soyedur Rahman Sawdagar created a Waqf Estate in the name & style of "Soyedur Rahman Shawdagor Waqf Estate" with the scheduled land, along with some undisputed land, on 01.08.1935, and enlisted it with the Bangladesh Waqf Administration, obtaining EC number 5575, and moreover, the Mutwalliship is continuing as to the said Waqf Estate. Thus, the bone of contention is that the B.S. Khatian was wrongly recorded in part under the defendants' names.

On perusal of the judgment and decree passed by the learned trial Court, it is found that the issues were framed under 3 counts, i.e., (i) whether the suit is maintainable in its

present nature and character, (ii) whether the plaintiffs have any right, title and interest in the suit land, and (iii) whether the plaintiffs are entitled to get reliefs as prayed for. Thereafter, the plaintiffs adduced two witnesses and produced some documents which have been exhibited as Ext. Nos. '1 to 13', and the defendant, counter-wise, adduced two witnesses and produced some documents, which have been exhibited as Ext. Nos. 'Ka to Yan' to prove their respective case.

Thereafter, the learned trial Court, after concluding the trial, delivered its judgment on 17.09.2017, and it was observed that:

“ওয়াকফ অধ্যাদেশ, ১৯৬২ এর ৫০ ধারায় উল্লেখ আছে যে, “কোনো সম্পত্তি ওয়াকফ সম্পত্তি কিনা এরূপ যে কোনো প্রশ্নের সিদ্ধান্ত প্রশাসক দিবেন।”

অর্থাৎ ওয়াকফ সম্পত্তির স্বত্ত্বের ব্যাপারে কোনো প্রশ্ন উত্থাপিত হলে তার সিদ্ধান্ত প্রশাসক দিবেন। শুধু তাই নয় উক্ত ধারায় আরোও বলা আছে যে প্রশাসকের সিদ্ধান্তে সংশ্লিষ্ট হলে সেই আদেশের বিরুদ্ধে জেলা জজ আদালত নিকট আবেদন করতে হবে।

সুতরাং অত্র মোকদমাতে স্পষ্টতই ভাবে প্রতীয়মান হয় যে, আইনগত ভাবে মোকদমায় ত্রুটি বিদ্যমান রয়েছে এবং অত্র আকারে এই মোকদমা রক্ষণীয় নয়।”

Similarly, on sifting the judgment of the learned Appellate Court it is more particularly found that it was observed as under:

“ওয়াক্‌ফ্‌ এস্টেটের পক্ষ বাদী নিজেই মোকদমাটি আনয়ন করেন। ওয়াক্‌ফ্‌ অধ্যাদেশ ১৯৬২ এর ৫০ ধারা মতে কোন সম্পত্তি ওয়াক্‌ফ্‌কৃত কিনা বা ওয়াক্‌ফ্‌কৃত সম্পত্তি অন্য কোন পক্ষের দ্বারা ক্ষতিগ্রস্ত হচ্ছে কিনা এরূপ সিদ্ধান্ত ওয়াক্‌ফ্‌ প্রশাসক কর্তৃক প্রদত্ত হবে। ওয়াক্‌ফ্‌ প্রশাসকের কোন সিদ্ধান্তে কোন পক্ষ বা সংশ্লিষ্ট কোন পক্ষ সংশ্লিষ্ট বা ক্ষতিগ্রস্ত হলে সেই আদেশ বা সিদ্ধান্তের বিরুদ্ধে সংশ্লিষ্ট পক্ষ বিজ্ঞ জেলা জজ আদালতে প্রতিকারের দাবী রাখেন। এক্ষেত্রে বাদী নালিশী সম্পত্তির দায়িত্ব প্রাপ্ত কার্যকারক বা রক্ষনাবেক্ষনকারী হিসেবে স্বার্থভোগী হলেও তিনি স্বত্ববান নন অর্থাৎ নালিশী সম্পত্তির স্বত্ব-স্বার্থ তার উপর বর্তায় না। ফলে বর্তমান ও আকারে ও প্রকারে বাদীপক্ষ কর্তৃক কোন সকল প্রতিকারের দাবীতে মূল মোকদমাটি আনয়ন করেছেন, ইহা ত্রুটিপূর্ণ রক্ষণীয় নয় মর্মে অত্র আদালতের অভিমত।”

So, it is obvious that both the Subordinate Courts, without touching the matrix of facts, found concurrently that the suit was not maintainable under the provisions of Section 50 of the Waqfs Ordinance, 1962.

For reasons of necessity, I need to examine the provisions of Section 50 of the Waqfs Ordinance, 1962, which are reproduced as under:

"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 provisions of sub section (1) of section 35; and if such a petition is filed, the provisions of section 35 shall apply."

From a plain reading of the aforesaid provisions, it is manifest that when a question arises whether a particular property is a Waqf Property or not, then these provisions come into operation. For example, if Mr Ar Chowdhury made an oral gift in favour of his minor son in respect of 20 decimals of land, and the same had been recorded in the subsequent survey, but before the publication of the said record, Mr

Chowdhury created a Waqf Estate along with the said heba property and got EC number thereto. Then a question arose as to whether orally gifted property would be considered as Waqf property or not. This situation definitely comes within the purview of Section 50 of the Waqfs Ordinance, 1962, because the said provision created an implied bar to exercise the power under Section 9 of the Code of Civil Procedure, 1908.

However, the facts and circumstances of the case at hand unequivocally demonstrate that plaintiff No. 2, in his capacity as the duly appointed Mutwalli of the concerned Waqf Estate, instituted the instant suit seeking, inter alia, a declaration of title in favour of the aforesaid Waqf Estate over the suit property. The specific case of the plaintiffs is that the entire extent of 92 decimals of land comprised in R.S. Plot No. 42 exclusively belonged to Soyedur Rahman Shaodagor Waqf Estate, and that both the R.S. and P.S. Khatians were duly prepared and recorded in the name of the then Mutwalli, Nurul Elahi, reflecting the ownership and possession of the Waqf Estate. According to the plaintiffs, during the

subsequent B.S. settlement operation, a portion of the said land was erroneously recorded in the name of the predecessor-in-interest of defendant Nos. 2-17, thereby giving rise to the present dispute.

The plaintiffs have further alleged that one Mohammed Abdul Awal subsequently asserted title over the scheduled property on the strength of a decree passed in Other Suit No. 16 of 2005 and a consequential registered deed executed through the learned Court in execution of the said decree for specific performance of contract. Therefore, the foundation of the rival claim rests upon a judicial decree and the conveyance executed pursuant thereto, whereas the plaintiffs' grievance principally relates to an allegedly erroneous B.S. record of rights prepared during the survey and settlement operation.

In the backdrop of the above facts, it becomes manifestly evident that the alleged erroneous B.S. record of rights, which is merely the product of the survey and settlement operation, bears no legal or factual nexus with the title claimed by Mohammed Abdul Awal under the decree passed in Other Suit No. 16 of 2005 and the registered

conveyance executed through the learned Court in pursuance thereof. Likewise, the impugned survey record has no connection whatsoever with any decision, order, proceeding, or administrative action taken by the Bangladesh Waqf Administration concerning the management, ownership, or administration of the Waqf Estate. The source of title claimed by the contesting defendants is entirely independent of the survey entry, while the survey record itself neither emanates from nor is founded upon any adjudication made by the Bangladesh Waqf Administration. Consequently, the alleged wrong recording in the B.S. Khatian, the decree passed in the suit for specific performance together with the registered Court deed executed in consequence thereof, and any decision of the Bangladesh Waqf Administration constitute separate and distinct legal events having no interdependence or common origin. As such, no legal nexus can be established among them so as to justify treating them as components of a single or connected cause of action. Accordingly, the provisions of Section 50 of the Waqfs Ordinance, 1962, do not create any bar as to this particular suit.

However, the decision as referred to by the opposite party 1 as contained in 39 DLR (1987) 451, S S M Osman Ghani vs Bangladesh, where it is found that the Dhaka Cantonment Board leased the suit property for 99 years to Rouf Ahmed Bawany, who transferred it benami to Tamanna Khan in the name of his brother Jamil Ahmed Khan by a registered sale deed dated 16-1-1965. Tamanna Khan managed the property under a registered power of attorney, created a waqf on 3-3-1972 in Jamil Ahmed Khan's name, and appointed the plaintiff as the first mutwalli. The plaintiff sought enrollment of the waqf and mutation of his name but, despite being in possession through his men, the Board issued a notice on 25-7-1972 treating them as unauthorized occupants. The plaintiff then filed Title Suit No. 188 of 1972 for permanent injunction and subsequently discovered from the Board's affidavit that it had treated the property as abandoned, though it was never so.

In the context *ut supra*, their Lordships were pleased to hold that,

“Section 46A of the Bengal Waqf Act, 1934 clearly operated as an implied bar to the institution of suits and the Commissioner of Waqfs was the designated authority to decide whether a property was a waqf property or not. The Commissioner's decision "shall be final", "unless revoked or modified C by a competent Court". There was a clear implication that a litigant has to avail of the statutory remedy first before he can go to the Civil Court. Section 50 of the Waqfs Ordinance, 1962 proceeds differently. The Administrator of Waqfs shall decide all questions as to whether a particular property is waqf property or not. But his decision is not final any more. The aggrieved person has a remedy, not in any Civil Court, but in the Court of District Judge within whose jurisdiction the particular property is situated. The aggrieved person will file a petition to the District Judge, claiming a declaration of waqf character of the property. This petition is indistinguishable from a civil suit. ...(21)”

Upon following the aforesaid decision, this Division in the case of Takhlish Ali v. Petitioner No.1 Abdur Rahman Chowdhury, being dead, his heirs: Md. Imdadul Hoque Chowdhury and others, as contained in 37 BLD (HCD) 411, was pleased to hold that,

“It is settled in the case referred above that Section 50 of the Waqf Ordinance (sic) is an implied bar, and as such, under Section 9 of the Code of Civil Procedure, civil court cannot decide character of a property whether the property is waqf or not. It is immaterial whether Waqf deed is enrolled or not in the office of Waqf Administrator. ---(18)”

Learned Advocate for the opposite party 1 further referred to another decision as contained in 57 DLR (HCD) 738, in the case of Yusuf Chowdhury (Md) vs Administrator of Waqf and others, where the facts remained as, one Tofazzal Ali Choudhury created a waqf of 59.945 acres of land appertaining to Jote No. 8 of JL No. 5 by a registered deed of waqf dated 22-11-15 which he purchased from one Innat Ali. Then, he got said waqf enlisted in EC No. 2323 in the then

office of Waqf Administrator. Appellant Motahar Hossain Chowdhury, on 10-7-92, made an application for enlistment of 6.49 acres of land, including land of RS plot No. 460 of RS Khatian No. 449. After local investigation, the Inspector submitted a report dated 22-9-92. Said land was also recorded in SA and BS khatian as waqf. His application was based on the premise that he had no knowledge as to whether said land of said Jote 8 was made waqf. Thereafter, one Khurshid Alam on 10-2-97 made an application before the Waqf Administrator for a decision that said land of CS plot No. 609 of CS Khatian 202/198 was never made waqf. There was also an enquiry upon the application, and the Inspector submitted his report dated 28-2-97. Upon such report and the record, the Waqf Administrator gave his decision dated 12-3-97 that said land of CS plot No. 609 was not waqf.

Considering the aforementioned facts, their Lordships were pleased to hold that-

"Waqf Ordinance (1 of 1962) Sections 35 & 50:

In view of sections 35 and 50 of the Waqf Ordinance, any person claiming an interest in the waqf is entitled to make a petition before the District Judge if he is aggrieved by any order or decision of the Waqf Administrator. He is also entitled to present an appeal before this Division if he is aggrieved by a decision of the District Judge. Application made by a son of last Mutawali claiming interest in the waqf estate cannot be denied to prosecute the appeal....(18)."

From the foregoing three authoritative decisions, it unmistakably emerges that the principal and determinative issue in each case revolved around the identity and character of the disputed property, namely, whether the land in controversy formed part of the Waqf Estate or constituted private property belonging to the contesting parties. The ratio flowing from those decisions is that where the identity of the property itself is disputed, the Court must first ascertain the true source of title, the chain of ownership, and the corresponding revenue records before adjudicating upon the competing claims.

In the instant case, however, the factual matrix stands on a distinctly different footing. The materials on record unequivocally establish, and indeed it is not seriously disputed, that the entire extent of 92 decimals of land comprised in R.S. Plot No. 42 under R.S. Khatian No. 682 originally belonged to the Soyedur Rahman Shaodagor Waqf Estate. The documentary evidence further demonstrates that both the Revisional Survey (R.S.) and Pakistan Survey (P.S.) Khatians were duly prepared and recorded in the name of the then Mutwalli, Nurul Elahi, thereby affirming the ownership, possession, and representative status of the Waqf Estate over the entire suit land. The existence, validity, and operative effect of the registered Waqf deed dated 01.08.1935 have also remained admitted by the parties, leaving no room for controversy regarding the creation or legal existence of the Waqf.

The plaintiffs' specific case is that during the subsequent Bangladesh Survey (B.S.) settlement operation, an inadvertent and erroneous entry was made whereby a fractional portion of the Waqf land was wrongly recorded in the name of the

predecessor-in-interest of defendant Nos. 2-17. Conversely, the defendants themselves trace their title to an entirely different source, asserting ownership through Abdul Wadud Shaodagor in respect of R.S. Plot No. 41 under R.S. Khatian No. 680. The record further reveals that Abdul Wadud Shaodagor died leaving behind his widow, Mallika Khatun, and his three sons, namely Mohammed Abdul Azim, Mohammed Abdul Hamid, and Mohammed Abdul Doiyan, from whom the defendants allegedly derived their title and possession.

Accordingly, the rival claims of the parties do not emanate from a common source of title, nor do they relate to the same original estate. On the contrary, each side traces its title to separate and independent holdings recorded under different plots, different Khatians, and different proprietors. In such circumstances, there exists no genuine dispute regarding the origin or legal character of the Waqf Estate itself. Rather, the controversy has been narrowed down to the correctness and legal effect of the subsequent B.S. record-of-rights, whereby a limited portion of the admittedly vested Waqf property is alleged to have been mistakenly recorded in

favour of the defendants' predecessor-in-interest. Therefore, unlike the cases relied upon, where the very identity of the property as Waqf property constituted the central issue, the present litigation substantially concerns the legality and evidentiary value of an allegedly erroneous B.S. settlement entry affecting only a small portion of an otherwise undisputed Waqf Estate. The real controversy, therefore, is not whether the property belongs to the Waqf Estate, but whether the impugned B.S. record, to the extent it departs from the admitted Waqf title reflected in the earlier R.S. and P.S. records, is legally sustainable and capable of conferring or evidencing any valid title in favour of the defendants.

For reasons of necessity, I would like to examine the relevant provisions of Sections 6A, 51 and 83 of the Waqfs Ordinance, 1962, which are respectively reproduced as under:

“Record-of-Rights, separate khatian, etc.

6A. (1) Any immovable property belonging to any waqf estate shall be recorded in the record-of-rights in the name of the waqf, and shall be represented by the

designation of mutawalli, Receiver or Administrator, as the case may be.

(2) The personal name of any mutawalli, Receiver or Administrator shall not be stated in the record-of-rights.

(3) Notwithstanding anything contained in any other law for the time being in force, the Revenue Officer shall record the waqf estate in a separate khatian.

Explanation. - Revenue-officer as referred to in this sub-section means the Revenue-officer as defined in section 2(24) of the State Acquisition and Tenancy Act, 1950 (Act No. XXVIII of 1951).

(4) If any immovable property belonging to any waqf estate is not recorded in accordance with the provisions of this section, the Administrator shall take immediate steps for correction of the record-of-rights."

"Penalties:

61. (1) If a mutawalli fails-

(a) to apply for enrolment; or

(m) to protect title to the waqf property and look after its preservation and safety;

(n) to do any other act which he is lawfully required to do by or under this Ordinance; he shall, unless he satisfies the Court that there was reasonable cause for his failure, be punishable with a fine which may extend to twenty thousand taka and, in default, with simple imprisonment which may extend to six months:

--- "

“Administrator may institute suit or proceeding regarding a waqf:

83. If there is no mutawalli or the mutawalli refuses or neglects to act in the matter, within a reasonable time, the Administrator may, in his own name, institute a suit or proceeding in a Court against a stranger to the waqf or any other person-

- (a) for the establishment of right, title and interest in a waqf property, or
- (b) for confirmation of possession in a waqf property, or
- (c) for the recovery of any waqf property wrongfully possessed, alienated or leased, or
- (d) for having any waqf property discharged of an encumbrance or obligation wrongfully created, or
- (e) for the recovery of any money belonging to waqf, or
- (f) for any other relief in the interest of a waqf he may consider necessary."

From the aforesaid statutory provisions of the Waqf Ordinance, 1962, it is abundantly clear that the legislature has carefully delineated the respective powers and responsibilities of the Administrator and the Mutawalli in relation to the protection, preservation and management of waqf properties. Section 6A (4) expressly empowers the Administrator, where any immovable property belonging to a waqf estate has not been correctly recorded in the record-of-rights in accordance

with the provisions of the Ordinance, to take immediate and appropriate steps for correction of such record. This power is essentially supervisory and regulatory in nature, enabling the Administrator to ensure that the public record faithfully reflects the legal status of waqf property.

Furthermore, Section 83 confers upon the Administrator the authority to institute a suit or other legal proceeding concerning a waqf property only in exceptional circumstances. The language of the provision unmistakably demonstrates that such authority is not an unrestricted or concurrent power. Rather, it becomes exercisable only where there is no Mutawalli in existence, or where the existing Mutawalli, despite having the primary responsibility to safeguard the waqf estate, refuses or neglects, within a reasonable time, to take appropriate legal action. In such eventualities, the Administrator may, in his own name, institute a suit or proceeding against a stranger to the waqf or any other person for the establishment of the waqf's right, title and interest, for confirmation of possession, for recovery of possession of any waqf property wrongfully occupied, alienated or leased, or for

obtaining such other relief as may be necessary for the protection and advancement of the interests of the waqf.

Significantly, Section 61 of the Ordinance further reinforces the statutory obligation of the Mutawalli by prescribing penal consequences for his failure to protect the title of the waqf property or to ensure its proper preservation, maintenance and security. The incorporation of such penal provisions unmistakably signifies that the legislature intended the Mutawalli to be the principal custodian and first line of defense in protecting the proprietary interests of the waqf estate. The Administrator's intervention is therefore designed to be supplementary and not a substitute for the lawful functions of a duly appointed and functioning Mutawalli.

In the case at hand, it is an admitted position that the concerned waqf estate has a duly appointed Mutawalli who has neither been shown to have refused nor neglected to discharge his statutory duties. There is no allegation, much less any evidence, establishing the existence of the contingencies contemplated under Section 83 for the Administrator to assume the role of the Mutawalli in initiating

legal proceedings. Consequently, the statutory preconditions for the exercise of the Administrator's power under Section 83 are wholly absent. Therefore, in the presence of a competent and functioning Mutawalli, there was neither any legal necessity nor any statutory justification for the Administrator to institute a suit or independently take any decision in respect of the protection or assertion of the rights, title and interest of the instant waqf estate. The primary responsibility in this regard indisputably rests upon the Mutawalli, subject only to the supervisory powers vested in the Administrator under the Ordinance.

However, on analyzing the observations of the learned Subordinate Courts, it is manifest that both the learned Courts concurred on the point of law and they did not consider the factual matrix of the suit. Accordingly, this Court, being a supervising Court, is not bound by the concurrent findings on law.

However, a paramount question of law has to be resolved, as it is evident in earlier discussions that if anybody wants to challenge any decisions of the Administrator, he

might go to the District Judge having territorial jurisdiction, but if the Administrator of Waqf wants to file any suit in respect of the interest of the Waqf Estate, then where does he have to go? Section 83 empowers the Administrator to file suit or any proceeding, if there is no mutawalli or the mutawalli refuses or neglects to act in the matter, within a reasonable time, the Administrator may, in his own name, institute a suit or proceeding in a **Court** against a stranger to the waqf or any other person for the establishment of right, title and interest in a waqf property, etc. Thus, nowhere in the Waqfs Ordinance, 1962, is the definition of "Court" found. Similarly, the District Judge does not possess the power of original jurisdiction of declaration of title, etc., as per the Civil Courts Act, 1887 (Amendment 2025). Moreover, the provisions of Sections 79 and 80 of the said Ordinance mention 'Any Court'. So, the only option rests upon the Administrator or Mutwalli to file a civil suit before the competent Court having jurisdiction.

Nevertheless, the primary concern is that under Bangladesh law and the principles of Muslim law, a **Waqf**

Estate is a permanent religious and charitable endowment. Once a valid waqf has been created, the ownership is divested from the waqif (founder) and, in legal contemplation, vests in Almighty Allah. The Mutawalli is merely the manager or superintendent of the estate and has no beneficial ownership or proprietary interest in the waqf property. Accordingly, a valid waqf is, by its very nature, perpetual and irrevocable. The waqif cannot revoke the dedication or reclaim the property after the waqf has validly come into existence. The Waqfs Ordinance, 1962 defines a "waqf estate" as the totality of the immovable and movable properties comprised in the waqf. Section 6A further requires that every immovable property belonging to a waqf estate be recorded in the record-of-rights in the name of the waqf and in a separate khatian, represented only by the designation of the Mutawalli, Receiver, or Administrator, not by their personal names. The Waqf Estate **does not lose its legal title**. Such acts may affect possession or create disputes requiring adjudication, but they do not, by themselves, extinguish the title of the waqf. However, title may be defeated or lost only in exceptional circumstances recognized by law, such as (i) a judicial determination that the property never formed part of the waqf; (ii) proof that the

original dedication was void or invalid under Muslim law; (iii) acquisition by the Government under lawful authority, subject to applicable statutory provisions; or (iv) any other mode expressly recognized by law resulting in extinction of title. The Waqfs Ordinance itself contemplates disputes regarding whether a particular property is waqf property and vests the initial decision in the Administrator, subject to challenge before the District Judge. As a matter of legal principle, courts have traditionally afforded strong protection to waqf property because it is dedicated permanently for religious or charitable purposes. A mere trespasser or unauthorized occupier does not acquire title simply by entering into possession. Whether title can be lost through adverse possession depends upon the applicable limitation law, the precise facts, and the judicial precedents governing waqf property. In Bangladesh, there is **no provision in the Waqfs Ordinance, 1962** stating that a waqf estate automatically loses title by reason of non-possession or an incorrect record of rights.

Therefore, in the context of Bangladesh law, the safer legal proposition is that **a Waqf Estate retains its title unless it is divested by a valid process recognized by law or a**

competent court holds that the property is not waqf property. Neither erroneous record-of-rights nor unauthorized occupation, standing alone, extinguishes the title of a validly constituted waqf.

Consequently, I am constrained to hold that **the legal character of a valid waqf estate is one of perpetual and statutory inalienability. Consequently, Section 56 of the Waqf Ordinance, 1962 imposes a mandatory prohibition against any form of alienation of waqf property without the previous approval of the Administrator of Waqfs. Neither the Survey Settlement Authority nor any other statutory or administrative authority possesses jurisdiction to alter, divide, exclude, or otherwise affect the Record of Rights relating to waqf property in a manner amounting to alienation or severance without such approval. Any order, record, or transaction made in violation of this statutory mandate is a nullity in the eye of law and *void ab initio*.**

However, it is a settled principle of law that although the appellate Court is the final Court of facts, where it seeks to reverse findings of fact recorded by the trial Court, it must independently analyze the entire evidence on record and

assign cogent and convincing reasons for disagreeing with the findings and non-consideration of any question in or facts of the trial Court. Failure to consider material evidence or omission to deal with important admissions on record amounts to misreading and non-reading of evidence, as well as misleading the propositions of law, which constitutes an error of law warranting interference under section 115(1) of the Code of Civil Procedure, 1908.

In the present case, I find that both the learned Subordinate Courts failed to consider the material facts of the case, relying only upon misconceived views of law, and thus, without assigning legally sustainable explanations, passed the impugned judgments and decrees. The impugned judgment, therefore, suffers from illegality, which might be cured through a fresh trial of the suit for the ends of justice.

Accordingly, I find substance in the Rule as per the above observations and scheme of laws.

In the result, the Rule is made **absolute** without any order as to costs.

The judgment and decree dated 28.10.2021 (decree drawn up thereunder and signed on 04.11.2021) passed by the learned Additional District Judge, 5th Court, Chattogram, in Other Appeal 85 of 2018 disallowing appeal and affirming the judgment and decree dated 17.09.2017 (decree drawn up thereunder and signed on 25.09.2017) passed by the learned Senior Assistant Judge, 1st Court, Chattogram, in Other Class Suit No. 236 of 2009 dismissing the suit, are hereby set aside.

The instant case is sent back on remand for holding a fresh trial by the learned Senior Assistant Judge, 1st Court, Chattogram, and the learned trial Court keeping the earlier evidence as it is, thus giving both parties the opportunities to amend the pleadings, adduce further witnesses or produce documents, if they feel required, and also complete the trial expeditiously as early as possible.

The order of ***status quo*** granted earlier by this Court shall be continued till disposal of the suit in trial.

The office is directed to send down the Subordinate Courts Records (SCR) along with a copy of this judgment forthwith.

(Abdur Rahman, J)