

**District-Rangpur**

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

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 5070 of 2007.**

Md. Amir Ali,

---- Plaintiff-Respondent-Petitioner.

-Versus-

Md. Abdul Aziz and anohter.

---- Opposite Party-Appellant-Opposite Parties.

None appears.

---- For the Plaintiff-Respondent-Petitioner.

Mr. Asfaqur Rahaman, Advocate with

Mr. Sumit Kumar Sarker, Advocate

----For the Defendant-Appellants-Opposite Party No.1.

Heard On: 02.03.2026, 03.03.2026 and 05.03.2026.

And

**Judgment Delivered On: 09.03.2026.**

**Md. Toufiq Inam, J:**

This Rule was issued at the instance of the petitioner, calling upon the opposite parties to show cause as to why the judgment and order passed by the learned Additional District Judge, Second Court, Rangpur in Miscellaneous Appeal No. 54 of 2005, whereby the appellate Court reversed the order dated 28.12.2004 passed by the Deputy Administrator of Waqfs, Bangladesh in E.C. No. 12688 relating to Ahsanullah Waqf Estate, Rangpur, removing Abdul Aziz (opposite party No.1) from the office of Mutawalli and appointing the

present petitioner in his place, should not be set aside and the said order of the Deputy Administrator restored.

The case arises out of the management of the Ahsanullah Waqf Estate, Rangpur, comprising approximately 3.45 acres of land dedicated as waqf by Ahsan Ulla through Waqf Deed No.1125 dated 21.05.1936 (Waqf-E-Lillah). Under the terms of the deed, the waqif himself was to remain Mutawalli during his lifetime and, upon his death, his son Fazlu Sheikh would succeed to the office. Thereafter, the descendants of Fazlu Sheikh were to hold the office of Mutawalli in succession.

After the death of Ahsan Ullah, his son Fazlur Rahman Sheikh alias Fazlu Sheikh acted as Mutawalli until his death in 1990. He left behind three sons, namely Md. Amir Ali (the present petitioner), Md. Azizar Rahman and Md. Abdul Aziz (opposite party No.1). It appears that after the death of Fazlu Sheikh no formally recognised Mutawalli remained in office for a considerable period. During that time the B.S. Khatian came to be recorded in the names of the said heirs, and the petitioner along with his brother Azizar Rahman began enjoying portions of the waqf property under a mistaken belief that the property belonged to them personally. The record indicates that from 1990 until 2003 the waqf estate remained without effective supervision by a Mutawalli.

Subsequently, allegations of mismanagement of the waqf estate were brought to the notice of the Waqf Administration, including allegations that portions of the waqf property had been recorded in private names, unauthorized transfers had taken place and certain lands were being occupied without authority. Upon receipt of such complaints, the Deputy Administrator of Waqfs initiated an inquiry under section 32 of the Waqf Ordinance, 1962.

During the course of the inquiry, it was found that Abdul Aziz, the youngest son of Fazlu Sheikh, had been appointed Mutawalli during the vacancy but that the estate was not being properly administered and that certain irregularities had occurred in respect of the waqf property. On the basis of such findings, the Deputy Administrator by order dated 28.12.2004 removed Abdul Aziz from the office of Mutawalli and appointed the present petitioner in his place.

Being aggrieved, Abdul Aziz preferred Miscellaneous Appeal No.54 of 2005 before the learned Additional District Judge, Second Court, Rangpur. The appellate Court allowed the appeal and restored Abdul Aziz to the office of Mutawalli holding, inter alia, that the Deputy Administrator had exceeded his jurisdiction and that the allegations of mismanagement were not sufficiently established.

The present petitioner thereafter obtained the instant Rule challenging the legality and propriety of the appellate decision. Although none appeared to press the Rule on behalf of the petitioner despite repeated calls, this Court, considering the age of the matter and in the interest of justice, has proceeded to examine the case on the basis of the materials on record.

On behalf of the petitioner, it has been contended that the Deputy Administrator acted within the authority conferred under section 32 of the Waqf Ordinance, 1962, which empowers the Waqf Administration to supervise waqf properties and to remove a Mutawalli where the estate is being mismanaged or where the interests of the waqf are jeopardized. According to the petitioner, the inquiry disclosed irregularities in the management of the waqf estate, including unauthorized occupation and improper recording of waqf land, and therefore the order dated 28.12.2004 was passed in the lawful exercise of statutory power to safeguard the waqf property. It has further been argued that the petitioner, being the eldest son of the deceased Mutawalli Fazlu Sheikh, was entitled to succeed to the office in accordance with the terms of the waqf deed.

Conversely, Mr. Asfaqur Rahaman, learned Advocate appearing for the opposite party No.1 with Mr. Sumit Kumar Sarker, submits that Abdul Aziz had been appointed Mutawalli by letter dated 04.09.2003

and that such appointment could have been challenged only by way of appeal under section 43 of the Waqf Ordinance. Instead of availing that statutory remedy, the petitioner filed an application before the same authority within about six months, upon which the Deputy Administrator removed the existing Mutawalli and appointed the petitioner. According to the learned counsel, this action amounted to an exercise of review power which is not provided for under the Ordinance.

It has further been submitted that the petitioner had originally sought appointment as joint Mutawalli but the Deputy Administrator, misconstruing the auditor's report dated 12.06.2004, removed the existing Mutawalli and appointed the petitioner as sole Mutawalli without any proof of misconduct within the meaning of section 32(1) of the Ordinance. The appellate Court, therefore, rightly interfered with the said order.

The learned counsel for the opposite party also contends that the appellate Court correctly noticed that the petitioner himself had dealt with waqf property inconsistently with its character, including an alleged transfer of a portion of the property to a third party, which would constitute breach of trust under section 56 of the Ordinance and thereby disentitle him from claiming the office of Mutawalli.

Upon hearing the submissions and examining the materials on record, this Court finds that the appellate Court based its conclusion largely upon certain statements contained in an application submitted by the petitioner before the Waqf Administrator, from which it inferred unlawful occupation and construction on waqf land. Such statements, however, cannot by themselves constitute conclusive proof of misconduct unless the matter is determined upon proper inquiry in accordance with the provisions of the Waqf Ordinance.

Similarly, the observation regarding the alleged gift of 0.03 decimals of waqf property to Palli Doridro-Kallyan Sangstha was considered without examining the surrounding circumstances. The record suggests that the property was subsequently recovered and restored to the waqf estate. In the absence of a lawful determination by the competent authority establishing breach of trust, such allegations could not be treated as a permanent disqualification for holding the office of Mutawalli. The appellate Court therefore appears to have proceeded on presumptions regarding violation of section 56 of the Ordinance without any adjudication by the competent authority. Such a presumption is legally unsustainable.

It is also evident from the record that the alleged acts attributed to the petitioner occurred during a period when the waqf estate had remained without an effective Mutawalli for many years and the heirs were in

possession under a mistaken belief arising from the B.S. record prepared in their names. In such circumstances, irregular acts committed under misconception cannot automatically be equated with deliberate breach of trust unless the element of conscious misappropriation is clearly established.

Furthermore, the appellate Court diverted its attention to collateral issues relating to the personal conduct of the petitioner rather than examining whether the Deputy Administrator had exercised jurisdiction properly under section 32 of the Ordinance.

At the same time, it also appears from the record that the Deputy Administrator removed Abdul Aziz from the office of Mutawalli without recording any clear finding of misconduct within the meaning of section 32(1) of the Ordinance. Moreover, the Deputy Administrator observed that since Abdul Aziz was the youngest son of Fazlu Sheikh, his continuance as Mutawalli would be contrary to the condition of the waqf deed. Such reasoning is plainly erroneous, since the deed merely provides that the descendants of Fazlu Sheikh shall succeed to the office and does not prescribe that the youngest son is disqualified from holding the office.

Upon consideration of the materials on record, this Court finds that neither the order of the Deputy Administrator dated 28.12.2004 nor

the judgment of the learned Additional District Judge can be sustained in their present form.

It appears that Abdul Aziz was initially appointed Mutawalli by letter dated 04.09.2003 during a period when the waqf estate had remained without an effective Mutawalli for a considerable length of time following the death of Fazlu Sheikh in 1990. Within a few months of that appointment, the present petitioner approached the same authority seeking appointment as Mutawalli. Acting on that application and relying upon an inquiry report, the Deputy Administrator removed the existing Mutawalli and appointed the petitioner by the impugned order dated 28.12.2004.

The record, however, indicates that the petitioner had not pursued the statutory remedy of appeal as contemplated under section 43 of the Waqf Ordinance, 1962 against the order of appointment dated 04.09.2003. Instead, the matter was reconsidered by the same authority on the basis of the petitioner's subsequent application. The Ordinance does not confer any express power of review upon the Waqf Administrator in respect of such appointment. Consequently, the course adopted by the Deputy Administrator in virtually setting aside the earlier appointment and appointing another person in its place was not in strict conformity with the statutory scheme.

At the same time, the reasoning adopted by the learned Additional District Judge in restoring Abdul Aziz to the office of Mutawalli is also not entirely satisfactory. The appellate Court appears to have proceeded on the assumption that the alleged acts attributed to the petitioner, including construction on waqf land or the alleged transfer of a small portion of property, conclusively established misconduct and disqualification under the Waqf Ordinance. Those observations were based largely on statements made in certain applications and not upon the outcome of a formal inquiry conducted in accordance with law. Without a proper determination by the competent authority as contemplated under section 32 of the Ordinance, such matters could not be treated as finally established grounds of disqualification.

Moreover, the materials on record disclose that for a long period after the death of Fazlu Sheikh the waqf estate remained without effective supervision, the B.S. record was prepared in the names of the heirs, and portions of the property came to be used by them under a mistaken belief regarding their rights. In such circumstances, allegations relating to occupation, construction of homestead, transfer, or other dealings with waqf property require a thorough and independent inquiry before any definitive conclusion can be drawn regarding breach of trust or mismanagement.

The waqf deed itself provides that after the death of Fazlu Sheikh the office of Mutawalli shall devolve upon his descendants. The deed does not expressly prescribe that only the eldest son must hold the office. Thus, the mere fact that Abdul Aziz is the youngest son cannot by itself render his appointment invalid. At the same time, if it is found upon inquiry that any of the heirs has acted in breach of the conditions of the waqf or has dealt with waqf property in violation of law, such conduct may legitimately attract the supervisory jurisdiction of the Waqf Administration under section 32 of the Ordinance.

In view of the above circumstances, this Court is of the view that the dispute relating to the management of the Ahsanullah Waqf Estate has not yet been examined through a comprehensive inquiry addressing the relevant statutory considerations. The interests of the waqf require that the matter be reconsidered by the competent authority upon proper investigation.

**The Rule is disposed of.**

The judgment and order passed by the learned Additional District Judge, Second Court, Rangpur in Miscellaneous Appeal No. 54 of 2005 as well as the order dated 28.12.2004 passed by the Deputy Administrator of Waqfs, Bangladesh in E.C. No. 12688 are hereby set aside.

The matter is remanded to the Deputy Waqf Administrator concerned for holding a fresh inquiry under section 32 of the Waqf Ordinance, 1962. In conducting such inquiry, the Deputy Waqf Administrator shall examine, in particular, whether any of the three sons of late Fazlu Sheikh, namely Md. Amir Ali, Md. Azizar Rahman, and Md. Abdul Aziz, has incurred disqualification for holding the office of Mutawalli by reason of—

1. establishing homestead or commercial structures upon the waqf property without lawful authority;
2. selling, gifting, mortgaging, or otherwise transferring any portion of the waqf property contrary to the waqf deed or the provisions of law;
3. committing breach of trust, mismanagement, or any other violation contemplated under section 32 of the Waqf Ordinance, 1962.

The authority shall afford reasonable opportunity of hearing to all concerned parties and, upon consideration of the materials on record, determine as to which person is legally entitled to hold the office of Mutawalli in accordance with the terms of the waqf deed and the provisions of the Ordinance.

The determination regarding eligibility and any consequent appointment shall be completed within **four (4) months**, including the entire inquiry, from the date of receipt of a copy of this judgment.

There will be no order as to costs.

**(Justice Md. Toufiq Inam)**

Ashraf /ABO.