

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Present:

Mr. Justice Sheikh Abdul Awal

And

Mr. Justice Md. Mansur Alam

WRIT PETITION NO. 5240 of 2023.

In the matter of:

An application under Article 102 of the
Constitution of the People's Republic
of Bangladesh

And

IN THE MATTER of :

Abdul Baker

.....Petitioner

-VS-

The Government of Bangladesh
represented by the Secretary, Ministry of
Religious Affairs, Bangladesh Secretariat,
Dhaka and others.

.....Respondents

Mr.Md. Towfiqul Islam Khan Advocate

.....For the Petitioner.

Mr. Md. Bodiuzzaman Tapader, D.A.G. with
Ms. Salma Sultana (Soma), D.A.G. with
J.R.Khan Robin, A.A.G. with
Mr. A.B.M. Ibrahim Khali, A.A.G. and
Mr. Md. Manowarul Islam, A.A.G

....For the Govt. respondents

Heard on: 16.07.2025 & 29.07.2025 .

Judgment on:31.07.2025.

Md. Mansur Alam, J:

The petitioner Abdul Baker filed this writ petition
challenging the Memo No.16.02.0000.041.31.000.22/102 (1-4)
dated 09.11.2015 appointing respondent No.5 as a joint Mutawalli

of Haji Abdul Latif Waqf Estate (E C No.11338) (Annexure-A) in contravention of the Waqf deed without following existing laws and regulations. The petitioner contended in his writ petition that his father Abdul Matin was one of the joint Mutawalli of Haji Abdul Latif Waqf Estate. Abdul Matin's father Noor Islam hold the same position of joint Mutawalli of Abdul Latif Waqf Estate. According to the provision of clause 8 of the Waqf deed, either the blood related brother of the deceased Mutawalli can be appointed as Mutawalli, or if no such brother exists, then the son of the deceased Mutawalli is to be appointed as the next joint Mutawalli. On death of joint Mutawalli Abdul Matin, the respondent Waqf Administrator had appointed U N O Hatiya, Noakhali as a receiver to carry out the functions of the joint Mutawalli provisionally until a new Mutawalli could be appointed through Memo No.O: Pro dated 03.05.2016.

Thereafter, the respondents without following the guidelines described in the Waqf deed, appointed the respondent No.5 as a joint Mutawalli, even though respondent No.5 was not a blood related brother of late Abdul Matin. According to the version of the Waqf deed there is no provision in the deed for step brothers to take up the position of Mutawalli. Though Abdul Matin and the respondent No.5 Abdul Baten Bahar both are son of Nurul Islam but their mothers are different. Abdul Matin's mother was Ambia Khatun where Abdul Baten Bahar's mother was Nurjahan Begum. So Abdul Matin and Abdul Baten Bahar are not full brother; they

are step brother to each other. In such a situation petitioner Abdul Baker is entitled to become Mutawalli of the alleged Waqf estate, not Abdul Baten Bahar.

This petitioner filed so many applications on 02.12.2014, 23.04.2015, 11.08.2015 and 07.08.2017 to the Waqf Administration office to be appointed him as Mutawalli in accordance with provision of clause 8 of alleged Waqf deed but the respondent did not reply to any of the representation letters nor did they call the petitioner to any meetings or gave any chance of his personal hearing before appointing the respondent No.5 as the new joint Mutawalli. Hence the impugned order as passed in direct contravention of clause no 8 of the Waqf deed and section 29 of the Waqf ordinance, so the same is liable to be declared without lawful authority and is of no legal effect.

The learned Advocate for the petitioner argues that according to clause 8 of the waqf deed (Annexure-B) that either the blood related brother of the deceased mutawalli can be appointed as mutawalli and where such brother does not exist, then the son of the deceased mutawalli is to be appointed as the next mutawalli but in the impugned memo No.16.02.0000.041.31.000.22/102 (1-4) purporting to appoint step brother of late Abdul Matin as mutawalli is liable to be declared to have been passed without lawful authority and is of no legal effect. He further argues that the concern Union Parisadh, Hatiya issued a Warishan Sanad where it transpires that late mutowalli Abdul Matin was the son of late

Nurul Islam and late Ambia Khatun. The respondent No.5 Abdul Baten Bahar is the step brother of Abdul Matin. So after the death of mutawalli A. Matin, the mutowalliship would go to his son, the petitioner Abdul Baten. As such, the impugned order is liable to be declared to have been passed without lawful authority and is no legal effect.

The writ petitioner gave representation to the waqf Administrators on 02.12.2014, 23.04.2015, 11.08.2015 and 07.08.2017 to be appointed as mutowalli in accordance with clause 8 of the waqf deed as Abdul Matin had no any brother but the respondents did not reply to any of the representation letters or the petitioner was never called to any meetings or given any chance at a personal hearing before appointing the respondent No.5 as new joint mutowalli, hence the impugned order being non-transparent and arbitrary is liable to be declared to have been passed without lawful authority and is of no legal effect.

The learned Advocate for the petitioner contended that the respondent No.5 was appointed joint mutowalli of the alleged waqf Estate in contravening the clause 8 of the waqf deed and the provision of section 29 of the waqf ordinance and so the same is liable to be declared to have been passed without lawful authority and is of no legal effect.

Reversely on the part of the respondent Waqf Administrator and of respondent No. 5 Learned Deputy Attorney General submits that the Abdul Latif has three wives, eleven sons and five

daughters and pursuant to the succession certificate of the late Abdul Latif it appears that Nurul Islam @ Nur Islam is the son of late Abdul Latif and pursuant to the succession certificate of late Nurul Islam @ Nur Islam it appears that Abdul Baten Bahar, respondent No.5 is the son of said Nur Islam who was appointed as joint Mutawalli. The petitioner Abul Baker is the son of late Abdul Matin, who is the step brother of the said Abdul Baten Bahar. Learned Deputy Attorney General further contended that pursuant to the version of Waqf deed it is observed that clause 8 provides the method of appointing Mutawalli and the Waqf Administrator duly appointed respondent No.5 as Mutawalli in accordance with the provision of clause 8 of the Waqf deed.

We heard learned Advocate and learned Deputy Attorney General and having gone through the materials on record.

Also it is placed by the respondent that the tenure of the impugned committee is going to be expired on 12. 12. 2025. Also the respondent argues that the succession certificate filed by the petitioner is not authenticated by the competent court of civil jurisdiction. More over the present petition suffers from the non maintainability of the writ jurisdiction since section 43 of the Waqf Ordinance provides appeal against the impugned order before the District judge.

Let us now first ascertain whether the Waqf Administrator appointed respondent No.5 as Mutwalli of Abdul Latif Waqf Estate

in contravention of the averments of clause 8 of the Waqf deed.

Clause 8 of the alleged Waqf deed reads as follows:

“আমার অবর্তমানে কিম্বা স্বেচ্ছায় উক্ত পদ ত্যাগ করিলে আমার পুত্র মাহফুজল হক মোহাম্মদ হোসেন, মোসারেফল হক, নুরুল ইছলাম, আজিজল হক । প্রত্যেকে দুই দুই বৎসরের জন্য উপর্যপরি পালাক্রমে মতোয়াল্লী পদে প্রতিষ্ঠিত থাকিয়া বর্ণিত নিয়মাধন কার্য পরিচালনা করিবে। আমার কার্য্যান্তে প্রথমে মাহফুজল হক হইতে আরম্ভ হইয়া ক্রমান্বয়ে মতোয়াল্লীর কার্য চলিতে থাকিবে । বর্ণিত পুত্রগন পালাক্রমে মতোয়াল্লী পদ গ্রহন করিয়া সুচারুরূপে কার্য্য নির্বাহ করিতে থাকিবে । খোদায় না করন উহাদের মধ্যে কেউ মানব লীলা সম্বরণ করিলে তাহাদের প্রত্যেকের সহোদর ভ্রাতা দ্বারা ঐ স্থান পূরন হইবে । আমার পুত্র গনের বংশধর পরম্বরায় উপযুক্ত ব্যক্তিগন ধর্মিয় নিয়মে মোতায়াল্লীর স্থান অধিকার করিবে । তাহদের বংশের পুত্রসন্তান গন যতই নিম্নে হউক ঐ রূপভাবে মতোয়াল্লী পদ সমাপিত থাকিবে । আমার পুত্র গনের বংশ নিব্বংশ হইলে আমার কন্যাগনের বংশের পত্ন সন্তান গন যতই নিম্নে হউক ঐ রূপভাবে উপযুক্ত যোগ্য ব্যক্তিগনের প্রতি মতোয়াল্লী পদ অর্পিত হইবে।”

From the above guidelines of the alleged Waqf deed it appears that the legacy of the alleged Waqf Estate will vest upon a full brother i.e blood related brother after the death of a Mutawalli brother. This particular guideline provides no chance for the step brother to get the mutawalliship of another deceased brother. But this very provision such as the term of full brother is applicable only in the case of the sons of Abdul Latif, not in other circumstances. The clause 8 of the Waqf deed does not include anybody beyond the sons of Wakif Haji Abdul Latif. The father of the petitioner Abdul Matin was appointed Mutwalli for the Estate

of Haji Abdul Latif. Before Abdul Matin, his father Nurul Islam was appointed Mutwalli for the alleged Estate. It is admitted that respondent No.5 Abdul Baten Bahar is another son of late Nurul Islam. It transpires from the clause 8 of the alleged Waqf deed that if after the death of Nurul Islam, any of his full brothers alive then the legacy of Mutwalli would go to him according to the order as described in the Waqf deed. But as no brother exists on the death of Nurul Islam, so the same has gone to his elder son Abdul Matin as third generation. But after the death of Abdul Matin, since respondent No.5 Abdul Baten Bahar another son of Mutwalli Nurul Islam is alive as fourth generation, so according to the principles of succession, the Mutwalliship definitely will go to respondent No.5 Abdul Baten Bahar. We found from the averments of the Waqf deed that the entrustment of inheritance is limited among the full brothers namely Mahfujul Haq, Mohammed Hossain, Mosharefol Haq, Nurul Islam, and Azizol Haq only, so to say among the sons of Haji Nurul Islam only. So respondent No.2 Waqf Administrator has not made any wrong or violated any provision of the Waqf Ordinance or the directions of clause 8 of the alleged Waqf deed in appointing respondent No.5, Mutwalli of Haji Abdul Latif Waqf Estate. Therefore the decision of Honorable Appellate Division referred in 13 MLR 2008 at page 81 is not at all relevant in the situation of the present writ petition.

Learned Deputy Attorney General asserted that the instant writ petition is not maintainable in its present form since it is

barred by section 43 of the Waqf Ordinance. Section 43 of the Ordinance reads as follows:

“43 In the case of any Waqf of which there is no Mutwalli or where there appears to the Administrator to be an impediment to the appointment of Mutwalli in terms of the deed of Waqf or where the successor to the office of Mutwalli is a minor, a person of unsound mind or a person adjudged insolvent by a competent court of law, the Administrator may, for such period as he deems fit, appoint a person to act as Mutwalli with notice to all the persons interested in the Waqf. Any person aggrieved by such an appointment may, within three months from the date of the receipt of the notice, appeal to the District Judge; and the decision of the District Judge shall be final.”

The writ petition discloses that after the death of joint Mutwalli Abdul Matin, the respondent No.2, Waqf Administrator appointed U N O Hatya as receiver of the alleged Abdul Latif Waqf Estate. So it reveals the fact that there was no Mutwalli after the death of Abdul Matin and for a transitional period U N O Hatya was appointed as receiver in the interest of sound management and administration of the alleged Estate. So this situation invoked the provision of section 43 of the Waqf Ordinance. As the disputed matters falls within the purview of section 43 of the Ordinance, so the petitioner has efficacious remedy to prefer appeal to the District Judge within its jurisdiction.

In the light of discussion made here above, this Court is led to find that the Waqf Administrator did no wrong in appointing respondent No.5 Mutwalli of Hazi Abdul Latif Waqf Estate and the impugned Memo No. 16. 02.0000.041.31.000.22/102(1-4)dated 09.11.2015 is not liable to be interfered with. We, on thorough observation, find that the petitioner has the efficacious remedy by way of appeal and as such this writ petition is not maintainable. There is nothing in the writ petition to declare the impugned order of the Waqf Administrator to be illegal or without lawful authority.

In the Result, the Rule is discharged without any order as to costs.

In the facts and circumstances of the case the petitioners may avail the remedy of appeal against the impugned order in the Court of Learned District judge with an application for delay, if they so advised and if it is open to them.

The learned Court Concerned shall consider the plea for delay in filing the appeal if any, in accordance with law.

Let a copy of this judgment communicate at once.

Sheikh Abdul Awal, J

I agree