

Present:

Mr. Justice Md. Salim

FIRST MISCELLANEOUS APPEAL NO.258 OF 2008
(F.M.A.T. NO.341 of 2008)

Badiul Alam Dobash being dead, his heir:
1(a)-Wahedul Alam Dobash

..... *Defendant-Appellant.*

-VERSUS-

Jarina Khatun being dead, her heirs:
1(a) Lutfunnessa and others

.....*Plaintiff-Respondents.*

Mr. Mohammad Osaman with
Mr. Gazi Md. Giash Uddin, Advocates

..... *For the Appellant.*

Mr. Abdul Wadud Bhuiyan, Senior Advocate
with

Mr. Fahad Mahmood Khan, Advocates

..... *For the Respondents.*

Heard on 21.11.2024, 05.12.2024,
06.01.2025 and 21.01.2025.

Judgment on 21.01.2025.

This Miscellaneous Appeal is directed against the Judgment and order dated 05.06.2008 passed by the learned Additional District Judge, Dewlia Court, Chattogram in Miscellaneous Case No.02 of 2007, allowing the miscellaneous case and reversing the order dated 16.05.2005 passed by the Waqf Administrator in E.C. Petition No.11304

declaring that the suit land is not the land of Khan Bahadur Abdul Haque Estate or within E.C. No.11304.

Facts, in brief, for disposal of the appeal are that on 28.07.2003, the respondents as applicants filed an application under section 50 of the Waqfs Ordinance,1962 before the Administrator of Wakfs, Bangladesh, Wagf Bhaban, 37, Nawabktra, Neemtali, Dhaka-1000 for a declaration that 054 decimal lands of R.S. Khatian No.363, R.S. plot No.4250, District Chattogram are not the lands of Khan Bahadar Abdul Haque Dovash waqf estate stating in short that he and his other brothers and sisters enjoy and possesses the said lands by inheritance, it is necessary to declare that the lands of said suit plot are not the land of Khan Bahadar Abdul Haque Dovash Waqf Estate.

The defendant-appellant contested the said application as the opposite party by filing a written objection denying all the material averments made in the application and contended inter alia that late Khan Bahadur Abdul Hoque Dovash purchased 442 decimal lands through the registered kabala No. 479, executed on 01.11.1935 and registered on 20.12.1935 and thereafter he bequeathed the said 442 decimals land including the suit plot with rest of the land of

the schedule property through the registered kabala No. 937, executed on 28.2.1947 registered on 12.3.1947 and which was registered as Waqf Estate being E.C. 11304 of Bangladesh Waqf Estate. Those lands have been described in schedule No. 102 of the Waqf Deed, and the suit land is the khash land of Khan Bahadur Abdul Hoque Dovesch waqf Estate bearing E.C. No. 11304.

Subsequently, the Deputy Waqf Administrator-1, by the order dated 18.06.2005, rejected the application with a finding that long after more than 58 years of treating the suit property as waqf property, the respondent prayed for its release, which cannot be sustained because a civil court should decide it and that the suit property is the property of Waqf Estate.

Being aggrieved by the aforesaid order passed by the Deputy Waqf Administrator, the plaintiff respondents instituted Miscellaneous Case No.690 of 2005 under Section 35 of the Waqfs Ordinance,1962 before the District Judge, Chattogram narrating similar averments so made in the application before the Administrator of Waqfs and finally prayed for allowing the same. However, the Miscellaneous Case was transferred to the Additional District Judge, Dewlia

Court, Chattogram, for hearing and was renumbered as Miscellaneous Case No.02 of 2007.

It is worthwhile to mention here that, in the said Waqfs Miscellaneous Case, the Mutawalli as well as the Administrator of Waqfs and the government were made opposite parties, and the learned Additional District Judge, Dewlia Court, Chattogram in order to dispose of the said case, framed necessary issues. Eventually, the learned Additional District Judge, Dewlia Court, Chattogram, after considering the materials and evidence on record, allowed the Miscellaneous Case after setting aside the order dated 16.05.2005 passed by the Deputy Administrator-1 in E.C. Petition No.11304 and hereby released 54 decimals of land from the waqf estate namely, “Khan Bahadur Abdul Hoque Dovash Waqf Estate.”

At that stage, the Motwalli of the Waqf named “Khan Bahadur Abdul Hoque Dovash Waqf Estate” as appellant preferred this Miscellaneous Appeal before this court, which was admitted on 09.07.2008.

Mr. Mohammad Osaman, the learned advocate appearing on behalf of the appellant upon taking me through the impugned Judgment and order at the very outset,

submits that the learned Additional District Judge erred in law in not taking into consideration the vital facts that the property in question has been treated as waqf estate for more than 50 years and the same has been published as waqf property in the latest Khatian without raising any objection. He then submits that the plaintiff respondents hopelessly failed to file the petition before the District Judge within the stipulated time, and the same is clearly barred under Section 35(1) of the Waqf Ordinance, but the learned Additional District Judge has not considered this material point and as such he prays for allowing the appeal.

On the contrary, Mr. Abdul Wadud Bhuiyan, the learned senior advocate appearing on behalf of the respondents, opposes the contention so made by the learned advocate for the appellant and submits that the Additional District Judge, having considered all the material aspects of the case and reversing the findings of the Deputy Waqf Administrator-1 as well as discussing the evidence rightly passed the impugned Judgment. He then submits that the suit property was not treated as waqf estate property for a long time, and as per provision of section 35(1) of the Waqf Ordinance, the application is maintainable. The appellant failed to show any

related document as to how the property was included in the Khan Bahadur Abdul Hoque Dovash Waqf Estate. As such, the appeal is liable to be dismissed.

Be that as it may, I have considered the submissions so advanced by the learned advocate for both the parties, perused the memorandum of appeal and all the related documents appended herewith vs-a-vis the application filed by the respondents under Section 50 of the Waqfs Ordinance, 1962.

I have also meticulously reviewed the provision provided in Section 50 of the said Ordinance, 1962, and the submission made by the learned counsels for both parties.

To begin with, I would like to confine the discussion followed by observation, keeping myself within the ambit of the provision provided in Section 50 of the Waqfs Ordinance, 1962, to find whether the claim of the appellant-petitioner at this stage can be sustained. For ready reference, we thus feel it expedient to reproduce Section 50 of the Waqfs Ordinance, 1962, which runs as follows:

“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 on 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 provision of sub-section (1) of section 35; and if such a petition is filed, the provisions of section 35 shall apply.”

The first part of section 50 of the Ordinance manifests that an administrator has been mandated to decide whether any property is a waqf property or not. In the proviso to that section, it has also been spelled out that if any person becomes aggrieved with any order passed by the Administrator, be it Mutawalli or any persons aggrieved, may file a petition to the District Judge under section 35(1) of the Waqfs Ordinance. In view of the said provision, the respondent became aggrieved by a rejection of the application. Then he filed Miscellaneous Case No.02 of 2007 before the District Judge, Chattagram, in which the Mutawalli, Administrator of Waqfs, and the government were parties. Further, the provision of section 50 of the Waqfs Ordinance, 1962, in an unambiguous term, vested authority upon the Administrator of Waqfs to decide title and

ownership of a property to be waqf property like an ordinary civil court with the help of evidence or other materials on record while releasing the same from the waqf estate but without doing so, the Administrator of Waqfs undersigned by the Deputy Administrator in a very cursory refused to entertain the application of the respondent.

The records show that the 056 decimals of suit land under R.S. Khatian No.363 and R.S. plot No. 4250 are not included as waqf property. However, the learned Counsel for the appellant contends that, long after more than 50 years of treating the suit property as waqf property, the respondent prayed for its release, which cannot be sustained. However, considering the concerned records followed by the inspection report dated 22.11.2004 submitted by the Waqf Inspector, the report says that the disputed R.S. Plot No.4250 under R.S Khatian No. 363 is not included in the Khan Bahadur Abdul Haque Dovash Wakf State.

Further, it manifests that late Khan Bahadur Abdul Hoque Dovash purchased 442 decimal lands through the registered kabala No. 479, executed on 01.11.1935 and registered on 20.12.1935 and thereafter, he bequeathed the said 442 decimals land through the registered kabala No.

937, executed on 28.2.1947 registered on 12.3.1947. Which was registered as Waqf estate being E.C. 11304 of Bangladesh waqf estate; those lands are described in a total of 102 schedules of waqf deeds. I have anxiously scrutinized those schedules of the deeds, but I find that the disputed R.S Khatian No. 363 plot No.4250 has not at all been included with the schedules of the deeds, so the appellant's contention does not stand.

Considering the above facts and circumstances it appears that the learned Additional District Judge, while allowing the miscellaneous case, very appropriately says that-

"স্বীকৃত মতে প্রার্থীক পক্ষ সম্পাদনকৃত বিগত ১৮-০৭-১৯৩৫ ইং সনের ৪২৫ ও ১৮-২-১৯৪৭ ইং তারিখের ১৩৭ নং পৃথক ২টি ওয়াকফ নামা এবং প্রতিপক্ষের তথাকথিত ১২-০৩-১৯৪৭ ইং তারিখে ৯৩৭ নং পৃথক ওয়াক্ত নামার কথা উল্লেখ করিয়াছে ঐ ৩টি ওয়াক্ত নামার কোথাও নালিশী আর,এস, ৪২৫০ দাগটির উল্লেখ নাই। ঐ ক্ষেত্রে-দালিলিক ভাবে প্রমাণিত হয় ঐ, আর, এস, ৪২৫০ নং দাগটি ওয়াক্ত সম্পত্তির অন্তর্ভুক্ত নহে সেই ক্ষেত্রে ১ ও ২ নং বিবাদী কেবলমাত্র এই আর,এস, ৪২৫০নং দাগটি পি.এস. ও বি.এস, জরীপে ভুলএমে মোতাওয়ালী নামে ওয়াক্ত সম্পত্তি হিসাবে

রেকর্ড করার দ্বারা আইনের দৃষ্টিতে কোন এমেই উক্ত আর,এস, ৪২৫০ নং দাগেটি ওয়াক্ফ সম্পত্তির অন্ডভুক্ত বলা যায় না।

The learned Additional District Judge further says that-

“কিন্তু ওয়াক্ফ প্রশাসক তর্কিত আদেশে তথাকথিত ১২-০৩-১৯৪৭ইং ১১৩০৪ ওয়াক্ফ দলিলে অন্যান্য দাগের সহিত সম্পত্তির পরিমান সঠিক বলিয়া বিরোধীয় তথা নালিশী আর,এস, ১২৫০ দাগ অনুভুক্ত আছে মন্তব্য করিলে বস্তুত ৩নং প্রতিপক্ষ ওয়াক্ফ পরিদর্শকের প্রতিবেদন অনুসারে সাব-রেজিস্ট্রারিতে ঐ ধরনের কোন দলিলের অস্তিত্ব নাই বলিয়া প্রতিবেদন দাখিল করেন। ইহা ছাড়া ১/২নং প্রদত্ত আদেশের আদ্যপান্ত এবং এমন কি তাহার আলোচনা ও পরবেক্ষনে দেখা যায় তিনি নিদক্ষায় স্বীকার করিয়াছেন যে, ৩টি ওয়াক্ফ দলিল এবং ই,সি, নং- ৮৮১০ এবং ১১৩০৪ নং পৃথক ২টি ই,সির কোনটিতে নালিশী আর,এস, ৪২৫০ দাগ অন্তর্ভুক্ত নাই, তাহা হইলে ইহাকে ওয়াক্ফ সম্পত্তি বলিয়া আখ্যায়িত করা বে-আইনী।”

Further, considering the provision of Section 35(1) of the Waqf Ordinance, the respondent, by filing the application and miscellaneous case before the Wakf Administrator or the District Judge, did not commit any error in law. However, the learned Additional District Judge has correctly addressed all

these points while passing the impugned Judgment and order.

In view of the above facts and circumstances, I do not find any shred of illegality in the impugned Judgment and order which is liable to be sustained.

Resultantly, the appeal is dismissed with cost.

The Judgment and order dated 05.06.2008 passed by the learned Additional District Judge, Dewlia Court, Chattogram in Miscellaneous Case No.02 of 2007 is hereby affirmed.

Communicate this Judgment with lower court records at once.

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(Md. Salim, J).

Kabir/BO