

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

WRIT PETITION NO.4856 of 2011

With

WRIT PETITION NO.4486 of 2011

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

(1) Ahmed Zamir Faizul Islam Petitioner.

-Versus-

The Government of Bangladesh and others.

.....Respondents

(In W.P. No.4856 of 2011).

(2) Sagir Ahmed Petitioner.

-Versus-

The Government of Bangladesh and others.

.....Respondents

(In W.P. No.4486 of 2011).

Mr. Hassan M.S. Azim with

Mr. Ashfaqur Rahman, Advocates

..... For the petitioner.

(In W.P. No.4856 of 2011).

Mr. A.Q.M. Safiullah with

Mr. Ruhul Ameen, Advocates

.....For the Respondent No.7

(In W.P. No.4856 of 2011).

Mr. A.Q.M. Safiullah with

Mr. Ruhul Ameen, Advocates

..... For the petitioner.

(In W.P. No.4486/2011).

Mr. Hossain M.S. Azim with

Mr. Ashfaqur Rahman, Advocates

.....For the respondent No.6.

(In W.P. No.4486/2011).

Heard On: 23.06.2021, 08.09.2021 &

04.11.2021 And

Judgment On: 09.03.2022.

Present:

Mr. Justice K.M. Kamrul Kader

And

Mr. Justice Muhammad Mahub Ul Islam

K.M. Kamrul Kader, J:

These 2 (two) writ petitions have been taken up together for hearing and disposed of by a single judgment as these are involve common question of facts and law. Almost in common terms both the Rule *Nisi* were issued by this Court.

In Writ Petition No. 4856 of 2011, this Rule *Nisi* was issued on 18.08.2011, in the following terms:

“Let a Rule Nisi be issued calling upon the respondents No.2 & 3 to show cause as to why the order contained in memo No.O.PRO/CHA/DA/193, dated 10.05.2011 issued by the respondent No.2 (Annexure-C) shall not be declared to have been made illegal and without lawful authority and/or why such other or further order or orders as this Court may deem fit and proper, should not be passed.”

In Writ Petition No. 4486 of 2011, this Rule *Nisi* was issued on 17.10.2011, in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order dated 10.05.2011, passed by the respondent No.5 (Annexure-E) appointing respondent No.2 as the Official Mutwalli of Pathantoli Hakim Ali Jame Mosjid Waqf Estate, should not be declared to have been passed without lawful authority and of no legal effect and further to show cause as to why direction

should not be given to appoint the petitioner as the Mutwalli of Pathantoli Hakim Ali Jame Masjid Waqf Estate; and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Facts relevant for disposal of the Rule, in Writ Petition No. 4856 of 2011 are that Hakim Ali Jame Masjid is situated at Mogultoli area under the Double Muring Police Station, Chittagong, which was established vide a registered Waqf Deed being No. 173 dated 18.04.1945. It is stated that Liyaqat Ali, son of Abdul Hakim, Sultan Ahmed and Saiyad Ahmed, sons of Liyaqat Ali, and Moulana Zamiruddin, son of Roushan Ali dedicated their immovable property measuring an area of 346 decimals or 17 gandas 3 karas' of land in favour of the aforementioned mosque and appointed Nur Mohammad, son of Minnat Ali as the Mutwalli. Thereafter, one of the Waqifs Zamir Uddin's son Alhaj Nurul Islam was orally appointed as Mutwalli and meanwhile, Fatima Khatun, wife of Ahmed Kabir, one of the recorded tenants of the related R.S. 'khatian' vide registered Waqf Deed No.9858 dated 21.06.1980, dedicated an area of 4 'gandas' 3 'karas' 2 'kranties' in favour of the said mosque and appointed Alhaj Nurul Islam, son of Zamir Uddin as the ' Mutwalli' and in both the Waqf Deeds Alhaj Nurul Islam was working as

"Mutwalli" and during the Bangladesh Settlement, for the entire Waqf Estate, and 'khatian No. 578 was duly and finally published in the name of Alhaj Nurul Islam, as the Mutwalli of the aforesaid Hakim Ali Jame Masjid. It is further stated that during his 'Mutwalliship' for a period of 55 years, bundle of innovative acts, projects and programs of the said Waqf Estate had taken place; especially the mosque was developed to a mainly two-storied, partially three storied buildings from a corrugated iron house, and one four storied 'Madrasha' named 'Darul Hakim Islamic Academy' was built accommodating different wings; and Mutwalli Alhaj Nurul Islam dedicated his entire life for welfare, development, management and administration of the said Waqf Estate with devotion. By virtue of his relentless efforts, the Waqf Estate has now become a viable and financially solvent institution and Alhaj Nurul Islam has created some financial generating avenues in the said Waqf Estate, such as rental houses and shops. In the mean time, Alhaj Nurul Islam had undergone a bypass surgery and thereafter, he become sick and could not work with efficiency as before and so he took his son, the petitioner with him for better assistance and before his death, Alhaj Nurul Islam was bed-ridden for a month. At that time, he declared and appointed his son as his successor, next Mutwalli ' and he did it after consulting with the *musullis* of

the mosque and family members of the Waqifs and after the demise of Alhaj Nurul Islam on 06.05.2009, his son the present petitioner took the responsibility of the Mutwalliship of the said Waqf Estate with dedication and commitment and as per consent of the entire generation of 'Waqifs' and other family members of the late Alhaj Nurul Islam and *musullis* of the mosque, who rendered their heartfelt support to the petitioner for the enhancement and fulfilment of the remaining desires of the previous 'Mutwalli' Alhaj Nurul Islam and the petitioner has been doing his best. Meanwhile, the petitioner with his utter disappointment realized that the said Waqf Estate was not brought under enrolment of the Waqf Administrator and with all *bonafidness* for the fulfilment of this legal lacuna; he filed a petition before the Bangladesh Waqf Administrator, on 09.06.2009. In the meantime, some local people including the respondent No.7 with an ulterior motive and to grab income of the Waqf Estate, they started creating disturbance in the smooth management and functioning of the Estate and filed an antedated petition showing it as on 09.06.2009 for enrolment claiming himself as the 'Mutwalli' of the said Waqf Estate. Accordingly, the Misc. E.C. 24/2010 and 25/2010 respectively were opened in the office of the respondent No.2 and at this stage, the respondent No.2 called for reports from the respondent No.6,

Waqf Inspector, Chittagong (South) and the Deputy Commissioner, Chittagong, respondent No.4. It is further stated that the respondent No.7 Sagir Ahmed was not related to any of the Waqif's family and previously, he was not related to any activities of the Waqf Estate and his social position is not up to the mark to hold over the position of a Mutwalli of such an Waqf Estate, which is committed for the purpose of pious, religious, charitable and likewise endowments or grants. Unfortunately, a small fraction of people, who are not *musullis* of the mosque in the truest sense, started hobnobbing with the affairs of the Waqf Estate for attaining illegal personal gains and the respondent No.7 started creating hurdle in the smooth functioning of the Waqf Estate by the petitioner. The respondent No.4, Deputy Commissioner, Chittagong, appointed one Senior Assistant Commissioner, for holding required enquiry, who obtained a report through one of the Kanongo, L. A. Branch, Chittagong and finally submitted the report to the respondent No.4 on 22.06.2010 and the respondent No.4 in its consequence submitted a report to the respondent No.2, vide Memo No. 4-07/10-4161, dated 12.10.2010 stating that, the report of Senior Assistant Commissioner was objected by the petitioner and consequently that objection was heard by respondent No.5, Additional Deputy Commissioner (Revenue), Chittagong

and petitioner's objection was rejected by the respondent No.5. Accordingly, the respondent No.4, in harmony with the decision of the respondent No.5, accepted the report of the Senior Assistant Commissioner, submitted earlier on 22.06.2010 and sent it to the respondent No.2 and on the other hand; the respondent No.6 sent a report on 17.08.2009 to the respondent No.2 stating that he held an enquiry and in the light of the recommendation of the concerned Word Commissioner and Honorable Member of the Parliament, Chittagong-3, proposed the name of respondent No.7 to be appointed as the 'Mutwalli' of the said Waqf Estate as well as proposed to form a managing committee and respondent No.2 passed an order vide his letter dated 10.05.2011 and appointed respondent No.5 as the official 'Mutwalli' and declare the Waqf as Public Waqf and advised the respondent No.5 to form a Managing Committee. It is also stated that the petitioner approached the respondent No.2 to get the Waqf Estate enrolled and also to get him appointed as the 'Mutwalli' of the said Waqf Estate as he has been working as the 'Mutwalli' of the Waqf Estate after his father's death. He repeatedly approached to the respondent No.2 for hearing of the matter. Unfortunately, respondent No.2 failed to hold any hearing upon this matter for unknown reasons. It is also stated that the respondent no. 2, passed an order dated

10.05.2011 declaring the said Waqf Estate as Public Waqf Estate and also appointed respondent No.5 as the official 'Mutwalli' without showing any cogent reason. It is further stated that the respondent No.2 has appointed the respondent No.5 as the official 'Mutwalli' without assigning any reasons and without considering the application and documents filed by the petitioner. The respondent No.2 also advised the respondent No.5 for forming a Managing Committee including the petitioner and the respondent No. 7 without considering the waqf deed.

In Writ Petition 4486 of 2011, it is stated that one Abdul Hakim had decided to establish a Mosque over 346 decimals of land equivalent to 17 ½ Gondas of land. Accordingly, the mosque was constructed in the name of Hakim Ali Zame Mosque and other structures were also made in the said Land. After the death of Abdul Hakim Ali his heirs namely (1) Liakat Ali (2) Sultan Ahmmad (3) Syed Ahmed (4) Md. Jamiruddin (5) Eyakub Ali and (6) Nowab Ali executed registered Waqf Deed being No.973 dated 18.4.1945 in respect of the said 346 decimals of land containing C.S. Jarip Dag Nos. 661, 662 and 663, R.S. Dag No. 313, R.S. Khatian No.319 containing Nos. 1083, 1084 and 1085 under Police Station-Doublemooring, District-Chittagong and since then

his heirs, who were pious in religion with the consent of *Musullies* of the Mosque were appointed as 'Mutwalli' of the said Mosque. Although, the Waqf Deed was registered as Hakim Ali Jame Masjid Waqf Estate on 18.4.1945, but the same was not enrolled in the office of the Waqf Administrator. It is further stated that eventually the petitioner Sagir Ahmed grandson of Waqif late Hakim Ali filed an application for enrolment of the said land of Mosque as Waqf property and the same was numbered as Misc. E.C. No. 25/2009 in the Office of Administrator of Waqf. Thereafter, the petitioner Sagir Ahmed being the direct heirs of Waqif Hakim Ali filed an application on 9.12.2009 before the respondent No. 4, Waqf Administrator praying for appointment of Mutwalli of Pattantoli Hakim Ali Jame Masjid Waqf Estate. In the said application, almost all the *musullies* of the mosque gave consent in favour of the petitioner for appointment of Mutwalli of the said Waqf Estate. On the other hand, the respondent No. 6, Ahmed Faizul Islam also filed an application before the respondent No.4, Waqf Administrator praying for appointing him as Mutwalli of Hakim Ali Jame Masjid Waqf Estate. The respondent No. 4 Waqf Administrator on receipt of the applications from the said two persons namely the petitioner and the respondent No.6, requested to the Deputy Commissioner, Chittagong for

enquiry and also investigate about the above two applications in respect of appointment of Mutwalli of the said Jame Masjid. The respondent No.4 the Waqf Administrator also directed the concerned Waqf Inspector for local investigation and to take statement of the *musullis* of the mosque namely Hakim Ali Jame Masjid. The Deputy Commissioner, Chittagong, appointed one Senior Assistant Commissioner, for holding Local investigation, who obtained a report through one of the Kanongo. Accordingly, the Senior Assistant Commissioner and the Kanongo of the office of the Deputy Commissioner, Chittagong after investigation submitted their reports to the Deputy Commissioner stating that the musullies of the Hakim Ali Jame Masjid unanimously gave consent for appointment of the petitioner as the Mutwalli of the said Hakim Ali Jame Masjid Waqf Estate. Against the report submitted by the Senior Assistant Commissioner, Chittagong, the respondent No. 6, Ahmed Jamir Faizul Islam filed a written objection and on the basis of the objection the Additional Deputy Commissioner (Revenue), Chittagong after giving notice to both the parties and after hearing them upheld the report submitted by the Senior Assistant Commissioner, Chittagong and recommended for appointment of the petitioner as the Mutwalli of Hakim Ali Jame Masjid Waqf Estate. The above reports were duly

submitted to the respondent No.4, Waqf Administrator with specific recommendation as per verdict and consent of the *musullies* of the said Jame Masjid for appointment of the petitioner as the Mutwalli of Hakim Ali Jame Masjid Waqf Estate. But the respondent No.4, the Administrator of Waqf has not passed any order and the respondent No.5, Assistant Waqf Administrator, Chittagong South beyond his power without taking into consideration of the above reports most illegally passed the impugned order on 10.5.2011 appointing the Additional Deputy Commissioner (Revenue), Chittagong as the official mutwalli of Pathantoli Hakim Ali Jame Masjid Waqf Estate which is impugned herewith.

Being aggrieved by and dissatisfied with the impugned order dated 10.05.2011 passed by the Administrator of Waqf, Bangladesh, both the petitioners filed these writ petitions before this Court and obtained the present Rules.

Mr. Hassan M.S. Azim, learned Advocate appeared on behalf of the petitioner, in Writ petition No.4856 of 2011 and submits that the impugned order (Annexure-C) suffers from ambiguity and all relevant legal procedures were not complied with, and ambiguity was created from different dimensions and by different types of actions and such impugned order is *ex-facie* illegal and is of no legal effect. He further submits

that, the impugned order (Annexure-C) is *prima facie* found to have been passed without giving any opportunity of being heard to the petitioner and the respondent No.2 failed to consider this aspect that the petitioner has been working by way of legging in the shoes of his father that is earlier admitted *de facto* 'Mutwalli'. So, considering the report of the respondent No.6, the impugned order passed by the respondent No.2 is *ex-facie*, illegal and against natural justice, equity and fair play. He also submits that, the impugned order is also with a direction to appoint respondent No.5 as the official 'Mutwalli' and also to form a committee to look after the management of the said Waqf Estate and in this impugned order the respondent No.2 has failed to mention the period of tenure of official 'Mutwalli' and the proposed committee and this order is as such, illegal, without any lawful authority and is of no legal effect. Learned Advocate by filing a supplementary affidavit submits that after issuance of the Rule in the instant writ petition, the Hakim Ali Jame Masjid Management Committee vide General Meeting dated 10.11.2014 decided to open a bank account in the Islami Bank Limited in the name of the Hakim Ali Jame Mashjid. In the said General Meeting dated 10.11.2014, it was also decided that one will be appointed to collect and deposit rent in the said bank account from the stores

situated at the Hakim Ali Jame Mashjid Waqf Estate area. The petitioner and the respondent No.7 were jointly given power to manage the bank account and joint signatures of both the petitioner and the respondent No.7 would be needed to withdraw any amount from the said account. He further argued that the respondent No.7 with the help of some local goons started to create hurdle in the smooth functioning of the Waqf Estate. The respondent No.7 for attaining illegal personal gains started forcefully collection of the rent from different shops and instead of depositing the rent in the said bank account, the respondent No.7 embezzled the said money for the last 03(three) years amounting to Taka approximately 37,93,000/- (Thirty seven lac and ninety three thousand) only, but no steps has been taken by the Waqf Administrator till date with regard to the said embezzlement and as such, the impugned order (Annexure-C) is liable to be declared as illegal and without lawful authority and he prays for making the Rule absolute.

Mr. A.Q.M. Safiullah, learned Advocate appeared on behalf of the respondent No.7 in Writ petition No.4856 of 2011 opposing the Rule by submitting an affidavit-in-opposition denying all averments made in the writ petition and controverted the submission of the learned Advocate for

the petitioner and submits that the petitioner in his petition stated the words "in the meanwhile the petitioner with his utter disappointment realized that the said Waqf Estate was not brought under enrolment of the Waqf Administrator and ending with the words and filed an antedated petition are wholly untrue and *malafide*. He further submits that he again mentioned the words respondent No.7 Sagir Ahmed was not related in any way with any of the Waqif's family and ending with the words 'respondent No.7 started creating hurdle in the smooth functioning of the Waqf Estate by the petitioner are wholly untrue. He also argued that as per statement of the petitioner, the respondent No.4 Deputy Commissioner appointed a Senior Assistant Commissioner for enquiry and the concerned Assistant Commission after enquiry submitted a report to the respondent No.4 vide Memo dated 12.10.2010. The petitioner made objection to the said report. The respondent No.5 after hearing rejected the objection made by the petitioner and accepted the report of the Assistant Commissioner of Land. Accordingly, the respondent No.2 Administrator of Waqf appointed the respondent No.5 Additional Deputy Commissioner (Rev.) as the official Mutwalli and declared the Waqf as Public Waqf and advised the respondent No.5 to form a Managing Committee. He lastly submits that the respondent No. 7 was the heirs of the

predecessors of original Mutwalli and after death of the original Mutwalli, the respondent No.7 had performed all the affairs of the Waqf Estate. Ultimately on the basis of his application, the Waqf Estate was enrolled as Hakim Ali Jame Mosque Waqf Estate being Misc. EC Nos.24/2010 and 25/2010 was opened and at this stage, the respondent No.2 Administrator of Waqf called for reports from Waqf Inspector, Chittagong, South and also from Assistant Commissioner (Land) respectively and as per direction they have submitted the reports in respect of the affairs of the said Waqf Estate in favour of the respondent No.7 and as such, the Rule issued in the instant writ petition has no merit and prays for discharging the Rule.

Mr. A.Q.M. Safiullah, learned Advocate appeared on behalf of the petitioner in Writ petition No.4486 of 2011 submits that both the petitioner and the respondent No.6 filed applications for appointment as *mutwalli* of the Pathentoli Hakim Ali Jame Mosjid Waqf Estate and on the basis of the said application, the respondent No.4, Waqf Administrator requested the Deputy Commissioner to enquire into the matter and accordingly, the Deputy Commissioner directed a Senior Assistant Commissioner and also the Kanongo for spot enquiry and Subsequently, they enquiry

into the matter and taking statements of *musullies* and after completion of enquiry, submitted the report with a recommendation to appoint the petitioner as the Mutwalli of Hakim Ali Jame Mosjid Waqf Estate, but the respondent No. 5, Assistant Waqf Administrator, Chittagong South without considering the above reports and opinion of the *musullis* of the mosque passed the impugned order appointing the Additional Deputy Commissioner (Revenue), Chittagong as the official Mutwalli with a direction to form a committee for the said Waqf Estate and as such, the impugned order should be declared to have been passed without any lawful authority and is of no legal effect. He further submits that against the said report of recommending the appointment of the petitioner as the mutwalli of the said Hakim Ali Jame Mosjid Waqf Estate, the respondent No.6 filed a written objection. The Additional Deputy Commissioner (Revenue), Chittagong issued notices upon both the parties to appear before him and ultimately after hearing the parties, the Additional Deputy Commissioner (Revenue), Chittagong upheld the report of the Senior Assistant Commissioner, Chittagong and the position being such the petitioner ought to have appointed as the mutwalli of the said Waqf Estate and no consideration for the above aspect in the impugned order and as such, the same should be declared to have been passed

without any lawful authority and is of no legal effect. He again submits that there is no provision in the Waqf Ordinance to appoint a committee by any other authority except the respondent No. 4 the Administrator of Waqfs and the respondent No.4 having not done the impugned order, which passed by the respondent No.5, Assistant Administrator of Waqfs, Chittagong South thus illegal. He again submits that the respondent No.5, Assistant Administrator of Waqfs is not the authority to pass the impugned order to appoint the Additional Deputy Commissioner (Revenue) to appoint the official Mutwalli and as such, the impugned order should be declared illegal, to have been passed without any lawful authority and is of no legal effect.

Mr. Hassan M.S. Azim, learned Advocate appeared on behalf of respondent No.6 in Writ Petition No.4486 of 2011 opposes the Rule without filing any affidavit-in-opposition.

We have heard the learned Advocates of both the sides and perused the writ petitions, affidavit-in-opposition, supplementary affidavit filed by both the parties and other material documents.

It appears that both the petitioners have filed their application to be appointed as Mutwalli of the Pathentoli

Hakim Ali Jame Masjid Waqf Estate and on the basis of the said applications, the Waqf Administrator requested the Deputy Commissioner to enquire into the matter. Accordingly, the Deputy Commissioner directed a Senior Assistant Commissioner who directed the Kanongo for spot enquiry and after completion of enquiry and taking statements of 'Musullies' submitted the report with a recommendation for appointment of the Mutwalli, but the Assistant Waqf Administrator, Chittagong South passed the impugned order appointing the Additional Deputy Commissioner (Revenue), Chittagong as the Official Mutwalli with a direction to form a committee for the said Waqf Estate.

Mr. Hassan M.S. Azim, learned Advocate appeared on behalf of the petitioner in Writ Petition No. 4856 of 2011 and for respondent No.6 in Writ Petition No.4486 of 2011 argued that one of the Waqif namely Zamir Uddin's son Mutwalli Alhaj Nurul Islam has orally appointed his son Ahmed Zamir Faizul Islam as next Mutwalli of the said Waqf Estate, after consultation with the *musullis* of the mosque and family members of the Waqifs. Mutwalli Alhaj Nurul Islam had undergone a bypass surgery and he became sick and could not work with efficiency as before and after the demise of Mutwalli Alhaj Nurul Islam on 06.05.2009, his son the

present petitioner took the responsibility of the Mutwalliship of the said Waqf Estate. However, he was removed by the impugned order without assigning any reason, as per provision Sections 27 and 32 of the Waqf Ordinance, there is no provision of law that a Mutwalli without proper inquiry can be removed from his office.

Admittedly, there is no power given to the Waqf Admiration either under section 27 or 32 of the ordinance empowering him to cancel a regular appointment of a Mutwalli. Under Section 32 of the Waqf Ordinance a Mutwalli may be removed for breach of trust, mismanagement, malfeasance or misappropriation. He can also be removed for any act causing loss of the Waqf property or affecting the proper administration, control or preservation of the Waqf and also when he had been convicted under section 61 of this Ordinance and lastly, if he is found unsuitable, incompetent, negligent or otherwise undesirable. Any matter not envisaged in the provision of section 32 for the purpose of removing a Mutwalli from his office, his removal will not be considered as inconformity with law. However, in the impugned order, there is no reflection, relating to the removal of the petitioner Ahmed Zamir Faizul Islam from his respective post. Now the question is whether the appointment of the petitioner Ahmed

Zamir Faizul Islam as Mutwalli of the said Waqf Estate was proper or not.

We noticed that the Assistant Administrator of Waqf appointed Additional Deputy Commissioner (Revenue) as Official Mutwalli as per provision of the Section-44 of the Waqf Ordinance. According to the provision of Section 44, the Official Mutwalli should be appointment of by the Administrator of Waqf not by the Assistant Administrator of Waqf. The Administrator of Waqf has been empowered to appoint an 'official Mutwalli', notwithstanding anything contained in this Ordinance or in any other law in force or in any deed or instrument, such as Waqf deed. Thus, the provisions of section 44 override all other things contained either in the waqf-deed or elsewhere in this Ordinance.

Admittedly, the Assistant Administrator of the Waqf passed the impugned order as per provision of Section 44 of the Waqf Ordinance, the Administrator of Waqf himself only ought to have exercised his jurisdiction for appointment of an Official Mutwalli. In the instant matter, the Assistant Administrator has appointed the Official Mutwalli of the said Waqf the same is not in conformity with the law. However, there is no illegality to form a committee of persons to be appointed as Mutwalli by the Administrator of Waqf.

Mr. Hassan M.S. Azim, learned Advocate appeared on behalf of the petitioner in Writ Petition No. 4856 of 2011 and for respondent No.6 in Writ Petition No.4486 of 2011 argued that the respondent No.7 Sagir Ahmed in Writ Petition No. 4856 of 2011 and the petitioner in Writ Petition No.4486 of 2011 was not related in any way with any of the Waqif's family and previously, he has no activities in the Waqf Estate and his social position is not up to the mark to hold over the position of a Mutwalli of such an Waqf Estate, which is committed for the purpose of pious, religious, charitable and likewise endowments or grants. Unfortunately, a small fraction of people, who are not *musullis* of the mosque in the truest sense, started hobnobbing with the affairs of the Waqf Estate for attaining illegal personal gains and Sagir Ahmed started creating hurdle in the smooth functioning of the Waqf Estate by the petitioner Ahmed Zamir Faizul Islam and for his illegal personal gains started forcefully collection of the rent from different shops and instead of depositing the rent in the said bank account, the respondent No.7 embezzled the said money for the last 03(three) years amounting to approximately Tk.37,93,000/- (Thirty seven lac and ninety three thousand). On the contrary, Mr. A.Q.M. Safiullah, learned Advocate for the respondent No.7 in Writ petition No.4856 of 2011 and the petitioner in Writ Petition No.4486

of 2011 argued that Sagir Ahmed was the heirs of the predecessors of original Mutwalli and after death of the original Mutwalli, the respondent No.7 had been performing all the affairs of the Waqf Estate. Ultimately, on the basis of his application, the Waqf Estate was enrolled as Hakim Ali Jame Mosque Waqf Estate through Misc. EC Nos.24/2010 and 25/2010.

These are serious disputed question of facts, which cannot be resolved under Article 102 of the Constitution. The proceeding under Article 102 of the Constitution is a summary one and it is decided on the basis of statements made by the concern parties and the documents annexed with the petition and the affidavit-in-opposition. However, it is difficult for us to find out who will be proper Mutwalli for the Hakim Ali Jame Mosque Waqf Estate, without justifying actual documents and evidence which preserved by the office of Waqf Administrator, who is the proper authority to find out actual fact of this matter. We also noticed that there is an allegation of embezzlement which cannot be resolved by this Court and the same can be resolved by the Office of Waqf Administrator, who is the proper authority to find out the real perpetrators / culprits.

Considering the facts and circumstances of the matter, we are of the view that justice would be better met, if we direct the respondent i.e. the Administrator of Waqf, Bangladesh to appoint a new Mutwalli or a committee of persons as Mutwallis of the said Waqf Estate.

In the result, the Writ Petition Nos.4856 of 2011 and 4486 of 2011 are disposed of with direction. The respondent, Administrator of Waqf, Bangladesh is hereby directed to appoint a new Mutwalli or a committee of persons as Mutwallis of the Hakim Ali Jame Mosque Waqf Estate upon considering the Waqf deeds, opinion of the members of Waqif's family and the 'Musullis' of the Mosque, within 03(three) months from the date of receipt of the order, in accordance with law, without fail.

There is no order as to cost.

Communicate the judgment and order at once.

Muhammad Mahbub Ul Islam, J:

I agree.