

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 9913 OF 2015

In the matter of:

An Application under article 102 of the
Constitution of the People's Republic of
Bangladesh.

And

In the matter of:

Md. Shah Alom and others

... Petitioners

-Versus-

The Waqf Administrator of Bangladesh and
others

... Respondents

Mr. Md. Zahangir Kabir, Advocate

...For the petitioners

Mr. Syed Nazmul Karim, Advocate

...For the respondent nos, 3 &4

Heard and Judgment on 20.10.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Rezaul Karim

Md. Mozibur Rahman Miah, J.

On an application under article 102 of the Constitution of the
People's Republic of Bangladesh, a Rule Nisi was issued calling upon the
respondents to show cause as to why the review proceedings initiated by
the respondent no. 2 vide Memo No. ৩ঃ ২ঃ/৩ঃ শি-৩/১০০(১-৫) dated

30.07.2015 (Annexure-‘D-1’) to the writ petition) in response to the review application of the respondent nos. 3 and 4 dated 30.06.2015 (Annexure ‘D’ to the writ petition) in respect of “Mongol Sikder Waqf Estate”, Barguna being E.C. No. 9658 should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, the operation of the review proceedings initiated by the respondent nos. 3-4 vide annexure ‘D’ and notice issued thereupon vide Annexure ‘D-1’ to the writ petition was stayed for a period of 06 (six) months. The said order of stay was subsequently extended from time to time and it was lastly extended on 12.12.2024 for another 06 (six) months.

The short facts leading to issuance of the rule which has been described in the instant writ petition are:

One, Mongol Sikder made a registered deed bearing no. 877 dated 01.04.2004 making his property as “Wakf-E-Lillah” and the same was registered in the office of Waqf administration as E.C. No. 9658. Then the petitioner No. 1 was appointed as *Mutawalli* on 06.07.2004 by the respondent no. 1 and in the same vein on 19.05.2005 one, Joynal Sikder and Md. Nijam Uddin were also appointed as joint *Mutwalli* along with the petitioner. Thereafter, Joynal Sikder and Md. Nijam Uddin resigned as *Mutawalli*. It has further been stated that the petitioners have been appointed joint *Mutawalli* on 06.05.2009 and since then they have been functioning to the satisfaction of the respondent no. 1 as well as carried out their duties for the welfare of the estate. It has also been stated that,

the respondent no. 3, Md. Nasir Uddin had made an application on 04.09.2004 in the office of the respondent no. 1 for appointing him as joint *Mutawalli* but the same was rejected keeping the same with the record. Thereafter, he again made similar application on 05.11.2008 in the same office of respondent no. 1 but it was also rejected on 13.11.2008 and the same was also kept with the record. However, against that order, he filed an appeal being Miscellaneous Appeal No. 29 of 2008 in the court of District Judge, Barguna but the said appeal was dismissed on 18.04.2013 for the fault of the appellant. However, against that order passed by the appellate court, he did not prefer any revision in the High Court Division under the provision of section 32(2) of the Waqf Ordinance 1962. It has further been stated in the writ petition that the respondent nos. 3 and 4 and one Nijam Uddin filed another application on 18.03.2014 before the respondent no. 1 for removing the petitioners as joint *Mutawallis* on the allegation of misappropriation and that of appointing them as joint *Mutawalli* but that application was not supported by any affidavit as required under section 37 of the Waqf Ordinance, 1962. However, the respondent no. 2 after hearing both the parties rejected the said application and kept the same in record (নথিভাত) vide order dated 20.04.2015. Then the respondent nos. 3 and 4 filed an application on 30.06.2015 for review of the said order passed on 20.04.2015 and on the basis of that very review application, respondent no. 2 sent notices upon the petitioners on 30.07.2015 fixing the date on 01.09.2015 for hearing.

Being aggrieved by and dissatisfied with the filing of the review application and the notice issued, the instant writ petition has been filed

by the petitioners and obtained rule and order of stay as has been stated hereinabove.

Subsequently, the petitioners filed an application for issuing a supplementary rule where they have challenged the propriety of inspection ordered to be conducted at the instance of an Assistant Administrator vide its letter dated 21.05.2024 basing on an application filed by the attorney of the respondent nos. 3 and 4 named, Md. Abul Kalam which has been annexed as of annexure-‘G’ and ‘F’ respectively to the supplementary application. On the basis of the said application, rule was issued by this court on 12.12.2024 and by interim order, operation of inspection taken through annexure ‘G’ has also been stayed for a period of 06 (six) months when the parties to the application were directed to maintain status quo in respect of possession and position of the said Waqf property till disposal of the rule.

Mr. Md. Zahangir Kabir, the learned counsel appearing for the petitioners upon taking us to the writ petition and all the annexure appended therewith at the very outset submits that, since under the provision of section 32 of Waqf Ordinance there has been no provision for review apart from appeal as well as revision, so issuance of notice following review application initiated by the respondent nos. 3 and 4 cannot be maintained.

The learned counsel by taking us to section 32(1) of the said ordinance also contends that, who can prefer appeal as well as revision has also been laid out in that sub section where only the administrator or beneficiary has been given the authority to prefer appeal as well as

revision, so in that sense as well, the respondent nos. 3-4 have got no locustandi to file any appeal or revision let alone any review application.

The learned counsel by referring to annexure 'E' to the writ petition also contends that, in the event of repeated applications by the respondent nos. 3 and 4 seeking appointment as of joint *Mutawalli* those were rejected on several occasions by the respondent no. 1 and 2 even in Miscellaneous appeal by the learned District Judge and the latest order against which review application was filed was passed on 20.04.2015 rejecting the same on which notice was issued upon the petitioners (Annexure 'D-1' to the writ petition).

The learned counsel by placing the supplementary application on which rule was issued on 12.12.2024 also contends that by virtue of the power of attorney (annexure 'F' to the writ petition) one, Md. Abul Kalam was made attorney for respondent nos. 3 and 4 who leveling several allegations upon the petitioners filed an application to the administrator of Waqf, on which the respondent no. 2 directed to hold local inspection vide annexure 'G' yet the said respondent nos. 3 and 4 have no authority either to give any power of attorney in favour of one, Md. Abul Kalam let alone to hold inspection on the basis of the alleged allegation which has been annexed as of annexure 'F-1' to the supplementary application and relying on those legal aspects, the learned counsel finally prays for making the rule absolute by setting aside the review application and the notice issued there under.

On the contrary, Mr. Syed Nazmul Karim, the learned counsel appearing for the respondent nos. 3 and 4 by taking us to clause no. 4 to

the affidavit-in- reply so filed on 11.12.02024 which has been annexed as of annexure 'X-1' to the said reply, contends that as per the said clause 4 of the Waqf deed, who will become *Mutwally* has clearly been specified thereon so under no circumstances can the petitioners be made as joint Mutwalli to look after the Waqf property for the "Waqif". When we pose a question to the learned counsel for the respondent nos. 3 and 4 with regard to the locustandi of the respondent nos. 3 and 4 to file review application, the learned counsel then takes us to clause 'G' to section 27 of the Ordinance 1962 and contends that under that very provision, the Administrator of Waqf can exercise the authority to review any order passed by him/ her and therefore the review filed by them is well maintainable.

The learned counsel also contends that, since there has been nothing in the entire Ordinance that review cannot be initiated, so there has been no legal bar on the part of the respondent nos. 3 and 4 to file review application and considering the same, the respondent no. 1 has rightly entertained the review application and issued notice upon the petitioners.

The learned counsel lastly contends that, in absence of any legal authority to look after the Waqf property the petitioners have been misappropriating the fund derived from the 'Waqf Estate' and to restrained them from doing such misdeed, the review is liable to be disposed of on merit and on contest so that the management and administration of the Waqf Estates can be smoothly functioned. On those submissions, the learned counsel finally prays for discharging the rule.

We have considered the submission so placed by the learned counsel for the petitioners and that of the respondent nos. 3 and 4 at length. We have also very meticulously gone through the writ petition, the document so have been annexed therewith and that of the supplementary application on which rule was issued on 12.12.2024 vis-à-vis the affidavit-in-opposition, affidavit-in-reply and that of supplementary affidavit filed by the respondent nos. 3 and 4. At the very outset, we asked the learned counsel for the respondent nos. 3 and 4 to show us from the provision of section 32 of the Ordinance of 1962 whether a review preferred by them as has been annexed as of annexure 'D' to the writ petition can be entertained by the administrator of Waqf. But the learned counsel finds it difficult to impress us through any plausible submission that review can be maintained. Basing on the provision of clause 'D' to section 27 of the ordinance, he submits that by that provision review can be maintained but on going through section 27 of the Ordinance we find that, by that provision the administrator of Waqf has been given a host of authority to regulate the waqf estate but since review is a procedural aspect so it has to be legislated something which has not been provided therein in section 27. Rather, what has been provided in section 32 of the ordinance, to prefer appeal as well as revision which can only be entertained by the District Judge. So it is certain, there has been no provision to prefer any review in the ordinance. Furthermore, we have also taken notice of the submission placed by the learned counsel for the petitioner with regard to the person who will be entitled even to file such appeal or revision. On going through 32(1) of the ordinance even the

respondent nos. 3 and 4 does not fall within the purview of such person. So, until and unless respondent nos. 3 and 4 acquire any locustandi or person aggrieved to become any beneficiary, they could have at least filed appeal or revision to the learned District Judge against the order dated 20.04.2015. On top of that, record shows, the respondent nos. 3 and 4 left no stone unturned to be added as *co-Mutualli* in the Waqf estate but failed.

In view of the above, we are of the considered view that entertainment of review application through Annexure'D-1' to the writ petition by the respondent no. 1 is based on total misconception of law.

As a result, the rule is made absolute however without any order as to costs.

The review application so initiated by the respondent nos. 3 and 4 and the notice issued upon that application through annexure- 'D' and 'D-1' to the writ petition is thus declared illegal and without any lawful authority and those are struck down.

The interim orders so passed at the time of issuance of the rule dated 10.11.2015 and supplementary rule dated 12.12.2024 stand recalled and vacated.

Let a copy of this judgment and order be communicated to the respondents forthwith.

Rezaul Karim, J.

I agree.