

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah  
And  
Mr. Justice Md. Bashir Ullah**

**Civil Revision No. 5541 of 2003**

IN THE MATTER OF:

An application under Section 115(1) of  
the Code of the Civil Procedure.

And

IN THE MATTER OF:

Md. Golam Rabbani  
...Respondent No. 4- Petitioner

-Versus-

Md. Yasin Ali and others

... Appellant-Opposite parties.

None appeared for either party.

**Judgment on: 20.08.2024**

**Md. Bashir Ullah, J**

At the instance of the petitioner in E.C. No. 15769, this Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 13.10.2003 passed by the learned Additional District Judge, Second Court, Dinajpur in Miscellaneous Appeal No. 75 of 2000 allowing the appeal and reversing order dated 06.09.2000 passed in E.C. No. 15769, Bibiran Nessa Waqf Estate, Kaharol, Dinajpur by the Deputy Administrator of Waqf (1) for Bangladesh, removing the opposite party No.1 from the

post of Mutawalli under section 32(1) of the Waqf Ordinance, 1962 appointing Upazilla Nirbahi Officer, Kaharol, Dinajpur as official Mutawalli under Section 44 of the Waqf Ordinance, 1962 should not be set aside 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, this Court also stayed the operation of the judgment and order dated 13.10.2003 in Miscellaneous Appeal No. 75 of 2000 passed by the learned Additional District Judge, Second Court, Dinajpur for a period of 4(four) months, which was subsequently extended from time to time and it was lastly extended on 29.11.2005 till disposal of the Rule.

Facts relevant for the disposal of the Rule are:

The Waqf Administrator, Bangladesh appointed the appellant-opposite party No.1 as Mutawalli for a period of 3(three) years with effect from 22.11.1994 as well as approved a managing committee consisting of 11 members for the greater interest and smooth administration and management of Waqf Estate contained in E.C. Case No. 15769, Bibiran Nessa Waqf Estate.

The opposite party No.1 without complying with the direction given by the Waqf Administrator used the Waqf

Estate for his own interest and misappropriated the income of Waqf Estate without showing accounts of income and expenditures to the managing committee. He failed to hand over the charges and the responsibility of the Waqf Estate to the managing committee violating the decision of the Waqf authority. Then notice was served upon him on several occasions for handing over charge of the Waqf Estate to the managing committee but he did not take any step nor he appeared in any meeting called by the managing committee. Thereafter, the Union Parishad Chairman sent notices for three times but the Mutawalli did not receive the notices and attend the meeting. For such non-cooperation of opposite party No.1, a meeting of the managing committee was held on 08.01.1995 and in the meeting, it was decided that, since the opposite party No.1 has not provided proper accounts and cooperate the managing committee so he (Mr. Md. Yasin Ali) be removed from the post of Mutawalli. It was further resolved that, the said resolution will be sent to the Waqf Administrator requesting it to appoint an auditor to examine the accounts of the Waqf Estate and to take necessary steps. In view of the above facts and circumstances, the Assistant Secretary i.e. the present petitioner and the President of Coatgaon Old Jame Mosque submitted an application to the

Waqf Administrator stating all the facts and circumstances of non-cooperation and misappropriation of funds of the Waqf Estate and prayed for removal of the Mutawalli and prayed for handing over the charges to the managing committee of the Waqf Estate through Upazilla Nirbahi Officer, Kaharol, Dinajpur.

Accordingly, the managing committee on 10.01.1995 sent an application along with the resolution dated 08.01.1995 taken by the managing committee of Bibiran Nessa Waqf Estate to the Waqf Administrator. Upon receipt of the resolution, the Waqf Administrator then appointed an auditor who visited the Waqf Estate and met the members of managing committee, Mutawalli and local people and found prima-facie allegation of misappropriation of money from the Waqf Estate against the opposite party No.1. The investigating authority found that, the opposite party No.1 misappropriated money from the Waqf Estate and used the same for his personal interest and he did not perform the religious activities and the charitable functions under the Waqf Estate and the condition of the Mosque has been decaying and the local 'Musallis' could not perform their prayer at the time of raining. The rainwater falls through the roof and the same impairs the environment of prayers. The

opposite party No.1 constructed another tin shed mosque a hundred yards away from the original mosque. The local Musallis do not perform prayer in that mosque. The opposite party No.1 used the Waqf Estate as his personal Estate infringing the purpose and objects of the Waqf Estate. The auditor of the Waqf Estate then recommended the petitioner as of Mutawalli of the Waqf Estate.

The Waqf Administrator notified the opposite party No.1 to submit written objection against the allegations brought against him by application dated 10.01.1995 and accordingly, the Mutawalli opposite party No.1 filed a written objection on 20.03.1995. The petitioner examined 2(two) witnesses and opposite party No.1 examined 03 witnesses to prove their respective cases.

Upon hearing the parties, the Deputy Administrator of Waqf passed an order on 06.09.2000 removing the Mutawalli i.e. the opposite party No.1 under Section 32(1) of the Waqf Ordinance 1962 and appointed Upazilla Nirbahi Officer, Kaharol as official Mutawalli of Bibiran Nessa Waqf Estate for a period of 3(three) years under Section 44 of the Waqf Ordinance 1962.

Feeling aggrieved by the order dated 06.09.2000 passed by the Deputy Administrator of Waqf for Bangladesh

in E.C. No. 15769 the opposite party no. 1 then preferred Miscellaneous Appeal No. 75 of 2000 under Section 32(2) of the Waqf Ordinance, 1962 before the District Judge, Dinajpur.

The learned District Judge, Dinajpur transferred the same to the Court of Additional District Judge, Second Court, Dinajpur for hearing and disposal of the same. Upon hearing the parties, the appellate Court then allowed the appeal vide judgment and order dated 13.10.2003.

Being aggrieved by and dissatisfied with the judgment and order dated 13.10.2003 passed by the learned Additional District Judge, Second Court, Dinajpur in Miscellaneous Appeal No. 75 of 2000, the petitioner preferred the instant Civil Revision under Section 115(1) of the Code of Civil Procedure before this Court and obtained Rule and stay.

The instant revision has been referred to this Court by the Honourable Chief Justice of Bangladesh for disposal, but none appeared to support or oppose the rule though the matter has been appearing in the list for several days with the name of the learned counsels.

It is submitted in the civil revision that the appellate court has committed an error of law resulting in an error in the decision occasioning failure of justice in entertaining

Miscellaneous Appeal No. 75 of 2000 though the opposite party No.1, the outgoing Mutawalli has not handed over possession and charge of the management of the Waqf property together with cash and all papers relating to it to the succeeding Mutawalli under Section 32(4) of the Waqf Ordinance, 1962 and as such the impugned judgment and order passed by the appellate Court below is liable to be set aside.

It is further submitted that, the appellate Court has committed an error of law resulting in an error in the decision occasioning failure of justice in not perusing and considering the evidence of PWs and DWs and the report of the Waqf Auditor wherein it has been clearly stated and established that, the opposite party No.1 has totally failed to administer and look after the Waqf property for the religious purpose. Rather he has constructed another mosque hundred yards away from the original mosque and the allegation of breach of trust, mismanagement, malfeasance and misappropriation of funds have been established by the evidence of PWs and in that view of the matter, the impugned judgment and order passed by the appellate Court is liable to be set aside.

We have perused the revisional application, judgment and order and other materials on record.

It appears from the record that, the opposite party No. 1, the removed Mutawalli misappropriated funds of the Waqf Estate. The managing committee asked for several times to provide the accounts but the removed Mutawalli never submitted the accounts of the Waqf Estate. Moreover, it appears from the record and evidence from the witnesses that the removed Mutawalli constructed another mosque a hundred yards away from the original mosque of Estate and he collected money from both of the mosque.

The Deputy Waqf Administrator, Bangladesh observed that:

“ওয়াকফ হিসাব পরীক্ষক সরেজমিনে তদন্ত করিয়া তাহার অফিস স্মারক নং ১০০৭/দিনাজ, তাং ০৪/০৬/১৯৯৫ ইং মূলে বিস্তারিত প্রতিবেদন দাখিল করেন। উক্ত প্রতিবেদন পর্যালোচনায় দেখা যায় যে, ওয়াকিফা কর্তৃক ৮/৭/১৯৫৪ এবং ১৩/৭/১৯৫৪ তারিখে সৃজিত ওয়াকফ দলিলানুযায়ী অত্র ওয়াকফ এস্টেট একটি সম্পূর্ণ লিল্লাহ ওয়াকফ। ইহাতে কাহার ও কোন ব্যক্তি স্বার্থ জড়িত নাই। ওয়াকিফার প্রতিষ্ঠিত মসজিদ ধর্মীয় এবং সেবামূলক কাজে এস্টেটের সমস্ত আয় ব্যয় হইবে। ওয়াকফ দলিলে মোতওয়াল্লী নিয়োগের শর্তে উল্লেখ্য ওয়াকিফা নিজে জীবিত কালতক মোতওয়াল্লী থাকিবেন। তাহার মৃত্যুর পর যে মসজিদের ইমাম



থাকিবেন সেই মোতওয়াল্লী ও মোতওয়াল্লীর কার্যাদি পরিচালনা করিবেন।”

But the removed Mutawalli was not the *imam* of that mosque.

The Deputy Administrator of Waqf further observed that:

“তদন্তের সময় পরিলক্ষিত হইয়াছে যে, এলাকার লোকজন জনাব ইয়াসিন আলীর কার্যকলাপে খুবই ক্ষিপ্ত। অবস্থা এমন পর্যায়ে পৌঁছিয়াছে যে, এলাকার বিরোধিতার কারণে তিনি এস্টেটের মূল মসজিদ হইতে ১০০ গজ দূরে ছাপড়ার আর একটি মসজিদ নির্মান করিয়াছে। যেখানে সমাজের কোন লোক নামাজ আদায় করে না। উক্ত মসজিদ ইয়াছিন আলী ওয়াকফ সম্পত্তি নিজ স্বার্থে ব্যবহারের উদ্দেশ্যে নির্মান করিয়াছে।”

PW 1, Golam Rabbani stated that there was a mosque under Bibiran Nessa Waqf Estate and the Mutawalli mismanaged the affairs of waqf Estate and violated the provisions of the Waqf Ordinance. He constructed another mosque near the mosque of Bibiran Nessa Waqf Estate and caused the loss of Waqf property. He has not been repairing the mosque.

PW 2 corroborated the evidence of PW1 and stated that Mutawalli Yasin Ali misappropriated the funds of the mosque under the Waqf Estate. He committed a breach of

trust and the mosque was at the brink of destruction because of his negligence. He would not arrange Milad Mehfil or any religious function in the mosque. He failed to look after the Waqf property. It transpires that, the auditor's report dated 04.06.1995 was well-founded and reasonable.

So, we find that the Deputy Administrator of Waqf passed the order dated 06.11.2000 very legally and correctly. But the appellate Court failed to appreciate that the removed Mutawalli misappropriated huge amount of money collected for the Waqf Estate. The appellate Court also failed to consider the evidence of PWs and the report of the Waqf auditor as well.

Considering the above facts and circumstances we find that, the judgment and order passed by the learned Additional District Judge, Second Court, Dinajpur, reversing the order dated 06.09.2000 passed in E.C. Case No. 15769, Bibiran Nessa Waqf Estate, Kaharol, Dinajpur, is not sustainable in the eye of law.

So, we find merit and substance in the Rule.

In the result, the Rule is made absolute, however without any order as to costs.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this Judgment and order along with the Lower Court Records be communicated to the Court concerned forthwith.

**Md. Mozibur Rahman Miah, J.**

I agree.

Md. Ariful Islam Khan  
Bench Officer