

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

Present:

Justice Sheikh Abdul Awal

And

Justice S.M. Iftekhar Uddin Mahamud

Writ Petition No. 8270 of 2016

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. Abdul Latif

..... Petitioner.

-Versus-

The Administrator of Waqfs for Bangladesh
and others.

..... Respondents.

Mr. Md. Khalilur Rahman with

Mr. Md. Rashidul Karim, Advocates

..... For the Petitioner

Mr. Sheikh Zulfiquar Bulbul with

Mr. Moteen Uddin Anwar with

Mr. Md. Ali Akbar Khan, Advocates

.... For the Respondent No. 9.

Mr. Mohammad Harun-Ur-Rashid, Advocate

..... For the Respondent No.1.

Mr. Md. Mohsin Kabir, D.A.G with

Mr. A.K.M. Rezaul Karim Khandaker, D.A.G

with

Ms. Shahin Sultana, A.A.G with

Mr. Md. Manowarul Islam Uzzal, A.A.G with

Mr. Md. Moklesur Rahman, A.A.G

..... For the Government.

Heard on 09.11.2025, 07.12.2025 and

Judgment on 11.12.2025.

Sheikh Abdul Awal, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, the Rule Nisi was issued calling upon the respondents to show cause as to why the impugned order

dated 05.05.2016 under memo No. O:Pro:/Di:/59 passed by the respondent No. 2 removing the petitioner from his function as Mutwalli of Pirbox Kabiraz Waqf Estate, Dinajpur and appointing the Upazila Nirbahi Officer, Sadar, Dinajpur as official Mutwalli with a direction to initiate a criminal proceeding against the petitioner (Annexure-G) should not be declared to have been made without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts as stated in the writ petition briefly are that one Pirbux Kobiraj, the predecessor of the petitioner had made waqf of his property measuring 109 bighas of land by executing a registered deed dated 25.05.1936. As per the terms and conditions of the waqf deed the waqif appointed himself as the first Mutwalli of the waqf estate till his lifetime and after his death, the eldest son of the family would be the next Mutwalli to administer the waqf estate. The only son of the Waqif died issueless and thereafter Osman Gani, the eldest son of the only daughter of waqif became Mutwalli and during the lifetime of Mr. Osman Gani the Administrator of Waqf by an order dated 29.05.1982 removed him from the charge of Mutwalli and appointed one M.A. Salam, Waqf Auditor as Mutwalli and against that order Osman Gani, the father of this petitioner preferred Miscellaneous Appeal No. 34 of 1982 and the learned Additional District Judge, Dinajpur by judgment and order dated 26.06.1993 allowed the appeal and reinstated the said Osman Gani as Mutwalli for a period of 2 years on some conditions. Thereafter, due to illness of Mr. Osman Gani, the Administrator of Waqf appointed the present petitioner as Mutwalli for a period of 3 years from 19.01.2009 and thereafter his appointment was further extended for 2 (two) years by order dated

08.12.2013. Thereafter, as per persuasion of some interested persons the respondent No. 2, Assistant Administrator of Waqf by an order dated 24.12.2008 removed the petitioner from the post of official Mutwalli and formed a 9 members committee to manage the waqf estate. Against which the petitioner filed written objection on 04.01.2009 and the respondent No. 2 by order dated 19.01.2009 re-appointed the petitioner as official Mutwalli for further 2 years with effect from 15.09.2008. Thereafter, challenging the aforesaid order dated 19.12.2009 Md. Nasir Uddin, elder brother of the petitioner, filed Writ Petition No. 787 of 2009 before this Court wherein this petitioner was made respondent No.4. Ultimately, the Rule of Writ Petition No. 787 of 2009 was discharged by judgment and order dated 11.11.2010. Thereafter on the basis of an allegation, an auditor of waqf made an inquiry and submitted his report on 29.10.2013 wherein clearly stated that this petitioner is a competent person to perform the functions as Mutwalli. Later on, again some interested persons filed vague allegations using the name of some villagers before the respondent No.1 and thereafter while those villagers learnt about the matter, they sent a letter on 24.02.2015 to the respondent No.1 informing that neither they filed any objection nor signed any such application against the Mutwalli. In this background an auditor of waqf made an inquiry who after completion of inquiry submitted a report on 09.04.2015 stating that all the allegations made against this petitioner are false. Subsequently, the Upazilla Social Welfare Officer submitted an inquiry report on 13.05.2015 to the Upazila Nirbahi Officer (UNO), Dinajpur who forwarded the same to the respondent No. 1 by letter dated 19.05.2015 and thereafter the office of the respondent No. 1 by letter dated 01.07.2015 asked the petitioner to show cause as to the allegations made against him by the Upazilla Social Welfare

Officer and thereafter the petitioner by letter dated 28.07.2015 sent his reply to the respondent No. 1. Thereafter, without considering the matter from a correct angle the respondent No.1 by letter dated 05.05.2016 removed the petitioner from the office of Mutwalli of Pirbux Waqf Estate, Dinajpur and appointed the UNO, Sadar, Dinajpur as official Mutwalli of Pirbux Waqf Estate, Dinajpur and also directed to take legal action against the petitioner.

Being aggrieved by the aforesaid impugned order dated 05.05.2016 passed by the Respondent No. 2 the petitioner preferred this Writ Petition and obtained the present Rule.

Mr. Md. Khalilur Rahman with Mr. Md. Rashidul Karim, the learned Advocates appearing for the petitioner in the course of argument takes us through the writ petition along with annexures, supplementary affidavit, affidavit in opposition and other materials on record and then submits that it on record that the impugned order was passed by an Assistant Administrator of Wakf, Bangladesh, which was clear violation of law and Quorum non-judice as well inasmuch as per provision of section 44 of the Waqf Ordinance an Assistant Administrator of Waqf cannot be passed any such order instead of Waqf Administrator of Bangladesh and as such, the impugned order removing the mutwalli of Waqf Estate is out and out illegal, which is liable to be declared to have been made without any lawful authority and is of no legal effect. The learned Advocate further submits that the added respondent No. 9, Abdul Majid is, in fact, a busybody of Pirbux Waqf Estate as because he is simply a villager/stranger although the Waqf Administrator beyond the scope of law and waqf deed most illegally entertained his application and appointed official mutwalli to respondent No. 3, in-fact added respondent No.9, is a 3rd party stranger, he has/had no locus-standi to be added as a party. The

learned Advocate further submits that the complaint petition under section 32 (Annexure-IV) filed by the added Respondent No.9 having been disposed of by the duly appointed inquiry officer by his report dated. 09.04.2015 (Annexure-N) stating that alleged complaint petition has not been filed by him rather was filed by some other interested person by using his name and as such, fresh claim made by selfsame added Respondent No.9 again on the basis of the selfsame time barred petition after 10 years is barred by Article 14 of the Limitation Act, 1908.

Mr. Sheikh Zulfikur Bulbul Chowdhury, the learned Advocate appearing for the respondent No. 9, on the other hand, after placing affidavit in opposition and other materials on record submits that it is apparent from the impugned order that the Assistant Administrator after being instructed by the Administrator of Waqf, Bangladesh duly put his signature for and on behalf of Waqf Administrator, Bangladesh and as such, there is no legal scope to say that the impugned order was passed by the Assistant Administrator, the same is quorum non-judice. The learned Advocate further submits that the petitioner filed this writ petition in 2016 challenging the impugned order of removal of mutwally dated 05.05.2016 based on inquiry report dated 09.04.2015 and thus, the contention raised by the learned Advocate for the petitioner as to barred by limitation is plainly misconceived in law. The learned Advocate further referring waqf deed submits that as per narration of the waqf deed it cannot be said that the respondent No. 9/villager is a third party, who had/has no locus-standito file complaint against the corrupt Mutwalli. The learned further referring to the Writ Petition No. 7615 of 2016 submits that over the self-same issue earlier the present petitioner after being

unsuccessful in earlier Writ petition No. 7615 of 2016 preferred the instant writ petition and thus, the instant writ petition is not maintainable in law.

Mr. Md. Mohsin Kabir, the learned Deputy Attorney General, appearing for the Government-respondents, on the other hand, referring the impugned order submits, it is apparent from the impugned order that the Assistant Administrator after being instructed by the Administrator of Waqf duly put his signature for and on behalf of Waqf Administrator and as such, there is no legal scope to contend that the impugned order was passed by the Assistant Administrator instead of Waqf Administrator, Bangladesh, the same is quorum non-judice etc. The learned Deputy Attorney General further referring sub-section 2 of section 32 of the Waqf Ordinance submits that being instructed by the Administrator of Waqf, Bangladesh the impugned order was passed under the signature of Assistant Waqf Administrator, which is appealable and therefore, the instant writ petition is misconceived and not tenable in law.

Mr. Mohammad Harun-Ur-Rashid, the learned Advocate appearing for the respondent No.1 submits that the impugned order issued under the signature of assistant administrator stating নির্দেশিত হইয়া and as such, there is no legal scope to assail the impugned order on the ground that the impugned order passed by the assistant administrator, in fact, the impugned order passed by administrator of Waqf, Bangladesh and the assistant administrator simply নির্দেশিত হইয়া issued the impugned order. Finally, the learned Advocate submits that instant writ petition is misconceived, incompetent and not tenable in law inasmuch as there is a forum to file appeal .to the learned District Judge against an order passed by the Administrator

of Waqf appointing an official mutawalli under section 44 of the Waqf Ordinance, 1962.

Having heard the learned Advocate for the respective parties and the learned Deputy Attorney General and having gone through the materials on record including the writ petition along with annexures as filed thereto.

On a scrutiny of the record, it appears that in this writ petition the petitioner challenges the impugned notification dated 05.05.2016 (Annexure-G) on the main ground that the impugned order passed by an Assistant Administrator under his signature instead of the Administrator of Waqf, Bangladesh which is beyond the scope of law and as such, the same is liable to be declared illegal and without lawful authority.

On a close perusal of the impugned order as stated above it appears that the impugned order issued under the signature of assistant administrator stating নির্দেশিত হইয়া and thus, we have no hesitation to hold that the impugned order was passed by the Administrator of Waqf, Bangladesh and the Assistant Administrator simply put his signature in the impugned order stating নির্দেশিত হইয়া। Therefore, first branch of argument as advanced by the learned Advocate for the petitioner falls to the ground.

Now, let us consider the second branch of argument of Mr. Khalil, the learned Advocate for the petitioner that respondent No. 9 is a busybody, who has/had no locus-standi to file complain against the regular Mutwalli. To meet this argument together with arguments of this point made by other side, we have carefully studied the deed of waqf to the best of our ability and find, in the waqf deed being deed number 1424 dated 25.5.1936 (Annexure-XXI) it is written as follows:

“যদি মোতওয়াল্লী পদ লইয়া খকনও বিবাদ উপস্থিত হয় তবে আমার গ্রামবাসী মুসলমানগণ আমার বংশধরগণ মধ্যে যে ব্যক্তিকে উপযুক্ত উপযুক্ত মনে করিবেন সেই মুতওয়াল্লী হইবে।”

From the above narration, it highlights that villagers having right to select mutwalli of the waqf estate in the attending facts and circumstances, if so required. Therefore, the second branch of argument of Mr. Khalilur Rahman does not find any leg to stand upon whatsoever.

As per provisions of Section 44 of the Waqf Ordinance, 1962, the Administrator of Waqf has absolute authority and jurisdiction to appoint an Official Mutawalli, even beyond anything contained in the Ordinance 1962, or in the Waqf Deed, or in any instrument, or in any other law for the time being in force, where it is considered necessary. In the instant case, the Upazilla Nirbahi Officer has been appointed under section 44 of the Waqf Ordinance as an official Mutawalli by the Administrator of Waqf as he find fit for the proper administration and management of the Waqf Estate as the then Mutawalli was removed for mismanagement, malfeasance and misappropriation of the Waqf property. So, we find nothing wrong in impugned appointment of official Mutawalli.

It is found that alleged report dated 09.04.2015 (Annexure-N) prepared by the Waqf Accountant has not been given finality by the Administrator of Waqf, especially after getting the allegation filed by the added respondent No. 9 dated 01.06.2015 (Annexure - V) and on the application filed by the added respondent No. 9, the Adminstrator of Waqf removed the petitioner from the office of the mutawalli, being found guilty of mismanagement, malfeasance and misappropriation of the Waqf property and the Affidavit-in-Opposition filed by the added respondent No. 9 is mere opposition of the averments made by the petitioner in disposing of the instant

Writ Petition, which cannot be said at all that the respondent No. 9 re-agitated his earlier claim and thus there is no question of limitation at all. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the petitioner.

At the end of the day Mr. Sheikh Zulfiquir Bulbul Chowdhury submits that earlier, the writ petitioner filed another Writ Petition No. 7615 of 2016 which was not pressed by order dated 13.06.2016 on the plea that the learned lawyer for the petitioner got instruction from the writ petitioner that he would prefer Miscellaneous Appeal against the impugned memo dated 05.05.2016 (Annexure "G" to the Writ Petition). Therefore, the petitioner filed instant writ petition No. 8270 of 2016, with self-same grounds and statements and as such, at any rate the present writ pretention is not maintainable in law before file a Miscellaneous Appeal to the District Judge Court. He adds that the Waqf Administrator by the impugned order appointing an official mutawalli under Section 44 of the Waqfs Ordinance, 1962, is appealable; specifically, a mutawalli removed by such an order can appeal to the District Judge within three months of the order's communication, though they must first hand over charge to the new appointee for the appeal to be heard, according to Section 33(2) of the Waqf Ordinance, 1962. We think in a case of this nature there is a good deal of persuasion in the submission of Mr. Sheikh Zulfiquir Bulbul Chowdhury, the learned Advocate for the Respondent No. 9.

In view of our discussions made in the foregoing paragraphs it is by now clear that the instant Rule must fail.

In the result, the Rule is discharged. The order of status-quo granted earlier by the Court stands vacated.

In the facts and circumstances of the case there will be no order as to costs.

Communicate this judgment at once.

S.M. Iftekhar Uddin Mahamud, J:

I agree.

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The relevant facts as stated in the writ petition briefly are that one Pirbux Kobiraj, the predecessor of the petitioner had made waqf of his property measuring 109 bighas of land by executing a registered deed dated 25.05.1936. As per the terms and conditions of the waqf deed the waqif appointed himself as the first Mutwalli of the waqf estate till his lifetime and after his death, the eldest son of the family would be the next Mutwalli to administer the waqf estate. The only son of the Waqif died issueless and thereafter Osman Gani, the eldest son of the only daughter of waqif became Mutwalli and during the lifetime of Mr. Osman Gani the Administrator of Waqf by an order dated 29.05.1982 removed him from the charge of Mutwalli and appointed one M.A. Salam, Waqf Auditor as Mutwalli and against that order Osman Gani, the father of this petitioner preferred Miscellaneous Appeal No. 34 of 1982 and the learned Additional District Judge, Dinajpur by judgment and order dated 26.06.1993 allowed the appeal and reinstated the said Osman Gani as Mutwalli for a period of 2 years on some conditions. Thereafter, due to illness of Mr. Osman Gani, the Administrator of Waqf appointed the present petitioner as Mutwalli for a period of 3 years from 19.01.2009 and thereafter his appointment was further extended for 2 (two) years by order dated

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Officer and thereafter the petitioner by letter dated 28.07.2015 sent his reply to the respondent No. 1. Thereafter, without considering the matter from a correct angle the respondent No.1 by letter dated 05.05.2016 removed the petitioner from the office of Mutwalli of Pirbux Waqf Estate, Dinajpur and appointed the UNO, Sadar, Dinajpur as official Mutwalli of Pirbux Waqf Estate, Dinajpur and also directed to take legal action against the petitioner.

Being aggrieved by the aforesaid impugned order dated 05.05.2016 passed by the Respondent No. 2 the petitioner preferred this Writ Petition and obtained the present Rule.

Mr. Md. Khalilur Rahman with Mr. Md. Rashidul Karim, the learned Advocates appearing for the petitioner in the course of argument takes us through the writ petition along with annexures, supplementary affidavit, affidavit in opposition and other materials on record and then submits that it on record that the impugned order was passed by an Assistant Administrator of Wakf, Bangladesh, which was clear violation of law and Quorum non-judice as well inasmuch as per provision of section 44 of the Waqf Ordinance an Assistant Administrator of Waqf cannot be passed any such order instead of Waqf Administrator of Bangladesh and as such, the impugned order removing the mutwalli of Waqf Estate is out and out illegal, which is liable to be declared to have been made without any lawful authority and is of no legal effect. The learned Advocate further submits that the added respondent No. 9, Abdul Majid is, in fact, a busybody of Pirbux Waqf Estate as because he is simply a villager/stranger although the Waqf Administrator beyond the scope of law and waqf deed most illegally entertained his application and appointed official mutwalli to respondent No. 3, in-fact added respondent No.9, is a 3rd party stranger, he has/had no locus-standi to be added as a party. The

learned Advocate further submits that the complaint petition under section 32 (Annexure-IV) filed by the added Respondent No.9 having been disposed of by the duly appointed inquiry officer by his report dated. 09.04.2015 (Annexure-N) stating that alleged complaint petition has not been filed by him rather was filed by some other interested person by using his name and as such, fresh claim made by selfsame added Respondent No.9 again on the basis of the selfsame time barred petition after 10 years is barred by Article 14 of the Limitation Act, 1908.

Mr. Sheikh Zulfikur Bulbul Chowdhury, the learned Advocate appearing for the respondent No. 9, on the other hand, after placing affidavit in opposition and other materials on record submits that it is apparent from the impugned order that the Assistant Administrator after being instructed by the Administrator of Waqf, Bangladesh duly put his signature for and on behalf of Waqf Administrator, Bangladesh and as such, there is no legal scope to say that the impugned order was passed by the Assistant Administrator, the same is quorum non-judice. The learned Advocate further submits that the petitioner filed this writ petition in 2016 challenging the impugned order of removal of mutwally dated 05.05.2016 based on inquiry report dated 09.04.2015 and thus, the contention raised by the learned Advocate for the petitioner as to barred by limitation is plainly misconceived in law. The learned Advocate further referring waqf deed submits that as per narration of the waqf deed it cannot be said that the respondent No. 9/villager is a third party, who had/has no locus-standito file complaint against the corrupt Mutwalli. The learned further referring to the Writ Petition No. 7615 of 2016 submits that over the self-same issue earlier the present petitioner after being

unsuccessful in earlier Writ petition No. 7615 of 2016 preferred the instant writ petition and thus, the instant writ petition is not maintainable in law.

Mr. Md. Mohsin Kabir, the learned Deputy Attorney General, appearing for the Government-respondents, on the other hand, referring the impugned order submits, it is apparent from the impugned order that the Assistant Administrator after being instructed by the Administrator of Waqf duly put his signature for and on behalf of Waqf Administrator and as such, there is no legal scope to contend that the impugned order was passed by the Assistant Administrator instead of Waqf Administrator, Bangladesh, the same is quorum non-judice etc. The learned Deputy Attorney General further referring sub-section 2 of section 32 of the Waqf Ordinance submits that being instructed by the Administrator of Waqf, Bangladesh the impugned order was passed under the signature of Assistant Waqf Administrator, which is appealable and therefore, the instant writ petition is misconceived and not tenable in law.

Mr. Mohammad Harun-Ur-Rashid, the learned Advocate appearing for the respondent No.1 submits that the impugned order issued under the signature of assistant administrator stating নির্দেশিত হইয়া and as such, there is no legal scope to assail the impugned order on the ground that the impugned order passed by the assistant administrator, in fact, the impugned order passed by administrator of Waqf, Bangladesh and the assistant administrator simply নির্দেশিত হইয়া issued the impugned order. Finally, the learned Advocate submits that instant writ petition is misconceived, incompetent and not tenable in law inasmuch as there is a forum to file appeal .to the learned District Judge against an order passed by the Administrator

of Waqf appointing an official mutawalli under section 44 of the Waqf Ordinance, 1962.

Having heard the learned Advocate for the respective parties and the learned Deputy Attorney General and having gone through the materials on record including the writ petition along with annexures as filed thereto.

On a scrutiny of the record, it appears that in this writ petition the petitioner challenges the impugned notification dated 05.05.2016 (Annexure-G) on the main ground that the impugned order passed by an Assistant Administrator under his signature instead of the Administrator of Waqf, Bangladesh which is beyond the scope of law and as such, the same is liable to be declared illegal and without lawful authority.

On a close perusal of the impugned order as stated above it appears that the impugned order issued under the signature of assistant administrator stating নির্দেশিত হইয়া and thus, we have no hesitation to hold that the impugned order was passed by the Administrator of Waqf, Bangladesh and the Assistant Administrator simply put his signature in the impugned order stating নির্দেশিত হইয়া। Therefore, first branch of argument as advanced by the learned Advocate for the petitioner falls to the ground.

Now, let us consider the second branch of argument of Mr. Khalil, the learned Advocate for the petitioner that respondent No. 9 is a busybody, who has/had no locus-standi to file complain against the regular Mutwalli. To meet this argument together with arguments of this point made by other side, we have carefully studied the deed of waqf to the best of our ability and find, in the waqf deed being deed number 1424 dated 25.5.1936 (Annexure-XXI) it is written as follows:

“যদি মোতওয়াল্লী পদ লইয়া খকনও বিবাদ উপস্থিত হয় তবে আমার গ্রামবাসী মুসলমানগণ আমার বংশধরগণ মধ্যে যে ব্যক্তিকে উপযুক্ত উপযুক্ত মনে করিবেন সেই মুতওয়াল্লী হইবে।”

From the above narration, it highlights that villagers having right to select mutwalli of the waqf estate in the attending facts and circumstances, if so required. Therefore, the second branch of argument of Mr. Khalilur Rahman does not find any leg to stand upon whatsoever.

As per provisions of Section 44 of the Waqf Ordinance, 1962, the Administrator of Waqf has absolute authority and jurisdiction to appoint an Official Mutawalli, even beyond anything contained in the Ordinance 1962, or in the Waqf Deed, or in any instrument, or in any other law for the time being in force, where it is considered necessary. In the instant case, the Upazilla Nirbahi Officer has been appointed under section 44 of the Waqf Ordinance as an official Mutawalli by the Administrator of Waqf as he find fit for the proper administration and management of the Waqf Estate as the then Mutawalli was removed for mismanagement, malfeasance and misappropriation of the Waqf property. So, we find nothing wrong in impugned appointment of official Mutawalli.

It is found that alleged report dated 09.04.2015 (Annexure-N) prepared by the Waqf Accountant has not been given finality by the Administrator of Waqf, especially after getting the allegation filed by the added respondent No. 9 dated 01.06.2015 (Annexure - V) and on the application filed by the added respondent No. 9, the Adminstrator of Waqf removed the petitioner from the office of the mutawalli, being found guilty of mismanagement, malfeasance and misappropriation of the Waqf property and the Affidavit-in-Opposition filed by the added respondent No. 9 is mere opposition of the averments made by the petitioner in disposing of the instant

Writ Petition, which cannot be said at all that the respondent No. 9 re-agitated his earlier claim and thus there is no question of limitation at all. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the petitioner.

At the end of the day Mr. Sheikh Zulfiquir Bulbul Chowdhury submits that earlier, the writ petitioner filed another Writ Petition No. 7615 of 2016 which was not pressed by order dated 13.06.2016 on the plea that the learned lawyer for the petitioner got instruction from the writ petitioner that he would prefer Miscellaneous Appeal against the impugned memo dated 05.05.2016 (Annexure "G" to the Writ Petition). Therefore, the petitioner filed instant writ petition No. 8270 of 2016, with self-same grounds and statements and as such, at any rate the present writ pretention is not maintainable in law before file a Miscellaneous Appeal to the District Judge Court. He adds that the Waqf Administrator by the impugned order appointing an official mutawalli under Section 44 of the Waqfs Ordinance, 1962, is appealable; specifically, a mutawalli removed by such an order can appeal to the District Judge within three months of the order's communication, though they must first hand over charge to the new appointee for the appeal to be heard, according to Section 33(2) of the Waqf Ordinance, 1962. We think in a case of this nature there is a good deal of persuasion in the submission of Mr. Sheikh Zulfiquir Bulbul Chowdhury, the learned Advocate for the Respondent No. 9.

In view of our discussions made in the foregoing paragraphs it is by now clear that the instant Rule must fail.

In the result, the Rule is discharged. The order of status-quo granted earlier by the Court stands vacated.

In the facts and circumstances of the case there will be no order as to costs.

Communicate this judgment at once.

S.M. Iftekhar Uddin Mahamud, J:

I agree.

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

Present:

Justice Sheikh Abdul Awal

And

Justice S.M. Iftekhar Uddin Mahamud

Writ Petition No. 8270 of 2016

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. Abdul Latif

..... Petitioner.

-Versus-

The Administrator of Waqfs for Bangladesh
and others.

..... Respondents.

Mr. Md. Khalilur Rahman with

Mr. Md. Rashidul Karim, Advocates

..... For the Petitioner

Mr. Sheikh Zulfiquar Bulbul with

Mr. Moteen Uddin Anwar with

Mr. Md. Ali Akbar Khan, Advocates

.... For the Respondent No. 9.

Mr. Mohammad Harun-Ur-Rashid, Advocate

..... For the Respondent No.1.

Mr. Md. Mohsin Kabir, D.A.G with

Mr. A.K.M. Rezaul Karim Khandaker, D.A.G

with

Ms. Shahin Sultana, A.A.G with

Mr. Md. Manowarul Islam Uzzal, A.A.G with

Mr. Md. Moklesur Rahman, A.A.G

..... For the Government.

Heard on 09.11.2025, 07.12.2025 and

Judgment on 11.12.2025.

Sheikh Abdul Awal, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, the Rule Nisi was issued calling upon the respondents to show cause as to why the impugned order

dated 05.05.2016 under memo No. O:Pro:/Di:/59 passed by the respondent No. 2 removing the petitioner from his function as Mutwalli of Pirbox Kabiraz Waqf Estate, Dinajpur and appointing the Upazila Nirbahi Officer, Sadar, Dinajpur as official Mutwalli with a direction to initiate a criminal proceeding against the petitioner (Annexure-G) should not be declared to have been made without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts as stated in the writ petition briefly are that one Pirbux Kobiraj, the predecessor of the petitioner had made waqf of his property measuring 109 bighas of land by executing a registered deed dated 25.05.1936. As per the terms and conditions of the waqf deed the waqif appointed himself as the first Mutwalli of the waqf estate till his lifetime and after his death, the eldest son of the family would be the next Mutwalli to administer the waqf estate. The only son of the Waqif died issueless and thereafter Osman Gani, the eldest son of the only daughter of waqif became Mutwalli and during the lifetime of Mr. Osman Gani the Administrator of Waqf by an order dated 29.05.1982 removed him from the charge of Mutwalli and appointed one M.A. Salam, Waqf Auditor as Mutwalli and against that order Osman Gani, the father of this petitioner preferred Miscellaneous Appeal No. 34 of 1982 and the learned Additional District Judge, Dinajpur by judgment and order dated 26.06.1993 allowed the appeal and reinstated the said Osman Gani as Mutwalli for a period of 2 years on some conditions. Thereafter, due to illness of Mr. Osman Gani, the Administrator of Waqf appointed the present petitioner as Mutwalli for a period of 3 years from 19.01.2009 and thereafter his appointment was further extended for 2 (two) years by order dated

08.12.2013. Thereafter, as per persuasion of some interested persons the respondent No. 2, Assistant Administrator of Waqf by an order dated 24.12.2008 removed the petitioner from the post of official Mutwalli and formed a 9 members committee to manage the waqf estate. Against which the petitioner filed written objection on 04.01.2009 and the respondent No. 2 by order dated 19.01.2009 re-appointed the petitioner as official Mutwalli for further 2 years with effect from 15.09.2008. Thereafter, challenging the aforesaid order dated 19.12.2009 Md. Nasir Uddin, elder brother of the petitioner, filed Writ Petition No. 787 of 2009 before this Court wherein this petitioner was made respondent No.4. Ultimately, the Rule of Writ Petition No. 787 of 2009 was discharged by judgment and order dated 11.11.2010. Thereafter on the basis of an allegation, an auditor of waqf made an inquiry and submitted his report on 29.10.2013 wherein clearly stated that this petitioner is a competent person to perform the functions as Mutwalli. Later on, again some interested persons filed vague allegations using the name of some villagers before the respondent No.1 and thereafter while those villagers learnt about the matter, they sent a letter on 24.02.2015 to the respondent No.1 informing that neither they filed any objection nor signed any such application against the Mutwalli. In this background an auditor of waqf made an inquiry who after completion of inquiry submitted a report on 09.04.2015 stating that all the allegations made against this petitioner are false. Subsequently, the Upazilla Social Welfare Officer submitted an inquiry report on 13.05.2015 to the Upazila Nirbahi Officer (UNO), Dinajpur who forwarded the same to the respondent No. 1 by letter dated 19.05.2015 and thereafter the office of the respondent No. 1 by letter dated 01.07.2015 asked the petitioner to show cause as to the allegations made against him by the Upazilla Social Welfare

Officer and thereafter the petitioner by letter dated 28.07.2015 sent his reply to the respondent No. 1. Thereafter, without considering the matter from a correct angle the respondent No.1 by letter dated 05.05.2016 removed the petitioner from the office of Mutwalli of Pirbux Waqf Estate, Dinajpur and appointed the UNO, Sadar, Dinajpur as official Mutwalli of Pirbux Waqf Estate, Dinajpur and also directed to take legal action against the petitioner.

Being aggrieved by the aforesaid impugned order dated 05.05.2016 passed by the Respondent No. 2 the petitioner preferred this Writ Petition and obtained the present Rule.

Mr. Md. Khalilur Rahman with Mr. Md. Rashidul Karim, the learned Advocates appearing for the petitioner in the course of argument takes us through the writ petition along with annexures, supplementary affidavit, affidavit in opposition and other materials on record and then submits that it on record that the impugned order was passed by an Assistant Administrator of Wakf, Bangladesh, which was clear violation of law and Quorum non-judice as well inasmuch as per provision of section 44 of the Waqf Ordinance an Assistant Administrator of Waqf cannot be passed any such order instead of Waqf Administrator of Bangladesh and as such, the impugned order removing the mutwalli of Waqf Estate is out and out illegal, which is liable to be declared to have been made without any lawful authority and is of no legal effect. The learned Advocate further submits that the added respondent No. 9, Abdul Majid is, in fact, a busybody of Pirbux Waqf Estate as because he is simply a villager/stranger although the Waqf Administrator beyond the scope of law and waqf deed most illegally entertained his application and appointed official mutwalli to respondent No. 3, in-fact added respondent No.9, is a 3rd party stranger, he has/had no locus-standi to be added as a party. The

learned Advocate further submits that the complaint petition under section 32 (Annexure-IV) filed by the added Respondent No.9 having been disposed of by the duly appointed inquiry officer by his report dated. 09.04.2015 (Annexure-N) stating that alleged complaint petition has not been filed by him rather was filed by some other interested person by using his name and as such, fresh claim made by selfsame added Respondent No.9 again on the basis of the selfsame time barred petition after 10 years is barred by Article 14 of the Limitation Act, 1908.

Mr. Sheikh Zulfikur Bulbul Chowdhury, the learned Advocate appearing for the respondent No. 9, on the other hand, after placing affidavit in opposition and other materials on record submits that it is apparent from the impugned order that the Assistant Administrator after being instructed by the Administrator of Waqf, Bangladesh duly put his signature for and on behalf of Waqf Administrator, Bangladesh and as such, there is no legal scope to say that the impugned order was passed by the Assistant Administrator, the same is quorum non-judice. The learned Advocate further submits that the petitioner filed this writ petition in 2016 challenging the impugned order of removal of mutwally dated 05.05.2016 based on inquiry report dated 09.04.2015 and thus, the contention raised by the learned Advocate for the petitioner as to barred by limitation is plainly misconceived in law. The learned Advocate further referring waqf deed submits that as per narration of the waqf deed it cannot be said that the respondent No. 9/villager is a third party, who had/has no locus-standito file complaint against the corrupt Mutwalli. The learned further referring to the Writ Petition No. 7615 of 2016 submits that over the self-same issue earlier the present petitioner after being

unsuccessful in earlier Writ petition No. 7615 of 2016 preferred the instant writ petition and thus, the instant writ petition is not maintainable in law.

Mr. Md. Mohsin Kabir, the learned Deputy Attorney General, appearing for the Government-respondents, on the other hand, referring the impugned order submits, it is apparent from the impugned order that the Assistant Administrator after being instructed by the Administrator of Waqf duly put his signature for and on behalf of Waqf Administrator and as such, there is no legal scope to contend that the impugned order was passed by the Assistant Administrator instead of Waqf Administrator, Bangladesh, the same is quorum non-judice etc. The learned Deputy Attorney General further referring sub-section 2 of section 32 of the Waqf Ordinance submits that being instructed by the Administrator of Waqf, Bangladesh the impugned order was passed under the signature of Assistant Waqf Administrator, which is appealable and therefore, the instant writ petition is misconceived and not tenable in law.

Mr. Mohammad Harun-Ur-Rashid, the learned Advocate appearing for the respondent No.1 submits that the impugned order issued under the signature of assistant administrator stating নির্দেশিত হইয়া and as such, there is no legal scope to assail the impugned order on the ground that the impugned order passed by the assistant administrator, in fact, the impugned order passed by administrator of Waqf, Bangladesh and the assistant administrator simply নির্দেশিত হইয়া issued the impugned order. Finally, the learned Advocate submits that instant writ petition is misconceived, incompetent and not tenable in law inasmuch as there is a forum to file appeal .to the learned District Judge against an order passed by the Administrator

of Waqf appointing an official mutawalli under section 44 of the Waqf Ordinance, 1962.

Having heard the learned Advocate for the respective parties and the learned Deputy Attorney General and having gone through the materials on record including the writ petition along with annexures as filed thereto.

On a scrutiny of the record, it appears that in this writ petition the petitioner challenges the impugned notification dated 05.05.2016 (Annexure-G) on the main ground that the impugned order passed by an Assistant Administrator under his signature instead of the Administrator of Waqf, Bangladesh which is beyond the scope of law and as such, the same is liable to be declared illegal and without lawful authority.

On a close perusal of the impugned order as stated above it appears that the impugned order issued under the signature of assistant administrator stating নির্দেশিত হইয়া and thus, we have no hesitation to hold that the impugned order was passed by the Administrator of Waqf, Bangladesh and the Assistant Administrator simply put his signature in the impugned order stating নির্দেশিত হইয়া। Therefore, first branch of argument as advanced by the learned Advocate for the petitioner falls to the ground.

Now, let us consider the second branch of argument of Mr. Khalil, the learned Advocate for the petitioner that respondent No. 9 is a busybody, who has/had no locus-standi to file complain against the regular Mutwalli. To meet this argument together with arguments of this point made by other side, we have carefully studied the deed of waqf to the best of our ability and find, in the waqf deed being deed number 1424 dated 25.5.1936 (Annexure-XXI) it is written as follows:

“যদি মোতওয়াল্লী পদ লইয়া খকনও বিবাদ উপস্থিত হয় তবে আমার গ্রামবাসী মুসলমানগণ আমার বংশধরগণ মধ্যে যে ব্যক্তিকে উপযুক্ত উপযুক্ত মনে করিবেন সেই মুতওয়াল্লী হইবে।”

From the above narration, it highlights that villagers having right to select mutwalli of the waqf estate in the attending facts and circumstances, if so required. Therefore, the second branch of argument of Mr. Khalilur Rahman does not find any leg to stand upon whatsoever.

As per provisions of Section 44 of the Waqf Ordinance, 1962, the Administrator of Waqf has absolute authority and jurisdiction to appoint an Official Mutawalli, even beyond anything contained in the Ordinance 1962, or in the Waqf Deed, or in any instrument, or in any other law for the time being in force, where it is considered necessary. In the instant case, the Upazilla Nirbahi Officer has been appointed under section 44 of the Waqf Ordinance as an official Mutawalli by the Administrator of Waqf as he find fit for the proper administration and management of the Waqf Estate as the then Mutawalli was removed for mismanagement, malfeasance and misappropriation of the Waqf property. So, we find nothing wrong in impugned appointment of official Mutawalli.

It is found that alleged report dated 09.04.2015 (Annexure-N) prepared by the Waqf Accountant has not been given finality by the Administrator of Waqf, especially after getting the allegation filed by the added respondent No. 9 dated 01.06.2015 (Annexure - V) and on the application filed by the added respondent No. 9, the Adminstrator of Waqf removed the petitioner from the office of the mutawalli, being found guilty of mismanagement, malfeasance and misappropriation of the Waqf property and the Affidavit-in-Opposition filed by the added respondent No. 9 is mere opposition of the averments made by the petitioner in disposing of the instant

Writ Petition, which cannot be said at all that the respondent No. 9 re-agitated his earlier claim and thus there is no question of limitation at all. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the petitioner.

At the end of the day Mr. Sheikh Zulfiquir Bulbul Chowdhury submits that earlier, the writ petitioner filed another Writ Petition No. 7615 of 2016 which was not pressed by order dated 13.06.2016 on the plea that the learned lawyer for the petitioner got instruction from the writ petitioner that he would prefer Miscellaneous Appeal against the impugned memo dated 05.05.2016 (Annexure "G" to the Writ Petition). Therefore, the petitioner filed instant writ petition No. 8270 of 2016, with self-same grounds and statements and as such, at any rate the present writ pretention is not maintainable in law before file a Miscellaneous Appeal to the District Judge Court. He adds that the Waqf Administrator by the impugned order appointing an official mutawalli under Section 44 of the Waqfs Ordinance, 1962, is appealable; specifically, a mutawalli removed by such an order can appeal to the District Judge within three months of the order's communication, though they must first hand over charge to the new appointee for the appeal to be heard, according to Section 33(2) of the Waqf Ordinance, 1962. We think in a case of this nature there is a good deal of persuasion in the submission of Mr. Sheikh Zulfiquir Bulbul Chowdhury, the learned Advocate for the Respondent No. 9.

In view of our discussions made in the foregoing paragraphs it is by now clear that the instant Rule must fail.

In the result, the Rule is discharged. The order of status-quo granted earlier by the Court stands vacated.

In the facts and circumstances of the case there will be no order as to costs.

Communicate this judgment at once.

S.M. Iftekhar Uddin Mahamud, J:

I agree.