

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

Present:

Ms. Justice Naima Haider
And

Ms. Justice Kazi Zinat Hoque

Writ Petition No. 8173 of 2013

In the matter of :

An application under Article 102(2)(a)(ii) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of :

Shah Mahmud Hasan Chowdhury alias Md.
Mahmudul Hasan, Official Matowalli Porsha
High Madrasa Waqfa Estate, Porsha, Naogaon.

..... Petitioner

-VERSUS-

Government of the People's Republic of
Bangladesh, represented by the Secretary,
Ministry of Religious Affairs, Bangladesh
Secretariat, Ramna, Dhaka and others .

..... Respondents

Mr. M. L. Das, with
Mr. Fazlul Kabir and
Mr. Ferdous Reza Chowdhury, Advocates

..... For the Petitioner

Mr. Amit Das Gupta, Deputy Attorney General

.... For the respondents

Date of Hearing : 20.08.2023 and 22.08.2023.

Date of Judgment: 29.08.2023.

Kazi Zinat Hoque, J :

In this application under Article 102(2)(a)(ii) of the Constitution, this Rule Nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the change of the nomenclature of Porsha High Madrasha into Porshah High Madrasha-Cum-High School shall not be declared to have been done without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.”

The relevant fact for the disposal of the Rule is that late Bibi Nurjat Chowdhurani, wife of late Abdul Latif Shah Chowdhury, the paternal great-grandmother of the petitioner of village and Police Station Porsha in the District of Naogaon, along with other benevolent persons, dedicated about 500 bighas of their landed properties within the jurisdiction of Porsha, Safahar, Niyamotpur, and Patnitala Police Stations under Naogaon District by executing and registering deeds of Waqf on different dates from 1924 and

onward for religious and educational purposes of the children of the locality, namely Porsha. She also established the local Porsha High Madrasha for imparting free religious education to the children of the locality in 1924, and the same was affiliated in 1927. Available waqf deeds are dated 19.06.1931, 07.12.1932, 31.01.1935, 15.04.1936, 19.05.1939, and 27.12.1956, respectively. The waqif and waqifa of the aforesaid deeds of waqf stipulated that they would function as Mutwallis of the waqf estate during their lifetime, and thereafter the Secretary of the Managing Committee of Porsha High Madrasha shall become the Mutwalli and manage the waqf estate.

During the tenure of the first Mutwalli, Shah Abdul Hye Chaudhury, with his sincere effort and as per the stipulations of the Waqf deeds, the Porsha High Madrasha was affiliated with the Madrasha Education Board, Dhaka, and as such, respondent No.5, the Madrasha Education Board, became the controlling authority of the Porsha High Madrasha. At this time, due to the excellent results of the students of Porsha High Madrasha, its reputation widely spread, and Porsha High Madrasha became known as Porsha Senior High Madrasha. Thereafter, during the old age of

the aforesaid first Mutwalli, Shah Abdul Hye Chowdhury, Porsha High Madrasha fell into the hands of some unscrupulous persons of the locality. One Mr. Shah Khalil Mohammad Chaudhury along with some other local unscrupulous persons illegally and with an ulterior motive, got the Porsha High Madrasha changed into Porsha High Madrasha-Cum-High School under the then Board of Intermediate and Secondary Education, Rajshahi, without obtaining any formal permission, sanction, or even serving any notice to the Madrasha Education Board, Dhaka. This act of conversion was in utter violation of the stipulations of the waqf deeds. During East Pakistan times, respondent No.7, the Deputy Director of Public Instruction, introduced certain civic sciences into the Madrasha Education Curriculum. During the fag end of the Pakistani regime and the disabled old age of the first Mutwalli, Shah Abdul Hye Chaudhury, said Shah Mohammad Khalilur Rahman Chaudhury, by using his name and by virtue of being designated as a member of the Porsha High Madrasha Curriculum Committee, actuated by ill motives, tried to abolish the Porsha High Madrasha. They illegally wanted to establish a high school on the waqf property and, with that end in view, they also illegally

tried to change the nomenclature of the Porsha High Madrasha. In advancing their ill-motivated design, they, in connivance with respondent No.8, the Secretary of the Board of Intermediate and Secondary Education, Rajshahi, got the nomenclature of the Porsha High Madrasha illegally changed into Porsha High Madrasha-Cum-High School. In doing so, they misrepresented themselves as Mutwalli and the Secretary of the Management Committee of Porsha High Madrasha. Respondent No.7 or 8 has/had no scope to act in violation of the stipulations of deeds of Waqf, which only provided the opportunity of imparting religious education. The petitioner has challenged the change of nomenclature of Porsha High Marasha into Porsha High Madrasha cum High School

Mr. M. L. Das, learned Advocate, appearing on behalf of the petitioner, submitted that “Porsha High Madrasha” was established in 1924 by the waqf estate. However, the respondents most illegally and arbitrarily changed the name of the “Porsha High Madrasha” into “Porsha High Madrasha-Cum-High School” which was not contemplated in the deeds of waqf. As such the change of nomenclature of Porsha High Marasha into Porsha High Madrasha

cum High School is liable to be declared to have been done without lawful authority.

The Rule has not been opposed by any of the respondents.

“Waqf, in [Islamic law](#), is a charitable [endowment](#) held in [trust](#).”¹

The Mussalman Wakf Validating Act No. VI of 1913 contains definition of waqf.

“Waqf means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious pious or charitable.”²

“Waqf” means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by Muslim Law as pious, religious or charitable, and includes any other endowment or grant for the aforesaid purposes, a waqf by user, and a waqf created by a non-Muslim.”³

“Waqif means any person creating waqf”.⁴

“Waqf deed means any deed or instrument by which a waqf is created and includes any valid subsequent deed or instrument

¹ <https://www.britannica.com/topic/waqf>

² Section 2

³ Waqfs Ordinance, 1962, section 2(10)

⁴ Ibid, section 2(13). The settler/donor is called the waqif (male) or waqifa (female).

by which any of the terms of the original dedication has been varied.”⁵

From careful perusal of the waqf deeds dated 19.06.1931, 07.12.1932, 31.01.1935, 15.04.1936, 19.05.1939, and 27.12.1956 (Annexure A series), it is evident that late Bibi Nurjat Chowdhurani, wife of late Abdul Latif Shah Chowdhury, the paternal great-grandmother of the petitioner of village and Police Station Porsha in the District of Naogaon, along with other benevolent persons, dedicated about 500 bighas of their landed properties within the jurisdiction of Porsha, Safahar, Niyamotpur, and Patnitala Police Stations under Naogaon District for religious and educational purposes of the children of the locality, namely Porsha. She also established the local Porsha High Madrasha for imparting free religious education to the children of the locality in 1924, and the same was affiliated in 1927. The waqif and waqifa of the aforesaid deeds of waqf stipulated that they would function as Mutwallis of the waqf estate during their lifetime, and thereafter the Secretary of the Managing Committee of Porsha High Madrasha shall become the Mutwalli and manage the Waqf Estate.

⁵ Waqfs Ordinance, 1962, section 2(11)

During the tenure of the first Mutwalli, Shah Abdul Hye Chaudhury the Porsha High Madrasha was affiliated with the Madrasha Education Board, Dhaka, and as such, respondent No.5, the Madrasha Education Board, became the controlling authority of the Porsha High Madrasha. At this time, due to the excellent results of the students of Porsha High Madrasha, its reputation widely spread, and Porsha High Madrasha became known as Porsha Senior High Madrasha. Thereafter, during the old age of the aforesaid first Mutwalli, Shah Abdul Hye Chowdhury, Porsha High Madrasha fell into the hands of some unscrupulous persons of the locality. One Mr. Shah Khalil Mohammad Chaudhury, with the help of some other local unscrupulous persons, illegally and with an ulterior motive, got the Porsha High Madrasha changed into Porsha High Madrasha-Cum-High School under the then Board of Intermediate and Secondary Education, Rajshahi, without obtaining any formal permission, sanction, or even serving any notice to the Madrasha Education Board, Dhaka. This act of conversion was in utter violation of the stipulations of the waqf deeds. During East Pakistan times, respondent No.7, the Deputy Director of Public Instruction, introduced certain civic sciences

into the Madrasha Education Curriculum. During the fag end of the Pakistani regime and the disabled old age of the first Mutwalli, Shah Abdul Hye Chaudhury, said Shah Mohammad Khalilur Rahman Chaudhury, by using his name and by virtue of being designated as a member of the Porsha High Madrasha Curriculum Committee in connivance with respondent No.8, the Secretary of the Board of Intermediate and Secondary Education, Rajshahi, got the nomenclature of the Porsha High Madrasha changed into Porsha High Madrasha-Cum-High School. In doing so, they misrepresented themselves as Mutwalli and the Secretary of the Management Committee of Porsha High Madrasha. The petitioner contended that the change of name of the Porsha High Madrash into Porsha High Madrasah cum High School is without lawful authority as respondent No.7 or 8 has/had no scope to act in violation of the stipulations of deeds of waqf, which only provided the opportunity of imparting religious education.

The Courts have always maintained the sanctity of waqfs. Question of validity of a waqfnama⁶ creaed by Nawab Mohammad Yosuf came up in the case of Zubeda Begum vs. Syed Shah

⁶ Waqfnama means the document evidencing a declaration of waqf.
<https://www.lawinsider.com/dictionary/waqfnama>

Khurshid Ahmad Hash ⁷. Nawab Mohammad Yosuf, son of Nawab Abdul Majid Saheb of Jaunpur city, created a waqf by executing waqfnama dated 05.04.1956. After his death his widow filed suit for cancellation of the waqfnama. The trial court decreed the suit in part. Appeal was filed against the aforesaid decree before the Allahabad High Court which dismissed the appeal. Thereafter an appeal was filed in the Supreme Court of India. The Supreme Court dismissed the appeal holding that the waqif created the waqf for religious benefit and thereafter the property vested in the Almighty. Therefore the waqf created by Nawab Mohammad Yosuf is a valid waqf created in accordance with law.

The case of Sikandar Hayat Khan Jogazai vs. Muhammad Hashim⁸ dealt with the validity of a lease of waqf property for setting up of a petrol pump for 30 years. A waqf was created in 1908 over land situated in Multan. In 1950 a school was established on a portion of the waqf property. The Chief Administrator of Waqf granted lease of the waqf property for setting up of a petrol pump for a period of 30 years. The descendants of the waqif challenged the said grant through filing a

⁷ AIR ONLINE 1999 SC 999

⁸ CP No. 522-L, 523-L & 588 of 2013

writ petition, on the ground that the lease offends the object of the waqf and is violative of the provisions of the Punjab Waqf Properties Ordinance, 1979 (hereinafter referred to as the Ordinance, 1979) and Punjab Waqf Properties (Administration) Rules, 2002. The High Court of Punjab set aside the grant of lease for setting up a petrol pump holding that the trust property could not lawfully be given to the petitioner for establishment of a petrol pump, the grant of lease for 30 years is illegal and the land in question being a playground attached to a school cannot be used for different purpose. The Division Bench of the High Court upheld the judgment in appeal vide impugned order dated 29.01.2013. This decision was challenged in an appeal before the Supreme Court of Pakistan. The Supreme Court of Pakistan held that the grant of lease of waqf property for setting up of a petrol pump is illegal as it is violative of the provisions of the Punjab Waqf Properties Ordinance, 1979 and Punjab Waqf Properties (Administration) Rules, 2002.

In view of the above discussions, we are of the view that the change of name of Porsha High Madrasha into Porsha High School cum Madrasha is without lawful authority as it is against

the express object of the waqf deeds. The original purpose of the waqf is to support religious education, and altering the name contradicts this purpose. Therefore, this change of name violates the clear intent of the waqf.

Since Porsha Madrasah established in 1924 was affiliated as a Madrasah with the Board of Central Madrasah Examinations, Bengal in 1927, the said Board (now the Madrasah Education Board) is the controlling authority of the aforesaid Madrasah. Therefore respondent No.8, the Secretary, Board of Secondary and Higher Secondary Education, Rajshahi, has/had no authority to change the name of the Madrasah against the clear intent of the waqf.

In the result, the Rule is made absolute. The change of the nomenclature of Porsha High Madrasha into Porsha High Madrasha-Cum-High School is declared to have been done without lawful authority and is of no legal effect.

There is no order as to costs.

The interim order of stay is recalled and vacated.

Let a copy of this judgment be communicated to the concerned respondents at once.

(Kazi Zinat Hoque, J):

I agree

(Naima Haider, J):