



2026:AHC:153384-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 21943 of 2012

Mohd. Yaseen and others

.....Petitioner(s)

Versus

Mohd. Asif and others

.....Respondent(s)

Counsel for Petitioner(s)	: Dushyant Singh, M.C. Singh, Mohit Kumar, Rahul Srivastava
Counsel for Respondent(s)	: C.S.C., M.N.singh, Mahesh Narain Singh, Mahesh Narayan Singh

A.F.R.

Court No. - 2

**HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.**

**Order on Civil Misc. Delay Condonation Application No. Nil of 2026
and Civil Misc. Substitution Application No. Nil of 2026**

1. Both these applications have been moved in Court today. These applications are taken on record. Let them be numbered by the Office.
2. The delay condonation application has been moved seeking to condone the delay in making the application for substitution seeking to bring on record the heirs and LR's of respondent nos. 3 and 5, who have since passed away.
3. Mr. M.N. Singh, Advocate, who appears for the contesting respondents and has instructions on behalf of the heirs and LR's states

that he does not wish to file a counter affidavit to the delay condonation application.

4. We have perused the delay condonation application and the affidavit in support thereof. Respondent no. 3, Smt. Shagufta passed away on 11.04.2026 leaving behind her heirs and LRs as respondent nos. 1 and 2, who are already on record.

5. Likewise, respondent no. 5, Smt. Mahmoodan died on 28.11.2013 leaving behind respondent no. 4, her son, Mohammad Hashim, as her heir and LR. Mohammad Hasim too passed away and his heirs have already been substituted pursuant to our orders passed yesterday.

6. The cause shown for the delay is sufficient. The application is allowed.

7. The delay in preferring the substitution application is condoned and the substitution application is treated to be within limitation.

8. So far as substitution application goes, it has been moved to bring on record the heirs and LRs of respondent nos. 3 and 5. We notice that the heirs of respondent no. 3 are already on record as respondent nos. 1 and 2 and those of respondent no. 5 are also on record presently as the heirs and LRs of respondent no. 4, who too has passed away in the meanwhile.

9. There is good ground to grant substitution. The substitution application is allowed.

10. Let a note be made in the cause title against the names of respondent no. 3 that her heirs and LRs are already on record as respondent nos. 1 and 2 and a similar note against the name of respondent no. 5 be also made that her heirs and LRs are already on record as respondent nos. 4/1, 4/2 and 4/3.

11. Let the substitution be carried out by the office forthwith.

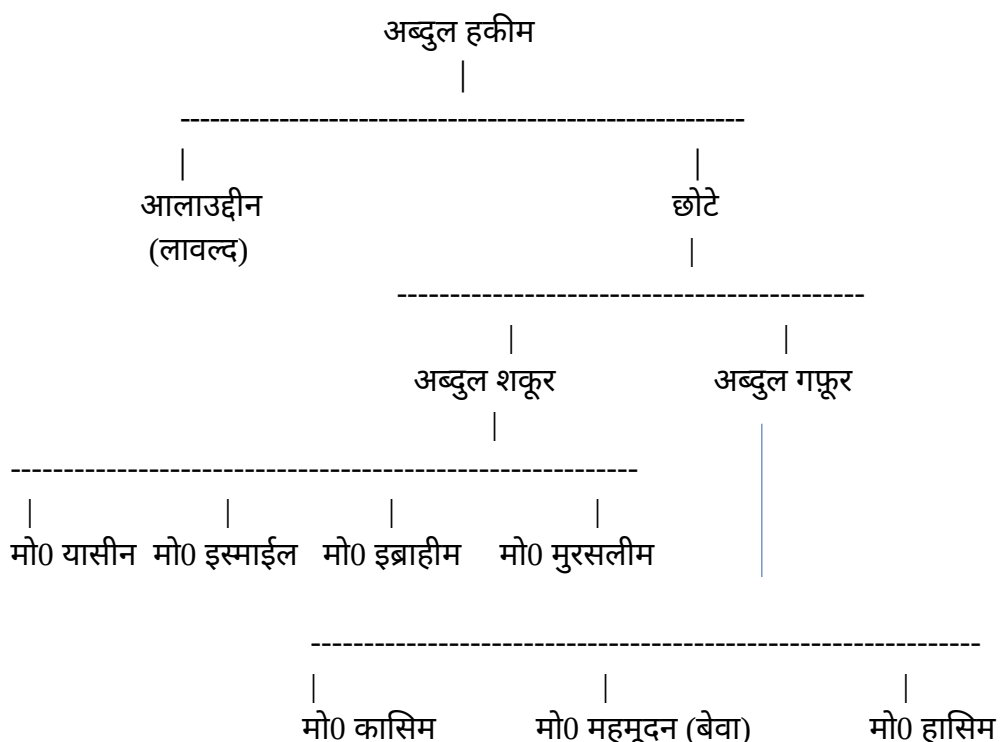
Order on WRIT - C No. - 21943 of 2012

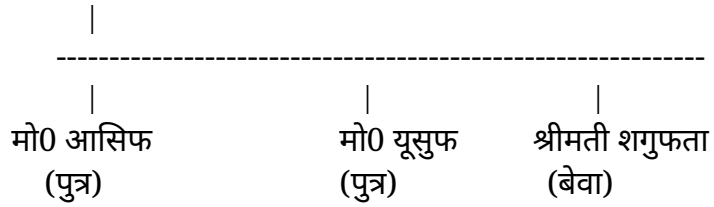
Mohd. Yaseen and othersPetitioner(s)
 Versus
 Mohd. Asif and othersRespondent(s)

1. This writ is directed against an order dated 23.04.12 passed by Additional District Magistrate (Administration) acting as the competent authority under the National Highways Act, 1956 (for short the Act of 1956), apportioning compensation between the petitioners on one hand and the original respondent nos. 1 to 5 on the other, granting them a moiety each.

2. Heard learned Counsel for the petitioner, Mr. M.N. Singh, learned Counsel appearing on behalf of respondent nos. 1 to 5 and Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing on behalf of respondent nos. 6 and 7.

3. The case of the petitioners is that the land in regard to compensation whereof the dispute has arisen was originally held by one Abdul Hakeem. He was succeeded by generations after him and the property devolved upon parties according to following pedigree:





4. We notice that Abdul Hakeem had two sons, namely, Alauddin and Chhote. Alauddin died issue-less and his line failed. The dispute here has arisen amongst heirs of Abdul Hakeem descended through his son Chhote. Chhote had two sons Abdul Shakur and Abdul Gafur. The petitioners represent Abdul Shakur's branch, whereas respondent nos. 1 to 5, represent the branch of Abdul Gafur.

5. The land in dispute was acquired under the National Highways Act, 1956 *vide* notification under Section 3A published on 04.12.2009 and 3(B) published in the gazette on 16.06.2010. A notice under Section 3G was issued, which was published in Hindi Daily '*Amar Ujala*' and '*Dainik Hindustan*', both dated 23.07.2010. An award was passed on 28.02.2011, awarding a total sum of Rs. 25,35,29,509/-.

6. The dispute arose between the petitioners on one hand and respondent nos. 1 to 5 on the other regarding apportionment of compensation. The petitioners contented that the late Alauddin had transferred his agricultural holdings by way of oral gift (*Hiba*) in favour of the late Abdul Shakur, one of his two nephews, whose branch is represented by the petitioners. The petitioners, therefore, say that they would have a 3/4th share in the land acquired, and *a fortiori*, the compensation payable. The respondents would be entitled to a 1/4th. One of the principal questions that arose for consideration, therefore, was whether, in the case of tenure land governed by the U.P. Zamindari Abolition and Land Reforms Act, 1956 (U.P.Z.A. & L.R. Act, 1956), an oral gift could be made under the personal law of parties. The contention was that the U.P.Z.A. & L.R. Act, 1956 is uniformly applicable to all the tenure holders regardless of their religion and the personal laws

governing other properties of theirs. The U.P.Z.A. & L.R. Act carries provisions regarding making of gift under Section 152 of the said Statute and gift of a transferable tenure can be made by a *bhumidhar* in accordance with Section 154 of the U.P. Z.A. & L.R. Act alone.

7. On the other hand, it was urged that there is no specific provision in the U.P.Z.A. & L.R. Act providing for gift of a *bhumidhari* land. Section 154 of the said Act does not contemplate the gift of such land. It was urged that since there was no specific mode of gift provided under the U.P.Z.A. & L.R. Act, Section 129 of the Transfer of the Property Act, 1882 would apply, entitling a *bhumidhar*, who was a Muslim to transfer his land by making an oral gift in accordance with the Mohammadan law. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, did not abrogate or override this rule of Mohammedan law. In support of this contention, reliance was placed on a decision of this Court in **Mohammad Ali vs. Board of Revenue, 2001 (92) RD 282**.

8. From the aforesaid state of things, what we find is that there was a serious contention between parties on facts and law about their shares in the land since acquired, and *a fortiori*, regarding apportionment of compensation between them. It was a full-fledged *lis* and not merely a case, where the shares of parties were, more or less, agreed upon and the matter one where the competent authority could determine the shares almost as non-contentious business.

9. The Act of 1956 makes provision in regard to apportionment of compensation under Section 3H, which reads:

" [3H.](#) Deposit and payment of amount.—

[\(1\)](#) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit."

10. Learned Counsel for the petitioner invited our attention to Sub-section (4) of Section 3H and submitted that in the event of a dispute arising between co-sharers of the land acquired under the Act, apportionment of compensation or any part thereof or to any person to whom the same or any part thereof is payable, could not be done by the competent authority. The competent authority would have to refer the

dispute for decision of the principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situate. This, according to the learned Counsel for the petitioner, is the inescapable effect to Sub-section (4) of Section 3H.

11. On the other hand, Mr. M.N. Singh, learned Counsel appearing on behalf of respondent nos. 1 to 5 submits that Sub-section (3) of Section 3H of the Act of 1956 provides that where several persons claim to be interested in the amount deposited under Sub-section (1), the competent authority is empowered to determine the persons, who in opinion of the authority, are entitled to receive compensation payable to each of them. This power, according to Mr. M.N. Singh, learned Counsel for respondent nos. 1 to 5, entitles the competent authority to apportion shares between parties. We do not agree.

12. The power under Sub-section (3) of Section 3H is a power given to the competent authority to distribute compensation according to the shares of parties so long as the entitlement to the compensation with reference to the shares of each largely remains a non-contentious issue. If shares of parties are apparently well settled, there is no difficulty for the competent authority to proceed under Sub-Section (3) of Section 3H and pay compensation according to each co-sharer's entitlement. However, if a dispute arises between parties in the sense of a *lis* with each party propounding a different share for himself based on past transactions and the law applicable, it is a matter which can alone be determined by the principal Civil Court of original jurisdiction within whose jurisdiction the land acquired is located. The competent authority in a situation of the latter kind would have no jurisdiction to decide upon entitlement of shares of parties and distribute compensation according to his opinion. The only course left open to the competent authority would be to make a reference of the dispute for the decision of competent Civil Court within whose jurisdiction the acquired land is located. We are

fortified in the view that we take by the authority of the Supreme Court in **Vinod Kumar and others vs. District Magistrate, Mau and others, AIR 2023 SC 3337**. In **Vinod (supra)**, it has been held:

"33. We are of the view that when it comes to resolving the dispute relating to apportionment of the amount determined towards compensation, it is only the Principal Civil Court of original jurisdiction which can do so. Principal Civil Court means the Court of the District Judge.

34. Our final conclusion is as under: If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, then, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub-section (3) of Section 3H, will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court."

13. In the circumstances, we are of opinion that the competent authority/Additional District Magistrate had no jurisdiction to apportion compensation between the petitioners on one hand and respondent nos. 1 to 5 on the other. He had to make a reference of the dispute to the principal Civil Court of original jurisdiction within whose jurisdiction the land acquired is situate.

14. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 23.04.2012 is hereby **quashed**. The competent

authority/Additional District Magistrate Bulandshahr is ordered to **forthwith** make a reference of the dispute to the principal Civil Court of original jurisdiction within whose jurisdiction the land is acquired.

15. There shall be no order as to costs.

16. Let this order be communicated to the Additional District Magistrate, Bulandshahr through the learned Chief Judicial Magistrate, Bulandshahr by the Registrar (Compliance) **by Monday next.**

(Indrajeet Shukla, J.) (J.J. Munir, J.)

July 24, 2026

Deepak Pandey