

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...
WP(C) No. 601/2025
C/w
WP(C) No. 56/2025

Reserved on: - 13.03.2026
Pronounced on: - 30.03.2026
Uploaded on: - 31.03.2026
Whether the operative part or full judgment is pronounced: - full

Atiqa Begum and Ors.

.....Petitioner(s)

Through:
Mr. Aswad Attar, Advocate
Versus

UT of J&K and Ors.

.....Respondent(s)

Through:
Mr. Hakim Aman Ali, Dy. AG
Mr. Jahangir Iqbal Ganai, Sr. Advocate with Mr. Owais Dar and Ms. Syed Gousia Tabassum, Advocates for R-5

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

“There are two lasting bequests parents normally want to provide to their children with, one of these is roots and other is wings”- unknown.

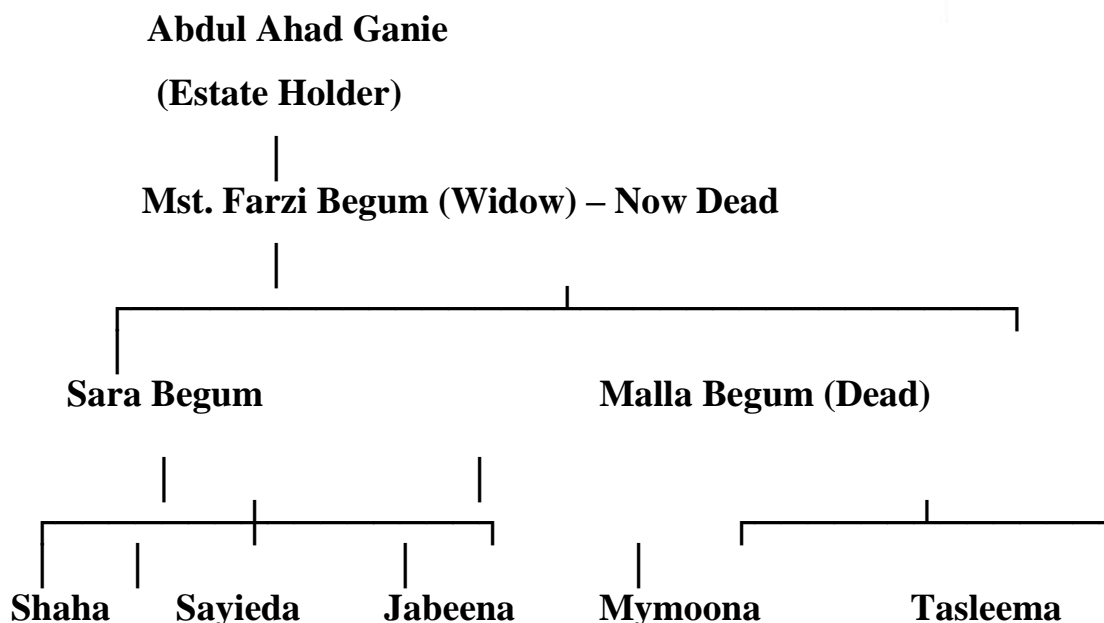
I. In this case father’s final act of love depicts that he bestowed his minor unmarried daughter with “roots” so as to stand on her feet and the elder married daughter with “wings” to build her own kingdom. Deceased father ensured to secure the future of the one who needed the most at the relevant point of time, providing stability to his unmarried daughter, while trusting his happily married daughter to thrive in life, built up her life with her husband and family. Sisters remained happily throughout the life span of elder sister but now children of elder sister are claiming their right in the compensation of the land which has been acquired by National Highway Authority.

2. Since the subject matter in the writ petitions is similar on facts and law, therefore, both are taken up together for disposal by this common Judgment and order.

3. These petitions have been preferred by petitioners, thereby challenging order passed by Respondent no.2, District Collector, Baramulla dated 11-03-2025, whereby their application seeking reference under section 3H (4) of National Highway Act, 1956 has been rejected. The petitioners had claimed their entitlement to compensation in lieu of land which has been acquired for widening of Baramulla-Kupwara National Highway Road under Survey No.92-B and Survey No.233 at Estate, Delina.

Factual Matrix:

1. The father of petitioners' mother Mst. Malla Begum (dead) and Respondent no.5, was owner in possession of land measuring in all 40 Kanals 70 Marlas falling under Survey no. 45, 60, 62, 63, 214, 298, 300, 390 and 518, situated at Moza Delina, and upon his death, the said property had devolved upon his legal heirs that is mother of the said petitioners and Respondent no.5. The pedigree table of the parties is given as under:-



2. The petitioners are legal heirs of Mst. Malla Begum and after the demise of the estate holder, Abdul Ahad Ganai, as per Law of Inheritance under Muslim Personal Law his whole estate had to be devolved upon his wife Mst. Farzi Begum and two daughters, namely Mst. Malla Begum and Mst. Sarah Begum, (Respondent no.5).

3. It is stated that petitioners had no knowledge about the fact that Respondent no.5, in league with Respondent Tehsildar, had illegally mutated the entire land of the then estate holder to the exclusion of the mother of the petitioners. They came to know about it only when the land in question was required by the authorities for construction/strengthening/widening of two lane project from Rafiabad- Kupwara (NH 701) estate Delina. On further enquiry, it was found that as per revenue record, Mutation no.1066 (*Bikrami*) has been attested in favour of Respondent no. 5, Showing her as an exclusive owner of the land in question. The entry has been carried forward in subsequent *Jamabandi* and revenue extracts.

4. The petitioners allege that the mutation has been fraudulently obtained by respondent No. 5, neither their deceased mother Mst. Malla Begum nor were they ever associated with the mutation proceedings. The petitioners herein filed an appeal along with an application, seeking condonation of delay under J&K Agrarian Reforms Act, therein, assailing the mutation no.1066, dated 21-11-2011 (*Bikrami*) attested by the then Tehsildar, exclusively in favour of respondent no.5. Simultaneously, petitioners also filed a suit before the Court of learned District Judge, Baramulla, seeking therein, *inter alia*,

declaration from the court that the property described shall be declared as joint undivided and un-partitioned property of the petitioners and respondent no.5. The suit in question, instituted by the petitioners, is for the entire parcel of land, measuring 40 Kanals 70 Marlas out of which only approximately 6 Kanals have been acquired by the authority for construction of the road. Apart from this, an application had also been filed by the petitioners' seeking restraint on the release of compensation in favour of Respondent no.5, on account of the fact that the petitioners being the legal heirs of Mst. Malla Begum (dead) are also entitled to share in the property.

5. Petitioners filed an application before Respondent no.3, Assistant Commissioner Revenue, Baramulla, thereby requesting him not to release compensation in favour of Respondent no.5, till the rights between the parties are decided. After receiving report from the concerned, Respondent no .3 dismissed the application of the petitioners on 23-12-2024, mainly on the ground that same pertains to the filing of mutation/appeal/revision of settlement of records.

6. The petitioners invoked the provisions of National Highway Act 1956, read with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, by filing an application before Deputy Collector Baramulla, Respondent no.2, seeking therein the reference of the dispute to the competent authority for adjudication regarding apportionment, including the question of title. The application of the petitioner seeking reference was not decided by Respondent no.2, which constrained the petitioners to file a writ petition before this Court bearing WP(C) 56/2025, wherein interim order was granted in favour of the

petitioners on 03-01-2025, by directing Respondent no.2 to decide the application filed by the petitioners for making reference and not to disburse the compensation. Respondent no.2 decided the reference in terms of impugned order dated 11-03-2025, thereby holding that the recorded owner of the land shall only be entitled to compensation.

7. Petitioners have challenged the impugned order passed by Respondent no.2, on the ground that the findings returned by respondent No. 2, are based on the report of Respondent no.4, Tehsildar, which was relied upon by Assistant Commissioner Baramulla; Respondent no.2 while passing the impugned order, has usurped the authority as by law vested in the Principal Civil Court of original jurisdiction; he has gone into the merits of the case and decided the application as if he was the authority hearing the reference; impugned order is in violation of National Highway Act, 1956, read with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013.

8. *Per contra*, in the reply filed by Respondent no.5, it is stated that the instant petition is not maintainable inasmuch as the petitioners, for the same cause of action and relief sought, have already approached this court by filing a writ petition WP (C) No. 56/2025, the Petitioners have filed a false affidavit and have averred in this petition at para 24 that they have not filed any other petition on the same subject matter; not only that, the petitioners have also filed a civil suit for declaration, partition, and separate possession, Mesne profit, and Perpetual Injunction qua the land which has been acquired, before the Principal District Judge, Baramulla; petitioners have also filed an appeal challenging Mutation No.1066 in terms whereof the property acquired stands

mutated in the name of Respondent no.5. The appeal was preferred after acquisition proceedings were initiated, which upon consideration has been dismissed on 20-05-2025.

9. Respondent no.5 is stated to be the owner in possession of the land measuring 39 Kanals, 19 Marla situated at Moza Delina. Out of this property land measuring 0.136 Hectares under Survey no.233 and land measuring 0.163 Hectares under Survey no. 92-B amongst others was sought to be acquired. The acquisition proceedings were initiated under the provisions of National Highway Act, 1956, a Notification was published in two leading newspapers and 21 days' time was granted to the land owners/Interested persons to file their objections. No objections were filed by the petitioners, after the acquisition proceedings were initiated in accordance with law and Award under Section 3G of National Highway Act, 1956 was notified by respondent no.8 on 31-07-2024. The respondent no.5 was held entitled to compensation amounting to ₹2,48,82,947/- for land measuring 0.136 Hectares falling under survey no. 233 and ₹ 2, 98,22,944/-for the land measuring 0.163 Hectare falling under Survey no. 92-B. After passing of the Award dated 31-07-2024, an application has been filed by petitioners before Responding no.3, thereby requesting for stoppage of compensation in favour of Respondent no.5, the same was rejected on 23-12-2024 by Respondent No. 3.

10. It is stated further in the reply that the petitioners are strangers to the acquisition proceedings as such have no right to seek reference to the Principal Civil Court. The competent authority has rightly on the basis of the record held that the petitioners have no right over the properties which have been acquired and Respondent no. 5 is the sole owner of the acquired land.

Moreover, the petitioners do not satisfy the definition of “Person Interested”, as such they cannot raise any dispute qua apportionment of the amount determined.

Arguments of the learned counsel for the petitioners.

11. Learned counsel for the Petitioners Mr. Aswad Attar has contended that Section 3H(4) of the Act of 1956 emphasizes the expression “shall refer”, which is mandatory in character, the moment a dispute regarding apportionment or entitlement to compensation arises, the Competent Authority is statutorily divested of adjudicatory power and is bound to refer the matter to the Principal Civil Court of original jurisdiction. He further submits that the property in question was a landed estate of late Abdul Ahad Ganie, which upon his demise, devolved upon his widow and two daughters in accordance with Muslim Personal Law (**Shariya Law**). He submits that the Petitioners, being daughters of late Mst. Malla Begum, stepped into her shoes and inherited her lawful share. He has submitted that the Competent Authority transgressed its statutory limits by scrutinizing the revenue entries, touching upon title and ownership. According to the learned counsel for petitioners, such exercise amounts to adjudication of civil rights, which falls exclusively within the domain of a civil court.

12. Learned counsel has further contended that the pendency of a civil suit for declaration and partition reinforces, rather than negates, the existence of a dispute. According to the learned counsel for petitioners, the very fact that a civil court is seized of the issue of title demonstrates that a bona fide dispute exists, mandating reference under Section 3H (4) as such the impugned order effectively prejudices the rights of the petitioners by accepting the revenue

record as conclusive, thereby depriving them of statutory protection envisaged under the National Highway Act of 1956. Learned counsel further submits that it is beaten law of the land that revenue entries do not confer title upon its beneficiary.

13. In support of such contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Mansoor Saheb (Dead) and Others v. Salima (D) by Lrs. and Others***, 2024 LiveLaw (SC) 1023 wherein the Court observed:

“35. Additionally, the purpose of mutation entry, as is well settled is only limited to revenue records. They do not, in any way, translate to or confer any title in regard to the subject matter property.”

14. He has also relied upon judgments of Hon'ble Supreme Court reported in 2024 SCC Online 3809, 2004(3) SCC 137, 2023 (19) SCC 126 and 1952 (2) SCC 219.

Arguments of the learned counsel for the Respondents.

15. Learned Senior Counsel Mr. Jahangir Iqbal Ganai appearing on behalf of Respondent No. 5, submitted that the petitioners have not demonstrated any subsisting legal right of theirs over the property in question as on date. Mutation No. 1066 has been recorded in favour of Respondent No. 5 for more than seven decades, but was never challenged by Mst. Malla Begum (dead) during her lifetime. He further submits that the property had devolved in favour of Respondent No. 5 in the year 1954 as per customary law, which was relevant at that point of time and not as per Shariat law. It is also submitted by learned senior counsel that the settled revenue record formed the basis of acquisition proceedings and the award, the Petitioners' raised their claim only

after determination of compensation, a belated assertion lacking prima facie foundation.

16. Learned Senior Counsel submitted that Section 3H(4) cannot be read in isolation, the expression “dispute” must denote a legally cognizable and bona fide controversy grounded in a recognizable right. A mere assertion of co-heirship, unsupported by any declaratory decree or prima facie adjudication, does not automatically compel District Collector to accept reference. Reliance has been laid upon *2017 (11) SCC 92*, *2011(7) SCC 397*, *2016 (02)SLJ 751*, *2018 (2) SLJ 965*, *2025 SCC ONLINE BOMBAY 1037*, *2025 SCC BOMBAY 307*, *2025 SCC ONLINE KER 7592*.

17. Learned Deputy Advocate General, Mr Hakeem Amaan Ali has submitted that Assistant Commissioner, Revenue, Baramulla, while passing an order on an application filed by petitioners regarding the release of compensation for land falling under Survey no.92-B and 233 situated at Delina, which has been acquired for the construction of RKCTC Road, had directed the office of the Tehsildar, Baramulla, to submit report, accordingly, a team was constituted headed by Naib Tehsildar Baramulla to enquire into the matter and to submit the report. The team examined the available revenue records and after conducting a thorough enquiry in the matter, submitted his report on 16-12-2024, which strengthens the claim of respondent no. 5 of being an exclusive owner in possession of the acquired land.

18. Heard learned counsel for the parties and perused the material on record.

19. Learned senior counsel representing respondent No. 5, has raised preliminary objections with respect to maintainability of this petition on the

ground that petitioner had filed a writ petition WP(C)no.56/2025, for the same cause of action and relief sought, in that petition, petitioners herein, had sought direction upon Respondent no. 2 to refer the dispute with respect to land in question to competent authority for adjudication. In this petition, petitioners have challenged the decision taken by Respondent no. 2, as per interim direction passed in the earlier petition, the second prayer is the consequential relief which has been sought by the petitioners in both the petitions. The petitioners though have not suppressed anything in the instant petition; but they were bound to depose at para 24 that they had filed a similar petition which is pending disposal before this Court.

20. The petitioners herein, have remained silent for as many as 70 years after the mutation was recorded in the year 2011 (Bikrami), 1954 A.D, in favour of Respondent no.5, and mother of the petitioner never objected to the right, title, ownership of Respondent no. 5 during her lifetime. The date of death of the mother of the petitioners is nowhere mentioned in the petition, however, petitioners herein are also more or less above 50 years of age, and most of them are residing nearby to the property in dispute at village Delina, therefore it is very difficult to believe that petitioners had no knowledge of the right, ownership and possession of Respondent no.5, with respect to subject matter of the property in dispute.

21. In this petition, petitioners claim to be entitled to the compensation for the land allegedly devolved upon them through their mother now acquired for the construction of the road, which is to be released only in favour of the respondent no. 5, on the basis of mutation no.1066 dated 21-11-2011 (Bikrami), recorded in her favour from last more than seven decades.

Reference to the dispute was made by petitioners before concerned District Collector under section 3H(4) of National Highways Act, 1956, to the extent of apportionment of the land in question, however, the same has been rejected by Respondent no.2, in terms of order impugned dated 11-03-2025.

Before coming to the rival submissions on either side, few relevant provisions of the Act of 1956 are to be looked into:-

3G. Determination of amount payable as compensation.—(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority. (2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land. (3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired. (4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land. (5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government-- (6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

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 subsections (2) to (4) shall apply to such deposit.

22. The legislative intent, as reflected in 3G of the Act of 1956, clearly shows that the right of user or any right in the nature of an easement, on any land which is required under. There shall be paid an amount to the owner or any other person who has right of enjoyment in that land, affected in any manner by such acquisition. Before proceeding to determine the amount, the competent authority is bound to give a public notice published in two local

newspapers, such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner before the competent authority, at a place and time to state the nature of their respective interest in such land, and if it is not acceptable to either of the parties, the amount shall on application by parties be determined by the arbitrator to be appointed by the central government. Section 3H(4) provides that if any disputes arises as to the apportionment of the amount or any part thereof, the competent authority shall refer the dispute to the decision of principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

23. The National Highways Act, 1956 has not defined ‘Person Interested’ in the Act, however, it broadly recognizes the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever.

However, The Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 provides the definition of “*land owner*” and “*person interested*” under Section 3(r) and Section 3(x), respectively.

Under Section 3(r) “land owner” includes any person,—
(i) whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or
(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) or under any other law for the time being in force; or

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or
(iv) any person who has been declared as such by an order of the court or Authority;

Further, under Section 3 (x), “person interested” means—
(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;
(ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);

(iii) a person interested in an easement affecting the land;
(iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and
(v) any person whose primary source of livelihood is likely to be adversely affected;

24. Petitioners, herein have already preferred a civil suit for declaration and consequential relief with respect to the property, which also includes the property forming the subject matter of the present petition where all the respondents have been arrayed as defendants. This means that the petitioners/plaintiffs are yet to obtain a declaration in their favour on the basis of which they can be said to have a right, title or interest with respect to the suit property including the property forming subject matter of this petition.

In the suit the petitioners herein, have prayed as under:-

- a. Decree of declaration declaring the Suit land measuring 39 Kanal 19 Marlas under Survey number 17, land measuring 17 Kanal 11 Marlas contained under khasra number 36, land measuring 7 kanal 02 Marlas contained under Survey number 92 BAY, land measuring 15 Kanal 06 Marlas contained under Survey number 233, situated at Moza Delina as joint, undivided and un-partitioned among the plaintiffs and the defendant no. 6 and the plaintiffs may be declared entitled to their respective share out of the suit property.*
- B. Decree of prohibitory and mandatory injunction be passed against the defendants 1 to 5 (official Defendants) restraining them from disbursing the compensation amount with regard to the land falling under Survey number 92-BAY and 233, which has been acquired by defendant 1 to 5 for national Highway bypass road, Kanispora/Kapwara road in favour of defendant no.6.*
- c. Decree by issuance of preliminary decree of partition, by directing Tehsildar Baramula to partition the suit land by meets and bounds in between the plaintiffs and the defendant in accordance with the entitlement of the plaintiffs and defendants and on his submitting the*

report and after its acceptance final degree of partition and separate possession be passed under order 20 rule 18 CPC in favour of plaintiffs and against the defendant.

- d. Decree of separate possession of the actual share of plaintiffs by meets and bounds be passed, keeping in view the status and position of the land from the property left by the original estate holder. (Abdul Ahad Ganai)*
- e. Decree of consequential relief of perpetual injunction restraining the defendant no. 6 (Mst. Sara) from alienating, creating third-party interest, changing the nature of the portion of the suite land/property falling on a survey number that is land measuring 17 kanal 11. Marlas contain a Survey numbers i.e., Land measuring 17 Kanal 11 Marlas contained under khasra number 36, Land measuring 7 kanal 02 Marlas contained under Survey number 92-BAY, Land measuring 15 Kanal 06 Marlas contained under Survey number 233, total 39 Kanal 19 Marlas situated at Moza Delina by any mode or manner till the suit land is divided and partition in between the plaintiff and defendant no. 6.*
- f. Decree for Mesne Profits be passed in favour of plaintiffs and against defendant no. 6 directing defendant to pay the mesne profits arising out from the share of plaintiffs which defendant no. 6 has illegally used for her personal use.*
- g. Costs of the suit be also decreed in favour of the plaintiffs and against the defendant no.6*
- h. Any other relief which this court deems fit and proper in the circumstances of the case.*

25. Learned counsel for the petitioners in terms of order passed by this Court dated 24.02.2026 was directed to show maintainability of the instant petition in the face of parallel civil suit filed by the petitioners. In order to come out of the query of the court, petitioners filed an application under Order 23 Rule 1 of CPC, for partial withdrawal of the claim made in the suit filed by the petitioners to the extent it relates and seeks adjudication of the land measuring 0.163 Hectare under Survey no.92-B and 0.136 Hectare under Survey no. 233, acquired by National Highway Authority of India for construction of Highway, however, the same has not been decided by Principal District judge Baramulla till date. Appeal filed by petitioners before Additional Deputy Commissioner, Baramulla, against Mutation no.1066,

attested in favour of Respondent no.5 has also been dismissed against which petitioners have preferred a revision petition in the court of Divisional Commissioner Revenue, Srinagar, on 19-08-2025, which is pending disposal. As such petitioners have miserably failed to establish any right, title or interest in the property in dispute before the competent authority as well as before this court.

26. As recorded by the Competent Authority for Land Acquisitions i.e., Deputy Commissioner (District collector) , Baramulla, in the impugned order dated 11-03-2025, petitioners/applicants had filed application under Section 64 and 76 of J&K RFCTLARR Act, 2013 seeking reference of the case to the court of District Judge Baramulla, however, the acquisition proceedings have been initiated and completed under the provisions of National Highways Act, 1956 and corresponding section of the said Act for referral of dispute is 3H. After hearing the applicants as well as non-applicants and thorough verification of the matter, it has been concluded by respondent No. 3, that Respondent no.5 is recorded as sole owner of the acquired land prior to the land settlement (consolidation holding 1984-1985). It is also stated that applicants/petitioners failed to produce any document wherein they could establish their right/interest over the property prior to issuance of Award. Neither the petitioners nor their mother (dead) had ever been recorded as **owner** or tenant in the available records. In terms of the Act, Notification was published in two leading newspapers, 21 days' time was granted to the land owners/person interested to file their objections. Admittedly, no objections have ever been filed by the petitioners, resultantly award has been passed in

favour of Respondent no.5, strictly in consonance with National Highways Act,1956.

27. Learned counsel for the petitioners has relied on the judgment rendered in *Vinod Kumar & others vs District Magistrate, Mau and Others*, (2023) 19 SCC 126. The relevant extract of the said judgment is reproduced herein below:

“ 25. The scheme of the Act 1956 and the statutory provisions referred to above makes it very clear that once any land is acquired under the Act 1956, the competent authority is obliged to pay an amount by way of compensation. There is a procedure which has been prescribed under [Section 3G](#) of the Act 1956. Sub-section (5) of [Section 3G](#) makes it abundantly clear that if the amount determined by the competent authority under sub-section (1) or subsection (2) of [Section 3G](#) is not acceptable to either of the parties, the amount will have to be determined by the arbitrator who may be appointed by the Central Government on the strength of an application by either of the parties. [Section 3H](#) provides that the amount determined towards compensation under [Section 3G](#) will have to be deposited by the Central Government in accordance with the rules. It is only after such amount is deposited by the competent authority that the possession of the land can be taken. Sub-section (4) of [Section 3H](#) talks about apportionment of the amount. The language of subclause (4) of [Section 3H](#) is plain and simple. It provides that if any disputes arises as to the apportionment of the amount or any part thereof, the competent authority is obliged to refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.”

35. 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.

36. 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.”

28. Learned senior counsel for the respondents submitted that this judgment is not applicable to the claim of the petitioners on the ground that appellants and respondents in the judgment supra were co-sharers and their shares were determined, he has relied upon the paras:

7. The respondents herein objected to the aforesaid report. Both the parties were given opportunity to file their documents. An opportunity of hearing was also given to the parties and thereafter the competent authority i.e. SLAO, Mau proceeded to determine the shares of the various parties in the land in question vide order dated 11.12.2019. This order was passed under [Section 3H\(3\)](#) of the Act 1956. The SLAO relied upon the earlier judgment of the Civil Court dated 31.05.1976. It is the case of the appellants that the SLAO has correctly determined the shares between the parties.

9. The respondents, being dissatisfied with the order dated 11.12.2019 passed by the SLAO referred to above, challenged the same by filing a petition before the District Magistrate, Mau invoking [Section 3G\(5\)](#) of the Act 1956. It is the case of the appellants herein that the District Magistrate, Mau without any jurisdiction and further without giving any opportunity of hearing to the appellants proceeded to pass an order dated 16.01.2020 granting higher shares in favour of the respondents towards compensation.”

29. Learned senior counsel further submitted that the Supreme Court in case titled ***Vinod Kumar and others vs. District Magistrate, MUA and others*** (2023) 19 SCC 126 drew a clear and fine distinction between:

- i. Determination of the amount of compensation; and*
- ii. Apportionment of the amount already determined.*

Learned senior counsel submits that petitioners have misapplied the ratio of *Vinod Kumar*, the said judgment presupposes the existence of competing legally recognizable interests in the property. The obligation to

refer arises where there are identifiable claimants asserting apportionment of compensation on the basis of some prima facie existing interest. In the present case, the revenue record exclusively reflects Respondent No. 5 as the recorded owner. The Petitioners do not presently hold any declared share, decree, or adjudicated right in the property. Their claim is based on alleged succession under Shariya Law, which is yet to be established by the competent civil court. It is thus contended that in the absence of any adjudicated or prima facie recognized interest in favour of the petitioners, there was no “apportionment dispute” in the legal sense contemplated under Section 3H(4). At best, what exists is a disputed claim of title, which is already pending adjudication in a civil suit.

30. Learned Senior Counsel has relied upon *K. Jayaram v. Bangalore Development Authority* (2023)19 SCC 126 to submit that Article 226 jurisdiction is extraordinary, equitable and discretionary, and a writ court cannot be converted into a forum for indirectly securing civil relief in matters involving disputed title, the Competent Authority rightly refrained from mechanically referring the matter and that the petitioners must first establish their entitlement before the competent civil forum. Only upon such establishment would the question of apportionment arise in its true legal sense. The proper remedy lies in prosecuting the pending civil suit, the writ petition is an attempt to indirectly secure protection over compensation without first establishing title on the said property.

31. Taking into account, the submissions made by the learned counsels for the parties with respect to Judgment supra, it is quite clear that the parties therein were co-sharers and their rights were determined, only their

apportionment was disputed, however, in the instant case petitioners *prima-facie* have no right, title or interest in the disputed property, as the rights are yet to be determined by the appropriate forums.

32. Learned counsel for the petitioners has also relied upon judgment titled **Mansoor saheb vs Saleema reported** as (2003) SCC online 3809, which provides that the purpose of mutation entry is only limited to revenue records, they do not in any way, translate to any title with regard to the subject matter of property.

33. In this case, the Respondent no.5 has been able to establish her right, title, interest, and ownership on the land which has been acquired by official respondents but petitioners herein have failed to establish anything so as to show their entitlement to the compensation for the said land, as such, they are strangers and cannot be categorized as “persons interested” till they establish their rights before the competent Court of law.

34. The learned senior counsel representing Respondent no. 5 has relied upon the judgment titled, **Nagendra Chanmalappa Kesur and Others vs Competent Authority Deputy Collector (Land Acquisition) and Others** reported as 2025 SCC online Bom 1037, wherein it has been held as under:

“26. Considering the peculiar facts and circumstances of present case, the issue that arises for consideration is whether this Court can be called upon to exercise its extraordinary jurisdiction to set aside the impugned order dated 16 April 2024 when Petitioners are unable to make out demonstrable prima facie case of title in respect of the acquired land. There are two clear factors against the Petitioners for not directing a reference to the Civil Court under Section 3-H(4) of the Act. Firstly Petitioners will have to ultimately get the Consolidation Scheme corrected with a view to claim title in respect of the acquired land and correction of Consolidation Scheme cannot be effected in a Reference made to the Civil Court under Section 3-H(4) of the Act. Secondly, Petitioners have maintained silence about Sale Deed of acquired land executed in favour of Respondent Nos. 4 to 8 for over 20 years. Thus what cannot be directly achieved by filing a suit for setting up challenge to the Sale Deed dated 8 November 2001 is now sought to be indirectly achieved by seeking a reference to the Civil Court under Section 3-H(4) of the Act. Petitioners claim for compensation in the acquired land cannot be allowed unless Civil Court arrives at a conclusion that

the Sale Deed executed in favour of Respondent Nos. 4 to 8 is invalid and not binding on the Petitioners. If Petitioners were to file a suit in the year 2022 challenging Sale Deed dated 8 November 2001 such challenge would have been susceptible to the objection of limitation as the suit was required to be instituted within a period of three years from the date of execution of the Sale Deed or within three years of acquisition of knowledge about execution of Sale Deed. As observed above, names of the Respondent Nos. 4 to 8 were mutated to the revenue records consequent to execution of Sale Deed dated 8 November 2001 which would in ordinary case would have enabled the Petitioners to acquire knowledge about execution of the said Sale Deed.

*27. On account of the above twin difficulties, which the Petitioners will have to surmount, before seeking claim in respect of compensation for acquired land, in my view, a routine order of reference under provisions of Section 3-H(4) of the Act is not warranted in the peculiar facts and circumstances of the present case. Refusal of reference under Section 3-H(4) of the Act would not leave Petitioners remediless. They can always file a civil suit claiming title in respect of the acquired land and claim a share in the amount of compensation. In the light of the above peculiar facts and circumstances of the present case, I am not inclined to interfere in the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India. Consequently, the Petition must fail. It is accordingly **dismissed**. Dismissal of the Petition however shall not come in the way of Petitioners filing a Civil Suit claiming title in respect of the acquired land. Such suit shall be decided uninfluenced by any of the observations made by this Court in the present judgment.”*

35. Learned senior counsel also submits that the above pointer would answer the contention raised by the learned counsel for the petitioners that refusal of reference under section 3-H (4) of the Act would lead petitioners remedy less. Learned senior counsel would also submit that the petitioners have already filed a civil suit which includes claiming of title in respect of the land which has been acquired and share in the amount of compensation, as such the impugned order dated 11-03-2025, has not taken away the right of the petitioners, which they are seeking in the civil suit as well as in the revision petition, which are pending disposal before competent courts.

36. Learned senior counsel has further placed reliance upon a recent judgment passed by High Court of Kerala at **Ernakulam in Saravanabhava vs District collector and others.**, reported as 2025 SCC OnLine Ker 7592 , wherein it has been held as under:

“ 5. The learned Single Judge examined the matter and opined that such a challenge is hit by the provisions of the Limitation Act. We are of the view that such an observation was unnecessary. The question that needed to be considered was whether the dispute ought to have been referred to the civil court as provided under Section 3H(4) of the NH Act. Given the fact that compensation was disbursed based on the title deed produced by the party respondents and that the competent authority had not committed any error in acknowledging the said title deed, there was no need for referring such a dispute to the civil court under Section 3H(4) of the NH Act. It is for the appellant to impeach the title deed by instituting a separate civil suit, and he cannot invoke the provisions of reference under the NH Act as a means to raise such a challenge in acquisition proceedings initiated under the NH Act.

6. Thus, we reserve liberty to the appellant to challenge the title of the party respondents before the civil court, independent of the acquisition proceedings under the NH Act, subject to the law of limitation. Any observations in the impugned judgment stand modified as to the application of the Limitation Act. The question of limitation can be decided in such a civil suit and accordingly is left open.”

37. Having regard to what has been observed hereinafter, it is held that dispute, which the competent authority may refer under Section 3H(4) of National Highways Act, must be one that the competent authority cannot decide without adjudication, it must be a dispute from the perspective of competent authority and not from the perspective of the person challenging it. Merely for the reason that a third-party could challenge such a judgment, the competent authority is not bound to refer such a dispute to the civil court. The remedy available to such a person is to challenge the title deed in appropriate proceedings before the civil court, independent of the provisions under National Highways Act, 1956. Since the petitioners herein, have already filed a civil suit seeking declaration with respect to the property in dispute and have also challenged the mutation in favour of Respondent no. 5, before the competent courts, therefore, if the dispute, raised by the petitioners, would have been referred and decided by the civil court, it would have definitely caused prejudice and would be in contrary to the rights of Respondent no. 5, notwithstanding the decisions to be taken by the courts where the suit and the revision, filed by the petitioners against Respondent no.5, are pending.

38. In view of above, this Court passes the following order:-

- (i) This court do not find any illegality or perversity in the impugned order passed by Respondent no. 2, dated 11-03-2024. Writ petitions are, accordingly, dismissed
- (ii) The dismissal of petitions shall not, however, come in way of the petitioners in the civil suit and the revision petition pending before the competent courts of law. The suit and revision petition shall be decided by the concerned courts uninfluenced by any of the observations made by this court in this Judgment.
- (iii) Respondent no. 2, District Collector, Baramulla, is directed to release the compensation in favour of Respondent no. 5, forthwith, in terms of award dated 31-07-2024. The release of such amount shall, however, be subject to an undertaking of Respondent no. 5, that in the event the petitioners succeed in the civil suit and revision petition pending disposal before, Respondent no. 2, she and after her lifetime, her legal heirs, shall duly compensate the petitioners to the extent of their entitlement of share in the property in dispute, to be decided by the competent Courts of law.

(MOKSHA KHAJURIA KAZMI)

JUDGE

Srinagar

30.03.2026

“Mohammad Yasin Dar”

Whether the Judgment is reportable: Yes/No.

Whether the Judgment is speaking: Yes/No.