



2026:UHC:1532-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI MANOJ KUMAR GUPTA
AND

HON'BLE SRI JUSTICE SUBHASH UPADHYAY

10TH MARCH, 2026

SPECIAL APPEAL No. 100 OF 2025

Waqf Allah Tala, Dargah Hazrat Masum Sah Miyan

...Appellant.

Versus

National Highway Authority of India and others.

...Respondents

Counsel for the appellant	:	Sri T.A. Khan, learned Senior Counsel assisted by Sri Vinay Bhatt, learned counsel.
Counsel for the respondents	:	Sri Naresh Pant and Sri Raunak Pant, learned counsel for NHAI. Sri B.S. Parihar, learned Additional Chief Standing Counsel with Sri Gajendra Tripathi, learned Standing Counsel for the State of Uttarakhand.

JUDGMENT : (Per Sri Manoj Kumar Gupta, C.J.)

1. The present intra-Court appeal is directed against the interim order dated 25.04.2025 passed by the learned Single Judge in Writ Petition (M/S) No. 2258 of 2020 titled as '*Waqf Allah Tala Dargah Hazrat Masum Sah Miyan vs. National Highways Authority of India and others*'. The said writ petition was filed by the appellant for the following relief:-

"(i) To issue a writ, order or direction in the nature of mandamus directing the respondents not to remove, demolish or excavate the Mazar and not to cause any loss or damage to the Mazaar of Hazrat Masum Sah Miyan and the land appurtenant thereto total comprising of .0063 hectare equal to 63 sq. mts., situated at Khasra No. 250 in village Rampura, Tehsil Rudrapur, near Indra Chauraha, Rudrapur, District Udham Singh."



2. The case of the appellant in the writ petition is that a Mazar of a Sufi saint, namely Sayyed Masum Sah Miyan, was in existence over the subject land since 1941. The area appurtenant to the Mazar is being used for sitting of devotees and for organizing Kawwalies and Urse, etc. As per the case of the appellant, the Mazar is also duly recorded in the records of the U.P. Sunni Central Board of Waqf, Lucknow as a waqf. After reorganization of the State, the entry continued in the Uttarakhand Waqf Board record. It appears that a Notification, under Section 3A of the National Highways Act, 1956 (hereinafter referred to as 'Act') was issued on 1st December, 2012 followed by Notification under Section 3D of the Act dated 26th April, 2013 and whereby *inter alia* an area measuring 0.0063 hectare of Plot No. 250 was acquired. According to the appellant, it is the same land over which Mazar was in existence. The Notification mentions that the land belongs to Government and is non-agricultural in character. It appears that when in pursuance of the said Notifications the Authorities proceeded with the construction of road over the acquired land, the writ petition came to be filed by the petitioner.

3. It is noteworthy that in the writ petition, the petitioner has not challenged the acquisition proceedings, nor the Notification under Section 3A or 3D of the Act.

4. Learned Single Judge, on 24.04.2025, noticed the submission of the learned counsel for the appellant that the appellant desires to shift the remainders and the soil of Dargah



2026:UHC:1532-DB

Sharif to his house bearing Municipal No. 361/3 (old number) and 1732 (new number) situated at Mohalla Kheda, Tehsil Rudrapur, District Udham Singh Nagar over an area measuring 50X42 ft. in the light of the proposed amendments to the relief clause. The learned Single Judge, in the same order, noticed that there was no conclusive evidence to establish title of the appellant over the said property. Various other facts, including the submission of two reports before the Court and which were opened during the proceedings, have also been noted. The case of the State that the acquired land was government land and that the appellant does not have title over any other land is also mentioned in the order. The operative part of the said order is as follows:-

“12. Since, now the application has been moved for shifting of so called Dargah and the name of two persons have already been suggested by Mr. Khan, learned Senior Advocate by way of an affidavit and their credentials were also verified and furthermore in the amendment application the present Mutawalli proposed his house for the purpose of shifting of Dargah, therefore, only for the limited purpose, at this stage let Mr. Bisht, learned Addl. C.S.C may get instructions whether the residence of Mutawalli is suitable place for shifting since, as per google location area where the Mutawalli is residing is very densely populated area.

In addition to this the counsel for the Waqf Board Mr. Shafy may also get positive instructions from the concerned C.E.O. to suggest alternative land recorded as Waqf property in a Waqf register.” (emphasis supplied)

5. It appears that on the next date when the matter was taken up, again various facts, as submitted before the Court, were noted. Relevant portions of the order of the learned Single Judge dated 25.04.2025 are extracted below for ready reference:-



"8. Yesterday, this court was of the view that the debris of Mazar be collected in the presence of the two persons whose name has been proposed by the petitioner in the presence of Mutawalli, but Mr. T.A. Khan, learned senior counsel today submits that until and unless the Government provides an alternative land these two persons with the Mutawalli will not participate in removing the debris of Mazar in the presence of the district administration, in such an eventuality, to maintain the law and order and keeping in view of the fact that the Mazar was constructed in the Government land illegally, the District Administration is now directed to remove the debris of Mazar with immediate effect by doing videography and kept the debris in a suitable place by preparing a memo to be signed by the officials of the District Administration.

9. It is made clear that no other person will be permitted at the time of removal of debris. The A.D.M. apprise to this court that they will remove the material within one hour. Consequently, the District Administration is directed to remove the material with immediate effect and to apprise this court through learned Additional C.S.C. Mr. Rajeev Singh Bisht. Police Administration is also directed to give proper assistance at the time of removal of debris and ensure to maintain law and order.

12. Apart from this, this Court is enlarging the scope of this petition, since the matter relates to a property notified as waqf property relating to Dargah / Mazaar constructed over the nazul land and as per the stand taken as by respondents any construction over the Nazul/Government land cannot be a waqf property and only those properties can be notified as waqf properties including waqf by user where there is permanent dedication by a person in view of section 3 (r) of the Waqf Act, 1995.

13. Admittedly, the Dargah / Mazaar, in question, was constructed on a nazul land, which according to Mr. T.A. Khan, learned Sr. Advocate, earlier was Abadi land, therefore, permanent dedication is not required. This aspect is required deep scrutiny.

15. Learned Addl. CSC submits that Section 3 (r) of the Waqf Act, 1995, provides that in relation to waqf by user, there should be permanent dedication by person and since land where said Dargah / Mazaar was constructed is admittedly a government land and therefore there is no any question of permanent dedication, which is a mandatory requirement as per Section 3(r) of the Waqf Act.

16. List this matter on 05.05.2025 along with WPMS No. 2899 of 2023. By that time respondents may file the objection to the second supplementary affidavit as well as to the amendment application positively.

17. In the meantime, the Chief Secretary is directed to constitute a committee headed by District Magistrate in each



district to identify any such construction in Government land or public place.”

6. Aggrieved by the aforesaid order dated 25.04.2025, the present appeal has been filed.

7. It appears that at the time when the appeal was entertained, an order came to be passed on 10.09.2025 directing that no construction shall be made by any of the parties on the land, over which the appellant intended to shift the Mazar.

8. Learned Senior Counsel for the appellant submits that the appellant has two main grievances. The first one being that the order of the learned Single Judge records findings, which are adverse to the appellant without considering the entries in the revenue records. He submits that there was no evidence to establish that the acquired land was Nazool land or government land, but the learned Single Judge has proceeded to observe that there is no dispute about the said fact, which is not correct. In support of the submission, learned Senior Counsel for the appellant has placed reliance on the revenue entries. Specific reference has been made to Khatauni filed as Annexure-7 and also Khasra entries. The second submission is that the controversy in the writ petition was limited to the rights of the appellant and there was no justification for enlarging the scope of the writ petition.

9. Learned Additional Chief Standing Counsel for the State submits that the District Magistrate has passed an order on 2nd May, 2025 and wherein a finding has been returned to the effect



that Khasra No. 340/1 area 2.151 hectare is land of Class 14(3)e i.e. 'Banjar' and over which the appellant does not have any title.

10. Learned Additional Chief Standing Counsel for the State of Uttarakhand has also invited our attention to another order passed by the District Magistrate, Udham Singh Nagar on 2nd December, 2025, in which it is stated that although the super structure is recorded at Column Nos. 25 and 26 in the Register of waqf properties, but the same is not recorded in the revenue records. It is part of the acquired land under the provisions of the National Highways Act, 1956.

11. Learned Senior Counsel for the appellant submits that the District Magistrate has not examined the revenue records at all, therefore, the findings returned by the District Magistrate are unsustainable.

12. Once it is not disputed that the subject land was acquired under the provisions of the National Highways Act, the relief sought by the appellant in the writ petition restraining the respondents from demolishing the superstructure existing over the acquired land was, on the face of it, not sustainable. As noticed above, the learned Single Judge has proceeded to examine the alternative submission of the appellant that he may be permitted to shift the debris and soil of the Mazar to another place. In pursuance of the order of the learned Single Judge, it appears that a memo was got prepared and the debris of the Mazar and the soil are reported to be in the possession of the District authorities.



13. Since the dispute in the writ petition was limited to the suit property, we are of the considered opinion that there was no occasion to enlarge the scope of the writ petition and consequently, the order of the learned Single Judge enlarging the scope of the writ petition is hereby set aside.

14. As regards the case of the appellant that the appellant is also owner of the acquired land, the said dispute can be raised by the appellant as per the provisions of Section 3H of the National Highways Act, 1956 or in any other proceedings as may be advised. In such an event, any observation made by the learned Single Judge in the impugned order shall not come in the way of the appellant.

15. As regards the other part of the land, which is stated to be unacquired portion, but in respect of which the State denies the title of the appellant, we are of the considered opinion that such intricate questions of title cannot be examined in the writ jurisdiction. Therefore, in respect of the said part of the land also, it shall be open to the appellant to avail such other remedy as it may be advised.

16. In view of the above, the writ petition would now remain confined to the manner of disposal of the debris of the Mazar pertaining to which a memo was also prepared and it's shifting to a suitable alternative site.

17. Accordingly, the instant appeal stands disposed of.



18. Pending application, if any, also stands disposed of accordingly.

MANOJ KUMAR GUPTA, C.J.

SUBHASH UPADHYAY, J.

Dt: 10th March, 2026
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Digitally signed by PRAVINDRA SINGH RATHOUR
DN: cn=PRAVINDRA SINGH RATHOUR,
o=UHC, ou=UHC, email=pravindra.singh.rathour@uhs.gov.in,
c=IN, serial=1532, version=3
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Unique identifier: 55484831277C48248C3A7
SHA-256 digest: 7F582C24C4C4B6
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