



HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE SHRI MANOJ KUMAR GUPTA

AND

THE HON'BLE JUSTICE SHRI SUBHASH UPADHYAY

07th July, 2026

SPECIAL APPEAL NO.166 of 2026

Bhaskar Sah and Others -----Appellants

Versus

State of Uttarakhand and Others ----Respondents

Presence:-

Mr. Anil Kumar Joshi, learned counsel for the appellants.

Mr. B.S. Parihar, learned Additional CSC for the State.

JUDGMENT: (per Manoj Kumar Gupta, C.J.)

1. The instant intra-court appeal is directed against the order of learned Single Judge dated 28.04.2026 in WPMS No. 1141 of 2026, whereby the writ petition filed by the appellants came to be dismissed. In the writ petition, the appellants had sought the following reliefs:-

"i. Issue a writ of certiorari quashing the impugned order dated 17.04.2026 passed by respondent No.2 (contained as Annexure No.1 to this writ petition, Page No.16 to 22).

ii. Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to lay down the Sewer Line over the private property of the petitioners without acquiring the land under the provisions of Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013."



2. The learned Single Judge held that the appellants have an efficacious civil remedy for redressal of their grievances and has accordingly declined to entertain the writ petition.

3. The submission of learned counsel for the appellants is that the appellants are co-tenure holders of *khasra* no.121क and 122, through which the sewer line is being laid. They have 1/3rd share therein. There has been no partition of the joint holding so far. The order of City Magistrate, Haldwani dated 17.04.2026, which was impugned in the writ petition, proceeds on the premise that some of the co-tenure holders, who have given consent to the construction of sewer line, are in actual physical possession of the portion of the holding through which the sewer line was being constructed, therefore, no objection given by them would suffice. However, the fact of the matter is that since there has been no partition, therefore, it cannot be said that any specified part of the joint holding was in exclusive share of any co-tenure holder. He further submits that since the sewer line



is proposed to be constructed over a private land without acquisition, therefore, the act of the State was wholly illegal. It is contended that the writ petition should have been entertained and that the view taken by the learned Single Judge that the appellants should approach the civil court for redressal of their grievances is un-sustainable in law.

4. On the other hand, learned State Counsel has taken us through the order dated 17.04.2026, passed by City Magistrate, Haldwani. It records that Nirmal Shah, Mayank Shah sons of Madan Lal Shah, Atul Shah son of Chandra Lal Shah, Asim Shah son of Kailash Lal Shah, who are co-tenure holders of *Khasra* No.121क and 122, have given their consent to the construction of the sewer line. It is also recorded in the order that they are in actual possession of the portion of the holding through which the sewer line is being constructed. In view of the said findings, the objection of the appellants to the construction of the sewer line has been repelled.



5. As it is not disputed before us that a part of the sewer line has to pass through private land, it necessarily follows that in absence of consent of the tenure holders, the same cannot be constructed. The specific case of the appellants is that they never gave their consent and that the respondents were constructing sewer line over private property without acquisition of the land or consent of the owners. Therefore, in our opinion, the said issue required consideration in the writ petition under Article 226 of the Constitution, as in case, the contentions were found to be correct, the action of the State would amount to a violation of Article 300A of the Constitution. As such, the view taken by learned Single Judge that the appellants should have availed civil remedy and on that basis, declining to entertain the writ petition, cannot be sustained in law. The order of learned Single Judge is accordingly set aside.

6. The question which now survives for consideration is the relief to which the appellants would be entitled to even if it is accepted that they



were co-tenure holders and have not consented to the construction of the sewer line, although other co-tenure holders have given their consent.

7. Admittedly, as per own case of the appellants, they collectively have $1/3^{\text{rd}}$ share in the joint holding. Appellant No. 1 has already instituted a suit for partition bearing No.27 of 2026 under Section 176 of the UPZA & LR Act and it is stated to be pending before the Revenue Court. The construction of sewer line is being undertaken in public interest. Most of the land is of Category 5-3 (g), i.e. Jungle. The portion of private land utilized for construction of sewer line constitutes only a very small part of the total holding and is much less than $1/3^{\text{rd}}$ share of the appellants. We are, therefore, of the considered opinion that the interest of the appellants would be adequately safeguarded if while passing the final decree in the Partition Suit, the Revenue Court ensures that the land over which the sewer line is being laid is not allotted to the share (*qura*) of the appellants and the said land is allotted, as far as practicable, to the



share of those tenure holders who had consented to the construction of the sewer line.

8. It shall be open to the appellants to place a copy of this Judgment before the Revenue Court in the pending Partition Suit. The Revenue Court, while preparing the final decree, shall keep in view the observations made herein and pass orders in accordance with law.

9. The appeal stands disposed of in the aforesaid terms.

10. Pending application, if any, also stand(s) disposed of.

(MANOJ KUMAR GUPTA, C.J.)

(SUBHASH UPADHYAY, J.)

Dated: 07.07.2026

KKS/PP