



2026:AHC-LKO:14114

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 526 of 2026

A.F.R.

Jag Prasad And Others

.....Petitioner(s)

Versus

Additional Commissioner, Administration, 2nd,
Devi Patan Division, Gonda And Others

.....Respondent(s)

Counsel for Petitioner(s)	: Faiz Ahmad Khan
Counsel for Respondent(s)	: C.S.C., Chandra Shekhar Shukla, Pankaj Gupta, Vijay Shankar Trivedi

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Faiz Ahmad Khan, learned counsel for petitioners as well as learned Standing Counsel for respondent Nos. 1 to 3 and Sri Vijay Shankar Trivedi, learned counsel for respondent Nos. 5 to 8.

2. The dispute in the present case pertains to demarcation of the land situated at Gata No. 32 measuring 0.870 hect. recorded in the name of predecessor in interest of the private respondents. The petitioners are recorded tenure holders of land situated at Gata No. 23 situated at Village Madhavpar, Pargana, Tehsil and District Gonda which is adjacent to Gata No. 32 and accordingly were necessary parties in proceedings U/S 24 of U.P. Revenue Code / 41 of Land Revenue Act.

3. The proceedings were initiated sometimes in 2015 and the report of the revenue officials were also called for but subsequently during the proceedings after hearing the objections another fresh report of revenue officials were called which were submitted on 02.01.2020. It seems that when the case was next listed on 20.05.2022, the petitioners did not put in appearance nor did they filed their objections against the report dated 02.01.2020 and consequently the Sub-Divisional Magistrate, Devi Patan Mandal, Gonda confirmed the demarcation report as per the report of the

revenue officials dated 02.01.2020 and directed for actual demarcation proceedings to be conducted (Patharnasin). The petitioners thereafter had preferred a revision before Additional Commissioner (Administration-II) stating that after filing of the second revenue report on 02.01.2020 no opportunity was given to them.

4. Apart from the fact that one of the parties to the case namely, Swami Deen had died on 12.03.2020 and accordingly the order dated 20.05.2022 has been passed against a dead person. The revisional authority has duly considered the objections filed by the petitioner and found that the Sub-Divisional Magistrate had issued notices on a receipt of the revenue report dated 02.01.2020. He has further observed that no doubt that Swami Deen had died in the meanwhile during the proceedings but the notice was received by petitioner Nos. 2 to 5 who are the legal heirs of Swami Deen and accordingly once the legal heirs were served then the infirmity with regard to death of Swami Deen stood cured and accordingly declined to interfere in exercise his judicial power and dismissed the revision filed by the petitioners. It is in the aforesaid circumstances that the writ petition has been filed before this Court assailing the validity of the order dated 20.05.2022 and the order dated 06.05.2025.

5. Learned counsel for petitioner has submitted that once a party to a civil dispute has died then it is incumbent for him to be substituted before the proceedings can be finalized and there is no dispute with regard to legal proposition that any order passed against a dead person is a nullity and void. He submits that undoubtedly even if it is assumed that the notices were served on the legal heir of Swami Deen but they were not parties to the present dispute at that time and such a service on the legal heirs of Swami Deen (deceased) cannot be deemed to be effective service on Swami Deen. He submits that it is only after curing the defect and making necessary substitution of Swami Deen the proceedings could have continued after adequately serving notices on the legal heirs of Swami Deen.

6. Accordingly, in this regard it is stated that the order dated 20.05.2022 is illegal and arbitrary and even the order dated 06.5.2025 passed by Additional Commissioner (Administration) is illegal and arbitrary

inasmuch as he has wrongly appreciated the aspect pertaining to substitution of the parties and both the orders deserves to be set aside.

7. Learned counsel for respondents on the other hand has opposed the writ petition and submitted that merely because petitioners were not served or were not properly served cannot be a sole ground for setting aside the impugned order inasmuch as they were fully aware of the proceedings pending before the Sub-Divisional Magistrate and had deliberately not participated in the said proceedings and therefore had supported the impugned orders.

8. Considering the rival submissions of the parties, it is noticed that there is no dispute with regard to the facts, but only the infirmity claimed by the petitioners is with regard to not giving adequate opportunity of hearing to the petitioners by the Sub-Divisional Magistrate at the stage of confirming the revenue report dated 02.01.2020 and passing of the order dated 20.05.2022. It is noticed that Swami Deen who was a respondent before the Sub-Divisional Magistrate and a recorded tenure holder of Plot No. 23 situated at Village Madhavpar, Pargana, Tehsil and District Gonda was a necessary party in proceedings for demarcation. He had died on 12.09.2020 and no application for substitution was preferred by the private respondents before the Sub-Divisional Magistrate at any stage prior to passing of the order dated 20.05.2022. The infirmity in the said proceedings is said to have cured when notices were issued on the fresh revenue report dated 02.01.2020 which was served on some of the petitioners who are the legal heirs of Swami Deen.

9. The aspect which required consideration before this Court is as to whether in case notices were served to the legal heirs of the deceased-respondent would amount to effective service on the parties to the proceedings. There is again no dispute that once some of the petitioners who are the legal heirs of Swami Deen were never substituted and hence they were never the contesting parties before the Sub-Divisional Magistrate and their status of necessary party would accrue only when the application for substitution if had been filed in accordance with law would have been allowed by the SDM. Accordingly, service of notice on persons who are not parties to the proceedings is of no value, as they

cannot participate in such proceeding despite service.

10. In the present case, service of notice on the legal heirs prior to their being substituted as parties in the regular proceedings cannot be deemed to be effective service curing the defect of non-substitution of the deceased respondent. Accordingly, the service on the legal heirs of Swami Deen will cure the defect of non-substituting Swami Deen with his legal heirs and hence the infirmity which was existing at the stage of passing of the impugned order by the Sub-Divisional Magistrate dated 20.05.2022 cannot be cured by assuming the service to be effective service on the parties to the proceedings. It is in this regard, this Court finds that the revisional authority has been incorrectly appreciated the law and dismissed the revision filed by the petitioner.

11. With the aforesaid circumstances, the writ petition is **allowed**. The impugned orders dated 06.05.2025 and 20.05.2022 are set aside. The matter is remitted to the Sub-Divisional Magistrate to proceed afresh from the stage of receipt of the report dated 02.01.2020. The petitioners would be at liberty to file their objections within next three weeks and the Sub-Divisional Magistrate shall conclude the proceedings within a period of two months thereafter by speaking and reasoned order in accordance with law.

12. Parties before this Court undertake to cooperate in the proceedings and shall not take any unnecessary adjournments.

13. Till such time as final orders are passed by Sub-Divisional Magistrate, the parties shall maintain status quo over the disputed land as existing today.

14. Affidavit of service filed today is taken on record.

(Alok Mathur,J.)

February 20, 2026

Ravi/