
(2013) 07 AHC CK 0169

Allahabad High Court

Case No: First Appeal No. 670 of 1992

State of U.P. and
Others

APPELLANT

Vs

Rahmulla

RESPONDENT

Date of Decision: July 23, 2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 41 Rule 23, Order 41 Rule 23A, 107#Land
Acquisition Act, 1894 " Section 18, 54

Citation: (2013) 07 AHC CK 0169

Hon'ble Judges: Pankaj Mithal, J

Final Decision: Dismissed

Judgement

Pankaj Mithal, J.

Heard learned Standing counsel for the State of U.P. Sri A.K. Malhotra has appeared for
UPSEB/U.P. Power Transmission Corporation Limited

for whose benefit the land was acquired but was not specifically impleaded.

No one has appeared for respondent despite revised call.

The appeal is under Section 54 of the Land Acquisition Act (hereinafter referred to as the
"Act") against the judgment, order and award dated

30.3.1989 passed by the III Additional District Judge, Jaunpur in LAR No. 165 of 1985.

The land of village Muradganj, ParganaHaveli, Tehsil and District Jaunpur was acquired
for establishing 220 KVA Electricity Power Station vide

notification under Section 4 of the Act dated 5.11.1981. The Special Land Acquisition
Officer (in short SLAO) made an award dated 29.5.1982.

The claimant respondent not satisfied by the compensation offered by the SLAO preferred a reference under Section 18 of the Act. The reference

has been decided by the impugned judgment, order and award and the matter has been remanded to the SLAO for redetermination of the

compensation admissible to the claimant respondent.

The remand has been made in view of the award of the reference court passed in LAR No. 73 of 1985 (Shamullah Vs. State) in connection with

same acquisition and the sale deed alleged to have been executed by Ram Saran in favour of one Devi Prasad Upadhyaya, Advocate.

It is important to note that from the same acquisition several references were preferred which were separately decided. In First Appeal No. 129 of

1988 (District Magistrate Vs. Majid and another) arising from LAR No. 167 of 1985, the reference court had enhanced compensation on the basis

of the abovereferred sale deed executed by Ram Saran in favour of Devi Prasad Upadhyaya but without the said sale deed having been produced

in evidence.

Thus, in the absence of the evidence or any other material on record to prove that the award of the SLAO was inadequate and that the claimants

were entitled to higher compensation, the appeal was allowed and the judgment, order and award of the reference court was set aside.

On the basis of the judgment, order and award of the reference court passed in the above case of Majid, several other references were decided

and the appeals arising therefrom have all been allowed by me including the one arising from the decision in LAR No. 73 of 1985 (Shamulla Vs.

State) by a separate judgment of date as the enhancement was based upon the decision rendered in reference of Majid which was set aside.

In view of the above, both the grounds on which the remand has been made have ceased to exist.

This apart, the power of remand is only available to the appellate court under Section 107 read with Order XLI Rule 23/23 A CPC and the said

power is not vested in any court seized of the matter in its original jurisdiction. it is settled vide Chimmanlal Hargovinddas Vs. Special Land

Acquisition Officer AIR 1988 SC 1692 that a reference under Section 18 of the Act is not an appeal against an award of the SLAO but is in the

nature of original proceedings wherein the claimant is in a position of the plaintiff who is supposed to establish that the price offered for his acquired

land is inadequate by producing material evidence before the reference court.

In the light of the above decision, the reference court acts as court of original jurisdiction and does not exercises appellate powers while deciding

references under Section 18 of the Land Acquisition Act. Therefore, it is denuded of any power to remand the matter.

In view of the above, the order of remand made by the reference court is patently without jurisdiction and is unsustainable in law for both the

reasons indicated above. The impugned judgment, order and award of the reference court 20.3.1989 passed in LAR No. 165 of 1985 is set aside

and the appeal is allowed.