

(2013) 07 AHC CK 0216

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

Citation: (2014) 1 ALJ 308 : (2013) 100 ALR 584 : (2013) 121 RD 215

Hon'ble Judges: Pankaj Mithal, J

Bench: Single Bench

Advocate: A.K. Mehrotra and Sandeep Mukherjee, for the Appellant; P.C. Srivastava, for the Respondent

Final Decision: Allowed

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.

2. The appeal is u/s 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.

3. The land of village Muradganj, Pargana-Haveli, Tehsil and District-Jaunpur was acquired for establishing 220 KVA Electricity Power Station vide notification u/s 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 u/s 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 re-determination of the compensation admissible to the claimant respondent.

4. The remand has been made in view of the award of the reference court passed in LAR No. 73 of 1985 (Shamullah v. 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.

5. 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 v. Majid and another) arising from LAR No. 167 of 1985, the reference court had enhanced compensation on the basis of the above-referred sale deed executed by Ram Saran in favour of Devi Prasad Upadhyaya but without the said sale deed having been produced in evidence.

6. 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.

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

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

9. This apart, the power of remand is only available to the appellate court u/s 107 read with Order XLI, Rule 23/23A CPC and the said power is not vested in any court seized of the matter in its original jurisdiction. It is settled vide [Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another](#), that a reference u/s 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.

10. In the light of the above decision, the reference court acts as court of original jurisdiction and does not exercise appellate powers while deciding references u/s 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.