

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

RFA No. 23/2021
CM Nos. 7856/2021 &
1466/2024

Rajinder Parkash aged 64 S/o Sh. Bhagat Ram R/o
Village Galhutta tehsil Mendhar district Poonch

....Petitioner/Appellant(s)

Through :- Mr. R.P. Sharma, Advocate.

V/s

1. Collector, Land Acquisition, Sub
Divisional Magistrate, Mendhar.
2. Chief Engineer, PMGSY, JKRRDA,
Jammu.
3. Executive Engineer, PMGSY, Mendhar.
4. Nasir Ahmed Khan S/o Dost Mohd. Khan
R/o Village Galhutta Tehsil Mendhar
district Poonch.
5. Mohd. Yaqoob Khan S/o Mukhtar Khan
R/o Village Galhutta Tehsil Mendhar
district Poonch.
6. Saif Ahmed R/o Village Galhutta Tehsil
Mendhar district Poonch.
7. Ajwar Hussain S/o Said Mohd.
8. Mumtaz Hussain S/o Faiz Mohd.
Both R/o Village Galhutta Tehsil Mendhar
district Poonch.

....Respondent(s)

Through :- Ms. Priyanka Bhat, Advocate vice
Mrs. Monika Kohli, Sr. AAG for 1.
Mr. Ravinder Gupta, AAG for 2 and 3.
Mr. Mumtaz Choudhary, Advocate vice
Mr. M. Tariq Mughal, Advocate for 4, 5 and 7.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT/ORDER

28.05.2024

1. For a purpose of construction of a road from Harni to Lower
Galhutta of village Galhutta, tehsil Mendhar, district
Poonch under PMGSY Scheme, notification No. 14 LA of
2017 dated 24.04.2017 under Section 4 of the Jammu and
Kashmir Land Acquisition Act, Svt. 1990 (in short, '**Act of**

1990') came to be issued with respect to 166.4 kanals of land falling in different khasra numbers, some of those being khasra Nos. 715, 715 min, 721, 722 and 723 min of the said village.

2. Said section 4 notification was followed by a legal course of action as envisaged under the Act of 1990 resulting in issuance of a final award No. SDM/LA/PMGSY/630 dated 26.02.2019 passed by the Collector Land Acquisition (Sub Divisional Magistrate), Mendhar. The final words of this award by the Collector Land Acquisition (Sub Divisional Magistrate), Mendhar are to the effect that **the amount of compensation to be disbursed to the rightful owners/claimants under law.**
3. The appellant, being shown in the apportionment statement, as being the owner of the acquired land comprised in khasra numbers 715, 715 min, 721, 722 and 723 and also showing the said land in the aforesaid khasra numbers to be in use and occupation of Nasir Ahmed Khan, Mohd. Yaqoob Khan, Ajwar Hussain, Mumtaz Hussain and Saiaf Ahmed who are the respondents No. 4 to 8 herein.
4. The appellant came forward with an application dated 23.09.2019 addressed to the Collector Land Acquisition (Sub Divisional Magistrate), Mendhar registering his objections in para 8 therein with respect to the measurement of the land recorded under acquisition

relatable to the appellant and also to the quantum of compensation assessed being on the lower side.

5. In this application seeking reference under Section 18 of the Act of 1990, the appellant did make a mention that he came to receive copy of the award only through RTI mode and by that reference pleaded his application for seeking reference within time.
6. The Collector Land Acquisition (Sub Divisional Magistrate), Mendhar, came to generate a reference to the learned Principal District Judge, Poonch vide No. SDM/LA/PMGSY/109 dated 20.10.2020 which came to be taken on file No. 47/A dated 21.10.2020 by the court of learned Principal District Judge, Poonch.
7. Said reference came to be disposed of by virtue of a judgment dated 09.08.2021 holding the reference to be barred by limitation and also not being in consonance with legal precepts of law and being legally incompetent aggrieved whereof the appellant, as recorded owner of the land acquired in the aforesaid khasra numbers, has come up in the present statutory appeal. There is a fact which cannot admit of any dispute from any side to the present appeal that the disposal of the reference by the court of learned Principal District Judge, Poonch has taken place without adjudication of the matter on merit but on technical ground and that technical ground is that the

reference is hit by limitation by reference to Section 18(2)(a) of the Act of 1990.

8. A perusal of the impugned judgment of the Principal District Judge, Poonch as well as the reference made by the Collector Land Acquisition (Sub Divisional Magistrate), Mendhar would show that the Collector Land Acquisition (Sub Divisional Magistrate), Mendhar is making no claim that the award was notified in the manner as envisaged under Section 12 of the Act of 1990 so as to set the time running against all the interested persons for invoking the reference under Section 18 of the Act of 1990 and, therefore, the learned Principal District Judge, Poonch fell in an error of judgment by referring to Section 18(2) (a) of the Act of 1990 as if the appellant was found by the reference court below to have participated in the land acquisition proceedings in the course of making of the final award. If the appellant would have participated before the Collector Land Acquisition (Sub Divisional Magistrate), Mendhar in the land acquisition proceedings before passing of the final award, then the court of learned Principal District Judge, Poonch ought to have made a reference to the said fact in its judgment which has not been done meaning thereby either the court of learned Principal District Judge, Poonch did not come across with a fact from the record of the land acquisition file and the reference file

to show that the appellant had participated in the land acquisition proceedings to stay fully aware of the passing of the land acquisition award or that the court below did not, in fact, examine the record of the acquisition so as to confirm the fact about participation of the appellant and, therefore, there was no reason and scope for the learned Principal District Judge, Poonch to non-suit the appellant on the ground that the reference sought by him was barred by limitation.

9. Insofar as the other basis for rejection of the reference as cited by the learned Principal District Judge, Poonch is that it is not in consonance with the legal precepts of law and being legally incompetent but what is intended by said reference court is best known only to the court of learned Principal District Judge, Poonch as to what are those legal precepts of law in the context of which the court examined the reference made by the Collector Land Acquisition (Sub Divisional Magistrate), Mendhar. It is, therefore, rendered very evident that in fact the court of learned Principal District Judge, Poonch resorted to short-cut to dispose of the reference and, therefore, rendered its judgement dated 09.08.2021 bad in the eyes of law which cannot be allowed to be accepted as such the same is set aside and the matter is remanded to the court of learned Principal District Judge, Poonch for adjudicating the matter on merits and in doing

so the parties before it, be it the appellant as purported owner of the land under acquisition or the respondents No. 4 to 8 who are purportedly in use and occupation of the acquired land in whatever respective status that may be, to be heard and thereupon the reference to be answered by the court of learned Principal District Judge, Poonch on merits which would include even the aspect of apportionment of compensation to be finally settled by the court of learned Principal District Judge, Poonch by the reference proceedings.

10. Disposed of as above along with connected application(s).
11. Parties to appear before the court of learned Principal District Judge, Poonch on 22.07.2024.

(RAHUL BHARTI)
JUDGE

JAMMU
28.05.2024
Naresh/Secy