

---

**(2011) 03 UK CK 0085**

**In the Uttarakhand High Court**

**Case No :** Writ Petition (M/S) No. 3219 of 2001 and Old No. 28304 of 1996

Kashmir Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

---

**Date of Decision :** 11-03-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151, 152  
Land Acquisition Act, 1894 — Section 13A, 18

**Citation :** (2011) 03 UK CK 0085

**Hon'ble Judges :** Brahma Singh Verma, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

**Judgement**

B.S. Verma, J.—Heard learned Counsel for the parties and perused the record.

2. The instant writ petition has been filed by the Petitioners seeking the following reliefs: -

A. Issue a writ, order or direction in the nature of mandamus commanding the Respondents to make reference for total lands of 34 bigha and 5 biswa.

B. Issue a writ, order or direction in the nature of certiorari quashing the order dated 26.6.1996 passed by the Additional Sessions Judge/Special Judge, Nainital.

C. Issue a writ, order or direction in the nature of mandamus commanding the Respondents to give compensation for the entire land of 34 Bigha and 5 Biswas, in accordance with the rates given in the judgment and order dated 27.11.1993 (Annexure-6) and not to confine its operation only to 15 Bigha and 8 Biswa, as mentioned in referring order of the Collector.

D. Issue any other writ, order or direction, as is deem fit and proper in the circumstances of the case.

E. Award the cost of petition to the Petitioners.

3. In nutshell, the facts of the case are that Petitioners moved an application u/s 151 r/w Section 152 CPC for correction of the order dated 27.11.1993, passed in Land Acquisition Reference No. 1392/1989, u/s 18 of the Land Acquisition Act {hereinafter to be referred as the Act}. The averments made in the said application are that the question of reference had been decided for an area covering 15 bighas and 8 biswas and the mistake has been committed at page No. 2 of the said reference, wherein the area, for which the compensation should be awarded, should be of 34 bighas and 5 biswas instead of 15 bighas and 8 biswas. Accordingly, the prayer was made that the mistake may be corrected u/s 151 and 152 Code of Civil Procedure

4. After hearing the learned Counsel for the parties, learned Additional District Judge/Special Judge, Nainital vide judgment and order dated 26.6.1996 rejected the aforesaid application and found that it was not a case coming under the domain of Section 152 C.P.C., i.e. the same was not mere a typing or a clerical mistake and it was also observed that the applicants were at liberty to move to the Collector for correction of the Award or the Reference, as is provided u/s 13A of the Act, however the Petitioners did not do so, and the said application was rejected. Hence this writ petition has been filed by the Petitioners with the aforesaid prayers.

5. A counter affidavit has been filed on behalf of the State/ Respondents No. 1 to 3, wherein, in paragraph 7, it has been stated as under: -

7. That in reply to the contents of para No. 7 of the writ petition, it is submitted that it is true that the reference forwarded for adjudication and award of the Court u/s 18 of the Act to the District Judge, was by mistake and for an area of 15 Bigha 8 Biswa, instead of 34 Bigha 5 Biswa, as asked for by the Petitioner after the award of Collector.

6. A supplementary counter affidavit has also been filed on behalf of the State, wherein the order of Reference dated 2.8.1989 as well as the reference application, which was forwarded to the civil court, have been annexed.

7. Mr. Udyog Shukla, learned Counsel appearing for the Petitioners vehemently argued that the impugned order is patently bad in the eyes of law and the Petitioners are made to suffer loss because of the incorrect reference made by the Collector.

8. Mr. J.C. Belwal, learned Counsel appearing for Respondent No. 5-Krishi Utpadan Mandi Samiti, submitted that the entire amount of compensation in respect of acquisition of the land, measuring 34 Bigha and 5 Biswa, has been deposited and the case is pending before the execution court.

9. Upon a careful perusal of the aforesaid documents, it transpires that the area, as mentioned in the reference application, i.e. 15 Bigha and 8 Biswa has wrongly been mentioned, inasmuch as, in actuality, the actual area of the Petitioners' land acquired was 34 Bigha and 5 Biswa. The said fact has un-controvertedly

been admitted by the State itself in paragraph 7 of its counter affidavit, as has been quoted above.

10. That being the situation, the writ petition deserves to be allowed on this count alone. In view of the aforesaid admitted facts of the case, the Court directs the Collector, Nainital to make a reference to District Judge, Nainital, within a period of six weeks from the date of production of certified copy of this order, in respect of the left out acquired land of the Petitioner measuring 18 Bigha and 17 Biswa, for determination of compensation, as per the prevailing market rate, in accordance with the Rules. Thereafter, the District Judge, Nainital, after hearing both the parties, shall expedite the reference of the Petitioners in terms of the judgment and order dated 27.11.1993 in Land Acquisition Case No. 392 of 1989, Kashmir Singh and Ors. v. State of U.P., expeditiously, as far as possible within a period of six months, from the date of receipt of Reference.

11. Writ petition is, accordingly, disposed of, however without any costs.