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**(1995) 09 AHC CK 0013**  
**In the Allahabad High Court**  
**Case No : First Appeal No. 472 of 1985**

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|---------------------------------------|----|------------|
| State of U.P.                         | Vs | APPELLANT  |
| Bania (Dead) through L.Rs. and Others |    | RESPONDENT |

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**Date of Decision :** 06-09-1995

**Acts Referred:**

Allahabad High Court Rules, 1952 — Rule 3  
Civil Procedure Code, 1908 (CPC) — Section 11  
Land Acquisition Act, 1894 — Section 18, 23

**Citation :** (1996) AWC 491 Supp

**Hon'ble Judges :** N.L. Ganguly, J

**Bench :** Single Bench

**Advocate :** S.C, for the Appellant; L.P. Singh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

N.L. Ganguly, J.—All the above appeals arise out of the Land Acquisition References No. 51 of 1982 Bania and Ors. v. State of U.P., L.A.R. No. 41 of 1982 Raghunath and Anr. v. State, L.A.R. No. 52 of 1982 Babu Lal and Ors. v. State, L.A.R. No. 63 of 1982 Sheo Shanker Singh and Anr. v. State, L.A.R. No. 45 of 1982 Raja Ram and Anr. v. State, L.A.R. No. 44 of 1982 Ram Dayal v. State of U.P., L.A.R. No. 47 of 1982 Badloo and Anr. v. State, L.A.R. No. 69 of 1982 Sheo Narain Singh v. State and L.A.R. No. 43 of 1982 Lallu v. State. All these Land Acquisition References were decided by the Presiding Officer, Nagar Mahapalika Tribunal, Kanpur u/s 18 of Land Acquisition Act on reference and by a common judgment dated 21.12.84 all the References were decided. The present appeals are directed against the said judgment of the Tribunal. The learned Counsel for the Respondent Sri L. P. Singh pointed out that F.A. No. 466 of 1985 State v. Ganga Been arising out of L.A.R. No. 42 of 1982, F.A. No. 474 of 1985 State v. Raj Narain arising out of L.A.R. No. 39 of 1982 and F.A. No. 467 of 1985 State v. Brambha Singh arising out of L.A.R. No. 54 of 1982 were taken up and dismissed by the following orders:

Having complied with the provision of Ch. XIII, Rule 3 of High Court Rules and Informing the learned Counsel appearing for the State for his default regarding non-filing of the paper books despite that no paper book has been filed as yet.

Therefore, this Court has no option except to dismiss this appeal under Ch. XIII, Rule 3 of the Rules of the Court.

The appeal is, therefore, dismissed. Interim stay order. If any, shall stand vacated.

Sd/- 8.4.92.

The order, quoted above, was passed in FA No. 474 of 1985 and same order was passed in FA. No. 467 of 1985. The order passed in FA. No. 466 of 1985 by the Division Bench on 8.4.92 is quoted as under:

This is 1985 appeal. Despite the order dated 12.12.91 and 4.4.92, as yet, no paper book has been filed. If within 15 days paper book is not filed, the appeal shall stand dismissed automatically without making reference to this Court.

Sd/8.12.92.

2. The learned Counsel for the Respondents submitted that the present first appeals are liable to be dismissed on the ground that the earlier judgment passed by this Court shall operate as res Judicata. Sri L. P. Singh relied on a decision Sheodan Singh Vs. Smt. Daryao Kunwar, . The Apex Court was pleased to hold that the order of the High Court Itself may not be on merits. The decision of the High Court dismissing the appeal arising out of the suits was upheld by the decision on merits as an issue of title and, therefore, it must be held that by dismissing the appeal arising out of the suits, the High Court heard and finally decided the matter for It and confirmed the judgment of the trial court on Issue. The Hon''ble Supreme Court quoted in para 20 as under:

A consideration of the cases cited on behalf of the Appellant, therefore, shows that most of them are not exactly in point so far as the facts of the present case are concerned. Our conclusion on the question of res Judicata raised in the present appeals is this. Where the trial court has decided two suits having common issues on the merits and there are two appeals therefrom and one of them is dismissed on some preliminary ground, like limitation or default in printing with the result that the trial court's decision stands confirmed the decision of the appeal court will be res Judicata and the appeal court must be deemed to have heard and finally decided the matter. in such a case, the result of the decision of the appeal court is to confirm the decision of the trial court given on merits, and if that is so, the decision of the appeal court will be res Judicata whatever may be the reason for the dismissal.

Since the matter stands concluded by the decision of the Hon''ble Supreme Court that the dismissal of the appeal by the High Court after the judgment of the Tribunal even on the ground of non-printing of paper book shall operate as res

Judicata. It was held that the consequences of the decision of those issues become res Judicata u/s 11 of the CPC to bar the hearing of those common issues here and again. Sri L.P. Singh cited another decision reported in Land Acquisition and 1995 SCC 59 State of U.P. v. Babu Ram (Deceased by LRS) and Ors.. The Division Bench of this Court held that five References decided by the common judgment in proceedings under Land Acquisition Act Section 23/18, the State filed appeal only for four References. The award given in the reference which was decided by the common judgment remained unchallenged. It was held that:

When in respect of one of the land owners, compensation has been awarded at a rate which is same as in respect of other owners of the land acquired under the same notification in the village. It can be presumed that acquired lands of the various owners have similar advantages. Accordingly, when market value as determined in one reference which has become final in absence of any appeal, the same rate would also govern the land of other owners.

This decision is on a different point and is not directly affecting the present controversy but the decision of the Hon"ble Supreme Court (supra) fully covers and applies to the present case.

3. After hearing the learned Counsel for the Respondent and learned standing counsel who could not submit any other legal argument or cite any such other decision contrary to the case law cited by the learned Counsel for the Respondent, I am of the view that the preliminary objection about the maintainability of the present abovenoted appeals stand allowed.

All the first appeals are dismissed as barred by res Judicata. Parties to bear costs. The interim stay order, if any, stands vacated.