

(2007) 12 AHC CK 0104
In the Allahabad High Court
Case No : First Appeal No. 141 of 2001

U.P.Awas and Vikash Parishad, Lucknow	APPELLANT
Vs	
Ganeshi Dutt Joshi (Dead) and another	RESPONDENT

Date of Decision : 18-12-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 54

Citation : (2007) 12 AHC CK 0104

Hon'ble Judges : Rajesh Tandon, J

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard Shri K.S. Mehta, Counsel for the appellant.

2. By the present first appeal filed under section 96 of the Code of Civil Procedure, the appellant has prayed for setting aside the judgment and decree dated 10.10.1998 in L.A.R. Case No. 48/1988 passed by the District Judge, Almora.

3. Briefly stated, three land acquisition references being Nos. 47/1988, 48/1988 and 49/1989 have been made under section 54 of the Land Acquisition Act, 1894, which have been decided together by the District Judge, Almora on 10.10.1988. In the light of the order of the District Judge, Almora with regard to reference No. 47/1988, first appeal has been arisen being Appeal No. 809/2001 wherein the Division Bench of this High Court has passed the order to the following effect :

"Under the above amended provision, solatium was sought to be paid got enhanced from 15% to 30%. In Union of India and another v. Raghubir Singh and others, (1989) 2 SCC 754 the Apex Court has held that the amended provision does not apply to the awards, made by the Collector prior to April 30, 1982. A Division Bench of this Court has followed the same principle in First Appeal No. 754 of 2001; U.P. Avas Evam Vikas Parishad, Lucknoiv v. Harnam Singh and others, decided on 22.11.2005. In the above circumstances, and in

view of the above position of law, the Reference Court has erred in law by enhancing the solatium from 15% to, 30% in the matter, in which the Special Land Acquisition Officer had already made its award in 1980 i.e. prior to 3.4.1982, whereafter, the benefit was available to the claimants of the amended section 23 (2) of aforesaid Act." "7. Therefore, this appeal deserves to be allowed to the extent that the solatium payable to the claimants shall be at the rate of 15% and not at the rate of enhanced 30%. Accordingly, the appeal stands disposed of and allowed."

4. Counsel for the appellant has confined his argument to the extent of solatium part only.

5. Both the parties have agreed that the present appeal is squarely covered by the aforesaid judgment. Therefore, the present appeal is decided accordingly and it is held that the solatium payable to the claimants shall be paid at the rate of 15% and not at the 30% enhanced rate.

6. Subject to the observation made above with regard to solatium, appeal lacks merit and is dismissed. No order as to costs.