

**Niraj Agarwal Vs. Ist Additional District Judge, Muzaffarnagar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/474322](http://sooperkanoon.com/474322)

**Court :** Allahabad

**Decided On :** Mar-14-2002

**Reported in :** 2002(2)AWC1644; (2002)2UPLBEC1145

**Judge :** Anjani Kumar, J.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 18

**Appeal No. :** C.M.W.P. No. 2501 of 1999

**Appellant :** Niraj Agarwal

**Respondent :** ist Additional District Judge, Muzaffarnagar and ors.

**Advocate for Def. :** B.D. Mandhyan, S.C.

**Advocate for Pet/Ap. :** Vivek Mishra and ;V.C. Mishra, Advs.

**Disposition :** Writ petition dismissed

**Judgement :**

**Anjani Kumar, J.**

1. Since the Recall-Application No. 6849 of 2002 has been allowed and I have recalled my order dated 31.8.2001, dismissing the writ petition on the ground of availability of the alternative remedy, the writ petition has been restored to its original number. The writ petition has been heard on merits.

2. This writ petition challenging the order dated 14.12.1998. passed by the 1st Additional District Judge, Muzaffarnagar. whereby he has refused to make a reference under Section 18 of the Land Acquisition Act filed by the petitioner. Niraj Agarwal. The facts leading to the filing of the present writ petition are as under.

3. Ramji Das and Nand Lal were recorded tenure holders of the land, which was noticed under Section 4 of the Land Acquisition Act. The said notification was issued in the year 1975. Ram Ji Das filed Writ Petition No. 590 of 1976 before this Court in the month of January. 1976. The above writ petition was ultimately dismissed by this Court on 12.10.1977, wherein both the recorded tenure holders had challenged the validity of the acquisition, which stood upheld with the dismissal of the aforesaid writ petition. Ram Ji Das and Nand Lal went up to the Apex Court but ultimately failed there also and the acquisition was upheld. Niraj Agarwal, petitioner in the present case has come up with the case that he along with Shashi Kant entered into a partnership of which the heir of Nand Lal. Smt. Deoki and Ramji Das along with Niraj Agarwal and Shashi Kant were partners up to the extent of 1/4 each. Niraj Agarwal and Shashi Kant jointly contributed Rs. 10 lacs as share capital of the firm, which was registered some time in the year 1992. The heirs of Nand Lal and Ram Ji Das contributed two bighas of land each to the partnership. Thus, the partnership was registered. It is not in dispute that the two bighas land, which is said to be contributed by Ram Ji Das and Nand Lal. is the same land which has already been acquired for the concerned Mandi Semite by the notification issued in the year 1975. The validity whereof has been challenged up to the Supreme Court and notification was held to be valid. Thus, the acquisition was upheld by the Supreme Court even prior to constitution of the firm.

4. The further case set-up by the petitioner is that the partnership concerned was ultimately dissolved and a suit was filed between the partners of erstwhile firm said to have been registered in the year 1992. The aforesaid suit was decreed in terms of compromise dated 12.8.1994 wherein it was agreed that the petitioner is entitled to receive the compensation of the land acquisition. It is admitted case of the parties that in the said suit in which a compromise was said to have been executed, neither the Slate of U. P. nor the respondent Mandi Samiti were impleaded as parties. Pursuant to the aforesaid compromise dated 12.8.1994, the

petitioner filed an application purporting to be an application under Section 18 of the Land Acquisition Act that a reference be made to the District Judge after August, 1994. On the said application the objections were invited by the respondents. The acquisition became final. As stated earlier that the Writ Petition No. 590 of 1976 filed by Ram Ji Das and Nand Lal was dismissed on 12.10.1977 and the judgment was upheld by the Supreme Court when the appeal taken up against the judgment of this Court was dismissed on 5.8.1992. The alleged partnership came into existence after the judgment of this Court, which upheld the acquisition in the year, 1977 and thus the petitioner cannot claim any compensation as he is neither a person interested, nor a person whose land is actually acquired. The further objection is that the compromise decree is a sham transaction to which neither the State Government, nor the Mandi Samiti were parties and as such, the same cannot bind the Mandi Samiti or the State Government. Respondent No. 1 has further relied upon the circumstances that true owners Ram Ji Das and his wife filed Writ Petition No. 27527 of 1994 against the award dated 5.8.1994 and Ram Ji Das and his wife had not stated anything about the pendency of the Suit No. 301 of 1994. Though the said suit is said to have been filed and decided on 12.8.1994, no such reference was made in the aforesaid writ petition about the compromise decree dated 12.8.1994. The said writ petition was dismissed on 12.11.1994 on the ground that the property had vested in the State of U. P. much before the compromise decree dated 12.8.1994.

5. It is further contended that in any view of the matter, the acquisition having been completed in the year 1977, the application of reference by the petitioner in the year 1994 deserves to be dismissed on the ground of delay itself.

6. Shri V.C. Mishra appearing for the petitioner has contended that he is not challenging the acquisition. He submits that what he prayed is that in view of the compromise decree, he acquired a right to receive the compensation for the said acquisition and respondent was under a duty to refer the matter under Section 18 of the Act to the District Judge as petitioner in the circumstance stated above, is covered by the definition of 'person interested'. He relied upon a recent decision of Apex Court in 2000 (9) SCC 371. The Apex Court has held that since there was a dispute about the title as also regarding the apportionment of compensation for

acquiring the land in question, this was a fit case where High Court should have allowed the writ petition.

7. Needless to say that in the present case, there was neither a dispute of title nor a dispute of apportionment of the compensation. Shri Mishra has fairly conceded that he is not challenging the acquisition, which has become final in the year 1977- He has also stated that it is only by virtue of a compromise decree dated 12.8.1994, the right, if any, flows in favour of petitioner to collect the compensation which according to Shri Mishra is covered by definition of 'person interested'.

8. Needless to say that the aforesaid contention of Shri Mishra cannot be accepted. The petitioner cannot be said to be covered by the definition of the 'person interested', as the sole basis of his claim is to be covered by the said definition, is the compromise decree to which neither the State Government nor the Mandi Samiti were party and the same came in existence after about 20 years of notification issued for the land acquisition. In between acquisition was challenged and became final when the writ petition was dismissed in the year 1977.

9. Respondent No. 1 after hearing the parties, namely, the petitioner and Mandi Samiti has rejected the application and in my opinion rightly, filed by Niraj Agarwal seeking the reference under Section 18 of the Land Acquisition Act to receive compensation.

10. Thus, the view taken by the respondent No. 1 cannot be said to be either perverse or suffers from any error of law. The respondent No. 1 has rightly rejected the application of Niraj Agarwal for referring his application under Section 18 of the Land Acquisition Act.

11. In this view of the matter, I do not find any error in the order passed by the respondent No. 1. Thus, the writ petition deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. However, there will be no order as to costs.