

(2012) 08 GUJ CK 0037

In the Gujarat High Court

Case No : First Appeal No. 3599 of 1995 with First Appeal No. 5137 of 1995 with First Appeal No. 5138 of 1995

Bhikhabhai

APPELLANT

Vs

3rd Special Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 15, 18, 23, 23(1A), 23(2)

Citation : (2012) 3 GLH 319

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : P.M. Bhatt 1, Mr. Vibhuti Nanavati and Mr. Devendra A. Patels 1.2.1, 1.2.2, 1.2.3, 1.2.4, for the Appellant; Moxa Thakkar, AGP for Defendants 1 and 2, for the Respondent

Judgement

Mr. C.L. Soni, J.—These appeals are directed against the common judgment and award passed by the learned 2nd Jr. District Judge, Ahmedabad (Rural) at Mirzapur (herein after referred to as "the Reference Court") dated 31st August, 1994 in Land Acquisition Case No. 1713 of 1987 (Main) with Land Acquisition Case No. 1714 of 1987.

The land of Shri Nathabhai Chaturbhai Valand, who died pending the appeal and whose heirs are brought on record, and the land of Gobarji Muluji Vaghela were sought to be acquired for the purpose of construction Project of Capital of Gandhinagar. For the aforesaid purpose, notification u/s 4 of the Land Acquisition Act, 1894 (herein after referred to as "the Act") was issued on 19.4.1973. Thereafter, notification u/s 6 of the Act came to be issued on 14.7.1975. The Land Acquisition Officer passed the award on 31.10.1978 and awarded the compensation at the rate of Rs. 00.85 paisa per square meter. Since the claimants were dissatisfied with the award passed by the Land Acquisition Officer, they raised dispute to make reference u/s 18 of the Act. Accordingly, references were registered as Land Acquisition Case No. 1713 of 1987 in the case of

Nathabhai C. Valand and Land Acquisition Case No. 1714 of 1987 in the case of Gobarji Muluji Vaghela. Both the references were consolidated and Land Acquisition Case No. 1713 of 1987 was treated as the Main Reference. The claimants claimed compensation of Rs. 250.00 per square meter. Before the Reference Court, one Shri Vishnuprasad Nathalal Valand was examined as witness No. 1 at Exh. 10 on behalf of the claimants. Evidence of sale instances was adduced. Evidence as regards judgment given for the land of village Lekavada, Taluka Gandhinagar and village Vavol was also adduced. Reference Court, however, preferred and relied the sale instance and took the price as Rs. 8000.00 per acre and also considered the development of the Capital of Gandhinagar and ultimately fixed Rs. 26250.00 per acre Accordingly, by fixing market value of the lands acquired at Rs. 7.00 per square meter the Reference Court awarded additional compensation of Rs. 6.15 ps. per square meter after deducting the amount of Rs. 00.85 ps. per square meter awarded by the Land Acquisition Officer. Reference Court also awarded the statutory benefits of solatium at the rate of 30% with interest at the rate of 9% per annum for one year from the date of taking over possession of acquired of the acquired land and thereafter at the rate of 15 per cent per annum from the date of expiry of the first year till the amount is paid or deposit. Against this common award passed by the Reference Court, these three appeals have been filed. The First Appeal No. 3599 of 1995 is filed by the claimant Nathabhai C. Valand against the judgment and award in Land Acquisition Case No. 1713 of 1987. The First Appeal No. 5137 of 1995 and 5138 of 1995 are filed by the Land Acquisition Officer and the Executive Engineer against the judgment and award passed in Land Acquisition Case No. 1713 of 1987 and Land Acquisition No. 1714 of 1987, respectively.

We have heard learned Advocate Shri Devendra A. Patel for the appellants in First Appeal No. 3599 of 1995 and learned A.G.P. Ms. Moxa Thakkar for the respondents in First Appeal No. 3599 of 1995 and for the appellants in First Appeal No. 5137 and 5138 of 1995. Nobody has appeared for another claimant who is respondent in First Appeal No. 5138 of 1995.

2. Learned Advocate Shri Devendra Patel has submitted that the Reference Court has committed grave error in not considering the sale instances at Exh. 16 to Exh. 19 relied and proved by the claimants. As per his submission, the sale instances at Exh. 16 to Exh. 19 were in respect of the lands proximate to the lands acquired and were the best and relevant available evidence for determining the market price of the lands acquired. He would further submit that the above sale instances reflected the price of the lands at the relevant time of Rs. 111/-, Rs. 126/- per square meter. Out of the said sale instances, the sale instance for the price of Rs. 111/- per square meter was dated 16.6.1970 and the second relevant sale instance was of date 21.7.1975, therefore, before the date of notification, highest price as per the sale instance was Rs. 111/- per square meter which was required to be considered by the Reference Court. He would submit that when the above said best sale instances were available for the proximate lands, the Reference Court ought not to have considered and relied on

the sale instance in respect of the land bearing Survey No. 150-1 admeasuring 25 Gunthas sold on 3.5.1974 for the price of Rs. 5000.00 per Guntha which was taken at Rs. 8,000.00 per acre. He would further submit that taking the base of Rs. 8000.00 per acre, the learned Judge considered the development of the surrounding area and fixed Rs. 26,250.00 per acre which would be Rs. 7.00 per square meter which is not reflecting the true and correct market value at the relevant time. Thus, as per his submission, the very basis taken by the Reference Court for fixing the market value of the land was not at all reliable and the sale instances produced by the claimants at Exh. 16 to 19 being reliable evidence, could not have been discarded by the Reference Court. As per his submission, the market value of Rs. 111/- per square meter prevailing as in the year 1970 should have been taken as the basis and since the notification u/s 4 of the Act was of the year 1973, 10 per cent increase every year is required to be considered so as to arrive at the correct market price as on 14.4.1973, which would come to Rs. 144.30 ps. per square meter and from the said figure, deduction towards development charges to the extent of 50% and further deduction of 10% towards the smallness of the land of the above sale instance could be made which would come to Rs. 86.58 ps. per square meter and deducting the said amount from Rs. 144.30 per square meter, the market value of the land per square meter is required to be fixed at Rs. 57.72. In respect of the sale instance of Rs. 111.00, learned Advocate Mr. Patel has submitted that as per the principle of law settled by Hon"ble the Supreme Court, sale instance of small size land if comparable can always be considered and if the facts of the case so demand, some deduction on the count of smallness of the land could be made. In fact, Mr. Patel strenuously pointed out that the lands acquired are in proximity to GIFT City of Gandhinagar and is within highly developed areas of Capital City of Gandhinagar and it was of very high potentiality with other lands in Gandhinagar. In support of the above said submissions, learned Advocate Mr. Patel has relied on the following Authorities :-

- (1) The Deputy Director, Land Acquisition Vs. Malla Atchinaidu and Others, .
- (2) Mahesh Dattatray Thirthkar Vs. State of Maharashtra, .
- (3) Thakur Kuldeep Singh (D) thr. L.R. and Others Vs. Union of India (UOI) and Others, .
- (4) Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc., .
- (5) Special Land Acquisition Officer and Another Vs. M.K. Rafiq Saheb, .
- (5) Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, .

3. Learned Advocate Mr. Patel has further submitted that the Reference Court has also committed error in not awarding the benefit of increase in the market value u/s 23(1)-A of the Act. He submitted that though the Land Acquisition Officer

passed award before the amendment of 1984, still, since the award of the Reference Court came to be passed on 31.8.1994 and since the appeal is also pending before this Court, the claimants would be entitled to the benefit of additional amount at the rate of 12 per cent per annum on the market value of the land. In support of the above said contention, learned Advocate Mr. Patel has relied on the following Authorities :-

(1) Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., .

(2) Union of India (UOI) and Another Vs. Zora Singh and Others, .

4. In reply to the above said submissions made by the learned Advocate for the claimant, learned AGP Ms. Moxa Thakkar has submitted that the Reference Court has committed an error in determining the market value while relying on the sale instance in respect of the land bearing Survey No. 150-1 ad-measuring 25 Gunthas sold on 3.5.1974. Rs. 800.00 per acre could not have been taken as base and Rs. 250.00 per acre could not have been fixed for the purpose of determining the market value of the land in the context of the date of issuance of notification u/s 4 of the Act. She would further submit that the sale instance at Exh. 16 to 19 produced by the claimants were of very small area and were not at all comparable sale instances for the purpose of determining the correct market value of the lands acquired. She would submit that the sale instance at Exh. 16 to 19 were in respect of the sale price derived from the auction and did not reflect the correct market value of the land on the date of notification u/s 4 of the Act. She would further submit that the sale of the plots in public auction by the Government was for the purpose of construction of shops and residence and such sale instance could not be said to be comparable sale instances for the purpose of determining the market value of the lands under acquisition. She thus submitted that the Reference Court has not committed an error in not considering the sale instance at Exh. 16 to 19.

5. As regards statutory benefits of additional increase in the market value of the land u/s 23(1)-A of the Act claimed by the claimants, the learned A.G.P. has submitted that the claimants : are not only not entitled for such claim but the Reference Court has also committed grave error in awarding solatium at the rate of 30% with interest at the rate of 9% and 15% per annum because the Land Acquisition Officer has passed award in the year 1978, long before the introduction of the amendment in the year 1984 for additional statutory benefits. She would submit that the case of the claimants would neither fall in the transitional provisions in the Land Acquisition (Amendment) Act, 1984 nor the case of the claimants can be said to have been covered by the provisions of Section 23(2), 28 and 34 of the Land Acquisition Act. She would, thus, urge to dismiss First Appeal No. 3599 of 1995 and to allow the First Appeals filed by the State. Learned AGP has placed reliance on following Authorities :-

(1) Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, .

(2) Karnal Improvement Trust Vs. Smt. Sumitra Devi (dead) by Lrs. and Others, .

6. On the question of assessment of market value of the land under acquisition, best comparable sale instance is always to be relied on. However, if there is already judgment of the reference Court in respect of the land already acquired, of the same area or same village, due weightage is always required to be given on such judgment of the reference Court to determine the market value. However, while determining the market value on the basis of such judgment of the reference Court or even on the basis of the sale instance, difference between the dates of notification for the land under acquisition and for the lands already acquired is to be worked out for giving either increase or decrease in the value. In the present case, the Reference Court has before it the evidence of two awards of lands of two adjoining villages, one was in respect of village Lekavada and the another one of village Vavol in the District of Gandhinagar. The reference Court has also available on record the evidence of sale instance in respect of the lands in the vicinity of the lands under acquisition. Reference Court, therefore, thought it fit not to consider the evidence of the earlier award in respect of village Lekavada and Vavol. The reference Court was having the sale instance at Exh. 16 to 19 of the proximate land and also of the sale instance of the land bearing survey No. 150-1 admeasuring 25 Gunthas which was sold out on 3.5.1974. The Reference Court discarded the evidence of sale instance at Exh. 16 to 19 on the ground that those sale instances were of very small size of land and the sale of the land was in public auction for the purpose of shops and residence and, therefore, did not reflect the true and correct market value of the land. Learned Advocate Mr. Patel for the claimants has made very serious grievance for discarding the sale instance at Exh. 16 to 19 by the Reference Court and submitted that the reasoning given by the Reference Court for discarding such sale instance was contrary to the law laid down by the Hon''ble Supreme Court for the purpose of determining the market value. As per his submission, since the land bearing survey No. 150-1 was not at all comparable sale instance and since the sale instances of proximate land Exh. 16 to 19 though of small size and though sold in public auction were available, such sale instances were comparable sale instances and therefore there was no reason to discard such sale instances.

7. We may, at this stage, refer some judgments of the Hon''ble Supreme Court, (a) In *Atma Singh (died) through L. Rs. & Ors. v. State of Haryana & Anr.*, (supra), the Hon''ble Supreme Court has held that the exemplars of small plots cannot be discarded when the exemplars of large pieces of land are not available. They could, therefore, be used for determining the market value of the lands under acquisition. In the facts of that case, Hon''ble Supreme Court has confirmed the view taken by the High Court for deduction of 10 per cent from the market value of the small size of land. (b) In case of *Mahesh Dattatrey Thirthkar v. State of Maharashtra*, (supra), the Hon''ble Supreme Court has held that the proximity to developed urbanized area needs to be necessarily considered while deciding on the compensation to be paid for acquisition of land, on the basis of

evidence available. From the said judgment, observations in para 37 are required to be reproduced. They are, therefore, reproduced as under :-

37. Finally, it is pertinent to note that the appellants have correctly brought out the opinion of this Court in the case of Suresh Kumar v. Town Improvement Trust (supra) and Bhag Singh v. Union of India (supra). The former case clearly lays down that proximity to develop urbanized area needs to be necessarily considered, while deciding on the compensation to be paid for acquisition of land, on the basis of evidence available. The High Court seems to have ignored that based on the evidence put forth before it by the appellant, the acquired property is situated near Osmanabad-Latur Road and Aurangabad-Solapur Highway, and the Respondent has not given any evidence to rebut this contention. Thus, the High Court has overlooked the proximity of the acquired property to a developed area. Further, while this Court clearly cautioned against taking up of "technical pleas to defeat a just claim to enhanced compensation" under the Act in Bhag Singh v. Union of India (supra), the High Court set aside the order of the Reference Court merely on grounds of minor inconsistencies and technicalities. It seemed to have disregarded the fact that the compensation provision of the Act is in the nature of a welfare stipulation and thus the State Government must be just and fair to those whose land it acquires. It is not just and fair to deprive the owner of any property without payment of its true market value, especially when the law provides that the same shall be paid.

(c) In Thakur Kuldeep Singh (D) Thr. LR & Ors. v. Union of India and Ors., (supra), Hon"ble Supreme Court has observed in para 6 :-

6. Sections 23 and 24 of the Act speak about the matters to be considered and to be neglected in determining compensation. Let us consider whether the appellants are entitled to higher compensation than that of the one fixed by the High Court or Union of India is justified in seeking reduction of the market value/ compensation for the acquired land. While fixing compensation, it is the duty of the Land Acquisition Collector as well as the Court to take into consideration the nature of the land, its suitability, nature of the use to which the lands are sought to be acquired on the date of notification, income derived or derivable from or any other special distinctive feature which the land is possessed of, the sale transactions in respect of land covered by the same notification are all relevant factors to be taken into consideration in determining the market value. It is equally to consider the suitability of neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special characteristics available. The Land Acquisition Collector as well as the Court should always keep in their mind that the object of assessment is to arrive at a reasonable and adequate market value of the land. While doing so, imagination should be eschewed and mechanical assessment of evidence should be avoided. More attention should be on the bona fide and genuine sale transactions as guiding star in evaluating the evidence. The relevant factor would be that of the hypothetical willing vendor would offer for the land and what a willing purchaser

of normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of notification under Section

(d) In Valliyammal and Anr. etc. v. Special Tahsildar (Land Acquisition) and another etc. (supra), in para 14, Hon"ble Supreme Court has considered the earlier judgment in case of Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others, . Para 14, 19, 23 to 25, of said judgment are reproduced as under :-

14. In Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others, , this Court held :-

It is no doubt true that Courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification u/s 4 of the Act. However, comparable sales method of: valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification u/s 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.

(emphasis supplied)

19. In A.P. Housing Board Vs. K. Manohar Reddy and Others, , the rule of 1/3rd deduction towards development cost was invoked while determining market value of the acquired land. In Subh Ram and Others Vs. Haryana State and Another, , this Court held as under:-

Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and

the value of a large undeveloped land is the "development cost". Two factors have a bearing on the quantum (or percentage) of deduction in the "retail price" as development cost. Firstly, the percentage of deduction is decided with reference to the extent and nature of development of the area/layout in which the small developed plot is situated. Secondly, the condition of the acquired land as on the date of preliminary notification, whether it was undeveloped, or partly developed, is considered and appropriate adjustment is made in the percentage of deduction to take note of the developed status of the acquired land. The percentage of deduction (development cost factor) will be applied fully where the acquired land has no development. But where the acquired land can be considered to be partly developed (say for example, having good road access or having the amenity of electricity, water, etc.) then the development cost (that is, percentage of deduction) will be modulated with reference to the extent of development of the acquired land as on the date of acquisition. But under no circumstances, will the future use or purpose of acquisition play a role in determining the percentage of deduction towards development cost.

[Emphasis supplied]

23. Though it may appear repetitive, we deem it necessary to mention that the acquired land is situated in the close vicinity of various residential colonies, educational institutions, hospitals etc. and is on the junction of two important roads. Therefore, it can safely be concluded that the land is semi-urban and has huge potential for being developed as housing sites and the High Court should have added 10% per annum escalation in the price specified in the sale deeds relied upon for fixing market value of the acquired land.

24. The third error committed by the High Court is that in fixing market value of the land acquired vide notifications issued in 1991, 1992 and 1995 with reference to sale deed dated 4.9.1990 vide which a piece of land was sold at the rate of Rs. 20/- per square feet, the High Court did not add 10% escalation per annum in the land prices.

25. We may have sustained 20% deduction keeping in view the smallness of the plots which were sold vide sale deeds dated 4.9.1990 and 8.2.1991, but, in the peculiar facts of the case, we think that it will be wholly unjust to allow such deduction. Majority of the appellants have been deprived of their entire landholding and they have waited for 14 to 20 years for getting the compensation. It appears that in compliance of the interim orders passed by the Court, some of the appellants did get 25% and one of them get 35% of the compensation, but majority of them have not received a single penny towards compensation and at this distant point of time, it will be wholly unjust to deprive them of their legitimate right by approving the 20% deduction made by the High Court. In such matters, the Court cannot be oblivious of the fact that the landowners have been deprived of the only source of livelihood, the cost of living has gone up manifold and the purchasing power of rupee has substantially declined.

In Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others, , Hon"ble Supreme Court has held as under in para 17 and 19:

17. It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the Authority/ Court for fixing fair compensation. 19. This Court has time and again granted 10% to 15% increase per annum. In Ranjit Singh and others Vs. Union Territory of Chandigarh, , this Court applied the rule of 10% yearly increase for award of higher compensation. In Delhi Development Authority Vs. Bali Ram Sharma and Others, , this Court considered a batch of appeals and applied the rule of annual increase for grant of higher compensation. In The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, , this Court held that where the acquired land is in urban/semi-urban areas, increase can be to the tune of 10% to 15% per annum and if the acquired land is situated in rural areas, increase can be between 5% to 7.5% per annum. In Union of India (UOI) Vs. Harpat Singh and Others, , this Court applied the rule of 10% increase per annum.

8. Now, if we consider evidence in the present case, the sale instances as per Exh. 16 to 19 were of the lands in the proximity to the lands under acquisition. The evidence at Exh. 16 is of sale of land ad measuring. 131.25 square meter. This sale was by way of auction confirmed by the Additional Collector, Gandhinagar dated 19.8.1970. Other sale instances at Exh. 17, 18 and 19 are also for the sale of land ad measuring 200 square meters, 200 square meters and 130 square meters in the year 1975, 1978 and 1987 respectively by the order of the Additional Collector, Gandhinagar. These all sale instances are, of course, in respect of small plot of land for shops and residential purpose. But one important aspect is that the capital of the State, Gandhinagar city was being developed where the lands were being put for auction for the purpose of constructing commercial shops and residences. Thus, the lands of the present claimants were also worth sale consideration at least around the sale prices prevailing at the relevant time, therefore, such sale instances could not have been discarded out right by a reference Court. As held by the Hon"ble Supreme Court, development of lands in the vicinity or of developed area in the city cannot be ignored. At the same time, market value has to be discounted on account of comparison with the sale instance of small size of land. Sale instance of land bearing survey No. 150-1 relied on by the reference Court was not

comparable sale instance as it was after the notification u/s 4 of the Act and not so proximate to the lands under acquisition like other sale instances at Exh. 16 to 19.

9. Out of the sale instances at Exh. 16 to 19, sale instance at Exh. 16 was dated 27.4.1970, which was three years prior to the date of notification under Sec. 4 of the Act in the present case. Mr. Patel has pointed out that the lands of the claimants were already in the periphery of capital city of Gandhinagar which was under development and is already close and near to GIFT City developed in Gandhinagar, thus, could not be said to be not having any potentiality of future development. Therefore, as per his submission, valuation at Rs. 111.00 per square meter as per Exh. 16 is required to be taken as the base and considering difference of three years between the date of sale instance Exh. 16 to the date of notification in the year 1973 in the present case, 10 per cent rise every year is required to be considered.

10. Having considered the evidence on record, we are inclined to consider the sale instance at Exh. 16 dated 27.4.70 of Rs. 111.00 per square meter. Since the notification u/s 4 is of 19.4.1973, we would give increase by way of appreciation of 10% every year which would make the figure of Rs. 144.30. From the said amount, we deduct 50 per cent towards development and 20 per cent deduction on account of small size of the land of sale instance at Exh. 16. Thus, deducting 70% from Rs. 144.30, market value of the lands under acquisition per square meter would come to Rs. 43.20. Thus, we assess and fix the market value of the lands acquired by taking round figure at Rs. 44.00 per square meter. Claimants shall be entitled to compensation of their lands under acquisition as per the said rate. Since the claimants have already been awarded Rs. 7.00 per square meter by the reference Court, the claimants shall now be entitled to get additional compensation of Rs. 37.00 per square meter for the lands under acquisition.

11. This brings us to the question of grant of statutory benefits u/s 23(1-A) of the Act and other statutory benefits as claimed by the appellants claimants. In the present case, admittedly, the Land Acquisition Officer has passed award long before the introduction of the Land Acquisition (Amendment) Act, 1984. Learned Advocate Mr. Patel, however, submitted that since the Reference Court decided the References in the year 1994 and since the appeal against the award of the Reference Court is pending before this Court, the claimants shall be entitled to the benefit u/s 23(1-A) and solatium as also interest by virtue of the transitional provisions contained in Section 30 of the Land Acquisition (Amendment) Act, 1984. In support of his argument, Mr. Patel has relied on the decision of the Hon"ble Supreme Court in the case of Raghubir Singh (supra).

12. However, during the course of hearing, learned A.G.P. has relied on the decision of Hon"ble the Supreme Court in the case of Filip Tiago De Gama of Vedem Vasco De Gama (supra). Hon"ble Supreme Court in para 20 and 21 of said judgment observed as under:--

20. Entitlement of additional amount provided u/s 23(1A) depends upon pendency of acquisition proceedings as on 30 April 1982 or commencement of acquisition proceedings after that date. Section 30 sub-Section (1)(a) provides that additional amount provided u/s 23(1A) shall be applicable to acquisition proceedings pending before the Collector as on 30 April 1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-Section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30 April 1982 irrespective of the fact whether the Collector has made an award or not before 24 September 1984. The final point to note is that Section 30 sub-Section (1) does not refer to Court award and the Court award is used only in Section 30 sub-Section (2). 21. In the case before us, on 26 October 1967, the notification u/s 4 was issued. On 5 March 1969 the Collector made the award. The result is that on 30 April 1982 there was no proceedings pending before the Collector. Therefore, Section 30 sub-Section (1)(a) is not attracted to the case. Since the proceedings for acquisition commenced before 30 April 1982, Section 30 sub-Section (1)(b) is also not applicable to the case. Here, the case is really gone by both ways. It cannot be saved from Scylla or Charybdis. The claimant is, therefore, not entitled to additional amount provided u/s 23(1-A).

13. In above decision, the claim of the claimants for benefit of additional amount u/s 23(1-A) of the Act is rejected because the award of the Collector was not falling in the transitional provisions but was prior to the date of commencement of the transitional provisions. However, during the course of arguments, when the learned AGP noticed another decision of Hon'ble the Supreme Court in the case of Zora Singh and others (supra), she candidly pointed out that the decision in case of Union of India and others v. Filip Tiago De Gama of Vedem Vasco De Gama (supra) is over-ruled and it is held by the apex Court in para 18, 19 and 20 in case of Zora Singh and others, (supra) as under :-

18. As far as the decision of a Division Bench comprising two learned Judges of this Court in Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, strongly relied upon by the appellants is concerned, we find that in that case the Land Acquisition Officer made his award determining the compensation on March 5, 1969. On a reference u/s 18 the Civil Court made its award on May 28, 1985, that is, even after September 24, 1984, when the Amendment Act of 1984 came into effect. The view taken by the Division Bench is that, as the Collector had made his award before April 30, 1982, then the additional amount referred to in Section 23 (1-A) could not be awarded. This view has been taken on the basis that sub- Section (1)(b) of Section 30 of the said Act provides that the provisions of Section 23(1-A) shall be applicable to every acquisition proceeding commenced after April 30, 1982, irrespective of the fact whether the Collector has made the award on or before September 24, 1984, and that sub-Section (1) of Section 30 does not refer to Court award and the Court award is used only in sub-Section (2) of Section 30. (See para 21 of

the said report). We find that on the plain language of Section 23(1-A) itself, which we have set out earlier, the duty was cast on the Court to award an additional amount calculated as prescribed therein which would mean that it is directed to be awarded by the Court, namely, the Reference Court, in all cases which are pending before that Court on September 1, 1984. Sub-Section (1)(a) of Section 30 undoubtedly lays down that the provisions of Section: 23(1-A) of the Act are also made applicable to all proceedings for the acquisition of any land under the said Act pending on April 30, 1982, where no award had been made by the Collector before that date. At first glance this would appear to suggest that the additional amount referred to in Section 23(1-A) could not be awarded where the Collector had made his award before April 30, 1982. But this provision cannot be allowed to cut down the benefits available to the claimants on a plain reading of Section 23(1-A). This is clear from the use of the word "also" in the opening pan of Section 30(1). In our opinion, the view taken by the Bench comprising two learned Judges of this Court in that case cannot be accepted as correct as it is too narrow and unduly cuts down the operation of the benefit conferred under the plain language of Section 23(1-A) of the said Act. As far as the provisions of Section 30(2) are concerned, we do not feel that we are called upon to interpret the same in this decision. In our view, therefore, the said decision cannot be accepted as good law in so far as it lays down that in order to bring the provisions of Section 23(1-A) of the said Act into play the Collector must have made his award after April 30, 1982.

19. Coming to the decision in *Union of India and Another v. Raghuvir Singh (dead)* by Lrs. (Supra) referred to earlier, we find that it mainly concerned itself with the provisions of Section 30(2) of the said Amendment Act with which we are not directly concerned here and in that connection, the Constitution Bench of this Court has made the following observations (p. 779) :-

In construing Section 30(2), it is just as well to be clear that the award made by the Collector referred to here is the award made by the Collector u/s 11 of the parent Act, and the award made by the Court is the award made by Principal Civil Court of Original Jurisdiction u/s 23 of the parent Act on a reference made to it by the Collector u/s 19 of the parent Act. There can be no doubt that the benefit of the enhanced solatium is intended by Section 30(2) in respect of an award made by the collector between April 30, 1982, and September 24, 1984, Likewise the benefit of the enhanced solatium is extended by Section 30(2) to the case of an award made by the Court between April 30, 1982, and September 24, 1984, even though it be upon reference from an award made before April 30, 1982.

The Court went on to point out that (p.780) :-

Section 30(2) of the Amendment Act extends the benefit of the enhanced solatium to cases where the award by 2 the Collector or by the Court is made between April 30, 1982, and September 24, 1984, or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions

of the High Court or the Supreme Court are rendered before September 24, 1984, or after that date. All that is material is that the award (emphasis supplied) by the Collector or by the Court should have been made between April 30, 1982, and September 24, 1984. We find ourselves in agreement with the conclusion reached by this Court in *K. Kamalajammanniavar (Dead) by Lrs. Vs. Special Land Acquisition Officer*, find ourselves unable to agree with the view taken in *Bhag Singh and Others Vs. Union Territory of Chandigarh* through the land acquisition collector, Chandigarh, . The expanded meaning given to Section 30(2) in the latter case does not, in our opinion, flow reasonably from the language of that sub-Section. It seems to us that the learned Judges in that case missed the significance of the word "such" in the collocation "any such award" in Section 30(2). Due significance must be attached to that word, and to our mind it must necessarily intended that the appeal to the High Court or the Supreme Court, in which the benefit of the enhanced solatium is to be given, must be confined to an appeal against an award of the Collector or of the Court rendered between April 30, 1982, and September 24, 1984.

(Emphasis Supplied)

20. We find that this decision which was rendered by a Constitution Bench of this Court comprising 5-learned Judges runs in no way counter to the view which we have taken and, in fact, it leads some support to the view which we are taking. In the case before us, as the Reference Court has made its award after September 24, 1984 the benefit of the provisions of Section 23(1-A) was clearly available to the claimant as held in the impugned judgment.

14. Learned Advocate Shri Patel, therefore spared no time in grabbing the opportunity to rely on the decision in case of *Zora Singh* (supra) so as to press his point with more vehemence for entitlement of the claimants for additional amount u/s 23(1-A) of the Act. Therefore, at one stage, we were persuaded to take the view that even if the Land Acquisition Officer has passed award prior to Land Acquisition (Amendment) Act, 1984 but since the reference Court passed the award in the year 1994 and since the appeal also remained pending with this Court, the claimants would be entitled to the benefits of additional amount u/s 23(1-A) of the Act. However, upon further research by ourselves, we find that there are some more decisions on this issue which are referred herein below.

(1) In the case of *K.S. Pariapoornan and Others Vs. State of Kerala and Others*, , view expressed by the Hon''ble Supreme Court in *Zora Singh*'s case (supra) was a dissented from and the matter was referred to the larger Bench for consideration and decision. The issue was then decided Per Majority by the Constitution Bench of the Hon''ble; Supreme Court in the case of *K.S. Paripoornan Vs. State of Kerala and Others*, . Para 110 and 111 of said judgment are reproduced as under :-

110. For all these reasons the questions raised in these petitions are answered as below :-

(1) Section 23(1-A) providing for additional compensation is attracted in every case where reference was pending u/s 18 before the Court [Section 23(1-A)].

(2) No additional compensation is payable in appeals pending on or after 24th September 1984 either in High Court or this Court.

(3) Additional compensation u/s 23(1-A) is also payable in all those cases where the proceedings were pending and the award had not been made by the Collector on or before 30th April 1982 [Section 30(1)(a)].

(4) Similarly every land owner is entitled to additional compensation where the land acquiring proceedings started after 24th April 1982 whether the award by the Collector was made before 24th September 1984 or not [Section 23(1-A)].

(5) Additional compensation u/s 23(1-A) is liable to be paid by the Collector as well. (Section 15 of the Act).

ORDER OF THE COURT

(Per Majority)

111. In respect of acquisition proceedings initiated prior to the date of commencement of the Amending Act 68 of 1984, the payment of the additional amount u/s 23(1-A) of the Act will be restricted to matters referred to in clauses (a) and (b) of sub-Section (1) of Section 30 of the said Amending Act. Union of India (UOI) and Another Vs. Zora Singh and Others, , insofar as it holds that the said amount is payable in all cases where the reference was pending before the reference Court on September 24, 1984, irrespective of the date on which the award was made by the Collector, does not lay down the correct law.

(2) In the case of Karnal Improvement Trust Vs. Smt. Sumitra Devi (dead) by Lrs. and Others, , relied by the learned AGP, Hon"ble the Supreme Court has after noticing the decision in case of Filip Tiago De Gama of Vedem Vasco De Gama (supra), observed that the relevant date of benefit u/s 23(1-A) of the Act is the date of the award of the Collector and since there was no enhancement by the Reference Court in the compensation, the claimants were not entitled to benefit u/s 23(1-A) and 28 of the Act.

(3) The decision in case of K.S. Paripoornan (supra) was considered and relied in the case of Pralhad and Others Vs. State of Maharashtra and Another, and it is held in para 9, 10, 11 and 12 as under :-

9. The benefit which is given to the landowners under the amendment provision, which came by virtue of Section 15 of Act 68 of 1984, is now Section 23(1A) of the Principal Act. Section 23(1A) of the Principal Act runs as under :-

23(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, sub-Section (1), in respect of

such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.- In computing the period referred to in this sub-Section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition. 10. The benefit of the aforesaid amended provision to the landowners was provided by Section 30(1) of Act 68 of 1984. The said Section 30, which was known as transitional provision, read as under :--

30. Transitional Provisions-(1) The provisions of sub-Section (1-A) of Section 23 of the Principal Act, as inserted by clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,-

(a) every proceeding for the acquisition of any land under the Principal Act pending on the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People], in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the Principal Act commenced after that date, whether or not an award has been made by the Collector before the date of commencement of this Act.

(2) The provisions of sub-Section (2) of Section 23 and Section 28 of the Principal Act, as amended by clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the Principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.

11. The said transitional provision came up for consideration before this Court in several judgments and there was some divergence of judicial opinion which was ultimately settled by the Constitution Bench Judgment of this Court in the case of K.S. Paripoornan Vs. State of Kerala and Others, .

12. In K.S. Paripoornan Vs. State of Kerala and Others, the majority judgment was rendered by Justice S.C. Agrawal. In rendering the majority judgment their Lordship held that the decision of this Court in Union of India (UOI) and Another Vs. Zora Singh and Others, , is not correct and in paragraph 70 of the judgment the learned Judges held that the Parliament has given a clear indication of its intention in Section 30(1), which was a transitional provision. The learned Judges held that since a clear intention has been given in Section 30(1), there is no

scope for any speculation about the parliamentary intention by reading Section 23(1A) in isolation from Section 30(1) of the Act. [See SCC para 70].

(4) The said decision is further considered by the apex Court in case of Union of India (UOI) Vs. Giani, . In para 6, 7, 8 and 9 of the judgment, Hon''ble Supreme Court has held as under :-

6. The specific and the only issue which was agitated by the Counsel appearing for the appellant before us, during the course of hearing was that, since the aforesaid amendment by Act No. 68 of 1984 inserted a new provision in the nature of sub-Section (1A), which was inserted, w.e.f., 24.09.1984 [and was made applicable to proceedings pending on or after 30.04.1982] sub-Section (1A) would not be applicable in the present case.

7. In support of the said contention reference was made to the decision of the Constitution Bench of this Court in K.S. Paripoornan Vs. State of Kerala and Others, in which this Court upon a combined reading of Section 23(1A) and Section 30(1) of the Act held as follows :-

74.....A perusal of sub-Section (1) of Section 30 of the amending Act shows that it divides the proceedings for acquisition of land which had commenced prior to the date of the commencement of the amending Act into two categories, proceedings which had commenced prior to 30-4-1982 and proceedings which had commenced after 30-4-1982. While clause (a) of Section 30(1) deals with proceedings which had commenced prior to 30-4-1982, clause (b) deals with proceedings which commenced after 30-4-1982. By virtue of clause (a), Section 23(1-A) has been made applicable to proceedings which had commenced prior to 30-4-1982 if no award had been made by the Collector in those proceedings before 30-4-1982. It covers (i) proceedings which were pending before the Collector on 30-4-1982 wherein award was made after 30-4-1982 but before the date of the commencement of the amending Act, and (ii) such proceedings wherein award was made by the Collector after the date of the commencement of the amending Act. Similarly Section 30(1)(b) covers (i) proceedings which had commenced after 30-4-1982 wherein award was made prior to the commencement of the amending Act, and (ii) such proceedings wherein award was made after the commencement of the amending Act. It would thus appear that both the clauses (a) and (b) of sub-Section (1) of Section 30 cover proceedings for acquisition which were pending on the date of the commencement of the amending Act and to which the provisions of Section 23(1-A) have been made applicable by virtue of Section 30(1). If Section 23(1-A), independently of Section 30(1), is applicable to all proceedings which were pending on the date of the commencement of the amending Act, clauses (a) and (b) of Section 30(1) would have been confined to proceedings which had commenced prior to the commencement of the amending Act and had concluded before such commencement because by virtue of Section 15 the provisions of Section 23(1-A) would have been applicable to proceedings pending before the Collector on the date of commencement of the amending Act. There was no need

to so phrase Section 30(1) as to apply the provisions of Section 23(1-A) to proceedings which were pending before the Collector on the date of the commencement of the amending Act, This only indicates that but for the provisions contained in Section 30(1), Section 23(1-A) would not have been applicable to proceedings pending before the Collector on the date of commencement of the amending Act.

8. A similar issue again came up for consideration before this Court in Pralhad and Others Vs. State of Maharashtra and Another, wherein reference was made and reliance was placed in the decision of K.S. Paripoornan Vs. State of Kerala and Others, .

9. In the present case the acquisition proceeding commenced with the notification u/s 4 issued on 06.03.1965 and it culminated in passing of the award by the Collector on 09.07.1980, i.e., before 30.04.1982, the date from which the amending Act 68 of 1984 was made applicable to the pending and subsequent proceedings. Therefore, in terms of the law laid down by the Constitution Bench decision of this Court in the case of K.S. Paripoornan Vs. State of Kerala and Others, the respondents are not entitled to the benefit of Section 23(1A).

15. In light of the above decisions of the Hon''ble Supreme Court of India, the claimants in the present case shall not be entitled to additional amounts u/s 23(1-A) of the Act as the Land Acquisition Officer passed the award much before 30th April, 1982, which was the date of introduction of the Land Acquisition Amendment Bill, 1982 in the Parliament for the purpose of amendment to provide additional benefits u/s 23(1-A) of the Act. SO far as the other statutory benefits of solatium and interest are concerned, Hon''ble Supreme Court has also laid down that if the appeal was pending after the Land Acquisition (Amendment) Act, 1984, the claimants would be entitled: to the benefit of solatium and interest under the amended Act. Therefore, we reject the contention of the learned AGP that the claimants would not be entitled to solatium and interest on the basis of the Land Acquisition (Amendment) Act, 1984. We are of the view that the claimants would be entitled to solatium u/s 23(2) of the Act and interest u/s 28 of the Act on additional amounts awarded by the Reference Court as also by this Court.

16. However, as per the decision of Hon''ble the Supreme Court in the case of Sunder Vs. Union of India, as also in the case of Gurpreet Singh Vs. Union of India (UOI), , the claimants shall also be entitled to interest u/s 28 of the Act on solatium only from the date 19.9.2011 at the rate of 9% for the first year and at the rate of 15% for subsequent years till the same is either paid or deposited.

17. In view of the above the appeal of the claimants is required to be partly allowed. SO far as the appeals filed by the State are concerned, same are required to be dismissed.

18. In the result, First Appeal No. 3599 of 1995 is partly allowed. The claimants of First Appeal No. 3599 of 1995 are held entitled to additional compensation at

the rate of Rs. 37.00 per square meter and solatium at the rate of 30 per cent on the additional amount of compensation. On the additional amount of compensation, the claimants shall be entitled to interest at the rate of 9% for the first year from the date of taking of possession and at the rate of 15% for the subsequent years till the amount of compensation is either paid or deposited. However, on the amount of solatium on additional amount of compensation, the claimants shall be entitled to interest at the rate of 9% per annum with effect from 19.9.2001 for the first year and at the rate of 15% for subsequent years till the amount of solatium is paid or deposited in the Court. Accordingly, the award passed by the Reference Court stands modified to the extent indicated herein above.

Jayant Patel, J.

19. Before parting with while concurring with the view expressed by my learned Brother Justice C.L. Soni, I would like to further observe that when any judgment of the Supreme Court or the High Court is relied upon by the learned Advocate appearing for the respective parties, it is expected for him/her also to verify on the aspects about the subsequent case law on the point and to simultaneously draw attention of the Court to such subsequent case law by finding out as to whether the said judgment upon which reliance has been placed is subsequently diluted or over-ruled or re-affirmed or not. In our view, Advocate as an officer of the Court owes duty to the Court to put all the correct legal position as prevailing on the date when the submission is made. It is different matter where even if the judgment is subsequently diluted or over-ruled, he may have his submission for contending that the decision for dilution or over-ruling was on different points and not on the point which he or she is canvassing. We also find that if such a task is not undertaken by the Advocate, it may leave room to be misguided on the question of law more particularly for binding decision/ judgment and if the other subsequent binding judgment is not considered, the decision of the Court may result as per incurium or may result into wrong precedent or otherwise.

20. In J.S. Jadhav Vs. Mustafa Haji Mohamed Yusuf and others, , it was observed by the apex Court inter alia at para 8 which reads as under :-

8. Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hall mark. Sincerity of performance and the earnestness of endeavor are the two wings that will bare aloft the Advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades. It will be useful to quote what Sharaswood said of this profession :-

A lower, without the most sterling integrity, may shine for a while with meteoric splendor; but his light will soon go out in blackness of darkness. It is not in every man's power to rise to eminence by distinguished abilities. It is not in every man's power, with few exceptions, to attain respectability, competence, and

usefulness. The temptations, which beset a young man in the outset of his professional life, especially if he is in absolute dependence upon business for his subsistence, are very great. The strictest principles of integrity and honour are his only safety. Let him begin by swerving from truth or fairness, in small particulars, he will find his character gone-whispered away, before he knows it. Such a one may not indeed be irrecoverably lost; but it will be years before he will be able to regain a firm foothold. There is no profession in which moral character is so soon fixed as in that of the law; there is none in which it is subjected to severer scrutiny by the public. It is well that it is so. The things we hold dearest on earth, our fortunes, reputations, domestic peace, the future of those dearest to us, nay, our liberty and life itself, we confide to the integrity of our legal Counselors and Advocates. Their character must be not only without a stain, but without suspicion. From the very commencement of a lawyer's career, let him cultivate above all things, truth, simplicity and candor. They are cardinal virtues of a lawyer. Let him always seek to have a clear understanding of his object: be sure it is honest and right and then march directly to it. The covert, indirect and insidious way of doing anything, is always the wrong way. It gradually hardens the moral faculties, renders obtuse the perception of right and wrong in human actions, weighs everything in the balance of worldly policy, and ends most generally, in the practical adoption of the vile maxim, "that the end sanctifies the means."

Therefore an exacting standard is what is expected of an Advocate.

21. In this regard, we may also refer to the decision of this Court in the case of Mahesh Laxmanbhai Patel Vs. State of Gujarat, wherein it was observed by this Court at para 11 as under :-

11. We are at pains to record that Mr. Agrawal, a Senior Advocate, owes a duty to the Court to point out a judgment, more particularly, when Mr. Agrawal himself had appeared and argued the matter before another Division Bench, more so, when it was another Public Prosecutor, who had opposed him. It is not in good taste to argue a matter by urging the same points afresh before this Court without mentioning that he has already argued those points earlier before another Division Bench and they are concluded against him. We would have appreciated the submissions of Mr. Agrawal if they were to the effect that in view of the later decisions of the Honourable Apex Court, he wants this Court to take a different view of the matter than that of the earlier Division Bench, but then, Mr. Agrawal did not do that. He argued the matter without even mentioning the aforesaid facts. It is painful that a Senior Advocate has not discharged his duties towards the Court and has not put any serious efforts to see that ends of justice is served. An Advocate has to advance a cause of his clients, but at the same time, it is his pious duty and obligation towards the Court as well as towards the other side, to point out the decisions which may not be favourable to his case. Here, in this case, the learned Advocate, who appeared before the earlier Bench, advanced all these points at length, which are concluded against him by a

judgment, made an attempt to suppress that judgment and argued the matter afresh and urged all those points afresh with a hope that he may obtain a judgment in his favour. Despite these facts, as what is at stake before us is the interest of the appellant and not of the Advocate, we have considered all the submissions of Mr. Agrawal, learned Advocate for the appellant, in detail. We could have turned down all his submissions on all these points, merely by saying that "all these points are concluded by a Division Bench's judgment and we do not find any ground to take a different view than the one taken by the earlier Division Bench", but judicial propriety and discipline demands and, therefore, we discuss all the contentions of Mr. Agrawal in detail.

In case of Raghubhai Surabhai Bharwad Vs. Satishkumar Ranchhoddas Patel, , it was observed at para 22 as under :--

22. When Advocates cite a decision of a Court, they are expected to verify that the judgment which they refer or rely upon, is a judgment which has not been overruled or dissented from. It is also expected from them to verify that there is no other judgment rendered by a larger Bench. It seems that this precaution does not appear to have been taken while arguing the matter before this Court in Amratbhai Lilabhai Desai Vs. State of Gujarat, .

Thereafter, there is no much improvement as it had happened in present case.

22. Therefore, we find it appropriate to observe that some modalities are required to be formulated on the administrative side either at the time when the matters are filed before the Court and the decision of the High Court or the Supreme Court if relied upon, same should be with the statement of the Advocate concerned that he/she has verified that the judgment is not diluted or over-ruled. In the same manner, some duty deserves to be imposed specifically even during the course of hearing upon the Advocate concerned if he or she relies upon any decision of the High Court or the Supreme Court while arguing the case on behalf of his/her respective client. Such aspects may also call for amendment in the Gujarat High Court Rules or other modalities for such obligations. Hence the office shall place the matter before Hon''ble the Chief Justice for further consideration of the matter on administrative side. The appeals are disposed of accordingly with no order as to costs.