

**(2013) 05 GUJ CK 0034**  
**In the Gujarat High Court**

**Case No :** First Appeal No. 3795 of 2006 to First Appeal No. 3799 of 2006

General Manger, ONGC Limited

APPELLANT

Vs

Chamanji Kuberji and Others

RESPONDENT

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**Date of Decision :** 03-05-2013

**Acts Referred:**

Land Acquisition Act, 1894 — Section 16, 18, 23(1), 23(1A), 23(2)

**Citation :** (2013) 05 GUJ CK 0034

**Hon'ble Judges :** Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

**Bench :** Division Bench

**Advocate :** Ajay R. Mehta and Mr. Valmik Vyas, for the Appellant; Yatin Soni, Advocate for the Respondent No. 1 and Mr. Parth H. Bhatt, Asst. Govt. Pleader for the Respondent No. 2, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Bhaskar Bhattacharya, C.J.—These First Appeals are at the instance of the acquiring body, the Oil & Natural Gas Corporation Limited, in a proceeding under the Land Acquisition Act [hereinafter referred to as the Act] and is directed against a common judgment and award dated 6th February 2006 passed by the Principal Senior Civil Judge, Gandhinagar at Gandhinagar, in Land Acquisition References No. 12 of 2002 to 16 of 2002 by which the court below assessed the market value of the land at Rs. 353/- per sq. mtr. instead of Rs. 22/- per sq. mtr. assessed by the Special Land Acquisition Officer. The Court below further awarded an additional amount of compensation at the rate of 12% on the additional amount of compensation u/s 23(1-A) of the Act, solatium at the rate of 30% on the additional amount of compensation u/s 23(2) of the Act and interest on the additional compensation at the rate of 9% per annum from the date of taking the possession or from the date of issuing notification u/s 4 of the Act, whichever is earlier, for the first year and thereafter, at the rate of 15% per annum till realization u/s 28 of the Act. The facts giving rise to the filing of the above appeals may be summed up thus:-

1.1 Lands situated in village Pimplaj, Taluka & District Gandhinagar, were acquired for the purpose of drilling work of the appellant-acquiring body. Notification u/s 4 of the Act was published on 7th December 1999 and declaration u/s 6 of the Act was published on 14th September 2000. The Special Land Acquisition Officer, after issuing notice to the claimants and after hearing the parties, passed an award on 31st July 2001 thereby awarding compensation at the rate of Rs. 22/- per sq. mtr.

1.2 Being dissatisfied with the award passed by the Special Land Acquisition Officer, the claimants sought Reference before the District Court u/s 18 of the Act, claiming compensation at the rate of Rs. 500/- per sq. mtr.

1.3 The References were opposed by the appellants as well as the State thereby contending that the award passed by the Special Land Acquisition Officer was sufficient, just and proper.

1.4 At the time of hearing the References, Chamanji Kuberji, one of the claimants who is the owner of land bearing survey No. 330/1 of village Pimplaj, gave evidence on behalf of the referring-claimants. In his examination-in-chief, he has stated that the village in question is situated in Gandhinagar District and is adjacent to village Pethapur which is considered as a part of the Gandhinagar city. He has further stated that Pethapur village is situated at a distance of 4 to 5 kms. from Pimplaj village and the distance between Gujarat State's capital City, Gandhinagar, and Pimplaj village is just 8 kms. The certificate issued by the Talati of Pimplaj village in this regard was also produced. It was further stated in the examination-in-chief that State High Way of Gandhinagar, Mahudi, and Vijapur passes through the village and the acquired lands are located on Gandhinagar-Mahudi road. It was further stated that the village was fast developing and the lands of Pimplaj village were becoming very valuable. It was further asserted that the population of the village was around 8000. There is facility of 24-hour electricity and water supply in the village. There are pucca and cement roads in the village. There is a cooperative society, milk producers' cooperative society and government and private dispensaries in the village. There are also facilities of Post Office, Government Primary Schools, Secondary School and STD phone in the village. It was further asserted that capital city, Gandhinagar, and the well-known religious place, Mahudi, are also situated near the village. It was further stated that there is facility of ST bus from the village for going to Gandhinagar, Ahmedabad and Mansa.

1.5 Regarding the quality of the land, it was stated in the examination-in-chief that the lands are very fertile, rich in essence and of even level. There is facility of irrigation in the lands. Private bore-well is available for irrigation and certificate issued by the Talati-cum-Mantri of Pimplaj village in this regard was also produced. It was further stated that the cultivation in the lands in question was not based merely on rain water. It was claimed that the farmers used to take 2 to 3 crops in the lands in a year such as Jira, Jawar, Bajra, Wheat, Till, Paddy, Castor and Cotton and these agricultural products are sold in Mansa Market yard

and Randheja market yard and in retail in the village itself. It was further stated that the claimants are cultivating on their own and such cultivation was done scientifically by use high quality seeds and fertilizers and in accordance with the advice and instructions of Gram Sevaks appointed by the Government. It was further stated that the expenses for cultivation come to be 1/4th portion. It was further alleged that there are so many tractors in the village and therefore, the claimants are doing cultivation by using tractor and hence, the claimants are able to sow speedily, carefully and in a better way. It was further asserted that the claimants were getting a net income of Rs. 60,000/- per bigha per annum and the expenses were negligible as they were doing the cultivation by themselves.

1.6 This witness has further stated in his examination-in-chief that he knew that previously the lands of Pethapur village which is situated near his village, Pimplaj, have been acquired for drilling work of ONGC and the Principal Senior Civil Judge, Gandhinagar Rural has awarded additional compensation at the rate of Rs. 327/- per sq. meter to the agriculturists of Pethapur village whose lands were acquired. A certified copy of the judgment was also produced which was marked as Exh. 6.

1.7 In the cross-examination, a suggestion was given to this witness that the lands in village Pimplaj used to yield crops only one time a year which was denied. A suggestion was also given that only Rs. 2000/- to Rs. 3000/- is received per bigha which was also denied by this witness. It is, however, admitted in the cross-examination that the lands in question is one and a half kms. away in the village. A suggestion was also put that the land was uneven which was also denied. It was however admitted that the village is on the bank of Sabarmati river. He has denied that the suggestion that the claimants would get compensation of Rs. 22/- a sq. mtr. on selling the lands.

1.8 On behalf of the appellant-ONGC, one Udesinh Karshanbhai Vaghela, a Circle Officer working in the Circle Office, Department of Deputy Collector and Special Land Acquisition Officer at ONGC, Sabarmati, has given oral evidence wherein he has stated that he has personally observed the acquired land and there is facility of irrigation and private tube-well in these lands. He has further stated that crops of paddy, cotton, jira, till, wheat and vegetables etc. are grown in the lands. He has further stated that the population of the village is approximately 2000. He has further alleged that Pimplaj village is a developed village and all kinds of primary facilities are available in the village. He has further admitted that the boundary of village Pethapur and village Pimplaj is one and the same and both the villages are adjacent villages. He has further stated that compensation at the rate of Rs. 22/- per sq. mtr. was fixed by verifying the extracts of sales of five years and the same is just and reasonable.

1.9 In the cross-examination, he has clearly admitted that he has not seen the acquired lands. He has further stated that he is giving the oral evidence by reading the award only. It may not be out of place to mention here that although it was contended that the compensation was fixed on the basis of sale price of

the lands for the last 5 years, before the Reference Court, no such document was produced.

1.10 As indicated earlier, the learned Reference Court, on consideration of the materials on record, came to the conclusion that the fixation of compensation at Rs. 22/- per sq. mtr. was inadequate and by relying upon the decision of the Reference Court pertaining to the lands acquired in the adjoining village Pethapur, held that the market price of the lands acquired in village Pimplaj would be Rs. 353/- per sq. mtr. and passed an award of additional compensation, solatium, interest etc. as indicated hereinabove.

1.11 Being dissatisfied, the acquiring body, Oil & Natural Gas Corporation Limited, has come up with these appeals.

2. Mr. Mehta, the learned advocate appearing on behalf of the appellant-ONGC, strenuously contended before us that in arriving at the enhanced figure of compensation, the Reference Court committed substantial error of law in solely relying upon the judgment of the Reference Court itself in respect of lands of adjacent village Pethapur which, according to Mr. Mehta, although has attained finality, no evidence was produced by the referring-claimants showing that the quality of the lands of Pethapur village is similar to the lands of Pimplaj village. Mr. Mehta further contended that the onus is upon the claimants to prove the actual valuation and in the absence of convincing evidence, the valuation fixed in respect of the lands of village Pethapur cannot be relied upon simply because it is within a distance of 4 to 5 kms. Mr. Mehta, in this connection, has placed strong reliance upon the judgment of the Supreme Court in the cases of Basant Kumar and Others Vs. Union of India (UOI) and Others, and Pal Singh and others Vs. Union Territory of Chandigarh, .

2.1 Mr. Mehta further contends that the Reference Court committed a serious error in awarding interest at the rate of 9% per annum from the date of taking the possession or from the date of issuing notification u/s 4 of the Act, whichever is earlier, which is contrary to the provisions of the Act. Mr. Mehta contends that additional interest should be awarded not from the date of notification u/s 4 of the Act but from the date of actual taking possession which is 31st July 2001.

2.2 In support of his contentions, Mr. Mehta relies on the judgment in the case of R.L. Jain (D) by Lrs. Vs. DDA and Others, .

2.3 Mr. Mehta, thus, prays that in the facts of the present case, the award should be set aside and the matters should be remanded to the Reference Court for fresh adjudication.

3. Mr. Soni, the learned advocate appearing on behalf of the respondent-claimants, on the other hand, opposed the aforesaid contentions of Mr. Mehta and has asserted that in the case before us, the sole witness of ONGC having admitted that he did not even see the lands in question, his deposition about the nature of the lands in question is totally inadmissible being hearsay in nature. Mr.

Soni submits that his clients have discharged the initial burden by giving evidence of high quality of the lands and also proving the distance of 4 kms of the land in question from the lands of Pethapur village. Mr. Soni contends that when in the Reference in respect of lands in Pethapur, which is of the adjoining village and at a distance of just 4 kms. away from the land in question, the valuation has been assessed to be Rs. 353/- per sq. mtr, which has been confirmed by a Division Bench of this Court in First Appeal No. 2336 of 2007, there is no justification of disturbing the findings recorded by the learned Reference Court.

3.1 Mr. Soni further contended that once the initial burden is discharged, the onus shifts on the other side. In the case before us, the onus shifted to the appellant but the appellant failed to produce any evidence showing that the assertion of the witness examined on behalf of the claimants was wrong.

3.2 In support of his contentions, Mr. Soni relied on the following judgments:-

[1]. The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, .

[2]. Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another, .

[3]. Second Additional Special Land Acquisition Officer and Another Vs. Chunilal Gangaram and Others, .

[4]. State of Gujarat and Anr. v. Chaudhri Shankarbhai Dansanghbhai reported in 2001 (C) GLR 733.

[5]. Mahesh Dattatray Thirthkar Vs. State of Maharashtra, .

4. Therefore, the only question that arises for determination in this appeal is whether in the facts of the present case, the Reference Court was justified in enhancing the compensation by passing the impugned award.

5. After hearing the learned counsel for the parties and after going through the materials on record, we agree with Mr. Mehta, the learned advocate appearing on behalf of the appellant, that the initial burden is upon the claimants to prove that the amount awarded by the Special Land Acquisition Officer was inadequate and it is also the duty of the claimants to prove the actual market value. However, the law is now well settled that even if the initial burden is upon a particular party, in the course of the trial, once some evidence is adduced in discharge of the initial burden, the onus consequently shifts to the respondents to produce evidence to show that the assertion of the witness examined on behalf of the plaintiff was wrong. In the case before us, as already pointed out, the witness examined on behalf of the claimants has in detail described the location of the land which is at a distance of 4 to 5 kms. from Pethapur, and has also asserted that the claimants used to take three crops in a year and that the modern facilities for cultivation are available to the claimants. Although some suggestions

were given to the said witness that those assertions are wrong, the sole witness for the appellant-ONGC has admitted that modern facilities of cultivation are available with the claimants. He further admitted that he did not actually see the acquired lands and he was giving the oral evidence by only reading the award. Such being the admission of the sole witness examined on behalf of ONGC, we cannot rely upon his assertion regarding the nature of land and in such situation, we are left with no other alternative but to believe the evidence given by the witness examined on behalf of the claimants which has remained uncontroverted. It is well-settled law that unless the evidence adduced by the witness for the party upon whom the onus lies is found to be incorrect from his own deposition or otherwise inherently impossible, a Court should not generally disbelieve such version in the absence of any contrary evidence given by the opponent. In the case before us, the version of the claimant is also supported by the certificates given by the Talati-cum-Mantri, which are exhibited and no suggestion was given that those were not genuine and were fabricated ones or that the contents thereof was not true. If any such assertion was made, the claimants were then further required to bring the author of the certificates; but in the absence of even any suggestion in this regard, there was no necessity of producing the author of the certificate, more particularly, when there is no other evidence to the contrary. The claimants having discharged the initial burden, it was for the State or the Appellant, to produce some evidence showing that the assertion of the PW-1 was wrong or that the land in question was in any respect inferior to the one in respect of the adjoining village for which value has been assessed at Rs. 353/- per sq. mtr.

6. Moreover, in respect of the lands of the adjoining village of the same District, which is situated at a distance of 4 to 5 kms, the valuation of Rs. 22/- per sq. mtr. having been found to be grossly inadequate and the same having been enhanced to Rs. 353/- by the Reference Court which has been confirmed by this Court in appeal, we do not find any substance in the contention of Mr. Mehta that we should set aside the award and remand the matters back to the Reference Court for fresh adjudication.

7. From the evidence given on behalf of the claimants, we find that the lands in question yield three crops a year and there is facility of irrigation and availability of modern facilities such as tractors etc. We do not find any reason to disbelieve the assertion of the claimants regarding the quantum of yield from the lands in question. Similarly, there is no dispute that the land is also by the side of a State Highway and the area is fast developing.

8. In the absence of any cogent evidence produced by the acquiring body or the State showing that the assertion of the claimants is false, we are left with no other alternative but to believe the evidence adduced on behalf of the referring claimants.

9. At this stage, we may profitably refer to the following observations of the Supreme Court in the case of Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal

Vinayak Gosavi and Others, on the question of the doctrine of burden of proof:

The expression "burden of proof" really means two different things. It means sometimes that a party is required to prove an allegation before judgment can be given in its favour; it also means that on a contested issue one of the two contending parties has to introduce evidence. Whichever way one looks, the question is really academic in the present case, because both parties have introduced their evidence on the question of the nature of the deity and the properties and have sought to establish their own part of the case. The two Courts below have not decided the case on the abstract question of burden of proof; nor could the suit be decided in such a way. The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail. Where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic.

10. In the cases before us both the parties have led evidence on the question of valuation of the land in question. The appellant who is a party to the judgment in respect of the land of the adjoining village (whereas the claimants are not) had some responsibility to explain that the quality of the land involved therein was better than the one which is the subject-matter of the present litigation. Thus, the abstract doctrine of burden of proof does not help the appellant when the initial burden has been discharged by the claimants.

11. We, consequently, find that the rate of compensation awarded by the Reference Court at the same rate of the adjoining village is quite justified in the facts of the present case.

12. We now propose to deal with the decisions cited by Mr. Mehta.

12.1 In the case of Basant Kumar vs. Union of India (supra), the Supreme Court made the following observations upon which Mr. Mehta has made strong reliance:

The question is whether the appellants are entitled to the same compensation as was determined by the High Court in the appeals arising out of Raghuvir Singh case and Chet Ram case? It has been firmly settled law by beadrill of decisions of this Court that the Judge determining the compensation u/s 23(1) should sit in the armchair of a willing prudent purchaser in an open market and see whether he would offer the same amount proposed to be fixed as market value as a willing and prudent buyer for the same or similar land, i.e., land possessing all the advantageous features and to the same extent. This test should always be kept in view and answered affirmatively, taking into consideration all relevant facts and circumstances. If feats of imagination are allowed to sway, he out steps his domain of judicial decision and lands in misconduct amenable to disciplinary law. We have gone through the record and judgments in Chet Ram case and Raghuvir Singh case decided by the two Division Benches. The learned Judges have adopted the principle that the entire lands in the village shall be treated as

one unit and the compensation shall uniformly be determined on that basis. The principle is wholly unsustainable in law and cannot be a valid ground for determination of compensation. It is common knowledge that even in the same village, no two lands command same market value. The lands abutting the main road or national highway command higher market value and as the location goes backward, market value of interior land would be less even for the same kind of land. It is a settled legal position that the lands possessed of only similar potentiality or the value with similar advantages offer comparable parity of the value. It is common knowledge that the lands in the village spread over the vast extent. In this case, it is seen that land is as vast as admeasuring 1669 bighas, 18 biswas of land in the village. So, all lands cannot and should not be classified as possessed of same market value. Burden is always on the claimant to prove the market value and the court should adopt realistic standards and pragmatic approach in evaluation of the evidence. No doubt, each individual had different parcels of the land out of that vast land. If that principle is accepted, as propounded by the High Court, irrespective of the quality of the land, all will be entitled to the same compensation. That principle is not the correct approach in law. The doctrine of equality in determination and payment of same compensation for all claimants involved in the same notification is not a good principle acceptable for the aforesaid reasons. When both the lands are proved to be possessed of same advantages, features etc., then only equal compensation is permissible.

12.2 By relying upon the aforesaid observations, Mr. Mehta tried to impress upon us that the land of adjoining village cannot have the same quality and consequently, the valuation arrived in respect of the land situated more than 4 kilometers from the land in question cannot be the yardstick. It appears that the notification in respect of the adjoining village was of the same period and the land involved therein was also agricultural in nature. In the case before us, the uncontroverted evidence of the claimant is that the land yields three crops a year which indicates that the land in question as an agricultural land is of the best quality and at the same time, the modern facility of irrigation and the device of cultivation by the use of tractor under the advice of government official are also available. Such being the position, contention of the claimant that at least the compensation at the rate given in case of another agricultural land of the adjoining village should also be available to him cannot be said to be unreasonable when having regard to the evidence given by the claimant it is established that the land in question as an agricultural land is of the best quality as it is unusual to have more than three crops a year. On the face of such evidence, the witness of the appellant having failed to highlight any special characteristic of the land of adjoining village, we do not find any reason to take a different view from the one arrived at by the learned trial judge. Moreover, the sole witness for the appellant even did not produce the materials which formed the basis of the award of the collector. We therefore hold that the observations of the Supreme Court in the abovementioned matter do not help Mr. Mehta's client



in any way.

12.3 In the case of Pal Singh and others Vs. Union Territory of Chandigarh, , the Supreme Court made the following observations in paragraph 5 of the judgment upon which Mr. Mehta relied upon:

No doubt, a judgment of a court in a land acquisition case determining the market value of land in the vicinity of the acquired, lands, even though not inter partes, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in H.K. Mallick's case(supra) based on the authority of the Judicial Committee of the Privy Council in (1909) ILR 36 967 (P.C.) (Privy Council) , where the Judicial Committee did refuse to interfere with High Court judgment in a land acquisition case based on previous awards, holding that no question of principle was involved in it But what cannot be overlooked is that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land. In the cases on hand, the petitioners who are claimants claiming enhanced compensation for their acquired land have not produced the judgment of the High Court on which they propose to rely for finding the market value of their acquired lands as evidence in their cases, in that they could not have done so for the reason that it was not a judgment then available to them as a previous judgment relating to market value of land in the vicinity. Much less is there any evidence aliunde adduced by them in the cases on hand to show that due regard being given to all attendant facts and circumstances, It could form the basis for determining the market value of their acquired lands. Hence, there is no justification for us to act upon a subsequent judgment of the High Court, cited before us from a Law Report, to enhance the market value of the acquired lands of the petitioners merely because it was claimed on their behalf that the market value of the lands concerned therein could become evidence for determining the market value of the lands concerned in the appeals respecting which the present Special Leave Petitions are filed. Moreover, when judgment is rendered by a Court determining the market value of lands acquired under the Act, by agreement of parties, such judgment becomes final and it would not be open to any of the parties thereto to appeal against that judgment. Hence, these Special Leave Petitions are liable to be dismissed.

12.4 As it appears from the above observations, the claimant in that case could not even place the judgment of the nearby land at the time of hearing before the trial court but subsequently placed the same before the appellate court. In such circumstances, as there was no evidence of resemblance of the land in question

with that of the one involved in the reported judgment sought to be relied upon, the Supreme Court made the following observations. In the case before us, the PW-1 has not only given the description of the land involved and its nature and character but also pointed out by production of the judgment that an agricultural land acquired at the instance of same appellant for the same purpose in adjoining village at the relevant point of time has been held to be valued at Rs. 353 per sq. meter whereas an agricultural land of the best quality has been held to be valued at Rs. 22 per sq. meter only. In such a situation, the DW-1 did not utter a single sentence as regards the quality of the land in adjoining village where the land was acquired also for the appellant. In the circumstance, in our opinion, the claimant has discharged his initial burden and in the absence of any evidence to the contrary, the court is free to give compensation at least at the rate given for the land in adjoining village. The abstract doctrine of burden in such a situation loses its significance as pointed out in the case of *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and others* (supra).

12.4.1 In this connection, we may profitably rely upon the following observations of the Supreme Court in the case of *General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel and Anr.* (supra), relied upon by the respondent in paragraph of the judgment:

The fact that Santhal village adjoins Ijapura is not disputed. The fact that Ex. 15 related to the acquisition of lands in the neighbouring Santhal village, for the benefit of the appellant-ONGC is also not disputed. The Reference Court and the High Court have recorded a concurrent finding of fact that having regard to the proximity and similarity between the lands at Santhal covered by Ex. 15 and the acquired lands in Ijapura, the market value determined in regard to the Santhal lands afforded a reasonable basis for determining the market value of the acquired lands. We also find from the evidence of one of the claimants - Laljibhai examined as CW 1, that the boundaries of Santhal, Kasalpura and Modipur villages are adjacent to the acquired lands; and that the lands of one Ramanbhai Keshavlal of Santhal Village acquired on 6.1.1987 (subject matter of Ex. 15) and the acquired lands were in neighbouring areas divided only by three or four agricultural fields. We also find that the Ex. 15 was also the basis for determining the market value of lands which were the subject matter of another acquisition for ONGC in Santhal and other villages under notification dated 31.7.1986; and that this Court affirmed the award of compensation at the rate of Rs. 10 per sq. m. in regard to such acquisition relying on Ex. 15 (vide in *G.M., O.N.G.C. Ltd. Vs. Sendhabhai Vastram Patel and Others*, .We are therefore of the view that in the absence of any evidence relating to sale transactions or acquisitions relating to the village of Ijapura itself, and having regard to the evidence relating to proximity of Santhal lands, Ex. 15 offered a reasonable basis for determining the market value of the acquired lands in Ijapura. In view of Ex. 15 relating to neighbouring Santhal, Ex. 16 relating to Chalsana loses relevance.

(Emphasis supplied by us.)

12.5 We thus find that the decisions cited by Mr. Mehta do not help the appellant in any way.

13. We, however, find substance in the contention of Mr. Mehta that while assessing additional interest, the Reference Court should not have awarded interest from the date of issuing notice u/s 4 of the Act but should have awarded such interest from the date of taking possession.

14. We, thus, modify the award only to the extent that the claimants would be entitled to get additional interest from the date of taking possession in accordance with section 16 of the Act and not from the date of issuing the notification u/s 4 of the Act. The appeal is, thus, allowed only to the aforesaid extent.

14.1 In the facts and circumstances, there will be, however, no order as to costs.