

(1999) 11 GUJ CK 0062
In the Gujarat High Court

Case No : First Appeal No's. 56, 57 and 1156 of 1984 and 194 of 1985

Heir of Rupabhai Kuberbhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-11-1999

Acts Referred:

Land Acquisition Act, 1984 — Section 23(1), 23(1A), 28

Citation : (2001) 4 GLR 3695

Hon'ble Judges : Rajesh Balia, J;R.M. Doshit, J

Bench : Division Bench

Advocate : J.C. Sheth, in First Appeal No. 1156 of 1984 and 194 of 1985 and Premal Joshi, AGP in First Appeal No. 56 and 57 of 1984, for the Appellant; Premal Joshi, AGP for Respondent No. 1 in First Appeal No. 1156 of 1984 and 194 of 1985 and J.C. Sheth in First Appeal No. 56 and 57 of 1984, for the Respondent

Judgement

1. These four appeals arise out of common award made by the court in Land Acquisition Reference No. 5/81 and 10/81 by the District Court of Panchmahal at Godhra by order dated 27-4-1983. First Appeals Nos. 56/84 and 57/84 are preferred by State of Gujarat against the enhancement of compensation by the reference Court, whereas Appeals Nos. 1156/84 and Appeal No. 194/85 are by the respective claimants of two Land Acquisition Reference Cases referred to the extent they were dissatisfied. As the common question of law and facts are involved we propose to decide all the appeals by common judgment.

2. The Cross Appeals Nos. 56 and 1156 of 1984 arise out of L.A.R Cases Nos. 5/81 and Appeals No. 57/84 and 194/85 arise out of L.A.R. Case No. 10/81. The notification u/s 4 of the Land Acquisition Act was published in Government Gazette dated 9-2-1978 for the acquisition of the lands in question. The lands in question are Survey Number 708 admeasuring 1 Hectare 20 Are and 39 Sq. Mts. and Survey No. 709/1 admeasuring 45 Are and 53 Sq. Mts. situated in Dahod and subject matter of L.A.R. No. 5/81. The land comprised in L.A.R. Case No. 10/81 is Survey No. 709/2 admeasuring 45 Are and 53 sq.mts. After declaration

u/s 6 of the Act was published on 18-10-1989 inviting objections u/s 9 of the Act and hearing the concerned parties the Land Acquisition Officer by a single award dated 30-3-1981 determined the compensation payable to the claimants. He assessed the market value of the land comprising Survey No.708 at Rs.14000 per Hectare and for other lands in S.No. 709/2 and 709/1 he assessed rate of land at Rs.45000/- per Hectare. Possession of the land was taken on 8.4.1981. It is informed by learned counsel for the claimants that the amount of compensation determined by the Land Acquisition Officer was paid to the claimants soon after making of the award. The claimants have laid claim to compensation at Rs.1 lakh per acre. Dissatisfied by the award of compensation granted by the Land Acquisition Officer at the instance of claimants the aforesaid Land Acquisition Reference was made to the Principal Civil Court at Panchmahal. By the impugned award the court enhanced the rate at which the value of the land in question is to be assessed to Rs.15 per sqm. in case of Survey No. 708 and at Rs. 18/- per sqm. in case of other two survey numbers, as against the award of Rs.1.40 and Rs. 4.50 respectively for the said survey numbers. Accordingly, the amount of solatium payable under the Land Acquisition Act, 1894 as per the provisions as they stood at that time at the rate of 15% was also increased. Interest at the rate of 4.5% per annum on the additional compensation awarded was also directed to be paid by the learned Joint District Judge. From the compensation determined by the Court 5% sum was deducted as government share. It is stated by learned counsel for the petitioner that enhanced amount of compensation has also been received by the claimants. However, the exact date is not presently known when the said amount was received. The Court has enhanced the compensation only by increasing the rate at which the land was to be valued. Obviously, therefore the State Appeals Nos. 56 and 57 of 1984 are confined to the extent the award of compensation has been enhanced by increase in the market value of the lands in question. We shall therefore first examine that question. We may also notice that claimants have also in their appeals made a prayer for further enhancement of the market value of the land in question.

3. The market value has been determined by the court primarily on the basis of sale instances of the land in near vicinity relied on by both the parties, and oral evidence was produced in support of those sale instances which consists of the parties to the sale transaction. 4 sale instances have been relied on by the claimants which are Exh. 40, 73, 103, 115 whereas the State has relied on three instances comprised in Exh. 84, 38 and 65. All the lands are situated in Dahod. The lands in question as well as lands in sale instances were also market lands. The claimants reliance on Exh. 47, sale instance of 720 sq. ft. of land has not been given credence by the learned Jt. District Judge, and in our opinion rightly. So also instance relied on by the State in the form of Exh. 4 pertaining to acquisition which took place prior to 1963 and final determination of compensation was made by High Court in First Appeal 591 of 1963 at Rs.15000/- per sq. Hectare or Rs.1.50ps per sq. mt. in far distant past has not rightly been

considered as comparable proposition while evaluating the market value evidence by the court below.

4. Exh. 73 pertains to compensation of Rs.32072 sq. mts of land in 1975 wherein the award was made at Rs.11/per sqm. This land according to evidence detailed by the learned district judge is the land comparable with the present case. Land in the present case is adjacent to the market yard for whose purpose it is required and is situated opposite the land under sale instance. Keeping in view the near vicinity of the land with the market yard and not too distant proximity in time to the date with reference to which compensation is to be determined the aforesaid case was considered to be a comparable instance. Exh. 103 relates to transaction of 23 Are and 27 sq.mts of land of Survey No. 995/A/1 which is also of 27-8-1975. This was a transaction at Rs.17.40 ps per sq. mt. This was also found comparable with the instant lands. That the acquired lands are nearer to the town of Dahod than the lands subject matter of the sale instance. The instance lands according to the buyer is about 2 kms away from the land under acquisition and it has also been pointed out in the statement of testimony of the purchaser that the lands are surrounded by construction at the time when purchase took place. From the evidence the court came to the conclusion that there are buildings around the lands purchased by the witness and also the the lands in question. Considering the fact that the lands included in Exh. 113 subject matter of transfer in 1975 at Rs.17.40ps it was also considered relevant and comparable sale instances. Like wise vide Exh. 115 lands comprised in Survey No. 750/A and 751/B were subject to the land acquired in 1972 and in respect of the former land price was fixed at Rs.20 sqm. for S.No. 750/A and at Rs.15 per sq. for S.No. 751/B. Considering that the land subjected to this acquisition in 1972 is nearer to the town and bigger in size from the acquired land, the quality of the land in question was held to be inferior to the land subject matter of the instance Exh. 115. At the same time the court also considered that price awarded in respect of superior land was in 1972, i.e., to say six years prior to the relevant date on which compensation is to be determined, and that during intervening period development of the area has taken place affecting the market price as on the relevant date in the present case. The court found that on overall view of the matter taking into consideration all the three instances Rs. 15/- per sq. mt. for S.No. 708 and Rs.18/- per sq. mt. for S.No. 709/1 and 709/2 appears to be fair market price of the land in question on the relevant date. About the sale instances relied on by the State it has found that so far as the transaction comprised in Exh. 88 is concerned which of 24-6-77 was from father in law to son in law does not give a fair parameter of the market price inasmuch as the transaction was not out of ordinary commercial considerations . So also the sale transaction comprised in Exh. 844 of 1976 in light of statement given by the parties was not found to be neglecting true and fair picture prevailing in the year 1978.

5. Thus in totality of the evidence before it the court below noticing the comparable instances within three to six years of the relevant date keeping in

view the location of each of the land in question vis-a-vis market yard and the distance from the town, and existing surrounding as on the relevant date fixed the land price of Survey No. 708 at Rs. 15 per sqm. and other two lands at Rs.18/- per sq. mt. Except urging that sale instances furnished by Land Acquisition Officer ought to have been preferred to the ones relied on by the court, no infirmity in noticing and appreciating facts have been pointed out. Neither the correctness of documentary evidence or credibility of testimony of witnesses have been assailed.

6. In determination of market value of the land as compensation, the price which a willing buyer would pay to a willing seller, having due regard to its existing condition, its existing advantages, and its potential possibilities, excluding those which are attributable to the consequence of coming out the scheme for which land is being acquired, is considered to be fair estimate. In finding such market price, the bonafide genuine sale of the part of same land at about the time relevant date furnish best material. In the absence of the sale of very parcel of land, such sale of similar lands in the vicinity of lands under acquisition furnish relevant material for guidance. Each sale instance in the present case has been proved by parties to the transaction and relative similarity of existing conditions, advantages and potential possibilities have been examined by the court below. Having gone through the material we are satisfied that no interference is called for inasmuch as there does not appear to be any error in appreciation of evidence or in application of principles in determining market value.

7. As a result of aforesaid discussion we hold that no interference is called for in the finding reached by the reference court in determining the market price of the land in question.

8. These findings determine the fate of First Appeals Nos. 56 and 57 of 1984 filed by the State of Gujarat and are hereby dismissed, with costs.

9. This takes us to the appeals filed by the claimants referred to above. The claimants have following grievance to make in these appeals. Firstly, the rate at which the land has been valued be enhanced from Rs.18 per sq. mt. to Rs.50 per sq. mt. Secondly that they are entitled to additional benefits in the matter of computing compensation payable to them, as a result of Amendment in the Land Acquisition Act, 1894 by the Land Acquisition (Amendment) Act 1984, which came into effect with effect from 24-9-1984, viz (a) enhanced solatium @ 30% instead of 15% be allowed to them; (b) they are entitled to interest on the amount of enhanced compensation at the enhanced rate prescribed in terms of Section 28 of the Land Acquisition Act; and (c) thirdly that the claimants are also entitled to interest at the rate provided in Section 23(1A) in addition to the market value of the land from the date of publication of Notification u/s 4 in respect of lands in question, to the date of the award of the Collector or upto the date of taking possession of the land. Lastly, it was urged that the Court in Land Acquisition Reference Cases was not right in deducting 5% of the amount determined by the Court as Government share in the land, with reference to

Section 43A of the Bombay Tenancy Act.

10. Learned counsel for the claimants have urged that enhancement of the market price. So far as material before the reference court is concerned there is no dispute that only material which is on record that has been referred to in the order and no material is left out of consideration. On consideration of the aforesaid material we have already reached conclusion about that fixation of rate at which market price of land has been valued does not deserve any interference.

11. However, C.A. No. 7964 of 1994 has been moved by the claimants for producing additional evidence in connection with the price of the land. The two documents which the claimants wants to place on record for consideration are a valuation certificate issued by registered valuation and chartered engineer certifying that market value of the land situated near market yard at Dahod is about Rs.29 lakhs per hectare, i.e. to say Rs.29 per sq. mtr. The certificate is of 4.2.1992. Another document relied on and placed along with application is a notice issued by the Deputy Collector disclosing that the Government has estimated the value of land near the acquired land of Rs.58,000 per guntha for the purpose of stamp duty. That is also of 1992. The other documents copies of which have been placed on record are in the form of illustrative sale instances of different dates which are neither primary evidence nor certified copies of the documents, or these are public documents which could be admitted in evidence without formal proof of their execution and other relevant facts. Apart from the fact that most of the documents including the two documents referred to above are not relevant to the date with reference to which compensation is to be paid, we see no reason to consider this application for additional evidence at this stage. By virtue of Section 53 of the Act CPC governed the procedure, in proceedings before the Court. The appellant court has ordinarily to restrict itself to the material that was before the Reference Court unless a case is made out for allowing additional evidence to be brought on record under Order XLI, Rule 27 of the Code of Civil Procedure. No ground for permitting to lead such additional evidence in this appeal is made out. The material which was not before the reference court and the material which does not relate to the period for which we are concerned for the purpose of determining the market value of the land in question are neither relevant nor required for the pronouncement of judgment. We therefore reject this application.

12. So far as claim of the appellants with reference to the amendments brought about by the Land Acquisition (Amendment) Act 1984, (hereinafter called the Act of 1984) is concerned it must be stated at the out set that the court below had no occasion to consider this question inasmuch as at the time when the award was made by the Civil Court made on 27-4-1983 the amendments had not even come into existence on the statute book. The bill to amend the Land Acquisition Act has been introduced in Parliament on 30-4-1982. It became an Act and came into effect only on 24-9-1984 when it received the assent of the President and published in the Gazette of India Extraordinary of the same date. However since

the claim of the appellants is founded solely on the basis of the operation of the amended provisions of law it does not involve inquiry into the questions of fact to be determined by this Court and as the claim is alleged to flow directly from the provisions of the Act automatically we have permitted these grounds to be raised in appeal before us and examined the issues on merit. To this both parties have no objection.

13. Section 23 as well as Section 28, benefit of amendment wherein is claimed by the appellants, are substantive provisions and are ordinarily to be accepted as prospective in operation, with effect from the date of the commencement of amending Act by which such changes have been brought into effect, unless from the provision itself or other provisions of the Act the intention to the contrary is revealed. Section 23 by itself does not give a clue as to the retrospective operation of the changes that has been brought about by the Act of 1984 in Section 23. The amendments u/s 28 too reveals no such intention. However, if we look at the provisions of the Act of 1984, it has also made transitional provisions u/s 30, which reveals that a limited retrospectivity is envisaged, in giving effect to newly inserted Section 23(1)A, and amendments brought in Sections 23(2), 28 and Section 34. These provisions have been made retrospective in operation with effect from the date of the introduction of the Land Acquisition Act Bill 1982 in the House of People that is to say from 30-4-1982 and has also provided conditions for such retrospective operation of the amended provisions. It will therefore be apposite for us to notice the provisions of Section 30 of the Amendment Act, 1984 and the relevant provisions under which the enhancement of compensation is claimed by the appellants.

Section 30 of Act of 1984 reads:

"30. Transitional provisions. (1) The provisions of subsection (1-A) of Sec. 23 of the principal Act, as inserted by Cl.(a) of Sec. 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 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 commencement of this Act.

(2) The provisions of subsection (2) of Sec. 23 and Sec. 28 of the principal Act, as amended by Cl. (b) of Sec. 15 and Sec. 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 later the 30th day of April, 1982 the date of introduction of the Land Acquisition (Amendment) Bill, 1932, in the House of the People and before the

commencement of this Act.

(3) The provisions of Section 34 of the principal Act, as amended by Section 20 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to, -

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April, 1982 the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People, and the amount of compensation for such acquisition had not been paid or deposited u/s 31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession has been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said Sections 31, with effect on and from the date of taking such possession."

Section 23(1-A) as newly inserted provision in the Act reads:

"Section 23(1-A) 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, subsection (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 subsection, 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.

The other relevant provisions viz Ss. 23(2) and 28 and 34 of the Act after amendments read as under:

"Section 23(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."

"Section 28: Collector may be directed to pay interest on excess compensation. - If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court: Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has

not been paid into Court before the date of such expiry."

"Section 34. Payment of interest. - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

14. Section 30 of the Amending Act of 1984 forms integral part of the scheme of the operational field of the changes brought about by the amendment and has to be read together, to find the true intention and respective scope of the operation of these provisions. Let us first examine the claim of the petitioners the question of applicability of provisions of subsection (1-A) of Section 23 of the Principal Act, which has newly been inserted by the Act of 1984. There was no corresponding provision for payment of interest on the amount of compensation determined by the Collector with effect from date of Notification u/s 4 to the date of award made by the Collector or from the date of taking possession of the land. This new provision has been first time introduced by the Amending Act vide Section 15 of the Amendment Act. Obviously, this being a provision of substantive nature would not have applied to the transaction already foreclosed before the commencement of the Act, 1984 but for the transitional provisions contained in Section 30. Section 30 reproduced above envisages two conditions in which the provisions of subsection (1-A) of Section 23 has been made operative with effect from 30th day of April 1982. Clause A of subsection (1) of Section 30 of the Amending Act, 1984 clearly envisages that where proceedings for acquisition of any land under the Principal Act are pending on 30-4-1982 i.e., to say which has been initiated prior to the introduction of the Land Acquisition Amendment Bill, 1982 in the House of the People and in which no award has been made by the Collector until that date, namely, 30th day of April 1982. Clause (b) of the aforesaid provision applies in case where acquisition proceedings have been commenced after 30-4-1982 but award has been made before the commencement of the Act of 1984 i.e, 24-9-1984 that the provisions of Sub-Section (1-A) of Section 23 has been extended to the awards made or proceedings arising out of such awards. Obviously, subsection (1-A) of Section 23 cannot have any application in respect of land acquisition proceedings which have been commenced prior to 30th day of April 1982 and in respect of which award has also been made by the Collector before the 30th day of April 1982. The retrospectivity does not extend to the awards made by the Court on reference so far as provisions of Section 23(1-A) are concerned. But for this provision Section 23(1-A) would have applied only to the awards made

after 24-9-1984. Section 30 not only envisages retrospective operation of Section 23(1-A) but also lays down the limits to which it operates. We are therefore on the plain reading of the provisions unable to accept the contention of the learned counsel for the appellants that they are entitled to claim interest on the compensation determined by the Collector, in pursuance of Section 23(1-A) in the present case inasmuch as though the land acquisition proceedings were initiated much prior to the date of 30th April 1982 in 1978, the award of the Collector was also made on 30-3-1981 much before the relevant date of 30-4-1982. Possession in pursuance of which has also been taken on 8-4-1981.

15. This conclusion is as per ratio of Constitution Bench decision of Supreme Court in K.S. Paripoornan Vs. State of Kerala and Others, . There being a difference of opinion on earlier occasion the matter has been referred to the Constitution Bench for considering the correctness of the decision in the Union of India (UOI) and Another Vs. Zora Singh and Others, decided by a Bench of three Judges. In Zora Singh's case though the award of Collector was made prior to 30-4-1982 the award of the Court was made after the commencement of Act of 1984 that is to say after insertion of Section 23(1-A) has become effective and award of the court has come into existence thereafter. The Apex Court has held that the payment of additional amount payable @ 12% per annum on the market value under subsection (1-A) inserted in Section 23 of the Land Acquisition (Amendment) Act, 1984 is to be ordered in every case where reference was pending before the reference court on the date of commencement of the Amending Act even though the award of the Collector was made prior to April 30, 1982. Zora Singh's case has laid down two fold propositions, firstly, that Section 23(1-A) deals with the substantive rights and confers substantive right to claim additional amount calculated as set out in the said subsection in the circumstances stated therein. Secondly it laid down that Section 23(1-A) operates on its own force independently and the duty was cast on the court to award an additional amount calculated as prescribed therein which would mean that it is directed to award made by the court, namely the reference court in all cases which are pending before that court in September 24 1984. While in Zora Singh's case the court noticed that by reading Section 30(1)(a) in the first glance it would appear to suggest that the additional amount referred to u/s 23(1-A) could not be awarded where the Collector's award is made before 30th April 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), when the reference was pending before the court under the Act, when the Amending Act came into force on 24-9-1984 and it has made its award thereafter. The Apex Court in Zora Singh's case while holding the nature of the provisions to be substantive in nature and operating on their own force and to operate prospectively in respect of all matters pending before reference court on the commencement of the Act, 1984 made it applicable to the cases where the award of the court came to be made after 24-9-1984. In K.S. Paripoornan's case on reference being made to examine the correctness of Zora Singh's case the apex Court agreed with the

conclusion in Zora Singh's case to the extent it holds the provisions to be of substantive character. It said :--

Union of India (UOI) and Another Vs. Zora Singh and Others, proceeds on the basis, and rightly so, that Section 23(1-A) deals with substantive rights and it confers a substantive right to claim additional amount calculated as set out in the said subsection in the circumstances set out therein. The applicability of the said provisions to proceedings for acquisition which were pending on the date of coming into force of the said provisions has, therefore, to be examined keeping in view the aforesaid nature of the provisions."

16. The court further held :

"A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the Legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct."

17. The court however did not agree with Zora Singh's case to consider the provisions of Section 23(1-A) independent and being prospectively. The Court said:

"If the said provision is applied to the acquisition proceedings which commenced prior to its enactment and an additional obligation in the matter of payment of compensation is imposed for such acquisition the effect would be that the said provision would be operating retrospectively in respect of transactions already past. We are therefore unable to agree with the view expressed in Union of India (UOI) and Another Vs. Zora Singh and Others, that Section 23(1-A) would only operate prospectively and will not have retrospective operation if it is construed as applying to proceedings which were pending before the Reference Court on the date of the commencement of the amending Act and in which the reference Court makes the award after the commencement of the amending Act."

18. Thus laying the premise for construing the provisions of Section 23(1-A) the majority opinion of the Court concluded:

"If subsection (1-A) of Section 23 is construed in the light of the provisions contained in subsection (1) of Section 30 of the amending Act there is no escape from the conclusion that Section 23(1-A), by itself, has no application to proceedings which had commenced prior to the enactment of the amending Act and the applicability of the said provision to pending proceedings is governed exclusively by subsection (1) of Section 30 of the amending Act."

The Court concluded by reading the provisions of Section 30 of the Act of 1984 and Section 23(1-A) of the Principal Act:

"By virtue of clause (a) Section 23(1-A) has been made applicable to proceedings which had commenced prior to April 30, 1982 if no award has been made by the collector in those proceedings before April 30, 1982. It covers (a) proceedings which were pending before the collector on April 30, 1982 wherein award was made after April 30, 1982 but before the date of the commencement of the amending Act, and (b) 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 (a) proceedings which had commenced after April 30, 1982 wherein award was made prior to the commencement of the amending Act, and (b) 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 subsection (1) of Section 30 cover proceedings for acquisition which were pending on the date of the commencement 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), 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".

About the limits of retrospectivity to which Section 23(1-A) operates the Court relying on the Principal that the rule of statutory construction guides that even where the statute is clearly intended to be to some extent retrospective; it is not to be construed as having a greater retrospective effect than its language renders necessary, the Court concluded:

"The limited scope of the retrospectivity that has been conferred in respect of Section 23(1-A) under subsection (1) of Section 30 does not lend support to the contention that the scope of such retrospectivity should be enlarged by reading such further retrospectivity into the provisions of Section 23(1-A). We are of the view that in relation to proceedings which were initiated prior to the date of the commencement of the amending Act Section 23(1-A) would be applicable only to those cases which fall within ambit of clauses (a) and (b) of subsection 91) of Section 30 of the amending Act. There is, therefore, no scope for

extending the ambit of retrospective operation of subsection (1-A) of Section 23(1-A) beyond the limits specified in Section 30(1) of the amending Act so as to apply it to all proceedings initiated prior to the date of coming into force of the amending Act which were pending before the Civil Court on reference u/s 18 of the principal Act irrespective of the date on which the award was made by the Collector.

The Court in the process approved the ratio laid down by the Supreme Court earlier in Filip Tiago's case (AIR 1990 SC 981).

19. In view of above discussion claim of the appellants u/s 23(1-A) must be rejected inasmuch as in the present case not only that the award of the Collector has been made prior to 30th April 1982 but the award of the Court has also been made prior to the commencement of the Act.

20. Even as per the principle enunciated in Zora Singh's case the case of the appellants would not fall for claim to interest u/s 23(1-A). In K.S. Paripoornan in his minority view Sanwant J. said :

"What is, therefore, necessary to note is that Section 30(1) deals exclusively with the powers of the Collector and it has no bearing on the powers of the Reference Court u/s 23. What is more, clause (a) of the said Section 30(1) is not retrospective in operation. It speaks of power of the Collector in the proceedings pending before him on 30th April, 1982 in which he has yet to make the award. IT is only clause (b) of the said Section which gives a limited retrospectivity to the power of the collector when it enables him to reopen the award made by him before the commencement of the amending Act, viz., 24th September, 1984 in proceedings started after 30th April, 1982."

As neither the award of court has been made after insertion of Section 23(1-A), nor the award of Collector has been made after 30-4-1982 but before 24-9-1984.

21. However, claim of the appellants in respect of solatium and interest on enhanced compensation by the civil court on reference is governed by provisions of Section 23(2) and Section 28 of the principal Act read with Section 30(2) of the Act of 1984. The scheme of the Act in respect of the retrospective operation of these two provisions of the principal Act is different from what that has been envisaged in respect of Section 23(1-A). Subsection (2) of Section 30 of the Act of 1984 specifically governs the retrospectivity of changes brought in subsection (2) of Section 23 and Section 28 of the principal Act as amended by clause (b) of Section 15 and Section 18 of the Amending Act respectively Subsection (2) of Section 30 makes it clear that this provision applies and is deemed to have applied also to, 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 such award after 30th April 1982 and before the commencement of this Act. These provisions make it abundantly clear that provisions of Subsection (2) of Section 23(2) and Section 28 of the Principal Act as amended have been made applicable to all cases in which the Collector or the Court on reference has made an award after

30th April 1982 but before 24-9-1984, the date of the commencement of the Amendment Act, 1984. Such are the cases which are covered by this provision, the benefit of the amendment has been extended to transactions already past before the date of commencement of the amendment Act, but which came into existence after the introduction of the bill for the amendment was laid before the Parliament. That is to say the benefit was extended to the transaction which came to be concluded by dint of award having been made either by the Collector or by the civil court on reference under the Act, after the introduction of the bill but before the commencement of the Act of 1984. The provisions of enhanced solatium and enhanced rate of interest u/s 28 was made applicable thereto. That benefit operated on its own force inasmuch as for the purpose of the allowability of these benefits to the transactions already concluded was irrespective of the pendency of the case before the higher courts as on the date of the commencement of the Act. This is apparent from the deeming provision that 'shall be deemed to have been applied' to such award of Collector or award of court or to orders passed in appeal against such award.

22. That the provisions dealt with under it have been differently treated for the purpose of retrospectivity is clear from different expressions used under subsections (1), (2) and (3) respectively. While retrospectivity in respect of provisions governed by Section 30 have been confined to period between the date of presentation of the land acquisition amendment Bill 1982 and the date of commencement of the Act of 1984 in pursuance thereof. But each subsection dealt separately with different provision of the amending provisions each has been subject to conditions of its own. While subsection (1) of Section 30 confines the retrospectivity operation of Section 23(1-A) only in the cases of awards made by the Collector in the intervening period, subsection (2) of Section 30 which deals with amendment in Sections 23(2) and 28, extends the benefit of retrospectivity to the awards made by the Collector as well as the awards made by the Court on a reference, even where the award has been made by the Collector prior to 30th April 1982. Likewise subsection (3) which deals with the provisions of Section 34 greater retrospectivity has been envisaged and it has been extended to all cases in which possession of the land under acquisition has been taken prior to 30-4-1982 where the amount of compensation for such acquisition has not been paid or deposited u/s 31 of the principal Act until 30th April 1982 and the benefit has been extended with effect from 30-4-1982 onwards, i.e., to say no interest 30 at the rate mentioned in Section 34 is payable upto prior to 30-4-1982, but enhanced rate of interest is payable with effect from 30.4.1982 where possession has been taken prior to 30-4-1982. In all such cases, where possession of land is taken after 30-4-1982 but before 24-9-1984 the enhanced rate of interest is made applicable to such case with effect from the date of taking actual possession. In respect to the extension of provisions of subsections (2) of Section 23 and Section 28 there had earlier been a cleavage of opinion whether it applies in all cases where proceedings under Land Acquisition Act are pending at any stage of determining the compensation

whether before Collector or by way of reference before the civil Court u/s 18 or 30, or any further proceedings by way of appeal before the High Court or Supreme Court as the case may be or it is confined to awards made by the Collector and the civil court on reference under the Land Acquisition Act. The benefit of enhanced rate of solatium from 15% to 30% of the compensation is envisaged u/s 23(2) and enhanced rate of interest 9% was prescribed in place of 4.5% and the amendment also provided interest at the rate of 15% on the additional compensation determined by the civil court, if the same is not paid or deposited within one year of the award, operation of these charges was extended in relation to any award made by the Collector or order or to any award passed by High Court or Supreme Court in appeal against any such award under the provisions of the Principal Act after 30-4-1982. The word that it has been extended to all awards made by the Collector or court on reference under the Act has not been doubted. However, the subsequent clause which reads `or to any order passed by the High Court or Supreme Court on appeal against any such award" under the provisions of principal Act. The adjective `such" which precedes word `award" in relation to order made by High Court or Supreme Court in appeal does give a clue that it refers only to appeals pending before High Court or Supreme Court which arose out of such awards referred to earlier i.e., to say awards made by Collector or court on reference under the provisions of the principal Act after 30th day of April 1982. In some cases the other view has also been taken that the applicability of Section 23(2) and Section 28 of the principal Act as amended by the amending Act has been extended to all proceedings mentioned in Section 30(2). The interpretation of this provision is no more in doubt and is settled by pronouncement of the Constitution Bench of the Supreme Court in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., . The Court opined:

"There can be no doubt that the benefit of the enhanced solatium is intended by S.30(2) of amendment Act in respect of an award made by the Collector between 30 April, 1982 and 24 Sept. 1984. Likewise the benefit of the enhanced solatium is extended by S.30(2) to the case of an award made by the Court between 30th April, 1982 and 24 September 1984, even though it be upon reference from an award made before 30 April 1982. The dispute is about the meaning of the words "or to any order passed by the High Court or Supreme Court on appeal against any such award" used in S.30(2)? Are they limited, to appeals against an award of the Collector or the Court made between 30 April, 1982 and 24 September, 1984 even though arising out of awards of the Collector or the Court made before 30 April, 1982"

23. Thus accepting the proposition about the applicability of the provisions of Section 23(2) to the awards made by the Collector as well as by the Court on a reference being made under the Land Acquisition Act between 30-4-1982 and 24-9-1984, the Court posed for itself the question, `The dispute is about the meaning of the words "or to any order passed by the High Court or to any order passed by the High Court or Supreme Court on appeal against any such award"

used in S.30(2)? The Court answered :

"It is significant to note that the Parliament has identified the appeal before the High Court and the appeal before the Supreme Court by describing it as an appeal against any such award. The words any such award are intended to have deeper significance, and in the context in which those words appear in S.30(2) it is clear that they are intended to refer to awards made by the Collector or Court between 30 April, 1982 and 24 September, 1984. In other words the benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between 30 April, 1982 and 24 September, 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 24 September, 1984 or after that date. All that is material is that the award by the Collector or by the Court should have been made between 30 April, 1982 and 24 Sept. 1984. It cannot be said that the words any such award only mean the award made by the Collector or court, and carry no greater limiting sense. No such words of description by way of identifying the appellate order of the High Court or of the Supreme Court were necessary. Plainly, having regard to the existing hierarchical structure of forum contemplated in the parent Act those appellate orders could only be orders arising in appeal against the award of the Collector or of the Court."

24. In arriving at this conclusion the court applied the rule of construction, 'If the Parliament had intended that the benefit of enhanced solatium should be extended to all pending proceedings it would have said so in clear language. On the contrary, the terms, in which S. 30(2) is couched, indicate a limited extension of the benefit. The Amendment Act has not been made generally retrospective with effect from any particular date, and such retrospectivity as appears is restricted to certain areas covered by the parent Act and must be discovered from the specific terms of the provision concerned. Similarly it was never intended to define the scope of the enhanced solatium on the mere accident of the disposal of a case in appeal on ascertain date."

25. The fact that there is distinction between the provisions of Subsection (1) and (2) of Section 30 has been noticed by subsequent constitution Bench in K.S. Paripoornan's case (supra) in which question arose about true scope of retrospectivity of Section 23(1-A) which is subject matter of subsection (1) of Section 30 while agreeing with the proposition intended in Raghuvir Singh's case (supra). The Court in K.S. Paripoornan's case (supra) noticed in response to an argument raised with reference to Raghuvir Singh's case that the benefit of Section 23(1-A) should be extended to all cases where awards have been made by Civil Court under reference after 30-4-1982 in the cases where reference is arising from the award made by the Collector prior to 30-4-1982. The Court observed :

"Merely because subsection (1) of Section 30 only refers to award made by the Collector while subsection (2) of Section 30 also refers to an award made by the

Court as well as the order passed by the High Court or the Supreme Court in appeal against such award does not mean that Section 23(1-A) was intended to have application to all proceedings which were pending before the Civil Court on the date of the commencement of the amending Act. The difference in the phraseology in subsections (1) and (2) of Section 30 only indicates the limited nature of the retrospectivity that has been given to provisions contained in Section 23(1-A) u/s 30(1) as compared to that given to the provisions of Section 23(2) and 28 u/s 30(2)."

26. In the present case the facts are that while the award was made by the Collector prior to 30-4-1982 reference u/s 18 was pending before the Civil Court as on 30-4-1982 and award has been made on 27-4-1983, i.e., to say after the introduction of the amending bill in the Parliament on 30-4-1982 but before actual commencement of the Act of 1984. The present appeal is arising out of such award. The court is enjoined with a duty to give effect to provision of Section 23(2) and 28 as amended in such appeals. It may be observed that in respect of award made prior to 29-9-1984, the question of raising the applicability of such provision can only arise in appeals and the provision referred to above envisage making separate order on an application but is deemed to have applied even to cases where orders such appeals have been made before commencement of Act of 1984. This fortifies our conclusion as to automatic operation of provision to orders covered u/s 30(2) of the Act of 1984. Therefore the case of the appellant is squarely governed by the provisions of Section 30(2) for the purpose of applicability of Section 23(2) and Section 28.

27. Accordingly, we hold that the appellants are entitled to enhancement of compensation by providing solatium at the rate of 30% instead of 15% and also to the interest at the rate provided u/s 28 on the additional compensation with effect from the date of possession of the land was taken from the appellants to the date of the payment of such excess into the court. According to proviso to Section 28 on such additional compensation interest with effect from the date of taking possession at the rate of 9% is payable, and where such excess or any part thereof was paid into the court after expiry of period of one year from the date on which possession is taken, interest at the rate of 15% per annum is payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the court before the date of such expiry of one year. In the present case compensation awarded by the Collector in the first instance was paid duly soon after the award was made. Possession was taken in April 1981 and the award by the Civil Court has been made in April 1993, obviously, the excess or part of the additional compensation could not have been paid before expiry of period of one year from the date on which possession was taken. Therefore, it must be held that the appellants are also entitled to additional compensation by way of interest at the rate of 9% per annum on the enhanced amount of market price from the date on which the possession of the land was taken from the appellants for the period of one year and after the expiry of one year at the rate of 15% on the said sum until the

amount was deposited in the court or paid to the claimants whichever is earlier.

28. Lastly it has been contended by the learned counsel for the claimants about the error appearing from the order of the learned Joint District Judge in deducting 5% of the compensation as Government share with reference to Section 43A of the Bombay Tenancy Act. Our attention has been drawn to the decision of the Apex Court in *State of Maharashtra v. Babu Govind Gavate* AIR 1990 SC 904 and Division Bench decision of this Court in *Samjuba Merambhai Vs. 2nd Special Land Acquisition Officer and Another*, . In *Babu Govind Gavates* case (supra) the apex court was concerned with the deduction made by the Land Acquisition Officer in Maharashtra, of 1/3 of the market value u/s 43(1A) of the Bombay Tenancy Act the very same provision under which 5% deduction is being made by the Land Acquisition Officer in State of Gujarat, with which we are concerned. The Apex court did not countenance the practice and action of the State Government in directing the Land Acquisition Officers in the State to deduct 1/3 of the market value in the matter of determination of compensation payable under the Land Acquisition Act with reference to provisions of Section 43(1A) of the Bombay Tenancy Act. The Court held:

"When the Collector exercises the power to grant sanction u/s 43(1), he does it as a statutory authority to protect right, title and interest of the erstwhile tenant who subsequently became the owner to see that he remains to be the owner and continues to be in possession and enjoyment of the same. But that condition to grant sanction is not hedged with any right to the Government to deduct 1/3 when it exercise its power of eminent domain for a public purpose. The owner u/s 23(1) is entitled to the full compensation of the market value prevailing as on the date of publication of the notification u/s 4(1)."

29. Thus concluding, the Court held the circular issued by State of Maharashtra to be ultravires the power of Section 43 or any other power. Relying on the aforesaid decision, this Court in *Samjuba Merambhai* (supra) with reference to the contention that the deduction of 5 percent Government share from the amount of compensation is not permissible and legal in view of the decision rendered by this Bench in earlier such matters is not permissible, said:

"Second and last contention is also quite clear in view of the settled proposition of law. This Court in number of cases has held that deduction of market value u/s 43 of the Bombay Tenancy and Agricultural Lands Act (67 of 1948) is not permissible in a case of compulsory acquisition of land like the cases on hand. Placing reliance on the decision of the Apex Court in *State of Maharashtra Vs. Babu Govind Gavate* etc., , it appears that the attention of the Reference Court was not drawn to the said decision and the Division Bench judgment of this Court."

30. In this connection, we also notice decision of Supreme Court in *Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others*, wherein dealing with the question of levy to pay interest either u/s 28 or u/s 34

the Supreme Court has clarified:

"Section 34 or Section 28, as the case may be, fastens liability to pay interest only on amount of compensation or such excess amount of compensation or part thereof determined u/s 23(1). In other words, by virtue of the language of Section 23(2), viz., 'in addition to the market value', as provided in Section 23(1), solatium becomes payable. Compensation u/s 23(1), by necessary implication, excludes the liability to pay interest on solatium. Equally, no solatium is payable on additional amount payable u/s 23(1-A) on other components except on compensation or excess compensation or part thereof determined u/s 23(1) over and above the award u/s 11, by Civil Court u/s 26 or on appeal u/s 54, respectively."

In view of the aforesaid computation of interest will have to be made only on the excess computation determined with reference to the enhanced value of land. However no interest shall be payable on the enhanced amount of solatium u/s 23(2).

31. In view of the aforesaid decision we further hold that claimants are entitled to their compensation with deduction of 5% as government share as has been deducted by the court below.

32. Accordingly, the appeals of the claimants are partly allowed. Their claim to enhance the rate of market price and claim to interest u/s 23(1-A) of the Land Acquisition Act is refused. However, the award is required to be modified in terms of the provisions of Section 23(2) and 28 of the Land Acquisition Act and amended by the amendment Act, 1984 and also that the acquiring authority is not entitled to deduct 5% share from compensation payable to the Claimants. We further direct the lower court to recompute the amount payable to the petitioner in terms of the aforesaid decision and make the order for payment of the additional sums.

As in the appeals of the claimants have partly succeeded, there shall be no order as to costs.