
(2000) 12 MAD CK 0128

In the Madras High Court

Case No : Writ Petition No's. 17353 and 18130 of 1997, 803, 5464, 5591, 6120, 8992, 12085 to 12088, 12385, 14246, 15834, 17178, 17571, 18556, 18882 to 18885, 19138 and 19139 of 1998, 1716, 2583, 2661, 3123, 3267, 3844, 3845, 4125, 4301, 4302, 4303, 4484, 4485, 453

Rajasherriff

APPELLANT

Vs

The Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 22-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5, Order 41 Rule 5(1), 110
Constitution of India, 1950 — Article 14, 226, 254(2)
Income Tax Act, 1961 — Section 48
Land Acquisition Act, 1896 — Section 11, 17, 18, 18(2), 19(1)
Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 11

Citation : (2000) 12 MAD CK 0128

Hon'ble Judges : R. Jayasimha Babu, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : A. Sivaji, R.G. Narendran, K. Muthuramalingam, V. Radhakrishnan, Chitra Sampath, M.S. Subramanian, N. Damdodaran, V. Ramamurthy, M. Ajmal Khan, K. Kalyan Sundaram, P. Mani, V. Raghavachari, V. Krishnan, V.P. Sengottuvel, M. Subramaniam, R. Muthukumarasamy, S. Palani, M. Sriram, K.M. Venugopal, M. Damodaran, Muthumani Doraisami, P. Rathinadurai, AR.L. Sundaresan, P. Jagadeesan, K.V. Subramanian, N. Jayabalan, C.R. Muralidharan and M.V. Krishnan, for the Appellant; K.V. Venkatapathy, General, K. Veeraghavan, Additional Central Government Standing Counsel, K. Chelladurai, R. Gowtham Narayanan, M. Sriram and V. Radhakrishnan, for the Respondent

Judgement

R. Jayasimha Babu. J.

1. The constitutional validity of Section 23-A introduced into the Land Acquisition Act, 1896 (Central Act 1 of 1984) (the Act) by the Land Acquisition (Tamil Nadu Amendment) Act, 1996 (Act XVI of 1997) which received the assent of the President on 14th March, 1997 was gazetted on 20th March, 1997 and brought into force on 16th July 1997 has been called into question in this group of writ petitions.

2. The petitioners are persons whose lands had been compulsorily acquired under the Act and who are parties to appeals pending in this Court -such appeals having been preferred by the State or the persons interested in the compensation - against the awards made by the Court to which the matter had been referred u/s 18 of the Act (the reference Court), and who have, by reason of this new provision, been prevented from receiving the compensation as enhanced by that Court.

3. That Section 23-A reads as under: "23-A. Restriction on withdrawal of amount: : The amount of compensation awarded by any Court under this Act shall be deposited in that Court and the Court shall not allow the person interested to withdraw such amount till the final disposal of the matter in this regard in the higher forum:

Provided that if the Court considers that it is absolutely necessary to allow the person interested to withdraw the amount of compensation, the Court may allow him to withdraw only the amount awarded by the Collector.

Explanation. - For the purpose of this Section, "Court" includes the "High Court".

The section does not specify the period within which the compensation awarded by the Court is to be deposited.

4. The State, which by resorting to the provisions of the Act deprives persons of their property by compulsory acquisition, is by this provision, enabled to deprive them of compensation as well during the period the matter remains before the Courts - that period, more often than not stretching from ten to twenty years. Those who seek reference of the matter to Court are thus penalised for having exercised their lawful right, such penalty having been imposed by one of the parties to the Us.

5. The Court in which the deposit is made is not to allow the person entitled to that amount to withdraw the same "till the final disposal of the matter" by the highest forum. Highest forum is not defined in the Act. In the context in which that expression has been used, it can only mean the highest legal forum in the country - the Supreme Court. An embargo is placed on the Court in which the deposit is made from disbursing that amount except to the extent of the amount awarded by the Collector, even that disbursement being permissible only when the Court considers it to be "absolutely necessary".

6. The provision is to operate during the period the superior Courts are seized of the matter in appeal after the adjudication by the reference Court. It seeks to deprive the appellate Courts of the power to decline stay of execution of the award made by the lower Court and the power to direct stay of execution subject to such conditions as the appellate Court may, in the interest of justice having regard to the circumstances of the case, consider appropriate.

7. The award made by the reference Court as also the award made by the High Court are rendered inexecutable during the pendency of the appeal before the

High Court and Supreme Court respectively. The award is rendered inexecutable even in cases where the appeal is not at the instance of the State, but is at the instance of persons interested seeking further enhancement of the amount of compensation or who have objection to the measurement of the acquired land.

8. The constitutional validity of this new provision is impugned principally on two grounds: - that it is beyond the legislative competence of the State Legislature, as no legislature be it parliament or the State Legislature can usurp the judicial functions of the Court, and interfere directly with the performance of that function by the Court by substituting the fiat of the legislature in place of the discretion of the appellate Court in granting subject to conditions wherever appropriate, or declining stay of the decree appealed against; and that the section unfairly and unjustifiably discriminates against those who object to the Collector's award and seek a reference to the Court and consequently is violative of the petitioners' rights under Article 14 of the Constitution.

9. The learned Advocate General sought to sustain the amendment inter alia, by submitting that the State had lost monies in some cases by reason of the withdrawal of the amount deposited by it having been allowed, as though it was later found that the awards were required to be set aside, the claimants who had drawn the monies failed to deposit the monies drawn by them into the Court, or to pay over the same to the Government. We must note here that the State Government has not chosen to file a counter-affidavit to any of the writ petitions. No facts or figures have been placed before us to substantiate this submission. We must also note that Advocate General did not dispute the correctness of the statement of petitioners' counsel that the usual order that was being made by this Court, pending the appeal was to direct deposit of the entire amount awarded by reference. Court, permit withdrawal of one half of the amount without furnishing security, and direct the investment of the other half in fixed deposit in scheduled Bank. It was also submitted for the State that the Section itself must be read down as being applicable only to the appeals preferred by the State even though the language employed in the Section clearly would bring within it's scope not only the appeals filed by the State, but those filed by the claimants as well. The further submission was that the interest of the claimant is protected by the requirement that the State deposit the amount awarded by the Reference Court or the High Court as the case may be. It was also submitted that in view of the presidential assent under Article 254(2) of the Constitution, Section 23- A would override Order 41, Rule 5 of the Code of Civil Procedure, so far as this State is concerned.

10. The compensation payable for the compulsory acquisition of land under the provisions of the Act is to be determined initially by the Collector by making an award u/s 11 of the Act. Such award is to be made within a period of two years from the date of publication of the declaration made u/s 6 of the Act that the land is required for a public purpose. The declaration under Sec.6 is required to be made within one year from the date of publication of the notification u/s 4(1)

of the Act. In calculating these periods, the period during which any action or proceeding taken in pursuance of the notification u/s 4(1) of the Act, or declaration u/s 6 of the Act is stayed by an order of Court is to be excluded. The possession of the land is to be taken from the owner only after the award is made, unless the special powers in case of urgency available to the Government u/s 17 of the Act is invoked. Even in cases where Section 17 is invoked, before taking possession, the Collector is required, in addition to offering compensation for the standing crops and trees and for damages, if any resulting from sudden dispossession to pay for the land 80% of the compensation as estimated by him unless prevented by one or more contingencies mentioned in Section 31(2) of the Act.

11. If the amount of compensation as determined by the Collector is not paid or deposited before taking possession of the land, the Collector is required to pay that amount with interest at 9% from the time of taking possession till actual payment or deposit. If the period for which the payment is not made after the possession has been taken exceeds one year, such interest is payable at the rate of 15% as provided u/s 34 of the Act. It is open to the persons interested in the compensation awarded by the Collector to receive the amount under protest as to the sufficiency of the amount, and such receipt will not disentitle them from raising objections to the Award.

12. The award made by the Collector, though binding on the Government, is one which may be objected to by the persons interested, whether the objection be to the measurement of land, the amount of compensation or the persons to whom it is payable. When such objections are raised within the period allowed u/s 18(2) of the Act, the Collector is required to make a reference to the Court and submit to the Court the information regarding the matters set out in Section 19(1) (a) to (d) of the Act, and attach thereto a schedule giving the particulars referred to in Section 19(2) of the Act. "Court" is defined in Section 3(d) of the Act to mean the Principal Civil Court of original jurisdiction, unless the appropriate Government has appointed a special judicial officer within any specified local limits to perform the functions of the Court under the Act. The authority to appoint such special judicial officer is conferred on the appropriate government by Section 3(d), which defines "Court".

13. After the matter is referred to the Court, the Court is required to serve notices on the applicant, and on all persons interested in the objection except those who have consented without protest to receive the payment of compensation awarded by the Collector, and if the objection is in regard to the area of the land or to the amount of compensation, on the Collector. This is provided for in Section 20 of the Act. The scope of the enquiry before the reference Court is limited to a consideration of the interest of the persons affected by the objection (Section 21). All the proceedings in that enquiry shall take place in open Court, and all person entitled to practise in any Civil Court in the State will be entitled to appear, plead and act in any such proceeding Section

22). The provisions of the CPC apply to proceedings before the Court, save in so far as they are inconsistent with the provisions of the Act.

14. The amount of compensation that may be awarded by the reference Court shall not be less than the amount awarded by the Collector, nor shall it be more than the amount claimed by the person interested, as provided in Section 25 of the Act as amended by the Tamil Nadu Act 16 of 1997. Prior to such amendment, the only restriction on the Court's power was that the compensation determined by it should not be less than the amount awarded by the Collector. The award made by the reference Court shall specify the amount awarded u/s 23(1) of the Act, and also the amounts, if any, respectively awarded under each of the other clauses of Section 23 together with the grounds for awarding each of those amounts, as required u/s 26(1) of the Act. When the award of the Collector is not upheld, the costs shall ordinarily paid by the Collector, unless the Court holds that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction should be made from his costs, or that he should be made to pay a part of the Collector's costs (Section 27).

15. The award made by the Court is deemed to be a decree and the statement of the grounds of every such award a Judgment within the meaning of Section 2, Clause (2) and Section 2, Clause (9), respectively, of the Code of Civil Procedure, 1908, as provided in Section 26(2) of the Act.

16. The matters to be considered in determining compensation are set out in Section 23(1) of the Act. Matters to be excluded in determining the compensation are set out in Section 24 of the Act. These provisions are binding on the Collector, as also on the reference Court and the superior Courts. In addition to the market value so determined, the reference Court shall in every case, as provided u/s 23(1-A), award an amount calculated at the rate of 12% 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. The period covered by any order of stay or injunction issued by any Court which caused delay in proceeding for the acquisition of the land are to be excluded. In addition to these amounts, the Court is also required to award in every case 30% of such market value in consideration of compulsory nature of acquisition, as provided in Section 23(2) of the Act. Section 28 of the Act empowers the reference Court to direct the Collector to pay interest on the amount of the compensation as determined by the Court which is in excess of the sum, which the Collector had determined and awarded as compensation. The rate of interest shall be 9% from the date on which the land was taken possession of till the date of payment of such excess into Court. 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 15% 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. (Proviso to Section 28 of the Act.). The award made by the reference Court is subject to an appeal provided for in Section 54 of the Act.

17. The award made by the reference Court is open to challenge in an appeal that may be preferred u/s 54 of the Act by any of the affected parties. Section 54 reads as under: "54. Appeals in proceedings before Court. - Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, "or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to (the Supreme Court) subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof."

18. The scheme of the Act in so far as it concerns the determination and payment of compensation shows that: the Act does not contemplate the divesting a person of his property without first estimating in cases of urgency/ determining in other case, the compensation payable and providing for payment of that amount; the determination made by the officer of the Government is not final, though it binds the Government; the determination of the market value of the acquired land has to be made by the Court in all cases where the persons interested does not accept the award made by the Collector; the amount of compensation as determined by the collector may be received by the person interested without having his right to object to the sufficiency thereof, if the amount is received under protest; proceedings before the Court are regulated by the CPC in so far as it is not inconsistent with the Act: counsel are entitled to appear for the parties, to the proceedings; and that the award of the Court is deemed to be a decree to and the reasons therefore a judgment, and that award is made appealable to the High Court, whose decree in such appeal is further appealable to the Supreme Court.

19. The appeals preferred against the award made by the reference Court to the High Court being appeals against a decree made by a civil Court, Order 41 of the Code, which deals with appeals from original decrees is ordinarily applicable to such appeals. Order 41, Rule 5, which deals with stay by the appellate Court, as that provision is in force in the State of Tamil Nadu reads as under: "5. Stay by Appellate Court: - (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree, and may, when the appeal is against a preliminary decree, stay the making of a final decree in pursuance of the preliminary decree or the execution of such final decree if already made.

Explanation: An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

(2) Stay by Court which passed the decree: -Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under Sub-rule (1) or Sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order of stay is made;

(b) that the application has been made without unreasonable delay; and that security has been given by the applicant for the due performance of such decree or order, as may ultimately be binding upon him

(4) Subject to the provision of Sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the application."

20. Thus, the fact that a decree has been appealed against does not disentitle the decree-holder from executing the decree and the pendency of an appeal will not by itself operate as the stay of the decree. Stay of execution or suspension of the decree will have to be sought for by way an application made to the trial Court pending the filing of an appeal, and from the appellate Court after the appeal has been instituted. Even after such application is made, the appellate Court is not bound to stay the execution. Unless the applicant complies with the conditions set out in Order 41, Rule 5 (3) of the Code of Civil Procedure, no stay can be granted.

21. The High Court, by the impugned Section 23-A of the Act is sought to be rendered powerless in the matter of granting or withholding of stay of execution of the awards made by the reference Court, despite the specific provision in Order 41, Rule 5(1) of the C.P.C. that the filing of an appeal will not automatically result in the stay of the execution of the decree. This statutory prohibition is directly aimed at the Court, which is seized judicially of the matter, and seeks to deprive the Court of the power to decide in it's sound discretion whether or not the award of the reference Court which is deemed to be a decree should be allowed to be executed, and if not, the terms subject to which the execution of the decree should be stayed.

22. The time taken from the date the award of Collector or the date of dispossession, till the final disposal of the matter, in cases where the reference is

made to the reference Court is very often a long period of ten to twenty years, if not more. We have been informed by counsel that a large number of land acquisition appeals of the year 1988 are still pending in this Court. Having regard to the expanding needs of the State, and the continued resort to the process of compulsory acquisition for a variety of public purposes, the number of references, which come to the reference Courts, is also constantly on the increase. This will lead to more appeals being preferred further increasing the pendency of the appeals in the High Court. In cases where further appeals are preferred to the Supreme Court, the matters may not reach finality for some more years.

23. The balancing of promotion of public purpose with the rights of the individual whose land had been acquired, thereby often depriving the person of the means of livelihood, is one of the objectives of Land Acquisition (Amendment) Act, 1984 (Central Act LXVIII of 1984) by which the amount of solatium as also the rate of interest were enhanced. In the statement of objects and reasons the accompanied the bill, it is inter alia state thus:

"The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss, keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them."

24. The Supreme Court in the case of State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, stressed the need for providing timely compensation in these words;

The owner of the land or other person interested therein is required to be paid compensation in lieu of land forthwith to re-establish himself whether in a new residence or another piece of agricultural land or otherwise." (Italics supplied)

The Court in that case struck down that part of Section 11 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, which provided for payment of compensation in equal annual instalment not exceeding five where the amount of compensation exceeded Rs.2, 000.

25. In the vast majority of cases referred to the reference Court, it is found that the compensation awarded by the Collector is inadequate, and does not represent the true market value. Invariably, the reference Court enhances the amounts of the compensation. Such awards are appealed against some times by the claimants who seek further enhancement, but more often by the State which objects to the extent of enhancement.

25A. That the legislature, despite the legislative competence possessed by it with regard to the field on which the legislation has been enacted, has no power to make encroachments into the judicial power of the judicial wing of the State has

been emphasised by the Apex Court in several decisions.

26. In the case of *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, , the Constitution Bench speaking through Hidayatullah, C.J. held at paragraph 4 of the judgment inter alia that "granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in the exercise of judicial power which the legislature does not possess or exercise."

27. In the case of *Jagdish Mitter Vs. The Union of India (UOI)*, , the Bench of four Judges speaking through Sarkaria, J observed at paragraph 21 thus:

"The distinction between a legislative act and judicial act is well known, though in some specific instances, the line which separates one category from the other may not be easily discernible. Adjudication of the rights of authorities, according to the law enacted by the legislature is the judicial function. In the performance of this function, the Court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the law prescribing the norms of conduct which will govern parties and transactions and to require the Court to give effect to that law".

28. In the case of *Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another*, the Apex Court held that

" It is plain that the legislature attempted to overrule or set aside that decision of this Court. It was open to the legislature under the constitutional scheme within certain limits to amend the provisions of the Act retrospectively and to declare what the law shall be deemed to have been, but it was not open to the legislature to say that the judgment of the Court properly constituted and rendered shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court."

29. In the Presidential reference regarding Cauvery Water disputes Tribunal, 1993 (Supp.) (I) SCC 96, a Constitution Bench of the Court held that the legislature has no power to interfere with the judicial power of the State vested in the Tribunal. The Apex Court, inter alia, observed in the case that,

" The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court, and thus change the law in general which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an Act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate Court or Tribunal."

30. In the case of *S.R. Bhagwat and others, Vs. State of Mysore*, , a three Judge Bench of the Apex Court held that a writ of mandamus, or directions which had become final could not be nullified by empowering the State to review such

judgments and orders. The State law which sought to so empower the State was struck down. The Apex Court observed at paragraph 12 of the judgment:

" It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect."

31. The legislature clearly has no power to reverse the decisions rendered by the Courts in exercise of the judicial power. It may not also suspend the enforceability of the decision of the Courts. Decisions rendered by the Courts in exercise of the judicial power are decisions that bind the parties and are decisions that are required to be given effect to. The pendency of appeals against the decision enables the appellate Court to give such directions as are considered appropriate concerning the execution of the decree under appeal, during the period the matter is pending in the appellate Court. That is clearly a judicial function and the directions are given in exercise of the judicial power.

32. During the pendency of all such appeals, by reason of Section 23-A of the Act, the loser is the claimant. He is made a statutory loser by being prevented from receiving any part of the compensation as enhanced by the trial Court. The Section takes away the discretion, which discretion the Courts had been exercising with due care having regard to the facts and circumstances of the given case. It is accepted by the learned Advocate General who appeared for the State that the normal order that was being made in this Court in the land acquisition appeals was to direct the State to deposit the entire amount payable under the award made by the reference Court, of which the claimant was permitted to draw 50% without security, the balance 50% being directed to be kept in a fixed deposit which would earn interest, till the disposal of the appeal. Such orders ensured a balance giving substantial immediate relief to the claimant while at the same time holding back a part of the amount of enhancement to ensure that in the event of the award being set aside or reduced, the State would be in a position to reimburse itself a substantial part of the amount immediately.

33. Prima facie, the Section seeks to impose an apparent fetter even on the power of the Apex Court. The mandate of the Section is that the amount of compensation deposited in the reference Court or the High Court will not be allowed to be withdrawn till the final disposal of the matter by the highest forum.

34. Thus, even during the pendency of an appeal in the Supreme Court, and despite a decree having been made by the High Court directing the State to pay the compensation as enhanced by the reference Court, and as affirmed by or modified by the High Court, the claimant is not to be allowed to withdraw the money. The State thus seeks to grant to itself an order of stay of the execution

of the decree made by the reference Court during the pendency of an appeal against the decree in the High Court. It also seeks to grant a stay in favour of itself during the pendency of the appeal against the decrees of this Court, before the Apex Court. A party to the litigation has by this amendment given to itself the right to make an order of stay in it's own favour in respect of a decree in which the State is the judgment-debtor.

35. The Presidential assent has the effect of giving primacy to Sec.23A vis-a-vis Order 41, Rule 5 of the Code of Civil Procedure. The argument advanced by counsel for some of the petitioners that President's attention had not been drawn to the repugnancy is untenable, as the rationale for seeking Presidential assent was the fact that the amending Act would be unenforceable by reason of repugnancy to Central Acts, in the absence of such assent. Civil Procedure, as also Acquisition and requisition of property are fields of legislation enumerated in Entries 13 and 42 respectively in the concurrent list. If the State law had been reserved for consideration of the President by reason of the repugnancy between the State law and the Central law/s and had secured the assent of the President the State law will prevail. Sec.23A introduced by the State though repugnant to Order 41, Rule 5 of the CPC will prevail in the State of Tamil Nadu Act, Article 254(2) does not lay down that assent should be given separately for every repugnancy.

36. That assent, however, does not render constitutional the invasion of the judicial power in so far as Sec.23A prevents the execution of the decree and interferes with the judicial discretion of the appellate Court.

37. The impugned provision seeks to penalise all those who seek enhancement of compensation and treats them as a class apart whose rights are to abridged during the pendency of matters in the Courts, although they belong to the same class of person interested in the compensation to which those who do not object to the award belong. All of them are entitled to the market value of the acquired land as on the date of notification under Sec.4(1). The Act specifically provides for the determination of that value by the Court whenever the person interested objects to the determination made by the Collector. Such objection does not disentitle him from receiving the amount determined by the Collector under protest. The fact that the award made by the Reference Court is appealable does not in any way alter it's character as the expression of a Judicial decision, though the judicial process by a Court. That decree remains executable unless modified or overruled in appeal. The State cannot without infringing Article 14 discriminate against such decree holders vis-a-vis those who have accepted the award of Collector without protest. It can only invoke the judicial process of appeal to get redress against an award of the Reference Court considered by the State to be defective.

38. Article 14 of the Constitution applies not only to substantive law, but to procedural law as well. In the case of *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, , a Constitution Bench of the Supreme Court reiterated

the law that had been laid down in the case of *The State of West Bengal Vs. Anwar Ali Sarkar*, and *Kathi Raning Rawat Vs. The State of Saurashtra*, and held that Article 14 condemns discrimination not only by a substantive law, but also by a law of procedure. In that case, it was held that the procedure prescribed by the corresponding provisions in the West Bengal Special Courts Act and the Saurashtra Ordinance which introduced similar departures from the ordinary law of procedure constituted a discrimination against persons tried by the Special Judge according to procedure prescribed by those pieces of legislation.

39. In the case of *Venkateshwara Theatre Vs. State of Andhra Pradesh and Others*, , it was observed that, "A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law."

40. Even among those who object to the Collector's award, discrimination is made by the new Section 23A. Claimants who appeal against the award of the Reference Court or High Court are penalised for having preferred such appeals by denying to them the compensation that had been awarded by the Court below till the disposal of the matter by the "highest forum".

41. Learned Advocate General relying upon the Statement of Objects and Reasons attached to the Bill which subsequently became the amending Act, more particularly paragraph 4 of that statement, which reads thus:

" The enhanced compensation awarded by the Courts are deposited in the Courts. During the pendency of appeal the persons interested approach the Courts and withdraw entire enhanced compensation amount deposited. If the entire amount is drawn like this it becomes very difficult to recover the amount at a later date in case if the appeal happens to be decided in favour of the Government. Hence, it has been decided to restrict such withdrawal of amount."

submitted that the Section should be read in the light of that statement, and so read, it would appear that the Section was intended to be applicable only to cases where the State was the appellant. We find it difficult to accept that submission.

42. The Section does not refer to appeals filed by the State. It places an embargo irrespective of who may have carried the appeal to the High Court, or Supreme Court, against the withdrawal of the amount of compensation awarded by the reference Court or the High Court "till the final disposal of the matter in this regard in the highest forum". The preamble in any event cannot be an aid to construction of the statutory provision, which must be interpreted having regard to the language employed in the provision, the Scheme of the Act, and the purposes of the Act. The Supreme Court has in more than one decision pointed out that a preamble while it may be helpful in understanding the background and the reason for the amendment cannot serve as an aid to the construction of the provision.

43. In the case of *The State of West Bengal Vs. Anwar Ali Sarkar*, , a Constitution Bench of the Apex Court held that a provision of an enactment, if it is clear and unambiguous cannot be curtailed or extended with aid of the preamble to the Act. Another Constitution Bench in the case of *State of West Bengal v. Union of India*, AIR 1962 S.C. 1241 observed thus:

" It is however well-settled that the Statement of Objects and Reasons accompanying a bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Government s" rights as owners of minerals."

In that case, the Statement of Objects and Reasons was sought to be relied on to show that despite the clear words of enactment. Parliament had not intended to acquire the property belonging to the State Government. The Court, having regard to the express language of the statute under consideration in that case, rejected that argument.

44. That principle has been reaffirmed in the later decisions of the Apex Court in the case of *Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others*, . It was reiterated that it was well settled that when the language of the statute is clear and admits no ambiguity, recourse to the Statement of Objects and Reasons for the purpose of construing a statutory provision is not permissible. That was again reiterated in the case of *Kumar Jagdish Chandra Sinha and others Vs. Mrs. Eileen K. Patricia D'Rozarie*, .

45. Any recourse to the Statement of Objects and Reasons for the purpose of ascertaining meaning of the Section 23-A of the Act, which in itself is clear is unambiguous is wholly impermissible.

46. Even that Statement of Objects, it is pointed out by counsel for the petitioner, is to some extent incorrect. It was submitted a submission which was not disputed, that the statement therein that persons interested withdraw the entire enhanced compensation amount deposited, is erroneous, as the State Government invariably seeks stay of the execution of the award of the reference Court, and the uniform order being made by the High Court has been to permit only the withdrawal of 50% of the amount deposited, the balance being directed to be kept in fixed deposit till the disposal of the appeal, though there may have been some exceptions to that normal rule.

47. It was submitted by counsel for petitioners that the long delay in the payment of compensation to the claimant would render what he would ultimately receive illusory. Counsel pointed out that having regard to the value of rupee based on the cost of inflation index issued by the Government of India u/s 48 Explanation Clause (5) of the Income Tax Act, 1961, 350 rupees of the year

1998-99 would be equal to 100 rupees of the year 1981-82. By preventing the claimant from drawing the amount deposited subject to such conditions as the High Court or the Supreme Court may impose, the claimant is made to suffer a huge monetary loss as the value of what he would receive ultimately will only be a fraction of the value, which he would have obtained, had he been allowed to draw the money, though subject to such conditions that may be imposed by the appellate Court, immediately after the deposit is made.

48. The Section clearly offends Article 14. It treats equals as unequals. All those entitled to claim the market value for their lands, though, belonging to one class are treated differently, those raising objection to the Collector's award being discriminated against. It seeks to penalise the claimant who has a right under the law to appeal to the High Court and thereafter to the Supreme Court for enhancement, for exercising that right. The restriction indirectly placed on the claimant's right to prefer an appeal is clearly arbitrary and absolutely unreasonable. Even in cases where the State has accepted the award of the reference Court or High Court as the case may be, and the claimant appeals, such claimants are prevented from withdrawing the amount awarded by the Court below. The State and claimant though dissimilar in this regard, are being treated similarly with regard to the statutory consequence of pendency of an appeal. The proclaimed desire of the State to protect its interest in the event of the award made by the reference Court being ultimately reduced or being set aside, has no relevance at all in case of appeals filed by the claimants for further enhancement. The State which has not preferred an appeal against the decree can have possibly no right to object to the execution of the same. It cannot seek to punish a claimant who seeks further enhancement by withholding from him the extent of the enhanced compensation.

49. The amounts awarded by the reference Court as compensation are the amounts awarded on the basis of the evidence let in before the Court. It may well be that there are instances of such evidence being wrongly appreciated, wrong principles being applied, relevant factors being missed, and awards being made in excess of what is permissible on the basis of the evidence. However, the major causes, besides the unrealistic awards made by Collectors, for the adverse result suffered by the State at the trial stage and at times at the appellate stage also, is the lack of professional expertise of the desired level on the part of those who conduct the matters for the State. The remedy to those ills is not the usurpation of the judicial power by the State, or according arbitrary and unequal treatment to claimants, but in ensuing better administration and entrusting the conduct of the States case to those who are professionally able and are diligent.

50. The Courts are required to decide the matters brought before them in accordance with law. The errors that may be committed at a lower level are capable of correction by the superior Court. It is open to the State to prefer an internal appeal where one is permissible, and/or carry the matter in appeal to the Supreme Court, wherever in the State's view the interim order of the High

Court is erroneous. The apparent distrust displayed by the legislature in the Courts is wholly unwarranted and is based on misconceptions. Under our constitutional scheme, the legislature has no competence to take over the judicial function.

51. The new Section 23A, constituting as it does an impermissible in road into the judicial field with the legislature seeking to exercise judicial power, and also being violative of the petitioners' right to non-arbitrary, non-discriminatory, and equal treatment under the law, the same is liable to be, and is struck down as unconstitutional.