

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3927 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI Sd/-

and

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No

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VIJAYKUNVERBA M JADEJA

Versus

UNION OF INDIA  
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Appearance:

1. Special Civil Application No. 3927 of 1985  
MR SB VAKIL for Petitioner No. 1  
MS PJ DAVAWALA for Respondent No. 1  
MR rc kodekar agp for Respondent No. 2  
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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE D.H.WAGHELA

Date of decision: 29/11/2001

1. By this petition, a prayer is made to strike down the provisions of Section 23 (1-A) of the Land Acquisition Act, 1894. Only two cases were pending on 30.4.1982 in which no award has been passed and no possession of the land has been taken. The learned counsel appearing for the petitioner has fairly brought to our notice the decision of Five Judges Bench of the Supreme Court in the case of K.S.PARIPOORNAN v. STATE OF KERALA reported at (1994) 5 SCC 593, in which the provisions of Section 23 (1-A) have been construed and the cut off date has been referred. The relevant observations from the majority view read as under:

"Therefore, if sub-section (1-A) of Section 23 is construed in the light of the provisions contained in sub-section (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 sub-section (1) of Section 30 of the amending Act. A perusal of sub-section (1) of Section 30 of the amending Act shows that it divides the proceedings for acquisition of land which had commenced prior to the date of the commencement of the amending Act into two categories, proceedings which had commenced prior to 30.4.1982 and proceedings which had commenced after 30.4.1982. While clause (a) of Section 30 (1) deals with proceedings which had commenced prior to 30.4.1982, clause (b) deals with proceedings which commenced after 30.4.1982. By virtue of clause (a), Section 23 (1-A) has been made applicable to proceedings which had commenced prior to 30.4.1982 if no award had been made by the Collector in those proceedings before 30.4.1982. It covers (i) proceedings which were pending before the Collector on 30.4.1982 of the amending Act, and (ii) such proceedings wherein award was made by the Collector after the date of the commencement of the amending Act. Similarly, Section 30 (1) (b) covers (i) proceedings which had commenced after 30.4.1982 wherein award was made prior to the commencement of the amending Act, and (ii) such proceedings wherein award was made after the commencement of the amending Act.

It would thus appear that both the clauses (a) and (b) of sub-section (1) of Section 30 cover proceedings for acquisition which were pending on the date of the commencement of the amending Act and to which the provisions of Section 23 (1-A) have been made applicable by virtue of Section 30 (1). It is wrong to maintain 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. It is necessary to bear in mind the rule of statutory construction that even where a 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. There is, therefore, no scope for extending the ambit of retrospective operation of sub-section (1-A) of Section 23 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 under Section 18 of the principal Act irrespective of the date on which the award was made by the Collector."

2. The learned counsel for the petitioner has given to us the relevant dates. Section 4 notification was issued on 31.5.1971. Section 6 notification was issued on 15.11.1972. The award was passed on 10.5.1974 and possession was taken in June 1975. The matter was taken to the Reference Court seeking enhancement of compensation and the Civil Court decided it on 31.12.1974 against which First Appeal No.374 of 1978 was filed. On the above relevant dates, apparently, the petitioner's claim for increase of rate of interest under Section 23 (1-A) could not have been accepted on the plain language of the provision. Section 23 (1-A) was inserted by the Amendment Act 68 of 1984 which contains transitional provisions regarding applicability of the amended provisions of Section 23 (1-A) providing for rate of interest payable on the amount awarded @ 12% from the date of publication of notification under Section 6 to the date of award by the Collector or the date of taking possession of the land whichever is earlier.

3. As held by the Supreme Court and as the provisions of Sections 23 (1-A) and 30 have been construed therein, the cut-off date is 30.4.1982 and, therefore, in the case where the award itself has been made as back as on 10.5.1974 and possession was taken in

June 1975, the claim for increased rate of interest cannot be made on the basis of the provision. The Supreme Court has also repelled the challenge to the constitutional validity of the Act urged on the ground of cut-off date being arbitrary.

4. Since the petitioner is not entitled to his claims under Section 23 (1-A), as admittedly in this case the award was passed and possession was taken much before the cut-off date, we need not go into the question of validity.

5. For the aforesaid reasons, we dismiss the petition. Rule is discharged with no order as to costs.

Sd/-

( D.M.Dharmadhikari,C.J.)

Sd/-

29.11.2001 ( D.H.Waghela, J.)  
(KMG Thilake)