

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 10716 of 2004
With
CIVIL APPLICATION No. 10917 of 2005**

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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**SUTHAR DALSUKHBHAI KHEMABHAI & 10 - Petitioner(s)
Versus**

LAND ACQUISITION OFFICER - Respondent(s)

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Appearance :

MR R.K.MANSURI for Petitioner(s) : 1 - 4, 4.2.1, 4.2.2, 4.2.3, 4.3.1, 4.3.2, 4.3.3, 4.3.4 - 6, 6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.3.1, 6.3.2, 6.3.3, 6.3.4 - 7, 7.2.1, 7.2.2, 7.2.3 - 9, 9.2.1, 9.2.2, 9.2.3, 9.2.4, 9.2.5 - 10, 10.2.1, 10.2.2, 10.2.3 - 11.

MR SP HASURKAR A.G.P. for Respondent(s) : 1,

NOTICE SERVED for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and**

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 31/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. In this petition the only grievance of the petitioners is that, though in accordance with the provisions of Section 28A of the Land Acquisition Act [hereinafter referred to as “the Act”] the respondent is required to pay compensation to the petitioners on the basis of the award that has been passed in the Reference cases arising from the same acquisition, by the learned Joint District Judge, Sabarkantha, dated 30th October, 1996, the respondent has not paid interest on solatium to the petitioners. The learned Joint District Judge, has awarded interest on solatium to the applicant of Reference case No. 1540 of 1988, which is arising from the same acquisition proceedings.

2. According to the petitioners, their lands are situated at village Ankala. Since these said lands were required for public purpose, Notification under Section 4 and declaration under Section 6 of the Act were duly published and ultimately, the award was made determining the compensation for the land in question as also other lands similarly acquired for the same public purpose. The petitioners however did not approach the District Court under Section 18 of the Act for claiming higher compensation, but one Shri Jetavat Harisinh Girdharisinh preferred an application under Section 18 of the Act to the Collector with a request to make Reference to the District Court which was accepted and the Land Reference case no.1540 of 1988 was placed before the learned Joint District Judge, Sabarkantha who, as stated as above, made the award on 30th October, 1996. The learned Judge increased the rate of compensation to Rs.678/- per Are for the irrigation land together with 30% solatium and 12% escalation in the prices. He also directed payment of interest on solatium which is payable under Section 23 (1-A) and Section 23 (1) (2) of the Act. When the petitioners learnt about the award passed by the learned Joint District Judge, Sabarkantha, they preferred application under Section 28A of the Act for claiming compensation at the same rate. It was preferred in time.

However respondent no. 1 while disposing of the applications enhanced compensation payable to the petitioners but failed to order payment of interest on solatium. The said applications were disposed of by respondent no. 1 by common order dated 27th February, 2004. The increase was directed to be paid to the petitioners with interest at the rate of 9% for one year from the date of the award on the value of the land and thereafter at the rate of 15% on the value of the land. He did not give any direction with regard to payment of interest on solatium.

3. It is submitted by Mr. Mansuri learned advocate appearing for the petitioners that as per the provisions of law Section 28A application is to be decided on the basis and in terms of award passed by the District Judge in Reference under Section 18 of the Act. In the instant case, though the learned Joint District Judge, has awarded interest on solatium, that has not been awarded by respondent no. 1 while disposing of the application of the petitioners under Section 28A of the Act. We have also perused the provisions of Section 28A of the Act as well as the decision rendered by the Apex Court in the case of **Union of India v. Mangatu Ram reported in A.I.R. 1997 S.C. pg.2704**. The Apex Court has clearly laid down that the applicant of application made under Section 28A of the Act is entitled to receive compensation which has been awarded to the owners of other land covered by the same Notification. The provisions of Section 28A are also very clear. Therefore, there is no doubt in our mind that respondent no. 1 has committed error in not granting interest on solatium and escalation in the prices to the petitioners which are statutory benefits available to the owners of the lands which are acquired for public purpose. Hence, we direct respondent no. 1 to pay interest on the aforesaid items in accordance with the direction contained in the judgment of the learned Joint District Judge, Sabarkantha rendered in Land Reference case No.1540 of

1988 dated 30th October, 1996. This is to be done on or before 31st March, 2006. The amount of compensation and the interest to be paid to the petitioners on or before 31st March, 2006.

4. With the above directions, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

5. In view of the above order, Civil Application No. 10917 of 2005 does not survive. Hence, the Civil Application stands disposed. Notice is discharged.

{Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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