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K.S. PARIPOORNAN

v

STATE OF KERALA AND ORS.

OCTOBER 20, 1994

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[K, RAMASWAMY, S.P. BHARUCHA AND
M.K. MUKHERJEE, JJ.]

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Land Acquisition (Amendment) Act, 68 of 1984—Sections 28 and 23(1-A)—Enhanced interest u/s 28—Claim of—Award of Collector—Civil Court enhancing compensation—Whether claimants entitled to the enhanced interest u/s 28 as amended u/s 18 of Amendment Act—Held, yes—Award of enhanced interest @9% from the date of taking possession for one year and thereafter @15% till date of deposit made by Collector—Held: Claimant not entitled to additional compensation u/s 23 (1-A) as Collector made award prior to the date of Amendment Act came into force.

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Notification u/s 3(1) of the Kerala Land Acquisition Act, 1961 was published on March 21, 1979. The Collector u/s 11 thereof, passed his award on December 30, 1980. Thereafter, possession of some land was taken on January 15, 1991 and the balance land on March 13, 1981. The compensation was deposited on August 10, 1981. On a reference u/s 18 the Civil Court enhanced the compensation at Rs. 5,000 per cent in its award and decree dated February 28, 1985. The enhanced compensation was deposited on October 20, 1986 and December 3, 1986 respectively. The High Court on appeal, while confirming the enhanced compensation granted by the Civil Court disallowed interest u/ss 28 and 23(1-A) of the Land Acquisition (Amendment) 68 of 1984. The Amendment Act which came into force on September 24, repealed the Kerala Act and Central Act 1 of 1984 became applicable as amended by the Amendment Act. The High Court, relying upon sub-section (2) of Section 30 of the transitory provision of the Amendment Act held that since the award was made prior to the Amendment Act had come into force, the appellant was entitled to the interest u/s 30 of the Kerala Act @ 4%. These appeals were filed against the judgment of the High Court.

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Opposing the claim, the State relied on *Union of India v. Raghubir Singh*, [1989] 2 SCC 754, and claimed that if the award had been made

between April 30, 1982 and September 24, 1984, the claimant would be entitled to the benefit of the enhanced solatium under Section 23 (2) of the Principal Act. It was alleged that on the parity of the ratio therein by operation of sub-section (2) of the Section 30 of the Transitory provision of the Amendment Act which included Section 28 also, the appellant was not entitled to the enhanced interest under the amended Section 28 of the Principal Act.

Partly allowing the appeals, this Court

HELD : 1.1. The award of the Collector or the Court made between April 30, 1982 and September 24, 1984 would alone get attracted to Section 30(2) of the transitory provision of Land Acquisition (Amendment) Act, 68 of 1984. The restricted interpretation would not be understood to mean that section 23(2) of the Principal Act would not apply to the awarded decree of the Civil Court pending at the time when the Act came into force or thereafter. In this case, admittedly the award of the Civil Court was after the Act has come into force, namely Feb. 28, 1985. [700-C, E]

1.2. Therefore, if the sum which, in the opinion of Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the Court shall direct to pay interest on such excess @ 9% per annum from the date on which the Collector took possession of the land to the date of payment of such excess into the Court. By operation of the proviso if such excess or any part thereof is paid into the Court after the date of expiry of a period of one year from the date on which compensation is taken, interest @ 15% 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 the Court before the date of such expiry. Accordingly, the appellant is entitled to the enhanced interest @ 9% from the date of taking possession, namely January 15, 1981 and March 11, 1981 respectively, for one year @ 9% and thereafter @ 15% till the date of the deposit made by the Collector. Admittedly, the deposit of the enhanced compensation was made on October 20, 1986 and December 3, 1986. Therefore, the interest shall be calculated at the enhanced rate for the aforesaid record. [700-F-H, 701-A]

Union of India and another v. Raghubir (dead) by L.Rs. etc., [1989] 2 SCC 754, relied on.

A 1.3 The appellant is not entitled to the benefit of additional compensation under Section 23(1A) over the excess compensation as the Collector made the award to the date of Amendment Act came into force. [701-C]

K.S. Paripoorman v. State of Kerala and Ors., JT (1994) 6 SC 182, relied on.

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7375-78 of 1994.

From the Judgment and Order dated 4th and 5.10.86 of the Kerala High Court in L.A.A. No. 119, 120, 125 & 134 of 1986.

C P.S. Poti and V.B. Saharya for the Appellants.

A.S. Nambiar and M.T. George for the Respondents.

D The following Order of the Court was delivered :

Leave granted.

E Notification under Section 3(1) of the Kerala Land Acquisition Act, 1961 Act 21 of 1962 was published in the State Gazette on March 21, 1979. The Collector under Section 11 thereof passed his award on December 30, 1980. Thereafter, possession of some land was taken on January 15, 1991 and the balance land on March 13, 1981. The compensation was deposited on August 10, 1981. On a reference u/s 18 the Civil Court enhanced the compensation at Rs. 5,000 per cent in its award and decree dated February 28, 1965. The enhanced compensation was deposited on October 20, 1986 and December 3, 1986 respectively. The High Court on appeal, while confirming the enhanced compensation granted by the civil court disallowed interest under Sections 28 and 23 (1-A) of the Land Acquisition (Amendment) Act 68 of 1984, for short 'the Amendment Act'. By operation of the Amendment Act which has come into force on September 24, 1984 repealed the Kerala Act and thereby Central Act 1 of 1984 became applicable as amended by the Amendment Act. Section 15(b) and Section 18 of the Amendment Act amended Section 28 and Section 23(2) of the Central Act 1 of 1984. The High Court, relying upon sub-section (2) of Section 30 of the transitory provision of the Amendment Act has held that since the Award was made prior to the Amendment Act had come into force, the appellant is entitled to the interest under Section 30 of the Kerala

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Act at the rate of 4%. The question, therefore, is whether the appellant is entitled to the enhanced interest as envisaged under Section 28 as amended under Section 18 of the Amendment Act. A

It is contended for the State by Shri A.S. Nambiar, the learned senior counsel that in *Union of India & Anr. v. Raghbir Singh (dead) by Lrs. etc.*, [1989] 2 SCC 754 this Court had given restricted interpretation to Section 30(2) of the transitory provision holding that if the award has been made between April 30, 1982 and September 24, 1984, the claimant would be entitled to the benefit of the enhanced solatium under Section 23(2) of the Principal Act. On the parity of the ratio therein by operation of Sub-section (2) of Section 30 of the transitory provision of the Amendment which includes Section 28 also, the ratio therein equally be applicable to the facts of these cases. Since the award was made by the Court after the Act has come into force the appellant is not entitled to the enhanced interest under the amended section 28 of the Principal Act. We are unable to agree with the learned counsel. Sec. 30(2): B C

"30(2) - The provisions of sub-section (2) of s.23 and s.28 of the Principal Act, as amended by clause (b) of s.15 and s.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 after the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill 1982, in the House of the People) and before the commencement of this Act". D E F

This Court while noticing the effect of the amendment in Sub-sec. (2) of Sec. 30 in paragraph 31 considered the effect thereof thus :

"31. In construing Sec.30(2), it is just as well to be clear that the award made by the Collector referred to here is the award made by the Collector under Section 11 of the Parent Act, and the award made by the Court is the award made by the Principal Civil Court of Original Jurisdiction under Sec. 23(1) of the Parent Act on a reference made to it by the Collector under Sec. 19(18) of the Parent Act. There can be no doubt that the benefit of the enhanced solatium is intended by Sec. 30(2) in respect of an award G H

A made by the Collector between April 30, 1982 and September 24, 1984. Likewise the benefit of the enhanced solatium is extended by Sec. 30(2) to the case of an award made by the Court between April 30, 1982 and September 24, 1984, even though it be upon reference from an award made before April 30, 1982."

B This Court thereby clearly held that even in the pending reference made before April 30, 1982, if the civil court makes an award between April 30, 1982 and September 24, 1984, section 30(2) gets attracted and thereby the enhanced solatium was available to the claimants. Since Sec. 30(2) deals with both the Amendments under sec. 23(2) and the amendment to Sec.28
 C of the principle Act by Section 15(b) and Sec. 18 respectively by parity of the reasoning the same ratio applies to the awards made by the civil court between those dates. The conflict of decisions as to whether Sec. 23(2) as amended by Sec. 15(b) of the Amendment Act through Sec. 30(2) of the transitory provisions would be applicable to the pending appeals in the
 D High Court and the Supreme Court was resolved in the *Raghubir Singh's* case by the Constitution Bench holding that the award of the Collector or the Court made between April 13, 1982, and September 24 would alone get attracted to sec. 30(2) of the transitory provision. The restricted interpretation would not be understood to mean that Sec. 23(2) would not apply to the awarded decree of the civil court pending at the time when the Act, came into force or thereafter. In this case, admittedly the award of the civil court was made after the Act has come into force, namely, February 28, 1985.

Therefore, 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 Court shall direct to pay interest on such excess at the rate of 9% per annum from the date on which the Collector took possession of the land to the date of payment of such excess into the Court. By operation of the proviso, if such excess or any part thereof is paid into the Court after the date of expiry of a period of
 G one year from the date on which possession is taken, interest at the rate of 15% 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 the Court before the date of such expiry. Accordingly, the appellant is entitled to the enhanced interest @ 9% from the date of taking
 H possession, namely January 15, 1981 and March 11, 1981 respectively for

one year and thereafter @ 15% till the date of the deposit made by the Collector. Admittedly, the deposit of the enhanced compensation was made on October 20, 1986 and December 3, 1986. Therefore, the interest shall be calculated at the enhanced rates for the aforesaid record. A

The question relating to the payment of 12% additional compensation under Sec.23(1A) over the excess compensation has already been covered by the Constitution Bench Judgment of this Court in *K.S. Paripoornan v. State of Kerala & Ors.*, JT (1994) 6 SC 182. Therefore, the appellant is not entitled to this benefit as the Collector made the award prior to the date of the Amendment Act came into force. B

The appeals are accordingly allowed in part but in the circumstances, the parties are directed to bear their own costs. C

A.G.

Appeals partly allowed.