

Union Of India And Ors vs Filip Tiago De Gama Of Vedem Vasco De Gama on 30 November, 1989

Equivalent citations: 1990 AIR 981, 1989 SCR SUPL. (2) 336, AIR 1990 SUPREME COURT 981, 1990 (1) SCC 277, 1990 UJ(SC) 1 292, (1990) 1 UPLBEC 192, (1989) 4 JT 529 (SC), (1990) 2 LANDLR 193, (1990) 1 CIVLJ 838, (1990) 1 CURCC 72, (1990) 1 APLJ 50, (1990) 1 GOALT 1, (1990) 41 DLT 72, (1990) MAH LJ 724, (1990) 2 MAHLR 183, (1990) 1 LJR 513, (1990) 2 RRR 146, (1990) 1 SCJ 230, 1990 BOM LR 92 153

Author: K.J. Shetty

Bench: K.J. Shetty, A.M. Ahmadi

PETITIONER:
UNION OF INDIA AND ORS

Vs.

RESPONDENT:
FILIP TIAGO DE GAMA OF VEDEM VASCO DE GAMA

DATE OF JUDGMENT 30/11/1989

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
AHMADI, A.M. (J)

CITATION:
1990 AIR 981 1989 SCR Supl. (2) 336
1990 SCC (1) 277 JT 1989 (4) 529
1989 SCALE (2) 1226
CITATOR INFO :
D 1991 SC 2027 (9)

ACT:
Land Acquisition Act, 1894 Sections 4, 6, 23, 23(1A)
and 30-A was made between April 30, 1982 and September 24,
1984-Entitlement to higher Solatium and additional amount
under Section 23(IA)--Consideration of.

HEADNOTE:
By a notification issued under Section 4 of the Land

Acquisition Act and published in the Government Gazette on 26.10.1967, the State Government declared its intention to acquire the land of the Respondent on 23.2.1968. A notification under section 6 of the Act was published in the Gazette and on 5.3.1969. The Land Acquisition Officer declared award, determining compensation at the rate of 4 paise per square meter with solatium at 15 per cent. At the instance of the respondent--claimant, a reference under section 18 of the Act was made to the Distt. judge on May 28, 1985. The Civil Court awarded compensation at Rs.3 per square meter and also awarded solatium at 15 per cent and interest at 6 per cent from the date of taking possession of the land by the State till payment of compensation. Being dissatisfied, the Respondent preferred an appeal to the High Court seeking enhancement both of compensation and solatium at the rate of 30 per cent.

The High Court allowed the appeal, and granted three reliefs viz; (1) Additional amount at the rate of 12 per cent of the market value from the date of the notification under section 4 till the date of taking over possession; (2) interest at the rate of 9 percent for the first year from the date of taking possession and 15 per cent for the subsequent years and (3) Solatium at 30 per cent on the market value.

The appellant has thus filed the instant appeal after obtaining Special Leave.

There is no grievance as regards the interest awarded. The challenge relates to the grant of enhanced solatium and the additional amount of compensation. Appellants' contention is that sections 30(2) and 23(2) are not at all attracted and the claim of the Respondent on the said two counts is not sustainable.

337

Partly allowing the appeal, this Court,

HELD: Section 30(2) provides that the amended provisions of section 23(2) shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court between 30th April 1982 and 24th September 1984, or to an appellate order therefrom passed by the High Court or Supreme Court. The purpose of these provisions seems to be that the awards made in that interregnum must get higher solatium in as much as to awards made subsequent thereto. [343G-H]

If there is obvious anomaly in the application of law, the Court could shape the law to remove the anomaly. The Legislatures do not always deal with specific controversies which the Court decide. They incorporate general purpose behind the statutory words and it is for the Courts to decide specific cases. If a given case is well within the general purpose of the legislature but not within the literal meaning of the statute, then the Court must strike the balance. So construing the Court held that benefit of higher solatium under section 23(2) should be available also to the

present case. [344A-C]

In the instant case, on October 26, 1967, the notification under section 4 was issued. On March 5, 1969, the Collector made the award. The result is that on April 30, 1982 there was no proceeding pending before the Collector. Therefore Section 30, sub-section (1)(a) is not attracted to the case. Since the proceedings for acquisition commenced before 30th April 1982 Section 30, sub-section (1)(b) is also not applicable to the case. The case is therefore really gone by both ways. The claimant is therefore not entitled to additional amount provided under Section 23(IA). [346E-F]

The purpose of incorporating Transitional Provisions in any Act or amendment is to clarify as to when and how the operative parts of the enactments are to take effect. The transitional provisions generally are intended to take care of the events during the period of transition. [343A]

Kamalajammaniavar v. Special Land Acquisition Officer, [1985] 1 SCC 582; Bhag Singh v. Union Territory of Chandigarh, [1985] 3 SCC 737; State of Punjab v. Mohinder Singh, [1986] 1 SCC 365; Union of India v. Raghubir Singh, [1989] 2 SCC 754; Towne v. Eisher, 245, U.S. 418,425, 1918; Lenigh Valley Coal Co. v. Yensavage, 218 F.R. 547 at 553; Mahadeolal Kanodia v. The Administrator General of West Bengal, [1960] 3 SCR 578, referred to.

338

Special Land Acquisition Officer, Dandeli v. Soma Gopal Gowda, AIR 1986 Karnataka 179 at 183 (FB); Jaiwant Laxman P. Sardesai etc. etc. v. Government of Goa Daman & Diu & Anr., AIR 1987 Bom. 214 at 217 (FB), overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4802 of 1989.

From the Judgment and Order dated 7.9.1987 of the Bombay High Court in First Appeal No. 24 of 1986.

Anil Dev Singh, C. Ramesh, C.V.S. Rao and P. Parmeshwar for the Appellants.

S.K. Mehta, Dhruv Mehta, Aman Vachher, Atul Nanda and S.M. Satin for the Respondent.

The Judgment of the Court was delivered by K. JAGANNATHA SHETRY, J. Special Leave granted. This case raises yet another variant of a vexed question. Does Section 23(2) of the Land Acquisition Act, 1984 (as amended by Act 68 of 1984) providing for higher solatium proprio rigore apply to award made subsequent to 24 September 1984 even though the acquisition commenced prior to the said date. The appeal also raises another important question as to the applicability of section 23(IA) providing additional amount of compensation to award made in such acquisition

proceedings.

The facts are not in dispute and may be stated as follows:

By notification under section 4 of the Land Acquisition Act, 1894 (the 'Act') published in the Government Gazette on 26 October 1967, the State Government declared its intention to acquire the land belonging to the respondent for estab-

lishing Naval Air Station Dabolim. On 23 February 1968, notification under section 6 was published in the Gazette. On 5 March 1969 the Land Acquisition Officer declared award determining compensation at the rate of 40 paise per square meter with solatium at 15 per cent.

The claimant had sought reference under section 18 of the Act and reference was duly made to the Civil Court (District Judge). On 28th May 1985, the Court after investigation of the claim awarded compensation at Rs.3 per square meter. The Court also awarded solatium at 15 per cent and interest at 6 per cent from the date of taking possession till payment of compensation. Not being satisfied, the claimant preferred an appeal to the High Court seeking further enhancement of compensation and also solatium at 30 per cent. This claim was apparently based on the new provisions introduced by the Amending Act 68 of 1984. The High Court accepted the appeal and granted the reliefs in the following terms:

"The impugned award dated 28th May, 1986, is modified. The appellant is entitled to the added benefits. In that he shall be entitled to have the compensation at the rate of 12% of the market value from the date of section 4 notification till the date of possession or the date of award, whichever is earlier. The appellant is further entitled to interest at the rate of 9% for the first year from the date of taking over possession and thereafter at the rate of 15% per annum till the date of deposit or payment as the case may be. The appellant shall be entitled to further 15 per cent solatium in addition to the 15 per cent already granted to him. To the extent indicated above, the award shall stand modified."

The High Court has thus granted three more reliefs to the claimant: (i) Additional amount at the rate of 12 per cent of the market value from the date of notification under section 4 till the date of taking over possession; (ii) interest at the rate of 9% for the first year from the date of taking possession and 15 per cent for the subsequent years; and (iii) solatium at 30 per cent on the market value.

There is no grievance made in this appeal as to the second of the reliefs granted to the claimant. The claimant is entitled to the interest under section 28 of the Act. The challenge is only against the first and the third of the said reliefs. They were evidently given under the amended sections 23(IA) and 23(2) of the Act.

We will first take up the question of solatium. On 30 April 1982, the corresponding Bill of the Amending Act 68 of 1984, namely, Land Acquisition (Amendment) Bill 1982, was introduced in

Parliament. On 24th September 1984 it became law as the Land Acquisition (Amendment) Act, 68 of 1984, when it received assent of the President. Before the amendment, Section 23(2) provided solatium at 15 per cent on the market value. After amendment by Act 68 of 1984 solatium was raised to 30 per cent on the market value. Section 23(2) now reads:

"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."

The question herein is whether the higher solatium is attracted to the present case. Section 23(2) has been given limited retrospectivity by supplying transitional provisions under section 30(2). Section 30(2) reads:

"30. Transitional provisions:

(1) xxxxxxx xxxxxxx
xxxxxxxxx

(2) The provisions of sub-section (2) of Section 23 of the principal Act, as amended by clause (b) of Section 15 and Section 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 princi-

pal Act after the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1984, in the House of the People) and before the commencement of this Act."

The scope of retrospective operation of Section 23(2) was first explained in *Kamalajammaniavar v. Special Land Acquisition Officer*, [1985] 1 SCC 582. A two Judge Bench held that the award of 30 per cent solatium will apply only where the award appealed against was made by the Collector or Court during the period between 30 April 1982 and 24 September 1984. This decision was rendered on 14 February 1985. Shortly thereafter there was another decision by a three-Judge Bench in *Bhag Singh v. Union Territory of Chandigarh*, [1985] 3 SCC 737. There a contrary view was expressed. It was held that even if an award is made by the Collector or Court on or before 30 April, 1982, and an appeal against such award is pending before the High Court or the Supreme Court on 30 April 1982 or is filed subsequent to that date, 30 per cent solatium under section 23(2) should be allowed. In taking that view, Bhag Singh overruled *Kamalajammaniavar* and approved of the opinion expressed in another three-Judge Bench in *State of Punjab v. Mohinder Singh*, [1986] 1 SCC 365. But the recent Constitution Bench in *Union of India v. Raghbir Singh*, [1989] 2 SCC 754 has overruled Bhag Singh and Mohinder Singh and reiterated the view expressed in *Kamalajammaniavar*. Pathak, CJ., speaking for the Court in Raghbir Singh case rounded off his discussion thus (at 782):

"We think that what Parliament intends to say is that the benefit of section 30(2) will be available to an award by the Collector or the Court made between the aforesaid

two dates or to an appellate order of the High Court or of the Supreme Court which arises out of an award of the Collector or the Court made between the said two dates. The word 'or' is used with reference to the stage at which the proceeding rests at the time when the benefit under section 30(2) is sought to be extended. If the proceeding has terminated with the award of the Collector or of the Court made between the aforesaid two dates, the benefit of section 30(2) will be applied to such award made between the aforesaid two dates. If the proceeding has passed to the stage of appeal before the High Court or Supreme Court, it is at that stage when the benefit of section 30(2) will be applied. But in every case, the award of the Collector or of the Court must have been made between April 30, 1982 and September 24, 1984."

In stating thus, the decision has set at rest the controversy as to entitlement of higher solatium to cases pending as on the date of commencement of the Amending Act. Section 23(2) was held to apply to awards made in between 30 April 1982 and 24 September 1984. Obviously they must be awards in acquisition commenced prior to the said dates. The award may be of the Collector or Court. One or the other must receive thirty per cent solatium on the market value of the land. More important, that the higher solatium could also be given by the High Court or the Supreme Court in appeals against such award.

But these decisions do not solve the problem presented here. The award with which we are concerned does not fall within the interregnum i.e. between 30 April 1982 and 24 September 1984. To repeat the facts: The acquisition commenced on 26 October 1967 when the notification under section 4(1) of the Act was published. On 5 March 1969 the Collector made the award and on 28 May 1985 the reference court made the award. Both the awards, thus apparently fall outside the period prescribed under section 30(2).

Counsel for the appellant on the aforesaid facts rules out the applicability of section 30(2) in the first place. Secondly, he also ruled out the applicability of section 23(2). The first contention was based on the plain terms of Section 30(2) and the second on the ground that section 23(2) with its isolated splendour is not retrospective in operation. He thus submitted that the claimant's case could not be saved for higher solatium either under Transitional Provisions or by amended Section 23(2) of the Act and it was gone both ways.

This submission reminds us of the words of Shakespeare in the Merchant of Venice, where Lancelot tells Jessica:

"Truely then I fear you are damned both by father and mother. When I shun scylla your father, I fail into charybdis your mother. Well, you are gone both ways." (The Merchant of Venice 3.5).

The submission that Section 23(2) by itself has no retrospective operation seems to be justified. It is significant to note that section 23(2) forms part of a scheme of determining compensation for land acquired under the Act. It provides 30 per cent solatium on the market value of the land in consideration of the compulsory nature of

the acquisition. It thus operates on the market value of the land acquired. The market value of the land is required to be determined at the date of publication of the notification under section 4(1). It cannot be determined with reference to any other date. That has been expressly provided for under section 23(1) of the Act. In the instant case, section 4(1) notification was published on 20 October 1967. The Amending Act 68 of 1984 came into force on 24 September 1984. The amended section 23(2) by itself is not retrospective in operation. It can not proprio vigore apply to awards in respect of acquisition proceedings commenced prior to 24 September 1984. If, therefore, section 30(2) does not cover the present case, then amended Section 23(2) has no part to play.

This in effect is the result of the plain meaning rule of interpreting Section 30(2) of the Amending Act 68 of 1984. But then, it would seem very odd indeed and anomalous too to exclude the present case from the operation of section 30(2). Section 30(2) is the Transitional Provisions. The purpose of incorporating Transitional Provisions in any Act or amendment is to clarify as to when and how the operative parts of the enactments are to take effect. The Transitional Provisions generally are intended to take care of the events during the period of transition. Mr. Francis Bennion in his book on Statutory Interpretation (14 Edition, p. 442) outlines the purpose of such provisions:

"189. Transitional Provisions Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulates the coming into operation of those enactments and modify their effect during the period of transition. Where an Act fails to include such provisions expressly, the Court is required to draw such inferences as to the intended transitional arrangements as, in the light of the interpretative criteria, it considers Parliament to have intended."

The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation "Words are certainly not crystals, transparent and unchanged" as Mr. Justice Holmes has wisely and properly warned. (*Town v. Eisher*, 245, U.S. 418, 425, 1918). Learned Hand, J., was equally emphatic when he said. "Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them." (*Lenigh Valley Coal Co. v. Yensavage*, 218 F.R. 547 at 553.) Section 30(2) provides that amended provisions of Section 23(2) shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the collector or Court between 30 April 1982 and 24 September 1984, or to an appellate order therefrom passed by the High Court or Supreme Court. The purpose of these provisions seems to be that the awards made in that interregnum must get higher solatium in as much as to awards made subsequent to 24 September 1984. Perhaps it was thought that awards made after the commencement of the Amending Act 68 of 1984 would be taken care of by the amended Section 23(2). The case like the present one seems -to have escaped

attention by innocent lack of due care in the drafting.

The result would be an obvious anomaly as will be indicated presently. If there is obvious anomaly in the application of law the Court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature. That could be done, if necessary even by modification of the language used. [See: *Mahadeolal Kanodia v. The Administrator General of West Bengal*, [1960] 3 SCR 5/8]. The legislators do not always deal with specific controversies which the Court decide. They incorporate general purpose behind the statutory words and it is for the courts to decide specific cases. If a given case is well within the general purpose of the legislature but not within the literal meaning of the statute, then the court must strike the balance.

The criticism that the literal interpretation of Section 30(2), if adhered to would lead to unjust result seems to be justified. Take for example; two acquisition proceedings of two adjacent pieces of land, required for the same public purpose. Let us say that they were initiated on the same day--a day sometime prior to 30 April 1982. In one of them the award of the Collector is made on 23 September 1984 and in the other on 25 September 1984. Under the terms of Section 30(2) the benefit of higher solatium is available to the first award and not to the second. Take another example; the proceedings of acquisition initiated, say, in the year 1960 in which award was made on 1 May 1982. Then the amended Section 23(2) shall apply and higher solatium is entitled. But in an acquisition initiated on 23 September 1984, and award made in the year 1989 the higher solatium is ruled out. This is the intrinsic illogicality if the award made after 24 September 1984, is not given higher solatium. Such a construction of Section 30(2) would be vulnerable to attack under Article 14 of the Constitution and it should be avoided. We, therefore, hold that benefit of higher solatium under section 23(2) should be available also to the present case. This would be the only reasonable view to be taken in the circumstances of the case and in the light of the purpose of Section 30(2). In this view of the matter, the higher solatium allowed by the High Court is kept undisturbed.

This takes us to the second question which we have formulated at the beginning of the judgment: Whether the claimant is entitled to additional amount of compensation provided under Section 23(IA) of the Act? This is equally a fundamental question and seemingly not covered by any of the previous decisions of this Court.

Section 23(IA) reads as follows:

"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 under Section 4, sub-section (1), in respect of such land to the date of 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 sub-section 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 objective words used in this sub-section are similar to those that are used in Section 23(2). It enjoins a duty on the Court to award the additional amount at twelve per cent on the market value of the land for the period prescribed thereunder. But this again is a part of the scheme for determining compensation under Section 23(1) of the Act. It also operates on the market value of the land acquired. It is plainly and distinctly prospective in its operation since market value has to be determined as on the date of publication of notification under section 4(1). But the legislature has given new starting point for operation of section 23(IA) for certain cases. That will be found from Section 30 sub-section 1(a) and (b) of the Transitional Provisions. They read as follows:

Section 30: Transitional Provisions:

(1) The provision of sub-section (IA) of Section 23 of the principal Act, as inserted clause (a) of section 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 intro-

duction of the Land Acquisition (Amendment) Bill 1982 [in the House of the 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 date of commencement of this Act."

Entitlement of additional amount provided under Section 23(1A) depends upon pendency of acquisition proceedings as on 30 April 1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(IA) shall be applicable to acquisition proceedings pending before the Collector as on 30 April 1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-section (1)(b) provides that section 23(1A) shall be applicable to every acquisition proceedings commenced after 30 April 1982 irrespective of the fact whether the Collector has made an award or not before 24 September 1984. The final point to note is that Section 30 sub-section (1) does not refer to Court award and the Court award is used only in section 30 sub-section (2). In the case before us, on 26 October 1967, the notification under section 4 was issued. On 5 March 1969 the Collector made the award. The result is that on 30 April 1982 there was no proceedings pending before the Collector. Therefore, section 30 sub-section (1)(a) is not attracted to the case. Since the proceedings for acquisition commenced before 30 April 1982, section 30 sub-section (1)(b) is also not applicable to the case. Here, the case is really gone by both ways. It cannot be saved from Scylla or Charybdis. The claimant

is, therefore, not entitled to additional amount provided under Section 23(I-A).

Before we part with the case, it is important that we should refer to two authorities of the High Courts which have taken contrary view.

As to the applicability of Section 23(IA) to pending cases, the Karnataka High Court in Special Land Acquisition Officer, Dandeli v. Soma Gopal Gowda, AIR 1986 Karnataka 179 at 183 (FB) has expressed the view that for giving an additional amount calculated at the rate of 12 per cent per annum on the market value of the land, no distinction could be made respecting lands acquired before or after the coming into force of the Amending Act. In all pending cases whether on reference or on appeal, the Court is required to apply the provisions of Section '23(1A) in determining compensation payable to claimants. For this conclusion the Court relied upon the judgment of this Court in Bhag Singh case. The Bombay High Court in Jaiwant Laxman P. Sardesai etc. etc. v. Government of Goa, Daman and Diu and Ant., AIR 1987 Bom 214 at 217 (FB) has also accepted a similar line of reasoning. In fact the reasons are so much similar, the cases look like twins.

Both the High Courts have focussed attention on the terms and phraseology used in Section 30 sub-section (1) namely, " shall apply, and shall be deemed to have applied, also to, and in relation has also been proceedings for acquisition ". The conclusion has also been rested on the mandatory words of Section 23(IA). It was said that it enjoins a duty on the court to award the amount in every case and that mandate of the legislature could not be ignored. The decision of this Court in Bhag Singh appears to be the single motive force guiding the approach and reaching the conclusion. But it may be noted that the aforesaid phraseology used in Section 30 sub-section (1) is quite similar to that used in Section 30 sub-section (2). The scope of those words has already been examined and no more need to be stated in that regard since Bhag Singh has been overruled in Raghubir Singh. The view taken by the High Courts of Karnataka and Bombay therefore, could no longer be considered as good law and the said decisions are accordingly overruled.

In the result, the appeal is allowed in part. The judgment of the High Court is modified and the compensation award under Section 23(IA) is deleted. The judgment and decree in other respects are kept undisturbed. ' In the circumstances of the case, we make no order as to costs.

Y. Lal
allowed.

Appeal