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PRALHAD AND ORS.

v.

STATE OF MAHARASHTRA AND ANR.

(Civil Appeal Nos.1745-53 of 2004)

SEPTEMBER 15, 2010

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[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

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Land Acquisition Act, 1894 – s.23(1A) – Enhancement of compensation – Amendment made in the Act in 1984 – Amended provision of s.23(1A) provided for additional benefits to landowners – Such amendment made applicable to every pending acquisition proceeding under the Act as on 30-04-1982 – Entitlement of appellants-land owners to benefit of s.23(1A) – Held: On facts, the acquisition proceedings which affected the appellants-landowners commenced with notification u/ s.4, which is dated 5-3-1983 and the award was passed on 1-3-1984 – Therefore, the appellants-landowners were entitled to benefit of the amending provision u/s.23(1A) – High Court ought to have granted such benefit to the landowners on the basis of their application under O.41, r.33 CPC notwithstanding the fact that they did not file any appeal before the High Court from the order of the Reference Court – Code of Civil Procedure, 1908 – O. 41 r. 33 – Scope, purpose and ambit of.

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Constitution of India, 1950 – Art. 141 – Law declared by Supreme Court is binding on the High Court under Art. 141 and the High Court is bound to follow the same.

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The land belonging to appellants-landowners was acquired under the Land Acquisition Act, 1894. The Land Acquisition Collector passed the award. Aggrieved, the landowners filed a Reference application under Section 18 of Act for enhancement of compensation. Meanwhile, the Act was amended and benefit was given to the

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landowners under the amended provision i.e. Section 23(1A) of the Act. The amendment was made applicable to every pending acquisition proceeding under the Act on 30-04-1982. A

The Reference Court enhanced the compensation. The State Government challenged the award of the Reference Court in the High Court. The landowners did not file any appeal or cross-objections against the judgment of the Reference Court, but filed applications under Order 41, rule 33 CPC. B

The basic issue before the High Court was whether in absence of an appeal or cross-objection from the claimants, additional benefits could be granted to the appellants as provided in Section 23(1A) of the Act. The High Court held that it had no jurisdiction to award additional benefits under Section 23 (1A) of the Act and confirmed the award of the Reference Court. C D

Partly allowing the instant appeals, the Court

HELD:1. In the instant case, the acquisition proceeding commenced with notification under Section 4 of the Land Acquisition Act, 1894, which is dated 5.3.1983 and the award was passed on 1.3.1984. Therefore, the appellants-landowners who were affected by the instant acquisition proceeding were entitled to the benefit of the amending provision under Section 23(1A). [Para 16] [924-A-B] E F

K.S. Paripoornan v. State of Kerala and others (1994) 5 SCC 593 and *Prem Chand and others vs. Union of India* AIR 2010 SC 1308 – relied on. G

Union of India v. Zora Singh, (1992) 1 SCC 673 – referred to. H

- A 2. The provision of Order 41, Rule 33 of CPC is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which *ought* to have been made as the case may require. The expression 'Order ought to have been made' would obviously mean an Order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying 'the court may pass such further or other Order as the case may require.' This expression 'case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law. [Para 17] [924-D-G]

- E *Vanarsi v. Ramphal*, AIR 2004 SC 1989 and *Samundra Devi and others v. Narendra Kaur and others* (2008) 9 SCC 100 – referred to.

Mulla CPC, 15th Edition, pg. 2647 – referred to.

Case Law Reference:

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|---|------------------|-------------|---------|
| F | (1994) 5 SCC 593 | relied on | Para 11 |
| | (1992) 1 SCC 673 | referred to | Para 12 |
| | AIR 2010 SC 1308 | relied on | Para 15 |
| G | AIR 2004 SC 1989 | referred to | Para 20 |
| | (2008) 9 SCC 100 | referred to | Para 20 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1745-1753 of 2004.

PRALHAD AND ORS. v. STATE OF MAHARASHTRA 919
AND ANR.

From the judgment and order dated 09.02.1999 of the High Court of Bombay at Nagpur and order dated 09.02.1999 of the High Court of Bombay at Nagpur in C.A. No. 1518 of 1998 and 1546 to 1553 of 1998. A

V.S. Mohta, Vishnu B. Saharya and Viresh B. Saharya (for Saharya & Co.) for the Appellants. B

Manish Pitale (for Asha G. Nair) for the Respondents.

The Judgment of the Court was delivered by

GANGULY, J. 1. The relevant facts common in these appeals are that a preliminary notification dated 5.03.1983 was issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as, 'the Principal Act') in respect of the land at Ghonga Tank in village Ghonga, Taluk Barshitakli, Akola, Nagpur. It was followed by a notification under Section 6 of the Principal Act on 28.07.1983. C D

2. The Land Acquisition Collector passed his award on 1.03.1984, awarding Rs.3600/- per acre for the acquired lands. Landowners, being aggrieved, filed a Reference application under Section 18 of Act on 5.04.1984, for enhancement of compensation. E

3. Meanwhile, the Land Acquisition (Amendment) Act, 1984, being Act 68 of 1984 (hereinafter 'the Amendment Act') received the assent of the President on 24.09.1984 for amending the Principal Act. The amendment was made applicable to every pending proceeding for acquisition of any land under the Principal Act and which were pending on 30.04.1982. F G

4. On 25.04.1985, the Additional District Judge, Akola, in the Reference Proceeding enhanced the compensation to Rs.13,000/- per acre, with solatium at the rate of 30% as per the amendment and interest at the rate of 9% p.a. from the date of possession. H

A 5. The State of Maharashtra challenged the award of the
Reference Court in the High Court of Bombay (Nagpur Bench),
Nagpur. The landowners did not file any appeal or cross-
objections against the judgment of the Reference Court, but
B filed applications under Order 41, Rule 33 of the Civil
Procedure Code (for short "CPC") claiming additional
compensation at the rate of 12% p.a. on the market value for
the period commencing from the date of publication of the
award and interest at 9% p.a. on enhanced compensation
C from the date of taking possession for a period of one year
and at the rate of 15% for the further period, in view of the
amendment to the Principal Act.

6. The High Court, by judgment and order dated
9.02.1999, dismissed the appeals of the State of Maharashtra
as well as the applications filed by the landowners under Order
D 41, Rule 33 of CPC. The High Court relied on various judgments
of this Court and held that it had no jurisdiction to award
additional benefits under Section 23 (1A) of the Land
Acquisition Act, 1894, while confirming the award of the
Reference Court.

E 7. The present appeals are filed by the landowners before
this Court, challenging the dismissal of their application under
Order 41, Rule 33 of the CPC by the High Court.

F 8. The basic issue before the High Court was whether in
absence of an appeal or cross-objection from the claimants,
is it permissible to grant additional benefits to the appellants
as provided in Section 23 (1A) of the Amendment Act?

G 9. The benefit which is given to the landowners under the
amendment provision, which came by virtue of Section 15 of
Act 68 of 1984, is now Section 23 (1A) of the Principal Act.
Section 23 (1A) of the Principal Act runs as under:

"23(1A) In addition to the market value of the land, as

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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 the award of the Collector or the date of taking possession of the land, whichever is earlier. A B

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.] C

(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. D

10. The benefit of the aforesaid amended provision to the landowners was provided by Section 30 (1) of Act 68 of 1984. The said Section 30, which was known as transitional provision, read as under: E

30. Transitional Provisions- (1) The provisions of sub-section (1-A) of section 23 of the Principal Act, as inserted by clause (a) of section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,- F

(a) every proceeding for the acquisition of any land under the Principal Act pending on the 30th day of April, 1982 [the date of introduction 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;* G

(b) every proceeding for the acquisition of any land under the Principal Act commenced after that date, whether or H

A not an award has been made by the Collector before the date of commencement of this Act.

B (2) The provisions of sub-section (2) of section 23 and section 28 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 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 11. The said transitional provision came up for consideration before this Court in several judgments and there was some divergence of judicial opinion which was ultimately settled by the Constitution Bench Judgment of this Court in the case of *K.S. Paripoorman vs. State of Kerala and others*, (1994) 5 SCC 593.

E 12. In the case of *Paripoorman* (supra) the majority judgment was rendered by Justice S.C. Agrawal. In rendering the majority judgment their Lordship held that the decision of this Court in *Union of India vs. Zora Singh*, (1992) 1 SCC 673, is not correct and in paragraph 70 of the judgment the learned Judges held that the Parliament has given a clear indication of its intention in Section 30 (1), which was a transitional provision. The learned Judges held that since a clear intention has been given in Section 30(1), there is no scope for any speculation about the parliamentary intention by reading Section 23(1A) in isolation from Section 30(1) of the Act. (See para 70)

G 13. The learned Judges also noted the purpose of a transitional provision in the statute and referred to Francis

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PRALHAD AND ORS. v. STATE OF MAHARASHTRA 923
AND ANR. [ASOK KUMAR GANGULY, J.]

Bennion on Statutory Interpretation and also to Thornton on Legislative Drafting. Relying on those treaties on interpretation, this Court held that Section 23 (1A) and Section 30 are interconnected (See para 73, page 639). A

14. In paragraph 74 at page 639 and 640 of the report this Court, on a conjoint reading of Section 23(1A) with Section 30(1), held as follows: B

“...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 wherein award was made after 30-4-1982 but before the date of the commencement 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...” C
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15. In subsequent judgment, in *Prem Chand and others vs. Union of India*, AIR 2010 SC 1308, following the ratio in *Paripooman* (supra) this Court granted relief to the claimants in accordance with the provision of Section 23(1A) of the Act. In that case the land acquisition commenced on 22nd of March G
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A 1978 and the award was passed on 25th February 1983.

B 16. Keeping in mind the aforesaid declaration of law, this Court holds that in the instant case the acquisition proceeding commenced with notification under Section 4 which is dated 5.3.1983 and the award was passed on 1.3.1984. Therefore, the landowners who were affected by the instant acquisition proceeding were entitled to the benefit of the amending provision under Section 23(1A) in view of the ratio in *Paripooman* (supra).

C 17. Now, the only question which remains is whether the landowners, without filing an appeal before the High Court from the order of the Reference Court, are entitled to the aforesaid benefit on the basis of their application under Order 41 Rule 33 of CPC.

D 18. The provision of Order 41, Rule 33 of CPC is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. E Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which *ought* to have been made as the case may require. The expression 'Order ought to have been made' would obviously mean an Order which justice of the F case requires to be made. This is made clear from the expression used in the said Rule by saying 'the court may pass such further or other Order as the case may require.' This expression 'case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict G or a prohibition clamped by law.

H 19. In fact, the ambit of this provision has come up for consideration in several decisions of this Court. Commenting on this power, Mulla (CPC, 15th Edition, pg. 2647) observed that this Rule is modelled on Order 59, Rule 10(4) of the

Supreme Court of Judicature of England, and Mulla further opined that the purpose of this rule is to do complete justice between the parties.

20. In *Vanarsi vs. Ramphal*, AIR 2004 SC 1989, this Court construing the provisions of Order 41 Rule 33 of CPC held that this provision confers powers of the widest amplitude on the appellate court so as to do complete justice between the parties. This Court further held that such power is unfettered by considerations as to what is the subject matter of appeal or who has filed the appeal or whether the appeal is being dismissed, allowed or disposed of while modifying the judgments appealed against. The learned Judges held that one of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice. The learned Judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the prejudice of a person who is not a party before the Court; secondly, this power cannot be exercised in favour of a claim which has been given up or lost; and thirdly, the power cannot be exercised when such part of the decree which the party has been permitted to become final by a party is reversed to the advantage of that party. (See para 15 at pg. 1997). It has also been held by this Court in *Samundra Devi and others vs. Narendra Kaur and others*, (2008) 9 SCC 100 (para 21) that this power under Order 41, Rule 33 of CPC cannot be exercised ignoring a legal interdict.

21. In the instant case, the right of the landowner to receive the benefit under section 23(1A) of the Principal Act is legally permissible in view of the majority decision in *Paripoorman* (supra). Therefore, the law declared by this Court in *Paripoorman* (supra) is binding on the High Court under Article 141 of the Constitution and High Court is bound to follow the same, especially when an application has been made by the landowner under Order 41 Rule 33 of CPC.

- A 22. In view of the aforesaid interpretation given to Order 41 Rule 33 of CPC by this Court, we are of the opinion that the High Court denied the relief to the appellants to which they are entitled in view of the Constitution Bench decision in *Paripoorman* (supra), by taking a rather restricted and narrow
- B view of the scope of Order 41 Rule 33 of CPC and also on a misconstruction of the ratio in *Paripoorman* (supra).

- C 23. For the reasons aforesaid, this Court holds that the appellants are entitled to the benefit of the amended provision of Section 23 (1A) of the Principal Act in view of the clear law laid down by this Court in *Paripoorman* (supra). The appeals are allowed to the extent indicated above. No order as to costs.

B.B.B

Appeals partly allowed.