

*Before Nirmal Yadav, J.*

**PUNJAB STATE,—Appellant**

*versus*

**RAKSHA DEVI (DIED) THROUGH HER L.Rs,—Respondents**

**R.F.A. NO. 946 OF 1987**

9th December, 2005

*Land Acquisition Act, 1894—S.23(1-A)—Claimants seeking enhancement of compensation for acquisition of their building—While enhancing the compensation, Addl. District Judge also granting the benefit to respondents under the amended provisions of S.23(1-A) of the Act—Challenge thereto—Award passed by the Collector prior to the date of commencement of the Amending Act—Claimants not entitled to the benefit provided under section 23 (1-A) of the Act—Appeal allowed.*

*Held*, that in respect of the acquisition proceedings initiated prior to the date of commencement of the Amending Act, the payment of additional amounts payable under section 23(1-A) of the Act, is to be restricted to the case referred to in Clauses (a) and (b) of sub-section (1) of Section 30 of the Amending Act. Since the Land Acquisition Collector's award is dated 21st January, 1982 which precedes 30th April, 1982, i.e. the date when the original Bill for amending the provisions of the Land Acquisition Act introducing Section 23(1-A) of the Act was proposed, the claimants would not be entitled to the benefit provided under section 23(1-A) of the Act.

(Para 8)

Ms. Neelofar A. Praveen, A.A.G., Punjab, *for the appellants.*

None for the respondents

### **JUDGMENT**

**NIRMAL YADAV, J.**

(1) This appeal has been preferred by the State of Punjab through Collector, Hoshiarpur, challenging the order dated 29th November, 1986 passed by Additional District Judge, Hoshiarpur.

(2) The short question raised in the present appeal is— whether the claimant-respondents are entitled to the benefit of the amended provisions of Section 23(1-A) of the Land Acquisition Act or not ?

(67)

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(3) The facts, in brief, are that building (shop-cum-residential house) of claimants-respondents was acquired,—*vide* gazette notification, under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') published on 21st March, 1981. The Land Acquisition Collector,—*vide* his award No. 39, dated 21st January, 1982 granted Rs. 44,300 as compensation for the shop-cum-residential building. Aggrieved by the said award, the claimant made a reference to the Court of District Judge for enhancement of compensation. The Additional District Judge, Hoshiarpur,—*vide* order dated 29th November, 1986 allowed the reference and held the claimant to be entitled to Rs. 40,583 being value of the property, share in the well and electric installation. She has also been held entitled to the amount calculated at the rate of 12% per annum on the market value of the property with effect from 21st March, 1981 to 21st January, 1982, the date of her dispossession. She has further been held entitled to solatium at the rate of 30% on the market value of the building and interest at the rate of 9% on the enhanced rate of compensation on the market price of the acquired building from the date of taking possession till the date of payment of such excess amount.

(4) The State of Punjab has challenged the award to the extent of the benefit granted to the claimants under the amended provisions of Section 23(1-A) of the Act.

(5) Since, no one put in appearance of behalf of the respondents in spite of the case having been called out on numerous occasions on 25th November, 2005, the arguments advanced by the State counsel were heard and order was kept reserved.

(6) The learned State counsel argued that the claimant is not entitled to the benefit of the provisions of Section 23(1-A) of the Act as the award in the present case has been passed on 21st January, 1982 i.e. well before the date of proposed Amending Act i.e. 30th April, 1982. In this behalf, she placed reliance on a judgment of the Apex Court in the case of **K. S. Paripoornan Singh versus State of Kerala, (1)** and a judgment of this Court in **Punjab State and others versus Gopi Chand, (2)**.

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(1) 1995 (1) RRR 40 (S.C.)

(2) 2004 (3) RCR (Civil) 679

(7) The Apex Court in **K. S. Paripoornan's** case (*supra*) has observed as under :—

“..... We find no merit in this contention. It was open to Parliament of apply the provision of Section 23(1-A) only to awards whether of the Collector or the Court made after the commencement of the amending Act. ....Merely because parliament has decided to give a limited retrospectivity so as to cover awards that were made by the Collector during the period from April 30, 1982, when the original Bill was introduced in Lok Sabha till the date of the commencement of the amending Act would not result in the said provisions being infected with the vice of arbitrariness. The choice of April 30, 1982, the date on which the original Bill was introduced in Parliament, cannot be said to be arbitrary and confining the ambit of retrospectivity so as to exclude awards made by Collector prior to April 30, 1982 would not render the provisions of Section 30(1) of the amending Act unconstitutional. The question of expanding the field of retrospectivity so as to cover all the awards made by the Collector prior to the commencement of the amending Act irrespective of the date when they were made, therefore does not arise.”

(8) In view of the reasons mentioned above, it can well be concluded that in respect of the acquisition proceedings initiated prior to the date of commencement of the Amending Act, the payment of additional amounts payable under Section 23(1-A) of the Act, is to be restricted to the case referred to in clauses (a) and (b) of sub-section (1) of Section 30 of the Amending Act. Since the Land Acquisition Collector's award is dated 21st January, 1982 which precedes 30th April, 1982, i.e. the date when the original Bill for amending the provisions of the Land Acquisition Act introducing Section 23(1-A) of the Act was proposed, the claimants would not be entitled to the benefit provided under Section 23(1-A) of the Act.

(9) In this view of the matter, the order of the Additional District Judge i.e. the reference Court, in so far as it relates to grant of benefit of amended provisions of Section 23(1-A) of the Act, deserves to be set aside.

(10) Accordingly, the appeal is allowed. The claimants shall not be entitled to the benefit of the amended provisions of Section 23(1-A) of the Act.