K.S. PARIPOORNAN

v.

STATE OF KERALA AND OTHERS

SEPTEMBER 12, 1994

[M.N. VENKATACHALIAH C.J., P.B. SAWANT, S.C. AGRAWAL, R.M. SAHAI AND S.P. BHARUCHA, JJ.]

Land Acquisition Act, 1894 (as amended in 1984)—S.23(1- A)—Land Acquisition (Amendment) Act, 1984—S.30(1)—Award of additional amount payable under s.23(1-A) in pending proceedings before the reference court—Held, (per majority) S.23(1-A) confers substantive right to additional amount, and is prospective—Reference court may not award additional amount in pending proceedings except to the extent provided in S.30(1) of the amending Act—Transitional provisions in amending Act, held, is integral part of amended provisions—Zora Singh, held, reversed—Transitional Provisions—Prospectivity.

Interpretation of Statutes—Retrospectivity—Land Acquisition Act, 1894—S.23(1-A)—Land Acquisition (Amendment) Act, 1984—S.30(1)—Held, (per majority) statute is retrospective if it operates on cases or facts coming into existence before its commencement, and affects, even if for future only, past transactions or other conduct—Held further, statute dealing with substantive rights is prima facie prospective unless it expressly or by necessary implication has retrospective effect—S.23(1-A), held, is prospective, and does not apply to pending proceedings except to extent provided by the statute.

Interpretation of Statutes—Extrinsic aids—Statement of Objects and Reasons and speeches in Parliament—Held, (per majority) cannot be used as aids to construction of statute.

Constitution of India—Article 14—Land Acquisition Act, 1894—S.23(1-A)—Land Acquisition (Amendment) Act, 1984—S.30(1)—Limited retrospectivity—Provisions having effect from date of original Bill being introduced in Lok Sabha—Held, not arbitrary—Constitutionality upheld—Interpretation of Statutes.

Constitution of India—Article 31 A(1) Proviso—Land Acquisition Act, 1894 (as amended in 1984)—S.23 (1-A)—Land Acquisition (Amendment)

Act, 1984—S.30(1)—Held, (per majority) object of Article 31 A is to facilitate agrarian reforms—Principal law not relating to agrarian reform, Article 31A has no bearing on the provisions of the Land Acquisition Act, 1894 and the Land Acquisition (Amendment) Act, 1984.

In *Union of India* v. *Zora Singh*, [1992] 1 SCC 673 decided by a three Judge Bench, it was held that the payment of additional amount @12% per annum on the market value under s.23(1-A) of the Land Acquisition Act 1894 ('Act'), inserted by the Land Acquisition (Amendment) Act 1984 ('amending Act') is to be ordered in every case where reference was pending before the reference court on the date of commencement of the amending Act even though the award of the Collector was made prior to April 30, 1982. The correctness of this view was doubted by a two Judge bench and the matter was referred to a larger bench, for considering the correctness of the decision in *Zora Singh* Case.The question referred for examination by the larger bench was whether the additional amount payable @12% per annum on the market value under s.23(1-A) is restricted to matters referred to in s.30(1)(a) and (b) of the amending Act or is to be awarded in every case where the reference was pending before the reference court on September 24, 1984 (the date of commencement of the amending Act) irrespective of the date on which the award was made by the Collector.

While urging that *Zora Singh* lays down the correct law, it was *inter alia* contended for the claimants that S.23(1-A) does not involve giving retrospective effect only because a part of the requisites for its action is drawn from events antecedent to its passing; that the language used in S.23(1-A) being clear, its scope cannot be limited by the Transitional Provisions in s.30(1) of the amending Act; that where a reference has been made under the Act, the acquisition proceedings do not terminate with the making of the award by the Collector; and the object of the amending Act shows that it was Parliament's intention to remove the hardship caused by pendency of acquisition proceedings for long periods rendering the scale of compensation to be unrealistic.

For the Union of India and the States it was contended that since the insertion of S.23(1-A) imposes an additional amount by way of compensation, it can only apply to proceedings for acquisition initiated subsequent to the coming into force of the amending Act, except to the limited extent of retrospectivity given by S.30(1) of the amending Act.

Disposing of the reference, this Court A

HELD : *(Per Majority Venkatachaliah C.J., Agrawal & Bharucha JJ.)*

1. In respect of the acquisition proceedings initiated prior to the commencement of the Land Acquisition (Amendment) Act, 1984 the payment of the additional amount payable under S.23(1-A) of the Act will be B restricted to matters referred to in clauses (a) and (b) of sub-section (1) of S.30 of the Amending Act. Insofar as *Zora Singh* holds that the said amount is payable in all cases where the reference was pending before the reference court on September 24, 1984, irrespective of the date on which the award was made by the Collector, it does not lay down the correct law. C [443-D, E]

Union of India & Anr. v. *Zora Sing*, [1992] 1 SCC 673, reversed.

Union of India v. *Raghubir Singh*, [1989] 3 SCR 316, followed.

K. Kamalajammanniavaru v. *The Special Land Acquisition Officer*, D [1985] 2 SCR 914, affirmed

Bhag Singh v. *Union Territory of Chandigarh*, [1985] Suppl. 2 SCR 949, reversed.

Special Land Acquisition Officer v. *Soma Gopal Gowda*, AIR (1986) E Kar 179; *Jaiwant Laxman P. Sardesai* v. *Govt. of Goa, Daman and Diu*, AIR (1967) Bom 214; *The Special Deputy Collector* v. *B. Venkata Seshamma*, AIR (1987) AP 136 and *Maya Devi* v. *Union Territory of Chandigarh*, 1988 Punj. L.J. 189, overruled.

Union of India v. *Filip Tiago De Gama*, [1989] Supp. 2 SCR 336, F affirmed.

R. v. *St. Mary Whitechapel*, [1848] 12 QB. 120 116 E.R. 525; *Master Ladies Tailor Organisation* v. *Minister of Labour & National Service*, [1950] 2 All E.R. 525; *In re A Solicitor's Clerk*, (1957) 1 W.L.R. 1219; *Alexander* v. G *Mercouris*, [1979] 3 All E.R. 305; *Sajjan Singh* v. *State of Punjab*, [1964] 1 SCR 631; *Kapur Chand Jain* v. *B.S. Grewal*, [1965] 2 SCR 36; *T.K.L. Iyer* v. *State of Madras*, [1968] 3 SCR 542; *Lakshminarayan Guin & Ors.* v. *Niranjan Modak*, [1985] 2 SCR 202; *Darshan Singh* v. *Ram Pal Singh*, [1992] Suppl. 1 SCC 191; *Warburton* v. *Loveland*, [1832] VI Bligh N.S.I, 5 E.R. 499 and *Khorshed Shapoor Chenai* v. *Assistant Collector of Estate Duty*, [1980] H

A **2 SCR 315, referred to.**

2. S.23(1-A) deals with substantive rights and it confers a substantive right to claim an additional amount. The applicability of the said provision to proceedings for acquisition which were pending on the date of coming into force of the said provisions has, therefore, to be examined keeping in
B **view the aforesaid nature of the provisions. [432-B, C]**

3. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is *prima facie*
C **prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or fact coming into existence before its commencement**
D **in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospectivity of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently**
E **imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relive persons from liabilities then existing, and the view that existing obligations**
F **was not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. These principles are equally applicable to amendatory statutes. [432-D to H]**

Halsbury's Laws of England, **4th Edn. Vol. 44, paras 921, 922, 925 and**
G **926, referred to.**

Crawford' Statutory Construction, **pp. 622-23, relied on.**

4. The question whether a particular statute operate prospectively only or has retrospective operation also will have to be determined on the
H **basis of the effect it has on existing rights and obligations, whether it**

creates new obligations or imposes new duties or levies new liabilities in relation to past transactions. For that purpose it is necessary to ascertain the intention of the legislature as indicated in the statute itself. [433-F] A

The Queen v. *St. Mary, Whitechapel*, [1848] 12 Q.B. 120, 116 E.R. 525, distinguished. B

Alexander v. *Mercouris*, [1979] All E.R. 305, referred to.

5. In relation to pending proceedings, the approach of the Courts in India is similar to the courts in England which is that they are unaffected by the changes in the law so far as they relate to the determination of substantive rights and in the absence of a clear indication of a contrary intention in the amendment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so the whether the law is changed before the hearing of the case at the first instance or while an appeal is pending. [433-H, 434-A] C D

Halsbury's Law of England, 4th Edn., Vol. 44 para 922 referred to.

United Provinces v. *Atiqa Begum*, [1940] FCR 110; *Garikapatti Verraya* v. *N. Subbiah Chaudhury*, [1975] SCR 488, relied on. E

6. In order that the provisions of a statute dealing with substantive right may apply to pending proceedings the court has insisted that the law must speak in language which expressly or by clear intendment, takes in even pending matters. [434-G]

Smt. Dayawati and Anr. v. *Inderjit and Ors.*, [1966] 3 SCR 275 and *Lakshminarayan Guin & Ors.* v. *Niranjan Modak*, [1985] 2 SCR 202, relied on. F

Union of India & Anr. v. *Zora Singh*, [1992] 1 SCC 673, reversed.

7. For the purpose of ascertaining whether and, if so, to what extent the provisions of sub-section (1-A) introduced in S.23 by the amending Act are applicable to proceedings that were pending on the date of commencement of the amending Act it is necessary to read S.23 (1-A) along with the transitional provisions continued in sub-section (1) of S.30 of the amending Act. [436-F] G H

A Francis Bennion, *Statutory interpretation*, 2nd Edn., p.213; *Thornton on Legislative Drafting*, 3rd Edn., 1987, p. 319 quoted in *Britnell* v. *Secretary of State*, [1991] 2 All E.R. 726, relied on.

8. In *Zora Singh* the Court has laid stress on the word "also" in S.30(1) and has held that apart from the retrospectivity flowing from the B provisions contained in s.23 (1- A) further retrospectivity is given to these provisions in cases where no proceedings were pending on the date of commencement of the amending Act. This would mean that Parliament has made two provisions for giving retrospectivity to section 23(1-A), one in section 23(1-A) itself and the other in Section 30(1) of the Amending Act. C The is no sound basis for this construction. This approach has been disapproved by the Constitution Bench in *Raghubir Singh* on the ground that the terms in which s.30 is couched indicate a limited extension of the benefit. [436-GH, 437-A, B]

D *Union of India and Anr.* v. *Zora Singh*, [1992] 1 SCC 673, reversed.

Union of India v. *Raghubir Singh*, [1989] 3 SCR 316, relied on.

Union of India v. *Filip Tiago De Gama*, [1989] Supp. 2 SCR 336, affirmed.

E *Special Land Acquisition Officer* v. *Soma Gopal Gowada*, AIR (1986) Karnataka 179; *Jaiwant Laxman P.Sardesai* v. *Govt. of Goa, Daman And Diu*, AIR (1967) Bom 214; *The Special Deputy Collector* v. *B. Venkata Seshamm*, AIR (1987) AP 136, overruled.

9. Merely because the provision regarding scope of the retrospec- F tivity in regard to pending matters is contained in a separate provision and is not found in the amended provision would not justify treating the said provisions independent of each other. The provisions contained in s.30 of the amending Act are to be treated as an integral part of the amended provisions of the principal Act to which they relate. [437-F]

G *Warburton* v. *Loveland*, [1832] VI Bligh N.S.1, 5 E.R. 499 and Special Reference No. 1 of [1974 -1975] 1 SCR 504, distinguished.

10. The provisions of S.23(1-A) have been given limited retrospectivity by s.30(1). In relation to proceedings which were initiated prior to H the date of commencement of the amending Act S.23(1-A) would be ap-

plicable only to those cases which fall within the ambit of clauses (a) and (b) of sub-section (1) of s.30 of the amending Act. Even where the statute is clearly intended to be retrospective to some extent, it is not to be construed as having a greater retrospective effect than its language renders necessary. [439-E, F] A

There is no scope for extending the ambit of retrospective operation of sub-section (1-A) of s.23 beyond the limits specified in s.30(1) of the amending Act so as to apply it all proceedings initiated prior to this date of coming into force of the amending Act which were pending before the civil court on reference under s.18 of the principle Act irrespective of the date on which the award was made by the Collector. [439-G] B C

Union of India and Anr. v. *Zora Singh*, [1992] SCC 673, reversed.

Union of India v. *Filip tiago De Gama*, [1989] Supp. SCR 336, affirmed. D

Municipal Council of Sydney v. *Margaret Alexandra Troy*, AIR (1928) PC 128, distinguished.

Halsbury's Laws of England, 4th Edn., Vol. 44, para 924, referred to.

10. Statement of Objects and Reasons appended to a bill cannot be used except for the limited purpose of understanding the background and the state of affairs leading to the legislation but it cannot be used as an aid to the construction of the statute. [441-C] E

Asvini Kumar v. *Arbinda Bose*, [1953] SCR 1; *State of West Bengal* v. *Subhash Gopal Bose*, [1954] SCR 587 and *State of West Bengal* v. *Union of India*, [1964] 1 SCR 371, relied on. F

12. Speeches made by the members in the House at the time of consideration of the Bill are not admissible as extrinsic aids to the interpretation of the statutory provisions though the speech of the mover of the Bill may be referred to for the purpose of finding out the object intended to be achieved by the Bill. [441-D] G

State of Travancore-Cochin v. *The Bombay Co. Ltd.*, [1952] SCR 1112 and *Aswini Kumar* v. *Arbinda Bose*, [1953] SCR 1, relied on. H

A 13. The Bills of 1982 and 1984 show that they did not contain the provisions found in s.23 (1-A) of the principal Act and s.30(1) of the amending Act. These provisions were inserted when the 1984 Bill was under consideration before Parliament. The Statement of Objects and Reasons does not, therefore, throw any light on the circumstances in which these provisions were introduced. [441-E]

B

14. 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 C 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 the Collector prior to April 30, 1982, would not render the provisions of s.30(1) of the amending Act unconstitutional. [442-B, C]

D

15. Article 31A (1) proviso has no bearing on the interpretation of sub-section (1-A) of s.23 and s.30(1) of the amending Act. The object underlying Article 31 A is to facilitate agrarian reforms and it extends protection to laws bringing about such reforms. The principal Act is not E a law relating to agrarian reform as contemplated in Article 31 A of the Constitution. It is pre-constitutional legislation which was saved by Article 341 (5) (a) from any attack on the ground of violation of the right conferred by Article 31(2) of the Constitution. [443-C, B]

Atma Ram v. *State of Punjab*, [1959] Supp. 1 SCR 887, relied on.

F

Per Sawant J., (dissenting);

1. Section 23(1-A) like the one for solatium in sub-section (2) of section 23, is a substantive one. Unless, therefore, there is a statutory G mandate, neither of these provisions can be given retrospective. [448-D]

2. S. 30(1) deals exclusively with the powers of the Collector and it has no bearing on the powers of the Reference Court under s.23. Also, s.30(1)(a) is not retrospective in operation. It speaks of power of the Collector in the proceedings pending before him on April 30, 1982 in which H he has yet to make an award. It is only clause (b) of the said section which

gives a limited retrospectivity to the power of the Collector when it enables him to reopen the award made by him before the commencement of the amending Act which is September 24, 1984 in proceedings started after April 30, 1982. [451-C to E] A

3. S.23 does not make any distinction in the acquisition proceedings pending before the reference court on September 24, 1984 between those which had commenced prior to April 30, 1982 and those which had commenced thereafter. If the proceedings are pending before the reference court on the date of the commencement of the Act which is September 24, 1984 the plain language of s.23 enjoins upon the reference court to give the benefit of s.23(1-A) in all such proceedings without making any distinction. When the reference court does so, it gives prospective effect to S.23(1- A). It does not give retrospective effect to the said section merely because the proceedings in question had started to prior to April 30, 1982. [464-D to F] B C

Halsbury's Laws of England, 4th Edn. Vol. 4, para 221; *Queen* v. *Inhabitants of St. Mary, Whitechapel*, [1848] 12 QB 120; *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh*, AIR (1953) SC 394; *T.K. Lakshmana Iyer* v. *State of Madras*, [1968] 3 SCR 842; *Trimbak Damodhar Rajpurkar* v. *Assaram Hiraman Patil*, AIR (1966) SC 1758 and *Bishun Narain Misra* v. *State of U.P.*, AIR (1965) SC 1567, relied on. D

4. This interpretation is also in conformity with the object of the legislation. The Act was amended to deal with the long delays which occurred very often, and which affected the land owners materially as the market value of the land is to be determined under s.23 of the principal Act with reference to the date of the notification issued under S.4(1). [454-D, 455-B] E F

All India Report on Agricultural Census, 1985-86 (1992); *Law Commission Report*, (1958) and (1970) Report, relied on.

It was, therefore, clearly the intention of the legislature in enacting the amending Act and in particular s.23(1-A) to give additional amount to the deprived land owners in all the proceedings which were pending before the Collector on April 30, 1982 and before the reference court on September 24, 1984 i.e. the date of commencement of the Act. But for the provisions of s.30(1), the Collector would not have been able to give the benefit of S.23(1-A) in the proceedings referred to therein. This would have G H

A defeated the object of the Act in those cases which had not travelled or could not travel to the reference court and had or would become final with the Collector's award. If the Collector could give the said benefit in proceedings pending before him on April 30, 1982 although started prior to that date, where he had not made his award, it will be against the scheme of the Act to contend that the reference court could not give the same benefit in the proceedings pending before it because the acquisition proceedings had started prior to April 30, 1982. [457-C, D, H, 458-A]

5. S.30(1) of the amending Act is confined to spelling out the powers of the Collector. It has no reference to and bearing on the power of the reference or the appellate court. Also Ss. 30(1) and 30(2) deal with different benefits and speak of powers of different tribunals. It is not permissible to read the provisions of S.30(2) of the amending Act into S.30(1) thereof and thereby in s.23(1-A). The provisions of S.30(2) are exclusively concerned with Ss.23(2) and 28 and have no relation to the provisions of S.23(1-A). [458-B to D]

Union of India v. *Filip Tiago De Gama*, [1989] Supp. 2 SCR 336, partly affirmed and partly reversed.

The reference under S.23 has no power to reopen the award made by it before September 24, 1984 to give the benefit of S.23(1-A), since the provisions of S.23(1-A) have no retrospective effect. The retrospective effect is given only to the powers of the Collector to reopen the awards made by him before September 24, 1984. [459-H, 460-A]

Union of India & Anr. v. *Zora Singh*, [1992] 1 SCC 673, partly reserved.

K.S. Paripooman v. *State of Kerala*, [1992] 1 SCC 684, reversed.

Union of India v. *Raghubir Singh*, [1989] 3 SCR 316, endorsed.

K. Kamalajammanniavaru v. *The Special Land Acquisition Officer*, [1985] 2 SCR 914, affirmed.

Bhag Singh v. *Union Territory of Chandigarh*, [1985] Suppl. 2 SCR 949, reversed.

Union of India v. *Filip Tiago De Gama*, [1989] Supp. 2 SCR 336, partly approved, partly reversed.

State of Punjab v. *Mohinder Singh*, [1986] 1 SCC 365, referred to. A

6. It is not possible to accept the view that the word 'award' occurring in s.23(1-A) is used there not as a noun but as a verb. Although the word 'award' is not defined in the Act, the legislature has used the said word in various provisions of the Act with a specific intention and meaning and hence there cannot be any mistake that the said expression has been used B even in s.23(1-A) as a noun. Inconvenient words, expressions and language, when their intendment and meaning are plain, cannot be got over by either mutilating them or by attributing to them unnatural and unwarranted role. Such an exercise is against the canons of the interpretation of statutes. [460-G, H, 461-A] C

7. But for the provisions of S.30(1), the Collector would not have been able to give the benefit of S.23(1-A) in the proceedings referred to therein. This would have defeated the object of the Act in those cases which had not travelled or could not travel to the reference court and had or would become final with the Collector's award. The legislature, therefore, D wanted to give the power to the Collector in addition to the reference court to take care of such cases. It was aware that many cannot and did not go to the reference court to get their due compensation. Any other interpretation will be a distortion of the plain language, meaning and intendment of the relevant provisions. It will also amount to reading limitation on the powers of the Collector and the courts where the legislature intended to E expand them. [463-D to F]

8. Neither the reference court nor the appellate court, whether High Court or the Supreme Court can grant the benefit of S.23(1-A) in any proceeding in which the reference court has made its award prior to F September 24, 1984. The grant of such benefit by the courts is not warranted by the transitional provisions of S.30(1). [464-H, 465-A]

Per Sahai, J. (Dissenting)

1. S.23(1-A) is not a procedural or declaratory law, but is substantive G in nature and prospective in operation. The section is not robbed of its prospectivity because for the exercise of right the calculation of compensation has to be made on facts which come into existence prior to the date of the amending Act. [471-F, 474-D]

Kapur Chand v. *B.S.Grewal, Financial Commissioner*, AIR (1965) SC H

A 1491 and *Master Ladies Tailors Organisation* v. *Minister of Labour and National Service*, [1950] 1 All ER 525, relied on.

Union of India & Anr. v. *Zora Singh*, [1992] 1 SCC 673 and K.S.Paripoornan v. *State of Kerala*, [1992] 1 SCC 684, discussed.

B The right to receive additional compensation at the rate of 12 % under S.23(1-A) operates in future, i.e., it confers benefit of additional compensation from the date it came into force and not from a date prior to coming into force of the provisions. If the legislature does not use any expression to indicate that the law made by it shall apply to any cause of C action or incident taking place only after coming into force of the Act, then the law has to be applied in praesenti, i.e., to matters pending before it even if it those matters had arisen before the coming into force of the Act. [473-H, 474-A, 471-G]

Halsbury's Laws of England, 4th Edn., Vol. 4, para 221; *Queen* v. *Inhabitants of St. Mary, Whitechapel*, [1848] 12 QB 120; *Rao Shiv Bahadur* D *Singh* v. *State of Vindhya Pradesh*, AIR (1953) SC 394; *T.K. Lakshmana Iyer* v. *State of Madras*, [1968] 3 SCR 842; *Trimbak Damodhar Rajpurkar* v. *Assaram Hiraman Patil*, AIR (1966) SC 1758 and *Bishun Narain Misra* v. *State of U.P.*, AIR (1965) SC 1567, relied on.

E Principles of interpretation are only the guideline, they are not conclusive. The sure and safe way is to interpret the provision on the necessity and requirement as appears from the objective of the Act and the words used by the legislature. [473-C]

Alexander v. *Mercouris*, [1979] 3 All E.R. 305, distinguished.

F

S.23(1-A) come into force on September 24, 1984, and requires the court to pay additional compensation in every case. The ambit of the section cannot be narrowed by confining its operation to those cases where notification is issued after coming into force of the amending Act. [476-E]

G *Union of India* v. *Raghubir Singh*, [1989] 3 SCR 316; *Union of India* v. *Filip Tiago De Gama*, [1989] Supp. 2 SCR 336 and *K.S.Paripoornan* v. *State of Kerala*, [1992] 1 SCC 684, distinguished.

Union of India & Anr. v. *Zora Singh*, [1992] 1 SCC 673, referred to.

H 2. By calculating compensation for the period between the notifica-

tion under S.4(1) and publication under S.6, the right to receive additional compensation is not taken into the past. The right operates from the date the amending Act came into force. [475-G] A

Union of India v. *Zora Singh*, [1992] 1 SCC 673, affirmed.

Literally or even constructionally the law requires the Court determining compensation under S.18 of the Act, to pay additional compensation in every case coming before it after the amendment comes into force. [477-D] B

3. Necessity to construe a provision by taking recourse to adding or substracting words may arise if the provision is otherwise ambiguous or it may lead to disastrous consequences. In this case, the expression in S.23(1-A) is "the Court shall in every case" award the amount. The word "shall" has been used to impart it mandatory character. This obligation the court has to discharge in every case. In absence of any expression limiting the exercise of power in only those cases where notification is issued after September 24, 1984 or making it retrospective so as to apply to every case in which proceedings for acquisition had started before the Act came into force, the provision has to be applied to every case which was pending for award of compensation on and after the date when the section becomes operative. [477-F of H] C D

Union of India and Anr. v. *Zora Singh*, [1992] 1 SCC 673 and *K.S. Paripoornan* v. *State of Kerala*, [1992] 1 SCC 684, discussed. E

Municipal Council of Sydney v. *Margaret Alexander Troy*, AIR (1928) PC 128, relied on.

When the court proceeds to determine compensation after September 24, 1984, it cannot ignore S.23(1-A). That would be against the plain and simple language of the section. [478-C] F

4. A transitional provision cannot curtail operation of the substantive provision. The field of operation of S.30 being narrow, namely, to extend the benefit of S.23(1-A) to all those land owners whose land has been notified to be acquired before 1982 and in which no award has been made by the Collector, it cannot be taken help of for determining the scope of the main provision and hold that what is not covered by it stands excluded from S.23 (1-A). [481-B] G H

A 5. The legislative background and purpose of the enactment of the amending Act was to remove the hardship of the effected parties because of the delay in payment of compensation. It is the duty of the court to construe the provisions in such a manner that the mischief which the legislature intended to remove may be suppressed and the avowed objective of the legislation be served. [470-E, F]

B

All India Report on Agricultural Census 1985-86, (1992) *Law Commission Report*, 1958 and 1970 Report, relied on.

6. The legislature has used different language in S.30(1) and S.30(2). The construction placed by the Court on S.30(2) cannot furnish basis for C construing S.30(1) in the same manner. [483-F]

Bhag Singh v. *Union Territory of Chandigarh*, [1985] Suppl. 2 SCR 949; *Union of India* v. *Raghubir Singh*, [1989] 3 SCR 316 and *K. Kamalajammannivaru* v. *The Special Land Acquisition Officer*, [1985] 2 SCR 914, D referred to.

7. S.30(1) does not spell out power of the Collector. Its clauses (a) and (b) are descriptive of those proceedings to which the benefit of S.23(1-A) has been extended. They deal with retrospectivity given to S.23(1-A). But the Collector should be deemed to have this power, otherwise it E would cause injustice where the land owner does not seek a reference for any reason. This power, however, flows from S.15 of the Act itself. It is also just and reasonable that the additional compensation is payable even by the Collector when he is making a award under S.11. [483-H, 484-A, B]

8. No additional compensation is payable in appeals pending on or F before September 24, 1984 either in the High Court or the Supreme Court. [488-B]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) Nos. 5514-17 of 1990 etc. etc.

G From the Judgment and Order dated 4 & 5.10.89 of the Kerala High Court in L.A.A. No. 119 of 1986.

(With SLP (C) Nos. 5685-88 of 1990, 9215-22 of 1920.

Altaf Ahmad, Additional Solicitor General, P.S. Poti, A.S. Nambiar H Soli J Sorabjee, Santosh Hedge, Vikram Mahajan, Vellapally Joseph, V.A.

Bobde, O.P. Rana, V.C. Mahajan, A.B. Rohtagi, O.P. Sharma, G. Vishwanatha Iyer, K.L. Rathi, Rajender Sachar, Ujagar Singh, S.P. Goyal, Ms A.Subhashini, S.N. Terdol, C.V. Subba Rao, Vishnu B. Saharya, Mrs. Ratna Nair, M.T. George, Dr. Meera Aggarwal, R.C. Misra, Ranbir Yadav G.K. Bansal, Tripurari Ray, Gopal Jain, Mukul Mudgal, P.N. Gupta, S.M. Sareen, P.N. Puri, M.K. Dua, S. Balakrishnan, K.L. Narsimhan, S. Prasad, R.C. Verma, A.K. Srivastava, Ambrish Kumar, Manoj Swarup, Pradeep Gupta, K.K. Mohan, Shivi Sharma, Goodwill Indeevar, K.C. Jain, Atul Sharma, E.C. Agarwala, Ms. Rekha Palli, Balmokand Goyal, T.V.S.N. Chari, N.D. Garg, R.C. Pathak, Satish Vig, Arvind Minocha, Sanjeev Malhotra, Mrs. S. Bagga, R.B. Misra, R.S. Suri, R.N. Kovind, Ms. Madhu Moolchandani and Ms. Naresh Bakshi for the appearing parties.

The following Judgments of the Court were delivered by

S.C. AGRAWAL, J. By order dated December 17, 1991, these matters have been referred to a larger bench to consider the correctness of the decision in *Union of India & Anr.* v. *Zora Singh & Ors.*, [1992] 1 SCC 673 (decided by a bench of three Judges). In *Zora Singh's* case (supra), this Court has held that the payment of additional amount payable @ 12% per annum on the market value under sub-section (1-A) inserted in Section 23 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the principal Act') by the Land Acquisition (Amendment) Act, 1984 (hereinafter referred to as 'the amending Act') is to be ordered in every case where the reference was pending before the reference court on the date of commencement of the amending Act even though the award of the Collector was made prior to April 13, 1992.

In all these matters preliminary notification under Section 3(1) of Kerala Land Acquisition Act, 1961 was published on March 21, 1979 and the notification under Section 6 of the said Act was published on May 15, 1979. The Land Acquisition Officer made the award on December 30, 1980. The reference under Section 18 was decided by IInd Additional Subordinate Judge, Trivandrum on December 28, 1985, after the commencement of the amending Act. The amending Act also repealed the Kerala Land Acquisition Act, 1961 and extended the principal Act as amended to Kerala with effect from September 24, 1984. The civil court enhanced the compensation and awarded interest @12% per annum from March 11, 1981 till the deposit of the excess amount of compensation awarded by it. The High Court rejected the claim for additional amount at the rate of 12% per annum payable under Section 23(1-A) on the view that the said

A provision was not attracted in view of Section 30(1) of the amending Act. The said view is assailed by the petitioners on the basis of the decision in *Zora Singh* (supra). Therefore, this reference.

The question which is required to be examined by this Bench is : whether the additional amount payable @ 12% per annum on the market B value under Section 23 (1-A) is restricted to matters referred to in clauses (a) and (b) of sub-section (1) of section 30 of the amending Act or is to be awarded in every case where the reference was pending before the reference court on September 24, 1984 (the date of the commencement of the amending Act) irrespective of the date on which the award was made C by the Collector.

Section 23 of the principal Act prescribes, in sub-section (1), the matters which are required to be considered in determining compensation by the Court on a reference under Section 18. Sub-section (2) of Section D 23 makes provision for award of a sum, commonly known as 'solatium' in consideration of the compulsory nature of the acquisition. Prior to the amending Act, 15% of the market value of the land was required to be paid as solatium. In Section 28 of the principal Act provision has been made for payment of interest on the amount which has been awarded as compensation in excess of the sum awarded by the Collector. Prior to the E amending Act the said interest was payable at the rate of 6% per annum. Similarly in Section 34 of the principal Act provision is made for payment of interest on the amount of compensation when the said amount is not paid or deposited before taking possession of the land. Prior to the amending Act the said interest was payable at the rate of 6% per annum. Having regard to the recommendations of the Law Commission and the F Land Acquisition Review Committee, a Bill (Bill No.67 of 1982) for amending the various provisions of the principal Act was introduced in the Lok Sabha on April 30, 1982. while the said bill was pending consideration before Parliament various other proposals for amendment, in the principal Act were received and after considering these proposals in consultation G with the State Governments and other agencies the said Bill was withdrawn and another Bill (Bill No. 63 of 1984) was introduced and the same was enacted as the amending Act which came into force on September 24, 1984. The amending Act introduced amendments in various provisions of the principal Act. The amendments relevant for the purpose of the present controversy are those introduced in Section 23 of the Act. Sub-section H (1-A) inserted after sub-section (1) in Section 23 reads as under :

"(1-A) 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 the 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."

In sub-section (2) of Section 23 solatium was enhanced from 15% to 30%. The rate of interest prescribed in Sections 28 and 34 was enhanced from 6% to 9%.

Section 30 of the amending Act contains the following transitional provisions:

"*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, -

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of the 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 :

(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.

(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

A 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.

(3) The provision of Section 34 of the principal Act, as amended by Section 20 of this Act, shall apply, and shall be deemed to have applied also to, in relation to. -

C (a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People), and the amount of compensation for such acquisition had not been D paid or deposited under Section 31 of the principal Act until such date, with effect on and from the date; and

(b) every case in which such possession has been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or E deposited under the said Section 31, with effect on and from the date of taking such possession."

Section 23(1-A) of the principal Act and Section 30(1) of the amending Act are interrelated and have to be read together. Similarly section F 23(2) of the principal Act, as amended, as Section 30(2) of the amending Act have to be read together. Though sub-sections (1) and (2) of Section 30 of the amending Act are differently worded, the construction that is placed on one set of provisions has a bearing on the construction of the other set. Since the provisions of Section 23(2) of the principal Act and Section 30(2) of the amending Act came up for consideration before this G Court earlier than the provisions of Section 23(1-A) of the principal Act and Section 30(1) of the amending Act, we will briefly refer to the decisions wherein Section 23(2) of the principal Act as amended and Section 30(2) of the amending Act have been construed before we come to the decisions on Section 23(1-A) of the principal Act and Section 30(1) of the amending H Act.

In *K. Kamla Jammanniavaru (Dead) by Lrs.* v. *The Special Land Acquisition Officer*, [1985] 2 SCR 914, a two-Judge Bench of this Court rejected the contention that the amendment in the provisions of Section 23(2) regarding enhanced solatium at the rate of 30% was applicable to all proceedings in regard to compensation which had not become final whether they be pending before the Collector, court, High Court or Supreme Court and held that the amended provisions of Section 23(2) would apply to awards made after the commencement of the amending Act and in view of sub-section (2) of Section 30 of the Amending Act the said amended provisions would also apply to awards made by the Collector or Court before April 30, 1982 and September 24, 1984 and to orders made by High Court or by Supreme Court in appeals against such awards. Chinnappa Reddy, J., speaking for the Court, has observed :

> "Parliament did not intend and could not have intended that whatever be the date of the award, however ancient it may be, solatium would stand enhanced to 'thirty per centum' if an appeal happened by chance or accident to be pending on April 30, 1982. Surely it was not the intention of parliament to reward those who kept alive the litigation even after several years. If it was the intention of Parliament to make the amended section 23(2) applicable to all proceedings relating to compensation wherever they be pending, the words "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" is section 30(2) and would become meaningless. *It is clear that Parliament wanted the amended section 23(2) to have very limited retrospectivity.* It made the provision applicable to awards made after April 30, 1982 and before September 24, 1984 also and further to appeals to the High Court as the Supreme Court arising from such awards." (p.917)
>
> (Emphasis supplied)

A three Judge Bench of this Court in *Bhag Singh* v. *Union Territory of Chandigarh*, [1985] Suppl. 2 SCR 949, disapproved the view taken in *Kamala Jammanniavaru* (supra) and held that under sub-section (2) of Section 30 of the amending Act the provisions of the amended Section 23(2) and Section 28 are made applicable to all proceedings relating to

A compensation pending on April 30, 1982 or filed subsequent to that date, whether before the Collector or before the Court or the High Court or the Supreme Court, even it they have finally terminated before the enactment of the amending Act. The Court first considered what would be the position if Section 30(2) were not enacted and the amendments in sub-section (2) of Section 23 and Section 28 were effective only from the date on which they were made, namely, September 24, 1984, when the amending Act received the assent of the President and was brought into force. After observing that "if at the date of the amending Act, any proceedings for determination of compensation were pending before the Collector under Section 11 of the Act or before the Court on a reference under Section 18 of the Act, the amended Section 23 sub-section (2) and Section 28 would admittedly be applicable to such proceedings", the Court posed the question I : "But if an award were made by the court on a reference under Section 18 prior to the commencement of the amending Act and an appeal against such award was pending before the High Court under Section 54 at the date of the commencement of the amending Act, which provisions would the High Court have to apply in deciding the appeal and determining the amount of compensation: the amended provisions in Section 23 sub-Section (2) and Section 28 or the unamended provisions". The said question was thus answered:

> "The answer can only be that the High Court would have to apply the provisions in the amended Section 23 sub-section (2) and Section 28. The appeal against the award would be a continuation of the proceeding initiated before the Court by way of reference under Section 18 and when the High Court hears the appeal, it would be in effect and substance be hearing the reference and while determining the amount of compensation, it would have to give effect to Sections 23 and 28 as it finds them at the date of decision of the appeal. When Section 23 sub-section (1) provides that in determining the amount of compensation the court shall take into consideration matters specified in the various sub-clauses of that sub-section and sub-section (2) of Section 23 directs that in addition to the market value of the land the court shall in every case award a sum of 15 per centum of such market value in consideration of the compulsory nature of the acquisition, the mandate of these two sub-sections must apply equally whether the court is hearing a reference or the High Court is hearing an appeal

against an award made by the Court. The amended provisions in Section 23 sub-section (2) and Section 28 would therefore have to be applied by the High Court in determining the amount of compensation. The same position would obtain where an appeal against an award has been decided by the High Court prior, to the commencement of the amending Act and an appeal against the order of the High Court is pending before the Supreme Court at the date of commencement of the amending Act or is filed after such date." (pp.858-59)

Thereafter the Court examined sub-section (2) of Section 30 of the amending Act and observed that by virtue of the said provision the amended provisions of sub-section (2) of Section 23 and Section 28 were made applicable also where the proceedings were pending on April 30, 1982, the date when the original Bill (which ultimately became the amending Act) was introduced in Parliament, but were commenced after that date even though they might have finally come to an end before the enactment of the amending Act. The expression "such award" in section 30(2) was construed to mean only the award made by the Collector or by the Court and it was held that it does not import the time element which finds place only at the end of the sentence and not immediately followed by the words "any award made by the Collector or Court". It was, therefore, held that under Section 30(2) the provisions of amended Section 23(2) and Section 28 are applicable to all proceedings relating to compensation pending on April 30, 1982 or filed subsequent to that date, whether before the Collector or before the Court or the High Court or the Supreme Court, even though they have finally terminated before the enactment of the Amendment Act.

The said decision in *Bhag Singh* (supra) has been reversed by the Constitution Bench of this Court in *Union of India* v. *Raghubir Singh*, [1989] 3 SCR 316, wherein the earlier decision in *K. Kamala Jammanniavaru* (supra) has been affirmed. Accepting the contention of the learned Attorney General that if Parliament had intended that the benefit of enhanced compensation should be extended to all pending proceedings it would have said so in clear language and that on the contrary the terms in which Section 30 is couched indicate a limited extension of the benefit, Pathak, CJ. speaking for this Court, has stated:

A "The Amendment Act has not been made generally retrospective with effect from any particular date, and such retrospectivity as appears is restricted to certain areas covered by the parent Act and must be discovered from the specific terms of the provisions concerned. Since it is necessary to spell out the degree of retrospectivity from the language of the relevant provision itself, close attention must be paid to the provisions of S.30(2) for determining the scope of retrospective relief intended by Parliament in the matter of enhanced solatium." (pp.339-40)

Referring to the principle that an appeal is a continuation of the C proceeding initiated before the Court by way of reference under Section 18, the learned Chief Justice observed that "the application of a general principle must yield to the limiting terms of the statutory provision itself." (p.340) While construing the provisions of Section 30(2) of the amending Act, it was held that the words "any such award", in the context in which D they appear in Section 30(2), are intended to refer to awards made by the Collector or by the Court between April 30, 1982 and September 24, 1984, and they could not have the expanded meaning given to them in *Bhag Singh* (supra).

The provisions of Section 23(1-A) of the principal Act and Section E 30(1) of the amending Act have been construed by the various High Courts in the light of the decision in *Bhag Singh* (supra). A Full Bench of the Karnataka High Court in *Special Land Acquisition Officer* v. *Soma Gopal Gowda*, AIR 1986 Karnataka 179, construed Section 23(1-A) of the principal Act to mean that in all pending cases whether on reference or on F appeal, the Court is required to apply the provisions of sub-section (1-A) of Section 23 in determining the compensation payable to claimants. It was held that Section 23(1-A) is not restricted by Section 30(1) of the amending Act which gives a limited retrospectivity to category of cases specified therein. A Full Bench of the Bombay High Court in *Jaiwant Laxaman P. Sardesai & etc. etc.* v. *Government of Goa, Daman and Diu & Anr.*, AIR G (1967) Bom. 214, also construed Section 23(1-A) of the principal Act independently of Section 30(1) of the amending Act and held that where on the date of the commencement of the amending Act any proceedings for determination of compensation were pending before the Collector under section 11 or before the Court under reference under Section 18 of H the Act or before the High Court under appeal under Section 54 of the

Act, then the amended Section 23(1-A) would be applicable to such proceedings in absence of Section 30(1). Similarly a Full Bench of the Andhra Pradesh High Court in *The Special Deputy Collector* v. *B. Venkata Seshamma*, AIR (1987) Andhra Pradesh 136, took the view that the amended provisions of Section 23(1-A) were applicable to all pending cases, whether pending before the Collector or on reference or appeal on the date of commencement of the amending Act i.e. September 24, 1984, and the operation of sub-section (1-A) of Section 23 was not cut down by the transitory provisions contained in sub-section (1) of Section 30 of the amending Act. A Division Bench of the High Court of Punjab and Haryana took the same view in *Maya Devi* v. *Union Territory of Chandigarh*, [1988] Punj. LJ 189. The Kerala High Court in the judgment under appeal has, however, taken a different view and has held that the retrospectivity of Section 23(1-A) stands regulated by section 30(1) of the amending Act in the same mode as Section 30(2) regulates the retrospectivity of Section 23(2) and that in cases where the acquisition proceedings commenced before April 30, 1982 amount would be payable under Section 23(1-A) only if no award was made before April 30, 1982.

The question of applicability of Section 23(1-A) to pending proceedings was considered by a two-Judge Bench of this Court in *Union of India* v. *Filip Tiago De Gama*, [1989] Supp. 2 SCR 336. In that case, the Land Acquisition Officer declared the award on March 5, 1969, and on reference the Civil Court made the award on May 28, 1985, i.e., after the commencement of the amending Act. It was held that the entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on April 30, 1982 or commencement of acquisition proceedings after that date and if the Collector has made the award before that date then, additional amount cannot be awarded. After referring to the provisions of Section 23(1-A), Jagannatha Shetty, J., speaking for the Court, has observed :

> "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

A 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(1-A) for certain cases. That will be found from section 30 sub-section 1(a) and (b) of the Transitional Provisions." (p. 345)

B Referring to Section 30 of the amending Act the learned Judge has pointed out that the Collector had made the award on March 5, 1969 and on April 30, 1982, no proceeding was pending before the Collector and, therefore, Section 30 sub-section (1) (a) was not attracted to the case and since the proceedings for acquisition commenced before April 30, 1982, C Section 30 sub-section (1)(b) was also not applicable to the case. The learned Judge has taken note of the decisions of Karnataka High Court in *Soma Gopal Gowda* (supra) and Bombay High Court case in *Jaiwant Laxaman P. Sardesai* (supra) and has observed :

D "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(1-A). It was said that it enjoins a duty on the court to award the amount E 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 F 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." (p. 347)

G It may be mentioned that the decision of the Karnataka High Court in *Soma Gupal Gowda* (supra) which was reversed by Jagannath Shetty, J. in *Filip Tiago*(supra) was also rendered by Shetty, J. in the High Court.

The said view in *Filip Tiago* (supra) has been reversed by a three-H Judge Bench of this Court in *Zora Singh* (supra). The Court has held that

Section 23(1-A) confers a substantive right to claim the additional amount calculated as set out in the said sub-section in the circumstances set out therein and that under the well-settled rules the said provisions can have only prospective operation unless the language in which the provisions are couched, read in the context, shows that the intention of the legislature was to give retrospective effect to them. Laying emphasis on the language of section23(1-A) the Court has observed that a duty has been cast on the Reference Court to award an additional amount calculated as prescribed therein and that an unduly restricted meaning given to the provisions of Section 23(1-A) in *Filip Tiago* (supra) was not warranted. It was held that on the plain language of Section 23(1-A) itself the additional amount is directed to be awarded by the Court, namely, the Reference Court, in all cases which are pending before that Court on September 24, 1984 even if the award of the Collector was made before April 30, 1982. It was so confined to the Reference Court on the ground that the provisions "award", as distinguished from the expression "decree", has been used in Section 23(1-A) and for that reason it was held that Section 23(1-A) would not come into play where award had been made by the Collector as well as by the Reference Court earlier, but on the date of coming into effect of the said sub-section, an appeal from the said award might have been pending in a court. The benefit conferred by Section 30(1)(a) has been limited to only those cases where the Collector as well as the Court have made their respective awards between April 30, 1982 and September 24, 1984. Kania, J. (as the learned Chief Justice then was), speaking for the Court, has observed :

> "We find that on the plain language of Section 23(1-A) itself, which we have set out earlier, the duty was cast on the court to award an additional amount calculated as prescribed therein which would mean that it is directed to be awarded by the court, namely, the Reference Court, in all cases which are pending before the Court on September 24, 1984. Sub-section (1) (a) of Section 30 undoubtedly lays down that the provisions of Section 23(1-A) of the Act are also made applicable to all proceedings for the acquisition of any land under the said Act pending on April 30, 1982, where no award had been made by the Collector before that. At first glance this would appear to suggest that the additional amount referred to in Section 23(1-A) could not be awarded where the Collector had made his award before April 30, 1982. But this provision cannot be allowed to cut down the benefits available to the

A claimants on a plain reading of Section 23(1-A). This is clear from the use of the word "also" in the opening part of Section 30(1). In our opinion, the view taken by the bench comprising two learned Judges of this Court in that case cannot be accepted as correct as it is too narrow and unduly cuts down the operation of the benefit conferred under the plain language of Section 23(1-A) of the said Act." (p. 682)

B

The decision in *Raghubir Singh*, (supra) was distinguished on the ground that it was mainly concerned with the provisions of Section 30(2) of the amending Act with which the Court was not directly concerned.

C

The correctness of the said view in *Zora Singh*, (supra) has been doubted by a two-Judge Bench in the order of Reference.

The learned counsel appearing for the claimants have urged that D *Zora Singh* (supra) lays down the correct law and that in view of the language used in Section 23(1-A) of the principal Act in every case which was pending before the Reference Court on September 24, 1984 the date of commencement of the amending Act, the Court has to award the additional amount as prescribed in sub-section (1-A) of Section 23 and that this obligation is irrespective of the date on which the award was made by E the Collector. It has been submitted that this construction does not involve giving retrospective effect to the provisions of sub-section (1-A) introduced in Section 23 of the amending Act for the reason that a provision cannot be held to be retrospective only because a part of the requisites for its action is drawn from events antecedent to its passing. In support of the F said submission reliance has been placed on a number of English decisions, namely, *R.* v. *St. Mary Whitechapel*, [1848] 12 Q.B. 120, 116 E.R. 811; *Master Ladies Tailors Organisation & Anr.* v. *Minister of Labour & National Service,* [1950] 2 All E.R. 525; *In re A Solicitor's Clerks,* [1957] 1 W.L.R. 1219 and *Alexander* v. *Mercouris,* [1979] 3 All E.R. 305; as well as the decisions of this Court in *Sajjan Singh* v. *The State of Punjab,* [1964] 1 SCR G 631, *Kapur Chand Jain* v. *B.S. Grewal & Ors.*, [1965] 2 SCR 36, *T.K.L. Iyer* v. *State of Madras*, [1968] 3 SCR 542, *Lakshminarayan Guin & Ors.* v. *Niranjan Modak*, [1985] SCR 202 and *Darshan Singh* v. *Ram Pal Singh & Anr.*, [1992] Suppl. 1 SCC 191. Placing reliance upon the observations of the House of Lords in *Warburton* v. *Loveland*, [1832] VI Bligh N.S.1, 5 E.R. H 499, that "no rule of construction can require that where the words of one

part of a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part", it has been urged that the language used in sub-section (1-A) of Section 23 of the principal Act is clear and the scope of that language cannot be limited by reference to Section 30(1) of the amending Act. It has also been submitted that acquisition proceedings do not terminate with the making of the award by the Collector, and in case Reference has been made the proceedings remain pending till the Court decides the Reference and that Collector's award is no more than an offer of compensation made by the government to the claimant whose property is acquired and that if the offer is acquiesced by total acceptance the right to compensation does not survive but if the offer is not accepted or is accepted under protest and reference is sought by the claimant under Section 18, the right to receive compensation must be regarded as having survived and kept alive which the claimant prosecutes in Civil Court. In support of the said submission reference has been made to the decision in *Khorshed Shapoor Chenai Etc.* v. *Assistant Collector of Estate Duty*, [1980] 2 SCR 315. The learned counsel have also placed before us the statements of objects and reasons for the Bills which led to the enactment of the amending Act and the debates in the Lok Sabha to show that the intention of Parliament in enacting Section 23(1-A) was to remove the hardship caused to the affected parties on account of pendency of acquisition proceedings for long periods which renders unrealistic the scale of compensation offered to them.

The learned Additional Solicitor General appearing for union of India and the other counsel appearing for the State have, on the other hand, urged that since the amendment introduced in Section 23 by insertion of Sub-section (1-A) imposes an obligation to pay an additional amount by way of compensation, it can only apply to proceedings for acquisition which are initiated subsequent to the coming into force of the amending Act and it can only operate prospectively. According to the learned counsel retrospectivity to a limited extent has been given to the said provisions under sub-section (1) of Section 30 of the amending Act and except in cases falling within the ambit of sub-section (1) of Section 30, the benefit of additional amount by way of compensation under sub-section (1-A) of Section 23 cannot be granted in acquisition proceedings which had commenced prior to the coming into force of the amending Act.

In view of the submissions that have been advanced the first question

A which needs to be examined is whether sub-section (1-A) of Section 23 has been correctly construed in *Zora Singh* (supra) to apply on its own force to matters in which acquisition proceedings were initiated prior to the commencement of the amending Act and were pending on the date of said commencement.

B *Zora Singh* (supra) proceeds on the basis, and rightly so, that Section 23(1-A) deals with substantive rights and it confers a substantive right to claim additional amount calculated as set out in the said sub-section in the circumstances set out therein. The applicability of the said provisions to proceedings for acquisition which were pending on the date of coming into C force of the said provisions has, therefore, to be examined keeping in view the aforesaid nature of the provisions.

A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is *prima facie* prospective D unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded retrospective if it operates on cases or facts coming E into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under F powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected G has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See : Halsbury's Laws of England, 4th Edn. Vol. 44, paras 921, 922, 925 and 926)

These principles are equally applicable to amendatory statutes. H According to crawford :

"Amendatory statutes are subject to the general principles relative to retrospective operation. Like original statutes, they will not be given retrospective constructions, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transaction, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed there is a presumption that an amendment shall operate prospectively."

(See : Crawford's Statutory Construction, pp. 622-23)

The dictum of Lord Denman, CJ in *The Queen* v. *St. Mary, Whitechapel*, (supra) that a statute which is in its direct operation prospective cannot properly be called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing, which has received the approval of this Court, does not mean that a statute which is otherwise retrospective in the sense that it takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past, will not be treated as retrospective. In *Alexander* v. *Mercouris*, (supra), Goff, LJ, after referring to the said observation of Lord Denman, CJ has observed that a statute would not be operating prospectively if it creates new rights and duties arising out of past transactions. The question whether a particular statute operates prospectively only or has retrospective operation also will have to be determined on the basis of the effect it has on existing rights and obligations, whether it creates new obligations or imposes new duties or levies new liabilities in relation to past transaction. For that purpose it is necessary to ascertain the intention of the legislature as indicated in the statute itself.

In the instant case we are concerned with the application of the provisions of sub-section (1-A) of Section 23 as introduced by the amending Act to acquisition proceedings which were pending on the date of commencement of the amending Act. In relation to pending proceedings, the approach of the courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary

A intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is changed before the hearing of the case at the first instance or while an appeal is pending. (See : Halsbury's Laws of England, 4th Edn., Vol. 44, para 922). Similar is the B approach of the courts in India. In *United Provinces* v. *Atiqa Begum*, [1940] FCR 110, Sulaiman, J. has observed. :

> "Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending suits, Court have undoubtedly leaned very C strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so". (p.163)

To the same effect are the observations of Varadachariar, J., who has stated :

D

> "There can be little doubt that there is a well-recognised presumption against construing an enactment as governing the rights of the parties to a pending action. ..... There are two recognised principles, that vested rights should not be presumed to be affected and that the rights of the parties to an action should ordinarily be E determined in accordance with the law as it stood at the date of the commencement of the action. The language used in an enactment may be sufficient to rebut the first presumption, but not the second. Where it is intended to make a new law applicable even to pending actions, it is common to find the legislature using language expressly referring to pending actions." (p. 185-186)

F

In the words of S.R. Das, CJ, "The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed." (See : *Garikapatti Verraya* v. *N. Subbiah Choudhury*, [1957] G SCR 488, at pp. 515-16). In order that the provisions of a statute dealing with substantive right may apply to pending proceedings the court has insisted that the law must speak in language which expressly or by clear intendment, takes in even pending matters. [See : *Smt Dayawati & Anr.* v. *Inderjit & Ors.*, [1966] 3 SCR 275, and *Lakshminarayan Guine's* case H (supra)].

The provisions of section23(1-A) have to be construed in the light of the aforementioned principles. If thus construed, it would be evident that under section 23(1-A) an obligation to pay an additional amount by way of compensation has been imposed. Such an obligation did not exist prior the enactment of the said provision by the amending Act. If the said provision is applied to the acquisition proceedings which commenced prior to its enactment and an additional obligation in the matter of payment of compensation is imposed for such acquisition the effect would be that the said provision would be operating retrospectively in respect of transactions already past. We are, therefore, unable to agree with the view expressed in *Zora Singh* (supra) that Section 23(1-A) would only operate prospectively and will not have retrospective operation if it is construed as applying to proceedings which were pending before the Reference Court on the date of the commencement of the amending Act and in which the Reference Court makes the award after the commencement of the amending Act.

The next question which needs to be considered is whether any indication has been given by Parliament that Section 23(1-A) will have retrospective operation so as to be applicable to acquisition proceedings which were commenced prior to the date of the enactment or the said provision. The learned counsel for the claimants have urged that such an indication has been given by the words "in every case" used in Section 23(1-A). We are, however, of the view that Parliament has given a clear indication of its intention in this regard in Section 30(1) of the amending Act. Since express provision is contained in Section 30(1) of the amending Act indicating the intention of Parliament as to the extent to which the provision of Section 23(1-A) would apply to pending proceedings there is no scope for speculating about the said intention of Parliament by reading Section 23(1-A) in isolation without reference to Section 30(1) of the amending Act.

Section 30 of the amending Act bears the heading "Transitional provisions". Explaining the role of transitional provisions in a statute, Bennion has stated :

> "Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transaction. Where an Act fails

A to include such provisions expressly, the court is required to draw inferences as to the intended transitional arrangements as, in the light of the interpretative criteria, it considers Parliament to have intended."

[Francis Bennion : Statutory Interpretation, 2nd Edn. p. 213]

B

The learned author has further pointed out :

"Transitional provisions in an Act or other instrument are provisions which spell out precisely when and how the operative parts of the instrument are to take effect. It is important for the C interpreter to realise, and bear constantly in mind, that what appears to be the plain meaning of a substantive enactment is often modified by transitional provisions located elsewhere in the Act." (p.213)

D Similarly Thornton in his treatise on Legislative Drafting has stated:

"The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force."

E [See : Thornton on Legislative Drafting, 3rd Edn., 1987, p.319 quoted in *Britnell* v. *Secretary of State,* [1991] 2 All E.R. 726; at p. 730, *Lord Keith*]

For the purpose of ascertaining whether and, if so, to what extent the provisions of sub-section (1-A) introduced in Section 23 by the amending F Act are applicable to proceedings that were pending on the date of the commencement of the amending Act it is necessary to read Section 23(1-A) along with the transitional provisions contained in sub-section (1) of Section 30 of the amending Act.

In *Zora Singh* (supra) the Court has laid stress on the word "also" in G Section 30(1) and has held that apart from the retrospectivity flowing from the provisions contained in Section 23(1-A) further retrospectivity is given to these provisions in cases covered by clauses (a) and (b) of Section 30(1) in cases where no proceedings were pending on the date of commencement of the amending Act. This would mean that Parliament has made two H provisions for giving retrospectivity to Section 23(1-A), one in Section

23(1-A) itself and the other in Section 30(1) of the amending Act. We do not find a sound basis for this construction. The words "in every case" are also found in Section 23(2) and so is the word "also" contained in Section 30(2) of the amending Act. While construing Section 23(1-A) the approach in *Zora Singh* (supra) is not different from that in *Bhag Singh* (supra) on the construction of Section 23(2). This approach was disapproved by the Constitution Bench in *Raghubir Singh* (supra) on the ground that the terms in which section 30 is couched indicate a limited extension of the benefit. The Full Bench decisions of the High Courts of Karnataka, Bombay and Andhra Pradesh were given after *Bhag Singh* (supra) but before *Raghubir Singh* (supra) and while construing Section 23(1-A) they adopt the same approach as in *Bhag Singh* (supra). Keeping in view the decision in *Raghubir Singh* (supra) the two-Judge Bench in *Filip Tiago* (supra) rightly disapproved the view taken in these Full Bench decisions. The learned Judges on the three-Judge Bench in *Zora Singh* (supra), while reversing the said view in *Filip Tiago* (supra), have failed to take note of the basic premise underlying the decision in *Raghubir Singh* (supra).

A perusal of the various amendments that have been introduced in the principal Act by the amending Act shows that the approach in relation to acquisition proceedings which had commenced prior to the date of commencement of the amending Act is not identical. In relation to some of the amendments provision for their applicability is contained in the amended provision itself (Section 6(1) Proviso (i); Section 11-A Proviso) while in respect of the other amendments separate provision is made in Section 30 of the amending Act. Merely because the provision regarding scope of the retrospectivity in regard to pending matters is contained in a separate provision and is not found in the amended provision would not justify treating the said provisions independent of each other. The provisions contained in Section 30 of the amending Act are to be treated as an integral part of the amended provisions in the principal Act to which they relate. In our opinion, therefore, the observations in *Warburton* v. *Loveland* (supra), that no rule of construction can require that when the words of one part of a statute convey a clear meaning, it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part, which have been approved by this Court in *Special Reference No. 1 of 1974*, [1975] 1 SCR 504, at p. 519 and on which reliance has been placed by Shri Sorabjee, can have no application because Section 23(1-A) and Section 30(1) are so inter-connected that

A for construing sub-section (1-A) of Section 23, it is not possible to ignore the provisions of Section 30(1) of the amending Act.

If sub-section (1-A) of Section 23 is construed in the light of the provisions contained in sub-section(1) of Section 30 of the amending Act B there is no escape from the conclusion that Section 23(1-A), by itself, has no application to proceedings which had commenced prior to the enactment of the amending Act and the applicability of the said provision to pending proceedings is governed exclusively by sub-section (1) of Section 30 of the amending Act. A perusal of sub-section (1) of section 30 of the amending Act shows that it divides the proceedings for acquisition of land C which had commenced prior to the date of the commencement of the amending Act into two categories, proceedings which had commenced prior to April 30, 1982 and proceedings which had commenced after 30, 1982. While clause (a) of Section 30(1) deals with proceedings which had commenced prior to April 30, 1982, clause (b) deals with proceedings D which commenced after April 30, 1982. By virtue of clause (a) of section 23(1-A) has been made applicable to proceedings which had commenced prior to April 30, 1982 if no award had been made by the Collector in those proceedings before April 30, 1982. It covers (a) proceedings which were pending before the Collector on April 30, 1982 where in award was made after April 30, 1982 but before the date of the commencement of the E amending Act, and (b) 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 (a) proceedings which had commenced after April 30, 1982 wherein award was made prior to the commencement of the amending Act, and (b) such proceedings wherein award was made F after the commencement of the amending Act. It would thus appear that both the clauses [(a) and (b)] of sub-section (1) of Section 30 cover proceedings for acquisition which were pending on the date of the commencement of the amending Act and to which the provisions of Section 23(1-A) have been made applicable by virtue of Section 30(1). If Section 23(1-A), independently of Section 30(1), is applicable to all proceedings G which were pending on the date of the commencement of the amending Act clauses (a) and (b) of Section 30(1) would have been confined to proceedings which had commenced prior to the commencement of the amending Act and had concluded before such commencement because by virtue of Section 15 the provisions of Section 23(1-A) would have been H applicable to proceedings pending before the Collector on the date of

commencement of the amending Act. There was no need to so phrase Section 30(1) as to apply the provisions of Section 23(1-A) to proceedings which, pending before the Collector on the date of the commencement of the amending act. This only indicates that but for the provisions contained in section 30(1). Section 23(1-A) would not have been applicable to proceedings pending before the Collector on the date of commencement of the amending Act.

Merely because sub-section (1) of Section 30 only refers to award made by the Collector while sub-section (2) of Section 30 also refers to an award made by the court as well as the order passed by the High Court or the Supreme Court in appeal against such award does not mean that Section 23(1-A) was intended to have application to all proceedings which were pending before the civil court on the date of the commencement of the amending Act. The difference in the phraseology in sub-sections (1) and (2) of Section 30 only indicates the limited nature of the retrospectivity that has been given to provisions contained in Section 23(1-A) under Section 30(1) as compared to that given to the provisions of Sections 23(2) and 28 under Section 30(2). The limited scope of the retrospectivity that has been conferred in respect of Section 23(1-A) under sub-section (1) of Section 30 does not lend support to the contention that the scope of such retrospectivity should be enlarged by reading such further retrospectivity into the provisions of Section 23(1-A). For the reasons aforementioned we are of the view that in relation to proceedings which were initiated prior to the date of the commencement of the amending Act Section 23(1-A) would be applicable only to those cases which fall within the ambit of clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act. In this context it is also necessary to bear in mind the rule of statutory construction that even where a statute is clearly intended to be to some extent retrospective, it is not to be construed as having a greater retrospective effect than its language renders necessary. [See : Halsbury's Law of England, 4th Edn., Vol. 44, para 924]. There is, therefore, no scope for extending the ambit of retrospective operation of sub-section (1-A) of Section 23 beyond the limits specified in Section 30(1) of the amending Act so as to apply it to all proceedings initiated prior to the date of coming into force of the amending Act which were pending before the civil court on reference under Section 18 of the principal Act irrespective of the date on which the award was made by the Collector. For the reasons aforementioned we are unable to subscribe to the view taken in *Zora Singh* (supra)

A that sub-section (1-A) of Section 23 would apply to all proceedings pending in the Reference Court on the date of commencement of the amending Act irrespective of the date on which award was made by the Collector. In our opinion, the provisions of Section 23(1-A) of the principal Act and Section 30(1) of the amending Act have been correctly construed in *Filip Tiago* (supra)to mean that the obligation to pay additional amount in respect of proceedings initiated before the date of commencement of the amending Act is confined to the matters covered by clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act and we endorse the said view.

Reference may be made, at this stage, to the decision of the Judicial C Committee of the Privy Council in *Municipal Council of Sydney* v. *Margaret Alexandra Troy*, AIR (1928) P.C. 128, on which reliance was placed by Shri Sorabjee. In that case, a piece of land was acquired by the Municipal Council on June 6, 1924, and on the date of such acquisition interest on compensation was payable at the rate of 4%. After the said acquisition, a D statute was enacted which came into operation on September 17, 1924, whereby the rate of interest was prescribed at 6%. The said statute contained a non-obstante clause in Section 17 which gave overriding effect to its provisions. Having regard to the said non-obstante clause the Supreme Court of New South Wales held that prior acquisitions were covered and that for the period upto September 17, 1924, interest on the unpaid amount E of compensation was payable at the rate 4% and for the period subsequent thereto, it was payable at 6%. Upholding the said view the Privy Council observed that this conclusion is neither affected by the well-known rule of construction against retrospective interpretation, nor by anything to be imported from the expressions used in the earlier statutes in the series F which has to be read in conjunction. The said decision which turns on the non-obstante clause in the subsequent statute has, in our opinion, no application to the present case in view of the express provisions contained in Section 30(1) of the amending Act which specifically restrict the applicability of sub-section (1-A) of Section 23 to proceedings covered by clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act.

G

In support of the construction placed on Section 23(1-A) of the principal Act and Section 30(1) of the amending Act in *Zora Singh* (supra), the learned counsel for the claimants have referred to the Statement of objects & Reasons appended to the Bill in 1982 as well as the Bill of 1984 H and have submitted that the said Statements of Objects and Reasons show

that the object underlying the enactment of Section 23(1-A) was to remove the hardship to the affected parties on account of pendency of acquisition proceedings for a long time which renders unrealistic the amounts of compensation offered to them. Our attention has also been invited to the speeches made by members at the time when the Bill was considered and was adopted by Parliament. It has been urged that a construction which advances the said object must be adopted. We are unable to accept this contention. As regards the Statement of Objects and reasons appended to the Bill the law is well settled that the same cannot be used except for the limited purpose of understanding the background and the state of affairs leading to the legislation but it cannot be used as an aid to the construction of the statute. [See : *Asvini Kumar & Anr.* v. *Arbinda Bose & Anr.*, [1953] SCR 1, at p. 28; *State of West Bengal* v. *Subhash Gopal Boshe*, 1954 SCR 587, at p. 628, per Das J,; *State of West Bengal* v. *Union of India*, [1964] 1 SCR 371 at p. 383]. Similarly, with regard to speeches made by the members in the House at the time of consideration of the Bill it has been held that they are not admissible as extrinsic aids to the interpretation of the statutory provisions though the speech of the mover of the Bill may be referred to for the purpose of finding out the object intended to be achieved by the Bill. [See : *State of Travancore-Cochin & Anr.* v. *The Bombay Co. Ltd.*, [1952] SCR 1112 and *Aswini Kumar* v. *Arabinda Bose*, (supra)]. On a perusal of the Bills of 1982 and 1984 we find that they did not contain the provisions found in Section 23(1-A) of the principal Act and Section 30(1) of the amending Act. These provisions were inserted when the 1984 Bill was under consideration before Parliament. The Statement of Objects and Reasons does not, therefore, throw any light on the circumstances in which these provisions were introduced.

Shri V.A. Bobde, appearing for some of the claimants, has contended that a construction whereby Section 23(1-A) is held inapplicable to awards made by Collector prior to April 30, 1982, would render the provisions of Section 30(1) of the amending Act unconstitutional as being violative of the right to equality. To illustrate the discriminatory effect it has been pointed out that out of two cases arising from same notification one may be decided by the Collector on April 28, 1982, and the other on May 1, 1982 and that if the construction placed in *Zora Singh* is not adopted while the former will not attract the provisions of Section 23(1-A) the latter would. The submission is that a construction which leads to such a result must be avoided. We find no merit in this contention. It was open to

A Parliament to apply the provisions of Section 23(1-A) only to awards whether of the Collector or the Court made after the commencement of the amending Act. It is not suggested that such a course would have been violative of Article 14 of the Constitution. 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 B 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 C exclude awards made by Collector prior to April 30, 1982 would not render the provision 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 D arise.

Relying upon the second proviso to clause (1) of Article 31A of the Constitution which prescribes that "where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be E lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than F the market value thereof" Shri K.C. Jain has submitted that compensation for the land acquired under the Act must be paid on the basis of the market value of the property which should be assessed on the date of acquisition, namely, the date on which possession is taken. The submission of Shri Jain is that Section 23(1-A) by providing for payment of additional amount at the rate of 12% per annum on the market value for the period commencing G after the publication of the notification under Section 4(1) to the date of taking possession seeks to give effect to said requirement of Article 31A of the Constitution and that if it is held that sub-section (1-A) of Section 23 is not applicable to the cases where the award by the Collector is made prior to April 30, 1982, the result would be that the amount of compensa- H tion would not be equal to the market value on the date of acquisition in

respect of acquisition of lands where the award was made prior to April 30, 1982 and the provisions of the Act regarding acquisition would be rendered violative of the provisions of Article 31A. We find no merit in this contention. As pointed in *Atma Ram* v. *State of Punjab & Ors.*, [1959] Supp. 1 SCR 887, at p. 904 the object underlying Article 31A is to facilitate agrarian reforms and it extends protection to laws bringing about such reforms. The principal Act is not a law relating to agrarian reform as contemplated in Article 31A of the Constitution. It is pre-constitutional legislation which was saved by sub-clause (a) of clause (5) of Article 341 from any attack on the ground of violation of the right conferred by clause (2) of Article 31 of the Constitution. The second proviso to clause (1) of Article 31A has, therefore, no bearing on the interpretation of sub-section (1-A) of Section 23 and Section 30(1) of the amending Act.

Conclusion,

For the reasons aforementioned it must be concluded that in respect of acquisition proceedings initiated prior to date of commencement of the Amending Act the payment of the additional amount payable under Section 23(1-A) of the Act will be restricted to matters referred to in clauses (a) and (b) of sub-section (1) of Section 30 of the Amending Act. *Zora Singh* (supra) insofar as it holds that the said amount is payable in all cases where the reference was pending before the reference court on September 24, 1984, irrespective of the date on which the award was made by the Collector, does not lay down the correct law.

The question referred is answered accordingly. The matters be placed before the appropriate bench for consideration in the light of this order.

SAWANT, J. I have perused the draft of the judgment prepared by my bother Justice Agrawal. Since, I respectfully beg to differ with the interpretation on the relevant provisions of the Act and the conclusions drawn therein, I am impelled to deliver this dissenting judgment.

2. The question of law involved in these matters though a short one, has been the subject of conflicting decisions of this Court and hence is referred to the Constitution Bench for resolving the conflict. The question is whether the benefit of sub-section (1-A) of Section 23 of the Land Acquisition Act, 1894 (the 'principle Act') is to be granted only in the

proceedings for the acquisition of land referred to in clauses (a) and (b) of section 30 (1) of the Land Acquisition (Amendment) Act, 1984, (the 'amending Act') or it is to be granted in all proceedings pending before the Courts on the 24th September, 1984.

3. To appreciate the controversy, it is necessary to refer to the relevant provisions of the principal Act.

Section 3 (d) defines "Court" to mean a principal Civil Court of original Jurisdiction, unless the appropriate Government has appointed a special judicial officer within any specified local limits to perform the functions of the Court under the Act. In the context of the other provisions and the scheme of the Act, it means the Court to which the reference is made by the Collector under Section 18 of the principal Act.

Section 11 empowers the Collector, among other things, to enquire into the value of the land on the date of the publication of the notification for acquisition of the land under Section 4 (1) and to make an award of the compensation which in his opinion should be allowed for the land.

Section 15 requires the Collector while determining the amount of compensation, to be guided by the provisions of Sections 23 and 24 of Act.

Section 16 empowers the Collector to take possession of the land when he has made the award under Section 11 of the Act. On taking such possession, the land vests absolutely in the Government, free from all encumbrances. In case of urgency, Section 17 empowers the appropriate Government to direct the Collector to take possession of the land after 15 days from the publication of the notice under Section 9(1) although no award has been made under Section 11.

Section 18 provides for reference to the Court by an interested person, among other things, on the ground that the amount of compensation awarded by the Collector is inadequate. When a reference is made to the Court for determining the amount of compensation, Section 23 requires the Court to take into consideration six factors which are mentioned therein for determining the market value of the land. Sub-sections (1-A) and (2) of the said section require the Court to award in every case, amounts referred to therein in addition to the market value of the land. Sub-section (1-A) provides for an additional amount calculated at the rate

of 12 per centum per annum on the market value of the land, for the period commencing on and from the date of the publication of notice under Section 4 (1) to the date of the award of the Collector or to the date of taking possession of the land, whichever is earlier. Likewise, sub-section (2) requires the Court to award in every case a sum of 30 per centum on the market value determined under Section 23(1) in consideration of the compulsory nature of the acquisition. This amount is commonly known as solatium and is in addition to the additional amount under-section (1-A).

Section 24 enumerates eight matters which are to be ignored while determining the compensation of the land.

Sections 25 lays down that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11. Section 28 enables the Court to direct the Collector to award interest on the excess amount at the rate of 9 per centum per annum from the date on which the possession of the land is taken to the date of payment of such excess into Court if, in the opinion of the Court, the sum which the Collector ought to have awarded as compensation,was in excess of the sum which the Collector did award. The proviso to the said section further enables the Court to award interest at the rate of 15 per centum per annum, if the excess amount or any part thereof that is payable is not paid inot the Court within one year from the date on which possession is taken. The interest is to be paid from the date of expiry of the said period of one year.

Section 28-A enables the persons interested in all the other lands covered by the same notification under section 4 (1) and aggrieved by the award made by the Collector, to make a written application to the Collector within three months from the date of the award of the Court requiring that the amount of compensation payable to them be re-determined on the basis of the amount of compensation awarded by the Court to the applicants who had sought a reference under Section 18 of the Act to the Court, if the amount of compensation awarded to such applicants by the Court is in excess of the amount awarded by the Collector, although the persons concerned may not have similarly applied for a reference under Section 18 to the Court. On such application being made, the Collector is required to hold inquiry to make an award re-determining the award of compensation payable to such applicants. Any person who does not accept the award of the Collector re-determining the amount of Compensation, is

A given a right to require the Collector to refer the matter for the determination of the Court, and such application is to be deemed to be an application for reference under Section 18 of the Act.

4. Before we proceed further, it is necessary to bear in mind that the determination of the amount of compensation under Section 11 as well as
B by the Court on a reference under Section 18, are both regarded by the Act as an "Award" as distinguished from "Order" or "Decree" of the appellate courts such as High Court and the Supreme Court in appeal against such award. This is clear from the language of sections 11 to 12, 13A, 15A, 16-18, 23, 25 to 28-A and 54, among others. While under Section
C 26, the award made by the reference Court is deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, clause (2) and Section 2 clause (9), respectively of the Civil Procedure Code, under Section 54, the order passed by the High Court is *per se* decree and it is appealable as such to the Supreme Court under the Civil Procedure Code. But for Section 54 of the Act, the award
D of the reference court would not have been appealable. What is further, Section 30 (2) of the Amending Act clearly and specifically brings out the distinction between "award" made by the Collector and by the reference Court on the one hand and the "order" passed by the High Court or the Supreme Court in appeal on the other. It is an error to dismiss this vital
E distinction made in the principal and amending Acts between "award" and "order" by characterising the use of the word "award" as a verb and not noun. The distinction between the two has a significant relevance for the correct interpretation of the provisions in question. According to us, the legislature has not used the two words causally or unintentionally.

F It is further necessary to bear in mind that the amending Act has added, among others, the provisions of Section 23(1A) and 28-A and has amended the provisions of Section 23(2). It has also made independent transitional provision in its Section 30. The relevant provisions of Section 30 read as follows :

G

> 30. Transitional provision.- (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,

H (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 :

(b) Every proceedings 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.

(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.

The date of the introduction of the Bill of the amending Act is 30.4.1982 and the date of its commencement is 24.9.1984.

5. Against the background of the aforesaid relevant provisions of the principal and the amending Act, we have to interpret the provisions of Section 23(1-A) of the principal Act. Section 23(1) speaks of the factor which the reference Court has to take into consideration while determining the amount of compensation to be awarded for the acquired land. The compensation so determined is to be the market value of the land in question on the date of the publication of the notification under Section 4(1) of the principal Act. The legislature had originally provided for a further sum in every case to be paid in addition to the market value of the land in consideration of the compulsory nature of the acquisition. That sum was 15 per centum on the market value. This additional sum known as 'solotium' was provided for in sub-section (2) of Section 23. By the amending Act, it has been increased to 30 per centum of the market value. The solotium was thus a part of the compensation from the very inception of the principal Act and all that was done by the amending Act, was to increase its amount.

A It was, however, found that there was a considerable time lag between the date of the publication of the notification under section 4(1) and the date of the award of the Collector. The market value of the land acquired was however frozen to the date of the notification under Section 4(1). In order to relieve the hardship of the persons interested in the land (hereinafter compendiously termed as 'land-owners' for the sake of convenience), the legislature for the first time introduced sub-section (1-A) in Section 23 of the principal Act by the amending Act. This sub-section enjoins the grant, in every case, of a further amount in addition to the market value. The amount is to be calculated at the rate of 12 per centum per annum on the market value for a specific period, namely the period commencing on and from the date of the publication of the notification under Section 4(1) and ending with the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. The Explanation to the said sub-section (1-A), states that in computing the period for which the said amount is to be granted, 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. This provision like the one for solatium in sub-section (2) of Section 23, is a substantive one. Unless therefore, there is a statutory mandate, neither this provision nor the provisions for the increased solatium can be given retrospective effect. It is here that the role of Section 30 of the amending Act (hereinafter referred to as 'Section 30') which makes provisions for the transitional period, viz. the period between the introduction of the Bill of the amending Act and the commencement of the said Act, comes into play. It is the interpretation of the said Section 30 and its bearing on the provisions of Section 23 which has become a matter of controversy and a subject of conflicting decisions of this Court as stated at the outset.

The relevant provisions of Section 30 have already been reproduced. An analysis of the Section shows that it deals separately with the two different benefits which the amending Act has conferred on the land-owners. Sub-section (1) thereof deals exclusively with the provisions of sub-section (1-A) of Section 23 of the provisions Act while sub-section (2) thereof deals exclusively with the provisions of the sub-section (2) of Section 23, and section 28 of the principal Act, as amended by the amending Act. In the present proceedings, we are concerned with the applicability of the newly inserted sub-section (1-A) of Section 23 of the principal Act

and not with the amended Sections 23(2) and 28 of the principal Act. However, since some decisions of this Court have tried to project and rely upon sub-section (2) of Section 30 for the interpretation of sub-section (1) thereof and also for the interpretation of Section 23 of the principal Act, it will be necessary to refer to the provisions of section 30(2) also in the course of the discussion that follows.

Sub-section (1) of Section 30 in its turn deals separately with two classes of cases. By clause (a) thereof it makes the provisions of Section 23(1-A) of the principal Act applicable also to and in relation to every acquisitions proceeding pending on the 30th April, 1982 i.e., the date of the introduction of the Bill of the amending Act, in which no award has been made by the Collector before that date. By its clause (b), it makes the provisions of the said Section 23(1-A) applicable also to and in relation to every acquisition proceeding commenced after 30th April, 1982 whether the Collector has or has not made an award before the date of the commencement of the Act, i.e., 24th September, 1984. It is further clear that sub-section (1) of Section 30, deals exclusively with the power and the jurisdiction of the Collector in the proceedings before him. It does not deal with or refer to the power either of the reference Court under Section 23 of the principal Act or of the appellate Court such as the High Court and the Supreme Court. With respect, it is the failure to appreciate the *sine qua non* of the provisions of Section 30(1) which is responsible for misinterpretation of, and wrong conclusions with regard to the applicability of Section 23(1-A). These transitional provisions with regard to the proceedings pending before the Collector were necessary, for without them it would not have been permissible for the Collector to give benefit of Section 23(1-A) to the concerned land-owners. The legislature not only wanted the reference Court under Section 23, but also the Collector under Section 11 of the principal Act, to give the benefit of Section 23(1-A) in the proceedings pending before them. This is as it should be, for Section 15 of the principal Act requires the Collector to take into consideration the provisions contained in Sections 23 and 24 while determining the amount of compensation to be awarded. To get his due compensation, every landowner need not be obliged to ask for a reference under Section 18 nor is every land-owner in a financial position to do so. It is common knowledge that many a land acquisition proceedings come to an end at the stage of the Collector, and only some cases travel to the reference Court and thereafter to the appellate Courts. Secondly, Section 30(1) while giving

A the power to the Collector to grant the benefit of section 23(1-A), also places a restriction on the said power. The Collector is empowered to grant the said benefit only in those proceedings which are pending before him on 30th April, 1982 and in which no award has been made by him before that date. That is understandable since the proceedings would be pending before him on 30th April, 1982 even after he has made his award, either for making a reference or for payment and distribution of the compensation. In such cases, he is not empowered to give the said benefit by reopening the award. If the reference in such proceedings is ultimately made under section 18 of the principal Act, the reference Court under Section 23 will have authority to give the benefit. If it is not made, the proceedings will stand closed without the said benefit. On the other hand, if the proceedings are pending before him on the 30th April, 1982 in which no award is made, he is empowered to give the said benefit in such proceedings since, as pointed out earlier, under section 15 of the principal Act he is to be guided by the provisions of Section 23 and 24 of that Act while determining the compensation. This is the substance of clause (a) of Section 30(1).

Clause (b) of Section 30(1) takes care of another situation where the Collector is given power to give the benefit of section 23(1-A). That situation is where the proceedings for acquisition have been started after 30th April, 1982 whether an award has been made or not by the Collector before 24th September, 1984, which is the date of the commencement of the amending Act. In other words, the Collector has been given power to give benefit of Section 23(1-A) in all acquisition proceedings started after 30th April, 1982. This provision was also necessary, since but for the said provision, the Collector would have been powerless to give the said benefit in the acquisition proceedings started after 30th April, 1982 in which he has made his award before 24th September, 1984. The clause (b) empowers the Collector to reopen such award whether the proceedings are pending before him or not. Secondly, the said clause empowered the Collector to give the said benefit also in all acquisition proceedings started after that date in which he has not made award till 24 the September. 1984.

6. Thus, the provisions of sub-section (1) of Section 30 are in conformity with the object of the amending Act, namely, to give benefit to the land-owners who were denied the benefit of compensation for a long time and were put to an avoidable loss. There is no reason why if the reference Court under Section 23 of the principal Act can give the benefit

of Section 23(1-A) in the proceedings pending before it on the date of the commencement of the amending Act, the Collector should not have power to give the said benefit in the proceedings before him. The only restriction that the legislature has placed on the said power of the Collector is that it has prevented him from reopening the awards which he had already made before 30th April, 1982 in proceedings pending before him on that day. This was, as stated above, for the reason that those of the awards made by him in such proceedings which were the subject matter of reference under Section 18 could be taken care of by the reference Court under Section 23. On the other hand, those of such awards which were not questioned and, therefore, had become final, should not be reopened.

What is, therefore, necessary to note is that Section 30(1) deals exclusively with the powers of the Collector and it has no bearing on the powers of the Reference Court under Section 23. What is more, clause (a) of the said Section 30(1) is not retrospective in operation. It speaks of power of the Collector in the proceedings pending before him on 30th April, 1982 in which he has yet to make the award. It is only clause (b) of the said Section which gives a limited retrospectivity to the power of the Collector when it enables him to reopen the award made by him before the commencement of the amending Act, viz., 24th September, 1984 in proceedings started after 30th April, 1982.

The reference Court in its turn in the matters pending before it on the date of the commencement of the amending Act. viz., 24 September, 1984 is enjoined upon to give the benefit of section 23 (1-A) in awards made by it on and after the date of the commencement of the Act. For granting the said benefit, Section 23 of the principal Act nowhere makes any distinction between the acquisition proceedings commenced prior to and after 30th April, 1982 or inhibits the power of the Reference Court, unlike the provisions of Section 30 (1) which deal with the powers of the Collector. When the reference Court does so, it gives prospective effect to the provisions of Section 23(1-A). It does not give retrospective effect to the said provisions. To import the concept of retrospectivity in Section 23 merely because the reference Court gives the benefit of Section 23(1-A) in the proceedings pending before it on the date of the commencement of the amending Act, is neither interpretatively correct nor in conformity with the provisions of Section 23. It is wrong to say that merely because the acquisition proceedings were commenced prior to 30.4.1982, i.e., the date

A of the introduction of the Bill of the amending Act, the grant of the said benefit has a retrospective effect, although the benefit is given by the reference Court in the proceedings pending before it. In the first instance, the additional amount under Section 23(1-A) is to be calculated till the date of the award or the date of taking possession of the land whichever is earlier. Secondly, when the legislature does not use any expression to indicate that the law made by it shall apply only to causes of action or incidents taking place after the coming into force of the amending Act, the law has to be applied to all matters pending before the Court even if those matters had arisen before coming into force of the Act.

B

C "A statute is not retrospective merely because it affect existing rights; nor it is retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing". (*Halsbury's Laws of England* Vol. IV para 221). In *The Queen* v. *The Inhabitants of St. Mary, Whitechapel*, [1848] 12 Q.B. 120 at page 127), the law intended to secure that a widow residing in a parish with her husband shall not be removed for twelve months after his death. The benefit of the law was extended even when the husband had died before coming into force of the Act and it was observed.

D

E "It was said that the operation of the statute was confined to persons who had become widows after the Act was passed, and that the presumption against a retrospective statute being intended supported this construction; but we have shown before that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing. In this case the words 'shall be removed' were thus found appropriate to cover all cases of future removals irrespective of whether the husband had dies prior to the Act but they were not found wide enough to nullify completed removals prior to the Act, even if the widow was removed within twelve months of her husband's death."

F

G

This principle was approved by our Court in *Rao Shiv Bahadur Singh & Anr.* v. *The State of Vindhya Pradesh*, AIR (1953) SC 394 at 398 and in *T.K. Lakshmana Iyer and Ors.* v. *State of Madras and Ors.*, [1968] 3 SCR

H 842. In *Trimbak Damodhar Rajpurkar* v. *Assaram Hiraman Patil & Ors.*,

AIR 1966 SC 1758, it was observed by the Constitution Bench. A

> "where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included."

In *Bishun Narain Misra* v. *The State of Uttar Pradesh & Ors.*, AIR B (1965) SC 1567 a rule made by the State Government providing that the age of retirement would be 55 years came up for consideration before the Constitution Bench. It was argued that since the rule could not apply retrospectively, a Government servant who was recruited and appointed earlier to the date when the rule was made by the Government, could not C be retired in exercise of power under this rule retrospectively. The submission was repelled and it was held that the rule could not be struck down on the ground that it was retrospective in operation as all that it provided was that from the date it came into force the age of retirement became 55 years.

D

The fact that the provisions of sub-section (1) of Section 30 are confined to the powers of the Collector and have no relation to or bearing on the power of the reference Court under Section 23 of the principal Act or of the appellate Courts, becomes abundantly clear when we contrast the said provisions with the provisions of sub-section (2) of the said Section E 30. That sub-Section extends the benefit of the amended Section 23 (2) and Section 28 of the principal Act also to and in relation to not only the award made by the Collector but also to that made by the reference Court and further to the orders passed by the High Court and the Supreme Court in appeals against any such award made by the Collector or the reference Court after 30.4.1982 and before 24.9.1984. In other words, sub-section (2) F of Section 30 empowers all the tribunals, viz., the Collector, the reference Court and the appellate Courts to grant the benefits of the amended Section 23(2) and Section 28 in contradiction to its sub-section(1) which only speaks of the Collector and the award made by him.

G

7. In the face of these clear indications given by Section 30(1) and (2), it is incorrect to read in Section 23, the limitations of section 30(1) and circumscribe the powers of the reference Court under Section 23. The reference Court acting under Section 23 is not inhibited in any manner as the Collector under Section 30(1), from giving benefit of Section 23 (1-A) in the proceedings pending before it on 24.9.1984, whether the said H

A proceedings were started prior to or after 30.4.1982. In fact the plain language of Section 23 enjoins upon the reference court to grant the said benefit in all proceedings pending before it on the date of the commencement of the amending Act. For the same reason, neither the reference Court nor the appellate Court like the High Court and the Supreme Court can give the benefit of Section 23(1-A) in proceedings which were closed before the reference Court before 24.9.1984. This is so, because unlike sub-section (2) Section 30 which extends the benefit of the amended section 23 (2) and Section 28 of the principle Act to the awards made by the reference Court after 30.4.1982 and before 24.9.1984 or to any order passed by the High Court or the Supreme Court in appeal against such award, sub-section (1) of Section 30 does not extend the benefit of Section 23(1-A) to such award of the reference Court and to the orders of High Courts and the Supreme Court in appeal against such award.

8. The above interpretation is also in conformity with the object of the legislation. It must be remembered in this connection that according to the Agricultural Census of 1985-86, [All-India Report on Agricultural Census, 1985-86 (1992)] the small holders of agricultural land, i.e., those who hold land between 1 to 2 hectares, constitute 18.4 per cent of the agriculturists whereas marginal holders, i.e., those who possess less than one hectare constitute 57.8 per cent of the agriculturists. Thus, together, the small and the marginal holder constitute 76.2 per cent of the agriculturists. The average small holding is 1.43 hectare whereas the average marginal holding is 0.39 hectares. Out of the total holdings, only 27.1 per cent are wholly irrigated whereas 17.8 per cent are partly irrigated and remaining 55.1 per cent are wholly unirrigated. The vast majority of the land holders in this country, thus, are subsistence farmers. It is also a notorious fact that agriculture in this country has never been a profitable occupation. The vagaries of nature, the spiralling prices of inputs and the basic necessities of life, uneconomic prices fixed for the agricultural products, the exploitation of farmers by the middlemen and market forces, the growing burden of dependents on the limited holdings are rendering even the so-called large holdings, the area of which ranges between 10 hectares to 50 hectares on average unremunerative. When the acquisition takes away either wholly or partly the lands from the farmers, they are deprived of their only means of livelihood or the already slender means are still further slimmed, depending upon the area of the land acquired and the person from whom it is acquired.

9. The right to receive compensation under the principal Act accrues to the owner when the possession is taken by the Collector. Section 16 vests the land in the State absolutely free from all encumbrances when the Collector takes possession of the land after making the award in non-urgent circumstances, the urgent cases being covered by Section 17 of the principal Act. But as stated above between the date of notification under Section 4 and the date of award and of taking possession of the land, very often than not a long delay occurred which affected the land-owners materially as the market value of the land is to be determined under Section 23 of the principal Act with reference to the date of the notification issued under Section 4(1). The delays became more pronounced and their consequences to the land-owners more and more adverse with the passage of time on account of the spiralling of the prices. To remedy the situation, the Law Commission as early as in 1958 observed as follows :

> ".....It is noteworthy, however, that the State Governments themselves admit that the delay is largely due to the tardy manner in which the machinery of the government moves in the matter. They also admit that, if the land acquisition officers are made to work methodically and expeditiously, the pace can be quickened. Any proposal for the reform of the law should, therefore, aim at overcoming these evils. Most of the delay occurs in the initial stages of the proceedings between the date of the notification under Section 4 and the declaration under section 6. Further delay arise in the making of the award by the Collector, with the result that as under the existing law, the Government cannot obtain possession until the award is made and the taking of possession is indefinitely delayed."

The report submitted in 1970 which suggested a time-frame for completion of the acquisition proceedings, particularly to relieve the poor land holders whose only means livelihood was taken away, recommended as follows:

> "The Land Acquisition Act is over 75 years old. When enacted it was not faced with the requirements of the Constitution of India. It is remarkable that broadly speaking it fulfilled the needs of the community for such a length of time. Even today the Act is not so much vulnerable on its provisions as on the way the executive

A authority tried to implement them. From one end of the country to the other the same story has been repeated again and again (with provincial variations) that it has been used as an engine of oppression by the administrative authorities and the weaker poorer sections of the community have suffered the most. The complaint B (not without substance) is that only an illusory compensation was awarded in an appreciable number of cases and that too was not paid for years. Emergent acquisition was the order of the day without the existence of any emergency. The law was ignored and the exception was made the law perhaps on the ground that observance of law would have meant delay. The executive mind C considered the delay in acquiring possession as a matter of great importance but the delay in payment of compensation to poor land-owners as of no consequence. This callous indifference was manifested again and again. Many of the sufferers lost their hereditary occupation also which alone provided them with some D sort of economic security. As a result quite an appreciable number of citizens were completely uprooted and turned into refugees in their own land of birth."

To implement these recommendations and suggestions, the amending Act was enacted. One of the suggestions made in the debate in the E Parliament was that the determination of the value of the land be made with reference to the notification issued under Section 6 of the Principal Act. The Honourable Minister who piloted the Bill expressed his inability to do so due to various difficulties. Instead, he opted for measures including that provided under Section 23 (1-A) to mitigate the miseries of the F land-owners. In this connection, he stated thus :

"It is, therefore, necessary to ensure particularly that the interest of the weak and the poor are not overlooked in our concern for modernisation and industrialisation. Even when acquisition of their G land, becomes an inescapable necessity for the larger interest of the community, they ought to be provided with the necessary wherewithals of rehabilitation. In making provision in the amending Bill, we have been animated by our concern of ensuring that the person who loses his property right in land, particularly one how belongs to the weaker sections of the community, is adequately H compensated for his loss..... As it is well known, a number of land

acquisition proceedings have been pending for the award of Collector for years an end. In some cases, the preliminary notification under Section 4 (1) was issued many year ago. Payment of compensation to the interested parties on the basis of the market value of the land prevailing on the one of the preliminary notification will be purely unfair. To remedy this unfairness, the Bill provides for payment, in every proceeding for acquisition of land where the award of the Collector had not been given on the 30th day of April, 1982, an additional payment of 10 per cent annum from the date of the preliminary notification on the date of the payment or deposit of compensation."

10. It is, therefore, clear that the intention of the legislature in enacting the amending Act and in particular Section 23 (1-A) with which we are concerned, was to give additional amount to the deprived land owners in all the proceedings which were pending before the Collector on the 30th April, 1982 and before the reference Court on the 24th September, 1984 i.e. the date of the commencement of the Act. However, the legislature conferred the power on the Collector to give the said benefit only in those proceedings which were pending before him on 30.4.1982, where no award was made by him. This is because, as explained earlier, where he had made his awards in such proceedings, either they had travelled to the reference Court and were pending before it or had been accepted and become final. The awards which were before the reference Court were left to be dealt with by it under Section 23 while those which had become final were not to be reopened. However, in proceedings which were started after 30.4.1982, whether the award was or was not made by the Collector before the date of commencement of the Act, the legislature gave the Collector the power to grant the said benefit even by reopening the award, because the Collector was seized of the proceedings between 30.4.1982 and 24.9.1984 when the benefits were on the anvil. If he could give the benefit to the awards made by him in such proceedings after 24.9.1984, there is no reason why the awards made by him during the said interregnum should not receive the same treatment. The reference Court *proprio vigore* was empowered to give the said benefit in all proceedings which were pending before it on the date of the commencement of the amending Act. If the Collector could give the said benefit in proceedings pending before him on 30.4.1982, although started prior to that date, where he had not made his award, it will be against the scheme of the Act to contend that the reference

A Court could not give the same benefit in the proceedings pending before it because the acquisition proceedings had started prior to 30.4.1982.

11. According to me the error in the contrary view springs, firstly, from the fact that the said view fails to notice that section 30(1) of the amending Act is confined to spelling out the powers of the Collector. It B has no reference to and bearing on the powers of the reference or the appellate Court. The dovetailing of the provisions of Section 30(1) into the provisions of Section 23 is, therefore, mainly responsible for the error. Secondly, sections 30(1) and 30(2) deal with different benefits and speak of powers of different tribunals. While Section 30(1) speaks of powers only C of the Collector, Section 30(2) speaks of powers of the Collector, the reference Court and also of the appellate Court. An attempt to project the provisions of Section 30(2) into the provisions of Section 30(1) and consequently in Section 23(1-A) is no less responsible for the erroneous interpretation of the powers of the reference Court under Section 23 to grant D the benefit of Section 23(1-A).

12. The relevant decisions of this Court may now be referred to. There are three decisions directly on Section 23(1-A) viz., *Union of India and Ors.* v. *Filip Tiago De Gama of Vedem Vasco De Gama*, [1990] 1 SCC 277, *Union of India and Anr.* v. *Zora Singh and Ors.*, [1992] 1 SCC 673, and E the referring judgment in *K.S. Paripooman & Ors.* v. *State of Kerala & Ors.*, [1992] 1 SCC 684. The other decisions, viz., *Union of India and another* v. *Raghubir Singh (Dead) by Lrs. etc.*, [1989] 2 SCC 754 which is a Constitution Bench decision and *K. Kamalajammiavaru (Dead) by Lrs.* v. *Special Land Acquisition Officer*, [1985] 1 SCC 582, *Bhag Singh and Ors.* v. *Union* F *Territory of Chandigarh*, [1985] 3 SCC 737 and *State of Punjab* v. *Mohinder Singh and Anr.*, [1986] 1 SCC 365 are all on the interpretation of amended Sections 23 (2) and 28 of the principal Act and, therefore on the interpretation of Section 30 (2) of the Amending Act.

G In *Vasco De Gama* (supra), the facts were that the acquisition proceedings were commenced with the notification published under Section 4 (1) of the principal Act on 26.10.1967. The Collector made his award on 5.3.1969 and the reference Court made its award on 28.5.1985. The Court was here called upon to interpret the provisions of sections 23 (2) and 28 of the principal Act and, therefore, of Section 30(2) of the Amend- H ing Act as well as the provisions of Section 23 (1-A) of the principal Act

and of Section 30 (1) of the Amending Act. I am in respectful agreement with the observations made in the said judgment that Section 30 (1) of the Amending Act refers to the Collector's award and Section 30 (2) refers to the award of the reference Court as well. To this extent, the view which I have taken above on the point finds support in these observations. The conclusion, drawn in this case however as far as Section 23 (1-A) is concerned, was, with respect, incorrect inasmuch as it denied the power to the reference Court to give the benefit of Section 23 (1-A) in the proceedings in that case, though they were pending before the Court on the commencement of the amending Act. i.e. on 24.9.1984. This decision, with respect, has committed the error of projecting the provisions of section 30(2) in Section 30(1) and in Sections 23 and 23(1-A) of the principal Act.

In *Zora Singh* (supra), notification under Section 4(1) of the principal Act was issued on 10.5.1979. The Collector made his award on 31.3.1981 and the Court made its award in 1985, i.e., after the commencement of the principal Act. Although I agree with the proposition laid down there that the plain language of Section 23(1-A) shows that a duty is cast on the reference Court to award the additional amount in all cases pending before that court on 24.9.1984 even if the award of the Collector was made before April 30, 1982, with respect, I am unable to agree with the following observation underlined by me in paragraph 14 of the judgment :

> "..... On a correct interpretation of the provisions of section 23(1-A) read with Section 30(1)(a) of the Amendment Act of 1984, an additional amount calculated in the manner indicated in Section 23 (1-A) is also payable in those cases where the Collector had not made his award on or before April 30, 1982, *even in cases where the court might have made its award before September 24, 1984.*"

The above observation, according to me, ignores that in cases where (a) acquisition proceedings were pending on 30.4.1982 and the award is made by the Collector after that date (b) where acquisition proceedings had started after 30.4.1982 and the Collector made award after that date but before the commencement of the amending Act i.e., 24.9.1984, the Collector is given power to reopen the award and give the benefit of Section 23(1-A). The reference Court under Section 23 has no power to reopen the award made by it before 24.9.1984 to give the benefit of Section 23 (1- A), since the provisions of Section 23 (1-A) have no retrospective

A effect. The retrospective effect is given only to the powers of the Collector to reopen the awards made by him before 24.9.1984. For the similar reason, the observations made by the Court to the same effect in paragraph 15, with respect, cannot be accepted.

B As regards the referring judgment in *K.S. Paripooman* (supra), the facts in that case show that notification under section 4 (1) was issued on 21.3.1978. The Collector made his award on 30.12.1980 and the reference Court gave its award on 28.2.1985. I agree with the observation made there that the said case is not covered by Section 30(1). However, I am unable to agree that in that case the benefit of Section 23(1-A) is not available to C be granted by the reference Court under Section 23. With respect, the decision confuses the powers of the Collector under Section 30 (1) with the powers of the Court under Section 23. The provisions of Section 30(1) govern only the powers of the Collector under Section 11 and not the powers of the Court under Section 23. Further, there is no retrospectivity D given by Section 30(1) to the powers of the Collector except where it enables the Collector to reopen the award made by him before 24.9.1984 in proceedings for acquisition started after 30.4.1982. In all other respects, the powers of the Collector are prospective in nature inasmuch as both clauses (a) and (b) of Section 30(1) grant power to the Collector to give the benefit of section 23 (1-A) in proceedings pending before him on E 30.4.1982 and thereafter. I am also unable to agree that the use of the word "Court" in Section 23 (1-A) is of no significance and that the said expression would include the appellate Courts, i.e., the High Court and the Supreme Court. It is also difficult to agree with the statement made in paragraph 11 of the judgment that even the High Court and Supreme Court can award F the benefit of Section 23 (1-A) if they decide the matter on or after 24.9.1984 irrespective of the date on which the award was made by the reference Court. The said interpretation gives retrospective effect to Section 23(1-A) inasmuch as it applies the provisions of the said Section also to awards made by the reference Court prior to 24.9.1984.

G 13. I am further unable to accept the view that the word "award" occurring in Section 23(1-A) is used there not as a noun but as a verb. Although the word "award" is not defined in the Act, as pointed out at the outset, the legislature has used the said word in various provisions of the Act with a specific intention and meaning and hence there cannot be any H mistake that the said word has been used even in Section 23(1-A) as a

noun. The inconvenient words, expressions and language, when their intendment and meaning are plain, cannot be got over by either mutilating or by attributing to them unnatural and unwarranted role. Such an exercise is against all canons of the interpretation of statutes.

14. Coming now to the decisions of this Court on Section 23(2), I find that on the language of Section 30(2) of the amending Act, this Court in *Kamalajammanniavaru* v. *Special Land Acquisition Officer*, [1985] 1 SCC 582, has with respect taken the correct view of the law. In that case, the notification under Section 4(1) was issued on 28.11.1957 and the Collector and the Court made their awards either in 1970 or prior to it. The Court held that the provisions of section 23 (2) read in the light of Section 30(2) of the amending Act did not apply to the said case. This judgment is also relevant for yet another reason in that it states that it is only the awards made by the Collector under Section 11 and the reference Court under Section 18 which are "awards" proper under the Act. This observation supports the view I have taken.

15. I am, however, unable to agree with the decision in *Bhag Singh*, (supra) which was also a decision under Section 23(2) and Section 28 of the principal Act read with Section 30(2). In that case, notification under Section 4(1) of the principal Act was issued on 19.10.1974. The Collector made his award on 9.10.1975 and the Court made its award on 31.7.1979. This decision ignores the limited prospectivity given by section 30(2) of the Amending Act and makes the amended provisions of Sections 23(2) and 28 of the principal Act applicable also to cases where the award were made by the Collector or the Court prior to 30.4.1982. This decision has relied upon the earlier decision of the Court in *State of Punjab* v. *Mohinder Singh and Another*, (supra). Unfortunately the latter decision has not given any reasons for coming to the conclusion in question except that S.L.P. against the same decision was already dismissed. For the reasons given above, I am unable to agree with the conclusions in this decision.

16. The last decision on the amended Sections 23(2) and 28 read with Section 30(2) is of the Constitution Bench in the case of *Raghubir Singh* (supra). This decision has overruled the decisions in *Bhag Singh* and *Mohinder Singh* (supra). With respect, I am in complete agreement with the decision which has taken the correct view of law as taken in the case of *K. Kamalajammanniavaru* v. *The Appellate Court*, viz, that under Section

A 30(2), the High Court and the Supreme Court have power to give the benefit of the amended Sections 23(2) and 28 retrospectively only in those proceedings where the awards are made by the Collector or the reference Court between 30.4.1982 and 24.9.1984. It is further only to such awards of the Collector and the reference Courts that the said provisions apply retrospectively.
B

17. The transitional provision is by its very nature an enabling one and has to be interpreted as such. In the present case, it is made to take care of the period between 30.4.1982 and 24.9.1984, i.e., between the date of the introduction of the Bill of the amending Act and the date of the
C commencement of the Act. Since some awards might have made by the Collector and the reference Court during the said interregnum, the legislature did not want to deprive the concerned awardees either of the newly conferred benefit of Section 23(1-A) or of the increased benefit under Sections 23(2) and 28. The second object was to enable the Collector and the Court to give the said benefits in the proceedings pending before them
D where they had not made awards. The only limitation that was placed on the power of the Collector in this behalf was that he should not reopen the awards already made by him in proceedings which were pending before him on 30.4.1982 to give the benefit of Section 23 (1-A) to such awardees. This was as stated earlier, for two reasons. If the said awards are pending
E before the reference court on the date of the commencement of the amending Act viz., 24.9.1984, the reference Court would be able to give the said benefit to the awardees. On the other hand, if the awardees in question had accepted the awards, the same having become final, should not be reopened. As regards the increased benefit under Sections 23(2) and 28, the intention of the legislature was to extend it not only to the
F proceedings pending before the reference Court on 24.9.1984 but also to those where awards were made by the Collector and the reference Courts between 30.4.1982 and 24.9.1984. Hence these awards could not only be reopened but if they were the subject-matter of the before High Court or the Supreme Court, the appellate orders could also be reopened to extend the said benefits.
G

The difference made in the transitional provisions of Section 30 between payment of the additional amount under Section 23(1-A) and of the increased solatium and interest under Sections 23(2) and 28 has to be noted. While the former is provided for under Sub-Section (1) of Section
H 30, the latter are taken care of by sub-Section (2) thereof. Sub-section (1)

gives power to the Collector while sub-section (2) gives power to all the tribunals - the Collector, the reference Court and the appellate courts. The Collector's powers under sub-section (1) are confined (a) to the acquisition proceedings pending before him on 30. 4.1982 where he has not made award before that date and (b) to the acquisition proceedings commenced after 30.4.1982 whether he has or has not made award prior to the commencement of the amending Act i.e., 24.9.1984. As against this, the power conferred by sub- section (2) on all the tribunals is confined only to the awards made by the Collector and the reference Court between 30.4.1982 and 24.9.1984. This distinction is necessitated by the difference in the nature of the benefit. While the additional amount under Section 23(1-A) which is for the first time made payable by the amending Act is to compensate for the delay in the making of the award or taking possession of the land, the solatium under Section 23(2) and interest on the excess amount under Section 28 which were always payable were increased to take care of the inflation and the fall in the purchasing power of the rupee in the meanwhile.

A B C D

But for the provisions of sub-section (1) of the said Section 30, the Collector would not have been able to give the benefit of Section 23(1-A) in the proceedings referred to therein. This would have defeated the object of the Act in those cases which had not travelled or could not travel to the reference Court and had or would become final with the Collector's award. The legislature, therefore, wanted to give the power to the Collector in addition to the reference Court to take care of such cases. It was aware that many cannot and did not go to the reference Court to get their due compensation.

E

18. According to me, any other interpretation will be a distortion of the plain language, meaning and intendment of the relevant provisions. It will also amount to reading limitation on the powers of the Collector and the Courts where the legislature intended to expand them.

F

19. I, therefore, hold that :

G

(i) Sub-section (1) of Section 30 of the Amending Act relates only to the powers of the Collector. It has no relation to or bearing on the powers of the reference Court. It is erroneous to read its provisions and the limitations placed by and the distinction made by it between acquisition proceedings com-

H

menced prior to and after 30th April 1982, into the provisions of Section 23 including of sub-section (1-A) thereof.

(ii) Under clause (a) of sub-section (1) of the said Section 30, the Collector has power to grant benefit of Section 23(1-A) of the principal Act in every proceeding for the acquisition which is pending before him on 30th April, 1982 but in which he has made no award before that date.

(iii) Under clause (b) of sub-section (1) of the said Section 30, the Collector has power to give the benefit under Section 23(1-A) in every proceeding for the acquisition commenced after 30th April, 1982 whether or not he has made his award in such proceeding before 24th September, 1984. Where he has made his award in such proceeding before that date, he is empowered to reopen the same and grant the said benefit.

(iv) Section 23 does not make any distinction in the acquisition proceedings pending before the reference Court on the 24th September, 1984 between those which had commenced prior to 30th April, 1982 and those which had commenced thereafter. If the proceedings are pending before the reference Court on the date of the commencement of the Act, viz., 24th September, 1984, the reference Court is enjoined upon to give the benefit of Selection 23(1-A) in all such proceedings without making any distinction. When the reference Court does so, it gives prospective effect to Section 23(1-A). It does not give retrospective effect to the said Section merely because the proceedings in question had started prior to 30th April, 1982.

(v) It is not permissible to read the provisions of sub-section (2) of Section 30 of the amending Act into the provisions of sub-section (1) thereof and thereby in Sections 23 and 23(1-A). The provisions of Section 30(2) are exclusively concerned with Sections 23(2) and 28 and have no relation to the provisions of Section 23(1-A).

(vi) Neither the reference Court under Section 23 nor the appellate court, whether High Court or the Supreme Court can

grant the benefit of Section 23 (1-A) in any proceeding in which the reference Court has made its award prior to 24th September, 1984. The grant of such benefit by the Courts is not warranted by the transitional provisions of Section 30(1). The provisions of Section 30(2) as stated above are not applicable to the benefit under Section 23 (1-A). For the Courts to grant the said benefit in such proceedings is to give retrospective effect to the provisions of Section 23 (1-A) which is impermissible in law.

20. For the reasons stated above, I agree with the conclusion drawn in *Union of Indian & Another* v. *Zora Singh & Others*, [1992] 1 SCC 673, that in all proceedings pending before the reference court on 24.9.1984, the reference Court has to give benefit of the provisions of Section 23(1-A) to the claimants.

R.M. SAHAI, J. How to construe section 23(1-A) of the Land Acquisition (Amendment) Act, 1984 (for short 'the Amendment Act') a substantive provision added in the Land Acquisition Act, 1894 (for short 'the Act') after 90 years, for striking proper balance, 'between the need of acquisition of land for private purpose and the rights of the individual whose land is acquired' is the simple issue but of far reaching consequence both for the State or the acquiring body and the owners who, by process of law are deprived of their land. Should the interpretative process, which in public welfare measures has to be purpose oriented, further the legislative objective by taking recourse even to the debates in the House, if necessary, to find out the mischief the Legislature intended to remedy or it should resort to strained or unduly restrictive construction by adding or substracting words to the otherwise plain and simple language on assumptions of limited retrospectivity drawn from the transitional provision. Even a decade has not elapsed since the amendment was made yet there are no less than six decisions one of them being constitution bench on scope and applicability of the amending provision when it could not be disputed that the law was amended and the Legislature made the changes to mitigate the rigour of the owners on account of delay by providing for time frame in Section 11-A, additional compensation under Section 23(1-A) enhanced solatium under Section 23(2), and equality of compensation for persons affected by same notification under Section 28-A. But the divergence has arisen not on the purpose of objective, or the benefit the provision intends

A to confer but on construction arising out of difference in approach of interpreting such a provision. Brother Agrawal has opted for construction which restricts the operation of Section 23(1-A) to the proceedings for acquisition initiated after coming into force of the Amendment Act. This with profound respect to him is not made out either from the language of the provision or from the legislative objective as discerned from the B Debates in the Lok Sabha. Therefore, despite deliberations and discussions it has not been possible to share the views expressed by him, that if the provision for additional compensation is extended to the land owner whose reference were or are pending under Section 18 it would amount to operating the provisions retrospectively in respect of past transactions. Nor C it has been possible to reconcile to the view that Section 30(1), the transitional provision, can be reflected into Section 23(1-A) to curtail its ambit and scope and construe it as applicable to notification issued under Section 4(1) after September, 1984.

D Before entering into the legalistic exercise of analysing Section 23(1-A) and the time or period from which it commences to operate it, it is appropriate to preface it by making an attempt to bring out the purpose and objective of the amendment. The Land Acquisition Act enacted in 1894 primarily, for acquiring land was more socially inclined towards displacement of the individual by providing for payment of compensation, E from the date the declaration was issued under Section 6 of the Act. But as time passed and acquisition expanded the date of determining compensation was pushed back in 1923 to the date notification under section 4 was issued. Effect of it on the right of land owners was economically harsh as at times there was long delay between issuing of notifications under Sec- F tions 4 and 6 of the Act and compensation due to distance of time between the two notifications, in many cases, became nugatory. Yet it took 34 years, even, from the date the country became independent for the elected representative, most of whom come from rural background, to intervene in favour of that class of persons who not only form bulk of the society and for whom land is not only property but their bread and butter, their life G and soul, to relieve them to the effect of compulsory taking over of their land by restructuring and making the provisions more economically viable. Even though our country is vast, bristling with varied cultures yet the economy, basically, being agricultural right from Kashmir to Kanyakumari, irrespective of the fertility of land, the love and lure for it is the same. An H agriculturist of Tamil Nadu is as much concerned as a cultivator in Uttar

Pradesh and Bihar. But the development of different State, the potential value of land etc. is vastly different. An acre of land in one State due to irrigation facility and development activity may cost more than in any other State. Therefore, the high ratio of compensation for land in that State should not be a scare for construing, the beneficient, provision narrowly. If the Legislature in keeping with feeling of its elected representative brings out a legislation then the Courts endeavour should be to advance it and the draftsman devil, if any, should not be permitted to act as obstruction in achieving the basic purpose.

Although the amendments touched various aspects but these petitions are primarily concerned with construction of Section 23(1-A) of the Act. To put it precisely whether the provision for additional compensation introduced since 1984 is attracted even in those cases where the awards had been made by the Collector prior to 1982 and their final adjudication was pending in courts either under Section 18 of the Act or in appeal etc. But before adverting to and examining its reach it appears apposite to mention in brief the provisions relating to determination of compensation under the Act prior to 1984, the defects, if any, with which it suffered, and if the Legislature intended to cure and remedy the mischief.

Relevant sections of the Act which deal directly or indirectly with the right to receive compensation, jurisdiction and power to determine it and method and manner of its calculation and payment of interest on it are Sections 4, 6, 8, 9, 11, 12, 15, 18, 23, 24, 28 and 34. They can be conveniently divided in two parts, one, the right and duty of the Collector to make award and take possession and second the jurisdiction and power of the court to determine compensation. In the first part there are three stages, one, from sections 6 to 9 that is the period during which the Collector acquires jurisdiction to measure and plan the land, which has been declared to be intended to be used for public purpose, and issues notice to persons interested to file objection to the value of the land. The second stage deals with procedure which the Collector is required to follow under section 10 which ultimately ends in making of the award under Section 11 of the Act. Section 12 makes the award as conclusive and binding between the parties subject to provisions of the Act. The third stage is to take possession under Section 16 is after making of the award. The second part deals with determination of compensation by the court on reference made to it under Section 18 in the manner provided by the Act by taking into consideration

A certain factors in Section 23 and ignoring those in Section 24. Section 28 empowers the Court to award interest on difference in the amount awarded by the Collector and determined by the Court whereas Section 34 entitles Collector to award interest if the amount determined is not paid before taking possession. Nature of the proceedings for determination of the
B compensation both by the Court and the Collector are statutorily regarded as award. That is apparent, amongst others, from sub-section (1) of Section 26 of the Act.

Right to receive compensation accrues to the owners, under the Act, when possession is taken by the Collector. Section 16 vests the land in the
C State absolutely free from all encumberances when the Collector takes possession after making the award. But between Sections 4 and 6 notification and thereafter between Section 6 and 11 there occurred at times much delay. The Act did not provide for any time frame. And this affected the land owners vitally as the market value of the land under Section 23 is to
D be determined on the date the notification under sub-section (1) of Section 4 was issued whereas the award has to be made after declaration under Section 6 and issuing of notice under Section 9. The effect of such delay become more marked as years rolled in after 1950. As far back as 1958 the Law Commission observed :

E

> "The Finance Ministry has given four instances in which the carrying out of projects has been delayed because they could not obtain possession of the land in time and it has been stated that acquisition proceedings commenced as early as 1948 are still
F pending. It is noteworthy, however, that the State Governments themselves admit that the delay is largely due to the tardy manner in which the machinery of the Government moves in the matter. They also admit that, if the land acquisition officers are made to work methodically and expeditiously, the pace can be quickened. Any proposal for the reform of the law should, therefore, aim at
G overcoming these evils. Most of the delay occurs in the initial stages of the proceedings between the date of the notification under Section 4 and the declaration under section 6. Further delays arise in the making of the award by the Collector, with the result that as under the existing law, the Government cannot obtain posses-
H sion until the award is made indefinitely delayed."

The situation deteriorated further and report submitted in 1970 suggested time frame as delay in acquisition proceedings caused untold sufferings to the land owners and affected the poor adversely. A

> "The Land Acquisition Act is over 75 years old. When enacted it was not faced with the requirements of the Constitution of India. It is remarkable that broadly speaking it fulfilled the needs of the community for such a length of time. Even today the Act is not so much vulnerable on its provisions as on the way the executive authority tried to implement them. From one end of the country to the other the same story has been repeated again and again (with provincial variations) that it has been used as an engine of oppression by the administrative authorities and the weaker poorer sections of the community have suffered the most. The complaint (not without substance) is that only an illusory compensation was awarded in an appreciable number of cases and that too was not paid for years. Emergent acquisition was the order of the day without the existence of any emergency. The law was ignored and the exception was made the law perhaps on the ground that observance of law would have meant delay. *The executive mind considered the delay in acquiring possession as a matter of great importance but the delay in payment of compensation to poor landowners as of no consequence. This callous indifference was manifested again and again.* Many of the sufferers lost their hereditary occupation also which alone provided them with some sort of economic security. As a result quite an appreciable number of citizens were completely uprooted and turned into refugees in their own land of birth."
>
> (emphasis supplied)

B C D E F

There can thus be no dispute that there existed a lacuna in the Act which did not provide for compensating for the rise in price of land due to delay rendering the compensation illusory, in many cases. To overcome this and similar defects the Parliament introduced the Bill in 1982. It was withdrawn as it suffered from certain defects. It was reintroduced in 1984. One of the suggestions in the House was that determination of value of the land may again be restored to the date the declaration was published under Section 6 of the Act. But the Hon'ble Minister who piloted the Bill expressed his G H

A inability due to various difficulties and opted for measures including Section 23(1-A) to mitigage misery of the land owners. It was stated thus,

> "It is, therefore, necessary to ensure particularly that the interest of the weak and the poor are not overlooked in our concern for
B modernisation and industrialisation. Even when acquisition of their land, often the only source of their livelihood, becomes an inescapable necessity for the larger interest of the community, they ought to be provided with the necessary wherewithals of rehabilitation. *In making provision in the amending Bill, we have been animated by our concerned of ensuring that the person who loses his*
C *property right in land, particularly one who belongs to the weaker sections of the community, is adequately compensated for his loss*..... As it is well known, a member of land acquisition proceedings have been pending for the award of the Collector for years an end. *In some cases, the preliminary notification under Section*
D *4(1) was issued many years ago. Payment of compensation to the interested parties on the basis of the market value of the land prevailing on the one of the preliminary notification will be purely unfair.*"

E (Emphasis supplied)

Such being the legislative background and purpose of its enactment being to remove the hardship of the affected parties as is clear from the objects and reasons that 'The pendency of acquisition proceedings for long periods often, caused hardship and to the affected parties and renders unrealistic
F the scale of compensation offered to them', it becomes the duty of the Court while construing the provisions to construe it in such a manner that the mischief which the Legislature intended to remove may be suppressed and the avowed objective of the legislation be served. The rule in this regard as laid down in numerous decisions rendered by this Court and
G English Courts is that the Court when faced with interpretation of such provisions must ascertain what was the law before making of the Act, what were the mischief or defects in such law and how the Parliament intended to resolve or cure it. The prevailing law and its defects have already been noticed. It has been attempted to be remedied by taking recourse to provide not only for future but present and past as well. Future has been
H taken care of by providing for automatic lapse of acquisition proceedings

under Section 11-A if the award is not made by the Collector within two years of the publication of notification under Section 6 of the Act. Present is protected by Section 23(1-A) and past by Section 30. It is the understanding of scope of these two sections and their inter-relation which shall be decisive of fate of these petitions. For this purpose Section 23(1-A) of the Act is extracted below :

> "S.23(1-A). - 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 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.
>
> 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."

It is added to Section 23 which provides for considerations which may be taken into account for determination of compensation. But it is different in nature. Unlike sub- section (1) it operates on its own as it crates the right of additional compensation, provides for the rate at which it is to be paid and lays down the period for which it is to be calculated. Therefore, from the date it came on the statute book, i.e., September 24, 1984 an owner became entitled to the additional amount and the court became statutorily obliged to award it. The use of the expression 'in every case' widens the ambit of the Section. True it is not a procedural law or a declaratory law, therefore it is substantive in nature and is prospective in operation. Yet the question is, as arises in every such provisions, the time or the date from which it commences to operate. The difficulty is greater when there are no express indications and the provision is general in nature and wider in reach. If the legislature does not use any expression to indicate that the law made by it shall apply to any cause of action or incident taking place only after coming into force of the Act then the law has to be applied *in presenti*, that is to the matters pending before it even if those matters and arisen before coming into force of the Act, as "A (a) statute is not retrospective merely because it affects existing rights; nor it is retrospective

A merely because a part of the requisites for its action is drawn from a time antecedent to its passing". (Halsbury Laws of England Vol. IV para 221). In *The Queen* v. *The inhabitants of St. Mary Whitechapel*, [1848] 12 Q.B. 120 at page 127, it was observed that the rule against retrospective operation was not applicable to a statute merely because a part of the requisites
B for its action is drawn from a time antecedent to its passing. This principle was approved by our Court in *Rao Shiv Bahadur Singh & Anr.* v. *State of Vindhya Pradesh*, AIR (1953) SC 394 at 398 and in *T.K. Lakshmana Iyer and Others* v. *State of Madras and others*, AIR (1968) SC 1489. In *Trimbak Damodhar Raipurkar* v. *Assaram Hiraman Patil & Ors.*, AIR (1966) SC 1758, it was observed by the Constitution Bench.

C

> "..... where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included.....".

In *Bishun Narain Misra* v. *The State of Uttar Pradesh & Ors.*, AIR (1965)
D SC 1567 a rule made by the State Government providing that the age of retirement would be 55 years came up for consideration before the Constitution Bench. It was argued that since the rule could not apply retrospectively, a Government servant who was recruited and appointed earlier to the date when the rule was made by the Government could not be retired
E in exercise of power under this rule otherwise it would amount to application of the rule retrospectively. The submission was repelled and it was held that the rule could not be struck down on the ground that it was retrospective in operation as all that it provided was that from the date it came into force the age of retirement became 55 years.

F In *St. Whitechapel* (supra) the law intended to secure that a widow residing in a parish with her husband shall not be removed for twelve months after his death. The benefit of the law extended even when the husband had died before coming into force of the Act and it was observed:

G

> "It was said that the operation of the statute was confined to persons who had become widows after the Act was passed, and that the presumption against a retrospective statute being intended supported this construction; but we have shown before that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective
H statute because a part of the requisites for its action is drawn from

time antecedent to its passing. In this case the words 'shall be removed' were thus found appropriate to cover all cases of future removals irrespective of whether the husband had died prior to the Act but they were not found wide enough to nullify completed removals prior to the Act, even if the widow was removed within twelve months of her husband's death." A B

This observation was made was the literal and abstract construction would have resulted in hardship. Any legislation specially a legislation enacted to mitigate special mischief is normally construed to serve the public good. Principles of interpretation are only the guideline they are not conclusive. The sure and safe way is to interpret the provision on the necessity and requirement as appears from the objective of the Act and the words used by the Legislature. Reliance was placed on observations made by Lord Goffe in *Alexander* v. *Mercouris* [1979] 3 All England Law Reports 305 distinguishing *Whitechepals* case that a statute, 'would not be operating prospectively if it creates new rights and duties arising out of past transaction.' This decision turned more on the language of the Section than the principle that the prospectivity of a provision is not effected even if it draws partly from past transactions. Section 1(1) of the Defective Premises Act, 1972 provided that a person *taking on work* for or in connection with the provision of a dwelling' owes a duty to see that the work is done properly, 'so that as regards that work the dwelling will be fit for habitation when completed.' The question that arose was 'whether this duty applied where the work was taken on before the commencement of the 1972 Act but completed after. It was held that the substance of the matter was the initial act of 'taking on' the work, therefore, the duty could not be said to arise unless the 'taking on' occurred after the commencement of the Act'. The decision thus turned on the explicit language used in the Section. No exception can be taken to the observation that a statute creating new right on past transactions cannot be held to be prospective. How does this principle help the State? Section 23(1-A) does not create any right on past transactions. Misconception appears to be prevailing due to fixation of the period for which additional compensation shall be paid. The two termini, that is, issuance of notification under Section 4(1) and publication of declaration under Section 6 are erroneously understood as creating right or furnishing starting point from which the Section shall apply. The right which is substantive in nature is to get additional compensation at the rate of twelve per cent. The right is not created on past transactions. It operates C D E F G H

A in future, that is, confer benefit of additional compensation from the date it came into force and not from a date prior to coming into force of the provisions.

A substantive law is held to be prospective as a matter of legal policy
B since it is founded on public policy that no right be so created as to work to the disadvantage for whom it is crated as if it be so, 'it would be betrayal of what the law stands for' (Bennion on Statutory Interpretation). Section 23(1-A) does not suffer from such betrayal. It is just the otherwise. It instead of operating to disadvantage promotes the law and fairness by
C extending the benefit provided by the Section to all such proceedings which are pending before the court under Section 18. It ensures uniformity and equality.

The Section is not robbed off its prospectivity because for the exer-
D cise of right the calculation of compensation has to be made on facts which come into existence prior to the date of the Amending Act. To take a practical illustration a law may be made that any person who suffers an injury or damage would be liable to be compensated. If there is no date of its commencement then the law under General Clauses Act would start
E applying from the date of its enactment. And any person suffering any injury or damage after the date of enactment can file the suit. The law being substantive a person suffering any injury prior to the date of enactment would not be entitled to file the suit. To this extent the law is prospective. But if the Legislature while enacting such law provides the scale of damages and links it with year or place or time prior to the date
F of coming into force of the Act it cannot be said that since part of it extends to any point of time anterior to the law the provision has become retrospective. In *Kapur Chand* v. *B.S. Grewal, Financial Commissioner, Punjab, Chandigarh & Ors.,* AIR (1965) SC 1491, Section 14-A added from 1955 to the Punjab Security of Land Tenures Act, 1953 permitted a land owner to
G bring a suit for eviction notwithstanding anything to the contrary if the tenant failed to pay rent regularly as provided in Section 9(ii) of the Punjab Security of Land Tenures Act, 1953. The suit was filed by the land owner for eviction for arrears due for the years 1952, 1953, 1954 and January, 1955. It was decreed and the argument that since the provisions came into force in 1955 the arrears of certain period could not furnish the cause of
H action else it would become retrospective was repelled and it was observed,

A "..... In our opinion, the conduct of the tenant prior to the coming into force of the new section can be taken into account. No doubt a statute must be applied prospectively. But a Statute is not applied retrospectively because a part of the requisites for its action is drawn from a moment of time prior to its passing. The clause in question makes a particular conduct the ground for an B application for eviction. The necessary condition for the application of S.9(1) (ii) may commence even before the Act came into force and past conduct, which is as relevant for the clause as conduct after the coming into force of the Act, cannot be over looked."

C

The substantive right to evict was enforced prospectively but the necessary facts for its enforcement were taken even from before coming into force of the Act. The law was not held to be retrospective on that account. In *Master Ladies Tailors Organisation & Anr.* v. *Minister of Labour & National Service*, [1950] (1) All England Law Reports p. 525, a question arose if an D order passed by the Minister fixing remuneration for work and holding was *ultra vires* the Act as it applied retrospectivity. It was held the effect of the provisions relating to accrued remuneration being merely to determine and limit the quantum to be made the order could not be construed as having retrospective operation. It was observed by the Court that if a prospective E benefit is in certain cases to be measured by or depends on antecedent facts does not make the provision retrospective. This decision makes it clear that a substantive provision is not rendered retrospective if the right created by the provision provides the scales or fixes the benefit from period prior to coming into force of the provision. Therefore, merely because the substantive right of additional compensation at the rate of 12% on the F compensation determined it to be paid for the period commencing from the date the notification under Section 4(1) was issued to the date the publication was made under Section 6 which period may be prior to coming into force of the amending Act would not render the provision retrospective. By calculating compensation for the period between the two notifications the right to receive additional compensation is not taken into the past. G The right operates from the date the amending Act came into force. As explained earlier, Section 23(1A) creates not only the right to receive additional compensation but also lays down the period for which the amount shall be paid. By the latter part of the Section which only provides for measure for compensation, the Section is not rendered retrospective. H

A It is not the method of drafting a provision that makes it prospective or retrospective but its effect on the rights of the parties effected by it. If the legislature would have stopped by providing for additional compensation at the rate of 12% to be calculated in the manner prescribed probably no argument could have been raised about it being applied retrospectively. Therefore, it does not make any difference if the Legislature instead of providing separately that the additional compensation shall be payable for the period covered by the two notifications issued under Sections 4 and 6 chose to provide it in the same section. The substantive provision which otherwise is applicable to all proceedings which are pending before the reference court, would not become retrospective as for calculation of the compensation the notification issued prior to coming into force of the Act, is to be taken into consideration.

Even though no part of the Section, is of any help for deciding if the Section applies to only future or past acquisitions, yet this Court in *Union of India & Anr.* v. *Zora Singh & Ors.*, [1992] 1 SCC 673 tried to find out the point of time from which the Section would operate and observed as follows,

> "The expression "award" used in Section 23(1-A) suggests that the intention of the legislature was to make the provisions of the said sub-section applicable to cases where the Collector had yet to make his award *or the trial Court hearing the reference under Section 18 of the Land Acquisition Act had still to make its award after the coming into force of the said-section on September 24, 1984.*"
>
> (Emphasis supplied)

Whereas in *K.S. Paripooman & Ors.* v. *State of Kerala & Ors.*, [1992] 1 SCC 684 the order by which reference was made to the larger Bench it was observed,

> "The legislature having designed the horizontal growth in such manner, the collective scheme which has been made operational prospectively on September 24, 1984 and onwards becomes plain because that is the date on which the amendment comes into effect. *When we import this understanding to the scheme of things it becomes evident that a Court when applying sub-section (1-A) of Section 23 would do so only if it has in hand an acquisition based*

upon a notification under Section 4 of the Act issued on September 24, 1984 or thereafter and not to any such notification issued earlier to that date. Same would be the role of the Collector at his end when employing Section 15 and making an award under Section 11 of the Act."

(Emphasis supplied)

The expression 'commencing on' used before the words 'on and from the date of publication of the notification under Section 4, sub-section (1)' or the words 'to be date of award' etc., do not indicate directly or indirectly that the Section shall be applied from this or that date to the proceedings of one or the other nature. A provision laying down the date or the period on which the valuation of land shall be determined cannot be taken as the date from which the amendment in the Act providing for additional compensation could be said to apply. Literally or even constructionally the law requires the Court determining compensation under Section 18 of the Act, to pay additional compensation in every case coming before it after the amendment came into force. Any other interpretation would result in rendering Section 23(1-A) dormant and non-operative in class of those cases where compensation is being determined by the Court on objection raised by interested persons against making of award by the Collector prior to 1982 not on the language of the Section but on assumption that the Section was designed to apply to notification issued under Section 4(1) of the Act after the Amendment Act came in to force.

Necessity to construe a provision by taking recourse to adding or substracting words may arise if the provision is otherwise ambiguous or it may lead to disastrous consequence. If the construction in *Zora Singh* (supra) was adopted by straining the language then the interpretation suggested in *Paripooman's* case (supra) is unduly restrictive. What has not been taken notice of in either decisions is the expression 'the court shall in every case' award the amount. Use of the word 'shall' has been used to impart it mandatory character. This obligation the court has to discharge in every case. In absence of any expression limiting the exercise of power in only those cases where notification is issued after September, 1984 or making it retrospective so as to apply to every case in which proceedings for acquisition had started before coming into force of the Act, the provision has to be applied to every case which was pending for award of compensation on and after the date when the Section became operative.

A Any other construction may result in consequences which were not intended by the Legislature and may leave the mischief as it was. Such impractical or inconvenient result should be avoided. In *Municipal Council of Sydney* v. *Margaret Alexandra Troy*, AIR (1928) PC 128 in more or less similar circumstances when rate of interest payable on compensation was increased from four to six per cent, it was held that the increase in the rate
B of interest was payable in respect of land acquired before the date the Act came into force and such construction did not result in making the provision retrospective as, 'the provision being substantive one which was not made to depend on any reference to corresponding provision in the earlier Statute.' Similarly, the substantive part of Section 23(1-A) also does
C not depend on any reference to the corresponding provision in the principal Act. It has been explained earlier that it stands on its own. Even otherwise when the Court proceeds to determine compensation after September 1984 it cannot ignore sub-section (1-A) added to Section 23. That would be against plain and simple language of the Section.

D The additional compensation under Section 23(1-A) was thus payable on every matter which was pending in Court on 24th September, 1984. But that would not have been complete and full realisation of the legislature intention as the malady which the Legislature intended to cure was concerned not only with present and future but past as well. Section 23(1-A) being prospective in nature it could not have applied to acquisition
E proceedings which were pending before September, 1984 in which award has been made or not. To cover up this Section 30 was enacted which read as under :

> "30. Transitional provisions - (1) The provisions of sub-section (1-A) of Section 23 of the principal Act, as inserted by clause (a)
F 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 or April, 1982 (the
G 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;
>
> (b) every proceeding for the acquisition of any land under the principal Act commenced after that date whether or not
H an award has been made by the Collector before the com-

mencement of this Act.

(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."

The Section is headed as transitional provision. The word transitional according to dictionary means, 'passage or change from one act or set of circumstances to another'. The objective of such a provision is to bridge the gap between commencement of the Act and its operation prior to it. It is a drafting measure to, 'regulate the coming into operation of these enactments and modify their effect during the period of transition'. As stated earlier, Section 23(1-A) empowers the Court to grant additional compensation in every case which was before it on the day the Act came into operation. But that could not have served the legislative purpose, therefore, Section 30 was added to serve as transitional provision to extend the benefit of Section 23(1-A) by bridging the gap and providing for payment of additional compensation to even those who were not covered otherwise in Section 23(1-A). The Section has two sub- clauses. Clause (a) takes back applicability of section 23(1- A) to all those proceedings in which notifications had been issued under Section 4(1) of the Land Acquisition Act and proceedings were pending on 30th day of April, 1982 as no award had been made by the Collector before that date. Clause (b) extends the benefit of Section 23(A) to the proceedings which had commenced after 30th April, 1982. This date was chosen as the Bill for amending the Act was initiated in 1982. It provides that where notification had been issued after 1982 the land owner is entitled to additional compensation whether the award had been made before September, 1984 or not.

In acquisitions in which notification has been issued prior to 1982 the Legislature placed them in two categories, one, where award had been made and others where it was still pending at a stage prior to making of

A the award. Where awards had been made prior to 1982 and the persons interested had not accepted it and sought reference it was pending before the court on the date the Section came into force. No provision was necessary for such matters as they came within the purview of Section 23(1-A). But in those cases where the matter was still pending a provision had to be made to obviate any injustice to them and, therefore, clause (1) B of Section 30 provided for payment of additional compensation to them as well. Therefore, if Section 23(1-A) and Section 30 are read together they cover among themselves entire proceedings for the acquisition of land in which notification had been issued under Section 4(1) of the Act before 1982 but the proceedings had not become final either because no award C had been made by the Collector or because award had been made but it was pending before the court under Section 18 or the proceedings had been initiated between April, 1982 and September, 1984, irrespective of whether the award had been made or not. What was canvassed from the other side is that Section 23(1-A) having been made retrospective by Section 30 and its operation being limited to those cases where the award D had not been made by the Collector, a land owner was not entitled to claim additional compensation where the award had been made before that date. That is not a correct way of construing the two Sections. In absence of Section 30 it would have been difficult for a land owner whose land had been acquired under a notification issued under Section 4(1) before coming into force of the Act and in which no award had been made to claim E additional compensation. That would have been contrary to the legislative objective. Therefore, the Legislature in order to cover up all those cases in which award had not been made added a transitional provision. It can better be explained by taking a practical illustration. Suppose two notifications were issued on January, 1979 for acquiring the land mentioned in the F notification. In one the award is made before April, 1982 and in the other it remained pending. If the construction as suggested on behalf of the Union of India and other State Governments is accepted then the additional compensation would be payable only in a case in which the proceedings were pending and not in those in which the proceedings had become final before the Collector. Such construction would be highly unjust and G inequitable. The benefit of additional compensation could not be denied on of chance of the award having been made. There must be some rationale for giving benefit to that class of land owners in whose cases due to delay for one or the other reasons the proceedings could not be finalised and others where award had been made. A construction which leads to anomalous and illogical results should be avoided. True once the award is

H

made right to compensation accrues but Section 23(1-A) does not on its own make a distinction for purposes of payment of additional compensation between pendency of proceedings and making of award. A transitional provision cannot curtail operation of the substantive provision. The field of operation of Section 30 being narrow, namely to extend the benefit of Section 23(1-A) to all those land owners whose land has been notified to be acquired before 1982 and in which no award has been made by Collector, it cannot be taken help of for determining the scope of the main provision and hold that what is not covered by it stands excluded from Section 23(1-A). A transitional provision cannot become main provision nor it can curtail the ambit and width of the principle Section. The prospectivity of Section 23(1-A) is not eroded by applying it to the proceedings pending before it. Nor could the concept of limited retrospectivity be imported by resorting to sub-section (1) of Section 30. In fact the field of operation of Section 23(1-A) and Sections 30(1)(a) and (b) are entirely different. Neither can be projected in another. The submission that Section 23(1-A) applied only to situation visualised by Section 30 is not made either by the language employed by the two Sections or any principle of interpretation or construction. Section 23(1-A) does not suffer from *casus ommisa* which requires to be supplied by taking recourse to external help. The Legislature was never in doubt about the matters pending before court in reference u/s 18. Therefore, by the transitional provision it attempted to cover other cases. That is why it uses the expression, 'also'. The significance of this word should not be lost sight of. It is clear indication of extended the benefit provided by Section 23(1-A) not only to those cases in which the award had been made and the matters were pending in court, but 'also' to all those cases in which acquisition proceedings due to delay were still pending. In fact in absence of transitional provision there might have been difficulty in awarding additional compensation in cases covered by sub-section (1) and sub-section (2) of Section 30 as Section 23(1-A) could not have applied to proceedings which were pending prior to coming into force of the Act. In any case, the ambit of Section 23(1-A) could not be narrowed by operating Section 30 as it would be contrary to cannons of interpretation.

Reliance was placed on construction of sub-section (2) of Section 30 by the Constitution Bench in *Union of India & Anr* v. *Raghubir Singh (Dead) by LRs. etc.,* [1989] 3 SCR 316 and it was urged that since the two sub-sections of Section 30 were enacted on the same date with same purpose and objective, the interpretation put by the Constitution Bench on

A the limited retrospectivity of sub-section (2) should be extended to sub-section (1) of Section 30 as well. The submission suffers from inherent fallcy of ignoring the difference in phraseology of the two sub-sections and the objective sought to be achieved by them. Their field of operation is different and they serve different purpose. The amendment in sub-section (2) of Section 23 brings about a change in existing ratio of solatium from B 15% to 30%. And sub-section (2) of Section 30 makes it operative from 30th April 1982, 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. Both the decisions, i.e., *Bhag Singh* v. *Union Territory of Chandigarh*, [1985] Supp. 2 SCR 949 which was held to be C incorrectly decided and *Raghubir Singh* agreed to the extent that the retrospectivity visualised by the sub-section applied to the award made by the Collector or Court. But difference arose as to whether 30% enhanced solatium was payable in appeals pending in the High Court and this Court irrespective of the date of award. The interpretation turned on expression 'such award' used in the sub-section. In *Bhag Singh* (supra) it was extended D even to the appeals pending in the High Court or Supreme Court against award of the Collector or the Court whereas in *Raghubir Singh* (supra) it was confined to those appeals in High Court or this Court which arose out of, 'such award'. The question of limited retrospectivity arose on specific language of the sub-section. In absence of sub-section (2) of Section 30 the enhanced solatium would have been payable on not only an award after E 30th April 1982 but in all appeals pending in the High Court or this Court irrespective of the date of award. The Legislature, therefore, carved out an exception and confined payment of enhanced solatium in pending appeals only if they had arisen out of award made after 30th April 1982. A comparison of the two sub-sections of Section 30 indicates that the expres-F sion of sub- section (1) beginning from the "provisions of sub-section" and upto "in relation to" are identical to first part of sub-section (2). But there the similarity ends. Sub-section (1)(a) applies to every proceeding which was pending on 30th day of April, 1982 in which *no award has been made* by the Collector before that date. Whereas sub-section (2) extends the benefit of retrospectivity to *any award made* by the Collector or Court or G to any order passed by the High Court or the Supreme Court in appeal against any, 'such award' under the provisions of the principal Act after 30th day of April,1982. The construction in *Raghubir Singh* case (supra) turned on the use of the words 'such award'. It was held that the use of the expression 'any such award' restricted the operation of the Section to only those awards which had been made after 30th day of April, 1982.

H

Therefore, it was held that a land-owner could claim additional solatium in those appeals only which were directed against such award as had been made after 30th April, 1982. The interpretation placed on sub-section (2), therefore, could not help in arriving at the legislative intention of sub-section (1) of Section 30. Why this difference in phraseology of the two sub-sections ? What could be the rationale for confining additional solatium in appeals arising out of the awards made after 1982? A Legislature is presumed to know the needs of its people. Similarly it should be presumed to be aware of the state of affairs prevalent at the time of enacting a law. Solatium is no doubt compensation but it is in nature of payment for displacement. The effect of acquisition due to rise in price and inflation was not so acute in Sixties or Seventies as in Eighties and Nineties. It was for this economic reason that the Legislature enhanced the solatium from 15% to 30%. But this enhanced amount was not to be paid to those land owners whose land had been acquired much before 1982 but its final adjudication was pending in appeal in the High Court or this Court. The Legislature must be presumed to be aware that such disputes in which land had been acquired much earlier were still pending and could not be disposed of due to heavy work load in higher courts. Therefore, the Legislature in its wisdom considered it proper to confine the benefit of enhanced solatium to those land owners whose appeals arose out of the award made after 1982.

Same rationale which in fact furnished basis in *K. Kamala Jammanniavaru (Dead) by Lrs.* v. *The Special Land Acquisition Officer*, [1985] 2 SCR 914, and was approved in *Raghubir Singh* (supra) cannot be applied to reference pending before the Court under Section 18 of the Act. The Legislature for good reason, therefore, used different language in two sub-sections. And the construction of one cannot furnish basis for construing the other in same manner.

Although brother Sawant, J. has agreed with me on construction of Section 23(1-A) of the Amendment Act but he has written a separate order to highlight the difference between exercise of power by the Court under Section 16 on one hand and High Court and Supreme Court on the other. He has also attempted to cull out power in favour of Collector to award additional compensation from Section 30(1). So far the first is concerned I fully agree with his reasons and conclusions. But I have reservations on the second. Section 30(1) does not spell out power of the Collector. Its clauses (a) and (b) are descriptive of those proceedings to which the

A benefit of Section 23(1-A) has been extended. They deal with retrospectivity given to Section 23(1-A). But I agree with him that the Collector should be deemed to have this power otherwise it would cause injustice in those large number of cases where a land owner does not seek any reference either because he is satisfied with the determination of compensation or his financial resources prevent him from pursuing the hazard of taking recourse to Court of law. However, this power, in my opinion, flows from Section 15 itself. In any case it in just and reasonable to hold that the additional compensation is payable even by the Collector when he is making an award under Section 11.

C What remains to be considered is if the benefit under Section 23(1-A) could be extended even in those cases where appeals were pending in the High Court or Supreme Court against the award made by the court under section 18 of the Act. The word, 'court' used in Section 23(1-A) appears to refer to the court under Section 18, only, as the court under this D provision has been empowered to award additional compensation on such market value as is determined by taking into consideration Section 23 of the Act. The word 'court' in Section 23(1-A) does not appear to have been used in the wider sense as including the Court of appeal or the court under Article 136 of the Constitution of India. In *Zora Singh* (supra) it was E observed rightly by this Court that the Legislature's intention was to award additional compensation only at the stage of award made by the Collector or the Court under Section 18. The construction of the word 'court' in the wider sense would not be in consonance with the purpose and objective of the legislation the background of which has been traced in detail. It is thus clear that the benefit of Section 23(1-A) is available only in those cases F where the matter was pending for determination of compensation at the stage of reference under Section 18 in respect of acquisitions which had started even before 1982.

G Having explained the scope of Section 23(1-A) and Section 30, their inter-relation and the field of their operation, it may now be seen as to how these provisions have been dealt with by this Court in various decisions which came before it. When Section 23(1-A) was added Section 23(2) providing for solatium was amended and from 15% it was raised to 30%. Its operation during transitional period was regulated by Section 30(2) of H the Act. This provisions came up for consideration earlier in point of time

and by 1989 there were at least four decisions one of them being Constitution Bench *Union of India and Another* v. *Raghubir Singh (Dead) by Lrs. etc.*, [1989] 2 SCC 754. Since this decision has been considerably influenced the decisions on Section 23(1-A) which have been rendered since 1990 it may be adverted to first. The following question was referred for consideration by the Constitution Bench,

> "Whether under the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amendment) Act 1984 the claimants are entitled to solatium at 30 per cent of the market value irrespective of the dates on which the acquisition proceedings are initiated or the dates on which the award had been passed?"

But the Bench did not enter into the larger issue and confined itself to the limited question of whether the amended provision for enhanced solatium was available only in appeals arising out of awards made by the Collector or the Court between 30th April, 1982 and 24th September 1984 or even prior to it. And on construction of the expression, 'or to any order passed by the High Court or subordinate court on appeal against *any such award* under the provisions of the principle Act' after 30th April 1982 and before 24th September 1984 held that in the context they were used they intended to awards made by the Collector or the Court between the two dates. According to the Bench,

> "In other words Section 30(2) of the Amendment Act extends the benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between 30 April, 1982 and 24 September, 1984 or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions of the High Court or Supreme Court are rendered before 24 September, 1984 or after that Date. All that is material is that the award by the Collector or by the Court should have been made between 30 April, 1982 and 24 September, 1984."

This decision was not concerned with the jurisdiction and power of the Court to grant enhanced solatium in reference pending before it under Section 18 as the notification for acquiring the land was issued on 13th November 1959 and the reference court had decided the proceedings on 10th June 1968. What was pending on the date the amendment came into force was the appeal in the High Court. Therefore, the main provision of

A Section 23(2) was not attracted. The land owners could get the benefit only if their case was governed by the transitional provision. Further, the construction turned on use of the expression, 'against such award under the provisions of the Principal Act after 30th April, 1992'. No such language has been used in clause (a) of Section 30(1). The ratio of the decision, thus, B has to be appreciated in this context.

In the present set of petitions this Court is concerned whether the power of the Court to grant additional compensation, which as explained earlier, in absence of any express indication to the contrary extends in all those cases where reference was pending at the stage of making the award C by the Court under Section 18 could be curtailed or negatived by taking recourse to the transitional provision. The question cropped up first in *Union of India & Ors.* v. *Filip Tiago De Gama of Vedem Vasco De Gama* (1990) 1 SCC 277 when this Court while recognising that Section 23(1-A) enjoined a duty on the Court to award the additional amount on 12% on D the market value of the land observed as under :

> "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 E date of publication of notification under Section 4(1). But the legislature has given new starting point for operation of Section 23(1-A) for certain cases. That will be found from Section 30 sub-sections (1)(a) and (b) of the Transitional Provisions."

F Consequently the Court held that a land owner was entitled to additional amount provided under Section 23(1-A) only if the acquisition proceedings were pending on April 30, 1982 or they had been commenced after that day and were either pending or concluded before September 1984. In taking this view the Bench held an owner to be entitled to additional compensation if the acquisition of his land was covered in either clauses G of Section 30 or if the notification under sub-section (1) of Section 4 had been issued after coming into force of the amended provision. No exception can be taken so far as the construction of Section 30 is concerned. But the observation that the Legislature has given new starting point of operation of Section 23(1-A) was based on *Raghubir Singh's* decision (supra). H The starting point in that decision was given for purposes of appeals

pending in High Court or the Supreme Court. The Bench did not examine if the benefit of enhanced solatium under Section 23(2) could not be extended to the acquisitions which were pending before the court under Section 18. Yet prospectivity of the Section 23(1-A) was linked with issuance of notification under Section 4(1) of the Act after coming into force of the Act. The Section does not give any such indication. Determination of market value on the date the notification is issued under Section 4(1) fixes the point of time on which date the court shall determine compensation and not the date from which the Act shall commence to operate. Use of expression, 'in addition to the market value of the land' cannot be stretched to mean that the additional compensation shall be payable only in those cases in which notification under Section 4(1) has been issued after coming into force of the Act. This decision was not accepted as laying down correct law in *Zora Singh* (supra) as expression 'award' used in Section 23(1-A) according to the Bench suggested that the intention of the legislature was to make the provisions of the said section applicable to cases where the Collector or the court hearing the reference had yet to make its award. It has been explained earlier that such construction would be straining language of the Section. In *K.S. Paripoornan* (supra) doubt has been expressed on correctness of *Zora Singh* (supra). Basis for it appears to be same as was expressed in *Filip Tiago's* case (supra). Neither of the decisions have noticed that in absence of any indication to the contrary the Section became operative on the date it came into force that is 24th September, 1984. If it came into force on that date and the Section requires the court to pay additional compensation in every case then the ambit of the section cannot be narrowed by confining its operation to those cases where notification is issued after coming into force of the Act. The scope of Section 23(1-A) has already been explained. It has also been explained, at length, as to what was the objective and purpose of it. In light of that it would not be reasonable to restrict the operation of this Section to those proceedings which will be taken for determination of compensation after the Act came into force in September 1984. The expression 'in addition to' is only descriptive rather explanatory by directing that in all those cases where the Court was awarding compensation after coming into force of the Act it shall award an additional amount as provided in sub-section (1) of the Act.

A B C D E F G

For all these reasons the questions raised in these petitions are answered as below :

H

A (1) Section 23(1-A) providing for additional compensation is attracted in every case where reference was pending under Section 18 before the Court (Section 23(1-A).

(2) No additional compensation is payable in appeals pending on or after 24th September 1984 either in High Court or this Court.

B

(3) Additional compensation under Section 23(1-A) is also payable in all those case where the proceedings were pending and the award had not been made by the Collector on or before 30th April 1982 [Section 30(1)(a)].

C

(4) Similarly every land owner is entitled to additional compensation where the land acquiring proceedings started after 24th April 1982 whether the award by the Collector was made before 24th September 1984 or not [Section 30 (1)(b)].

D (5) Additional compensation under Section 23(1-A) is liable to be paid by the Collector as well. (Section 15 of the Act).

ORDER OF THE COURT (PER MAJORITY)

In respect of acquisition proceedings initiated prior to the date of E commencement of the Amending Act 68 of 1984, the payment of the additional amount under Section 23(1-A) of the Act will be restricted to matters referred to in clauses (a) and (b) of sub- section (1) of Section 30 of the said Amending Act. *Union of India & Anr.* v. *Zora Singh & Ors.*, (1992) 1 SCC 673 insofar as it holds that the said amount is payable in all cases where the reference was pending before the reference court on F September 24, 1984, irrespective of the date of which the award was made by the Collector, does not lay down the correct law.

The question referred is answered accordingly. The matters be now placed before the appropriate Benches for consideration and disposal of G the appeals in the light of this order and on the other contentions, if any, raised in the appeals.

U.R. Appeals disposed of.