

**The State of Rajasthan and ors. Vs. Smt. Taradevi and ors.**

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**Court :** Rajasthan

**Decided On :** Jan-02-1974

**Reported in :** 1974WLN(UC)37

**Judge :** S.N. Modi, J.

**Appeal No. :** S.B. Civil First Appeal No. 83 of 1971

**Appellant :** The State of Rajasthan and ors.

**Respondent :** Smt. Taradevi and ors.

**Judgement :**

S.N. Modi, J.

1. These are three connected first appeals and arise out of two original suits Nos. 66 of 1964 & 46 of 1966 of the Court of the Addl. Dist Judge No. 1, Jaipur City, and the Court of the Additional District Judge, Toi k, decided on 22nd October, 1970 and 30th November, 1972 respectively, in the following circumstances

2. The Director, Printing and Stationery Department, Government of Rajasthan, here in after referred to as Director, invited tenders for supply of stationery articles for the year 1961-62 commencing from 1-4-61 to 31-3 62. Ghanshyamdas who carried on the business in the name and style of Saini Book Depot, Jaipur hereinafter called as the contractor, submitted Tender No. 58 for I tem No. 27, namely, 'Cover Kraft paper 18'x12' of 22'x29' 60 lbs. (printed on one side)'. He quoted two rates for two qualities of such covers. The Purchase Committee of the Government of Rajasthan approved the Second Quality of Cover Kraft paper quoted in the tender, the rate of which was Rs. 89/per thousand. The Purchase Committee also approved the sample of the second quality submitted along with the tender. After some correspondence, the Director on behalf of the Governor, Government of Rajasthan, & the contractor entered into an agreement on 2-8-61. In pursuance of the agreement, the contractor supplied during the year 1961-62 four lakhs, one lakh, one lakh and 81 thousand covers to the Government Presses at Jaipur, Jodhpur, Udaipur and Bikaner respectively. The supply of one lakh covers made to the Government Press, Jodhpur was rejected and the whole lot of covers was sent back to the contractor on the ground that the covers supplied by the contractor ware half-inch less width-wise, that is, the width of covers was 11 1/2' instead of 12'. The supply made to the Government Presses, Jaipur, Udaipur and Bikaner was accepted and the bills submitted by the contractor to the said Government Presses were paid by the respective Government Presses. For the subsequent year 1962-63 tenders were again invited and the Purchase Committee again approved Tender No. 99 of the contractor for the supply of the cover Kraft paper. The contractor in pursuance of Tender No. 99 supped 18 lakhs

of such covers to the Government Press at Jaipur vide bills dated 27 8-62. 13 11-62, 2312-62 and 15-3-63 amounting to Rs. 12522.44 P When the question of payment of these bills arose, the Printing and Stationery Department, Rajasthan, instead of making payment informed the contractor vide its letter dated 20-3-63 that a sum of Rs. 10817.38 P. has been ordered to be deducted from the said bills amounting to Rs. 12522 44 P, because covers supplied during the previous year, namely, 1961 62 to the Government Presses at Jaipur, Udaipur and Bikaner, vide Tender No- 53 were made out of Kraft papers having weight less than 60 lbs. The details of the deduction were also mentioned in the letter dated 20-3-63 which are as follows:

Names of Government Quantity Amount

Presses of cover deducted

Kraft

paper

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Jaipur 4 lakhs Rs. 7857,27

Udaipur 1 lakh Rs. 414,10

Bikaner 81,000 2087,67

Rajasthan Electric Press

440,26

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Rs. 10817,30

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The contractor thereupon instituted two suits, the first one for the recovery of the price of one lakh covers supplied to the Government Press, Jodhpur, during the year 1961-62 and the second one for the recovery of the amount deducted from the supply made during the year 1962-63. In the first suit which was instituted by the plaintiff on 21-11 64 the contractor claimed Rs. 8939/- as the sale-price of one lakh covers supplied to the Government Press, Jodhpur and Rs. 1631-50. as interest total Rs. 10620.50 P. In the second suit which was instituted on 13-5-66 the plaintiff claimed Rs. 10,817.30 P. (the amount deducted out of the supply made during the year 1962-63 ) and Rs. 1947.12 P by way of interest-total Rs. 12,764 42 P. Various pleas were raised by defendant-State of Rajasthan which contested both the suits,

3. The main plea raised in both the suit was that the supply of covers during the year 1961-62 in pursuance of Tender No. 58 was not made according to the specifications contained in the agreement entered into between the parties on 2.8.61. The plea of the defendant was not accepted and both the suits were decreed. In the first suit, the learned Additional District Judge, Jaipur City, allowed pendente lite and future

interest but in the second suit, the learned Additional District Judge, Tonk. said nothing about pendente lite and future interest and thus by implication disallowed pendente lite and future interest, Aggrieved by the decrees, the State has filed Appeal No. 83 of 1971 in the first suit and Appeal No. 77 of 1973 in the second suit. The legal representatives of the contractor Ghanshyam Das who died during, the suit have preferred Appeal No. 76 of 1973 for grant of pendente lite and future interest in the second suit. It will be convenient to deal with each appeal separately.

4. I first take up, Appeal No. 83, of 1971, relating to the first suit,

5. It is contended on behalf of the State that the contract between the parties for sale of cover kraft paper was by description as well as by sample and the contractor was bound to supply the goods corresponding with the description as also with the sample. It is further contended that since the description of the goods mentioned in the tender purchase order and agreement clearly showed that the contractor was required to supply cover kraft paper prepared out of the paper of the quality weighing 60 lbs, and since the covers actually supplied were net prepared out of the, kraft paper of the required quality, the supply of one lakh covers to the Government, Press, Jodhpur, was rightly rejected and returned.

6. On the other hand, it is contended on behalf of the contractor that no contract was entered into between the parties to supply cover kraft paper made out of 60 lbs. paper. The second quality cover kraft paper quoted in Tender No. 58 no Weight of kraft paper in pounds was mentioned & the sample submitted along with the tender and approved by the Purchase Committee was also not of the paper of 60 lbs. weight. The rejection of the goods which, in all respects, corresponded with the sample, was, in the circumstances, rightly held by the lower court to be an authorised and illegal.

7. It is not in dispute that the supply of cover kraft paper made to the Government, Press, Jodhpur, was not of 60 lbs. It is further not in dispute that in case the contractor undertook to supply cover kraft paper made out of 60 lbs. paper, the rejection of the supply was justified.

8. The question that arises for consideration therefore is whether there was a contract between the parties by which the contractor undertook to supply cover kraft paper made out of 60 lbs. paper Item No. 27 of the Tender Notice (Ex.1) goes to show that the tenders were invited for the supply 'cover kraft paper 18' x 12' of 22' x 29'-60 lbs. (printed on one side)'. In other words, the invitation was for the supply of cover kraft paper of size of 18' x 12' prepared out of 60 lbs paper of 22 x 29'. The tender-notice was neither an offer nor a proposal. It was meant only for extending an invitation to the contractors for making offers. In pursuance of the, tender-notice, the contractor submitted Tender No. 58 which contains the following two quotations:

1. Rs. 92/- Kraft paper 22' x 29'--60 lbs. of Oriental Paper Mills-1st quality.

2. Rs. 89/- Kraft paper 22'x29' of Oriental Paper Mills-2nd quality.

It is thus abundantly clear that no weight of paper in pounds was mentioned in the second quality of cover kraft for which the rate quoted was Rs. 89/- per thousand. These quotations by the contractor in the tender amounted to contractor's offer of proposal. It is an acceptance of the offer or proposal which makes a promise or an agreement. The Purchase Committee in the present case accepted the second quality

quotation @ Ra. 89/- per thousand which, as already pointed out above, did not contain any condition as to weight of paper in pounds. It therefore cannot be said that because tenders were invited for the cover kraft paper prepared out 60 lbs. paper, the contractor undertook to supply cover kraft paper of the said weight, That was merely an invitation by the department to call offers from the contractors. The contractor in the present case gave the offer which did not contain the condition of poundage. That offer was accepted by the Purchase Committee and therefore it cannot be said that the contractor accepted the condition of poundage for the supply of kraft. paper Moreover, along with the tender the contractor also submitted sample of the second quality of cover kraft paper. It was the sample of the second quality which was approved by Purchase Committee. Admittedly this sample which is Ex. 18 on the record and which was approved by the Purchase Committee is not of 60 lbs. paper. My attention has been drawn to the approval order which finds place on the sample Ex. 18 and the acceptance letter Ex. A/1 dated 22-4-61 issued to the contractor. The relevant portion of the approval order appearing, in Ex. 18 reads as under:

Item No. Name of Article

\_\_\_\_\_

27 Cover kraft paper-18' x 12' of 22' x 29'-

60 lbs. printed on one side Oriental Mills

as per sample 2nd quality

Tender No. Name of Firm

\_\_\_\_\_

68 Saini Book Depot, Jaipur

sd. Chairman Dated 5-9 61.

The acceptance letter Ex. A/1 dated 22-4-61 addressed to the contractor runs as under:

Dear Sirs,

I have to inform you that the rates quoted above of the undermentioned articles of stationery has been approved by the Purchase Committee. Please send your samples of each of the articles marked with asterik to this office within a fortnight. The bill of the samples, if any, may be sent for payment. No supply is to be made unless you receive my formal order intimating the quantity required and places of supplying the articles.

S. No. Item No. Specifications of Rate

articles Rs. 89/-

1 27 Cover kraft paper per

18'x12' of 22'x29'60 thousand.

1bs. printed on one side

as ptr sample second-Orient

Mills mentioned there

in 1961 62.

Sd/-

Director.

It is argued on the basis of these documents that the acceptance of the tender was by description as also by sample and since poundage was specifically mentioned in the approval order as well as in the acceptance letter, the contractor was bound to supply the goods which corresponded with the description as well as with the sample to my mind there is no force in the above contention. As already pointed out above, no poundage of the paper was mentioned in the second quality of cover kraft paper quoted in the tender. The sample Ex. 18 on which the approval order was written was also not made out of 60 lbs. paper. It is difficult to believe that the members of the Purchase Committee who are supposed to be experts in the matter of the stationery articles and who wrote their approval order on the sample cover itself did not know even this much that the sample cover was not made out of 60 lbs paper. In these circumstances, no importance can be attached to the mentioning of 60 lbs. paper in the approval order as also in the acceptance letter. Again, the correspondence which exchanged between the parties prior to the agreement dated 2-8-61 also shows that the contractor at no time accepted the condition of 60 lbs paper. Even at the time of signing the agreement, a clause was inserted in the agreement that the supply will be in accordance with the sample. By his letter dated 11-5-61 (Ex. 2) the contractor sent further samples of articles. On 31-5-1961 the contractor vide letter Ex. 3 informed the Director that the samples of envelopes had already been sent and there would not be anything different from the samples. Again, the contractor wrote to the Director vide letter dated 13-1-1961 (Ex.4) that he has not mentioned any weight of the paper in Tender No. 58 but he had sent the sample which was approved by the Department. He further added that he would supply the material just as the sample and there would be no difference in it. Again, the contractor in his letter dated 15-7-61 (Ex.16) further made it clear that he would supply the material in accordance with the sample and there is no condition about weight of the paper in the second quality quoted by him in the tender. It will be desirable to quote this letter in extenso

O/s-8 13-6-61

To-The Director, Printing & Stationery Department, Rajasthan, Jaipur.

Sub: Subsequent Samples

Dear Sir,

In reply to your letter No. 9669/Sty/T. 58/61-62 dated 7-6-61, it is to inform you that I have not mentioned any weight of paper in the Tender No. 58 which was submitted to

you but I had sent the sample and the same was approved by your Department. Now it is to submit that I shall supply the material just as I have given in the sample and there would be no difference but would be just as per sample.

Therefore, it is requested that kindly place the order to me so that I may satisfy you with our work in time and work will be done in time and will save the delay of Government work. An early action is request. Thanks.

Yours faithfully

For Saini Book Depot,

Sd/- G.D. Saini, Proprietor.

In reply to the letter Ex. 16, the Director asked the contractor to send some more samples of the stationery article vide letter dated 1-8-61 (Ex.5). On the next day, that is, 2 8 61 the agreement was executed between the parties. It is a printed agreement and does not contain any reference to the specifications of the articles to be supplied. The only reference which is found in it is to letter the purchase order No. 13497 dated 27-7-61. This purchase order was issued by the Director on 27-7-61, that is, subsequent to the letter dated 15-7-61 Ex. 16 quoted above. By this purchase order, the contractor was directed to supply five lakhs 'cover kraft paper of 18-'x12' of 22'x29' -60 lbs. printed on one side Orient Mills, as per sample second quality Rs. 89/- per thousand to be prepared out of 22'x29' 60 lbs.' At the time of the agreement Ex. 1.it appears that the contractor did not agree to the specifications mentioned in the purchase order. A clause was therefore added at the end of the printed agreement in the following words:

Supply will be made as per approved samples in all respects.

Below these words, both the parties-appended their signatures. These handwritten words in the printed agreement Ex. 9 are not without signification. If the contractor had agreed to supply covr kraft paper according to the specifications mentioned in the purchase order there would not have been any necessity for adding the weds "supply will be as per approved samples', in the agreement Ex. 9 specially when besides the specifications the words 'as per sample' were already mentioned in the purchase order Ex. A/3. The statement of Prahlad Dutt Vyas DW 1. the officer in-charge, appointed for this case and an attesting witness to the agreement Ex. 9 makes the position further clear. He has deposed that the words ',supply will be made as per approved samples in all respects' were written after consideration' of the contractor's letters Ex. 2, Ex. 3, Ex. 4 & Ex. 16 already discussed above. That clearly leads to the inference that the contractor did not agree to the condition regarding the weight of the paper and it was cue to this reason that it was thought necessary to add the words 'supply will be made as per approved sample in all respects in the agreement Ex,2. It is further important to note that the letter Ex. 10 from the Superintendent, Government Press, Jodhpur, dated 18-1-62- shows-that the supply made by the contractor to the Government Press, Jodhpur was rejected not on the ground that the covers were not made out of 60 lbs. paper but on the ground that they were 114' instead of 12', and the workmanship was of, inferior quality. It is further significant to note that for the first time the complaint about less poundage of the paper was made by the Superintendent, Government Press, Jodhpur vide his letter Ex. A/3, dated 14-3 62, that is, about 2 months after the rejection of the goods.

It is further surprising to note that having known the defect of less poundage of the paper, neither the Director nor the Superintendent. Government Press, Jodhpur, informed the contractor about this vital defect. On the contrary, in the subsequent letters such as Ex. 12 dated 26-6-62 and Ex. 13 dated 29-6-62 addressed to the contractor all that was said was that the supply was not in accordance with the sample. No mention was made in these letters that the covers supplied by the contractor were not made out of 60 lbs. paper. All these circumstances leave me with no doubt that the contractor never agreed to the condition to supply covers made out of 60 lbs. paper. The rejection of the goods on this ground was therefore clearly unjustified.

9. The learned Deputy Government Advocate's next contention is that the size of the cover supplied by the contractor was 11 1/2' instead of 12' in width. In this connection, my attention has been drawn to the statements of DW 02 Karanraj and DW 3 Kedarsing. The former was Superintendent, Govt. Press, Jodhpur and the latter, the store-keeper there, during the relevant period. Both of them have deposed that the covers supplied by the contractor to the Government. press, Jodhpur, were measured and they were found to be only 11' in width instead of 12'. It may be stated here that no cover out of covers supplied by the contractor to the Govt. Press, Jodhpur, was produced in court. It appears that the whole of the supply made by the contractor was returned to the contractor through Messrs. Golden Transport Company but because the contractor did not take the delivery back, the said company ultimately auctioned the whole lot in order to realize demurrage and other expenses. The contractor who made the supply unfortunately could not appear in the witness-box as he expired before the case was fixed for his evidence. His father Balaprasad Saini appeared in the witness-box as PW 1 and stated on oath that the covers supplied were 18'x12'. In my opinion, the statement of PW 1 is true and the covers supplied to the Govt. Press, Jodhpur were in the width and not 11 1/2' as deposed to by DW 2 and DW 3. The sample Ex. 18 was measured and weighed in court in the presence of the parties. Ex. 18 measured 18'x11.9'. The difference of .1' is negligible and throughout the trial Ex. 18 was deemed to be 18'x12', and no argument was made on the ground that the width of the sample was less by .1'. On being weighed the weight of Ex. 18 came to be 29 grams. If 29 grams are multiplied by 250, the weight of 250 covers would be 7250 killo grams equal to 15.98 lbs. If that is so, it can safely be inferred that the covers supplied by the contractor were also of the same size as per the sample Ex. 18, that is, 18'x12' for it is not the case of the defendant that the covers supplied by the contractor were in any other way different from the sample. I therefore on the evidence of PW 1 hold that the covers supplied by the contractor were 12' in width and not 11 1/2'.

10. The last argument of the learned Deputy Government Advocate is based on clause 27 of the conditions of the tender and contract which runs as under:?

Clause 27.-If any dispute arises out of the contract with regard to the interpretation, meaning and the breach of the terms of the contract, the matter shall be referred to by the parties to the Secretary to the Government in the Home Department whose decision shall be final. He will be the sole arbitrator of the dispute.

My attention has also been drawn to Ex. A/40 dt. 12-8-62 which reads as under:

No. F. 2 (52) HD/62 dated 12-11-62

GOVT. OF RAJASTHAN

Home (D) Department

Jaipur.

FROM

Shri M.L Purohit,

Asstt. Secretary to the Govt.

To-- The Director,

Printing & Stationery,

Rajasthan, Jaipur.

SUB: Supply of cover craft 18' x 12' for the year 1961-62 by

M/s. Saini Book Depot, Jaipur.

Notice Under Section 80 CPC regarding payment of claim.

Ref: Your letter No. 20629/Sty/F. 50/61-62 dated 16-10-62 and the notice served by the party dated 17-10-62.

I am directed to say that the above noted case was personally heard by the Secretary (Presses) on 5-1 i-62 in the presence of Sarvashri Balaprasad and Ghanshyamdas proprietor of the firm M/s Saini Book Depot, Jaipur, and facts were recorded as per copy of his observations attached herewith.

In view of the above facts, the party's claim for payment of bills on account of supply of covers has not been accepted and their notice has also been ignored.

Further action may kindly be taken at your end in the light of the said observations under intimation to this Department.

Yours faithfully,

Sd/- -M.L. Purohit

Asstt. Secretary to Govt.

It is contended that the Secretary in the Home Department was the sole arbitrator and since he after hearing the parties decided against the contractor, that decision was final and it was not open to the contractor to question that decision in a court of law. This contention has not impressed me at all In the first place, under Clause 27, the parties agreed to the sole arbitration of the Secretary in the Home Department. The letter Ex. A/40 shows that the claim of the contractor was rejected by the Secretary (Presses). There is nothing to indicate on the record that the Secretary (Presses) was the Secretary in the Home Dep. The name of the person who took the

decision has not been disclosed. It there fore cannot be said that the decision Ex. A/40 was of the competent person named in Clause 27. There is vet another rea3 on for holding that the decision of the Secretary (Presses) is not binding on the contractor. Clause 27 provides for a joint reference by the parties to Secretary in the Home Department. In the present case, it is not borne out from the record that the dispute arising in this case was referred by the contractor in pursuance of Clause 27. It is contended that the contractor had appeared before the Secretary (Presses) and he thus accepted his authority and he was therefore estopped from challenging his jurisdiction. Suffice it to say in this connection that where there is inherent want of jurisdiction in a Tribunal, the mare fact that the challenging party had appeared before such Tribunal and had even taken part in the proceedings would not amount to estoppels, acquiescence or waiver. In the present case, the proceedings which took place before the Secretary (Presses) have not been brought on record. It therefore cannot be said that no objection regarding inherent lack of jurisdiction of the Secretary (Presses) on account of a joint reference was not taken up by the contractor; The proceedings were with the defendant and since they were withheld, every adverse inference can be raised against the defendant. Another aspect of the case is that there is nothing to indicate that the Secretary (Presses in giving his decision Ex. A/14 acted as a servant of the defendant or in the conscious exercise of the powers conferred on him by the arbitration Clause 27. Before arriving at the conclusion that the decision of an officer is final and conclusive between the parties, the court must be satisfied that the officer who gave the decision was conscious of the fact that he had been called upon to exercise powers of an arbitrator. The court must also be satisfied that the officer in fact exercised the power of an arbitrator with the sense of responsibility and judicial independence required for the purpose. In the absence of the reference, award and the proceedings which took place before the officer, it is difficult to say that the Secretary (Presses) gave his decision as an arbitrator under Clause 27 of the contract.

11. For the reasons stated above I hold that the decision Ex. A/40 is not binding on the contractor and it did not preclude him from instituting the present suit.

12. No other point has been pressed before me.

13. The decree passed by the court below must therefore be sustained and this appeal deserves to be dismissed with costs.

14. I cow take up Appeal No. 77 of 1973 filed by the learned Additional District Judge, Tonk. In view of my finding in Appeal No. 83 of 1971, the learned Deputy Government Advocate did not argue that the contractor agreed to supply cover Kraft paper made out of 60, lbs. paper. His sole contention in this appeal is that the suit is barred by time under Article 14 of the Limitation Act, 1963. Article 14 runs as follows:Period of Time from which period

Description Period of Time form which period

of suit limitation begins to run

14. For the price of Three years The date of the goods sold and delivery of goods

delivered where

no fixed period

of credit is

agreed upon.

In order to appreciate the point of limitation, it is necessary to recapitulate a few facts. The contractor supplied the goods in pursuance of Tender No. 99 of the year 1962-63 to the Government Press, Jaipur, and submitted his bills on 27-8 62, 13 12 62, 23 12-62 and 15-3-63 amounting to Rs. 12522.44 P The defendant instead of making payment of the suit amount informed the contractor vide letter dated 20-3-63 that Rs. 10817.30 P. have been ordered to be deducted cut of the said amount of Rs. 12522.44 P. on the pretext that the cover kraft paper supplid by the contractor against Tender No, 58 in the previous year were covers made out of paper of less poundage. After notice under KC 80 PC, the contractor filed the suit on 30 5 66 for the recovery of Rs. 10817/- as the cost of the goods supplied tp the Government Press, Jaipur, on the dates aforementioned. In para No. 10 of the plaint, the .. facts were stated to thow how the suit was within time That para runs as under:

Para No. 10--that the suit is filed within limitation under Article 14 read with Section 15 of the Limitation Act being within 3 years and 60 days from 30 3 63, the date of the last payment made by the defendant out Rs. 12,522/44 P. the price of goods sold against the four bills described in para No. (3) above 29th May 1966 fell on Sunday and therefore the suit is filed on the 30th May, 1966, the next opening day.

The defendant in its written statement in reply to para No. 10 of the plaint stated as follows:

Para No. 10--That the contents of para No. 10 of the plaint are simply legal and need no specific reply.

In view of the reply in the written statement, no issue on the point of limitation was framed by the court below. It further appears from the judgment of the court below that no question of limitation was raised at the bar in the lever court. It is for the first time that the point of limitation has been raised in this Court. There is no denying the fact that in case the part payment mentioned in para No. 10 of the plaint is accepted to have extended the period on Imitation, the suit is within time The defendant in its written statement did not deny specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant, shall be taken to be admitted. There is no evidence on the record to show that the payment alleged by the plaintiff was not made on 30-3-63 or was of such nature that it was hot covered by Section 19 of the Limitation Act, 1963. The defendant therefore cannot be allowed to challenge at this stage that the payment did not extend the period of limitation As already pointed out above, if the payment is accepted 13 have extended the period of limitation, the suit was within time. I therefore see no justification for holding that the suit is barred by time.

15. No other point has been pressed before me in this appeal. The appeal therefore deserves to be dismissed with costs.

16 I next take up the appeal filed by the contractor. Its number is 76 of 1973. The only point involved is this appeal is relating to pendent. lite and future interest. As already pointed out above, the court below has said nothing why the plaintiff should not be awarded pendent lite and future interest. It is only by implication that the court below has refused to allow pendent lite and future interest. I am of the opinion that an unpaid seller of goods is entitled to pendent lite and future interest Under Section 61(2) of the Sale of Goods Act at a reasonable rate unless there are reasons why he should not be deprived of it. In the present case, no such reasons are present. The appellants are therefore entitled to pendent lite and future interest. I allow them interest at the rate of six percent per annum on the principal sum of Rs. 10817.30 P. from the date of the suit to the date of the decree and from the date of the decree to the date of realization.

17. To sum up, the appeals filed by the State, namely, Appeals 83 of 1971 and 77 of 1973, are dismissed with costs. Appeal No. 76 of 1973 filed by the plaintiffs is allowed with costs and pendent lite and future interest is allowed as indicated above.

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