

G. M. Contractor and others

Vs

Gujarat Electricity Board and others

Civil Appeal Nos. 28, 170 and 678 of 1971 with Civil Misc. Petition No. 7420 of 1971

(S.M.Sikri, CJ, J.M.Shelat, G.K.Mitter, I.D.Dua, H.R.Khanna JJ)

10.12.1971

### JUDGMENT

1. In these Civil Appeals the respondents have filed miscellaneous petition praying that this Court may be pleased to permit them to raise the following additional ground :

"That the licence granted in this case is nothing but a contract and it is by virtue of the contract that the option to purchase the undertaking is being exercised. As the controversy has arisen out of a contract only and the undertaking is sought to be purchased in terms of the contract, there is no compulsory acquisition of the undertaking within the meaning of Article 31 of the Constitutions and as such the writ petition and the appeal are not maintainable."

2. It is stated that this ground goes to the very root of the matter but was not raised before the High Court. The appellants objected to this fresh ground being allowed to be taken up, but we consider that as this ground goes to very root of the matter it should be allowed after the appellants are compensated by costs.

3. We further consider that we would like to have the assistance of the views of the High Court on the matter as important questions are involved. The High Court may allow the appellants herein to file counter-affidavits in reply to the ground raised and then, after hearing the parties, forward out report to us.

4. The miscellaneous petition is accordingly allowed and the cases remanded to the High Court. The respondents will pay to the appellants the costs of hearing on December 1, 1971, in any event.

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