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U.P. AVAS EVAM VIKAS PARISHAD

v.

JAINUL ISLAM AND ANR.

JANUARY 21, 1998

B

[S.C. AGRAWAL, B.N. KIRPAL AND V.N. KHARE, JJ.]

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U.P. Avas Evam Vikas Parishad Adhiniyam, 1965—Section 55—Acquisition of land for executing housing scheme under the Adhiniyam—Reference to land Acquisition Act, 1894 in section 55 of the Adhiniyam—Applicability of amendments introduced in the land Acquisition Act, 1894 relating to determination and payment of compensation under Section 23 (1-A), 23(2) and 28 as amended by 1894 Act—Held, legislature intended to apply amendments introduced to acquisition Act, 1894—Section 23 (1-A), 23(2) and 28.

D

Acquisition of land—Market Value—Determination—Direction about deduction of one third of price towards cost of development for housing scheme—Held, not illegal interference with the determination of market value uncalled for—Land Acquisition Act, 1894—Section 23.

E

Interpretation of statutes—Legislation by incorporation and by reference—Effect of—In case of legislation by incorporation, repeal or amendment does not effect operation of the incorporation statute—Determination of whether legislation is by incorporation or reference depends upon the language used in the incorporating statute.

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Housing scheme was framed by the appellant under the provisions of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965. The notification was issued to the acquired under section 55 of the Adhiniyam. The provisions of Land Acquisition Act as modified by the schedule to the Adhiniyam were made applicable to acquisition of land for the purpose of the Adhiniyam. Therefore, amendments were introduced in the land Acquisition Act, 1894 relating to determination and payment of compensation under Section 23(1-A), 23(2) and 28 as amended by 1984 Act. As a result of the amendments in Section 23(2) and 28 the solatium payable under Section 23(2) has been enhanced from 15% to 30% and the interest payable under Section 28 has been enhanced from 6% to 9% and 15%. The land

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Acquisition Officer determined the compensation to be paid to the respondent.

The respondent claiming higher compensation made reference under Section 18 of the claims. The civil court determined the market value of the land at Rs. 150 per sq. yards but made a deduction of 10% out of it since the land acquired constituted a large area. Aggrieved by the order the appellant and the State of Uttar Pradesh jointly filed appeals before the High Court.

Some of the respondents-land owners challenged the deduction of 10% out of the market value of the land. The High Court partly allowing the appeal assessed the market value of the land at Rs. 110 per sq. yard and directed that deduction on account of the large area of the land should be one-third of the sum of Rs. 110. The High Court held that the amendments introduced in the Land Acquisition Act by the 1984 Act are applicable to acquisition of land for the purposes of the Adhinyam and the respondents are entitled to all statutory benefits under the Land Acquisition Act as amended by the 1984 Act.

In this batch of civil appeals and Special Leave Petitions before this Court the appellate challenged the applicability of the provisions contained in the Land Acquisition (Amendment) Act, 1984 to acquisition of land for executing the housing scheme framed by the U.P. Avas Evam Vikas Parishad Adhinyam, 1965. In the other batch of civil appeals and writ petitions the respondents challenged the validity of provisions contained in L.A. Act, 1894 as applicable in the matter of acquisition of Land.

The appellant contended that the provisions of the L.A. Act, as modified by the Schedule to the Adhinyam, have been incorporated into the Adhinyam and as a consequence of such incorporation the provisions of the L.A. Act as modified must be read as a part of the Adhinyam itself and any amendment made in the L.A. Act after the enactment of the Adhinyam would not, *ipso facto*, apply so as to have the effect of modifying those provisions contained in the Adhinyam and, therefore, the amendments introduced the L.A. Act by the 1984 Act would not apply to an acquisition made for the purposes of the Adhinyam on the basis of the provisions of L.A. Act as modified by the Adhinyam.

The respondent submitted that the amendments introduced in the L.A. Act by the 1984 Act are applicable to an acquisition for the purposes of the Adhinyam.

Dismissing the Civil Appeals, writ petitions and Special Leave Petitions, this court.

A HELD : 1.1. On a proper construction of Section 55 of the U.P. Avas
 Evam Vikas Parishad Adhinyam while incorporating the provisions of the
 L.A. Act in the Adhinyam the intention of the Legislature was that
 amendments in the L.A. Act relating to determination and payment of
 compensation would be applicable to acquisition of lands for the purposes of
 B the Adhinyam. This means that the amendments introduced in the L.A. Act
 by the 1984 Act relating to determination and payment of compensation
 under Sections 23,(1-A), 23(2) and 28 as amended by the 1984 Act would be
 applicable to acquisitions for the purposes of the Adhinyam under Section
 55 of the Adhinyam. [279-C]

C 2. A legislation may be a referential legislation or a legislation by
 incorporation. In a referential legislation the provisions of the earlier
 legislation to which reference is made in the subsequent legislation would
 be applicable as it stands on the date of application of such earlier legislation
 to matters referred to in the subsequent legislation. But in legislation by
 D incorporation the rule of construction is that repeal of the earlier statute
 which is incorporated does not affect operation of the subsequent statute in
 which it has been incorporated. So also any amendment in the statute which
 has been so incorporated that is made after the date of incorporation of such
 statute does not affect the subsequent statute in which it is incorporated and
 E the provisions the of statute which have been incorporated would remain the
 same as they were at the time of incorporated and the subsequent amendments
 are not to be read in the subsequent legislation. The legal effect of such
 incorporation by reference "is to write those sections into the new Act just
 as if they had been actually written in it with the pen or printed in it, and,
 the moment you have those clauses in the later Act, you have no occasion
 F to refer to the former Act at all". As to whether a particular legislation falls
 in the category or referential legislation or legislation by incorporation
 depends upon the language used in the statute in which reference is made
 to the earlier legislation and other relevant circumstances. [269-E-G]

G *State of Madhya Pradesh v. M.V. Narasimhan*, [1976] 1 SCR 6, relied
 on *Wood's Estate*, Re (1886) 31 Ch D 607 p. 615, referred to

3.1. The amendments introduced in the L.A. Act by the 1984 Act were
 not part of the L.A. Act as applicable in State of Uttar Pradesh, at the time
 of passing of the Adhinyam. The provisions of the L.A. Act, as amended in
 its application to U.P., with the modification specified in the Schedule to the
 H Adhinyam, have, therefore, to be treated to have been incorporated by reference

into the Adhiniyam and became an integral part of the Adhiniyam and the said provisions would remain in the L.A. Act unless any of the exceptional situations can be attracted. [267-G, 272-E-F] A

Secretary of State v. Hindustan Co-operative Insurance Society Ltd., AIR (1931) PC 149. *State of Madhya Pradesh v. M.V. Narasimha*, [1931] 1 SCR 6, applied. B

3.2. While construing the provisions of the Adhiniyam providing for acquisition of land for the purposes of the Adhiniyam one cannot lose sight of the settled principle of statutory construction that if certain provisions of law, construed in one way, would make them consistent with the Constitution another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. [274-F] C

Kadar Nath Singh v. State of Bihar, [1962] Supp. 2 SCR 769, 808, 809. relied on D

3.3. If the provisions of the Adhiniyam are so construed as to incorporate the provisions of the L.A. Act as it stood on the date of enactment of the Adhiniyam without the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation an owner whose land is acquired for the purpose of the Adhiniyam would be entitled to payment of solatium under Section 23(2) of the L.A. Act @ 15% and interest under Section 28 of the L.A. Act @ 6% but an owner whose lands are acquired under the provisions of the L.A. Act amended by the 1984 Act would be entitled to payment of solatium @ 30% and interest @ 9% and 15% and would also be entitled to payment of additional amount as per the provisions of Section 23(1-A) of the L.A. Act, as amended. In other words, the compensation payable to the owner whose land is acquired for the purposes of the Adhiniyam would be less than the compensation payable to the owner whose land is acquired under the L.A. Act as amended by the 1984 Act. There is no rational basis for treating the two land owners differently in the matter of payment of compensation on the acquisition of their lands. It would suffer from the vice of arbitrary and hostile discrimination. Such a consequence would be avoided if the provisions of the Adhiniyam are construed to mean that the provisions of the L.A. Act, as amended by the 1984 Act, relating to determination and payment of compensation would apply to acquisition of land for the purposes of the Adhiniyam. The provisions of the Adhiniyam show that the intention of the Legislature, while enacting the E F G H

A Adhiniyam, was to confer the benefit of solatuim @ 15% by modifying Section 23(2) in the Schedule, which benefit was not available under the provisions of the L.A. Act as it was applicable in the State of Uttar Pradesh at the time of enactment of the Adhiniyam. [275-A-C, 278-G-H, 279-A-B]

B *Nagpur Improvement Trust & Anr v. Vithal Rao & Ors.*, [1973] 3 SCR 3, followed.

C *State of Madhya Pradesh v. G.C. Mandawar*, [1955] 1 SCR 599; *Prakash Amichand Shah v. State of Gujarat & Ors.*, [1985] Supp. 3 SCR 1025 and *Union of India v. Hari Kishan Kholsa (dead) by LRs.*, [1993] Supp. 2 SCC 2 149, referred to.

4.1. The High Court, rightly held that in the absence of any material that the agreements for sale relied upon had matured into sale transactions not much assistance could be derived from them in the matter of determination of the market value of the acquired land. [281-E]

D 4.2. For determining the market value of a large property on the basis of sale transactions for a small property a deduction should be given. Thus, the direction about deduction of one third of the said price towards cost of development for the housing scheme involving construction of roads and other amenities is upheld. [281-F-G]

E *Tribeni Devi & Ors., v. Collector of Ranchi*, [1972] 3 SCR 208; *Vijay Kumar Moti Lal v. State of Maharashtra*, [1981] 2 SCC 719; *Special Land Acquisition officer Bangalore v. V.T. Velu & Ors.*, [1996] 2 SCC 538; *K.S. Shivadevamma & Ors. v. Asst. Commissioner & Ors.*, [1996] 2 SCC 62 and *Basant Kumar v. Union of India*, [1996] 2 SCC 542, held applicable.

F *Bhawathula Samanna & Ors. v. Special Tehsildar & Land Acquisition Officer, Visakhapatnam*, [1991] 4 SCC 506 and *Maharbad & Ors. v. The State of U.P. & Ors.*, [1997] 4 Scale 363, referred to.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6343 of 1995
Etc. Etc.

From the Judgment and Order dated 7.12.1994 of the Allahabad High Court in R.F.A. No. 750 of 1992.

H K.T.S. Tulsī, M.N. Venkataramani, S.B. Sanyal, Shanti Bhushan, Jitendra

Mohan Sharma, P.K. Jain, K.C. Jain, E.C. Agarwala, P.K. Roy, Nafis Ahmed A
Siqq, Mansoor Ali, Shiv Sagar Tiwari, S. Murlidhar, Pramod Dayal, Prashant
Chaudhary, Jayant Bhushan, Arvind Varma, Surya Kant, Sunil Gupta, Shashi
Bhushan and Anand Padmanabhan for the appearing parties.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. : (A) *Civil Appeals Nos.* 6343/95, 6383/95, 6358/95, B
6368/95, 6353/95, 6370/95, 6369/95, 6371/95, 6363/95, 6357/95, 6361/95, 6356/95,
6376/95, 6359/95, 7646/95, 7361/95, 7362/95, 7363/95, 6373/95, 6374/95, 6375/95,
6352/95, 6382/95, 6347/95, 6354/95, 6344/95, 6345/95, 6355/95, 6350/95, 6362/95,
6364/95, 7357/95, 7358/95, 7360/95, 7359/95, 7356/95, 7644/95, 7364/95, 7365/95, C
6351/95, 6349/95, 6377/95, 6372/95, 6365/95, 6360/95 And *Civil Appeal*
Nos......{arising out of Special leave Petitions (Civil) Nos. 11170/95, 10512-
10538/95, 10147/95 and 9549/95}.

Leave granted in Special Leave Petitions (Civil) Nos. 11170/95, 10512-
10538/95, 10147/95 and 9549/95. D

These appeals are directed against the judgment of the Allahabad High
Court dated December 7, 1994 in appeals arising out of proceedings for
acquisition of land in connection with the housing scheme framed by the U.P.
Avas Evam Vikas Parishad [hereinafter referred to as 'the Parishad'] under the
provisions of The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 E
[hereinafter referred to as 'the Adhiniyam']. They raise common questions
relating to the applicability of the provisions contained in the Land Acquisition
(Amendment) Act, 1984 [hereinafter referred to as 'the 1984 Act' to acquisition
of land for executing the said scheme. The amendments introduced by the
1984 Act include insertion of sub-section (1-A) in Section 23 and amendment
of Sections 23(2) and 28 of the Land Acquisition Act, 1894 [hereinafter to as F
'the L.A. Act']. As a result of the amendments in Sections 23(2) and 28 the
solatium payable under Section 23(2) has been enhanced from 15% to 30%
and the interest payable under Section 28 has been enhanced from 6% to 9%
and 15%.

The Parishad is a housing and development board established under G
Section 3 of the Adhiniyam. Under Section 15 of the Adhiniyam one of the
functions of the Board is "to frame and execute housing and improvement
schemes and other projects". In accordance with the provisions of the
Adhiniyam the Parishad framed the "Bhomi Vikas Evam Grihasthan Yojana No.
10 between Meerut-Hapur and Meerut-Delhi Road in Meerut". By Notification H

- A dated July 23, 1983 (published in the U.P. Government Gazette dated August 27, 1983) issued under Section 28 of the Adhiniyam the Parishad notified the said scheme. The scheme was prepared with a view to solving the acute housing problem in the Meerut city and it covered lands lying in the outskirts of Meerut city. The said notification was followed by Notification dated July 15, 1985 (published in the U.P. Government Gazette dated August 3, 1985) issued under Section 32(1) of the Adhiniyam. The said notification dated July, 15, 1985 was in respect of land covering 202.48 acres equivalent to 9,07,954 sq. yards which was to be acquired under Section 55 of the Adhiniyam whereby the provisions of the L.A. Act, as modified by the Schedule to the Adhiniyam, have been made applicable to acquisition of land for the purposes of the Adhiniyam. After the issuance of the said notifications, the Land Acquisition Officer initiated proceedings to determine the compensation to be paid to the land owners whose lands were acquired in accordance with provisions of the L.A. Act as modified under the Schedule to the Adhiniyam. The Land Acquisition Officer determined the market value of the land so acquired at Rs. 30 per sq. yard and the compensation was offered to the land owners on that basis. The land owners claimed compensation at a higher rate of Rs. 150/-per sq yard and sought reference under Section 18 of the L.A. Act and thereupon references were made to the Civil Court for determination of such claims of the land owners. By judgment dated December 12, 1991, the Civil Court, namely, the Additional District Judge, Meerut, determined the marked value of the land at Rs. 150 per sq yard but he made a deduction of 10% out of it since the land acquired constituted a large area. Feeling aggrieved by the said determination made by the Civil Court the Parishad and the State of Uttar Pradesh jointly filed appeals before the Allahabad High Court. Some of the land owners filed cross-objections wherein they confined their challenge to the deduction of 10% that was made by the Civil Court. By the impugned judgment dated December 7, 1994 the High Court has partly allowed the appeals filed by the Parishad and has assessed the market value of the land at Rs. 110 per sq yard and, instead of a deduction of 10% made by the Civil Court on account of the large area of the land, the High Court has, therefore, fixed the market value of the land at Rs. 73 per sq. yard. The cross-objections filed by the land owners have been dismissed. The High Court has, however, held that the amendments introduced in the L.A. Act by the 1984 Act are applicable to acquisition of land for the purposes of the Adhiniyam and the land owners are entitled to all the statutory benefits under the L.A. Act as amended by the 1984 Act so far as applicable to them. Feeling aggrieved by the said decision of the High Court, the Parishad has filed Civil Appeals Nos. 6343/95, 6383/95, 6358/95, 6368/95, 6353/95, 6370/95, 6369/95, 6371/95, 6363/95,

6357/95, 6361/95, 6356/95, 6376/95, 6359/95, 7646/95, 7361/95, 7362/95, 7363/95, 6373/95, 6374/95, 6375/95, 6352/95, 6382/95, 6347/95, 6354/95, 6344/95, 6345/95, 6355/95, 6350/95, 6362/95, 6364/95, 7357/95, 7358/95, 7360/95, 7359/95, 7356/95, 7644/95, 7364/95, 7365/95, 6351/95, 6349/95, 6377/95, 6372/95, 6365/95 and 6360/95, before this Court. Feeling aggrieved by the reduction in the market value by the High Court some of the claimants have filed Civil Appeals arising out of Special Leave Petitions (Civil) Nos. 11170/95, 10512-10538/95, 10147/95 and 9579/95. The claimants, who are respondents in Civil Appeals Nos. 6353/95 and 6363/95, filed by the Parishad, have filed Writ Petitions Nos. 224/97 and 339/97 under Article 32 of the Constitution wherein they have challenged the validity of the provisions contained in the L.A. Act as applicable in the matter of acquisition of land for the purposes of the Adhiniyam by virtue of Section 55 read with the Schedule to the Adhiniyam.

It would be convenient, at this stage, to briefly refer to the relevant provisions of the Adhiniyam.

The Adhiniyam has been enacted by the U.P. State Legislature to provide for the establishment, incorporation and functioning of a housing and development Board in the State of Uttar Pradesh. It had received the assent of the President. Section 3 of the Adhiniyam provides for constitution of the Board and in accordance with the said provision the Parishad had been constituted by the State Government as a Board under the Adhiniyam. By virtue of Section 3(3) of the Adhiniyam the Parishad is a local authority for the purposes of the L.A. Act. Section 15 of the Adhiniyam enumerates the functions of the Board and one of the function thus enumerated is to frame and execute housing and improvement schemes and other projects. Section 16 provides that the Board may on its own motion or at the instance of a local authority frame a housing or improvement scheme and that the Board shall frame such a scheme when so directed by the State Government. Section 17 prescribed the matters which are required to be provided for in such a scheme. One of the matters to be provided is "the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme". Sub-section (1) of Section 28 provides that when any housing or improvement scheme has been framed the Board shall prepare a notice to that effect specifying the matters mentioned in clauses (a) to (c). Sub-section (2) of Section 28 requires such notice to be published in the manner laid down therein. Section 29 provides for service on the persons or classes of persons of a notice stating that the Board proposes to acquire any specified land or building for the execution of the scheme. Section 30 makes provision for filling

A of objections against the scheme. Section 31 provides for sanctioning of the scheme, with or without modifications after considering the objections received under the Section 30, by the Board if the estimated cost of the scheme does not exceed twenty lakhs of rupees and by the State Government if it exceeds the said amount. Sub-Section (1) of Section 32 provides that whenever the Board or the State Government sanctions a housing or improvement scheme,

B it shall be notified in the Gazette and Sub-section (2) lays down that the notification under Sub-Section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned. In cases where the scheme is sanctioned by the Board an appeal lies to the State Government against the decision of the Board under Sub-Section (3) of

C Section 32 and if the scheme is altered or cancelled by the State Government on such appeal the cancellation or alteration is required to be notified in the Gazette under sub-section (4) of Section 32. In Section 38 provision is made for transfer to the Board of any building or land or any street, or any part thereof, vested in a local authority which lies within the area comprised in any housing or improvement scheme and for payment by the Board to the local

D authority, as compensation, a sum equal to the market value of such land or building or both, as the case may be, as on the date on which the scheme comes into force. Section 39 makes provision for transfer of any private street or square or part thereof which the public or any section of the public has right to pass along or use and which is not vested in the Board or in any

E local authority for executing any housing or improvement scheme and for payment to the previous owner compensation determined on the basis of the market value, on the date of vesting, of his rights therein. Section 55 of the Adhiniyam makes the following provisions regarding acquisition of land that is required by the Board for any of the purposes of the Adhiniyam :-

F “Section 55. *Power to acquire land.*-(1) Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Land Acquisition Act, 1894 (Act No.1 of 1894), as amended in its application to Uttar Pradesh, which for this purpose, shall be subject to the modifications specified in the Schedule to this Act.

G (2) If any land is respect of which betterment fee has been levied under this Act is subsequently required for any of the purposes of this Act, such levy shall not be deemed to prevent the acquisition of the land under the Land Acquisition Act, 1894 (Act No. 1 of 1894).”

H Section 56 empowers the Board, by agreement with any person, to

purchase, lease or exchange any land or any interest therein required by it for any of the purposes of the Adhiniyam. Section 64 makes provision for the constitution of one or more Tribunals for the purposes of, inter alia, performing the functions of the Court with reference to the acquisition of land for the Board under the L.A. Act, as modified by the Schedule to the Adhiniyam. A

The Schedule to the Adhiniyam sets out the modifications in the L.A. Act, as amended, in its application to the State of Uttar Pradesh. As per the said modifications:- B

(i) Clause (i) has been inserted in Section 3 of the L.A. Act to define "local authority" as including "the Board". C

(ii) Clause (j) has been inserted in Section 3 of the L.A. Act to define 'Board' to mean the Parishad established under the Adhiniyam.

(iii) The first publication in the Official Gazette of a notice of any housing or improvement scheme under Section 28 or under clause (a) of Sub-section (3) of Section 31 of the Adhiniyam has been substituted for and shall have, in relation to any land proposed to be acquired under the Scheme, the same effect as publication in the Official Gazette of a notification under sub-section (1) of Section 4 of the L.A. Act. D

(iv) The publication of a notification under sub-section (1) or, as the case may be, under sub-section (4) of Section 32 of the Adhiniyam in the case of land acquired under any housing or improvement scheme under the Adhiniyam has been substituted for and shall have the same effect as a declaration by the State Government under Section 6 of the L.A. Act. E

(v) Sub-section (1) of Section 17 of the L.A. Act has been substituted. In sub-section (1), so substituted, it is provided that whenever the State Government so directs in the interest of the expeditious execution of housing or improvement scheme under the Adhiniyam, the Collector, though no such award has been made, may on the expiration of fifteen days from the publication of the notice mentioned in sub-section (1) of Section 9 take possession of any land needed for the purposes of the Adhiniyam and such land shall thereupon vest absolutely in the Government free from all encumbrances. F G

(vi) Section 17-A has been inserted in the L.A. Act. The said provision reads as under:- H

A “Section 17-A Transfer of land to Board,- In every case referred
to in Section 16 or Section 17, the Collector shall upon payment
of the cost of acquisition make over charge of the land to the
C Housing Commissioner, or an officer authorised in this behalf
under the Uttar Pradesh Avastha Vikas Parishad Adhiniyam,
B 1965, and the land shall, thereupon vest in the Board subject to
the liability of the Board to pay any further costs which may be
incurred on account of its acquisition.”

(vii) In Section 23 of the L.A. Act for existing explanation to the clause
“firstly” the following provision has been substituted :-

C “Explanation.- In judging the market value aforesaid in any case
where a land is acquired under a housing or improvement scheme
under the Uttar Pradesh Avastha Vikas Parishad Adhiniyam,
D 1965, if any building has been erected, re-erected, added or
altered in contravention of the provisions of clause (a) of sub-
section (3) of Section 23, sub-section (3) of Section 24, or Section
35 of the said Adhiniyam, any increase in the market value
resulting from such erection, re-erection, addition or alteration
shall be disregarded.”

(viii) After the existing sub-section (1) in Section 23 of the L.A. Act
the following sub-section (2) has been added :-

E “(2) In addition to the market value of the land as above provided,
the court shall in every case award a sum of fifteen percentum
of such marked value in consideration of the compulsory nature
of the acquisition.”

F (ix) In Section 49 after sub-section (1) the following sub-section (1-a)
has been added :-

G “(1-a) For the purposes of sub-section (1), land which is held
with and attached to a house and is reasonably required for the
enjoyment and use of the house shall be deemed to be part of
the house.”

In this context, it may be mentioned that prior to the enactment of the
Adhiniyam the Uttar Pradesh State Legislature had enacted the Land
Acquisition (U.P. Amendment) Act, 1954 [U.P. Act 22 of 1954] [hereinafter
referred to as ‘the 1954 Act’] where by the L.A. Act in its application to the
H State of Uttar Pradesh, in so far as it relates to acquisitions of land except

for the purposes of the Union, had been amended and it was to have effect in the State subject to the amendments specified in the Schedule to the 1954 Act. One of amendments that was so introduced was in Section 23 of the L.A. Act whereby the following explanation was added in clause (1) of Section 23:-

“Explanation.—In judging the market value aforesaid in any case, where the land acquired for or in connection with sanitary improvement or any kind or planned development due regard shall be had to the insanitary and unhygienic conditions of the land on the date aforesaid.”

The other amendment was the deletion of sub-section (2) of Section 23.

By the Land Acquisition (U.P. Amendment) Act, 1972 (U.P. Act No. 28 of 1972) [hereinafter referred to as ‘the 1972 Act’ the L.A. Act, as applicable in the State of Uttar Pradesh, was further amended and the Explanation that was inserted in sub-section (1) of Section 23 by the 1954 Act was omitted and sub-section (2) of Section 23 which was deleted by the 1954 Act was restored. This would show that in 1965 when the Adhinyam was enacted solatium @ 15% was not payable under Section 23 of the L.A. Act in respect of acquisition of land in the State of Uttar Pradesh when such acquisition was not for the purposes of the Union and while enacting the Adhinyam the Legislature made provision for payment of such solatium. Thus there was disparity in the matter of payment of solatium in respect acquisition of land for the purposes of the Adhinyam and acquisitions of land under the provision of the L.A. Act as applicable in the State of Uttar Pradesh where such acquisition was not for the purposes of the Union. This disparity stood removed after the enactment of the 1972 Act whereby sub-section (2) was introduced in the L.A. Act as applicable in the State of Uttar Pradesh.

By the 1984 Act the L.A. Act has been amended and amongst the amendments that have been made the following are relevant:

(i) Sub-section (1-A) was inserted in Section 23 whereby an additional amount calculated at the rate of 12% per annum on the market value of land as determined under sub-section (1) of Section 23 has to be awarded by the Court for the period commencing on and from the date of the publication of notification under Section 4(1) in respect of such land to the date of the award of the Collector or to the date of taking possession of land, whichever is earlier.

(ii) The rate of solatium payable under Section 23(2) had been

A enhanced from 15% to 30%.

(iii) The rate of interest payable of the excess amount of compensation under Section 28 had been enhanced from 6% to 9% per annum when the excess amount is paid within one year of the date on which the Collector took possession of the land and where the excess amount is paid after the expiry of the period of one year interest would be payable @ 15% per annum from the date of expiry of the period of one year.

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The 1984 Act, being a subsequent parliamentary enactment, overrides the 1972 Act by virtue of Article 254(2) of the Constitution and as a result in the State of Uttar Pradesh in the event of land being acquired under the provisions of the L.A. Act, as applicable in the said State, the land owner is entitled to payment of compensation and interest in accordance with the provisions of Sections 23 and 28, as amended by the 1984 Act. Since there has been no corresponding amendment in the Adhiniyam the question has arisen whether the benefit of the amendments introduced in the L.A. Act by the 1984 Act can be extended to land owners whose land is acquired for the purposes of the Adhiniyam on the basis of the provisions of the L.A. Act as modified by the Adhiniyam.

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In *Gauri Shankar Gaur and Ors. v. State of U.P. and Ors.*, [1994] 1 SCC 92, a bench of two Judges of this Court (K. Ramaswamy and R.M. Sahai, JJ.) has dealt with the question regarding the applicability of the 1984 Act to acquisition of land under the provisions of the Adhiniyam in the context of the first proviso to Section 6 of the L.A. Act which was substituted by the 1984 Act. By the said proviso it had been prescribed that no declaration in respect of any particular land covered by a notification under Section 4(1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the 1984 Act, shall be made after the expiry of the three years from the date of the publication of the notification. In that case the notification under Section 28(1) of the Adhiniyam was published in the Gazette on September 8, 15 and 22 of 1973 and the notification under Section 32(1) of the Adhiniyam was published on August 27, 1977, i.e., after the expiry of three years. A contention was raised that the notification under Section 32 was required to be issued within three years from the date of the notification under Section 28(1) on the basis of the first proviso to Section 6 of the earlier Act. It was urged that the amendment introduced in the L.A. Act by the 1984 Act, including the first proviso to

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Section 6, are applicable to acquisition of land under the Adhiniyam. Although both the learned Judges have concurred in upholding the validity of the acquisition, but there was difference of opinion between them on some of the questions that came up for consideration. One of the questions arising for consideration was whether the provision of the L.A. Act have been incorporated by reference in the Adhiniyam by virtue of Section 55 read with the Schedule to the Adhiniyam and as a consequence any amendment made in the earlier Act after the enactment of the Adhiniyam does not, *ipso facto*, apply to an acquisition of the purposes of the Adhiniyam on the basis of the provisions of the L.A. Act as modified by the Adhiniyam.

Ramaswamy J. was of the view that Section 55 of the Adhiniyam read with the Schedule made an express incorporation of the provisions of Section 4(1) and Section 6 as modified and incorporated in the Schedule and that the Schedule effected necessary structural amendments to Sections 4,5,17 and 23 incorporating therein the procedure and principles with necessary modifications and that it is a complete code in itself. He, therefore, held that Section 55 and the Schedule adopted only by incorporation Sections 4(1) and 6(1) and the subsequent amendments to Section 6 did not become part of the Adhiniyam and they have no effect on the operation of the provisions of the Adhiniyam. Sahai J., however, took a contrary view. He was of the opinion that whether a legislation was by way of incorporation or by way of reference is more a matter of construction by the courts keeping in view the language employed by the enactment, the purpose of referring or incorporating provisions of an existing Act and the effect of it on the day to day working. According to the learned Judge such legislation by incorporation is subject to exceptions and that one such situation where legislation by incorporation is excluded is if it creates difficulty in day to day working. The learned Judge was of the view that in our constitutional set up the exception can be extended further and the Courts should lean against a construction which may result in discrimination. He, therefore, held that the amendments introduced in the L.A. Act by the 1984 Act would be applicable to acquisition of land for the purpose of the Adhiniyam and restriction of three years added by the first proviso to Section 6 of the L.A. Act was applicable to acquisition for the purposes of the Adhiniyam also. The learned Judge, however, took note of the fact that the Parishad had entered into possession and had constructed housing colonies as there was no interim order in favour of the land owners during pendency of the writ petitions in the High Court and observed that larger social interest requires this Court to mould the relief in such manner that justice may not suffer. He, therefore, held that even though publication

A of declarations under the Act were beyond the period of three years it was not in the interest of justice to quash the proceedings but the land owners should be paid compensation of the land acquired on market value prevalent in the year in which the declaration analogous to Section 6 of the earlier Act was published/issued by fictionally assuming that fresh notification under the Act analogous to Section 4 was issued in that year.

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Another question that came up for consideration in *Gauri Shankar Gaur* (supra) was whether the provisions contained in the L.A. Act, as amended by Section 55 read with the Schedule to the Adhiniyam, have ceased to operate after the enactment of the 1984 Act in view of Article 254 of the Constitution for the reason that the provisions contained in the Adhiniyam are repugnant to the provisions contained in the L.A. Act as amended by the 1984 Act. Ramaswamy J. has dealt with this question and has held that the Adhiniyam was a law made under Entry 6, Entry 5 and Entry 66 of List 11 (State List) and incidentally it took recourse to Entry 42 of List III (Concurrent List) and that since the main purpose of the Adhiniyam was not the acquisition of the property, as the provisions do indicate in pith and substance that they did not occupy the same field, it was not fully inconsistent and were not absolutely irreconcilable with the L.A. Act as amended by the 1984 Act and that the Adhiniyam and the earlier Act both do co-exist in relation to the procedure prescribed under both these Acts and the Adhiniyam did co-exist independently with out in any way colliding with the earlier Act and, therefore, Section 55 and the Schedule did not become void under the proviso to Article 254 (2) of the Constitution. Sahai J. has, however, not considered the said question of repugnancy of the Adhiniyam to the L.A. Act as amended by the 1984 Act.

F Since there was difference of opinion between the learned Judges the question regarding the applicability of the 1984 Act to acquisitions for the purpose of the Adhiniyam in *Gauri Shankar Gaur* (supra), these matters have been directed to be heard by a Bench of three Judges and that is how these matters have come up before us.

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Shri S.B. Sanyal, the learned senior counsel appearing for the Parishad, has placed reliance on the judgment of Ramaswamy J. in *Gauri Shankar Gaur* (supra) and has urged that the provisions of the L.A. Act, as modified by the Schedule to the Adhiniyam, have been incorporated into the Adhiniyam and as a consequence of such incorporation the provisions of the L.A. Act as modified must be read as a part of the Adhiniyam itself and any amendment

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made in the L.A. Act after the enactment of the Adhiniyam would not, *ipso facto*, apply so as to have the effect of modifying those provisions contained in the Adhiniyam and, therefore, the amendments introduced in the L.A. Act by the 1984 Act would not apply to an acquisition made for the purposes of the Adhiniyam on the basis of the provisions of L.A. Act as modified by the Adhiniyam. On behalf of the land owners reliance has been placed on the judgment of Sahai J. in *Gauri Shankar Gaur* (supra) and has been submitted that the amendments introduced in the L.A. Act by the 1984 Act are applicable to an acquisition for the purposes of the Adhiniyam.

A subsequent legislation often makes a reference to an earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation where under the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated. So also any amendment in the statute which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statute which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation. In the words of Lord Esher, M.R., the legal effect of such incorporation by reference "is to write those sections into the new Act just as if they had been actually written in it with the pen or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all." [See : *Wood's Estate, Re, (1886) 31 Ch D 607. at p. 615*]. As to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the earlier legislation and other relevant circumstances. The legal

A position has been thus summed up by this Court in *State of Madhya Pradesh v. M.V. Narasimhan*, [1976] 1 SCR 6 :-”

B “where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases :

(a) Where the subsequent Act and the previous Act are supplemental to each other,

C (b) where the two Acts are in *pari materia*,

(c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and

D (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act.” [p. 14]

E Section 55 of the Adhiniyam makes a reference to the provisions of the L.A. Act, as amended in its application to Uttar Pradesh, and has laid down that any land or any interest therein required by the Parishad for any of the purposes of the Adhiniyam may be acquired under the provisions of the L.A. Act as amended in its application to Uttar Pradesh which for this purpose has to be subject to the modifications specified in the Schedule to the Adhiniyam.

F A number of modifications have been made in the various provisions of the L.A. Act that have been made applicable in respect of acquisition for the purposes of the Adhiniyam. The publication of the notification under Section 28(1) of the Adhiniyam has been equated with a notice under sub-section (1) of Section 4 of the L.A. Act and the publication of a notification under Section 32(1) of the Adhiniyam has been equated with a declaration under Section 6

G of the L.A. Act. As regards compensation modification has been made by inserting sub-section (2) in Section 23 of the L.A. Act, as it was applicable in the State of Uttar Pradesh. As pointed out earlier, in the L.A. Act, in its application to the State of Uttar Pradesh, in so far as it related to acquisitions of land except for the purposes of the Union, sub-section (2) of Section 23

H had been deleted by virtue of the 1954 Act and there was no provision for

payment of solatium. A provision for payment of solatium @ 15% was introduced by a modification made in the Schedule to the Adhiniyam and sub-section (2) was inserted in Section 23 of the L.A. Act in its application to acquisition for the purposes of the Adhiniyam. A

Provisions similar to Section 55 of the Adhiniyam are found in other enactments providing for urban improvement. One such enactment was the Calcutta Improvement Act, 1911, where under the Board to Trustees of the Calcutta Improvement Trust was entrusted with very wide powers for the purpose of carrying improvements schemes within the municipal limits of Calcutta. The said powers included the power of compulsory acquisition of land. In Part 4 of the said Act it was provided that the Trustees may make such acquisitions under the L.A. Act but the L.A. Act was modified for the purposes of the Calcutta Improvement Trust. The modifications were contained partly in the body of the Improvement Act and partly in a Schedule attached to the Improvement Act. One of the departures from the L.A. Act was that under the Improvement Act a Tribunal was constituted to take the place of a Court under the L.A. Act except for the purposes of Section 54 of the said Act and as a consequence there was no general right of appeal to the High Court which right was available under the L.A. Act. By an amendment made contemporaneously by Act 18 of 1911 passed by the Governor-General in Council the Calcutta Improvement Act was amended and a right of appeal to the High Court from the Tribunal was conferred. Subsequently by Act 19 of 1921 an amendment was introduced in the L.A. Act whereby a right of appeal to His Majesty in Council from any decree passed by the High Court on appeal from an award of the Court was conferred. In *Secretary of State v. Hindustan Co-operative Insurance Society Ltd.*, AIR (1931) PC 149, a question arose whether the said amendment in the L.A. Act was applicable so as to confer a right of appeal to the Privy Council against the judgment of the High Court in an appeal from the Tribunal. The said question was answered in the negative by the Privy Council. After referring to Part 4 of the Calcutta Improvement Act and the modifications that were made in the L.A. Act, their Lordships observed:-

“The modifications are contained partly in the body of the Act and partly in a schedule attached to the Act. They are numerous and substantial and the effect is, in their Lordships’ opinion to enact for the purposes of the local Act a special law for the acquisition of land by the trustees within the limited area over which their powers extend. [pp. 150, 151]

A “Their Lordships’ regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt” [p.152]

B It was held that the amendment that was introduced in the L.A. Act in 1921 could not be regarded as incorporated in the Calcutta Improvement Act because the same was not part of the L.A. Act when the Calcutta Improvement Act was passed, nor in adopting the provisions of the L.A. Act was there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to the L.A. Act and that Act
C 19 of 1921 also did not contain any provision that the amendments enacted by it were to be treated as in any way retrospective or were to be regarded as affecting any other enactment than the L.A. Act itself.

The provisions of Section 55 read with the Schedule to the Adhiniyam are on the same lines as those contained in the Calcutta Improvement Act, 1911 and the principles laid down in *Secretary of State v. Hindustan Co-operative Insurance Society Ltd.*, (supra) are equally applicable to the present case. The amendments introduced in the L.A. Act by the 1984 Act were not part of the L.A. Act, as applicable in the State of Uttar Pradesh, at the time of passing of the Adhiniyam. The provisions of the L.A. Act, as amended in its application to U.P., with the modifications specified in the Schedule to the Adhiniyam, have, therefore, to be treated to have been incorporated by reference into the Adhiniyam and became an integral part of the Adhiniyam and the said provisions would remain unaffected by any subsequent repeal or amendment in the L.A. Act unless any of the exceptional situations indicated in *State of Madhya Pradesh v. M.V. Narasimhan* (supra) can be attracted.

F In *Gauri Shankar Gaur* (supra) Sahai J. has stated that the language of Section 55 of the Adhiniyam permitting acquisition on under the provisions of the L.A. Act, as amended in its application to Uttar Pradesh, with modifications specified in the Schedule to the Adhiniyam, is widely different from the language used in the Calcutta Improvement Act and further that the decision of the Judicial Committee of the *Privy Council in Secretary of State v. Hindustan Co-operative Insurance Society Ltd.*, (supra) turned on the principle that specific excludes general. We find it difficult to agree with the said view of the learned Judge. As noticed earlier by Part 4 of the Calcutta Improvement Act, 1911, which dealt with the acquisition of land for the purposes of that Act, the L.A. Act had been modified for the purposes of the
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Calcutta Improvement Act and the said modifications were contained partly in the body of the Calcutta Improvement Act and partly in the Schedule attached to the Act and on that basis it was held by the Judicial Committee of the Privy Council that the effect of the said provisions was to enact for the purposes of the Calcutta Improvement Act a special law for acquisition of land by the trustees within the limited area over which their powers extended and the Calcutta Improvement Act was regarded as doing nothing more than incorporating certain provisions from an existing Act and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt. The scheme of Section 55 read with the Schedule to the Adhiniyam is not very different.

As regards the exceptional situations referred to in *State of Madhya Pradesh v. M.V. Narasimhan* (supra), it may be stated that the Adhiniyam and the L.A. Act cannot be regarded supplemental to each other. The Adhiniyam contains provisions regarding acquisition of land which are complete and self-contained. Nor can the provisions in the Adhiniyam be said to be in *pari materia* with the L.A. Act because the Adhiniyam also deals with matters which do not fall within the ambit of the L.A. Act. It cannot also be said that the 1984 Act, expressly or by necessary intendment, applies the said amendments to the Adhiniyam. Can it be said that if the amendments made in the L.A. Act by the 1984 Act are not incorporated in the Adhiniyam it would be rendered unworkable? Sahai J. has expressed the view that the exceptional situations referred to in *State of Madhya Pradesh v. M.V. Narasimhan*, (supra) can be extended further in our constitutional set up and that the courts should lean against a construction which may result in discrimination. In the impugned judgment the High Court has observed that while persons whose lands were acquired under the Land Acquisition Act were entitled to all statutory benefits under Section 23(1-A) and Section 23(2) and interest got the said benefits as per the 1984 Act, similar benefits are denied in the matter of determination of market value of the land acquired by application of provision of the Adhiniyam and that it would be discriminatory and violative of Article 14 of the Constitution and that the court should interpret the provisions of a law to favour constitutionality rather than interpret it so as to be violative of the fundamental rights guaranteed under the Constitution.

The learned counsel for the land owners have urged that if the provisions of the L.A. Act, as they stood on the date of enactment of the Adhiniyam

- A without the amendments introduced by the 1984 Act relating to determination payment of compensation are held to be incorporated in the Adhiniyam the provisions of the Adhiniyam incorporating the provisions of the L.A. Act would be rendered unconstitutional as being violative of Article 14 of the Constitution. Reliance has been placed on the decision of this Court in
- B *Nagpur Improvement Trust & Anr. v. Vithal Rao & Ors.*, [1973] 3 SCR 3. On behalf of the Parishad it has, however, been urged that in proceedings arising from a reference under Section 18 it is not open to the claimants to raise the question regarding constitutional validity of the provisions of the Adhiniyam under which the reference has been made. It has been pointed out that the L.A. Act was enacted by Parliament while the Adhiniyam was enacted by the
- C Uttar Pradesh State Legislature and that Article 14 cannot be invoked when the alleged discrimination arises on the basis of laws made by two different legislative bodies. It has also been urged that merely because under the provisions of the L.A. Act, as modified by the Schedule to the Adhiniyam which are applicable in the matter of acquisition of land for the purposes of the Adhiniyam, solatium is payable @ 15% and not @ 30% and interest is
- D payable @ 6% and not @ 9% and 5%, as provided in the L.A. Act as amended by the 1984 Act, would not render the acquisition proceedings taken under the Adhiniyam to be unconstitutional. In support of the said submissions reliance has been placed on the decisions of this Court in *State of Madhya Pradesh v. G.C. Mandawar*, [1955] 1 SCR 599; *Prakash Amichand Shah v. State of Gujarat & Ors.*, [1985] Supp. 3 SCR 1025 and *Union of India v. Hari Krishan Khosla (dead) by Lrs.*, [1993] Supp. 2 SCC 149.

- It is no doubt true that in an appeal arising from a reference under Section 18 of the L.A. Act it is not open to the claimants to challenge the validity of the provisions of the law under which the reference has been made.
- F But, at the same time, while construing the provisions of the Adhiniyam providing for acquisition of land for the purposes of the Adhiniyam, we cannot lose sight of the settled principle of statutory construction that "if certain provisions of law, construed in one way, would make them consistent with the Constitution and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction."
- G See : *Kedar Nath Singh v. State of Bihar*, [1962] Supp. 2 SCR 769, at pp, 808, 809. We would, therefore, examine whether the provisions of the Adhiniyam if they are so construed as to incorporate the provisions of the L.A. Act as it stood on the date of enactment of the Adhiniyam without the amendments introduced in the L.A. Act by the 1984 Act relating to determination and
- H payment of compensation would be violative of the provisions of Article 14

of the Constitution. In this context, it may be stated that if the provisions are construed as indicated above an owner whose land is acquired for the purpose of the Adhiniyam would be entitled to payment of solatium under Section 23(2) of the L.A. Act @ 15% and interest under Section 28 of the L.A. Act @ 6% but an owner whose lands are acquired under the provisions of the L.A. Act as amended by the 1984 Act would be entitled to payment of solatium @ 30% and interest @ 9% and 15% and would also be entitled to payment of additional amount as per the provisions of Section 23(1-A) of the L.A. Act, as amended. In other words, the compensation payable to the owner whose land is acquired for the purposes of the Adhiniyam would be less than the compensation payable to the owner whose land is acquired under the L.A. Act as amended by the 1984 Act. Is there any rational basis for treating the two land owners differently in the matter of payment of compensation for the acquisition of their lands?

This question came up for consideration in *Nagpur Improvement Trust & Anr.* (supra) decided by a special Bench of seven Judges of this Court. Section 59 of the Nagpur Improvement Trust Act, 1936 provided that the Trust may, with the previous sanction of the State Government, acquire land under the provisions of the L.A. Act, as modified by the provisions of the Improvement Trust Act, for carrying out any of the purposes of the Improvement Trust Act. By Section 61 certain express provisions were made in the matter of acquisition for the purpose of acquisition of land under the L.A. Act and it was also laid down that "the Act shall be subject to the further modifications as indicated in the Schedule". The Schedule to the Improvement Trust Act contained various modifications. Among the modifications made in the Schedule was the substitution of sub-section (2) of Section 23 of the L.A. Act and as a result the applicability of the provisions of the sub-section (2) of Section 23 of the L.A. Act were made inapplicable to lands other than those specified therein. The constitutional validity of the provisions of the Improvement Trust Act, in so far as the same related to acquisition of land, was challenged on the ground that same were violative of the right to equality guaranteed under Article 14 of the Constitution inasmuch as the said provisions empowered the acquisition of land at prices lower than those that would have been payable if the lands had been acquired under the L.A. Act. The said challenge was upheld by the High Court and the provision contained in the Improvement Trust Act, whereby Section 23 of the L.A. Act, as applicable to acquisition for the purpose of the Improvement Trust Act, were struck down on the ground of violation of Article 14 of the Constitution. The said decision of the High Court was upheld by this Court. This Court has referred to

A Section 17-A which had been inserted by way of modification as per the Schedule to the Improvement Trust Act and wherein it was provided that “in every case referred to in Section 16 or Section 17, Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition”. It was held that in view Section 17-A, as inserted by Paragraph 6 of the Schedule to the Improvement Trust Act, it was quite clear that the acquisition will be by the Government and it is only on payment of the cost of acquisition to the Government that the lands vest in the Trust and though the acquisition is for the Trust and may be at its instance, but nevertheless the acquisition is by the Government. It was pointed out that the Government could thus acquire for a housing accommodation scheme either under the L.A. Act or under the Improvement Trust Act and, if it were so, it would enable the State Government to discriminate between one owner equally situated from another owner. it was observed :-

D “Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Art. 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefits to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land ? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government ? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.”

G “It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts enables the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Art. 14.” [p.48]

H The provisions of the Adhiniyam are very similar to those contained in the Nagpur Improvement Trust Act. Section 55 of the Adhiniyam is similar to Section 59 of the Nagpur Improvement Trust Act inasmuch as both the

provisions provide for modifications being made in the L.A. Act. Section 17-A that has been inserted in the L.A. Act by the modifications made by the Adhiniyam is in the same terms as Section 17-A which was inserted by Paragraph 6 of the Schedule to the Nagpur Improvement Trust Act. The reasons which weighed with this Court in striking down the provisions of the Nagpur Improvement Trust Act whereby Section 23 of the earlier Act had been modified in its application for the purpose of acquisition under the said Act would, therefore, equally apply while considering the constitutional validity of the provisions of the Adhiniyam where under the provisions of Section 23 of the L.A. Act have been modified under the Schedule to the Adhiniyam.

The principle laid down by this Court in *State of Madhya Pradesh v. G.C. Mandawar* (supra) that Article 14 cannot be invoked when the alleged discrimination is on account of laws made by two different legislatures has no application in the present case because under the L.A. Act as well as under the provisions of the Adhiniyam the acquisition is to be made by the same authority, viz., the State Government of Uttar Pradesh, and discrimination arises on account of action taken by the same authority.

The decision in *Prakash Amichand' Shah v. State of Gujarat & Ors.*, (supra) on which reliance has been placed by Shri Sanyal on behalf of the Parishad, also does not lend any assistance to his submissions. In that case this Court was dealing with the provisions of the Bombay Town Planning Act, 1954 as applicable in the State of Gujarat. Under the said Act there were three modes for taking over land, namely, (i) acquisition under Section 11 for developmental purposes for which compensation was payable under the provisions of the L.A. Act as amended by the provisions contained in the Schedule to the said Act, (ii) transfer of lands that takes place oncoming into force of the final scheme under Section 53 of the said Act for which compensation is payable in accordance with Section 67 of the said Act, and (iii) acquisition of land under Section 84 of the said Act which empowered the State Government to acquire land included in the Town Planing Scheme at a subsequent stage where amount was payable in accordance with provisions of the L.A. Act as amended by the Schedule to the said Act. In that case acquisition had been made under Section 53 of the said Act and compensation was payable in accordance with Section 67 of the said Act and there was no provision for payment of solatium. While negating the challenge to the validity of the acquisition on the ground of discrimination in the matter of payment of compensation, this Court, after referring to the decision in *Nagpur Improvement Trust & Anr.* (supra), has pointed out that the provision under consideration in that case, viz., Section 59 of the Nagpur Improvement

A Trust Act, corresponds to Section 11 or Section 84 of the Bombay Town Planning Act and that the provisions under Section 53 of the said Act are not like acquisition proceedings under the L.A. Act and the provisions of the L.A. Act were not applicable with or without modifications as in the case of the Nagpur Improvement Trust Act. Section 53 of the Bombay Town Planning Act contained provisions which are similar to those contained in Sections 38 and 39 of the Adhiniyam which also provide for vesting of certain public lands vested in a local authority or private street or square and payment of compensation for such lands. A provision similar to Section 55 of the Adhiniyam was contained in Section 11 of the Bombay Town Planning Act which provided that the L.A. Act as amended by the Schedule to the said Act would apply to the determination of compensation for the acquisition of such land. Since the Court was not dealing with an acquisition under Section 11 of the Bombay Town Planning Act the decision in *Prakash Amichand shah* (supra) has no application.

Union of India v. Hari Krishan Khosla (dead) by Lrs., (supra) relates to acquisition under the provisions of Requisitioning and Acquisition of Immovable Property Act, 1952. Section 8(3) of the said Act did not provide for payment of solatium @ 15% and interest @ 6% on acquisition of requisitioned lands. The validity of Section 8(3) was challenged on the ground that it was violative of Article 14 of the Constitution and reliance was placed on *Nagpur Improvement Trust & Anr.* (supra). The said challenge was negated by the Court on the ground that "cases of acquisition of land stood on a different footing than those where such property is subject to prior requisition before acquisition". This decision also does not lend any assistance to the submissions of Shri Sanyal.

Since the present case involves acquisition of land under the provisions of the L.A. Act as applicable under the Adhiniyam, it is fully covered by the law laid down by this Court in *Nagpur Improvement Trust & Anr.* (supra). Keeping in view the principles laid down in the said decision of this Court, it has to be held that if the provisions of the Adhiniyam are so construed as to mean that the provisions of the L.A. Act, as they stood on the date of enactment of the Adhiniyam, would be applicable to acquisition or land for the purpose of the Adhiniyam and that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation are not applicable under the Adhiniyam, would suffer from the vice of arbitrary and hostile discrimination. Such a consequence would be avoided if the provisions of the L.A. Act as amended by the 1984 Act, relating to determination and payment of compensation would apply to acquisition of land for the

purposes of the Adhiniyam. There is nothing in the Adhiniyam which precludes adopting the latter construction. On the other hand, the provisions of the Adhiniyam show that the intention of the Legislature, while enacting the Adhiniyam, was to confer the benefit of solatium @ 15% by modifying Section 23(2) in the Schedule, which benefit was not available under the provisions of the L.A. Act as it was applicable in the State of Uttar Pradesh at the time of enactment of the Adhiniyam. It cannot, therefore, be said that the intention of the Legislature, in enacting the Adhiniyam, was to deny to the landowners the benefits relating to determination and payment of compensation which would be available to them under any amendment made in the L.A. Act after the enactment of the Adhiniyam. We are, therefore, of the opinion that on a proper construction of Section 55 of the Adhiniyam it must be held that while incorporating the provisions of the L.A. Act in the Adhiniyam the intention of the Legislature was that amendments in the L.A. Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the Adhiniyam. This means that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation, viz, Section 23(1-A) and Section 23(2) and 28 as amendment by the 1984 Act would be applicable to acquisitions for the purposes of the Adhiniyam under Section 55 of the Adhiniyam.

In view of the construction placed by us on the provisions of Section 55 of the Adhiniyam that the provisions of the L.A. Act, as amended by the 1984 Act relating to determination and payment of compensation, would be applicable to acquisition of land for the purposes of the Adhiniyam, it is not necessary to deal with the submission that if the provisions of the 1984 Act are held to be not applicable in the matter of acquisition of land for the purposes of the Adhiniyam the provisions of the L.A. Act, as applicable under the Adhiniyam, would be void on the ground of repugnance under Article 254 of the Constitution.

As regards the determination of the market value of the lands in question, it may be stated that the said market value has to be determined with reference to August 27, 1983, the date of publication of the notification under Section 28 of the Adhiniyam, which has been equated with a notification under Section 4(1) of the L.A. Act. The area of the land acquired is more than 200 acres. It lies within the municipal limits of the city of Meerut and is adjacent to Indira Nagar, Shiv Shakti Nagar and Shiv Sagar Colony. The Land Acquisition Officer determined the market value at Rs. 30 per sq. yard. The land owners sought reference claiming that the market value was Rs. 150 per sq. yard. Seven exemplars were filed. The exemplar relied upon by the Parishad

- A was a sale deed dated March 31, 1982 in respect of 16 biswas and 1 biswasanis of land situated in Mohalla Indira Nagar which showed a price of about Rs. 40 per sq. yard. The exemplars filed on behalf of the land owners were in respect of plots measuring from 22.22 sq yards to 260 sq yards of land and the price ranged from Rs. 110 per sq yard to Rs. 150 per sq yard. The Civil Court fixed the market value at Rs. 150 per sq. yard and made a deduction of 10% for development. The Parishad in its appeals before the High Court assailed the said determination of the market value by the Civil Court. Some of the land owners filed cross-objections assailing the 10% deduction. In the High Court an application was submitted on behalf of the Parishad for permission to file certain agreements to sell by way of additional evidence. The said application was rejected by the High Court on the view that there was no material that the said agreements had matured into sale transactions even after eight years of their execution and that the said agreements were not of any assistance in the matter of determination of the market value. The High Court has also held that the exemplar submitted by the Parishad could not be accepted for the reason that therein it was categorically provided that the purchaser would take the risk of statutory prohibitions, if any, on the transfer and that the vendor would not be responsible and that for covering the risk, the purchaser will normally demand reduction in the rate. Referring to the exemplars produced by the land owners the High Court observed that in respect of land covered in most of the exemplars no evidence of any deficiency had been brought to its notice. The High Court has pointed out that admittedly, the acquired land was not developed and it may only have the potentiality of development to be used as building sites and while facilities for drainage, electricity supply, water supply and pucca road are available in those developed areas, the land which is acquired measuring more than 200 acres does not have such advantages. The High Court was, however, of the view that as the acquired land is within the municipal limits and is surrounded by the developed area with buildings and pucca roads and other facilities and has the advantage of road passing by the side, it has potentiality of developing though it cannot be treated to have similar advantages as the land in the developed areas. The High Court has also taken note of the fact that the entire acquired area was used for the purpose of agriculture even in 1983 when the surrounding areas had already developed. In the light of aforesaid circumstances the High court held that the rates available for land in developed area could not be adopted for determination of market value of the acquired land though they can be used for guidance to determine the market value by taking note of other circumstances as available on record. Referring to the exemplar dated February 24, 1983 relied upon by the land owners in respect of a plot measuring 260 sq. yards which reflected a rate of Rs. 110 per sq. yard, the High Court has stated that the said land was below 4 to 5 ft. of road level and that in the absence of any material as to any other disadvantage, this

disadvantage of a piece of land could be given due weight to hold that such small strips of an area of 260 sq. yards in the acquired land would also have to be valued at the rate of Rs. 110 per sq. yard. The High Court, therefore, fixed the value of the acquired land at Rs. 110 per sq. yard. As regards the development charges, the High Court held that normally when a big area is acquired for housing project and rate for small strip of land having equal advantage is available this Court normally provides for deduction of one third from the rate and, therefore, it would not be unreasonable to deduct one third from Rs. 110 to arrive at the market value. The High Court has, therefore, fixed the market value of the acquired land at Rs. 73 per sq. yard. The said determination by the High Court has been assailed by the learned counsel for the Parishad as well as for the land owners.

Shri Sanyal has submitted that the High Court was in error in rejecting the application for additional evidence filed by the appellants. On behalf of the land owners the learned counsel have urged that the High Court was in error in reducing the market value from Rs. 150 per sq. yard to Rs. 110 per sq. yard and in permitting the deduction of one third. The learned counsel have placed reliance on the decisions in *Kaushalya Devi Bogra & Ors. v. The Land Acquisition Officer, Aurangabad & Anr.*, [1984] 2 SCR 900; *Bhagwathula Samanna & Ors. v. Special Tahsildar & Land Acquisition Officer, Viskhapatham*, [1991] 4 SCC 506 and *Meharbad & Ors. v. The State of U.P. & Ors.*, (1997) 4 SCALE 363.

We do not find any substance in the submissions urged on behalf of the Parishad regarding rejection of the application for adducing additional evidence by the High Court. The High Court, in our opinion, has rightly held that in the absence of any material that the agreements for sale relied upon had matured into sale transactions not much assistance could be derived from them in the matter of determination of the market value of the acquired land.

As regards the grievance of the land owners regarding the determination of the market value of the acquired land, we are of the view that no case is made out for interference with the said determination by the High Court. In fixing the value of the acquired land at Rs. 110 per sq. yard the High Court has placed reliance on one of the exemplers submitted by the land owners which was in respect of an area of 260 sq. yards showing a price of Rs. 110 per sq. yard. We do not find any ground to interfere with the said determination by the High Court fixing the value at Rs. 110 per sq. yard.

The direction about deduction of one third of the said price towards cost of development for the housing scheme involving construction of roads and other amenities is in consonance with the various decision of this Court wherein this Court has allowed one third deduction in the price towards cost of development [See : *Tribeni Devi & Ors. v. Collector of Rachi*, [1972] 3 SCR

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A 208; *Vijay Kumar Moti Lal v. State of Maharashtra*, [1981] 2 SCC 719; *Special Land Acquisition Officer, Bangalore v. V.T. Velu & Ors.*, [1996] 2 SCC 538; *K.S. Shivadevamma & Ors. v. Assistant Commissioner & Land Acquisition Officer & Anr.*, [1996] 2 SCC 62 and *Basant Kumar v. Union of India* [1996] 11 SCC 542.]

B In *Kaushalya Devi Bogra & Ors.*, (supra), on which reliance has been placed by the learned counsel for the claimants, this Court has laid down that for determining the market value of a large property on the basis of sale transactions for a small property a deduction should be given and that while in *Special Land Acquisition Officer, Bangalore v. T. Adinarayam Setty*, [1959] Supp. 1 SCR 404, a deduction of 25% was indicated, there were certain other cases where the view taken is that the deduction should be to the extent of one third. We are, therefore, unable to uphold the contention that the deduction of one third which has been allowed by the High Court on the value of Rs. 110 per sq. yard. calls for interference by this Court. We, therefore, do not find any merit in the appeals that have been filed by the land owners assailing the determination of the market value at Rs. 73 per sq. yard by the High Court.

C For the reasons aforementioned, the appeals filed by the Parishad as well as the appeals filed by the land owners are dismissed. No order as to costs.

D (B) WRIT PETITIONS NOS. 224/97 AND 339/97

E These Writ Petitions have been filed under Article 32 of the Constitution by the Petitioners wherein they have assailed the constitutional validity of the provisions contained in the Adhiniyam as modified whereby the provisions of the earlier Act as applicable to acquisition under Section 55 of the Adhiniyam have been modified in so far as it results in reduction of amount of compensation payable to the petitioners-land owners.

F The ground on which the validity of the said provisions is challenged is that under the provisions of the earlier Act as amended by the 1984 Act solatium is payable at the rate of 30% under Section 23(2) as amended and interest at the rate of 9% and 15% under Section 28 as amended, while under the earlier Act as modified by the Adhiniyam solatium is payable at a lower rate of 15% and interest at a lower rate of 6% and this amounts to denial of right to equality and violative of the provisions of Article 14 of the Constitution.

G In view of the construction placed by us on the provisions of the Adhiniyam relating to acquisition of land for the purposes of the Adhiniyam, these writ petitions do not survive and they are, therefore, dismissed. No costs.

(C) CIVIL APPEALS NOS. 13191 OF 1996 AND 222 OF 1997

H These appeals are directed against the interim orders passed by the

Allahabad High Court pending appeals. Civil Appeal No. 13191 of 1996 has been filed against order dated August 3, 1986 where by the High Court has dismissed the application filed by the Parishad for modification of the earlier order dated December 14, 1992. Civil Appeal No. 222 of 1997 has been filed against the order of the High Court dated February 7, 1996 whereby the High Court has dismissed the application for interim relief submitted by the Parishad.

It has been pointed out that while passing the said orders the High Court has proceeded on the basis that the provisions of the L.A. Act, as amended by the 1984 Act, as amended by the 1984 Act, are applicable and enhanced solatium @ 30% and interest @ 9% and 15% is payable in respect of acquisition of lands by the Parishad on the basis of notifications published under Section 28 of the Adhinyam.

In view of the construction placed by us on the provisions of Section 55 of the Adhibiyam relating to acquisition of land for the purposes of the Adhinyam, we do not find merit in these appeals and the same are, therefore, dismissed. No order as to costs.

(D) SPECIAL LEAVE PETITIONS (CIVIL) NOS, 20601 of 1995 AND 20599 OF 1995

These special leave petitions are directed against the judgment of the Allahabad High Court dated October 28, 1994 whereby the appeals filed by the Parishad against the judgments of the Additional District Judge, Meerut, in reference under Section 18 of the L.A. Act have been dismissed. In the impugned judgment the High Court has proceeded on the basis that the acquisition of land had been made under the L.A. Act on the basis of the notifications issued under Section 4(1) of the L.A. Act. It has been pointed out by the learned counsel appearing on behalf of the Parishad that the proceedings for acquisition were initiated on the basis of notifications published under Section 28 of the Adhinyam and notifications were not issued under Section 4(1) of the L.A. Act and that compensation had to be determined in accordance with the provisions of the L.A. Act as modified by Section 55 read with the Schedule to the Adhinyam and that under the said provisions solatium was payable under Section 23(2) of the L.A. Act @ 15% and not @ 30%.

Since in view of the construction placed by us on the provisions of section 55 of the Adhinyam there is no difference in the amount of compensation payable under the provisions of the L.A. Act as applicable to acquisition of land for the purposes of the Adhinyam and the compensation payable for acquisition of land under the L.A. Act, the special leave petitions are dismissed.

N.J.

Appeals and Petitions dismissed.