A SMT. KANAK AND ANR.

v.

U.P. AVAS EVAM VIKAS PARISHAD AND ORS.

SEPTEMBER 1, 2003

B [V.N. KHARE, CJ. AND S.B. SINHA, J.]

U.P. Nagar Mahapalika Adhiniyam, 1959—Section 381—Housing Scheme framed by Agra Nagar Palika—Respondent-Parishad formed in 1965 to which the execution of the scheme was transferred—Application for
C *reference made by claimants due to dissatisfaction as regards quantum of compensation but the respondent-Parishad was not made party—No reference made for eight years and in the meanwhile several deeds were executed assigning compensation rights to the appellants—Value of compensation was enhanced on reference and the respondent-Parishad filed an appeal before the High Court without the required pre-deposit,*
D *fitness certificate and also being time barred—Writ petition was also filed against the same impugned award—Appeal was dismissed but the writ petition was allowed and both parties filed appeals against the judgments—Held, merely execution of the scheme was transferred, therefore, procedures contained in Mahapalika Adhiniyam were to be followed—No application*
E *for fitness certificate was possible as respondent was not made a party in the Tribunal and the appeal was not maintainable the condition of pre-deposit did not arise—Writ petition was maintainable as there was no locus to file appeal—Parallel remedies not allowed to continue simultaneously but as appeal was not maintainable writ petition could be maintained—*
F *Respondent-Parishad had been seriously prejudiced by non-service of notice as regards proceedings before the collector and reference court—Hence writ petition maintainable—Matter be remanded back to reference court where respondent-Parishad shall be impleaded as a party and all parties shall be allowed to adduce their respective evidence.*

G *Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965—Land Acquisition (Amendment) Act, 1984 applicable and all claimants entitled to the benefits in terms of the amendments.*

The respondent-Parishad was formed under the Uttar Pradesh
H **Avas Evam Vikas Parishad Adhiniyam, 1965. Agra Nagar Mahapalika**

framed a housing scheme under the U.P. Nagar Mahapalika Adhiniyam, 1959 by issuing a notification dated 23.4.1960. Later on, after formation of the Parishad an agreement was entered into between it and the Agra Nagar Palika as regards transfer of execution of the said scheme. The possession of land was taken on or about 18.6.1971, which was valued at the rate of Rs. 1.34 per square yard. However, only a part of the determined sum was paid to the owners of the land and the rest was withheld due to dispute in titles. An application for reference was moved before the Collector as the owners of the land were dissatisfied with the quantum of the compensation.

Several registered deeds of sale were executed by the owners assigning their compensation rights as no reference was made for a period of eight years. The appellants are those assignees. The Tribunal constituted for adjudicating on the reference assessed the market value of the land at Rs. 12 per square yard in relation to some other lands. Later on a similar award was passed in respect of the land in question on 24.5.1993 along with other statutory benefits and damages. The respondent-Parishad, which was not a party in the reference court, preferred an appeal in the High Court against the award, which was barred by limitation, under Section 381 of the Mahapalika Adhiniyam, 1959. The appeal was filed without the pre-deposit and the required fitness certificate. The appeal was admitted and during its pendency the respondent-Parishad filed a writ petition challenging the award contending that the condition of pre-deposit was onerous. The High Court by a composite judgment dismissed the appeal as conditions under Section 381 of the Mahapalika Adhiniyam were not complied with but held that the writ petition was maintainable and reduced the determined market value, denied statutory and consequential benefits, disallowed claim of solatium and rejected the damages awarded. The respondent-Parishad filed an appeal against dismissal of their first appeal in the High Court and the appellants filed this appeal against the judgment in the writ petition.

The appellants contended that as Section 381 of the Mahapalika Adhiniyam provided a statutory remedy, the writ petition was not maintainable; that two parallel remedies were not maintainable as the first appeal was not withdrawn before filing the writ petition; that no

A case had been made out for overcoming the bar of alternative remedy in the writ petition before the High Court, that the respondent-Parishad was not justified in submitting that it had no formal notice of the reference proceedings; that when the first appeal was dismissed the award had attained finality and the same could not have been interfered
B with by allowing the writ petition and as the respondent-Parishad had not preferred any appeal against the judgment on the writ petition, the decision of the Tribunal, shall operate as *res-judicata.*

The respondents contended that there was no settled law as regards locus of the Parishad to file appeal against the judgment of reference
C court, therefore, a writ petition was also filed; that the appellants could not have derived locus standi to take part in the proceedings before the Land Acquisition Tribunal or even this Court; that the deeds of assignment made in favour of the appellants are illegal as per Section 23 of the Indian Contract Act; and that the provisions of the Land
D Acquisition Act were amended in 1984 so as to benefit genuine owners of land and not imposters like the appellants who have purchased litigation for unjust enrichment.

Disposing of the matters, the Court

E HELD : 1. The provisions of the Land Acquisition Act are to be read into the provisions of the Adhiniyam of 1965 and the claimants shall be entitled to all the benefits in terms of the Land Acquisition (Amendment) Act, 1984. [242-A, B]

F *Savitri Cairae* v. *U.P. Avas Evam Vikas Parishad & Anr.,* [2003] 6 SCC 255; *U.P. Avas Evam Vikas Parishad* v. *Jainual Islam,* [1998] 2 SCC 467; *Nagpur Improvement Trust* v. *Vithal Rao,* [1973] 1 SCC 500 and *Nagpur Improvement Trust* v. *Vasantrao & Ors.,* [2002] 7 SCC 657, relied on.

G 2.1. It is not in dispute that merely execution of the scheme was alone transferred in favour of the respondent-Parishad. Therefore, the procedures contained in the Mahapalika Adhiniyam for the purpose of acquisition of land were to be followed. [242-G]

H 2.2. The respondent-Parishad could not have applied for grant of certificate, as it was not a party before the Tribunal. Therefore, the

question of granting a certificate or refusal to grant the same so as to enable the maintainability of an appeal before the High Court did not arise. No appeal could have been preferred nor was it maintainable, as the conditions precedent thereof were not capable of being satisfied. When the appeal was not maintainable the same was for all intent and purport *non-est* in the eye of law. Therefore, if the appeal was not maintainable, the question of complying with other conditions precedent such as depositing the awarded amount would also not arise. It was entitled to file a writ petition as no recourse to provisions of Section 381 of the Mahapalika Adhiniyam was permissible. [243-F, G, 244-A, B]

3.1. It is one thing to say that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India may not grant a relief on the ground of existence of alternative remedy but it is another thing to say that the writ petition was not maintainable at all. The legal position as regard intervention of a person for whose benefit the land was to be acquired who was ultimately responsible for payment of compensation was in a fluid state. There were decisions and decisions and the law was finally laid down by this Court. Presumably having regard to the objections as regard maintainability of the appeal the respondent was advised to file a writ petition. Under the law based in judicial decisions as then existed the Parishad had no *locus standi* to file appeal before the High Court and therefore a writ petition was the only remedy available. [244-C-F]

U.P. Avas Evam Vikash Parishad v. *Gyan Devi (Dead) By L.Rs. & Ors.*, [1995] 2 SCC 326, relied on.

Sadhna Lodh v. *National Insurance Co. Ltd.*, [2003] 3 SCC 524; *Seth Chand Ratan* v. *Pandit Durga Prasad*, [2003] 5 SCC 399; *Sheodan Singh* v. *Daryao*, [1966] 3 SCR 300; *Shanker Ram Chandra* v. *Krishnaji*, [1969] 2 SCC 74; *Kanai Lal Sethi* v. *Collector of Land Customs, Calcutta*, (1956) 60 Calcutta Weekly Notes 1042; *Badri Narain Singh* v. *Kamdeo Prasad Singh*, [1962] 3 SCR 759 and *Premier Tyres* v. *KSRTC*, [1993] Supp. 2 SCC 146, distinguished.

3.2. The writ petition was entertained and the appllants filed a counter affidavit. The matter was argued on merits and in that view of the matter it is too late in the day to contend that an alternative remedy

A **should have been availed. In an ordinary situation two parallel remedies could not have been allowed to continue simultaneously but as an appeal was not maintainable at the instance of the respondent and the later proceedings were nullified, the writ petition was maintainable.**

[244-F, G, 245-B, C]

B *L. Hirday Narain* **v.** *Income Tax Officer, Bareilly,* **[1970] 2 SCC 355, relied on.**

Bombay Metropolitan Region Development Authority **v.** *Golak Patel Volkart Ltd.,* **[1995] 1 SCC 642, distinguished.**

C **4. No formal notice was served upon the respondent as regards the proceedings in the reference court. The respondent was not represented even before the Collector. It had been prejudiced by reason of non-service of notice. The exception carried out in the matter of service of notice to the local authority is not only confined to its knowledge about**
D **the pendency of the acquisition proceedings before the Collector or the reference court but also any prejudice on account thereof. These two conditions are to be read conjunctively and not disjunctively. The respondent filed a writ petition because it was seriously prejudiced.**

[245-D, E, 246-A, B]

E *U.P. Avas Evam Vikas Parishad* **v.** *Gyan Devi (Dead) by L.Rs. & Ors.,* **[1995] 2 SCC 326, relied on.**

5. The High Court cannot be said to have committed any illegality in allowing the writ petition but it should have remitted the matter back to the reference court directing that the respondent-Parishad be
F **impleaded as a party enabling its cross-examination and to bring on record other relevant material and leave it open to the appellants to adduce evidence contra. The impugned judgment is set aside and the matter is remitted back to the reference court where the respondent-Parishad shall be impleaded as a party and all parties be allowed to**
G **adduce their respective evidence and raise all contentions including that of the legality of the deeds of assignment. [247-D, 248-A]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4170 of 1999.

From the Judgment and order dated 20.5.98 of the Allahabad High
H Court in C.M.W.P. No. 11625 of 1996.

WITH

C.A. No. 4171 of 1999.

Dinesh Dwivedi, P.K. Jain, K.C. Jain, F.C. Agarwala, Mahesh Agarwal, and Rishi Agarwal for the appearing parties.

The Judgment of the Court was delivered by

S.B. SINHA, J : Whether and, if any, to what extent a Writ Petition will be maintainable at the instance of the respondent-Parishad questioning an award made on a reference under Section 18 of the Land Acquisition Act is the primal question involved in these appeals, which arise of a judgment and order dated 20.5.1998 passed by a Division Bench of the Allahabad High Court in First Appeal No. 549 of 1994 and Civil Misc. Writ Petition No. 11625 of 1996.

BACKGROUND FACTS:

The respondent herein is a statutory body created under the provisions of Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as 'the 1965 Adhiniyam').

Agra Nagar Mahapalika, a body constituted under Uttar Pradesh Municipal Corporations Adhiniyam, 1959 framed a housing scheme entitled "Ghatwasan Grah Isthan Evam Sarak Yojna". It issued a notification on 23.4.1960 under Section 357 of U.P. Nagar Mahapalika Adhiniyam 1959 (hereinafter referred to as 'Mahapalika Adhiniyam') which is equivalent to Section 4(1) of the Land Acquisition Act.

A declaration purported to be in terms of Section 363 of the Mahapalika Adhiniyam which is in *pari materia* with Section 6 of the Land Acquisition Act was issued on 26.9.1964. The respondent – Parishad was constituted in terms of the 1965 Adhiniyam. After the respondent-Parishad came into being, an agreement was executed between the Mahapalika and the Parishad to transfer the execution of the said scheme in terms of Section 47 of the 1965 Adhiniyam. In furtherance of the aforementioned notification under Section 357 and a declaration under Section 363 of the Mahapalika Adhiniyam, the Special Land Acquisition Officer (SLAO) took possession of the land sought to be acquired on or about 18.6.1971. An award in relation thereto upon assessing the market value thereof was made by the SLAO on or about 24.11.1972 at the rate of Rs. 1.34 per square yard.

A Allegedly, in his award it was held that the acquired land was surrounded by various colonies and localities and was of full building potentiality. Within the determined amount of Rs. 89,914.24, a sum of Rs. 33,573.48 was paid to the owners of the land but payment in relation to the rest thereof, namely, Rs. 56,340.76 was withheld having regard to the dispute of title in relation thereto. The owners of the land purported to be aggrieved B by and dissatisfied with the quantum of compensation awarded by the SLAO moved an application for reference before the Collector, Agra on 1.1.1973. But no reference was made for a period of eight years. Several registered deeds of sale, however, were executed by the owners in favour of several persons assigning their compensation rights. The said assignees C are presently represented by the appellants.

Allegedly, the Tribunal constituted for adjudicating on the reference assessed the market value of the land at the rate of Rs. 12 per square yard by reason of two awards in relation to some other lands; one of which is said to have been accepted by the State. According to the appellants, D having regard to the fact that the land in question was contiguous to the lands which were the subject matter of reference, the Tribunal also made an award on 24.5.1993 assessing the market value at the rate of Rs. 12 per square yard keeping in view the exemplar-Award. Other statutory benefits in terms of the Land Acquisition (Amendment) Act, 1984 were also E granted. The Tribunal furthermore awarded damages in terms of Section 48A of the Act.

The respondent-Parishad preferred an appeal thereagainst before the High Court purported to be in terms of Section 381 of the Mahapalika Adhiniyam. The said appeal, however, was barred by 100-days. No pre- F deposit was also made in terms of Sub-Section (3) of Section 381 of the Mahapalika Adhiniyam nor any fitness certificate to prefer an appeal in terms of Sub-Section (1) of Section 381 thereof was granted. Despite the said defect, however, by an order dated 30th September, 1994 the High Court admitted the appeal without granting special leave and passed the G following order:

"Admit.

Issue notice on the question of limitation, call for record. Put for hearing after receipt of record as the land acquired in 1964. H Learned counsel for the claimants entered appearance. He may

file counter affidavit to the application u/s 5 of Limitation Act. Learned Counsel for the appellant has served the memo of appeal and the copy of award on learned standing counsel for respondent nos. 3 and 4. The notice is treated sufficient." A

During pendency of the said appeal, the Parishad also filed a writ petition against the award dated 24.5.1993 *inter alia* alleging therein that the condition of pre-deposit was onerous. B

The appellants herein, however, moved an application for dismissal of the appeal for alleged non-compliance of the mandatory provisions of Section 381 of the Mahapalika Adhiniyam. In the Counter-Affidavit to the Writ Petition filed by them also, the maintainability of the said appeal was came to be questioned. C

The First Appeal as also the writ petition were heard analogously and by reason of a composite judgment dated 20.5.1998 the High Court, while dismissing the First Appeal holding that the appeal under Section 54 of the Land Acquisition Act was not maintainable as the respondent did not comply with the conditions under Section 381 of the Mahapalika Adhiniyam; held that the writ petition was maintainable. It was held: D

"The appeal already filed by the Parishad is not maintainable and so the Parishad cannot be debarred from filing writ petition. E

The alternative remedy of Appeal under the Nagar Mahapalika Adhiniyam is onerous.

Since no formal notice has been served on the Parishad, as per *UPAEVP* v. *Gyan Devi,* AIR (1995) SC 724, the writ petition under Article 226, is entertainable. F

The writ petition has been filed to avoid any controvery as to maintainability of its appeal without deposit, which was not clear." G

In the Writ Petition, the High Court decided the case on merits as a result whereof:

(i) The market value determined by the Tribunal was reduced; H

A (ii) The statutory and consequential benefits of 1967 Act and 1984 Act were denied;

(iii) The claim of solatium was disallowed;

B (iv) Damages under Section 48A of the Land Acquisition Act were rejected.

Whereas the claimants had filed the appeal against the judgment of the High Court from the writ petition, the Parishad had filed the appeal against the dismissal of the first appeal.

C *SUBMISSIONS:*

Mr. Sunil Gupta, the learned senior counsel appearing on behalf of the Appellants would submit that keeping in view the fact that Section 381 of the Mahapalika Adhiniyam provided for a statutory remedy, the writ D petition was not maintainable. Reliance in this behalf has been placed on *Sadhna Lodh* v. *National Insurance Company Ltd.,* [2003] 3 SCC 524 and *Seth Chand Ratan* v. *Pandit Durga Prasad,* [2003] 5 SCC 399.

In any event as the first appeal was not withdrawn before filing the E writ petition, Mr. Gupta would urge, the respondent-Parishad could not have maintained two parallel remedies. Reliance in this connection has been placed on *Bombay Metropolitan Region Development Authority* v. *Gokak Patel Volkart Ltd.*, [1995] 1 SCC 642.

In the alternative, (i) it was submitted that the High Court erred in F entertaining the writ petition on the ground of onerousness of pre-deposit, as no case had been made out for overcoming the bar of alternative remedy. (ii) the finding of the High Court to the effect that no formal notice was served upon the respondent-Parishad was contrary to the records of the case inasmuch as the Parishad had full knowledge of the reference proceedings G and as such it was not entitled to take benefit of the decision of this Court in *U.P. Avas Evam Vikas Parishad* v. *Gyan Devi (Dead) By LRs. And Ors.,* [1995] 2 SCC 326.

The learned counsel would argue that as the Parishad's appeal was H dismissed, the award and decree of the Tribunal has attained finality and,

thus, the same could not have been interfered with by allowing the writ petition. Reliance in this connection has been placed on *Sheodan Singh* v. *Daryao,* [1966] 3 SCR 300, *Seth Chand Ratan* (supra), *Shanker Ram Chandra* v. *Krishnaji,* [1969] 2 SCC 74 and *Kanai Lal Sethi* v. *Collector of Land Customs, Calcutta,* (1956) 60 Calcutta Weekly Notes 1042.

In the event it be held that the writ petition was not maintainable, it was argued, the Parishad having not preferred any appeal against the writ judgment, the decision of the Tribunal shall operate as *res judicata.* Reliance in this connection has been placed on *Badri Narian Singh* v. *Kamdeo Prasad Singh,* [1962] 3 SCR 759 and *Premier Tyres* v. *KSRTC,* [1993] Supp. 2 SCC 146.

Mr. M.N. Rao, the learned senior counsel appearing on behalf of the respondent-Parishad, on the other hand, would submit that the law was not settled at the time as regard locus of Parishad to file appeal against the judgment of Reference Court and in that view of the matter the writ petition was also filed. The learned counsel would contend that having regard to the provisions contained in Section 18 of the Land Acquisition Act, the appellants cannot be said to have derived *locus standi* to take part in the proceedings before the Land Acquisition Tribunal or for that matter filing the Appeal before this Court.

According to the learned counsel, the deeds of assignment made in favour of the appellants herein by the original claimants are illegal having regard to the provisions contained in Section 23 of the Indian Contract Act. The learned counsel would contend that the provisions of the Act were amended in the year 1984 so as to benefit the persons who are owners of the land and not imposters like the appellants herein who have purchased litigation with a view to unjustly enrich themselves.

BENEFIT UNDER THE 1984 AMENDING ACT:

So far as the question as to whether the claimants were entitled to solatium interest and additional amount is concerned, the same need not detain us inasmuch as this Court in *Savitri Cairae* v. *U.P. Avas Evam Vikas Parishad and Anr.,* [2003] 6 SCC 255 relying on or on the basis of the decisions of this Court *inter alia* in *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam,* [1998] 2 SCC 467 *Nagpur Improvement Trust* v. *Vithal Rao,* [1973] 1 SCC 500 and *Nagpur Improvement Trust* v. *Vasantrao and Ors.,*

A [2002] 7 SCC 657 held that the provisions of the Land Acquisition Act are to be read into the provisions of the Adhiniyam. The ratio of the said Judgment shall apply to this case also and thus, the claimants shall be entitled to all the benefits in terms of the Land Acquisition (Amendment) Act, 1984.

B *MAINTAINABILITY OF THE APPEAL:*

Section 47 of the 1965 Adhiniyam reads thus:

"Execution of other schemes by the Board:

C

(1) Without prejudice to the power of the State Government under sub-section (2), the Board may, on such terms and conditions as may be agreed upon between the Board and any other local authority, take over the execution or further execution of any housing or improvement scheme undertaken

D by such local authority, and the Board shall thereafter execute such schemes as if it had come into force under sub-section (5) of Section 32 of this Act.

... ...

E

(4) Whenever the execution or further execution of a scheme is transferred to the Board under sub-section (1) of sub-section (2), any legal proceeding, including any proceeding under the Land Acquisition Act, 1894 (Act No. I of 1894), pending in relation to that scheme by or against the Nagar Mahapalika

F may be continued, prosecuted or enforced by or against the Board."

It is not in dispute that on or about 31.5.1968 merely the execution of the Scheme alone was transferred. Thus, the entire scheme was not

G transferred in favour of the Parishad by the Nagar Mahapalika. In that view of the matter the procedures contained in the Mahapalika Adhiniyam for the purpose of acquisition of land indisputably were to be followed. Section 381 of the Mahapalika Adhiniyam reads thus:

"Appeals -1) An appeal to the High Court shall lie from a decision

H of the Tribunal, if –

(a) the Tribunal grants a certificate that the case is a fit one for appeal, or

(b) the High Court grants special leave to appeal, provided that the High Court shall not grant such special leave unless the Tribunal has refused to grant a certificate under clause (a).

(2) An appeal under sub-section (1) shall lie only on one or more of the following grounds, namely -

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect which may have produced an error or defect in the decision of the case upon merits either on a point of fact or of law."

A bare perusal of the aforementioned provision would clearly go to show that the appeal can be preferred if a certificate is granted in that behalf by the Tribunal certifying the same to be a fit case for appeal or a special leave is granted by the High Court on the ground of refusal on the part of the Tribunal to grant certificate under Clause (a).

The respondent herein was not a party before the Tribunal. It, thus, could not have applied for grant of a certificate for appeal to the High Court nor did it do so in fact. In such a situation the question of the Tribunal's granting a certificate or refusing to grant the same so as to enable the Parishad to maintain an appeal before the High Court in terms of Sub-Section (1) of Section 381 did not arise. Having regard to the nature of the provisions contained in Section 381, no appeal could have been preferred by it nor was it maintainable as the conditions precedent therefor were not capable of being satisfied. Once it is held that the appeal was not maintainable, the same was, for all intent and purport, *non-est* in the eye of law.

Thus, if the appeal preferred by the respondent-Parishad was not

A maintainable, the question of complying with the conditions precedent therefor, namely, depositing the awarded amount would also not arise. Once it is held that the respondent could not have taken recourse to the provisions of Section 381 of the Mahapalika Adhiniyam there cannot be any doubt whatsoever that it was entitled to file writ petition.

B *MAINTAINABILITY OF THE WRIT APPEAL:*

The writ petition for the reasons stated hereinbefore was maintainable. It is one thing to say that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India may not grant a relief *inter alia* C on the ground of existence of alternative remedy but it is another thing to say that the writ petition was not maintainable at all.

The legal position as regard intervention of a person for whose benefit the land was to be acquired who was ultimately responsible for payment D of compensation was in a fluid state. There were decisions and decisions. The law was laid down by the Court in *Gyan Devi* (supra).

The Tribunal, as stated hereinbefore, had made this award as far back on 24.5.1993 and the respondent was advised to file appeal on 7.2.1994. Presumably having regard to the objections as regard maintainability of the E appeal taken by the Registry of the High Court as also the objection raised by the appellants herein the respondent was advised to file a writ petition.

Under the law based on judicial decisions as then existed Parishad had no *locus standi* to file appeal before the High Court and therefore writ F petition at the instance of Parishad was only remedy available.

Furthermore, this writ petition was entertained. The appellants herein filed a counter affidavit. The matter was argued on merit and in that view of the matter it is too late in the day to contend that the respondent herein should have availed alternative remedy.

G

In *L. Hirday Narain* v. *Income-Tax Officer, Bareilly,* AIR (1971) SC 33 : [1970] 2 SCC 355 the law was laid down in the following terms:

> "We are unable to hold that because a revision application H could have been moved for an order correcting the order of the

> Income-tax Officer under Section 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits."

In an ordinary situation this Court could have agreed with the contention of Mr. Gupta to the effect that two parallel remedies could not have been allowed to continue simultaneously as has been held in *Bombay Metropolitan Region Development Authority, Bombay* (supra) but however, herein as noticed hereinbefore, the appeal was not maintainable at the instance of the respondent and, thus, all proceedings taken pursuant thereto were nullities. For the views we have taken, the writ petition must be held to be maintainable.

SERVICE OF NOTICE:

It is not in doubt or dispute that no formal notice was served upon the respondent. A notice to a person, for whose benefit the land is acquired or who is responsible for payment of compensation amount, was mooted before the courts of law on the construction of Section 50 of the Land Acquisition Act. It was held that Sub-Section (2) of Section 50 must be construed as conferring a right of notice to the local authority for whom at the stage of determination of the amount of compensation before the Collector as well as the reference court. It is not in dispute that the respondent was not represented even before the Collector. In the aforementioned situation, this Court in *Gyan Devi* (supra) held:

> "In other words the right conferred under Section 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the L. A. Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference court and has not suffered any prejudice on account of failure to give such notice."

A It is not correct to contend that by reason of non-service of notice the respondent was not prejudiced. The exception carried out by this Court in the matter of service notice to the local authority is not only confined to its knowledge about the pendency of the acquisition proceedings before the Collector or the reference court but also any prejudice on account thereof. The said two conditions are to be read conjunctively and not B disjunctively.

The respondent filed a writ petition because it was seriously prejudiced. This Court in *Gyan Devi* (supra) envisaged the following legal situations:

C "(i) No notice was given to the local authority under sub-section (2) of Section 50 of the L. A. Act and as a result the local authority could not appear before the Collector to adduce evidence.

(ii) Notice was served on the local authority and in response to said notice the local authority appeared before the Collector; and

D

(iii) Notice was served on the local authority but in spite of service of such notice the local authority failed to appear and adduce evidence before the Collector."

E The court laid down the criteria where the local authority would be necessary party or proper party. It was observed:

"Since the amount of the compensation is to be paid by the local authority and it has an interest in the determination of the said amount, which has been given recognition in Section 50(2) of the F L. A. Act, the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award in spite of the proviso precluding the local authority from seeking a reference. Such a challenge will, however, be limited to the grounds on which judicial review is permissible under Article 226 of the Constitution. G In a case where the local authority has failed to appear in spite of service of notice the local authority can have no cause for grievance. Even in such a case it may be permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award if it is vitiated H by *mala fides* or is perverse."

It was further held that presence of the local authority is necessary for a just decision on the question involved in the proceedings before the reference court as that would enable it to adduce evidence therein and as such it was entitled to be impleaded as a party.

Where an appeal has not been filed by the State, it was held that such an appeal would be maintainable with the leave of the Court. However, in *Gyan Devi* (supra) this Court did not have any occasion to consider a provision like one contained in Section 381 of the Mahapalika Adhiniyam and, thus, the observations of the Court therein would not be relevant for the purpose of the present case. The High Court, having regard to the facts and circumstances of this case cannot be said to have committed any illegality in allowing the writ petition.

However, having said so, in our opinion, the High Court should have remitted the matter back to the reference court with a direction that the respondent-Parishad may be impleaded as a party so as to enable it to cross-examine the witnesses examined on behalf of the claimants and examine its own witnesses and bring on records such other materials as it may seem fit and proper. It goes without saying it would also be open to the claimants to adduce evidence contra.

LEGALITY OF THE DEEDS OF ASSIGNMENT:

The High Court has held that the deeds of assignments are valid. The learned counsel appearing on behalf of the parties have addressed us at great length on the said question. However, the High Court did not address itself on the question as regards interpretation of Section 18 of the Land Acquisition Act *vis-à-vis* the relevant provisions of the Mahapalika Adhiniyam. We, in the facts and circumstances of this case, feel that as the respondent is being given an opportunity to raise all contentions, it should also be given an opportunity to raise the aforementioned contention also before the reference court. For the views we have taken, it is not necessary for us to refer to the other decisions relied upon by Mr. Gupta.

We, however, in view of above, are not disposed to go into merit of Civil Appeal No. 4171 of 1999 filed by the Parishad.

We, therefore, allow the Civil Appeal No. 4170 of 1999 to the extent

A mentioned hereinbefore. We, therefore, set aside the impugned judgment of the High Court and remit the matter to the reference tribunal with a direction to implead the respondent-Parishad as party therein and allow the parties to adduce their respective evidence and raise all contentions therein.

B Keeping in view the fact that the acquisition was made as far back in the year 1960, we would request the Tribunal to dispose of the matter as early as possible and preferably within the period of three months from the date of receipt of the records. No Costs.

A.Q. Matters disposed of