

A MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
v.
STATE OF MAHARASHTRA AND ORS.

MARCH 4, 2003

B [DORAISWAMY RAJU AND P. VENKATARAMA REDDI, JJ.]

Urban Development:

C *Maharashtra Regional Town Planning Act, 1996; Section 126:*

Acquisition proceedings—Determination of compensation under the provisions of MRTP Act and Land Acquisition Act—Amendments made thereafter in the provisions of Land Acquisition Act conferring certain additional benefits to land holder/claimant—Applicability of—Held: When some provisions of the earlier Act on the same subject have been referred/ incorporated in the later statute by the legislature, any amendment made in such provisions will have to be read into the later statute wherein they are referred to provided such amendments are not inconsistent with the other provisions of the later statute—Amended provision of L.A. Act relating to award of compensation would apply with full vigour to M.R.T.P. Act—On construing so the provision would not be violative of Article 14 of the Constitution of India—Hence benefits under amended provision of Land Acquisition Act had been rightly extended to the claimant by the Courts below—Land Acquisition Act with Amendment Act 68 of 1984—Sections 23 and 28—Interpretation of Statutes—Incorporation by reference—Constitution of India—Article 14.

F **Appellant-Corporation had initiated acquisition proceedings against respondent-claimant under the provision of Maharashtra Regional Town Planning Act (MRTP Act) read with the Land Acquisition Act. Subsequently, certain amendments were made in Sections 23 and 28 of the Land Acquisition Act conferring certain additional benefits to claimant/landholder. On denial of these benefits the respondent/claimant preferred an appeal before the District Court which awarded the benefits as per amended provisions of the L.A. Act. On appeal, the Judgment was affirmed by the High Court. Hence the present appeal.**

H It was contended for the appellant that since amendment in the

relevant provisions of the Land Acquisition Act relating to compensation/ other benefits was made after the enactment of MRTP Act, they were liable to be ignored in relation to an acquisition under MRTP Act.

On behalf of the respondent-claimant, it was submitted that in the absence of any provision in the MRTP Act to exclude any future amendment to be made in the Land Acquisition Act, the amended provisions in the L.A. Act shall be made applicable to the acquisition proceedings initiated under the MRTP Act.

Dismissing the appeal, the Court

HELD: 1.1. It is a well established legislative practice to borrow the provision of an earlier Act on a particular subject by making a broad reference to the earlier Act or some or most of its provisions therein so as to make them applicable to the relevant subject matter dealt with by the later statute. This is done primarily as a matter of convenience in order to avoid verbatim repetition of the provisions of the earlier Act. Very often such reference is followed by certain modifications subject to which the earlier Act should apply. When such legislative device is adopted, the relevant provisions of the earlier Act will apply *mutatis mutandis* to the matters governed by the latter Act. But, the difficulty in construction would arise when the earlier Act is repealed or amended/modified. The intricate question then would be whether the repeal or amendments should be ignored and the borrowed provisions should be read as they were at the time of enactment of later Act or the provisions of earlier Act should be applied subject to subsequent amendments/modifications. If there is a definite indication in the later Act as to the applicability or otherwise of subsequent amendments in the Act referred to, no difficulty arises; but, the problem arises when there is no such indication. Then, there arises two allied but qualitatively different concepts of statutory interpretation known as incorporation by reference and mere reference or citation of earlier statute in the later Act. In the former case, the provisions of the incorporated statute as they stood at the relevant time when incorporating statute was enacted will ever continue to be read into that later statute unless the legislature takes a positive step to amend the later statute in tune with the amendments. However, the legal effect is otherwise in the case of a statute which merely makes a reference to the provisions of an earlier statute. In that case, the modification of the statute from time to time, will have its impact on the statute in which it is referred to. The

A provisions in the earlier statute with their amendments will have to be read into the later enactment in which they are referred to unless any such subsequent amendment is inconsistent with a specific provision already in existence. [538-B-C-D-E]

B 1.2. The distinction between incorporation by reference and adoption of provisions by mere reference or citation is one of difference in degree and is often blurred. The fact that no clear-cut guidelines or distinguishing features have been spelt out to ascertain whether it belongs to one or the other category makes the task of identification difficult. The semantics associated with interpretation play their role to a limited extent.

C Ultimately, it is a matter of probe into legislative intention and/or taking an insight into the working of the enactment if one or the other view is adopted. The doctrinaire approach to ascertain whether the legislation is by incorporation or reference is, on ultimate analysis, directed towards that end. The distinction often pales into insignificance with the exceptions enveloping the main rule whether the Legislature had frozen the provisions of earlier Act prevailing on the date of enactment of later statute so as to insulate it from the impact of subsequent modifications or to bind itself to any future changes? The language, the scheme and purpose of the Act no doubt assume significance while finding answer to this question.

[539-F-G-H; 540-A-B]

E *Secretary of State v. Hindustan Co-operative Insurance Society Limited*, AIR (1931) P.C. 149, relied on.

Gauri Shankar Gaur v. State of U.P., [1994] 1 SCC Page 92, referred to.

F 1.3. The ratio and reasoning in *U.P.A.E. V. Parishad* case* applies with equal, if not greater force, to the acquisition under Chapter VII of Maharashtra Regional Town Planning Act of which Section 126(3) is a part. In fact the modifications made by MRTP Act to the provisions of L.A. Act are minimal and at any rate, less substantial than those effected

G by U.P. Adhinyam except in regard to the urgent acquisition dealt with by Section 129. The matters covered by the earlier Act have not been specifically referred to or restated because it is already ordained by Section 126(3) that the provisions of L.A. Act should be applied to the acquisition of land notified under the MRTP Act. [543-G-H; 544-A]

H **U.P. Avas Evam Vikas Parishad v. Jainul Islam*, [1998] 2 SCC 467,

relied on.

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Nagpur Improvement Trust v. Vasant Rao, [2002] 7 SCC 657, referred to.

1.4. There is nothing in the MRTP Act which precludes adopting the construction that the provision of L.A. Act, as amended by 1984 Act relating to award of compensation, would apply with full vigour to the acquisition of land under that Act. Unless such interpretation is placed on Section 126(3) the acquisition under MRTP Act will be afflicted with the vice of invidious discrimination and palpable arbitrariness hit by Article 14 of the Constitution. If the interpretation which is sought to be placed by the appellant is accepted, Section 126(3) itself is liable to be struck down as violative of Article 14 in which case the entire process of acquisition contemplated by Chapter VII will become unworkable and ineffectual. The land-holders whose lands are acquired under Chapter VII of MRTP Act cannot be subjected to a disability or disadvantage in the matter of obtaining monetary recompense for the deprivation of land depending upon the nature of public purpose or the authority for whose benefit the land is acquired. [544-D-E-F]

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U.P. Avas Evam Vikas Parishad v. Jainul Islam, [1998] 2 SCC 467 and *Nagpur Improvement Trust v. Vasant Rao*, [2002] 7 SCC 657, relied on.

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2. The award of the District Court where-under the benefits under Sections 23(1-A), 23(2) and Section 28 of the L.A. Act as amended by the 1984 Act were extended to the respondents and affirmed by High Court, calls for no interference. [545-H; 546-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4394 of 1997.

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From the Judgment and Order dated 16/17 and 19.12.1996 of the Mumbai High Court in F.A. No. 1135 of 1996.

V.K. Bobde, K.R. Nagaraja, R.S. Hegde, Prashant Jain, Chandra Prakash. Ajit Bhasme. Manish Pitale, S.S. Shinde, Uday U. Lalit. Anil J. Ahuja, Prakash J. Ahuja, Satyajit Saha, V.D. Khanna, Jamnadas H. Ahuja and Ms. Bhavana Khemani for the appearing parties.

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The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. This appeal by Special leave arises

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A out of the judgment of the High Court of judicature at Bombay in a first appeal and cross-objection preferred under the Land Acquisition Act. The High Court affirmed the judgment and decree passed by the Joint District Judge, Nasik. The acquisition which is the subject matter of this appeal was in respect of 5,800 sq. meters land situated near Satana town. The market value as on 7.5.1987 was fixed at Rs. 300 per Sq. metre and the statutory benefits under the amended Sections 23 and 28 of L.A. Act were extended.

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The acquisition proceedings were initiated under the provisions of Maharashtra Regional Town Planning Act, 1996 (hereinafter referred to as 'MRTP Act') read with the Land Acquisition Act in the year 1987 for the purpose of extension of bus-stand. Primarily, in this appeal, this Court is called upon to decide the question whether amendments made to the Land Acquisition Act by Central Act No. 68 of 1984 to Sections 23 and Section 28 which confer certain additional monetary benefits to the land holders are to be made applicable to the instant acquisition.

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D It may be noted that by Central Act 68 of 1984, sub-section (1-A) was added to Section 23 which entitled the claimants to receive the amount calculated at the rate of 12 per cent per annum on the market value for the period commencing on and from the date of the publication of the notification under Section 4(1) upto the date of the award or the date of taking possession of the land, whichever is earlier. It is ruled by the Constitution Bench in *Sunder v. Union of India*, [2001] 7 SCC 211 that this additional amount is part of compensation awarded. Another benefit made available under Act 68 of 1984 the enhancement of solatium payable as per sub-section (2) of Section 23 from 15 per cent to 30 per cent. Under Section 28, as amended, the claimant is entitled to receive interest on the excess compensation awarded at the increased rates.

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The contention on behalf of the appellant is that the said amended provisions of the Land Acquisition Act cannot be made applicable to the acquisition of land resorted to under the MRTP Act, the reason being that those amendments to the Land Acquisition Act subsequent to the date of the commencement of MRTP Act 1966 cannot be read into the MRTP Act. In other words, the contention is that in matters relating to compensation and the allied benefits admissible to the claimants/land holders, the relevant provisions of the Land Acquisition Act (hereinafter referred to as L.A. Act) as they stood on the date of enactment of the MRTP Act alone are relevant and the subsequent amendments thereto are liable to be ignored in relation

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to an acquisition under MRTP Act. The contention of the respondent- claimant is that any amendment made to the Land Acquisition Act more particularly with regard to determination and payment or compensation in respect of which there is no independent provision in the MRTP Act shall be made applicable for the acquisition under the MRTP Act. No contrary intention is expressed in the MRTP Act to exclude the future amendments to L.A. Act on the subject of compensation. It is further contended that Section 126 is an instance of referential legislation.

The answer to the question depends on the examination of provisions contained in Chapter VII ("Land Acquisition") of MRTP Act and more particularly the interpretation to be placed on section 126(3) of the said Act which reads as follows:

S. 126:

(3) "On publication of a declaration under the said section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act; *and provisions of that Act shall apply to the acquisition of the said land* with the modification that the market value of the land shall be,-

(i) where the land is to be acquired for the purpose of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area; and

(iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, which ever is earlier, or as the case may be, the date or publication of the draft planning scheme:

Provisos omitted.

The other provisions contained in Sections 125, 126, 128, and 129 may also be noted. *Section 125* lays down that any land required, reserved or designated in a regional plan, development plan or town planning scheme for a public purpose including plans for any area of comprehensive development

- A** or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. Section 126 (1) deals with modes of acquisition. It provides that after the publication of a draft regional plan or a development or other plan or town planning scheme, if any land is required or reserved for any of the public purposes specified in the plans or scheme, the Planning Authority, Development Authority or any
- B** Appropriate Authority may acquire the land (a) by mutual agreement; (b) by granting the land owner or the lessee subject to his paying or depositing the value of the lessor's interest, floor space index or transferable development rights against the area of the land surrendered free of cost and free from all encumbrances etc.; (c) by making an application to the State Government for
- C** acquiring such land under the Land Acquisition Act 1894. Once an application is made under clause (c) sub-section (1) of Section 126, Sub-section (2) provides that if the State Government is satisfied that the land specified in the application is needed for the public purpose specified therein or if the State Government itself is of the opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in
- D** the Official Gazette, in the manner provided in Section 6 of the Land Acquisition Act, 1894. The declaration so published shall be deemed to be a declaration duly made under the said section (i.e. section 6). Pausing here for a moment, it is seen that the State Government itself (except in cases falling under Sections 49 and 113 A) can suo moto make a declaration in the
- E** manner provided under Section 6 of L.A. Act, if it forms the opinion that any land included in the plan afore-mentioned is needed for a public purpose. The proviso to sub-section (2) enjoins that subject to the provision contained in sub-section (4), no such declaration shall be made after the expiry of one year from the date of the publication of the draft regional plan, development
- F** plan or any other plan or scheme, as the case may be. Sub-section (3) of Section 126 which is crucial for our purpose assimilates and absorbs the provisions of the Land Acquisition Act for the purpose of acquisition of land after the stage of publication of deemed declaration under Section 6. However, sub-section (3) makes a modification in order to fix up a date corresponding to S. 4(1) of L.A. Act. The modification is in respect of relevant date for the
- G** computation of market value. This is provided for by clauses (i), (ii) and (iii) of sub-section (3) which are extracted above. These dates have to be substituted for the date of publication of notification under S. 4(1) of L.A. Act. The last sub-section in Section 126 is sub-section (4). This provision too has the effect of modifying the Land Acquisition Act in a *limited* manner. Sub-section (4) which starts with a non-obstante clause provides for two things:
- H** (1) If the declaration is not made within the period referred to in sub-section

(2), the state Government may make a fresh declaration and (2) in such a case, the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh. Then, we come to *Section* 128 (1) which enables the State Government, notwithstanding anything contained in the Act, to acquire lands for a purpose other than the one specified in any plan or scheme, by invoking the provisions of L.A. Act. Sub-section (2) provides that the Planning Authority or the Development Authority or appropriate authority shall be deemed to be a 'person interested' in the land acquired. It also says that in determining the amount of compensation the market value shall be assessed as if land has been released from the reservation, or designation made in any plan or scheme. Sub-section (3) enjoins that on the land vesting in the State Government under Section 16 or 17 of the earlier Act, the relevant plan or scheme shall be deemed to be suitably varied by reason of acquisition of the land. Section 129 corresponds to Section 17 of the L.A. Act and provides for taking possession of the land in case of urgency after giving notice of 15 days and thereupon the land shall vest in the State Government free from encumbrances. For setting this provision in motion an application should be made by the planning and other authorities at any time after the publication of notification under Section 126 (2). The proviso to Section 129 (1) corresponds to sub-section (3) of Section 17 which obligates the Collector to offer to the persons interested compensation for the standing crops and trees if any on the land and for any damage sustained by the landholder on account of sudden dispossession unless it is excepted by Section 24 of L.A. Act. Sub-section (2) of Section 129 provides for payment of interest at the rate of 4 per cent per annum on the amount of compensation from the date of taking possession of the land upto the date of payment. This provision is attracted where possession of land is taken by invoking urgency clause. The rate of interest is specifically limited to 4 per cent which was the rate prevailing under the L.A. Act when MRTP Act was enacted. Sub-section (3) of section 129 provides for payment of advance not exceeding 2/3rd of the amount estimated to be payable to the person interested in case the possession of land is taken under sub-section (1) of Section 129. To some extent, it corresponds to sub-section 17 instead by Act 68 of 1984 and it marks a departure from the then existing provision of L.A. Act, i.e. Section 17. Thus, as far as acquisition on urgent basis is concerned, specific and detailed provisions are made under Section 129. Incidentally, we may mention that there is no pleading nor material before us that the acquisition in question was under Section 129(1). We need not therefore consider whether the rate of interest could be limited to 4%.

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A These are broadly the salient provisions with which we are concerned and in the midst of which the crucial provision, namely, sub-section (3) of Section 126 stands.

B It is a well established legislative practice to borrow the provisions of an earlier Act on a particular subject by making a broad reference to the earlier Act or some or most of its provisions therein so as to make them applicable to the relevant subject matter dealt with by the later statute. This is done primarily as a matter of convenience in order to avoid verbatim repetition of the provisions of the earlier Act. Very often such reference is followed by certain modifications subject to which the earlier Act should apply. Those modifications may be few or numerous. When such legislative device is adopted, the relevant provisions of the earlier Act will apply mutatis mutandis to the matters governed by the later Act. But, the difficulty in construction would arise when the earlier Act is repealed or amended/modified. The intricate question then would be whether the repeal or amendments should be ignored and the borrowed provisions should be read as they were at the time of enactment of later Act OR the provisions of earlier Act should be applied subject to subsequent amendments/modifications. If there is a definite indication in the later Act as to the applicability or otherwise of subsequent amendments in the Act referred to, no difficulty arises; but, the problem arises when there is no such indication. It is here that we come across two allied but qualitatively different concepts of statutory interpretation known as incorporation by reference and mere reference or citation of earlier statute in the later Act. In the former case, any change in the incorporated statute by way of amendment or repeal has no effect on the incorporating statute.

F In other words, the provisions of the incorporated statute as they stood at the relevant time when incorporating statute was enacted will ever continue to be read into that later statute unless the legislature takes a positive step to amend the later statute in tune with the amendments. However, the legal effect is otherwise in the case of a statute which merely makes a reference to the provisions of an earlier statute. In that case, the modification of the statute from the time to time, will have its impact on the statute in which it is referred to. The provisions in the earlier statute with their amendments will have to be read into the later enactment in which they are referred to unless any such subsequent amendment is inconsistent with a specific provision already in existence.

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The expression 'incorporation by reference' has been aptly and succinctly expounded by the *Privy Council in Secretary of State v. Hindustan Co-operative Insurance Society Limited*, AIR [1931] P.C. 149. We shall quote the relevant passage occurring at Page 152.

"In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second."

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"The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as much applicable in India as it is in this country."

As regards additions in the first statute by way of subsequent amendments, the position has been clarified in the following words:

"It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition."

The distinction between incorporation by reference and adoption of provisions by mere reference or citation is not too easy to highlight. The distinction is one of difference in degree and is often blurred. The fact that no clear-cut guidelines or distinguishing features have been spelt out to ascertain whether it belongs to one or the other category makes the task of identification difficult. The semantics associated with interpretation play their role to a limited extent. Ultimately, it is a matter of probe into legislative intention and/or taking an insight into the working of the enactment if one or the other view is adopted. The doctrinaire approach to ascertain whether the legislation is by incorporation or reference is, on ultimate analysis, directed towards that end. The distinction often pales into insignificance with the exceptions enveloping the main rule.

Did the Legislature intend to bind itself to any future changes that may be made to the earlier enactment from which the provisions are borrowed?

A OR whether the Legislature had frozen the provisions of earlier Act prevailing on the date of enactment of later statute so as to insulate it from the impact of subsequent modifications? These are the questions which loom large in judging the question whether the provisions borrowed from an earlier Act should be read subject to the subsequent amendments made therein. The language, the scheme and purpose of the Act no doubt assume significance while finding answer to this question.

B One indicia to spell out whether it is a case of incorporation or reference has been furnished by the decision of the *Privy Council in Secretary of State v. Hindustan Coop. Insurance Society Ltd.*, Supra, that is whether, the modifications that are made to the provisions of the earlier Act while broadly adopting the same are “numerous and substantial”. What that observation means as if they are “numerous and substantial”, *prima facie* it manifests an intention on the part of the Legislature not to go beyond the provisions of the borrowed Act as they existed at the time of enactment of the later Act except reading them subject to the modifications made.

D This very issue-whether the M.R.T.P. Act had incorporated in itself the original provisions of the Land Acquisition Act or adopted the provisions of the Land Acquisition Act by reference came up for consideration in a different context in the case of *State of Maharashtra v. Sant Joginder Singh*, [1995] Suppl. 2 SCC 475. There, the question arose whether Section 11A of the Land of Acquisition Act introduced by Central Act 68 of 84 which prescribed the outer limit for passing the award under Section 11 and also providing for the consequence of non-compliance thereof should be read into the M.R.T.P. Act by virtue of Section 126(3). A two Judge Bench of this Court answered that question in the negative. The learned Judges have mainly relied on sub-Section (2) & (4) of Section 126 for reaching the conclusion that a provision like Section 11A of the Land Acquisition Act stands excluded by necessary implication. Their Lordships also discussed the question whether the provisions of M.R.T.P. Act dealing with acquisition of land have incorporated the provisions of L.A. Act or only adopted them by a process of reference. Relying on the earlier decision in *Gauri Shankar Gaur v. State of U.P.* [1994] 1 SCC Page 92 in which the provisions of U.P. Avas Evam Vikas Parishad Adhiniyam fell for consideration, this Court expressed the view that “similar is the position under the Act”, meaning thereby that the subsequent amendments to the L.A. Act cannot be transposed into the M.R.T.P. Act. At the same time, a distinction was made between procedural and substantive provisions and it was observed that Section 11A which is a procedural

provision, does not stand on the same footing as Section 23 of the L.A. Act. A further observation was made that the legislature did not intend to apply the unspecified provisions of the earlier Act to the exercise of power of acquisition under M.R.T.P. Act. The learned Judges proceeded on the basis that the scheme and provisions of U.P. Adhiniyam and M.R.T.P. Act are the same. Though we find that there are certain differences between the two provisions, it is however not necessary to dilate on this aspect further. The ultimate conclusion in *Sant Joginder Singh's* case seems to rest on the ratio that there is sufficient indicia in M.R.T.P. Act itself to exclude the applicability of Section 11 A of the L.A. Act in view of sub-sections (2) and (4) of Section 126. As we are approaching the question of correct interpretation of Section 126(3) from a different perspective, there is no need to enter into a further discussion as to whether and to what extent support can be drawn from this decision.

We are of the view that the issue arising in the present case can be decided on a different principle in the light of two recent decisions of this Court without undertaking an exercise of placing Section 126(3) into one or the other category of legislation.

First, we have the case of *U.P. Avas Evam Vikas Parishad v. Jainul Islam*, [1998] 2 SCC 467 decided by a three-Judge Bench. The Court having reached a conclusion that the U.P. Avas Vikas Parishad Adhiniyam, 1965 must be deemed to have incorporated the provisions of L.A Act as then existing subject to modifications specified in the Adhiniyam, did not go further to reach a logical conclusion that the amendments to L.A Act by Act 68 of 1984 cannot be read into the Adhiniyam. The issue was, however, approached from a different angle, by applying the well known principle of statutory interpretation 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." Proceeding on this line of enquiry, it was observed thus:

"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 LA Act by the 1984 Act relating to determination and payment of compensation would be violative of the provisions of Article 14 of the Constitution. In this

A 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 LA Act @ 15% and interest under Section 28 of the LA Act @ 6% but an owner whose lands are acquired under the provisions of the LA 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 LA Act as amended by the 1984 Act. Is there any rational basis for treating the two landowners differently in the matter of payment of compensation for the acquisition of their lands.?"

D Relying on the special Bench decision of this Court in *Nagpur Improvement Trust* case [1973] 1 SCC 500, the learned Judges held;

E "The reasons which weighed with this Court 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 whereunder the provisions of Section 23 of the LA Act have been modified under the Schedule to the Adhiniyam."

F The opinion was further reinforced in Para 31 and a final view expressed in the following terms:

G "Since the present case involves acquisition of land under the provisions of the LA Act as applicable under the Adhiniyam, it is fully covered by the law laid down by this Court in *Nagpur Improvement Trust*. 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 LA Act, as they stood on the date of enactment of the Adhiniyam, would be applicable to acquisition of land for the purpose of the Adhiniyam and that the amendments introduced in the LA Act, by the 1984 Act relating to determination and payment of compensation are not applicable, the consequence would be that the provisions of

the LA Act, as 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 Adhiniyam are construed to mean that the provisions of the LA 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.* (emphasis supplied). 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 LA 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 LA 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 LA Act in the Adhiniyam the intention of the legislative was that amendments in the LA 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 LA Act by the 1984 Act relating to determination and payment of compensation, viz., Section 23(1-A) and Sections 23(2) and 28 as amended by the 1984 Act would be applicable to acquisitions for the purposes of the Adhiniyam under Section 55 of the Adhiniyam.”

It may be noted that in *Nagpur Improvement Trust* case, the special Bench ruled that in the matter of evolving principle for assessment of compensation, there can be no valid classification on the basis of the authority acquiring the land. As far as the owner is concerned, it does not matter to him whether the land is acquired by one authority or the other.

We have a similar situation here. The ratio and reasoning in *U.P. A.E.V. Parishad* case applies with equal, if not greater force, to the acquisition under Chapter VII of MRTP Act of which Section 126(3) is a part. In fact the modifications made by MRTP Act to the provisions of L.A. Act are minimal and at any rate, less substantial than those effected by U.P. Adhiniyam except

A in regard to the urgent acquisition dealt with by Section 129. The matters covered by the earlier Act have not been specifically referred to or restated because it is already ordained by Section 126(3) that the provisions of L.A. Act should be applied to the acquisition of land notified under the MRTP Act. As regards the determination of compensation, there are no modifications of substantial or drastic nature. The modification in Section 126(3) relating to the date of ascertainment of market value is only warranted in the context of the scheme of the Act. Section 126(4) read with the proviso to sub-section (2) is aimed at giving a fair deal to the land holder while at the same time reserving the power to issue a fresh declaration notwithstanding the expiry of one year. If such fresh declaration is issued, the market value shall be assessed

B with reference to the date of publication of fresh declaration. In our view, the provisions contained in Section 126 or any other provisions occurring in Chapter VII (discussed supra), far from manifesting an intention not to apply the provisions of LA Act as amended from time to time vis-à-vis compensation seem to suggest that the legislature did not intend to make a marked departure from the L.A. Act on the subject of compensation and other allied monetary benefits. Reiterating the observation made in *U.P. Awas Parishad* case in para 31, we hold that there is nothing in the MRTP Act which precludes adopting the construction that the provision of L.A. Act, as amended by 1984 Act relating to award of compensation, would apply with full vigour to the acquisition of land under that Act. Unless such interpretation is placed on

C Section 126(3) the acquisition under MRTP Act will be afflicted with the vice of invidious discrimination and palpable arbitrariness hit by Article 14 of the Constitution. If the interpretation which is sought to be placed by the appellant is accepted Section 126(3) itself is liable to be struck down as violative of Article 14 in which case the entire process of acquisition contemplated by Chapter VII will become unworkable and ineffectual. The

D land-holders whose lands are acquired under Chapter VII of MRTP Act cannot, in our view, be subjected to a disability or disadvantage in the matter of obtaining monetary recompense for the deprivation of land depending upon the nature of public purpose or the authority for whose benefit the land is acquired.

E

F

G The view taken in *U.P. A.E.V. Parishad* case was reiterated by a three-Judge Bench of this Court in a very recent decision of *Nagpur Improvement Trust v. Vasant Rao*, [2002] 7 SCC 657. The ratio of the decision in *U.P.A.E.V. Parishad* case and the conclusion reached therein were endorsed and applied to the cases of acquisition under Punjab Town Improvement Act 1922 and

H Nagpur Improvement Trust Act 1936. After referring in extenso to the

U.P.A.E.V. Parishad case, B.P. Singh, J. speaking for the Court observed at paragraph 50: A

“So far as the Punjab Act and the Nagpur Act are concerned, the Schedules do not modify the provisions of Section 23(2) of the Land Acquisition Act which provides for payment of solatium. However, a proviso was added to the effect that sub-section (2) shall not apply to any land acquired under the State Acts in question. The added proviso is identical in both the State Acts. This clearly implies that where acquisition was made under the provisions of the land Acquisition Act, as modified, the legislature did not intend to deprive the claimants of solatium as provided under the Land Acquisition. But solatium was not payable in cases of acquisition under the State Acts. There are provisions in both the State Acts which permit the State to acquire lands for the purposes of the schemes without resorting to the provisions of the Land Acquisition Act such as acquisition by purchase, lease, exchange, or otherwise, or acquisitions contemplated under deferred street scheme, development scheme and expansion scheme. In respect of such acquisitions solatium is not payable. Such cases are similar to the acquisitions under Section 53 of the Bombay Town Planning Act which was considered by this Court in *Prakash Amichand Shah v. State of Gujarat*. In these circumstances with a view to save the law from the vice arbitrary and hostile discrimination, the provisions must be construed to mean, in the absence of anything to the contrary, that the provision of the Land Acquisition 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 State Acts. It must, therefore, be held that while incorporating the provisions of the Land Acquisition Act in the State Acts, the intention of the legislature was that amendments in the Land Acquisition Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the State Acts.” B C D E F

The learned Judges held that the claimants were entitled to the benefits conferred by Section 23 (1-A), if applicable, and Sections 23(2) and 28 of L.A. Act as amended by 1984 Act. G

In the light of the analysis we have made of the provisions of MRTTP Act and the two verdicts of this Court handed down by three Judges Benches, we must reject the contention advanced on behalf of the appellants and uphold the view taken by the High Court. The award of the district Judge, Nashik, H

A in the Reference Case where-under the benefits under Sections 23(1-A), 23(2) and Section 28 of the L.A. Act as amended by the 1984 Act were extended to the respondents, calls for no interference.

B Some attempt was made to assail the conclusion of the Reference Court and the High Court vis-à-vis the quantum of market value. It is contended that the amount claimed by the land-holders/respondents is much less than what was awarded by the court. No such contention was raised before the High Court nor any material placed before us to substantiate this contention. Moreover, we are informed that a Review Petition was filed in the High Court and the same was dismissed. But no S.L.P. has been filed against that order. We need not dilate further on this contention.

C

In the result the appeal is dismissed, but, without costs.

S.K.S

Appeal dismissed.