M/S. Girnar Traders vs State Of Maharashtra & Ors on 11 January, 2011

Equivalent citations: AIRONLINE 2011 SC 643

Author: Swatanter Kumar

Bench: Anil R. Dave, Swatanter Kumar, K.S. Panicker Radhakrishnan, Mukundakam Sharma, S.H. Kapadia

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3703 OF 2003

Girnar Traders ... Appellant

Versus

State of Maharashtra & Ors. ... Respondents

WITH

CIVIL APPEAL NO. 292 OF 2011
(Arising out of SLP (C) No.9734 Of 2005)

Digambar Motiram Jhadhav ...Appellant

Versus

The Commissioner & Ors. ...Respondents

JUDGMENT

Swatanter Kumar, J.

Leave granted in SLP (C) No. 9734 of 2005.

IA Nos.4 and 5 of 2009 in Civil Appeal No.3703 of 2003 are allowed subject to just exceptions and limited to this reference.

Legalistic federalism was introduced as a technique of governance with the people of India adopting, enacting and giving unto themselves the Constitution of India on 26th November, 1949. The

legislative competence of the Central and State Legislatures has been demarcated by the Constitution under Article 246, with the fields for exercise of legislative power enumerated in List I (Central List), List II (State List) and List III (Concurrent List) of Schedule VII to the Constitution of India. Power to enact laws, thus, is vested in the Parliament as well as in the State Legislative Assemblies within their respective spheres. This is the paramount source for enactment of law, i.e., direct exercise of legislative power by the respective constituents. On the issue of distribution of powers between the Centre and the State, a Constitution Bench of this Court in Federation of Hotel & Restaurant Association of India v. Union of India [(1989) 3 SCC 634], noticed that the constitutionality of a law becomes essentially a question of power which, in a federal constitution, turns upon the construction of the entries in the legislative lists. Interpretative process, as a tool of interpretation, introduced new dimensions to the expansion of law enacted by Legislature, through Judge made law. Amongst others, doctrines of `legislation by reference' and `legislation by incorporation' are the creation of judicial pronouncements. One of the earliest instances, where the Privy Council, then responsible for Indian Judicial system, accepted the plea of `legislation by incorporation' and interpreted the statute accordingly in the case of Secretary of State for India in Council v. Hindusthan Co-operative Insurance Society Ltd. [AIR 1931 PC 149]. This judicial pronouncement was followed in different subsequent judgments and these doctrines were analyzed in greater depth for bringing out the distinction between them. The judgment of the Privy Council was referred with approval by this Court in different judgments including Municipal Commissioner of Howrah v. Shalimar Wood Products [(1963) 1 SCR 47]; Bolani Ores Ltd. v. State of Orissa [(1974) 2 SCC 777]; Mahindra & Mahindra v. Union of India [(1979) 2 SCC 529]; Ujagar Prints v. Union of India [(1989) 3 SCC 488]; U.P. Avas Evam Vikas Parishad v. Jainul Islam [(1998) 2 SCC 467]; Nagpur Improvement Trust v. Vasant Rao [(2002) 7 SCC 657] and Maharashtra State Road Transport Corporation v. State of Maharashtra [(2003) 4 SCC 200]. The principle that was enunciated by the Privy Council in the case of Hindusthan Co-operative Insurance Society Ltd. (supra) stated, "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 to function effectually without the addition". Though this principle has been reiterated from time to time; with the development of law, still certain doubts were reflected in the judicial pronouncements of the courts as to the application of this principle as an absolute proposition of law. On the contrary, this principle received criticism from various quarters. The critics said that it was causing impediments in smooth operation of the later law as well as abdication of legislative power by the concerned legislative constituent. Another criticism and argument which, in fact, was even advanced before us is that while approving the principle stated by the Privy Council, the subsequent Benches have not taken into consideration the impact of the judgment of the Constitution Bench of this Court in B. Shama Rao v. Union Territory of Pondicherry [(1967) 2 SCR 650]. A pertinent constitutional aspect that ought to have been brought to the notice of different Benches was that the federal structure of the Constitution had come into force which controlled governance of the country and therefore the principles, inter alia, stated by the Privy Council could not be adopted as law of universal application without appropriately modifying the stated position of law to bring it in complete harmony with the constitutional mandate. In the case of Gauri Shankar Gaur v. State of U.P. [(1994) 1 SCC 92], one member of the Bench of this Court, relied upon the principle stated in Hindusthan Co-operative Insurance Society Ltd. (supra) and held that in a case of

legislation by incorporation, subsequent amendment or repeal of the provisions of an earlier Act adopted cannot be deemed to have been incorporated in the adopting Act which may be true in the case of legislation by reference. This judgment was relied upon by another Bench of this Court in the case of State of Maharashtra v. Sant Joginder Singh Kishan Singh [1995 Supp.(2) SCC 475]. The amendments in various relevant laws and introduction and application of newly enunciated principles of law resulted in varied opinions. A Bench of this Court in the case of Girnar Traders v. State of Maharashtra [(2004) 8 SCC 505] (hereinafter referred to as `Girnar Traders-I) expressed certain doubts on the correctness of the law stated in the case of Sant Joginder Singh (supra) and referred the matter to a larger Bench.

The Bench in Girnar Traders-I (supra) felt that there were good reasons for reading the provisions introduced by the Land Acquisition (Amendment) Act, 1984 (hereinafter referred to as the `Central Act 68 of 1984') into Chapter VII of the Maharashtra Regional and Town Planning Act,1966 (for short, `the MRTP Act' or `the State Act') and Section 11A of the Land Acquisition Act, 1894 (for short, `the Land Acquisition Act' or `the Central Act') is one of such provisions. Thus, the Constitution Bench is called upon to examine whether the MRTP Act is a self-contained Code or not, if so, to what effect? Further, whether, in any event, all the provisions of the Land Acquisition Act, as amended by Central Act 68 of 1984 with emphasis on Section 11A can be read into the provisions of the MRTP Act?

The above questions require examination in light of the facts which, to some extent, have been referred to in the Order of Reference dated 14th October, 2004 which reads as under:

> "This appeal is directed against the judgment of the Division Bench of the High Court of Judicature at Bombay, Aurangabad Bench, dismissing the writ petition of the appellant under Article 226 of the Constitution. The question for consideration is: whether all the provisions of the Land Acquisition Act, 1894 as amended by Central Act 68 of 1984 can be read into the provisions under Chapter VII of the Maharashtra Regional and Town Planning Act, 1966 for an acquisition thereunder.
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> The appellant is a registered partnership firm owning certain lands situated within the jurisdiction of the second respondent Jalgaon Municipal Council. The land owned by the appellant was subject to a reservation in the draft development plan of Jalgaon town, which was published on 19-3-1987. Since the appellant was unable to develop the land under reservation, and no steps were being taken by the Jalgaon Municipal Council to acquire the said land under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act"), the appellant issued a notice dated 19-1-1989 under Section 49(1) of the MRTP Act, calling upon the State Government to either confirm or refuse the purchase notice within the period fixed under Section 49 of the MRTP Act.
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> On 25-7-1989 the State Government, acting under Section 49(4) of the MRTP Act, confirmed the purchase notice issued by the appellant. Despite confirmation of the purchase notice, the second respondent Jalgaon Municipal Council did not take any

steps under Section 126 of the MRTP Act, nor did it apply to the State Government for acquisition of the land under reservation.

Ultimately, on 3-10-1991, the first respondent State Government issued a notification under Section 126(4) of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894, declaring that the land concerned was required for a public purpose as indicated in the notification. This notification expressly mentions that the period of three years prescribed under Section 126(2) of the MRTP Act was over and, therefore, the State Government was acting under sub-section (4) of Section 126 of the MRTP Act.

It is the case of the appellant that it had no knowledge of this declaration dated 3-10-1991 as no individual notice has been served on it, though this declaration was published in the Official Gazette on 15-10-1991. Despite the declaration under Section 126(4) of the MRTP Act, as aforesaid, nothing happened till March 1994. On 23-3-1994 the appellant issued second purchase notice under Section 49(1) of the MRTP Act. By a reply dated 10-4-1995, the State Government informed the appellant that inasmuch as the earlier purchase notice dated 19-1-1989 had already been confirmed by the State Government on 25-7-1989, and further since the Jalgaon Municipal Council has already initiated proceedings for acquisition of the land, the second purchase notice was rejected.

The appellant challenged the said rejection by his Writ Petition No. 2829 of 1996 before the High Court of Judicature at Bombay. This writ petition was disposed of by the High Court by its judgment and order dated 31-3-1997 by which the State Government and the Municipal Council were directed to initiate the proceedings for acquisition of the lands in question within one year and complete the same within the time prescribed under the MRTP Act. The High Court further directed, "in case the authorities fail to initiate the acquisition proceedings within the prescribed period, the lands of the petitioners shall be deemed to have been released from the reservation".

According to the appellant, despite the order of the High Court, it was not informed about any steps taken by the authorities concerned for acquisition of its land. On 13-4-1998, the appellant issued a letter to the Special Land Acquisition Officer, Respondent 3, calling upon him to disclose whether any proceedings had been initiated for acquisition. The appellant, however, received no reply.

On 18-2-1999, Respondent 3 issued a notice to the appellant under Section 12(2) of the Land Acquisition Act, 1894 calling upon him to accept the compensation for the land acquired as per the award. The appellant moved Writ Petition No. 822 of 2000 in the High Court of Judicature at Bombay and sought quashing of the notice under Section 12(2) of the Land Acquisition Act, 1894 and a direction enabling it to develop its land for residential purpose.

By the impugned judgment, the High Court dismissed the writ petition by holding that the prayer for declaration of dereservation of the subject land as well as granting of permission to develop the property for residential purpose had already been declined by its earlier order dated 31-3-1997, which had become final as far as the appellant was concerned. The High Court thus took the view, "the only issue we are required to examine i.e. whether the Land Acquisition Officer has complied with our directions and if the directions were not complied within the period of one year, as set out by us, whether the petitioner is entitled for the reliefs prayed for in this petition". The High Court held: "on perusal of the documents submitted before us we are satisfied that the requisite steps have been taken by the Special Land Acquisition Officer for acquisition of the subject land and after Writ Petition No. 2829 of 1996 was disposed of, there was no necessity to initiate fresh action by the Planning Authority as contemplated under Section 126(1)(c) of the MRTP Act". In this view of the matter, the writ petition came to be dismissed. Hence, this appeal by special leave.

Mr V.A. Mohta, learned Senior Counsel for the appellant urged that the scheme of the MRTP Act shows that, on receipt of an application under sub-section (1) of Section 126, if the State Government is satisfied that the land specified in the application is required for a public purpose, it may make a declaration to that effect in the Official Gazette in the manner specified in the Land Acquisition Act, 1894, and such declaration is deemed to be a declaration duly made under Section 6 of the Land Acquisition Act, 1894. The proviso to sub-section (2) of this section prescribes the period within which such declaration has to be made. Sub-section (3) of this section provides that on publication of the declaration under Section 6 of the Land Acquisition Act, 1894, the Collector shall proceed to take order for the acquisition of the land under the said Act, and thereafter, the provisions of the Land Acquisition Act, 1894 shall apply to the acquisition of the said land, subject to the modification introduced by sub-section (3), which pertains only to the market value of the land. The only change made in the scheme of this Act is that, if the State Government fails to make the declaration under sub-section (2) within the time provided in the proviso thereto, the declaration does not become bad as it is saved by sub-section (4). Under sub-section (4), notwithstanding the fact that the requisite declaration under sub-section (2) had not been made within the time provided therein, the State Government is empowered to issue a fresh declaration for acquiring the land in the manner provided by sub-sections (2) and (3) of Section 126 of the MRTP Act, but, if that be done, the market value of the land for the purpose of compensation shall be the market value at the date of such declaration made afresh.

Mr. Mohta submitted that barring the above special modification introduced in the scheme of acquisition of land, in all other respects, the provisions of the Land Acquisition Act, 1894 would mutatis mutandis apply to an acquisition under Chapter VII of the MRTP Act. He pointed out that the MRTP Act contains neither any provision for payment of compensation, nor does it prescribe the time within which the award has to be made after a declaration is made under sub-sections (2), (3) or (4) of Section 126. It is urged that the legislature could not have left it vague and indefinite. In the submission of the learned counsel, this is a situation of invocation of the provisions of the Land Acquisition Act, 1894, not by incorporation, but by reference. In other words, as and when the provisions of the Land Acquisition Act, 1894 are amended, all the amended provisions would be attracted to an acquisition under Chapter VII of the MRTP Act, unless barred expressly or by direct implication. The amendments introduced in the Land Acquisition Act, 1894 by Central Act 68 of

1984 would all automatically apply.

Consequently, the period of limitation prescribed under Section 11-A for making the award would squarely apply.

Appellant urges that while sub-section (4) of Section 126 may save a declaration under Section 6 of the Land Acquisition Act, 1894 from becoming bad because of lapse of time (though, subject to the modification with regard to the market value of the land prescribed therein), there is nothing in the MRTP Act which precludes, expressly or by direct implication, the provisions of Section 11-A from applying to govern the period within which the award has to be made. In the facts of the present case, there is no dispute that the declaration under Section 126(4) was made on 3-10-1991 and published in the Official Gazette on 15-10-1991, while the award is said to have been made on 18-2-1999. In these circumstances, the award not having been made within the period of two years from the date of the declaration under Section 6, the entire proceedings for the acquisition of the land would lapse by reason of Section 11-A of the Land Acquisition Act, 1894.

Appellant relies heavily on the Statement of Objects and Reasons attached to the Bill preceding Act 68 of 1984. The attention of the legislature was drawn to the fact of pendency of acquisition proceedings for long time and, "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them".

Finally, it is contended that the amendments introduced by Central Act 68 of 1984 in the Land Acquisition Act, 1894 were by way of a composite package and it is not open to anyone to pick and choose them in their application, unless so provided in any competent legislative enactment. In the present case, there is nothing in the provisions of the MRTP Act which could oust the application of the entire gamut of amendments introduced by Central Act 68 of 1984 and, therefore, all acquisitions, even under the MRTP Act, must be read subject to them.

Learned counsel for the respondents, refuting the contentions urged on behalf of the appellant, placed heavy reliance upon the judgment of a Bench of two learned Judges in State of Maharashtra v. Sant Joginder Singh Kishan Singh1. Learned counsel for the respondents strongly urged that this judgment clinches the arguments against the appellant.

The same contention as urged by the appellant before us has been considered and negatived in Sant Joginder Singh (supra) wherein it is observed (vide para 13) as under:

> "It is next contended that since no separate procedure was prescribed by the Act for determining the compensation, by necessary inference, the Central Act was intended to be applied mutatis mutandis to the acquisition under the Act. He seeks support from the award made by the Collector in that behalf. It is true that there is no express provision under the Act to determine compensation for the land acquired under the Act. Therefore, by necessary implication, compensation needs to be determined by applying the principles in Section 23 of the Central Act. But, there is a distinction

> between procedural and substantive provisions of a statute. Determination of compensation by applying appropriate principles is relatable to substantive 1995 Supp (2) SCC 475 provision, whereas making of award within a prescribed period is basically procedural. So, merely because Section 23 of the Central Act would apply to acquisition under the Act, it is not enough to hold that what is contained in Section 11-A would also apply. Further, what has been provided in sub-section (4) of Section 126 of the Act is a clear indication that failure to make the award within two years from the date of the declaration under sub-section (2) of Section 126 of the Act, would not render the notification published under Section 125 of the Act non est."

The appellant urges that Sant Joginder Singh (supra) needs reconsideration by a larger Bench.

Upon careful consideration of the contentions urged before us, we are inclined to accept the submissions of Mr. Mohta for more than one reason. First, although the MRTP Act and similar Regional Town Planning Acts did not contain specific provisions for payment of compensation, when they were challenged as infringing Article 14 of the Constitution, their validity was upheld by reading the provisions as to payment of compensation contained in the Land Acquisition Act, 1894 into the Regional Town Planning Acts. (See in this connection Gauri Shankar Gaur v. State of U.P.2 and Nagpur Improvement Trust v. Vithal Rao3) Secondly, Sant Joginder Singh (supra) appears to have been doubted by a judgment (1994) 1 SCC 92 (1973) 1 SCC 500 Paragraphs 30 and 31 of another Bench of two learned Judges in Maharashtra SRTC v. State of Maharashtra4.

This was a case under the provisions of the same Act viz. MRTP Act, 1966. After considering the judgments in U.P. Avas Evam Vikas Parishad v. Jainul Islam5 and Nagpur Improvement Trust (supra) it was held that the provisions with regard to compensation made by Central Act 68 of 1984, by addition of sub-

section (1-A) to Section 23 and the increased amount of solatium under Section 23(2) and the interest payable under Section 28 would all apply to an acquisition under Chapter VII of the MRTP Act. Dealing with Sant Joginder Singh (supra) the Division Bench of this Court explained away Sant Joginder Singh by observing :

> "The ultimate conclusion in Sant Joginder Singh case1 seems to rest on the ratio that there is sufficient indicia in the MRTP Act itself to exclude the applicability of Section 11-A of the LA 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."

Reading the judgment in Maharashtra SRTC (supra) it appears to us that, the Division Bench in that case did not seem to agree with the proposition that was laid down in Sant Joginder Singh (supra).

(2003) 4 SCC 200 (1998) 2 SCC 467 There appears to be no good reason to shut out or preclude the amendments introduced by Central Act 68 of 1984 in the Land Acquisition Act, 1894 from applying

to an acquisition under Chapter VII of the MRTP Act. Or else, the consequence would be that, in respect of two landholders there would be arbitrary discrimination in the matter of acquisition of their lands, merely because in one case the acquisition is by the direct route of the Land Acquisition Act, 1894 and, in another case, through the indirect route of the MRTP Act. The vice of discrimination pointed out by a Bench of seven learned Judges in Nagpur Improvement Trust (supra) (vide para

31) would affect such a situation. In order to avoid such a situation, and to save the constitutionality of the provisions of the MRTP Act, the provisions of enhanced benefits introduced by Central Act 68 of 1984 were read into the provisions of the MRTP Act, and an acquisition under the MRTP Act was held to be governed by the same provisions. The same principle should apply in the matter of attracting the provisions of Section 11-A of Act 68 of 1984 also to the acquisition under the MRTP Act.

Thirdly, if the provisions of the MRTP Act are read as contended by the learned counsel for the respondents, in the light of Sant Joginder Singh (supra) then it would be open to the authorities, after issuing a declaration under sub-section (3), to go into hibernation and leave the matter hanging in perpetuity. That certainly would seriously affect the rights of the landholder preventing him from developing the land or alienating it, merely because the authority chooses to act under one Act instead of the other. This again, would attract the wrath of Article 14 of the Constitution, not only on account of discrimination, but also on account of arbitrariness.

We, therefore, see no good reason as to why the provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984 should not be read into an acquisition under Chapter VII of the MRTP Act, to the extent not precluded by the MRTP Act, 1966.

Section 11-A being one such section, it may have to be applied to the acquisition under Chapter VII of the MRTP Act.

For these reasons, in our considered view, the decision in Sant Joginder Singh (supra) requires reconsideration by a larger Bench.

The Registry is directed to place the papers before the Hon'ble Chief Justice of India for appropriate directions in the matter."

At the cost of repetition and also keeping in mind that certain important facts do not emerge in entirety from the Order of Reference, we will prefer to refer some of the essential additional facts as they appear from the record and, particularly, from the impugned judgment. Draft Development Plan was published on 19th March, 1987 and the lands of the appellant were reserved for a school and playground. On 19th January, 1989, the appellant served purchase notice under Section 49 of the MRTP Act which was confirmed on 25th July, 1989. The Planning Authority requested the Collector to initiate steps for acquisition of the land in question on 18th November, 1989 in furtherance to which the Collector, Jalgaon appointed Special Land Acquisition Officer (LAO) to initiate proceedings for acquiring reserved lands in the Development Plan. However, the Planning

Authority passed a resolution (No.736) recommending de-reservation of appellant's land but no further steps in accordance with law were taken and, on the contrary, on 3rd October, 1991, declaration under Section 126(2) of the MRTP Act in the manner specified under Section 6 of the Land Acquisition Act was issued along with notices under Section 9 of that Act, which had been denied by the appellant. It is alleged that this resolution was passed in collusion with the appellants. The State Government sanctioned the Draft Development Plan on 6th January, 1993 and draft award was prepared by the LAO on 20th July, 1993. The application dated 19th March, 1994 for developing the land, filed by the appellant under Section 44 of the MRTP Act, was turned down by the Municipality. The appellant served the second purchase notice under Section 49 of the MRTP Act which was also turned down vide order dated 10th April, 1995. It may be noticed that the communication dated 10th April, 1995 was challenged by the appellant before the High Court by filing a writ petition being CWP No.2829 of 1996. In this petition, the appellant had prayed for quashing of the communication dated 10th April, 1995 and declaring that the appellant's land would be deemed to have been released from the reservation. The Court, vide its order dated 31st March, 1997, rejected all the prayers and directed as under:

> "The respondents No.1 and 3 are directed to initiate the proceedings for acquisition of the lands in question within one year from today and complete the same within the time prescribed under the Act. In case the authorities fail to initiate the acquisition proceedings within the prescribed period, the lands of the petitioner shall be deemed to have been released from the reservation. Petition is disposed of accordingly."

Final award was passed by the LAO on 10th February, 1999 and he issued notices to the parties under Section 12(2) of the Land Acquisition Act on 18th February, 1999. The appellant approached the High Court of Bombay, again, by filing Writ Petition No.822 of 2000 in which the basic challenge to the action of the respondent was on the ground that the concerned authorities including the Planning Authority had failed to take steps for acquisition in terms of the order of the Court dated 31st March, 1997 within one year and, thus, the reservation had lapsed. The land of the appellant, thus, should be deemed to have reverted to the appellant and he should be at liberty to develop the said land free from any encumbrance. The writ petition came to be dismissed summarily by the High Court vide order dated 29th March, 2000 which was challenged by filing a Special Leave Petition which subsequently had been registered upon grant of leave as Civil Appeal No.3703 of 2003. It has been noticed by the High Court in the impugned judgment, "Admittedly, a notice under Section 127 of the MRTP Act has not been issued by the appellant to the Planning Authority at any time and, therefore, the reliance on the provisions of Section 127 of the MRTP Act is totally misplaced. The appellant had issued the first purchase notice under Section 49 of the MRTP Act to the State Government on 19th January, 1989 and it was confirmed by the State Government under Section 49(4) of the MRTP Act on 25th July, 1989." This is not even disputed by the appellant before us.

Another important fact which needs to be noticed by us is that the order dated 31st March, 1997 passed by the High Court in Writ Petition (C) No.2829 of 1996, was clarified in the impugned judgment by stating that the LAO had taken steps in furtherance to his appointment by the Collector vide order dated 29th June, 1990 and had prepared the draft award on 20th July, 1993. As these

facts were not brought to the notice of the Court, the directions issued by the High Court certainly did not mean that fresh steps for acquisition should be taken. In fact, the acquisition proceedings were expected to be completed by the LAO in furtherance to his appointment by the Collector in accordance with law. Thus, the High Court, while referring to the second notice served by the appellant under Section 49 of the MRTP Act, rejected all relief claimed by the appellant, as necessary steps had already been taken by the LAO.

The appellant herein had argued in Girnar Traders-I (supra) that the decision of this Court in Sant Joginder Singh's case (supra) needs reconsideration by a larger Bench as it did not state correct law whereas the respondent-State of Maharashtra had taken up the plea that Sant Joginder Singh's case (supra) clinched the entire issue. The Bench, while accepting the contentions raised on behalf of the appellant, stated three reasons for referring the matter to a larger Bench. As is evident from para 17 of the Order of Reference, the Bench noticed that Sant Joginder Singh's case (supra) appears to have been doubted by judgments of other Benches of this Court in the cases of Maharashtra SRTC, Nagpur Improvement Trust and U.P. Avas Evam Vikas Parishad (supra) in which it was held that the provisions with regard to compensation in terms of Central Act 68 of 1984, including Sections 23(1A), 23(2) and 28 of the Land Acquisition Act would be applicable to an acquisition under Chapter VII of the MRTP Act. On the contrary, in Sant Joginder Singh's case (supra), the Court had held that there are sufficient indicia in MRTP Act itself to exclude applicability of Section 11A of the Land Acquisition Act in view of sub-sections (2) and (4) of Section 126 of the MRTP Act. The Bench also felt that voice of discrimination pointed by the Seven Judge Bench in Nagpur Improvement Trust v. Vithal Rao [(1973) 1SCC 500] would affect a situation like the present case and such provisions may have to be read into the Land Acquisition Act. After expressing this view, the Bench chose to refer a restricted question for determination by the larger Bench that whether provisions of Section 11A of the Land Acquisition Act, amongst other provisions, introduced by Central Act 68 of 1984 would, apply to Chapter VII of the MRTP Act.

Before we answer this legal controversy arising in the present case, we consider it appropriate to refer to the contentions raised by the learned counsel appearing before us.

The appellant has challenged the findings recorded by the High Court in the impugned judgment on various grounds. They have to be examined on merits by the appropriate Bench. We are primarily concerned with answering the question referred to this Bench in the above Order of Reference. In that regard, the contentions raised on behalf of the appellants are:

> 1. There is generic reference to the provisions of Land Acquisition Act in different Chapters of the MRTP Act. Hence, the provisions of the Land Acquisition Act will have to be read into the provisions of MRTP Act as it is legislation by reference. As a result thereto, all the provisions introduced by the amending Central Act 68 of 1984, including Section 11A of the Land Acquisition Act will be read into and become integral part of the MRTP Act.
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> 2. The scheme under both the Acts is complementary to each other. Therefore, both the Acts have to operate in a common field and, then alone, it will form a unified

workable scheme with due regard to dichotomy between reservation and acquisition.

3. In terms of Section 125 of the MRTP Act, the purpose of acquisition shall be deemed to be a public purpose within the meaning of the Land Acquisition Act. The provisions of Section 126 of the MRTP Act require application of the provisions of the Land Acquisition Act. Once notification under Section 126(2) is issued, automatically the provisions of Section 6 and complete mechanism for acquisition of land under the provisions of the Land Acquisition Act comes into operation and, thus, the provisions of Section 11A of the Land Acquisition Act would become part of such acquisition necessarily.

4. The provisions of the Central Act 68 of 1984 are procedural in their nature and application and are not substantive. These provisions, therefore, would form part of the MRTP Act. Hence, the judgment of this Court in Sant Joginder Singh's case (supra) requires reconsideration.

5. The view taken by this Court in the case of Sant Joginder Singh (supra), following Hindusthan Co-operative Insurance Society's case (supra), applying the principle of legislation by incorporation is not applicable to the present case and these judgments require reconsideration by this Court.

6. Lastly and in alternative, it is contended that any other approach would vest the concerned authorities with the choice of initiating proceedings under either of these Acts which have substantially different consequences, in fact and in law. It is also argued that if Section 11A of the Land Acquisition Act is not read into or treated as part of the MRTP Act, then it will amount to discrimination between the similarly situated persons whose lands are subject matter of acquisition.

Reacting to the above submissions, the learned counsel appearing for different respondents contended that:

1. The MRTP Act is a self-contained Code in itself. Consequently, it is not necessary for the Court to go into the larger question, whether it is a case of legislation by reference or legislation by incorporation.

2. In the alternative, even if the Court decides to examine this aspect, it is a clear case of legislation by incorporation. Various provisions of the MRTP Act have referred to specific provisions of the Land Acquisition Act and no general application of the provisions of the Land Acquisition Act is contemplated under the provisions of the MRTP Act. Since it is legislation by incorporation, the amended provisions inserted by Central Act 68 of 1984 cannot be read into the MRTP Act. Both the laws are wholly dissimilar, operate in different fields and have different objects. The Land Acquisition Act is a Central legislation relatable to Entry 42 of List III while the MRTP Act is enacted by the State Legislature with reference to Entries 5 and 18 of List II of

Schedule VII to the Constitution.

3. These being the legislations enacted by two different bodies for different purposes cannot attract any of the aforestated principles. Both the Acts operate in different fields and cannot be read together to create a coherent legislation as that would frustrate the very object of the legislation falling exclusively in the domain of the State Legislature.

4. The State enactment has provided for definite time frame in regard to different subjects, except for making of the award after a declaration in terms of Section 126(2) or 126(4) of the State Act as the case may be, which by necessary implication, would mean intended exclusion of the provisions of Section 11A of the Central Act.

5. On following the principle stated by the Constitution Bench in the case of B. Shama Rao (supra), the other judgments of this Court cannot be stated as a binding precedent. There shall be abdication of its constitutional functions by the State Legislature as it would not be aware of and able to apply its mind to the amendments made to the Central Legislation, if the principle of legislation by reference is applied to the present case. It would lead to undesirable consequences.

SCHEME UNDER THE RESPECTIVE ACTS :

THE MAHARASHTRA REGIONAL & TOWN PLANNING ACT, 1966 The MRTP Act was enacted by the legislature of the State of Maharashtra as it was expedient to make provisions for the planning, development and use of the land in regions established for the purpose of that Act, for the constitution of Regional Planning Boards therefor and to make better provisions for the preparation of development plans with a view to ensure that the town planning scheme is made in a proper manner and its execution is made effective. According to the statement of objects and reasons of this enactment, the Bombay Town Planning Act, 1954 had made planning of land possible only within the areas of local authorities and there was no provision to control development of land in the important peripheral areas outside the municipal limits. This resulted in development of land in the peripheral areas in an irregular and haphazard manner which was clearly demonstrated in the vast areas outside Greater Bombay, Poona and other important urban centres.

The object of regional planning was to facilitate proper planning of such extensive areas of land, called Regions in the Bill, having common physical, social and economic problems so that certain matters such as distribution of population and industries, roads and highways, preservation of good agricultural lands, reservation of green belts and preservation of areas of natural scenery etc. could be dealt with and planned comprehensively on a regional level. The Bill had sought to improve the provisions of the Bombay Town Planning Act, 1954 in regard to preparation and execution of development plans to ensure that such plans are made properly and

expeditiously.

Every planning Authority is required to appoint a Town Planner for carrying out surveys and to prepare an existing land use map and formulating proposals of the development plan within the framework of the Regional Plan, where one exists, for the consideration of the Planning Authority. The Planning Authority is entitled to refuse or grant, subject to certain conditions, permission to develop in accordance with such plan. This order of the Planning Authority is appealable before the Prescribed Officer in the State Government.

Unauthorized development was made penal and could be removed and the use contrary to the plan could be discontinued. One of the main features of the Bill was the provision for creation of new towns by means of Development Authorities. The problems of overcrowding of population and industries, traffic congestion, inadequacy of public services and utilities like schools, hospitals, markets, water supply, drainage and road, rail transport etc. became so acute in the regions of Greater Bombay and Poona that it became necessary to consider proposals for the dispersal of population and industry from such centres and their reallocation at suitable places within the Region.

The MRTP Act required every local authority to prepare a development plan for the area within its jurisdiction. Under such plan, the local authority was to allocate land for different uses, e.g. for residential, industrial, commercial and agricultural and to reserve sites required for public purposes as well. Town planning schemes could be made in respect of any land, whether open or built up and incremental contribution, i.e. betterments in land value could be recovered from owners of the plots benefitting from the proposals made in the scheme. These were the features of the Bombay Town Planning Act, 1954 which extended to whole of the State of Maharashtra excluding the City of Nagpur and, thus, a more comprehensive and effective legislation was contemplated by the legislature.

The scheme of the MRTP Act is, primarily, focused on planning and development of the land in the entire State of Maharashtra. The MRTP Act provides for development plans from macro to micro level which includes specifying the land to be used for providing various public amenities and services. That is the precise reason that the expression `development' under Section 2(7) of the MRTP Act has been defined in very wide terms. It is difficult to comprehend any activity relating to land and planning which could fall outside the scope of this definition. Section 2(9) of the State Act defines `development plan' to mean a plan for development or redevelopment of the area within the jurisdiction of the Planning Authority and includes revision of a development plan and proposals of a Special Planning Authority for development of land within its jurisdiction. The `regional plan' means a plan for development or redevelopment of a region which is approved by the State Government and has come into operation under the MRTP Act. The expression `town planning scheme' has not

been defined as such but the term `scheme' includes a plan relating to town planning scheme in terms of Section 2(30) of the State Act. Corresponding to each plan there are authorities like `Development Authority' which means a New Town Development Authority constituted or declared under Section 113 of the MRTP Act, `Planning Authority' which means a local authority including a Special Planning Authority and the Slum Rehabilitation Authority appointed under Section 40 of this Act and Section 3(c) of the Maharashtra Slum Areas Improvement Clearance & Redevelopment Act, 1971 respectively. `Region' means any area established to be region under Section 3, `Regional Board' or `Board' means Regional Planning Board constituted under Section 4, `Regional Planning Committee' means a committee constituted under Section 10.

`Development Rights' in terms of Section 2(9A) means the right to carry out development or to develop the land or building or both and shall include the transferable development right in the form of right to utilize the Floor Space Index of land utilizable either on the remainder of the land partially reserved for a public purpose or elsewhere, as the final Development Control Regulations in this behalf provide.

Once a region has been created under the provisions of the MRTP Act then a regional plan is to be prepared and it should provide for matters contemplated under Section 14. This plan is to be submitted to the State Government for approval. The Regional Board, before preparing common regional plan and submitting it to the State Government for approval, is required to carry out necessary surveys and prepare an existing land use map of the region or such other maps as are considered necessary and then prepare a draft regional plan. It shall be published in the Official Gazette in the manner prescribed and shall be open to inspection at all reasonable hours mentioned therein inviting objections and suggestions from any person with regard to draft plan before the specified date which is not to be earlier than four months from the publication of the notice.

Then this plan has to be notified in accordance with the provisions of Section 17 of the MRTP Act. It is important to note that once the draft regional plan or regional plan has been notified and published then Section 18 of the MRTP Act places a restriction on change of use of land or development thereof which reads as under:

"18. Restriction on change of user of land or development hereof.

(1) No person shall on or [after the publication of the notice that the draft of Regional plan has been prepared or the draft Regional plan has been approved], institute or change the use of any land for any purpose other than agriculture, or carry out any development, in respect of any land without the previous permission of the Municipal Corporation or Municipal Council, within whose area the land is situate, and elsewhere, of the Collector.

(2) Notwithstanding anything contained in any law for the time being in force the permission referred to in sub-section (1) shall not be granted otherwise than in conformity with the provisions of the draft of final Regional plan.

(3) Without prejudice to the provisions of sub-

sections (1) and (2) or any other provisions of this Act, any person intending to execute a Special Township Project on any land, may make an application to the State Government and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be a Special Township Project by notification in the Official Gazette or, reject the application"

Section 20 of the State Act empowers the State Government to revise or modify the regional plan in accordance with the prescribed procedure. Chapter III of the MRTP Act deals with preparation, submission and sanction of Development Plan and, primarily, provides for use of land for purposes such as residential, industrial, commercial, agricultural, recreational, schools, colleges and other educational institutions, open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, transport and communication, water supply, drainage, sewerage amongst other public utilities and amenities. The Draft Development Plan is also to be submitted to the State Government in terms of Section 30 of the MRTP Act. Chapter IV of this Act contains certain significant provisions and relates to control of development and use of land included in the development plans. Section 43 of the MRTP Act states that after the date on which, the declaration of intention to prepare a development plan for any area is published in the Official Gazette or after the date on which a notification specifying any undeveloped area as a notified area, or any area designated as a site for a new town is published in the Official Gazette, no person shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning Authority. However, the proviso to this Section provides that no such permission shall be necessary for carrying out works for the maintenance, improvement or other alterations of any building which do not materially affect the external appearance thereof as specified in that Section. Even in terms of Section 49 of the MRTP Act where a purchase notice is served, the person has to call upon the authorities to purchase his interest in the land for reasons contained in clauses (a) to (e) of sub-section (1) and in accordance with the provisions of this Act.

The Government/Appropriate Authority, other than the Planning Authority is vested with the powers under Section 50 of the MRTP Act to delete reserved or designated land from interim or draft or final development plan and in terms of Section 68 of the MRTP Act, the State Government is also vested with the power to sanction even the draft scheme. Section 69 of the MRTP contemplates similar restrictions on the use and development of the land upon declaration of town planning scheme. Town planning schemes are required to be prepared for the purposes of implementing the

proposal in the official development plan in terms of the provisions of Chapter V of MRTP Act. Another aspect which requires consideration of this Court is reference to Section 72 of the MRTP Act which refers that the matters in relation to such schemes to be adjudicated upon by the Arbitrator who has been vested with wide powers and duties. The Arbitrator shall follow the procedure prescribed under Section 72(3), estimate the value and fix difference between the values of the original plots and the values of the final plots included in the final scheme and estimate the amount of compensation payable under Section 66 of the MRTP Act, estimate the reference of claims made before him and decide the dispute of ownership amongst other specified matters.

Appeal against the decision of the Arbitrator under clauses (iv) to (xi) (both inclusive) and clauses (xiv) to (xvi) of sub-section (3) of Section 72 of the State Act lies to a tribunal constituted under Section 75 of the MRTP Act. In fact, certain decisions of the Arbitrator are final and binding on the parties including the Planning Authority. However, some of such decisions do not attain finality qua filing of civil suits, e.g. disputes under Section 71 of the MRTP. Thus, an adjudicatory mechanism covering larger aspects of planning and execution is provided under the provisions of the MRTP Act. Preparation, submission and sanction of development plans are basic functions of various authorities constituted under Chapter VI of the MRTP Act with ultimate object of execution of such plan. The MRTP Act contemplates preparation, approval and finalization of an interim or draft plan and, as already noticed, with the publication of such plans, the restrictions operate.

We may also notice that Section 14(e) of the MRTP Act contemplates reservation of sites for new towns, industrial estates and any other large scale development or project which is required to be undertaken for proper development of the region or new town.

Section 113 of the State Act provides for designation of a site for a new town.

The most important facet of this legislation is the provisions with regard to acquisition and lapsing of reservation and powers of the Government in that regard. These aspects have been dealt with under Chapter VII of the MRTP Act. Section 125 of the MRTP Act provides that any land required, reserved or designated in a Regional Plan, Development Plan or Town Planning Scheme for a public purpose or purposes, including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act.

Section 126 of the MRTP Act contemplates that after the publication of a draft Regional Plan, a Development Plan or any other plan or Town Planning Scheme, if any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority,

or as the case may be, any Appropriate Authority may, except as otherwise provided in section 113A of the MRTP Act, acquire the land, in the mode specified in that Section. Section 126(2) of the MRTP Act also contemplates that where an application has been moved under Section 126(1)(c) of the MRTP Act to the State Government for acquiring such land under the Land Acquisition Act, then the Government is to act in accordance with and subject to the provisions of Section 126(2) of the MRTP Act. If the State Government is of the opinion that any land included in such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in Section 6 of the Land Acquisition Act (emphasis supplied). Such declaration, notwithstanding anything contained in the Land Acquisition Act, shall be deemed to be a declaration duly made under that Section. In other words, there is no requirement to comply with the provisions of Sections 4 and 5(A) of the Land Acquisition Act before such declaration is published. It is further provided that subject to the provisions of Section 126(4) of the MRTP Act no such declaration shall be made after the expiry of one year from the date of publication of the draft regional plan, development plan or any other plan or the scheme, as the case may be. After such declaration is published, the Collector shall proceed to take order for the acquisition of the land under the Land Acquisition Act and provisions of that Act shall apply to the acquisition of the said land with the modification that date of market value of the land to be acquired shall be determined with reference to sub-section 3(i) to 3(iii) of Section 126 of the MRTP Act. Sub-section (4) of Section 126 empowers the State Government to make a fresh declaration for acquiring the land where the period of one year, as specified in the proviso to sub-section (2) to Section 126 of the MRTP Act, has lapsed but then the market value of the land would be the market value on the date of publication of fresh declaration. Section 126 of the MRTP Act reads as under:

"126. Acquisition of land required for public purposes specified in plans.

(1) When after the publication of a draft regional Plan, a Development or of land any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time of the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, except as otherwise provided in section 113A acquire the land, -

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee-paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free

from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894, and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections or under the Land Acquisition Act, 1894, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the and specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894, in respect of the said land, The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section :

Provided that, subject to the provisions of sub- section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.

(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 the 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 purposes 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, whichever is earlier, or as the case may be the date or publication of the draft town planning scheme :

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972:

Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration,] is not made, within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning [(Amendment) Act, 1993)], the State Government may make a fresh declaration for acquiring the land under the Land of Acquisition Act, 1894, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that 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."

Section 127 of the MRTP Act relates to lapsing of reservations. The unamended provisions of Section 127 MRTP Act, subject to satisfaction of the ingredients therein, provide that if any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or no steps for acquisition have been taken then the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan. The provisions of Section 127 of the MRTP Act came to be amended by The Maharashtra Regional & Town Planning (Second Amendment) Act, 2009. By amendment, the portion underlined in the unamended Section, reproduced hereinafter, was deleted. The Legislature, in its wisdom, while deleting the reference to the Land Acquisition Act made lapsing of reservation a consequence of the default arising only from sub-sections (2) and (4) of Section 126 of the MRTP Act. Where such default appeared as well as no steps for acquisition were taken within the specified time, under the amended/unamended Section 127 of the MRTP Act, the owner was required to give notice in relation to release of the property. If no steps for acquisition were taken within 12 months of such notice, the land stood de-reserved. The amended and unamended provisions of Section 127 of the MRTP Act read as under:

Unamended "127. Lapsing of reservations. If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development

plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan." (emphasis supplied) Amended "127. Lapsing of reservations. (1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect ; and if within twelve months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan;

(2) On Lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette."

The objects and reasons for amendment of Section 127 of the MRTP Act specifically referred to the hardship to the land owners, stated in the judgment of this Court in the case of Girnar Traders v. State of Maharashtra [(2007) 7 SCC 555] (hereinafter referred to as `Girnar Traders-II'), pertaining to indefinite waiting for release of their respective lands because of inaction on the part of the Planning Authority in acquisition of their lands. The Legislature was obviously aware of the provisions of Section 11A of the Land Acquisition Act which permitted lapse of entire acquisition proceedings after the prescribed period. Still, the Legislature opted to amend Section 127 of the MRTP Act in the manner as it had amended. The intention appears to be to remove the doubt, if any, created by the unamended provisions of Section 127 of the MRTP Act with regard to application of Section 11A of the Central Act to the State Act. Once the State Legislature has, by amendment, restricted the application of default clause only in the situations covered under Section 126(2) and 126(4) of the State Act respectively, it will then be impermissible to read Section 11A of the Land Acquisition Act into the language of Section 126(2) of the State Act. The amendment ex-facie appears to be to avoid undue hardship to the owners of the land on the one hand while on the other, exclusion of the underlined portion supra especially the words `under the Land Acquisition Act',

suggests the legislative intent to complete all proceedings within the framework of the MRTP Act. Section 128 of the State Act deals with the powers of the State Government to acquire land for purposes other than the one for which it is designated in any plan or scheme. This provision is quite distinct and different from any of the provisions in the Land Acquisition Act. Section 128(2) of the MRTP Act makes, by operation of law, any Planning, Development or Appropriate Authority under this Act as a `person interested' in the land acquired under the provisions of the Land Acquisition Act; and in determining the amount of compensation to be awarded, the market value of the land shall be assessed as if the land has been released from reservation, allotment or designation made. Further the Collector or the Court shall take into consideration the damage sustained along with the proportionate cost of the development plan or town planning scheme or new town, if any, incurred by such authority which is rendered abortive by reason of such acquisition. The provisions of Section 129 of the MRTP Act are relatable to and in substance are pari materia to the provisions of Section 17 of the Land Acquisition Act. On an application made by the Planning, Development or Appropriate Authority, the State Government if satisfied that the possession of any land is reserved or designated for a public purpose under any of the plans is urgently required in the public interest by that Authority, can take steps for taking possession of the land after giving a notice of 15 days and thereupon, the right or interest in that land shall extinguish from the date specified; and on the date on which possession is taken, the land shall vest without any further assurance and free from encumbrances in the State Government. Of course, this power has to be exercised in consonance with other provisions of Section 129 of the MRTP Act. Wherever the possession of the land is taken under sub-section (1) the authority is required to pay at the request of the person interested an advance not exceeding 2/3rd of the amount estimated to be payable to such person on account of the land after executing an agreement in that behalf under Section 157 of the MRTP Act.

The various provisions, which we have indicated above, clearly demonstrate a self-contained scheme under the MRTP Act. Section 116 of MRTP Act is one other provision which refers to the provisions of the Land Acquisition Act and states that a Development Authority constituted under Section 113(2) of the MRTP Act is vested with the powers of a Planning Authority under Chapter VII of this Act for the purposes of acquisition either by agreement or under the Land Acquisition Act. Reference to the provisions of the Land Acquisition Act in some of the provisions of the MRTP Act could only imply that they have solely been made for the purpose of completing the process of acquisition. Most of the provisions of the Land Acquisition Act, with alteration in the language, have been specifically stated under the provisions of MRTP Act itself. Sections 126 to 129 of the State Act clearly enunciate the intention of the framers that substantive provisions of Land Acquisition Act are not applicable to MRTP Act, which is a self-contained code providing procedure regarding all matters contained therein, except to the extent that provisions of Sections 9 to 11 of the Land Acquisition Act be brought into it for the limited purpose of acquiring land. Once the provisions of MRTP Act are analyzed in their correct perspective, a holistic view can be taken that it is a code in itself. It is a legislation which has the paramount purpose only of planning; and acquisition of land is merely incidental, that too for a very limited purpose. The object of the MRTP Act is to specify and provide for development plans at the macro as well as micro level. While providing for larger concepts of development as contemplated under the regional plan as well as reservations under the development plan, provision for development at the most minute level, i.e. a small township as a part of region has also been provided. The primary object of the State Act is planned development.

Acquisition of land takes place only where the land is reserved, designated or required for complete development in the view of the Planning, Development or Appropriate Authority. Complete mechanism as to how the development plans shall be prepared, notified and implemented as well as how the land is to be acquired, and how the rights and disputes inter se parties as well as between the Planning Authorities and the owners will be settled are provided under different provisions of this Act. In other words, it is explicitly clear that a complete mechanism of planning, implementation, adjudicatory process in that regard as well as the methodology adopted for acquiring lands, in its limited sense, inclusive of change in the use, for public purpose, for which the land is required have been specifically provided under the MRTP Act. The State Act is hardly dependent upon the Land Acquisition Act except to the limited extent of completing the process of determining compensation, other than the compensation determinable by the designated Arbitrator or Tribunal. Recourse to legal remedies and providing a complete machinery to remedy the grievances of claimants is another significant feature to be considered while examining the legislative scheme of a statute. Section 72 of the MRTP Act gives jurisdiction to the Arbitrator to decide certain disputes arising between Planning Authority and claimants, as well as between the private owners. The jurisdiction of the Arbitrator is strictly controlled by the provisions of that Section. The power of the Arbitrator in regard to estimation and determination of the amounts, as contemplated under Section 72(iii) and 72(iv) of the MRTP Act are referable only to Section 97 of the State Act. The Arbitrator is primarily to resolve disputes relating to the `plots' as defined under the MRTP Act in contradistinction to the expression `land' used in other provisions of the Act. This indicates the limited jurisdiction of the Arbitrator. Appeals lie to the Tribunal only from such orders of the Arbitrator which are specified under Sections 73 and 74 of the MRTP Act. The matters for acquisition and payment of compensation are to be finalized with the aid of the provisions of the Land Acquisition Act. Under Section 83 of the MRTP Act, the lands can be vested in the concerned authority at different stages right from the commencement of preparation/approval of draft plan to the final plans and their execution under the provisions of the Act. Like Section 83 of the MRTP Act, Sections 116 and 128(3) of the State Act can be enforced by the planning authorities with an object to achieve planned development and as part of planning under the Act. Section 117 of the State Act again states the consequences of default. Where the land notified under Section 113 of the MRTP Act, as site of a new town, is not acquired by the Government or a development authority within a period of ten years from the date of notification, the owner is entitled to serve a notice upon the authority, upon service of such notice, the provisions of Section 127 of the MRTP Act would come into play for lapsing of reservation. This being the scheme of the MRTP Act, mere reference to some of the provisions of the Land Acquisition Act would not take away the substantive scheme of the State Act which is a complete code in itself.

LAND ACQUISITION ACT, 1894 Land Acquisition Act was enacted as it was considered expedient to amend the law for acquisition of land needed for public purposes and for companies and, particularly, for payment and determination of the amount of compensation to be paid on account of such acquisition. The Land Acquisition Act, 1870 made it obligatory for the Collector, to refer the matter to Civil Courts for a decision in cases of difference of opinion with interested person(s) as to value of the land as well as cases in which one of the claimants was absent, as the Collector was not empowered to make an award ex-parte even after notice. This requirement resulted in a lot of litigation, delay and expenses. According to the statement of objects and reasons of the Land

Acquisition Act; the Act of 1870 had not, in practice, been found entirely effective for the protection either of the persons interested in lands taken up or of the public purse. Thus the law was amended by making Collector's award final unless altered by a decree. The persons interested in the land thus still have the opportunity, if they desire, to prefer to an authority, quite independent of the Collector, their claims for more substantial compensation than what the Collector has awarded. Procedure for determining the valuation of land was also proposed to be suitably changed. Major amendments were proposed by the Central Act 68 of 1984 to the Land Acquisition Act. The statement of objects and reasons for this amending Bill posited that due to enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialization, building of institutions etc. has become far more numerous than ever before. Acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individuals and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for larger interest of the community. The pendency of acquisition proceedings for long periods often caused hardship to the affected parties and rendered unrealistic, the scale of compensation offered to them. With this background the legislature felt that it was necessary to restructure the legislative framework for acquisition of land so that it is more adequately governed by the objective of serving the interests of the community in harmony with the rights of the individuals. Recommendations on similar lines were also made by the Law Commission and while considering these proposals for amendment, the legislature carried out various amendments of significance in the existing Land Acquisition Act. Besides enlarging the definition of `public purpose', provision was also made for acquisition of land for non-governmental companies. Further, it provided the time limit for completion of all formalities between issue of preliminary notification under Section 4(1) and declaration under Section 6(1) of the Land Acquisition Act. Section 11A of the Land Acquisition Act was introduced which provided for time limit of two years, from the date of publication of declaration under Section 6 of the Central Act, within which the Collector should make its award under that Act. Provision was also made for taking of possession of land by the Collector before the award is made in urgent cases. From the objects and reasons of the Land Acquisition Act, it is clear that the primary object of this Act is acquisition of land for a public purpose which may be `planned development' or even otherwise. In fact the provisions of the Land Acquisition Act do not deal with the concept of development as is intended under the specific statutes like MRTP Act, Delhi Development Act, 1957, Bangalore Development Authority Act, 1976 (for short, `the Bangalore Act') etc. The primary purpose of the Land Acquisition Act is to acquire land for public purpose and for companies as well as to award compensation to the owners/interested persons in accordance with the provisions of this Act.

The acquisition proceedings commence with issuance of a notification under Section 4 of the Land Acquisition Act against which the interested persons are entitled to file objections which will be heard by the competent authority in accordance with the provisions of Section 5A leading to issuance of declaration under Section 6 of the Land Acquisition Act. After complying with the requirements of Section 9 of the Land acquisition Act, the Collector is expected to make an award under Section 11 of the Central Act and in terms of Section 11A of the Land Acquisition Act, if the award is not made within two years from the date of publication of the declaration the acquisition proceedings shall lapse. Section 11A of the Land Acquisition Act reads as under:

> "11A. Period within which an award shall be made.--(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:
>
> Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.
>
> Explanation.--In computing the period of two years referred to in this section the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

If the award is made within the stipulated period, such award attains finality under Section 12 of the Land Acquisition Act and is conclusive evidence of the true area or the value of the land as between the collector and person interested. In normal acquisition proceedings, after passing the award, the Collector may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances as per Section 16 of the Land Acquisition Act. The possession can also be taken earlier as the Appropriate Government is vested with special powers in cases of urgency. In that case, the provisions of Section 17 of the Land Acquisition Act state the scheme to be followed by the Collector for acquisition of the land including taking of possession prior to making of an award. Section 48 of the Land Acquisition Act is another important provision of this Act which empowers the Government to withdraw from the acquisition of any land of which possession has not been taken and whenever it withdraws from the acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner/interested person in consequence of such proceedings. The owner/interested person is entitled to invoke the remedy of reference under Section 18 of the Land Acquisition Act against the award made by the Collector and thereafter he may appeal to the High Court under Section 54 of the Land Acquisition Act for enhancement of compensation including determination of the disputes covered under the provisions of this Act. As is evident from the afore-narrated provisions, the primary purpose and the only object of the Land Acquisition Act is acquisition of land and payment of compensation for such acquisition. It is not an Act dealing in extenso or otherwise with development and planning. The scheme of this Act is very simple. Despite the fact that it is compulsory acquisition, which is in exercise of the State's power of eminent domain, the legislature has still attempted to create a balance between compulsory acquisition on the one hand and rights of owner/interested person in land on the other. The acquisition proceedings are commenced with issuance of a notification under Section 4 of the Land Acquisition Act for a public purpose and would end with the payment of compensation for such acquired land. The mechanism provided under this Act is entirely relatable to the process of acquisition of land and payment of compensation. This Court in the case of Delhi Development Authority v. Mahender Singh [(2009) 5 SCC 339], while examining the scope of power of the High Court under Article 226 of the Constitution to direct payment of statutory interest in terms of Section 34 of the Land Acquisition Act held as under:

> 11. "In D-Block Ashok Nagar (Sahibabad) Plot Holders' Assn. (Regd.) v. State of U.P.[(1997) 7 SCC 77] this Court again observed that liability to pay interest to the claimant arises only in accordance with Section 34 of the Act.

As the Act is a self-contained code, common law principles of justice, equity and good conscience cannot be extended in awarding interest, contrary to or beyond the provisions of the statute."

The Land Acquisition Act itself is a self contained code within the framework of its limited purpose, i.e. acquisition of land. It provides for complete machinery for acquisition of land including the process of execution, payment of compensation as well as legal remedies in case of any grievances.

Having stated the scheme of the two Acts, let us proceed to examine if there are marked distinctions between the statutory provisions of the two Acts and, if so, what is the scope of the same.

Sl. No.	Land Acquisition Act	MRTP Act
1.	The Land Acquisition Act is a legislation regulating only the acquisition of land for a public purpose and payment of its compensation. In other words,	The primary object of MRTP Act is regional/town planning and development of the entire State of Maharashtra. The function of the authorities

it is a legislation of acquisition constituted under the Act is alone and is in no way planning. The purpose of the concerned with planned Act primarily is planned development. development and acquisition is incidental thereto.

2. The lands are to be acquired The Act deals with and only for a public purpose in provides only for land required, terms of the notification under reserved or designated for Section 4. planned development.

3. Upon issuance of notification Even prior to issuance of under Section 4 of the Act, the declaration under Section owner/interested person can 126(2), i.e., on publication of develop the land or utilize the declaration of intention to same for his benefit but without prepare a development plan claiming any compensation for for any area under Section 43 such modification subsequent or town planning scheme to the date of the notification under Section 69, the rights of (Matter seventhly of Section the owner are completely

24) restricted. No person is entitled to institute or change the use of any land or carry out any development of land without permission of the authority under Section 43 or a commencement certificate under Section 69.

4. Under normal proceedings for Under this Act, the land acquisition under the Act, the required for development vests land vests in the Government in the Government at the very only after the award is made threshold. Under Section and possession is taken in 129(1) when emergency terms of

Section 16 of the Act, provisions are invoked, the of course with the exception land shall vest without any stated in Section 17 of the Act. further assurance and free from all encumbrances in the State only when notice of 15 days is given by the Collector prior to taking possession.

		Section 83 shows marked distinction that possession of the land can be taken and it shall vest in the Government/authority where it is necessary to undertake forthwith any work included even in a draft scheme for a public purpose.
5.	Under this Act, there is no provision empowering the State Government to acquire the land for any purpose other than the	In terms of Section 128(1), the Government has been vested with the power to acquire land for the purposes other than the

one specified in the notification one for which it is designated issued under Section 4 for in any plan or scheme.

	which the property was acquired.	
6.	Very few provisions provide for	There are as many as 80

limitation of period within which different provisions of the Act the action by the authority is which provide limitation of time required to be taken and for commencement, execution default thereto results in and completion of actions by substantial consequences. the authorities concerned and (Sections 6 and 11A) in default the consequences flowing therefrom.

7. The Collector is vested with all Multiple authorities have been the powers under the Act right constituted under different from acquisition till payment of provisions of the Act which are compensation. The award responsible for performing the passed by the Collector is specified functions. The subject to reference and appeal Arbitrator nominated and the under the provisions of the Act. Tribunal constituted under the provisions of the Act has to perform practically all the adjudicatory proceedings except where land is to be acquired for planned development acquisition thereof and awarding of its compensation by the Collector.

8. This Act is a Central Legislation This Act is a State Legislation relatable to Entry 42 of List III relatable to Entries 5 and 18 of of Schedule VII to the List II of the Schedule VII to Constitution. the Constitution. (without prejudice to the contention of the parties)

9. The market value of the land The market value has to be has to be determined as of the determined with reference to date of issuance of notification the date/dates specified in under Section 4 of the Land Section 126(3) and upon Acquisition Act. issuance of a declaration under Section 126(2) in the manner for issuance of declaration under Section 6 of the LA Act.

10. The Government can withdraw There is no provision from acquisition of any land empowering the planning before possession is taken in authority from de-notifying land terms of Section 48 of the Act from acquisition. However, in terms of Section 50, it has power to delete from reservation, designation for an interim draft plan.

These are some of the glaring points of distinction between the two Acts. Of course, there may be other distinctions and the ones stated by us are only illustrative. The purpose of referring to these distinctions is primarily to demonstrate that they are two different statutes operating in different fields, the provisions of which are required to be utilized by the concerned authorities for the object sought to be achieved under the respective Acts. The schemes under the two Acts are distinct and different. Scheme under the State Act can be implemented with recourse to the provisions of the Central Act which have been specifically stated therein. At the same time where there are specific provisions under the State Act the corresponding provisions of the Central Act will not apply. The provisions of the Land Acquisition Act relating to the acquisition of land alone, for which there are no specific provisions under the State Act, would be applicable to the acquisition under the State Act. This view was also taken by a three Judge Bench of this Court in a very recent judgment in the case of Bondu Ramaswamy v. Bangalore Development Authority [(2010) 7 SCC 129].

SELF-CONTAINED CODE For an Act to be a `self-contained code', it is required to be shown that it is a complete legislation for the purpose for which it is enacted. The provisions of the MRTP Act relate to preparation, submission and sanction of approval of different plans by the concerned authorities which are aimed at achieving the object of planned development in contradistinction to haphazard development. An owner/person interested in the land and who wishes to object to the plans at the appropriate stage a self-contained adjudicatory machinery has been spelt out in the MRTP Act. Even the remedy of appeal is available under the MRTP Act with a complete Chapter being devoted to acquisition of land for the planned development. Providing adjudicatory mechanism is one of the most important facets of deciding whether a particular statute is a `complete code' in itself or not.

This Court in Munithimmaiah v. State of Karnataka [(2002) 4 SCC 326] had the occasion to consider somewhat similar question in relation to the Bangalore Act and the provisions of the Land Acquisition Act. The provisions of Section 36 of the Bangalore Act refer to application of the provisions of the Land Acquisition Act. The Court rejected the plea that provisions of Sections 6 and 11A of the Land Acquisition Act providing a shorter period of limitation for publication of final notification and making of an award, were applicable to acquisition made under the Bangalore Act. Further, while holding that the Bangalore Act is a self-contained code, the Court held as under :

> "15. So far as the BDA Act is concerned, it is not an Act for mere acquisition of land but an Act to provide for the establishment of a development authority to facilitate and ensure planned growth and development of the city of Bangalore and areas adjacent thereto and acquisition of lands, if any, therefore is merely incidental thereto. In pith and substance the Act is one which will squarely fall under, and be traceable to the powers of the State Legislature under Entry 5 of List II of the Seventh Schedule and not a law for acquisition of land like the Land Acquisition Act, 1894

traceable to Entry 42 of List III of the Seventh Schedule to the Constitution of India, the field in respect of which is already occupied by the Central enactment of 1894, as amended from time to time. If at all, the BDA Act, so far as acquisition of land for its developmental activities is concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of BDA and the same was not also considered to be part of the Land Acquisition Act, 1894. It could not also be legitimately stated, on a reading of Section 36 of the BDA Act that the Karnataka Legislature intended thereby to bind themselves to any future additions or amendments, which might be made by altogether a different legislature, be it Parliament, to the Land Acquisition Act, 1894. The procedure for acquisition under the BDA Act vis-`-vis the Central Act has been analysed elaborately by the Division Bench, as noticed supra, in our view, very rightly too, considered to constitute a special and self- contained code of its own and the BDA Act and Central Act cannot be said to be either supplemental to each other, or pari materia legislations. That apart, the BDA Act could not be said to be either wholly unworkable and ineffectual if the subsequent amendments to the Central Act are not also imported into consideration. On an overall consideration of the entire situation also it could not either possibly or reasonably be stated that the subsequent amendments to the Central Act get attracted or applied either due to any express provision or by necessary intendment or implication to acquisitions under the BDA Act. When the BDA Act, expressly provides by specifically enacting the circumstances under which and the period of time on the expiry of which alone the proceedings initiated thereunder shall lapse due to any default, the different circumstances and period of limitation envisaged under the Central Act, 1894, as amended by the amending Act of 1984 for completing the proceedings on pain of letting them lapse forever, cannot be imported into consideration for purposes of the BDA Act without doing violence to the language or destroying and defeating the very intendment of the State Legislature expressed by the enactment of its own special provisions in a special law falling under a topic of legislation exclusively earmarked for the State Legislature."

A Constitution Bench of this Court in Prakash Amichand Shah v. State of Gujarat [(1986) 1 SCC 581], while dealing with the erstwhile Bombay Town Planning Act, 1954 (for short, `the Bombay Act') discussed in some elaboration the working under the Land Acquisition Act vis-`-vis the Bombay Act. The Court said that development and planning carried out under the Bombay Act is, primarily, for the benefit of the public. The local authority is under an obligation to function according to the Bombay Act and has to bear part of the expenses of development. It is in one sense a package deal. The proceedings relating to scheme are neither like acquisition proceedings under the Land Acquisition Act nor its provisions are made applicable to the Bombay Act either with or without modifications as in the case of Nagpur Improvement Trust Act, 1936.

Another school of thought has taken the view that while determining whether a statute is a self-contained code or not, relevant consideration would be whether such Act contains a bar for application of other statute by specific language or even by necessary implication to the Act in question. In some cases, there may be general application of other laws to the law in question or

there may be a reference of certain provisions of other statute in the provisions of the later statute and only those specified provisions would apply to the later statute while in other cases, the situation may be different where the later statute is not a self-contained code. It may be possible to enforce the bar or limitations created under the earlier statute even by subsequent amendments. We may refer to the judgment of this Court in the case of Gopal Sardar v. Karuna Sardar [(2004) 4 SCC 252], wherein the Court was concerned with the West Bengal Land Reforms Act, 1955. Some of the provisions of that Act referred to certain provisions of the Limitation Act, 1963. Section 8 of the West Bengal Land Reforms Act required service of the notice in terms of Section 5(5) within three months of the date of the transfer but no reference was made to any of the provisions of the Limitation Act in this Section. The contention raised was that the applicant could invoke Section 5 of the Limitation Act for condoning the delay in filing an application in terms of Section 8 of the West Bengal Land Reforms Act. The Court while emphasizing, that the West Bengal Land Reforms Act was a self-contained code, held as under:

> "13. Section 8 of the Act prescribes definite period of limitation of three months or four months, as the case may be, for initiating proceedings for enforcement of right of pre- emption by different categories of people with no provision made for extension or application of Section 5 of the Limitation Act. When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are made so as to give benefit of Section 5 of the Limitation Act and such provision is not made to an application to be made under Section 8 of the Act, it obviously and necessarily follows that the legislature consciously excluded the application of Section 5 of the Limitation Act. Considering the scheme of the Act being a self-contained code in dealing with the matters arising under Section 8 of the Act and in the light of the aforementioned decisions of this Court in the case of Hukumdev Narain Yadav, Anwari Basavaraj Patil and Parson Tools it should be construed that there has been exclusion of application of Section 5 of the Limitation Act to an application under Section 8 of the Act. In view of what is stated above, the non-applicability of Section 5 of the Limitation Act to the proceedings under Section 8 of the Act is certain and sufficiently clear. Section 29(2) of the Limitation Act as to the express exclusion of Section 5 of the Limitation Act and the specific period of limitation prescribed under Section 8 of the Act without providing for either extension of time or application of Section 5 of the Limitation Act or its principles can be read together harmoniously."

In the case of Church of North India v. Lavajibhai Ratanjibhai [(2005) 10 SCC 760], Bombay Public Trusts Act, 1950 under which the jurisdiction of the Civil Court is expressly barred was held to be a `complete code' in itself providing adequate machinery to deal with disputes relating to management of trust property. The provisions of this Act and the scheme thereof left no manner of doubt that the Act is a complete code in itself. It provides for a complete machinery for a person interested in a trust to put forward his claim before the Charity Commissioner, who is the competent authority under this Act to go into the said question and can prefer an appeal if he feels aggrieved by any decision.

Now, we may, while referring to an example, show when a statute may not be treated as a self-contained Code. In the case of Mariyappa v. State of Karnataka [(1998) 3 SCC 276], a Bench of this Court was concerned with the Karnataka Acquisition of Land for Grant of House Sites Act, 1972 (in short `the Karnataka Act') which was an Act of only seven Sections and Section 5 of which provided that provisions of the Land Acquisition Act shall mutatis mutandis apply. The Court, in paragraph 37 of the judgment, stated that there being no detailed machinery whatsoever in the Karnataka Act, it cannot be treated as a self-contained code. This clearly shows that if complete machinery or mechanism is not provided under an Act to ensure effective execution of the functions assigned therein with due protection of the rights of the interested persons within the framework of law, it may not be possible for the Court to hold that such a statute is a self-contained code.

It may not be possible to state parameters of universal application which could determine with precision as to whether an Act is a self-contained code or not. It is difficult and, in fact, may not even be permissible to formulate any hard and fast rule which could uniformly be applied to all statutes for such determination. We have merely indicated some of the features which could serve as precepts for the courts to analyse whether an Act is a complete code in itself or not. The expression `complete code in itself' has not been defined precisely. However, it will be of some help to understand what the word `code' means. It has been explained in P. Ramanatha Aiyar's `The Law Lexicon' (2nd Edn. 1997) as under :

> "A general collection or compilation of laws by public authority; a system of law; a systematic and complete body of law, on any subject such as Civil Procedure Code, Code of Criminal Procedure, Penal Code. etc. ... The code is broader in its scope, and more comprehensive in its purposes. Its general object is to embody, as near as practicable, all the law of the state, on any particular subject. It is more than evidentiary of the law; it is the law itself."

`Complete' further adds a degree of certainty to the code. It has to be a compilation of provisions which would comprehensively deal with various aspects of the purpose sought to be achieved by that law and its dependence on other legislations is either absent or at best is minimal. The provisions of the enactment in question should provide for a complete machinery to deal with various problems that may arise during its execution. Sufficient powers should be vested in the authority/forum created under the Act to ensure effectual and complete implementation of the Act. There should be complete and coherent scheme of the statutory provisions for attainment of the object and purpose of the Act. It essentially should also provide for adjudicatory scheme to deal with grievances/claims of the persons affected by enforcement of the provisions of the Act, preferably, including an appellate forum within the framework of the Act. In other words, the Act in itself should be a panacea to all facets arising from the implementation of the Act itself.

Upon analysis of the above principles and particularly keeping in mind the negative instance in the case of Mariyappa (supra), we may turn back to the provisions of the MRTP Act. The principal object of this legislation is planned development of the State of Maharashtra by preparing development plans for regions and town planning schemes and constitution of various authorities to achieve the said purpose. Incidentally, it includes the function of acquisition of land but for a very

limited purpose. It is not expected of the authorities to apply to the Government for a general acquisition but the acquisition has to be of the land which is required, reserved or designated under any development plan. Thus, it is an acquisition of a very limited connotation. The MRTP Act specifies all the authorities, their respective powers and functions for attaining the object of the Act.

The complete scheme has been provided under the MRTP Act for attaining the object of planned development. Various provisions of the Act comprehensively prescribe what and how the steps are required to be taken by the authorities under the Act, right from the stage of preparation of draft development plan to its finalization as well as preparation and finalization of all regional and town planning schemes. The MRTP Act clearly spells out as to how these schemes are to be implemented and by whom. Right of the interested person to raise objections, pre-finalization of the respective plans, is specifically provided. The authority before whom such objections are to be raised and who is to be granted hearing and by whom is clearly spelt out. There is no aspect which is not dealt with or provided for under the provisions of the State Act right from the initial stage to its final execution. Besides providing right of objection to the owner of the land or property, which fall within the development plan, the State Act also provides machinery for finalization and determination of disputes between the authorities and private parties. Furthermore, a person is entitled to raise all disputes including the dispute of ownership. The Arbitrator nominated under the MRTP Act has the jurisdiction to decide all such matters. The jurisdiction of the Arbitrator is a limited one like estimation and payment of compensation in relation to plots in distinction to lands as defined under the Act within the four corners of the provisions of Sections 72 to 74 of the MRTP Act with reference to Section 97 of the State Act. Some of his decisions are final, while on most of other decisions, an appeal lies to the Tribunal.

The MRTP Act besides being a code in itself has one pre- dominant purpose, i.e., planned development. Other matters are incidental and, therefore, should be construed to achieve that pre-dominant object. All the provisions of the Land Acquisition Act cannot be applied to the MRTP Act. The provisions of the MRTP Act have to be implemented in their own field. As far as the provisions relating to preparation, approval and execution of the development plans are concerned, there is hardly any dependency of the State Act on the provisions of the Land Acquisition Act. It may be necessary, sometimes, to acquire land which primarily would be for the purpose of planned development as contemplated under the MRTP Act. Some of the provisions of the State Act have specifically referred to some of the provisions of the Land Acquisition Act but for the limited purpose of acquiring land. Thus, the purpose of such reference is, obviously, to take aid of the provisions of the Central Act only for the purpose of acquiring a land in accordance with law stated therein rather than letting any provision of the Central Act hamper or obstruct the principal object of the State Act, i.e. execution of the planned development. There can hardly be any hesitation in concluding that the MRTP Act is a self-contained code and does not lose its colour or content of being a self-contained code merely because it makes a reference to some of the provisions of Land Acquisition Act for acquisition of land for the purpose of MRTP Act and determination of compensation in that behalf. The referred provisions of the Land Acquisition Act may only be taken recourse to that limited extent, within the extensive framework and for the purpose of MRTP Act.

Therefore, MRTP Act is an Act which completely provides for various steps in relation to execution of its object, constitution of various authorities to implement the underlying scheme of planned development, machinery for interested persons to raise their claims for adjudication under the provisions of this Act or at best to an authority referred to in the Act. Thus, we have no hesitation in holding that the MRTP Act is a complete code in itself. Whether the provisions of the Central Act 68 of 1984, with particular reference to Section 11A, can be read into and treated as part of the MRTP Act on the principle of either legislation by reference or legislation by incorporation?

At the very outset, we may notice that in the preceding paragraphs of the judgment, we have specifically held that MRTP Act is a self-contained code. Once such finding is recorded, application of either of the doctrines, i.e. `legislation by reference' or `legislation by incorporation', would lose their significance particularly when the two Acts can co-exist and operate without conflict.

However, since this aspect was argued by the learned counsel appearing for the parties at great length, we will proceed to discuss the merit or otherwise of this contention without prejudice to the above findings and as an alternative plea. These principles have been applied by the courts for a considerable period now. When there is general reference in the Act in question to some earlier Act but there is no specific mention of the provisions of the former Act, then it is clearly considered as legislation by reference. In the case of legislation by reference, the amending laws of the former Act would normally become applicable to the later Act; but, when the provisions of an Act are specifically referred and incorporated in the later statute, then those provisions alone are applicable and the amending provisions of the former Act would not become part of the later Act. This principle is generally called legislation by incorporation. General reference, ordinarily, will imply exclusion of specific reference and this is precisely the fine line of distinction between these two doctrines. Both are referential legislations, one merely by way of reference and the other by incorporation. It, normally, will depend on the language used in the later law and other relevant considerations. While the principle of legislation by incorporation has well defined exceptions, the law enunciated as of now provides for no exceptions to the principle of legislation by reference. Furthermore, despite strict application of doctrine of incorporation, it may still not operate in certain legislations and such legislation may fall within one of the stated exceptions. In this regard, the judgment of this Court in the case of M.V. Narasimhan (supra) can be usefully noticed where the Court after analyzing various judgments, summed up the exceptions to this rule as follows :

"(a) where the subsequent Act and the previous Act are supplemental to each other;

(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) where the amendment of the previous Act, either expressly or by necessary

intendment, applies the said provisions
to the subsequent Act."

With the development of law, the legislature has adopted the common practice of referring to the provisions of the existing statute while enacting new laws. Reference to an earlier law in the later law could be a simple reference of provisions of earlier statute or a specific reference where the earlier law is made an integral part of the new law, i.e., by incorporation. In the case of legislation by reference, it is fictionally made a part of the later law. We have already noticed that all amendments to the former law, though made subsequent to the enactment of the later law, would ipso facto apply and one finds mention of this particular aspect in Section 8 of the General Clauses Act, 1897. In contrast to such simple reference, legal incidents of legislation by incorporation is that it becomes part of the existing law which implies bodily lifting provisions of one enactment and making them part of another and in such cases subsequent amendments in the incorporated Act could not be treated as part of the incorporating Act. Ultimately, it is the expression and/or the language used in the new law with reference to the existing law that would determine as to under what class of referential legislation it falls. In some of the statutes, expressions like "shall for that purpose be deemed to form part of this Act in the same manner as if they were enacted in the body thereof"6 or "the provisions of Section of the said Act (set out in the Schedule) shall apply as if they were herein re-enacted"7 are typical examples of legislation by incorporation. Another glaring example of incorporation one finds in the provision of Bombay Municipal Corporation Act, 1949 where Section 284N uses the expression "the LA Act ... shall for that purpose be deemed to form part of this chapter as if enacted in the body hereof". Another feature of legislation by incorporation is that the language is explicit and positive. This demonstrates the desire of the legislature for legislation by incorporation. Self-contained enactment should be clearly distinguished from supplemental law. When the later law depends on the former law for procedural/substantive provisions or is to draw its strength from the provisions of the former Act, the later Act In Section 20 of 53 Vict. Ch 70 - Housing of the Working Classes Act, 1890.

Section 1(3) of 54 and 55 Vict. Ch 19 is termed as the supplemental to the former law. The statement of object and reasons of both the Acts, i.e. the MRTP Act and the Land Acquisition Act as well as the scheme of these Acts, we have already discussed at length. They are Acts which operate in different fields. One is a Central Act while the other is a State Act. They derive their source from different entries in the constitutional lists.

On behalf of the appellant, it was contended before us that the MRTP Act would be rendered unworkable and ineffective without the provisions of the Land Acquisition Act. It was also contended on behalf of the appellants that reservation and acquisition has a clear legal dichotomy and if acquisition lapses it will result in lapsing of reservation by operation of provisions of Section 11A of the Land Acquisition Act. Thus, it is implied that the provisions of Section 11A would form an

integral part of the MRTP Act and an acquisition will lapse in terms thereof in the event of default. While referring to the provisions of Sections 113A, 116 and 126(2) of the MRTP Act, it is stated that there is a generic reference to the provisions of the Land Acquisition Act. Therefore, all the amendments made by the Central Act 68 of 1984, with particular reference to Section 11A of the Land Acquisition Act, would be read into the provisions of the MRTP Act. Keeping in view the language used by the Legislature, it will inevitably be legislation by reference.

Per contra, the submission made on behalf of the respondents is that both these Acts operate in different fields and have a different object. The provisions specifically referred, clearly demonstrate that the intent of the legislature, at best, was to incorporate these limited provisions of the Land Acquisition Act and, but for the application of those provisions, nothing else would form part of the later law, i.e. the MRTP Act. This being legislation by incorporation, the general reference to the provisions of the Land Acquisition Act shall stand excluded. Both the laws, according to the respondents, are wholly dissimilar and the principal purpose of the MRTP Act can be achieved without the aid of the Land Acquisition Act which has a very limited and restricted application. It is argued that there being specific provisions providing for different time schedules in the MRTP Act at a number of places, it will not be permissible to read in a bar in that respect from another legislation. In other words, to bodily lift the provisions of the Land Acquisition Act and imprint them in the MRTP Act, including Section11A, would be impermissible as the State Legislature has already exercised its legislative power by enacting/amending Sections 126 and 127 of the MRTP Act in face of the provisions of Section 11A of the Land Acquisition Act.

Now, let us examine the specific reference made to the provisions of the Land Acquisition Act in the provisions of the MRTP Act. Section 113A of the MRTP Act provides that where any company or corporation has been declared to be the new town development authority under sub-section (3A) of Section 113, then the State Government shall acquire either by agreement or under the Land Acquisition Act any land within the area designated under this Act. Similarly, Section 116 of the MRTP Act gives power to the development authority constituted under sub-section (2) of Section 113 as having all powers of a planning authority under this Act as provided in Chapter VII for the purpose of acquisition either by agreement or under the Land Acquisition Act. This clearly shows that these provisions make reference to a specific aspect of the acquisition, i.e. for exercise of powers by the authority concerned for the purposes of Chapter VII of the State Act. Section 125 of the MRTP Act introduces a legal fiction as it requires that reservation and designation of land under the plan shall be deemed to be a public purpose within the meaning of the definition of Land Acquisition Act. Section 126 of the MRTP Act is the effective provision which refers to the Land Acquisition Act. In terms of Section 126(1), the land can be acquired for public purpose specified in the plan. It gives right to acquire even after publication of a draft regional plan. Whenever a land is required or reserved for any public purpose specified in any plan or scheme under the MRTP Act, the concerned authority may, with the exception of the provisions of Section 113A of the State Act, i.e. land designated under the Act connected with the development of the new town, acquire the land by different modes i.e. (a) by paying an amount agreed (by agreement); (b) in lieu of any such amount by granting the right specified under Section 126(1)(b); and (c) by making an application to the State Government for acquiring such land under the Land Acquisition Act. Section 126(2) lays down the procedure, primarily, as to how the application made under Section 126(1)(c) is to be dealt with by

the State Government and if it is satisfied, to make a declaration in the Official Gazette to the effect that the land is needed for a public purpose, in the manner provided in Section 6 of the Land Acquisition Act. Section 126(3) deals with the procedure to be followed after declaration contemplated under Section 126(2) has been published. The Collector has to proceed for acquisition of the land under the Land Acquisition Act and the provisions of that Act shall apply for acquisition. Market value of the land has to be determined with reference to the date specified in clauses (i) to (iii) of sub-section (3) of Section 126. In terms of proviso to Section 126(2) if the declaration is not made within one year from the date of publication of the draft regional plan or any other plan or the scheme, as the case may be, the authority loses the right to make such a declaration. Exception to this is contemplated under Section 126(4) that despite the above consequences, the Government still has the right to make a fresh declaration for acquisition of the land subject to the modification that 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.

Section 127 of the MRTP Act which deals with lapsing of reservation under this Act stood amended vide Maharashtra Amendment Act 16 of 2009. We have already reproduced above the amended and unamended provisions of Section 127 of the MRTP Act. It is noteworthy that in the unamended provision of Section 127, it was contemplated that if the proceedings for acquisition of such land under this Act or under the Land Acquisition Act are not commenced within such period, the owner/interested person of any land may serve a notice on the planning authority and if within six months from the date of the service of such notice, the land was not acquired or no steps were taken, the land shall be deemed to be released from such reservation. By amendment, the expression `if proceedings for acquisition of such land under this Act or under the Land Acquisition Act' stood deleted. This further buttresses the view that general reference to the provisions of the Land Acquisition Act was intentionally deleted by the Legislature and in its place specific reference to the provisions of Section 126(2) or 126(4) of the State Act was made and the period of six months was increased to 12 months. The legislative intent appears to make the MRTP Act a self- contained code and does not generally advert to the provisions of the Land Acquisition Act for execution of planned development. The default, its consequences and remedies, thus, have been specifically provided for under Section 126 of the MRTP Act and in that regard there is apparently no need to refer to the default clause contained in Section 11A of the Land Acquisition Act. We have also referred that time limitations and consequences of their default are specifically provided for in the MRTP Act by the Legislature and, therefore, it will not be appropriate to read into these provisions something which has not been stated by the Legislature on the inference that time limitations or bars created under the Land Acquisition Act would essentially have to be read as part of the MRTP Act. Sections 128 and 129 of the State Act are other relevant provisions which are required to be examined analytically. Both these provisions refer to certain definite aspects of acquisition under the provisions of the Land Acquisition Act. The State Government under Section 128(1) is vested with the power of acquiring land under the provisions of the Land Acquisition Act where any land which had been included as reserved/designated land for any purpose specified and that land is needed for a public purpose different from any such public purpose or purpose of the Planning Authority. The provisions of Section 128(2) deal with three different aspects that further reflect the mind of the Legislature to restrictively apply the provisions of the Land Acquisition Act and even give precedence to the provisions of the MRTP Act vis- `-vis that Land Acquisition Act. Firstly, the

Planning Authority or any other authority under the State Act shall be deemed to be a person interested in the land acquired; secondly while determining the amount of compensation to be awarded, the market value of the land shall be assessed as if land had been released from the reservation, allotment or designation; thirdly, the Collector or the Court shall take into consideration the damage, if any, that the authority has suffered or may sustain by reason of acquisition of such land under the Land Acquisition Act or otherwise and proportionate cost of the development etc., if any, incurred by the authority for the reason that such acquisition has been rendered abortive. Section 129 of the MRTP Act relates to exercise of powers for taking possession of the land in case of urgency akin to the provisions of Section 17 of the Land Acquisition Act. Proviso to Section 129(1) provides reference to payment of compensation to the interested person by the Collector for any damage sustained by the person which is caused by such sudden dispossession and compensation not excepted in Section 24 of the Land Acquisition Act and if such offer is not accepted, then it shall be allowed in awarding compensation for the said land under the provisions of the said Act. The compensation under the Land Acquisition Act is to be determined in accordance with the provisions of Section 23 while neglecting the matters stated under Section 24 of the said Act. However, the provisions of the State Act in terms of Section 128(2) mandate that despite the property being reserved, allotted or designated for a purpose, the same shall be deemed to be released from such reservation, allotment or designation while awarding compensation. This requirement is completely distinct from provisions of Section 23 of the Central Act. In other words, the value of the land acquired shall not be diminished because it has been reserved for a particular purpose. Reference to Section 24 of the Central Act is again very specific. It also needs to be mentioned that there are provisions regarding vesting of land in the State/Authority but still reference has been made to Section 16 of the Land Acquisition Act under Section 128(3) of the State Act. The specific reference to provisions of Land Acquisition Act and purpose to be achieved is clear from the language of the above-referred provisions of the State Act.

In other words, wherever the State Legislature considered it appropriate, it has made specific reference to a particular provision of the Land Acquisition Act and for attainment of a particular purpose. There is no general reference to the Land Acquisition Act in any of the provisions of the MRTP Act to say that the provisions of the former Act, in their entirety, will be applicable to all kind of proceedings and purposes under the later Act.

Another aspect which would support the view that it is legislation by incorporation and there is every legislative intent to exclude legislation by reference is that wherever there was a general reference to the provisions of the Land Acquisition Act like Section 127 of the MRTP Act, the same stands excluded/deleted by amendment of 2009. Furthermore, the entire Land Acquisition Act cannot be made applicable to proceedings under the MRTP Act where, unlike Land Acquisition Act, the proceedings commence and consequences take place the moment the land is designated or reserved under a plan, draft plan or even scheme. On the contrary, the proceedings under the Land Acquisition Act start when the notification under Section 4 of that Act is issued. This exclusion is of paramount significance as the provisions of the Land Acquisition Act relating acquisition would not come into play till the issuance of the notification under Section 4 thereof while that is not true under the MRTP Act. If the Legislature intended to apply the provisions of the Land Acquisition Act generally and wanted to make a general reference and implementation of those provisions, it could

have said that the provisions of the Land Acquisition Act would be applicable to the MRTP Act. Such expression is conspicuous by its very absence.

Besides the MRTP Act being a self-contained Code, these are enactments which, apparently, are dissimilar in their content and application. The provisions of Section 127 of the MRTP Act were amended long after the amendment of the Land Acquisition Act by Central Act 68 of 1984. The Legislature was fully aware of the entire matter including hardship of the land owners. The statement of objects and reasons for amendment of Section 127 of the MRTP Act conveys intent antipodal to that sought to be put forward by the appellants, that Section 11A of the Land Acquisition Act would be attracted. Section 11A was in existence at the time of amendment in 2009 of the MRTP Act and if it was intended to be applied to the MRTP Act there was hardly any need to amend Section 127 of the MRTP Act in the manner in which it was done. If the intention of the legislature was to permit lapsing of acquisition, in that event provisions of Section 11A of the Land Acquisition Act, per se, would have achieved the purpose. The 2009 amendment to the State Act restricted even lapsing of the reservation or designation only if there was default in compliance to the provisions of Section 126(2) and 126(4) of the MRTP Act. General reference to acquisition under the Land Acquisition Act was deleted as it was never intended to be read as a part of the State Act. Thus, the State Legislature in its wisdom restricted the consequences only to lapsing of reservation.

Now, let us examine these two settled doctrines with reference to judgments of this Court, particularly, the ones which have been relied upon by the learned counsel appearing for the parties. In the case of M/s. Ujagar Prints (supra), a Constitution Bench of this Court was dealing with the question whether the Central Excise and Salt Act, 1944 which defines the expression `manufacture' as defined in Central Excuse and Salt Act, 1984 which came to be enlarged by amendment of the definition the year 1980, would apply to the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and whether such an amendment of the Central Excise Act was ultra vires to Entry 84 of List I of Schedule VII to the Constitution and, therefore, beyond the competence of the Parliament. The Court held as under :

> "93. Referential legislation is of two types. One is where an earlier Act or some of its provisions are incorporated by reference into a later Act. In this event, the provisions of the earlier Act or those so incorporated, as they stand in the earlier Act at the time of incorporation, will be read into the later Act. Subsequent changes in the earlier Act or the incorporated provisions will have to be ignored because, for all practical purposes, the existing provisions of the earlier Act have been re-enacted by such reference into the later one, rendering irrelevant what happens to the earlier statute thereafter. Examples of this can be seen in Secretary of State v.
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> Hindusthan Co-operative Insurance Society, Bolani Ores Ltd. v. State of Orissa, Mahindra and Mahindra Ltd. v. Union of India. On the other hand, the later statute may not incorporate the earlier provisions. It may only make a reference of a broad nature as to the law on a subject generally, as in Bhajiya v. Gopikabai, or contain a general reference to the terms of an earlier statute which are to be made applicable. In this case any modification, repeal or re-enactment of the earlier statute will also be

> carried into in the later, for here, the idea is that certain provisions of an earlier statute which become applicable in certain circumstances are to be made use of for the purpose of the later Act also. Examples of this type of legislation are to be seen in Collector of Customs v. Nathella Sampathu Chetty, New Central Jute Mills Co. Ltd. v. Assistant Collector of Central Excise and Special Land Acquisition Officer v. City Improvement Trust. Whether a particular statute falls into the first or second category is always a question of construction. In the present case, in my view, the legislation falls into the second category. Section 3(3) of the 1957 Act does not incorporate into the 1957 Act any specific provisions of the 1944 Act. It only declares generally that the provisions of the 1944 Act shall apply "so far as may be", that is, to the extent necessary and practical, for the purposes of the 1957 Act as well."

Besides deciding this aspect directly with reference to doctrine afore-referred, the Bench also applied the doctrine of pith and substance. It held that entries to the Legislative List are not source of legislative power, but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression `with respect to' in Article 246 brings in the doctrine of `Pith and Substance'. In the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially `with respect to' the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic.

In the case of M.V. Narasimhan (supra), the Court while applying the principle of legislation by incorporation had read amendment to Section 21 of the Indian Penal Code defining a `public servant' into the provisions of Prevention of Corruption Act, 1947. The Court clarified that when provisions of a later Act borrowed the provisions of the IPC; the same became an integral and independent part of the subsequent Act and, therefore, usually remained unaffected by any repeal or amendment in the previous Act. But the Court, while spelling out the exceptions to the rule of legislation by incorporation, had applied one of such exceptions where the reading of the amended provisions of the earlier statute into the later enactment becomes necessary as non-incorporation thereof would render the subsequent Act wholly unworkable and ineffectual. The significant dictum of the court in this case after noticing other judgments was, "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".

In an earlier judgment of this Court in the case of Bajaya v. Gopikabai [(1978) 2 SCC 542], the Court was concerned with the provisions of Section 151 of the Madhya Pradesh Land Revenue Code, 1954 which provided that subject to personal law, the interest of the tenure-holder shall on his death, pass by inheritance, survivorship or bequest as the case may be. The argument addressed was that despite the fact that Hindu Succession Act, 1956 came into force subsequent to the M.P. Land Revenue Code, 1954, the expression `personal law' in Section 151 includes the definition in the generic law on the subject on the basis of the principle of legislation by reference. The Court, while

accepting this argument, held that it was well-known that legislature can legislate on a subject by reference if the subject is constitutionally within its legislative competence and also noticed that there were no words in the Section of the Code or elsewhere which limits the scope of the expression `personal law' to that prevailing on February 5, 1955. On the contrary, the words `on his death' used in Section 151 clearly show that the legislative intention was that `personal law' as amended up to date on which devolution of the tenure-holder's interest is to be determined, shall be the rule of decision.

The distinction between these doctrines received a new dimension founded upon a distinction between procedural and substantive provisions of the statute. In the case of Sant Joginder Singh (supra), the Court was concerned with the provisions of the MRTP Act amended by the Maharashtra Act 14 of 1971, specially failure to publish declaration within three years, as was then prescribed under proviso to Section 126(2) of the said Act, and the application of provisions of Section 11A of the Land Acquisition Act which provided limitation of two years for making award. Applying the principle of distinction between procedural and substantive provisions of the statute, the Court came to the conclusion that Section 11A cannot be read into the provisions of the MRTP Act and rejected the argument as the provisions of Section 23 of the Central Act have to be applied for determining compensation, Section 11A would also automatically apply. The Court found that Section 11A was a procedural provision while Section 23 was a substantive provision and held, "So, merely because Section 23 of the Central Act would apply to acquisition under the State Act, it is not enough to hold that what is contained in Section 11A would also apply". Even, the earlier judgments of this Court have taken the view that as the statutes like the present one do not contain specific procedure for determination of compensation payable for acquisition, the provisions of Section 23 of the Land Acquisition Act may be attracted. In the case of Land Acquisition Officer v. H. Narayanaiah [(1976) 4 SCC 9], wherein Section 27 of the Bangalore City Improvement Trust Act, 1945 referred to the provisions of the Land Acquisition Act insofar as they are applicable, in absence of there being a specific provision for computation of compensation, provisions of Section 23 of the Land Acquisition Act were held to be applicable by a Bench of three Judges of this Court.

In the case of Gauri Shankar Gaur (supra), a Bench of two Judges of this Court took divergent view while dealing with the challenge to the validity of Section 55 read with the Schedule to the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 which provided that the provisions of the Land Acquisition Act would apply in the matter of acquisition of land for the purpose of the Adhiniyam. One view was that the provisions of the Adhiniyam and the provisions of the Land Acquisition Act both co-existed independently in relation to the procedure prescribed under the respective Acts without, in any way, one colliding with the other. Thus, Section 55 and the Schedule did not become void. Justice K. Ramaswamy (as he then was) held that the limitation of three years prescribed under the first proviso to Section 6 of the Land Acquisition Act was not attracted, in its application, to the State of U.P. vis-`-vis the procedure prescribed in paragraph 2 of the Schedule to the Act read with Section 55 of the Act. In other words, the bar of limitation contained in the Land Acquisition Act would not apply. Justice R.M. Sahai's (as he then was) view was that in absence of express exclusion, it is more in interest of justice to hold that the restrictions of three years added by the proviso to Section 6 should be applied to the later Act. Any effort to demonstrate impossibility of completing proceedings within three years cannot be countenanced. Legislative intention cannot be frustrated by executive

inaction. The acquisition proceedings were, therefore, to come to an end after expiry of three years from the date of issuance of notification under the provisions of the UP Act analogous to Section 4 of the Land Acquisition Act. Thus, there was difference of opinion on this question of law between the Judges of the same Bench. Since the appeal was dismissed on different grounds by both the learned Judges, the matter remained at that stage.

The above dissent led to reference of the legal issue to a three Judge Bench in the case of U.P. Avas Evam Vikas Parishad (supra) where the Court took the view that the acquisition effected under the provisions of U.P. Avas Evam Vikas Parishad Adhiniyam, 1965, where Section 55 read with the Schedule of that Act adopted the provisions of the Land Acquisition Act, such adoption was held to be legislation by reference and, therefore, the land owners would be entitled to the benefits of Sections 23(1A), 23(2) and 28 as introduced by the Central Act 68 of 1984 as otherwise it would suffer from the vice of arbitrariness and hostile discrimination. This Court while dealing with the provision of Section 55 of the Adhiniyam held that the provisions of the Land Acquisition Act as amended by the Central Act 68 of 1984, relating to determination and payment of compensation, would be applicable to acquisition of land for the purposes of Adhiniyam.

The principle of legislation by incorporation as stated in Hindusthan Co-operative Insurance Society Ltd. (supra) had been followed in subsequent cases as well. It was clearly stated that in the case of legislation by incorporation, it is a statute existing at that time which stands incorporated in the later law to the extent it is adopted by the legislature and subsequent amendments are inconsequential for implementation of the law contained in the subsequent Act. Even in the case of Bolani Ores Ltd. (supra), the Court while dealing with the definition of `motor vehicle' in Section 2(18) of the Motor Vehicles Act, 1939 and Section 2(c) of the Bihar and Orissa Motor Vehicles Tax Acts, 1930 held that the amendment to Section 2(18) of the Motor Vehicles Act by Act 100 of 1956 could not be read into the Bihar Act, as the legislature had intended to incorporate the provisions of the Motor Vehicles Act as it stood in 1939.

These are the few examples and principles stated by this Court dealing with both the doctrines of legislation by incorporation as well as by reference. Normally, when it is by reference or citation, the amendment to the earlier law is accepted to be applicable to the later law while in the case of incorporation, the subsequent amendments to the earlier law are irrelevant for application to the subsequent law unless it falls in the exceptions stated by this Court in M.V. Narasimhan's case (supra). It could well be said that even where there is legislation by reference, the Court needs to apply its mind as to what effect the subsequent amendments to the earlier law would have on the application of the later law. The objective of all these principles of interpretation and their application is to ensure that both the Acts operate in harmony and object of the principal statute is not defeated by such incorporation. Courts have made attempts to clarify this distinction by reference to various established canons. But still there are certain grey areas which may require the court to consider other angles of interpretation. In the case of Maharashtra SRTC (supra), the court was considering the provisions of the MRTP Act as well as the provisions of the Land Acquisition Act. The Court finally took the view by adopting the principle stated in U.P. Avas Evam Vikas Parishad (supra) and held that there is nothing in the MRTP Act which precludes the adoption of the construction that the provisions of the Land Acquisition Act as amended by the Central Act 68 of

1984, relating to award of compensation would apply with full vigour to the acquisition of land under the MRTP Act, as otherwise it would be hit by invidious discrimination and palpable arbitrariness and consequently invite the wrath of Article 14 of the Constitution. While referring to the principle stated in the case of Hindusthan Cooperative Insurance Society Ltd. (supra) and clarifying the distinction between the two doctrines, the Court declined to apply any specific doctrine and primarily based its view on the plea of discrimination but still observed. :

> "8. ... 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."

In the case in hand, it is clear that both these Acts are self- contained codes within themselves. The State Legislature while enacting the MRTP Act has referred to the specific sections of the Land Acquisition Act in the provisions of the State Act. None of the sections require application of the provisions of the Land Acquisition Act generally or mutatis mutandis. On the contrary, there is a specific reference to certain sections and/or content/language of the section of the Land Acquisition Act in the provisions of the MRTP Act. Section 113A of the State Act refers to acquisition of land under the Land Acquisition Act for the purpose under Section 113(3A) which in turn refers to the complexity and magnitude of the work involved in developing any area as a site for new town. Section 116 of the State Act refers to the power which shall vest in a Developing Authority, constituted under Section 113(2) of the MRTP Act, for acquisition by agreement or under the Land Acquisition Act, as provided in Chapter VII of the MRTP Act. Section 125 of the State Act provides that any land which is required, reserved or designated in a regional plan or a scheme for a public purpose, which shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act. Section 126(1)(b) provides for payment of an amount equivalent to the value of lessor's interest to be determined by the authorities on the basis of the principles laid down in the Land Acquisition Act. Thus, the reference to the provisions of the Land Acquisition Act is only for the purpose of adopting the principles stated therein for a very limited purpose. In terms of Section 126(1)(c) of the MRTP Act, the application to the State Government has to be made for acquiring such land under the Land Acquisition Act. Such land refers to the lands which are required only under the provisions of the MRTP Act. Section 126(2) refers to Section 6 of the Land Acquisition Act only for the purpose of format in which the declaration has to be made. In terms of Section 126(3), on publication of the declaration, the Collector shall proceed to take order for acquisition of the land under the State Act, i.e. for the purpose of acquisition of land; the procedure adopted under the Land Acquisition Act shall be adopted by the Collector and nothing more. The afore-referred provisions of the State Act clearly frame a scheme for planned development with limited incorporation of some of the provisions of the Land Acquisition Act. The provisions of the State Act were amended last in point of time and, therefore, the State Legislature was aware of the relevant

existing laws including Section 11A of the Land Acquisition Act. The intent of the legislature to exclude the application of Section 11A clearly emerges from the fact that while amending Section 127 of the MRTP Act, it made no reference, generally or specifically, to the said provision rather it deleted reference to the provisions of the Land Acquisition Act from the unamended provisions of Section 127. Reference to Section 16 of the Land Acquisition Act in the State Act, under Section 128(3) of the State Act, is again relatable to the acquisition proceedings under the Land Acquisition Act, as under Section 83 of the State Act, the land could vest in the Planning Authority even at the threshold and it is vesting of a different kind than contemplated under Section 16 of the Land Acquisition Act. The purpose and intent of Section 129 of the MRTP Act is akin to the provisions of Section 17 of the Land Acquisition Act and from linguistic point of view, there is similarity in the two Sections but still the State Act has provided for a complete scheme with regard to possession and compensation payable to the owner of the land in cases of urgency. Thus, it is clear that there is no general reference to the provisions of the Land Acquisition Act and they shall not apply as such or even mutatis mutandis to the MRTP Act. On the contrary, reference to the Central Act, wherever is made in the State Act, is specific and for a definite purpose.

Another argument which had been vehemently advanced on behalf of the appellant is that the reference to the provisions of the Land Acquisition Act in different provisions of the MRTP Act would require that the proceedings commence from Section 6 of the Central Act onwards and award is made in terms of Section 11 of that Act and as those provisions apply to these proceedings, Section 11A would automatically come into play so would the other provisions of the Land Acquisition Act. The expression `under the said Act' in Section 126(3) of the MRTP Act is sufficient indication that it is a legislation by reference and, thus, all subsequent amendments would apply. It was also contended that on a bare reading of Sections 126 and 127 of the MRTP Act, it is clear that it does not exclude the application of Section 11A of the Land Acquisition Act. We certainly are not impressed by this argument advanced on behalf of the appellants. Firstly, if we examine the acquisition proceedings under the Land Acquisition Act, they commence only when a notification under Section 4 of the Land Acquisition Act is issued. Section 5A of the Central Act makes it incumbent upon the authorities to invite objections and decide the same before issuing declaration under Section 6 of the Land Acquisition Act. All these proceedings have specifically been given a go-by under the MRTP Act, where notification is to be issued under Section 126(2) in the manner provided under Section 6 of the Land Acquisition Act. Secondly, specific reference to various sections of the Land Acquisition Act in the MRTP Act necessarily implies exclusion of the provisions not specifically mentioned therein. Lastly, acquisition proceedings under the MRTP Act are commenced by issuance of a declaration under Section 126(2) and then the procedure prescribed under the Land Acquisition Act is followed upto passing of award under Section 11 of that Act. Further, determination of compensation will again depend upon the principles stated in Sections 23 and 24 of the Land Acquisition Act but subject to Sections 128(2) and 129(1) of the MRTP Act. Statutory benefits accrued under Sections 23(1A), 23(2) and 28 of the Land Acquisition Act would be applicable as held by this Court in U.P. Avas Evam Vikas Parishad (supra). Vesting, unlike Section 16 of the Land Acquisition Act which operates only after the award is made and compensation is given, whereas under the MRTP Act it may operate even at the initial stages before making of an award, for example, under Sections 126(1)(c) and 83. While referring to Section 6 of the Land Acquisition Act, the State Legislature has not adopted, specifically or otherwise, the period mentioned in proviso to

Section 6(1) of the Land Acquisition Act. On the contrary, different time frames have been postulated under different provisions of the MRTP Act. If those limitations of time are not adhered to by the concerned authorities, the consequences have also been provided therefor. From the stage of initiation of steps for preparation of draft plans to the finalization of the scheme, it takes considerable time. Furthermore, its implementation at the ground level, takes still much more time. If this entire planned development which is a massive project is permitted to lapse on the application of Section 11A of the Central Act, it will have the effect of rendering every project of planned development frustrated. It can hardly be an argument that the Government can always issue fresh declaration in terms of Section 6 of the Land Acquisition Act and take further proceedings. Recommencement of acquisition proceedings at different levels of the hierarchy of the State and Planning Authority itself takes considerable time and, thus, it will be difficult to achieve the target of planned development. This clearly demonstrates that all the provisions of the Land Acquisition Act introduced by later amendments would not, per se, become applicable and be deemed to be part and parcel of the MRTP Act. The intent of the legislature to make the State Act a self- contained Code with definite reference to required provisions of the Land Acquisition Act is clear.

Besides this, another very important aspect of the present case is that if the provisions of Section 11A of the Land Acquisition Act are applied or deemed to be incorporated by application of any doctrine of law into the provisions of MRTP Act, it will have the effect of destroying the statutory rights available to the State Government and/or the Planning Authority. For instance, proviso to Section 126(2) of the State Act provides that where a declaration in the manner provided in Section 6 of the Land Acquisition Act in respect of the said land is not made within one year from the date of publication of draft regional plan, thereafter no such declaration shall be made. Section 126(4) makes an exception to the consequences stated in proviso to Section 126(2) that the State Government, notwithstanding those provisions, can make a fresh declaration for acquiring the land under the Land Acquisition Act. However, the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring such land afresh. In other words, the rest of the machinery provided under the Act would not operate after the prescribed period. However, in terms of Section 127 of the MRTP Act, if any land reserved, allotted or designated for any purpose specified is not acquired by agreement within 10 years from the date on which final regional plan or final development plan comes into force or if a declaration under sub-sections (2) or (4) of Section 126 of the MRTP Act is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice upon such authority to that effect and if within 12 months from the date of service of such notice, the land is not acquired or no steps, as aforesaid, are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and the land would become available to the owner for the purposes of development. The defaults, their consequences and even exceptions thereto have been specifically stated in the State Act. For a period of 11 years, the land would remain under reservation or designation, as the case may be, in terms of Section 127 of the MRTP Act(10 years + notice period). However, if the provisions of Section 11A of the Central Act were permitted to punctuate a scheme of the State Act and the award is not made within two years from the date of declaration under Section 6 of the Central Act, the acquisition proceedings will lapse which will frustrate the rights of the State as well as the scheme contemplated under Section 126 as well as Section 127 of the State Act and

that would not be permissible in law. This being legislation by incorporation, the general reference to the provisions of the Land Acquisition Act shall stand excluded.

While applying any of the doctrines, the Court will have to take care that there is no distortion or destruction of the provisions of the principal statute. For examining this aspect, it really would not matter whether we apply the doctrine of incorporation or reference to the facts of the present case. It will have to be examined on the touch stone of effective and complete workability while protecting legislative intent. Primarily, we have to examine whether incorporating provisions of Section 11A of the Land Acquisition Act into the provisions of MRTP Act by reference would disturb the scheme of the MRTP Act and cause legal and practical impediments in execution of this Act. Section 126(2) of the State Act refers to the manner of declaration as contemplated under Section 6 of the Land Acquisition Act but the legislature intentionally avoided making any reference to other features contained in Section 6 of the Central Act as well as the time frame prescribed under that Act. On the contrary, proviso to Section 126(2) of the MRTP Act spells out its own time frame whereafter such declaration cannot be made subject to the provisions of Section 126(4). The unamended provisions of Section 127 of the State Act though refer to the acquisition under Land Acquisition Act but without making any reference to the time frame prescribed under the said Act. In this Section also, the specific time frame and the consequences of default thereof have been stated. Sections 128 and 129 of the MRTP Act relate to acquiring land for the purpose other than for which it is designated in any plan or scheme and taking of possession of land in cases of urgency respectively. The Court cannot lose sight of one very important fact that the MRTP Act is an Act relating to planned development and acquisition is an incidental aspect thereof. Planned development is quite different from merely `achieving a public purpose' for which the land is acquired under the provisions of the Land Acquisition Act. Development plan, Regional Plan and town planning scheme are major events in the development of a State. They are controlled and guided by different financial, architectural and public interest for the development including macro and micro planning of the entire State. The provisions relating to planned development of the State or any part thereof, read in conjunction with the object of the Act, show that different time frames are required for initiation, finalization and complete execution of such development plans. The period of 10 years stated in Section 127 of the MRTP Act, therefore, cannot be said to be arbitrary or unreasonable ex facie. If the provisions of Section 11A of the Land Acquisition Act, with its serious consequence of lapsing of entire acquisition proceedings, are bodily lifted and read into the provisions of MRTP Act, it is bound to frustrate the entire scheme and render it ineffective and uncertain. Keeping in view the consequence of Section 11A of the Central Act, every development plan could stand frustrated only for the reason that period of two years has lapsed and it will tantamount to putting an end to the entire development process. Another reason for rejecting the contention of the appellants is that for the full and complete implementation of the scheme de hors such reservation, allotment and designation, lands have to be acquired and once acquisition as argued, fails on the application of Section 11A of the Central Act, those lands would have to be restored to the owners while lands of other plot owners under the same scheme would continue to be under reservation, allotment or designation. Even this would render the scheme unworkable. If the legislature has opted not to introduce any such limitation in the MRTP Act, then to read the same with reference to the provisions of the Land Acquisition Act would be unjust and render the scheme under the State Act completely unworkable. That certainly is not the legislative intent. Thus, in our view, reading of Section 11A of the Land Acquisition Act into

Chapter VII of the MRTP Act will render the substantive provisions of the State Act ineffective, unworkable and may frustrate the object of the Act materially.

One of the pertinent principles that the Court should keep in mind while applying referential legislation as a tool of interpretative application is that such interpretation should not, in any way, defeat the object and essence of principal legislation. The likelihood of any interference with the scheme under the principal Act would tilt against accepting such an interpretation.

Counsel appearing for the appellant strenuously argued with the aid of equitable principles that the judicial discretion while referring to such statutes should tilt in favour of the owners of the land rather than in favour of the State which in any case is exercising its power of eminent domain. The contention is that Section 11A of the Land Acquisition Act should be read into the MRTP Act on equitable grounds, as that alone will balance the rights of the citizens vis-`-vis right of the State. In other words, if a declaration is made under Section 126(2) of the State Act in the manner specified under Section 6 of the Central Act but consequently an award is not made within two years of such declaration, then the acquisition and all proceedings thereafter would lapse in terms of Section 11A of the Central Act. It was pressed that if this contention is not accepted, great injustice will be caused to the appellants inasmuch as they will have to wait for years together for finalization of the proceedings and 10 years, in any case, is an unduly long period. Per contra, the respondents argue that induction of Section 11A into the MRTP Act would hamper the scheme and would frustrate its object.

We find no merit in the contention raised on behalf of the appellants. The Court cannot lose sight of the fact that the acquisition of land for planned development under the MRTP Act may be completed much prior to the time frame stipulated under Sections 126 and 127 of that Act. Once the acquisition is complete and land is vested in the State, the person interested ceases to have any interest in the land in question. Even for variety of other reasons, this contention cannot be accepted. Firstly, the provisions of the MRTP Act do provide for time limitation as well as the consequences in the event of default. Secondly, wherever there is delay, despite such framework provided under the MRTP Act, the applicants are duly compensated by payment of compensation. If the provisions of Section 11A of the Land Acquisition Act are read and enforced stricto sensu in the MRTP Act, inevitable consequences would be that various development schemes under the MRTP Act would come to a halt and the larger public interest would suffer. On the other hand, some inconvenience may be caused to the owners/interested persons of the land by non-induction of provisions of Section 11A of the Central Act. Thus, private interest would suffer which, in comparison to larger public interest, can hardly be a consideration for accepting the contention raised on behalf of the appellant. It has been held by various judgments of this Court and rightly so that the provisions of Sections 23(1A), 23(2) and 28 of the Land Acquisition Act which relate to payment of interest and solatium with regard to the amount of compensation determined under the award made by the Collector under Section 11 of that Act, is an adequate compensation to the appellants for the delay which may be caused by the Government due to avoidable and/or unavoidable circumstances. On the contrary, if acquisition and all proceedings thereafter are permitted to lapse in terms of Section 11A of the Land Acquisition Act, the development plans which may have already commenced or even progressed may come to a standstill causing huge damage to

the public interest as well as to the State Revenue which, ultimately, is nothing but public funds. This is more so for the reason that the lands come under a reservation, designation as land required for plans including township even when the draft plans are prepared and approved by the State. From whatever point of view this is examined, it is not possible to read the provisions of Section 11A of the Land Acquisition Act into the MRTP Act without adversely affecting the very object of the MRTP Act and causing impediments, legal or otherwise, in the implementation of the development plans. These Acts operate in different fields and such incorporation by reference would be incompatible with the cause of the MRTP Act, particularly, when the reference to the provisions of the Land Acquisition Act are, primarily, for achieving the purpose of the MRTP Act.

Various judgments of this Court, which have been relied upon by the learned counsel appearing for the respective parties, appear to have taken the view that doctrine of legislation by reference would ipso facto include all the prospective amendments to the earlier statute into the later statute. Further, it was contended that this rule of legislation by reference is a rule to which, so far, no exceptions have been carved out like those to the principle of legislation by incorporation as provided in the case of M.V. Narasimhan (supra). However, during the course of hearing, all the learned counsel appearing for the respective parties contended and fairly stated that the rule of legislation by reference too can have exceptions though to a limited extent. Having perused and analyzed the various judgments cited at the Bar we are of the considered view that this rule is bound to have exceptions and it cannot be stated as an absolute proposition of law that wherever legislation by reference exists, subsequent amendments to the earlier law shall stand implanted into the later law without analyzing the impact of such incorporation on the object and effectuality of the later law. The later law being the principal law, its object, legislative intent and effective implementation shall always be of paramount consideration while determining the compatibility of the amended prior law with the later law as on relevant date. It will be useful to apply the `test of intention' and `test of unworkability' with their respective contextual reference while determining the applicability of either of the doctrines and for that matter, even on the applicability of the amended law to the later law. Impact analysis on the workability of the respective legislation shall be a relevant consideration for resolving such an issue. There can be instances where the amended law, if applied and treated as incorporated in the principal legislation, may be apparently unadjustable to the scheme of that legislation. In that circumstance, it will be unfair to interpret the amended law as deemed to be incorporated, irrespective of its consequences on the implementation of the provisions of the principal Act. It is emphasized that the object of the principal Act should not be permitted to be defeated on the basis of either of the doctrines above referred. Hence, there is need for carving out exceptions to the rule of legislation by reference as well. Examples where such reference would be impermissible are as follows :

a) Legislation by reference should not result in defeating the object and purpose of the later Act;

b) Where the amendments to the earlier law are read into the subsequent law as a result of legislation by reference, if the result is irresolvable conflict between their provisions or it results in destroying the essence and purpose of the principal Act (later law).

The above exceptions to the doctrine are not exhaustive but are merely indicative. The possibility of other exceptions to this doctrine cannot be ruled out as it is difficult for this Court to state all such exceptions with precision. Furthermore, defining such exceptions with exactitude will not even aid the ends of justice. We have already noticed that all the learned counsel appearing for the parties are ad idem that it would be necessary to carve out such exceptions to apply the doctrine appropriately, advantageously and objectively.

Synoptic analysis of the stated doctrines leads us to conclude that it is a case of legislation by incorporation. The reference to the provisions of the Central Act is specific as opposed to general. The State Act uses similar but definite language and expressions while referring to the provisions of the Central Act indicating the intent of the legislature not to adopt or even apply the provisions of the Central Act generally. This premise clearly is more than suggestive of the animus imponentis to exclude the application of the provisions of Central legislation prescribing time frame and consequences of default thereof to the State Act. It will give rise to an irresolvable conflict amongst the provisions of the two legislations if provisions like Section 11A of the Land Acquisition Act are to be read into the State law. Even if the contention advanced by the appellant is accepted, for the sake of argument, it will still fall within the exceptions stated (supra) to the principle of legislation by reference. Reading such provisions into the State law would result in destroying the essence and effective implementation of the State law. We have discussed the above plea in regard to referential legislation as an alternative argument addressed by the learned counsel for the respective parties. While holding that it is a case of legislation by incorporation, we still are of the considered view that some of the amended provisions of the Central Act would be applicable to the State Act or read as a part thereof, with reference to the doctrine of pith and substance and harmonious application of the statutes. These principles we shall shortly proceed to discuss.

Harmonious Application Having analyzed the niceties of the doctrines and principles of law at some length, let us now proceed to examine whether both these statutes, being self-contained codes in themselves, can be applied harmoniously to achieve the object of the State Act without any conflict, with particular reference to acquisition proceedings. As it is not always necessary for the Courts to examine conflict or inconsistency between the two statutes, one enacted by the State and other by the Centre, in such situation one Act itself may afford the key to the solution of the problem, which may relate to construction of the provisions of the statute. The Central law can be applied to the State law for a purpose and with such adjustments as may be contemplated under the relevant law. In the case of Patna Improvement Trust v. Smt. Lakshmi Devi [AIR 1963 SC 1077], the majority of the four Judge Bench took such a view and held as under:

> "5. It is not necessary to go into the argument of inconsistency between the Bihar Act and the Land Acquisition Act or the special Act excluding the general because it appears to us that the various provisions of the Bihar Act themselves afford the key to the solution of the problem before us which is one of construction. Section 71 of the Bihar Act which modifies the Land Acquisition Act, itself states that for the purpose of acquisition of land for the Trust under the Land Acquisition Act, that Act (Land Acquisition Act) shall be subject to the modification specified in the Schedule. Therefore even for the purpose of acquiring land for the Trust the machinery of the

> Land Acquisition Act as modified is contemplated. It does not exclude the Land Acquisition Act, on the contrary it makes it applicable but subject to its modifications and exceptions..."

The Court has to keep in mind the clearly stated legal distinction between reservation and designation on one hand and acquisition on the other. These are well defined terms used by the Legislature in both the enactments and they do not admit any synonymity or interchangeability. The reservation under the MRTP Act necessarily may not mean and include acquisition. The acquisition under the Land Acquisition Act may not necessarily mean and include reservation. They are well explained concepts within the legislative scheme of the respective Acts. It may not be necessary at all for an appropriate authority to always acquire the entire or part of the land included in the planned development, while there may be cases where the land is acquired for the purpose of completing planned development. With this distinction in mind, let us, again, refer to some of the relevant provisions of both the enactments. Once the notification under Section 126(2) of the MRTP Act has been issued in the manner prescribed under Section 6 of the Land Acquisition Act, the mechanism stated under the provisions of the Land Acquisition Act, for the limited purpose of acquisition and determination of compensation, would be read into the State Act. It is provided under the provisions of the State Act that the Collector shall take order in terms of Section 126(3) for acquisition of the land after declaration under Section 126(2) has been issued. The provisions of Section 126(3) of the MRTP Act are similar to the provisions of Section 7 of the Land Acquisition Act. Thereafter, the authority responsible for initiating the acquisition proceedings is expected to comply with the provisions of Sections 9 and 10 and finally make an award under Section 11 of the Central Act. With passing of the award, the first phase of proceedings for acquisition is complete. Undue delay in completion of proceedings was a matter of concern both before the Parliament and the State Legislature when the respective Acts were amended. This had led to introduction of certain beneficial provisions in the Land Acquisition Act which were intended to give additional benefits by way of interest and solatium to the owner/interested person in the land on account of delay in completion of such proceedings. These are Sections 23(1A), 23(2) and 28 of the Land Acquisition Act which are in consonance with the scheme of the State Act and in no way obstruct the planned development, rather they ensure proper balance between private and State interest by granting just and fair compensation to the claimants. A three Judge Bench of this Court in the case of U.P. Avas Evam Vikas Parishad (supra), has already taken the view that these provisions are to be applied while determining compensation payable for acquisition of land and we see no reason to differ with the view taken. The State Act does not provide for any specific machinery for determination of compensation and rights of the claimants when an award is made. Again, to this extent, recourse to provisions of Section 18 of the Land Acquisition Act for making a reference to the Court of competent jurisdiction at the behest of owner/interested person as well as provisions of appeal to the High Court would be attracted as the remedy available to the claimant. Of course, compensation would have to be determined with reference to the principles stated under Sections 23 and 24 of the Land Acquisition Act which have been made applicable by judicial pronouncements but, again, subject to the restrictions stated under Sections 128(2) and 129 of the State Act. The provisions of Section 72 of the MRTP Act require determination of disputes referred to in that section by the Arbitrator. The jurisdiction and powers of the Arbitrator as well as of the Tribunal under Section 74 of the State Act have a very limited scope. The Arbitrator can only adjudicate the disputes which

strictly fall within the ambit of his jurisdiction under Section 72(3) clauses (i) to (xviii) of the State Act. Clauses (iii) and (iv) of Section 72(3) of the MRTP Act provide for fixation of value and difference between the values of the `original plots' and the `final plots' as well as estimating the compensation payable for the loss of the area of the `original plot' in accordance with the provisions contained in clause (f) of sub- section (1) of Section 97 of the MRTP Act which deals with cost of a town planning scheme. This adjudicatory power is in relation to the `plots' as defined under Section 2(21), in distinction to compensation payable for acquired `land' as defined under Section 2(14) of the State Act. The provisions of Sections 72 and 74 of the MRTP Act grant specific power and jurisdiction to the Arbitrator and the Tribunal respectively. None of these provisions deal with the concept of land acquisition and payment of compensation in terms of the Central Act which the State legislature has specifically provided by devoting a complete chapter to acquisition (Chapter VII) in the State Act. It is also pertinent to note that predominantly the provisions of the State Act relate to planned development. The provisions of Chapter V(b) with particular reference to Sections 72, 73 and 82 to 86 of the State Act are another pointer towards the limited jurisdiction of the Arbitrator. The principal role of the Arbitrator is relatable to the events occurring between finalization of draft plan to approval of the final scheme, under the provisions of the Act, and the disputes connected thereto.

Another very specific power vested in the Arbitrator is performance of the functions attributed to it under Section 83 of the State Act. According to that Section, possession of the land can be taken in advance of town planning scheme with reference to the draft scheme. The Planning Authority is entitled to make an application, through the Arbitrator, to the State Government to vest in it the land, without building, shown in the draft scheme. If the Government is satisfied that such land is urgently necessary in the public interest, it could empower the Planning Authority to enter upon the land and may direct the Arbitrator to take possession of the land by notification in the Official Gazette. The Arbitrator under Section 83(2) and 83(3) of the State Act is required to serve a notice to the person interested in the land to give possession of the land to the Arbitrator or any person authorized by him within the specified period. If there is default of compliance to his directions issued under Section 83(3), the Arbitrator can request the Commissioner of Police or District Magistrate to enforce delivery of possession of land under Section 84 of the MRTP Act. Section 85 of the State Act directs that the person interested in such land shall be entitled to interest at the rate of 4 per cent per annum on amount of compensation payable to him under the final scheme in respect of the said land from the date on which possession is taken till the date on which the amount of compensation is paid to him by the Planning Authority. These provisions (Sections 83 to 85 of the MRTP Act) do not empower the Arbitrator to determine the compensation and no such power is vested in the Arbitrator under Section 72 of the State Act too. The right of the person interested in the plot to receive compensation and interest as contemplated under Section 85 of the MRTP Act arises only when it is part of the land possession of which is taken as part of the final scheme. The final scheme is to be sanctioned by the Government as per the provisions of Section 86 of the MRTP Act.

Section 102, which falls in Chapter V(h) of the State Act, relates to payment of compensation in respect of property or right injuriously affected by the making of town planning scheme. Even this Chapter does not talk of compensation payable for acquisition of land which is governed by Chapter

VII and the relevant provisions of the Central Act. The provisions of the Central Act, which are read into the State Act by specific reference, do not cause any impediment in proper execution and attainment of the object of planned development, in fact, it is a pragmatic view which would further the cause of the State Act. The provisions which provide for a time frame, consequences of default and lapsing of the proceedings under the amended Central Act cannot be deemed to be incorporated into the State Act by fiction of law. We have already dealt with this aspect in some detail. Suffice it to note that their deemed incorporation will disturb the working under the State Act and, simultaneously, defeat its purpose. Different Benches of this Court, and for valid reasons, have taken the view that provisions of Section 6 as well as Section 11A of the Central Act are not applicable and cannot be read into the State Act. The law enunciated in the case of Gauri Shankar Gaur (supra) in so far as it is in line with the principles stated in this judgment is the correct enunciation of law. The view of this Court in the case of Sant Joginder Singh (supra) is again the correct statement of law but for reasons stated in this judgment and reasons recorded in that judgment other than the distinction carved out between procedural and substantive provisions of a statute. We may notice that Gauri Shankar Gaur (supra) was followed in Satya Pal v. State of U.P. [(1997) 9 SCC 117], wherein the Court took the view that Section 11A of the Land Acquisition Act would not be applicable to the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965.

We have already noticed that reservation, designation and acquisition are different concepts of distinct scope, application and consequences. The acquisition of land, under the provisions of the Central Act, has to be for the purpose of the State Act. There is a complete and comprehensive scheme on harmonious application of both the Acts when specific provisions of the Central Act, as contemplated under the State Act, alone are read into the State Act. The Planning Authority is expected to prepare the plan indicating what land it needs to acquire for implementation of the development plan. Like town planning scheme, once it is finalized, all concerned must adhere thereto as it is a part of enforceable law and consequences of default would accordingly flow. No person can develop any property contrary to Development/Regional Plan or town planning scheme and permissions are required to be obtained under various provisions of the State Act. Acquisition of land may become necessary for completing the planned development. Thus, the acquisition will only be for planned development as required under Section 126 of the State Act. Of course, the State Government has been vested with the power to acquire land for a purpose other than the one for which it is designated in any plan or scheme, in terms of Section 128 of the State Act. Still, the acquisition by the State under those provisions has to be for the authorities specified under the MRTP Act or for Maharashtra Industrial Development Corporation under the provisions of the Maharashtra Industrial Development Act, 1961.

The vesting of land, again, has different connotations when examined in light of different provisions of the State Act. Section 83(3) of the MRTP Act provides for vesting of land in the Planning Authority, free from encumbrances, in advance of town planning scheme. Section 88 of the MRTP Act mentions vesting in the Planning Authority, free from encumbrances, as one of the effects of final scheme, for the purpose of handing over possession of the final plots to the owners to whom they are allotted in that scheme. Section 128(3) of the MRTP Act provides for vesting of land in the State Government under Section 16 or 17 of the Land Acquisition Act, as the case may be, when the land is acquired for the purpose other than the one for which it is designated and the plan or the

scheme shall be deemed to be suitably varied by reason of acquisition of the said land. Section 129(1) of the MRTP Act relates to a situation where urgency provisions are invoked by the State upon an application made by the Planning Authority and possession of land is taken thereof, then it shall vest without any further assurance and free from encumbrances in the State Government. There are different kinds of vesting of lands as mentioned in the two Acts. The State Act has multi-dimensional purposes leading to primary object of planned development, while the Central Act has only one dimension, i.e. acquisition of land for a specified public purpose. The land, in terms of Section 16 of the Central Act shall vest in the State free of encumbrances only when the compensation is paid and possession of the land is taken under that Act. Section 48 of the Central Act empowers the State to withdraw from acquisition of any land of which possession has not been taken, despite the fact that award may have been pronounced in terms of Section 11 of the Central Act. But once there is complete vesting of land in the State it amounts to transfer of title from owner to the State by fiction of law. Neither the Central Act has any provision to deal with re-vesting of the land in the owner, nor does it appear to be permissible within the scheme of both the Acts. Corollary to this would be that even where the reservation lapses as a result of default specified in the provisions of Sections 49, 126 and 127 of the State Act the acquisition of the vested land would not, per se, lapse. The provisions of Section 11A of the Land Acquisition Act do not have any application to such cases under the provisions of MRTP Act. Furthermore, the provisions of Sections 126(2) and 127(1) of the State Act proceed on the basis that there has been no acquisition of land or there is a default in acquiring the land. The bare reading of these provisions puts the matter beyond ambiguity that where the land has been acquired these provisions would not apply. This is so because if the land stands acquired and owner is divested of its title he is left with no interest in the acquired land or even against the reservation of such land. Where lands have not been acquired and the default persists for periods specified under the relevant provisions, that land would become available, free of reservation or designation, to the owner for developing it in accordance with law. The legislature in its wisdom, and appears to us rightly so, has not referred to lapsing of acquisition as a consequence of the default contained in Section 127 of the State Act. Section 127 opens with the words "If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years ....." or if a declaration under sub-section (2) or sub-section (4) of Section 126 of the MRTP Act is not published in the Official Gazette within such period then the interested person is entitled to invoke the provisions of Section 127 of the MRTP Act by serving a notice and still if steps for acquisition are not taken within twelve months of the date of such notice for acquiring the land or the land is not acquired then the consequences of lapsing of reservation, allotment or designation shall follow. This also demonstrates the intention of the legislature, not to apply mandate of Section 11A of the Central Act to the State Act. Lapsing of acquisition is not contemplated under the scheme of either of the two Acts in question, once the land is vested in the State. Such a view will find support from the fact that under the provisions of the State Act the Government has been given power to acquire land for the purpose other than the one for which it was specified in the plan, i.e. the purpose of acquisition can be changed. Whenever such a situation arises, in that event, the relevant plan or scheme shall also be deemed to be suitably varied by such acquisition in terms of Sub- sections (1), (1A) and (2) of Section 128 of the State Act. Application of doctrine of pith and substance and incidental encroachment to the issue raised in the present case The doctrine of pith and substance can be applied to examine the validity or otherwise of a legislation for want of legislative competence as

well as where two legislations are embodied together for achieving the purpose of the principal Act. Keeping in view that we are construing a federal Constitution, distribution of legislative powers between the Centre and the State is of great significance. Serious attempt was made to convince the Court that the doctrine of pith and substance has a very restricted application and it applies only to the cases where the Court is called upon to examine the enactment to be ultra vires on account of legislative incompetence. We are unable to persuade ourselves to accept this proposition. The doctrine of pith and substance find its origin from the principle that it is necessary to examine the true nature and character of the legislation to know whether it falls in a forbidden sphere. This doctrine was first applied in India in the case of Prafulla Kumar Mukherjea v. Bank of Commerce Ltd., Khulna [AIR 1947 PC 60]. The principle has been applied to the cases of alleged repugnancy and we see no reason why its application cannot be extended even to the cases of present kind which ultimately relates to statutory interpretation founded on source of legislation. In the case of Union of India v. Shah Gobardhan L. Kabra Teachers' College [(2002) 8 SCC 228], this Court held that in order to examine the true character of the enactment, the entire Act, its object and scope is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of pith and substance has to be applied not only in cases of conflict between the powers of two legislatures but also in any case where the question arises whether a legislation is covered by a particular legislative field over which the power is purported to be exercised. In other words, what is of paramount consideration is that the substance of the legislation should be examined to arrive at a correct analysis or in examining the validity of law, where two legislations are in conflict or alleged to be repugnant. An apparent repugnancy upon proper examination of substance of the Act may not amount to a repugnancy in law. Determination of true nature and substance of the laws in question and even taking into consideration the extent to which such provisions can be harmonized, could resolve such a controversy and permit the laws to operate in their respective fields. The question of repugnancy arises only when both the legislatures are competent to legislate in the same field, i.e. when both, the Union and the State laws, relate to a subject in List III [(Hoechst Pharamaceuticals Ltd. v. State of Bihar [(1983) 4 SCC 45)]. We have already noticed that according to the appellant, the source of legislation being Article 246 read with Entry No. 42 of the Concurrent List the provisions of the State Act in so far as they are in conflict with the Central Act, will be still born and ineffective. Thus, provisions of Section 11A of the Land Acquisition Act would take precedence. On the contrary, it is contended on behalf of the respondent that the planned development and matters relating to management of land are relatable to Entry 5/18 of State List and acquisition being an incidental act, the question of conflict does not arise and the provisions of the State Act can be enforced without any impediment. This controversy need not detain us any further because the contention is squarely answered by the Bench of this Court in Bondu Ramaswami's case (supra) where the Court not only considered the applicability of the provisions of the Land Acquisition Act vis-`-vis the Bangalore Act but even traced the source of legislative competence for the State law to Entry 5 of List II of Schedule VII and held as under:

> "92. Where the law covered by an entry in the State List made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to the provisions of any existing law with respect to that matter in the Concurrent List, then the repugnant provision in the State List may be void unless it can coexist and operate without repugnancy to the

> provisions of the existing law. This Court in Munithimmaiah v. State of Karnataka [(2002) 4 SCC 326] has held that the BDA Act is an Act to provide for the establishment of a Development Authority to facilitate and ensure planned growth and development of the city of Bangalore and areas adjacent thereto, and that acquisition of any lands, for such development, is merely incidental to the main object of the Act, that is, development of Bangalore Metropolitan Area. This Court held that in pith and substance, the BDA Act is one which squarely falls under Entry 5 of List II of the Seventh Schedule and is not a law for acquisition of land like the LA Act, traceable to Entry 42 of List III of the Seventh Schedule, the field in respect of which is already occupied by the Central Act, as amended from time to time. This Court held that if at all, the BDA Act, so far as acquisition of land for its developmental activities is concerned, in substance and effect will constitute a special law providing for acquisition for the special purposes of BDA and the same will not be considered to be a part of the LA Act. The fallacy in the contention of the appellants is that it assumes, erroneously, that the BDA Act is a law referable to Entry 42 of List III, while it is a law referable to Entry 5 of List II. Hence the question of repugnancy and Section 6 of the LA Act prevailing over Section 19 of the BDA Act would not at all arise."

While holding as above, the Bench found that the question of repugnancy did not arise. The Court has to keep in mind that function of these constitutional lists is not to confer power, but to merely demarcate the legislative heads or fields of legislation and the area over which the appropriate legislatures can operate. These Entries have always been construed liberally as they define fields of power which spring from the constitutional mandate contained in various clauses of Article 246. The possibility of overlapping cannot be ruled out and by advancement of law this has resulted in formulation of, amongst others, two principal doctrines, i.e. doctrine of pith and substance and doctrine of incidental encroachment. The implication of these doctrines is, primarily, to protect the legislation and to construe both the laws harmoniously and to achieve the object or the legislative intent of each Act. In the ancient case of Muthuswami Goundan v. Subramanyam Chettiar [1940 FCR 188], Sir Maurice Gwyer, CJ supported the principle laid down by the Judicial Committee as a guideline, i.e. pith and substance to be the true nature and character of the legislation, for the purpose of determining as to which list the legislation belongs to. This Court in the case of Jijubhai Nanbhai Kachar v. State of Gujarat [1995 Supp.(1) SCC 596], referring to the principle of interpretation of Entries in the legislative lists, held as under:

> "7. It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its

> constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude...."

The primary object of applying these principles is not limited to determining the reference of legislation to an Entry in either of the lists, but there is a greater legal requirement to be satisfied in this interpretative process. A statute should be construed so as to make it effective and operative on the principle expressed in the maxim ut res magis valeat quam pereat. Once it is found that in pith and substance, an Act is a law on a permitted field then any incidental encroachment, even on a forbidden field, does not affect the competence of the legislature to enact that law [State of Bombay v. Narottamdas Jethabhai [1951 SCR 51]. To examine the true application of these principles, the scheme of the Act, its object and purpose, the pith and substance of the legislation are required to be focused at, to determine its true nature and character. The State Act is intended only to ensure planned development as a statutory function of the various authorities constituted under the Act and within a very limited compass. An incidental cause cannot override the primary cause. When both the Acts can be implemented without conflict, then need for construing them harmoniously arises. We have already discussed in great detail that the State Act being a code in itself can take within its ambit provisions of the Central Act related to acquisition, while excluding the provisions which offend and frustrate the object of the State Act. It will not be necessary to create, or read into the legislations, an imaginary conflict or repugnancy between the two legislations, particularly, when they can be enforced in their respective fields without conflict. Even if they are examined from the point of view that repugnancy is implied between Section 11A of the Land Acquisition Act and Sections 126 and 127 of the MRTP Act, then in our considered view, they would fall within the permissible limits of doctrine of "incidental encroachment" without rendering any part of the State law invalid. Once the doctrine of pith and substance is applied to the facts of the present case, it is more than clear that in substance the State Act is aimed at planned development unlike the Central Act where the object is to acquire land and disburse compensation in accordance with law. Paramount purpose and object of the State Act being planned development and acquisition being incidental thereto, the question of repugnancy does not arise. The State, in terms of Entry 5 of List II of Schedule VII, is competent to enact such a law. It is a settled canon of law that Courts normally would make every effort to save the legislation and resolve the conflict/repugnancy, if any, rather than invalidating the statute. Therefore, it will be the purposive approach to permit both the enactments to operate in their own fields by applying them harmoniously. Thus, in our view, the ground of repugnancy raised by the appellants, in the present appeals, merits rejection.

A self-contained code is an exception to the rule of referential legislation. The various legal concepts covering the relevant issues have been discussed by us in detail above. The schemes of the MRTP Act and the Land Acquisition Act do not admit any conflict or repugnancy in their implementation. The slight overlapping would not take the colour of repugnancy. In such cases, the doctrine of pith and substance would squarely be applicable and rigours of Article 254(1) would not be attracted. Besides that, the reference is limited to specific provisions of the Land Acquisition Act, in the State Act. Unambiguous language of the provisions of the MRTP Act and the legislative intent clearly mandates that it is a case of legislation by incorporation in contradistinction to legislation by

reference. Only those provisions of the Central Act which precisely apply to acquisition of land, determination and disbursement of compensation in accordance with law, can be read into the State Act. But with the specific exceptions that the provisions of the Central Act relating to default and consequences thereof, including lapsing of acquisition proceedings, cannot be read into the State Act. It is for the reason that neither they have been specifically incorporated into the State law nor they can be absorbed objectively into that statute. If such provisions (Section 11A being one of such sections) are read as part of the State enactment, they are bound to produce undesirable results as they would destroy the very essence, object and purpose of the MRTP Act. Even if fractional overlapping is accepted between the two statutes, then it will be saved by the doctrine of incidental encroachment, and it shall also be inconsequential as both the constituents have enacted the respective laws within their legislative competence and, moreover, both the statutes can eloquently co-exist and operate with compatibility. It will be in consonance with the established canons of law to tilt the balance in favour of the legislation rather than invalidating the same, particularly, when the Central and State Law can be enforced symbiotically to achieve the ultimate goal of planned development. Thus, the contentions raised by the appellants are unsustainable in law as considered by us under different heads and are liable to be rejected.

Before we conclude, we must notice that learned counsel appearing for respective parties had raised certain other contentions during the course of arguments, which have not been, specifically and intentionally, dealt with by us in the judgment. Firstly, in the facts and circumstances of the case, it is not necessary for us to dwell upon those contentions in any detail as we are of the considered view that the question referred could be answered by the Court without going into the merit or otherwise of these arguments. Secondly, because on application of different doctrines and principles, de hors the contentions raised and judgments relied upon in that regard including the plea of legislative abdication, we have precisely answered the question referred to the larger bench. Thus, we leave these questions open to be dealt with in an appropriate case. These contentions are:

> 1. The Constitution Bench in B. Shama Rao's case (supra) has clearly stated the principle that even in the case of legislation by reference, if subsequent amendments are deemed to be part of the later law adopting the earlier law, in that event, it would amount to abdication of legislative functions by the concerned constituent. It was also contended that B. Shama Rao's case (supra) has not been noticed by subsequent Benches including the Constitution Bench of this Court and, thus, the law in the later judgments cannot be said to be correct exposition of law.

On the contrary, reference was made to the Constitution Bench judgment of this Court in Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. The Asstt. Commissioner of Sales Tax [(1974) 4 SCC 98] to contend that the ruling in B. Shama Rao's case (supra) must be confined to the facts of that case. It is doubtful whether there is any general principle which precludes the Parliament or a State Legislature from adopting a law and future amendments to the law passed respectively by a State Legislature or the Parliament and incorporating them in its legislation. Further, it was contended that the law in B. Shama Rao (supra) was contrary to the ratio of the judgment of this Court in Rajnarain Singh v. Chairman, Patna Administration Committee [(1955 (1) SCR 290] and the still-born theory expanded in B. Shama Rao's case (supra) was even contrary to Devi Das v. State of

Punjab [AIR 1967 SC 1896].

2. The other challenge was on the ground that if the provisions of Section 11A of the Land Acquisition Act are not read into the provisions of the MRTP Act, it will result in patent discrimination in regard to determination of compensation and, thus, is violative of Article 14 of the Constitution of India. Per Contra, it was argued that such contention, in somewhat similar cases, has already been rejected by different Benches of this Court and has no merit. Reliance in this regard was placed upon the judgments of this Court in the case of U.P. Avas Evam Vikas Parishad (supra) and a Constitution Bench judgment in the case of Nagpur Improvement Trust-II (2002) (supra).

3. The various judgments of this Court have not examined the effect of federal structure of the Constitution while applying the principle enunciated by the Privy Council in the case of Hindusthan Co-operative Insurance Society Ltd. (supra). Having said so, now we proceed to record our answer to the proposition referred to the larger Bench as follows :

> "For the reasons stated in this judgment, we hold that the MRTP Act is a self-contained code. Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of Chapter VII of the MRTP Act but with a specific exception that the provisions of the Land Acquisition Act in so far as they provide different time frames and consequences of default thereof including lapsing of acquisition proceedings cannot be read into the MRTP Act.
>
> Section 11A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions under Chapter VII of the MRTP Act."

The Reference is answered accordingly. Matters now be placed before the appropriate Bench for disposal in accordance with law.

.....CJI. (S.H. Kapadia) .....J. (Dr. Mukundakam Sharma) .....J. (K.S. Panicker Radhakrishnan) .....J. (Swatanter Kumar) .....J. (Anil R. Dave)
New Delhi January 11, 2011