

## **Nagpur Improvement Trust vs Vasantryao And Others on 26 September, 2002**

**Equivalent citations: AIR 2002 SUPREME COURT 3499, 2002 (7) SCC 657, 2002 AIR SCW 4095, (2003) 1 ALLINDCAS 270 (SC), (2002) 4 ALLMR 905 (SC), 2003 (1) ALLINDCAS 270, 2002 (4) ALL MR 905, 2002 (4) LRI 16, (2002) 7 JT 447 (SC), 2002 (9) SRJ 377, (2003) 1 RAJ LR 369, 2002 (7) SCALE 307, 2002 (5) SLT 487, (2002) 4 ICC 865, (2003) 1 GUJ LH 140, (2003) 1 LANDLR 299, (2003) 1 MAD LJ 22, (2003) 1 RAJ LW 155, (2002) 4 SCJ 466, (2002) 2 LACC 508, (2002) 6 ANDHLD 12, (2002) 7 SUPREME 15, (2002) 4 RECCIVR 551, (2002) 7 SCALE 307, (2003) 1 ALL WC 161, (2003) 1 ANDHWR 193, (2002) 4 CURCC 69, (2003) 1 CURLJ(CCR) 197, (2003) 2 WLC (RAJ) 235, (2003) 3 BOM CR 167**

**Author: B.P. Singh**

**Bench: Chief Justice, Shivaraj V. Patil, B.P. Singh**

CASE NO.:

Appeal (crl.) 1164-1200 of 1993

PETITIONER:

Nagpur Improvement Trust

RESPONDENT:

Vasantryao and others

DATE OF JUDGMENT: 26/09/2002

BENCH:

CJI, SHIVARAJ V. PATIL & B.P. SINGH.

JUDGMENT:

WITH CIVIL APPEAL NO.9209 OF 1995 Jalandhar Improvement Trust . Appellant Versus Amrik Singh and others . Respondents WITH CIVIL APPEAL NO.9210 OF 1995 Jalandhar Improvement Trust . Appellant Versus President, Improvement Trust Tribunal Jalandhar and others . Respondents WITH CIVIL APPEAL NO.9213 OF 1995 Jalandhar Improvement Trust . Appellant Versus Aminder Singh and others . Respondents WITH CIVIL APPEAL NO.9214 OF 1995 Jalandhar Improvement Trust . Appellant Versus Gurdip Singh and others . Respondents WITH CIVIL APPEAL NOS.9260-9261 OF 1995 Amarjit Singh Nalwa . Appellant Versus Jalandhar Improvement Trust and others . Respondents WITH SPECIAL LEAVE PETITION (CIVIL) NOS.8256-8259 OF 1993 Nagpur Improvement Trust . Appellant Versus Jaswantibai and others . Respondents WITH CIVIL APPEAL NO.839 OF 1995 Dr. Sudha Rani Gupta and others . Appellants Versus The State of U.P. and others . Respondents WITH CIVIL APPEAL NO.3789 OF 1992 Bhiwani Improvement

Trust . Appellant Versus Kali Charan and others . Respondents WITH SPECIAL LEAVE PETITION (CIVIL) No.12949 of 1992 Bhiwani Improvement Trust . Appellant Versus Kali Charan and others . Respondents WITH SPECIAL LEAVE PETITION (CIVIL) No.3331 of 1993 Bhiwani Improvement Trust . Appellant Versus Haricharan, Girdhari Lal and another . Respondents WITH CIVIL APPEAL NO.9207 OF 1995 Jalandhar Improvement Trust . Appellant Versus Daljinder Singh and others . Respondents WITH CIVIL APPEAL NO.9206 OF 1995 Jalandhar Improvement Trust . Appellant Versus Gurjaipal Singh (dead) by L.Rs.and others . Respondents WITH SPECIAL LEAVE PETITION (CIVIL) NO. 3210 OF 1999 Jalandhar Improvement Trust . Appellant Versus Krishan Kumar and others . Respondents WITH CIVIL APPEAL NO.9211 OF 1995 Jalandhar Improvement Trust . Appellant Versus President Improvement Trust Tribunal Jalandhar and others . Respondents WITH CIVIL APPEAL NO.9212 OF 1995 Jalandhar Improvement Trust . Appellant Versus President Acquisition Tribunal and others . Respondents WITH CIVIL APPEAL NO.9208 OF 1995 Jalandhar Improvement Trust . Appellant Versus President Land Acquisition Tribunal and others . Respondents WITH CIVIL APPEAL NO.6590 OF 2001 Ram Gopal . Appellant Versus Collector, Agra and others . Respondents WITH CIVIL APPEAL NO.6591 OF 2001 M/s. Bhagwan Das Tara Chand . Appellant Versus Collector, Agra and others . Respondents WITH CIVIL APPEAL NO.6592 OF 2001 Navin Chand Bansal . Appellant Versus Collector, Agra and others . Respondents J U D G M E N T B.P. SINGH, J.

In this batch of appeals and special leave petitions the common question which arises for consideration is whether the provisions of the Land Acquisition Act, 1894, particularly Sections 6, 23(2) and 28 thereof stand incorporated in the three State Acts with which we are concerned in these matters or whether the Land Acquisition Act has been merely referred to in the State Acts. If it is held that the provisions of the Land Acquisition Act stand legislatively incorporated in the State Acts, the subsequent amendments to the Land Acquisition Act will have no effect upon the acquisitions made under the State Acts. We are concerned with three State Acts, namely, The Punjab Town Improvement Act, 1922 (hereinafter referred to as 'the Punjab Act') ; The Nagpur Improvement Trust Act, 1936 (hereinafter referred to as 'the Nagpur Act') and The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as 'the U.P. Act').

C.A. Nos. 9206 to 9214 of 1995; C.A. Nos. 9260-9261 of 1995; C.A. No. 3789 of 1992; SLP (C) No. 12949/1992; SLP (C) No. 3331/1993 & SLP (C) No. 3210/1999 relate to acquisitions made under the Punjab Act. C.A. No. 839 of 1995 and C.A. Nos. 6590 to 6292 of 2001 relate to acquisitions under the U.P. Act while C.A. Nos. 1164-2000 of 1993 and SLP (C) Nos. 8256-8259 of 1993 relate to acquisitions made under the Nagpur Act.

In the matters arising under the Punjab Act, the High Court of Punjab and Haryana held that the claimants, whose lands were acquired under the Punjab Act were entitled to additional compensation under Section 23(1-A) of the Land Acquisition (Amendment) Act, 1984 as also to the solatium under Section 23(2) and interest under Section 28 of the Land Acquisition Act as amended by Act 68 of 1984. The Court relied upon the judgment of this Court in Union of India and Anr. Vs. Zora Singh and Ors. (1992) 1 SCC 673; Nagpur Improvement Trust and another vs. Vithal Rao and others : AIR 1973 SC 689 as also the full Bench of that Court in Harbans Kaur and others vs. Ludhiana Improvement Trust and others : 1973 P.L.J. 250.

In the appeals which relate to the acquisitions under the Nagpur Act, the appellant, namely the Nagpur Improvement Trust, has impugned the judgment and order of the High Court of Bombay (Nagpur Bench), Nagpur, holding that the Land Acquisition Act is merely referred to in the Nagpur Act and, therefore, the provisions of Section 6 including the proviso thereto apply to acquisitions under the Nagpur Act. Since the notice under Section 39 of the Nagpur Act corresponding to the Notification under Section 4 of the Land Acquisition Act was first published in the official gazette on 25th December, 1969 and the subsequent Notification under Section 45 corresponding to the declaration under Section 6 of the Land Acquisition Act was published on 18th September, 1974 i.e. after more than three years, the same deserves to be quashed since the notice published under Section 39 of the Act lapsed on expiry of three years from the date of its publication, and no action pursuant to the said notice could have been taken thereafter.

In Civil Appeal No. 839 of 1995 which arises under the U.P. Act, the High Court of Judicature at Allahabad dismissed the writ petitions challenging the acquisitions before it holding that Section 6 of the Land Acquisition Act was legislatively incorporated in the U.P. Act which was of the year 1965, and that the subsequent amendment of Section 6 of the Land Acquisition Act in the year 1967 did not affect the provisions of the U.P. Act including Section 6 of the Land Acquisition Act as incorporated in the U.P. Act. It, therefore, rejected the contention urged on behalf of the petitioners that acquisition proceedings lapsed on expiry of the period of three years from the date of issuance of Notification under Section 28 of the U.P. Act which corresponds with Section 4 of the Land Acquisition Act. The High Court relied upon its Full Bench decision in *Doctors Sahakari Gram Nirman Samiti Ltd. vs. Avas and Vikas Parishad etc.*, AIR 1984 Allahabad 234. In Civil Appeal Nos. 6590-6592 of 2001, the sole question is whether the claimants are entitled to interest on the sum payable under Section 23 of the Land Acquisition Act.

The Punjab Act was enacted to make provision for the improvement and expansion of towns in Punjab. The Nagpur Act also makes provisions for the improvement and expansion of the town of Nagpur. The U.P. Act has the same objective but applies to whole of the State of Uttar Pradesh, excluding the Cantonment areas. All these State Acts incorporate a similar scheme and follow a common pattern. They provide for the constitution of Trust or Board, as the case may be, and also provide for various schemes for the improvement and expansion of the areas covered by the Act. All the three Acts provide for acquisition of land in accordance with the provisions of the Land Acquisition Act subject to the modifications made thereto by the Act and/or the Schedule to the Act. In a nutshell, the provisions of the Land Acquisition Act are made applicable to the acquisitions made under the State Acts subject to certain modifications as indicated in the Act and/or the Schedule thereto.

Before we advert to the submissions urged at the Bar we may briefly notice the scheme under the said Acts.

The Punjab Act provides for the creation and incorporation of Trusts which are charged with the duty of carrying out the provisions of the Act in the local area within their jurisdiction. Provisions have been made for the constitution of the Trusts and the manner in which the proceedings of the Trusts and their Committees are to be conducted. Chapter IV of the Act deals with the schemes

which may be framed under the Act, which include general improvement scheme or rebuilding scheme; street schemes and deferred street schemes ; development and expansion schemes; housing accommodation scheme ; re-housing scheme etc. Under Section 36 of the Act when a Scheme is framed, the Trust shall prepare a notice stating the fact that the scheme has been framed and prescribe the boundaries of the locality comprised in the scheme and furnish requisite particulars. Such a notice is required to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received. Under Section 38, during the thirty days next following the first day on which any notice is published under Section 36 in respect of any scheme under the Act, the Trust is required to serve a notice on every person, whom the Trust has reason to believe, to be the owner of any immovable property which it is proposed to acquire in executing the scheme and the occupier of such premises. Under Section 41 the State Government may sanction, either with or without modification, or may refuse to sanction, or may return for reconsideration, any scheme submitted to it under Section 40 of the Act. In case scheme is sanctioned by the State Government, Section 42 mandates the State Government to notify the sanction of the scheme under the Act whereafter the Trust shall proceed to execute the scheme in accordance with the provisions of the Act. A notification under sub-section (1) of Section 42 in respect of any scheme is conclusive evidence that the scheme has been duly framed and sanctioned. Chapter V deals with the powers and duties of the Trust where the scheme has been sanctioned. Chapter VI deals with the acquisition proceedings and the application of the Act to other authorities. Section 56 thereunder enables the State Government to abandon the acquisition of land in certain cases on payment being made of a sum to be fixed by the Trust. A Tribunal is constituted under Section 58 for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trust under the Land Acquisition Act, 1894. Section 59 is of considerable significance and is, therefore, reproduced below :-

"59. Modification of the Land Acquisition Act, 1894 For the purpose of acquiring land under the Land Acquisition Act, 1984, for the trust

(a) the tribunal shall (except for the purposes of section 54 of the said Act) be deemed to be the Court, and the president of the tribunal shall be deemed to be the Judge, under the said Act :

(b) the said Act shall be subject to the further modifications indicated in the Schedule to this Act;

( c) the president of the tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and

(d) the award of a tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be final".

The Schedule to the Act is also of considerable significance since it seeks to modify the provisions of the Land Acquisition Act in its application to acquisitions under the Punjab Act. Paragraph 2 of the Schedule reads as under :-

"2. Notification under section 4 and declaration under section 6 to be replaced by notification under sections 36 and 42 of this Act. (1) The first publication of a notice of any improvement scheme under section 36 of this Act shall be substituted for and have the same effect as publication in the Official Gazette and in the locality of a notification under sub-section (1) of section 4 of the said Act, except where a declaration under section 4 or section 6 of the said Act has previously been made and is still in force.

(2) Subject to the provisions of clauses 10 and 11 of this Schedule, the issue of a notice under sub-section 32 (1) of section in the case of land acquired under that sub-section and in any other case the publication of a notification under section 42 shall be substituted for and have the same effect as a declaration by the State Government under section 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force".

Various clauses of the schedule seek to amend sections 11, 15, 17, 18, 19, 20, 23, 24, 31 & 49 of the Land Acquisition Act. Two new provisions have been inserted, namely Sections 24A and 48A. The relevant part of paragraphs 6 and 10 of the schedule which seek to add Section 17-A and modify Section 23 of the Land Acquisition Act are as follows :-

"6. Transfer of land to Trust - After section 17 of the said Act, the following shall be deemed to be inserted, namely :-

17-A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the trust, and the land shall thereupon vest in the trust subject to the liability of the trust to pay any further costs which may be incurred on account of its acquisition".

"10. Amendment of section 23. (1) In clause first and clause sixthly of sub-section (1) of section 23 of the said Act, for the words "publication of the declaration relating thereto under section 6" and the words "publication of the declaration under section 6", shall be deemed to be substituted.

(a) if the land is being acquired under sub-section (3) of section 32 of this Act the words "issue of the notice under sub-section (3) of section 32 of the Punjab Town Improvement Act, 1922," and

(b) in any other case, the words "first publication of the notification under section 36 of the Punjab Town Improvement Act, 1922".

(2) The fullstop at the end of sub-section (2) of section 23 of the said Act shall be deemed to be changed to a colon and the following proviso shall be deemed to be added :-

Provided that this sub-section shall not apply to any land acquired under the Punjab Town Improvement Act, 1922."

Section 48A reads as under :-

" 48-A. Compensation to be awarded when land not acquired within one year. - (1) If within a period of one year, from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provision of part III of this Act shall apply, so far as it may to the determination of the compensation payable under this section."

The Nagpur Act, namely the Nagpur Improvement Trust Act, 1936, follows the same pattern. Chapter II of the Act deals with the Constitution of the Trust and Chapter III deals with the proceedings of the Trust and the Committees. Chapter IV deals with various improvement schemes contemplated by the Act. Section 26 provides that an improvement scheme may provide for all or any of the matters provided therein which includes the acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the scheme; recovery of betterment contributions; the re-laying out of any land comprised in the scheme, the construction and re- construction of buildings ; the provisions of parks, playing- fields and open spaces etc; sanitary arrangements required for the area; reclamation or reservation of land for market, gardens, afforestation etc. etc. It also includes any matter for which, in the opinion of the State Government, it is expedient to make provision with a view to the improvement of any area in question or the general efficiency of the scheme. Various schemes have been specified such as a general improvement scheme; a re-building scheme; a re-housing scheme; a street scheme; a deferred street scheme; a house accommodation scheme etc. etc. Sections 36 to 47 prescribe the procedure to be followed in framing an improvement scheme. Section 39 provides that when any improvement scheme has been framed, the Trust shall prepare a notice stating the fact that the scheme has been framed; the boundaries of the area comprised in the scheme and such other particulars as are specified in that section. Under Section 41, during the thirty days next following the first day on which any notice is published under Section 39 in respect of any improvement scheme, the Trust shall serve a notice on every person whose name appears in the Municipal assessment list of land as owner of any building or land which it proposed to acquire in executing the scheme or in regard to which it proposed to recover a betterment contribution. The notice shall state that the Trust propose to acquire such land or to recover such betterment contribution for the purposes of carrying out an improvement scheme. The notice shall call upon such person, if he dissents from such acquisition or from the recovery of such betterment contribution, to state his reason in writing within a period of sixty days from service of the notice. The objections are, thereafter, to be considered under Section

43 within the period prescribed. The objectors are entitled to be heard in the matter if they so desire, whereafter the Trust may either abandon the scheme or apply to the State Government for sanction of the scheme with such modification, if any, as the Trust may consider necessary. Thereafter the State Government may sanction either with or without modification, or may refuse to sanction, or may return for reconsideration, any improvement scheme submitted to it under Section 43. Section 45 provides that whenever the State Government sanctions an improvement scheme, it shall announce the fact by notification and the Trust shall forthwith proceed to execute the same. The publication of a notification under sub-section (1) of Section 45 in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned. Section 46 authorises the Trust to alter any improvement scheme after the same has been sanctioned subject to the previous sanction of the State Government, if required. Chapter V of the Act lays down the powers and duties of the Trust where a scheme has been sanctioned. Chapter VI deals with the acquisition and disposal of land. Section 58 provides for acquisition by purchase, lease or exchange by the Trust pursuant to an agreement with the person concerned. Section 59 reads as follows :-

"59. The Trust may, with the previous sanction of the State Government acquire, land under the provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Act, for carrying out any of the purposes of this Act."

Section 60 provides for the constitution of Tribunal for the purposes of performing the functions of the Court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894. Section 61 reads as under :-

"61. For the purpose of acquiring land under the Land Acquisition Act, 1894, for the Trust, -

(a) the Tribunal shall except for the purposes of section 54 of that Act, be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge thereunder ;

(b) the Act shall be subject to the further modifications as indicated in the Schedule ;

(c) the President of the Tribunal may summon witnesses and enforce their attendance and may compel the production of documents by the same means, and so far as may be, in the same manner, as is provided in case of a Civil Court under the Code of Civil Procedure, 1908 ; and

(d) the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be final".

It is not necessary to refer to other provisions of the Act. However, the Schedule to the Act provides for further modification of the Land Acquisition Act, 1894. Clauses 2 and 3 of the Schedule are significant and they are reproduced below:-

"2. (1) The first publication of a notice of an improvement scheme under section 39 of the Nagpur Improvement Trust Act, 1936, shall be substituted for, and have the same effect as publication in the official Gazette and in the locality of, a notification under sub-section (1) of section 4, except where a declaration under section 4 or section 6 has previously been made and is still in force.

(2) Subject to the provisions of clauses 10 and 11 of this Schedule, the issue of notice under sub-section (4) of section 32 of the Nagpur Improvement Trust Act 1936, in the case of land acquired under that sub-

section, and in any other case the publication of a notification under section 45 of the Nagpur Improvement Trust Act, 1936, shall be substituted for, and have the same effect as a declaration by the State Government under section 6, unless a declaration under the last mentioned section has previously been made and is in force.

(3) The full stop at the end of section 11 shall be deemed to be changed to a semi-

colon, and the following shall be deemed to be added, namely:--

"and

(iv) the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of section 23 as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant."

The Schedule further amends Sections 15, 17, 18, 19, 20, 23, 24 & 31 of the Land Acquisition Act. The schedule inserts two new provisions, namely Section 24-A and Section 48-A. Section 17-A which has been added by clause 6 of the Schedule reads as under:-

" 6. After section 17, the following section shall be deemed to be inserted, namely :-

17-A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition."

Clause 10 of the schedule which effects several modifications in Section 23 of the Land Acquisition Act, modifies sub-section (2) thereof as follows :-



"(2) The full stop at the end of sub-section (2) of section 23 shall be deemed to be changed to a colon, and the following proviso shall be deemed to be added :-

Provided that this sub-section shall not apply to any land acquired under the Nagpur Improvement Trust Act, 1936, except

(a) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and

(b) gardens not let to tenants but used by the owners as a place of resort."

Similar is the scheme under the U.P. Act which has been noticed by this Court in U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another : (1998) 2 SCC 467.

It will thus be seen that the three State Acts follow the same pattern and incorporate a common scheme. The provisions of the Land Acquisition Act with certain modifications are made applicable to acquisitions made for purposes of execution of the schemes under those Acts. There is also a striking similarity between schedules to the Punjab and Nagpur Acts, and even though they may not be identical they are in pari materia. The schedule to the U.P. Act is not as detailed but that is due to the fact that many of the modifications in the Land Acquisition Act have been brought about by the provisions of the Act itself. The schedule modifies sections 17, 23 and 49 of the Land Acquisition Act, and adds a new section 17-A which is identical to Section 17-A inserted in Punjab and Nagpur Acts. It also gives to the notifications under Section 28(1) and 32(1) of the U.P. Act, the same effect as notifications published under Sections 4 and 6 respectively of the Land Acquisition Act.

Mr. Rajinder Sachar, learned Senior Counsel appearing on behalf of Jalandhar Improvement Trust in Civil Appeal No.9206 of 1995 submitted that a careful analysis of the scheme of the Punjab Act would disclose that the scheme of the Punjab Act is quite different from the scheme of the Land Acquisition Act. Different equities arose under the two Acts and, therefore, the High Court was not justified in holding that even in respect of the acquisition under the Punjab Act, the claimants were entitled to the benefit of beneficial provisions under the Land Acquisition Act as brought in by amending the Land Acquisition Act by Act No. 68 of 1984. He sought to distinguish the judgments relied upon by the respondents and submitted that having regard to the principle laid down by this Court in Maneklal Chhotalal and others vs. M.G. Makwana and others : [1967] 3 SCR 65 and State of Gujarat vs. Shantilal Mangaldas and others : (1969) 1 SCC 509, it must be held that compensation was not justiciable and since the two legislations were under two different entries of the Constitution, Article 14 could not be invoked.

Mr. Rakesh Dwivedi, Senior Advocate, appearing on behalf of the Nagpur Improvement Trust in C.A. Nos. 1164- 1200 of 1993 and the Uttar Pradesh Avas Evam Vikas Parishad in Civil Appeal No.839 of 1995 submitted that the provisions of the Nagpur and the U.P. Act and the modifications brought about by these Acts leave no room for doubt that the provisions of the Land Acquisition Act stood incorporated by legislation in the State Acts and, therefore, it cannot be said that the legislature intended that subsequent amendments in the Land Acquisition Act, 1894 should apply to

an acquisition under the said Act. He further submitted that this Court in Bhatinda Improvement Trust vs. Balwant Singh and others : (1991) 4 SCC 368 over-looked a judgment of this Court in State of Kerala and others vs. T.M. Peter and others : (1980) 3 SCC 554 and erroneously came to the conclusion that there was no question of incorporation of any of the provisions of the Land Acquisition Act into the Punjab Act. A perusal of the provisions of the Nagpur Act would show that the provisions of the Land Acquisition Act, 1894 as it stood in 1936 stand incorporated by reference in the 1936 Act subject to the modifications indicated therein. The Nagpur Act is a complete and exhaustive code enacted with the object of providing for improvement and expansion of the town of Nagpur. The Act also contemplates under Section 58 acquisition by agreement while Sections 59 to 68 deal with compulsory acquisition under the provisions of the Land Acquisition Act as modified by the provisions of the Nagpur Act. The Nagpur Act has its own exhaustive mechanism and procedure for acquisition of land and further it adopts provisions of Land Acquisition Act, 1894 as it stood in 1936 with specific, numerous, and detailed modifications which make out a clear case of incorporation of Land Acquisition Act, 1894 as it then stood with modifications. He further contended that it cannot be that the legislature intended that subsequent amendments in the Land Acquisition Act, 1894 should automatically apply to the Nagpur Act.

So far as the U.P. Act is concerned, Shri Dwivedi submitted that having regard to the scheme of the Act and the modifications to the Land Acquisition Act, 1894, it was also a case of incorporation of the provisions of the Land Acquisition Act, 1894 as amended in its application to the State of U.P. subject to the modifications contained in the Schedule to the Adhiniyam. A separate exhaustive code exists for acquisition under the Adhiniyam. He, however, submitted that while applying Article 14, the nature of the provision of the enactment under consideration becomes important. Mere absence of a limitation of time period for issuance of a declaration under Section 6 would not imply a breach of Article 14 and for this he relied upon the judgment of this Court in State of Kerala and others vs. T.M. Peter and others (supra). He further submitted that the provisions pertaining to compensation would be different from the provisions pertaining to the time limit for notifying sanction of the draft scheme. The latter would be a procedural provision which may, indirectly, impact compensation by increasing or decreasing it depending upon the market situation. Therefore, the cases of this court pertaining to compensation being equal to the compensation paid under the Land Acquisition Act in view of Article 14 of the Constitution of India, would have no applicability for invoking the proviso to Section 6 of the Land Acquisition Act in respect of the scheme under the Nagpur Act and consequently the principles laid down by this Court in Nagpur Improvement Trust and another vs. Vithal Rao and others (supra) would not be attracted. He, therefore challenged the correctness of the impugned judgment and order of the High Court of Bombay, Nagpur Bench, Nagpur holding that the proviso to Section 6 applies to acquisition made under the Nagpur Act, 1936 and supported the judgment of the Allahabad High Court holding that the said proviso has no application to the acquisition made under the U.P. Act.

Mr. V.A. Mohta, Senior Advocate, appearing on behalf of the respondents, in C.A. Nos. 1164-1200 of 1993 and appellants in C.A. No. 839 of 1995 relating to the acquisitions made under the Nagpur Act and the U.P. Act submitted that the questions which arise in these matters are :-

- 1) Whether the provisions of the Land Acquisition Act, as modified, stand incorporated in the said Acts?
- 2) Whether the decision of this Court in Nagpur Improvement Trust vs. Vithal Rao (supra) is confined to cases of grant of compensation or whether the said principle would also apply to the issuance of Notifications under Sections 4 and 6 of the Land Acquisition Act ? and
- 3) If it is held that the provisions of the Land Acquisition Act stand incorporated whether it would not fall within any of the four exceptions enunciated in The State of Madhya Pradesh vs. M.V. Narasimhan : (1975) 2 SCC 377 ?

On the first question he relied upon the opinion of Sahai, J. in Gauri Shankar Gaur and others vs. State of U.P. and others : (1994) 1 SCC 92 but conceded that the said view has not been approved by this Court by a larger Bench in U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another : (1998) 2 SCC 467. He pointed out that even though the Nagpur Improvement Trust vs. Vithal Rao (supra) dealt with a matter which was confined to the question of compensation, the same principle should apply to cases where the application of proviso to Section 6 of the Land Acquisition Act is involved. Lastly he contended that this Court must hold that the provisions of the State Acts were supplemental in nature and are, therefore, covered by the first exception enunciated in State of Madhya Pradesh vs. M.V. Narasimhan : (1975) 2 SCC 377.

Shri K.C. Jain appearing on behalf of the respondents in C.A. No.1166 of 1993, an appeal preferred by the Nagpur Improvement Trust, submitted that Section 59 as well as Section 61(b) of the Nagpur Act simply cites/refers to the Land Acquisition Act and does not incorporate it referentially. Hence all the amendments made to the Land Acquisition Act must apply automatically. In the alternative he submitted that even if it is assumed that the aforesaid provisions incorporate the Land Acquisition Act as it then existed in the year 1936, it falls in exceptional situations carved out by this Court, namely that it is supplemental to the Land Acquisition Act and, therefore, incidences of incorporation shall not follow. He supported the reasoning in Jainul Islam's case (supra) and submitted that not applying the amendment leads to unconstitutionality of the Act. He distinguished the decisions of this Court in Prakash Amichand Shah vs. State of Gujarat and others : (1986) 1 SCC 581 and State of Gujarat vs. Shantilal Mangaldas and others (supra) and submitted that those decisions relate to Bombay Town Planning Act and were distinguishable. So far as the instant controversy is concerned, according to him, it stands clearly covered by the decision of this Court in Nagpur Improvement Trust vs. Vithal Rao (supra).

Mr. N.N. Goswami, learned Senior counsel appearing on behalf of the respondents in C.A. No.9212 of 1995 supported the impugned judgment of the High Court of Punjab and Haryana awarding solatium and interest under the beneficial provisions of the Land Acquisition Act as amended in the year 1984. He relied upon the decision of this Court in Nagpur Improvement Trust vs. Vithal Rao (supra) and submitted that the provisions of the Punjab Act will have to be struck down as discriminatory if the claimants are not given benefit of the beneficial provisions of the Land Acquisition Act as amended in the year 1984. He further submitted that the provisions of the Punjab

Act also provide for payment of solatium and there is no reason why interest should not be granted to the claimants who would otherwise be granted such interest under the provisions of the Land Acquisition Act, as amended.

Counsel appearing in the other matters have adopted the submissions advanced by the learned Senior counsel whose submissions we have noticed above.

Numerous decisions have been cited before us by learned counsel appearing for the parties. We do not consider it necessary to refer to all of them because several authorities have been cited for the same proposition. Moreover some of the issues involved appear to be clearly covered by a decision of this Court rendered by a Bench comprising of three judges which is a binding precedent. However, we shall notice such of them as appear relevant for decision of the appeals and special leave petitions before us.

At the outset we may dispose of Civil Appeal Nos. 6590 to 6592 of 2001. This Court by its order dated September 19, 2001 has already upheld the contention of the appellants that they are entitled to interest on the amount envisaged in Section 23(2) of the Land Acquisition Act. In these three appeals, therefore, the sole question that survives for consideration is whether the appellants whose lands have been acquired under the Land Acquisition Act are also entitled to interest on the sum payable under sub-section (1-A) of Section 23 of the Land Acquisition Act, 1894. The High Court by its impugned judgment and order following the earlier decision of this Court in Prem Nath Kapur and another vs. National Fertilizers Corporation of India Limited and others : (1996) 2 SCC 71, dismissed the writ petitions preferred by the appellants holding them to be not entitled to interest on the sum payable under Section 23(1-A) of the Land Acquisition Act. The matter was reconsidered by a Larger bench of this Court and the question now stands concluded by an authoritative pronouncement of this Court in Sunder vs. Union of India : 2001 (7) SCC 211 holding that the claimant is entitled to interest on the amount of compensation worked out in accordance with the provisions of Section 23 of the Land Acquisition Act including all the sub-sections thereof, meaning thereby sub-sections (1), (1-A) and (2) of Section 23. This Court held:-

"No judicial exercise is required to quantify the sums mentioned in sub-section (1-A) or sub-section (2) because the section itself specifies the percentage to be worked out for the purpose of adding to the total amount arrived at under sub-section (1). Otherwise Section 26 is not intended to show that the compensation awarded would be bereft of the additional amount and the solatium envisaged under sub-section (1-A) or sub-section (2). This can be clearly discerned from the commencing words of Section 26 itself. They are: "Every award under this Part shall be in writing signed by the Judge".

What is referred to therein is Part III of the Act which comprises of a fasciculus of twelve provisions starting with Section 18 and ending with Section 28-A of the Act.

There can be no doubt that all the three heads specified in the three sub-sections in Section 23 are the sums to be "awarded by the court". Hence the words "every award under this Part" cannot be

treated as the award after delinking the amounts awarded under sub-section (1-A) or sub-section (2) of Section 23.

\* \* \* \* The remaining sub-sections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof".

These appeals (Civil Appeal Nos. 6590 to 6592 of 2002) deserve to be allowed and the impugned judgments and orders of the High Court set aside, and the respondents directed to compute and pay the interest payable to the appellants in accordance with law as enunciated in *Sunder vs. Union of India* (supra).

We shall now proceed to consider whether the provisions of the Land Acquisition Act, 1894 as modified by the State Acts stand incorporated in the State Acts or whether there is a mere reference or citation of the land Acquisition Act in the State Acts. The law on the subject is well settled. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it. The incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or the citation of the provisions of an earlier statute. In a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act alongwith the incorporated provisions of the earlier Act constitute an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction.

In *Secretary of State vs. Hindustan Cooperative Insurance Society Ltd.* : AIR 1931 PC 149, the Privy Council observed :-

"In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in "Craies on Statute law," Edn.3, pp. 349-50. This doctrine finds expression in a common-form section which regularly appears in the Amending and Repealing Acts which are passed from time to time in India. The section runs, The repeal by this Act of any enactment shall not affect any Act. in which such enactment has been

applied, incorporated or referred to."

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

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 Re : Wood's Estate, Ex parte, Works and Buildings Commrs., (1886) 31 Ch D 607 at page 615 Lord Esher, M.R. observed :-

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it."

In U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another (supra) this Court observed :-

"17. A subsequent legislation often makes a reference to the earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be

(i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated. So also any amendment in the statute which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statute which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation."

This is a reiteration of the principle as laid down by earlier judgments of this Court in a catena of decisions including Mary Roy vs. State of Kerala (1986) 2 SCC 209 ; Ramsarup vs. Munshi : AIR

1963 SC 553 ; Ram Kripal Bhagat vs. State of Bihar : AIR 1970 SC 951 ; Bolani Ores Ltd. vs. State of Orissa : AIR 1975 SC 17 ; Mahindra and Mahindra Ltd. vs. Union of India : AIR 1979 SC 798.

It is also well settled that the question as to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the earlier decision and other relevant circumstances.

In Bhatinda Improvement Trust vs. Balwant Singh and others (supra) a question arose regarding the applicability of the first proviso of Section 6(1) of the Land Acquisition Act, 1894 as substituted by Act 68 of 1984 to an improvement scheme under the Punjab Act providing for acquisition of the land under the Land Acquisition Act. In that case the first notice published under Section 36(2) of the Punjab Act in May, 1977 was followed by a Notification under Section 42 published in June, 1980 sanctioning the scheme. Since the notice under Section 42 was issued after the expiry of the period of three years from the date of the publication of the Notification under Section 36(2) of the Punjab Act, it was contended that the acquisition proceeding lapsed. Upholding the contention the Court held that the first proviso to Section 6(1) of the Land Acquisition Act was applicable since there was no question of incorporation of any of the provisions of the Land Acquisition Act into the Punjab Act. This Court observed that the Punjab Act did not deal with acquisition of land for the purposes of a scheme as contemplated thereunder. The acquisition of such land for the purposes of the scheme is left to the general law of the land, namely the Land Acquisition Act which has to be resorted to for the acquisition of land for the purposes of the schemes contemplated under the Punjab Act. The only difference is that some of the provisions of the Land Acquisition Act, as referred to in the relevant sections of the Punjab Act, are given effect to as amended by the relevant sections of the Punjab Act. In these circumstances, it cannot be held that any provisions of the Land Acquisition Act have been incorporated into the Punjab Act and, therefore, the provisions of the Land Acquisition Act, as they stood at the time of acquisition, would be applicable in the absence of any contrary intention. The judgment was rendered by a bench of two Judges of this Court. The same question again arose in Gauri Shankar Gaur and others vs. State of U.P. and others (supra) in the context of the provisions of the U.P. Act. A two Judge Bench of this Court upheld the validity of the acquisition but the learned judges recorded different reasons for coming to the same conclusion. After referring to a large number of decisions of this Court Ramaswami, J. recorded his conclusion in the following words:-

"33. Section 55 of the Act read with the schedule made an express incorporation of the provisions of Section 4 (1) and Section 6 as modified and incorporated in the schedule. The schedule effected necessary structural amendments to Sections 4, 6, 17 and 23 incorporating therein the procedure and principles with necessary modifications. Sections 28(2) and 32(1) prescribe procedure for publication of the notifications under Sections 28(1) and 32(1) of the Act without prescribing any limitation. It is a complete code in itself. The Act is not wholly unworkable or ineffectual though may be incompatible with provisos to Section 6(1) of the Land Acquisition Act. The U.P. Legislature did not visualize that later amendment to Central Act 1 of 1894 i.e. Land Acquisition Act would be automatically extended. We have, therefore, no hesitation to conclude that Section 55 and the schedule adapted

only by incorporation Sections 4(1) and 6(1) and the subsequent amendments to Section 6 did not become part of the Act and they have no effect on the operation of the provisions of the Act."

On the other hand Sahai, J. held that the language of Section 55 of the U.P. Act indicated that the legislature intended to take proceedings for acquisition of land under the Land Acquisition Act except to the extent it has been amended by the schedule. Notice published in the official gazette under Section 28 and clause (a) of sub-section (3) of Section 31 have been given the same effect as a notification issued under Section 4 of the Land Acquisition Act. Similarly notices issued under clause (c) of sub-section (3) of Section 23 of the Act or publication of a notification under sub-section (1) or under sub-section (4) of Section 32 of the Act have been substituted for and have the same effect as declaration under Section 6 of the Land Acquisition Act. In other words the notices issued under the Act under different sections mentioned in it shall be substituted in place of Sections 4 and 6 of the Land Acquisition Act. The learned Judge concluded that this did not amount to bringing into effect a new legislation nor transposing provisions of Land Acquisition Act to the U.P. Act as modified to proceedings under the U.P. Act. Even so, the learned Judge observed that though the law was in favour of the petitioners but equity stood in their way since in pursuance of the proceedings the Parishad had entered into possession and constructed housing colonies in the absence of any interim order. Therefore, the individual interest of the land owners was faced with public interest of those large number of middle class persons who must have invested their life's savings in purchasing these houses and hence the demolition of houses which are standing over the land and rendering its occupants homeless shall result in incalculable loss and injury. Larger social interest, therefore, required this Court to mould the relief in such manner that justice may not suffer. Since the issuance of the notifications under Section 4 and Section 6 were not flawed, and the infirmity arose due to procedural delay, the principle that delay destroys the remedy but not the right, were applicable. The Parishad could have acquired the land by issuing fresh notification. In these circumstances the equity could be adjusted by directing that the compensation to the land owners shall be paid by assuming that fresh proceedings for acquisition were taken in the year in which declaration was issued. We may observe that in reaching the conclusion that this was not a case of incorporation of the provisions of the Land Acquisition Act into the U.P. Act, Sahai, J. relied upon the decision of this Court in Bhatinda Improvement Trust vs. Balwant Singh and others (supra). It would thus appear that for different reasons the learned Judges came to the same conclusion and accordingly dismissed the appeals and the writ petitions.

The same question again arose for consideration in U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another (supra). In view of the difference of opinion between the learned Judges in Gauri Shankar Gaur and others vs. State of U.P. and others (supra) regarding the applicability of the 1984 Act to acquisition for purposes of U.P. Act, the matter was directed to be heard by a Bench of three Judges. The appellant Parishad placed reliance on the judgment of Ramaswami, J. while the respondents strongly placed reliance on the judgment of Sahai, J. in Gauri Shankar Gaur and others vs. State of U.P. and others (supra).

This Court in U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another (supra) noticed the scheme of the U.P. Act and observed that Section 55 of the U.P. Act makes a reference to the



provisions of the Land Acquisition Act, as amended, in its application to Uttar Pradesh, and has laid down that any land or any interest therein required by the Parishad for any of the purposes of the Ahiniyam may be acquired under the provisions of the Land Acquisition Act, as amended, in its application to the State of Uttar Pradesh, which for this purpose has to be subject to the modifications specified in the schedule to the U.P. Act. Similar provisions are found in other enactments and reference was made to the Calcutta Improvement Act, 1911 whereunder the Board of Trustees of the Calcutta Improvement Trust was entrusted with very wide powers for the purpose of carrying out improvement schemes within the municipal limits of Calcutta. After noticing the provisions of the Calcutta Improvement Act, 1911, this Court noticed the judgment of the Privy Council in Secretary of State vs. Hindustan Cooperative Insurance Society Ltd. (supra) in which the question arose - whether the amendment in the Land Acquisition Act was applicable so as to confer a right of appeal to the Privy Council against the judgment of the High Court in an appeal from the Tribunal. The said question was answered in the negative by the Privy Council. This Court quoted the following passages appearing in Secretary of State vs. Hindustan Cooperative Insurance Society Ltd. (supra), "The modifications are contained partly in the body of the Act and partly in a schedule attached to the Act. They are numerous and substantial and the effect is, in their Lordship's opinion to enact for the purposes of the local Act a special law for the acquisition of land by the trustees within the limited area over which their powers extend.

\* \* \* \* \* Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt."

The Privy Council in the aforesaid judgment also made the following observations :-

"But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the local Act of 1911. It was not part of the Land Acquisition Act when the local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor, again, does Act 19 of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to be regarded as affecting any other enactment than the Land Acquisition Act itself."

This Court observed that Section 55 read with the schedule to the U.P. Act are on the same lines as those contained in the Calcutta Improvement Act, 1911 and, therefore, the principles laid down by the Privy Council in that case were equally applicable to the case in hand. This Court, therefore, concluded that the provisions of the Land Acquisition Act, as amended, in its application to U.P. with the modifications specified in the schedule to the Adhiniyam, have, therefore, to be treated to have been incorporated by reference into the Adhiniyam and became an integral part of the

Adhiniyam and the said provisions would remain unaffected by subsequent repeal or amendment of the Land Acquisition Act unless any of the exceptional situations indicated in *The State of Madhya Pradesh vs. M.V. Narasimhan* (supra) were attracted. This Court did not agree with the view of Sahai, J. and approved the view of Ramaswami, J. in *Gauri Shankar Gaur and others vs. State of U.P. and others* (supra). This Court also considered the judgment in *The State of Madhya Pradesh vs. M.V. Narasimhan* (supra) which enumerated four exceptions to the rule that the incorporated provisions of the previous Act which have become integral and independent part of the subsequent Act are totally unaffected by any repeal or amendment in the previous Act. The exceptions enumerated are :-

"(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."

It was held that the U.P. Act and the Land Acquisition Act could not be regarded as supplemental to each other. The U.P. Act contains provisions regarding acquisition of land which are complete and self-contained. Nor can the provisions in the U.P. Act be said to be in pari materia with the Land Acquisition Act because the U.P. Act also dealt with matters which did not fall within the ambit of the Land Acquisition Act. It could not also be said that the 1984 Act, expressly or by necessary intendment applied the said amendments to the U.P. Act. The Court then posed the question "Can it be said that if the amendments made in the Land Acquisition Act by the 1984 Act are not incorporated in the Adhiniyam, it would be rendered unworkable ? The Court observed that Sahai, J. had expressed the view that the exceptional situations referred to in *The State of Madhya Pradesh vs. M.V. Narasimhan* (supra) can be extended further in our constitutional set-up, and that the courts should lean against the construction which may result in discrimination.

Relying upon the judgment of this Court in *Nagpur Improvement Trust and another vs. Vithal Rao and others* (supra) it was contended in *U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another* (supra) by the land owners that if the provisions of the Land Acquisition Act as they stood on the date of enactment of the U.P. Act without the amendments introduced by the 1984 Act relating to determination and payment of compensation, are held to be incorporated in the U.P. Act, the provisions of the U.P. Act incorporating the provisions of the Land Acquisition Act would be rendered unconstitutional as being violative of Article 14 of the Constitution. On the other hand the Parishad contended that it was not open to the claimants to raise the question regarding constitutional validity of the provisions of the U.P. Act under which the reference had been made. Further it was contended that the Land Acquisition Act was enacted by Parliament while the U.P. was enacted by the State Legislature and, therefore, Article 14 cannot be invoked since the alleged discrimination arises on the basis of laws made by two different legislative bodies. In any event, it

was contended, that merely because under the provisions of the Land Acquisition Act, as modified by the schedule to the U.P. Act, which are applicable in the matter of acquisition of land for the purposes of the U.P. Act, solatium is payable @ 15% and not @ 30% and interest is payable @ 6% and not 9% and 5%, as provided in the Land Acquisition Act, as amended by the 1984 Act, would not render the acquisition proceedings taken under the U.P. Act to be unconstitutional.

This Court after considering the submissions urged before it held that even if the claimants could not challenge the validity of the provisions of the law under which the reference had been made, while construing the provisions of the U.P. Act, one cannot lose sight of the settled principle of statutory construction that "if certain provisions of law, construed in one way, would make them consistent with the Constitution and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction". (See Kedar Nath Singh vs. State of Bihar : AIR 1962 SC 955). This Court, therefore, proceeded to consider whether the provisions of the U.P. Act, if they are so construed as to incorporate the provisions of the Land Acquisition Act as they stood on the date of enactment of the U.P. Act without the amendments introduced in the Land Acquisition Act by the 1984 Act relating to determination and payment of compensation, would be violative of the provisions of Article 14 of the Constitution. The Court noticed the difference in the compensation that may be payable if the acquisition took place under the U.P. Act and if the acquisition took place under the Land Acquisition Act, as amended. The compensation payable to the owner whose land is acquired for the purposes of the U.P. Act would be less than the compensation payable to the owner whose land is acquired under the Land Acquisition Act, as amended by the 1984 Act. After considering the decision in Nagpur Improvement Trust and another vs. Vithal Rao and others (supra) this Court held that the reasons which weighed with this Court in Nagpur Improvement Trust and another vs. Vithal Rao and others (supra) in striking down the provisions of the Nagpur Improvement Trust Act whereby Section 23 of the earlier Act had been modified in its application for the purposes of application to the said Act, would equally apply while construing the constitutional validity of the U.P. Act wherein the provisions of Section 23 of the Land Acquisition Act have been modified under the schedule to the U.P. Act. This Court found that the provisions of the U.P. Act are very similar to those contained in the Nagpur Improvement Trust Act. Section 55 of the U.P. Act is similar to Section 59 of the Nagpur Improvement Trust Act inasmuch as both the provisions provide for modification being made in the Land Acquisition Act. Section 17-A that has been inserted in the Land Acquisition Act by the modification made in the U.P. Act is in same terms as 17-A which has been inserted by paragraph 6 of the schedule to the Nagpur Act. Finding such similarity in the provisions of the two State Acts, this Court held that the reasons which weighed with this Court in striking down the provisions of the Nagpur Act would equally apply in the case of U.P. Act. In this connection this Court relied upon the following passage from the judgment in Nagpur Improvement Trust and another vs. Vithal Rao and others (supra) :-

"Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in

fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

\* \* \* It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts enables the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of article 14."

This Court also considered the judgment in *Prakash Amichand Shah vs. State of Gujarat and others* (supra) and distinguished the same finding that the provisions of Section 53 of the Bombay Town Planning Act, 1954 were not akin to the acquisition proceedings under the Land Acquisition Act, and the provisions of the Land Acquisition Act were not applicable, with or without modifications, as in the case of Nagpur Improvement Trust Act. Section 53 of the Bombay Town Planning Act was comparable with the provisions contained in Sections 38 and 39 of the U.P. Act which provided for vesting of certain public lands vested in the local authority or private street or square and payment of compensation for such lands. The case of *Prakash Amichand Shah vs. State of Gujarat and others* (supra) was, therefore, distinguished. Having considered all aspects of the matter, this Court recorded its conclusion in the following words :-

"31. Since the present case involves acquisition of land under the provisions of the LA Act as applicable under the Adhiniyam, it is fully covered by the law laid down by this court in *Nagpur Improvement Trust*. Keeping in view the principles laid down in the said decision of this Court, it has to be held that if the provisions of the Adhiniyam are so construed as to mean that the provisions of the LA Act, as they stood on the date of enactment of the Adhiniyam, would be applicable to acquisition of land for the purpose of the Adhiniyam and that the amendments introduced in the LA Act by the 1984 Act relating to determination and payment of compensation are not applicable, the consequence would be that the provisions of the LA Act, as applicable under the Adhiniyam, would suffer from the vice of arbitrary and hostile discrimination. Such a consequence would be avoided if the provisions of the Adhiniyam are construed to mean that the provisions of the LA Act, as amended by the 1984 Act, relating to determination and payment of compensation would apply to acquisition of land for the purposes of the Adhiniyam. There is nothing in the Adhiniyam which precludes adopting the latter construction. On the other hand, the provisions of the Adhiniyam show that the intention of the legislature, while enacting the Adhiniyam, was to confer the benefit of solatium @ 15% by modifying Section 23 (2) in the Schedule, which benefit was not available under the provisions of the LA Act as it was applicable in the State of Uttar Pradesh at the time of enactment of the Adhiniyam. It cannot, therefore, be said that the intention of the legislature, in enacting the Adhiniyam, was to deny to the landowners the benefits relating to

determination and payment of compensation which would be available to them under any amendment made in the LA Act after the enactment of the Adhiniyam. We are, therefore, of the opinion that on a proper construction of Section 55 of the Adhiniyam it must be held that while incorporating the provisions of the LA Act in the Adhiniyam the intention of the legislature was that amendments in the LA Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the Adhiniyam. This means that the amendments introduced in the LA Act by the 1984 Act relating to determination and payment of compensation, viz., Section 23(1-A) and Section 23(2) and 28 as amended by the 1984 Act would be applicable to acquisitions for the purposes of the Adhiniyam under section 55 of the Adhiniyam."

So far as the U.P. Act is concerned the judgment in U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another (supra) answers all the questions raised before us. It has been held that so far as the U.P. Act is concerned, the Land Acquisition Act, as modified, stands incorporated in the U.P. Act. However, as a matter of construction it was held that Section 55 of the U.P. Act, while incorporating the provisions of the Land Acquisition Act intended to apply to acquisition made under the U.P. Act the beneficial amendments that may be brought about for determination and payment of compensation, in the Land Acquisition Act, 1894. There was nothing in the U.P. Act which precluded the Court from adopting such a construction, and this was necessary to save the Act from the vice of arbitrary and hostile discrimination.

This Court also found that the provisions of the Nagpur Act, with which we are concerned, were similar to the provisions of the U.P. Act. This aspect of the matter has been discussed in paragraph 27 of the report. We have also considered the provisions of the Nagpur Act as well as the provisions of the Punjab Act. We are satisfied that the aforesaid two Acts as well as the U.P. Act have a common scheme and pattern. All the three legislations relate to town planning and development, and each one of them specifies the various schemes that may be undertaken. For acquisition of land for the purposes of any of the schemes under the said Acts, the Land Acquisition Act 1894 has been made applicable with certain modifications as contained in the schedule to the said Acts which are numerous and substantial. The modifications made are also similar. We have found no distinction in the three Acts which may have a bearing on the question relating to legislative incorporation of the Land Acquisition Act in the State Acts. We are, therefore, of the view that what has been held by this Court in U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another (supra) with regard to U.P. Act holds good for the Punjab Act as well as the Nagpur Act. Consequently we are unable to subscribe to the view taken in Bhatinda Improvement Trust vs. Balwant Singh and others (supra) that the provisions of the Land Acquisition Act have not been incorporated into the Punjab Act and that they have merely been cited or referred to in the Punjab Act. It may be noticed that in U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another (supra) this Court highlighted the fact that though under the Land Acquisition Act as amended in its application to the State of U.P. there was no provision for grant of solatium, by the U.P. Act such solatium was provided for. The intention of the legislature was apparent that it wanted to confer the benefit of solatium by modifying Section 23(2), which benefit was not available under the provisions of the Land Acquisition Act as it was applicable in the State of U.P. at the time of enactment of the U.P. Act. So far as the Punjab Act and

the Nagpur Act are concerned, the schedules do not modify the provisions of Section 23(2) of the Land Acquisition Act which provides for payment of solatium. However, a proviso was added to the effect that sub-section (2) shall not apply to any land acquired under the State Acts in question. The added proviso is identical in both the State Acts. This clearly implies that where acquisition was made under the provisions of the Land Acquisition Act, as modified, the legislature did not intend to deprive the claimants of solatium as provided under the Land Acquisition Act. But solatium was not payable in cases of acquisition under the State Acts. There are provisions in both the State Acts which permit the State to acquire lands for the purposes of the schemes without resorting to the provisions of the Land Acquisition Act such as acquisition by purchase, lease, exchange, or otherwise, or acquisitions contemplated under deferred street scheme, development scheme and expansion scheme. In respect of such acquisitions solatium is not payable. Such cases are similar to the acquisitions under Section 53 of the Bombay Town Planning Act which was considered by this Court in *Prakash Amichand Shah vs. State of Gujarat and others* (supra). In these circumstances with a view to save the law from the vice of arbitrary and hostile discrimination, the provisions must be construed to mean, in the absence of anything to the contrary, that the provisions of the Land Acquisition Act as amended by the 1984 Act relating to determination and payment of compensation would apply to acquisition of land for the purposes of the State Acts. It must, therefore, be held that while incorporating the provisions of the Land Acquisition Act in the State Acts, the intention of the legislature was that amendments in the Land Acquisition Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the State Acts. Consequently the claimants are entitled to the benefits conferred by Section 23(1-A), if applicable, and Section 23(2) and 28 of the Land Acquisition Act as amended by the 1984 Act for acquisition of land for the purposes of the State Acts under Sections 59 of both the Nagpur and the Punjab Acts.

We shall now proceed to consider the other submissions urged before us.

In so far as the Punjab cases are concerned, the challenge is to the grant of benefit to the claimants under the amended provisions of Sections 23 and 28 of the Land Acquisition Act. In all these cases acquisitions were made under the provisions of the Land Acquisition Act as modified by the State Act and the Collector had made his Awards which were challenged.

Mr. Rajinder Sachar appearing on behalf of Jalandhar Improvement Trust submitted that the scheme of the Act discloses that the acquiring authority was the Trust and not the State. He sought to distinguish the case of Nagpur Improvement Trust contending that in that case it was the State which was the acquiring authority and the State could not discriminate between one land-holder and the other whose lands were sought to be acquired by choosing to acquire land under one or the other Act so as to discriminate between such land holders. The submission overlooks Section 17-A of the Land Acquisition Act which is inserted in all the three State Acts by way of modification. In *Om Prakash and another vs. State of U.P. and others* : (1974) 1 SCC 628 this Court considered a similar provision in the U.P. Nagar Mahapalika Adhiniyam, 1959 and held that Section 17-A which was inserted in that Act and which was in the same terms, showed that the land has first to be acquired by the Collector for the Government and thereafter it is transferred by the Government to the Mahapalika only on payment of its costs. Thus, it was clear beyond all manner of doubt that whenever land is to be compulsorily acquired for the Mahapalika the acquiring authority is the

Government. It was observed that there was no material difference between the impugned provisions of the Adhiniyam and those which were in question before this Court in Nagpur Improvement Trust's case (supra). Since Section 17-A inserted in the Land Acquisition Act by way of modification in all the three State Acts is in the same terms as Section 17-A considered by this Court in the aforesaid decision, it must be held that the acquiring authority under the State Acts is the Government and not the Trust.

In any event in Nagpur Improvement Trust (supra) this Court negatived the contention that different principles of compensation can be laid if the land is acquired for or by the Improvement Trust or Municipal Corporation or the Government. This Court held that as far as the owner is concerned, it does not matter to him whether the land is acquired by one authority or the other. Thus, viewed from any angle, the submission must be rejected.

Learned counsel then relied upon the two decisions of this Court in Maneklal Chhotalal and others vs. M.G. Makwana and others (supra) and State of Gujarat vs. Shantilal Mangaldas and others (supra), and submitted that the law as laid down in those decisions must apply to the cases in hand. Both these decisions were considered in a later decision of this Court in Prakash Amichand Shah vs. State of Gujarat and others (supra) and followed. In Jainul Islam's case (supra) this Court considered the decision in Prakash Amichand Shah vs. State of Gujarat and others (supra) and distinguished it. It must, therefore, be held that the aforesaid two decisions on which Mr. Sachar relies do not advance the case of the Trust. Those cases are clearly distinguishable. Mr. Sachar then contended that even if the claimants cannot be deprived of the enhanced solatium under Section 23(2) of the Land Acquisition Act, in the facts of this case the owners are not entitled to the benefit of additional compensation payable under Section 23(1-A) of the Land Acquisition Act which has been brought in by way of amendment in the year 1984.

We find considerable force in this submission. It may be noticed that at the time when the High Court decided the Letters Patent Appeals pending before it, the law as laid down by this Court in Union of India and another etc. etc. vs. Zora Singh and others etc. etc : (1992) 1 SCC 673 held the field. However, a larger bench of 5 judges reconsidered the matter in K.S. Paripoornan vs. State of Kerala and others : 1994(5) SCC 593 and overruled the decision in Zora Singh's case. This Court held :-

"80. For the reasons aforementioned it must be concluded that in respect of acquisition proceedings initiated prior to date of commencement of the amending Act the payment of the additional amount payable under Section 23(1-A) of the Act will be restricted to matters referred to in clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act. Zora Singh insofar as it holds that the said amount is payable in all cases where the reference was pending before the reference Court on 24-9-1984, irrespective of the date on which the award was made by the Collector, does not lay down the correct law."

In the appeals and special leave petitions before us relating to acquisitions under the Punjab Act, the High Court has granted to the claimants the benefit of additional amount payable under Section

23(1-A) of the Land Acquisition Act. We find from the record placed before us that the Awards of the Collector in all these cases were made much before 30th April, 1982 and, therefore, there was no proceeding for acquisition of land pending on 30th April, 1982 since the Collector had made his Awards much earlier. Such being the factual position, the claimants will not be entitled to the benefit of additional amount payable under Section 23(1-A) of the Land Acquisition Act and the judgments and orders of the High Court on this aspect of the matter must be set aside.

In C.A. Nos.9260-9261 of 1995 the appellant has claimed benefit of additional amount payable under Section 23(1-A) of the Land Acquisition Act. In these cases as well the Collector had made his Award much before 30th April, 1982 and, therefore, the appellant's claim for additional amount under Section 23(1-A) must be rejected.

So far as the acquisition under the Nagpur Act and the U.P. Act are concerned they have been challenged on the ground that the Notification corresponding to the declaration under Section 6 of the Land Acquisition Act was made more than 3 years after the expiry of the date of the publication of the Notification corresponding to the Notification under Section 4 of the Land Acquisition Act. This was on the assumption that the provisions of the Land Acquisition Act were not incorporated in the State Acts but were merely referred to and the amendment of Section 6 of the Land Acquisition by insertion of proviso thereto by Act 13 of 1967, would apply to the acquisitions. We have already held that the provisions of the Land Acquisition Act as modified by the State Acts and the Schedule thereto stand incorporated in the State Acts and, therefore, the subsequent amendments of Section 6 by the Land Acquisition (Amendment and Validation) Act, 1967 (Act No. 13 of 1967) or by Act 68 of 1984, will have no effect on the acquisition made under the State Acts. The High Court of Allahabad has taken this view while the High Court of Bombay, Nagpur Bench, Nagpur has taken the contrary view. The appeals, therefore, which are directed against the judgment of the High Court of Allahabad must be dismissed and those against the judgment of the High Court of Bombay, Nagpur Bench, Nagpur, must be allowed. Since we have held that the Land Acquisition Act stands incorporated in the State Acts, with the consequence that subsequent amendments to the Land Acquisition Act have no effect upon the acquisitions made under the State Acts, it is not necessary to consider the submission of Mr. Rakesh Dwivedi, Senior Advocate, that in view of the judgment of this Court in T.M. Peter's case (supra), the absence of any time limit in the State Acts for issuance of Notification corresponding to the declaration under 6 of the Land Acquisition Act will not expose the State Acts to the charge of discrimination invoking the principles enshrined in Article 14 of the Constitution.

In the result C.A. Nos. 9206 to 9214 of 1995 are partly allowed and the direction contained in the judgments and orders impugned to the effect that the claimants shall be entitled to the benefit of additional compensation under Section 23(1-A) of the Land Acquisition Act is set aside. However, the impugned judgments and orders are affirmed in all other respects.

Special Leave Petition (Civil) No. 3210 of 1999 is dismissed.

Civil Appeal Nos. 9260-9261 of 1995 in which the appellants have claimed additional compensation under Section 23(1-A) of the Land Acquisition Act are dismissed since in all these cases the Collector



pronounced his Award much prior to 30th April, 1982.

Civil Appeal Nos. 3789 of 1992 and 839 of 1995 and Special Leave Petition (Civil) Nos. 12949 of 1992 and 3331 of 1993 are dismissed.

Civil Appeal Nos. 6590 to 6592 of 2001 were partly allowed by this Court by order dated September 19, 2001 in so far as the claim for interest on the enhanced solatium under Section 23(2) of the Land Acquisition Act is concerned. Their claim to interest on the sum payable under sub-section (1-A) of Section 23 of the Land Acquisition Act must also be allowed in view of the judgment of this Court in *Sunder vs. Union of India* (supra). Accordingly these appeals are allowed and it is held that the claimants are also entitled to interest on the amount payable to them under sub-section (1-A) of Section 23 of the Land Acquisition Act. The respondents are directed to compute and pay the interest payable to the appellants in accordance with law as enunciated in *Sunder vs. Union of India* (supra).

Civil Appeal Nos. 1164-1200 of 1993 and SLP (C) Nos. 8256-8259 of 1993 are allowed and the impugned judgments and orders of the High Court in all the appeals are set aside. The appellants shall now proceed with the acquisition in accordance with law.

There shall be no order as to costs.