Gauri Shankar Gaur And Others, Etc. vs State Of U.P. And Others on 12 August, 1993

Equivalent citations: AIR1994SC169, 1993(3)SCALE371, (1994)1SCC92, [1993]SUPP1SCR667, AIR 1994 SUPREME COURT 169, 1994 (1) SCC 92, 1993 AIR SCW 3029, 1993 ALL. L. J. 1207, 1993 ( ) JT (SUPP) 104, (1994) LACC 169, (1993) 3 CURCC 302, (1993) 3 SCJ 489

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Bench: K. Ramaswamy, R.M. Sahai

ORDER

K. Ramaswamy, J.

1. Special leave granted.

2. These 41 appeals and writ petitions raise common question of law for decision. Therefore, they are disposed of together. As the facts in C.A. No. 965/81 are sufficient to consider the controversy raised, the need to reiterate the facts in each case became redundant.

3. U.P. Avas Evam Vikas Parishad, Lucknow, the second respondent framed Bhumi Vikas Evam Grahastham Yojana No. 1 Scheme for Rampur city to relieve the acute housing problems of that city and published the impugned notification in the Gazette on September 8, 15 and 22 of 1973 under Section 28(1) of the Avas Evam Vikas Parishad Adhiniyam, 1965(Act 1 of 1966) amended as on that date, for short 'the Act' proposing to acquire 14 acres of land situated in civil area at an estimated cost of Rs. 25.21 lacs. Local publications too were made. Notices under Section 29 inviting objections were served on the appellants and others on Sept. 20, 1973. On October 28,1973 objections were filed. On July 31, 1976 notice was given of hearing objections on August 28, 1976 The Committee constituted in that behalf after hearing the objections; consideration thereof and rejection by proceedings dated Nov. 1, 1976, recommended to the Govt. to approve the Scheme. The Govt. on June 25, 1977 approved it to the extent of 11 acres 27 cents and the notification was published on August 27, 1977 in the gazette as required under Section 32(1). Appeal under Section 32(2) filed before the Govt. too was rejected on July 14, 1978. On its receipt the Board issued notices on Feb. 1, 1979 under Section 9 of the Land Acquisition Act of 1894 for short, 'L.A. Act' to take possession of the lands on expiry of 15 days thereafter. The appellant questioned its legality under Article 226 in the High Court. Similar notifications at different places were also subject matters of

writ petitions raising reverse contentions. In Kadim Hussain v. State of U.P. , a Division (sic) held that the first proviso of the L.A. Act did not restrict the right to issue notification under Section 32(4) of the Act, nor should it be done within a period of three years of the notification under Section 28(1) of the Act. In Riazuddin v. State of U.P. , the notification under Section 32 did not contain adequately the identity and the particulars of the land sought to be acquired as required in Sections 4 and 6 of the L.A. Act., when its validity was questioned. The Division Bench held that Sections 4 and 6 of L.A. Act had no application. In Satish Kumar Agarwal and Ors. v. State of U.P. and Ors., Civil Misc. Writ No. 1966 of 1979 dt. July 6, 1979, another Division Bench consisting of K.N. Singh, J., as he then was, and B.D. Agrawal, J., as he then was, negatived the contention that notification under Section 32 was to be issued within three years from the date of the notification under Section 28(1) and the first proviso to Section 5 of the L.A. Act had no application. Reliance was placed on Riazuddin's case. When similar question was again raised in Gauri Shankar v. State of U.P., Writ Petition No. 1247 of 1976 dated 13.2.1981, a division bench consisting of Satish Chandra, C.J. And A.N. Verma, J. upheld the validity of the notification under Section 32(1) independently considered the provisions of the Act and also followed Kadim Hussain's case an reiterated the same view. Similar cases were dismissed which arc subject matter of these appeals. When Doctor' Grih Nirnan Samiti Ltd. v. Avas Evam Vikas Parishad , came up for consideration before another division bench, on reference, the full bench considered the question in extenso and held that the first proviso to Section 5 of the L.A. Act is inapplicable to the proceedings under Section 28(1) or 32(1) of the Act. When an appeal was filed, this Court in S.L.P. Nos. 92-94 of 1984 dated Nov. 13, 1984 upheld the lull bench judgment and dismissed the petition. In Abdul Wahab and Ors. v. State of U.P., Writ Petition No. 37 of 1987 dt. August 9, 1988, another division bench bellowing the full bench ratio held that Section 11A of L.A. Act had no application and award need not be made within one year as per 1984 amendment Act. In S.L.P. No. 11310 of 1989, etc. another three judges bench confirmed the decision and dismissed the S.L.P. on November 6, 1989. It would thus be clear that in interpreting the Act and the L.A. Act as incorporated therein a consistent and unbroken judicial flora has been nurturing in the State of U.P. that Sections 4 and 6 of L.A. Act have no application to the proceedings under the Act and the bar of three years prescribed in first proviso to Section 5 too does not apply. In this case while granting leave, by order dated March 13, 1981 this Court restricted the appeal to the question whether the limitation of three years prescribed in first proviso to Section 5 of the L.A. Act would apply to the notification under Sections 32(i) and 28(i) of the Act. Other cases and Writ Petitions filed, thereafter, were tagged with it.

4. The counsel appearing for the appellants addressed the arguments exhaustively. They placed reliance on Bhatinda Improvement Trust v. Balwant Singh and Ors. , and other decisions and contended that the Act adapted the L.A. Act by reference and that, therefore, the first proviso to Section 5 as amended by Act 13 of 1967 gets attracted. Declaration under Section 5 vis-a-vis notification under Section 32(1) not having been published within three years from the date of the publication of the notification under Section 28(1) of the Act Section 4(1) of the L.A. Act], the notifications under Sections 28(1) & 32(i) became void ab initio, and the authorities are devoid of jurisdiction to proceed further. The High Court had not adequately dealt with the point. The contention of the respondents is that by operation of Section 55 and the schedule appended to the Act the legislature incorporated Sections 4(i) and 6(i) L.A. Act with modification existing as on the date the Act had come into force. The subsequent amendments to the L.A. Act are inapplicable. The

legislature did not intend that any subsequent amendments made to the L.A. Act would pro tanto protando be applicable to the proceedings under the Act. Their main plank is the full bench decision. The State sought to justify the delay on the plea of inconvenience or impossibility of compliance within three years' limitation prescribed in the proviso to Section 5 of L.A. Act, due to the procedure the Act had prescribed and so departure from the rigorous test of compliance of time Schedule was salvaged.

5. Though counsel for the appellants sought to argue other points or new contentions, to maintain comity and concomitant consistence, we restricted our consideration to the point on which this Court granted leave. It would be obvious that this Court applied its mind to the other questions canvassed by the counsel and did not consider them fit to be decided and limited to the general question of law of public importance as to the applicability of the first proviso to Section 5 of L.A. Act to the proceedings under the Act in the State of U.P. to lay down the law authoritatively. When the jurisdiction of this Court was invoked under Article 32, this Court would normally deal with the points arose for decision but writ petitions were admitted after the leave was granted and tagged them to the main case. Generally, if not invariably, it is desirable to maintain uniformity, at the hearing of the point on which leave was granted and any other point would not be permitted to be canvassed unless the point touches the jurisdiction or constitutional validity of the offending provisions. Exceptions should not become the rule and permitting to reopen several points which this Court did not consider fit to be canvassed, would create uncertainty and inconsistencies and would become a gamble and exceptions become the rule. To maintain this concomitant comity and certainty we declined to permit counsel for the appellants or writ petitioners to raise other points for adjudication.

6. Whether limitation of three years prescribed under the first proviso to Section 5 of the L.A. Act would apply to the acquisitions under Sections 28 and 32 of the Act is the crucial question. The object of the Act is the establishment, incorporation and functioning of a Housing and Development Board in U.P. to develop the land, construct the houses, acquire, hold and dispose of property and to contract and do all things necessary for the proposes of the Act. (Preamble and Section 4) to relieve housing shortage in urban areas due to increased influx of the migrant rural population to towns and cities to take out their livelihood or for their betterment and consequent rapid increase of urban population. The Housing Board or the Improvement Trust, Development Boards have been constituted under the Act and other allied Acts to frame and execute housing and improvement schemes in other projects; to coordinate housing activities and expeditious and effective implementation thereof, etc. (s.15) and to construct new houses under the planned development of towns and cities and if need be to acquire land and to execute the housing improvement schemes and other projects regulating building operations, improvement and clearance of slums to provide roads, electricity, sanitation, water supply and other civic amenities in the area to be developed. Section 17 provides that, notwithstanding anything containing in any other law for the time being in force and without prejudice to the provisions in Chapter III, a housing to improvement scheme may provide for all or any of the enumerated powers, one of which is to acquire by purchase or exchange otherwise of any property necessary for or effected by the execution of the scheme, etc. Section 18 of the Act specifies diverse types of housing improvement schemes which the Housing Board was authorised to frame. The parameters were laid down in Sections 19 of 27. Section 28(1) envisages

that when any housing or improvement schemes have been framed, the Board shall prepare a notice specifying (a) the boundaries of the area comprised in the scheme; (b) the dates, hours and place or places at which the map of the area covering the scheme and the particulars mentioned in Clause (b) of Sub-section (1) of Section 28 are available; and (c) the date by which the objection to the scheme shall be invited. The procedure was prescribed under Sub-section (2) of it publication in the state Gazette two daily newspapers, one of which shall be a Hindi newspaper, and publication on the notice board of local authorities within whose jurisdiction the area comprised in the scheme lies, etc. It shall be complied with within six weeks from the date of the publication of Section 28(1) notification. The Board is enjoined to serve the notice in the prescribed form on such person or classes of persons and in such manner as may be prescribed, of the proposed acquisition and the particulars of the land comprised therein. Within 30 days from the date of service of the notice or within such extended time by the Board for sufficient reasons, the owner or persons having interest may tile objections in writing to the Board against the scheme or against the proposed acquisition or levy. Under Section 31 the Board on receipt of the objections, after giving an opportunity of being heard by the objectors and consideration thereof, within six months from the date of the receipt of such objections, may either abandon the scheme or if the estimated cost of scheme does not exceed Rs. 20.00 lacs, sanction it with or scheme exceeds Rs. 20.00 lacs, the Board should submit it to the State Govt. with such modifications, if any, as it may suggest, for sanction. The State Govt. having been empowered under Section 31 (3), has to either accord or refuse or modify the sanction or return the proposed scheme for reconsideration. The other details of Sub-section (3) are not relevant. Under Sub-section (1) of Section 32 whenever the Board or the State Govt. sanctions a scheme or improvement scheme, it shall be notified in the gazette. Under Sub-section (2) thereof the same shall be conclusive evidence that the scheme has been duly approved and sanctioned. Any person or local authority which had objected under Section 30(3) of the scheme, being an aggrieved person, has been given right to tile an appeal within 30 days from the date of Section 32(1) notification to the State Govt. whose decision thereon shall be final. If the scheme is altered or cancelled as a result of the appeal under Sub-section (3) it shall be notified under Section 32(4) in the gazette. Sub-section (5) envisages that the scheme shall come into force from the date of the notification under Sub-section (1) if it had to be sanctioned by the State Govt. and in case of sanction by the Board and where no appeal was preferred under Sub-section (3) of Section 32, on expiry of 30 days from the date of the notification under Sub-section (1); Where an appeal was preferred and the scheme was maintained with or without alteration, on the date of the decision of the appeal and where more than one appeal is preferred, on the date of the decision of the appeal last decided.

7. The purpose of Section 4(1) of the L.A. Act is well-known. Whenever it appears to the appropriate Govt. that the Land in any locality is needed or likely to be needed for any public purpose or for a company, a notification to the effect shall be published in the official gazette, etc. The Collector is also required to cause public notice of the substance of such notification to be given at prominent places in the said locality. Thereupon it shall be required for any officer either generally or specifically authorised in this behalf by such Govt. and for his servants or workmen to enter upon and survey and take-levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adapted for such purpose. It is also enjoined upon the officers to set out the boundaries of the land proposed to be taken for the intended work, if any, proposed thereon. The officer is also enjoined to make such levels, boundaries and line, by placing

marks and cutting the trenches etc. Under Sub-section (1) of Section 5 declaration shall be made that the lands are needed for the public purpose or for a company duly signed by the Govt. and the officers. Different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Sub-section (1) or Sub-section (4). The first proviso postulates that on declaration in respect of any particular land covered by a notification under Section 4, under Sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967(1 of 1967) before the commencement of the land Acquisition Amendment Act, 1984 shall be made after expiry of three years from the date of the publication of the notification. Further provisos and explanation, etc. are not material, hence omitted. The publication of the declaration in the official gazette has been envisaged under Sub-section (2). Under Sub-section (3) the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be and the appropriate Govt. would acquire the land in the manner laid down thereafter.

8. It would, thus, be seen that Sections 28 and 32 operate in their own sphere within the time specified thereunder as separate and complete code, while Section 4(1) and Section 5 of the earlier Act mandate to follow the procedure prescribed thereunder within the period of limitation provided therein as general law.

Section 55 of the Act manifests the intendment of the legislature thus:

> 55. Power to acquire land. -
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> (1) Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Laud Acquisition Act, 1894(Act 1 of 1984), as amended in its application to Uttar Pradesh, which for this purpose shall be subject to the modifications specified in the Schedule to this Act.

(emphasis supplied) In the Schedule it has been provided thus:

> Modifications in the Land Acquisition Act, 1894, as amended in its application to Uttar Pradesh (hereinafter called "the said Act") *** *** ***
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> 2. Effect of notices under this Act. - (1) The first publication, in the official Gazette, of notice of any housing or improvement scheme under Section 28 or under Clause (a) of Sub-section (3) of Section 31. of the Act shall be substituted for and have, in relation to any land proposed to be acquired under the scheme, 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 notification under Section 4 of a declaration under Section 5 of the said Act has previously been made and is still in force, and the provisions of Section 5-A of the said Act shall be inapplicable in the case of such land.

(2) The issue of a notice under Clause (c) of Sub-section (3) of Section 23 of this Act in the case of land acquired under Bhavi Sarak Yojana and the publication of a notification under Sub-section (1) or as the case may be under Sub-section (4) of Section 32 of this Act in the case of land acquired under any other housing or improvement scheme under this Act shall be substituted for and have the same effect as a declaration by the State Govt. under Section 5 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

(3) In as case to which Sub-Paragraph (1) or Sub-paragraph (2) Applies, a notification under Sub-section (2) of Section 33 or under Sub-section (3) of Section 49 of this Act involving alteration of the extent of the land proposed to be acquired shall have the effect of correspondingly modifying the notification under Sub-section (1) of Section 4 and the declaration under Section 5 of the said Act, so, however, that any such modification shall be without prejudice to the validity of anything previously done under the original notification or declaration.

(emphasis supplied) Paragraphs Nos. 3 amends Section 17 of the L.A. Act by , substituting Sub-section (1) for Sub-sections (f) and (1-A) and omitting Sub-section (4); adds a Paragraph 4 substitutes new Section 17-A in L.A. Act providing for transfer of land to Board; Paragraph 5 amends Sub 23 of the L.A. Act by substituting the Explanation to clause 'firstly' payment of 15% solatium on the market value.

9. Service of notices have been prescribed in U.P. Avas Evam Vikas Parishad Forms and Manner of Service of Notice Rules, 1967, the details of which are not material for the purpose of this case, hence omitted.

10. Before adverting to the main question it is well to keep in mind at the forefront that in Uttar Pradesh the legislature wherever finds necessary adapted the L.A. Act either by reference or by incorporation in different Acts to suit its local needs and to remedy the alarming malady. So it made the Act and provided its own procedure to achieve the object of the Act. It is settled law that the court would make every endeavour to give effect to the legislative intent, allowing full play of its operation by harmonious construction and no part of the provision of the statute would be rendered surplus of otiose.

11. In Maxwell on The Interpretation of Statute, 12th Edition, at page 236 it is stated thus:

> By "equitable construction", the judges have sometimes meant nothing more than construction in accordance with the intention of the legislature. "Within the equity", said Byles J., "means the same thing as 'within the mischief of the statute. In this sense, equitable construction is unobjectionable and is still common: in application of mischief rule, for instance; in a "beneficial" or broadly liberal approach to problems of interpretation; and in the practice of construing a statute in such a way as to prevent evasion of its terms.
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> At page 237 it is stated that 'equity in interpretation of statute would not be tolerated today and it may be now considered altogether discarded in the construction of

> modern statutes.... It was at one time asserted that a statute contrary to natural equity or reason (such as one which made a man Judge in his own cause), or contrary to Magna Carta, was void, for, it was said, jura nature sunt immutabilia, they are leges legum, and an Act of Parliament can do no wrong.

12. Craies on Statute Law, 7th Edition, at page 101 in Chapter VI 'Construction where the meaning is not plain' in Part 4 'Construction by the Equity of the Statute', at page 102 it is stated that, in Brandling v. Banington [1927] 6 B. & C. 467 at 475, "that there is always danger in giving effect to what is called the equity of the statute, and that it is much safer and better to rely on and abide by the plain words, although the legislature might possibly have provided for other cases had their attention been directed to them:...

Although the expression "equity of the statute" has long been out of use in the courts, we find that a somewhat similar principle of construction is sometimes acted upon, and that if it is manifest that the principles of justice require something to be done which is not expressly provided for in an Act of Parliament, a court of justice will take into consideration the spirit and meaning of the Act apart from the words; in other words, there is still, as Jessel M.R. said, in Re Bethlem Hospital, "such a thing as construing an Act according to its intent, though not according to its words.

13. It would thus be clear that in construing a statute equity will not relieve against a public statute of general policy in cases admitted to fall within the statute and it is the duty of the court to give effect to the legislative intent. We have to advert, therefore, to the main question, whether the Act adapted Sections 4 to 6 of the L.A. Act is by incorporation or by reference.

14. In Clarke v. Bradlaugh [1881] 8 Q.B.D. 63 at p.69, Brett, L.J. laid the rule of incorporation thus:

> there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second.
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> This was reiterated by Lord Esher, M.R., dealing with the legislation by incorporation, in In re Wood's Estate (1886)31 Ch.D. 607 at 615, thus:
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> If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has been held, is to write those sections into the new Act just as if they had been actually written with pen, in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all

15. In Secretary of State v. Hindustan Co-op. Insurance Society Ltd., , the Judicial Committee was to consider whether Calcutta Improvement Trust Act, 1911 which in express terms modified partly the body of the L.A. Act or partly in the schedule attached to it. Therein, Section 26(2) of the Act empowered to constitute a "Tribunal" in the place of the 'Court' under the L.A. Act consisting of a President with the judicial experience and two lay officers. The question was whether an appeal would lie to the Privy Council against the decision of the Division Bench. It was contended that

Section 54 of the L.A. Act must be read into local Act and every award of the Tribunal must be deemed to be a decree within the meaning of the C.P.C. Dealing with that question the Board, held that it is an accepted rule of construction that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second. The independent existence of the two Acts, viz. Land Acquisition Act and Calcutta Improvement Act, is, therefore, recognised; despite the death of the parent Act, its off spring survives in the incorporating Act. Though no such saving clause appears in General Clauses Act, the principle involved is still applicable. Where certain provisions from an existing Act have been incorporated into 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 is is possible for the subsequent Act to function effectually without the addition. Accordingly it was held that an appeal would not lie to the Privy Council. This Court approved and followed the above ratio in cantina of cases.

16. In Ram Swamp v. Munshi and Ors. [1963] 3 SCR 875, a Constitution Bench of this Court was to consider whether the repeal of Punjab Alienation of land Act 1900 has only affect on the continued operation of the Punjab Pre-emption Act. It was held that, "we are, therefore, clearly of the opinion that neither the repeal of the Punjab Alienation of Land Act, 1900, nor the consequential removal of the fetters imposed by Sections 14 and 23 have the effect of rendering the substantive provision contained in Section 15 not available to those who satisfy its terms" Sections 15 and 3(1) of the Pre-emption Act incorporated "agricultural land" as defined in Punjab Alienation of Land Act, 1900, as amended by Act 1 of 1907, without giving any right of mortgage, whether usufruct or not, in such a land. The Punjab Alienation of Land Act was repealed later on. The contention raised was that the Punjab Alienation of Land Act was applied only by reference, and not by incorporation. The repeal of the Punjab Alienation of Land Act of 1900 had, therefore, effected the continued operation of the Pre-emption Act. While negating the contention it was held that and the expression 'agricultural land' in the late Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it" and it was by incorporation.

17. In Bolani Ores Ltd. v. state of orissa , Bihar and Orissa Motor Vehicles Taxation Act and Mysore Motor Vehicles Taxation Act, 1957 adapted the definition of 'Motor Vehicles' contained in Motor Vehicles Act, 1914. Subsequently it was amended in the Motor Vehicles Act, 1939. Unamended definition of Motor Vehicles Act, 1914 remained in the Orissa Act The constitutionality of that Act was challenged contending that the Central Act was applied by reference to Motor Vehicles registered under the Central Act for the purpose of State Taxation Acts. This Court held that the intention of the Parliament for modifying the Motor Vehicles Act has no relevance in determining the intention of the state legislature in enacting a Taxation Act. It is possible for both the Acts to co-exist, even if the definition of Motor Vehicles Act has been amended in the Central Act. It is, therefore, clear that the definition of Motor Vehicles Act as existing prior to 1937 amendment would alone be applicable as having been incorporated in the Taxation Act. The constitutional validity of the said Act was accordingly upheld.

18. In state of Madhya Pradesh v. Narasimhan , the question was whether the definition of 'public servant' in Clause 12 of Section 21 I.P.C. would be applicable to a public servant prosecuted under Prevention of Corruption Act, 1947. The contention was that the definition not having been

incorporated in the P.C. Act, the public servant under P.C. Act was not liable to prosecution of corruption under P.C. Act. Dealing with the doctrine of incorporation by reference this Court considered the scope and reiterated the ratio in Hindustan Cop-op. Insurance Society case holding thus:

> their Lordships of the Privy Council made it clear that this principle would not apply where a subsequent Act is rendered unworkable or is not able to function effectively." On a consideration of the authorities laid down the following exceptions :
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> (a) where the subsequent Act and the previous Act are supplemental to each other;
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> (b) where the two Acts are in pari matril;
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> (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
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> (d) where the amendment of the previous Act, either expressly of by necessary intendmcnt, applies the said provisions to the subsequent Act. It was held in that case that exception 'c' and 'd' would get attracted to the facts of that case and corporation employee was a public servant and the I.P.C. amendment by implication supplement the definition of public servant in P.C. Act. Otherwise P.C. Act becomes wholly unworkable and inefficient.

19. The same view was reiterated by this Court in State of Kerala v. Attesee (AIT Corporation) . In Farid Ahmed Abdul Samad & Anr v. Municipal Corporation of the City of Ahmedabad & Anr , the question was, whether Section 5A of the Land Acquisition Act was incorporated and personal hearing was mandatory. While considering the provisions of the Bombay Municipal Corporation Act, the scheme envisaged therein this Court held thus:

> Section 28AN referentially incorporated in the Bombay Act certain provisions of the Land Acquisition Act as detailed in Appendix I to the Bombay Act. Out of those provisions we are only concerned with part II (Acquisition) of the Land Acquisition Act containing Sections 4 to 17 including Section 5A. According to Appendix I all the sections in Part II of the Land Acquisition Act except Sub-section (1) of Section 4, Section 5 and Sub-section (2) of Section 17 are bodily incorporated in the Bombay Act. Those provisions are deemed to be part and parcel of the Bombay Act in terms of Appendix I

20. In Mahendra & Mahendra Ltd. v. Union of India and Anr. [1919] 2 SCR 1038, the Monopolies & Restrictive Trade Practices Act, 1969 by Section 55 thereof incorporated the grounds specified in Section 100 of the C.P.C., 1907 as its part to file second appeal against the order made by the Commission. It was contended that Section 100 as amended in f976 Amendment Act would apply, as the Commission was empowered to amend or revoke at any time in the manner in which it was made in Section 13(2). The substantial question of Law envisaged was whether Amended Section

100 C.P.C. would be applicable? This Court held that the three ground in unamended Section 100 were before the legislature when that Act was made and to which the legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the legislature intended to restrict the right of appeal. The legislature could never have intended to limit the right of appeal to any ground or grounds which might from time to time find place in Section 100 without knowing what those grounds were. The grounds specified in Section 100 might be changed from time to time having regard to legislative policy relating to second appeals and it is difficult to see any valid reason why the legislature should have though it necessary that these changes should also be reflected in Section 55 which deals with the right of appeal in a totally different context. We fail to appreciate what relevance the legislative policy in regard to second appeals has the right of appeal under Section 55 so that Section 55 should be inseparably linked or yoked to Section 100 and whatever changes take place in Section 100 must be automatically read into Section 55".

21. It would thus be clear that in case of legislation by incorporation, incorporated provisions would become part and parcel of the later fresh statute as if it is written by pen in ink or printed bodily therein as part of the later statute and became an integral scheme of that Act. The legislature while incorporating them did not intend to speculate that any subsequent amendment to the previous Act or its repeal would alter the texture of the later Act unless the Previous Act is supplemental to the later Act or both are in pari materia in which case it would render the later Act wholly unworkable and ineffectual or by necessary intendment applies it.

22. Let us then proceed to consider the cases on reference. In Collector of custom, Madras v. Nathella Sampathu Chetty and Anr. [1962] 3 SCR 786, Section 23A of the Foreign Exchange Regulation Act as amended in 1952 provided that the restriction imposed in Section 8 thereto shall he deemed to have been imposed under Section 19 of the Sea Customs Act, 1878 and all the provisions of the Act shall have effect accordingly. A contention was raised that the Sea Customs Act was incorporated and that, therefore, the procedure therein alone would be followed. Their constitutional validity was also assailed. This Court held that there is a "distinction between a mere reference to or a citation of one statute in another and incorporation which in effect means the bodily lifting of the provisions of one enactment and making it part of another so much so the repeal of the former leaves the later wholly untouched. Considering the provisions of Section 19 of Sea Customs Act, Section 8 of General Clause Act and Section 23A of the Foreign Exchange Regulation Act this Court held that adaptation is only by way of reference and not by incorporation and the repeal of the Sea Customs Act had no consequence. The order of confiscation and detention orders were upheld.

23. In New central jute Mills Co. Ltd. v. Asstt. Collector of central Excise, Allahabad and Ors, the appellant was a manufacturer of chemicals which included Amonia. The Asstt. Collector, Central Excise issued warrant to search and seize certain goods and document from the appellant's premises on the plea that the appellant was evading excise duty on Amonia. The jurisdiction of the officer under the offending action was questioned by way of writ petition on the ground that Sea Customs Act, 1875 having been repealed whether Central Govt. by operation of Section 12 was empowered to apply Section 105 of Customs Act and the authority has power to lake action. M was also contended

that Section 12 of the Central Excise and Salt Act 1944 was void. In considering (he questions, this Court angulated the distinction between incorporation and reference of the Sea Customs Act into the later Act. Applying Section (1) of the General Clauses Act, this Court held that Section 12 delegated limited power to Central Govt. to draw upon the provisions of the Sea Customs Act and were not meant to be incorporated in the Act. They are only to be applicable to the extent modified by the Central Govt. for the purpose of excise duty leviable under Section 3.

24. In Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah,etc. etc. , Section 27 of the city of Bangalore Improvement Act, 1945 enables the officer to apply the procedure in the Land Acquisition Act to the acquisition therein except to the extent the Bangalore Act provided different procedure. It was contended that L.A. Act was applicable by incorporation. Considering the scope and purpose of this Act, this Court held it to he by reference and applied Section 23 of the Land Acquisition Act to determine the market value. In Special Land Acquisition Officer City Improvement Trust Board, Mysore v. P. Govindan , a full Bench of the Mysore High Court held that the date of the determination of the compensation under Section 23(1) of the L.A. Act was the date of the notification under Section 18 of the local Act which corresponds to Section 5 of the declaration of the Land Acquisition Act. This Court held that Section 23 of the Mysore Act provided that compensation for acquisition shall be governed by the Land Acquisition Act as they exist on the date of a particular acquisition proceedings "except to the extent to which a different procedure is expressly laid down in the Mysore Act". No such different procedure was provided therein. In the background it was held that the L.A. Act was applied only by reference and to determine the market value was the date of the notification under Section 16 of the Mysore Act, corresponding to Section 4(i) of L.A. Act. At this stage it is relevant to notice that this Court laid emphasis that Section 23 of the Mysore Act declared that "the general procedure provided in the Land Acquisition Act will apply except to the extent it was inapplicable. That would mean that "amendment of the procedure in the Acquisition Act will apply if it is capable of application". The emphasis laid by the counsel was that, "the departure from the generally accepted procedure which regulates acquisition and compensation for it has to be something more explicit, express and substantial than mere date of the enactment of the Mysore Act". The emphasis pointed out must be considered in the light of the language used in that Act. The U.P. Act expressly incorporated certain provisions in the Schedule, as seen earlier, by operation of Section 55 as integral scheme. Therefore, incorporation to that extent was specific, unambiguous and explicit.

25. Bajaya v. Gopikabai and Anr. , is also a case in which Section 151 Madhya Pradesh Land Revenue Code, 1954 provided applicability of the Hindu Personal Law "for the time being in force" and the interest of the tenure holder shall "on his death passed on by inherence, survivorship or bequest, as the case may he ". Prior to the Hindu Succession Act 1956 came into force a Hindu female under Mitakshara law had only limited estate which right alone the female would get under personal law and the Hindu Succession Act I956 was inapplicable, was the contention. This Court negatived the contention and held that the code applied "personal law" by reference. Therefore, succession was controlled by the law in operation as on the date of the death by which date the Hindu Succession Act, 1956 came into force.

26. In Ujagar Prints & Ors v. Union of india and Ors. , the Constitution bench of this Court held that the facts in that case fell in the exceptions carved out in Narsimhan's case.The levy and excise duty on textiles was upheld. In Dr. Pratap singh and Ors. v. Director of enforcement, FERA and Ors. , the question was whether the provisions of Section 165 of Crl. P.C., were made applicable to Section 37 of the Foreign Exchange Regulation Act, 1973 by reference or by incorporation, It was contended that it was not by reference and that there was no power under the Act to search and seize the properly. Accordingly the search and seizure were invalid. Repelling that contention this Court reiterated that the language "as Tar as practicable used in Section 37 " would indicate that it is only by reference and not by incorporation.

27. In Western Coalfields Ltd. v. Special Area Development Authority, Korba & Anr , the facts were that Madhya Pradesh Municipalities Act empowered the Municipal Council to impose property tax. Similarly the Municipal Corporation Act, 1956 also provided power to levy property fax. Sections 127, 127A and 129 of the Municipalities Act and Section 132 of the Municipal Corporation Act provide the power and procedure to impose property tax. In 1973, the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (23 oT 1973) Act was made. Section 16 thereof conferred power on the Development Authorities to levy properly tax. Subsequently, it was amended in 1976 by Act 6 of 1976. Section 69(d) incorporated the provisions of Municipalities Act and Municipal Corporation Act in the 1973 Act to regulate the procedure to levy property tax. It was contended that the subsequent amendment of 1976 was not applicable. In that behalf relying upon Hindustan Co-op. Insurance societies Ltd.'s case this Court held that it an earlier legislation is incorporated into the later legislation, the procedure of previous Act which are incorporated into the later Act, became a part and parcel of the latter Act. Therefore amendments made in the earlier law after the repeal of previous Act cannot by their own force be merged with the later law.

28. In Bangalore Jute Factory Co. v. Inspector of Central Excise , this Court considered the inter-play of Rule 3 of the Jute Cess Rule and amended Rules 9 and 49 of the Central Excise Rules and exigibility of excise duty on jute yarn manufactured by the appellant. It was held that Rule 3 of the jute cess rule provided that the Central Excises Act and the rule, shall, so far as may be, applied in relation to levy and collection of cess on jute manufactures under that Act. Therefore, it was held that it is only by reference. In Bhatinda Improvement Trust's case Section 59(b) of the Punjab Town Improvement Act, 1992 provided that the Land Acquisition Act may be subject to further modification us indicated in the schedule to the said Act. Schedule II (Clause 1) provided the procedure for publication of the notification under Section 36 as provided under Sub-section (1) of Section 4 and Sub-section (1) of Section 5 of L.A. Act except where a declaration under Sub-section (4) of Section 5 of the said Act previously made and is in force. It was contended that it was by incorporation and not by reference. This Court held that it was by way of reference and not by incorporation and the proviso to Section 5 would apply and if the declaration was not made within three years from the date of Section 36(4)(1) notification, the notification under Section 36(4)(1) of the Land Improvement Trust Act shall stand lapsed. We are informed that the same bench directed these appeals to be heard later, though were posted together and obviously the bench was not inclined to apply the above ratio and intended to consider these appeals in the selling of the Act.

29. The ratio in Kanthimathy Plantation Pvl. Ltd. v. State of Kerala and Ors.v.[1989] 4 SCC 650, has no application. Both the Kerala and the Central Act 68/1984 operate in the same field. Therefore, it was held that after the amendment Act. by operation of Act 254 the Kerala Land Acquisition Act would stand repealed. The ratio in P. Vajravelu Mudaliar v. Special Dy, Collector, Madras & Anr , has no application since the vires of the Act has not been questioned. The ratio in Om Prakash v. Union of India , has no relevance. Therein the question was whether the Governor of Delhi is the Central Govt. for the purpose of Section 15 of Delhi Development Act to acquire the land. Considering the definition of the Central Govt. it was held that appropriate Govt. would mean the Lt. Governor. In Krishna Chandra Gangopadhyaya v. Union of India , the contention was that the Bihar Mines and Minerals Rules, 1964 having been declared ultra vires in Baijnath Kedia v. State of Bihar . which Parliament validated it with retrospective effect, whether it was by reference and whether the validation Act was ultra vires as the vice was not cured. In that selling this Court held that the parliament legislated for itself and statutorily adapted itself the second proviso to Section 10 of the Bihar Act which was otherwise ultra vires of Sub-rule (2) of Rule 20. It was further contended that if the technique adopted by reference or incorporated legislation which was insufficient in law, cannot be validated. The court held that there is force in the submission. Taking a view of the circumstances of the Validation Act the Parliament did more than simply validating an invalid law passed by the Bihar legislature, but did re-enact with retrospective effect of its own right amending Central Act.

30. It would thus he clear that in case of legislation by incorporation the former Act becomes an integral part and parcel of the later Act, as if it was written with ink and printed in the later Act. Its validity including the provisions incorporated thereunder would be judged with reference to the power of the legislature enacting the later Act. It is not by reference. Logically when provisions in the former Act are repealed or amended, they do not, unless expressly made applicable to the subsequent Act, be deemed to be incorporated in it. The later Act is totally unaffected by any amendment or repeal. It would be subject to the exceptions enumerated hereinbefore. The statute being distinct and different each is to be judged with reference to its own source that emerges from its scheme, language employed and purpose it seeks to achieve.

31. If later Act merely makes a reference to the earlier Act or existing law, it is only by way of reference and all amendments, repeals, new law subsequently made will have effect unless its operation is saved by Section 8(1) of the General Clauses Act or is void under Article 254 of the Constitution.

32. Section 55 of the Act read with the schedule made an express incorporation of the provisions of Section 4(1) and Section 5 as modified and incorporated in the schedule. The schedule affected necessary structural amendments to Sections 4, 6, 17 and 23 incorporating therein the procedure and principles with necessary modifications. Sections 28(2) & 32(1) prescribed procedure for publication of the notifications under Sections 28(1) and 32(2) of the Act without prescribing any limitation. It is a complete code in itself. The Act is not wholly unworkable or ineffectual, though be incompatible with provisos to Section 5(1) of L.A. Act. The U.P. Legislature did not visualise that later amendment to Central Act 1/1894 i.e. L.A. 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 5 did not become part of the Act

and they have no effect on the operation of the provisions of the Act.

33. It is next contended that Section 55 and the schedule must be so read as to apply Section 5 as amended from time to time and shall be applicable to the proceedings taken under Sections 28 and 32 of the Act. We find no force in the contention. In Yuri Maru v. The Woron, 1927 Appeal Cases 9%, the Colonial Courts of Admiralty Act, 1890 limited the jurisdiction of the High Court of England as Colonial. Admiralty court established under the Act "as if existed at the passing of the Act". When suit for damages against charter party was laid in the Exchequer Court of Canada, which was established under the Admiralty Act, 1906, it was contended that it had ceased having jurisdiction fur the action for damages for breach of charter party; the defendant being domiciled in London and the cause of action not having been arisen within the limits of Exchequer Court of Canada, and the ship having been within the limits of the High Court of England it had jurisdiction as if the Act has been amended from time to time excluding the colonial jurisdiction of Canada Court. Therefore, the Exchequer court of Canada had no jurisdiction to try the case. The Privy Council negatived the contention and held that the High Court of England had jurisdiction only as available at the time when the Act was made. The appellant's claim that these words can be understood as applying to conditions which are to come into being upon and after passing of the Act and they offer in effect to make the meaning clear by reading into the sentence before the words "existing", the words " from time to time. " The judicial committee negatived the contention and held that," the admiralty jurisdiction of the High Court of England as then existing would not apply in the following words:-

> On the whole, the true intent of the Act appears to their Lordships to have been to define as a maximum of jurisdictional authority for the courts to be set up there under, the Admiralty jurisdiction of the High Court in England as it existed at the time when the Act passed. What shall from time to time be added or excluded is left for independent legislative determination.

34. It is, therefore, clear that by statutory interpretation the court has no power to add words or interpret the words "as amended form time to time".

35. Sri Satish Chandra then contended that Section 2 of U.P. Amendment Act 28 of 1972 amended Section 5 of the Land Acquisition Act retrospectively and validated the invalid declaration under first proviso to Section 5(1) of the L.A. Act. By necessary implication the U.P. legislature extended the first proviso to Section 5(1) to the acquisition under the Act, otherwise the State Amendment Act would be rendered otoose. The first proviso to Section 5(1) and Sub-section (2) as amended by the U.P. Legislature should be harmoniously interpreted to apply first proviso to all the acquisition under the Act. Prima facia the argument though attractive, by deeper porbe, we find it to be fallacious. It is seen that different local Acts applied the provisions of the L.A. Act, with different language. In U.P. Urban Land Planning and Development Act, 1973, Section 17 thereof adopted by reference the Land Acquisition Act, 1894 for acquisition of the Land under that Act. It adapted not by incorporation therein. The declaration under Section 5 was made beyond (he period of 3 years. So to validate those acquisitions. Amendment Act came to be made.

36. It is next contended that by operation of proviso to Article 254(2) of the Constitution Section 55 and the schedule became inconsistent with the first proviso to Section 5(1) of the L.A. Act. The Act received the assent of the President. The Amendment Act of 1967 and 1984 brought on statute the first and second provisos into Section 5(1) of the L.A. Act. The Act being earlier Section 55 and the schedule became void, the first proviso to Section 5(1) of L.A. Act would be applied and the declarations made beyond three years became void and inoperative. We find no force in the contention. It is seen that the purpose of the Act is not acquisition simplicitor. It is only to constitute or incorporate Housing Board or its branches to regulate planned development of the Urban area. Power has been given to the Board to frame the schemes and if necessary to acquire the land by agreement with the persons having interests in the land or by exchange or otherwise. Therefore, compulsory acquisition is only incidental to the main purpose. It is seen that in Narayanaiah and govindan cases this Court emphasised that the Improvement Trust Act has provided a special procedure for improvement of the city of Bangalore and urban areas. There is no express incorporation in those Acts of the Land Acquisition Act. Therefore, by reference they were made applicable. In Ahmad's case this Court in similar circumstances held that it is only by incorporation and purpose of the acquisition of land is incidental. In Bolani Ores Ltd.' case we have already seen that this Court held that the purpose of the Motor Vehicles Taxation Act was to regulate (he motor vehicles and that the incorporation of Motor Vehicles defined under the Motor Vehicles Act, 1939 was as the part ot the Taxation Act. Its constitutional validity was accordingly upheld.

37. In Mithan Lal v. State of Delhi , the Constitution Bench of this Court was to consider the constitutionality of the notification extending Bengal Finance Sales-tax Act, 1941 to Delhi State Part 'C'. When its constitutional validity under Article 246 was challenged, the Constitution Bench held that the result of the notification issued under Section 2 of Part 'C' of State Laws Act enacted by Parliament was that provisions of the law was extended became incorporated by reference in the Act itself and, therefore, a tax thereunder was imposed by the Parliament. Even if it is a invalid law, in paragraph 10, it was held that the impugned provisions by way of modification of the Bengal Finance Sales Tax Act, does not purport to modify the Bengal Act but merely extends the whole of it by way of mistaken notion that it is all valid. But that does not affect the position. The notification intended that all the provisions of the Bengal Finance Sales-tax Act, 1941 should operate in the State of Delhi and if that may be effected by recourse being had to any of the powers of the legislature, that should be done and the legislation upheld as referable to that power Ut res magis valeat quam pereat. Accordingly even if the law be invalid law, its incorporation becomes valid provided the legislature has competence to make the law. It is not in dispute that the U.P. Legislature has legislative competence to make the Act. Instead of enacting separately, a separate procedure with necessary modifications under Section 55 and the schedule applied the procedure provided under Sections 4 and 6 of the L.A. Act with modifications enacted thereunder. Since the Act is not an Act to acquire the land, the question of inconsistency does not arise and the proviso to Article 254(2) is not attracted.

38. There is no doubt or difficulty as to applicability of the law under Article 254 of the Constitution. As to what would happen in a case of conflict between a Central and State Law, occupying the same field enumerated in the concurrent list Article 254 was enacted to solve that conflict. Article 254(1) envisages the normal rule that in the event of a conflict between the law made by the Union and the

State Legislature in the concurrent field, the former prevails over the latter if the law relating to the concurrent subject made by the State Legislature is repealed by Union Law, whether Union Law is prior or later in point of time, the Union Law will prevail and the State Law shall, to the extent of such repugnancy, be void. An exception has been engrafted to this rule by C1.2 thereof, namely, if the state law has been reserved for consideration and the President gives assent to a State Law, it will prevail, notwithstanding it repugnance to a earlier law made by the Union, though both laws are dealing with concurrent subject occupying the same field but operate in a collision course, The assent obtained from the President of the State Act which is inconsistent with the Union Law prevails in that State and overrides the provisions of the Union Law in its application to that State only. However, if the Parliament, in exercising its power under proviso to Article 254(2) makes a law adding, amending or repealing the union law, predominance secured by the Stale Law by the assent of the President is taken away and the repugnant Stale Law though it became valid by virtue of President's assent, would be void either directly of by its repugnance with respect to the same matter. The Parliament may not expressly repeal the State Law and may by necessary implication the State Law stands repealed to the extent of the repugnancy, as soon as the subsequent law of the Parliament creating repugnancy is made. Such repugnancy may also arise where both the laws are operating in the same field and they cannot possibly stand together. This is the consistent law laid by this Court. In Zaverbhai Amaidas v. The State of Bombay , the Bombay Act and Essential Supplies (Temporary Powers) Act, 1946 as amended in 45 and 49 void under proviso to Article 254(2) of the Constitution occupied same field and State law imposes higher punishment for the same offence and so State Law is repugnant to the Central Act. It was, therefore, held that the Central Law will prevail over the State Law and Stale Law is void. In M. Karunanidhi v. Union of India, another Constitution Bench surveyed the case law when Tamilnadu Public Men (Criminal Misconduct) Act was challenged as being repugnant to the CrPC, 1898, Prevention of Corruption Act 1947 and Criminal Law (Amendment) Act, 1952 and laid down the test thus: (1.) where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely iireconcilable, the Central Act will (emphasis supplied) prevail and the State Act will become void in view of the repugnancy; (2) where, however, a law passed by the State conies into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the Stale Acl has been passed in accordance with Clause (2) of Article 254(3) Where, however, a law made by the State Legislature on a subject covered by the 'Concurrent List is inconsistent with or repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the Stale Act is concerned, it will prevail in the Slate and over-rule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying of repealing the law made by the State Legislature under the proviso to Article 254. Where, however, a law made by the Stale Legislature on a subject covered by the Concurrent List is inconsistent with or repugnant to a previous law made by the Parliament, then such a law can he protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and over-rule the provisions of the Central Act in their applicability to the State only. Such a Slate of affairs will exist only until Parliament may at any time

make a law adding to, or amending, varying of repealing the law made by the State Legislature under the proviso to Article 254; In that case it was held that part of the provisions were not repugnant in their application to the public men in Tamilnadu but are void to the extent of public servants. T. Barai v. Henry Ah Hoc and Anr. , is a case where Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 in the Concurrent List prescribes a punishment of six years and fine. The West Bengal State Legislature amended it by West Bengal Amendment Act, f973 and prescribed a punishment of imprisonment for life for the self same offence under s,16(J) of the Act. Prevention of Food Adulteration Act was amended by Parliament in f976. The question arose whether by operation of proviso to Article 254(2) the State Law is void. Since the Central Amendment Act, 1976 occupies the same field imposing lesser punishment, the previous State Law imposing punishment of imprisonment for life, though received the assent of the President was held to be void.

39. It is seen that the Act was made under Entry 6, Entry 5 and Entry 66 of the State List and incidentally it took recourse to Entry 42 of the Concurrent List Presumptive evidence furnishes that the State Legislature would be aware of the Central law and appreciated the local needs and the remedy is provided for and would make the law. Every endeavour should be made to allow both the laws to operate in their respective field. Unless Stale Law is fully in consistent and absolutely irreconcilable it would not be correct conclude that repugnancy renders the State Law void. Since the main purpose of the Act is not the acquisition of the property as the provisions do indicate in pith and substance that they do not occupy the same field. It is not fully inconsistent and are not absolutely irreconcilable. Both do co-exist in relation to the procedure prescribed under the Acts. The Act does co-exist independently without in any way colliding with the L.A. Therefore, Section 55 and the Schedule did not become void.

40. Thus considered, we hold that the view of the full bench is perfectly legal and already was upheld by this Court. The limitation of three years prescribed under the first proviso to Section 5 of the L.A. Act is not attracted in its application to the State of U.P. vis-a-vis the procedure prescribed in paragraph 2 of the schedule to the Act read with Section 55 of the Act. We would reiterate that the State had undertaken, before the full bench, to properly compensate the land owners for the delayed period as it had occurred due to several supervening events beyond the State's control. The appeals and writ petitions are dismissed, but without costs.

R.M. Sahai, J.

41. Principal issue debated at length in these special leave petitions directed against Full Bench judgment of Allahabad High Court and writ petitions filed under Article 12 of the Constitution, was if bar of three years on declaration under Section 6 of the Land Acquisition Act 1894(Act I of 1894)(for brevity 'L.A. Act') added by way of proviso in 1967 applied to the housing or improvement scheme framed by the Board under Section 20 or sanctioned by State Government under Section 30 of the U.P. Avas and Vikas Parishad Adhiniyam Act, l965(hereinafter referred to as 'the Act'), as the L.A. Act having been adopted by Section 55 of the Act all subsequent amendments in it applied automatically.

42. Adopting or applying an earlier or existing Act by a competent Legislature to a later Act is an accepted device of legislation. If the adopting act refers to certain provisions in an earlier existing act it is known as Legislation by reference. Whereas if the provisions of another Act are bodily lifted and incorporated in the act then it is known as legislation by incorporation. Legal meaning of these expressions, therefore, is no different than the literal meaning. But the consequences of their application are far reaching. When an earlier act is referred in a later act then any subsequent amendment, addition or alteration in the earlier act.,automatically, becomes a part of it even for purpose of the later act. But in a legislation by incorporation since the entire provision either wholly or partly stands bodily engrafted, therefore, it stands frozen on the date of incorporation and remains unaffected by any subsequent or future amendment. Why it is so? What is the rationale for it? When an act is wholly or partly referred in another act it has to be applied or acted upon in the form it exists. For instance if a statute provides that the proceedings under the act shall he conducted in accordance with the procedure provided in the CPC (in brief 'CPC'), then on the date the proceedings commence it is the CPC as existing, on that date which shall apply. The natural consequence that flows from it is that any amendment or alteration In the adopted act becomes operative even in the statute in which it is referred. Sutherland in his book 'Statutory Construction' has explained it thus, A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted.

Same principle is discussed in Corpus Juris Secundum as under :

> ...Where the reference in the adopting statute is to the law generally which governs the particular subject, and not to any specific statute or part thereof,... the reference will be held to include the law as it stands at the time it is sought to be applied, with all the changes made from time to time, at least as far as the changes are consistent with the purpose of the adopting statute.

43. On the other hand legislation by incorporation 'is to write those sections into the new Act as if they had been actually written in it with pen or printed in it'. Repeal of the provision of the earlier act adopted or any amendment of alteration in it can have no effect on its operation in the adopting Act as having become part of the new statute it remains untouched by what happens in the parent Act. One of the reasons to resort to such method of legislation is to ensure uniformity. For instance if a statute provides a remedy by way of second appeal on the same grounds as is specified in Section 100 CPC then it may for sake of brevity and uniformity incorporate those provisions as was the case in Mahindra and Mahindra Ltd. v. Union of India and Anr. AIR (1979) SC 798, which permitted a second appeal to be filed on, 'one or more of grounds of appeal specified in Section 100 of CPC'. Provisions of Section 100 CPC stood transposed in Monopolies and Restrictive Trade Practices Act (in brief Monopolies & Restrictive Trade Practices Act_'). The legislature instead of reproducing the same words opted for incorporation by reference as such device brings all the learning given to it by the courts of law. Effect of it was that the provision of Section 100 of CPC having become part and parcel of the Monopolies & Restrictive Trade Practices Act_ it could be amended, altered or repealed by exercising such power under the act and not under CPC. State of Madhya Pradesh v. M. V. Narasimhan ; Smt. Ujjam Bai v. State of Uttar Pradesh and Bolani Ores. Ltd. v. State of Orissa , were

cases in which definitions of other acts which had withstood the test of interpretation were incorporated. In Narsimhan's case meaning of the word 'public servant' used in Section 21 of the Indian Penal Code having become well known by interpretative process the State Legislature instead of repealing it adopted it by providing that, for purpose of this Act "public servant" means a public servant defined in Section 21 of the Indian Penal code'. When such method of legislation is resorted to (he legislature prefers to accept the interpretation and understanding of such an expression as given by the courts in respect of it in the earlier Act. Legislation by incorporation bring into effect a new and independent legislation which remains unaffected by any change, or alteration or amendment in the earlier Act, 'because the legislature, which adopts by incorporation the existing provisions of another law, cannot be assumed to intend to bind itself to all future amendments or modifications which may be made in the earlier law. In other words, the incorporating Act does nothing more than borrow certain provisions of an existing Act an instead of setting out, verbatim, those provisions in its own creation, refers to them as a matter of convenience in the mode of drafting' Western Coal fields Ltd. v. Special Area Development Authority, Kobra & Anr [1982| 2 SCR 1. Although the decision of Privy Council in Secretary of State v. Hindustan Co-operative insurance Society Ltd was concerned with the L.A. Act adopted by the Calcutta Improvement Act the Court on consideration of the provisions held that the effect of extensive modifications in the local act and schedule was, 'to enact for the purposes of the local Act a special law for the acquisitions of land'. Further the decision turned on the principle that specific excludes general. The Court held that the State act while adopting L.A. Act constituted a tribunal and accorded it, by fiction, status of courts, 'except for the purposes of Section 54 of the Act'. Therefore, in view of this exclusion the subsequent amendment in Section 54 of L.A Act providing for second appeal could not be available in acquisition proceedings under the Act. The language of Section 55 of the Avas Vikas Act permitting acquisition under the provisions of the L.A. Act 1894(Act 1 of 1894), as amended in its application to Uttar Pradesh, with modifications specified in the schedule, is widely different from the language used in Calcutta Improvement Trust Act. Apart from it this Court in Farid Ahmed Abdul Samad and Anr. v. The Municipal Corporation of the city of Ahmedabad and Anr. held Section 284N of the Municipal Corporation Act was a referential legislation even though the Section ran as under :

> 284N. The Land Acquisition Act, 1894(in this and the next succeeding sections referred to as 'the Land Acquisition Act') shall to the extent set forth in Appendix I regulate and apply to the acquisition of land under this Chapter, otherwise than by agreement, and shall for that purpose he deemed to form part of this chapter in the same manner as if enacted in the body thereof, subject to the provisions of this Chapter and to the provisions following, namely :-....
>
> It was held that the Corporation Act having adopted Chapter II of the L.A. Act to the extent set forth in Appendix I of the Act which did not exclude Section 5A of the L.A. Act the right of hearing could not be denied. Special Land Acqusition Officer City Improvement Trust,Msore v. P. Govindan , was a case where this Court applied subsequent amendment in L.A. Act, adopted by the City Improvement Act Mysore, as the provision relating to compensation was matter of procedure and any law dealing with procedure is retrospective in operation. In Western Coal-fides Ltd. v. Special Area Development Authority, Korba and Anr. , this Court construed Section 69 of

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (23 of 1973), which for purposes of taxation conferred on the Special Area Development Authority same powers as were exercised under Municipal Corporation Act, 1956 or the Madhya Pradesh Municipal Act, 1961 as legislation by reference therefore subsequent amendments in the Municipal Corporation Act enlarging the power of assessment applied to the Special Development Authority under Act 23 of 1973. State of Kerala v. M/s. Attesee [1989] Suppl. 1 SCC 733. is yet another case where the State Legislature provided that cotton fabric, silk fabric etc. as defined in First Schedule of Central Excise Act shall he exempt from payment of tax. The entry in Excise Act was subsequently amended. It was held:

In the first place, we think it would be correct to say that the 1963 Act brings in the definitions of the 1944 Act by way of incorporation. For, a reading of the Act shows that the Act intended to confer exemption of a number of goods set out in the schedule. Of these, since items 5 to 7 are defined in the 1944 Act, the Act refers to those definitions to ascertain the scope of these items. There are no express words used by the statute which will justify an inference that the intention was to incorporate those definitions, as standing on that date, into the 1963 Act.

In Bajaya v. Gopikabai and Anr. [it was held that it was a case of legislation by reference.

44. Principles laid down in these decisions indicate that the determination if a legislation was by way of incorporation or reference is more a matter of construction by the courts keeping in view the language employed by the Acl, the purpose of referring or incorporating provisions of an existing Acl and the effect of it on the clay to day working. Reason for il is the courts' prime duty to serve law made by the Legislature is enacted to serve public interest. That is (he rationale due (o which the court constructed provisions in Western Coalfields Ltd (Supra) or M/s. Attesee (supra) or M/s. Bangalore. Jute Factory Co. and Ors. v. Inspector of Central Excise and Ors. [1992] I SCC 401 as legislation by reference even though on literal and conservative test enunciated by English courts in Re Wood's Estate Ex parte, Works and Buildings Comma's (1886) 31 Ch D 607 or Clarke v. Bradlaugh [1881] 8 QBD 63 the provisions appears more to be illustrative of legislation by incorporation. Same principle is discernible from those eases where this Court applied amendments made subsequently in L.A. Act lo proceedings for acquisition taken under the Act to which adopted the L.A. Act with modifications. It is necessary therefore to extract Section 55 of the Act to ascertain if the State Legislature intended to adopt the L.A. Act generally which would result in applying the amendments made in Section 6 automatically or the L.A. as modified by the schedule stood bodily engrafted:

55. Power to acquire land -

(1) Any land or any interest therein required by the Board for of the purposes of this Acl, may he acquired under the provisions of the land Acqusition Act, 1894(Act 1 o) 1894), as amended in its application to Uttar Pradesh, which for this purpose shall be

subject to the modifications specified in the Schedule to this Act.

The language indicates that the legislature intended to take proceedings for acquisition of land under the L.A. Act except lo the extent il has been amended by the Schedule. A perusal of the schedule indicates that it amended Sections 3, 17, 23, and 49 of the L.A. Act added Section 17A to the L.A. Acl and provided for effect of notices issued under Sections 23, 28, 31 and 32 of the Act. 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 LA. 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 in the Act have been substituted for and have same effect as declaration under Section 6 of (he L.A. Act. In other words the notices issued under (he Act under different sections mentioned in it shall be substituted in place of Sections 4 and 6 of the L.A. Act. It is not bringing into effect a new legislation nor transposing provisions of L.A. Act to the Avas Vikas Act but applying the L.A. Act as modified to proceedings under the Act. In Bhatinda Improvement Trust v. Balwant Singh and Ors. , this Court in more or less similar circumstances, where Section 59 of (he Punjab Town Improvement Act 1922 provided that, 'publication of a notice of any improvement scheme under Section 3d of this Act shall he substituted fur and have the same effect as publication in the Official Gazette and in the locality of a notification under Sub-section (I) 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/ held, In the present case, however, we find that there is no question of incorporation of any of the provisions of the Land Acquisition Act into the said Act at all. The said Act does not deal with acquisition of land for the purposes of a scheme as contemplated under the said Act. The acquisition of such land for the purposes of the scheme is left to the general law of the land in that connection, namely, the Land Acquisition Act which has to be resorted to for the purposes of acquisition of land for the purposes of the scheme contemplated under the said Act. The only difference is that some of the provisions of the Land Acquisition Act, as referred to in the relevant sections of said Act, are given effect to as amended by the relevant sections of the said Act. In these circumstances, it cannot be held that any provisions of the Land Acquisition Act have been incorporated into the said Act and the provisions of the Land Acquisition Act which have to he applied, are the provisions as they stand at the relevant time, namely at the time of acquisition, in the absence of a contrary intention. There is nothing to indicate that there was any such contrary intention in the present case. In these circumstances, the notification under Section 42 should have been published within the period of three years of the date of publication of the notification under Section 4(1) of the Land Acquisition Act, as required under the first proviso to Section 6 of the Land Acquisition Act.

45. Language of the section, apart, the courts have a duty to construe the provisions of a statute to advance the cause of justice and facilitate the day to day working of the statute to serve the public interest and achieve the objective of social betterment. Motivated by such principles the Privy Council mitigated the rigour of legislation by incorporation by carving out exceptions to it which have been reiterated by this Court in Narasimhan (supra) and M/s. Attesee (supra). One of such situations where legislation by incorporation has been excluded is if it would create difficulty in day to day working. In our constitutional set up it can be extended further and the courts should lean against a construction which may result in discrimination. How does it arise? Land of 'A' or 'B'

owners of adjoining land is acquired one by the State Government for constructing a road or canal or bridge and other by the Avas Vikas Parishad for constructing a building in public interest. The acquisition proceedings in either case in taken under the L.A. Act. In one it is L.A. Act simplicitor whereas in other as modified to the extent indicated in the schedule or appendix of the act adopting it. Where it is under L.A. Act the proceedings have to be completed within three years whereas under other it may go on for ten years. Such consequence can be avoided by construing the statutory provision in such a manner that it does not operate unjustly. A legislature should not be deemed lo have intended that the State Legislature while providing for acquisition of land under the L.A, Act. opted to exclude availability of any beneficial amendments in it. At least not by construction. Faulty implementation of a legislative provision by the executive should not persuade the court to impute intention to the legislature lo have intended lo act unfairly.

46. Reason for adding the proviso to section itself was public interest. In the original act compensation for the land acquired was payable on the market value at the date of, 'declaration relating thereto under Section 6'. It was substituted by (Amendment) Act 1923(XXXVII of 1923) by the expression, "notification under Section 4 ". But the experience of working of the Act indicated that declarations under Section 6 were issued long alter publication of notification under Section 4 even where urgency clause was invoked resulting in grave injustice to the land owners. Consequently to mitigate such injustice the proviso was added to Section 6 reducing (he gap between notification under Section 4 and declaration under Section 6 of the L.A. Act to three years. The object and reasons for adding proviso to Section 6 was, "at the same time, care has been taken to ensure that land acquisition proceedings do not linger on for unduly long time. The aforesaid Ordinance, therefore, provides that no declaration under Section 6 of the Act should be issued in respect of any particular land covered by a notification under Section 4(1) published after the commencement of the Ordinance, after the expiry of three years form the date of such publication". The Parliament in our Federal structure has the supremacy in legislative matters subject to the exclusive power of State on matters enumerated in list II of the VIIth schedule. It would be unjust to exclude operation of the beneficent provision added for general betterment in social interest, by resorting to rule of construction. The courts are obliged to adopt a constructive approach while construing such provisions. In absence of express exclusion it is more in consonance with justice to hold that the restriction of three years added by the proviso to Section 6 applied to the 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 thus came to end after expiry of three years from the date of issuance of notification under the act analogous to Section 4 of the L.A. Act.

47. But this is not the end. Even though the law is in favour of petitioners but equity stands in their way since in pursuance of these proceedings the Avas Vikas Parishad entered into possession and constructed housing colonies as there was no interim order in favour of land owners during pendency of the writ petitions in the High Court. Therefore the individual interest of the land owners is faced with public interest of those large number of middle class persons who must have invested their life's savings in purchasing theses houses and the demolition of houses which are standing over the land and rendering its occupants homeless shall result in includible loss and injury. Larger social interest therefore requires this Court to mould the relief in such manner that

justice may not suffer. No flaw has been found in the notifications issued for acquisition of land under Section 4 or publication of declaration under Section 6 of the Act. The infirmity has arisen due to procedural delay. It is well established that delay destroy the remedy but not the right. The Avas Vikas Parishad could have acquired the land by issuing fresh notification. Therefore the equities can 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 the declaration was published.

48. Before parting it is also necessary to mention of the petitioners who approached this Court under Article 32 can be denied hearing on points other than limitation only because their petitions had been tagged with special leave petition in which following order was passed:

> Leave granted limited to the question as to whether the limitation provided in proviso to Section 6 of the Land Acquisition Act introduced by the amending Act of 1967 is also applicable in the facts of this case in view of U.P. Avas & Vikas Adhiniyam.
>
> From the order granting leave extracted above it is clear that the order was confined to facts of that case. It may legitimately be argued that the Bench hearing the appeals is not bound by the order granting leave as even though other aspects shall be deemed to have been heard and decided yet in absence of any decision or adjudication on merits it has no binding effect. Whether it is so or not need not be gone into, in these petitions except observing that the implied rejection of an order does not amount to deciding on merits but in propriety and comity it is just and proper that except in very rare cases where injustice is manifest the Bench hearing the matter finally is expected to respect the earlier order passed by the Bench granting leave. But that does not apply to the writ petitions which were merely tagged with special leave petitions. In absence of any specific order it would not be fair to shut out the petitioners who invoked extraordinary jurisdiction of this Court merely because one of the quest ions, may be the main one, being common the petitions were directed to be connected either at the instance of the bar or the Bench. Once the petitions were admitted the court has an obligation to hear them or to settle the question of law and permit the petitioners to seek their remedy on other issues in appropriate forum.

49. For these reasons even though publication of declarations under the act were beyond the period of three years it is not in interest of justice to quash the proceedings but the appellants shall be paid compensation of the land acquired on market value prevalent in the year in which the declaration analogous to Section 6 of the L.A. Act was published/issued by fictionally assuming that fresh notifications under the Act analogous to Section 4 was issued in that year.

50. So far the writ petitions are concerned it shall be open to petitioners to seek their remedy in appropriate forum against any aspect other than the limitation. The special leave petitions and writ petitions are dismissed subject to observation made above.