their prime. The draftsmen should be encouraged to be creative with clarity of thought for drafting concise, clear, understandable and implementable statutes. Instead of looking back to ancient drafts, it is better to go through similar statutes in advanced and enlightened countries where implementation is fast, people understand the provisions of law and the offenders are put in fear of certainty of punishment.

JUDGMENT OF THE SUPREME COURT REPORTED IN AIR 2001 SC 1117 - UPSETTING THE APPLE CART ?

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In the present system of administration of justice, it is not uncommon to come across conflicting and contrary judgments from various High Courts on the same subject-matter of law. While this does pose a problem for the subordinate Courts especially in the absence of any judgment of the Supreme Court on the point, the real difficulty arises when the Supreme Court itself takes a view contrary to its own earlier judgments rendered by a co-ordinate Bench.

A rent judgment of the Supreme Court in the case of land *Acquisition Officer and Mandal Revenue Officer v. Narasaiah*, AIR 2001 SC 1117, under Section 51A of the Land Acquisition Act is a case in point. The said judgment has not only failed to consider the earlier Supreme Court judgments rendered by Benches of equal strength which have taken a different view on the same point of law, but in the process has also failed to correctly appreciate some of the important aspects of Evidence Act.

The short question before the Supreme Court in the above referred case was whether it is necessary for the claimants in the Land Acquisition cases to examine the persons connected with the sale deeds which are filed in support of their claim for higher compensation before the said sale deeds are accepted as evidence by the reference Court. Till *Narasiah's* case, there has been no discordant note struck by any Court including the Supreme Court in the past and the accepted position of law was that such examination of the party connected with the sale deed is a *sine quo non*. For the first time, a three-member Bench of the Supreme Court held otherwise. The final observations of the Supreme Court in *Narasaiah's* case (supra) are summarized as follows:

(a) The purpose of introducing Section 51-A in the Land Acquisition Act by way of an amendment is to obviate the difficulties for the State Officials to trace out the persons connected with the sale deeds and examine them in the Court for the purpose of proving such transactions.

(b) Therefore certified copies of sale deeds can be considered without examining the persons connected with the transaction.

(c) In land acquisition cases for enhanced compensation the State has the burden to prove the market value of the land acquired by it for which the State may have to depend upon the prices of lands similarly situated which were transacted or sold in the recent past, particularly those lands situated in the neighbouring areas.

The above judgment will have a far reaching effect not only in all the Land acquisition cases, but also in other cases, for

the Supreme Court's view has also gone against some of the important provisions of Evidence Act as well as the Land Acquisition Act. The first impact of the said judgment is that the claimants who seek higher compensation in Land Acquisition cases will not henceforth be required to take the trouble of examining the persons connected with the sale deeds which are being relied upon by them to prove the sale deeds and it would suffice for them to merely file the certified copies of sale deeds into the Court for the purpose of claiming enhanced compensation without doing anything more. We are afraid, this is not the purport of Section 51A of the Land Acquisition Act, as we shall deal with in this Article.

In the above backdrop, the various issues that are closely connected with the points decided by the Supreme Court are examined in this article. We propose to deal with the matter in three parts. Part-I deals with the purport of some of the fundamental provisions of Evidence Act dealing with the admissibility and proof of documents. In Part-II the purport of Section 51A of the Land Acquisition Act as well as the correctness and the reasoning of the Supreme Court are dealt with. Part-III deals with the binding nature of the said judgment on the High Court and the Subordinate Courts.

Part-I

When we deal with the point regarding the admissibility and mode of proof of documents, we have to refer to Sections 61 to 65 of the Evidence Act. Section 61 says that the contents of a document may be proved either by primary or by secondary evidence. Section 62 defines "Primary evidence" means the document itself produced for inspection of the Court. Section 64 says that documents must be proved by primary evidence except in the cases mentioned in Section 65 whereunder the circumstances under which secondary evidence may be given are listed out. A conjoint reading of the above provisions would show that except in situations permitted under Section 65, in all other situations documents have to be proved by primary evidence. In other words, as a matter of rule, the contents of a document should always be proved by way of primary evidence. It is only in the event of the specified circumstances narrated in Section 65, that secondary evidence can be let in and that too after laying down necessary foundation for the same.

The next important question, and the one which is very often misunderstood, is about the meaning of the expression "be proved" and "proving by" as they appear in Sections 61 and 64 of the Evidence Act respectively. Did the legislature intend to give the expression "proving a document" a meaning which is synonymous whit "filing" the said the document without anything more? In our view, proving a document does not mean filing the document. "Proof" could refer to proof of execution, or the contents of the documents. We can take an illustration to understand this. If a letter is said to be written by A and addressed to B, and if the said letter is sought to be relied upon by a party then, by merely filing the said document into the Court it cannot be said that either the execution or the contents of it is proved. In order to prove the same, the law requires that the person connected with the document should be examined. As otherwise the document cannot be said to be proved. For the sake of better understanding, we refer to the judgment of the Supreme Court in the case of *M/s. Barelly Electricity Supply Company Limited v. The Workmen and others*, AIR 1972 SC 330, wherein the Supreme Court speaking about the proof of documents observed as follow:

> "... If a letter or other document is produced to establish some fact, which is relevant to the enquiry, the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accordance with principles of natural justice

as also according to the procedure under Order III Civil Procedure Code and the Evidence Act both of which incorporate these general principles...."

Thus, production of the person connected with the document is a *sine quo non* for proving a document. This is the general principle applicable in all cases. Now, let us see whether this principle is any different in the case of certified copies produced in all cases including Land Acquisition cases. Before that, it is necessary to briefly deal with the circumstances under which "Secondary Evidence" of documents is permitted under Section 65 of the Evidence Act. Broadly stated, under the said provision, in order to let in secondary evidence of a document, it is imperative that it should be such that the original is in possession of the opposite party or any other person who is out of reach or not subject to the process of the Court, or the original of the said document or its contents have been proved to be in writing by the opposite party, or the original is destroyed or lost, or when a party cannot (not on his own default or neglect) produce it in a reasonable time, or when the original is not easily movable, or when the original is a public document under Section 74 of Evidence Act or when the original is a document of which a certified copy is permitted under the Evidence Act or by any other law to be given in evidence.

Section 65 starts with the phrase "Secondary evidence may be given of the existence, condition or contents of a document.." The meaning of this expression is that secondary evidence can be let into prove the existence of the original document or its contents. Now let us take the same illustration, which we took earlier for easy understanding. For instance, if a person is not able to produce the original of a letter written by A to B and if he is able to lay the foundation to let in secondary evidence under Section 65 of Evidence Act, and then files a secondary evidence of the said letter then the can succeed only to the extent of proving that there exists or existed a original letter written by A to B and that it contained the same contents as that of the secondary evidence of the said letter filed before the Court. But, it cannot be said that by merely filing the secondary evidence of the letter the truth or otherwise of the contents are proved. For proving this, he has to examine A who is the author or his affidavit has to be filed so that the other side will get an opportunity to cross-examine A. This is what is the essence of the Supreme Court judgment reported in AIR 1972 SC 330 cited supra. In other words, the Court can act on the said copy being the next best evidence. But, the important and material question that is very often lost sight of is a mere filing of such a copy itself cannot amount to proving the contents of the letter. This can also be understood in a different way. If it is required to examine the author or someone connected with the document to prove the execution and the contents of a document even when the original is filed *i.e*., the best primary evidence, can it ever be said or contended that such a requirement of examining the author would not be required when a secondary evidence of the same document *i.e*., the second best evidence is filed and that the mere filing of it would amount to proving the truth of same? In our view, the same cannot be so. Therefore, the mere acceptance of the secondary evidence of a document simply dispenses with the filing of the original. The law also presumes that whatever are the contents of the secondary evidence are the same as that of what the primary evidence contained. This, in our view, cannot mean that the obligation to examine the party connected with the document is dispensed with. It is one thing to say that the contents contained in the secondary evidence correspond to what is contained in the original. But, it is altogether a different thing to say that the truth of the contents of the documents is "proved" the moment the secondary evidence is filed into

the Court without doing anything further. Once this rudimentary principle is understood, it will not pose any difficulty in appreciating the point decided by the Supreme Court in *Narasaiah*'s case.

Part-II

Coming to the logic and reasoning of the judgment of the Supreme Court, its first conclusion is that a person who claims enhanced compensation under the Land Acquisition Act can merely file a certified copy of the sale deed of other lands in the vicinity in order to prove his own land's true market value as on the date of notification under Section 4(1) of the Land Acquisition Act. In effect, what the Supreme Court has said is that in all land acquisition matters, a mere filing of the certified copy of the sale deeds would do and it is not necessary to examine the persons connected with the said sale deeds. To put it differently, it is to the effect that mere filing of secondary evidence would suffice and the same would amount to proving the said documents though none connected with the said document is examined to prove the truth of the contents of the said document. The basis for this conclusion, as it appears from the judgment, appears to be based on an interpretation and understanding of the purport and intendment of Section 51A of the Land Acquisition Act. According to the Supreme Court, even before the introduction of Section 51A of Land Acquisition Act it was possible for the claimant to merely file a certified copy of the sale deed of the neighbouring lands into the Court under Section 57(5) of the Registration Act to prove the market value as on the date of 4(1) notification and that therefore the purpose of introducing Section 51A was only to dispense with the burden of examining the persons connected with the sale deed. With due respect, the aforesaid reasoning and the conclusion of the Supreme Court is not in accordance with law or in consonance with the earlier judgments of the Supreme Court on the subject.

In order to appreciate the above reasoning, it is necessary for us to refer to Section 57(5) of the Registration Act, which is to the following effect:

> "All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents".

Supreme Court, while observing that a certified copy of the sale deed issued by the Registrar could be straight away filed into the Court and may be accepted by the Court under strength of the above section did not, unfortunately, consider Section 65 of the Evidence Act which deals with the proof of documents by secondary evidence. Further, the intention behind the incorporation of Section 57(5) of the Registration Act has also not been properly appreciated by the Supreme Court. It is well known that in the case of the sale deeds the original is returned to the party presenting it for registration but a copy of it is kept in the registrar's office and the certified copy given by the registrar under Section 57(5) is not a copy of the original document but is a copy of the registration copy. Therefore, under illustration (c) of Section 63 of the Evidence Act it will not come under the category of secondary evidence since it is a copy of a copy and not compared with the original. It is only to obviate this difficulty that Section 57(5) of the Registration was enacted which makes the certified copy of the sale deeds as secondary evidence though they are copies of copies not compared with the original. In other words, it carves out an exception to the general rule that copies made from copies and not compared with the original are not to be treated as secondary evidence. Though there are several judgments on this point, a useful reference is made to the Full Bench decision of the AP High Court in the case of *The Land Acquisition Officer, Vijayawada Thermal Station v. Nutalapati Venkata Rao*, AIR 1991 AP 31. In the said judgment, while dealing with the admissibility of

certified copy of sale deed granted by the sub-registrar, the Court held as follows:

> "..... though the ordinarily copies of copies are not to be treated as 'secondary evidence' unless such copies are again compared with the original, the said principle does not apply to certified copies granted by the Sub-Registrar under the Registration Act. These certified copies are, under law, to be treated as secondary evidence....."

The above would show that the purpose of Section 57(5) of the Registration Act is only to make the certified copies given under the said Act as "secondary evidence" and nothing more. In other words, but for Section 57(5) of Registration Act, a certified copy of sale deed will not get the status of secondary evidence. Now, once a document comes within the definition of secondary evidence or deemed as secondary evidence, then it follows that the said secondary evidence can be let in only within the four corners of Clauses (a) to (g) of Section 65 of the Evidence Act and not otherwise. In other words, before the secondary evidence is admitted, the foundation has to be laid by the party relying on the said secondary evidence. In the land acquisition cases, where the original sale deeds of the neighbouring plots are in the possession of the respective owners, one cannot let in secondary evidence by filing the certified copies taking shelter under clause (a) to (d) of Section 65 of Evidence Act, as none of the situations in the said sub-sections would govern the situation in the case of land acquisition case. In so far applicability of clause (e) is concerned, though some Courts had earlier held that the copy of the registered sale deed kept in the office of the Registrar would come under the definition of public document as per Clause 74(2) of the Evidence Act *viz*., public record of private documents and consequently fall under clause (e) of Section 65 of the Evidence Act, the later judgments have all taken a contrary view. To appreciate this point, we refer to one of the earliest Privy Council decisions reported in the case of *Gopaldas and another v. Sri Thakurji and others*, AIR 1943 PC 83. That was a case where a certified copy of a private receipt was sought to be tendered in evidence the original of which was registered and returned to the party. Rejecting the argument that the said document comes within the meaning of "Public Document" the Privy Council held as follows:

> "..... It was contended by Sir *Thomas Strangman* for the respondents that the receipt comes within para 2 of Section 74, Evidence Act, and was a "public document"; hence under Section 65(e) no such foundation is required as in cases coming within clauses (a), (b) and (c) of that section. Their Lordships cannot accept this argument since the original receipt 1881 is not a "public record of a private document." The original has to be returned to the party see sub-section (2) of Section 61, Registration Act, 1908. A similar argument would appear at one time to have had some acceptance in India but it involves a misconstruction of the Evidence Act and Registration Act and later decision have abandoned it..."

In view of the above, the certified copies of sale deeds do not come under Clause (e) as well. Lastly, Clause (f) of Section 65 says that secondary evidence can be given when the original is a document of which certified copy is permitted by this Act, or by any other law in force in India to be given in evidence. A certified copy of a sale deed given by the registrar cannot qualify to be tendered as secondary evidence under Section 57(5) of the Registration Act because the said section does not permit the certified copies given under the said section to be given evidence (*Emphasis supplied*). It only says that the same is admissible *for the purpose of proving* the contents of the original documents. The expression "to be given in evidence" appears to have a distinct meaning as certain other enactments have specifically used the said expression to which we shall refer a little later. Suffice it to state

that Section 57(5) of the Registration Act does not permit certified copies given under said section "to be given in evidence". Therefore, in our view, certified copies of sale deeds cannot be filed under the strength of clause (f) also in the case of Land Acquisition case.

In view of the above, what follows is that though the certified copies given under Section 57(5) of the Registration Act is deemed as a secondary evidence, yet, one could not have filed the same into the Court under any of the clauses of Section 65 of the Evidence Act. The claimants could not also have filed the original sale deeds into the Court, for they are in the possession of third parties and who, in most cases part with the same. At the same time, the claimants, in order to succeed in getting a higher compensation for their lands have to necessarily to prove that the neighbouring lands that are similarly placed would have fetched and/or did fetch a higher market value as on the date of notification under Section 4(1) of the Land Acquisition Act. It is only to obviate this difficulty, that the legislature thought in its wisdom to make an appropriate provision by which certified copies of sale deeds could be tendered as secondary evidence under clause (f) of Section 65 of the Evidence Act. This is the reason why an amendment was made by incorporating Section 51(A) to the Land Acquisition Act, which reads as follows:

> " 51(A). Acceptance of certified copy as evidence - In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908, including a copy given under Section 57 of that Act, may be accepted as evidence of the transaction recorded in such document".

Two things are noticeable in the above provision. Firstly, it permits certified copies given under the Registration Act to be accepted as evidence. Secondly, it makes a specific reference to Section 57(5) of the Registration Act. This itself shows that Section 57(5) does not otherwise in itself permit certified copies given under that section to be accepted as evidence. If it were to be so, there would not have been any necessity to specifically clarify and further make a reference to the said provision in Section 51A. In *Narasaiah's* case, the Supreme Court has fallen in error while observing as follows:

> "If the only purpose served by Section 51A is to enable the Court to admit the copy of the document in evidence there was no need for a legislative exercise because even otherwise the certified copy of the document could have been admitted that could have very well served the purpose for using the certified copies of sale deeds given under the Registration Act, as evidence".

In our view, prior to introduction of Section 51A, the certified copies of sale deeds could not have been straight away admitted by the Courts as secondary evidence unless the case could be brought under any of the circumstances enumerated in any of the sub-clauses of Section 65. For the proposition that in order to file certified copies of sale deeds issued by the sub-registrar one needs to lay foundation under Section 65 of the Evidence Act, we refer to the decision of Madras High Court rendered in the case of *Karuppanna Gounder and others v. Kolandaswami Gounder*, AIR 1954 Mad. 486. In the said judgment the Madras High Court held as follows:

> "... But the law is that a certified copy what has been copied in the books of registration is admissible to prove the contents of the original document only when a case is made out for introduction of secondary evidence, i.e., by proof of the loss of the original or where a original is withheld by a party in whose possession it is or is presumed to be ..... when once the case for the introduction of secondary evidence is made out, certified copy got from the Registrar's office can be admitted under Section 57 sub-section (5) of the Indian Registration Act. ....."

From the above, it is clear that laying the foundation for receiving secondary evidence is essential, without which the certified copies given by the sub-registrar cannot be straight away filed into the Court. With respect to Supreme Court, we beg to differ with its view in *Narasaiah*'s case on this point. We are of the further view that the expression "to be given in evidence" as used in Section 65(f) is totally different from the expression "admissible in evidence" as used in Section 57(5) of the Registration Act. While the former would enable a party to file secondary evidence under Section 65(f), the latter would only bring the document within the meaning of "secondary evidence" as an exception to Section 63 of Evidence Act. Therefore, the purpose of incorporating Section 51-A was to bring the certified copies of the sale deeds given by the registrar as permissible secondary evidence under Section 65(f) of the Evidence Act and not to dispense with the examination of the parties connected with the sale deeds. With due respect to the learned judges of the Supreme Court, we say that admissibility of documents is altogether different from proof of contents of documents. While the former deals with placing a piece of evidence acceptable and admissible under law, the latter deals whith the proof of truth of the contents of the documents. Unfortunately, this distinction has escaped the attention of the Supreme Court in the above case.

While talking about the truth or otherwise of the contents of documents, we are reminded of a judgment of Supreme Court reported in the case of *Biswanath Rai v. Sachhidanand Singh*, AIR 1971 SC 1949, wherein the contents of a letter alleged to have been addressed by one *Swamiji* to one *Ram Chandra Sharma* was in question. There, the said *Ram Chandra Sharma* was the one through whom the said letter was got marked and the letter was said to have been addressed to him by the *Swamiji*. He further testified that he knew the handwriting of *Swamiji.* Yet when it came to the proof of the correctness of the contents of the said letter, the Supreme Court observed as follows:

> "... The contents of this letter were proved by the evidence of *Ram Chandra Sharma* who stated that he knew the handwriting of *Swamiji* with whom he had correspondence earlier. His evidence, thus, was sufficient to prove that *Swamiji* wrote this letter to *Ram Chandra Sharma*, and that the statements contained in the letter were made by *Swamiji* himself. It is true that, in the absence of examination of *Swamiji* the correctness of those statements cannot be held to be proved. Thus the evidence of *Ram Chandra Sharma* proves the contents of the letter, but not the correctness of those contents. The letter was, therefore, admissible to the extent to which the fact that *Swamiji* wrote such a letter to *Ram Chandra Sharma* with its contents has bearing on the issues involved in this case. To that extent, the letter was relevant and admissible."

The above judgment explains in a lucid manner the fine distinction between proving the contents of a document and the truth or otherwise of the same. In the light of the above, we now proceed to examine the correctness and the soundness of the other observations and conclusions of the Supreme Court in *Narasaiah's* case. In the said judgment, the Supreme Court after drawing an analogy between Section 57(5) of the Registration Act and Section 293 of Cr.PC and Section 13 of Prevention of Food Adulteration Act has concluded that under the above provisions, examination of the persons contained are dispensed with. We have perused the above two provisions. Section 293, Cr.PC, is special rule of evidence and makes any document, purporting to be a report under the hand of a Government scientific expert to whom the said section applies, upon any matter or thing duly submitted to him for examination and report, admissible in evidence without calling such expert as witness. The object behind dispensing with his examination is presumably to avoid expense, delay and

inconvenience which would be caused if the expert had to travel round the province giving evidence at every murder trial. Section 293 (2) of Cr.PC, however empowers the Court, if it thinks it, to summon and examine any such exert as to the subject matter of his report. To this extent, this is to be treated as an exception to the general principle with regard to proving the documents. Similarly, Section 13 of Prevention of Food adulteration Act is also a special rule of evidence according to which the report of the Public Analyst can be received in evidence without the examination of the Analyst as a witness in the case. Even under this provision of law, the Court is empowered to summon the Analyst. After going through the above two special rules of evidence which are made applicable in a special circumstances arising under criminal law and special law and further when the said provisions also empower the Court to summon and examine the expert or the Analyst as the case may be, they are, in our view, incomparable with Section 51A of the Land Acquisition Act. As a matter of fact, there is no corresponding provision in Section 51A of the Land Acquisition Act, empowering the Court to summon the persons connected with the sale deeds. If the legislative intent behind Section 51A were really to dispense with the attendance of the persons connected with the sale deeds, then the wording of the Section 51A would have been similar to the Section 293, Cr.PC or Section 13 of Prevention of Food Adulteration Act. However, we find no such corresponding provision in the Land Acquisition Act. In our view, keeping very object behind the above provisions in view viz., for the convenience of the scientific experts and analysts that the above provisions are incorporated. In the land acquisition cases, the object behind Section 51A is however only to dispense with the filing of the original sale deeds belonging to third parties and not their evidence. While there can be many reasons for the original sale deeds not coming forth from the third parties, one cannot visualize that their evidence is also dispensed with. Secondly, in the criminal cases, the Court is enabled under the said provisions to summon and examine the experts and analysts whereas in Land Acquisition cases, we cannot imagine a Court summoning third parties for proving the case of the claimants, as the burden is on the claimants to prove their case. Therefore, for all purposes and intents the provisions of law referred to by the Supreme Court are materially different from Section 51A of the Land Acquisition Act and as such no parallels can be drawn between them.

The next important aspect of *Narasaiah's* case is the lengthy observations with regard to the burden of proof in a case under Section 18 of Land Acquisition Act. The Supreme Court has held that the purpose of introducing Section 51A in the Land Acquisition Act by way of an amendment is to obviate the difficulties for the State officials to trace out the persons connected with the sale deeds and examine them in the Court for the purpose of proving such transactions. However, it is a settled law that the award of the LAO is only an offer and in a reference under Section 18 of the Land Acquisition Act, the burden is always on the claimant who approaches the Court for a higher compensation than what the Land Acquisition Officer offers him in his award. It is also the law that in case the claimant fails to prove his case, the reference Court has to confirm the award of LAO and pass a "Nil" award in favour of the claimant. Therefore, it is NOT for the LAO to file the original sale deeds on which he relies upon, or to trace out the persons connected with such sale deeds and examine them in the Court to prove such transactions or justify his award. Though there is a catena of decisions on the above point, for the sake reference we are citing a judgment of Supreme Court in the case of *LAO v. Sri Siddappa Omanna Tumari and others*, AIR 1995 SC 840, wherein the following

observations made with regard to the burden of proof are relevant:

> "..... the position of a claimant in a reference before the Court is considered to be that of the plaintiff in suit requiring him to discharge the initial burden of proving that the amount of compensation determined in the award under Section 11 was inadequate on the basis of relevant material and by application of correct principles of valuation, either with reference to the contents of the award itself or with reference to other evidence aliunde adduced before the Court. Therefore, if the initial burden of proving the amount of compensation allowed in the award of the collector was inadequate, is not discharged the award of the collector which is made final and conclusive evidence under Section 12, as regards matters contained therein will stand unaffected....."

In view of the above clear cut position of law, the observations of the Supreme Court in *Narasaiah's* case to the effect that the State has the burden to prove the market value of the lands acquired by it, is made under the mistaken impression of law.

Lastly, the above judgment has failed to take note of the fact that in a proceeding under Section 18 of Land Acquisition Act, the persons concerned with the sale transactions are required to be examined not only for the sake of the requirement of the Evidence Act, but also even for discharging the burden as required in the said proceedings. It is needless to emphasise the fact that the Court has to take into consideration many aspects while arriving at the just compensation. The Supreme Court had, in the case of *Chimanlal Hargovinddas v. Special LAO, Poona*, AIR 1998 SC 1652, elaborately dealt with all the factors and the method in which the compensation amount has to be arrived at. The first and foremost aspect as emphasised by the Supreme Court is to ascertain whether the comparable sale said to have taken place at the time of issue of 4(1) notification are genuine, if they are proximate, and the acquisition has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. The task before the Court by any means is not an easy one. It has to determine, standing on the date line of valuation (date of publication of notification under Section 4(1) of LA Act) as if the valuer is hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price. If the Court has to determine the compensation keeping in view the above factors, then it has to have credible evidence and/or material before it to arrive at a conclusion. This is impossible if the persons connected with the sale transactions are not examined and cross-examined. Otherwise, the Court will invariably be left with the sole testimony of a claimant alone. Therefore, viewed from this angle also, it is very much essential to examine the persons connected with the sale transactions for discharging the burden and also enabling the Court to come to a just conclusion.

Part-III

As we have mentioned earlier, the view taken by the Supreme Court in *Narasaiah's* case is contrary to four earlier Division Bench judgments of the Supreme Court. While the *Narasaiah's* case specifically refers to two of its earlier judgments viz., *Inder Singh v. UOI*, (1993) 3 SCC 240, and *P. Ram Reddy v. LAO, Hyderabad*, (1995) 2 SCC 305, rendered by two judges, the same has not however considered unfortunately though, two other Division Bench judgments rendered by three judges in the case of *Special Deputy Collector v. Kurra Sambasiva Rao*, AIR 1997 SC 2625 and in the case of *Meharban v. State of U.P.*, AIR 1997 SC 2664. In this context, if one has to understand the binding precedent value of *Narasaiah's* case, it is necessary in the first

instance to understand the law relating to precedents.

Firstly, the constitution of Division Bench by the Supreme Court comprising of two judges or three judges as the case may be is only for the administrative convenience and therefore, a Division Bench consisting of three judges cannot overrule another judgment of a Division Bench comprising of two judges. This principle has been explained by the Supreme Court in the case of *Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra*, AIR 1985 SC 231. The Supreme Court has summarized this principle as follows:

> ".... The case also raises a further question whether a Division Bench of three judges can purport to overrule the judgment of a Division Bench of two Judges merely because three is larger than two. The Court sits in Divisions of two and three judges for the sake of convenience and it may be inappropriate for a Division Bench of three judges to purport to overrule the decision of a Division Bench of two judges..... It may be otherwise where a Full Bench or a Constitution Bench does so."

If the above principle of law as laid down by the Supreme Court is to apply, then the Division Bench which heard *Narasaiah's* case Supreme Court in *Narasaiah's* case, should have referred the matter to a Constitution Bench if it was unable to concur with the earlier Division Bench judgments in *Inder Singh's* and *Kurra Sambasiva Rao's* case (supra). Unfortunately, the Bench that heard the *Narasaiah's* case has simply disagreed with the earlier Division Bench judgments and proceeded to decide the case before them based on their own views. The matter does not rest here. As already stated earlier, the attention of the Supreme Court was not drawn to two other earlier Division Bench judgments rendered by three judges which had taken a contrary view and therefore this presents another dimension to the problem. The same is none too easy to face. When the High Court and the subordinate Courts are faced with two contrary judgments of the Supreme Court comprising of equal number of judges, the question that raise for consideration is as to which one of the judgments has to be followed by the High Court and the Subordinate Courts. Though Bombay High Court in a case reported in the case of *Vasant Tatoba Hargude v. Dikaya Muttaya Pujari*, AIR 1980 Bom. 341, and the Allahabad High Court in the case of *Gopal Krishna Indley v. 5th Additional District Judge, Kanpur and others*, AIR 1981 All 300, held that it is the judgment rendered by the later Bench is binding, the views taken by the Andhra Pradesh and Pubjab and Haryana High Courts and also the later judgments of Bombay and Allahabad High Court indicate that in case of conflict of two decisions of the Supreme Court, given by equal strength, the High Court should follow that judgment of the Supreme Court, which states the law elaborately and accurately. Reference in this connection may be made to the judgments reported in the case of *Sri Panduranga Traders and others v. SBI Vatluri Branch*, 2000(2) ALT 511, *Ganga Saran v. Civil Judge, Hapur and others*, AIR 1991 All 114, M/s. *Indo Swiss Time Limited v. Umarao*, AIR 1981 P&H 213, and *The Special Land Acquisition Officer(1) Bomaby v. The Municipal Corporation of Greater Bombay*, AIR 1988 Bom. 9. If the above rule of precedent has to be followed, then the same is bound to result in chaos and conflict, for it is the ultimate analysis and judgment of the respective High Courts as to which Supreme Court judgment has laid down the law accurately that prevails. One should not lose sight of the fact that in this process, the respective High Courts while taking a view either way would be in effect sitting in judgment over one or the other judgment of the Supreme Court, which proposition cannot be countenanced.

In the light of the above, we are of the view that the matter requires to be

decided by a Constitution Bench of the Supreme Court and the sooner it is better in order avoid further clash of views and interpretation by the various High Courts on the point in question. In fact, if the earlier Division Bench judgments rendered by three judges had been brought to the notice of the Bench which decided *Narasaiah's* case, then the matter would have been certainly referred to a Constitution Bench. Unfortunately, this has not happened and we sincerely believe that this is where the members of the Bar are required to play a proactive role in helping the Courts to come to the right and just conclusion. At the same time, this cannot absolve the Courts of law from performing their duties in correctly interpreting the law.

Before concluding, we would like to briefly highlight the impact of the judgment in *Narasaiah's* case. Right from the beginning, all the Courts including the Supreme Court have held in one voice that it is necessary for the party to examine someone connected with the sale deed in order to prove the same till the Supreme Court struck a discordant note and upset the law in *Narasaiah's* case. Prior to *Narasaiah's* case several thousands of land acquisition cases have been dismissed and the award of the LAO confirmed by the Subordinate Courts on the preliminary point that the claimant has not proved the sale deed transactions by examining the parties connected therewith. This was based on the settled law laid down by the Supreme Court in *Sambasiva Rao's* case and *Meharban's* case supra. It is also quite likely that corresponding number of appeals challenging the reference Court's award is also pending in various High Courts. Now, in view of the judgment of *Narasaiah's* case, all those appeals have to be remanded to the Subordinate Courts for disposal on merits. In the meanwhile, if the matter is referred to Constitution Bench it will overrule either of the Division Bench judgments of the Supreme Court. All this will only lead to loss of time and deprivation of the compensation in time to the litigant public, besides needless wastage of time and expenditure. Further, it will certainly add to the interest burden on the beneficiaries for whose sake the lands are required. Above all, it also will take a very heavy toll on the time of the Courts. In our view, certainly this is not a healthy trend especially when much is being said on "speedy justice" and 'quick disposal". However, as the adage goes "Better late than never", if the matter could be referred to a Constitution Bench atleast now without any further delay, the quantum of future damage can atleast be averted, though the damage already caused in the meanwhile would always remain as irreversible.

Before we part with this Article, we are reminded of a passage from the judgment of the Supreme Court reported in the case of *Mahadeolal Kanodia v. The Administrator General of West Bengal*, AIR 1960 SC 936, which we feel it very appropriate to quote here to highlight the importance of consistency and certainty of law.

> ".... Judicial decorum no less than legal propriety forms the basis of the judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench holding the view that the earlier decision is wrong, itself gives effect to that view the result, would be utter confusion..... In such a case lawyers would not know how to advise their clients and all Courts subordinate to the High Court find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court....."