

CASE NO.:
Appeal (civil) 3703 of 2003

PETITIONER:
M/S GIRNAR TRADERS

RESPONDENT:
STATE OF MAHARASHTRA & ORS

DATE OF JUDGMENT: 27/08/2007

BENCH:
B.N. Agrawal & P.K. Balasubramanyan & P.P. NAOLEKAR

JUDGMENT:

J U D G M E N T
WITH

C.A. No. 3922 of 2007
(@ Special Leave Petition (Civil) No. 11446 of 2005)

P.K. BALASUBRAMANYAN, J.

1. Leave granted in Special Leave Petition (Civil) No. 11446 of 2005.

2. Civil Appeal No. 3703 of 2003 is before us on the basis of an order of reference dated 14.10.2004 reported as Girnar Traders Vs. State of Maharashtra & Ors. [(2004) 8 S.C.C. 505. Civil Appeal arising out of Special Leave Petition (Civil) No. 11446 of 2005 is before us by virtue of an order dated 11.7.2005 tagging the same along with the Civil No. No. 3703 of 2003. The question in Civil Appeal No. 3703 of 2003 and one of the questions in the Civil Appeal arising out of Special Leave Petition (Civil) No. 11446 of 2005 as posed by the order of reference is whether all the provisions of the Land Acquisition Act, 1894 as amended by the Central Act 68 of 1984, can be read into the provisions under Chapter VII of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the MRTPA Act') for an acquisition under that Act. According to the order of reference, the decision in State of Maharashtra & Anr. Vs. Sant Joginder Singh Kishan Singh & Ors. [(1995) 2 S.C.R. 242] requires reconsideration. In the second of the appeals, this question arises along with a subsidiary question on the interpretation of Section 127 of the MRTPA Act.

3. The MRTPA Act as its preamble shows, is an act to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in

respect of the plans; and for purposes connected with the matters aforesaid. This legislation is a State enactment and according to the learned counsel for the State of Maharashtra, is covered by the Entries 5, 6, 10, 13, 14, 17, 18, 23, 24, 28, 33, 35 of List II and also by Entries 17A, 20, 31 and 42 of List III of the Constitution. In other words, the attempt is to show that the MRTTP Act is a legislation concerned with planning, local development and regulation in various fields. As is seen from the preamble, the compulsory acquisitions of land provided for by the Act are acquisitions of land required for public purposes in respect of plans under the Town Planning Scheme and not for acquisitions of lands for other purposes or for public purpose as envisaged by the Land Acquisition Act.

4. In Civil Appeal No. 3703 of 2003, revised Draft Development Plan under the MRTTP Act was prepared on 22.11.1983. The revised Draft Development Plan was published on 6.3.1987. The land in question was reserved for the purpose of education. The land was agricultural land. The appellant purchased the land only on 24.2.1984, after the preparation of the revised draft plan. The appellant attempted to get permission to develop the land but without success.

5. On 19.1.1989, the appellant issued a purchase notice to the Government under Section 49 of the MRTTP Act. Steps for acquisition of land were taken for the purpose as envisaged by the Plan and a declaration under Section 126 of the MRTTP Act published on 15.10.1991. A draft award was also allegedly prepared. At this stage, the appellant issued another purchase notice under Section 49 of the MRTTP Act on 22.3.1994. The purchase notice was rejected. That rejection was challenged in the High Court by the appellant and the High Court on 31.3.1997, directed the authorities to initiate acquisition proceedings within one year failing which the land should be deemed to be released. Based on the earlier initiation of acquisition proceedings, a final award was passed on 10.2.1999 and the local authority deposited the award amount on 15.2.1999. Notice was issued under Section 12(2) of the Land Acquisition Act to the appellant. Then the appellant filed another Writ Petition, No. 822 of 2000 praying for the issue of a writ of certiorari to quash the proceedings on the ground that Section 11A of the Land Acquisition Act, 1894 as amended, had been violated by the award not being passed within two years of the declaration under Section 6 of the Act, and for a writ of mandamus directing the respondents in the Writ Petition to permit the appellant to develop the reserved land for residential purposes. The High Court dismissed the Writ Petition by the impugned judgment. It held, on a perusal of the documents, that it was satisfied that the requisite steps have been taken by the Special Land Acquisition Officer after the earlier Writ Petition was disposed of and there was no necessity to initiate fresh action by the Planning Authority as contemplated under Section 126(1)(c) of the MRTTP Act and hence the relief sought could not be granted. It is this decision that was challenged before this Court by way of a Petition for Special Leave to Appeal and leave having been granted the matter is before us as detailed earlier.

6. In the second of the appeals, the land involved is situate in Carmichael Road, Malabar Hill Division, Mumbai. The declaration under Section 4(1) of the Bombay Town Planning Act, 1954 was made on 7.7.1958. A development plan in accordance with the provisions of Section 3(1) of that Act was published on 9.1.1964. On 8.7.1964, a modified development plan was submitted to the Bombay Municipal Corporation to the Government of Maharashtra for sanction. On 6.1.1967, the Government of Maharashtra sanctioned the development plan. The property in question was notified for development as open space and children's park. On 11.1.1967, the MRTTP Act came into force. The Bombay Town Planning Act stood repealed. But proceedings initiated or taken under that Act were saved by Section 165 of the MRTTP Act. It was notified that 7.2.1967 would be the date on which the final development plan shall come into force.

7. On 6.1.1979, a declaration under Sections 126(2) and 126(4) of the MRTTP Act was made in respect of an extent of 2593.36 square meters of land. On 24.9.1984, the Land Acquisition (Amendment) Act 68 of 1984 came into force. On 16.9.1991, the revised development plan sanctioned by the State Government on 6.7.1991 came into effect. On 2.8.1993, the Municipal Commissioner, Greater Bombay wrote to the Special Land Acquisition Officer stating that the Bombay Municipal Corporation has decided to give priority for acquiring the property in question. The letter also requested Land Acquisition Officer to move the State Government for acquisition of the property for the purposes envisaged by the MRTTP Act. The Land Acquisition Officer asked for submission of fresh proposals by taking a stand that an earlier notification for acquisition of the property issued had lapsed on 23.9.1986. On 3.2.1998, the appellant issued a purchase notice, inter alia, asking for re-notifying the property and to pay compensation as per the prevailing market rate or otherwise to release the property from reservation and accord sanction for development of the property. The Municipal Commissioner thereupon wrote to the State Government indicating that purchase notice issued was invalid as 10 years have not expired since the sanction of the revised development plan which came into effect only on 16.9.1991. On 18.10.2000, the appellant again issued a purchase notice under Section 127 of the MRTTP Act to the Municipal Commissioner. Again, the appellant was informed that since 10 years have not expired, the notice was invalid. On 15.3.2002, the appellant issued yet another purchase notice under Section 127 of the Act calling upon the authority either to acquire the land or to permit the appellant to develop the same. According to the Municipal Corporation, on 9.9.2002, it passed a resolution deciding to request the State Government to acquire the land. On 13.9.2002, the request was sent to the State Government. On 20.11.2002, a notification under Section 126(4) of the MRTTP Act read with Section 6 of the Land Acquisition Act was issued declaring that the property in question was needed for the purpose for which it has been reserved. The appellant filed a Writ Petition on 19.9.2003 seeking to have the notification dated 6.1.1967 and the declaration dated 6.1.1979 quashed and for a mandamus directing the respondents to accord sanction to the appellant for developing the property or

in the alternative to re-notify the land and pay the market value as compensation. On 24.6.2004, the High Court disposed of the Writ Petition leaving the appellant to pursue the remedies that may be available in accordance with law. The appellant thereupon submitted a revised plan for development of the property purporting to be in the light of the direction of the High Court in the Writ Petition. The proposal was rejected. Another Writ Petition was filed by the appellant seeking permission to develop the land and for payment of enhanced compensation and for quashing the notification dated 20.11.2002 issued under Section 126(4) of the MRTTP Act. After the pleadings were completed and the appellant sought and obtained an amendment of the Writ Petition, ultimately the High Court dismissed the Writ Petition relying on the decision in State of Maharashtra & Anr. Vs. Sant Joginder Singh Kishan Singh & Ors. [supra]. The appellant thereupon approached this Court and got its Petition for Special Leave to Appeal tagged to Civil Appeal No. 3703 of 2003.

8. The main contention urged on behalf of the appellants on the first aspect is that the MRTTP Act has adopted the Land Acquisition Act, 1894 by reference and consequently, any amendment in the Land Acquisition Act, 1894 would automatically be attracted in any proceedings for acquisition under the MRTTP Act. Since Section 11A introduced into the Land Acquisition Act by Act 68 of 1984 provided that acquisition would lapse if an award is not passed within two years of the declaration under Section 6 of the Act, the entire proceedings for acquisition in both these cases have lapsed since awards were not rendered within two years of the declaration. On the second aspect arising in the latter appeal, the contention is that on receipt of the purchase notice, the proceeding for acquisition itself was not started within six months of the receipt of the notice and consequently the acquisition and the reservations have lapsed under Section 127 of the MRTTP Act. The further submission is that taking of some step like writing to the Government for acquiring the land, is not a step as contemplated by Section 127 of the MRTTP Act and the step must be a step under the Land Acquisition Act, namely, issuance of a declaration under Section 6 of that Act so as to enable the authority to acquire the land in terms of the MRTTP Act. These contentions are met by learned counsel for the State of Maharashtra and the authorities by contending that there was no incorporation by reference of the Land Acquisition Act of 1894 in the MRTTP Act; that the MRTTP Act had adopted the Land Acquisition Act only for limited purposes and since there was no provision in the MRTTP Act for lapsing of an acquisition as distinct from the lapsing of the scheme itself, Section 11A of the Land Acquisition Act had no application. It is also contended that in any event the amendment brought in by introduction of Section 11A into the Land Acquisition Act by the Amendment Act 68 of 1984 cannot be read into the MRTTP Act which adopted the Land Acquisition Act as it then stood in the year 1966, on which date Section 11A was not in the statute book and hence there was no question of the acquisition lapsing in terms of Section 11A of the Land Acquisition Act. It is submitted that the decision of this Court in State of Maharashtra & Anr.

Vs. Sant Joginder Singh Kishan Singh & Ors. [supra] covers this question. On the latter question, it is submitted that what Section 127 of the Act contemplates is only a step under the MRTTP Act as distinct from the Land Acquisition Act and the writing of the concerned authority to the Government to acquire the land for the purpose for which it has been reserved under the revised plan within time would be a step in terms of Section 127 of the Act. It is submitted that the High Court has rightly relied upon the decision in Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants' Association & Ors. (1988 (Suppl.) SCC 55) to negate the plea.

9. We may first notice the scheme of the MRTTP Act. We have already referred to the preamble of the MRTTP Act which indicates that the main object of the Act is to make provisions for planning the development and use of land in regions established for the purpose. Different purposes are contemplated. Provision is also made for acquisition of land but as the preamble suggests it is for compulsory acquisition of land required for the purposes in respect of the plans and not merely a public purpose as understood under the Land Acquisition Act. Thus, it is clear that the acquisition of land under the MRTTP Act is incidental to the main objective of bringing about a planned development of the different regions and areas in the State of Maharashtra and the use of various lands reserved in the development plan for the purpose for which it is reserved. Chapter VII deals with land acquisition. Section 125 provides for any land required, reserved or designated in a Regional plan, Development plan or town planning scheme for a public purpose or purposes including plans for any areas of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act. In other words, the moment a Regional development plan or town planning had been notified, Section 125 would operate as a notification corresponding to a notification under Section 4(1) of the Land Acquisition Act. Section 126 provides for acquisition of land so required in terms of the plan and three modes are prescribed for such acquisition. One is by agreement by parties by paying an amount agreed to, or by paying the compensation as provided in clause (b) or by making an application to the State Government for acquiring the land under the Land Acquisition Act. The acquisition under the Land Acquisition Act is contemplated by the authority making an application to the State Government for that purpose. In other words, it is not the authority that has to take steps for the acquiring of the land under the Land Acquisition Act but it is to apply to the State Government to make an acquisition under the Land Acquisition Act. On receipt of such an application if the State Government is satisfied that the land specified in the application is needed for the specified public purpose or that land is included in the plan and it is needed for any public purpose indicated, it may make a declaration, in the manner provided under Section 6 of the Land Acquisition Act. The declaration so published is deemed to be a declaration duly made under Section 126 of the MRTTP Act. The proviso indicates that declaration shall be made before the expiry of one year from the date of the draft regional plan, development plan or any other

plan or the scheme. On publication of the declaration under Section 126, the Collector shall proceed to make an order for acquisition of the land under the Land Acquisition Act and the provisions of the Land Acquisition shall apply to the acquisition of the said land subject to the modification that the relevant date for determining the market value to be paid as compensation shall be the date of declaration under Section 126 of the MRTTP Act. The section also provides that if a declaration is not made within one year, the State Government may make a fresh declaration for acquiring the land subject to the modification that the market value of the land is to be paid with reference to the date of the subsequent declaration. In other words, on a declaration under Section 126 being made, the authority under the MRTTP Act has to apply to the government to acquire the land. The Government has to issue a declaration as contemplated by Section 6 of the Land Acquisition Act. The compensation is to be paid with reference to the date of such declaration. A declaration has to be made within one year of the request for acquisition. But in case it is not so made, a fresh declaration would be made in which case the compensation has to be adjudged with reference to the market value on the date of the second declaration. Section 126 of the MRTTP Act does not provide for the lapsing of the acquisition. On the other hand, the acquisition, notwithstanding the default to act in terms of sub-section (2) of that Section can be proceeded with by issuing a fresh declaration and the compensation has to be determined with reference to the date of that fresh declaration. Section 127 provides for lapsing of reservations. Since interpretation of Section 127 is also involved we think it proper to extract the said provision. \023127. If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of notice of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.\024

10. The reservations are provided by the Act for a period of ten years. If the land is not acquired within a period of ten years by agreement of parties or if proceedings for acquisition of the land are not commenced within ten years, the owner could serve a

notice on the planning authority or the development authority and if within six months from the date of the service of such notice the land is not acquired or no steps are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and the land shall be deemed to be released from such purpose, allotment or designation and shall become available to the owner for the purpose of development as permissible in the case of lands lying adjacent to the land in question under the relevant plan. In other words, if the reservation lapses, the land owner could use the land for the purposes for which the adjacent lands are permitted to be used under the development plan or revised plan.

11. This section also does not appear to deal with lapsing of any acquisition for which steps have been taken in terms of Section 126 of the MRTP Act by applying to the State Government for acquiring the land for the purpose for which it is reserved in the plan. But this Section contemplates the lapsing of reservation itself if the conditions laid down thereunder are not complied with. If no acquisition is made within 10 years of the notification under Section 125 of the Act, the land owner is given the right to issue a notice calling upon the authority to acquire the land for the purpose for which it is earmarked in the plan. If on service of such a notice no steps for acquisition are taken within six months, the reservation would lapse. This section also does not contemplate a lapse of the acquisition as such. Section 128 confers power on the State Government to acquire land for a purpose other than the one for which it is designated in any plan or scheme. Section 129 confers power to take possession of the land in case of urgency at any time after the declaration under Section 126(2) of the Act is notified, on condition that before taking possession, the Collector has to offer to the person interested, compensation as provided in that section.

12. On an analysis of the provisions in the context of the questions that are before us, what emerges is that the publication of the plan with the reservation therein itself operates as a notification like the one under Section 4(1) of the Land Acquisition Act, that a declaration has to be made akin to a declaration under Section 6 of the Land Acquisition Act, the compensation has to be paid not with reference to the date of the notification under Section 125 of the Act but with reference to the date of declaration under Section 126 of the MRTP Act and that a declaration under Section 126 of the Act had to be made within one year of the application for acquisition made by the authority under the MRTP Act. But in case the declaration was not so made, a fresh declaration has to be issued and compensation has to be paid with reference to the date of the fresh declaration and the authority had also the power to take prior possession in case of urgency on the conditions stipulated under Section 129 of the MRTP Act. The MRTP Act provides for lapsing of reservations but does not provide for lapsing of the acquisition. The reservation lapses on the expiry of ten years and on the expiry of six months after a purchase notice is issued by the owner of the land unless steps are taken in the meanwhile to proceed with the acquisition. If there is no agreement regarding compensation and acquisition then

the State Government has to be approached \023for acquiring such land under the Land Acquisition Act, 1894.\024

13. Under the Land Acquisition Act, a notification under Section 4(1) of the Act is followed by a declaration under Section 6 of the Act. The amendment introduced by Act 68 of 1984 provides that no declaration under Section 6 shall be made after the expiry of one year from the date of publication of the notification under Section 4(1) of the Act. It further provides that the Collector, after the declaration is made, has to take an order for acquisition, mark out the land available, issue notice to persons interested in the land to be acquired and for, passing an award containing the true area of the land acquired, the compensation that should be allowed for the land and the apportionment of the compensation among the claimants, if there are more than one. Section 11A introduced by Act 68 of 1984 provides that the Collector shall make an award within a period of two years from the date of publication of the declaration and if no award is made within that period the entire proceedings for the acquisition of the land shall stand lapsed. Thus, the Land Acquisition Act, as amended in the year 1984 provides for two lapses of the acquisition; one, in a case where a declaration under Section 6 is not made within one year of the publication of the notification under Section 4(1) of the Act and; two, the award itself not being made within a period of two years from the publication of the declaration.

14. The question we are called upon to decide is whether in spite of the MRTTP Act not having provided for the lapse of an acquisition and in spite of having adopted a scheme for lapsing of the reservation itself, the stipulation in Section 11A of the Land Acquisition could be invoked to hold that an acquisition commenced after a declaration under Section 126 of the MRTTP Act would lapse on the basis that the award had not been made within a period of two years from the date of declaration.

15. It is clear that when the MRTTP Act was enacted, the Land Acquisition Act that was referred was the unamended Act of 1894. That Act did not contain either a provision for lapsing of the acquisition on the non issue of a declaration under Section 6 of the Act within one year of a notification under Section 4(1) of the Act or by the award not being rendered within two years of a declaration under Section 6 of the Act. These two time limits were prescribed by Act 68 of 1984. Thereafter, the State Legislature amended the MRTTP Act by substituting the proviso to sub-Section (2) of Section 126 providing that a declaration shall not be made after the expiry of one year from the date of notification under Section 125 of the MRTTP Act. Simultaneously, sub-Section (4) was amended providing that notwithstanding the fact that a declaration had not been made within one year, the Government could make another declaration under Section 126 of the MRTTP Act in terms of the Land Acquisition Act in the manner provided by sub-sections (2) and (3) of Section 126 with the only consequence that the compensation payable shall be the compensation as on the date of the fresh declaration. Significantly, the State Legislature did not introduce any provision either for the lapse of an acquisition or for lapsing of the

proceedings for acquisition if an award is not made within two years of the declaration under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act. According to learned counsel for the State and the Authorities, this has significance in that the MRTP Act did not intend the lapsing of an acquisition at all, and consequently for non compliance with the requirement of Section 11A of the Land Acquisition Act.

16. It is in this context that learned counsel for the appellants contended that the Land Acquisition Act is incorporated by reference in the MRTP Act and the consequences of such incorporation by reference is to make all subsequent amendments to the Land Acquisition Act applicable to cases of acquisition under the MRTP Act. Learned counsel submitted that the consequences of incorporation by reference cannot be ignored while dealing with the contention raised on behalf of the State.

17. Learned counsel for the State in answer submitted that the MRTP Act was a legislation under the State List and the Land Acquisition Act was a legislation under the Union List. In other words, one was State Legislation and the other was a Parliamentary Legislation. Learned counsel submitted that the invocation of the theory of incorporation of reference when a State Act refers to a Central enactment and applying the rules in that behalf, would mean that the State Legislature would be taken to have surrendered its right of legislation to the Parliament, a situation that cannot be readily envisioned. According to him therefore, every amendment to the Central Legislation cannot automatically be adopted into the State Legislation in view of such a grave consequence. This is an aspect which appears to warrant serious consideration.

18. We shall now deal with some of the decisions that are germane to the issue. The first of the decisions is that of the Privy Council in *Secretary of State Vs. Hindustan Cooperative Insurance Societies Ltd.* [AIR 1931 P.C. 149]. In that case, the provisions of the Land Acquisition Act, 1894 were made applicable for acquisition of land under the Improvement Act. Under the Land Acquisition Act, against an award an appeal lay to the High Court under Section 54 of that Act. The Privy Council had held in *Rangoon Botatoung Company Vs. Collector of Rangoon* [39 Indian Appeals 197] that under Section 54 of the Land Acquisition Act, no further appeal lay to the Privy Council from the decision of the High Court in an appeal under Section 54 of the Act. The Land Acquisition Act was amended providing that the award passed thereunder would be deemed to be a decree. The amendment was of the year 1921, after the Land Acquisition Act, 1894 had been adopted by the Improvement Act. The question before the Privy Council was whether by virtue of the amendment brought about in the year 1921 in the Land Acquisition Act deeming an award to be a decree, a further appeal would lie to the Privy Council from the decision of the High Court in the case of an acquisition under the Improvement Act. It was argued before the Privy Council that it was a case of incorporation by reference and therefore the amendment would

automatically be attracted and consequently the award would be a decree and an appeal lay to the Privy Council. The Privy Council negatived the said contention thus:

\023But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the local Act of 1911. It was not part of the Land Acquisition Act when the local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor, again, does Act 19 of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, are to be regarded as affecting any other enactment than the Land Acquisition Act itself. Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt.

Their Lordships have not been referred to anything in the General Rules of Construction embodied in the General Clauses Act, 1897, which supports the contention of the Secretary of State, nor to any authority which favours it. In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in \023Craies on Statute Law, \024 Edn. 3, pp. 349-50. This doctrine finds expression in a common form section which regularly appears in the Amending and Repealing Acts which are passed from time to time in India. The section runs,

\021The repeal by this Act of any enactment shall not affect any Act . . . in which such enactment has been applied, incorporated or referred to:\024

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

It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition. So Lord Westbury says in *Ex parte St. Sepulchre* (1864) 33 L.J. Ch. 372:

\021If the particular Act gives in itself a complete rule on this subject matter, the expression of that rule would undoubtedly amount to an exception of the subject matter of the rule out of the general Act:\022 see also *London, Chatham and Dover Railway V. Wandsworth Board of Works* (8 C.P. 185).\024 (emphasis supplied)

19. As we understand this decision, their Lordships have indicated that in the absence of anything to suggest that the State Legislature intended to bind themselves to any future additions, which might be made in the Central Act, it would not be proper to infer that all amendments subsequent to the adoption would automatically apply. Their Lordships have also indicated that in such a situation, it would only be a case of a State Act incorporating certain provisions of an existing Central Act and nothing more. These reasons, we consider weighty. In *Chairman of the Municipal Commissioners of Howrah Vs. Shalimar Wood Products & Anr.* [(1963) 1 S.C.R. 47], this Court quoted with approval the concerned observations. In *Ujagar Prints & ors. Vs. Union of India & ors.* [(1989) 3 S.C.C. 488], this Court observed:

\023Referential legislation is of two types. One is where an earlier Act or some of its provisions are incorporated by reference into a later Act. In this event, the provisions of the earlier Act or those so incorporated, as they stand in the earlier Act at the time of incorporation, will be read into the later Act. Subsequent changes in the earlier Act or the incorporated provisions will have to be ignored because, for all practical purposes, the existing provisions of the earlier Act have been re-enacted by such reference into the later one, rendering irrelevant what happens to the earlier statute thereafter. Examples of this can be seen in *Secretary of State V. Hindustan Cooperative Insurance Society* (AIR 1931 PC 149), *Bolani Ores Ltd. V. State of Orissa* [(1947) 2 S.C.C. 777], *Mahindra and Mahindra Ltd. V. Union of India* [(1979) 2 S.C.C. 529]. On the other hand, the later statute may not incorporate the earlier provisions. It may only make a reference of a broad nature as to the law on a subject generally, as in *Bhajiya V. Gopikabai* [(1978) 2 S.C.C. 542], or contain a general reference to the terms of an earlier statute which are to be made applicable. In this case any modification, repeal or re-enactment of the

earlier statute will also be carried into in the later, for here, the idea is that certain provisions of an earlier statute which become applicable in certain circumstances are to be made use of for the purpose of the later Act also. Examples of this type of legislation are to be seen in Collector of Customs V. Nathella Sampathu Chetty [(1962) 3 S.C.R. 786], New Central Jute Mills Co. Ltd. V. Assistant Collector of Central Excise [(1970) 2 S.C.C. 820] and Special Land Acquisition Officer V. City Improvement Trust [(1976) 4 S.C.C. 697]. Whether a particular statute falls into the first or second category is always a question of construction.\024

20. A three judge Bench of this Court in U.P. Awas Evam Vikas Parishad Vs. Jainul Islam & Ors. [(1998) 2 SCC 467] after referring to and quoting from the decision of the Privy Council in Secretary of State Vs. Hindustan Cooperative Insurance Societies Ltd. (supra) held that the provisions of Section 55 of the concerned Adhiniyam were on the same lines as those contained in the Calcutta Improvement Act, 1911 and the principles laid down by the Privy Council are equally applicable to that case. This Court stated:
\023The amendments introduced in the Land Acquisition Act by the 1984 Act were not part of the Land Acquisition Act as applicable in the State of Uttar Pradesh, at the time of passing of the Adhiniyam. The provisions of the Land Acquisition Act, as amended in its application to U.P., with the modifications specified in the Schedule to the Adhiniyam, have, therefore, to be treated to have been incorporated by reference into the Adhiniyam and became an integral part of the Adhiniyam and the said provisions would remain unaffected by any subsequent repeal or amendment in the Land Acquisition Act unless any of the exceptional situations indicated in State of M.P. V. M.V. Narasimhan can be attracted.\024

Their Lordships also observed that the Adhiniyam contains provisions regarding acquisition of land which are complete and self contained. Nor can the provisions in the Adhiniyam be said to be in pari materia with the Land Acquisition Act because the Adhiniyam also deals with matters which do not fall within the ambit of the Land Acquisition Act. It cannot also be said that the Act 68 of 1984, expressly or by necessary intendment, applies the said amendments to the Adhiniyam. In Nagpur Improvement Trust Vs. Vasantrao & Ors. [(2002) 7 S.C.C. 657, yet another three Judge Bench of this Court after quoting the observations of the Privy Council held that subsequent amendments to Section 6 of the Land Acquisition Act by Act 68 of 1984 have no effect on acquisitions under the State Acts of Uttar Pradesh, Punjab and Nagpur and that only the benefits conferred by Act 68 of 1984 relating to quantification of compensation alone would be applicable in the case of acquisition under the Town Planning Acts. Their Lordships repeated that it was also well settled that the question as to whether a particular legislation falls in the category of referential legislation or legislation by

incorporation depends upon the language used in the statute in which the reference is made to the earlier decisions and other relevant circumstances. This decision is a clear authority for the position that amendments brought about in the Land Acquisition Act, 1894, subsequent to the incorporation thereof by the State Act, could not apply to acquisitions under the State Act.

21. But, both in U.P. Awas Evam Vikas Parishad Vs. Jainul Islam & Ors. (supra) and Nagpur Improvement Trust Vs. Vasantrao & Ors. (supra), this Court has taken the view that the Compensation payable has to be calculated in terms of the Land Acquisition Act as amended by Act 68 of 1984. If the amendment has not to be taken to be incorporated, would this conclusion be justified, is one aspect to be considered.

22. But then, the Court in Nagpur Improvement Trust and Another Vs. Vithal Rao & Others. (1973(1) SCC 500) had upheld the decision of the Bombay High Court which had struck down certain provisions relating to the payment of compensation for acquisition of land under the Improvement Trust Act. This Court summarised the decision of the High Court thus:
\023The High Court held that as the acquisition is by the State in all cases where the property is required to be acquired for the purpose of scheme framed by the Trust and such being the position, it is not permissible without violating the guarantee under Article 14 of the Constitution for the State to acquire any property under the provisions of the Land Acquisition Act as amended by the Improvement Trust Act insofar as they relate to the basis of determination and payment of compensation. It must, therefore, be held that the provisions of Paragraph 10(2) and 10(3) insofar as they add a new clause (3)(a) to Section 23 and a proviso to sub-section (2) of Section 23 of the Land Acquisition Act are ultra vires as violating the guarantee of Article 14 of the Constitution.\024

This Court stated:

\023\005\005\005\005\005.It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.\024

Thus, it was held that differing compensations could not be paid for acquisition of land. It is relevant to notice that the decision was not based on a theory of legislation by reference but based on discrimination. The implication of this decision might justify the approach made in the earlier two cited decisions.

23. The decision in State of Kerala & ors. Vs. T.M. Peter & ors. [(1980) 3 S.C.C. 554], saved the relevant provision by reading into it a provision for payment of solatium. There, this Court was dealing with the Town Planning Act, 1932 (originally Travancore Act 4 of 1108 ME) and the Kerala Land Acquisition Act, 1961. The High Court had struck down Section 34(1) and Section 34(2A) of the Town Planning Act and the appeal was against that decision. This Court stated:

\023We regard this grievance as mythical, not real, for more than one reason. The scheme is for improvement of a town and, therefore, has a sense of urgency implicit in it. Government is aware of this import and it is fanciful apprehension to imagine that lazy insouciance will make Government slumber over the draft scheme for long years. Expeditious despatch is writ large on the process and that is an in-built guideline in the statute. At the same time, taking a pragmatic view, no precise time scale can be fixed in the Act because of the myriad factors which are to be considered by Government before granting sanction to a scheme in its original form or after modification. Section 12 and the other provisions give us some idea of the difficulty of a rigid time-frame being written into the statute especially when schemes may be small or big, simple or complex, demanding enquiries or provoking discontent. The many exercises, the differences of scale, the diverse consequences, the overall implications of developmental schemes and projects and the plurality of considerations, expert techniques and frequent consultations, hearings and other factors, precedent to according sanction are such that the many-sided dimension of the sanctioning process makes fixation of rigid time limits by the statute an impractical prescription. As pointed out earlier, city improvement schemes have facets which mark them out from other land acquisition proposals. To miss the massive import and specialised nature of improvement schemes is to expose one's innocence of the dynamics of urban development. Shri

Raghavan fairly pointed out that, in other stages, the Act provides for limitation in time (for example, Section 33 which fixes a period of three years between the date of notification and the actual acquisition). Only in one minimal area where time-limit may not be workable, it has not been specified. The statute has left it to Government to deal expeditiously with the scheme and we see sufficient guideline in the Act not to make the gap between the draft scheme and governmental sanction too procrastinatory to be arbitrary. We need hardly say, that the court is not powerless to quash and grant relief where, arbitrary protraction or mala fide inaction of authorities injures an owner. \024

While upsetting the decision of the High Court and upholding the validity of the provisions, this Court held that even then, solatium also will be payable to the land owners as provided under the Land Acquisition Act, even though the acquisition is under the Improvement Act.

24. In State of Maharashtra & Anr. Vs. Sant Joginder Singh Kishan Singh & Ors. (supra), this Court was dealing with the MRTTP Act and two learned judges of this Court after referring the distinction between legislation by incorporation and adoption by reference proceeded to hold that Section 11A of the Land Acquisition Act on which reliance is placed before us was not applicable to acquisitions under the MRTTP Act. Of course, it is the correctness of this decision that has been doubted by the Bench referring the matter to a larger Bench since their Lordships were not inclined to agree with the position adopted in State of Maharashtra & Anr. Vs. Sant Joginder Singh Kishan Singh & Ors. (supra) that Section 11A is only a procedural provision and the same introduced by Act 68 of 1984 cannot be read into the MRTTP Act which adopted the Land Acquisition Act prior to the said amendment. Suffice it to notice that this decision is directly concerned with the MRTTP Act.

25. Learned counsel for the appellants commended to us the reasons given in the order of reference for overturning the decision in State of Maharashtra & Anr. Vs. Sant Joginder Singh Kishan Singh & Ors. (supra). Of course, we could consider or reconsider the correctness of the decision in State of Maharashtra & Anr. Vs. Sant Joginder Singh Kishan Singh & Ors. (supra) because that was rendered only by two learned judges. But, we find from the various arguments raised that there are at least two, three Judges Bench decisions which have recognised principles which may have to be considered or reconsidered while considering the aspects posed by the order of reference. In that context, we think that the whole question requires to be looked into considering the impact the answer to the questions may have on various City and Town Improvement Acts governing the planning of cities and towns and incidentally dealing with acquisitions of lands for the purpose for which the land is earmarked in the finalised

plan or town planning scheme. We also feel that the question whether anything turns on the fact that one is a State enactment and the other a Parliamentary legislation as noticed by the Privy Council while considering whether a subsequent amendment to the parliamentary legislation can be read into the State enactment by invoking the theory of legislation by reference has to be authoritatively considered. If one were to hold that the subsequent amendment would not be applicable, then how far one would be justified in importing the provisions as amended, for determination and payment of compensation, may also have to be considered. In this context, we also think that the propositions enunciated in *The State of Madhya Pradesh Vs. M.V. Narasimhan* [(1975) 2 S.C.C. 377] may also have to be examined afresh so as to authoritatively pronounce upon the principles to be settled for application of the theory of incorporation by reference and importing into the original law the amendments made to the Act that is incorporated by reference. We also think that the question is of general importance and it will be appropriate if the gamut of questions rising is settled by an authoritative pronouncement of a Constitution Bench.

26. Under our Constitution, there is a distribution of legislative powers between the Parliament and the legislatures of States. Under Article 246 (1) of the Constitution, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule to the Constitution. Under Article 246 (3) of the Constitution, State has exclusive power to make laws for the State with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution. Of course, under Article 246(2) of the Constitution, in respect of matters enumerated in List III in the Seventh Schedule to the Constitution, both the Parliament and the State Legislatures have the power to make laws. The legislative fields thus are well defined subject to some overlapping here and there. Therefore, in the context of the Indian Constitution and what can be called the separation of legislative powers, the question arises as to how far it is open to adopt the theory of legislation by reference and to adopt the consequences flowing therefrom. No doubt, as on that day, the legislature had chosen to adopt the parliamentary legislation. Actually, when a State Legislature incorporates the provisions of a parliamentary enactment as part of its own legislation, it is enacting it as on that day as its own legislation. The effect thereof can be conceived to be a case of the legislature re-enacting the parliamentary enactment in respect of a subject matter which is exclusively within its legislative field. As stated in *Craies on Statute Law*, 7th Edn., page 223, "The effect of bringing into a later Act by reference, Sections of an earlier Act is to introduce incorporated Sections of the earlier Act into the later Act as if they had been enacted in it for the first time."

(emphasis supplied)

One possible view is that you cannot incorporate as your own a Section that did not exist as on the day of incorporating another Act by reference. In that context,

can it be said that, if there is a future amendment to the Parliamentary enactment that has been incorporated by the State Legislature, those amendments would also automatically become applicable in the case of the State enactment? This would be postulating a position of surrender of its legislative function or legislative power by the State Legislature to Parliament. In the context of the Indian Constitution, is such a position permissible? Is it open to the court to readily accept a surrender of its legislative power by the State Legislature in such circumstances by construing the enactment as a legislation by reference? In our view, it cannot be readily inferred that the State Legislature has made such a surrender of its legislative powers when it adopts a parliamentary enactment as on the date it existed, by referring to it in its enactment or by incorporating it in its enactment. With respect, we think that this aspect requires consideration by a Constitution Bench considering that it also involves an interpretation of the Constitution and the Constitutional Scheme of Legislation.

27. The second of the questions, of course, relate to the interpretation of Section 127 of the MRTTP Act. The question has to be considered in the light of the decision in *Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants' Association & ors.* [supra] and the expression used in Section 127 of the Act which speaks of the land not being acquired or no steps as stated earlier are commenced for its acquisition. Obviously, under the MRTTP Act, in a case where it is not acquired by negotiation, the authority can only request the State Government to acquire the lands. In the context of Sections 126 and 127, the question is whether it is not sufficient if the authority within six months of receipt of the purchase notice issued by the owner, applies to a State Government for acquiring the land as a step contemplated by Section 127 of the MRTTP Act. This is also a question which is of considerable importance in the context of the Town Planning Acts and the lapsing of schemes as distinct from the lapsing of acquisition. I feel that this is also an important question which requires an authoritative pronouncement, in the context of the argument on behalf of the appellant that the step contemplated by Section 127 of the Act is a step under the Land Acquisition Act and not a step under the MRTTP Act.

28. But I find that my learned brothers are inclined to decide this question here and now. I find it difficult to appreciate why we should do so when the main issue involved herein also is being referred to a Constitution Bench. But since my learned Brothers have chosen to pronounce on it, I have necessarily to express my views. I find myself unable to agree with the view taken by them on the interpretation of Section 127 of the MRTTP Act. Under Section 126(1) of the Act the authority under the MRTTP Act can only make an application to the State Government for acquiring the concerned land under the Land Acquisition Act, 1894. This is clear from Section 126(1)(c). And clause (c) applies, when the acquisition cannot be made in terms of clauses (a) and (b) of Section 126(1). What I want to emphasise here is that the

authority under the MRTTP Act cannot be set in motion proceeding under the Land Acquisition Act while acting under Section 126(1) of the MRTTP Act. It can only request the State Government to acquire the land and the State Government initiates steps to acquire it when it is satisfied that the land, the acquisition of which is sought for, is needed for the public purpose specified in the application made by the authority under the MRTTP Act. It is not as if the authority under the MRTTP Act can issue a declaration in the manner provided for under Section 6 of the Land Acquisition Act read with Section 126(2) of the MRTTP Act.

29. When we interpret Section 127 of the Act, it is not possible to forget the impact of Section 126(1) of the Act. Obviously, the provisions have to be read harmoniously. The court can only postulate the question whether the authority under the MRTTP Act has done which it possibly could, in terms of the statute. Therefore, while reading Section 127, we have to take note of the fact that the authority under the MRTTP Act can only make an application for acquisition under the Land Acquisition Act and nothing more. Therefore, when Section 127 of the MRTTP Act says that "if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition the reservation shall be deemed to lapse. We have to see what the Authority under MRTTP Act has done. The first part of the provision above quoted is unambiguous and that is a case where the land is actually acquired. Or, in other words, the acquisition is complete. The second limb above quoted shows that it is possible to avert the lapse of the scheme if steps as aforesaid are commenced for its acquisition. The step that the authority under the MRTTP Act can commence, is the step of applying to the State Government to acquire such land under the Land Acquisition Act. After all, the legislature has given the authority a locus poenitentiae for invoking the machinery for acquisition under the Land Acquisition Act. Therefore, when a purchase notice is received by it, in all reasonableness, what it can do is to make an application to the State Government to make the acquisition within six months of the receipt of the purchase notice. Is it necessary or proper to whittle down the locus poenitentiae given to ensure that even at the last moment the lapsing of the scheme can be averted by the authority under the MRTTP Act or even after ten years it can seek the acquisition of the land on the receipt of the purchase notice? It is in that context that in *Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants' Association & Ors.* (supra) this Court approved the view of the Bombay High Court that it is enough if the application is made by the Authority for acquisition of the land. Suppose, immediately on receipt of a purchase notice, the authority under the MRTTP Act makes an application to the Government to acquire the land and for administrative reasons or otherwise it takes the Government time to initiate the proceeding and the six months expire in between, can it be postulated that the reservation has lapsed? In that case we will be compelling the authority under the MRTTP Act to do something that it has no power to do. According to me

such an interpretation of the provision would be unreasonable and should be avoided. Here, the application has been made according to the respondents by the Chief Engineer as authorised by the local authority and to say that the letter written by him is unauthorised or is not adequate compliance of Section 127 of the MRTTP Act appears to me to be unwarranted especially when we keep in mind the laudable objects of the MRTTP Act.

30. The MRTTP Act serves a great social purpose and the approach of the court to an interpretation must be to see to it that the social purpose is not defeated as far as possible. Therefore, a purposive interpretation of Section 127 of the Act so as to achieve the object of the MRTTP Act is called for.

31. I would, therefore, hold that there has been sufficient compliance with the requirement of Section 127 of the MRTTP Act by the authority under the Act by the acquisition initiated against the appellant in the appeal arising out of SLP(C) No.11446 of 2005 and the reservation in respect of the land involved therein does not lapse by the operation of Section 127 of the Act. But since on the main question in agreement with my learned Brothers I have referred the matter for decision by a Constitution Bench, I would not pass any final orders in this appeal merely based on my conclusion on the aspect relating to Section 127 of the MRTTP Act. The said question also would stand referred to the larger Bench.

32. I therefore refer these appeals to a larger Bench for decision. It is for the larger Bench to consider whether it would not be appropriate to hear the various States also on this question considering the impact of a decision on the relevant questions. The papers be placed before the Hon'ble Chief Justice for appropriate orders.