PETITIONER:
MARIYAPPA & OTHERS

Vs.

RESPONDENT:
STATE OF KARNATAKA & OTHERS

DATE OF JUDGMENT: 19/02/1998

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.JAGANNADHA RAO.J.

Leave granted.

The appellants have filed this appeal against the judgment of the High Court of Karnataka in Writ Appeal Nos. 8451-53 of 1996 dated 11.6.1997 by which, the High Court dismissed the Writ appeals and confirmed the judgment of the learned Single Judge in Writ Petition Nos. 23657 to 23659 of 1992 dated 23.7.1996. In so doing, the High Court followed the judgment of a Division Bench in Writ Appeal No. 1821 of 1995 dated 10.6.1997 (Iswarappa & Another Vs. The Deputy Commissioner, Dharwar & Others) whereby the judgment in Writ petition No. 16302 of 1987 dated 23.3.1995 was affirmed.

The point concerns the applicability of Section 11-A of the Land Acquisition Act, 1894 (hereinafter called the Central Act, 1984) for the purposes of the Karnataka Acquisition of land for House Sites Act, 1972 (hereinafter called the Karnataka Act, 1972) (Act 18 of 1973). Appellants contend that the new Section 11-A is attracted to proceedings for land acquisition under the Karnataka Act, 1972 while the respondents contend that the Section 11-A is not so attracted. The High Court has held, in the above decisions that Section 11-A is not attracted to the karnataka Act, 1972.

Facts:

We shall refer to the facts. The appellants claim to be tenants in regard to Survey No. 11, Thyamagondalu village, Nelamangala Taluk, of an extent of 10 acres 27 guntas. The said land was endowed to Sri Rama Devaru. Under Section 5 of the Karnataka Land Reforms Act, 1961, the Land Tribunal is said to have conferred occupancy rights on the appellants on 27.8.1975, Some issues regarding cancellation of the 3rd appellant's right are said to be still pending. Notification dated 19.12.83 under section 3(1) of the Karnataka Act, 1972 was published in the gazette on 9.2.84. Thereafter notification under section 3(4) was published in the gazette on 14.3.85. On 17.6.85, the 3rd appellant filed Writ Petition No. 9079 of 1985 and stay of dispossession was granted on 1.7.1985. Appellants 1 & 2 filed Writ Petitions and similar orders were passed on 8.7.85 and 9.7.1985. On

31.7.90, Writ petition of 3rd appellant was dismissed. On 1.2.91, Writ petitions of appellants 1 & 2 were also dismissed. Thereafter, fresh Writ Petition Nos. 23657 to 59 of 1992 were filed on 10.1.1992 and stay of dispossession was again granted on 1.2.1992 provided that possession was not taken. On 23.7.96, the said writ petitions were dismissed by the learned Single Judge. In the Writ Appeals Nos. 8451-53, the Court again ordered on 30.9.96 stay of dispossession. On 11.6.1997, the Writ appeals were dismissed. In case it is to be held that Section 11-A of the Central Act, 1894 is to be applied to the Karnataka Act, 1972, even if the period of stay orders is excluded. the position is that the 2 years period specified in Section 11-A has expired inasmuch as till now no award has been passed. The appellants are said to be in possession still.

The High Court holds section 11-A not applicable because of doctrine of incorporation' :

The acquisition here is under the karnataka Act, 1972. The contention of the appellants in the High Court is that, because of section 5 of the karnataka Act adopting the Central Act of 1984 in certain respects, section 11-A introduced in the Central Act in 1984 is applicable and the proceedings must be deemed to have lapsed.

The Division Bench of the High Court has followed its earlier Judgment in Iswarappa & Another Vs. Deputy Commissioner & others (W.A. No. 1821 of 1995) dated 10.6.1997 and held that section 11-A of the Central Act, 1894 cannot be read into the Karnataka Act, 1972, even if the award was not passed within 2 years as stipulated in section 11-A. The High Court, after referring to sections 3 and 4 of the Karnataka Act, 1972 observed :

> "The provisions of sections 3 and r appear to be self-contained so far as the procedure for acquisition of the land is concerned. The provisions of the Central Act 1 of 1894 have been made applicable apparently for the purpose of determination of the amount payable in respect of the land acquire under the provisions of the Act and for making reference to the Court."

The High Court referred to section 5 of the Karnataka Act of 1972, which stated that the procedure of the Central Act in respect of inquiry and award by the Dy. Commissioner, the reference to Court, the apportionment of amount and the payment of amount, applied. Then the High Court observed:

> "Such an adoption in the legal sense of the term is known as legislation by referential incorporation.... Perusal of Section 5 however does not show that the Central Act was adopted generally with respect to a subject as genus. As already held, the said act was adopted by reference to the statute as it existed at the time of incorporation. The Central Act was adopted, as noted earlier, upto 1961 and not onwards. Section 11-A of the Act was admittedly incorporated vide Act No. 69 of 1984, much less after the adoption of the Central Act No. 1/1984".

The High Court then observed that this aspect is

covered by a decision rendered by the same Court under the Karnataka Development Act, 1976 in Krishna Moorthy Vs. Bangalore Development Authority (ILR 1996 Karn. 1258) wherein after referring to the principle of incorporation, it was held that section 11-A was not attracted to the acquisition under that Act. The high Court has applied that judgment to the present case which has arisen under the Karnataka Act, 1972. In Iswarappa's case, the High Court has also held that the purposes of the Karnataka Act, 1972 and the Central Act, 1894 are different, they are meant to deal with different situations and they have provided different modes of vesting of the acquired land in the State. Under the Karnataka Act, a house site vests in the State on the publication of the notification under Section 3(5) of that Act whereas land acquired under Central Act, 1894 vests only when the Collector makes an award under Section 11 and not otherwise. The provisions of the special law i.e. Karnataka Act, 1972 prevail over provisions of a general law on the subject the Central Act. 1894. On the above reasoning, the High Court in Iswarappa's case has held that the principle of incorporation' applies and that section 11-A of the Central Act, 1894 cannot be read into the Karnataka Act, 1972. The said judgment under appeal. It is the correctness of the above view that falls for consideration before us.

Contentions of parties in this Court :

Learned counsel for the respondents-State contends that the Karnataka Act being an Act of 1972, the applicability of the provisions of the Central Act, 1894 as modified by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (hereinafter called the Karnataka Act, 1961) is restricted to what is specifically stated in the body of Section 5 of the Karnataka Act, 1972 and, therefore amendments to the Central Act of 1894 subsequent to 1961, such as Section 11-A introduced in 1984 are not attracted to the Karnataka Act. 1972.

On the other hand, learned counsel for the appellants contends that Section 11-A introduced into the Central Act, 1894 in 1984 has also to be read into the Karnataka Act, 1972 for the following reasons :

(i) the words 'mutatis mutatis' in section 5 of the Karnataka Act, 1972 have the effect of bringing in subsequent changes of the Central Act, 1894 into the karnataka Act, 1972.

(ii) the Central Act, 1894 is not merely "incorporated" but it is referred to in section 5 as a piece of referential legislation.

(iii) even assuming that the Central Act was "incorporated" into the Karnataka Act, 1972, the case on hand would fall within the following well known exceptions to the said principle, namely,

(a) Karnataka Act, 1972 does not contain the full machinery for being treated as a complete code and has to depend on the Central Act, 1894 for being functional, so far as (i) inquiry, (ii) award, (iii) reference (iv) appointment and (v) payment of compensation, are concerned. The provisions of the 1972 act and the Amendments introduced by the 1961 Act are not sufficient to make the 1972 Act a complete code by itself.

(b) Karnataka Act, 1972 and the Central Act, 1894 are supplemental to each other.

(c) Both the Acts are pari materia inasmuch as the subject matter of 1972 Act could have otherwise come within the ambit of the Central Act. 1894 and the Karnataka Act, 1972 does not deal with any subject

other than acquisition of land.

The Karnataka Act, 1972: contains only seven sections and no machinery for inquiry etc:

We shall initially refer to the provisions contained in the karnataka Act, 1972.

It is an Act "to provide for acquisition of lands for grant of house sites to weaker sections of the people of the State". The preamble says: "whereas it is expedient to provide for the acquisition of lands for the public purposes of granting house sites to weaker sections of the people in the State and for purposes connected therewith". Section 2(2) defines notification' as the notification published in the gazette. Section 2(3) defines weaker sections' as belonging to scheduled Castes and Tribes, 'landless labourers' and such other classes of persons to be notified depending on their economic backwardness. Section 2(4) defines land' and person interested' as having the same meaning given to those words in the Central Act, 1894 as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961.

Section 3 deals with acquisition of land' and corresponds to section 4(1) of the Central Act, 1894. Under Section 3(1) if the State Government is of opinion that any land is required for the purpose of providing house sites to the weaker sections of people who are house-less, that State Government may, by notification give notice of its intention to acquire such land. Section 3(2) requires the State Government to serve notice on the owner or occupier or persons known to be interested in the land, to show cause, within 30 days of service, why the land should not be acquired. Section 3(3) states that after considering the causes, if any, shown and after giving an opportunity to be heard, the Government may pass such order as it deems fit. Section 3(4) which corresponds to section 6(1) of the Central Act, 1894 states that the Government shall, in case it decides to acquire, issue a declaration by notification. Under Section 3(5), on such declaration being published under Section 3(4) the land shall vest absolutely in the State Government free from all encumbrances. Under Section 3(6), once the land is so vested under Section 3(5), the Government may, by notice in writing, order any person who may be in possession to surrender or deliver possession thereof to the Government or any person duly authorized within 30 days. Section 3(7) permits possession to be taken by Government, if the occupant does not surrender the land. Section 4 of the Act deals with "Amount payable". It will be noticed that to some extent the above provisions deviate from the corresponding provisions of the Central Act, 1894.

We are mainly concerned with Section 5. It deals with "Application of Central Act 1 of 1894" and reads as follows:

> "Section 5: Application of Central Act 1 of 1894: The provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) as amended by the land Acquisition (Karnataka Extension and Amendment) Act, 1961 shall, mutatis mutatis apply in respect of enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of amount and the payment in respect of Land acquisition under this Act."

Section 6 deals with power of State Government to delegate its powers (except those under Section 7). Section

7 deals with rule making power and laying the same before the legislative.

From the above, it will be seen that the Karnataka Act, 1972 contains only seven sections and that it does not contain any independent machinery or provisions for the purpose of inquiry, reference, award and apportionment and payment of compensation.

Section 5 of Karnataka Act, 1972 speaks of amendments to the Central Act, 1894 by the Karnataka Act 1961:

Section 5 of the Karnataka Act, 1972 refer to the application of the Central Act, 1894 as amended by the Karnataka Act, 1961. These amendments concern the following section of the Central Act, 1894 - Sections 1(2), Section 3 (aa), (d), (e), (ee), (f), proviso (iii) (g), (b); (1) 4(1A), 4(2), (3) (4, 5-5A(1), (2), (6) (1A), (2) - (Section 8 is omitted), 9(2), (3),(4), 10(1), addition of proviso to 11, 12(1) (2), 12-A, 15-a, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26(2), 27(2), 28, 30-A, 34, 35 (1A) (1B) (ii), 35(2), 37-A, 45, 46, 50, 54. We are not referring to the details of these amendments except to say that the Dy. Commissioner replaces the Collector, certain extra details are to be given in Sections 4, 6 notifications, the Section 4(1) notification has also be served on the owner or occupier, report on Section 5-A inquiry is to be approved by the Government, the State Government may revise the Dy. Commissioner's orders, application for reference to Court is to be made within 90 days of service of notice under section 12(2) and the Dy. Commissioner is to make a reference to the Civil Court in 90 days failing which the affected party can directly move the civil Court. In Section 24 certain other factors are introduced for determining market value. Section 28 and 34 are amended fixing a rate of interest of 5% rather than 6%. There are a few other amendments which are not material in the present context.

It will be noticed that for purposes of the Karnataka Act, 1972 the provisions in the Central Act (as amended by the Karnataka Act, 1961) apply in respect of inquiry, award by the Dy. Commissioner, in respect of the procedure for reference to a Civil Court and an adjudication by the Civil Court on the question of compensation and apportionment. On these aspects, there are - as pointed out earlier, no provisions in the Karnataka Act, 1972.

Do the words mutatis mutatis' in Section 5 bring in the latter Central amendments into the Karnataka Act. 1972?

One of the submissions for the appellant was that Section 5 of the Karnataka Act, 1972 states that the Central Act, 1894 (as amended by Karnataka Act, 1961) shall, mutatis mutatis, apply in respect of enquiry and award by the Dy. Commissioner, the reference to Court, the apportionment of amount and the payment of amount and that therefore the subsequent amendments in 1984 to the Central Act, 1894 have to be read into the Karnataka Act, 1972.

The words mutatis mutatis' have been explained by this Court in M/s Ashok Service Centre Vs. State of Orissa-1983 (2) SCC 82. It was stated by Venkataramiah, J, (as he then was):

> "Ear 1 Jowitt's The Dictionary of English Law (1959) defines mutat is mutatis' as with necessary changes in points in detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices and the like..... Extension of an earlier Act mutatis

> mutatis to a later Act, brings in the idea of adaptations, but so for only as it is necessary for the purpose making an change without altering the essential nature of the things changed subject of course to express provisions made in the later Act".

If, therefore, the words mutatis mutatis' merely permit the application of the Central Act, 1894 (as modified by Karnataka Act, 1961) with necessary changes and without altering the essential nature of the thing changed then the said principle is applicable to the Central Act, 1894 as it stood in 1972 with the amendments brought about the Karnataka Act, 1961. Therefore the contention for the appellant that subsequent changes made in the Central Act after 1972 also get into the karnataka Act, 1972, cannot be accepted. That question again depends upon whether the Central Act, 1894 has been incorporated' into the Karnataka Act, 1972 or falls within the exceptions to the said principle or whether Section 5 is to be treated as a pice of referential legislation'.

Incorporation of referential legislation and exceptions to Incorporation - supplemental legislation-'

As the case before us, as we shall presently show, falls within the exception' to the rule of incorporat ion', we shall refer to the relevant rulings in this behalf.

The leading case in which the broad principles were laid down is the one in State of M.P. Vs. M.V. Narasimhan - 1975 (2) SCC 377. On a consideration of the case-law, it was stated by Fazal Ali, J. as follows:

> "Where a subsequent Act incorporates provisions of a previous Act, then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:
>
> (a) Where the subsequent Act and the previous Act are supplemental to each other.
>
> (b) Where the two Acts are in pari materia.
>
> (c) Where the amendment in the previous Act, is not imparted into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and
>
> (d) Where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

In that case, the position was that the Prevention of Corruption Act, 1947 adopted the definition of public servant from Section 21 of the Indian Penal Code , Question was whether the subsequent amendments made in 1958 and 1964 to section 21 of the Penal Code enlarging the definition of public servant', could be read into the Prevention of Corruption Act, 1947. Though it was held that the 1947 Act dealt with a specific offence of criminal misconduct, while the Penal Code dealt with bribery' and were not in pari

materia still, it was held that having regard to the preamble and object of the prevention of Corruption Act, 1947 and the Penal code, there could be no doubt that the former Act was undoubtedly a statute supplemental to the latter. hence it was held that the amendments of 1958 and 1964 in the I.P.C. should be read into the Prevention of Corruption Act, 1947, as the case fell within one of the exceptions to the principle of incorporation'.

Similarly, in Western Coalfields Ltd. Vs. S.A.D. Authority [1982 (1) SCC 125], Section 69(d) of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (Act 23/73) stated that the special Area Development Authority under that Act would, for the purpose of taxation have the powers which a Municipal Corporation or a Municipal Council has under the M.P. Municipal Corporation Act, 1956 or the M.P. Municipalities Act, 1961, as the case may be. Chandrachud, C.J. gave two reasons as to why the subsequent amendments made in the 1956 and 1961 Acts could be read into the 1973 Act. One reason was that the Act of 1973 did not, in Section 69(d), incorporate any particular provision of the 1956 and 1961 Act but said that for the purposes of taxation' the Authority shall have the powers which a Municipal Corporation or a Municipal Council would have under the 1956 and 1961 Acts respectively. It was not therefore a case where merely some provisions of one Act were bodily lifted into another. The other reason was that the 1973 Act did not provide for any independent power of taxation or any machinery of its own for the exercise of the power of taxation. Further, the three Acts were supplemental to each other.

Ujagar Prints Vs. Union of India [1989 (3) SCC 488] is again a similar case. Under Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 it was said that the provisions of the Central Excise and salt Act, 1944 and rules made thereunder - including those relating to refunds and exemptions from duty - shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collocating of the duties of excise on the goods specified in sub-section (1). Now section 3(1) provided for levy and collection of additional duties in respect of goods described in the First Schedule to the 1957 Act which were produced or manufactured' in India. It was held that the definition of the term manufacture' enacted in the Central Excise and Salt Act, 1944 - as enlarged by Amendment Act 6 of 1980 - had to be read into the 1957 Act. It was observed that the Additional Duties Act, 1957 was merely supplemental to the 1944 Act. While the 1944 Act imposed a general levy of excise duty on all goods manufactured and produced, the aim of the 1957 Act was to supplement the levy by an additional duty of the same nature on certain goods. Unlike the Finance Act, the 1957 Act was incomplete as to the basis of the charge and its provisions would become totally unworkable unless the concepts of manufacture' and asses sable' value as determined under the 1944 Act were carried into it.

Yet another case where the legislation was held by itself to be unworkable' and supplemental to another Act is the one in State of Kerala Vs. M/s. Attesee [1989 suppl. (1) SCC 733]. It was there held that the scope of exemption under the head cotton fabrics' in schedule III item 7 of the Kerala General Sales Tax Act, 1963 would depend upon the definition in item 19 of Schedule I to Central Excise and Salt Act, 1944 with reference to its amendments upto the relevant date. hence it was held that the amendments to the

Central Act were to be read into the Kerala Act.

Two other rulings of this Court relating to land acquisition and which arose from Karnataka are relevant in this context. In the State of Karnataka, there are two statutes,- the Mysore Improvement Act, 1903 and the City of Bangalore Improvement Act, 1945. In each of these Acts there is a provision (Section 23 in the former and Section 27 in the latter) stating that the acquisition under the Act "shall be regulated by the provisions, so far as they are applicable, of the Mysore Land Acquisition Act, 1894" and also by certain other provisions of these Acts. (The Mysore Act of 1894 and the Central Act 1894 are almost identical). Now both these Acts of 1903 and 1945 contained provisions which require compensation to be paid with reference to the second notification which publishes the declaration' (i.e. corresponding to Section 6 of the Central Act, 1894) and not the one which corresponds to Section 4 of the Central Act. However in 1927, the Mysore Land Acquisition Act, 1894 was amended by directing compensation to be paid with reference to the first notification (corresponding to Section 4 (1) of the Central Act). Question arose in two cases, one under each of these Acts, as to whether the said amendment of 1927 would have to be read into the said Acts.

Now so far as the Bangalore Act of 1945 is concerned, the case was decided in Land Acquisition Officer Vs. H.Narayaniah [1976 (4) SCC 9]. This case presents no difficulty because the said Act was passed in 1945 and by that, the Mysore Land Acquisition Act, 1894 already stood amended in 1927. The reference in Section 27 of the 1945 Act to the Mysore Act of 1894 therefore obviously included all the amendments made to the Mysore Land Acquisition 1894 by 1945 including the one made in 1927 and, therefore, compensation was to paid only as per the first notification (i.e. the one corresponding to Section 4(1) of the Central Act).

The case more in point is the one in Special Land Acquisition Officer Vs. P. Govindan [1976 (4) SCC 697] which dealt with the Mysore Act of 1903 because the question there was whether the subsequent amendment of 1927 to the Mysore Land Acquisition Act, 1894 shifting the relevant date for fixing compensation from the corresponding Section 6 notification to Section 4(1) notification, would have to be read into the Mysore Act, 1903. It was held that it should - notwithstanding certain obiter observation to the contrary in Naravanaih's case. The provision in section 23 of the Mysore Act, 1903 read as follows:

> "Section 23 The acquisition, otherwise than by agreement of land within or without the city under this Act, shall be regulated by the provisions, so far as they are applicable, of the Mysore Land Acquisition Act 1894 and by the following further provisions, namely,....."

It was held by this Court that the amendments in 1927 to the Mysore Land Acquisition Act, 1894 have to be read into the Mysore Act, 1903. The decision of the Full Bench of the Mysore High Court to the contrary in Venkatamma Vs. Special Land Acquisition Officer, [AIR 1972 Mysore 193] was overruled. In that context Beg J. (as he then was) observed:

> "If Section 23(1) of the (Mysore) Acquisition Act (1903) lays down, as we think it does, the only procedure for award of compensation

it has to be followed as it exists at the time of acquisition proceedings. No one has a vented right in a particular procedure. It is a fair interpretation of Section 23 of the Mysore Act of 1903 to hold that it means that whichever may be the procedure there, with regard to matters regulating compensation under the (Mysore) Acquisition Act (1894) at the time of acquisition proceedings, will apply to acquisition under the Mysore Act, (1903)"....

"It was enough to lay down, as Section 23 of the Mysore Act (1903) does, that the general procedure found in the Acquisition Act (1894) will apply except to the extent it was inapplicable. This means that amendments of the procedure in the Acquisition Act, (1894) will apply if it is capable of application" (words in brackets supplied).

From the above passage (words in brackets supplied) is clear that when the mysore act, 19903 adopted the procedure under the Mysore Act, 1894, the provisions of the latter Act as they stood "at the time of acquisition" had to be applied for regulating' the acquisition of land under the Mysore Act, 1903. This was because the Mysore Act, 1903 said that the "general procedure" under the Mysore Act, 1894 applied except to the extent it was inapplicable.

In our view, the above rulings of this Court are more in point and are directly applicable to the Karnataka Act, 1972. But, before we draw our final conclusions, it is necessary to refer to three more rulings, one decided by the Privy Council and two decided by this Court recently and state why, in our opinion, those decisions are distinguishable.

The decision of the Privy Council is the one in Secretary of State Vs. Hindustan Coop. Society Ltd. [AIR 1931 PC 148]. There the provisions of the Calcutta Improvement Act, 1911 (Act 13/1911) fell for consideration. That Act coupled with its schedule contained provisions not only for issuing relevant notification in regard to acquisition but also for reference to a Tribunal for passing an award relating to compensation. By Act 18 of 1911 a right of appeal was given to the High Court against the Award of the Tribunal. Under the Act, there was no further right of appeal to the Privy Council. In 1921, the Central Act, 1894 was amended in two respects, one by introducing Section 26(2) which deemed the award of the reference Court a decree' and the reasons a Judgment' and the other an amendment in Section 54 of the Central Act, 1894 giving a right of appeal to the Privy Council from any decree passed by the High Court from an award of the reference Court. Now the Calcutta Act, 1911 contained a provision in Section 69 that the "Board may acquire land under the Land Acquisition Act, 1894 for carrying out the purposes of the Act". Section 70 related to the constitution of a Tribunal - as detailed in Section 72 - for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the land Acquisition Act, 1894. However, Section 71 modified the Central Act, 1894 as follows:

"Section 71: Modification of Land

> Act, 1894: For the purpose of acquiring land under the said Act for the Board -
> (a) the Tribunal shall (except for the purpose of Section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act.
> (b) the said act shall be subject to the further modifications indicated in the schedule.
> (c).....
> (d) the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894."

The modification made by section 71 (a) was crucial to the case.

Section 77 referred to the passing of the award' by the Tribunal under the provisions of the Land Acquisition Act 1894, for determining the compensation, apportionment, etc.

The appellant, the Secretary of State, contended that the appeal to the Privy Council lay because the amendment to the Central Act in 1921 by substituting Section 26(2) which deemed the award' a decree' had to be read into the Calcutta Act, 1911 and if that was done, then an appeal would lie, under Section 54 of the Central Act, 1894 to the Privy Council. The respondents contended that such a telescoping of Section 26(2) of the Central Act, 1894 into the Calcutta Act, 1911 would be repugnant to the express words in Section 71(a): "except for the purposes of Section 54 of the Act". The said contention of the respondents was accepted by the privy Council. Their Lordships also Lord Wrenbury in Ex parte St. Sepulchre (1864) [33 L.J. Ch. 372] to the effect that it will not be possible to read the provisions of an earlier Act into a latter Act, if the earlier Act

> "gives in itself a complete rule on the subject matter"

It was also observed that the provision in Section 70(a) of the Calcutta Act, 1911 deliberately excluding Section 54 of the Central Act, 1894 was

> "an indication of the local legislature's intention that there should be, under the special Code applicable to the Improvement Trust, no appeals beyond the High Court".

In other words, two reasons were given by their lordships as to why section 26(2) of the Central Act, 1894 could not be read into the Calcutta Act, 1911. One was that reading Section 26(2) of the Central Act, 1894 into the Calcutta Act, 1911 would be repugnant to Section 70(a) of the Calcutta Act, 1911 which expressly excluded Section 54 of the Central Act, 1894 from the purview of the Calcutta Act. The other was that such telescoping would not be permissible if the latter statute which, in certain respects, referred to an earlier statute, was otherwise a complete Code by itself. This is clear from the fact that the Calcutta Act, 1911 Contains 177 sections and a schedule, Chapter III relates to schemes and publication of notifications in that behalf and Chapter IV deals with acquisition and disposal of land containing sections 68 to 81; among these, section 70 deals with reference to the

Tribunal: Section 77 deals with passing of award by the Tribunal; Section 71(b) and the Schedule to the Act (which contains 14 clauses) deals with various matters relating to notifications as well as fixation of market value. On the other hand, we have no such elaborate machinery provided in the Karnataka Act, 1972 and the Act has only seven sections. The Karnataka Act does not contain any separate procedure for inquiry, award not does it constitute a Tribunal in the place of the reference Court as done by the Calcutta Act of 1911. That is why we are of the view that the Privy Council decision is clearly distinguishable.

The other two recent decisions of this Court in Gauri Shankar Vs. State of up [1994 (1) 92] and UP Avas Vikas Parishad Vs. Jainul Islam [1998 (1) Scale 185], both relate to acquisition under the UP Avas Vikas Parishad Adhinyam 1965. We shall refer to the scheme of the UP Act, 1965 Chapter III of that Act deals with formulation of schemes and issue of notifications (sections 15 to 49); Chapter V deals with land acquisition etc. Sections 55 to 63, Chapter VI with constitution of Tribunal and its purposes, section 55 of the Act reads as follows:

> "Section 55(1): Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Land Acquisition Act, 1894 (Act No. 1 of 1894) as amended in its application to Utter Pradesh, which for the purpose shall be subject to the modifications specified in the schedule to this Act".

Section 64 (1) says that the Tribunal shall perform the functions of the reference Court under the Central Act, 1894 as modified by the Schedule, in the matter of determining the compensation. Section 66 says that the Award of the Tribunal shall, in case of land acquisition under Central Act, 1894 as modified by the Schedule, be deemed to be an award of the Court under the Central Act and shall, subject to section 54 of that Act, be final. Section 67 says award of the Tribunal shall be deemed to be a decree and the UP Act, 1965 contains an elaborate machinery like the Calcutta Act, 1911.

In Gauri Shankar's case, decided by K.Ramaswamy & Sahai, JJ. the notifications for acquisition under Section 28 (1) were of the year 1973 while the notifications under Section 32 (1) were of 1977. Before 1948, the Allahabad High Court had taken the view that the notification under Section 32 (1) corresponding to declaration under Section 6 (1) of the Central Act need not be issued within 3 years of the notification under Section 28(1) corresponding to section 4(1) of the Central Act. In cases arising after 1948, it was also held by the Allahabad High Court that Section 11-A was not applicable to the UP Act. Gauri Shankar's case related to the 3 year rule in the proviso to Section 6 of the Central Act. K.Ramaswamy, J. held (para 8) that the principle of incorporation' applied and that the provisions of Section 28, 32 of the UP Act, 1965 were a separate and complete code, that Section 55 read with clause (2) of the Schedule, which contained the need for issuing the preliminary and final notification under sections 28 and 32 of the UP Act, formed an integral scheme (para 25). The Schedule amended Sections 4, 6, 17 and 23 of the Central Act, 1894. It was pointed out that Section 28(2) and Section 32 (1) related to the publication of notifications without

prescribing any limitation and that the UP Act 1965 was "a complete code in itself". It was also held that the Act was not otherwise unworkable or ineffectual, though it may be incompatible with the provisos to Section 6(1) of L.A. Act (para 33). On the other hand, sahai, J. held that the principle of incorporation' did not apply but that of facts, it was not a fit case for interference inasmuch as the Parishad had already taken possession. In that view of the matter, both the learned Judges directed compensation as on the date when the notification corresponding to Section 6 declaration was issued. We shall next to refer to the recent judgment in Jainul Islam's case where the opinion of K.Ramaswamy, J. was accepted.

The question which arose in Jainul Islam's case [1998 (1) SCALE 185] under the same UP Act. 1965 was whether Section 23(1-A), Section 23(2) and Section 28 of the Central Act, 1894 as amended in 1984, were attracted to the UP Act. Approving the view of K.Ramaswamy, J. in Gauri Shankar's case [1994 (1) SCC 92], Agrawal, J. held that the principle of incorporation' applied and therefore the above amendments of 1948 to the Central Act, 1894 did not apply. Reference was also made to the Privy Council Judgment in Secretary of State Vs. Hindustan Cooperative Insurance Society Ltd. [AIR 1931 PC 149]. After considering the various provisions of the UP Act, 1965, it was held (para 21), that provisions of Section 55 and Schedule to the Act were "on the same lines" as the provisions of the Calcutta Improvement Act, 1911 and that the principles laid down by the Privy Council were equally applicable. Adverting to the exceptions referred to in State of M.P. Vs. M.V. Narasimhan [1975 (2) SCC 377], it was observed that the UP Act, 1965 and the Central Act, 1894 did not come within the exceptions and that the provisions of the UP Act, 1965 were not supplemental' to each other, nor was the UP Act in pari materia with the Central Act because it dealt with other matters which did not fall within the ambit of the Central Act. The UP Act was self contained and complete . Agrawal, J. observed (para 23) as follows:

> "the Adhinyam and the L.A. Act cannot be regarded supplemental to each other. The Adhinyam contains provisions regarding acquisition of land which are complete and self-contained. Nor can the provisions in the Adhinyam be said to be in pari materia with the L.A. Act because the Adhinyam also deals with matters which do not fall within the ambit of the L.A. Act".

In our view, these three rulings, namely Secretary of State Vs. Hindustan Cooperative Society Ltd. [AIR 1931 PC 149], Gauri Shankar's case [1994 (1) SCC 92] and Jainul Islam's case [1998 (1) Scale 185], are clearly distinguishable. As pointed out earlier the Karnataka Act, 1972 has only 7 Sections which deal with the issuance of notification corresponding to Sections 4 and 6, and 9 of Central Act and certain other minor modification relating to acquisition and payment of compensation. The Act has no provision for a separate inquiry or award or reference to a Tribunal, or a machinery for payment of compensation of apportionment. The Central Act, 1894 alone is to apply in so far as it related to inquiry and award, the reference to Court, the apportionment of amount and the payment of amount in respect of lands acquired under the Act'. There are no detailed provisions as in the Calcutta Act, 1911 or as in

the UP Act, 1965.

We are of the view that the Karnataka Act, 1972 clearly comes within the exceptions stated in M.V. Narasimhan's case for the following reasons:

Firstly there being no detailed machinery whatsoever in the Karnataka Act, 1972, that Act cannot be treated as a self-contained or complete Code. Secondly, the Karnataka Act, 1972 and the Central Act, 1894 (as amended by the Karnataka Act, 1961) are supplemental to each other for unless the Central Act supplements the karnataka Act, the latter cannot function. Thirdly, these acts are in pari materia because the karnataka Act, 1972 - unlike the Calcutta Act, 1911 and the UP Act, 1965 - does not deal with any other subject but deals with the same subject of land acquisition which otherwise would have fallen within the ambit of the Central Act, 1894. For the aforesaid reasons, we are of the view that the amendments made in 1948 to the Central Act, 1894 including Section 11-A have to be read into the Karnataka Act, 1972, so far as enquiry, award, reference to Court, apportionment of amount and the payment of amount in respect of land acquired under the Act.

Admittedly, the prescribed period under section 11-A has elapsed and it is stated that even now, the award is not passed. Therefore, it is clear that the conditions of section 11-A are violated, and accordingly, the entire land acquisition proceedings including the notifications under section 3(1) and 3(4) of the Karnataka Act, 1972 lapse. We declare accordingly.

Before parting with the case, we may say that in this appeal we are concerned only with the question whether section 11-A as introduced by the Amendment in 1984 to the Central Act 1894 could be read into the Karnataka Act, 1972 and we have held that it should be read into the Karnataka Act, 1972 because there is not such provision in the Karnataka Act, 1972 as amended by the Karnataka Act, 1961. The question as to the telescoping of other amendments brought to the Central Act, 1894 by the 1984 amendment and the consequential impact thereof is not before us and we should not be understood as deciding any such matter. If the question of applicability of any other amendment brought by the Central Act in 1984 to the Karnataka Act, 1972 arises in Karnataka, such a question may have to be decided separately.

Further, in the impugned Judgment, certain rulings under the Bangalore Development Act, 1976 have been followed. We have gone by the provisions of the Karnataka Act, 1972. We are not to be understood as having said anything with regard to the Bangalore Development Act, 1976. We are in fact told that some that some appeals are pending in this Court in regard to the said Act of 1976.

In the result, the appeals are allowed and it is declared that the notifications issued under the Act under Section 3(1) and Section 3(4) have lapsed.