ALLAHABAD HIGH COURT

Doctors' Sahkari G.N.S. Ltd

Vs.

A.A.V. Parishad

Civil Misc. Writ Petn. No. 8917 of 1981

(H.N. Seth, A. Banerji and S.D. Agarwala, JJ.)

07.05.1984

JUDGEMENT

H.N. Seth J.

1. A Scheme known as Sikandara Grihsthan Evam Sarak Yojna, Agra was notified under Section 28 (1) of the U.P. Avas Evam Vikas Perished Adhiniyam, 1965 (hereinafter referred to as the Adhiniyam) on 4th April, 1970. In due course the said notification was followed by a notification under Section 32 (1) of the Adhiniyam published in the U.P. Gazette dated 28th June, 1980.

2. The two petitioners, namely Doctors' Sahkari Grih Nirman Samiti Ltd. and Ram Babu Gupta filed the present petition on 30th April, 1981 and questioned the authority of the Board constituted under the Adhiniyam to, in pursuance of the aforesaid notification, acquire their rights in respect of certain Bhumidhari plots mentioned in paragraph '2' of the petition. They submitted that in view of Section 55 of the Adhiniyam. which lays down that 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 Uttar Pradesh which for this purpose is be subject to the modifications specified in the Schedule to this Act, it was not open to the State Government to issue the notification under Section 32 (1) of the Adhiniyam after a lapse of more than three years of the notification dated 4th of April, 1970 issued under Section 28 (1) of the Adhiniyam.

3. The Bench before which the petition was presented felt that the aforesaid submission made by the petitioners stood concluded against them by the two Bench decisions of this Court in the cases of of *Khadim Husain v. State of U.P.,*

and *Bharat Sewak Samaj Sahkari Griha Nirman Samiti Ltd. Varanasi v. State of U.P.* [2] which purported to rule that the limitation of the three years provided in the Land Acquisition Act for issuance of notification under Section 6 thereof was not applicable in cases where the land was sought to be acquired in pursuance of a scheme framed under the Adhiniyam. Learned counsel for the petitioners next contended that if the aforesaid conclusion arrived at by the two Benches with regard to the effect of the provisions contained in Section 55 of the Adhiniyam be taken to be correct the said provision would suffer from the vice of discrimination forbidden by Article 14 of the Constitution and the provisions contained n the Adhiniyam with regard to acquisition of land would be rendered unconstitutional. Consequently, even for purposes of the scheme framed under the Adhiniyam, it will not be possible to acquire the land except by strictly complying with the provisions contained in the Land Acquisition Act. In support of the submission that in such circumstances, the provisions contained in Section 55 of the Adhiniyam would suffer from the vice of discrimination, learned counsel relied upon the decision of the SC in the case of *Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition, West Madras,* [3] and *Nagpur Improvement Trust v. Vithal Rao,* [4] As the Bench felt that the submissions made by the learned counsel for the petitioners deserved detailed consideration, it admitted the petition and called upon the respondents to put in appearance in the case.

4. The Division Bench before which the petition came up for hearing observed that since this case involved reconsideration of earlier Division Bench decisions of the Court, it should be decided by a larger bench. It accordingly referred the case for decision by a larger 'bench and that is how the matter has come up before us.

5. In order to appreciate and effectively deal with the rival submissions made by the learned counsel for the parties it would be convenient to briefly notice the statement of object and reasons for the enactment as well as the contents of relevant provisions of the Adhiniyam and those of the Land Acquisition Act as amended in its application to the State of U.P.

6. The statement of objects and reasons for the introduction of the bill pertaining to the Adhiniyam published in the U.P. Gazette Extraordinary dated

15th April, 1965 runs thus:-
"Migration of people from rural to urban area influx of displaced persons increasing impact of the development activity generated by the Five Year Plans and several other factors have resulted in rapid increase of population in towns of this State. Construction of new houses and the planned development of towns has, however, not kept pace with this rapid increase of urban population. The efforts in this direction made by the State Government. Nagar Mahapalikas, Nagar Palikas, Improvement Trusts. Development Board and other Smaller Local Bodies have, for want of effective co-ordination and control, not met with the desired success. The said local bodies with their limited resources and know-how and due to other factors have not been able to relieve the housing shortage and to undertake the requisite development of land. There are areas in this State with immense potentialities of development, but they still remain as they were a decade or so back. It is now considered absolutely essential for tackling the housing and development problems of practically all the fast growing urban areas, and areas with potentialities of development, that an autonomous central body to be known as Housing and Development Board be created for the whole State. A Comprehensive Bill, called the Uttar Pradesh Avas Evam Vikas Parishad Vidheyak has accordingly been prepared to provide for the establishment, incorporation and functioning of a Housing and Development Board in this State. This bill is being introduced accordingly."

7. The State Legislature enacted the Adhiniyam in the year 1965 providing for the constitution of Uttar Pradesh Avas Evam Vikas Parishad (hereinafter referred to as the Board) and, inter alio, interested it with the function of framing and execution of Housing Improvement Schemes and other projects, regulating building operations, improvement and clearing of slums, providing for roads. electricity, sanitation, water supply and other civic amenities and essential services in the areas developed by it. The Adhiniyam also enables the Board to acquire movable and immovable properties for purposes of the Act, Section 18 of the Adhiniyam specifies various types of Housing and Improvement Scheme that can be framed by the Board, the perimeters of each such scheme have been laid down in Sections 19 to 27 of the Adhiniyams. Secs, 18 (a) and (d) enable the Board to frame Grihsthan Yojana (House Accommodation Scheme) and Sarak Yojna (street scheme) and perimeters thereof are contained in Section 19 and 22 of the Adhiniyam.

8. Section 28 of the Adhiniyam obliges the Board to, whenever it frames a housing or improvement scheme, prepare a notice to that effect, specifying therein the boundaries of the areas comprised in the scheme together with the dates, hours and place or places at which dates, hours and area particulars of the scheme, and details of the land proposed to be acquired may be seen and the date by which objections to the scheme may be made, and to publish the same in the manner provided by sub-section (2) thereof. Apare from this the Board is, under Section 29, required to issue individual notice as well mentioning that it, for purposes of executing the scheme, proposes to acquire specified plot or land. Section 30 envisages that the Board has to afford, opportunity to the concerned persons to file objections against the scheme as also against the proposed acquisition of property. After objections are filed they are to be considered by the Board so far as may be, within 6 months of the filing of the last such objection and thereafter it has either to abandon the scheme or if the estimated cost of the scheme does not exceed, Rs. 20 lakhs to sanction it with or without modification. Where the estimated cost exceeds Rs. 20 lakhs. the Board has to submit the scheme to the State Government for its sanction with such modification, if any, as it may suggest. Under sub-section (3) of Section 31 the State Government is empowered either to sanction the estimate submitted to it with or without modification or to refuse to sanction the same or to return the scheme submitted to it for reconsideration by the Board. According to Section 32 (1) of the said Adhiniyam whenever the Board or the State Government sanctions a housing scheme or improvement scheme, it has to be notified in the gazette and as per sub-section (5) the Scheme sanctioned under the foregoing provisions either by the State Government or by the Board comes into force on the date of its notification under Section 32 (1) of the Adhiniyam. After the scheme comes into force, the Board is, under Section 34 of the Adhiniyam, called upon to forthwith proceed to execute the same and to, after its completion make a declaration to that effect in the official gazette. While proceeding to execute the scheme, it may, as provided in the scheme become necessary to the Board to acquire land or building in the area covered by the scheme and for that purpose Section 55 (1) of the Adhiniyam provides thus:

> (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 Uttar Pradesh, which for this purpose shall be subject to the modifications specified in the Schedule to this Act."

(2) .. .."

The Schedule to the Act provides for various amendments and modifications in Sections 3. 17. 23 and 49 of the Land Acquisition Act hereinafter referred to as the Act). It also provides for addition of new Section 17-A in the Act. Sub-clauses (1) and (2) of cause 2 of the Schedule, run thus:-

"(1) The first publication, in the official Gazette, of a notice of any housing or improvement scheme under Section 28 or under clause (a) of sub-section (3) of Section 31 of the Act shall be substituted for and have, in relation to any land proposed to be acquired under the scheme, the same effect as publication in the official gazette, and in the locality, or a notification under sub-section (1) of Section 4 of the said Act, except where a notification under Section 4 or a declaration under Section 6 of the said Act has previously been made and is still in force, and the provisions of Section 5-A of said Act shall be inapplicable in the case of such land.

(2) The issue of a notice under Clause (c) sub-section (3) of Section 23 of this Act in case of land acquired under a Bhavi Sarak Yojana and the publication of a notification under sub-section (1) or, as the may be, under sub-section (4) of Section 32 of this Act in the case of land acquired under any other housing or improvement scheme under this Act shall substituted for and have the same effect as a declaration by the State Government under Section 6 of the said Act, unless a declaration under the last mentioned Section has previously been made and is still in force.

(3) .....

Section 4 of The Land Acquisition Act lays down that "whenever it appears to (appropriate Government) that land any locality is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the official Gazette, and the elector shall cause public notice of the substance of such notification to he given at convenient places in the said locality."

9. Amongst, others one of the effects of publication of a notification under

Section 4 of the Act is that as per clause first of Section 23 (1) of the Act, the amount of compensation payable in respect of the property sought to be acquired has to be computed with reference to its market value on the date of such notification and for this purpose any appreciation in valuation of the land, subsequent to the publication of Notification under Section 4 (1) of the Act is to be ignored. Consequently, the effect of publication of notification with regard to framing of scheme by Board under Section 28 (1) of the Adhiniyam also would be that if the land is eventually acquired in connection with the scheme the market value thereof on the date of such notification would be taken into consideration in determining the compensation payable to the owner of the acquired property and any subsequent appreciation in the market value thereof will have to be ignored. Section 6 of the Act enables the State Government to, after following the procedure laid down in the preceding section and other provisions of the Act. if it is so satisfied, make a declaration that any particular land is needed for public purpose or for a company, and to publish the same in the Official Gazette. Consequence of publication of a notification under Section 6 as laid down in sub-section (3) thereof is that thereafter the appropriate Government becomes entitled to acquire the land in the manner mentioned in subsequent provision of the Act.

10. It appears that after enactment of the Adhiniyam in the year 1965, following proviso was added to Section 6 (1) by Act No. 13 of 1967 with effect from 12th April, 1967;-

> "Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section, (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), shall be made after the expiry of three years from the date of such publication."

11. The case of the petitioners is that inasmuch as the Schedule referred to in Section 55 of the Adhimiyam equates a notification under Section 32 (4) of the Adhiniyam with a notification under Section 6 of the Act, the restriction placed by the proviso added to Section 6 of the Act, on issuing a notification under that section after a lapse of three 'Years of the notification under. Section 4 of the Act, equally applies to the notification published under Section 32 (4) of the

Adhiniyam and in respect thereof the notification 4ssued under Section 28 (1) of the Adhiniyam is to be treated as equivalent to the notification contemplated by Section 4 of the Act. after the year 1967, it was not open. to the State Government to issue a notification under Section 32 (4) of the Adhiniyam more than three years after the late of notification under Section 28 (1) of the Adhiniyam. Accordingly, in the instant case the impugned notification under Section 32 (4) of the Adhiniyam issued more than three years after the notification under Section 28 (1) thereof was with jurisdiction.

12. Scrutiny of various provisions contained in the Adhiniyam shows that it Provides for the constitution of a Board and invests it why very wide powers for carrying out various housing and improvement schemes. It also provides for compulsory acquisition of land on a large scale in case it becomes necessary to do so for purposes of execution of the scheme. In the circumstances, the state legislature thought that the general procedure for acquisition of land for public purposes, till the stage of obtaining orders for acquisition of land under Section 7 of the Act, as also that in some other subsequent provisions contained in the Act. may not be apt and it accordingly proceeded to provide for a special procedure therefore. It is with this end in view that it enacted Section 55 of the Adhiniyam providing that 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 and Acquisition Act, 1894 as amended its application to Utter Pradesh, which for this purpose shall be subject to the modifications specified in the Schedule to the Act. A perusal of the Schedule shows that for this purpose the legislature has proceeded to adopt the procedure for acquisition of land laid down in the Land Acquisition Act, 1894 amended in its application to the State of Utter Pradesh in the year 1965 such a way that it appropriately achieves the object of acquiring land for purposes of a scheme formulated by the Board. On the face of it the Legislative intendment that the land, for purposes of the scheme formulated under the Adhiniyam, is to be acquired by following the procedure prescribed by the Land Acquisition Act, 1894 as in force in the State of Utter Pradesh in the year 1965. subject however to the modifications and changes effected by the Schedule is absolutely clear. In other words, what the legislature intended to do was to lay down a special procedure for acquisition of land for purposes of the scheme formulated under the Adhiniyam and that procedure has to be spelled out by perusing the provisions of the Land Acquisition Act, 1894

as amended in its application to Utter Pradesh in the year 1965 together with the modifications indicated in the Schedule. Certainly the legislature did not intend that any future amendment in the Act should, whether or not it be in consonance with the modified provision for acquisition of property contemplated by the Adhiniyam, also become applicable to such acquisitions. Viewed in this light, it becomes absolutely clear that in the instant case what the legislature did was nothing more than incorporating with modification and amendment certain provisions existing in the Act or the Adhiniyam and for convenience of drafting it did so by reference to that Act instead of setting out for itself at length the provisions which it wanted to adopt. It is now well settled that where a statute is incorporated by reference into a draft statute, the repeal or amendment of the first statute does not affect the second. Accordingly any amendment made in the incorporated provisions of the Act in the year 1967 will have no bearing whatsoever on the question of acquisition of property in connection with a scheme formulated under the Adhiniyam which acquisition has to be carried out in accordance with the procedure laid down in the Act as amended in its application to Utter Pradesh in the year 1965, i. e., the year in which the Adhiniyam was enacted.

13. We are, in taking this view, fortified by the decision of the Privy Council in the case of *Secretary of State v. Hindusthan Co-operative Insurance Society Ltd.,* [5] In that case, the Calcutta Improvement Act provided for the constitution of Board of Trustees which was invested with very wide powers for the Purpose of carrying out improvement scheme within the municipal limits of Calcutta, For that purpose necessity could arise for compulsory acquisition of land on a large scale and the Bengal Government thought that it would facilitate the proceedings of the trustees if they had a special code of their own under which such acquisitions should be made instead of leaving the matter to be dealt with by the land Acquisition Act, 1894 which was of general application throughout British India. Part 4 of the Calcutta Improvement Act which dealt with the acquisition of land for the purposes of that Act provided that the trustees could make such acquisitions under the Land Acquisition Act and proceeded to modify that Act for purposes of Calcutta Improvement Act. The modifications were contained partly in the body of the Act and partly in a schedule attached to the Act. They were numerous and substantial. Subsequently an amendment was made in the Land Acquisition Act and a question arose as to whether the

amendment had any bearing in respect of acquisition made for purposes of the Calcutta Improvement Act. While dealing with this question the Privy Council came to the conclusion that in the circumstances the concerned provisions contained in the Calcutta Improvement Act were directed towards providing a special law for acquisition of the land by the trustees within the limited area over which their powers extended. In this connection the learned members of the Judicial Committees observed thus :-

> "But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921,can be regarded as incorporated in the local Act of 1911. It was not part of the Land Acquisition Act when the local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor again, does Act 19 of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective or are to be regarded as affecting any other enactment than the Land Acquisition Act itself.....". "Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt.... The independent existence of the two Acts is therefore recognised; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General clauses Act, their Lordships think that the principal involved is as applicable in India as it is in this country."

14. Thereafter learned members of the Privy Counsel went on to conclude that as the provisions of the Land Acquisition Act stood incorporated in the Calcutta Improvement Act, any subsequent charge made in the Land Acquisition Act was not to affect the acquisition made in accordance with the provisions of the Land Acquisition Act as incorporated in the Calcutta Improvement Act. The

case before us stands on a footing identical to that on which the aforementioned case decided by the Privy Council stood.

15. In order to substantiate his submission that for purpose of acquisition of Property in connection with a scheme formulated under the Adhiniyam subsequent amendments made in the Land Acquisition Act would be relevant, learned counsel for the petitioner referred us to various observations made by the SC in the cases of the *Collector of Customs, Madras v. Sampathu Chetty,* [6] *Bolani Ores Ltd. v. State of Orissa,* [7] *State of Madhya Pradesh v. Narasimhan,* [8] *Farid Ahmad Abdul Samad v. Municipal Corporation of the City of Ahmedabad,* [9] and *Western Coalfields Ltd. v. Special Area Development Authority, Korba* [10]

16. In the case of the Collector of Customs, Madras (supra) the SC was concerned with the question as to whether having regard to the wordings in Section 23-A of the Foreign Exchange Regulation Act, which ran thus :-

> "Without prejudice to the provisions of Section 23 or to any other provision contained in this Act the restrictions imposed by sub-sections (1) and (2) of Section 8 sub-section (1) of Section 12 and clause (a) of sub-section (1) of Section B shall be deemed to have been imposed under Section 19 of the Sea Customs Act, 1878,and all the provisions of that Act shall have effect accordingly, except that Section 183 thereof shall have effect as if for the word 'shall' therein the word 'may' were substituted."

could it be said that the provisions of Sea Customs Act stood incorporated in the Foreign Exchange Regulation Act and whether the subsequent amendments made in the Sea Customs Act also governed the proceedings under the Foreign Exchange Regulation Act. In this connection, the SC referred to the decision of the Privy Council in the case of *Secy. of State v. Hindusthan Co- operative Society* (supra) and observed thus:-

> "In support of this conclusion the learned Judges of the High Court have relied largely on the decision of the Privy Council in *Secy. of State v. Hindustan Co-operative Society Ltd.,* [11] We consider that the legislation

regarding which the Privy Council rendered the decision bears no resemblance, whatever to the matter now on hand and that the ruling in ILR 59 Cal 55 cannot therefore furnish any guidance or authority applicable to the interpretation of Section 23A of the Foreign Exchange Regulation Act. To consider that the decision of the Privy Council has any relevance to the construction of the legal effect of the terms of Section 23A of the Foreign Exchange Regulation Act is to ignore the distinction between a mere reference to or a citation of one statute in another and an incorporation which in effect means the bodily lifting of the provisions of one enactment and making it part of another so much so that the repeal of the former leaves the latter wholly untouched .... "It is thus evident that the SC did not disagree with a decision of the Privy Council in the case of Hindustan Co-operative Society's case (supra). Rather it affirmed the law laid down in that case and concluded that the provisions, the effect whereof it was called upon to determine, were quite different from those which were involved before the Privy Council. The SC did not controvert the position that in a case where the provisions of an earlier statute are for its purpose, incorporated by the latter statute, any change made in the earlier statute does not affect the provisions of the latter statute. It pointed out that there is a difference in a case where the provisions of an earlier statute are incorporated by the latter statute which have the effect of bodily Lifting, the provisions of earlier enactment and making them part of the latter enactment and a case where the latter statute refers to the provisions contained in the earlier statute. After taking into consideration the language of, and the context in which Section 23-A of the Foreign Exchange Regulation Act had been enacted, the SC concluded that the section did not purport to bodily lift the provisions of Sea Customs Act and to incorporate the same. It merely referred to those provisions and considerations different from those that prevailed before the Privy Council in the case of Secretary of State (supra) prevailed in the case before it. As already indicated, the case before us is akin to the Privy Council case cited above and the principle enunciated by the Privy Council shall continue to govern it."

17. In the case of *Bolani Ores Ltd. v. State of Orissa,* [12] it was found that after its amendment in the year 1940. Section 2 (c) of Bihar and Orissa Motor Vehicles

Taxation Act, 1980 gave the same meaning to the expression "motor vehicle" as in Motor Vehicles Act, 1939. One of the questions that arose for consideration before the SC was as to whether, in view of Section 2 (c) of the Taxation Act under which the expression "motor vehicle" had the same meaning as in the Motor Vehicles Act, 1939, any subsequent amendment made in Section 2 (18) of the Motor Vehicles Act, 1939 (the section defining the meaning of expression motor vehicle) by Motor Vehicles (Amendment) Act, had an impact on the meaning of the expression 'motor vehicle' for purposes of the Taxation Act as well. Whereas the submission made by the petitioner in that case was that artifice adopted by legislature resulted in incorporation of the definition of expression 'motor vehicle' contained in the Motor Vehicles Act in the Taxation Act by reference, as such any subsequent amendment made in the Motor Vehicles Act did not have any effect on the provisions contained in the Taxation Act, the submission made on behalf of the State was that the definition of Motor Vehicle in the Taxation Act was not a definition by incorporation. It was only
A definition by reference and as such the meaning of 'motor vehicle' in the taxation Act would be the same as defined from time to time in the Motor Vehicles Act. Observations made by the SC in paragraph 29 of the judgment indicate that the opinion of the SC was that in such cases it is the intention of the legislature which has to be gathered. The Court after taking into consideration the purpose of enactment of the two Acts observed thus :

> "If this be the purpose and object of the Taxation Act, when the motor vehicle is defined under Section 2 (c) of the Taxation Act as having the same meaning as in the Motor Vehicles Act, 1939, then the intention of the Legislature could not have been anything but to incorporate only the definition in the Motor vehicles Act as then existing namely, in 1943, as if that definition was bodily written into Section 2 (c) of the Taxation Act. If the subsequent Orissa Motor Vehicles Taxation (Amendment) Act, 1943 incorporating the definition of 'motor vehicle' referred to the definition of Motor Vehicle under the Act as then existing, the effect of this legislative method would, in our view amount of an incorporation by reference of the provisions of Section 2 (18) of the Act in Section 2(c) of the Taxation Act. Any subsequent amendment in the Act or a total repeal of the Act under a fresh legislation on that topic would not affect the definition of 'motor vehicle' in Section 2 (c) of the Taxation Act."

The judgment further shows that in arriving at the aforementioned conclusion the SC amongst other cases cited with approval the decision of the Privy Council in Hindustan Co-operative Insurance Society Ltd. case AIR 1931 PC 149.

18. In the case of *State of Madhya Pradesh v. Narasimhan* [13] the principle that where a subsequent Act incorporates provisions of a previous Act, 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 was reiterated but then the SC held that this principle was not to apply in 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 if not imported into the subsequent Act, also, would render the subsequent Act, wholly unworkable and ineffectual and
> (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

19. According to Sri S.P. Gupta, one of the learned counsel who argued for the petitioners the present case falls under first, second and third exceptions mentioned above and as such the general principle that amendment made in the law incorporated rated would not have any bearing on the law which makes the incorporation as laid down in the case of Secy. of State (supra) would not be applicable in the instant case.

20. We are unable to accept this submission. As already indicated the legislature has, acquisition of property for purpose of scheme formulated under the Adhiniyam laid down a special procedure somewhat different from that laid down in the Land Acquisition Act. Law prescribes different procedures one generally for acquisition of property laid down in the Land Acquisition Act and the other for the acquisition of property for purpose of scheme formulated under the Adhiniyam. It is accordingly not possible to treat the provisions contained in

the two encatments as supplemental to each other. We are also not impressed by the argument that the two acts are in pari materia. It is apparent that in case it is held that by virtue of Section 55 of the Adhiniyam, the provisions of Land Acquisition Act as amended in its application to Uttar Pradesh, stood, subject to the modifications mentioned in the section incorporated in the Adhiniyam, the Adhiniyam can safely be regarded as self contained Code dealing with acquisition of Land in connection with execution of a scheme formulated under the provisions of the Adhiniyam. It has not been shown to us as to how in this case can it be said that in case amendment made in Section 6 of the Land Acquisition Act is not taken into account, the provisions of the Land Acquisition Act as incorporated by the Adhiniyam would become unworkable and ineffectual. In the result, we are not satisfied that the instant case is covered by any of the exceptions indicated by the SC in the case of State of Madhya Pradesh (supra).

21. In the case of *Farid Ahmed Abdul Samad v. Municipal Corporation of the City of Ahmedabad* [14] the question that arose for consideration before the SC was as to whether in view of the provisions contained in Section 284N of the Bombay Provincial Municipal Corporation Act, 1949 which ran thus :

> 284N. "The Land Acquisition Act, 1894 (in this and the next succeeding sections referred to as 'the Land Acquisition Act') shall to the extent set forth in Appendix 1 regulate and apply to the acquisition of land under this Chapter, otherwise than by agreement, and shall for that purpose be deemed to form part of this chapter in the same manner as if enacted in the body hereof, subject to the provisions of this Chapter and to the provisions following, namely:-
>
> It was obligatory on the respondents to, as laid dawn in Section 5-A of the Land Acquisition Act, afford an opportunity of personal hearing to persons objecting to acquisition of their property. In this connection the SC observed thus:
>
> "Section 284N referentially incorporates in the Bombay Act certain provisions of the Land Acquisition Act as detailed in Appendix I to the Bombay Act. Out of those provisions we are only concerned with Part II (Acquisition) of the Land Acquisition Act containing Sections 4 to 17 including Section 5-A. According to Appendix I all the sections in Part II

of the Land Acquisition Act except sub-section (1) of Section 4. Section 6 and sub-section (2) of Section 17 are bodily incorporated in the Bombay Act. Those provisions are deemed to be part and parcel of the Bombay Act. Hence Section 5A is clearly a part of the Bombay Act in terms of appendix I"

In this case the SC was not concerned with the question with regard to the effect of any amendment made in Section 5-A of the Land Acquisition Act after it stood incorporated in the Bombay Corporation Act. This decision, in our opinion, does not contain anything which may support the submission of the learned counsel for the petitioner.

22. Coming now to the case of *Western Coalfields Ltd v. Special Area Development Authority, Korba* [15] we find that the question that arose for consideration before the SC was as to whether the Development Authority was under the provisions of Section 69 (d) of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam empowered to levy the property Tax by availing the provisions of Section 127A of the Madhya Pradesh Municipalities Act and Section 135 of the Madhya Pradesh Municipal Corporation Act which powers were envisaged subsequent to insertion of Section 69 (d) in the Adhiniyam which runs thus:

"69. Powers : The Special Area Development Authority shall-
(d) for the purpose of taxation have the powers which is a municipal corporation or a municipal council has as the case may be, under the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956) of the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961).
(a) where the municipal corporation or municipal council existed in such area under Section 64 according to the municipal law by which such special area was governed: and
(b) where no municipal corporation or municipal council existed in such area prior to its designation as special area under Section 64, according to such of the aforesaid Acts as the State Government may direct."
It was urged before the SC that the provisions conferring power of taxation under the Madhya Pradesh Municipal Corporation Act and Madhya Pradesh Municipalities Act must be taken to have been

incorporated by Section 69 (d) of the Adhiniyam and any subsequent change in the provisions of the Act could not be availed of by the Development Authority. Accordingly the powers conferred by Sections 127-A and 135 of the respective Acts which were subsequently inserted were not available to the Development Authority. While dealing with the legal implication and the provisions contained in Section 69 (d) of the Adhiniyam the SC cited with approval decision of the Privy Council in Hindusthan Co-operative Insurance Society Ltd. AIR 1931 PC 149) (supra) and having considered the scheme of the Adhiniyam it reached to the following conclusion :

"Applying these principles, we are of opinion that in the instant case, subsequent amendments made to the Municipal Corporation Act and the Municipalities Act will also apply to the power of taxation provided for in Section 69 (d) of the Act of 1973. The Act of 1973 did not by Section 69 (d) incorporate in its true signification any particular provision of the two earlier Acts. It provides that for the purpose of taxation, the Special Area Development Authority shall have the powers which a Municipal Corporation or a Municipal Council has under the M. P. Municipal Corporation Act, 1965 or the M. P. Municipalities Act, 1961. The case, therefore, is not one of incorporation but of mere reference to the powers conferred by the earlier Acts."

It will thus be seen that having regard to the scheme of the Adhiniyam the SC came to the conclusion that the legislative intendment was not to incorporate the provisions contained in the M. P. Municipal Corporation Act and M. P. Municipalities Act, in the Adhiniyam but Section 69 merely made a reference to the powers conferred by earlier Act and intended that similar powers were exercised by the Development Authority as well. Nothing contained in this judgment runs counter to the conclusion to which we have arrived in the case before us.

23. There is yet another way of looking at the matter. When clause (2) of the Schedule to the Adhiniyam provides that the first publication in the Official Gazette, of a notice of any housing or improvement scheme under Section 28 of the Act shall be substituted for and have, in relation to any land proposed to be acquired under the scheme, the same effect as publication in the Official

Gazette and in the locality, of a notification under sub-section (1) of Section 4 of the Act and likewise when sub-section (2) provides that issue of a notification under Section 32 (4) of the Adhiniyam in case of land acquired for purposes of housing or improvement scheme shall be substituted for and have the same effect as a declaration by the State Government under Section 5 of the said Act, the legislature clearly intended to exclude the application of Sections 4 and 6 of the Land Acquisition Act to the proceedings for acquisition of land or houses for purposes of a scheme formulated under the Adhiniyam. Instead, it provided that the notifications issued under Sections 28 (1) and 32 (4) of the Adhiniyam in accordance with the procedure laid down in the Adhiniyam shall take the place of notifications issued under Sections 4 and 6 of the Land Acquisition Act and will have the same respective effect. This clearly indicates that the legislature did not, for purposes of acquisition of land in connection with the Adhiniyam, either incorporated the provision of Sections 4 and 6 of the Land Acquisition Act or did it intend that such acquisition proceeding should be carried on in accordance with the provision contained in those sections. The legislative intendment is quite clear that the procedure for issue of notifications under Sections 28 (1) and 32 (4) are to be completely governed by the provisions contained in the Adhiniyam and is not to be inhibited by or subject to any provision contained in the Land Acquisition Act regarding issue of notifications under Sections 4 and 6 of the Land Acquisition Act. Accordingly if any restriction is placed by the Land Acquisition Act on the right to issue of a notification under Section 6 thereof it will have no impact on the notifications to be issued under Section 32 (4) of the Adhiniyam. It, therefore, follows that any amendment made in Section 6 of the Land Acquisition Act which merely places a restriction in issuing of a notification under Section 6 will have no bearing on a notification to be issued under Section 32 (4) of the Adhiniyam. In the result, we are unable to accept the submission made by the petitioners that because of addition of first proviso to Section 6 of the Land Acquisition Act in the year 1967, the right to issue a notification under Section 32 (4) of the Adhiniyam also becomes barred in cases where the same had not been issued within three years of the date of notice under Section 28 (1) of the Adhiniyam.

24. Before parting with this point, we would also like to notice few cases of this Court cited at the bar. The first case is that of *Khadim Husain v. Site of U.P., Lucknow* [16] which was also referred to in the order admitting the writ petition as

a case in support of the proposition that the first proviso to Section 6 of the Land Acquisition Act added in the year 1967 did not restrict the right to issue the notification under Section 32 (4) of the Adhiniyam after a lapse of a period of three years of a notification under Section 28 (1) of the Act. We find that in Khadim Husain's case the main point decided was that the first proviso to Section 6 merely places a restriction on making of a declaration under Section 6 (1) of the Act, namely, that the land is needed for public purpose and not on publication of that declaration under Section 6 (2). Accordingly in a case where requisite declaration has been made within time, the publication thereof subsequently is not barred. Next case to be noticed in this connection is that of *Riaz Uddin v. State of U.P.,* [17] In this case the notification under Section 32 of the Adhiniyam had been issued in accordance with the provision contained in the Adhiniyam but such notification did not adequately identify the land sought to be acquired and it was contended that as the provisions contained in Sections 4 and 6 of the Land Acquisition Act had been contravened, the acquisition was bad. It was argued by the petitioners that the notification issued under Section 32 of the Adhiniyam was to be equated with a notification under Section 6 of the L and Acquisition Act and, therefore, it was necessary that while issuing such notification, the provisions of Sections 4 and 6 of the Land Acquisition Act had to be strictly complied with. While repelling this submission the Bench observed that the relevant provisions of the Schedule to the Adhiniyam states that the notification issued under the Adhiniyam shall be substituted for and have the same effect as publication of the notification under Sections 4 (1) and 6 of the Land Acquisition Act. The notification issued under the Adhiniyam operates as substitutes for notifications under Sections 4 and 6 of the Land Acquisition Act. In addition, the notifications under the Adhiniyam has the same effect as publication of notifications under Sections 4 and 6 of the Land Acquisition Act, Clause '2' of the Schedule of the Adhiniyam creates a fiction whereby the notifications under the Adhiniyam are to be deemed to be and having the same effect as notifications under Sections 4 and 6 of the Land Acquisition Act. It opined that fiction created by the Schedules precludes the making or the publication of a Notification under Section 4 (1) or Section 6 (1) of the Land Acquisition Act. The notifications issued under the Adhiniyam are themselves deemed to be and having the same effect as notifications under Section 32 of the Adhiniyam comply with the requirements of those provisions, and as such are valid notifications under the Adhiniyam, they by operation of

law have effect and operate as notifications under Sections 4 and 6 of the Land Acquisition Act. In view of this fiction, the Board is exempt from making or publishing notifications under Sections 4 and 6 of the Land Acquisition Act. Hence the notification issued under Section 32 of the Adhiniyam need not be strictly in accordance with the provisions of Sections 4 and 6 of the Land Acquisition Act. Those notifications are not required to fulfil the requirements of Sections 4 and 6 of the Land Acquisition Act. If they are valid notifications under the provisions of the Adhiniyam, they exclude the necessity of issuing notifications under Sections 4 and 6 of the Land Acquisition Act. Those notifications cannot be struck down because they do not fulfil the requirements of Sections 4 and 6 of the Land Acquisition Act. Their validity cannot be tested on the analogy of the requirements of Section 4 (1) or Section 6 (1) of the Land Acquisition Act. This decision is quite in line with the view expressed by us above.

25. In the case of *Gauri Shanker v. State of U.P.* [18] while dealing with the question as to whether the limitation of 3 years mentioned in proviso to Section 6 (1) will govern the acquisition under the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965, a Bench of this Court observed that similar question came up for consideration in Khadim Husain's case (supra) and the bench had, after elaborately discussing various provisions, ruled that the proviso laying down three years period of limitation was not applicable to the issuance of the notification under Section 32 (1) of the Adhiniyam and that it was bound by that decision. Learned counsel for the petitioners contended that in Khadim Husain's case, no such proposition had been laid down. What had been decided therein was that the limitation provided by the proviso to Section 6 of the Land Acquisition Act merely applied to making of tie declaration and not to its subsequent publication. BE THAT AS IT May, we, for the reasons already stated, agree with the Division Bench decision that three years period of limitation mentioned in the first proviso to Section 6 of the Land Acquisition Act has no bearing on the notification to be issued under Section 32 of Adhniyam.

26. Learned counsel for the petitioners then contended that in the view which we have taken, the provisions contained in the Adhiniyam with regard to acquisition of property for purpose of a scheme formulated under the

Adhiniyam would suffer from the vice of discrimination forbidden by Article 14 of the Constitution and would be unconstitutional. Learned counsel appearing for the respondents objected to the arguments ought to be raised by the petitioners and contended that the provisions for acquisition of property contained in the Adhiniyam are entitled to the protection of Article 31-A (1) (a) and 31-C of the constitution and as such it is not open to the petitioner to question their validity on the ground that they contravene the guarantee contained in Article 14 of the constitution. In the circumstances we would, before proceeding to consider the question as to whether or not, the provisions contained in the Adhiniyam contravene the provisions of Article 14 of the Constitution, consider the aforementioned objection raised by the respondents.

27. Article 31-A (1) (a) of the Constitution lays down that "notwithstanding anything contained in Article 13, no law providing for, the acquisition by the State of any estate or of any rights therin or the extinguishment or modification of any such rights, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14. Article 19 or Article 31." Sub Article (2) of Article 31-A defines the expression 'estate' for the purpose of Article thus :- .

> "(a) the expression 'estate' shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include.
> (i) any jagir, inam or muafi or other similar grant and in the States of (Tamil Nadu) and Kerala, any Janmam right.
> (ii) any land held under ryotwari settlement;
> (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto including waste land, forest land, for pasture or sites of building and other structures occupied by cultivators of land, agricultural labourers and village artisans."

Submission of the learned counsel for the respondents is that inasmuch as the Adhiniyam enables acquisition of land which falls within the expression of the word 'estate' it is a law for acquisition by State of an estate and as such is immune from being challenged on the ground that its provisions contravene Article 14 of the Constitution. The scope and ambit of the protection and

immunity extended by Article 31-A (1) (a) of the Constitution has been the subject matter of consideration before the SC in a number of cases and having regard to the definition of the word 'estate' it has ruled that the protection under the said Article is available only in respect of such laws as provide for acquisition of land in connection with agrarian reforms.

28. In the case of *Kavalappara Kottarathi Kochuni v. State of Madras and Kerala* [19] it was held that Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) which deprived Sthanams of his properties and waste land in the Tarwads was not protected by Article 31-A inasmuch as the Act did not deal with agrarian reforms.

29. In *P. Vajravellu Mudaliar v. The Special Deputy Collector for Land Acquisition, West Madras* [20] the SC held that Article 31-A will apply only to a law made for acquisition by the State of any 'estate' or any rights therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is connected with "agrarian reform". Article 31-A removes the bar so as to enable the State to implement agrarian reforms and this is implicit in Article 31-A. Since the object of slum clearance for which the land was said to have been acquired was not referable to agrarian reforms either in its limited or wider sense, the law was not entitled to protection under the said Article.

30. In *Deputy Commissioner and Collector, Kamrup v. Durganath Sharma* [21] the SC held that Assam Acquisition of Land for Flood Control and Prevention of Erosion Act (6 of 1955) is not concerned with agrarian reforms and in not protected by Article 31-A (1) (a) of the Constitution of India.

31. In *Balmadies Plantations Ltd. v. State of Tamil Nadu,* [22] the SC held that there was nothing to show that acquisition of forest in Janmam land was for a purpose related to agrarian reform or betterment of village, hence the provision was not entitled to the protection of Article 31-A.

32. The question, therefore, that arises for consideration is as to what is, for purposes of Article 31-A (1) (a) of the Constitution the meaning of, agrarian

reforms,. In the case of the *Godawari Sugar Mills Ltd. v. S.B. Kamble,* [23] the Supreme Court, after considering earlier cases decided by it, came to the following conclusion:

> Para 28. "The following principles can be inferred from the decided cases in order to find whether an impugned enactment for acquisition of land is protected by Article 31-A.
> (1)Acquisition of land by the State in order to enjoy the protection of Article 31-A should be for the purpose of agrarian reform.
> (2)Acquisition of land by taking it from a senior member of the family and giving it to a junior member is not a measure of agrarian reform."
> (3)Acquisition of land for urban slums or for a housing scheme in neighbourhood of a big city is not a measure of an agrarian reform.
> (4)Acquisition of land by the State without specifying the purpose for which land is to be used is not a measure of agrarian reform.
> (5)Scheme of rural development end envisages not only suitable distribution of land but also raising of economic standards and bettering of rural health and social conditions in the villages. Provision for the assignment of land to a Panchayat for the use of the general community or for hospitals, school, manure, pits, tanning grounds enure for the benefit of the rural population and as such constitutes a measure of agrarian reform.
> (6)Provision for reservation of land for promotion of agriculture and for the welfare of agricultural population, constituted a measure of agrarian reform. Agrarian reform is wider than land reform.
> (7)If the dominant and general purpose of the scheme is agrarian reform, the Scheme may provide for ancillary provisions to give full effect to the scheme.
> (8)A provision fixing ceiling area and providing for the disposal of surplus land in accordance with the rules is a measure of agrarian reform.

Accordingly only such enactments would quality as enactments for agrarian reform which either deal with agricultural land reform or which envisage a scheme for rural development for raising the economic standard and betterment of rural health and social condition in the villages. If these be not the primary object of acquisition under an enactment, it will not be possible to contend that

it is directed towards securing agrarian reform and would not be entitled to the protection of Article 31-A of the constitution.

33. We have already extracted the statement of objects and reasons for enactment of the Adhiniyam. It shows that the Adhiniyam was primarily enacted for the purpose of meeting the situation which had emerged as a result of migration of people from rural to urban areas, influx of displaced persons, increasing impact of the development activity generated by the Five Year Plans and several other factors which had resulted in rapid increase of population in towns of this State. Construction of new houses and the planned development of town, had, however not kept pace with this rapid increase of urban population and the efforts in this direction made by the State Government, Nagar Mahapalikas, Nagarplikas, Improvement Trusts. Development Board and other smaller local bodies had for various reasons not met with the desired success. There were areas in the State with immense potentialities of development but they still remained as they were a decade or so back. It was therefore, considered absolutely essential for tackling the housing and development problems of practically all the fast growing urban area, and areas with potentialities of development, that an autonomous central body to be known as Housing and Development Board be created for the whole State. This clearly shows that the object underlying the enactment of the Adhiniyam was not to provide for betterment of rural area, instead it was to solve the housing and other needs of fast developing urban areas. Viewed in this light it is difficult to say that the acquisition of land for purposes of various schemes envisaged by the Act which in the fact of it are meant for providing facilities in urban areas, can be regarded as a measure for agrarian reform. In our opinion the Adhiniyam enactment for agrarian reform is not entitled to protection of Article 31-A (1) (a) of the Constitution and the respondents are not justified in contending that under this Article the petitioners are not entitled to question the validity of the Adhiniyam on the ground that it contravenes Article 14 of the Constitution.

34. We now proceed to consider the question as to whether the Adhiniyam falls within the protective umbrella of Article 31-C of the Constitution and its validity is, for that reason, immune from being questioned on the ground that its provisions contravene Article 14 of the Constitution.

35. Article 31-C was inserted in the Constitution by the Constitution (Twenty-fifth Amendment) Act 1971 and it provided that notwithstanding anything contained in Article 13 no law giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 or 31 of the Constitution This Article was amended by Constitution (Forty-second Amendment) Act, 1976 whereafter it ran thus:-

> "Notwithstanding anything contained in Article 13, no law giving effect to the policy of State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for the giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy."

Protection under Article 31-C which uptill now was available only in respect of such laws which had been enacted for giving effect to the directive principles contained in clauses (b) and (c) of Article 39 was extended to all legislations for implementation of any of the directive principles enumerated in Part IV of the Constitution. The case of the respondents is that inasmuch as the Adhiniyam has been enacted for giving effect to the directive principles contained in Articles 38, 39 clauses (b) and (c), 41 and 47 of the Constitution, it is entitled to the protection of Article 31-C and cannot be questioned on the ground that its provisions contravened Article 14 of the Constitution.

36. Learned counsel for the petitioner controverted the above submission made on behalf of the respondents by referring to the decision of the SC in the case of *Minerva Mills Ltd. v. Union of India,* [24] wherein it was held that extension of protection under Article 31-C in respect of laws enacted to give effect to any or all the directive principles was beyond the amending powers of the Parliament under Article 368 of the Constitution. He, therefore, contended that in the circumstances, the respondents are not justified in contending that the Adhiniyam in asmuch as it seeks to implement any of the directive principles contained in Article 38, 41 and 47 is immune from being questioned on the

ground that it contravenes Article 14 of the Constitution and that in case Article 31-C is held to be applicable in the case of the present Adhiniyam, it will be immune from being challenged on the ground of contravention of Article 14 of the Constitution, only if the case falls within the ambit of clauses (b) and (c) of Article 39 of the Constitution which according to him it does not.

37. Learned counsel for the respondents cited before us the decision of the SC in the case of *Sanjeev Coke Mfg. Co. v. M/s. Bharat Coking Coal Ltd.,*[25] . In this case, the SC had an occasion to refer to the changes introduced under Article 31-C of the Constitution by Constitution (Forty-second Amendment) Act whereby the protection provided by Constitution (Twenty-fifth Amendment) Act to laws enacted for giving effect to the policy of the State towards securing the principles specified in clause (b) or (c) of Article 39 was extended to all laws enacted for giving effect to the policy of the State towards securing of the directive principles specified in Part IV of the Constitution. In this connection the SC referred to its earlier decision in Minerva Mills case AIR 1980 SC 1789 and observed that it had some misgivings about that decision and gave its own reasons as to why it considered that the court should not have in Minerva Mills case, gone into the question with regard to the validity of the changes introduced in Article 31-C of the Constitution by Constitution (Forty-second Amendment) Act thus:-

> "The counsel who appeared, however, chose to question the constitutional validity of Section 4 of the Constitution (Forty-second Amendment) Act, 1976 by which the immunity was extended by replacing the words "the principles specified in clause (b) or Clause (c) of Article 39" by the words "all or any of the principles laid down in Part IV." No question regarding the constitutional validity of Section 4 of the Constitution (Forty-second Amendment) Act, 1976 arose for consideration in the case, firstly, because the immunity from attack given to a law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 was given by the Constitution (Twenty-fifth Amendment) Act.1971 itself and secondly, because the Sick Textile Undertakings (Nationalisation) Act had been enacted before the Constitution (Forty-second Amendment) Act, 1976."

The SC also expressed its doubts about the correctness of the decision in Minerva Mils case wherein it had been held that extension of protection under Article 31-C was unconstitutional. In these circumstances, it will not be proper for us to examine the question as to whether or not the Adhiniyam had been enacted with a view to give effect to the principles contained in Articles 38, 41 and 47 unless it becomes absolutely necessary for us to do so. Further the submission of the learned counsel for the petitioners is that neither the Adhiniyam falls within the ambit of Clause (b) or (c) of Article 39 of the Constitution nor is the protective umbrella of Article 31-C of the Constitution is available to laws like the Adhiniyam before us enacted prior to its introduction by the Constitution (Twenty-fifth Amendment) Act, 1971. In the circumstances, the question of considering as to whether or not the Adhiniyam falls within the purview of clauses(b) and (c) of Article 39 of the Constitution would also arise for consideration only if it is held that the protection given by Article 31-C of the Constitution, either as originally introduced in the Constitution or as amended by Constitution (Forty-second Amendment) Act, is also available in respect of laws that were enacted prior to, as the case may be, its introduction or its subsequent amendment by Constitution (Forty-second Amendment) Act.

38. In the case of *Sheo Kumar v. State of U.P.,* [26] A Full Bench of this Court repelled the submission of the learned Advocate General that Article 31-C of the Constitution operated retrospectively and it observed thus (At p. 390):-

> "We are unable to agree. Article 31-C is a relaxation or exception to Article 13. Article 13 renders void laws inconsistent with the fundamental rights. In Keshvan's case AIR 1951 SC 128 it was held that the fundamental rights were not retrospective and so Article 13 operated prospectively. Article 31-C which protects laws against breach of fundamental rights under Articles 14, 19 and 31 cannot be presumed to operate retrospectively. There is nothing in the language of Article 31-C to show an intention of retrospectivity."

39. As already pointed out, in the case of *Sanjeev Coke Mfg. Co. v. M/s. Bharat Coking Coal Ltd.* [27] the SC while commenting that in Minerva Mills' case the question with regard to the validity of extension of the protection given by Article 31-C to all laws enacted for giving effect to any of the directive

principles contained in Part IV of the Constitution did not properly arise for consideration, held that inasmuch as the law validity whereof had been questioned in that case had been enacted prior to the amendment made in Article 31-C of the Constitution by Constitution (Forty-Second Amendment) Act no question of testing its validity on the footing that it effectuated the directive principles other than those contained in Article 39 (b) and (c) arose for consideration. Aforementioned reasoning clearly implied that the constitutional validity of the legislation had to be tested in the light of the provisions of Article 31-C as they stood at the time of its enactment and not in the light of the provisions as subsequently amended. This line of reasoning clearly tends to strengthen the decision of this Court in *Sheo Kumar v. state of U.P.,* [28] according to which Article 31-C has no retrospective operation and its protection could not be available to enactments made prior to its introduction in the Constitution. It, therefore, follows that there is substance in the submission made on behalf of the petitioners that protection of Article 31-C of the Constitution is not available to the laws like the Adhiniyam before us which had been enacted prior to the introduction of the said Article in the Constitution in the year 1972. It is, therefore, not necessary for us to resolve the controversy raised by the parties before us on the question as to whether or not the Adhiniyam had been enacted with a view to give effect to the policy of the State towards securing any of the directive principles contained in Articles 38, 39 (b) or (c), 41 and 47 of the Constitution.

40. We now proceed to consider the question as to whether any of the provisions contained in the Adhiniyam relating to compulsory acquisition of land suffers from the vice of discrimination forbidden by Article 14 of the Constitution. As already indicated the submission made by the petitioners in this regard is that both Land Acquisition Act and the Adhiniyam make provision for compulsory acquisition of land for public purposes. Whereas in the case of land sought to be acquired for a public purpose under the provisions of the Land Acquisition Act final decision for acquisition of land by issuing a notification issued under Section 6 has necessarily to be taken within three years of the notification issued under Section 4. The price which is to be taken into consideration in awarding compensation for the property sought to be acquired under that Act which gets frozen as a result of notification under Section 4 thereof remains so frozen only for three years, no such provision is to be found in Section 32 of the

Adhiniyam which corresponds to Section 6 of the Act. Consequently, the price, for purposes of determining the compensation payable in respect of the property acquired for a public purpose under the Adhiniyam would as a result of a notification under Section 28 of the Act, remain frozen indefinitely. This, according to the learned counsel creates a discrimination not permitted by the Constitution.

41. This point raised by the learned counsel for the petitioners, in our opinion, stands concluded against them by a decision of the SC in the case of *State of Kerala v. T.M.Peter,*[29] . In this case, the SC was confronted by precisely similar situation in relation to the provisions contained in the Town Planning Act. Travancore and Cochin vis- ?is the provisions contained in the Land Acquisition Act. While rejecting the submission of the counsel, the SC emphasised the fact that the complex nature of modern urban development schemes makes it a different category altogether from the common run of 'public purposes' for which compulsory acquisition is undertaken by the State. Conceptwise and strategywise development schemes stand on a separate footing and classification of town planning schemes differently from the routing projects commanding compulsory acquisition may certainly be justified as based on a rational differentia which has a reasonable relation to the end in view, namely, improvement of towns and disciplining their improvement. In this connection the SC went on to observe:-

> "Once this basic factor is recognized, the raison d' etre of a separate legislation for and separate treatment of town planning as a special subject becomes clear. It was pointed out that under the Kerala Land Acquisition Act there is a time limit of 2 years written into Section 6 by engrafting a proviso thereto through an amendment of 1968 (Act 29 of 1968). Section 6 deals with declaration that land is required for a public purpose and the relevant proviso thereto reads:
> Section 6 (1) Proviso:

Provided that no declaration in respect of any particular land covered by a notification under sub-section (1) of Section 3 shall be made after the expiry of two years from the date of publication of such notification.

An argument was put forward that under the Land Acquisition Act there is thus a protection against unlimited uncertainty for the owners once lands are frozen

in the matter of dealing with them by an initial notification. This protection against protection and inaction on the part of the State and immobilization of ownership is absent in the Town Planning Act. According to Mr. T.C. Raghavan, appearing for some respondents, it makes for arbitrariness and discrimination invalidatory of the relevant provisions of the Town Planning Act. In our view there is no substance in this submission, having regard to specialized nature of improvement schemes and the democratic participation in the process required in such cases. We repel the submission."

42. In this view of the matter, it is not possible for us to hold that similar provisions contained in the Adhiniyam suffer from the vice of discrimination or arbitrariness merely because, like the provisions contained in the Land Acquisition Act the Adhiniyam does not provide a period of limitation within which the notification under Section 32 (4) is to be issued.

43. Learned counsel for the petitioners next contended that in the instant case, the notices under Section 28 of the Adhiniyam were issued sometimes in the month of April, 1970. The price of the property sought to be acquired accordingly got frozen on that date but then the notification under Section 32 of the Adhiniyam which corresponds to the notification under Section 6 of the Act was issued only on 28th of June, 1980 i.e., after a period of more than ten years had elapsed since the framing of the scheme by the Board. There was thus an inordinately long delay and even if the law did not lay down any fixed period of limitation for finalisation of a scheme under the Adhiniyam, the scheme has necessarily to be finalised within a reasonable time and that if it is not so finalised in a reasonable time, the proceedings in connection thereof are liable to be quashed. In this connection, learned counsel referred us to following decisions:-

(i) *M/s. Doongarcee and Sons v. State of Gujarat*.[30]
(ii) *Lekhraj Sabumal v. State of Gujarat*, and [31]
(iii) *Satish Kapur v. State of Haryana*.[32]
wherein it has been laid down that even where no period for issuing a notification under section had been specified, it was incumbent upon the concerned authorities to have issued the same within a reasonable time after the date on which the notification under Section 4 of the Act was issued. This

becomes necessary inasmuch as material rights of the parties to deal with their properties are affected by issuing of the notification under Section 4 of the Act. In case there be laches on the part of the concerned authorities in issuing the notification under Section 6 of the Act, the land acquisition proceedings get vitiated and are liable to be set aside.

44. It may, for purposes of this discussion, be accepted that law implies that finalization of the scheme by means of a notification under Section 32 of the Adhiniyam should be made within a reasonable time after the date of publication of the notices envisaged by Section 28 of the Adhiniyam and that in case it is not done and there are laches on the part of the respondents, further proceedings for acquisition of land may be quashed. However, there exists no hard and fast rule for determining such reasonable time. The question whether the steps have been taken within reasonable time and whether there were laches on the part of acquiring authority in this regard would depend upon the facts and circumstances of each individual case. According to the respondents the land involved in the scheme was to the extent of 875 acres. Notices under Section 28 of the Adhiniyam were published in the Government Gazette on April 4, and 18, 1970 and also in two local newspapers on February 7, 14 and 21, 1970. Individual notice contemplated in Section 29 of the Adhiniyam to persons whose property was sought to be acquired as also to Nagar Mahapalika had also been issued in the month of March, 1970. Nagar Mahapalika prayed for extra time for filing objections which was granted. Eventually about 170 persons filed their objections, but as they did not mention their addresses, it took some time in contacting them. Two more persons, namely, Sri G.D. Sharma and Smt. Satyawati Devi filed objections as late as 16th of March, 1972.The Executive Officer of the Nagar Mahapalika was, vide letters dated 2nd December, 1972 and 12th of January, 1973, required to send details and plans regarding temple, mosque, grave-yard, cultivated land and banzar land. The said details, despite extension of time, were not furnished till 27th of April, 1974. No date for hearing the objections before the concerned Sub-Committee could, therefore, be fixed earlier. In the meantime the U.P. Urban Planning Development Act, 1973 came into force. Section 59 of the Act provided that operation of U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 shall be suspended except in relation to certain schemes in respect of which approval of the State Government was to be obtained. Inasmuch as the land involved in the

Scheme was also included in the development area of Agra Vikas Pradhikaran as per Government order dated 19-8-1974 and there existed a serious dispute between the Vikas Pradhikaran and the Board in respect of execution of the scheme, each party claimed that the scheme was to be executed by it. It was thus not possible for the Board to pursue the scheme further without approval of the State Government. Eventually the impasse was resolved only on 25th of April, 1977 when the Government permitted the scheme to be carried on by the Board. The present scheme was a big one and the Tahsil staff was needed for showing the demarcation and existing constructions but because of impending elections of Lok Sabha, it was not possible for the respondents to provide such staff. A report in this regard was made to the Board, which passed the necessary resolutions. During the same time, steps were taken to find out details of the land sought to be acquired as also to trace out various transfer deeds executed within a year of the issuance of the notice under Section 28 and consequently after the requisite staff was made available and necessary information was collected, the Sub-Committee submitted its report on various objections to the Board which on 5th of May, 1978 approved the scheme under Section 31 (2) and directed that it should be sent to the Government for sanction. The scheme was accordingly forwarded to the Government for necessary action on 7th of August, 1978 and was, after considering the entire matter, sanctioned by the State Government on 17th of January, 1980 and the notification under Section 32 was accordingly published in the Gazette dated 19th of April, 1980.

45. We have no reason to doubt the correctness of the explanation offered by the respondents. The narration of events go to indicate that this long time was consumed by the respondents because of variety of factors. The question with regard to this scheme had been in active consideration of the respondents throughout and it does not appear that at any time they were considering the scheme in respect of which notice was given under Section 28 of the Act in a casual or indifferent manner. We are accordingly not satisfied either that there were laches on the part of respondents in pursuing the said scheme or that they had at anytime become indifferent or impervious to the said Scheme. Much of the time consumed was beyond the control of the Board which has been entrusted with the job of formulating the scheme and thereafter executing the sanctioned scheme. In the circumstances, we do not feel satisfied that any case has been made out for interfering with the execution of the impugned scheme

merely for the reason that a period of about ten years had elapsed in between issuing notices under Section 28 of the Adhiniyam and the notification under Section 32 (4) thereof.

46. Inasmuch as we have found no merit in any of the submissions made by the petitioners questioning the legality of the development scheme formulated by the Board and approved by the State Government, the present petition fails and is dismissed. In the circumstances of the case, we direct the parties to bear their own costs.

Petition dismissed.

Cases Referred.

1. 1973 All LJ 18
2. (1981 All LJ 409)
3. AIR 1965 SC 1017
4. AIR 1973 SC 689
5. AIR 1931 PC 149
6. AIR 1962 SC 316
7. AIR 1975 SC 17
8. AIR 1975 SC 1835
9. AIR 1976 SC 2095
10. AIR 1982 SC 697
11. ILR 59 Cal 55
12. AIR 1975 SC 17
13. AIR 1975 SC 1835
14. AIR 1976 SC 2095
15. AIR 1982 SC 697
16. AIR 1973 All 132
17. AIR 1973 All 240
18. Writ Petn. No. 1247 of 1976, decided on 13-2-1981
19. AIR 1960 SC 1080
20. AIR 1965 SC 1017
21. AIR 1968 SC 394
22. AIR 1972 SC 2240

23. AIR 1975 SC 1193
24. AIR 1980 SC 1789
25. AIR 1983 SC 239
26. AIR 1978 All 386
27. AIR 1983 SC 239
28. AIR 1978 All 386 (FB)
29. AIR 1980 SC 1438
30. AIR 1971 Guj 46
31. AIR 1980 Guj 47
32. AIR 1982 Pun and Har 276