

# PUNJAB AND HARYANA HIGH COURT

Indo Swiss Time Limited

Vs

Umrao

Civil Revision No. 388 of 1980

(S. Sandhwalia, C.J., P.C. Jain and J.M. Tandon, JJ.)

23.02.1981

## JUDGMENT

### **S. S. Sandhwalia, C.J.**

1. Whether a company for whose benefit land is acquired under the provisions of the Land Acquisition Act, 1894 can be impleaded as a party in the Court of the District Judge in a reference preferred under Section 18 of the Act aforesaid - is the meaningful issue which has necessitated this reference to the Full Bench.
2. Undoubtedly there was a sharp divergence of judicial opinion on the aforesaid issue. However, it appears to me that a recent judgment of their Lordships in *Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Coutinha*, AIR 1980 Supreme Court 1118, to which a detailed reference follows hereinafter has now cut the Gordian knot clearly in favour of the petitioner-company.
3. For an issue so pristinely legal, the particular facts would ultimately pale into insignificance. However, it is apt to briefly outline the matrix thereof which has given rise to these twelve revision petitions now before us. Learned counsel for the parties are agreed that the issue being identical, this judgment would govern all of them.
4. The State of Haryana initiated the acquisition proceedings under Sections 4 and 6 of the Land Acquisition Act (hereinafter called the Act) for the public purpose of setting up a wrist watch manufacturing factory by the petitioner-company of M/s. Indo Swiss Time Ltd., in village Dundahara. A sum of Rs. 100/- was to be contributed by the State and the rest of the compensation money was to be paid by the company. The possession of the land was taken and handed over to the company after acquisition. Subsequent to the award of the Collector the landowners-claimants preferred a reference for the enhancement of the compensation in the Court of the District Judge, Gurgaon. The matter ultimately came up before the learned Additional District Judge, Gurgaon, before whom an application was preferred by the petitioner-Company under Section 52 of the Act read with Order 1 Rule 10, Civil Procedure Code, seeking expressly to be impleaded as a respondent to defend the case for the purpose of determination of the amount of compensation. The learned Additional District Judge rejected the prayer of the petitioner-Company for being impleaded as a party but allowed a limited relief to them of

appearing and adducing evidence for the determination of the compensation amount.

5. Aggrieved by the aforesaid order, the petitioner-company preferred these civil revisions which came up for hearing before my learned brother P. C. Jain, J., who referred the matter for decision by a larger Bench.

6. Now the weighty and meaningful contention of Mr. M. L. Sarin, learned counsel for the petitioner-Company is that it is directly and vitally interested in the compensation to be awarded to the land-holders and consequently, even if not a necessary party, it can certainly claim to be impleaded as a party in the proceedings. The stand is that the petitioner- Company is plainly a person interested under the Land Acquisition Act, 1894 (hereinafter called 'the Act'). The basic reliance of the counsel is, first; on the definition of a 'person interested' in Section 3(b) of the Act, and later references thereto in Section 18(1) and Section 20(b) of the Act.

7. It appears to me that in examining the aforesaid contention, it would now be wasteful to digress into a long discussion on principle because the issue (as has already been noticed) seems to be directly covered by the binding precedent. Therefore, it would suffice to mention that the inclusive definition of a "person interested" is in the following terms in Section 3(b) of the Act :-

"the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;"

Section 18(1) then expressly confers the right to claim a reference to the Court against the award of the Collector by any person interested, who has not accepted the same. Section 20(b) then enjoins the Court to serve notice on all persons interested in the objection except those who had consented without protest to receive the payment of compensation awarded.

8. There appears to be now little doubt that the definition of the "person interested" in Section 3(b) of the Act (it deserves highlighting that it is only an inclusive definition), as also the use of the phrase in Section 18(1) and Section 20 of the Act, are to be liberally construed. Once that is so, on principle, it would be plain that a Company for whose very benefit the land is acquired and who is obliged to discharge substantially if not wholly the burden of the payment of its compensation, would be obviously a person interested within the meaning of the definition and the use of the phrase in the Act.

9. The question, whether a Company for whose benefit the acquisition proceedings had been instituted, was a person interested in the proceedings that ensued from such acquisition - arose directly for decision before their Lordships in Himalaya Tiles and Marbles (P) Ltd. case (supra). Therein the appellant-Company had moved the Government for acquiring additional land for the purpose of its existing factory and accordingly notification under Sections 4 and 6 of the Act were duly issued and the proceedings culminated in an award under Section 21 of the Act. This acquisition was challenged by some of the land-owners by way of a writ petition on the ground that the land was not acquired for any public purpose as contemplated by Section 4 of the Act and that the Government was not competent to acquire the same for the purposes of a Company which could not be said to be a public purpose. In this writ petition, the appellant-Company was

impleaded as a party though expressly no relief was claimed against it. The learned Single Judge before whom the matter came initially quashed the acquisition proceedings. The appellant-Company then preferred a Letters Patent Appeal. Therein an objection was taken on behalf of the respondents that the appellant-Company had no *locus standi* to maintain such an appeal. This primary objection was up-held by the Letters Patent Bench in *Himalayan Tile and Marble (Pvt.) Ltd. v. Frances V. Coutinho and others*, AIR 1971 Bombay 341, primarily on the ground that the appellant-Company, as such, was not a 'person interested' within the meaning of Section 18(1) of the Act. Aggrieved thereby the Company appealed to the Supreme Court.

10. Now a reference to the judgment to the Himalaya Tiles and Marble (P) Ltd. case (supra) would make it plain that the twin question that arose before Lordships was whether a Company, for whose benefit the acquisition proceedings had been taken, is a person interested, and secondly, whether it had a right to prefer an appeal to a higher forum against an order adverse to its interests. Both these questions were unreservedly decided in favour of the appellant-Company with the following observations :-

"It seems to us that the definition of ' a person interested' given in Section 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. In the instant case, it is not disputed that the lands were actually acquired for the purpose of the company and once the land vested in the Government, after acquisition, it stood transferred to the company under the agreement entered into between the company and the Government. Thus it cannot be said that the company had no claim or title to the land at all. Secondly, since under the agreement the company had to pay the compensation, it was most certainly interested in seeing that a proper quantum of compensation was fixed so that the company may not have to pay a very heavy amount of money. For this purpose, the company could undoubtedly appear and adduce evidence on the question of the quantum of compensation."

And again :

"... .. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital ? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a Court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a Court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority or a person for whose benefit the land is acquired is not an interested person. We are satisfied that such a person is vitally interested both in the title to the property as also in the compensation to be paid therefor because both these factors concern its future course of action and if decided against him seriously prejudice his rights. Moreover, in view of the

decision of this Court referred to be above, we hold that the appellant was undoubtedly a person interested as contemplated by Section 18(1) of the Act. The High Court, therefore, committed an error in throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench."

It would be manifest from the aforesaid enunciation of the law that it must now be held that a Company for whose benefit the land is acquired, is both a 'person interested' in the acquisition proceedings and is further entitled to maintain an appeal in its own right.

11. Now once it is held as it inevitably must be in the present case that the petitioner-Company is a 'person interested' then it would inevitably follow that it can claim to be impleaded as a party. There is no gain saying with the elementary proposition that a party who is interested directly and vitally in a litigation is a proper party to the same. Apart from principle, on this point also the matter is covered by binding precedent and therefore, calls for no elaboration. In *Sunder Lal v. Paramsukhdas*, 1968(1) S.C.R. 362, a similar question arose and was unequivocally determined as follows :-

"It seems to us that Paramsukhdas was clearly a person interested in the objections which were pending before the Court in the references made to it and that he was also a person whose interest would be affected by the objections, within Section 21. He was accordingly entitled to be made a party ... ..".

12. Once it is held on larger principle and on authority that the petitioner-Company being vitally interested, would be entitled to be impleaded as a party, all that remains for examination is - whether there is any express statutory bar in the Act against it being so impleaded. On this question, the submission of Mr. M. L. Sarin is two-fold. It is first pointed out that Section 53 of the Act makes the Civil Procedure Code applicable to all proceedings before the Court, save in so far as they may be inconsistent with anything contained in the Act. Proceeding on that premises, Mr. Sarin submits that this would at once bring into play the provisions of Order 1 Rule 10 of the Civil Procedure Code and thereunder the petitioner-Company can claim to be impleaded as a party. Secondly, the submission was that there is no conflict or inconsistency betwixt the provisions of Order 1 Rule 10 of the Civil Procedure Code and any provision of the Act.

13. Herein again the twin submission of Mr. Sarin appears to be plainly meritorious subject of course to the statutory limitation contained in Section 50(2) of the Act. A reference to the plain provision of Section 53 would indicate that so far proceedings before the acquisition Court are concerned, the Civil Procedure Code would be attracted subject to the bar of any patent inconsistency with the provisions of the Act itself. The crux of the matter, therefore, is - whether Order 1 Rule 10 of the Civil Procedure Code which would be made plainly applicable by Section 53 of the Act, can be excluded on the ground of any conflict with Section 50 thereof ? It is on this later provision that basic reliance was placed on behalf of the respondent by Mr. M. S. Liberhan who attempted to contend that these provisions of the Act were diametrically in conflict with those of Order 1 Rule 10 of the Civil Procedure Code and would consequently exclude its application and bar the petitioners from being impleaded as a party.

14. Herein as the argument turns primarily on the provisions of Section 50 of the Act, it is apt to

quote it in *extenso* :-

"50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or company.

(2) In any proceedings held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or company shall be entitled to demand a reference under Section 18."

Much ado was raised around the provisions of sub-section (2) quoted above, as also the proviso thereto by Mr. M. S. Liberhan for contending that these provisions bar the petitioner-Company from being impleaded as a party. I am unable to hold so. A close examination of the scheme of the Act would make it manifest that the acquisition proceedings for this purpose can be categorized into two distinct stages. After the initial issuance of the notification and the notices etc., the proceedings before the Collector culminating in his award under Section 12 of the Act, form the first stage. Herein Section 50(2) of the Act gives the right to the Company to appear and adduce evidence on the point of compensation. Plainly the Collector when rendering the award is not a Court *stricto sensu* even though it may perhaps be hazarded that he would be exercising *quasi-judicial* functions. What has, however, to be borne in mind is the fact that by virtue of Section 53 of the Act, the Civil Procedure Code is applicable only to the proceedings before the Court and not to the proceedings before the Collector. Therefore, no question of the petitioner-Company being formally impleaded as a party under Order 1 Rule 10 of the Civil Procedure Code before the Collector can possibly arise. Nevertheless Section 50(2) gives the express right of appearance and adducing evidence to the Company before the Collector even though at that stage, its interest may be primarily identical with the Government who may have initiated the acquisition proceedings at its instance. Apparently to avoid any duplication the proviso to sub-section (2) bars the making of a reference under Section 18 of the Act by the Company. What, therefore, deserves highlighting is that this proviso would exhaust itself at the very first stage when the proceedings before the Collector are concluded and the award is rendered under Sections 11 and 12 of the Act. If the matter is not carried any further on behalf of the parties, the acquisition proceedings virtually culminate. This would conclude the first stage of the proceedings.

15. However, if the landowners-claimants (and in the Punjab and Haryana the State as well by virtue of a specific amendment) choose to challenge the award of the Collector by making references under Section 18 of the Act then the second stage of the proceedings begins in the Court. Herein now there is no other bar imposed by Section 50 of the Act apart from the limitation that the appearance and the adducing of the evidence by the Company must be directed to the purpose of determining the amount of compensation. Once the matter is before the acquisition Court, the proviso to sub-section (2) ceases to have any relevance and indeed has exhausted itself. Therefore, hereafter now the matter must be construed in the light of sub-section (2) of Section 50 (*de hors* its proviso) and the applicability of the Civil Procedure Code under

Section 53 of the Act.

16. I am unable, therefore, to see any conflict or inconsistency between Order 1 Rule 10 of Civil Procedure Code and Section 50(2) of the Act. It is an elementary rule of construction that different provisions of law when made applicable have to be harmoniously construed and content and meaning must be given to every word of the statute. So construing the two provisions together, it appears to me that Order 1 Rule 10 of the Civil Procedure Code, which would be attracted by virtue of Section 53 of the Act, is in no way barred or excluded by Section 50(2) of the Act. The petitioner-Company, which is entitled to be impleaded can come in and make its claim under the procedural provisions of Order 1 Rule 10 of the Civil Procedure Code, and as envisaged by sub-section (2) of Section 50 of the Act the limitation of adducing evidence for the purpose of determining the amount of compensation only would apply to it. Therefore, harmoniously construing the two provisions, I would conclude that Order 1 Rule 10 of the Civil Procedure Code would apply within the confines of Section 50(2) and the petitioner-company is entitled to be impleaded as a party thereunder.

17. Before advertent to precedent, it seems only fair to notice an ancillary argument advanced by Mr. M. L. Sarin. He submitted with plausibility that their Lordships of the Supreme Court in *Himalaya Tiles and Marble (P) Ltd. case (supra)* have now held in no uncertain terms that a company for whose benefit the land is acquired, is entitled to maintain an appeal in its own right. He submitted that it is inherent in the situation that such a company, which is both directly and vitally interested in the compensation and also has a right of appeal would inevitably be entitled to be impleaded as a party if it chooses to make such a claim. Counsel went to the length of contending that the right to maintain an appeal inevitably flows from the fact that such a person was a party to the original proceedings. It was submitted as a consequence that once the dictum of their Lordships of the Supreme Court in *Himalaya Tiles and Marble (P) Ltd. case (supra)* that the appellant-Company can maintain an appeal in its own right is accepted, then it would patently follow in the converse as a necessary corollary that the same company would have a right to be impleaded in the original proceedings before the Court as well.

18. Inevitably, one must now turn to the case-law. It would appear that within this Court, there has been little or no conflict on the point. The learned Single Judge in *State of Haryana v. Umrao Kaur*, C.M. No. 546/C-1 of 1980 in R.F.A. No. 84 of 1980 decided on May 22, 1980, has in no uncertain terms held that a company for whose benefit the land is acquired is entitled to be impleaded as a party. Earlier the same view had been expressed in *The Hindustan Sanitaryware and Industries Ltd., Bahadurgarh v. The State of Haryana*, AIR 1972 Punjab and Haryana 59. However, what seems to me in clinching the issue is the fact that this judgment was not only referred to with approval, but the material part thereof was quoted in *extenso* by their Lordships in *Himalaya Tiles and Marble (P) Ltd. case (supra)*. Therefore, the final seal of approval has been directly set on the view that a company, for whose benefit land has been acquired is entitled to be impleaded as a party.

19. Now because of the binding precedent in *Himalaya Tiles and Marble (P) Ltd. case (supra)* it seems wasteful to launch on a survey of the case law taking the contrary view or to refute the reasoning of individual judgment. The best example of the opposite view is the exhaustive judgment of the Full Bench in *The Andhra Pradesh Agricultural University, Rajendranagar v. Mahmoodunnisa Begum and another*, AIR 1976 Andhra Pradesh 134. Without advertent to it in

any great detail, it would suffice to mention that the very corner stone of this judgment was the twin finding that neither the State nor the company for whose benefit the land was acquired, could be deemed as a 'person interested' under the Act and further that such a company had no *locus standi* to prefer an appeal in its own right. Both of these view points now stand categorically over-ruled in Himalaya Tiles and Marble (P) Ltd. case (supra). Again Mahmoodunnisa Begum and another's case (supra) expressly dissented from *The Hindustan Sanitaryware and Industries Ltd., Bahadurgarh v. The State of Haryana*, AIR 1972 Punjab and Haryana 59, which judgment in turn has now received specific and categoric approval of their Lordships in Himalaya Tiles and Marble (P) Ltd. case (supra). The learned Judges of the Full Bench in Mahmoodunnisa Begum and another's case (supra) relied primarily on *State v. Amarendra Pratap*, AIR 1967 Orissa 180, and other judgments following the same. In Himalaya Tiles and Marble (P) Ltd. case (supra) their Lordships have in no uncertain terms over-ruled the aforesaid Amarendra Pratap's case (supra) as also the view in *Comilla Electric Supply Ltd. v. East Bengal Bank Ltd., Comilla*, AIR 1939 Calcutta 669. For all these reasons I would respectfully dissent from *The Andhra Pradesh Agricultural University, Rajendranagar v. Mahmoodunnisa Begum and another*, AIR 1976 Andhra Pradesh 134, and other judgments taking a similar view. Indeed, with respect, it appears to me that these authorities can now no longer hold the field in view of the clear enunciation of the law by the final Court in Himalaya Tiles and Marble (P) Ltd. case (supra).

20. However, in fairness to Mr. Liberhan, a reference must be made to *Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel and others*, (1970) 1 S.C.W.R. 183. Therein in a short order whilst upholding a preliminary objection against the maintainability of the appeal, their Lordships observed that the municipal corporation of the city of Ahmedabad for whose benefit the land had been acquired could not maintain an appeal in the Supreme Court against the judgment of the High Court setting aside that notification. It is evident from the brief order that the matter was disposed of at the very threshold without any elaborate reference to either principle or by adverting to any authority. The appeal was held to be not maintainable on the short ground that their Lordships failed to see what interest the municipal corporation had which would sustain an appeal by it against the order of the High Court allowing the writ petition filed by the landowners.

21. Relying heavily on this solitary observations Mr. Liberhan had forcefully contended that the judgment of their Lordships in Himalaya Tiles and Marble (P) Ltd. case had failed to notice the binding precedent in municipal corporation of the city of Ahmedabad's case and, therefore, it must be assumed that they had not intended to deviate from the law as declared in the earlier case. Counsel, therefore, insisted with great vehemence that in face of a direct conflict the earlier view which had not been noticed and has not been dissented from must necessarily have the pride of place. On the other hand learned counsel for the petitioner. Mr. Sarin has contended that the more elaborate and exhaustive enunciation of the law which has been rendered in the Himalaya Tile's case must now be necessarily followed in preference to the earlier view.

22. A perusal of the judgments in the municipal corporation of the city of Ahmedabad and Himalaya Tiles cases would plainly indicate that there is a direct conflict on the point therein. Both the judgments have been rendered by a Bench consisting of two Hon'ble Judges and cannot possibly be reconciled. This situation at once brings to the fore the somewhat intricate question which is now not of infrequent occurrence namely, - 'when there is a direct conflict between two

decisions of the Supreme Court rendered by co-equal Benches, which of them should be followed by the High Courts and the Courts below'.

23. Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the Superior Court are of co-equal Benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the Superior Court and of equal authority are extant then both of them cannot be binding on the Courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co-equal Benches of the Superior Court are earlier or later is a consideration which appears to me as hardly relevant.

24. The view I am inclined to take has the support of the high authority of Jessel M. R. in *Hampton v. Holman*, (1877) 5 Ch. D. Law Reports 183. Therein also the learned Master of the Rolls was faced with the difficult task of choosing between the two decisions of equal authority which were directly in conflict with each other. He observed as follows:-

"Now I take it that both the cases to which I have referred are not to be reconciled with *Hayes v. Hayes* at all events, they differ from it so far as to leave me at liberty now to say that *Hayes v. Hayes* is not sound law; indeed it appears that Sir John Leach himself was dissatisfied with his decision."

Again in *Miles v. Jarvis*, 1883 Law Reports Ch. D. 633, Kay J., was similarly faced with two judgments of equal weight which were in conflict. He observed as follows :-

" ... .. The question is which of these two decisions I should follow, and it seems to me that I ought to follow that of the Master of the Rolls as being the better in point of law."

Reference in this context may in particular be made to the celebrated case of *Young v. Bristol Aeroplane Co. Ltd.*, 1944 1 K.B.D. 718. Therein in a similar context of the Court of appeal being bound by its previous decisions it was held that it was only entitled but indeed duty bound to decide which of the two conflicting decisions of its own Will it follow in case of a clear divergence of the opinion in the earlier precedents.

25. I am conscious of the fact that a narrowly divided Bench in *Govindanaik G. Kalaghatigi v. West Patent Press Co. Ltd. and another*, AIR 1980 Karnataka 92, has taken the view by a majority of three to two that in such a situation the latter of the two decisions should be followed. A perusal of the judgment, however, would show that in fact there were two questions before the Full Bench - firstly, that where there was conflict of two decisions of the Supreme Court of unequal Benches which one is to be followed and secondly where these decisions were of co-equal Benches then which decision is to be followed. It is patent that the majority view adverted to the first of the two questions alone and there does not appear to be any discussion whatsoever on the second issue. Minority view on the other hand whilst agreeing with the majority view on

the first question specifically adverted to and discussed the second aspect of the matter in detail and concluded as follows :-

" ... .. It seems to us, therefore, the High Court would be well advised to consider which of two conflicting decisions it will follow in the interest of the administration of justice and it sought to follow that which is better in point of law than in point of time."

With great respect I am inclined to wholly agree with the aforesaid view of the minority and it bears repetition that the majority view does not seem to have even adverted to the question in essence.

26. Even though it is perhaps unconventional to quote a living authority, it deserves recalling that Mr. Seervai in his latest edition of his authoritative work in the Constitution Law of India has opined as follows :-

" ... .. But judgments of the Supreme Court, which cannot stand together, present a serious problem to the High Courts and to subordinate Courts. It is submitted that in such circumstances, the correct thing is to follow that judgment which appears to the Court to state the law accurately or more accurately than the other conflicting judgment."

27. As a matter of recent legal history it may be noticed that it was earlier even advocated that the latest judgment of the final Court must be followed irrespective of the fact whether it was rendered by a larger or a smaller Bench (see *A. J. Aramha v. Mysore Road Transport Corporation and others*, (1974) 1 Kar. L.J. 344). However, this theory of pre-eminence by time alone has now been conclusively exploded. In *Mattulal v. Radhe Lal*, AIR 1974 Supreme Court 1596, the final Court itself was faced with two directly contradictory judgments and Bhagwati, J., speaking for the Bench in following the earlier judgment in preference to the later one observed as follows:-

" ... .. Now there can be no doubt that these observations made in Smt. Kamla Soni's case, AIR 1969 NSC 186, are plainly in contradiction of what was said by this Court earlier in Sarvate T. B's case, 1966 MPLJ 26. It is obvious that the decision in Sarvate T. B's case was not brought to the notice of this Court while deciding Smt. Kamla Soni's case, or else this Court would not have landed itself in such patent contradiction. But whatever be the reason, it cannot be gainsaid that it is not possible to reconcile the observations in these two decisions. That being so, we must prefer to follow the decision in Sarvate T. B's case as against the decision Smt. Kamla Soni's case, as the former is a decision of a larger Bench than the latter. Moreover, on principle, the view taken in Sarvate T. B's case commends itself to us and we think that is the right view."

It would be evident from the underlined observations above that even in such a situation their Lordships considered the principle and the correctness of the view to be a relevant factor. Again in *Union of India and another v. K. S. Subramanian*, AIR 1976 Supreme Court 2433, a similar issue arose and Beg J., speaking for the Bench held as follows :-

" ... .. But, we do not think that the High Court acted correctly in skirting the views

expressed by larger Benches of this Court in the manner in which it had done this. The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger Benches of this Court in preference to those expressed by smaller Benches of the Court. That is the practice followed by this Court itself. The practice has now crystallised into a rule of law declared by this Court. If, however, the High Court was of opinion that the views expressed by larger Benches of this Court were not applicable to the facts of the instant case, it should have said so, giving reasons supporting its point of view."

It seems manifest from the above that the theory of pre-eminence of a judgment by virtue of its time and being the latest alone has now been conclusively laid to rest.

28. It appears to me that in the present case the issue would be interestingly highlighted if one were to inter-change the dates of the two judgments in Himalaya Tiles case and Ahmedabad Municipal Corporation case. If the judgments in Ahmedabad Municipal Corporation case had been rendered later on the time theory it would have to be followed even though no elaborate reasoning or principle or any authority had been cited on an intricate question of law whilst disposing of a preliminary point. With great respect, doing so in my view cannot be possibly justified.

29. I am keenly aware of the great difficulty of making a choice between the decisions of a Superior Court when they are in direct conflict with each other. However, when such divergence arises and the litigants' fortune depends thereon the issue cannot possibly be evaded. Obviously in such a situation it is not the province of the High Courts or the Subordinate Courts to comment on the judgments of a Superior Court which are patently entitled to respect. Its plain duty in the interest of justice is to respectfully follow that which appears to it to state the law accurately or in any case more accurately than the other conflicting judgment.

30. Applying the aforesaid principle I would with great respect prefer to follow the more elaborate judgment rendered in Himalaya Tiles case.

31. To conclude, the answer to the question posed at the very outset is, therefore, rendered in the affirmative, viz., that a company, for whose benefit the land is acquired, can be impleaded as a party in the Court of the District Judge, in a reference preferred under Section 18 of the Land Acquisition Act, 1894. However, it bears reiteration that as observed in the earlier paragraphs 15 and 16 of this judgment, such an impleading would be within the confines spelled out in Section 50 sub-section (2) of the Act aforesaid.

32. In view of the above, these Civil Revisions succeed and the order of the Additional District Judge is modified to the extent that the petitioners are hereby allowed to be impleaded as a party to the proceedings. There will, however, be no order as to costs.

**Prem Chand Jain, J.** - The State of Haryana initiated the acquisition proceedings under Sections 4 and 6 of the Land Acquisition Act (hereinafter referred to as the Act), for the public purpose of setting up a wrist watch manufacturing factory by the petitioner-company of M/s Indo Swiss Time Ltd., in village Dundahera, which culminated into the filing of an award by the Collector under Section 12 of the Act. Feeling dissatisfied from the award of the Collector, the

land-owners filed applications under Section 18 of the Act, requiring the Collector to refer the matter of enhancement of the compensation, to the Court of the District Judge, Gurgaon, before whom an application was preferred by the petitioner-company under Section 50(2) of the Act read with Order 1 Rule 10 of the Civil Procedure Code, praying that it may be impleaded as a respondent to defend the case for the purpose of determination of the amount of compensation. The learned Additional District Judge rejected the prayer of the petitioner for being impleaded as party, but allowed the company to appear and adduce evidence for the determination of the amount of compensation.

34. Feeling aggrieved from the order of the learned Additional District Judge, dated 28th November, 1979, the petitioner-company preferred 12 revision petitions, which came up for hearing before me on May 30, 1980. Finding that the point involved in the petitions was of considerable importance, I referred the matter for decision to a larger Bench. The question that needs our decision may be formulated thus :-

"Whether a company for whose benefit the land is acquired by the Government, can claim to be impleaded as a party in a reference made under Section 18 of the Act, under the provisions of Order 1 Rule 10 of the Civil Procedure Code ?"

35. Lengthy arguments were advanced on both sides by the learned counsel for the parties and various judgments, both of the Supreme Court and the High Courts, were cited before us.

36. On behalf of the petitioner, Mr. Sarin, learned counsel contended that the company is a necessary party, that Section 53 of the Act provides that the provisions of the Civil Procedure Code so far as they are not inconsistent with anything contained in the Act, shall apply to all the proceedings before the Court, that under section 50 of the Act the company is entitled to adduce evidence, that the company is a 'person interested' as defined in Section 3(b) of the Act and that a combined reading of the provisions of Sections 3(b), 18(1), 20(b), 50(2) and 53 of the Act would go to show that a company can claim as a matter of right to be impleaded as a party and thereafter in the event of the decision of the District Judge regarding compensation going against it, can file an appeal in this Court. In support of his contention, the learned counsel has relied on an unreported decision of this Court in C.M. No. 546/C.I of 1980 in R.F.A. No. 84 of 1980 (*State of Haryana v. Umrao Kaur*), decided on 22nd May, 1980. He also drew our attention to the judgment of this Court in *The Hindustan Sanitaryware and Industries Ltd., Bahadurgarh and another v. The State of Haryana and others*, AIR 1972 Punjab and Haryana 59, and a judgment of the Supreme Court in *Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Coutinha*, AIR 1980 Supreme Court 1118.

37. On the other hand, Mr. M. S. Liberhan, learned counsel for the respondents, contended that the only right of the company is to render assistance by adducing evidence for the purpose of determination of the amount of compensation, that the company is not a 'person interested', that the company is not entitled to claim a reference under Section 18 of the Act and that a company is neither a necessary nor a proper party and is not entitled to become a party by invoking the provisions of Order 1 Rule 10 of the Civil Procedure Code. In support of his contention, the learned counsel has relied on the judgment of the Supreme Court in *Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel and others*, (1970) 1 S.C.W.R. 183. The learned counsel also drew our attention to the judgments of the Gujarat High Court in *Gautamlal*

*Naranlal v. The Additional Special Land Acquisition Officer and another*, AIR 1970 Gujarat 81; *The Andhra Pradesh Agricultural University, Rajendranagar v. Mahmoodunissa Begum and another*, AIR 1976 Andhra Pradesh 134; *Sangit Mahinder Singh v. The Punjabi University, Patiala*, AIR 1975 Punjab and Haryana 318; *Nihal Chand and others v. District Board, Mianwali*, AIR 1936 Lahore 564, and an unreported Division Bench judgment of this Court in C. Misc. Nos. 906-C/1-76 and 961-C/1-76 in R.F.A. No. 600 of 1976, decided on 8th April, 1977 (*The Punjab State Warehousing Corporation Ltd. v. Narinder Nath Jain*).

38. On a careful consideration of the respective contentions of the learned counsel for the parties, in the light of various decisions cited by them, it transpires that the view taken in the judgment of the Supreme Court in *Himalaya Tiles and Marble (P) Ltd.* (supra), on which reliance has been placed by Mr. Sarin, is in conflict with the view taken in the earlier judgment in *Municipal Corporation of the City of Ahmedabad's case* (supra). As observed by my Lord the Chief Justice, a perusal of the two judgments plainly indicates that there is a direct conflict on the point which needs our decision. Both the judgments have been rendered by a Bench consisting of two Hon'ble Judges and cannot possibly be reconciled. In this situation, a somewhat interesting, though tricky, question arises for determination, i.e., when there is a direct conflict between the two decisions of the Supreme Court rendered by co-equal Benches, which of them should be followed by the High Courts and the Courts below.

39. On this question, my Lord the Chief Justice in his elaborate judgment has held that the Courts may follow the judgment which appears to them to state the law accurately and that mere incidence of time whether the judgments of the co-equal Benches of the Superior Court are earlier or later is a consideration which appears to be hardly relevant. I have also given my thoughtful consideration to the entire matter and find myself in respectful agreement with the aforesaid observations of my Lord the Chief Justice.

40. Keeping in view these observations, the next question that arises for determination is as to which out of the two judgments of the Supreme Court should be followed for deciding the point in issue.

41. After giving my thoughtful consideration to the entire matter, I have not been able to persuade myself to agree with my Lord the Chief Justice in following the view enunciated in *Himalaya Tiles and Marble (P) Ltd.* (supra), and I would with respect prefer to follow the view propounded in *Municipal Corporation of the City of Ahmedabad's case* (supra), wherein it has been observed thus :-

"The municipal corporation was impleaded as the fourth respondent before the High Court but no relief was claimed against the Municipal Corporation. The property, it is true, was notified for acquisition by the State Government for the use of the Municipal Corporation after it was acquired by the Government, but that, in our judgment, did not confer any interest in the Municipal Corporation so as to enable it to file an appeal against the order of the High Court allowing the petition. Substantially the grounds on which the petition was filed were that the notifications were invalid on account of diverse reasons. Some of these reasons have been upheld and some have not been upheld; but all those grounds related to the validity of the notifications issued by the Government of Bombay

and the Government of Gujarat. Not even an order of costs has been passed against the municipal corporation of city of Ahmedabad. We fail to see what interest the municipal corporation has which would sustain an appeal by it against the order of the High Court allowing the writ petition filed by the first respondent".

42. From the bare perusal of the aforesaid observations, it is quite evident that their Lordships of the Supreme Court have held that in acquisition proceedings, a company has no interest and that it has no right to file an appeal. When a company has no right to file an appeal then a fortiori it follows that an application under Order 1 Rule 10 of the Civil Procedure Code by a company to become a party in the proceedings would not be maintainable, because once an application for becoming a party is allowed and a company is made a party then the company would have a right to file an appeal. It may be observed at this stage that the only right given to a company under Section 50(2) of the Act is to appear and adduce evidence for the purpose of determination of the amount of compensation and for the exercise of that right, it is not necessary nor is there any provision in the Act which may entitle the company to ask for being impleaded as a party under the provisions of Order 1 Rule 10 of the Civil Procedure Code. In the light of the binding precedent of the Supreme Court in Municipal Corporation of the City of Ahmedabad's case (supra), my answer to the question posed for decision by the Bench is as under :-

(1) that an application under Order 1 Rule 10 of the Civil Procedure Code, for being impleaded as a party by the company is not legally maintainable;

(2) that the company is not an interested person so as to give it a right to become a party to the proceedings in reference before the District Judge;

(3) that the only right under the Act available to the company is to appear and adduce evidence for the determination of the amount of compensation; and

(4) that the company by itself would have no right to file an appeal.

43. In view of my aforesaid conclusions, the revision petitions filed by the petitioner are dismissed, but in the circumstances of the case I make no order as to costs.

**J.M. Tandon, J.** - I have had the privilege of going through the judgments recorded by my Lord the Chief Justice and my esteemed brother Prem Chand Jain, J., and with respect to the former, I concur with brother Jain, J.

ORDER<<CENTER< center>>P> **S. S. Sandhawalia, C.J., P. C. Jain and J. M. Tandon, JJ.** - In accordance with the majority decision the revision petitions filed by the petitioner are hereby dismissed but in the circumstances of the case we make no order as to costs.

Petition dismissed.